

THE SUPREME COURT OF FLORIDA

CASE NO. SC001910

Certified by the Fourth District  
Court of Appeal of Florida

MAGGIE KNOWLES, as Personal  
Representative of the Estate of  
Gladstone Knowles, Deceased,

Petitioner,

vs.

BEVERLY ENTERPRISES-FLORIDA,  
INC.,

Respondent.

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**BRIEF OF AMICUS CURIAE HEALTH CARE  
AND RETIREMENT CORPORATION OF AMERICA**

COLE WHITE & BILLBROUGH, P.A.

By: G. Bart Billbrough

Geoffrey B. Marks

Daniella S. Kreiner

Attorneys for HCR

Pacific National Bank Building

1390 Brickell Avenue, Third Floor

Miami, Florida 33131

E-mail: billbrough@cwblaw.com

Telephone: (305) 350-5358

Facsimile: (305) 373-2294

COLE WHITE & BILLBROUGH, P.A.

PACIFIC NATIONAL BANK BUILDING - 1390 BRICKELL AVENUE - THIRD FLOOR - MIAMI, FLORIDA 33131 - (305) 350-5300 - (305)373-2294 FAX

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## INTRODUCTION

Petitioner, Maggie Knowles, as Personal Representative of the Estate of Gladstone Knowles, seeks review of the Fourth District Court of Appeal decision in Beverly Enterprises-Florida, Inc. v. Knowles, 766 So.2d 335 (Fla. 4th DCA 2000). The present case is pending before this Court on the following question, certified to be one of great public importance:

MAY A PERSONAL REPRESENTATIVE  
BRING A STATUTORY CAUSE OF  
ACTION UNDER SECTION 400.023(1),  
FLA. STAT., ON BEHALF OF A  
DECEASED RESIDENT OF A NURSING  
HOME FOR ALLEGED INFRINGEMENT OF  
THE RESIDENT'S STATUTORY RIGHTS  
PROVIDED BY SECTION 400.022,  
FLORIDA STATUTES (1997), WHERE THE  
INFRINGEMENT HAS NOT CAUSED THE  
RESIDENT'S DEATH?

Beverly Enterprises-Florida, Inc. v. Knowles, 763 So.2d 1285  
(Fla. 4<sup>th</sup> DCA 2000).

Health Care and Retirement Corporation of America (hereinafter "HCR") has moved this Court for leave to submit this brief as an amicus curiae, and HCR submits the following to aid this Court's consideration of the issues on review.

## **STATEMENT OF THE CASE AND THE FACTS**

As an amicus, HCR defers to and adopts Respondent Beverly Enterprises' statement of the case and facts as set forth in their brief.

## **SUMMARY OF THE ARGUMENT**

I. Section 400.023, Florida Statutes, unambiguously provides that a personal representative of a deceased nursing home resident may bring an action against the nursing home for violation of the Patient's Bill of Rights only when the deprivation or infringement of the resident's rights caused the patient's death. Well established principles of statutory construction confirm that when the language of a statute is unambiguous, then the statute must be given its plain and obvious meaning. As such, the Fourth District Court of Appeal correctly interpreted the plain and unambiguous language of Section 400.023 and the policies underlying Chapter 400.

II. If the Legislature had intended the current version of the statute to create standing for all persons desiring to sue on behalf of a deceased nursing home resident for a non-fatal violation, then the Legislature could have chosen language to simply so state.

III. The litigation spurred by a statute intended to protect nursing home residents is being pursued by claimants in a way that may well end up accomplishing an unintended negative

result. This is contrary to the multiple public policy considerations addressed in this brief.

IV. The long-term effects of inappropriate Chapter 400 litigation could be devastating to the nursing home industry. As this Court considers the public policy components of this case, it should include within those considerations the need to appropriately safeguard the future of an industry whose goal it is to meet the needs of our aging population.



## ARGUMENT

MAY A PERSONAL REPRESENTATIVE BRING A STATUTORY CAUSE OF ACTION UNDER SECTION 400.023(1), FLA. STAT., ON BEHALF OF A DECEASED RESIDENT OF A NURSING HOME FOR ALLEGED INFRINGEMENT OF THE RESIDENT'S STATUTORY RIGHTS PROVIDED BY SECTION 400.022, FLORIDA STATUTES (1997), WHERE THE INFRINGEMENT HAS NOT CAUSED THE RESIDENT'S DEATH?

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On rehearing en banc, the Fourth District Court of Appeal unanimously<sup>1</sup> concluded Section 400.023, Florida Statutes, unambiguously provides that a personal representative of a deceased nursing home resident may bring an action against the nursing home for violation of the Patient's Bill of Rights only when the deprivation or infringement of the resident's rights caused the patient's death. Knowles, 763 So.2d at 1285. When this Court reviews this case and the policy decisions supporting the Fourth District's decisions, the Court should also conclude the Fourth District correctly interpreted the plain and unambiguous language of Section 400.023, Florida Statutes.

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<sup>1</sup> The Honorable Larry Klein recused himself from participation in the decision.

The issue certified as one of public importance -- whether Chapter 400 claims survive death where the death is unrelated to any alleged Chapter 400 violation -- calls upon this Court to employ traditional and long standing rules of statutory construction. The Legislature's intent must be determined primarily from the language of the statute itself. Aetna Cas. & Sur. Co. v. Huntington Nat'l Bank, 609 So.2d 1315, 1317 (Fla.1992). "When the language of the statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction; the statute must be given its plain and obvious meaning." Modder v. American Nat'l Life Ins. Co., 688 So.2d 330, 333 (Fla.1997)(quoting Holly v. Auld, 450 So.2d 217, 219 (Fla.1984)).

In statutory construction cases, statutes must be given their plain and obvious meaning because it must be assumed that the legislative body knew the plain and ordinary meaning of their words. Rinker Materials Corp. v. City of North Miami, 286 So.2d 552 (Fla. 1973). It is not appropriate to resort to judicial interpretation to displace the statute's expressed intent as set

forth in clear statutory language. Heredia v. Allstate Ins. Co., 358 So.2d 1353 (Fla. 1978). For this reason, this Court has stated that legislative history cannot be used to alter the plain meaning of a statute. Rollins v. Pizzarelli, 761 So.2d 294 (Fla. 2000).

Section 400.023 enunciates a civil cause of action for a violation of the Residents' Rights Act. The relevant portion of Section 400.023 states:

Any resident whose rights as specified in this part are deprived or infringed upon shall have a cause of action against any licensee responsible for the violation. The action may be brought by the resident or his or her guardian, by a person or organization acting on behalf of a resident with the consent of the resident or his or her guardian, or by the personal representative of the estate of a deceased resident when the cause of death resulted from the deprivation or infringement on the rights of a resident... Any plaintiff who prevails in any such action may be entitled to recover reasonable attorney's fees, costs of the action, and damages, unless the court finds that the plaintiff has acted in bad faith, with malicious purpose, and that there was a complete absence of a justiciable issue of either law or fact.

Construing this language, the Fourth District held Section 400.023 unambiguously provides a personal representative of a deceased, nursing home resident may bring an action against the nursing home for violation of the Patient's Bill of Rights only when the deprivation or infringement of the resident's rights caused the patient's death. Knowles, 766 So.2d at 336.

In doing so, the Fourth District, adopting Judge Warner's dissent in Greenfield v. Manor Care, Inc., 705 So.2d 926 (Fla. 4th DCA 1997), appeal dismissed, 717 So.2d 534 (Fla. 1998), discussed the rationale behind its decision:

The rights protected under section 400.022 are rights that are largely personal to the resident of the facility, such as the right to religious liberty, see § 400.022(1)(a), the right to organize and participate in groups in the facility, see § 400.022(1)(e), and the right to manage one's personal affairs, see § 400.022(1)(h) to name a few. The resident also has the right to adequate medical care and proper treatment, see § 400.022(1)(l) and under section 400.023(1), if the violation of these rights results in a death then, the personal representative of the estate of the deceased resident has a cause of action. However, as to the other personal rights, I can conceive of valid policy reasons why the legislature would not want such actions to survive, as post-death vindication would not bring any personal

satisfaction to the resident. Considering the fact that attorney's fees are available for successful suits proving infringements of these statutory rights, it may have been part of the legislative bargain in passing the resident's bill of rights to limit actions to the lifetime of the patient, other than those alleging that the violation of the rights resulted in the death of the resident.

Moreover, section 400.023(1) was enacted long after section 46.021 and I do not see how the two can be harmonized.... As a general rule of statutory construction, a special statute controls over a general statute. See McKendry v. State, 641 So.2d 45 (Fla.1994).

Knowles, 766 So.2d at 336-37.

The design of the statute itself, and its public policy foundation, support the Fourth District's conclusions on this point. The rights afforded under the resident's bill of rights are indeed personal ones. Entitlements such as the right to adequate medical care and proper treatment, the right the religious liberty, the right to organize and participate in groups in the facility, and the right to manage one's own personal affairs all reflect a desire on the part of the Legislature to protect residents in their capacity as residents.

At pages 33 through 36 of Petitioner's brief on the merits, the personal representative seeks to make a case that public policy warrants the interpretation of this statute to afford the widest possible benefit to persons who have resided in nursing homes and assisted living facilities. Listing a parade of hypothetical horrors, Petitioner seemingly contends this Court should ignore the plain and unambiguous language of Section 400.023, in favor of an expansive interpretation of facility liability. These arguments ignore not only the legislative text, but other equally compelling public policy considerations.

Chapter 400, Florida Statutes, was enacted to protect residents of long-term care facilities from health hazards and other deficiencies. Chapter 400 created a list of nursing home residents' rights and a civil enforcement provision with a statutory private right of action. The legislature thought the civil enforcement provision would save money by creating an additional deterrent against health, safety, and personal rights violations in nursing homes. The legislature admitted, however,

that it could not accurately anticipate what effect this could have on the nursing home industry.<sup>2</sup>

In the time since adoption of these protections for residents, litigation against nursing home and assisted living facilities has exploded in this state. Counsel for residents have learned that any kind of statutory violation, regardless of severity, will present the prospect not only for a recovery for the client, but the greater prospect of significant attorney's fees. Before residents had claims under Chapter 400, they always had rights of action against nursing homes and assisted living facilities for negligent acts.

HCR's experience on one claim bears particular note here. An elderly nursing home resident at an HCR facility was transported from a doctor's appointment in a nursing home van, and was injured when her wheelchair overturned during the resident's transport. Shortly after, the resident died from unrelated causes, and her personal representative commenced a lawsuit under Chapter 400. In addition to a claim for

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<sup>2</sup> *See* Committee on Health and Rehabilitative Serv., Nursing Homes: Senate Staff Analysis and Economic Impact Statement, S. Bill No. 80-1218 (Fla. 1980).

automobile negligence, the complaint alleged the driver's operation of the van at a high rate of speed caused injury to the decedent so as to have effectively deprived the decedent of her rights under Chapter 400. Of course, with this claim the personal representative alleged entitlement to attorney's fees as prescribed by statute if successful in his suit. The complaint did not make a single allegation of deficient nursing home care of the decedent, except for the auto accident.<sup>3</sup> Despite settlement of the automobile negligence claim by the nursing home's automobile insurance carrier, the plaintiff still pursued a Chapter 400 claim even though the resident's death was in no way caused by the nursing home.

The foregoing example is just one of many that could be given to this Court of an overzealous application of Chapter 400 -- application well beyond what HCR believes was intended by

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<sup>3</sup> These facts come from the case of Alan Katof, as Personal Representative of the Estate of Miriam Katof, Deceased v. Health Care and Retirement Corporation of America d/b/a Heartland Health Care and Rehabilitation Center - Sunrise, Fourth District Court of Appeal Case No. 4D00-3357. Review of the trial court's summary judgment in favor of HCR has been stayed in the District Court of Appeal, as this Court's disposition of the case at bar may resolve the issues in Katof.



the Legislature in its enactment. These claims are pursued not just for the protection or benefit of resident rights, but for attorney's fees. The foregoing scenario is but one outrageous example of how the prospect of attorney's fees have caused claimants to "push the envelope" of Chapter 400's scope.

Ironically, the litigation spurred by a statute intended to protect nursing home residents is being pursued by claimants in a way that may well end up accomplishing an unintended negative result. As our nation's population ages, and our state serves as a preferred venue for that population, the nursing home and assisted living facility industry here faces increasing stresses. The present economics of medicine and geriatric care means that fewer and fewer resources are available for the adequate care of our elderly. Statutes which regulate the conduct of this industry should appropriately be construed to effect the legislative purpose, and not in a fashion that promotes the depletion of critical resources needed for elder care. Funds that should be spent on resident care should not be siphoned away for unintended Chapter 400 claims being prosecuted in manners not intended by the Legislature.

If the Legislature had intended the current version of the statute create standing for all persons desiring to sue on behalf of a deceased nursing home resident for a non-fatal violation, then the Legislature could have chosen language to simply so state. In light of the plain language utilized, however, this Court should conclude there was no such intention on the part of the Legislature.

The principle of statutory construction, *expressio unius est exclusio alterius*, meaning that “the mention of one thing implies exclusion of another”, should find application here. See Moonlit Waters Apartments, Inc., v. Cauley, 666 So.2d 898 (Fla. 1996). The statute’s express authorization for a personal representative to sue for fatal violations of the residents’ rights act excludes a personal representative’s posthumous suits for non-fatal violations.

If increased costs are incurred due to an overly expansive application of Chapter 400, these costs will necessarily be passed on to those who consume resident services. Worse yet, in many cases the cost cannot be absorbed, meaning that if the financial burden is not shifted, the prospects for an overall

industry decrease in quality becomes much more real. Nursing homes and assisted living facilities may not be able to attract high quality job applicants because they will not be able to provide competitive salaries and benefits. Facilities may be forced to decrease the size of their staffs, and patient recreational activities may need to be cut due to the costs involved.

The long-term effects of inappropriate Chapter 400 litigation could be devastating to the nursing home industry. Nursing home providers may eventually be forced to close their doors and transfer the residents elsewhere, thus causing the residents severe trauma. As this Court considers the public policy components of the instant decision, it should include within those considerations the need to appropriately safeguard the future of an industry whose goal it is to meet the needs of our aging population.

Where, as here, the language of a statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for us to depart from its plain and unambiguous language. Dade County v. Pena, 664 So.2d 959, 960 (Fla.1995);

see also Holly v. Auld, 450 So.2d 217, 219 ("[w]hen the language of the statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction; the statute must be given its plain and obvious meaning.")(quoting A.R. Douglass, Inc. v. McRaney, 137 So. 157, 159 (1931)).

The Fourth District, viewing the plain and unambiguous language of Section 400.023, properly found that the Legislature provided for nursing home statutory claims to be brought by personal representatives only if the violation caused death. This interpretation is consistent with the plain meaning of the legislative language, and the policies underlying Chapter 400. This Court should affirm the ruling and rationale of the court below.

## **CONCLUSION**

Based upon the foregoing rationale and authorities, Amicus Curiae, Health Care and Retirement Corporation of America, respectfully requests this Court to answer the certified question of the Fourth District Court of Appeal in the same fashion as the holding of that Court: A personal representative cannot bring a statutory cause of action under Section 400.023(1), Florida Statutes, on behalf of a deceased resident of a nursing home for alleged infringement of the resident's statutory rights provided by Section 400.022, Florida Statutes, unless the infringement caused the resident's death.

COLE WHITE & BILLBROUGH, P.A.  
Attorneys for HCR  
Pacific National Bank Building  
1390 Brickell Avenue, Third Floor  
Miami, Florida 33131  
E-mail: billbrough@cwblaw.com  
Telephone: (305) 350-5358  
Facsimile: (305) 373-2294

By \_\_\_\_\_

G. Bart Billbrough  
Fla. Bar No.: 334261

Geoffrey B. Marks  
Fla. Bar No.: 714860

Daniella S. Kreiner  
Fla. Bar No.: 426539

**CERTIFICATE OF SERVICE**

We certify that a copy hereof has been furnished to the parties listed below by mail on January 22, 2001.

Jeffrey M. Fenster, Esq.                      Suite 800  
Counsel for Petitioner                      Miami, FL 33130  
Fenster and Faerber, P.A.  
8751 West Broward  
Boulevard  
Suite 307  
Plantation, FL 33324

Counsel for  
Appellee/Cross-Appellant  
Jane Kreuzler-Walsh, Esq.  
Counsel for Petitioner  
Jane Kreuzler-Walsh, P.A.  
Suite 503, Flagler Center  
501 S. Flagler Drive  
West Palm Beach, FL 33401

Scott Mager, Esq.  
Counsel for Respondent  
Mager & Sonn  
SouthTrust Tower, Suite  
620  
One East Broward  
Boulevard  
Fort Lauderdale, FL 33301

Joel S. Perwin, Esq.  
Counsel for Academy of  
Florida Trial Lawyers  
Podhurst, Orseck,  
Josefsberg,  
Eaton, Meadow, Olin &  
Perwin  
25 West Flagler Street

Edward J. Lyons, Esq.  
Counsel for The Coalition  
to Protect America's Elders  
Milcowitz & Lyons, P.A.  
29605 U.S. Highway 19  
North  
Suite 110  
Clearwater, FL 33761-2134

1100 SouthTrust Tower  
One East Broward  
Boulevard  
Fort Lauderdale, FL 33301

M. Stephen Turner, Esq.  
Counsel for Florida Health  
Care Associates  
Broad and Cassel  
P.O. Drawer 11300  
Tallahassee, FL 32302

Laura B. Zebersky, Esq.  
Counsel for Petitioner  
Zebersky & Associates,  
P.A.  
Suite 308  
1776 N. Pine Island Road  
Plantation, FL 33322

Patrick Ford, Esq.  
Counsel for Academy of  
Florida Trial Lawyers  
Ford & Sinclair, P.A.  
9130 South Dadeland Blvd.  
Datran 2, Penthouse 1C  
Miami, FL 33156

Seth Honowitz, Esq.  
Counsel for Respondent  
Kluger, Peretz, Kaplan  
& Berlin

---

G. Bart Billbrough  
Florida Bar No.: 334261  
Amicus Curiae for HCR Manor Care  
Cole White & Billbrough, P.A.  
1390 Brickell Avenue, Third Floor  
Miami, Florida 33131  
(305) 350-5358  
(305) 373-2294



**CERTIFICATE OF COMPLIANCE**

The undersigned hereby certifies that this amicus brief  
has been typed in 14 point Times New Roman.

COLE WHITE & BILLBROUGH, P.A.  
Attorneys for HCR  
Pacific National Bank Building  
1390 Brickell Avenue, Third Floor  
Miami, Florida 33131  
E-mail: billbrough@cwblaw.com  
Telephone: (305) 350-5358  
Facsimile: (305) 373-2294

By \_\_\_\_\_

G. Bart Billbrough  
Fla. Bar No.: 334261

Geoffrey B. Marks  
Fla. Bar No.: 714860

Daniella S. Kreiner  
Fla. Bar No.: 426539