8-4

IN THE SUPREME COURT OF FLORIDA

GERALD S. KAUFMAN, D.P.M., et al.,

Petitioners,

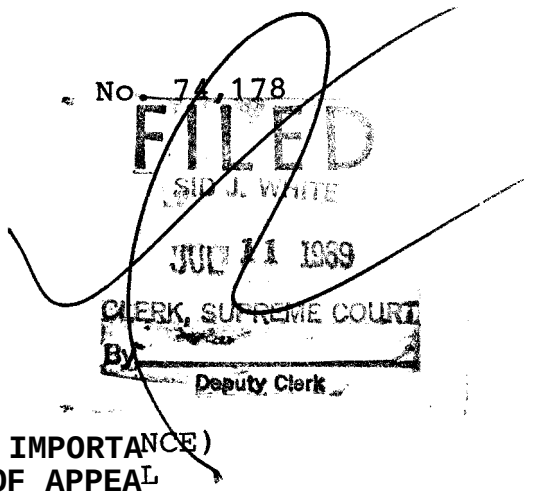
v.

PATRICIA MacDONALD,

Respondent.

* * *

No. 74,178



ON DISCRETIONARY REVIEW
(CERTIFIED QUESTION OF GREAT PUBLIC IMPORTANCE)
FROM THE FLORIDA DISTRICT COURT OF APPEAL
FOURTH DISTRICT

* * *

RESPONDENT'S BRIEF ON THE MERITS

* * *

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SUMMARY OF ARGUMENT

The Rowe dictum limits statutory awards of attorney's fees to the amount fixed by the fee agreement between the claiming party and that party's lawyer, but it does not purport to control how that party and counsel must structure their fee agreement. It does not restrain them from agreeing on alternative formulas to determine the amount owed, so long as each of the alternative provisions is itself proper. Here respondent and her counsel agreed that the fee upon a recovery in the medical malpractice action would be either a specific percentage of the recovery or the amount awarded by the court under the prevailing party statute -- whichever yielded the higher fee. Each alternative formula was indisputably proper, and each would have withstood any challenge standing alone. As nothing in Rowe limited statutory awards under § 768.56 to a percentage amount, the particular award here -- admittedly greater than the stated percentage but exactly equal to the other alternative formula -- by its very terms is incapable of exceeding the amount fixed by the agreement. The certified question must be answered in the negative.

Even if Rowe could somehow be read to forbid what happened here, the fault lies in Rowe itself and not in the structure of this particular fee agreement; and this court should now disclaim the Rowe dictum, even as the United States Supreme Court has itself done in a case involving an award under 42 U.S.C. § 1988. The amount fixed by the fee agreement between the non-paying party and his/her counsel should be but one of the several

factors that a court uses in the lodestar process to fix a reasonable fee. If the non-paying party and counsel cannot bind the paying party by their fee agreement, they should also not bind the court either,

The critical factor in such awards should be found in the purposes underlying the statute authorizing the award, Here, as in all prevailing party statutes, an important (if not the only) purpose is to encourage people with only modest meritorius claims to sue the offending health care provider -- presumably to publicly identify providers who practice below the standards of their profession *so* that they may be disciplined if necessary or otherwise encouraged to lift their standard of care. If the only permissible formula to compensate their attorneys were a percentage amount, those victims with modest monetary claims would be discouraged from vindicating their rights against offending providers, with the result that the concerned provider evades identification and discipline and the public has no occasion to learn of his/her delicts. Hence a limitation to percentage formulae actually transgresses the statutory purpose in authorizing fee awards.

This court should decline to consider the ancillary issue raised by petitioners as to the jury instruction for all of the reasons stated in respondent's motion to strike portions of petitioners' brief. The absence of an opinion by the district court that is functionally distinguishable from a "per curiam affirmed" makes meaningful review impossible,

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In any event, the instruction was plainly standard, for it merely complied with the simple command of Fla. Std. Jury Instr, (Civil) 3.5(1) to "describe conduct in question", Essentially petitioners are complaining because the trial judge told the jury what the case was all about, i.e. what the issues were for them to decide. There is certainly no error in that.

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STATEMENT OF ISSUES

1. [Certified Question] "Does the holding in Florida Patient's Compensation Fund v. Rowe, 472 So.2d 1145 (Fla. 1985) preclude an attorney's fee in a medical malpractice action above the percentage amount set out in the fee agreement between claimant and her counsel, where the agreement provides that the fee upon recovery shall be the higher of the percentage amount or an amount awarded by the court?"

2. Is a jury instruction non-standard or otherwise improper which relates the issues for the jury's consideration by beginning with the introductory language of Fla. Std. Jury Instr. (Civil) 3.5(1), and then describes six separate allegations of specific acts of medical negligence, each of which had been properly pleaded and the subject of proof?

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STATEMENT OF CASE AND FACTS

Respondent accepts petitioners' description of the course of proceedings below in the trial and district courts.

There is much, however, about their statement of facts to which respondent should object. Much of it represents only petitioners' side of the evidence on a particular factual issue without describing the opposing evidence (obviously the evidence believed by the jury); other statements have conclusory modifiers attached to them making them one-sided or misleading, if not downright untrue -- e.g. "This is a medical malpractice case where the jury awarded the Plaintiff damages of $58,980 after the doctor performed successful surgery on the Plaintiff's feet."[1] [e.s.]. Brief of Petitioners, at 2. It would be tedious (and probably unnecessary) for respondent to cite each of the many such omissions and misstatements. It is enough to provide one's own, more concise, but accurate account of the facts pertinent to this court's review.

Respondent sued petitioners for damages from medical malpractice. The case was tried to a jury[2], which found

[1] Petitioners do not explain why this "successful" surgery required another doctor to repeat the same procedure all over again. If the surgery were truly so successful, it was only because another surgeon did the job correctly after petitioners' bungled attempt -- also a fact believed by the jury.

[2] In submitting the case to the jury, the trial judge described the negligence issues for the jury's consideration as "whether [petitioners] were negligent in" (1) failing to exercise the degree of skill and care ordinarily exercised by podiatrists engaged in foot surgery; (2) carelessly performing foot/toe surgery on her feet so as to cause intense suffering and disability; (3) failing to timely order medical diagnostic tests, x-rays, and treatment consistent with the circumstances; (4) rendering improper during and after the surgery thereby

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petitioners liable and assessed $98,300 in damages. The jury also found that respondent was herself 40% responsible, thus reducing the recovery to $58,980.

Because this action was covered by § 768.56, Fla. Stat. (1983), respondent moved as prevailing party for an award of attorney's fees. The trial court found that respondent and her trial counsel had entered into a fee agreement providing "for a fee of up to 50% of any recovery or such greater fee as the court might award under § 768.56." R.1956. The court then found that respondent's trial counsel had reasonably expended 150 hours on the matter and that the reasonable hourly rate for her services was $200 per hour, thereby producing a lodestar of $30,000. Id. The court then determined that, after applying all of the Rowe factors applicable, the lodestar should be enhanced by a contingency risk multiplier of "2", thus yielding a reasonable attorney's fee of $60,000 to respondent. Id.

On appeal, the Fourth District affirmed the attorney's fee award. Its entire discussion on the subject is as follows:

> "We also affirm the award of attorney's fees to the appellee, but certify the issue raised to the supreme court as a question of great public importance.
>
> Does the holding in Florida Patient's Compensation Fund v. Rowe, 472 So.2d 1145 (Fla. 1985) preclude an attorney's fee in a medical malpractice action above the

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aggravating her condition; or (5) failing to institute timely and appropriate antibiotic therapy to prevent or treat her infection. T.916-17. See Fla. Std. Jury Instr. (Civ.) 3.5(1).

These were, among others, the precise negligence issues pleaded by respondent in her complaint. R.936-41. As petitioners did not request a special interrogatory verdict on these negligence issues, we have no way of knowing which if not all of the issues it actually found the doctor guilty on; and thus we are required to indulge a presumption of guilt as to all.

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> percentage amount set out in the fee agreement between claimant and her counsel, where the agreement provides that the fee upon recovery shall be the higher of the percentage amount or an amount awarded by the court?"

The court also granted respondent's motion for attorney's fees on appeal.

Petitioners perfected review in this court by timely filing a notice invoking this court's discretionary jurisdiction. Respondent has since moved to strike from petitioners' brief all argument and supporting material unrelated to the certified question, viz., the argument on the jury instruction. This court has deferred a ruling on respondent's motion until "the court determines oral argument."

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ARGUMENT

I. The Certified Question (The Attorney's Fee Award)

Let us first sweep away some of the more striking misconceptions which infect petitioners' argument both as to the fee agreement and the fee award. When a fee agreement has two alternative provisions to determine the amount of the fee owed by the client to the lawyer, it is absurd to attempt to calculate the fee due by ignoring or rejecting one of the two alternative provisions. Which of the two does one select? If, for example, the fee agreement here had fixed the fee at either $60,000 or 40% of the recovery, whichever was greater (a formula not unheard of in this state), could there be any possible contention that the agreement fixed a fee based only on a percentage of the recovery?

But the real question is whether there can be any principled distinction between such an agreement and the one here. In either case there is no basis to characterize the agreement as limited to the formula one prefers for the sake of argument. It is thus inaccurate for petitioners to say that the court's award is two and one-half times greater than the amount agreed upon by respondent and her counsel, Brief of Petitioners at 19, when actually the fee award is precisely equal to the one of the two alternative formulas agreed upon to fix the amount due.

Nor is there any logical basis to equate all contingency fees with percentage formulas only. The contingency (usually a recovery of money) is something quite separate from the formula agreed upon to determine the amount of the fee due. Lawyers are

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surely allowed to agree with their clients that the amount of the fee will be fixed by the court at the end of the case. Petitioners have suggested not a single defect with having a court fix the fee upon the occurrence of the contingency, regardless of whether there is an attorney's fee statute involved. Indeed, letting the court fix the amount simply insures that the fee actually paid will be reasonable. Surely it is inaccurate, in any event, to suppose that all contingency fee agreements ineluctably mean a percentage of the amount recovered.

Additionally, petitioners would have this court's dictum[3] in

[3]The "Rowe dictum" refers to the statement in Florida Patient's Compensation Fund v. Rowe, 472 So.2d 1145, 1151 (Fla. 1985), in which the court said that the court-awarded fee under the statute should never exceed the amount fixed by the fee agreement between the claimant and his/her counsel. But there was no issue raised by the parties in Rowe as to whether court-awarded fees could exceed an amount provided in the fee agreement between the claiming party and that party's counsel. Hence the court's statement was, strictly speaking, obiter dictum. The dictum was then later used as controlling principle in Miami Children's Hospital v. Tamayo, 529 So.2d 667 (Fla. 1988), and in Perez-Borroto v. Brea, 14 F.L.W. 271 (Fla. June 8, 1989). In both of these later decisions the dictum was applied as controlling precedent without any discussion as to its wisdom, a subject which was of course not raised in Rowe itself. Thus an idea has become the settled law of this state without any discussion of the merits of the principle or any argument from contesting parties with a real stake in its consideration.

Also it is curious that the authority cited for the dictum, Rosenberg v. Levin, 409 So.2d 1016 (Fla. 1982), involves a fee dispute between a discharged attorney and his former client, as to which a court award greater than the fee agreement would have had impairment-of-the-obligation-of-contract constitutional difficulties lacking in any dispute about prevailing party fees under a statute.

It is "curiouser" still that the proposition immediately preceding the dictum, that the fee arrangement between the claiming party and his/her counsel should not control the statutory award, actually contradicts the dictum. If fee agreements can't control the award, how is it that the award can be limited by the fee agreement?

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Florida Patient's Compensation Fund v. Rowe, 472 So.2d 1145, 1151 (Fla. 1985), read:

> "Further, in no case should the court-awarded fee exceed the **[percentage formula in]** the fee agreement reached by the attorney and his client."

Aside from transforming the substantive content of what the court actually said to something it did not say, the change has absolutely no grounds to support it and would conflict, as we shall see, with an obvious legislative purpose underlying all prevailing party fee statutes -- encouraging persons with only modest monetary claims to bring actions vindicating important rights. Yet that is exactly what petitioners have done when they characterize their position as follows:

> "However, not a single case in Florida, since the Supreme Court's decision in Rowe, has allowed a trial judge under Section 768.56 to award attorneys' fees in excess of the contingent fee percentage agreed on between the plaintiff and its [sic] counsel." [e.s.]

Brief of petitioners, at 24. But petitioners have it all wrong.

This court's Rowe dictum limits statutory awards to the amount fixed by the fee agreement between the claiming party and his/her attorney, meaning that the limitation applies to the entire fee agreement, not just the part that the paying party finds most agreeable. Thus, properly viewed, this court's Rowe dictum really means that if the agreement has alternative provisions to determine the fee, then the statutory award may not exceed that alternative provision which the agreement ultimately uses to fix the amount due.

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When the debris of petitioners' misconceptions is swept aside, the flaw in their argument becomes at once too obvious. This court made no such holding in Rowe as they conceive it. It is the fee agreement, including all of its parts, that limits the statutory award. The limitation is not the percentage formula, but is rather the precise provision as to how the fee will be calculated upon the occurrence of the contingency, If the parties have agreed upon a specific sum, that is the limit. If they have agreed to let the court fix the sum, that is the amount. If they have agreed upon a percentage only, the amount yielded by the percentage is the limit. If they have agreed upon alternative formulas to calculate the sum and have further provided as to which formula will be used, then the alternative specified is the limit. That is the real meaning of the Rowe dictum.

The court should note that petitioners do not raise any real question as to the separate propriety of either of the two alternative formulas, or suggest that either by itself would have yielded an excessive fee. Hence if respondent had agreed with her lawyer merely that the fee due upon the happening of the contingency would be set by the trial court, there would be no certified question to consider and the district court would have faced, if any at all, different issues with a final result identical to the one affirmed by that court. Why should the court awarded fee be any different where the parties have effectually agreed that the fee paid by the client will not be

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less than the percentage formula but not greater than the court's award?

Moreover, there is nothing in § 768.56 which limits fees to percentage amounts -- or indeed to any specific formula for calculating the amount. Nor does §768.56 even limit the fee award to the amount provided in the prevailing party's fee agreement with counsel.[4] The only limit generally is that in all events the fee awarded must be reasonable. Here petitioners made no challenge apart from their Rowe attack that the amount awarded was facially or otherwise unreasonable.

All court awarded fees are, by their very nature, reasonable. Both the trial court's award and the district court's affirmance carry an implied finding that the amount awarded to respondent is reasonable. Because that finding is based on that alternative of the applicable fee agreement which provided for a reasonable fee to be determined by the court and is based on competent substantial evidence, it follows that the court awarded fee in this case was both reasonable and did not

[4] To the extent that a statutory award of attorney's fees is governed and guided by the statute creating the right to the fees, as to awards based on § 768.56, Fla. Stat. (1983), the Rowe dictum is really a judicial gloss on the statute without textual support. Moreover this particular judicial gloss is quite unnecessary, for it is the courts who make the awards and who thus superintend the process and the amounts awarded. Hence if the dictum was prompted by this court's Article V supervisory powers over attorneys and the amounts they charge, the dictum is truly superfluous because the legislature has given the courts the primary power to make the fee awards in the first place. General constitutional powers should not be called upon where the legislature has expressly given one of the three branches the specific power to act.

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exceed the amount fixed by the agreement between the claiming party and her counsel.

Assuming for the sake of argument, however, that the court awarded fee here could be said to violate the limitation of Rowe, this is an appropriate occasion to reconsider the Rowe dictum in light of a recent holding by the United States Supreme Court in Blanchard v. Bergeron, 109 S.Ct. 939 (1989). The issue faced by that court was whether a court awarded attorney's fee under 42 U.S.C. § 1988 is limited to the amount provided in a contingent fee arrangement between the prevailing plaintiff and his counsel. A unanimous court held that the court awarded fee is not limited by the non-paying party's contract. The United States Supreme Court's conclusion on the very issue raised by the Rowe dictum is thus squarely contrary to the conclusion reached by this court.

The fee statute at issue in Bergeron[5], like the statute

[5]The attorney's fee statute there was The Civil Rights Attorney's Fees Awards Act, 42 U.S.C. § 1988. That statute by text is a discretionary prevailing party statute rather than, as here, a mandatory award. The Supreme Court has, however, construed § 1988 so that its fee awards are virtually mandatory for prevailing plaintiffs. See Hensley v. Eckerhart, 461 U.S. 424, 429 (1983), and Blanchard v. Bergeron, supra, at 942, fn. 1. Although the underlying civil rights claim basis for fee awards under § 1988 played a role in the court's determination, the court's decision does not turn solely on that aspect. Indeed the court cited with approval the following language from a case involving a Clean Air Act fee award;

> "The fee quoted to the client or the percentage of the recovery agreed to is helpful in demonstrating that attorney's fee expectations when he accepted the case." Pennsylvania v. Delaware Valley Citizens' Council for Clean Air. 483 U.S. 711 * * * (1987)." [e.o.1

Blanchard, at 944. The obvious implication is that the Blanchard court's conclusion was not driven by the fact that the fee award

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here, provides for an award to the prevailing party. The court said that the statute's purpose was to ensure access to the courts for persons with civil rights claims. Id. at 945, The same must, of course, be said of § 768.56 which is also a prevailing party statute, Such statutes are by their very nature and wording designed to encourage persons with grievances of the kind contemplated by the statute to seek relief in a court.[6]

Although the Court in Blanchard refused to accept the contention that fees in § 1983 (civil rights) damages cases should be modeled on the contingency fee arrangements usually found in personal injury litigation, the court did so for reasons that are quite fungible with the notion that the fee agreement should not limit the amount awarded under § 768.56. The Court rejected the personal injury litigation model only because it concluded that a civil rights suit is not merely "a private tort

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in that case was based on the fact of a civil rights claim.

[6]It is frequently said that the purpose of § 768.56 was to discourage plaintiffs with frivolous claims from suing health care providers. That confuses the motivation of the statute's proponents with the quite separate matter of "legislative intent", and the two are rarely the same. Where a statute is absolutely clear on its face, the legislative intent should be inferred from the statutory language and not from extrinsic sources such as the sponsoring member's personal motivation or some committee comments or (worse) a legislator's speeches on the floor of the House or Senate, See Holly v. Auld, 450 So.2d 217 (Fla. 1984).

If the purpose here had truly been only to discourage frivolous claims, then the language of the statute would merely have authorized fees when the court finds that plaintiff's claims were frivolous. Because, however, the actual language adopted was traditional prevailing party language, the only possible legislative intent inferable from the language approved by the majority of the legislature is the well-settled interpretation given to prevailing party language, i.e. encouragement of access to the courts by persons with small meritorius claims, the same conclusion reached by the Supreme Court in Blanchard.

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suit benefitting only the individual plaintiffs whose rights were violated." Blanchard v. Bergeron, supra, at 945.

Inevitably the same conclusion must attach to fee awards in medical malpractice litigation, whose public importance is vividly demonstrated by the recent massive overhaul of a decade's worth of annual patchwork changing of the restrictions and conditions on such litigation. Indeed the adoption of the express language of § 768.56 itself shows that the legislature had then concluded that medical malpractice suits were not merely private tort suits designed to benefit only the plaintiffs suing. If they were merely private claims with no public importance or implications, why should the legislature require that the prevailing party recover legal fees? Hence the Blanchard rejection of the personal injury model actually recommends the application of its result and reasoning to fee awards under § 768.56, rather than against it.

The Blanchard court saw a fee agreement limitation as antithetical to the lodestar process it had adopted in Hensley v. Eckerhart, 461 U.S. 424 (1983):

> "We have never suggested that a different approach is to be followed in cases where the prevailing party and his (or her) attorney have executed a contingent fee agreement. To the contrary, in Hensley and in subsequent cases, we have adopted the lodestar approach as the centerpiece of attorney's fee awards. The Johnson [v. Georgia Highway Express, 488 F.2d 714 (5th Cir. 1974)] factors may be relevant in adjusting the lodestar amount but no one factor is a substitute for multiplying reasonable billing rates by a reasonable estimation of the number of hours expended on the litigation." [e.s.]

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Blanchard v. Bergeron, supra, at **945.** It will be recalled that this court expressly relied on both Hensley and Johnson in adopting the lodestar process. See Florida Patient's Compensation Fund V. Rowe, supra, at 1150. Most respectfully, if the United States Supreme Court finds that the contingency contract limitation is contrary to the lodestar process, this court should not hesitate to do so either. The contract limitation unreasonably constrains a trial court in its search for a reasonable fee under a prevailing party statute.

Removing this artificial constriction provides no windfall to anyone, for the trial court must still assess only a reasonable fee, As the Blanchard court pointedly stated, the fee assessment is governed by a procedure -- the lodestar process -- that is designed to avoid that very result. Blanchard, at **946,** At least four judges may pass upon the question of reasonability, and three of them will usually be necessary to agree on the result. The lodestar process is designed to make attorney's fee awards rationally fitted to the precise circumstances of the particular case in which the award is sought. The more factors that are considered, the more likely that the resulting fee award will truly be reasonable.

As Justice White said for a unanimous court in Blanchard: "The trial judge should not be limited by the contractual fee agreement between plaintiff and counsel." Id. The fee contract should be neither floor nor ceiling but merely one of several gauges. This is then an appropriate case to disavow the Rowe dictum for the same reasons which prompted the United States

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Supreme Court to disclaim such a limitation. Only in this way will statutory fee awards approach the desired goals of both fairness and reasonability.

II. The Jury Instruction

This issue should not be decided by this court, and the per curiam affirmed (in effect) decision of the district court should be left undisturbed for all of the reasons given in respondent's motion to strike part of petitioners' brief. If there were no certified question, this court would have absolutely no jurisdiction to review the Fourth District's affirmance of the main appeal. Even if it did, there is no opinion, as such, for the court to consider; and so this court has no way of knowing what the district court's reasoning was. Its brief comment that it found no prejudice is hardly enough to allow principled analysis. Did the district court, for example, agree with petitioners' central contention that the instruction was impermissibly non-standard? Or even if non-standard, did that court agree that the instruction was wrong? As the Fourth District did not articulate its thinking, how can this court review its stated finding that the instruction did not affect the outcome?

With regard to the merits of the jury instruction issue, it is at once apparent that petitioners do not complain about an alleged misstatement of the applicable law, or burden of proof, or failure to charge on a matter that was the subject of proof, or any of the usual complaints about jury instructions one hears

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in appellate courts. Instead they merely complain about the trial judge's description of the issues that the jury was to decide. And in that they do not say that the charge was under or over-inclusive in the usual sense of whether issues were actually pleaded or the subject of proof. Here all of the issues described by the trial judge were manifestly pleaded and supported by substantial evidence.

Their essential argument centers around the meaning of Fla. Std. Jury Instr. (Civil) **3.5.** As required by the standard instruction, the trial judge began his charge on this particular point by saying: "The issues for your determination on the negligence claim of the plaintiff [MacDonald] are whether * * *." [e.s.] He then followed those words with six specific allegations of medical negligence.[7] The question raised by petitioners is whether that which followed the quoted material, i.e. the six allegations of negligence (all of which were taken from respondent's complaint), was proper.

Standard instruction **3.5** has thirteen examples of negligence issues, a through m, each designed for a specific kind of claim. The last two, l and m, are designed for medical negligence cases, the former for most malpractice claims (like the present one) and the latter for informed consent cases. The full text of **3.5(1)** is:

> "1. Negligence of physician or hospital, generally:
>
> **whether** (defendant physician or hospital) **was negligent in**

7 See n. 2 supra.

(describe conduct in question) * *
* ." [e.o.]

Petitioners argued below (in effect) that the trial judge should simply insert the words "breached the applicable standard of care in his treatment of plaintiff" into the above quoted material for the words "describe conduct in question". In other words, the trial judge's more particularized description of the "conduct in question" was, they say, non-standard and thus impermissible.

Aside from the obvious conclusion that petitioners are merely complaining because the judge told the jury what the case was all about, i.e. what the issues were for them to decide, their construction of the standard instruction is quite indisputably wrong. If the words "describe conduct in question" really meant that the judge should simply give the entirely formulaic description suggested by them (and which could be used in nearly all medical malpractice claims tried), why didn't the drafters of the rule simply say *so* and use the words urged by petitioners rather than leaving it up to the parties and trial judge in every case to draft their own words?

The unavoidable answer is that the drafters plainly intended the detailed description of specific negligence issues used here, If that were not their intention, they would simply have adopted a general negligence issue description like the one urged by petitioners and which could be used in all cases: "Did defendant breach a duty of care owed to the plaintiff?".[8] The fact that

[8]Petitioners' interpretation turns the charge into an empty tautology, One might just as well charge the jury on the negligence issue: "Were defendants negligent by being negligent". Such an instruction is hardly likely to assist jurors in

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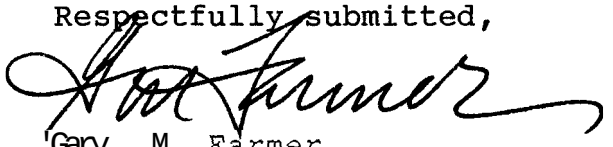
they did not undoubtedly means that they envisioned more fact-specific descriptions of the negligence allegations.

That being so, the instruction used here was not only quite standard, it was exactly as the drafters intended. It merely told the jury what respondent's specific allegations of negligence were for them to decide. There is no error in that and obviously, as the district court concluded, no prejudice.

CONCLUSION

The certified question should be answered in the negative and the district court's decision on the attorney's fee issue should be approved; or this court should reconsider and modify its dictum in Rowe so that the fee agreements do not control, either as ceiling or as floor, the reasonable fee to be determined in the lodestar process. The court should decline to reach the jury instruction issue raised by petitioners, but if it does the district court decision should also be approved.

Respectfully submitted,



Gary M. Farmer
(Fla. Bar No. 177611)

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understanding their mission -- one of the professed aims of jury instructions.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 10, **1989**, a true and c rrect copy of the foregoing Respondent's Brief on the Merits was placed in the U. S. Mail, first class postage prepaid, and addressed to Richard A. Sherman, P.A., Counsel for Petitioners, Suite 102N, **524** S. Andrews Ave., Ft. Lauderdale, FL **33301**; James H. Wakefield, **1230** S.E. 4th Ave., Ft. Lauderdale, FL **33316**; and Joanne **S.** Richards, Two S.E. University Dr., Suite 200, Ft. Lauderdale, FL **33324.**

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By _____
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