IN THE SUPREME COURT OF FLORIDA

HILLSBOROUGH COMMUNITY MENTAL HEALTH CENTER, ETC.,

Petitioner,

vs.

MARJORIE J. HARR, ETC., ET AL.,

Respondent.
---/

CASE NO. 79,266

District Court of Appeal
2d District - No. 90-2842

SAYYED HUSSAIN, M.D.,

Petitioner,

vs.

MARJORIE J. HARR, ETC., ET AL.,

Respondent.
---/

CASE NO. 79,267

District Court of Appeal
2d District - No. 90-2842

INITIAL BRIEF OF PETITIONER SAYYED HUSSAIN, M.D.

ON DISCRETIONARY REVIEW OF THE DECISION OF THE SECOND DISTRICT COURT OF APPEAL

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STATEMENT OF THE CASE AND OF THE FACTS

Michael Harr was found in a wooded area located north of East Fletcher Avenue between the north and southbound lanes of I-75 on October 2, 1986 by Lt. David Gainer of the Florida Game & Fresh Water Fish Commission. (R 248-249) He was hooking up a hose to the exhaust system of his pickup truck. He had suicide notes in his possession. Lt. Gainer called in the Hillsborough County Sheriff's Department. Deputy M. W. Burton came to the scene and apprehended Michael Harr in accordance with the Florida Baker Act. He delivered Mr. Harr to the Hillsborough Community Mental Health Center (HCMHC) at approximately 8:00 p.m. on October 2, 1986. (R 215)

Mr. Harr was interviewed at the HCMHC by K. B. Millrose, an intake counselor. He told Mr. Millrose that he had been thinking about suicide that afternoon but adamantly denied being suicidal at the time he was seen at the HCMHC. He denied trying to hook up a hose to his exhaust pipe. He said that he intended to get a job or to go back to Atlanta where he had spent time on his trip to Tampa from South Dakota. (R227-228) The counselor called Dr. Hussain (petitioner) for consultation. The two of them decided the patient could be discharged and he was discharged. (R 229)

He later drove his truck through the fence at the impound lot where it had been taken. (R 230)

Two days later, Michael's decomposing body was found in Pasco County in the same pickup truck. (R 13) A flexible hose had been hooked to the exhaust pipe and led to the cab. (R 226) The cause of death was carbon monoxide poisoning. (R 14) On October 6, 1986, Mrs. Harr, Michael's mother and plaintiff in this action, received a phone call from the local police chief in Aberdeen, South Dakota telling her that he had received information from the authorities in Tampa that Michael had died on October 2, 1986. (R 87, 110)

In the early morning hours of October 7, 1986, Mrs. Harr spoke to a Tampa police officer on the telephone. (R 111) During that conversation, she received the information that Michael had been apprehended by police authorities. He was found to have hooked up a flexible tube to the exhaust pipe of his truck and was in a state of depression. He was "Baker Acted", which she did not understand precisely. She was told that Michael had been taken to a crisis center and that he had killed himself later that day. (R 112)

A notice of intent to initiate litigation was mailed by certified mail on October 20, 1988 to HCMHC and to petitioner. (R 14) Thereafter, suit was filed on February 15, 1989. (R 1-7)

An amended complaint was filed on March 17, 1989. (R 12-17) Petitioner filed an answer to that amended complaint including the affirmative defense that the claim was barred by the applicable statute of limitations. (R 25-27) Plaintiff filed a reply to the affirmative defense of the statute of limitations seeking to avoid that defense by alleging she had not discovered the acts which constituted negligence on the part of the defendant until September 30, 1988 (sic 1987) when she received a copy of a report from the Inspector General of the Department of Health & Rehabilitative Services of the State of Florida. (R 38) On July 13, 1990, petitioner filed his motion for summary judgment on the basis of the statute of limitations defense. (R 64-67) A hearing was held on that motion on August 17, 1990. (R 306-338) Thereafter, the trial court entered an order granting the motion of both defendants for summary judgment. (R 294-295) A final judgment was entered. (R 296) A timely appeal ensued. (R 299-300)

The Second District Court of Appeal reversed and certified the case to this Court as involving a matter of great public importance. A notice to invoke discretionary jurisdiction was timely filed with this Court.

SUMMARY OF ARGUMENT

The Second District Court of Appeal has certified to this Court a question which it characterized as involving a matter of great public importance. The question basically is whether a medical malpractice plaintiff must be on notice of the bare fact of an injury or must also know that the injury in fact resulted from an incident involving a health care provider in order to start the statute of limitations running.

Petitioner takes the position that this is the wrong question. Under the cases decided by this Court, notice of an injury is sufficient. However, it is necessary to understand what "notice of an injury" means. That question must be answered in light of the inquiry which this Court has used as the test for whether the medical malpractice statute of limitations has been commenced. That question is whether plaintiff is put on notice of the possible invasion of his or her legal rights. The Second District has phrased a question very similar to this. The question is whether plaintiff was on notice of minimum essential facts indicating a timely investigation should begin in order to discover any additional facts needed to support a medical negligence action. While petitioner does not agree that

plaintiff must be on notice that the action he or she would commence would be a medical negligence action, petitioner otherwise agrees with this formulation of the question too. These questions represent the appropriate inquiry, not the question certified by the Second District Court of Appeal.

On examining the facts of this case, one immediately discovers that respondent was on notice of all the necessary facts to cause her to be on notice of a possible invasion of her legal rights and further to be on notice that she should undertake an investigation to find out more. Knowing that a crisis center to which her son had been taken for help had failed to help him and he had then committed suicide constitutes basic minimum facts under either test. For this reason, the decision of the Second District Court of Appeal should be reversed and the summary judgment below should be reinstated.

PRELIMINARY STATEMENT

The Second District Court of Appeal reversed the trial court's grant of summary judgment in favor of all defendants on the basis of the medical malpractice statute of limitations. In doing so, the District Court certified the following question to this Court as involving a matter of great public importance:

> DOES THE STATUTE OF LIMITATIONS IN §95.11(4)(b) COMMENCE:
>
> (A) WHEN THE POTENTIAL PLAINTIFF HAS NOTICE OF AN INJURY IN FACT; OR
>
> (B) WHEN THE POTENTIAL PLAINTIFF HAS AN ADDITIONAL NOTICE THAT THE INJURY IN FACT RESULTED FROM AN INCIDENT INVOLVING A HEALTH CARE PROVIDER?

It is the position of petitioner that the District Court has misperceived the law which led it to an incorrect result.

I.

THE DISTRICT COURT ASKED THE WRONG QUESTION.

It is axiomatic that when this Court accepts jurisdiction on certification of a matter of great public interest, the Court acquires the power to review the entire decision and record. It is not bound by the question that is certified to it if a specific question is certified.

Lawton v. Alpine Engineered Products, Inc., 498 So.2d 879 (Fla. 1986); Hillsborough Ass'n. for Retarded Citizens, Inc. v. City of Temple Terrace, 332 So.2d 610 (Fla. 1976); Cleveland v. City of Miami, 263 So.2d 573 (Fla. 1972); Rupp v. Jackson, 238 So.2d 86 (Fla. 1970) and Zirin v. Charles Pfizer & Co., 128 So.2d 594 (Fla. 1961). Petitioner contends that the District Court below has misunderstood and complicated a relatively simple issue which led it to ask the wrong questions and misjudge the merits of this cause.

In order to ask the correct question, it is necessary to understand the evolution of this body of law with particular emphasis on the sequence and timing of the relevant cases. In the case of City of Miami v. Brooks, 70 So.2d 306 (Fla. 1954), this Court first clearly struggled with the question when the statute of limitations commences to run in a medical malpractice case. In Brooks the Court was faced with a plaintiff who had been treated by radiation but did not show any ill effects from this for many years. The Court said,

> At the time of the application of the x-ray treatment there was nothing to put the plaintiff on notice of any probable or even possible injury. (emphasis supplied)
> Brooks, supra at 308.

In reaching its conclusion, this Court said the following:

> ... the statute attaches when there has been notice of an invasion of the legal right of the plaintiff or he has been put on notice of his right to a cause of action. In the instant case, at the time of the x-ray treatment, there was nothing to indicate any injury or to put the plaintiff on notice of such, or that there had been an invasion of her legal rights.
> Brooks, supra at 309.

Thereafter, this Court decided the landmark case of Nardone v. Reynolds, 333 So.2d 25 (Fla. 1976). The Court was answering questions certified by the Fifth Circuit Court of Appeals of the United States out of a factual situation in which a child was treated with brain surgery at Jackson Memorial Hospital. The child was discharged from the hospital in July of 1965 comatose and totally blind, having suffered irreversible brain damage during the treatment. Citing to Brooks, the Court said:

> Previously, this Court has held that the statute of limitations in a malpractice suit commences either when the plaintiff has notice of the negligent act giving rise to the cause of action or when the plaintiff has notice of the physical injury which is the consequence of the negligent act. (emphasis supplied)
> Nardone at 32.

This Court concluded that the statute of limitations barred the plaintiff's case in Nardone and said the following:

> With the knowledge of the severity of their son's resultant condition, the parents through the exercise of reasonable diligence were on notice of the possible invasion of their legal rights.
> Nardone, supra at 34.

The Court also held that the contents of records which are available to or obtainable by plaintiff is imputed to plaintiff. Nardone, supra at 34. Among the information available in the records in the Nardone case which was imputed to plaintiffs was the knowledge of the identity of some of the physicians. One of those physicians, Dr. Gargano, was, according to plaintiffs' testimony, unknown to them until their depositions were taken in the lawsuit. Nardone, supra at 30.

Thereafter, this Court decided Moore v. Morris, 475 So.2d 666 (Fla. 1985). This case involved a child who apparently sustained damage at her birth but this was not evident to the plaintiffs or their physicians until several years later. Speaking to these facts, Justice Atkins said:

> There's nothing about these facts which leads conclusively and inescapably to only one conclusion - that there was

> negligence or injury caused by negligence. ... Serious medical circumstances arise daily in the practice of medicine and because they are so common in human experience, they cannot, without more, be deemed to impute notice of negligence or injury caused by negligence. (emphasis supplied)
> Moore, supra at 668.

This Court went on to quote from the case of Almengor v. Dade County, 359 So.2d 892 (Fla. 3d DCA 1978) as follows:

> We do not believe, however, that this evidence put the plaintiff on notice as a matter of law that the baby was injured during birth because such evidence just as reasonably could have meant that the baby had been born with a congenital defect without any birth trauma.
> Moore, supra at 670, quoting from Almengor at 894.

With the law in this general condition, the Fourth District Court of Appeal decided the case of Shapiro v. Barron, 538 So.2d 1319 (Fla. 4th DCA 1989). In that case, a plaintiff underwent surgery on his bowel and upon discharge from the hospital had become blind. Citing to Moore, the District Court of Appeal said the following:

> While the complications arising from Mr. Shapiro's surgery were obvious to all, at what time the Shapiros had or should have had knowledge of the cause of such complications becomes the focal

> point of this opinion, since knowledge of physical injury alone, without the knowledge that it resulted from a negligent act, does not trigger the statute of limitations. (emphasis supplied)
> Shapiro at 1319.

With the law in this condition, Judge Lehan, on the Second District Court of Appeal, wrote his opinion in Jackson v. Georgopolous, 552 So.2d 215 (Fla. 2d DCA 1989). In his concurrence, Judge Lehan was attempting to harmonize these and several other decisions. Straining to harmonize Shapiro with Moore and Nardone, Judge Lehan said that these decisions,

> ... can also be taken to be that the medical malpractice statute of limitations is not triggered at the time plaintiff knows of the injury if the plaintiff then has no knowledge or notice of the incident involving defendant resulting in the injury.
> Jackson, supra at 220.

Although none of the judges is specifically saying so, it would appear obvious that the factor giving rise to the difficulties in Shapiro as well as Judge Lehan's efforts in Jackson and its progeny lies in the language which has been quoted previously in this brief from Nardone and Moore to the effect that when the running of the statute of limitations is triggered by knowledge of "injury", it must

be injury "which is the consequence of the negligent act" Nardone, supra at 32, or injury "caused by negligence" Moore, supra at 668. If, indeed, this Court should have been understood to mean that one must know that an injury had occurred which was the consequence of a negligent act or which was the result of negligence, then knowledge of injury alone is obviously not enough. That is what Judge Lehan is saying in his opinion in Jackson. Certainly one could understand and sympathize with the reasoning of Judge Lehan as expressed in Jackson and laud his efforts to make clear what was obviously otherwise not so clear. However, as it is wont to do, the law moved on.

This Court reversed the Fourth District Court of Appeal in its decision of Barron v. Shapiro, 565 So.2d 1319 (Fla. 1990). In doing so, this Court said:

> The district court of appeal misinterpreted Moore when it said that knowledge of physical injury alone, without knowledge that it resulted from a negligent act, does not trigger the statute of limitations.
> Barron, supra at 1321.

Explaining the rule of law, this Court said:

> Thus, the limitation period commences when the plaintiff should have known either of the injury or the negligent act. (emphasis supplied)
> Barron, supra at 1322.

In this formulation of the wording, this Court clearly divorced the word "injury" from the subsequent language "resulting from the negligent act". The Court pointed out that Mrs. Shapiro had said: "... Her husband went in for an operation on his colon and came out blind." Barron, supra at 1321. Knowledge of the blindness was sufficient to trigger the running of the statute of limitations for the Shapiros. Although one might have expected this would put the problem to rest, it did not.

This Court next decided University of Miami v. Bogorff, 583 So.2d 1000 (Fla. 1991). Therein, the Third District Court of Appeal had reversed a summary judgment on the statute of limitations and this Court quashed the opinion of the Third District. The Court noted that the District Court was requiring the Bogorffs to have knowledge both of the physical injury and that a negligent act caused the injury. Commenting that this was not an accurate statement of the law, the Court said: "... the limitation period commences when the plaintiff should have known of either (1) the injury or (2) the negligent act." Bogorff, supra at 1002. Perhaps somewhat confusingly, however, this Court also said:

> No party disputes that Adam Bogorff's injuries occurred, at the latest, by July, 1972. At that time the Bogorffs knew of Adam's paralyzed and

> unresponsive condition. Although they did not know if medical negligence caused that condition, they knew that Dr. Koch had treated Adam and knew of his injury. This was sufficient for their cause of action to accrue, thereby commencing the statutory limitation period against Dr. Koch and the University of Miami. (emphasis supplied)
> Bogorff, supra at 1002.

Looking at the language which petitioners have underlined in the immediately preceding quotation, one could believe that this Court was once again inserting a requirement for a "nexus" between knowledge of an injury and knowledge that the injury resulted from treatment provided by a physician.

Of significant importance, however, this Court also said the following:

> As a matter of law, the Bogorffs were on notice of the possible invasion of their legal rights and the limitation period began running.
> Bogorff, supra at 1002.

With the law in this posture, the Second District Court of Appeal decided two further cases which lead up to the instant cause. One of them is Goodlet v. Steckler, 586 So.2d 74 (Fla. 2d DCA 1991). Goodlet was decided in August of 1991, six months after the rendition of the Bogorff decision. In Goodlet, Judge Altenbernd set forth what that

Court considered the seven important factual considerations involved in a medical negligence cause of action. These are as follows:

> 1) the identity of the plaintiff; 2) the existence of a relationship between the plaintiff and a health care provider that is sufficient to create a legal duty under a theory of medical negligence; 3) the identity of the health care provider who owes the duty; 4) the standard of care owing under the duty; 5) the facts establishing a breach of the standard of care; 6) proximate causation; and 7) injury. Goodlet, supra at 76.

In Goodlet, Dr. Steckler treated plaintiff's decedent for deep venous thrombosis. She died of cardiac arrest on March 26, 1987 while in the hospital. On April 3, 1987, Dr. Steckler called the plaintiff (decedent's mother) and told her that he was her daughter's treating physician and that her daughter had died. Summary judgment was granted in the trial court on the basis of the statute of limitations and the Second District affirmed. However, Judge Altenbernd said:

> We are uncertain what knowledge, if any, the supreme court intends to require concerning factors 1 through 3. In this case, Ms. Goodlet had information concerning factors 1 through 3 as a result of Dr. Steckler's telephone call. Accordingly, we have

> no need to determine whether these factors are critical to the commencement of the statute of limitations and, if so, what information concerning those factors is essential. A holding as to these difficult issues can await a case in which they are dispositive.
> Goodlet, supra at 586.

Still straining to "harmonize" the law, Judge Lehan wrote a concurring opinion in Goodlet. Therein, he said the following:

> It should additionally be clear, I conclude, that only notice of an injury potentially inflicted by anyone is not enough to trigger the statute. ... Thus, there must be notice which is notice of more than only injury, i.e., which involves defendant with the injury, but which may be notice of less than negligence in the infliction of the injury.
> Goodlet, supra at 77.

Here we see Judge Lehan once again attaching some part of the qualifying language to the word "injury" which Barron would appear to have stricken out of it. And to make this even clearer, Judge Lehan was the author of the opinion in Rogers v. Ruiz, 16 F.L.W. 3076 (Fla. 2d DCA Dec. 13, 1991). In that opinion, Judge Lehan said, speaking of the Jackson and Goodlet cases, as follows:

> Nonetheless, as concluded in those concurring opinions, the parameter of notice of only injury should not be construed to mean literally what it says, ... Notice of injury in this context should be construed to include necessarily at least notice of 'the incident involving defendant resulting in the injury'.
> Rogers, supra at 3079.

Thus, Judge Lehan makes it clear that he will not accept the literal wording of the tests set forth by this Court in Barron and reaffirmed in Bogorff. Still he feels he needs to qualify the term "injury".

With that background, the Second District Court decided the instant cause. In this case, it was obvious that Mrs. Harr knew about the death of her son on October 6, 1986. She knew on October 7, 1986 that her son had been taken to a crisis center because he was depressed and suicidal but managed to commit suicide on the same day nevertheless. The District Court obviously believed that those facts did not provide the necessary "nexus" (the Second District does not use this term, it is being introduced into this discussion by counsel for petitioner) between knowing of the "injury" (death) and knowing that it was related to care rendered by specific health care providers. The District Court discusses which of its Goodlet factors a plaintiff must know of or be on notice of in order to trigger the running of the

statute of limitations in a medical malpractice action. It is certainly confusing to try to follow that discussion through those factors. It is also unnecessary. Because of the history of these cases as outlined previously, the Second District has fastened on the wrong question. This has led the Court into the unnecessary complications the Goodlet factors introduced and has led the Second District Court to pose the wrong certified question.

A careful reading of this Court's opinions makes it clear that the central question, from the Brooks decision all the way through to the Bogorff decision is this: Was the plaintiff on notice of a possible invasion of his or her legal rights? If the criteria set forth in Nardone and Barron, to-wit: notice of injury or notice of negligence, are tested by the critical question concerning the possible invasion of legal rights, it is unnecessary and in fact contrary to precedent to deal with the specifics of the Goodlet factors. If a plaintiff is on notice of either the injury or the negligence of the defendant such that a court can say the plaintiff is on notice of a possible invasion of his or her legal rights, that's enough.

The problems that revolve around the use of the word "injury" envisaged by Judge Lehan are unnecessary. It is evident in Moore that injury does not simply mean something

bad happening to a person. This Court said:

> Serious medical circumstances arise daily in the practice of medicine and because they are so common in human experience, they cannot, without more, be deemed to impute notice of ... injury ...
> Moore, supra at 668.

It would seem obvious that simply knowing someone had died without more would not constitute legal notice of "an injury". However, one need not put the causal relationship language back into the definition of "injury" which this Court struck out of it in Barron. All one need do is look toward the question of possible invasion of legal rights.

Actually, the Second District Court of Appeal has reformulated the question concerning invasion of legal rights in a way that is rather attractive. As Judge Altenbernd said,

> The critical question is what minimum facts are essential to give the plaintiff notice that a timely investigation should begin in order to discover any additional facts needed to support a medical negligence action. (emphasis supplied)
> Goodlet, supra at 75.

That question, which Judge Altenbernd called "critical" seems to this writer to be a different but parallel way of

asking whether plaintiff was on notice of possible invasion of his or her legal rights. The only quarrel petitioner has with this question is that it is not necessary that plaintiff know specifically that a medical negligence action should be commenced. All that is needed is that plaintiff know he or she should investigate a possible invasion of legal rights. The investigation will tell whether the defendant should be a health care provider. Had either of these parallel questions been asked by the Second District Court of Appeal with relationship to the instant cause, the answer would have been obvious. Mrs. Harr was on notice of a possible invasion of her legal rights or on notice that she should have begun an investigation on October 6 or 7, 1986.

II.

USE OF THE CORRECT TEST MANDATES REVERSAL OF THE DECISION OF THE DISTRICT COURT.

Petitioner has previously pointed out that this Court has jurisdiction to review this cause in its entirety. Lawton; Hillsborough Ass'n for Retarded Citizens, Inc.; Cleveland; Rupp and Zirin, supra. Because the District

Court has asked the wrong question and, as a result, improperly interpreted the facts of this case, petitioner requests this Court to review this issue and reverse.

A detailed description of the relevant facts is set forth in the statement of the facts in this brief. As a result, they will not be restated here in detail. However, a sketch of those facts is as follows. Mrs. Harr knew by October 7, 1986, that her son had been found by law enforcement officials in the median of a highway in a depressed state with a flexible tube hooked to the exhaust pipe of his truck. She knew he was taken into custody by law enforcement officials under a Florida law she didn't understand. Under that authority, he was taken to a "crisis center". Despite being taken to a crisis center, Michael Harr committed suicide later that day. When Mrs. Harr learned this, she began immediately attempting to obtain her son's belongings and records. By January of 1987, she had identified the Hillsborough County Mental Health Center (HCMHC) as the crisis center where her son was treated and by March of 1987 had identified Dr. Hussain as being involved in the care of her son. She had also received a copy of the HCMHC records.

A notice of intent to initiate litigation was mailed on October 20, 1988, over one and one-half years later. It has

been the contention of the defendants in this litigation that the statute of limitations began running on October 6 or 7, 1986. Therefore, the notice of intent was 13 or 14 days past the conclusion of the limitations period. The trial judge agreed. The District Court disagreed. Had the District Court asked the correct question about these facts, it would have been obvious that the trial court was correct.

What the Second District said about the facts of this case which was pivotal is as follows:

> On October 7, 1986, Mrs. Harr telephoned the police from her home in South Dakota and was informed that they had taken her son to a crisis center. However, she was not informed of the name or address of the crisis center or of the nature of the care that was provided. The term 'crisis center' without more does not put a person on notice that a health care provider is involved. Thus, we cannot conclude as a matter of law that on October 7, 1986, Mrs. Harr possessed sufficient information to be considered on notice of a possible invasion of her legal rights. (Decision of the District Court at 6).

Looking at this language literally, one would be tempted to think that the District Court did indeed consider whether these facts imputed notice to Mrs. Harr of a possible invasion of her legal rights. However, had the Court considered its own question on this subject, that is, whether she had the minimum essential facts necessary to put her on notice that a timely

investigation should begin, the Court would have realized that the answer was yes.

Petitioner would like to briefly address the question of knowledge of the identity of the specific health care providers. None of the decisions cited leading up to this case require that the plaintiff be on notice of the specific identity of the health care providers. In fact, in Nardone, some of those health care providers were unknown to the plaintiff for a long time. However, their identities were available in obtainable records. That's true in this case as well. In fact, not only did Mrs. Harr have imputed knowledge on October 6 or 7, she had actual knowledge of the identities of both the HCMHC and Dr. Hussain while she still had 19 months left on her statute of limitations.

Did Mrs. Harr receive notice of an injury? Well, she received notice that her son had been found depressed and with a flexible tube hooked up to the exhaust pipe of his truck. This certainly is evidence that he was suicidal. She knew he had been taken by law enforcement authorities to a crisis center in response to that state. She also knew that he committed suicide later that same day. This had to mean that whatever the crisis center was supposed to do for him had failed. As a result of that failure, he was able to commit suicide. These facts certainly seem to show "an injury". They

obviously do not describe normal events. A center obviously intended to assist in prevention of suicide failed to do so leading to the death of Mrs. Harr's son. How could she fail to know that she may have suffered "a possible invasion of her legal rights" or that there had been "an injury" as that term must be used in light of Moore? It could not be clearer that she was on notice of an injury and that a possible invasion of her legal rights had occurred.

The foregoing alone should be enough. However, if we need to go further, we can test these facts with the question asked by Judge Altenbernd. Did plaintiff have minimum facts essential to put her on notice that a timely investigation should begin? Obviously, the answer is yes. Mrs. Harr did immediately begin an investigation. Even though she was dealing across state lines with a death by suicide and with bureaucratic organizations, she was able in a little over 90 days to obtain the identity of the HCMHC. Less than five months after the death, she was aware of the identity of Dr. Hussain. She also had records from the HCMHC in her hands at that time. There is no issue of fraudulent concealment in this case. In light of the fact that she did begin an investigation, it seems impossible to conclude that she failed to have minimum facts essential to put her on notice that a timely investigation should begin. Having begun the

investigation, she learned all she needed to know. A mental health center and a psychiatrist had provided care to her son on the day of his death. The question had been whether he was suicidal. He had been released by that mental health center and immediately proceeded to commit suicide.

In light of the fact that this lady did immediately begin a timely investigation, the decision of the Second District Court seems almost inexplicable. Obviously, the Second District would like its "nexus" approach to the inception of the medical malpractice statute of limitations blessed by this Court. That should not happen for two reasons. The first is that the test which the Second District would like this Court to use flies in the face of Brooks, Nardone, Moore, Barron and Bogorff. The second is that under the test of possible invasion of legal rights or the parallel question asked by Judge Altenbernd, the facts of this case manifestly require reversal of the District Court's opinion and reinstatement of the trial court's summary judgment.

CONCLUSION

The question certified to this Court by the Second District Court of Appeal is the wrong question. The correct question is whether plaintiff was on notice of a possible invasion of her legal rights. As rephrased by the Second District, the question would be whether she was on notice "that a timely investigation should commence to discover additional facts needed to support an action against a health care provider." Had those questions been asked in light of the facts in this case, the answer would have been inescapably that Mrs. Harr was on notice of the necessary facts on October 7, 1986. The trial court's summary judgment was appropriate.

Petitioner requests this Court to reverse the decision of the Second District Court of Appeal and reinstate the summary judgment below.

Respectfully submitted,

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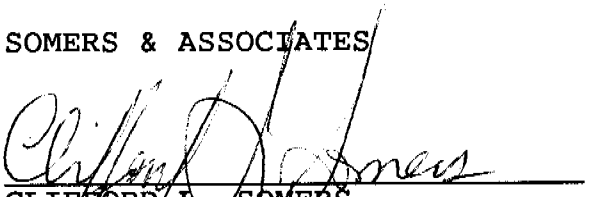

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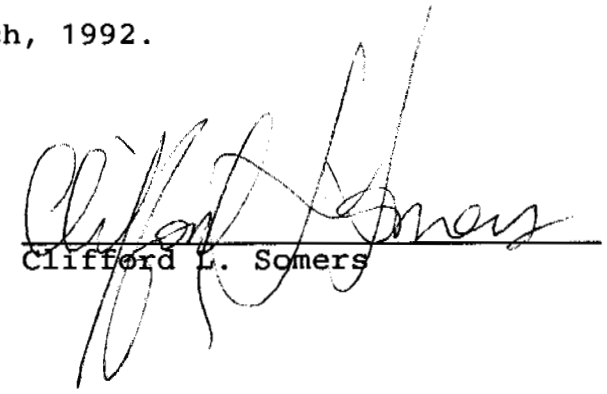
I HEREBY CERTIFY that a copy of the foregoing has been furnished to RICHARD M. MITZEL, P.O. Box 3329, Tampa, FL 33601, LEE S. DAMSKER, P.O. Box 172009, Tampa, FL 33672-0009, EDWIN J. BRADLEY, #310, 711 North Florida Avenue, Tampa, FL 33602 and JOEL D. EATON, #800, 25 West Flagler Street, Miami, FL 33130, by mail, this 5th day of March, 1992.



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