IN THE SUPREME COURT
STATE OF FLORIDA

CASE NO. SC06-688

FLORIDA HOSPITAL WATERMAN, INC.
d/b/a FLORIDA HOSPITAL WATERMAN,

Petitioner,

v.

TERESA M. BUSTER,
as Personal Representative of the ESTATE OF LARRY BUSTER, Deceased,

Respondent.

PETITIONER'S INITIAL BRIEF ON THE MERITS

ON REVIEW FROM A DECISION OF THE
FIFTH DISTRICT COURT OF APPEAL

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ABBREVIATIONS USED IN THIS BRIEF

"Amendment 7" refers to the amendment to the Florida Constitution entitled "Patients' Right to Know About Adverse Medical Incidents," which was adopted by the voters on November 2, 2004, and is now found in Article X, section 25 of the Constitution.

"Buster" refers to the respondent, Teresa Buster, as personal representative of the Estate of Larry Buster, deceased.

"*Buster*" refers to the decision of the district court – *Florida Hosp. Waterman, Inc. v. Buster*, 2006 WL 566084 (Fla. 5th DCA Mar. 10, 2006).

"Docket Entry __" refers to an entry on the Lake County Circuit Court docket in Case No. 2002CA000868.

"Hospital" references the petitioner, Florida Hospital Waterman, Inc.

"R:__" refers to the record-on-appeal as provided by the clerk of the Fifth District Court of Appeal.

"Section 381.028" refers to section 381.028, Fla. Stat. (2005), as adopted in 2005-265, Laws of Florida, § 1.

INTRODUCTION

This proceeding comes to the Court on three certified questions from the Fifth District Court of Appeal relating to the operation and effect of Amendment 7 to the Florida Constitution adopted by the voters on November 2, 2004, entitled "Patients' Right to Know About Adverse Medical Incidents" ("Amendment 7"). A copy of the district court's decision is attached as Appendix 1. Amendment 7 is now found in Article X, section 25 of the Constitution, a copy of which is attached as Appendix 2 and referenced in the brief simply as "Section 25."

Amendment 7 gave patients in Florida a right of access to any "records" of adverse medical incidents made or received in the course of business by a health care facility or provider. On certiorari review of a post-Amendment order directing the production of adverse incident medical reports, the district court invalidated laws pre-dating Amendment 7 which immunized hospitals from the production of medical records associated with legislatively-required peer review, risk management, quality assurance, and credentialing. The court also invalidated an implementing statute enacted by the Legislature after the passage of Amendment 7 – section 381.028, Fla. Stat. (2005)[1] – based on a determination that Amendment 7 is self-executing and that the voters did not intend legislative implementation. The court also held that Amendment 7 is prospective rather than

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[1] This statute will be cited without repeating "Fla. Stat. (2005)" in each instance. All other Florida statutes referenced in the brief, which pre-date Amendment 7, will be cited without repeating "Fla. Stat. (2003)" in each instance.

retroactive in operation, and limited the Hospital's production to records developed after the effective date of Amendment 7.

STATEMENT OF THE CASE

In March of 2002, a medical malpractice lawsuit was filed against Florida Hospital Waterman, Inc. by Teresa Buster, as personal representative of the Estate of Larry Buster, deceased. A copy of the docket of the circuit court proceeding is attached as Appendix 3.[2] A failed first trial was held on May 17-19, 2004. Appendix 3 at Docket Entries 683-85.

On November 2, 2004, the voters of Florida adopted Amendment 7 which, by its terms, became effective upon adoption. Section 25, Note. Amendment 7 gives patients a right of access to records of adverse medical incidents which are made or received by health care facilities and providers in the course of business. Section 25(a).

On November 19, Buster requested that the Hospital produce records generated or received concerning adverse medical incidents prior to the effective date of Amendment 7. R:19-27.[3] The Hospital objected, and moved for a protective order. R:28-42, 43-46. Following a hearing on the objections of the Hospital and its motion for a protective order (R:136-62), the court ordered the

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[2] Two physicians were also named as defendants. One is no longer involved in the lawsuit, see Appendix 3 at Docket Entry 689, and the other is separately represented in this appeal.

[3] Buster's request for production is attached as Appendix 4.

Hospital to produce all of the materials requested by Buster dating from December 25, 2000. R:163-64.[4]

The Hospital petitioned the Fifth District Court of Appeal for a writ of certiorari, challenging the trial court's production order. Buster filed a Response and the Hospital filed a Reply. An *amicus* brief was filed by the Florida Hospital Association in support of the Hospital's argument that Amendment 7 was prospective in application, and an *amicus* brief was filed by Floridians for Patient Protection, Inc., in support of Buster's arguments that Amendment 7 was retroactive and self-executing.

While the production order dispute was in progress, the Florida Legislature enacted section 381.028 for the purpose of implementing Amendment 7.[5] A copy of section 381.028 is attached as Appendix 5. Without conducting an oral argument, the district court issued the decision which is brought here for review. The decision of the district court, rendered after the enactment of section 381.028, holds that Amendment 7 was self-executing but not retroactive. *Buster* at *6-8. The court invalidated section 381.028 as an impermissible attempt by the

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[4] The order did not direct production going back to the date on which Buster's lawsuit was filed: March 15, 2002.

[5] The Florida Legislature enacted section 381.028 in its 2005 Regular Session, effective upon becoming a law. Ch. 2005-265, § 2, Laws of Fla. It was approved by the Governor and became effective on June 20, 2005.

legislature to implement a constitutional provision that required no implementation.[6] *Buster* at *7-8.

Due to the importance of the issues raised and addressed, the court certified three questions for the Court's consideration:

1. Does Amendment 7 preempt statutory privileges[7] afforded Health Care providers' self-policing procedures[8] to the extent that information obtained through those procedures is discoverable during the course of litigation by a patient against a health care provider?
2. Is Amendment 7 self-executing?
3. Should Amendment 7 be applied retroactively?

Buster at *9. The Hospital timely invoked the Court's jurisdiction, and the Court issued a briefing schedule which set May 30 as the due date for the Hospital's initial brief.

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[6] The court noted that the admissibility of information gathered in accordance with Amendment 7 was not before the court, and consequently was not addressed by the court. *Buster* at *1. It also held that Amendment 7 does not affect either the work-product or attorney-client privilege and noted that Buster did not contend that it did. *Buster* at *4.

[7] The "statutory privileges" were more accurately denominated as "immunities" in *Hillsborough County Hosp. Auth. v. Lopez,* 678 So. 2d 408, 409 (Fla. 2d DCA 1996).

[8] The processes, procedures, and protections established by law were more appropriately denominated as "self-regulation" in *Holly v. Auld*, 450 So. 2d 217, 220 (Fla. 1984).

After this appeal was lodged, the First District rendered its decision in *Notami Hosp. of Fla., Inc. v. Bowen*, 927 So. 2d 139 (Fla. 1st DCA 2006), addressing the same issues decided in this case. As did the Fifth District in this case, the court held that Amendment 7 was self-executing and that section 381.028 was invalid (in the court's words, "unconstitutional"). The court expressed explicit conflict with the Fifth District, however, by holding that Amendment 7 was retroactive in application.

Having declared a state statute unconstitutional, the district court's decision was appealed to the Court by Notami Hospital. That case was docketed by the Court as Case No. SC06-912.

Both the Hospital and the appellant in *Notami Hospital* moved in their respective cases for a contemporaneous briefing schedule, and to have the two cases argued together. On May 19, the Court entered an order granting the Hospital's motion and setting June 29 as the due date for service of the Hospital's initial brief.

SUMMARY OF ARGUMENT

The Florida Legislature has determined and declared as a matter of public policy that the sustainability of quality health care depends on the self-regulation of health care providers. That policy is manifest in numerous statutes dealing with credentialing, peer review, quality assurance, and risk management, and Amendment 7 did not change that policy. Amendment 7 narrowly conferred the right of patients to inspect and copy records of adverse medical incidents, and had

no impact on any other aspect of self-regulation processes, procedures, and immunities.

The district court's decision violated the constitutional separation of powers when it invalidated the legislature's post-Amendment implementation statute – section 381.028. Almost all of the provisions of that enactment appropriately clarified and implemented Amendment 7 with a re-affirmation of pre-Amendment statutes dealing with *other* aspects of health care provider self-regulation. Pre-Amendment statutes restricting the discovery of adverse medical incident information were overridden by Amendment 7 only to the extent that Amendment 7 allows *patients* to inspect and copy records.

Certified Question #1, if properly framed and limited, should be answered in the affirmative. The district court incorrectly held that Amendment 7 preempts pre-Amendment laws preventing the discovery of adverse medical incident "records" during the course of litigation brought by a patient against a health care provider. Allowing adverse medical incident records unqualifiedly to be obtained through the discovery process would allow persons other than patients, who are clearly not contemplated by the Amendment, to obtain such records. Moreover, the Amendment has no effect whatever on health care providers' immunity from suit in the self-regulatory processes, immunity from compulsion from testimony, and the inadmissibility of self-regulation materials into evidence.

Certified Question #2, if properly qualified, should be answered in the affirmative. The district court correctly held that Amendment 7 was self-executing

only with respect to its explicit subject matter – the inspection and copying of adverse medical incident records.

Certified Question #3 should be answered in the negative. The district court correctly held that Amendment 7 is prospective in application, and not retroactive. The Amendment has no clear evidence that the electorate intended it to apply to records created before Amendment 7's adoption, and vested rights would be impaired if Amendment 7 was given retroactive effect.

ARGUMENT

Immensely important and complex issues are involved in the interaction of Amendment 7 and the long-standing statutory scheme for the delivery of quality health care services in Florida. Unfortunately, this case came to the district court by way of petition for a writ of certiorari from a discovery order. Briefing, as is usually the case in certiorari proceedings, was limited to a sparse record, and as is also traditional in such proceedings the court formulated its decision without giving the parties an opportunity to present oral argument.

Absent oral argument, the court was denied a full understanding of the legislature's carefully crafted construction of the self-regulating system of health care which comprises the public policy of the state. That system is composed of several inter-related components which include confidentiality of records and other materials, the non-admissibility of confidential materials into evidence in civil and administrative proceedings, and immunity from lawsuits and compulsory testimony for the individuals and organizations involved in the credentialing, peer

review, quality performance and assessment, and risk management processes established by the legislature.

Only one aspect of one component of those processes was affected by the electorate's adoption of Amendment 7 – the confidentiality of adverse medical incident reports. All other components were unaffected by the Amendment, and were appropriately recognized by the legislature in section 381.028 as retaining post-Amendment vitality. The court's broadly worded opinion, however, appears to give effects to Amendment 7 which far exceed its language, any reliable indication of the voters' intent, or the limited purpose for which it was presented to the voters for adoption.

The court's approach to the issue presented – the discoverability of adverse medical incident reports – used the appropriate analytical principles for construing a constitutional amendment. The court read the several provisions within Amendment 7 in *pari materia*, construed the Amendment as a whole, and gave the Amendment a broad and liberal construction in order to effect its purpose and scope. *Buster* at *3. But the court went one step too far by unqualifiedly holding that adverse medical records are available through routine discovery mechanisms, thereby allowing individuals who are not patients to obtain the records.

The court also attempted to apply the principle that a court considering the electorate's intent for an amendment to the constitution will examine "explanatory materials available to the people as a predicate for their decision," citing to

Department of Envtl. Prot. v. Millender, 666 So. 2d 882 (Fla. 1996), and to *Plante v. Smathers*, 372 So. 2d 933 (Fla. 1979). *Buster* at *4.[9] It erred, however, in purporting to find voter intent in the Court's advisory opinion approving the language of Amendment 7 for placement on a ballot.[10] *Id*. That opinion, obviously, was not a source for ascertaining the voters' intent for adopting Amendment 7.

An oral dialogue with the court might have given the court a more complete understanding of the purposes and significance of the multiple legislative provisions put in place to implement the state's declared public policy of providing Floridians with quality health care – an array of processes, protections, and mechanisms for credentialing, peer review, quality assurance, and risk management.

The Hospital will address those elements of the state's health care policy here in greater depth. In doing so, the Hospital will demonstrate that Amendment 7 did not invalidate the majority of pre-Amendment self-regulating

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[9] The decisions cited by the court did not indicate what explanatory materials were in fact examined. They only referenced earlier decisions of the Court which examined statements made by the framer of the initiative proposal at issue (*Williams v. Smith*, 360 So. 2d 417, 419-20 (Fla. 1978)), and documents submitted to the voters as explanatory materials. *In re Advisory Opinion of Governor Request of Nov. 19, 1976 (Const. Rev. Comm'n*), 343 So. 2d 17, 22 (Fla. 1977). The court had no such materials to examine, however. It had only the language of the ballot title and summary, and the text of the Amendment itself.

[10] *Advisory Opinion to the Atty. Gen. Re Patients' Right to Know About Adverse Med. Incidents*, 880 So. 2d 617 (Fla. 2004) ("*Advisory Opinion*").

policies, and that the legislature was acting well within its authority when it re-asserted in section 381.028 the policies unaffected by Amendment 7.

I. The state's public policy of sustainable quality health care for all Floridians depends on the self-regulation of health care providers through credentialing, peer review, quality assurance, and risk management processes established by the Florida Legislature.

A. The legislature has effectuated the state's public policy on health care with processes and protections indispensable to the self-regulation of the health care industry.

The availability and delivery of quality medical services is the public policy of the state. Section 395.0193(1), which is illustrative, expressly provides that "quality medical services to the public" are "the public policy" of the state. In furtherance of that policy, the legislature has for more than 20 years fostered an array of processes and protections for the acts and personnel involved with the self-regulation processes of credentialing, peer review, quality assurance, and risk management. These protections include (i) confidentiality of the proceedings and reports in those processes,[11] (ii) immunity of the investigations, records, and proceedings from discovery,[12] (iii) immunity from suit for participants in those

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[11] Sections 395.0193(7) and 766.101(5) (*re* peer review).

[12] Sections 395.0191(8) (*re* credentialing); 395.0193(8) and 766.101(5) (*re* peer review); 395.0197(6)(c) and (7) (*re* annual risk management reports of adverse incidents); 766.1016(2) (*re* quality assurance and patient safety). Significantly, section 395.0193(8) declares that the "investigations, proceedings, and records" of the peer review body are not subject to discovery or introduction into evidence, thereby making an important distinction between investigations and proceedings on the one hand, and "records."

processes,[13] (iv) immunity from testimonial compulsion,[14] and (v) the inadmissibility in civil or administrative proceedings of investigations, proceedings, and records involved in those processes.[15]

This Court has consistently recognized and supported the legislatively-established mechanisms surrounding the availability and delivery of quality health care in Florida. For example, in *Holly v. Auld*, 450 So. 2d 217 (Fla. 1984), the Court held that a statute providing for the confidentiality of hospital committee proceedings was applicable to the credentialing process, as well as in medical malpractice suits, because

> meaningful peer review would not be possible without a limited guarantee of confidentiality for the information and opinions elicited from physicians regarding the competence of their colleagues.

Id. at 220.

This intricate set of procedures and protections for quality health care were obviously impacted by the electorate's adoption of Amendment 7. The issue before the Court in this case is how, and to what extent. The starting and ending

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13 Sections 395.0193(7) and 766.101(5) (*re* peer review). Section 395.0193(1), for example, provides "immunity from retaliatory tort suits" to physicians who in good faith participate in the peer review process.

14 Sections 395.0193(8) (*re* peer review); 395.0197(4) (*re* risk management reports of adverse incidents).

15 Sections 395.0193(8) (*re* peer review); 395.0197(4) (*re* risk management); 395.0197(5) (adverse incident reports); 395.0197(6)(c) and (7) (*re* annual risk management reports of adverse incidents); 766.1016(2) (*re* quality assurance).

point for analysis must be the language of Amendment 7 and its ballot title and summary, as the record contains no other material which sheds light on the intent of the electorate in adding Amendment 7 to the Florida Constitution.

B. Amendment 7 is limited by its language and all other indicia of voter intent to the right of patients to inspect and copy records relating to adverse medical incidents.

Amendment 7 – now Article X, section 25 of the Florida Constitution – is quite limited in both its objective and scope. Although Section 25 has six lettered and numbered subparagraphs, its purpose and scope are set out only in subsection 25(a), which declares that "patients have a right to have access to any records . . . relating to any adverse medical incident." Nothing beyond that simple declaration in the text of the Amendment addresses the intent or purpose for the Amendment, and there is no other text in Section 25 which creates a further right or expresses any different purpose.[16]

The ballot title – "Patients' Right to Know About Adverse Medical Incidents" – confirms the Amendment's sole purpose. So, too, does the ballot summary, which states in its entirety:

> Current Florida law restricts information available to patients related to investigations of adverse medical incidents, such as medical malpractice. This amendment would give patients the right to review, upon request, records of health care facilities' or providers' adverse

[16] Section 25(b) preserves the privacy rights of patients identified in adverse medical incident records, and sections 25(c)(1), (2), and(3) merely explain other terminology used in Amendment 7.

> medical incidents, including those which cause injury or death. Provides that patients' identifie [sic] should not be disclosed.

Buster at *4. The record before the lower courts in this proceeding contained no documents or other material which might have been made available to the electorate before the vote on Amendment 7.

The limited purpose of providing access to adverse medical incident reports is even more narrowly controlled by Section 25(c)(4), which defines the term "access" to mean, in addition to other procedures provided by general law, "making the records available for inspection and copying upon formal or informal request." Reading Sections 25(a) and 25(c)(4) together, as required to give meaning to Amendment 7 in its entirety,[17] the adoption of Amendment 7 gave patients a new but quite restricted right – the constitutional right upon formal or informal request to inspect and copy adverse medical incident reports.

For purposes of this proceeding, the most important features of Amendment 7 are those legislatively-created processes and protections of self-regulation in the health care industry which the Amendment does ***not*** address or impact. First, it is noteworthy that the Amendment expressly confined its reach to "records," although the self-regulation statutes of the state have long distinguished records from "investigations" and "proceedings." *See, e.g.*, §§ 395.0193(7), 766.101(5). Second, it is significant that the Amendment says nothing about the *usage* which patients can make of adverse medical incident reports they have been

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[17] *St. Mary's Hosp., Inc. v. Phillipe*, 769 So. 2d 961, 967 (Fla. 2000).

able to inspect and copy, and makes no change to existing statutes which protect from suit and from testifying those who have a role in creating or retaining those records.

Neither party put forward any explanatory material from which the intent of the electorate could be discerned. As noted above, the district court improperly referenced language in the Court's advisory opinion which approved Amendment 7 for placement on the ballot. Such an opinion is obviously not a permissible source of voter intent. Moreover, as is always the case in these circumstances, the Court was careful to express its limited role in the constitutional amendment process as being merely to determine whether the Amendment complied with the single-subject requirement of the Constitution and the statute governing ballot title and summary. *Advisory Opinion,* 880 So. 2d at 619.

In addressing single-subject, the Court confirmed that the narrow and only purpose for Amendment 7 was "providing access to records of adverse medical incidents." *Id*. at 620. The Court did note that this new right of access would affect two statutory provisions which exempt peer review records from discovery, but it recognized the limited reach of the Amendment by pointing out that nothing in the language or intent of the Amendment would affect the doctrine of work product or the attorney-client privilege. *Id*. at 620-21, 622. In addressing ballot title and summary, the Court rejected a claim from opponents that the public was misled by not being informed of the Amendment's effect on peer review statutes, and thereby avoided any analysis of the Amendment's effect on existing statutes. *Id*. at 622.

Thus, the meaning and scope of Amendment 7 is found within its four corners, and in the ballot title and summary. In express terms, the voters approved an alteration of only one component of the array of protections designed to assure meaningful health care self-regulation – the confidentiality of adverse medical incident "records." Nothing in the language of the Amendment, or in any document or material considered by the electorate which would bear on their intent, extends the newly-created right of patients beyond "making the records available for inspection and copying." Thus, the Amendment cannot be said to have any bearing on (i) the non-"record" investigatory materials, meeting minutes, or other documentation generated in credentialing, peer review, quality assurance, and risk management proceedings, (ii) the statutory immunity from suit given participants in these proceedings, (iii) their immunity from testimonial compulsion, or (iv) the inadmissibility of such records in civil or administrative proceedings.

It is against this background that the district court's invalidation of section 381.028 must be evaluated.

C. The district court's invalidation of section 381.028 constituted an unauthorized incursion into the responsibilities and prerogatives of the legislative branch of government.

Despite the absence of any language or intent extending Amendment 7 beyond the inspection and copying of adverse medical incident reports, the district court appears to have given the Amendment a much broader interpretation, while at the same time imposing a crippling limitation on the power of the legislature to perform its legislative function. In that latter regard, the court's invalidation of

section 381.028 failed to give the statute its required presumption of constitutionality,[18] and constituted an impermissible breach of the separation of powers set out in Article II, section 3 of the Florida Constitution that:

> No person belonging to one branch shall exercise any powers appertaining to either of the other branches . . . .

The court declared that an interpretation of the constitutional amendment is the exclusive prerogative of the judiciary. *Buster* at *5. It then looked at the statute enacted after Amendment 7 was adopted, section 381.028, and held that the court "was not much impressed or persuaded" by interpretations of Amendment 7 reflected in that statute. *Buster* at *8. The court misperceived the role of the legislature, however, which had and continues to have the same responsibility for implementing public policy and a constitutional amendment as the courts.

> Legislators are as capable as persons occupying judicial positions in ascertaining and applying the meaning of such words to statutory provisions and are presumed to be just as loyal to the government as their brethren of the legal profession occupying judicial offices.

State ex rel. Davis v. Rose, 122 So. 225, 237 (Fla. 1929).

Section 381.028 contains a number of provisions which have nothing whatever to do with the right of patients to inspect and copy adverse medical incident records. A careful analysis of section 381.028 reveals that the district

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[18] *E.g., Sunset Harbour Condo. Ass'n v. Robbins*, 914 So. 2d 925, 929 (Fla. 2005).

court's invalidation of it impermissibly stepped over the boundary between the legislative and judicial branches.

Section 381.028 states it was enacted "to implement s. 25, Art. X of the State Constitution." The Court has recognized that the legislature has both an implementation and clarification role when the Florida Constitution is amended. *See, e.g.*, *Parker v. State*, 843 So. 2d 871, 878 (Fla. 2003) (holding that the statute enacted after a constitutional amendment "reasonably may be viewed as implementing" the amendment, and "works hand-in-hand" with the constitutional provision).

The legislature's implementation of Amendment 7 was particularly appropriate, inasmuch as it contained a number of provisions which expressly contemplate implementing and/or coordinating legislation. For example, Section 25(a) states that the right of access being conferred is in addition to "other similar rights provided . . . by general law," and Section 25(c) provides that health care facilities and providers "have the meaning given in general law." Thus, Amendment 7 expressly contemplated that the legislature would have the responsibility to interpret and coordinate Amendment 7 through the enactment of general laws. It did so with respect to a range of matters.

Section 381.028(1) creates a short title for section 381.028 which repeats verbatim the title of Amendment 7. Section 381.028(2) begins with an acknowledgment that the electorate "intended to grant patient access to records of adverse medical incidents." These provisions are certainly appropriate to identify the source and basis on which the statute was being enacted.

The legislature then noted in section 381.028(2) that Amendment 7 was ***not*** intended to "repeal or otherwise modify existing laws governing *the use* of these records and the information contained therein" (emphasis added). This pronouncement is consistent with the Amendment's express directive that "access" meant *only* "inspection and copying," and an important acknowledgement that Amendment 7 does not purport to say how patients may utilize the adverse medical incident records they are authorized to inspect and copy.

Section 381.028(2) next states that pre-existing laws extending civil and criminal immunity to persons providing information to quality-of-care committees or organizations remained in full force and effect. This declaration, too, rightly reflects Amendment 7, where nothing overturns the pre-Amendment statutory immunity afforded participants in the credentialing, peer review, quality assurance, and risk management processes.

Section 381.028(3) defines terms, some of which use the very language in Amendment 7, and others of which Amendment 7 expressly authorized the legislature to define.[19] Section 381.028(4) formally declares the legislature's recognition that patients have a right of access to adverse medical incident records, using words which again essentially track the terminology in Amendment 7. All of

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[19] For example, subsection 25(c)(1) defines health care facilities and providers as having "the meaning given in general law related to a patient's rights and responsibilities." Those "general" laws are subject to change by the legislature from time to time, and nothing in Amendment 7 purported to freeze any meanings in general law as of the date the Amendment became effective.

these provisions constitute a legitimate exercise of legislative power. Indeed, they were necessary to answer such open questions as

> how [adverse medical incident reports are] requested, who is responsible for addressing such inquiries and compiling the information, what information is to be provided, [and] what information is protected by federal law.

Richardson v. Nath, 2005 WL 408132 at *7 (Fla. 6th Jud. Cir. Ct. Jan. 18, 2005).

Section 381.028(6) provides that Amendment 7 does not repeal restrictions on the admissibility of records relating to adverse medical incidents. Admissibility in civil or administrative proceedings was plainly never mentioned in Amendment 7, or implied in the ballot title and summary given voters.

Two other unobjectionable provisions in the statute are found in section 381.028(7). Subsection 7(b) specifies the statutory provisions which are to govern the production of adverse medical incident records by health care facilities and providers responsible for identifying such records. Subsection 7(c) sets limits on the fees charged by health care facilities and providers, and requires that production requests be in writing and contain certain minimum identifying information.

There was no legal basis for the district court to invalidate these several provisions. Arguably, however, two provisions in section 381.028 could appropriately be addressed with equal authority by the judicial branch. One is that portion of section 381.028(6) which provides that Amendment 7 does not repeal restrictions on the discoverability of records relating to adverse medical incidents. The other is that portion of section 381.028(5) which states that Amendment 7 is

prospective in application and does not apply to records created, incidents occurring, and actions pending before November 2, 2004.

The legislature's treatment of discoverability is the basis for the district court's first certified question, and will be addressed below. The legislature's judgment that Amendment 7 is prospective is consistent with the district court's conclusion on the point.

In sum, the district court's wholesale invalidation of section 381.028 was excessive, and in large part an undue incursion into the prerogatives of the legislative branch of Florida's government. In only one regard – discovery – is section 381.028 a potential subject for a reconciliation between the legislature and the courts.

II. The Hospital's discussion of the three certified questions.

A. Certified Question No. 1 – asking whether Amendment 7 preempts statutory 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 – should be reframed to address the discovery of "records" rather than "information" and to limit its scope only to patients.

The district court answered the first certified question in the affirmative. It held that Amendment 7 preempts the statutory immunities afforded health care providers to the extent that such "information" is obtainable through formal discovery during litigation. *Buster* at *3. In three regards, the court's formulation of the question is inconsistent with the language and intent of the Amendment, and suggests a broader right than Amendment 7 has conferred.

First, the Amendment quite specifically is limited to "records" rather than "information." Second, there are a range of statutory immunities which surround the credentialing, peer review, quality assurance, and risk management processes, of which "discovery" is only one. None of the others are affected by Amendment 7. Third, even if *patients* may obtain adverse medical incident records through formal discovery mechanisms, Amendment 7 does not in any way purport to affect immunity from discovery by any party, intervenor, or other participant in a lawsuit who is not a patient. The statutory immunity from discovery should remain as it pertains to persons who are not patients.

With a proper clarification of the issue, the Hospital does not oppose the district court's determination that Amendment 7 may have modified or limited the immunity from discovery, as regards *patients*, given adverse medical incident records.

1. By its express terms, Amendment 7 is restricted to adverse medical incident "records" and does not provide general access to "information."

Pre-Amendment peer review legislation provided confidentiality for "investigations," "proceedings," "reports," and "records." Section 395.0193(4) provided that disciplinary actions were to be reported to the Division of Health Quality Assurance of ACHA, but that the "reports" are not subject to inspection under the public records law. Section 395.0193(7) provided that "proceedings and records" of peer review committee panels, committees, and boards are not subject to the public records or open meetings laws. Section 395.0193(8) provided that

"investigations, proceedings, and records" of peer review panels, hospital committees, disciplinary boards, and governing boards are not subject to discovery (or introduction into evidence).

Language used in a constitutional amendment which proposes to change existing statutory law should be harmonized with the particular subject matter sought to be changed. *Cf.*, *In re Advisory Opinion to the Governor,* 132 So. 2d 163, 169 (Fla. 1961) ("[I]f by any fair course of reasoning the statute can be harmonized or reconciled with the new constitutional provision, then it is the duty of the courts to do so"). That is particularly appropriate, if not compelled, with respect to the term "records" in Amendment 7.

First, the ballot summary for the Amendment *expressly* differentiated between "information" and "records." It declared that "current Florida law restricts *information*" related to investigations of adverse medical incidents (emphasis added), and then advised voters that Amendment 7 would give patients the right to review "records" of adverse medical incidents. In other words, voters were told that there is a world of "information" relating to adverse medical incidents they have never seen, but that the patients would be given access only to the "records" of those incidents.

The dichotomy between information and records was carried forward into the text of the Amendment, where its statement of purpose similarly differentiated

those two terms.[20] The Statement and Purpose section of the Amendment described pre-Amendment enactments relating to "information," and advised that the legislature had restricted public access to "information" about investigations, incidents or the history of neglects and defaults, and declared that this "information" may be important to a patient. It then expressed the purpose of Amendment 7 as creating a right of access to "records," with protection given to the privacy and dignity of patients with respect to the "information" that would become available. The Amendment then expressly gave a right of access only to "records." Section 25(a). Plainly excluded from the right of access were investigatory documents and conversations, however documented or recorded.

The term "records" in the peer review statute was interpreted and given context in *Cruger v. Love*, 599 So. 2d 111 (Fla. 1992). The Court there held, in order to prohibit the chilling effect of the potential public disclosure of materials used in the peer review process, that the term "records" is informed by the legislative intent and policy behind the statutes, and consequently embraced "any document considered by a review committee or board," including a physician's application for staff privileges. *Id*. at 114-15.

When the legislature enacted section 381.028 after the voters' adoption of Amendment 7, it defined the term "records" to mean only the "final" report of any adverse medical incident. *See* section 381.028(3)(j). The Hospital concedes that

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[20] The text of the Statement and Purpose section of the Amendment is set out in *Advisory Opinion*, 880 So. 2d at 618.

this definition does not give the Amendment the liberal construction which the law requires, and that a more appropriate meaning of the term "records" in Section 25 would be the definition given that term by the Court in *Cruger*. Nonetheless, the term "information" is not an acceptable description of the materials to which patients have been given access, when full consideration is accorded the legislation sought to be changed by Amendment 7, the ballot summary given voters, and the text of the Amendment itself.

2. By its express terms, Amendment 7 does not to any extent affect the (i) immunity from suit, (ii) immunity from compulsion from testimony, and (iii) the inadmissibility of self-regulation materials into evidence.

The elaborate processes designed by the Florida Legislature to assure the delivery of quality medical services in Florida extended to processes involved with credentialing, peer review, quality assurance, and risk management. To make those processes workable, the legislature restricted public access to adverse medical incident investigations, processes, records, participants, and both public and private organizations, by granting the full range of materials confidentiality and immunity, and by barring the admissibility of adverse medical incident reports into evidence in civil or administrative proceedings. These statutory immunities have been recognized and upheld by the courts as essential to the public purpose of providing quality health care in Florida. *E.g.*, *Cruger*, 599 So. 2d at 113.

The district court did not suggest that any statutory immunities from discovery were changed by Amendment 7. In fact, the court specifically noted that

the admissibility of information gathered in accordance with Amendment 7 was not before the court, and consequently was not addressed. *Buster* at *1.[21] Similarly, both the district court and this Court have already recognized that Amendment 7 does not extend to attorney-client privilege and work product. *Buster* at *4; *Advisory Opinion*, 880 So. 2d at 620-21. The Court should make clear in its decision, possibly by restating the first certified question, that the only pre-existing statutory immunity affected by Amendment 7 was the absolute confidentiality of "records."

3. Amendment 7 does not allow persons who are not patients to obtain adverse medical incident records through the discovery process.

The district court held that "information" about medical negligence, intentional misconduct, and acts that may have caused injury or death "may be obtained during the course of litigation by the patient through the discovery process." *Buster* at *3. Through an express definition of the term "access," Amendment 7 gave patients nothing more than the right to inspect and copy adverse medical incident reports, and the right to obtain them by formal or informal request.

The court improvidently focused exclusively on the phrase "formal or informal request" in concluding that Amendment 7 was "intended to change Florida law" by overriding the ban on discoverability of adverse medical incident

[21] *Accord, Michota*, 2005 WL 900771 at *2.

"records." *Buster* at *4. The appropriate focus is on determining to whom the Amendment granted the right to make such requests. If, as the district court said, adverse medical incident records are unqualifiedly available through the discovery process, then *any* person or party in a medical negligence action would have the right to obtain such records through Amendment 7. Florida's voters, however, granted that right *only to patients*. Routine discovery procedures would allow persons who are not patients, including physicians, insurance companies, intervenors, and perhaps even *amicus* participants, to access these records. Amendment 7 is simply not that broadly written. The fact that patients need not invoke discovery or even file a civil action in order to obtain adverse medical incident records under Amendment 7 is the strongest indication that Amendment 7 cannot be extended to civil discovery.

The Court should hold that *only patients* may obtain adverse medical incident records through the formal discovery process in a pending action, and that the availability of such discovery is limited to patients. By doing so, a patient's discovery request for records would not require health care facilities and providers to serve copies on all parties to the lawsuit, and persons who are not patients would not have access to such records.

B. Certified Question No. 2 – asking if Amendment 7 is self-executing – should be answered with a *qualified* "yes."

The test for determining if a constitutional amendment is self-executing is

> whether or not the provision lays down a sufficient rule by means of which the right or purpose which it gives or is

> intended to accomplish may be determined, enjoyed, or protected without the aid of legislative enactment . . . .

Gray v. Bryant, 125 So. 2d 846, 851 (Fla. 1960). The Court observed in that case, however, that

> [t]he fact that the right granted by the provision may be supplemented by legislation, further protecting the right or making it available, does not of itself prevent the provisions from being self-executing.

Id.

Amendment 7 provides that patients shall "have a right to have access to any records" relating to any adverse medical incident which are made or received by a health care facility or provider in the course of business. Section 25(a). The Amendment defines the phrase "have access to any records" as encompassing both formal and informal requests "in addition to any other procedure for producing such records provided by general law." Section 25(c)(4).

The district court held that the Amendment was self-executing because it (i) provided sufficiently detailed definitions of terms, (ii) adopted a "fairly narrow policy" authorizing access to information regarding adverse medical incidents to patients, and (iii) left intact statutory procedures for implementation of the Amendment. *Buster* at *7.[22] Those reasons, and the very narrow form of access

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[22] The court referenced laws which relate to fees charged for access and copying, which address the timeliness of compliance, and which relate to discovery. *Buster* at *7. The court also noted, as had this Court in its advisory opinion allowing Amendment 7 onto the ballot (880 So. 2d at 622), that it does not affect either work product or attorney-client privilege. *Buster* at *4.

provided in Amendment 7, are precisely why the second certified question can only be answered with a *qualified* "yes."

The Court should answer the second certified question by holding that Amendment 7 is self-executing only insofar as patients have a right to inspect and copy adverse medical incident reports through formal or informal requests. Beyond that, though, Amendment 7 in no way restricts the legislature's plenary authority to maintain immunities deemed necessary for the self-regulation of health care facilities and providers, and to establish the manner and means by which facilities and providers identify and make available adverse medical incident records for patient inspection and copying. The district court exceeded its constitutional authority by rejecting the legislature's entire post-Amendment interpretation of Amendment 7 through the enactment of section 381.028. *Buster* at *5.

The district court invalidated section 381.028 on the basis that a post-Amendment statute would defeat the intent of the voters to make Amendment 7 "effective upon approval" (*Buster* at *8), reasoning that this provision in the Amendment "left no time for implementing legislation to be enacted," and that the voters did not intend "for subsequent legislation to be enacted to help implement that intent and purpose." *Id*. The district court was mistaken. Section 381.028 appropriately re-validated protections and immunities in the peer review and other self-policing processes which remain essential to assure quality medical care in Florida. Amendment 7 addressed only the confidentiality of adverse medical incident reports for patients.

No other court has ever held that the self-executing features of a constitutional amendment required the evisceration of an entire statutory scheme crafted to effect a declared public purpose. This Court, in fact, recognized the potential for overbreadth in construing Amendment 7 when it rejected as "speculative" the claim of opponents to Amendment 7 that the ballot title and summary did not signal the Amendment's effect on a range of existing statutes. *Advisory Opinion*, 880 So. 2d at 621.

As detailed above, section 381.028 contained the following appropriate and necessary provisions: section 381.028(1) (creating a short title); section 381.028(2) (acknowledging the intent of Amendment 7 and noting its non-affect on the use of adverse medical incident reports and the immunities given quality-of-care committees or organizations); section 381.028(3)(a)-(i) and (k) (defining terms); section 381.028(4) (declaring patients' right of access); section 381.028(5) (specifying no retroactive applicability); section 381.028(6) (addressing the use of records other than the purported ban in subsection 381.028(6)(b) on discoverability); and section 381.028(7) (prescribing production procedures and fees by reference to prior general law provisions).

While an argument can be made that section 381.028(3)(j) appropriately limits "records" to the final report of an adverse medical incident,[23] no valid argument can be made for invalidating the other provisions in section 381.028. It

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[23] *See* Amended Initial Brief of Appellant, Notami Hospital of Florida, at 29-37.

is important that the Court clarify what Amendment 7 does ***not*** do as a means of reducing the "frenzy of litigation wherein litigants and trial courts have struggled to discern its purpose and the extent of its application." *Buster* at *1.

C. Certified Question No. 3 – which asks if Amendment 7 should be applied retroactively – should be answered in the negative.

Article XI, section 5(e) of the Florida Constitution provides that a proposed constitutional amendment approved by the electorate is effective on the date specified in the amendment, if any. Amendment 7 contained a provision which states that it shall be effective on the date approved by the electorate. In seeking to give Amendment 7 a retroactive application, Buster had sought the production of documents which existed prior to the Amendment's effective date as they related to decedent's death, and any other incident of the Hospital's negligence, neglect, or default. *Buster* at *1.

The district court rejected Buster's attempt to apply Amendment 7 retroactively and held that Amendment 7 is prospective in application.[24] *Accord*, *Michota*, 2005 WL 900771 at *10; *Richardson*, 2005 WL 408132 at *7. The district court's determination in that regard, which paralleled the legislature's understanding expressed in section 381.028, applied the proper two-step analysis and reached the correct conclusion.

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[24] The court vacated an order of the trial court which had given Buster access to adverse medical incident records dating back to December 25, 2000, and limited Buster's access to records dating from the date on which the Amendment was adopted by the voters, November 2, 2004. *Buster* at *8.

The first step for determining retroactivity is to see if there was "clear evidence" that the voters intended to apply the statute retrospectively. *E.g.*, *State v. Lavazzoli*, 434 So. 2d 321, 323 (Fla. 1983); *State, Dep't of Revenue v. Zuckerman-Vernon Corp*., 354 So. 2d 353, 358 (Fla. 1977). The district court found none, and held that Amendment 7 must be presumed to operate prospectively. *Buster* at *6. Applying the principle that an effective date in a constitutional amendment rebuts any argument that retroactive application was intended (*State, Dep't of Revenue*, 354 So. 2d at 358), the court then confirmed its determination of presumptive prospectivity by noting that Amendment 7 specifically provided for an effective date. *Buster* at *6. The principle that an effective date in a statute or constitutional amendment dispels retroactivity has consistently and routinely been applied by the district courts of appeal. *See, e.g.*, *In re Name Change Petition of Mullin*, 892 So. 2d 1214, 1215 (Fla. 2d DCA 2005); *Promontory Enters., Inc. v. Southern Eng'g & Contracting, Inc.*, 864 So. 2d 479, 484 (Fla. 5th DCA 2004); *Foreman v. Russo*, 624 So. 2d 333, 336 (Fla. 4th DCA 1993), *review denied*, 637 So. 2d 234 (Fla. 1994); *Middlebrooks v. Department of State, Div. of Licensing*, 565 So. 2d 727, 728 (Fla. 1st DCA 1990).

The district court then considered the second step in a retroactivity analysis – whether Amendment 7 would run afoul of the constitutional prohibition on the impairment of vested rights if it were construed to have a retroactive effect – although the absence of retroactive intent made this determination unnecessary. *Buster* at *6-7. The court held that a retroactive application of Amendment 7 would indeed impair vested rights, and rejected Buster's argument that the

Amendment was merely remedial and procedural rather than substantive in nature. *Id*. The district court correctly applied this second step in making its determination that the voters did not intend Amendment 7 to be applied retroactively.

1. The district court properly held that there is no clear evidence the electorate intended Amendment 7 to apply retroactively.

In considering the retroactive effect of a statute, the Court has held that without a clear legislative intent favoring retroactive application, a law will not be applied to pending cases if it attaches new legal consequences to events completed before enactment. *Metropolitan Dade County v. Chase Fed. Housing Corp*., 737 So. 2d 494, 499 (Fla. 1999); *Memorial Hospital-West Volusia, Inc. v. News-Journal Corp*., 784 So. 2d 438, 440 (Fla. 2001). The principles of retroactivity applicable to statues are equally applicable to constitutional amendments. *Cf.*, *Public Health Trust of Dade County v. Lopez*, 531 So. 2d 946, 949 n.4 (Fla. 1988) ("The principles governing construction of statutes are generally applicable to the construction of constitutions."); *Buster* at *6; *Notami Hosp*., 927 So. 2d at 144 n.2.

There is a world of difference between granting a right of access to records generated from the effective day forward, and granting a right of access to records generated under pre-existing public policy statutes. The district court's search for voter intent failed to unearth any indication that a retroactive exercise of the right of access was contemplated, and Buster offered nothing in that regard.

In the district court, Buster argued only that the "purpose" for an enactment must be considered in determining intent, citing to *Metropolitan Dade County*, 737

So. 2d at 499. On that basis, she postulated that a retroactive application of Amendment 7 was necessary to carry out its dual purposes of (i) allowing patients to evaluate a prospective health care provider on the basis of prior adverse medical incidents, and (ii) providing victims of an adverse medical incident the records related to their incident. While these may well have been the purposes for Amendment 7, neither addresses the timing of the applicability of the Amendment.

The mere fact that new patients and patient victims were given the right to inspect and copy records previously barred from disclosure by law does not, in and of itself, indicate that the electorate intended to allow the inspection and copying of records created before the adoption of Amendment 7 on November 2, 2004. The purposes for Amendment 7 can be fully achieved prospectively, just as was the case in *Memorial Hospital-West Volusia*.

In that case, the Court was asked whether retroactive effect should be given to a statute which created an exemption to the public records and open meetings laws. The Court rejected a retrospective application of the exemption statute, despite language in the statute which declared its applicability to "existing" leases as well as future leases. Starting from the proposition that "the right of access to public records is a substantive right," and noting that the statute "was silent . . . concerning the effect of the exemption on those records in existence at the time the statute was enacted," the Court held that the reference to "existing" leases could "be reasonably read as exempting from disclosure the records created and meetings held after the effective date of the statute in the operation of leases existing on that date . . . ." *Memorial Hospital*, 784 So. 2d at 441.

The right of access to adverse medical incident records is also a substantive right (*Buster* at *6), and Amendment 7 is also silent concerning the effect of the newly-created right of access on records in existence on November 2, 2004. Thus, the Amendment's declaration that patients "have a right to have access" to "any" records can reasonably be read as granting access to the records created after its effective date. Indeed, as the Court held in *Arrow Air, Inc. v. Walsh*, 645 So. 2d 422, 425 (Fla. 1994), this would be the only proper application of the presumption against the retroactive application of a provision that affects substantive rights, because without a clear declaration of retroactive intent there is no assurance that affirmative consideration was given by the voters to the unfairness of retroactive application as "an acceptable price to pay for the countervailing benefits."[25]

The confidentiality of hospital committee records was reflective of the public policy of the state prior to November 2, 2004, and spelled out in sections 391.0191(8) (credentialing), 395.0193(8) (peer review), 766.101(7), 766.1016(2) (quality and performance improvement), 395.0197(6)(c), (7), (8), (13) (risk management). *And see Cruger*, 599 So. 2d at 113. Nothing in the wording of Amendment 7, or in any identified material put before the voters prior to its

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[25] In *Myers v. Hawkins*, 362 So. 2d 926, 933, n.25 (Fla. 1978), the Court noted that retroactivity determinations are perhaps best explained as the intelligent balancing and discriminating between reasons for and against retroactive application, and that the application of judgments as to the fairness or unfairness of applying new rules to prior events and circumstances are fundamental in a legal system which recognizes that "settled expectations honestly arrived at with respect to substantial interests ought not be defeated."

adoption, either states or implies that the newly-created substantive right of access would instantly abrogate the guarantee of confidentiality which shielded pre-amendment records from prying eyes in order to assure meaningful self-policing by health care providers.

The Hospital respectfully submits that in *Notami*, the First District erred in reading a retroactive intent into Amendment 7's reference to "any" adverse medical incident for patients who had "previously undergone treatment." 927 So. 2d at 144. As in *Memorial Hospital*, those terms can reasonably be read as describing nothing more than the breadth of access ("any") for a particular class of patients (past patients as opposed to individuals evaluating a new physician). Those words, which have no temporal connotation with respect to pre-Amendment records legislatively shielded from disclosure, do not overcome the presumption of prospectivity established by the Amendment's express designation of an effective date.

2. The district court correctly held that vested rights would be impaired if Amendment 7 were given retrospective effect.

A statute which impairs a substantive, vested right is unconstitutional. *Clausell v. Hobart Corp.*, 515 So. 2d 1275, 1276 (Fla. 1987), *cert. denied*, 485 U.S. 1000 (1988). Here again, the legal principle governing statutory analysis applies with equal force to a constitutional amendment. *Buster* at *6.

The district court held that Amendment 7 "constitutes a change in the law" – giving inspection and copying rights to patients for records previously inaccessible

to them, and imposing on health care providers a duty to provide adverse medical incident records upon receiving a formal or informal request. *Buster* at *6. *Accord*, *Brown v. Graham*, 2005 WL 900722 at *5-6 (15th Jud. Cir. Ct. Mar. 18, 2005); *Richardson*, 2005 WL 408132 at *7-9. Here, too, the court's analysis and conclusion is correct, and well supported in the law. *See Somer v. Johnson*, 704 F.2d 1473, 1479 (11th Cir. 1983), where the court held that a statute which provided for the confidentiality of a hospital health care committee's records created a substantive privilege.

In *Notami*, the First District held that the hospital had no substantive vested right with respect to records of adverse medical incidents, on the ground that it possessed only "an expectation that previously existing statutory law would not change." 927 So. 2d at 143-44. The court's understanding of vested substantive rights was mistaken, however. The prior, long-standing public policy of the state – that adverse medical incident records are confidential – is a vested substantive right which cannot be trivialized as a mere expectation. It has been the bedrock of the credentialing, peer review, quality assurance, and risk management processes for more than 20 years. A more accurate understanding of such a statutory foundation for the public policy of a state is found in *Salt Lake Child & Family Therapy Clinic, Inc. v. Frederick*, 890 P.2d 1017, 1019-20 (Utah 1995). There, the court held legislation abolishing the confidentiality privilege between a marriage therapist and patient could not be applied retroactively, as the plaintiff had a vested right to have her prior communications kept private.

CONCLUSION

Amendment 7 gave patients the constitutional right to inspect and copy adverse medical incident reports. Its impact on the self-regulation processes and protections of the health care industry is confined to that alone. In deciding this case, the Court should clarify the law by making clear that Amendment 7 has not changed or limited any pre- or post-Amendment provisions in the credentialing, peer review, quality assurance, and risk management statutes which deal with (i) the immunity of the investigations, records, and proceedings from discovery,[26] (ii) the immunity from suit of participants in those processes,[27] (iii) the immunity of those participants from testimonial compulsion,[28] and (iv) the inadmissibility in civil or administrative proceedings of investigations, proceedings, and records involved in those processes (including adverse medical incident reports).[29]

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[26] Sections 395.0193(8) and 766.101(5) (*re* peer review); 395.0197(6)(c) and (7) (*re* annual risk management reports of adverse incidents); 766.1016(2) (*re* patient safety). Significantly, section 395.0193(8) declares that the "investigations, proceedings, and records" of the peer review body are not subject to discovery or introduction into evidence, thereby making an important distinction between investigations and proceedings on the one hand, and "records."

[27] Sections 395.0193(7) and 766.101(5) (*re* peer review). Section 395.0193(1), for example, provides "immunity from retaliatory tort suits" to physicians who in good faith participate in peer review process.

[28] Sections 395.0193(8) (*re* peer review); 395.0197(4) (*re* risk management reports of adverse incidents).

[29] Sections 395.0193(8) (*re* peer review); 395.0197(4) (*re* risk management); 395.0197(5) (adverse incident reports); 395.0197(6)(c) and (7) (*re* annual risk management reports of adverse incidents); 766.1016(2) (*re* patient safety).

The Court should then answer the three certified questions by holding:

1. that adverse medical incident *records*, as that term is defined in *Cruger*, may be obtained by *patients*, either informally in the manner prescribed by the legislature in section 381.028(7)(d)(2), or in discovery;

2. that Amendment 7 is self-executing to the extent that it allows the inspection and copying of adverse medical incident reports, but that all other provisions in section 381.028 are valid; and

3. that Amendment 7 is prospective in application, and provides access only to adverse medical incident reports developed *after* November 2, 2004.

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APPENDICES

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