IN THE SUPREME COURT OF FLORIDA
CASE NOS. SC05-1191, SC05-1192

YOUR DRUGGIST, INC.,

Petitioner,

vs.

ROBERT POWERS, etc. et al.,

Respondents.

B.A.L. PHARMACY, etc.,

Petitioner,

vs.

ROBERT POWERS, etc. et al.,

Respondents.

AMICUS CURIAE BRIEF
THE ACADEMY OF FLORIDA TRIAL LAWYERS
IN SUPPORT OF RESPONDENT

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STATEMENT OF INTEREST

This Amicus brief is filed on behalf of The Academy of Florida Trial Lawyers in support of the Respondent, Robert Powers, as Personal Representative of the Estate of Gail Powers.

The Academy of Florida Trial Lawyers is a voluntary statewide association of trial lawyers specializing in litigation in all areas of the law, including personal injury and workers' compensation litigation. The lawyer members of the Academy are pledged to the preservation of the American legal system, the protection of individual rights and liberties, the evolution of the common law, and the right of access to courts. The Academy has been involved as *Amicus Curiae* in the state appellate courts on many aspects of the tort system and questions of law of which are of statewide significance and application.

The lawyer members of the AFTL care deeply about the integrity of the legal system and, towards this end, have established an Amicus committee for the purpose of considering requests by trial lawyers for Amicus assistance. While not every request for Amicus assistance is granted by the AFTL, the committee considers the issues presented in the case sub judice to be of importance and seek leave of this court to appear as Amicus.

SUMMARY OF THE ARGUMENT

The Fourth District Court of Appeals' opinion in Powers v. Thobani, 903 So. 2d 275 (Fla. 4th DCA 2005) did not create new public policy in the State of Florida, but instead followed existing public policy and Florida's common law by finding a duty to warn where under the facts alleged in the complaint it could be concluded that the pharmacist in question created a foreseeable zone of risk by filling repeated and unreasonable prescriptions for the plaintiff's decedent. The decision of the Fourth District Court in Powers is consistent with and does not conflict with any Florida statutes or regulations regarding the duties of pharmacists. Requiring pharmacists to warn or take other appropriate measures, such as contacting the prescribing physician, will result in better care for the customer and will not unduly interfere with the existing doctor/patient relationship. Utilizing the unique training and skill of the pharmacist to help detect the dangers inherent in filling dangerous prescriptions maximizes rather than diminishes the effectiveness of drug therapy. The opinion of the Fourth District is likewise consistent with emerging decisions throughout the country which recognize the pharmacist's duty to warn or take other precautionary action when presented with repeated or contraindicated prescriptions for dangerous drugs.

ARGUMENT

I. A PHARMACIST'S DUTY TO EXERCISE REASONABLE CARE INCLUDES THE DUTY TO WARN WHERE THE FILLING OF A PRESCRIPTION CREATES A FORESEEABLE ZONE OF RISK

Petitioners and their Amici argue that under no circumstances does a pharmacist owe a duty to warn his or her customers of the risks inherent in filling repeated or unreasonable prescriptions. More particularly, they argue that the only duty owed by a pharmacist is to accurately fill a lawful prescription. In doing so, Petitioners and Amici ignore this Court's duty analysis as set forth in McCain v. Florida Power Corp., 593 So.2d 500 (Fla. 1992). McCain held that a duty exists whenever a defendant's conduct creates a foreseeable zone of risk. The Fourth District's holding below, recognizing a duty to warn where there are potentially fatal consequences resulting from filling a prescription, should be affirmed as consistent with McCain as well as McLeod v. W.S. Merrell Co., Division of Richardson-Merrell, Inc., 174 So.2d 736 (Fla. 1965).

The fallacy of Petitioners' position is evidenced by considering a hypothetical situation in which a customer arrives at a pharmacy with two prescriptions from two different doctors for two different drugs, which if taken by the customer will necessarily result in death because of a fatal drug interaction. Or, consider a hypothetical situation where a customer presents three prescriptions

for OxyContin from three different physicians, each for a month's supply – and does this month after month. According to Petitioners and Amici, the pharmacist, despite knowing that death would result in the first hypothetical and serious drug addition and abuse in the second hypothetical, would have no duty to warn the customer or take other sufficient precautions to protect the customer from the harm posed by filling the prescriptions. Common sense, Florida common law, and public policy plainly cannot and do not support such a contention.

The touchstone for analyzing the duty owed by a pharmacist in such situations is this Court's opinion in McCain v. Florida Power Corp., supra. In McCain, this Court addressed the issue of duty as an element of negligence and found that a legal duty exists whenever a human endeavor creates a generalized and foreseeable risk of harming others. McCain, 593 So. 2d at 503. In discussing duty, the Court stated as follows:

> Where a defendant's conduct creates a *foreseeable zone of risk*, the law generally will recognize a duty placed upon defendant either to lessen the risk or see that sufficient precautions are taken to protect others from the harm that the risk poses. Thus, as the risk grows greater, so does the duty, because the risk to be pursued defines the duty that must be undertaken.
>
> The statute books and case law, in other words, are not required to catalog and expressly proscribe every conceivable risk in order for it to give rise to a duty of care. Rather, each defendant who creates a risk is required to exercise prudent foresight whenever others may be injured as a result. This requirement of reason, general foresight is the core of the

> duty element. For these same reasons, duty exists as a matter of law and is not a factual question for the jury to decide: Duty is the standard of conduct given to the jury for gauging the defendant's factual conduct. As a corollary, the trial and appellate courts cannot find a lack of duty if a foreseeable zone of risk more likely than not was created by the defendant.
>
> Id. (citations omitted) (Italics in original)

Clearly, a pharmacist dispensing drugs as hypothesized above would be creating a foreseeable zone of risk which he or she simply could not ignore under the law. Instead, under McCain, the pharmacist would have a duty, co-equal to the risk presented by the filling of the prescriptions, to warn the customer or take other appropriate precautionary measures.

This is the holding of the Fourth District Court of Appeal below. The Fourth District found that under the allegations of the complaint, the pharmacist who filled the prescriptions knew or should have known that the drugs prescribed were both contraindicated and excessive and presented an inherent risk of potentially fatal consequences. Thus, the pharmacist had a duty to warn the customer or otherwise reduce the risk of harm.

Likewise, the pharmacist's duty to warn customers of the risks inherent in filling repeated and unreasonable prescriptions with potentially fatal consequences is consistent with this court's opinion in McLeod v. W.S. Merrill Co., Division of Richardson Merrill, Inc., supra. In that products liability case, the issue presented

was whether a retail druggist who properly filled a prescription with an unadulterated drug could be liable to the patient-purchaser for breach of an implied warranty of fitness or merchantability if that the drug produced harmful effects on said purchaser.

In answering this question, this Court held that:

> The rights of the consumer can be preserved, and the responsibility of the retail prescription druggist can be imposed, under the concept that a druggist who sells a prescription warrants that (1) he will compound the drug prescribed; (2) **he has used due and proper care in filling the prescription (failure of which might also give rise to an action in negligence;** (3) the proper methods for use in the compounding process; (4) the drug has not been affected with some adulterating foreign substance.

Id. at 739 (emphasis added).

As noted by the district court below, the McLeod Court was careful to point out that it was ***not*** dealing with a complaint grounded in negligence. It also specifically held that a cause of action for negligence might arise if a pharmacist did not use proper care in filling the prescription, although the court did not clarify what factual circumstances the pharmacist's duty encompasses.

The bolded language cited in McCloud, which recognizes a duty of care, has been relied upon not only by the court below, but also by the First District Court of Appeal in Dee v. Walmart Stores, Inc., 878 So.2d 426, 427 (Fla. 1st DCA 2004). In that case, the First District held that a pharmacist must use due and proper care in

filling the prescription which includes the duty to warn of the danger presented by the prescription and/or inquire of the physician whether the prescription should be filled for the patient.

II. THE DISTRICT COURT'S OPINION IS CONSISTENT WITH OTHER JURISDICITION'S DECISIONS REGARDING A PHARMACIST'S DUTY OF CARE TO PROTECT CUSTOMERS FROM FORESEEABLE RISK OF HARM

Although there are other states which have sided with the position taken by Petitioners and Amici, a number of states have found that a pharmacist's duty of reasonable care includes a duty to warn when his or her actions create a foreseeable zone of risk. For example, in Horner v. Spalitto, 1 S.W.3d 519 (Mo. Ct. App. 1999) the court was presented with a factual situation where a pharmacist was alleged to have been presented with two prescriptions which, based upon the nature of the drugs, as well as the dosages and instructions provided therewith, created an unreasonable risk of great bodily harm or death and, in fact, death did occur.

The trial court, in reliance upon a previous Missouri opinion, Kampe v. Howard Starke Professional Pharmacy, Inc. , 841 S.W.2d 223 (Mo. St. App. 1992), held that a pharmacy fulfills its legal duty when it fills a legal prescription that

contains no apparent discrepancies on its face. In reversing, the Horner court applied an analysis akin to that in McCain:

> The Kampe court confused duty with what specific functions that duty obligates a pharmacist to do. Kampe ruled that a pharmacist fulfills his professional duties when he accurately fills a prescription – that he has no duty to warn or to monitor. This miscomprehended duty.
>
> Duty is an obligation imposed by law to conform to a standard of conduct toward another to protect others against unreasonable, foreseeable risks. . . . In other words, [the pharmacist's] duty was to exercise the care and prudence that a reasonably careful and prudent pharmacist would exercise in the same or similar circumstances – that is, his duty was to endeavor to minimize the risk of harm to Horner and others which a reasonably, careful and prudent pharmacist would foresee.
>
> Kampe wrongly held that, as a matter of law, a pharmacist's duty will never extend beyond accurately filling a prescription. This may be a pharmacist's only duty in particular cases, but in other cases, a pharmacist's education and expertise would require that he or she do more to help protect their patrons from risk which pharmacists can reasonably foresee. We must leave to a fact-finder what this duty requires of a pharmacists in a particular case. We can say at this point only that a pharmacist, as is the case with every other professional, must exercise the care and prudence which a reasonably careful and prudent pharmacist would exercise.
>
> Horner, 1 S.W.3d at 522. (Citation omitted) (emphasis added)

As recognized by the Horner court, where a pharmacist's actions create a risk of harm to a customer, then that pharmacist has a duty to exercise reasonable care to minimize the risk to that customer. In cases where the allegations of the complaint indicate that the risk presented is substantial either because prescriptions are contraindicated and/or excessive, then the pharmacist has a duty to warn.

In Lasley v. Shrake's Country Club Pharmacy, 179 Ariz. 583, 880 P.2d 1129 (1994), the court considered a factual situation where over a long period of time the defendant pharmacy had filled prescriptions for powerful, addictive drugs for the plaintiff. The plaintiff alleged that in doing so, it breached its duty to exercise the degree of care, skill and learning expected of a reasonably prudent pharmacy. In support thereof, the plaintiff presented the affidavit of a pharmacist expert, which stated that the standard of care for pharmacists includes the obligation to advise customers of the highly addictive nature of prescribed drugs and of the hazards of ingesting two or more drugs that adversely interact with one another. The trial court nevertheless granted the motion to dismiss holding that the pharmacy owed no duty to warn of addiction or to refuse to fill the prescriptions.

In reversing, the Lasley court stated as follows:

> Shrake's contends that the trial court correctly ruled that Shrake's had no duty to warn Lasley or his physician of the potentially addictive nature of drugs that are legitimately prescribed for Lasley. We believe, however, that the trial court's ruling confuses the concept of duty with that of standard of care.
>
> In *Markowitz* the Arizona Supreme Court cautioned against confusing the existence of a duty with details of the standard of conduct. Specific details of conduct do not determine whether a duty exists but instead bear on whether a defendant who owed a duty to the plaintiff breached the applicable standard of care. In explaining the concept, the *Coburn* court quoted from Prosser and Keeton:
>
> > It is better to reserve "duty" for the problem of the relation between individuals which imposes upon one a legal obligation for the benefit of the other, and to deal with particular conduct

> in terms of a legal standard of what is required to meet the obligation. In other words, "duty" is a question of whether the defendant is under any obligation for the benefit of the particular plaintiff; and in negligence cases, the duty [if it exists] is always the same – to conform to the legal standard of the reasonable conduct in the light of the apparent risk. What the defendant must do, or must not do, is a question of the standard of conduct required to satisfy the duty.

Lasley,179 Ariz. At 586, 880 P.2d at 1132. (Emphasis added) (citations omitted).

Thus, the Lasley court recognized that "duty" is a question of whether a defendant is under an obligation to a particular plaintiff. In Florida, the answer to that question turns on whether the defendant's conduct placed the plaintiff in a foreseeable zone of risk. If so, the defendant pharmacist owes the plaintiff a duty to conform to the legal standard of reasonable conduct for a pharmacist in light of the apparent risk created by his or her conduct.

Finally, in Dooley v. Everett, 805 S.W.2d 380 (Tenn. Ct. Ap. 1990) the pharmacist filled two contraindicated prescription drugs knowing that interaction could result in toxic levels causing death. As was the case in Horner, the plaintiff presented the affidavit of a pharmacy expert who affied that the pharmacist had a duty in such situations to either alert the prescribing doctor or warn the patient. Nevertheless, the trial court entered summary judgment finding as a matter of law that a pharmacist does not have a duty to warn his customer that there is a potential fatal drug interaction.

On appeal, the appellate court addressed the issue of duty as it relates to a pharmacist's obligations under the law, stating as follows:

> Legal duty means that which the law requires to be done or forborne to a determinate person or to the public at large and a correlative to a right vested in such person or the public at large. A duty rests on everyone to use due care under the attendant circumstances, and negligence is doing what a reasonable and prudent person would not do under the given circumstances.
>
> Duty in the context of a case where negligence is alleged raises the question of whether the defendant is under any obligation required by law for the benefit of the particular plaintiff. Standard of care refers to what a defendant "must do, or must not do . . . to satisfy the duty."
>
> Generally Revco owes its customer a duty to use due care under attendant circumstances. That is, Revco owes a duty to its customer to refrain from negligently doing or failing to do an act which would injure its customer. The pharmacist has a duty to act with due, ordinary, care and diligence in compounding and selling drugs.
>
> Whether there is a duty owed by one person to another is a question of law to be decided by the court. However, once a duty is established, the scope of the duty or the standard of care is a question of fact to be decided by the trier of fact.
>
> Dooley, 805 S.W.2d at 384. (emphasis added) (citations omitted).

In reaching its final conclusion reversing summary judgment, the Dooley court stated as follows:

> Here, the question is whether the scope of the duty owed by the pharmacist to the customer includes a duty to warn. The fact that the pharmacy owes its customer a duty in dispensing prescription drugs is

> without question. Revco simply argues that the duty to warn of potential drug interactions is not a part of its duty. The plaintiffs here have introduced expert proof disputing this assertion. Therefore, whether the duty to warn of potential drug interaction is included within the pharmacist's duty to his customer is a disputed issue of fact preventing the granting of summary judgment.
>
> Dooley, 805 S.W.2d at 386.

These cases have a number of things in common with the subject case. First, in each case, the prescription presented to the pharmacist created an unreasonable risk of harm to the plaintiff of which the pharmacist was or should have been aware. In other words, in each of the cases, the pharmacist filling the prescriptions created a foreseeable zone of risk. In each of the cases, the courts recognized that duty is an obligation imposed by law to conform to a standard of care so as to protect others against unreasonable and foreseeable risk. In each of the cases, the court found that once a pharmacist engages in the practice of pharmacy, he has a duty to exercise reasonable care in practicing that profession and that his actions will be judged according to the standard of care required by pharmacists. In both Lasley and Dooley, the plaintiffs presented expert testimony as to the standard of care when a pharmacists is presented with prescriptions for highly addictive drugs or drugs with potentially fatal interactions.

Presented with these facts, the courts in these cases, like the court below, found that a duty of care exists commensurate with the attendant circumstances. These holdings are consistent with the decision below, McCain and this court's

approach of finding a duty where a defendant's actions create a foreseeable "zone of risk" of harming others.

If a "zone of risk" is foreseeably found to exist, then the court as a matter of law cannot fail to find that a duty is owed. Therefore, in cases such as this, where there are allegations that a foreseeable zone of risk was created by filling prescriptions which were contraindicated or excessive, the pharmacist would not be using due and proper care if he filled such prescriptions without warning the customer or informing the prescribing physician. In such cases, plaintiffs should be allowed to present expert testimony that supports those allegations so that a jury can decide if the duty was breached under the facts presented to them.

III. THE DISTRICT COURT'S OPINION IS CONSISTENT WITH THE PUBLIC POLICY OF THE STATE OF FLORIDA AND WILL NOT RESULT IN UNREASONABLE HARM TO CUSTOMERS

A. THE OPINION BELOW DOES NOT CREATE POLICY BUT INSTEAD IS CONSISTENT WITH FLORIDA'S PUBLIC POLICY AS REFLECTED IN ITS STATUTES AND REGULATIONS IMPOSING A DUTY TO WARN

Petitioners and Amici argue that the Fourth District created public policy when it found that the defendant pharmacies owed a duty to warn under the facts of these cases. However, the Fourth District Court of Appeal did not create policy, but instead simply applied Florida's common law regarding the "duty of care". Under that common law, Florida's public policy is and should be to insure that

pharmacists practicing in the state conform to the standard of care expected of pharmacists.

Florida's public policy, as reflected in its statutes and regulations, also supports a duty to warn customers of the risks inherent in filling repeated and unreasonable prescriptions with potentially fatal consequences. The Fourth District Court of Appeal considered this fact in reaching its decision below. In particular, it cited a number of Florida statutes and regulations which, although not creating a private cause of action against pharmacists, do describe the duties of a pharmacist. Petitioners and Amici argue, however, that those statutes are permissive in nature and do not impose a mandatory duty to warn.

However, in addition to the statutes and regulations relied upon by the district court, Florida Administrative Code Regulation 64B16-27.810 entitled "Prospective Drug Use Review" deals directly with the duties owed by a pharmacist in situations where pharmacies are presented with lawful prescriptions which pose potentially fatal consequences. This regulation imposes an absolute duty to act where a pharmacist is presented with situations such as that alleged in the complaint in this case:

> F.A.C.R. 64B16-27.810
>
> (1) A pharmacist **shall** review the patient record on each new and refilled prescription presented for dispensing in order to promote therapeutic appropriateness by identifying:
>
> (a) over utilization or under utilization;

(b) therapeutic duplication;
(c) drug contraindication;
(d) drug-drug interactions;
(e) incorrect drug dosage or duration of drug treatment;
(f) drug-allergy interaction;
(g) **clinical abuse/misuse**.

(2) Upon recognizing any of the above, the pharmacist **shall** take appropriate steps to avoid or resolve potential problems which shall, if necessary, include consultation with the prescriber. (Emphasis added).

Regulation 64B16-27.810 requires a pharmacist to take appropriate steps to avoid or resolve problems created by contraindicated drugs or clinical abuse or misuse of drugs. In other words, the duties imposed by the Fourth District on a pharmacist are no different from those already required of him by the Florida Administrative Code. How then could holding that a pharmacist owes a legal duty to a particular patient to avoid or resolve risks either by warning or taking appropriate cautionary measures conflict with Florida public policy?

Moreover, Florida statutes that do deal with pharmacies do not conflict with the finding of a duty to warn. In particular, there are no Florida statutes or regulations that act to limit the otherwise applicable standard of care which would otherwise exist under Florida's common law. The Florida legislature has in no way enacted statutes which abrogate the common law of duty of care or otherwise limit a pharmacist's liability. The legislature simply has not "entered into this field" of regulating civil liability of pharmacists by enacting Chapter 465 of the Florida statutes.

Finally, not only is the opinion below consistent with Florida public policy and statutory scheme, it is also consistent with the federal public policy as reflected in the Omnibus Budget Reconciliation Act of 1990 (OBRA 90). OBRA 90 mandated that states enact legislation or regulations requiring pharmacist drug review of Medicaid prescriptions, counseling of patients and prescription record keeping for these patients. See 42 U.S.C. §1396r-8(g)(2). To receive matching Federal Medicaid funds, OBRA 90 required the state to enact prospective and retrospective drug review programs by January 1, 1993. 42 U.S.C. §1396r-8(g)(2)(A). The drug review was designed to insure that Medicaid patients would receive the benefit of a pharmacist's drug review prior to having their prescriptions filled, thus providing those patients with pharmacist's counseling at that time. While these federal requirements refer only to Medicaid prescriptions, by 1994 at least 40 states had passed regulations or statutes extending to prospective drug review requirements of OBRA 90 to all prescriptions. See, KENNETH R. BAKER, *The OBRA 90 Mandate and its Developing Impact on the Pharmacist Standard of Care*, 44 Drake L. Rev. 503 (1996). Florida's current pharmacy statutes reflect these federal requirements.

B. PETITIONER'S LIST OF HORRIBLES WILL NOT RESULT FROM RECOGNIZING A PHARAMACIST'S DUTY TO WARN

As noted above, pharmacists already have a duty under Florida regulations to take appropriate steps to avoid or resolve problems which would result from deadly drug interactions and clinical abuse/misuse. Therefore, if the list of horribles suggested by Petitioner were actually going to occur as a result of recognizing a legal duty to warn, then they already would have occurred. Instead, however, the pharmacist – physician – patient relationship seems to be working as intended.

One of the harms suggested by Petitioner is that the doctor/patient relationship, and ultimately patient care, will suffer if pharmacists are injected into the situation. However, the Horner court addressed this issue:

> Pharmacists have the training and skill to recognize that a prescription dose is outside a normal range. They are in the best position to contact the prescribing physician, to alert the physician about the dose and any contraindications relating to other prescriptions that the customer may be taking as identified by the pharmacy records, and to verify that the physician intended such a dose for a particular patient. We do not perceive that this type of risk management unduly interferes with the physician/patient relationship. Instead, it should increase the overall quality of health care. See, KENNETH R. BAKER, *The OBRA 90 Mandate and its Developing Impact on the Pharmacist's Standard Care*, 44 Drake L. Rev., 503, 517 (1996). The physician still is responsible for assessing what medication is appropriate for a patient's condition, but a pharmacist may be in the best position to determine how the medication should be taken to maximize the therapeutic to that patient, to communicate that

> information to the customer or his physician, or to answer any of the customer's questions regarding consumption of the medication.
>
> Relegating a pharmacist to the role of order filler as the Kampe court seemed to do, failed to appreciate the role recognized in section 338.010 and 4 C.S.R. 220-2190. We reject the suggestion in Kampe that the only functions which a pharmacist must perform to fulfill his duties is to dispense drugs according to a physician's prescription.
>
> Horner 1 S.W. 3d at 524.

The Horner court also dealt with the issue of tension between pharmacist and physician, stating as follows:

> We agree that a physician typically is in a superior position to judge the propriety of a particular patient's drug regime, but this should not relegate the pharmacist to the role of being merely an order filler. This view does not recognize, as section 338.010.1 does the practice of pharmacy includes consulting with physicians and patients to share with them pharmacist's expertise in drugs and their interactions. We disagree that a pharmacist consulting with the physician about an unusual prescription would result in antagonism exceeding the potential public benefit. Pharmacists are trained to recognize the proper dose and contraindications of prescriptions, and physicians and patients should welcome their insight to help make the dangers of drug therapy safer.
>
> Horner 1 S.W. 3d at 524, fn. 5.

Also, many of the horribles suggested by Petitioner assume that every prescription would require a duty to warn. However, as the Fourth District opinion makes clear, the duty to warn arises only where the prescription(s) in question present a foreseeable risk of serious or fatal results. This is consistent with the

McCain analysis which requires action based upon the level of danger presented. Therefore, not every prescription will require a duty to warn or contact the prescribing physician.

Petitioner also suggests that requiring contact with the physician will create undue delay or access to necessary prescriptions. First of all, delaying prescriptions that will have fatal results is obviously a preferable situation. Moreover, if contact with the physician is impossible, a pharmacist certainly could allow limited filling of the prescription so that the patient is provided with only one or two days dosages of the prescription. These would be reasonable requirements in order to prevent potentially fatal results.

Petitioner and Amici also suggests that imposing a duty upon the pharmacist to warn breaches the "learned intermediary doctrine". However, this argument was addressed in Dooley v. Everett as follows:

> We have also considered the "learned intermediary doctrine" which was adopted as an exception to a manufacturer's duty to warn in products liability cases brought under a very strict liability…..
>
> Conceived as an exception to the manufacturer's duty, the doctrine has recently taken a quantum leap and attached to a pharmacist's duty to warn his or her customers under a negligence theory…
>
> Here the focus is on the pharmacy's duty to its customer. The case does not involve a relationship between the drug manufacturer and the patient or the physician and the patient.
>
> Dooley, 805 S.W. 2d at 386.

As the Dooley court points out, the "learned intermediary doctrine" is meant to protect a drug manufacturer who has no actual contact with the patient. In contrast, a pharmacist is the last person with direct contact with the patient or customer receiving the drug prescription. It would seem a gross distortion of the "learned intermediary doctrine" to excuse from liability the person with the last clear chance to advise a patient as to the safety of taking a particular prescription. The "learned intermediary doctrine" should be kept to its original purposes and not extended into the patient/pharmacist relationship.

CONCLUSION

In conclusion, Amicus Academy of Florida Trial Lawyers requests this Court to affirm the decision of the Fourth District Court of Appeal.

Respectfully submitted on this 12th day of December, 1005

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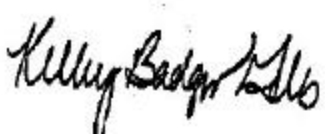

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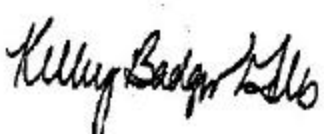

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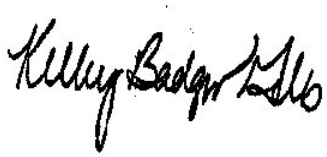

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