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IN THE
SUPREME COURT OF FLORIDA

DADE COUNTY, FLORIDA and
the PUBLIC HEALTH TRUST
OF DADE COUNTY, FLORIDA,

Petitioners,

-vs.-

AMERICAN HOSPITAL OF
MIAMI, INC.,

Respondent.

CASE NO. 66,689

DCA CASE NO. 83-1445

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**BRIEF OF AMICI CURIAE FEDERATION OF AMERICAN HOSPITALS, FLORIDA LEAGUE OF HOSPITALS, INC. AND FORTY-SEVEN FLORIDA HOSPITALS* IN SUPPORT OF THE POSITION OF RESPONDENT AMERICAN HOSPITAL OF MIAMI, INC.**

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The forty-seven hospitals which have joined as amici in this brief are the following:

Bayonet Point-Hudson Regional Medical Center, Hudson, Florida

Humana Hospital Bennett, Plantation, Florida

Humana Hospital Biscayne, Miami, Florida

L.W. Blake Memorial Hospital, Bradenton, Florida

Humana Hospital Brandon, Brandon, Florida

Central Florida Regional Hospital, Sanford, Florida

Coastal Communities Hospital, Bunnell, Florida

Community Hospital, New Port Richey, Florida

Crestview Community Hospital, Crestview, Florida

Humana Hospital Cypress, Pompano Beach, Florida

Humana Hospital Daytona Beach, Daytona Beach, Florida

Doctors General Hospital, Plantation, Florida

Doctors Hospital of Lake Worth, Lake Worth, Florida

Doctors Hospital, Sarasota, Florida

East Pointe Hospital, Lehigh Acres, Florida

Humana Hospital Fort Walton Beach, Fort Walton Beach, Florida

Gulf Coast Community Hospital, Panama City, Florida

Humana Hospital Kissimmee, Kissimmee, Florida

Largo Medical Center Hospital, Largo, Florida

Lawnwood Regional Medical Center, Fort Pierce, Florida

Humana Hospital Lucerne, Orlando, Florida

Marion Community Hospital, Ocala, Florida

North Beach Community Hospital, Fort Lauderdale, Florida

North Florida Regional Hospital, Gainesville, Florida

Humana Hospital Northside, St. Petersburg, Florida

Northwest Regional Medical Center, Margate, Florida

Oakhill Community Hospital, Brooksville, Florida

Humana Hospital Orange Park, Orange Park, Florida

Humana Hospital Palm Beaches, West Palm Beach, Florida

Humana Hospital Pasco, Dade City, Florida

Plantation General Hospital, Plantation, Florida

Port St. Lucie Hospital, Port St. Lucie, Florida

Putnam Community Hospital, Palatka, Florida

H.H. Raulerson Memorial Hospital, Okeechobee, Florida

St. Augustine General Hospital, St. Augustine, Florida

Humana Hospital St. Petersburg, St. Petersburg, Florida

Humana Hospital Sebastian, Sebastian, Florida

Humana Hospital South Broward, Hollywood, Florida

South Seminole Community Hospital, Longwood, Florida

Humana Hospital Sun Bay, St. Petersburg, Florida

Sun City Regional Medical Center, Sun City Center, Florida

Tallahassee Community Hospital, Tallahassee, Florida

Twin Cities Hospital, Niceville, Florida

University Community Hospital, Tamarac, Florida

West Florida Regional Medical Center, Pensacola, Florida

Edward H. White Memorial Hospital, St. Petersburg, Florida

Humana Women's Hospital Tampa, Tampa, Florida

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## I

## INTERESTS OF THE AMICI CURIAE

The amici curiae respectfully submit this brief in support of the position of American Hospital of Miami, Inc. ("American Hospital"). All of the amici are involved in the health care industry and most are directly engaged in the delivery of hospital services within the State of Florida. They have chosen to join together in this brief for the purpose of discussing the critically important legal and policy issues raised by the question certified to this Court by the District Court of Appeal for the Third District. While each of the amici supports the position of Respondent American Hospital in this case, they have left the formulation of the specific legal arguments contained in this brief to counsel, and all of the amici may not necessarily subscribe without qualification to each and every argument presented by counsel.

The health care industry throughout the United States is currently undergoing significant and historic changes that will alter the manner in which medical services are delivered and financed in this country for decades. There is a very real danger that the pressing needs of the medically indigent will be overlooked as competitive pressures increase throughout the industry and as available resources are further limited.

Thus, the decision of this Court in the instant case will have important and far-reaching consequences in defining the

contours of public and private responsibility in this state for the health care needs of the poor. The amici believe that the obligation to provide care to the medically indigent should continue to be a shared responsibility and that Florida's counties should not be allowed to abdicate their role in this process. Caring for the poor is a quintessentially public function, and the clear mandate of constitutional and legislative history and practice in this state indicates that to be the case.

The Federation of American Hospitals is a not-for-profit industry association representing more than fifteen hundred owned and managed member hospitals throughout the United States. The Federation is dedicated to the advancement of the delivery of high quality health care to the American people.

The Florida League of Hospitals, Inc. represents approximately ninety investor-owned member hospitals in the State of Florida. It seeks to promote a better understanding by the public and by agencies of state government of the challenges and opportunities facing Florida's hospitals.

The forty-seven hospitals which have joined as amici in this appeal constitute roughly one-fourth of all general, acute-care hospitals in Florida. Individually, they range in size from small, eighty-bed facilities to large urban medical centers. They are located in all areas of the state, from Pensacola to Miami; from Orange Park to Lehigh Acres.

Collectively, they staff and operate more than 10,000 beds, and they annually contribute many millions of dollars in uncompensated medical care for the indigent. American Hospital Association, Guide to the Health Care Field A50-A59 (1984).

All hospitals provide a certain amount of charity care. The central question presented by this appeal, however, is whether the burdens of indigent health care should fall exclusively upon the private hospitals of this state or whether those burdens should be equitably shared.

This Court should be cognizant of the fact that not all public hospital authorities in this state are as responsive to the needs of the indigent as is Jackson Memorial Hospital, the medical facility operated by Respondents Dade County and the Public Health Trust. Some are eager to engage in an active competition for profits and consider their indigent care costs to be nothing but an impediment to the realization of that goal.[1] If this Court should conclude that counties have no

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[1] For example, for many years the North Broward Hospital District has enforced a policy of refusing to provide care to indigent residents who have first been seen at a private hospital and who can be safely referred to one of the three hospitals owned and operated by the District (a fourth is now under construction and two more are planned).

During the fiscal year ending June 30, 1984, the District (which has independent taxing powers) raised over $40 million in tax revenues from its residents. North Broward Hospital District, Report on Examinations of Financial Statements at 15 (September 28, 1984). It realized a net surplus of revenue over expenses, however, during this same period of more

(Continued)

legal or financial duty to provide post-emergency medical care to indigent residents, then the doors may be thrown open in some counties to a wholesale renunciation of responsibility for the health care needs of the improverished, to their ultimate misfortune and to the possible financial ruin of many of Florida's private hospitals.

## II

## STATEMENT OF THE CASE AND FACTS

The question presented by this case is the extent to which a county is legally obligated to provide hospital services to the medically indigent. Respondent American Hospital of Miami, Inc. is a private, not-for-profit hospital, located in Dade County. Petitioner Dade County, Florida is a political subdivision of the State of Florida. Petitioner The Public Health Trust of Dade County, Florida ("the Public Health Trust") is a public agency created by the Dade County Board of County Commissioners for the purpose of operating Jackson Memorial Hospital, a large (1350 beds), tertiary-care medical complex in Miami, Florida.

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than $17 million. Id. at 3.

The District's Board of Commissioners is not elected by the people of the District and is thus accountable to no one for its actions. The South Broward Hospital District, which operates pursuant to a virtually identical charter, accepts referrals of indigent patients.

American Hospital filed a complaint for declaratory judgment against Dade County and the Public Health Trust in the Circuit Court for the Eleventh Judicial Circuit (Case No. 81-4964) seeking a determination of the County's legal and financial responsibility for non-emergency hospital care rendered to medically indigent residents of Dade County. The Circuit Court granted partial summary judgment in favor of American Hospital and held that Dade County and the Public Health Trust have a legal duty and a financial responsibilty to provide post-emergency medical care to indigent residents of Dade County after their emergency medical condition has been stabilized. The Court further held that Dade County and the Public Health Trust are obligated to accept the transfer to Jackson Memorial Hospital of indigent patients whose emergency condition has been stabilized.

Dade County and the Public Health Trust appealed the Circuit Court's order to the District Court of Appeal for the Third District (Case No. 83-1445) pursuant to Rule 9.130(a)(3)(C)(iv) of the Florida Rules of Appellate Procedure. That Court affirmed, but granted a motion by Dade County and the Public Health Trust for rehearing en banc to consider whether the panel's decision conflicted with a prior decision of the same court in Dade County v. Hospital Affiliates International, Inc., 378 So.2d 43 (Fla. 3d DCA 1979).

On rehearing en banc, the Court of Appeal found no conflict between the two decisions and denied the motion for rehearing. The Court of Appeal certified the following question of great public importance to this Court pursuant to Rule 9.030(a)(2)(A)(v) of the Florida Rules of Appellate Procedure: "Does a county bear a legal and financial duty to provide post-emergency medical care to indigent residents of the county?" This Court has accepted jurisdiction.

To the extent that this Statement of the Case and Facts differs from that submitted by Respondent American Hospital, the amici hereby adopt American Hospital's Statement as their own.

## III

## QUESTION PRESENTED FOR REVIEW

DOES A COUNTY BEAR A LEGAL AND FINANCIAL DUTY TO PROVIDE POST-EMERGENCY MEDICAL CARE TO INDIGENT RESIDENTS OF THE COUNTY?

## IV

## SUMMARY OF ARGUMENT

Caring for the poor in this nation has historically been a function of local communities. Prior to the enactment of the social welfare initiatives of the 1930's, counties and municipalities were specifically charged with the duty of

tending to the total needs of their indigent residents, providing them with the food, clothing, shelter and medical attention necessary for basic survival.

The state and federal governments have now stepped in to shoulder a portion of this burden, but the basic residual responsibility to provide for the needs of the indigent has never been lifted from local governments. State and federal programs have now supplanted local efforts to supplement the incomes of the poor, but certain important needs have been left unmet and can only be realized by programs at the local level. This is most particularly true with respect to medical care. Medicaid and Medicare provide certain benefits to defined recipient groups, but others must depend entirely upon the assistance of local communities.

The State of Florida has affirmatively determined that its destitute citizens shall not be forced to suffer and die for want of access to adequate health care. To realize this goal, the State has created a tripartite system of indigent health care in which the State itself, the private hospitals doing business in the state and Florida's counties all have a significant role to play. The State and the private hospitals are responsible for a substantial portion of the health care costs incurred in ministering to the poor; the counties are responsible for those costs that are not absorbed elsewhere.

This public policy has been set in place by the Legislature, and it is embodied in Florida constitutional law.

A decision to the contrary; a decision that counties have no legal or financial obligation for the medical care of their indigent residents is one which is properly within the exclusive province of the state Legislature. Florida's counties have the means at their disposal to seek legislative change in this area at any time, but the voices of the poor are not nearly so powerful. The question before this Court is not whether indigent persons shall be deprived of all medical care entirely, but which institutions should be responsible for financing that care. If Florida's counties are not obligated to participate in this public function, then their abdicated responsibility will inevitably fall on Florida's private hospitals. Those hospitals, already struggling with newly created competitive forces that endanger their continued survival, are less able to cope with additional financial burdens than ever before.

Dade County and the Public Health Trust and other units of local government in Florida have already implicitly assumed a responsibility for indigent medical care by choosing to operate and fund public medical facilities. Those facilities, at the very least, should be available for the benefit of needy residents. This Court may elect in this case to decide the more limited question of a county's duty to provide indigent

health care through its own medical facilities. Such a decision would not constitute a complete solution to the problem of caring for the medical needs of the impoverished, but it would at least validate the proposition that counties are not free to abdicate their responsibilities in this area altogether.

The Supreme Court has acknowledged that "medical care is as much 'a basic necessity of life' to an indigent as welfare assistance." Memorial Hospital v. Maricopa County, 415 U.S. 250, 1082; 94 S.Ct. 1076; 39 L.Ed.2d 306 (1974). This Court has been given the opportunity to ensure that this "basic necessity of life" will not be withheld by those with the power and the duty to provide for the medical needs of this State's poorest citizens.

## V

## ARGUMENT

### A

### IT IS THE PUBLIC POLICY OF THIS STATE THAT COUNTIES MUST SHARE IN THE COSTS OF PROVIDING MEDICAL CARE TO INDIGENT RESIDENTS

In a very real sense, this case involves important and fundamental public policy issues concerning the basic responsibilities of government. Aid to the poor has historically figured as one of the traditional functions of local government. The State has determined in the exercise of

its sovereign powers that the needy are not to be abandoned to the vagaries of private charity or left to fend as best they can by themselves.

As a consequence, this State has never hesitated to impose affirmative obligations upon local governments to provide for the health and welfare of the state's impoverished residents. Nowhere is this intention on the part of the Legislature made more manifest than in the field of indigent health care. Indeed, the Legislature has expressly declared in the Florida Health Care Responsibility Act, Sections 154.301-154.316, Florida Statutes (1983), that

> It is the intent of the Legislature to place the ultimate financial obligation for the medical treatment of indigents on the county in which the indigent resides, for all those costs not fully reimbursed by other governmental programs or third-party payors.

Section 154.301, Florida Statutes (1983)(emphasis added).

Few legislative pronouncements are so unambiguously clear. The Legislature has considered the question of where the ultimate financial responsibility for indigent medical care should be placed and has explicitly decided that that responsibility rests with the counties. This comports with the Legislature's general intention to create a statewide system of hospital care for the needy in which the counties, the State and private hospitals all contribute.

At one time, Dade County agreed with this interpretation, but its position has evidently changed:

> Part IV, of Chapter 154, Florida Statutes, the Health Care Responsibility Act, places the financial responsibility of medical treatment of indigents on the county where the indigents reside....
>
> ....
>
> Therefore, Dade County is financially responsible for the medical treatment of a Dade County resident who is eligible for treatment pursuant to this Act and qualifies as an indigent under the Department of HRS standards. Dade County is financially responsible for these patients' medical care regardless of whether the patient is treated at Jackson Memorial Hospital or at another hospital within the state.

Dade County Attorney's Opinion No. 79-25 (August 22, 1979)(emphasis added).

It is equally clear, however, that the Legislature never intended for the financial burdens of indigent health care to be borne by the counties alone. Instead, the Legislature has enacted a comprehensive program in this area which recognizes the high costs of modern hospital care and which effectively apportions financial responsibility among the three most logical candidates: the State itself, the private hospitals doing business in the state and the counties.[2]

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[2] The Legislature has repeatedly declared its intent that adequate health care be made available to all Florida citizens, regardless of financial status. In no other area has the Legislature spoken as frequently (Continued)

The State of Florida has assumed the obligation of operating the Florida Medicaid Program pursuant to the provisions of Sections 409.266-409.268, Florida Statutes (1983). Medicaid is the single most important indigent health care program now in existence, and, in fiscal year 1983-84, the State spent approximately $318 million on Medicaid benefits. Florida Task Force on Competition and Consumer Choices in Health Care, Report and Recommendations: An Opportunity for Leadership 143 (March, 1984). Private hospitals participate in Medicaid by providing hospital services to indigents at reduced rates which are below cost.

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or with as much force. See, e.g., Section 154.001, Florida Statutes (1983)("It is the intent of the Legislature to promote, protect, maintain, and improve the health and safety of all citizens and visitors of this state through a system of coordinated public health unit services."); Section 154.203, Florida Statutes (1983)("It is declared that for the benefit of the people of this state, the increase of their commerce, welfare, and prosperity, and the improvement of their health and living conditions it is essential that the people of this state have access to adequate medical care and health facilities..."); Section 381.025(1), Florida Statutes (Supp. 1984)("the Legislature intends that government not only strive to meet existing needs, but develop the ability to anticipate and respond to future needs which may result from population growth, technological advancements, new societal priorities, or other changes."); Section 395.5025, Florida Statutes (Supp. 1984)("It is the intent of the Legislature to assure that adequate health care is affordable and accessible to all citizens of this state."); and Section 409.2662(1), Florida Statutes (Supp. 1984)("It is declared that access to adequate health care is a right which should be available to all Floridians.")

In addition to Medicaid, the State operates and funds a maternal and infant hygiene program, Chapter 383, Florida Statutes (1983). It administers a program of children's medical services, Chapter 391, Florida Statutes (1983). It operates several tuberculosis hospitals pursuant to the provisions of Chapter 392, Florida Statutes (1983). It administers programs for the developmentally disabled, Chapter 393, Florida Statutes (1983), and funds comprehensive care for the mentally ill through the provisions of the Baker Act, Sections 394.451-394.4785, Florida Statutes (1983). The State is involved in the operation of children's residential and day treatment centers, Sections 394.50-394.62, Florida Statutes (1983), and it provides services for alcoholics and drug dependents, Chapter 396 and Chapter 397, Florida Statutes (1983). The State subsidizes the operation of emergency medical services and telecommunications, Sections 401.013-401.121, Florida Statutes (1983). All together, the State of Florida spent close to $1 billion on the provision of health care services in fiscal year 1983-84, most of those services intended for the medically indigent. State of Florida, Biennial Budget Recommendation IV-1 to IV-3 (February 14, 1985).

The private hospitals of this state make their contribution as well. Any person in need of emergency medical care is entitled to receive such care at any hospital in the state

which operates an emergency room, Section 395.0143, Florida Statutes (1983),[3] regardless of his or her ability to pay.

In addition, the recently enacted Public Medical Assistance Act levies an annual assessment on each hospital in the state equal to one percent of its annual net operating revenue until 1985 when the assessment increases to 1.5 percent, Section 395.101(2), Florida Statutes (Supp. 1984).[4] The funds thus collected are to be spent by the State exclusively for indigent health care programs, Section 409.2662, Florida Statutes (Supp. 1984), and the total annual amount raised is expected to exceed

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[3] Section 395.0143, Florida Statutes (1983) provides, in pertinent part, as follows:

> No general hospital licensed under this part, and no specialty hospital with an emergency room, shall deny any person treatment for any emergency medical condition which will deteriorate from a failure to provide such treatment.

This requirement is repeated in Section 401.45(1), Florida Statutes (1983).

[4] Section 395.101(2) provides, in pertinent part, as follows:

> There is hereby imposed upon each hospital an assessment in an amount equal to 1 percent of the annual net operating revenue of the hospital for its first fiscal year ending subsequent to May 18, 1984, and in an amount equal to 1.5 percent of such revenue for each hospital fiscal year thereafter, such revenue to be determined by the [Hospital Cost Containment] board, based on the actual experience of the hospital as reported to the board....All moneys collected pursuant to this subsection shall be deposited into the Public Medical Assistance Trust Fund.

$117 million by fiscal year 1985-86. Hospital Cost Containment Board, Estimated Indigent Care Assessment for Each Year and Medicaid Reimbursement (photo. reprint October 1, 1984). Finally, every private hospital in the state voluntarily provides a certain portion of completely uncompensated medical services to the indigent and most provide services at below cost rates through the Medicaid program.

The comprehensive indigent health care plan enacted by the Legislature contemplates that each county will fund a portion of the state Medicaid program, Section 409.267, Florida Statutes (1983), and be responsible for the residual needs of the medically indigent that are not included within a state or federal program or provided by private hospitals. Hence, the inexorable logic to the command of Section 154.302 that "[i]t is the intent of the Legislature to place the ultimate financial obligation for the medical treatment of indigents on the county in which the indigent resides, for all those costs not fully reimbursed by other governmental programs or third-party payors."

The State of Florida and the state's private hospitals are obligated to contribute to the medical care of the poor in the manner prescribed and through the programs created by the Legislature. The counties are obligated to provide for whatever may be left. Any other construction would render Section 154.302 completely meaningless and mere surplusage.

Such constructions of legislative enactments are disfavored. See, e.g., Dickinson v. Davis, 224 So.2d 262, 264 (Fla. 1969)("It is never presumed that the Legislature intended to enact purposeless or useless legislation.") A decision by this Court upholding the District Court of Appeal will not mean that Dade County and the Public Health Trust are required to pay for all indigent health care costs, but merely for their fair share.

The current structure of indigent health care programs in Florida has evolved over many years as the Legislature has considered and dealt with individual aspects of the problem of caring for the medical needs of the poor. Significantly, much of this structure was put into place at a time when the affirmative duties imposed upon Florida's counties by the Constitution of 1885 were explicitly in force. The resulting system may lack internal clarity and unity of purpose, but it also unquestionably reflects the considered judgment of the Legislature concerning the proper public responses to discrete issues of indigent health care. Disturbing the relative apportionment of responsibility in this overall structure risks major damage to the system itself. It may be time for a comprehensive reexamination of the indigent health care system in Florida, but that reexamination should be done by the Legislature and not by this Court.

It is perfectly appropriate and logical for the Legislature to have devised, even on an ad hoc basis, a tripartite system of indigent medical care in which the State and the state's private hospitals have been assigned some specific responsibilities for delivering medical services to the poor, and the counties assume financial responsibility for the residuum. Appreciation for the existing delicate balance between the responsibilities imposed by specific statutes on the State and on private hospitals, and the residual responsibility of Florida's counties, compels the conclusion that the question certified by the District Court of Appeal should be answered in the affirmative. This same conclusion is reaffirmed by an examination of relevant constitutional provisions, but is in no way dependent upon constitutional interpretation alone.

**B**

**ARTICLE XIII, SECTION 3 OF THE FLORIDA CONSTITUTION OF 1885 IS NOW A STATUTE IN CURRENT FORCE AND EFFECT**

Much has been written and said in this case concerning the current status of Article XIII, Section 3, Florida Constitution (1885), but this Court need not reach the question of constitutional interpretation raised by this case in order to find that counties do have a legal duty to assume the ultimate

financial obligation for the medical treatment of indigent residents.

If the statutory system created by legislative adjustments to the State's ad hoc indigent health care structure is not crystal clear in placing residual responsibility on the counties, then the wording of Article XIII, Section 3 should resolve any doubt as to the public policy of this state. That section provides, in pertinent part, as follows:

> The respective counties of the State shall provide in the manner prescribed by law, for those of the inhabitants who by reason of age, infirmity or misfortune, may have claims upon the aid and sympathy of society;...

The Florida Constitution of 1968 changed this former constitutional requirement into a statute by virtue of the automatic operation of Article XII, Section 10, Florida Constitution (1968):

> All provisions of Articles I through IV, VII and IX through XX of the Constitution of 1885, as amended, not embraced herein which are not inconsistent with this revision shall become statutes subject to modification or repeal as are other statutes.

As thus transformed, Article XIII, Section 3, Florida Constitution (1885) has never been repealed. The Legislature has never done so either explicitly or by indirection. The annual reviser's bills cited by Dade County and the Public

Health Trust are inapplicable by their very terms. The latest version provides as follows:

> Every statute of a general and permanent nature enacted by the State or by the Territory of Florida at or prior to the regular and special 1981 legislative sessions, and every part of such statute, not included in Florida Statutes 1983, as adopted by § 11.2421, as amended, or recognized and continued in force by reference therein or in §§ 11.2423 and 11.2424, as amended, is repealed.

Section 11.2422, Florida Statutes (1983)(emphasis added).

By definition, statutes created through the operation of Article XII, Section 10, Florida Constitution (1968) have never been enacted by the State or by the Territory of Florida. Hence, they could hardly be subject to repeal by virtue of Section 11.2422, Florida Statutes (1983) or of any other reviser's bill with the same qualification.

Whether Article XIII, Section 3, Florida Constitution (1885) still exists or not is largely immaterial to a proper resolution of the issues raised by this case.[5] It does,

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[5] As recently as 1979, Dade County apparently believed that Article XIII, Section 3 limited its discretion with respect to indigent health care services. See County Attorney's Opinion No. 79-25 (August 22, 1979)("this provision [of the 1885 Constitution] has the force of a statute since it is not inconsistent with the new Constitution. The clause places a duty on the County to render health care to the aged, infirm and misfortunate but does not state the extent of that duty.")(emphasis added). Id. at 2.

however, provide further evidence of the strong public policy of this state that the medically indigent shall not be denied access to adequate health care. If Article XIII, Section 3, Florida Constitution (1885) has indeed been repealed sub silentio, then that fact indicates nothing about the intentions of the Legislature in this area. The statutory scheme has now gone far beyond what could have been imagined in 1885. The intervening one hundred years have witnessed enormous changes in social welfare policy and in the role of government as protector of society's weakest members. To argue that Florida's counties are today less willing or able to provide for those who "may have claims upon the aid and sympathy of society" is to ignore the lessons of the past century.

C

**A DECISION THAT FLORIDA'S COUNTIES HAVE NO LEGAL OR FINANCIAL DUTY TO PROVIDE POST-EMERGENCY MEDICAL CARE TO RESIDENT INDIGENTS SHOULD BE LEFT TO THE LEGISLATURE**

The Legislature has created an affirmative and systematic statutory framework from which the duty of Florida's counties to their indigent residents may be found. Such a duty need not be proclaimed in boldface type in order for it to exist. It is part and parcel of the traditional, historical functions of local government and is explicitly recognized as such in most states.[6]

The concept of duty is simply the creation by law, either directly or by implication, of an obligation on the part of one for the benefit of another. One will search in vain throughout the Florida Constitution and the Florida Statutes for a single positive expression of the obvious proposition that local governments have a duty to provide fire and police protection to their citizens. No one would seriously dispute, however, that such a duty exists. It is simply a natural and obvious component of the functions of local government which needs no validation by the State Legislature.

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6 See, e.g., Ala. Const., art. IV, § 88, Ala. Code §§ 22-21-210 to 22-21-243 (Supp. 1984); Ariz. Rev. Stat. Ann. §§ 11-291 to 11-301 (1977 & Supp. 1984-85); Cal. Gov't Code §§ 29606-29607 (West 1968 & Supp. 1985); Conn. Gen. Stat. Ann. § 17-273 (West Supp. 1984); Idaho Code § 31-3503 (1983); Iowa Code Ann. § 347.16 (West 1983 & Supp. 1984-85); Kan. Const., art. VII, § 4; La. Rev. Stat. Ann. § 46:461 (West 1982); Me. Rev. Stat. Ann. tit. 22, § 4307 (Supp. 1984-85); Mich. Comp. Laws Ann. § 400.66a (West Supp. 1984-85); Minn. Stat. Ann. §§ 261.21-261.23 (West. Supp. 1985); Miss. Code Ann. §§ 43-31-1 to 43-31-39 (1972); Mo. Ann. Stat. §§ 205.580-205.630 and 205.670 (Vernon 1983); Mont. Code Ann. §§ 53-3-103 and 53-3-104 (1983); Neb. Rev. Stat. §§ 68-103 to 68-116 (1981); Nev. Rev. Stat. §§ 428.010-428.110 (1979); N.H. Rev. Stat. Ann. § 166:10 (Supp. 1983); N.J. Stat. Ann. § 44:1-154 (West 1940); N.M. Stat. Ann. §§ 27-5-1 to 27-5-18 (1978); N.Y. Const., art. XVII, § 1; N.D. Cent. Code § 50-01-01 (1982); Okla. Const., art. XVII, § 3; R.I. Gen. Laws § 40-5-1 (1977); S.D. Codified Laws Ann. § 28-13-1 (1984); Tenn. Code Ann. § 14-20-101 (1980); Tex. Const., art. XVI, § 8, Tex. Rev. Civil Stat. Ann. art. 4438 (Vernon 1976); Utah Code Ann. § 17-5-55 (Supp. 1983); W. Va. Code § 7-1-5 (1984); Wis. Stat. Ann. § 49.02 (West Supp. 1984-85); Wyo. Stat. §§ 18-8-101 to 18-8-108 (1977).

A decision by this Court that counties have no legal or financial obligation for indigent medical care, however, would seriously disrupt and interfere with the Legislature's design. The fundamental question in this area has already been answered: as a matter of public policy, this State is not willing to allow its impoverished citizens to suffer and die for lack of adequate medical care.[7] Having established that basic proposition, the Legislature has proceeded effectively to divide the legal and financial responsibility for indigent health care among the agencies of the State itself, the private hospitals licensed to do business in the state and the counties.

This Court must carefully consider the inevitable consequences of a decision to answer the question certified by the Court of Appeal with an unqualified negative. The result will not be a reduction of indigent health care costs, but the shifting of those costs from Florida's counties to the private hospitals. What was formerly a public responsibility will become a private burden.

All private hospitals in this state are legally obligated to render emergency medical care to indigent persons in need of such care, Sections 395.0143 and 401.45(1), Florida Statutes (1983). Having once done so, however, it is the clearly-

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7 See supra, n. 1.

established law of this state that a hospital may not discharge a medically-stabilized patient who may need further, non-emergency care. Le Jeune Road Hospital, Inc. v. Watson, 171 So.2d 202 (Fla. 3d DCA 1965). To do so runs the risk of significant liability in tort. Thus, a private hospital effectively must care for the total medical needs of an indigent person who presents himself to the hospital with an emergency condition and who cannot be transferred to a public facility.

Enormous changes are taking place in Florida and throughout the United States with respect to the financing of private hospital care. These changes have made it increasingly difficult for all private hospitals to absorb the costs of indigent medical care, and they implicate the very survival of many hospitals. A decision by this Court to place additional financial burdens on Florida's private hospitals will come at a time of mounting economic pressures which have made it even more difficult for private hospitals to respond to the health care needs of the poor.

Shifting the costs of indigent care to the paying patient, for example, is no longer an available option. The federal government has changed its hospital Medicare reimbursement practices from a cost-plus basis to a prospective payment system based on established rates for each of specific diagnosis-related groups (DRGs) of admissions irrespective of

the actual cost of the procedures and services rendered. 42 U.S.C. § 1395ww (1983). Medicare constitutes a substantial portion of the revenues of most hospitals, particularly in Florida, and there is no longer any margin to be used for other purposes.

Health care consumers have also become more cost-conscious. Alternative health care financing and delivery vehicles such as health maintenance organizations (HMOs) and preferred provider organizations (PPOs)(recently authorized in Florida by Sections 627.6375 and 627.6695, Florida Statutes (1983)) have proliferated throughout Florida, exerting significant downward pressures on hospital revenues. Outpatient surgical and emergency centers and free-standing clinics have multiplied in number, forcing a decline in total inpatient days at virtually every private hospital in the state.

Finally, the State itself has moved aggressively to contain hospital costs and limit revenues. The Hospital Cost Containment Board has been given the power to reject or modify hospital budgets that exceed certain specified parameters, Section 395.509, Florida Statutes (Supp. 1984), the goal being to limit further the revenue-generating potential of the state's private hospitals.

The private hospital industry in Florida currently contributes tens of millions of dollars every year in

uncompensated medical care for indigent citizens. Should this Court decide to place additional burdens on those hospitals, the results may well be disastrous. Some hospitals may be forced to close their emergency rooms. Others may be forced out of business altogether.

The question certified by the Court of Appeal is not merely whether Florida's counties must pay for indigent health care. The question actually is who should pay. Absent legislative direction to the contrary and in light of the evident statutory scheme, the answer must be that Florida's counties must contribute their fair share. Any other resolution is properly the exclusive function of the Legislature.

## D

## DADE COUNTY AND OTHER LOCAL POLITICAL SUBDIVISIONS HAVE EXPRESSLY ASSUMED A DUTY TO PROVIDE POST-EMERGENCY MEDICAL CARE TO INDIGENT RESIDENTS

Dade County and the Public Health Trust have argued that they are under no duty to provide hospital services to their indigent residents. In support of that proposition, they have cited seven old cases (none more recent than 1941) from North Dakota, South Dakota, Texas and Wisconsin. Each of those cases is distinguishable. Carthaus v. County of Ozaukee, 236 Wis. 438, 295 N.W. 678 (1941) and Willacy County v. Valley Baptist Hospital, 29 S.W.2d 456 (Tex. Civ. App. 1930), held no more than that counties are not responsible for the medical expenses

of non-indigents. Roane v. Hutchinson County, 40 S.D. 297, 167 N.W. 168 (1918) and Hamlin County v. Clark County, 1 S.D. 131, 45 N.W. 329 (1890), held only that a county is not responsible for the medical expenses of a non-resident. Mandan Deaconess Hospital v. Sioux County, 63 N.D. 538, 248 N.W. 924 (1933); Patrick v. Town of Baldwin, 109 Wis. 342, 85 N.W. 274 (1901); and St Luke's Hospital Ass'n v. Grand Forks County, 8 N.D. 241, 77 N.W. 598 (1898), held that indigent medical care rendered by a private party may be reimbursed from public funds only if prior authorization has been obtained.

Significantly, each of these four states imposed an affirmative statutory duty upon their counties to provide for the health care needs of their poor residents, and they continue to do so today.[8] See 1913 N.D. Comp. Laws § 2496 et seq. and N.D. Cent. Code § 50-01-13 (1982); S.D. Pol. Code § 2763 (1915) and S.D. Codified Laws Ann. § 28-13-33 (1984); 1925 Tex. Rev. St., art. 2351, subd. 11 and Tex. Rev. Civil

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8 And the courts in each state so recognized in the cited cases. Thus, "under the statutes, the defendant county owed the duty of extending relief." St. Luke's Hospital, 8 N.D. at 241; "[t]his section...fixes and casts upon the county the legal duty and obligation of supporting and caring for the poor lawfully settled in such county..." Roane, 40 S.D. at 300; "the duty and authority of the commissioners' court to send the indigent sick to hospitals is limited to 'public' hospitals within the county..." Willacy County, 29 S.W.2d at 457 (Tex.); "[t]he statute creates a liability to relieve destitute persons..." Patrick, 109 Wis. at 353.

Stat. Ann. art. 4438 (Vernon 1976); 1898 Wis. Rev. St. § 1499 et seq. and Wis. Stat. Ann. § 49.02(5) (West Supp. 1984-85).

Even if this Court should decide that the existence of such a statutory duty in Florida is unclear, there are sufficient grounds in the facts of this case for this Court to rule that Dade County and the Public Health Trust have at least implicitly assumed such a duty through their acts and their interpretations of existing law. In particular, the Dade County Attorney has rendered a legal opinion on this subject which provides, in pertinent part, as follows:

> In general, the Dade County Commission and the Public Health Trust have the discretion to determine the medical services to be funded and provided by Jackson Memorial Hospital. Florida law limits this discretion by requiring that the following medical services be provided by the County and the Trust:
>
> ....
>
> 3.B. Part IV, Chapter 154, Florida Statutes, requires that Dade County be financially responsible for the medical treatment of the indigents residing in Dade County that meet the eligibility requirements of the Department of Health and Rehabilitative Services. This Part does not require that the services must be provided by the County, but that the County will be financially responsible for the cost of treating its resident indigents.

County Attorney's Opinion No. 79-25 at 8 (August 22, 1979)(emphasis added).

More fundamentally, Dade County has chosen to discharge its indigent health care responsibilities through the creation of a public health trust.[9] It also continues to provide funding for the trust and for the operation of Jackson Memorial Hospital. Metropolitan Dade County, Florida, Proposed Operating Budget, 1984-85 82-83 (July 5, 1984).[10] It is not obliged to do so. What possible public purpose is served by these actions if it is not to provide for the medical needs of those Dade County residents who cannot otherwise afford adequate health care? Dade County has affirmatively acted, and, having acted, it has thus accepted the ultimate financial obligation for the medical treatment of its indigent residents.

Other counties in Florida have affirmatively assumed a responsibility to provide for the health care needs of their indigent residents through the creation of county hospitals in accordance with the provisions of Chapter 155, Florida Statutes (1983). Florida law expressly contemplates that these county

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9 Section 154.07, Florida Statutes (1983), provides, in pertinent part, that "[n]o [public health] trust created hereunder shall transact any business or exercise any powers until the governing body of the county of such trust shall, by proper resolution, declare that there is a need for such trust to function and shall appoint the members thereof."

10 Dade County's operating budget for 1984-85 states that the goal of purchasing hospital services from the Public Health Trust is "to provide for the diagnosis, treatment, and care of patients who do not have the ability to pay..." Id. at 82.

facilities will be operated for the benefit of each county's residents and will provide medical treatment to indigent residents at no charge:

> Every hospital established under this law shall be for the benefit of the inhabitants of such county and of any person falling sick or being injured or maimed within its limits...Every such inhabitant or person who is not a pauper shall pay to such board or such officer as it shall designate, a reasonable compensation for occupany, nursing, care, medicine, and attendance, according to the rules and regulations prescribed by the said board. Such hospital always shall be subject to such rules and regulations as said board may adopt in order to render the use of said hospital of the greatest benefit to the greatest number;...

Section 155.16, Florida Statutes (1983).

The clear implication of the wording of this section is that a "reasonable compensation" for hospital services need not be paid by every such inhabitant or person who is a pauper.

In addition, there are seventeen hospital districts in Florida. Florida Hospital Association, Florida Hospitals: The Facts 107-114 (April, 1983). Each of these districts was created by special act of the Legislature, and most possess independant taxing authority, the capacity to issue public, tax-exempt bonds and the power of eminent domain. These accoutrements of government authority were bestowed by the Legislature for the purpose of facilitating the establishment and financing of hospitals for the use and benefit of each

district's inhabitants, including and in particular its indigent residents. It would make no sense for the Legislature to grant such extraordinary powers, including the power to tax, for the creation of hospitals that are indistinguishable from profit-making enterprises. An obligation to serve the public must inevitably flow from the use and exercise of powers that are inherently public in nature.

Thus, in most instances, a ruling by this Court that counties bear a legal and financial duty to provide post-emergency medical care to indigent residents will not mean that Florida's counties will suddenly be encumbered with new and overwhelming financial responsibilities in this area. Many counties already accept the fact that they must provide for the medical needs of their impoverished residents. Many already operate county hospitals for this purpose. The citizens of other counties have chosen to care for their indigent sick through the creation of public hospital districts that are intended to make hospital services available to all residents, regardless of financial status. Each of these solutions is a perfectly appropriate means of discharging local health care responsibility to the poor, and they strongly indicate that Florida's counties have themselves accepted this obligation.

Any other interpretation would necessarily mean that Dade County, the Public Health Trust and all of Florida's counties are entirely free to engage in the proprietary hospital

business, competing for profits in the marketplace alongside the private sector. There is no dearth of hospitals in Dade County. The unique and essential function which distinguishes a public hospital is its obligation to provide medical services to the public. It is not an inherent function of local government to operate profit-making enterprises. It is, however, an accepted governmental responsibility to provide for the health and welfare of the truly needy. Dade County and the Public Health Trust have accepted this responsibility and, through Jackson Memorial Hospital, have generally discharged this duty in an enlightened and compassionate manner. The decision of this Court, however, will determine whether other local authorities will be free to stand aside from their historical role in implementing the declared intention of the State "to assure that adequate health care is affordable and accessible to all the citizens of this state." Section 395.5025, Florida Statutes (Supp. 1984).

**E**

**IT IS NOT NECESSARY FOR THIS COURT TO ANSWER THE QUESTION CERTIFIED BY THE COURT OF APPEAL WITH EITHER AN UNQUALIFIED POSITIVE OR NEGATIVE RESPONSE**

The question certified to this Court by the District Court of Appeal presents the issues involved in this case in terms which are perhaps too stark and sharply delineated. As is usually the case with significant and controversial public

policy issues, it may not be possible for this Court to answer the question certified with a simple "yes" or "no." This Court may properly conclude, however, that an appropriate middle ground exists whereby the health care needs of Florida's poor can be safeguarded without disrupting the financial stability of this State's local governments.

The amici believe that there is clear evidence to be drawn from Florida's history, from its Constitution and from its statutes that counties do have a legal and financial duty in this state to provide post-emergency medical care to indigent residents. That duty is naturally qualified by the power to make and enforce reasonable regulations as to eligibility and as to the manner in which hospital services are rendered. There is no single "correct" solution. Local governments may discharge their duties in this field through a variety of alternative mechanisms, all of which have been sanctioned by the Legislature. A county may choose to deliver medical services directly through a hospital which it owns and operates. It may decide instead to create and fund a public health trust for this purpose. Its citizens may elect to petition the Legislature for the creation of a special taxing district for the operation of public hospitals. A county may also choose to contract with or to reimburse private medical facilities for the care provided to indigent residents of the county.

What a county may not do is to abandon its indigent health care responsibilities altogether. Counties must provide for the post-emergency medical needs of their indigent residents, but they have some flexibility in deciding how those medical needs will be met.

The basic proposition that local governments have a duty to care for their indigent sick is most compelling where a unit of local government has at least implicitly accepted such a responsibility by choosing to establish and operate a medical facility. In such a case, the inherently public nature of the facility should dictate that indigent persons be afforded a preference in admission and treatment. The most controversial aspect of this case is the question of a county's duty to reimburse private hospitals for the care they provide to the indigent. That question need not be decided by this Court at this time. A local government's duty to admit and care for its indigent residents in its own medical facilities is, however, an obligation that should have been settled long ago.

Thus, it is not necessary for this Court to answer the question certified by the Court of Appeal with either an unqualified positive or negative response. Instead, this Court may appropriately rule that a unit of local government has a legal and financial duty to provide post-emergency medical care to indigent residents when it has used public funds to create and operate a medical facility or when such a unit of local

government was itself created for the purpose of providing hospital services (such as in the case of a hospital district). The duty to care for resident indigents should include a duty to accept the transfer of medically-stabilized indigents from private hospitals when appropriate public facilities are available.

Dade County and the Public Health Trust have conjured up a list of twenty-six "horribles" in an attempt to dramatize what they believe will be the consequences of a ruling by this Court upholding the decision of the District Court of Appeal. Each of their questions is based upon the most extreme and literal interpretation of an affirmative response by this Court to the certified question. Recognizing that an acceptable middle ground exists, there are short and obvious answers to each question:

A. Must the Public Health Trust reject all paying patients, leaving all of its beds for indigents in light of Section 154.11 allowing each trust to set its own rates and charges?

ANSWER: No. It is perfectly acceptable for the Public Health Trust to admit and care for paying patients so long as it accords preference in admission to Dade County's indigent residents.

B. Is there a limitation on the number of paying patients the Public Health Trust may accept?

ANSWER: No. There is no limitation on the number of paying patients the Public Health Trust may accept so long as the medical needs of Dade County's indigent residents are adequately met.

C. May the Public Health Trust legally accept paying patients who have unique maladies and can only receive their needed treatment at the Public Health Trust?

ANSWER: Yes. The Public Health Trust may legitimately admit and care for paying patients, including those with unique maladies. The provision of unique or highly specialized services by the Public Health Trust also furthers the public interest inasmuch as some county residents might not otherwise have access to the care they need.

D. Are there hospitals in Dade County that may not petition the lower court for reimbursement, such as those hospitals that are unaccredited?

ANSWER: Yes. The reimbursement of private hospitals may be made subject to reasonable rules and regulations, including licensing and accreditation requirements. Unlicensed hospitals are not, for example, entitled to reimbursement under the State's Medicaid program, Section 409.266(2)(d), Florida Statutes (1983), and

similar standards, including reporting and record-keeping requirements, may be imposed by Dade County and the Public Health Trust.

E. Would physicians, nursing homes, hospitals, health spas, private duty nurses, clinics, pharmacists, rescue units and any other institutions be eligible for reimbursement for direct and ancillary indigent medical care?

ANSWER: It depends. Dade County and the Public Health Trust have the power and discretion to reimburse all of these institutions, but they need not do so. Hospitals are the only facilities that provide comprehensive care and none of the other institutions render any medical services that are not also provided by hospitals. The medical needs of the indigent can be fully met with a program of hospital reimbursement alone; those needs cannot be met with any reimbursement program that excludes hospitals.

F. To what extent would Dade County be financially responsible to each entity or person treating indigents?

ANSWER: Dade County may enforce reasonable rules and regulations governing hospital reimbursement. It would be permissible, for example, for the County to reimburse hospitals for their costs of

treating indigents rather than their charges. Dade County would not be financially responsible for the costs of any medical care reimbursed by any state or federal program.

G. Would podiatrists, naturopaths, chiropractors, osteopaths or optometrists be entitled to the same rate of reimbursement as other medical practitioners?

ANSWER: All of these health care practitioners are recognized and licensed by the State of Florida and are entitled to participate as providers under the federal Medicaid program. 42 U.S.C. § 1396d(a). To the extent their services were required for the treatment of medically indigent residents and were not reimbursed by any state or federal program, they would be entitled to reimbursement from the County, subject to reasonable rules and regulations.

H. If a patient who is not an indigent but incapable of paying is brought to the Public Health Trust needing emergency care, and is treated and stabilized but needs further treatment, must the Public Health Trust transfer that patient to another hospital, possibly the Respondent's [American Hospital's] hospital, because it subjects itself to a lawsuit for retaining non-indigent patients?

ANSWER: No. The Public Health Trust may admit and care for non-indigent patients who are incapable of paying. Simply because the law requires the Public Health Trust to care for indigent patients does not mean that it must only care for indigent patients.

I. Would the County have a cause of action against a hospital which refused patients incapable of paying, who are not indigents but could not remain in the Public Health Trust because of their financial status?

ANSWER: No. The Public Health Trust may admit and care for non-indigent patients who are incapable of paying. So long as the Public Health Trust discharges its responsibility of providing medical services to indigent residents, it may perform other functions as well.

J. What paying patients, if any, may the Public Health Trust admit for teaching purposes, in light of its affiliation with the University of Miami School of Medicine?

ANSWER: The Public Health Trust may admit and care for any paying patients it chooses, so long as it does not deny hospital services to indigent residents.

K. Would the various hospitals be allowed to request administrative costs, and if so to what extent?

ANSWER: Dade County has the power to reimburse private hospitals for their administrative costs incurred as a result of caring for indigent residents which are not reimbursed by any state or federal program, and these costs ordinarily constitute an element of a hospital's expenses of rendering medical treatment. Dade County's only legal obligation is to reimburse private hospitals for those costs directly incurred in providing medical care to indigent residents and not reimbursed by the state or federal government.

L. Out of what fund must Dade County pay for such medical expenses?

ANSWER: Dade County may reimburse private hospitals for their uncompensated costs from general appropriations, from the Public Health Trust appropriation or from any other appropriate fund.

M. In the case of catastrophic illnesses, is there a limitation or cap on the amount hospitals may bill the County?

ANSWER: Yes. Private hospitals may not bill Dade County for any hospital services for which they receive reimbursement under any state or federal program.

N. If raising taxes is needed to appropriate more funds to pay for indigent care, is it legally permissible for the lower Court to compel Dade County to raise taxes, notwithstanding the Supreme Court's ruling that only the Board of County Commissioners has the authority consistent with the Florida Constitution to decide the millage rate?

ANSWER: Both the Legislature and the courts have the power and authority to compel Dade County to fund essential public services, but the courts may not require the County to raise taxes for this purpose. The manner in which Dade County raises sufficient revenues to meet its indigent health care responsibilities is a matter left to the County's discretion. The Legislature has often required Florida's counties to fund open-ended public services. See, e.g., § 34.171, Fla. Stat. (1983)(pertaining to salaries and expenses of circuit and county courts); and § 409.267, Fla. Stat. (1983)(Medicaid).

O. Would Dade County be liable to other hospitals and nursing homes for custodial care as well as acute care or both?

ANSWER: Dade County may choose to reimburse hospitals for their indigent custodial care costs, or it may require those hospitals to

transfer indigent patients in need of custodial care to the Public Health Trust.

P. Would Dade County be liable for prescription drugs on an outpatient basis? Are there prescriptions that would not be allowable?

ANSWER: Dade County would be obligated to reimburse private hospitals for the costs of prescription drugs administered to indigent residents as a part of their hospital care and not reimbursed by any state or federal program. Alternatively, Dade County may properly require that prescription drugs dispensed on an outpatient basis to indigent residents be obtained through the Public Health Trust itself. No reimbursement need be provided for prescription drugs that are not medically required.

Q. Would there be limitations on the number of visits per month or week that indigent patients would be allowed at a doctor's office or hospital?

ANSWER: Dade County and the Public Health Trust are under no legal obligation to reimburse either doctors or indigent residents for the costs of doctors' office visits. Dade County must reimburse private hospitals only for those non-emergency medical costs that are necessarily

incurred and that are not reimbursed by any state or federal program. Dade County and the Public Health Trust may require that medically-stabilized indigent patients be transferred to the Public Health Trust, thereby avoiding any obligation to reimburse private hospitals.

R. May patients admit themselves into the hospitals of their choice in Dade County when the Public Health Trust has no available beds, or must the patients go to the hospital nearest to his residence or place of business? or must indigents go to a hospital designated by Dade County?

ANSWER: An indigent resident with an emergency medical condition may go to any hospital for treatment and that hospital will be responsible for the costs of that emergency medical care. Sections 395.0143 and 401.45(1), Florida Statutes (1983). An indigent resident with a non-emergency medical condition in need of an elective hospital admission may permissibly be required to wait until the Public Health Trust has an available bed to accommodate that indigent patient.

S. Who are indigents--Who decides the various classifications of indigency?

ANSWER: The Florida Health Care Responsibility Act, in Section 154.304(1), Florida Statutes (1983), defines a "certified indigent patient" as "a patient who has been certified as indigent by the county in which he resides." The Florida Department of Health and Rehabilitative Services has promulgated uniform standards for the determination of indigency pursuant to the requirements of Section 154.308, Florida Statutes (1983). Dade County and the Public Health Trust may properly employ those standards in determining indigency or may elect to apply less restrictive standards, as permitted by Section 154.308, Florida Statutes (1983).

T. How long must indigents reside in Dade County before being eligible for free medical services?

ANSWER: Dade County may not condition eligibility for indigent hospital care upon any durational residence requirements. See Memorial Hospital v. Maricopa County, 415 U.S. 250, 94 S.Ct. 1076, 39 L.Ed.2d 306 (1974).

U. If a citizen who did not have money to pay for medical needs moved from another state or county to Dade County, and immediately was admitted into a hospital, would that hospital be eligible for reimbursement?

ANSWER: A hospital would be eligible for reimbursement for its costs of providing non-emergency medical care to a certified indigent which are not reimbursed by any state or federal program. Dade County and the Public Health Trust may, however, require the hospital to transfer a medically-stabilized indigent patient to the Public Health Trust, thereby avoiding any obligation to reimburse the transferring hospital. The length of residence of the indigent patient in Dade County is irrelevant. See Memorial Hospital.

V. If other hospitals or physicians refused to accept patients capable of paying so that they could accept only indigents for guaranteed reimbursement from Dade County, would Dade County be allowed to withhold payments from such hospitals?

ANSWER: No, but such unlikely behavior on the part of hospitals or physicians would be contrary to their economic interests. In any event, a private hospital may not refuse to treat a person capable of paying who is in need of emergency medical care. Sections 395.0143 and 401.45(1), Florida Statutes (1983). A refusal to treat elective paying patients would not cause any harm

to Dade County or to indigent residents of the County.

W. Would Dade County be obligated to reimburse Respondent [American Hospital] and other hospitals and physicians for costs only, or would the hospitals and physicians be entitled to overhead and profit?

ANSWER: Dade County has the power to reimburse private hospitals for medical services rendered to indigent residents and not reimbursed by any state or federal program, and it may elect to include overhead and profit within that reimbursement.

X. Within what period of time from the patients' discharge must hospitals bill Dade County? In what period of time must Dade County respond?

ANSWER: Dade County may enact and enforce reasonable rules and regulations governing its reimbursement of private hospitals for their costs of providing non-emergency medical services to indigent residents. These rules and regulations may include reasonable record-keeping, accounting and billing requirements, as is the case for any supplier of services to the County.

Y. What considerations, if any, would the Court give inflationary or recessionary pressures in determining the

County's obligation?

ANSWER: None. Inflationary or recessionary pressures, as the case may be, might increase or decrease the County's financial obligation, but they would also influence the County's tax base and thereby its capacity to respond to the health care needs of its indigent residents. The net effect should not change the County's obligation at all.

Z. If Dade County's population dramatically increased, would the financial burden increase likewise or would Dade County's responsibilities remain the same?

ANSWER: Dade County would continue to bear a legal and financial duty to provide post-emergency medical care to its indigent residents, regardless of the County's population. Such a duty would be subject to whatever reasonable rules and regulations the County might choose to enforce. If Dade County's population dramatically increased, its indigent health care costs might also increase, but so would its tax base and its financial capacity to provide for the health care needs of its indigent residents.

This extended treatment of the "worst case" scenario set forth by Dade County and the Public Health Trust should

demonstrate that a decision by this Court upholding the ruling of the Court of Appeal will not signal the end of fiscal integrity for Dade County or any other county in Florida. The questions they have posed concerning the interpretation and implementation of an affirmative answer by this Court are no more complicated or onerous than the administrative issues which often flow from decisions by this Court.[11]

A decision that Florida's counties bear a legal responsibility for the medical needs of their indigent residents will not bankrupt Dade County. It will, however, validate a long-standing commitment on the part of the Legislature that Florida's impoverished residents shall not be forced to suffer from a lack of access to adequate medical care.

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[11] Indeed, there are many significant and unanswered questions which would result from a decision by this Court overturning the decision of the District Court of Appeal. Some of them are the following:

A. Is there any limitation as to the amount of uncompensated medical care that private hospitals are obligated to provide to indigent patients?

B. Must a private hospital displace paying patients in order to render care to indigent patients?

C. Must a private hospital accept the transfer of indigent patients from public facilities?

D. Must private hospitals reimburse counties for their costs of operating public rescue services?

E. In a similar fashion, do private restaurants and hotels have a legal duty to provide food and shelter to needy individuals who may be hungry or homeless?

If this Court is mistaken in its interpretation of legislative intent, then Florida's counties are in a far better position to seek legislative change than are the poor and needy inhabitants of this State who stand to benefit or to suffer from a decision by this Court in this case.

There can be little question but that the Public Health Trust in particular is a uniquely sympathetic institution. Through Jackson Memorial Hospital, Dade County and the Public Health Trust operate an advanced and sophisticated medical center that provides high quality medical care. Jackson Memorial Hospital has also become, in many respects, the health care provider of last resort for many of Dade County's needy. It performs a magnificent service for the citizens of Dade County, often under the most difficult and trying circumstances. But the generally admirable performance of its public responsibilities by Jackson Memorial Hospital does not provide an appropriate legal basis for the resolution of the question of great public importance presented in this case.

To the contrary, this Court's decision will have wide repercussions throughout the State of Florida and will apply to counties and public health care facilities that are not nearly so responsive to the needs of the medically indigent as is Jackson Memorial Hospital.

The amici curiae respectfully submit that this Court must, as a matter of law, affirm the decision of the District Court

of Appeal because the letter and intent of the Legislature in this area is clear. To hold otherwise would run the risk of giving added support to those tax-assisted local health care authorities that are only interested in delivering medical services to the affluent.

## VI

## CONCLUSION

The amici curiae respectfully submit that this Court should hold that Florida's counties bear an unqualified legal and financial duty to provide post-emergency medical care to indigent residents of the county. That duty encompasses an obligation to reimburse private hospitals for their costs of providing medical care to indigent residents.

In the alternative, the amici curiae respectfully suggest that this Court should rule that a unit of local government has a legal and financial duty to provide post-emergency medical care to indigent residents when it has used public funds to create and operate a medical facility or when such a unit of local government was itself created for the purpose of providing hospital services (such as a hospital district). The duty to care for resident indigents includes the duty to accept the transfer of medically-stabilized indigents from private hospitals.

Florida law imposes an affirmative responsibility upon local government to share in the provision of medical services to the poor. Any decision by this Court to the contrary will disadvantage not only this State's private hospitals, but also its needy citizens.

Respectfully submitted,

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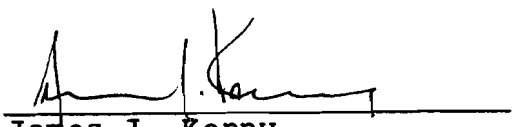
By: 
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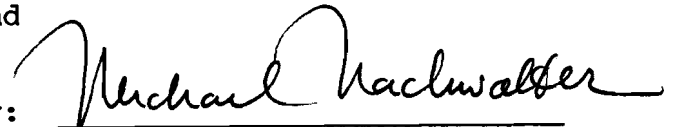
By: 
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Dated: April 26, 1985
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## Certificate of Service

I hereby certify that a true and correct copy of the foregoing has been mailed to the following on this 26th day of April, 1985:

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