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April 25, 1988

Sid White
Clerk of the Supreme Court of Florida
Tallahassee, Florida 32399-1927

Re: Proposed Florida Medical Malpractice Presuit Screening Rules,
Case No. 71,672

Dear Mr. White:

The proposed rules appear to require actual receipt by the potential defendant of the certified letter notice of intent to initiate litigation. The problem with this is that a claimant has no power to make a doctor personally accept or sign for certified mail directed either to his home or his office.

On more than one occasion I have encountered the problem of an impending statute of limitations deadline, only to have the letter sent to the doctor's home address come back unclaimed. (This is assuming I was able to ever locate a home address for the doctor.) This problem may be because no one was home to sign for the letter during postal delivery hours, and the doctor was either too busy, or too cautious to go down to the post office and pick up the certified letter.

In an abundance of caution, I also direct an identical certified letter to the doctor's medical office. The return receipt invariably comes back signed or initialed by some office employee unknown to me, who may or may not have had authority to accept the certified letter on behalf of the doctor. I never know for sure whether I have protected the statute of limitation from running, and I anxiously await some contact from the doctor or his insurance carrier acknowledging the 90 day review is under way.

The action of a claimant in sending the certified letter either to the doctors home, or to his regular place of business, should be sufficient "constructive notice" to protect the statute of limitations for the claimant. The doctor should be allowed to raise the lack of actual notice as a defense to allegations that he failed to cooperate during the pre-suit screening period. If a court made a finding that the notice was properly sent by the claimant, but not actually received (or learned of) by the defendant, then the court should be empowered to abate the action for 90 days to give the pre-suit screening process an opportunity to serve


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its purpose.

But when the statute of limitations is a factor, it would be grossly unjust to dismiss a suit for lack of actual receipt or acceptance of the letter by the defendant, if the claimant followed the statute and mailed the certified letter to the appropriate address within the statutory time period. This is a problem that could and should be corrected by the proposed rules.

Very truly yours, -



Scott R. McMillen

SRM/cau