IN THE SUPREME COURT OF FLORIDA

CASE NO. SC06-688

FLORIDA HOSPITAL WATERMAN, INC.,

Petitioner,

vs.

TERESA M. BUSTER, ETC.,

Respondent.

ON DISCRETIONARY REVIEW FROM
THE DISTRICT COURT OF APPEAL OF FLORIDA, FIFTH DISTRICT
Lower Tribunal No. 5D05-2195

AMICUS CURIAE BRIEF OF THE FLORIDA DEFENSE LAWYERS ASSOCIATION FILED IN SUPPORT OF THE PETITIONER

Filed with leave of Court

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INTRODUCTION

The Florida Defense Lawyers Association ["FDLA"] is a statewide organization of tort and insurance defense attorneys with over 1000 members. FDLA regularly provides amicus briefs to courts throughout the state of Florida in cases presenting significant issues of tort law and trial or pretrial practice.

Since the enactment of Amendment 7, FDLA's members have been actively involved in the development of the issues surrounding its interpretation and application, particularly with respect to discovery requests in medical malpractice litigation. The FDLA is uniquely situated to provide this Court with input, in particular, on the fairness in litigation issues implicated by Amendment 7 and its implementing statute, section 381.028, Florida Statutes (2005), as well as the role of Rule 1.280 in resolving discovery disputes, including those involving requests made pursuant to Amendment 7.

This brief will focus on the first of the three questions certified to this Court by the Fifth District, inasmuch as it directly pertains to the issues of immediate interest to the FDLA.

All emphasis is supplied by counsel unless otherwise indicated.

POINT INVOLVED ON REVIEW

WHETHER THE LEGISLATURE COULD PERMISSIBLY TREAT THE "PATIENT'S RIGHT TO KNOW" AS ONE TO BE PURSUED INDEPENDENT OF CIVIL LITIGATION, BECAUSE IT IS NOT NECESSARY TO INFER FROM AMENDMENT 7 AN UNSTATED LIMITATION ON THE POWER OF THE LEGISLATURE TO PROHIBIT THE USE OF COMPELLED SELF-CRITICAL ANALYSIS IN CIVIL PROCEEDINGS IN AN ATTEMPT TO PRESERVE THE INTEGRITY OF THE PEER REVIEW PROCESS AND TO PROMOTE FAIRNESS IN LITIGATION?

SUMMARY OF ARGUMENT

This Court should answer the first question certified by the Fifth District in the negative. Interpreting Amendment 7 to provide access to medical review committee records in the discovery process is not required by the language of the Amendment, and would broaden the scope of the required disclosure by providing an avenue of access to other parties to the litigation, including the very persons to whom the Legislature has expressly denied access to such information for important policy reasons. Such an interpretation would needlessly undermine the Legislature's goal of preserving the integrity of the peer review process by permitting those who have been the subjects of the review processes to have access to information concerning those proceedings.

Amendment 7 is silent on its applicability to litigation, and the permissible uses of the information obtained pursuant to the "patient's right to know." There is nothing about the Amendment, either in its express language or by necessary

implication, which requires a determination that the long-standing prohibition against the use of medical review committee information in civil litigation is no longer constitutional. Accordingly, consideration of Rule 1.280 should -- in most, if not all, cases -- lead to the conclusion that such information is not discoverable; i.e., the same result dictated by section 381.028, Florida Statutes (2005).

In enacting section 381.018, the Legislature reasonably sought to incorporate the "patient's right to know" into the existing, tightly-woven statutory mechanisms for hospital self-policing, thereby attempting to balance complex, inter-related considerations, with patient safety as the ultimate priority. The Legislature reasonably treated the process for providing access to information pursuant to the "patient's right to know" as separate from the litigation process, and sought to erect a "Chinese Wall" between the two. Because the Legislature could permissibly establish reasonable use restrictions which are not inconsistent with the language of the constitutional provision in an effort to preserve the integrity of the peer review process and to promote fairness in litigation, judicial development of the contours of the right afforded by Amendment 7 should not take place in the context of medical malpractice actions.

ARGUMENT

THE LEGISLATURE COULD PERMISSIBLY TREAT THE "PATIENT'S RIGHT TO KNOW" AS ONE TO BE PURSUED INDEPENDENT OF CIVIL LITIGATION, BECAUSE IT IS NOT NECESSARY TO INFER FROM AMENDMENT 7 AN UNSTATED LIMITATION ON THE POWER OF THE LEGISLATURE TO PROHIBIT THE USE OF COMPELLED SELF-CRITICAL ANALYSIS IN CIVIL PROCEEDINGS IN AN ATTEMPT TO PRESERVE THE INTEGRITY OF THE PEER REVIEW PROCESS AND TO PROMOTE FAIRNESS IN LITIGATION

Standard of review: The standard of review for constitutional interpretation is de novo, and no deference is afforded the decision of the lower court. Bush v. Holmes, 919 So. 2d 392, 399 (Fla. 2006).

Argument: The first of the questions certified to this Court by the Fifth District as involving great public importance was:

> Does Amendment 7 preempt statutory privileges afforded health care providers' self-policing procedures to the extent that information obtained through those procedures is discoverable during the course of litigation by a patient against a health care provider?[1]

The FDLA respectfully submits that the question should be answered in the negative. It is not necessary to interpret the phrase "formal request" to include a discovery request in the context of medical malpractice litigation when the language of Amendment 7 speaks to neither litigation, nor the permissible

[1] Florida Hospital Waterman, Inc. v. Buster, 31 Fla. L. Weekly D763 (Fla. 2d DCA March 10, 2006)(hereinafter referred to as Buster).

uses of sensitive peer review material. On the other hand, to do so effectively broadens the scope of Amendment 7 beyond its terms by granting a means of access to those who have been subjects of internal review, to whom such access has been denied by the Legislature on the basis of legitimate policy reasons unrelated a patient's "right to know."

The district court decision suffers from a myopic perception of the medical review committee privileges "affected"[2] by Amendment 7, their origins, and the evils sought to be corrected. Specifically, the Buster decision fails to take into account the multi-faceted nature of the concerns which prompted the Legislature to adopt the statutory privileges[3] in the first instance. The privileges were not adopted merely to prevent plaintiffs in medical malpractice actions from obtaining self-critical information. Rather, the concerns which prompted the Legislature to enact the privileges were much more complex;

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[2] In Advisory Opinion to the Attorney General Re Patients' Right To Know About Adverse Medical Incidents, 880 So. 2d 617, 620-621 (Fla. 2004), this Court stated: "Unquestionably, the amendment would affect sections 395.0193(8) and 766.101(5) of the Florida Statutes (2003), which currently exempt the records of investigations, proceedings, and records of the peer review panel from discovery in a civil or administrative action. Indeed, this is a primary purpose of the amendment." The extent to which those privileges are "affected" by Amendment 7 is at the heart of this proceeding.

[3] See, e.g., §§ 766.101(5), 766.1016(2), 395.0197(4), (6), 395.0191(8), 395.0193(8), Fla. Stat. (2003).

indeed, as complex as the internal operations of a hospital.

Historically, the parties who have sought to obtain access to documents generated by the medical review committee process have not been limited to patients,[4] nor have the desired uses been limited to medical malpractice actions.[5] Indeed, the

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[4] See, e.g., Cape Canaveral Hospital, Inv. v. Leal, 917 So. 2d 336 (Fla. 5th DCA 2005)(peer review records sought in action alleging improper suspension of clinical privileges at hospital); Columbia Hospital Corp. of South Dade v. Barrera, 738 So. 2d 505 (Fla. 3d DCA 1999)(physician suing hospital not entitled to obtain application for medical privileges, the court noting: "The documents sought may well be marked with comments by fellow physicians, and it is exactly these types of comments which must be protected in order to ensure that doctors speak freely and render meaningful opinions of their colleagues."); Century Medical Centers, Inc. v. Marin, 686 So. 2d 606 (Fla. 3d DCA), rev. denied, 695 So. 2d 698 (Fla. 1997)(physician suing clinic operator for breach of employment contract not entitled to obtain information subject to peer review privilege); Parkway General Hospital, Inc. v. Allinson, 453 So. 2d 123 (Fla. 3d DCA 1984)(discovery sought in defamation and conspiracy action brought by former staff physician against hospital and others).

[5] Liberty Mutual Ins. Co. v. Wolfson, 773 So. 2d 1272 (Fla. 4th DCA 2000)(uninsured motorist carrier improperly permitted to question automobile accident victim's treating physician about peer review process that led to suspension of his surgical privileges);
Tampa Television, Inc. v. Dugger, 559 So. 2d 397 (Fla. 1st DCA 1990)(rejecting media's request for access to quality management surveys and responses pertaining to quality of inmate health care); Pardell v. Humana Medical Plan, Inc., 560 So. 2d 1249 (Fla. 3d DCA), rev. denied, 576 So. 2d 289 (Fla. 1990)(upholding privilege in action against HMO by physician who was denied staff privileges, seeking damages for breach of internal standards); Dade County Medical Association v. Hlis, 372 So. 2d 117 (Fla. 3d DCA 1979)(defendants in automobile accident case not entitled to obtain committee records of medical association pertaining to two members who were the plaintiff's treating physicians). Cf. Lake Hospital and Clinic, Inc. v. Silversmith, 551 So. 2d 538 (Fla. 4th DCA 1989), rev. denied, 563 So. 2d 634

statutory privileges adopted by the Legislature reflect the untenable position into which a policy of self-policing forces hospitals and participants in the review process. Adverse action taken against a physician could prompt the physician to file an action for damages on any number of theories; e.g., defamation, anti-trust, or intentional interference with an advantageous business relationship, to name a few. On the other hand, failing to take action could subject the hospital to liability for medical malpractice. The Legislature knew that effective peer review depended upon eliminating this quandary, to the extent possible, and thus provided a broad discovery privilege in addition to immunity from liability. See Feldman v. Glucroft, 522 So. 2d 798 (Fla. 1988)(upholding qualified immunity from defamation action against members of medical review committee, stating: "We accept the legislative determination that without this type of qualified immunity, a viable health care process would be difficult, if not impossible, to maintain.")

Florida courts, including this Court, have recognized that preserving the integrity of the peer review process required enforcing the discovery privileges not only in medical malpractice actions, but also in other contexts where physicians

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(Fla. 1990)(credentialing records could not be used in action against hospital arising out of termination of medical staff

who had been the subject of adverse action sought to obtain the records. In Holly v. Auld, 450 So. 2d 217, 219-220 (Fla. 1984), this Court was called upon to answer the following question certified as one of great public importance: "Is the discovery privilege set out in section 768.40(4), Florida Statutes, limited to civil actions against providers of health care services based on medical malpractice?" This Court answered the question in the negative and expressly found that the privilege was applicable to an action for defamation brought by a physician who claimed that he had been wrongfully denied staff privileges, reasoning:

> It is apparent that the need for confidentiality is as great when a credentials committee attempts to elicit doctors' honest opinions about one of their colleagues for purposes of determining fitness for staff privileges as when attempting to determine whether the practice of a doctor on the staff meets the standards of the medical community. **A doctor questioned by a review committee would reasonably be just as reluctant to make statements, however truthful or justifiable, which might form the basis of a defamation action against him as he would be to proffer opinions which could be used against a colleague in a malpractice suit.** The discovery privilege . . . was clearly designed to provide that degree of confidentiality necessary for the full, frank medical peer evaluation which the legislature sought to encourage.

The Third District pointed to similar reasoning in explaining the origin of the discovery privilege in Parkway

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privileges).

General Hospital, Inc. v. Allinson, 453 So. 2d at 125-126:

> [The legislature] realized that simply immunizing health care professionals for providing information to a medical review committee . . . would not effect the desired result -- the self-regulation of the profession. That is, it was not enough to provide immunity from liability in a defamation suit because 1) that still allowed defamation lawsuits against health care professionals and 2) the mere threat of involvement as a defendant in such a lawsuit was enough to deter those people from participating in or even giving information to a medical review committee. Moreover, the fact that an announced privilege existed did not stop the filing of defamation suits because it was only a "qualified" privilege; a privilege dependent upon the participants acting "without malice or fraud." Thus, in order to insure valid peer review, the legislature had to protect the participants therein, even though by doing so it was necessary to encroach upon certain rights held by others. As the Supreme Court pointed out, this is a valid exercise of legislative power. The legislature chose to promote the protection of those giving information over the "rights" of those who were the subject of evaluation by enacting section 768.40(4),[6] which shields from discovery those notes, statements, transcripts, or records of medical review committee proceedings.

The role of discovery privilege in protecting participants in the peer review process was again articulated by this Court in Cruger v. Love, 599 So. 2d 111, 114-115 (Fla. 1992):

> The privilege afforded to peer review committees is intended to prohibit the chilling effect of the potential public disclosure of statements made to or information prepared for and used by the committee in carrying out its

[6] Now section 766.101(5), Fla. Stat. (2005).

> peer review function. . . . This chilling effect is attributable to several factors. As one commentator has noted:
>
> > [D]octors seem to be reluctant to engage in strict peer review due to a number of apprehensions: **loss of referrals, respect, and friends, possible retaliations, vulnerability to torts,** and fear of malpractice actions in which the records of the peer review proceedings might be used. It is this ambivalence that lawmakers seek to avert and eliminate by shielding peer review deliberations from legal attacks.
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> Gregory G. Gosfield, Medical Peer Review Protection in the Health Care Industry, 52 Temp.L.Q. 552, 558 (1979) (footnote omitted). These fears are alleviated only by interpreting the statute as we do today.

There is no question that protecting medical review committee participants from retaliation by those subject to adverse action was a significant consideration in adopting the statutory prohibition against discovery of peer review materials. Indeed, the Legislature's desire to protect peer review participants from retaliatory tort suits and federal anti-trust actions is explicitly set forth in section 395.0193(1), Florida Statutes (2003).

Moreover, on a practical level, the confidentiality policy served to preserve working relationships within hospitals; e.g., by protecting the surgeon who complained about the anesthesiologist, upon whom he must rely, or the nurse who reported a problem concerning the surgeon with whom she must

work every day. Preserving working relations within the hospital by limiting inter-personal repercussions from reporting adverse incidents unquestionably promotes the efficient delivery of health care services.

In finding "no discernable reason why Amendment 7 would prohibit access to the information by a patient during the progress of the litigation," Buster at *4, the district court failed to appreciate that subjecting medical review committee documents to production in the discovery process operates to expand the scope of the disclosure beyond that required by the language of Amendment 7, by providing a means of access to those persons to whom such access has been historically denied (i.e., co-defendant physicians), contrary to the long-standing policies which prohibit just such disclosure. In the discovery process, documents produced must be made available to other parties to the litigation, and may eventually be provided to experts and other witnesses and ultimately be spread across the public record, notwithstanding their sensitivity and propensity to cause harm.

Subjecting medical review committee records to the discovery process means that one of the most important intended protections of peer review participants -- protection from the prospect of retaliation -- fails, despite the fact that it is wholly unnecessary to satisfy the dictates of Amendment 7.

There is nothing in the text of the amendment or its history which compels a finding that the Legislature's admittedly important policy of denying access to medical review committee documents to those who have been the subjects of the review processes is no longer constitutionally permissible.

In enacting section 381.028 to implement Amendment 7, the Legislature undertook a delicate balancing act, as it sought to harmonize the several inter-related policies which were woven into the fabric of the statutes which govern the hospital self-policing processes with the newly-recognized "right to know." In so doing, it was reasonable for the Legislature to attempt to maintain a "Chinese Wall" between information obtained by a patient or his or her representative pursuant to Amendment 7 and the litigation process.[7] That the construction of Amendment 7

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[7] Section 381.028(6), provides:

> (6) USE OF RECORDS.—
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> (a) This section does not repeal or otherwise alter any existing restrictions on the discoverability or admissibility of records relating to adverse medical incidents otherwise provided by law, including, but not limited to, those contained in ss. 395.0191, 395.0193, 395.0197, 766.101, and 766.1016, or repeal or otherwise alter any immunity provided to, or prohibition against compelling testimony by, persons providing information or participating in any peer review panel, medical review committee, hospital committee, or other hospital board otherwise provided by law, including, but not limited to, ss. 395.0191, 395.0193, 766.101, and

adopted by the Legislature is rational is supported by several considerations. See Agency for Health Care Administration v. Associated Industries of Florida, Inc., 678 So. 2d 1239, 1247 (Fla. 1996)(court's "role is to determine whether the legislature has adopted a rational construction of the constitutional [provision].")

First and foremost, the Legislature's construction of the Amendment 7 "right to know" as one which should be pursued outside the litigation process is consistent with the result dictated by Rule 1.280, Florida Rules of Civil Procedure, which governs the scope of discovery in civil litigation. Consideration of Rule 1.280(b)(1) should have led the district court to the unremarkable conclusion that the information requested was simply not subject to discovery, particularly once

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766.1016.

> (b) Except as otherwise provided by act of the Legislature, records of adverse medical incidents, including any information contained therein, obtained under s. 25, Art. X of the State Constitution, are not discoverable or admissible into evidence and may not be used for any purpose, including impeachment, in any civil or administrative action against a health care facility or health care provider. This includes information relating to performance or quality-improvement initiatives and information relating to the identity of reviewers, complainants, or any person providing information contained in or used in, or any person participating in the creation of the records of adverse medical incidents.

it had determined that the documents to which Amendment 7 would provide a right of access are limited to those created after November 2, 2004, well after the treatment which gave rise to the underlying action. See Allstate Ins. Co. v. Langston, 655 So. 2d 91, 94 (Fla. 1995) ("Discovery in civil cases must be relevant to the subject matter of the case and must be admissible or reasonably calculated to lead to the discovery of admissible evidence."); Tanchel v. Shoemaker, 928 So. 2d 440 (Fla. 5th DCA 2006)(records pertaining to surgeries performed by defendant physician after date of plaintiff's surgery outside scope of permissible discovery); Pusateri v. Fernandez, 707 So. 2d 892 (Fla. 2d DCA 1998)(information pertaining to other patients not discoverable in absence of showing of relevance to pending action). Instead, the result reached by the district court turned Rule 1.280 on its head by ordering the production of documents which are not admissible, will never be admissible, and cannot possibly lead to the discovery of admissible evidence.

Even where a plaintiff in a medical malpractice action has obtained medical review committee information, such information may not be used in litigation for any purpose. See, e.g., Tallahassee Memorial Regional Medical Center v. Meeks, 560 So. 2d 778 (Fla. 1990)(incident report was inadmissible as evidence, and should not have been referred to "for any purpose");

Hillsborough County Hospital Authority v. Lopez, 678 So. 2d 408 (Fla. 2d DCA 1996), rev. denied, 689 So. 2d 1070 (Fla. 1997)(plaintiff in medical malpractice action prohibited from using medical review committee record in discovery proceedings or at trial). Nor could the plaintiff properly pose deposition questions or interrogatories to a party or participant in the medical review committee process about the work of the committee. See, e.g., Munroe Regional Medical Center, Inc. v. Rountree, 721 So. 2d 1220 (Fla. 5th DCA 1998) (defendant physician could not be compelled to answer questions about peer review proceedings that led to temporary suspension of his license); Century Medical Centers, Inc. v. Marin, 686 So. 2d 606 (Fla. 3d DCA), 695 So. 2d 698 (Fla. 1997)(clinic operator not required to disclose peer review deliberations in answers to interrogatories). Cf. Joseph L. Riley Anesthesia Associates v. Karstetter, 729 So. 2d 517, 519 (Fla. 5th DCA 1999)(wherein court held that participant in peer review investigation could not serve as expert in medical malpractice litigation, noting: "[I]t is unrealistic to believe that a person can provide a totally unbiased professional opinion after exposure to privileged information."); Good Samaritan Hospital, Inc. v. American Home Products Corp., 569 So. 2d 895 (Fla. 4th DCA), rev. dismissed, 576 So. 2d 284 (Fla. 1990)(defendant drug manufacturers and distributors not entitled to take depositions

or obtain documents pertaining to medical review committee actions concerning use of product in hospital).

Nothing about the language or history of Amendment 7 purports to alter the validity of the longstanding use restrictions which are part and parcel of the underlying statutory privileges, much less compels a finding that they are now constitutionally impermissible. Since documents generated by the statutory review processes may not be used in litigation, in the vast majority of cases consideration of Rule 1.280 should lead to a finding that such documents are not discoverable, either. Thus, the construction placed on Amendment 7 by the Legislature – i.e., as establishing a right to have access to otherwise privileged documents independent of the litigation process[8] – is not only rational, it is consistent with the rules

[8] The premise that a party's right of "access" to information is not necessarily co-extensive with the same party's right to obtain information in discovery is not new. See, e.g., Department of Highway Safety and Motor Vehicles v. Krejci Company, Inc., 570 So. 2d 1322 (Fla. 2d DCA 1990), rev. denied, 576 So. 2d 286 (Fla. 1991)(although driver's license photograph records are exempt from public inspection under Public Records Act, the same records were not necessarily privileged from discovery in litigation); Department of Highway Safety and Motor Vehicles v. Kropff, 445 So. 2d 1068, 1069 n.1 (Fla. 3d DCA 1984)(wherein the court, in commenting upon the "highly unusual hybrid procedure" of making a Public Records request in a litigation discovery request: "Although the Rules of Civil Procedure and the Public Records Act may overlap in certain areas, they are not co-extensive in scope.") Cf. Wait v. Florida Power & Light Co., 372 So. 2d 420 (Fla. 1979)(litigant in federal court did not give up "independent statutory rights to review public records under chapter 119."); United States v.

governing the discovery process. The result achieved is hardly absurd, as suggested by the district court, Buster at *4, nor is it "positively and certainly" contrary to Amendment 7. Greater Loretta Improvement Ass's v. State ex rel. Boone, 234 So. 2d 665, 669-670 (Fla. 1970)("[W]here a constitutional provision may well have either of several meanings, it is a fundamental rule of constitutional construction that, if the Legislature has by statute adopted one, its action in this respect is well-nigh, if not completely, controlling. . . The courts should not and must not annul, as contrary to the Constitution, a statute passed by the Legislature, unless it can be said of the statute that it positively and certainly is opposed to the Constitution.")

In the final analysis, the district court erred in failing to address the impact of Rule 1.280 on the plaintiff's discovery request, which provided a non-constitutional ground for disposing of the discovery dispute. A court should not address constitutional issues unless absolutely necessary for the disposition of a case. See, e.g., Peoples v. State, 287 So. 2d 63, 66 (Fla. 1973); Metropolitan Dade County Transit Authority v. Department of Highway Safety and Motor Vehicles, 283 So. 2d 99, 101 (Fla. 1973); In re: Estate of Sale, 227 So. 2d 199, 201

Murdock, 548 F.2d 599, 602 (5th Cir. 1977)(holding that "the discovery provisions of the Federal Rules of Criminal Procedure and the [Freedom of Information Act] provide two independent schemes for obtaining information through the judicial

(Fla. 1969); Mayo v. Market Fruit Co. of Sanford, 40 So. 2d 555, 559 (Fla. 1949). Because the information sought by the plaintiff's request was not discoverable in any event by virtue of a straight-forward application of Rule 1.280, it was unnecessary and inappropriate for the court to pass upon the validity of section 381.028.

The Legislature certainly has the right to adopt policies to promote fairness in litigation by limiting the use of certain information in litigation, or prohibiting its use altogether. Indeed, fairness in litigation measures permeate the Florida Statutes. See, e.g., Ch. 90, Fla. Stat. (2005)(the "Florida Evidence Code"); §316.066 (3)(c), (4), Fla. Stat.(2005) (limiting permissible uses of motor vehicle accident reports, and prohibiting use as evidence in criminal or civil trial); §44.405, Fla. Stat. (2005)(prohibiting discovery and admissibility of certain mediation communications); §766.205, Fla. Stat. (2005)(prohibiting discovery and admissibility of communications made during medical malpractice presuit screening process for any purpose); §768.72(1), Fla. Stat. (2005)(prohibiting discovery of party's financial worth until pleading punitive damages is authorized by trial court).

By virtue of their very nature, the records generated by the review processes which have as their goal the improvement of

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process.").

patient safety are uniquely susceptible to causing mischief in litigation. Because they are prepared in the furtherance of non-litigation objectives, they reflect a retrospective view, and frequently contain rank speculation, conjecture, opinions and personal criticisms[9] which can be inappropriately used against hospitals and health care providers in litigation for in terrorem effect.

Amendment 7 litigation-within-litigation threatens to become an expensive, unproductive sideshow which does little to advance the search for truth in medical malpractice cases. It is certainly within the province of the Legislature to provide, as a matter of fairness in litigation and preserving a level playing field – not to mention promoting judicial efficiency and economy – that information in the nature of compelled self-critical analysis is not subject to discovery in litigation.

Although Amendment 7 unquestionably now provides patients with "access" to documents pertaining to adverse medical incidents, the Legislature could reasonably conclude that balancing the interests of justice and the interest of attempting to preserve the peer review process required attempting to erect and maintain a "Chinese Wall" between

[9] Cf. United States v. Weber Aircraft Corp., 465 U.S. 792, 797 n.11 (1984)(wherein the Court made note of similar concerns raised by the Air Force associated with requiring the production of records concerning flight safety investigations in

information obtained pursuant to a patient's "right to know" and the litigation process. Issues concerning the nuances of the scope of Amendment 7, and there are sure to be many, are not properly litigated in the context of medical malpractice litigation.

response to a request under the Freedom of Information Act).

CONCLUSION

Based upon the foregoing arguments and authorities, this Court is respectfully requested to answer the first question certified by the Fifth District in the negative, and to quash the decision of the Fifth District.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief was prepared using Courier New 12-point font in compliance with Rule 9.210(a)(2), Florida Rules of Appellate Procedure.

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