

IN THE SUPREME COURT OF FLORIDA

CASE NUMBER: SC050- 1150

IN RE: Petition To Amend Rule 4-1.5(f)(4)(B)
Of The Rules of Professional Conduct

Comments of Matthew J. Cardillo, Attorney, Florida Bar No. 0863361,
in Opposition to Proposed Amendment

Matthew J. Cardillo respectfully submits the following comments in opposition to the proposed Amendment to the Rules Regulating the Florida Bar, Rule 4-1.5(f)(B) of the Rules of Professional Conduct.

As an attorney who practices primarily in the nursing home negligence arena, the position taken by the petition is nothing short of brazen. The Petition is the child of the Florida Medical Association (“FMA”) and the Citizens for a Fair Share, Inc., the driving forces behind Amendment 3. The Petitioners seem deeply concerned that the practice of medical malpractice claimants waiving their rights under Amendment 3 would “fly in the face of the constitutional mandate”. The Petition suggests that Amendment 3 is so important to the public that it should be insulated from waiver.

Apparently, the FMA is not so concerned about other Constitutional rights like *Access to the Courts* and *Trial by Jury* when it pertains to its affairs. The medical industry routinely asks its patients and residents to waive access to courts

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and jury trials by burying arbitration clauses in admission contracts. Courts have upheld arbitration contracts and jury trial waivers even where the resident signing the contract was legally blind. The Estate of Helen N. Etting v. Regents Park At Aventura, 891 So.2d 558 (Fla.App. 3rd Dist., 2004). A daughter who held a power of attorney was able to waive her mother's right to a jury trial in Gainesville Health Care Center, Inc. v. Weston, 857 So.2d 278 (Fla. App. 4th Dist., 2003). Recently, in MN Medinvest Co., L.P. v. Estate of Melissa Lee Nichols, 30 Fla.L.Weekly D1306 (Fla.App. 2nd Dist., May 2005), the court held that a mother could waive her daughter's right to a jury trial. Of course, the FMA and the Citizens for a Fair Share, Inc., did not stand up to defend the valuable right to a jury trial by filing amici briefs in these cases. I wonder why.

CONCLUSION

If a daughter can waive her mother's right to a jury trial; if a mother can waive her daughter's rights to a jury trial, and if a new nursing home resident, who is legally blind and stricken with other medical problems, can waive the right to a jury trial, why can't a fully informed (unlike in the fact patterns in the cases cited) medical malpractice plaintiff, waive the applicability of Amendment 3?

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing original and an electronic copy as well as eight copies were sent to the Clerk of the Supreme Court of Florida by mail September 12, 2005, pursuant to the Court's Administrative Order: In Re: Mandatory Submission of Electronic Copies of Documents, AOSC04-84 dated September 13, 2004; and to John Harkness, General Counsel, The Florida Bar, 651 East Jefferson Street, Tallahassee, FL 32399-2300 and Stephen H. Grimes, Counsel for Petitioners, Holland and Knight, LLP, P.O. Box 810, Tallahassee, FL 32302-0810.

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