Supreme Court of Florida

No. 67,742

FLORIDA PATIENT'S
COMPENSATION FUND, Petitioner,

vs.

HERBERT COHEN, Respondent.

[April 24, 1986]

SHAW, J.

We review Cohen v. Baxt, 473 So.2d 1340 (Fla. 4th DCA 1985), because of direct and express conflict with Taddiken v. Florida Patient's Compensation Fund, 478 So.2d 1058 (Fla. 1985). We have jurisdiction. Art. V, § 3(b)(3), Fla. Const.

The district court below held, inter alia, that the two-year statute of limitations for medical malpractice claims, section 95.11(4)(b), Florida Statutes (1983), was not applicable to complaints against the Florida Patient's Compensation Fund. Respondent concedes this was error. We disapprove this portion of the decision below on the authority of Taddiken.

As an alternative ground, the district court also held, assuming section 95.11(4)(b) was applicable, that there was a genuine, material issue of fact as to when respondent discovered his cause of action and thus, whether the cause of action was filed within the two-year limitation. Accordingly, in the district court view, the trial court erred in granting summary judgment to petitioner based on the statute of limitations. We

see no error in the district court holding on this point and approve this portion of the decision.

The case is remanded for proceedings consistent with this opinion.

It is so ordered.

BOYD, C.J., and ADKINS, OVERTON, McDONALD and EHRLICH, JJ., Concur

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED.

Application for Review of the Decision of the District Court of
Appeal - Certified Direct Conflict of Decisions

Fourth District - Case No. 84-835

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Florida; and Samuel R. Neel, III of Perkins and Collins,
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    for Petitioner

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