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PRELIMINARY STATEMENT

This is a Petition to invoke the discretionary jurisdiction of this Court to review a decision of the Fourth District Court of Appeal which the Fourth District in its opinion certified to be in conflict with decisions of the other four District Courts of Appeal. However, out of an abundance of caution, this Brief On Jurisdiction is being submitted on the basis that the decision of the Fourth District directly and expressly conflicts with other Florida appellate decisions.

Reference to the Appendix to this Brief on Jurisdiction will be made by the use of (A.) followed by the appropriate page number of the Appendix. The Petitioner, FLORIDA PATIENT'S COMPENSATION FUND, shall be referred to as FUND, and the Respondent, HERBERT COHEN, shall be referred to as Respondent.

STATEMENT OF THE CASE AND FACTS

On December 9, 1981, the Plaintiff/Respondent, Herbert Cohen, sued Dr. Paul Baxt and his professional association for medical malpractice alleging misdiagnosis and treatment of a knee injury from April through July of 1980. On August 30, 1982, a second Amendment to the Complaint was filed adding the Defendant/Petitioner, Florida Patient's Compensation Fund, as a Defendant (A.1).

The FUND filed a Motion for Summary Judgment based on the two-year statute of limitations for medical malpractice claims found in Section 95.11(4)(b), Florida Statutes (1983). The trial court found this statute applicable to the FUND and ruled that the claim against the FUND was barred by that statute (A.1).

The Plaintiff appealed and the Fourth District Court of Appeal reversed relying heavily upon its decision in Florida Patient's Compensation Fund v. Tillman, 453 So.2d 1376 (Fla. 4th DCA 1984), a case which is now before this Court and set for oral argument on December 4, 1985. That court also based its decision upon its more recent decision of Isabella v. Florida Patient's Compensation Fund, 462 So.2d 129 (Fla. 4th DCA 1985)(A.2-5).

In reversing, the Fourth District acknowledged that its

decision in this case as well as its decision in Tillman and Isabella were in conflict with cases from each of the other District Courts of Appeal and certified that its opinion in the case sub judice again conflicted with cases from each of the other Districts (A.5).

The FUND seeks to invoke this Court's discretionary jurisdiction to review the Fourth District's decision which is admittedly in conflict with other Florida cases and which has been certified to be in conflict with other Florida cases.

SUMMARY OF ARGUMENT

This Court has jurisdiction to review decisions of the District Courts of Appeal which expressly and directly conflict with decisions of other District Courts of Appeal on the same question of law or which are certified to be in direct conflict with decisions of other District Courts of Appeal. The decision of the Fourth District in this case has been certified to be in conflict with decisions of other District Courts of Appeal and expressly and directly conflicts with decisions of other District Courts of Appeal.

JURISDICTIONAL ISSUES

THE FOURTH DISTRICT COURT OF APPEAL'S
DECISION IS CERTIFIED TO BE IN
CONFLICT WITH OTHER FLORIDA APPELLATE
DECISIONS AND DIRECTLY AND EXPRESSLY
CONFLICTS WITH OTHER FLORIDA APPELLATE
DECISIONS ON THE ISSUE OF LAW OF
WHETHER THE TWO YEAR STATUTE OF
LIMITATIONS FOR MEDICAL MALPRACTICE
CLAIMS APPLIES TO THE FLORIDA
PATIENT'S COMPENSATION FUND.

ARGUMENT

Pursuant to Article V, Section 3(b)(3) and (4) of the Florida Constitution and Rule 9.030(a)(2)(A)(iv) and (vi) of the Florida Rules of Appellate Procedure, this Court has discretionary jurisdiction to review decisions of District Courts of Appeal that are certified to be in direct conflict with decisions of other District Courts of Appeal or which expressly and directly conflict with a decision of another District Court of Appeal or of this Court on the same question of law.

The Fourth District's decision in this case follows its prior decision in Florida Patient's Compensation Fund v. Tillman, 453 So.2d 1376 (Fla. 4th DCA 1984), and Isabella v. Florida Patient's Compensation Fund, 462 So.2d 129 (Fla. 4th DCA 1985). The Fourth District, in its opinion, relied heavily upon its decision in Tillman which is now before this Court and set for oral argument on December, 4, 1985, with this Court already having accepted jurisdiction and appellate briefs having been filed.

The Fourth District's decision is certified to be in direct conflict with and expressly and directly conflicts with decisions of other District Court's of Appeal which decisions include Owens v. Florida Patient's Compensation Fund, 428 So.2d 708 (Fla. 1st DCA 1983), cert. denied, 436

So.2d 100 (Fla. 1983); Burr v. Florida Patient's Compensation Fund, 447 So.2d 349 (Fla. 2d DCA 1984), cert. denied, 453 So.2d 43 (Fla. 1984); Taddiken v. Florida Patient's Compensation Fund, 449 So.2d 956 (Fla. 3rd DCA 1984) (which case is before the Florida Supreme Court for review with briefs having been filed and oral argument having taken place); Fabal v. Florida Keys Memorial Hospital, 452 So.2d 946 (Fla. 3d DCA 1984) (which case is before the Florida Supreme Court for review with briefs having been filed and oral argument having taken place); and Florida Patient's Compensation Fund v. S.L.R., 458 So.2d 342 (Fla. 5th DCA 1984).

Therefore, the decision of the Fourth District in this case not only expressly and directly conflicts with decisions of other District Courts of Appeal, as acknowledged by the Fourth District, but the Fourth District certified its decision to be in conflict with decisions of every other District Court of Appeal in Florida.

CONCLUSION

As reflected in the decision of the Fourth District Court of Appeal in this case, this Court has jurisdiction to hear this Petition on the merits because the decision of the Fourth District is certified to be in conflict with and directly and expressly conflicts with decisions of every other District Court of Appeal of Florida.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of
Petitioner's Brief on Jurisdiction has been furnished by
U.S. Mail to JOEL D. EATON, Suite 1201, 15 West Flagler
Street, Miami, Florida 33130; STUART Z. GROSSMAN, 801 City
National Bank Building, 25 West Flagler Street, Miami,
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October, 1985.

Respectfully submitted,

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