IN THE SUPREME COURT OF FLORIDA

TALLAHASSEE, FLORIDA

CASE NO: 66,854

HELEN HAFTEL, et vir,

Petitioners,

v.

ALVIN TOBIS, M.D.,
et al.,

Respondents.

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# REPLY BRIEF OF PETITIONERS ON THE MERITS

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and
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## ARGUMENT

The Fourth District Court of Appeal in COHEN v. BAXT, Case No. 84-835 (4th DCA 1985) has again ruled that the two year Statute of Limitations is not applicable to the Fund. In that decision the Fourth District points out that there was language in the Florida Supreme Court's recent decision in FLORIDA PATIENT'S COMPENSATION FUND v. VON STETINA, 10 FLW 286 (May 16, 1985), that now supports its conclusion:

> . . .[l]anguage used by the supreme court in a recent case supports the dual philosophy that (1) the Fund is more analogous to an insurer than to that of "one in privity with a health care provider" and that (2) the ameliorating influence of the Fund on the medical malpractice crisis is unnecessarily curtailed by artificially applying to it a statute of limitations that has no such predisposition by language or logic, both of which underlie our rationale in Tillman. In Florida Patient's Compensation Fund v. Von Stetina, 10 FLW 286 (Fla. May 16, 1985), our supreme court stated with regard to the genesis of the Fund:
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> > In 1975, the Florida Legislature instituted the Fund as a non-profit entity to provide medical malpractice protection to the physicians and hospitals who join it, as well as a method of payment to medical malpractice plaintiffs. See ch. 75-9, Laws of Fla. The Fund provides a statutory scheme of pooling the risk of losses and placing major losses in the entity that can best spread the risk of loss as well as control the conduct of those at fault. Department of Insurance v. Southeast Volusia Hospital District, 438 So.2d 815 (Fla. 1983, appeal dismissed, 104 S.Ct. 1673 (1984). In its preamble to the 1976 amendment, the legislature summarized its public policy findings with respect to the need for the enactment. It reads, in part, as follows:

> WHEREAS, despite the responsive and responsible actions of the 1975 session of the legislature, professional liability insurance premiums for Florida physicians have continued to rise and . . . such insurance, even at exorbitant rates, is becoming virtually unavailable in the voluntary private sector, and . . . this insurance crisis threatens the quality of health care services in Florida. . . and . . . this crisis also poses a dire threat to the continuing availability insurance system for medical malpractice will eventually break down . . . [and] fundamental reforms of said tort law/liability insurance system must be undertaken, and . . . the continuing crisis proportions of this compelling social problem demand immediate and dramatic legislative action. . . .
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> Ch. 76-260, Laws of Fla.

10 F.L.W. at 288. Most pertinent to our inquiry here, the supreme court continues: "The Florida Patient's Compensation Fund provides health care providers with medical malpractice liability coverage for the benefit of both the health care providers and those members of the public who become victims of medical malpractice. Id.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been mailed to: GEORGE V. LANZA, 3300 Ponce de Leon Boulevard, Coral Gables, FL 33134 and to THOMAS R. POST, 1011 City National Bank Bldg., 25 W. Flagler Street, Miami, FL 33130, this 15th day of July, 1985.

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