

**IN THE SUPREME COURT OF FLORIDA**

UNIVERSITY OF FLORIDA  
BOARD OF TRUSTEES; and  
SHANDS TEACHING HOSPITAL  
AND CLINICS, d/b/a SHANDS  
HOSPITAL,

Petitioners,

Case No. SC22-68  
L.T. Case Nos. 1D21-0634  
2019-CA-1827

v.

LAURIE CARMODY,

Respondent.

\_\_\_\_\_ /

---

**RESPONDENT'S ANSWER BRIEF ON JURISDICTION**

---

On Review From A Decision Of The  
First District Court Of Appeal

---

**/s/ Kennan G. Dandar**

KENNAN G. DANDAR, ESQ.

FBN: 289698

EF.KGD@dandarlaw.net

TIMOTHY M. DANDAR, ESQ.

TMD@Dandarlaw.net

FBN: 86750

Post Office Box 55444

St. Petersburg, Florida 33702

813-289-3858/Fax: 813-287-0895

Attorneys for Respondent

RECEIVED, 04/25/2022 12:53:20 PM, Clerk, Supreme Court

**TABLE OF CONTENTS**

TABLE OF CONTENTS ..... i  
TABLE OF CITATIONS..... ii  
ISSUE PRESENTED ..... 1  
STATEMENT OF CASE AND FACTS ..... 1  
ARGUMENT ..... 2  
CONCLUSION ..... 4  
CERTIFICATE OF SERVICE..... 4  
CERTIFICATE OF COMPLIANCE ..... 5

**TABLE OF CITATIONS**

**Cases**

*DeSantis v. Fla. Educ. Ass'n*,  
313 So. 3d 151 (Fla. 1st DCA 2020) ..... 2

*UF Bd. of Trs. v. Carmody*,  
331 So. 3d 236 (Fla. 1st DCA 2021) ..... 2, 4

*Williams v. Oken*, 62 So. 3d 1129 (Fla. 2011) ..... 2, 3

**Statutes**

Chapter 766, *Fla. Stat.* ..... 1

*Fla. Stat.* § 766.202(6) ..... 3

*Fla. Stat.* § 766.203 ..... 1

## **ISSUE PRESENTED**

Whether certiorari review is available in reviewing the Trial Court's finding that the Plaintiff's presuit expert, James DeStephens, M.D., was a qualified expert under Chapter 766, *Fla. Stat.* to render an opinion on the care and treatment provided by a Certified Nurse Practitioner (A.R.N.P)<sup>1</sup>

## **STATEMENT OF CASE AND FACTS**

Petitioners, University of Florida Board of Trustees and Shands Hospital, seek certiorari relief arguing that Respondent failed to comply with the presuit medical expert-corroboration requirement of the Medical Malpractice Act. See § 766.203(2), *Fla. Stat.* (2016). Petitioners assert that the trial court should have dismissed Carmody's medical malpractice lawsuit because her **medical doctor** expert was unqualified to address the standard of care applicable to the **certified nurse practitioner** (A.R.N.P) who rendered care in Respondent's case. (emphasis added). *UF Bd. of Trs. v. Carmody*, 331 So. 3d 236 (Fla. 1s DCA 2021).

---

<sup>1</sup> It should be noted that in Petitioner's Jurisdictional Brief, Petitioner inadvertently contends that Plaintiff's presuit internal medicine/cardiology expert was rendering an opinion regarding the care and treatment provided by a "Neurosurgical Provider".

## **ARGUMENT**

Certiorari review is an inappropriate means of challenging a trial court's denial of a motion to dismiss. *Williams v. Oken*, 62 So. 3d 1129, 1132 (Fla. 2011). However, Florida's courts have recognized exceptions to this rule with respect to the medical malpractice-presuit requirements of chapter 766—a law designed to avoid meritless claims. *Id.* In *Williams*, the Florida Supreme Court concluded that certiorari relief is available to address procedural omissions in presuit-related cases where a defendant isn't afforded "**proper process** through **procedural** compliance with the statutory requirements." (emphasis added) *Id.* at 1134-36. Conversely, the Court held that a petition should have been dismissed where the defendant received proper process and its certiorari argument merely involved whether the trial court erred in ruling on [\*\*3] the qualifications of an expert who had corroborated a medical negligence claim. *Williams*, 62 So. 3d at 1137 (concluding that "whether the trial court erred in finding [the doctor] was a qualified expert under the statute . . . is insufficient to merit certiorari review"); see also *DeSantis v. Fla. Educ. Ass'n*, 313 So. 3d 151, 154 (Fla. 1st DCA 2020) (deducing from *Williams* that "a **mere erroneous ruling**

that results from that process **cannot establish the jurisdictionally necessary irreparable harm**" (emphasis added)).

Importantly, Petitioners concede that a process-related deficiency has not occurred herein. To the contrary, Petitioners are arguing that the court erred and should have dismissed the case because the corroborating expert Physician was not qualified to render an opinion on standard of care applicable to a **certified nurse practitioner** (A.R.N.P) *Williams* applies directly to certiorari petitions making this argument, where this Court concluded that certiorari review is not available to review arguably erroneous rulings on the qualifications of medical-expert affiants under chapter 766 (as opposed to reviewable process-compliance issues). *Williams*, 62 So. 3d at 1137.

Here, the Trial Court properly conducted an evidentiary hearing to ascertain whether the Plaintiff's **medical doctor** expert was qualified to address the standard of care applicable to the **certified nurse practitioner** (A.R.N.P) pursuant to § 766.202(6), *Fla. Stat.* The First District Court of Appeals properly found that the trial court held an evidentiary hearing, understood its gatekeeping role under the statute, and ultimately ruled that Carmody's expert and the

corroborating affidavit satisfied the requirements of the Medical Malpractice Act. In doing so, the trial court complied with the procedural requirements of the law. *UF Bd. of Trs. v. Carmody*, 331 So. 3d 236, 238 (Fla. 1st DCA 2021).

**CONCLUSION**

Based on the foregoing, this Court should deny jurisdiction to review the underlying decision.

**/s/ Kennan G. Dandar**  
KENNAN G. DANDAR, ESQ.  
FBN: 289698  
EF.KGD@dandarlaw.net  
TIMOTHY M. DANDAR, ESQ.  
TMD@Dandarlaw.net  
FBN: 86750  
Post Office Box 55444  
St. Petersburg, Florida 33702  
813-289-3858/Fax: 813-287-0895  
*Attorneys for Respondent*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on April 25, 2022, a true and correct copy of the foregoing was furnished via the Florida Courts E-Portal System and a copy was served electronically upon the following counsel of record:

**Trial Counsel for Respondent:**

KENNAN G. DANDAR, ESQ.

FBN: 289698

[KGD@dandarlaw.net](mailto:KGD@dandarlaw.net)

TIMOTHY M. DANDAR, ESQ.

[TMD@Dandarlaw.net](mailto:TMD@Dandarlaw.net)

FBN: 86750

Post Office Box 55444

St. Petersburg, Florida 33702

**Trial Counsel for Petitioner:**

Francis E. Pierce, III

Mateer & Harbert

225 E. Robinson St., Suite 600

Orlando, FL 32801

[litpleadings@mateerharbert.com](mailto:litpleadings@mateerharbert.com)

[fpierce@mateerharbert.com](mailto:fpierce@mateerharbert.com)

**/s/ Kennan G. Dandar**

KENNAN G. DANDAR, ESQ.

**CERTIFICATE OF COMPLIANCE**

I HEREBY FURTHER CERTIFY that the foregoing complies with the font and typeface requirements set forth in Florida Rule of Appellate Procedure 9.045 and complies with the word count limit requirements set forth in 9.210(a)(2)(A) because it does not exceed 2,500 words.

**/s/ Kennan G. Dandar**

KENNAN G. DANDAR, ESQ.