D.A. 4-10-91 DA w/app

IN THE SUPREME COURT OF FLORIDA

JAMES F. COY, M.D., SIDNEY R. STEINBERG, M.D., AND CLAUDE A. BOYD, M.D., on behalf of themselves and all others similarly situated,

Petitioners,

vs.

FLORIDA BIRTH-RELATED NEUROLOGICAL INJURY COMPENSATION PLAN, FLORIDA BIRTH-RELATED NEUROLOGICAL INJURY COMPENSATION ASSOCIATION, and TOM GALLAGHER, in his official capacity as head of THE FLORIDA DEPARTMENT OF INSURANCE,

Respondents.

CASE NO.: 76,565

INITIAL BRIEF OF RESPONDENT FLORIDA BIRTH-RELATED NEUROLOGICAL INJURY COMPENSATION ASSOCIATION

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PREFACE

All reference to the Record on Appeal will be preceded by the prefix "R." All reference to the Transcript of the final hearing will be preceded by the prefix "TR."

The court has received briefs on behalf of two Amicus Curiae. Since all issues and argument presented by the Petitioners and Amicus Curiae in their briefs are either the same or interrelated, Respondent will incorporate all issues and responses in this brief.

STATEMENT OF THE CASE AND THE FACTS

The Case

Respondent, Florida Birth-Related Neurological Injury Compensation Association, (NICA), adopts and incorporates the statement of the case as presented by the Petitioners, Drs. James F. Coy, Sidney R. Steinberg, and Claude A. Boyd.

The Facts

In 1986, the Florida legislature created the Academic Task Force ("Task Force") for the review of the insurance and tort systems. The legislature directed the Task Force to study the problems associated with liability insurance in Florida and report to the legislature with recommendations for change. (R 496-833).

The Task Force conducted extensive research, which included fourteen public hearings, and gathered extensive technical and statistical data. The focus of the Task Force was on the affordability and availability of medical malpractice insurance. In 1987, the Task Force reported its findings to the Legislature, having reached the conclusion that a malpractice crisis existed in Florida and that major legislative reforms were required to deal with the problem (R 496-833). The Task Force recommended several major reforms which included, among others, the creation of a no-fault compensation system to provide for the long term care and treatment of certain neurologically injured infants. (R 496-499).

The Legislature acted on the Task Force's recommendations, and during a special session, in February, 1988, enacted Chapter 88-1, Laws of Florida. A portion of Chapter 88-1 created the Florida Birth-Related Neurological Injury Compensation Plan (the "Plan") and provided the means of funding same and for the administration of the plan. (See §766.301-§766.316, F.S. (1988)). The report to the legislature was published on August 14, 1987 by the Task Force in a document entitled Preliminary Fact-Finding Report On Medical Malpractice (the "Preliminary Report") (R 568-833). Although the Preliminary Report was extensive, only that portion which is pertinent to this appeal will be included herein.

The findings of the Task Force included:

a) Affordability. The cost of medical malpractice insurance has increased dramatically during the last eight years, with the largest share of this increase coming during the past two years.

b) Cause of Price Increase The primary cause of increase malpractice premiums has been the substantial increase in payments to claimants.

c) Frequency of Claims Payment. The frequency of claims payments has increased 4.6% per year since 1975, but only 1.8% when adjusted for the increase in population.

d) Variations Among Medical Specialities. **There are considerable variations both in frequency and severity of paid claims among medical specialities. Obstetrics and gynecology account for 13.6% of all paid claims,** while specialities such as endocrinology, psychiatry, and thoracic surgery each account for less than 2% of all paid claims. (Emphasis supplied).

e) Effects of Malpractice Liability upon Health Services in the Medical Profession. Medical malpractice insurance problems have many effects on health services

in the medical profession, including adverse financial effects on physicians, increased health care provider fees, and potentially deleterious alterations of health care delivery patterns.

See Preliminary Report, (R 570-573; 803-860)

With respect to obstetrics and gynecology, the Task Force found:

a) For the period 1975 to 1986, and particularly for the years 1982 to 1986, obstetrics and gynecology ranked highest in total paid claims.

b) The spread between malpractice premium insurance rates for obstetricians and family physicians has increased significantly between 1983 and 1987.

c) Between 1975 and 1986, the average claims cost for obstetricians rose 1,029%, from $14,173 to $160,555

d) Since the 1971 to '72 policy year and through the 1986 to '87 policy year, the percentage of an OB/GYN's gross revenues devoted to malpractice insurance premiums has increased from 4.2% to 23.1%; this percentage for all physicians rose less than half as much, from 3.6% to 11.6%.

(R 568-833; Preliminary Report; pages 3-5 and 236-254)

In November 1987, the Task Force submitted its actual recommendations to the Legislature. These recommendations were published by the Task Force in a document entitled Medical Malpractice Recomendations, (the "Final Report"). (R. 496-567) The Task Force, in addition to other recomendations, specifically recommended that the Legislature adopt legislation allowing physicians and hospitals to participate in a no-fault plan limited to birth-related neurological injuries. (R 496-497).

Pursuant to §766.306 through §766.316, Fla. Stat. (1988), the Plan was created, which provided for a no-fault compensation system for certain neurologically injured infants. To finance the Plan, the Legislature developed a financing scheme, (§73 of Chapter 88-1, Laws of Florida, now §766.314, Fla. Stat.), which requires all physicians licensed by the State of Florida, all hospitals in the State of Florida, and all physicians who are qualified for and choose to participate in the Plan, to pay certain statutory assessments for the purpose of funding the Plan. In addition, the Legislature provided for appropriations from the Insurance Commissioner's Regulatory Trust Fund (the "Trust Fund") to ensure the financial soundness of the Plan. Under certain circumstances, casualty insurance carriers would also contribute to the Plan. (See §766.314(5),(6),(7), Fla. Stat.)

NICA was created by the Legislature for the purpose of administering the Plan and all assessments and appropriations dedicated to the Plan. (§766.314(2) and §766.315(1)(a), Fla. Stat.). NICA, while not a state agency, board, or commission, was an association acting primarily as an instrumentality of the state and was vested with sovereign immunity. (§766.303(3), Fla. Stat.)

NICA and the Plan are governed by a board of five directors composed of one citizen representative; one representative of participating physicians; one representative of hospitals; one

representative of casualty insurers; and one representative of physicians other than participating physicians. (§766.315(1)(c), Fla. Stat.) As such, all persons and entities required to contribute to the Plan are represented on the Board.

Of significance is that the Insurance Commissioner, a constitutional and elected public official, and member of the Florida Cabinet, is empowered to appoint the members of the Board. (§766.315, (1)(c), 2(a), Fla. Stat.)

The Legislature directed that the Plan be initially funded in the following manner:

(1) A $250 annual base assessment against all physicians licensed pursuant to Chapter 458 or Chapter 459, Fla. Stat., other than participating physicians. (§766.314(4), Fla. Stat.)

(2) A $5000 annual base assessment against all participating physicians. (§766.314(4), Fla. Stat.) A participating physician is defined under §766.302(7), Fla. Stat., to mean a physician licensed in Florida to practice medicine and who practices obstetrics or performs obstetrical services either full time for part time.

(3) An annual base assessment against hospitals equal to $50 per infant delivered at the hospital. (§766.314(4)(a), Fla. Stat.)

(4) A $20 million appropriation from the Insurance Commissioner's Regulatory Trust Fund, which was immediately paid to the Plan.

(5) Thereafter, if after taking into consideration the aforestated initial assessments, it is determined by the Department of Insurance (DOI), a state agency, that such funds are insufficient to maintain the Plan on an actuarially sound basis, the Legislature specifically appropriated for transfer to NICA for use of the Plan, an additional amount of up to $20 million for a total appropriation of $40 million. (§766.314(5)(b), Fla. Stat.)

(6) Beginning January 1, 1990, an assessment against each entity licensed to issue casualty insurance in Florida pursuant to the specific formula specified in §766.314(7)(a), Fla. Stat.

Pursuant to §766.314(7)(b), Fla. Stat., if the DOI finds that the Plan cannot be maintained on an actuarially sound basis based on the assessment and appropriations heretofore discussed as specified in §766.314(4) and (5), Fla. Stat., the DOI is empowered and mandated to increase the assessments specified in subsection (4) on a proportional basis as needed. Section 766.314(7)(b), Fla. Stat. provides:

> "(b) If the Department of Insurance finds that the plan cannot be maintained on the assessments and appropriations listed in subsections (4) and (5), the department shall increase the assessments specified in subsections (4) on a proportional basis as needed." (Emphasis supplied).

The base assessments, however, remain constant and are assessed annually. The additional assessments, if any, are a separate and distinct assessment.

In 1989, (Chapter 89-186, Laws of Florida), the Legislature amended §766.314(5)(a), Fla. Stat. to provide that beginning on January 1, 1991, and on each January 1, thereafter, NICA was to determine the amount of additional assessments necessary pursuant to subsection (7), subject to any increase determined to be necessary by the DOI pursuant to paragraph (7)(b). As such, reading all of the assessment and appropriations provisions of §766.314, Fla. Stat., in pari materia, the following conclusions are evident.

The Plan was intended to be primarily funded by the initial annual assessments levied against participating and non-participating physicians, hospitals and the initial $20 million appropriaton from the Insurance Commissioner's Regulatory Trust Fund, and beginning January 1, 1990, assessments against casualty insurance companies. If these assessments and appropriations were determined by the DOI to be insufficient to maintain the Plan on an actuarially sound basis, an additional amount of up to $20 million was appropriated, as needed. If these assessments and all of the appropriations (i.e. $40 million) are insufficient to maintain the Plan on an actuarially sound basis, the DOI is authorized and mandated under §766.314(7)(b), Fla. Stat., to increase the assessments against participating and non-participating physicians. However, the additional assessments could not be levied upon physicians until July

1, 1991. (See §766.314(5)(a), Fla. Stat., 1989). Clearly, it is the DOI that determines the amount of any additional assessments. NICA, when performing its responsibility to administer the Plan, assessments and appropriatons, would simply "bill" the physicians for the assessments.

The Petitioners and Amicus Drs. James T. McGibony, et al., filed separate lawsuits attacking the constitutional validity of those portions of §766.314, Fla. Stat., providing for the assessment by the state of non-participating physicians.

As previously discussed, in 1989, the Florida legislature amended various provisions of §766.314, F.S. (1989 Amendments). (See Chapter 89-186, Laws of Florida). The Petitioners and/or Amicus maintain as a result of these amendments that NICA was delegated the responsibility of determining the amount of <u>additional assessments</u> which can be imposed upon the Petitioners in violation of Article VII, Section 1, of the Florida Constitution (1968). Petitioners further maintain that even if the DOI has been delegated the sole responsibility of determining whether additional assessments are necessary and, if necessary, how much, the additional assessments that may be determined by the DOI are invalid because the authority to impose <u>the additional assessments</u> is an invalid delegation of Legislative authority.

The First District Court, while aware of the 1989 Amendments did not specifically reference these amendments in its opinion. For the reasons heretofore discussed, the 1989 Amendments made no substantive changes to the original assessment provisions of §766.314, Fla. Stat. as originally enacted, other than to restrict the time when the additional assessments could be made against physicians, i.e., July 1, 1991.

SUMMARY OF ARGUMENT

The Petitioners and Amicus have attacked various provisions of §766.314, Fla. Stat., relating to assessments authorized to be made against physicians licensed by the State of Florida for the purpose of assisting in the funding of the Plan. It is the Petitioners' primary position that the assessments made against physicians, when said physicians either do not or cannot participate directly in the Plan, violate the due process and equal protection clauses of the United States and Florida Constitutions.

Further, the Petitioners' argue that the assessments made against these physicians are in the nature of a tax and, as a result thereof, the assessments improperly pledge the credit of the State; and improperly delegate the power to tax to the DOI and/or NICA. The Petitioners also argue that the assessments discriminate against out-of-state physicians by making them pay the "tax" when they cannot or

do not receive any benefit from-the Plan, even though the out-of-state physicians maintain active licenses in the State of Florida.

While the assessments may be a tax, the Legislature has very broad discretion in creating revenue raising schemes. All legislative enactments are presumed valid and all doubts should be resolved in factor of the constitutionality of a statute as long as, under any possible interpretation or factual predicate, the court could uphold the constitutionality of the statute.

The provisions of §766.314, Fla. Stat., providing for the assessments, are valid exercises of the police power, and are rationally related to a legitimate state purpose. The funding of the Plan was clearly adopted for the general welfare and benefit of the public as a whole; and for the benefit of all physicians to provide a means for the alleviation of the medical malpractice crisis in the State and the assurance of the continued availability of adequate health care for the public.

Further, the assessment provisions of §766.314, Fla. Stat., do not improperly pledge the credit of the State and do not impermissably delegate the State's power to tax because the DOI and NICA are carrying out the clear legislative mandate and intent. The actions of NICA and/or the DOI are subject to sufficient guidelines and standards

to ensure fairness and prevent abuse. It is the DOI, a state agency, which is headed by an elected and constitutional officer who is a member of the Florida Cabinet, that determines the amount of any additional assessments, not NICA. In addition, the assessments do not discriminate against licensed out-of-state physicians, since all physicians licensed by the State must pay the assessment, regardless of where they live or whether they participate in the Plan.

ARGUMENT

ISSUE I

DO THOSE SECTIONS OF §766.314, FLA. STAT., PROVIDING FOR THE ASSESSMENT OF ALL FLORIDA LICENSED PHYSICIANS NOT PARTICIPATING IN THE PLAN, VIOLATE THE DUE PROCESS AND EQUAL PROTECTION CLAUSES OF THE UNITED STATES AND FLORIDA CONSTITUTIONS.

Statutes are presumed constitutional and should be so construed. GulfStream Park Racing Association v. Department of Business Regulation, 441 So.2d 627 (Fla. 1983). If reasonably possible and consistent with constitutional rights, courts should resolve all doubts regarding the validity of the statute in favor of its constitutionality. Falco v. State, 407 So.2d 203 (Fla. 1981). This is because the state is considered the primary judge of regulation in the interest of public safety and welfare. Powell v. State, 345 So.2d 724 (Fla. 1977).

A party challenging the statute has the burden of establishing its invalidity; Peoples Bank of Indian River County v. State, Department of Banking and Finance, 395 So.2d 521 (Fla. 1981); and such invalidity must be shown beyond a reasonable doubt. Robinson v. Florida Drycleaning and Laundry Board, 194 So. 269 (Fla. 1940); Metropolitan Dade County v. Bridges, 402 So.2d 411 (Fla. 1981).

If the constitutionality of a statute is questioned and if the statute is reasonably susceptible of two interpretations, by one of which it will render the statute unconstitutional and by the other valid, the court must adopt the interpretation which will render the statute valid. Department of Insurance v. Southeast Volusia Hospital District, 438 So.2d 815 (Fla. 1983); Florida State Board of Architecture v. Wasserman, 377 So.2d 653 (Fla. 1979). **Furthermore, where a factual predicate is necessary to the validity of an enactment, it is to be presumed that the necessary facts were before the legislature at the time of the enactment.** Wasserman, supra; Cilento v. State, 377 So.2d 663 (Fla. 1979); Division of Pari-Mutuel Wagering, et al. v. Florida Horse Council, Inc., et al., 464 So.2d 128 (Fla. 1985).

The principle noted in Wasserman and Cilento was enunciated earlier in State v. Bales, 343 So.2d 9 (Fla. 1977). Bales involved a challenge to the constitutionality

of a statute which required persons who performed massages for a fee to be licensed by the state. The court upheld the regulation and stated:

> ...any legislative enactment carries a strong presumption of constitutionality, including a rebuttable presumption of the existence of necessary factual support in its provisions. Borden's Farm Products Co. v. Baldwin, 293 U.S. 194, 209, 210, 55 S.Ct. 187, 79 L.Ed. 281 (1934). If any state of facts, known or to be assumed, justify the law, the court's power of inquiry ends. United States v. Carolene Products Co., 304 U.S. 144, 154, 58 S.Ct. 778, 82 L.Ed. 1234 (1938). Questions as to wisdom, need or appropriateness are for the Legislature. Olsen v. State of Nebraska, ex rel. Western Reference & Bond Ass'n, 313 U.S. 236, 246, 61 S.Ct. 862, 85 L.Ed. 1305 (1941). (Emphasis supplied).

In Fulford v. Graham, 418 So.2d 1204 (Fla. 1st DCA 1982), the constitutionality of regulations concerning saltwater fisherman was challenged. The court upheld the regulations, citing Bales,and noted "the evidence adduced at trial, including the general comments of experts who testified, does not serve as a sufficient basis to declare the acts unconstitutional in light of the presumption of constitutionality."

As such, it is the law in this State that all doubts regarding the constitutionality of a statute must be resolved in favor of its constitutionality. If different reasonable interpretations exist where one would conclude

the financing scheme was unfair or unwise, but another would conclude the scheme was reasonable and rational, the latter interpretation must prevail. If a factual predicate is necessary to render the Legislature's choice a reasonable one, or a constitutional one, the court must presume that that predicate was before the legislature when it acted. Division of Pari-Mutuel Wagering v. Florida Horse Council, supra.

The Florida Supreme Court in Faircloth v. Mr. Boston Distiller Corporation, 245 So.2d 240 (1970) summarized the general guidelines for determining the constitutionality of a statute:

> 1) On its face every act of the legislature is presumed to be constitutional;
>
> 2) Every doubt as to its constitutionality must be resolved in its favor;
>
> 3) If the act admits of two interpretations, one of which would lead to its constitutionality and the other to its unconstitutionality, the former rather than the latter must be adopted;
>
> 4) The constitutionality of a statute should be determined by its practical operation and effect;
>
> 5) In determining its constitutional validity, courts should be guided by its substance and manner of operation rather than the form in which the act is cast; and

> 6) After indulging all presumptions in favor of the act, it is found to be in positive conflict with some provision of organic law, it becomes the duty of the court to strike it down."

In this case, the record is replete with factual information presented to, and considered by, the Legislature when it enacted the subject legislation. The Task Force documented and reported the existence and the effect of the malpractice insurance crisis. The crisis was far reaching and affected health care providers, insurance carriers and ultimately the ordinary citizens in need of health care. The statute before this court was just one of the recommended actions by the Task Force to deal with the issue. The financing scheme chosen by the Legislature to assure the financial viability of the Plan was not so far afield or so infirm as to overcome the presumption in favor of constitutionality that attaches to any statute. Certainly an individual assessment of $250.00 is not over burdensome, nor could such assessment affect the livelihood or economic well being of any physician.

A physician licensed in this State, whether or not residing in the State, and whether or not practicing in the State, is allowed under the provisions of Chapters 458 and 459, Fla. Stat., to maintain an active license for a prescribed period of time, without the necessity of having

to requalify for licensing. For the privilege of maintaining his active status, among other reasons, the assessment of that physician is not unreasonable or arbitrary.

A. THE ASSESSMENT IS CONSTITUTIONAL EVEN IF IT IS A TAX

The assessments imposed by the Legislation may be a tax. As a portion of the funding base for the Plan created by Section 766.301, et. seq., Fla. Stat., the excise levied on the licenses of all physicians authorized to practice in Florida is primarily a revenue mechanism. As such, it may properly be classified as a tax. Bateman v. City of Winter Park, 37 So.2d 362 (Fla. 1948).

In Eastern Airlines, Inc. v. Department of Revenue, 455 So.2d 311 (Fla. 1984), the Florida Supreme Court established the standard of review by which tax legislation, challenged on the same constitutional grounds raised by Petitioners, is to be evaluated:

> When the state Legislature, acting within the scope of its authority, undertakes to exert the taxing power, every presumption in favor of the validity of its action is indulged. Only clear and demonstrated usurpation of power will authorize judicial interference with legislative action. Walters v. City of St. Louis, 347 U.S. 231, 74 S.Ct. 505, 98 L. Ed. 660 (1954). In the field of taxation particularly, the legislature possessess great freedom in classification. The burden is on the one attacking the legislative enactment to negate every conceivable basis which might support it. Madden v. Kentucky, 309 U.S. 83, 60 S.CT. 406, 84 L.Ed. 590

> (1940); Just Valuation & Taxation League, Inc. v. Simpson, 209 So.2d 229, 323 (Fla. 1968). The state must, of course, proceed upon a rational basis and may not resort to a classification that is palpably arbitrary. Department of Revenue v. AMREP Corp., 358 So.2d 1343, 1349 (Fla. 1978). A statute that discriminates in favor of a certain class is not arbitrary if the discrimination is founded upon a reasonable distinction or difference in state policy. Allied Stores v. Bowers, 358 U.S. 522, 79 S.Ct. 437, 3 L.Ed.2d. 321 (1959). (Emphasis supplied).

A tax may even be so high as to restrict or even possibly destroy particular occupations without violating the due process or equal protection clause. A tax will not be nullified unless it is palapably arbitrary or grossly unequal in its application. Pittsburg v. Alco Parking Corporation, 417 U.S. 369 (1974). The presumption of constitutionality of a license tax can be overcome "only by the most explicit demonstration that a classification is a hostile and oppressive discrimination against particular persons and classes," Madden v. Kentucky, 309 U.S. 83 at 88 (1940), and even if everyone subject to a tax is not taxed equally, that in and of itself does not make taxation arbitrary or violative of the equal protection clause. Smith v. Department of Revenue, 512 So.2d 1008 (Fla. 1st DCA 1987).

Furthermore, the Legislature is free to tax the licenses of occupations or businesses for regulatory and revenue-raising purposes. Young v. Thomas, 17 Fla. 169

(1879); City of Jacksonville v. Ledwith, 7 So. 885 (Fla. 1890). This was more fully discussed in State ex rel. Bonsteel v. Allen, 91 So. 104 (Fla. 192), when the court held:

> While it is within the power of the courts to declare Laws levying license taxes void because of the unreasonable and arbitrary exercise of the state's power either in the classification or in fixing the amount of the license, such power will not be exercised unless the amount of the license tax is so great, or the classification so palpably arbitrary as to be beyond the necessities for the legislation, or equivalent to an impairment of the constitutional rights of property, or tend to prevent a great number, if not all persons, from pursuing otherwise lawful occupations which do not impair public safety, public health or destroy property. Id. at 105.

The assessments at issue here meet none of the criteria for finding a tax unconstitutional as articulated in Bonsteel or the cases that followed it. The amount of the license tax is not so great, nor is the classification so palpably arbitrary, as to be beyond necessity for the legislation. Petitioners are simply one of five contributing funding sources to the Plan, and no evidence has been presented which demonstrates that the proportionate share contributed by Petitioners is grossly unequal or discriminatory.

The assessment is not equal to an impairment of the constitutional rights of property and, from the evidence

considered or presented in this cause, does not tend to prevent a great number of persons from pursuing the medical profession.

Petitioners claim that the tax is unconstitutional because they receive no direct benefit is without merit. There is no constitutional requirement that a person subject to a tax must receive a direct benefit in return for the money contributed nor have Petitioners cited any authority in support thereof. Rather, the legitimacy and constitutionality of a tax is determined by the criteria discussed above.

B. THE POLICE POWER

Generally, the exercise of the state's police power must relate to the health, safety and welfare of the public and may not be arbitrarily and capriciously applied. Graham v. Estuary Properties, Inc., 399 So.2d 1374 at 1379 (Fla. 1981). A reviewing court will not usually disturb legislative discretion in classifying the subject of police regulations unless it is wholly without a reasonable basis; such a classification will not be declared unreasonable solely because opinions differ as to what should have been included or omitted in the legislation. Barts v. State, 447 So.2d 410 at 411 (Fla. 1st DCA 1984). **Thus, as long as a classificatory scheme chosen by the Legislature rationally advances a legitimate governmental objective, the courts**

will disregard the method used in achieving the objective and the challenged enactment will be upheld. Sasso v. Ram Property Management, 431 So.2d 204 (Fla. 1st DCA 1983), aff'd, 452 So.2d 932 (Fla. 1984), appeal dismissed, 469 U.S. 1030 (1984).

A court must not be concerned with whether the particular legislation in question is the most prudent choice, or is the perfect panacea, to cure the ill or achieve the interest intended. **If there is a legitimate state interest which the legislature aims to effect, and if the legislation is a reasonably related means to achieve the intended end, it will be upheld.** State v. Walker, 444 So.2d 1137 at 1139 (Fla. 1st DCA 1984).

The legitimate state interests served by the legislation are clearly set forth in the Preamble to Chapter 88-1, Laws of Florida. (See Appendix "A").

Given this strong pronouncement of compelling social need and the inherent authority and discretion of the Legislature to address such needs, Petitioners have not met their burden of demonstrating that the Legislature's decision to include them in the financing scheme of the Plan was "wholly without a reasonable basis."

(1). DUE PROCESS

The Legislature has broad discretion in determining necessary measures for the protection of the public health,

safety and welfare. When the Legislature acts in these areas, a court may not substitute its judgment for that of the Legislature. State v. Thomas, 428 So.2d 327 at 331 (Fla. 1st DCA 1983). In Department of Insurance v. Dade County Consumer Advocates Office, 492 So.2d 1032 (Fla. 1986), the Supreme Court noted the narrow grounds upon which a successful due process challenge can be waged:

> "When considering the validity of a legislative enactment, this court may overturn the act on due process grounds only when it is clear that it is not in any way designed to promote the people's health, safety or welfare or that the statute has no reasonable relationship to the state's avowed purpose."

Petitioners have conceded the Plan as a whole served legitimate state interests. (See Petitioners Motion for Summary Judgment, R 14-23). Petitioners have contended that the decision to require them to contribute financially to the Plan was unreasonable and violative of the due process clause because Petitioners bore no more relationship to the goals of the plan than a member of the general public. Specifically, Petitioners have alleged the assessments are unconstitutional because physicians who are required to pay them do not obtain benefits from the Plan. This is so, they argue, because physicians who do not practice obstetrics and gynecology are not permitted to

practice obstetrics in hospital settings and, since they cannot practice obstetrics they do not receive the benefits otherwise provided to participating physicians.

In effect, the lack of participation and coverage in the face of the required fees and possible assessments form the primary basis for Petitioners' constitutional attack on the statute. This position is entirely without merit.

The Plan bears a reasonable relationship to its stated purposes by insuring the continued availability of obstetrical care to Florida citizens and by providing for the care of Florida children who suffer birth-related neurological injuries. The assessment of Petitioners bears a reasonable relationship to the Plan. As documented and reported by the Task Force, physicians play a fundamental and critical role in the delivery of health care services and all physicians have been adversely affected by the medical malpractice crisis which engulfed this state and severly disrupted the delivery of health care services and the day-to-day operations of hospitals throughout the state.

Mr. Jay Weinstein, an expert in hospital administration and found so qualified by the lower court, provided unrefuted testimony regarding the extent and effects of the disruption of obstetrical services in the delivery of health care services. (R 242-278).

For example, various critical services including emergency room, trauma, obstetrical, and neurosurgery can be reduced or eliminated and, consequently, remaining services are overloaded. Referrals among physicians can be reduced and hospitals can find it difficult to recruit and maintain staff. Access to major health care services can be limited and, as a result, the relationship between the public and the medical profession deteriorated. These facts can be assumed by the court, with or without Mr. Weinstein's testimony, or any other evidence introduced at trial. Division of Pari-Mutuel Wagering v. Florida Horse Council, supra; Florida State Board of Architecture v. Wasserman, supra; State v. Bales, supra.

It can be concluded, as did the Task Force, that the effects of the disruption of obstetrical services are particularly far reaching and severe. When obstetrical services are not provided, the emergency room staff can be overloaded and "the system is pushed to the wall" because the providing of obstetrical services will become an emergency service. Negative economic consequences befall the hospital as well, since mothers are a primary source of patient referrals for physicians in all specialties. (R 242-278). Referrals will not occur in a health care system that cannot provide competent services.

The devasting effects of the disruption in the delivery of obstetrical services were confirmed even by Petitioners' expert, Dr. Masterson, who, during questioning, testified:

Question:

"Hypothetically, let's assume for a moment that all of the obstetrical physicians on that staff, because of malpractice premiums and because of-frankly, because of the problems associated with malpractice, including having to come to the courthouse and testify, and so forth, decided they had had enough. And they had decided that they have had enough so much that they decided to stop either treating indigent patients, which are sometimes common problem pregnancy, or otherwise just stop practicing OB. Based on that hypothetical I gave you and your small knowledge of Jackson, would that have an affect on the hospital's operations?"

Answer:

"It would be disastrous."

Question:

"That disaster would permeate that hospital: wouldn't it?"

Answer:

"I presume, yes."
(R 215-220, Transcript pp. 35-36).

Additionally, hospitals which do not provide obstetrical services are also negatively impacted by the

crisis as they struggle to refer their patients to other, unfamiliar facilities.

Conversely, when the malpractice crisis is lessened and health care services can be delivered smoothly and efficiently, benefits will be seen and felt throughout the health care industry.

For example, access to health care services will be expanded as services which were eliminated or reduced during the crisis are again offered. Emergency rooms and trauma centers will re-open. Patients referrals will increase and physicians will be able to practice in pleasant and full service facilities. Essentially, the negative consequences of the malpractice crisis will be alleviated. This provides a rational and reasonable basis for the subject assessments.

In light of these facts, demonstrated or assumed, Petitioners' claim that they are not related to the goals of this Plan cannot be sustained. As reasoned by the trial court, health care services are delivered by a team of providers, all of whom interact and depend on one another. The malpractice crisis severely disrupted the delivery of health care services and all members of the "team" suffered.

Since one of the goals of the Plan is <u>to help alleviate</u> the crisis and permit the efficient delivery of health care services by all members of the team, Petitioners are undeniably related to at least one of the goals of the Plan

and stand to benefit from its realization. This act is not a cure-all, but will be a major contribution to the cure. Thus, the Legislature's decision to require Petitioners to contribute to the Plan was not wholly unreasonable, arbitrary, or capricious, and, therefore, should be upheld.

The Florida Legislature chose a similar financing scheme in regard to another statutorily created plan, the Public Medical Assistance Trust Fund, (the "Medical Trust Fund"), found in §409.2662 and §409.2663, Fla. Stat. Under the provisions of the statutes which govern the Medical Trust Fund, hospitals contribute to a fund to pay for indigent care provided by hospitals around the state whether or not the hospitals themselves receive any benefits from the Trust Fund. In other words, the idea of requiring health care providers to contribute to a fund to "benefit" or pay for services rendered by others is nothing new. This fact supports the reasonableness of the Legislature's action in enacting the subject legislation.

There may have been another way to finance the Plan. The Legislation could have chosen not to act at all. However, the court cannot be concerned with whether the Legislature's choice was the most prudent or the most effective way to address the ill perceived. That is not the issue before this court. As long as the financial scheme chosen by the Legislature rationally advances a legitimate

government objective, the court should not second guess the method used in achieving the objective.

(2). Equal Protection

To comply with the requirements of the equal protection clause, statutory classifications must be reasonable and not arbitrary and all persons in the class must be treated alike. Lasky v. State Farm Insurance Company, 296 So.2d 9 (Fla. 1974). The regulation of the practice of medicine does not involve a fundamental right or special class for purposes of the equal protection analysis, so the rational basis analysis applies. Woods v. Holy Cross Hospital, 591 F.2d 1164 (C.A. Fla. 1979).

The equal protection clause requires that a statutory line, which draws distinctions and classifications be a rational one, bearing some rational relationship to a legitimate state purpose. Patch Enterprises, Inc. v. McCall, 447 F.Supp. 1075 (D.C. Fla. 1978). The equal protection clause does not require that the state choose between attacking every aspect of a problem or not attacking a problem at all; it is enough that the state's action be rationally based **and free from invidious discrimination.** Ivy Steel and Wire Company, Inc. v. City of Jacksonville, 401 F.Supp. 701 (M.D. Fla. 1975).

The burden is on the party challenging a statute or regulation on equal protection grounds to show there is no

conceivable factual predicate which would rationally support the classification under attack. Where the challenging party fails to meet such a burden, the statute or regulation must be sustained. The High School Activities Association, Inc. v. Thomas by and through Thomas, 434 So.2d 306 (Fla. 1983). The rational basis for the governmental objective may be identified by statements of intent from legislative reports and journals, inferences by reference to similar legislation or actions taken by the legislative body, or from legal arguments before the court. Sasso v. Ram Proprty Management, 431 So.2d 204 at 216 (Fla. 1st DCA 1983).

For the reasons already espoused, the Petitioners' equal protection claim also cannot prevail. Petitioners have not demonstrated that the Legislature's classification was arbitrary or unreasonable **or that there was no conceivable factual predicate to support the classification.**

Instead, Petitioners have attacked the competency of Mr. Weinstein, NICA's witness, even though Mr. Weinstein's testimony is not necessary to sustain the validity of the statute in question. It is not the burden of NICA to prove the validity of the statutes. It is the burden of the Petitioners to demonstrate the statutes invalidity.

The record, and the enacting legislation, has established the legitimate public purposes served by the Plan; the Petitioners' relationship to the goals of the Plan; and the reasonableness of the classification within

the financing scheme. The method chosen by the Legislature to insure the financial viability of the Plan was reasonable and was not violative of the equal protection clause. All physicians holding Florida licenses are treated equally.

ISSUE II

THE ASSESSMENT DOES NOT IMPROPERLY PLEDGE THE CREDIT OF THE STATE OR DELEGATE THE STATE'S TAXING AUTHORITY TO THE COMMISSIONER OF INSURANCE OR TO NICA.

(A) PLEDGING CREDIT OF THE STATE

Petitioners maintain that the imposition of the assessments contravene Article VII, Section 10 of the Florida Constitution 1968, because the payments are made to NICA, which Petitioners contend is a private entity. Petitioners, however, have misconstrued the provision which prohibit pledging the state tax credit. In addition, NICA is not a private entity within the purview of Article VII, Section 10. It has no control over the members, who are appointed by the State Treasurer; and its actions must comply with the requisite provisions of §766.301, et. seq.

Article VII, Section 10, provides, in pertinent part:

> Neither the state nor any county, school district, muncipality, special district, or agency or any of them, shall become a joint owner with, or stockholder of, or give, lend or use its taxing power or credit to aid any corporation, association, partnership or person. (Emphasis supplied).

Although the Association (NICA), which administers the Plan, is not an agency, board, or commission, it is not private in nature. NICA is exclusively a creature of the statute, formed solely to carry out the public purposes set forth by the Legislature and, as such, **is acting primarily as an instrumentality of the state.** There is no "benefit or aid" inuring to NICA by virtue of its being the depository or manager of the Plan's various funds. To the contrary, all benefits that may arise from the Plan are for the general public, the infants whose injuries will be compensated, and the health care industry as a whole, including the Petitioners.

When the Legislature makes a determination of public purpose, such as those purposes served by the subject legislation as previously discussed, the party challenging that determintion must show that such a determination was so clearly wrong as to be beyond the power of the Legislature. State v. Orange County Industrial Development Authority, 417 So.2d 959, 1962 (Fla. 1982). See also, State v. Osceola County Industrial Development Authority, 424 So.2d 739 (Fla. 1982). The Petitioners in this cause have not made such a showing.

(B) ADEQUATE STANDARDS AND GUIDELINES

Petitioners also contend that the provisions of the statute which grant to the Commissioner of Insurance the ability to levy additional assessments constitute an illegal

delegation of the power to tax, since the applicable statutes do not provide adequate standards and guidelines to be used by the DOI in determining the amount of any additional assessments. The Amicus contend that it is NICA that makes the determination to make an additional assessment, and the amount. These contentions are without merit.

NICA has previously discussed the applicable provisions of §766.314, Fla. Stat., wherein it is clear that the Legislature, by statute, has set a base assessment leved against hospitals; physicians, both participating ($5000) and non-participating ($250); has made specific monetary appropriations; and by specific formula, has dictated the amount of assessment to be made against casualty insurance carriers; and has specified, in detail, when and how the assessments are to be made. The only time that a specific amount for an assessment has not been made is when a determination is made that additional assessments, in excess of the base assessments, are necessary.

In determining when additional assessments are necessary, the DOI conducts an actuarial investigation and makes a determination as to whether the Plan is actuarially sound, taking into consideration all assessments and apropriations received to date. **If the Plan is not actuarially sound, the DOI, pursuant to §766.314(7)(b), determines the amount of additional assessment.** NICA,

thereafter, bills the appropriate party to collect the assessment. Accordingly, the issue is whether, under such circumstances, there has been an invalid delegation of legislative authority to the DOI.

The arguments raised by Petitioners in regard to this have been addressed, and disposed of by the Florida Supreme Court. In Department of Insurance v. Southeast Volusia Hospital District, 438 So.2d 815 (Fla. 1983), (see Appendix B) the Supreme Court dealt with a challenge to the authority granted to the Commissioner of Insurance to levy assessments against members of the Florida Patient's Compensation Fund (FPCF). The court found no improper delegation of authority and upheld the constitutionality of the statute. The court noted that:

> "The crucial test in determining whether a statute amounts to an unlawful delegation of legislative power is whether the statute contains sufficient standards or guidelines to enable the agency and the courts to determine whether the agency is carrying out the Legislature's intent."

The court then recognized that Florida courts have found the concept of actuarial soundness to be a meaningful standard; and referred to Article X, Section 14, of the Florida Constitution which refers to a "sound actuarial basis."

The court further found there was no unconstitutional delegation simply because the agency could determine the amount of the assessment. The Legislature may delegate to

authorized officials and agencies the authority to determine facts to which the established policies of the legislature are to apply. The question of determining whether a deficit exists or not is a technical issue of implementation and not a fundamental policy decision.

The authority granted the Commissioner of Insurance, an elected official, to levy additional assessments as needed to maintain the Plan on an actuarially sound basis satisfies the criteria set forth in Southeast Volusia Hospital District, supra, and does not constitute an unlawful delegation of the state's taxing authority.

In a somewhat similar situation, the courts have upheld legislation which has been attacked as having failed to provide adequate standards to guide an administrative agency's discretion in determining whether to grant or deny a license. The First District Court of Appeal has recognized that Florida's Administrative Procedure Act (the "APA") must be taken into consideration.

In Albrecht v. Department of Environmental Regulation, 353 So.2d 883 (1977), the court upheld the validity of §253.124, Fla. Stat., where said statute had been attacked as not containing adequate standards to guide the Department of Environmental Regulation's discretion in determining whether to grant or deny permits, by recognizing that the

APA provides significant procedural safeguards, which serve to restrict the agency's discretion in considering permit applications.

Likewise, in the instant case, when the DOI conducts an actuarial investigation and attempts to make a determination that additional assessments are necessary, all affected parties would have the right to proceed to an administrative hearing pursuant to the provisions of §120.57, Fla. Stat., and have all issues in this area resolved.

The court in Albrecht supra, recognized that if less specific statutory standards are "a practical necessity in legislation regulating complex subjects, they are now at least suceptible to refinement by policy statements adopted as rules or otherwise." Even if a decision by the DOI to raise the amount of assessment would not technically qualify as a rule, the First District Court of Appeal has further recognized that to the extent an agency does not refine the statutory standards through rule making, it will be required to explain the policy behind each of its decisions. McDonald v. Department of Banking and Finance, 346 So.2d 569 (Fla. 1st DCA 1977).

The point to be made is that the DOI, by rule, may define the circumstances and/or conditions by which it will conduct its actuarial investigation of the soundness of the Plan. With or without a rule, however, any decision to be made by the DOI regarding the actuarial soundness of the

Plan and any decision to increase assessments, will be subject to immediate scrunity pursuant to the provisions of §120.57, Fla. Stat. This statutory provision, and the APA as a whole, assures notice and opportunity to be heard on virtually every important question to be considered by a State agency; and provides independent hearing officers as factfinders in the formulation of particularly sensitive administrative decisions, and requires written findings and conclusions on all issues. The APA assures prompt administrative action, and judicial review of final, and even interlocutory orders, affecting a party's interest.

The court in Albrecht, supra, considered this array of procedural safeguards to have lessened the need for strict statutory standards in delegation of power to administrative agencies. The APA procedural provision for direct judicial review ensures that agency discretion will be exercised responsibly and fairly. Such procedural safeguards would be provided to the Petitioners in any decision made by the DOI regarding any increase of assessments under 766.314(7)(b), Fla. Stat.

It has been, therefore, recognized that the best way to implement policy is often for the legislative body to assign to an administrative agency the task of implementing policy within broad guidelines on a case by case basis. Volume I, K. Davis, Administrative Law Treatise, §2.08 (1958). Requiring strict standards in many instances destroys needed

flexibility. The Legislature meets but once a year. It normally does not have the opportunity to adjust strict standards to reflect economic and sociologic changes.

Finally, a strictly construed standards doctrine is logically unsound and legally meaningless. The needs and demands of modern government require delegation without overly specific standards. See Berry and Berry, Inc. v. State Department of Motor Vehicles 500 P.2d 540 (Wash. 1972).

ISSUE III

THE SUBJECT ASSESSMENTS DO NOT VIOLATE THE PRIVILEGES AND IMMUNITIES CLAUSES OF THE UNITED STATES OR FLORIDA CONSTITUTIONS.

The Petitioners have alleged that the subject assessments constitute a violation of the privileges and immunities clause of the Florida and United States Constitutions. Petitioners have misconstrued the meaning and intent of these constitutional provisions.

The singular goal of the privileges and immunities clause is to prohibit unequal treatment to the citizens of one state in favor of the citizens of another. The privileges and immunities clause "was designed to ensure to a citizen of State A, who ventures into State B, the same privileges which the citizens of State B enjoy." Toomer v. Witsell, 334 U.S. 385 (1948).

Pursuant to the provisions of §766.314,(4)(b), Fla. Stat., all physicians licensed under Chapters 458 and 459, Fla. Stat., are subject to the equal assessment of $250.00. The assessment applies equally to residents and nonresidents. The assessment has absolutely no relation to the residence of the licensee but, instead, is an assessment upon the privilege of holding the license which enables the licensee to practice medicine in this State. As such, it is constitutionally sound. Winshare Club of Canada v. Department of Legal Affairs, 542 So.2d 974 (Fla. S.Ct. 1989); Pike v. Bruce Church, Inc., 397 U.S. 137, 178 (1970).

As reasoned by the trial court, the assessment at issue may appear more burdensome or offensive to Florida licensed physicians who reside out of state and who do not practice in the State. However, that perception is a result of the licensee's choice of residence; and not as a result of any classification or special burden imposed by the statute.

ISSUE IV

MR. JAY WEINSTEIN WAS PROPERLY QUALIFIED AS AN EXPERT FOR THE PURPOSE OF PROVIDING AN OPINION AS TO THE EFFECTS ON THE HEALTH CARE SYSTEM IN FLORIDA DUE TO THE DISRUPTION OF OBSTETRICAL SERVICES BECAUSE OF THE MALPRACTICE CRISIS.

Petitioners have misconstrued the purpose and intent of Mr. Weinstein's testimony and the purpose and intent for which he was qualified as an expert. Mr. Weinstein was not

qualified by NICA as an expert in obstetrical services nor was he qualified by NICA for the purpose of testifying specifically regarding obstetrical services.

Instead, Mr. Weinstein was specifically qualified by NICA as an expert to discuss and offer his opinion regarding the effects of the malpractice crisis on the delivery of obstetrical services in Florida and the effects of this disruption on the health care system in Florida. Mr. Weinstein was clearly qualified because of his years of experience as a hospital administrator and, as a result of that experience, had obtained a detailed knowledge and understanding of the health care system in Florida. Further, Mr. Weinstein's experience has given him knowledge regarding the overall and general effects of the malpractice crisis on the delivery of obstetrical services and the effect of the disruption of obstetrical services on the health care system of Florida. (R 242-276)

Pursuant to the provisions of §90.702, Fla. Stat., if scientific, technical, or other specialized knowledge <u>will assist</u> the trier of fact in understanding the evidence or in determining a fact or issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify about it in the form of opinion. Mr. Weinstein's testimony was not only that of opinion; but also actual fact within the knowledge of Mr. Weinstein.

Mr. Weinstein was not qualified by NICA to discuss obstetrics, per se, but was qualified to discuss only the general effect of the disruption of such service on the health care industry. In the judgment of the trial court, Mr. Weinstein was qualified to give this testimony.

The trial court has the initial responsibility of determining the qualifications and range of subjects on which an expert witness is allowed to testify, and its determination will not be disturbed on appeal in the absence of a clear showing of abuse of discretion. Guy v. Kight, 431 So.2d 658 (5th DCA 1983); Rivers v. State, 425 So.2d 101 (1982); McDonnell Douglas v. Holiday, 397 So.2d 366 (1981).

As such, the trial judge is accorded considerable leeway and discretion in ruling on the admissibility of evidence and the qualifications of an expert witness. Reinhart v. Seaboard Coastline R.Co., 422, So.2d 41; Hartman v. Opeleka Machine and Welding Co. 414 So.2d 1105 (1982). Likewise, and notwithstanding the present occupation of a witness or the present experience of a witness, a witness can still be qualified as an expert based upon previous experience and knowledge. Brown v. State, 477 So.2d 609 (1st DCA 1985).

Mr. Weinstein had received a masters degree in business with a concentration in hospital administration at Xavier University in Cincinnati, Ohio and spent thirteen years in hospital administration at the University of Miami, Jackson

Memorial Medical Center. (TR 66-67). Mr. Weinstein is now the chief executive officer of a 412 bed acute care general hospital in South Florida. (TR 66). As a hospital administrator, he was concerned about policy, procedure, the operations of the institution, the financing aspects of the institution and the providing of health care services within the specific community. (TR 66-67).

Mr. Weinstein specifically testified that he is familiar with all aspects regarding the delivery of health care services in a hospital. He was particularly familiar with the way in which obstetrical services are delivered in a hospital from an administrative point of view, not a medical point of view. The delivery of obstetrical services is a major component of the health care delivery system. (TR 67). Before giving his testimony, Mr. Weinstein had reviewed the Task Force reports, the legislation regarding the Plan, as well as the complaint, and other various legal pleadings filed in this cause, including the response to various interrogatories.

The obvious purpose of Mr. Weinstein's testimony was to advise the court of the importance of obstetrical services within the hospital setting and the public health area and the overall effect of the disruption of the delivery of obstetrical services at hospitals or other health care facilities.

Mr. Weinstein was clearly qualified to advise the court in that area. Mr. Weinstein's many years of experience in hospital and health care administration made him eminently qualified to discuss that issue. This is true, regardless of whether or not any particular hospital where Mr. Weinstein was administrator actually delivered obstetrical services. The hospital electing not to provide obstetrical services had to know where to send patients needing that service. As previously discussed, the inability to refer patients would disrupt the operation of the hospital not providing such services because patients needing obstetrical services would come to the hospital on an emergency basis. As such, the court did not abuse its discretion in allowing Mr. Weinstein to testify in this area.

Regardless of Mr. Weinstein's testimony, however, this same information can be gleaned from the Task Force reports, answer to interrogatories, the preamble to the legislation enacting the Plan, and the legislative intent section of §766.301, Fla. Stat., or could be assumed by the court.

NICA did not have the burden of proving any factual predicate. It is clearly the law in Florida that any legislative enactment carries a strong presumption of constitutionality, which includes a rebuttable presumption of the existence of necessary factual support and if any state of facts, know or to be assumed, justify the law, the court's power of inquiry ends. The Petitioners have

confused who has the burden of demonstrating the absence of facts to justify the conclusion that a statute is constitutionally valid. It was the responsibility of the Petitioners to clearly rebut the presumption of the existence of necessary support for the validity of the subject statutes. The court could rely on any state of facts, known or to be assumed, to justify the constitutional validity of the subject law. It was the responsibility of the Petitioners to conclusively rebut the state of facts, either known or assumed by the court. This the Petitioners have clearly failed to do and, as such, the First District Court of Appeal's decision upholding the constitutionality of the challenged provisions of §766.314, Fla. Stat., should be affirmed.

CONCLUSION

The First District Court of Appeal's decision affirming the constitutional validity of the challenged assessment provisions of §766.314, Fla. Stat., should be affirmed by this court. The Petitioners have failed to conclusively rebut the presumption that the subject statutory provisions are constitutional.

The statutory provisions under attack provide the means for financing and funding a law clearly enacted for the benefit of the public health, safety and welfare, as well as for the benefit, directly or indirectly, of all physicians and for the health care system in Florida. The means chosen

by the Legislature to fund this very critical and necessary plan is clearly not arbitrary, capricious or discriminatory; nor are the challenged statutory provisions on their face oppressive.

There is no constitutional requirement that a person subject to a tax or license fee must receive a direct benefit in return for the money contributed, although Petitioners do in the instant situation. The challenged assessment provisions are not wholly without a reasonable basis and rationally advance a legitimate governmental objective. The statutes under attack, as such, should be upheld and the First District Court of Appeal's decision so finding should be affirmed.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the appellee's brief was mailed by U.S. Mail this 11th day of February, 1991 to: **KENT MASTERSON BROWN, ESQ.**, 1114 First National Building, 167 West Main Street, Lexington, KY 40507, **DONNA H. STINSON, ESQ.**, Moyle, Flanigan, Katz & Fitzgerald, 118 N. Gadsden Street, Suite 100, Tallahassee, Florida 32301, **WILLIAM H. ADAMS, III, ESQ.**, and **ROBERT J. WINICKI, ESQ.**, Post Office Box 4099, Jacksonville, Florida 32201, **JOHN THRASHER, ESQ.**, Florida Medical Association, 760 Riverside Avenue, Jacksonville, Florida 32304; **PETER D. OSTREICH, ESQ.**, Department of Insurance and Treasury, 412 Larson Building, Tallahassee, Florida 32399-0300; **H. REYNOLDS SAMPSON, ESQ.**, **HARPER FIELD, ESQ.**, Florida Department of Professional Regulation, 1940 North Monroe Street, Tallahassee, Florida 32399-0750; **GEORGE WAAS**, Department of Legal Affairs, The Capitol, Suite 1501, Tallahassee, Florida 32399-1050; **THOMAS J. MAIDA, ESQ.**, **KARL MCCONNAUGHHAY**, et al., Post Office Box 229, Tallahassee, Florida 32302 and **NEIL H. BUTLER, ESQ.**, Butler & Johnson, P.A., Post Office Box 839, Tallahassee, Florida 32302.

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