IN THE SUPREME COURT OF FLORIDA

HILLSBOROUGH COUNTY HOSPITAL AUTHORITY, d/b/a FAMILY CARE MEDICAL CENTER; MENTAL HEALTH CARE, INC., d/b/a BAYLIFE CENTERS; ANTHONY PIDALA, JR., M.D., DAVID TULSIAK, M.D., EMERGENCY MEDICAL ASSOCIATES OF TAMPA BAY, P.A.; and ST. JOSEPH'S HOSPITAL, INC.;

Petitioners,

vs. Case No.: SC00-665

REBECCA COFFARO,

Respondent.

_____/

Discretionary Appeal on Certified Question of Great Public Importance from the Second District Court of Appeal of the State of Florida

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ANSWER BRIEF FOR RESPONDENT TO PETITIONERS HILLSBOROUGH COUNTY HOSPITAL AUTHORITY, MENTAL HEALTH CARE, INC., ANTHONY PIDALA, JR., M.D., DAVID TULSIAK, EMERGENCY MEDICAL ASSOCIATES OF TAMPA BAY, P.A., and ST. JOSEPH'S HOSPITAL, INC.

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CERTIFICATE OF COMPLIANCE WITH FONT REQUIREMENTS

The undersigned counsel certifies that the following document is typed in Times New Roman style, 14 point type.

STATEMENT OF THE CASE AND OF THE FACTS

Respondent incorporates her Motion to Strike (dated May 11, 2000) portions of the Amended Joint Initial Brief for petitioners, Hillsborough County Hospital

Authority, Mental Health Care, Inc., Anthony Pidala, Jr., M.D., David Tulsiak, M.D., Emergency Medical Associates of Tampa Bay, P.A.; and the Initial Brief for petitioner, St. Joseph's Hospital, Inc., because petitioners' statements of the case and facts fail to list appropriate citations to the appendix and/or record-on-appeal which would assist this court in understanding the issue presented, are unduly argumentative, and/or contain both insufficient and immaterial facts. Fla.R.App.P. 9.120, 9.210(b), and 9.220. Respondent will list appropriate citations to the petitioners' appendix (dated April 25, 2000) as available or to the record-on-appeal. See Bolick v. Sperry, et al., 82 So.2d 374, 376 (Fla. 1955), which holds that the Supreme Court is not obliged to resort to the record-on-appeal to decide cases merely because [petitioner] has willfully failed to include sufficient matter in the appendix to enable the court to arrive at a decision, and [respondent] has no obligation to supply deficient matter which should have been included in [petitioners'] appendix.

This is an appeal arising from calculation of the medical malpractice statute of limitations, a question of law to be reviewed de novo. The respondent, Rebecca Coffaro, the original plaintiff below, perfected her appeals in due course to the Second District Court of Appeals of the State of Florida from final judgments rendered by Judge James Moody, Jr., of the Thirteenth Judicial Circuit

Court of Hillsborough County, Florida. The trial court granted the following in favor of the original defendants: Summary Judgment for Hillsborough County Hospital Authority, rendered on November 19, 1998 (R1 at 196-197; A at 2-3) (1st Appeal, Case No. 2D98-4849, R1 at 198-200; A at 1); Summary Judgment for Mental Health Care, Inc., rendered on February 22, 1999 (R2 at 294-297) (2d Appeal, Case No. 2D99-1143; R2 at 301-312); Dismissal with Prejudice for Anthony Pidala, Jr., M.D., David Tulsiak, M.D., and Emergency Medical Associates of Tampa Bay, P.A., rendered on February 18, 1999 (R2 at 291-293) (2d Appeal; id.); and Summary Judgment for St. Joseph's Hospital, Inc., rendered on February 22, 1999 (R2 at 298-300) (2d Appeal; id.). The appeals before the Second District Court were subsequently consolidated.

The Second District Court reversed the trial court's decisions and certified a question of great public importance to the Supreme Court of the State of Florida. Coffaro v. Hillsborough County Hosp. Auth. et al., Fla.L.W. D496 (Fla. 2d DCA February 25, 2000) (A at 153-157); this court has discretionary jurisdiction. Article V, §3(b)(4), Fla. Const; Fla.R.App.P. 9.030(a)(2)(A)(v).

In this Answer Brief, the respondent, Rebecca Coffaro, will be referred to by name, and the petitioners will be referred to by: "HCHA" for Hillsborough County Hospital Authority; "MHC" for Mental Health Care, Inc.; "Dr. Pidala" for Anthony

Pidala, Jr., M.D., "Dr. Tulsiak" for David Tulsiak, M.D., "EMA" for Emergency Medical Associates of Tampa Bay, P.A.; and "SJH" for St. Joseph's Hospital, Inc. In addition, the following symbols are adopted for references:

"R1" for volume 1 of record-on-appeal;

"R2" for volume 2 of record-on-appeal;

"T1" for transcript of November 19, 1998 hearing;

"T2" for transcript of February 15, 1999 hearing;

"A" for Appendix to Initial Briefs of Petitioners, dated April 25, 2000;

"AB/P" for Amended Joint Initial Brief of petitioners, HCHA, MHC, Dr. Pidala, Dr. Tulsiak, and EMA, filed April 25, 2000;

"B/P" for Initial Brief of petitioner SJH, filed May 8, 2000.

Briefly, Rebecca Coffaro received concurrent medical and psychiatric care from HCHA and MHC who prescribed muscle relaxants and antidepressants at alarming dosages ultimately rendering Ms. Coffaro in a comatose-like state (R1 at 46-47; A at 115-117). On August 20 and 21, 1995, Ms. Coffaro was rushed to SJH's emergency room and seen by Dr. Pidala and Dr. Tulsiak respectively (R1 at 46-47; A at 116-119). During both dates at SJH, Ms. Coffaro's rapidly deteriorating condition was left untreated and she was literally pushed out of SJH's emergency room doors (R1 at 48-50; A at 117-119). Ms. Coffaro's family

promptly transported her to HCHA who also refused to examine and treat her (R1 at 50; A 119). By this time, Ms. Coffaro was totally unresponsive and exhibiting combative seizure-like activity, whereupon her family rushed her to Tampa General Hospital (not a party to this action) and placed in Intensive Care (R1 at 50; A at 119). After a two week hospitalization course, Ms. Coffaro was discharged on September 2, 1995, and learned that her medical condition was probably due to medical malpractice (R1 at 50; A at 119).

All parties agree that the statutory limitations period began to run on September 2, 1995, and, therefore, was scheduled to end on September 2, 1997. §95.11(4)(b), Fla. Stat. (1995). The dates of Ms. Coffaro's mailing the notices of intent dates are disputed, however, for the purpose of this appeal, they were received by: HCHA on August 5, 1997 (R1 at 25-24; A at 78-92); Dr. Pidala, Dr. Tulsiak, and EMA on August 5, 1997 (R2 at 285); MHC on August 4, 1997 (R2 at 286); and SJH on August 8, 1997 (R2 at 223, 227-240). On August 11, 1997, Ms. Coffaro purchased an automatic ninety-day extension under section 766.104(2), Florida Statutes (1995) (R1 at 1-2; A at 151-152). Various extensions of the ninety-day presuit screening period under section 766.106(4) were granted, but the dates are disputed. For the purpose of this appeal, letters of termination of the presuit screening period and any extensions were received from: HCHA on

November 26, 1997 (R1 at 59; A at 18, 128; T1 at 14); MHC on November 14, 1997 (R1 at 59; A at 128; T2 at 20-22); Dr. Pidala, Dr. Tulsiak, and EMA on November 7, 1997 (R1 at 59; A at 128; T2 at 3); and SJH (preliminary denial) on November 5, 1997 (R1 at 59; A at 128; T2 at 26). However, it must be known that presuit discovery and evaluation with SJH continued (R1 at 59, 193-195; A at 36-39, 128). The initial complaint was filed on April 3, 1998 (R1 at 3-18; A at 36-39, 135-150).

ISSUE

IS A NINETY-DAY EXTENSION PURCHASED UNDER SECTION 766.104(2), FLORIDA STATUTES (1995), INCLUDED IN THE LIMITATIONS PERIOD WHEN CALCULATING WHETHER A PLAINTIFF IS ENTITLED TO AN ADDITIONAL SIXTY DAYS UNDER SECTION 766.106(4) FOR FILING SUIT?

SUMMARY OF ARGUMENT

This court has already answered the certified question in the negative in its discussion of the medical malpractice statutory scheme and its calculations in Hankey v. Yarian, M.D., et al., 25 Fla.L.W. S203, (Fla. March 16, 2000). The bottom line is that the purchased ninety-day extension and sixty-day provision are "statutorily granted additions to the initial two years allotted by the statute" and are added to the limitations period independently of each other. Id., at S205;

Novitsky v. Hards, D.D.S., 589 So.2d 404 (Fla. 5th DCA 1991); Rothschild v. NME Hospitals, Inc., 707 So.2d 952 (Fla. 4th DCA 1998).

Petitioners' half-heartedly attempt to allege that the plain language of section 766.104(2) providing for an "automatic" extension means that it is applied to the remainder of the limitations period at the time of purchase -- in effect, petitioners erroneously combine the purchased automatic extension and sixty days provision together. Petitioners' allegation has no merit, is made in bad faith, and actually limits the legislative intent of the statutes. When "literal interpretations of statutory sections lead to ridiculous results, the courts should look to legislative intent." Patry v. Capps, M.D., et al., 633 So.2d 9, 11 & 13 (Fla. 1994).

The separateness of sections 766.104(2) and 766.106(4) comports with legislative intent of the medical malpractice statutes. The plain language of section 766.104(1) reveals that the legislative intent of the purchased ninety-day extension is to facilitate "reasonable investigation" of the claim prior to filing suit. On the other hand, the plain language of section 766.106(4) reveals that the legislative intent of the sixty-day provision is to "settle or file suit". They're two entirely different functions which cannot be realistically combined. In the instant case, Ms. Coffaro was following the letter of the law under sections 766.104(1) and 766.201(2)(a)1., and it would be unjust to limit her guaranteed right of access to

the courts. Article I, §21, Fla.Const. Petitioners' misrepresentations concerning the law of the case have limited the legislative purposes of the medical malpractice statutes.

ARGUMENT

Foremost, petitioners have failed to state statutory authority for the Florida Supreme Court's discretionary jurisdiction and discretionary jurisdiction in general in light of this court's recent decision regarding calculations of the medical malpractice statute of limitations in Hankey, id.

Respondent hereby incorporates her Motion to Dismiss petitioners' briefs (dated May 11, 2000) which basically states the certified question has been answered by this court. In Hankey, this court thoroughly discussed the medical malpractice statutory scheme:

> ...Pursuant to section 95.11(4)(b), Florida Statutes...,an action for medical malpractice must be commenced within two years from the time the incident giving rise to the action occurred or within two years from the time the incident is discovered.... However, before a claimant can file a medical malpractice suit, chapter 766 prescribes a number of requirements...which affect the running of the limitations period....
>
> ...Section 766.106(2) provides: the claimant must serve a notice of intent to initiate litigation to each prospective defendant....
>
> Section 766.106(3)(a) provides: no suit may be filed for a period of ninety days after this notice of intent is mailed....

....Section 766.106(4) provides: during the 90-day period, the statute of limitation is tolled as to all potential defendants. Upon stipulation by the parties, the 90-day period may be extended and the statute of limitations is tolled during any such extension. Upon receiving notice of termination of negotiations in an extended period the claimant shall have 60 days or the remainder of the period of the statute of limitations, whichever is greater, within which to file suit.
.....

ADDITIONAL PROVISIONS AFFECTING LIMITATIONS PERIOD: Section 766.106(4)...provides that if there are less than sixty days remaining to file suit before the end date of the original two-year limitations period at the time the claimant filed the notice of intent to initiate litigation, then the claimant shall have sixty days from the time when the notice of termination of negotiations is received by him to file suit. If, however, there were more than sixty days remaining to file suit before the end date of the original two-year limitations period when the claimant filed the notice, then the claimant only has the time remaining in the original two-year period to file suit....

SECTION 766.104(2): Finally, in addition to the two scenarios involved in section 766.106(4),...a claimant can also automatically secure an additional ninety-day extension under section 766.104(2) that will be added to the end of both periods...Hence, this extension is to be tacked on to the end of the limitations period....
.....

It is true that the entitlement to any extra time under the sixty-day provision of 766.106(4) is entirely dependent on when the notice of intent is filed in relation to the time remaining in the original two-year limitations period as discussed earlier....

CONCLUSION: ...[T]he two-year limitations period is suspended temporarily and begins to run again under section 766.106(4) at the expiration of the stated time period or when the defendant responds to the notice of intent. The time of suspension provided under the tolling provision of section 766.106(4) is merely a “time out” that the prospective claimant was allotted by the legislature that is not to

> be counted against the two-year limitations period. On the other hand, any additional times added under section 766.106(4) if the notice of intent is filed by the claimant with less than sixty days remaining in the original statute of limitations, or under the automatic ninety-day extension pursuant to section 766.104(2), are actually statutorily granted additions to the initial two years allotted by statute.

Hankey, id. at S204-S205. The bottom line is that after determining whether a claimant is entitled to any additional time as provided by the purchased ninety-day extension and the sixty-day provision, these time periods will be applied to the limitations period independently of each other. This court's discussion of separateness of the purchased ninety-day extension and sixty days provision comports with legislative intent of the two statutory sections (further discussion).

Although petitioners may continue to protest that the rule of statutory construction is to first look to the plain meaning of the statute, it is obvious that both statutory sections are ambiguous and capable of different interpretations -- that's why we're here before this court. Here is a brief summary of prior arguments before the Second District Court:

First, the parties have disagreed on the plain meaning of the sixty days or remainder of the limitations period under §766.106(4). However, this court in Hankey has defined it as the time period "when the notice of intent is filed in relation to the time remaining in the original two-year limitations period. Id. at S205; §95.11(4)(b), Fla.Stat. (1995).

Next, the parties have disagreed on the plain meaning of section 766.104(2) which provides that the purchased ninety-day extension is separate and additional to any other tolling period. Hankey defined "the ninety-day presuit screening period as a tolling provision and the sixty days or remainder provision as a statutorily granted addition to the initial two years allotted by statute." Id. at S205. What's left?....

Petitioners are attempting to allege that the plain language of section 766.104(2) providing for an "automatic" purchased ninety-day extension means that it should be added to the limitations period at the time of purchase, and, therefore, in the facts of this case, the purchased ninety-day extension is added to whatever time is left of the limitations period in determining whether a claimant gets sixty days or greater remainder of the limitations period. Smells like a fish to respondent. Again, this court in Hankey held that "the purchased ninety-day extension is tacked on the end of the limitations period and does not run simultaneously with the separate ninety-day tolling period provided in section 766.106(4),....and entitlement to any extra time under the sixty-day provision of section 766.106(4) is entirely dependent on when the notice of intent is filed in relation to the time remaining in the original two-year limitations period." Id. at S205.

Another critique of petitioners' "automatic" plain meaning allegation is that the term is ambiguous, again because the parties disagree on its meaning, and, also, because of the fact that Webster's New World Dictionary lists several meanings: "1) done without conscious thought...or habit, 2) involuntary or reflex..., 3) moving, operating, etc. by itself; regulating itself..., 4) [definitions pertaining to] Firearms." Webster's New World Dictionary 95 (2d ed. 1984). Of course, Ms. Coffaro asserts that, more than likely, "automatic" means "operating by itself" because the purchased extension is not a person capable of conscious thought or involuntary reflexes, nor a firearm. Ms. Coffaro's plain meaning of "automatic" comports with the separateness of the statutory sections and this court's discussions in Hankey, id., and Tanner v. Hartog, M.D., et al., 618 So.2d 177 (Fla. 1993), citing Novitsky v. Hards, D.D.S., 589 So.2d 404 (Fla. 5th DCA 1991).

It is also anticipated that petitioners' will attempt to reallege that the "automatic" purchased ninety-day extension is synonymous with "spontaneous". However, this erroneous allegation is not supported by law, because if the legislature intended the purchased extension to be "spontaneous", they would have used that term. Hankey, id. at S204 (citing cases therein) holds that "[i]t has long been a rule of statutory construction that statutes must be given their plain and obvious meaning and courts should assume that the legislature knew the plain and

ordinary meaning of words when it chose to include them in a statute."

Furthermore, any attempt by petitioners to allege the purchased extension as "automatic" and "spontaneous" when applied to the facts of the instant case would be made in bad faith. As this court will recall, the facts of this case are that Ms. Coffaro purchased a ninety-day extension during the tolling period of the ninety-day presuit period. In this appeal, petitioners erroneously allege that "on the filing of the petition for extension, the extension is effective spontaneously" [cite omitted by petitioners, AB/P at 12], and "the plain and obvious meaning of the automatic ninety-day extension is that upon petition to the court and payment of the filing fee the extension is given effect" (AB/P at 9); while in the prior appeal, petitioners had correctly cited case law which held that the two ninety-day periods of tolling and extension do not run simultaneously [cf. the automatic extension is not effective upon being purchased] (Kalbach v. Day, 589 So.2d 448, 450 (Fla. 4th DCA 1991) [Answer Brief for Appellee HCHA at 8, Coffaro v. Hillsborough County Hosp. Auth., 25 Fla. L.W. D496 (Fla. 2d DCA February 25, 2000); Answer Brief for Appellee MHC at 9, and Answer Brief for Appellees, Dr. Pidala, Dr. Tulsiak, and EMA at 12, Coffaro v. Mental Health Care, et al., 25 Fla.L.W. D496, id.]

The result of petitioners' erroneous allegations would leave Ms. Coffaro with a total of 115 days (SJH allows 90 days for purchased extension and 25 days

for the sixty days or remainder provision; B/P at 12) or a total of 123 days (remaining petitioners allow 90 days for the purchased extension and 33 days for the sixty days or remainder provision; AB/P at 9-10, 13) which limits the legislative intent of the statutes. See Kukral v. Mekras, M.D., et al., 679 So.2d 278, 284 (Fla. 1996) which "favors liberal interpretations of the medical malpractice statutory scheme to guarantee a claimant's constitutional right of access to the courts." Article I, §21, Fla.Const. See also Tanner, id. at 183, which disfavors narrow constructions of the sixty-day provision under section 766.106(4).

When "literal interpretations of statutory sections lead to ridiculous results, the courts should instead look to the legislative intent of the statute." Patry v. Capps, M.D., et al., 633 So.2d 9, 11 & 13 (Fla. 1994).

The plain language of section 766.104(1) provides that the legislative intent of the purchased ninety-day extension is to facilitate "reasonable investigation" prior to filing suit. And the plain language of section 766.106(4) reveals the legislative intent of the sixty-day provision is to "settle or file suit". "Investigation" and "settle or file suit" are two entirely different functions which cannot be realistically combined. Clearly, section 766.104(2) provides ninety days for investigation prior to filing suit, and section 766.106(4) provides a minimum of

sixty days or the greater remainder of the statute of limitations in which to settle or file suit. See Tanner, id. at 183.

In the instant case, although petitioners'/defendants' rejection letters were received by Ms. Coffaro on November 5 to November 26, 1997, investigation of the claim continued as evidenced by SJH's continued tardy submission of requested discovery as late as February 5, 1998 (supra). Section 766.201(2)(a)1. requires reasonable investigation as a prerequisite to filing a medical malpractice claim. And section 766.104(1) expressly requires such an investigation and certificate of counsel in connection with the complaint. Ms. Coffaro continued to evaluate the claim for the purposes of settlement or to file suit up to the date on or about April 3, 1997, whereby she timely filed the complaint (supra). Ms. Coffaro was doing everything required of her under the letter of the law, and it would be unjust to limit her access to the courts. Article I, §21, id.

Nevertheless, petitioners continue to flout immaterial and insufficient rules of law and civil procedure that discuss multiple dates and methods of calculating the medical malpractice limitations period in an attempt to confuse the courts. For example, petitioner SJH appears to allege that section 766.106(4) by itself and/or in conjunction with Florida Rule of Civil Procedure 1.650 provides that a claimant must file suit within sixty days or the remainder of the limitations period

upon receiving notice of termination of negotiations in an extended period. Ms. Coffaro asserts that it is obvious that section 766.106(4) and Rule 1.650 do not contemplate the purchased ninety-day extension under section 766.104(2). Furthermore, rules of civil procedure do not control substantive rights in relation to the statute of limitations when they are inconsistent with the presuit notice and screening statutes. Patry v. Capps, id.; Boyd v. Becker, M.D., 627 So.2d 481 (Fla. 1993).

Petitioner SJH also misrepresents the Second District Court's opinion for this case. [See B/P at 11-12: "Two-fold mistake in Second District's Analysis".] First of all, the Second District did not use the day that plaintiff mailed her notice of intent as the day in determining entitlement to the sixty days or remainder of the limitations period -- the Second District used the date the "notice of intent was received" which turned out to be "less than one month remaining in the regular limitations period" (A at 157) [this comports with Ms. Coffaro's argument before the Second District on using the date of defendants' receipt of the notices of intent which was calculated to be 25 - 29 days before the end of the two-year limitations period; all of the petitioners had erroneously alleged the mailing date of the notices of intent or 33 days before the end of the limitations period (supra)].

Second, petitioner SJH erroneously states that the Second District added the

purchased ninety-day extension under section 766.104(2) to the sixty-day grace period provided in section 766.106(4) instead of the statute of limitations. Literally speaking, if the Second District had added the two sections together, Ms. Coffaro would have had 150 days to file suit [as opposed to 90 days for investigation and 60 days to file suit); however, the Second District's opinion clearly holds that "the purchased extension under section 766.104(2) is not included when computing the time remaining under section 766.106(4) for filing suit" (A at 158).

In petitioner SJH's continued discussion on alleged errors of the Second District, SJH states, " No court, however, has gone so far as to expressly hold that the automatic ninety-day extension of the statute of limitations under section 766.104(2) may be added to the sixty-day grace period under section 766.106(4)." [B/P at 12.] Isn't it ironic that this is exactly what petitioners have been arguing for before the courts, see the remaining petitioners' brief which states, "The Second District... misapplied the computation requirements of section 766.106(4) by failing to include the ninety-day extension in section 766.104(2) [AB/P at 7]. Clearly, the results are the same whether you "add to" or "include within". Once again, petitioners are humorously in conflict with each other.

Ms. Coffaro agrees that no court adds to or includes the purchased ninety-

day extension within the sixty-day provision. To date, petitioners cannot cite any law or case law which essentially combines or merges the purchased ninety-day extension into the sixty-day provision. But that doesn't mean that petitioners haven't tried.

In the past, petitioners have misrepresented that Rothschild v. NME Hospitals, Inc., 707 So.2d 952 (Fla. 4th DCA 1998) holds that the purchased ninety-day extension is included in calculating whether a claimant is entitled to sixty days or the greater of the remainder of the statute of limitations. For this appeal, their same allegation is stated somewhat ambiguously within their statement of the case [AB/P at 1], giving an appearance that they're trying to bury their heads in the sand on this one.

Rothschild is clear that the two statutory sections are separate because the "sixty-day" provision is determined as to the "remainder of the period of the statue of limitations", and the "purchased ninety-day extension is tacked on to the end of the statue of limitations." Id. at 953, cited by Hankey, id. Even the calculations within Rothschild support the separateness of the statutes, id.. The facts of Rothschild are as follows: "the alleged medical malpractice incident occurred on December 16, 1993....On July 7, 1995, when the appellant filed the notice of intent...and 161 days remained until the expiration of the limitations period which

was scheduled to end on December 16, 1995....In addition, on October 30, 1995, the appellant purchased a ninety-day extension under section 766.104(2)", so the court added 90 days to its calculations, id. at 953. The Rothschild court accounts 90 days for the presuit screening period, 71 days for the sixty days or remainder period, and, in addition, 90 days were added on to the end of the statute of limitations for the purchased extension. Id.

In Rothschild, the claimant purchased their ninety-day extension after the ninety-day tolling period provided by section 766.106(4) had run and before the original two-year limitations period ended, id. Nevertheless, the Fourth District Court did not calculate the purchased ninety-day extension into the sixty days or remainder of the limitations period, id.

Hankey, id. at S205, and Tanner, id. at 182, also cite the Novitsky case whose facts are on point with the instant case. Like the Novitskys who filed their notice of intent shortly before the end of the two-year limitations period, Ms. Coffaro's Notice of Intent was received by petitioners/defendants approximately 28 - 29 days before the end of the two-year limitations period.

Novitsky involved a dentist who dropped a crown into the patients lung, requiring surgical removal on January 12, 1987. Id. at 405. On January 10, 1989, two days before the end of the limitations period, the Novitskys filed their notice of

intent to initiate litigation and a petition for an automatic ninety-day extension. Id. The Novitsky court held that the automatic ninety-day extension of the limitations period under section 766.104(2) was a separate statute in addition to other tolling periods provided by section 766.106(4). Id. at 407. The Novitsky court stacked the ninety-day presuit screening period and any extensions, the sixty-day settlement period, and the purchased ninety-day extension as of the day that notice of intent was filed.

Although this court in Hankey has subsequently defined the sixty-day provision as a "statutorily granted addition to the initial two years allotted by the statute" (id. at S205), that definition will not affect the outcome in Novitsky nor Ms. Coffaro's case. Therefore, applying the Hankey and Novitsky to this case....

The parties agree that the operative date of the statute of limitations began on September 2, 1995, when Ms. Coffaro had knowledge that her injury was due to medical malpractice (R1 at 50; A at 119); therefore, the original two-year limitations period was scheduled to end on September 2, 1997. §95.11(4)(b), Fla.Stat. (1995).

The date that notices of intent were mailed is disputed, however, they were received by petitioner/defendant: HCHA on August 5, 1997 (R1 at 25-41; A at 78-92); MHC on August 4, 1997 (R2 at 286); Dr. Pidala, Dr. Tulsiak, and EMA on

August 5, 1997 (R2 at 285); and SJH on August 8, 1997 (R2 at 223, 227-240); or approximately 25 - 29 days before the end of the two-year limitations period. See Boyd, id., which holds that the "medical malpractice ninety-day presuit screening period should be computed from the date that the defendant received notice of intent to initiate suit."

Since 25 - 29 days are less than 60, under section 766.106(4), Ms. Coffaro was entitled to the minimum of sixty days for the purpose of settlement or to file suit. In addition, Ms. Coffaro had purchased a ninety-day extension under section 766.104(2) for the purpose of additional investigation prior to filing suit. Therefore, these two statutorily granted additions will be added at the end of the tolling provision of section 766.106(4) providing for the ninety-day presuit screening period along with any stipulated extensions. Hankey, id.

In this case, various extensions of the presuit screening period were granted and are disputed. However, for the purposes of this appeal, Ms. Coffaro will use the dates of her receipt of petitioners'/defendants' letters of termination of the presuit screening period. §766.106(4), id.

As to petitioner/defendant HCHA, its letter of termination was received on November 26, 1997 (R1 at 59; A at 18, 128; T1 at 14). Adding the ninety-day extension and the sixty-day provision separately to November 26, 1997, gives a

date on or about April 26, 1998 in which suit must be filed.

As to MHC, its letter of termination was received on November 14, 1997 (R1 at 59; A at 128; T2 at 20-22). Adding ninety days and sixty days separately gives a date on or about April 14, 1998, in which suit must be filed.

As to Dr. Pidala, Dr. Tulsiak, and EMA, their letter of termination was received on November 7, 1997 (R1 at 59; A at 128; T2 at 3). Adding ninety days and sixty days separately gives a date on or about April 7, 1998, in which suit must be filed.

As to SJH, its preliminary letter of termination was received on November 5, 1997 (R1 at 59; A at 128; T2 at 26). Adding ninety days and sixty days separately gives a date on or about April 4, 1998 (Saturday) or April 6, 1998 (Monday) in which suit must be filed.

The complaint was timely filed on April 3, 1998 (R1 at 3-18; A at 36-39).

CONCLUSION

Consistent with the decision of the district court, this court answered the certified question in the negative. Hankey, id. Accordingly, Ms. Coffaro prays that this court exercise its discretion to deny this petition for review. In the alternative, on the strength of the authorities cited, Ms. Coffaro respectfully

requests that this court affirm the decision of the Second District Court of Appeals, and remand this cause for further proceedings in the trial court.

Certificate of Service

I hereby certify that a true and correct copy of the respondent's answer brief has been served by U.S. Mail on this _____ day of May, 2000, to Michael Brown, Esq., 101 E. Kennedy Blvd., Ste. 1240, Tampa, FL 33602; Elaine Seymour, Esq., 3002 W. Kennedy Blvd., Tampa, FL 33609; Marlene Reiss, Esq., 9130 South Dadeland Blvd., PH-2, Miami, FL 33156; and Thomas Hoeler, Esq., 100 W. Kennedy Blvd., Ste. 800, Tampa, FL 33601.

_____

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