IN THE SUPREME COURT OF FLORIDA

Case No. SC10-92
L.T. Case No. 1D08-3398

On Discretionary Review of a Decision of the
First District Court of Appeal

TED WILLIAMS,

Petitioner,

v.

KEITH ROBINSON OKEN, M.D. and MAYO CLINIC OF FLORIDA,

Respondents.

BRIEF OF AMICUS CURIAE FLORIDA MEDICAL ASSOCIATION IN SUPPORT OF RESPONDENTS

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IDENTITY AND INTEREST OF THE AMICUS CURIAE

The Florida Medical Association is a professional association dedicated to the service and assistance of Doctors of Medicine and Doctors of Osteopathic Medicine in Florida. The FMA represents more than 20,000 physicians on issues of legislation and regulatory affairs, medical economics and education, public health, and ethical and legal issues. The FMA advocates for physicians and their patients to promote the public health, ensure the highest standards of medical practice, and to enhance the quality and availability of health care in Florida. The FMA frequently appears as amicus curiae in cases such as this that impact its members' legal rights and the availability of health care services.

The FMA's Division of Governmental Affairs serves as the major advocate for the medical profession before the Florida Legislature. The FMA is the only statewide organization that represents both allopathic and osteopathic physicians in every medical specialty. Over the years, the FMA has been on the forefront of issues that affect the availability of high quality, affordable health care for all Floridians. The FMA continues to push for legislative and regulatory solutions to the many challenges facing the health care system.

The FMA appears here in support of the Respondents, with the consent of both parties and subject to leave of Court, which FMA has requested by separate motion.

SUMMARY OF THE ARGUMENT

Florida courts have uniformly held that compliance with the presuit requirements of chapter 766 is a proper subject for certiorari review, and specifically that the qualifications of medical experts submitting presuit corroborating opinions are reviewable in such certiorari proceedings. This uniform rule is necessary to give effective to the protective purpose of the presuit requirements, that being to prevent the filing of noncompliant claims in the first place. If claims that do not satisfy the statutory requirements cannot be eliminated at an early stage, the defendants are beyond relief. Accordingly, the First District had jurisdiction to entertain the petition for writ of certiorari, and properly evaluated the medical expert's qualifications.

The First District also correctly interpreted the 2003 amendments to the qualifications required of medical experts, and then correctly applied the statute to hold that the expert in question here did not meet the required qualifications. The act of interpreting the statute was made necessary by the presence of undefined terms, "specialty" and "similar specialty," in section 766.102.

The First District's interpretation of the statute as amended should have been, and properly was, guided by the long Legislative history of the presuit requirements evidencing a strong Legislative intent to bar, at an early stage, any medical negligence suits deemed out of compliance with the statutory requirements. These requirements were enacted in response to decades of ongoing

crises in the provision of healthcare in Florida brought about by spiraling costs or the outright unavailability of medical malpractice insurance. Literally, these requirements exist to keep doctors practicing fully in all specialties and to keep them in Florida, thus protecting the public as well as healthcare providers.

In 2003, the Legislature materially amended the statutory qualifications for medical experts providing presuit corroborating opinion. As amended, the law eliminates the former catch-all qualification of subjectively similar knowledge and experience. Instead, the new law requires an objective test of equivalent specialization, coupled with substantial experience in practicing, teaching, or researching in the specialty in the three preceding years. The clear Legislative intent was to enhance and heighten the qualifications required of such experts.

The First District correctly concluded that claimant's medical expert did not qualify under the new law. That expert, a family practice and emergency department physician, was not in the same specialty or a similar specialty compared to the defendant, a board-certified cardiologist. Although the claimant argued that his expert has knowledge and experience in cardiology through treating emergency-room patients with cardiac conditions, that test of qualification is no longer available under the amended statutes. If there were any doubt about the sufficiency or comparability of the two kinds of practices, the doubt disappears in light of the purpose of the statutes and in particular the purpose of the 2003 amendments to the statutes. The Court should affirm.

ARGUMENT AND AUTHORITIES

The Court has for review *Oken v. Williams*, 23 So. 3d 140, 143-45 (Fla. 1st DCA 2009). *Oken* raises a threshold jurisdictional issue about whether certiorari review is proper to evaluate whether a medical expert providing a presuit opinion corroborating a claim of medical negligence satisfies the statutory requirements for such experts. The principal merits issue in *Oken* is what qualifications such a medical expert must possess under chapter 766, Florida Statutes, as amended in 2003, in order to provide such a presuit corroborating opinion. A third issue raised by the dissent in *Oken* is whether an appellate court may properly rely on Internet sources to inform its disposition of a case. The FMA will address the first two issues, believing the affirmative answer to the third question to be self-evident and, on the facts of this case, not problematic.

I. CERTIORARI REVIEW IS THE ONLY PROCEDURE THAT WILL GIVE EFFECT TO THE STATUTORY PURPOSE OF THE PRESUIT REQUIREMENTS.

Standard of Review. The exercise of certiorari jurisdiction is reviewed for abuse of discretion. *Broward County v. G.V.B. Internat'l, Ltd.*, 787 So. 2d 838, 842 (Fla. 2001) (the writ is discretionary); *Allstate Ins. Co. v. Kaklamanos*, 843 So. 2d 885, 889 (Fla. 2003) (district courts have discretion to issue the writ only on a showing of a departure from the clear requirements of law and irreparable harm).

Certiorari Review Is Necessary To Give Effect To The Purpose Of The Presuit Requirements.

The District Court's decision to exercise its certiorari jurisdiction and issue the writ on the facts of this case was appropriate, and this Court should affirm. As the District Court noted in its opinion, and as is readily borne out by a review of the voluminous cases in accord, certiorari is routinely invoked and exercised to review compliance with the presuit requirements of chapter 766. *Oken,* 23 So. 3d at 144. It would be a dramatic change in the law to rule that the vehicle of certiorari is not available in this class of cases to review whether a corroborating affidavit satisfies the statute, including whether the expert providing the affidavit is qualified as required by the statute. The qualifications are express, facial requirements of the statute that can, and should, be reviewed as early as possible to give effect to the very reason the requirements exist.

The propriety of certiorari review of expert qualifications at the presuit stage must be guided by the underlying purpose of the presuit statutes themselves. These statutes "cannot be meaningfully enforced postjudgment because the purpose of the presuit screening is to avoid the filing of the lawsuit in the first instance." *Parkway Bank v. Fort Myers Armature Works, Inc.*, 658 So. 2d 646, 649 (Fla. 2d DCA 1995). In addition, certiorari review is necessary to promote the Medical Malpractice Reform Act's purpose of encouraging settlement. *Cent. Fla. Reg'l Hosp. v. Hill,* 721 So. 2d 404, 405 (Fla. 5th DCA 1998). To give effect to

these Legislative purposes, the sufficiency of a presuit corroborating opinion *must* be raised at the earliest possible time. *Barclay v. Susac*, 780 So. 2d 152, 154 (Fla. 2d DCA 2000) ("In enacting chapter 766, the legislature has promoted the early settlement of meritorious claims and the early resolution of frivolous claims."). *See also, e.g.*, *Fassy v. Crowley*, 884 So. 2d 359, 363 (Fla. 2d DCA 2004) (failure to require compliance with presuit requirements would result in material injury to the defendants that could not be corrected on post-judgment appeal, because a post-judgment appeal would be inadequate to correct the error of subjecting the defendants to a trial that the pre-suit procedures were intended to prevent).

The First District did not abuse its discretion in exercising certiorari jurisdiction in this case. The Legislature has defined a meritorious suit for medical negligence as one in which the expert witness who provides the claimant's corroborating affidavit meets the specified qualifications. These qualifications are clear and express: the expert must be certified in the same specialty as the prospective defendant, or a similar specialty. It is no longer sufficient, as it might have been before the 2003 amendments to the statute, for the expert to rely upon a subjective showing of arguably substantially equivalent experience. Nevertheless, that is what the claimant's expert did here. The First District appropriately interpreted the new statutory requirements and appropriately concluded that the claimant's corroborating expert did not satisfy the requirements. Accordingly, the

claimant failed to state a meritorious claim as defined by the statute, and the case was properly dismissed. This Court should affirm.

II. THE COURT MUST INTERPRET SECTION 766.102 TO GIVE EFFECT TO THE LEGISLATURE'S EXPRESS INTENT TO BETTER PROTECT HEALTH CARE PROVIDERS AND THE PUBLIC AGAINST NON-MERITORIOUS LAWSUITS.

Standard of Review. The interpretation of section 766.102 is a question of law, reviewable de novo. *Florida Birth-Related Neurological Injury Ass'n v. Florida Div. of Admin. Hearings*, 948 So. 2d 705, 709-10 (Fla. 2007).

A. Presuit Requirements Are Intended To Preclude Meritless Suits And Encourage Early Settlements.

To decide this issue, the Court must give effect to the Legislative purpose behind the presuit requirements of chapter 766, Florida Statutes, and specifically the purpose of the presuit corroborating opinion required under section 766.203(2). The main goal of this section of FMA's brief is to provide the Court with a consolidated collection of sources demonstrating the Legislative history of the presuit statutes, and to encourage the Court to honor this history and the Legislative intent of the statutes in resolving the present controversy. This is critical, in order to protect Florida's physicians and their patients from the very evils that the Legislature intended to avoid through its presuit enactments, because the same evils exist today.

The presuit statutes now codified in chapter 766 were codified originally at section 768.57, Florida Statutes, as part of the Comprehensive Medical Malpractice

Reform Act of 1985, Chapter 85-175, Laws of Florida. *See Dressler v. Boca Raton Community Hosp.*, 566 So. 2d 571, 573 (Fla. 4th DCA 1990), *rev. denied*, 581 So. 2d 164 (Fla. 1991). This Court upheld the presuit notice provisions. *Williams v. Campagnulo*, 588 So. 2d 982 (Fla. 1991).

The Legislature enacted further tort reforms effective in 1988, for similar public policy reasons that this Court detailed in *University of Miami v. Echarte*, 618 So. 2d 189, 191-92 & nn.11-13 (Fla. 1993) (upholding, against access to courts challenge, statutory caps on noneconomic damages when a party requests arbitration of medical negligence claims), *cert. denied*, 510 U.S. 915 (1993). *See also Barlow v. North Okaloosa Med. Ctr.*, 877 So. 2d 655, 657 (Fla. 2004) (discussing enactment of ch. 88-1, §§ 48-54 at 164-71, Laws of Fla.); *St. Mary's Hosp., Inc. v. Phillipe*, 769 So. 2d 961, 968-70 & nn.1,2 (Fla. 2000) (extensive discussion of background and Legislative purpose of 1988 reforms).

Beginning with the Legislature's initial enactment of presuit notice requirements and continuously thereafter, this Court has acknowledged and given effect to the Legislature's intent that the purpose of the presuit requirements was to eliminate frivolous claims and to encourage settlements:

> The statute was intended to address a legitimate legislative policy decision relating to medical malpractice and established a process intended to promote the settlement of meritorious claims at an early stage without the necessity of a full adversarial proceeding.

Williams, 588 So.2d at 983; *see also, e.g., Barlow,* 877 So. 2d at 657; *Echarte,* 618 So. 2d at 192; *Weinstock v. Groth,* 629 So. 2d 835, 838 (Fla.1993) ("[T]he purpose of the chapter 766 presuit requirements is to alleviate the high cost of medical negligence claims through early determination and prompt resolution of claims, not to deny access to the courts to plaintiffs...."). Florida's District Courts of Appeal likewise have recognized and honored this Legislative intent. *E.g., Goldfarb v. Urciuoli,* 858 So. 2d 397, 398 (Fla. 1st DCA 2003); *Archer v. Maddux,* 645 So. 2d 544, 546 (Fla. 1st DCA 1994) (collecting cases holding that the purpose of the statutes was to promote early settlement and "to dispose of claims devoid of merit without the necessity of a full adversarial proceeding"). In light of this Legislative intent, the Court must affirm.

B. <u>The 2003 Amendments Imposed Heightened Requirements</u>.

The Florida Legislature substantially amended chapter 766 in 2003. In pertinent part, the Legislature amended section 766.102, as it governs the qualifications of medical experts who provide presuit opinions to corroborate a claim of medical negligence. Claimants bear the burden of proving that the defendant healthcare provider departed from the standard of care uniquely applicable to "<u>that</u> health care provider." § 766.102(1), Fla. Stat. (2007) (emphasis added). The presuit requirement of corroborating the legitimacy and viability of such a claim likewise expressly requires a direct link between the qualifications of the corroborating expert and the particular health care provider accused of

departing from the applicable standard of care. Simply put, an expert whose qualifications are not equivalent to those of "that [defendant] health care provider" is in no position to identify, or to pass judgment on that provider's satisfaction of, "that provider's" standard of care.

Three parts of the statute work together to impose specific qualifications on those experts who provide such corroborating opinions. First, section 766.203(2) requires claimants to conduct a presuit investigation, and to support their claim with a verified written opinion of a medical expert that the prospective defendant committed negligence and that such negligence was the cause of the claimed damages.[1] Second, this requirement expressly incorporates the definition of "medical expert" set forth in section 766.202(6).[2] Third, this definition of "medical expert" expressly requires a medical expert to meet "the requirements of an expert witness as set forth in s. 766.102." Therefore, the question before the Court turns on the medical expert qualifications in section 766.102, as amended in 2003, presented in the chart below alongside the old law:

[1] Section 766.203(2) provides that "Corroboration of reasonable grounds to initiate medical negligence litigation shall be provided by the claimant's submission of a verified written medical expert opinion from a medical expert as defined in s. 766.202(6), at the time the notice of intent to initiate litigation is mailed, which statement shall corroborate reasonable grounds to support the claim of medical negligence."

[2] Section 766.202(6) defines a "medical expert" as "a person duly and regularly engaged in the practice of his or her profession who holds a health care professional degree from a university or college and who meets the requirements of an expert witness as set forth in s. 766.102."

PRE-2003 STATUTE	AS AMENDED 2003
(b) If the health care provider whose negligence is claimed to have created the cause of action is certified by the appropriate American board as a specialist, is trained and experienced in a medical specialty, or holds himself or herself out as a specialist, a "similar health care provider" is one who: 1. Is trained and experienced in the same specialty; and 2. Is certified by the appropriate American board in the same specialty…. (c) The purpose of this subsection is to establish a relative standard of care for various categories and classifications of health care providers. Any health care provider may testify as an expert in any action if he or she: 1. Is a similar health care provider pursuant to paragraph (a) or (b); *or* 2. Is not a similar health care provider pursuant to paragraph (a) or paragraph (b) but, to the satisfaction of the court, possesses sufficient training, experience, and knowledge as a result of practice or teaching in the specialty of the defendant or practice or teaching in a related field of medicine, so as to be able to provide such expert testimony as to the prevailing professional standard of care in a given field of medicine. Such training, experience or knowledge must be as a result of the active involvement in the practice or teaching of medicine within the 5-year period before the incident giving rise to the claim.	(a) If the health care provider against whom or on whose behalf the testimony is offered is a specialist, the expert witness must: 1. Specialize in the same specialty as the health care provider against whom or on whose behalf the testimony is offered; or specialize in a similar specialty that includes the evaluation, diagnosis, or treatment of the medical condition that is the subject of the claim and have prior experience treating similar patients; and 2. Have devoted professional time during the 3 years immediately preceding the date of the occurrence that is the basis for the action to: a. The active clinical practice of, or consulting with respect to, the same or similar specialty that includes the evaluation, diagnosis, or treatment of the medical condition that is the subject of the claim and have prior experience treating similar patients; b. Instruction of students in an accredited health professional school or accredited residency or clinical research program in the same or similar specialty; or c. A clinical research program that is affiliated with an accredited health professional school or accredited residency or clinical research program in the same or similar specialty.

The old law allowed experts to be "similar health care providers" when compared to the prospective specialist defendant(s); whereas under the new law, experts must practice in the "same or similar specialty" and must have been active in practicing, teaching, or researching in that specialty for the preceding three years. To paraphrase the analysis allowed under the old law, trial courts had the discretion to determine that a medical expert was "close enough" in a rough-justice sense, if the expert seemed to possess sufficient knowledge and experience to be a fair critic of whether the prospective specialist defendant's provision of health care services met the governing standard of care. *See Hunt v. Huppman*, 28 So. 3d 989, 992 (Fla. 2d DCA 2010) (noting that under the old statute, "specialized knowledge" was sufficient, but not under the new law). As amended in 2003, however, section 766.102 eliminated that subjective basis of qualification, replacing it with a more objective and more stringent "same or similar specialty" standard coupled with recent and ongoing activity in the specialty.

The Staff Analysis for the 2003 bill used the term "enhanced" to describe the change in corroborating witness qualifications.[3] Staff Analysis at 4, 44. The new law was intended to heighten the qualifications required of a medical expert who provides a presuit opinion corroborating the existence of negligence and causation

[3] The Staff Analysis is available through Online Sunshine at the following address: http://www.flsenate.gov/data/session/2003D/Senate/bills/analysis/pdf/2003s0002D.hc.pdf.

to support a prospective claim for medical negligence or wrongful death. Ch. 2003-416, Laws of Fla., § 48 (CS/SB 2-D). Courts interpreting the new requirements for corroborating experts have uniformly concluded that the Legislature's intent was to make the qualifications more stringent. *See, e.g., Hunt*, 28 So. 3d at 992 ("The legislature has clearly indicated its intent to **narrow the class** of person who is qualified to give medical expert opinions by amending the statutory scheme in 2003.") (emphasis added); *Oken*, 23 So. 3d at 146. The Court's disposition of this case must be consistent with this Legislative intent to enhance and heighten the requirements for medical experts.

C. The Statute Must Be Interpreted To Give Effect To The Legislative Intent To Protect Health Care Providers And The Public.

As to the threshold question of whether the statute is subject to interpretation at all, the Court must interpret the statute because, as the staff analysis of the 2003 amendments and the First District in *Oken* expressly noted, the Legislature failed to define "specialty" or "similar specialty" as used in section 766.102. Staff Analysis at 18, 57; *Oken*, 23 So. 3d at 146. The presence of a significant and operative term that is undefined in a statute creates an ambiguity requiring judicial interpretation. *See, e.g., Nicarry v. Eslinger*, 990 So. 2d 661, 664 (Fla. 5th DCA 2008) (statute must be construed to resolve the ambiguity created when a key term is left undefined). The meaning to be given an undefined term may be determined by reference to the common use of the term within the relevant industry. *Florida*

Dep't of Revenue v. New Sea Escape Cruises, Ltd., 894 So. 2d 954, 961-62 (Fla. 2005) (interpreting undefined term "interstate" to mean within the state's boundaries, as used in sales and use tax context); *Southeastern Fisheries Ass'n, Inc. v. Department of Natural Resources*, 453 So. 2d 1351, 1353-54 (Fla. 1984) ("fish trap" statute was not void for vagueness, when interpreted by reference to use of the term within the fishing industry and its common meaning).

The Court's interpretation of "specialty" and "similar specialty" as used in chapter 766 must give effect to the legislative intent of these statutes, as amended. *E.g., Knowles v. Beverly Enterprises-Florida*, 898 So. 2d 1, 5 (Fla. 2004) (legislative intent is the polestar of statutory interpretation). This interpretive process properly includes consideration of a statute's history and the evil to be avoided through its enactment. *Smith v. Ryan*, 39 So. 2d 281, 283 (Fla. 1949) ("[T]he Supreme Court of Florida in construing a statute will consider its history, evil to be corrected, the intention of the lawmaking body, subject regulated and object to be obtained.").

The history of section 766.102 reveals repeated Legislative attempts to curtail the filing of meritless medical negligence claims, and to reduce the cost of medical malpractice insurance so that health care providers in Florida, especially those in high-risk specialties and high-cost parts of the state, can afford to remain in practice and remain in Florida. *See, e.g., Echarte*, 618 So. 2d at 192 (detailing the existence of a medical malpractice insurance crisis and the enactment of presuit

requirements to eliminate frivolous claims); *Estate of McCall v. U.S.*, 663 F.Supp.2d 1276, 1300 (N.D. Fla. 2009) (overview of the crisis, the reasons for it, and the Legislative policy decisions designed to alleviate the crisis). Under the weight of an ongoing crisis in healthcare arising largely out of the runaway cost of medical malpractice insurance coverage, the Governor appointed a Select Task Force in 2002, charging it to evaluate the malpractice crisis and make recommendations for change to alleviate that crisis. *McCall*, 663 F.Supp.2d at 1299-1300; *Barlow v. North Okaloosa Med. Ctr.*, 877 So. 2d 655 (Fla. 2004) (summarizing purposes of 2003 tort reform); *Weingrad v. Miles*, 29 So. 3d 406, 408 (Fla. 3d DCA 2010) (purposes of 2003 tort reform and other reforms dating back to 1975 were to alleviate a crisis in medical malpractice insurance); Task Force Report, Governor's Task Force chairman's summary letter, Jan. 29, 2003.[4]

With respect to expert witness qualifications, the Governor's Task Force identified as a "fairness issue" the problem of allowing a judge decide who qualifies as an expert, producing varying results on a case by case basis because of the fact-specific and subjective nature of the analysis. Task Force at 237-38. Significantly, a specific example the Task Force presented was the *inappropriateness* of allowing a family practitioner to testify as an expert against a neurosurgeon. Task Force at 238. The Task Force recommended instead that

[4] The Governor's Task Force report is available online at the following address: http://www.doh.state.fl.us/myflorida/DOH-Large-Final%20Book.pdf

experts should be "in-kind specialists" with "the same or equal qualifications beginning with the pre-suit affidavit level up to and including any trial." Task Force at 238, 239-40.

The Florida House Select Committee on Medical Liability Insurance issued a comprehensive report in March of 2003,[5] also addressing in relevant part the qualifications of expert witnesses and reflecting that the FMA and the plaintiffs' lawyers' association suggested reforms in this area. Select Committee at 49 & App. II Interestingly, both groups recommended that "specialists be used as expert witnesses against specialists and general practitioners be used as expert witnesses against general practitioners." *Id.* App. II at 16, 163. The plaintiffs' lawyers, however, recommended retaining the discretion of the trial court to accept non-specialists if the court found the expert to be sufficiently knowledgeable in any given case (i.e., the old system). *Id.*

With the reports and recommendations of the Governor's Task Force, the House Select Committee, and the FMA in hand as well as voluminous other input, the Legislature addressed comprehensive tort reform in the 2003 regular session

[5] The House Select Committee report is available online at the following address: http://www.myfloridahouse.gov/Sections/Documents/publications.aspx?CommitteeId=2147&PublicationType=Committees&DocumentType=General Publications&Session=2003&SessionId=28. To navigate to this site, go to www.myfloridahouse.gov, click on Councils & Committees, select Regular Session 2003, and scroll down to Select Committee on Medical Liability Insurance near the bottom. Under Committee Documents, click on General Publications. This report, without its attachments, is also part of the Appendix to Petition for Writ of Certiorari filed by Dr. Oken and Mayo Clinic in the First District, at Tab 6.

and several subsequent special sessions. The Legislature finally passed the amendments to section 766.102 along with a comprehensive tort reform package in a fourth special session in the summer of 2003, with an effective date of September 15, 2003. Ch. 2003-416, Laws of Fla., § 48 (CS/SB 2-D).

Notably, the Legislature included specific findings substantiating the need for these reforms:

> (1) The Legislature makes the following findings:
>
> (a) Medical malpractice liability insurance premiums have increased dramatically in recent years, resulting in increased medical care costs for most patients and functional unavailability of malpractice insurance for some physicians.
>
> (b) The primary cause of increased medical malpractice liability insurance premiums has been the substantial increase in loss payments to claimants caused by tremendous increases in the amounts of paid claims.
>
> (c) The average cost of a medical negligence claim has escalated in the past decade to the point where it has become imperative to control such cost in the interests of the public need for quality medical services.
>
> (d) The high cost of medical negligence claims in the state can be substantially alleviated by requiring early determination of the merit of claims, by providing for early arbitration of claims, thereby reducing delay and attorney's fees, and by imposing reasonable limitations on damages, while preserving the right of either party to have its case heard by a jury.
>
> (e) The recovery of 100 percent of economic losses constitutes overcompensation because such recovery fails to recognize that such awards are not subject to taxes on economic damages.

§ 766.201, Fla. Stat. (2003) (preamble) (quoted in *McCall*, 663 F.Supp.2d at 1300).

In light of the history of these statutes and the evil to be avoided through their enactment and amendments, the Court must interpret "specialty" and "similar specialty" to require that medical experts providing presuit corroborating opinions have the same qualifications as do the health care providers whose care the experts are evaluating. The Legislature affirmatively *removed* from the statute the former catch-all qualification of substantially equivalent knowledge, replacing it with an objective test of specialization coupled with specific requirements of active practice, teaching, or research in the three years preceding the lawsuit. The 2003 amendments were intended to "enhance" the expert requirements, not to leave them the same as they had been before. The new law makes it harder to qualify as a medical expert, and does so expressly and intentionally. The Court's construction of the statute must give effect to this Legislative intent.

The claimant in this case invited the lower courts, and again invites this Court, to violate the express dictates and clear intent of the amended statutes by resorting to the old catch-all qualification for medical experts. The First District correctly rejected the claimant's argument. The long history of the presuit requirements, as heightened by the 2003 amendments to the statute, makes it clear that the goal of the statute is to eliminate claims that do not meet the tests of legitimacy that the Legislature set forth in the statute itself – literally, to spare healthcare providers from having to defend such claims, and to spare the public the increased costs and reduced availability of healthcare resulting from the costs of

litigating such claims. These "evils to be avoided" are most effectively avoided by honoring the Legislature's express "enhancement" of the qualifications of medical experts. Finally, the First District properly resorted to industry meanings of "specialist" to resolve this case. *See New Sea Escape Cruises, Ltd.*, 894 So. 2d at 961-62 (interpreting undefined statutory term by reference to its intended context); *Southeastern Fisheries*, 453 So. 2d at 1353-54 (Fla. 1984) (same, by reference to industry usage).

CONCLUSION

The First District properly exercised its certiorari jurisdiction to review and quash the trial court's order, because certiorari review is essential to give effective to the protective purpose of the presuit statutes. On the merits, the First District appropriately interpreted the statute to require that a medical expert providing a presuit corroborating opinion must have specialist credentials equivalent to those of the defendant healthcare provider, and appropriately rejected the claimant's attempt to resort to the old law's subjective alternative qualification based on alleged knowledge and experience. This Court should affirm.

Respectfully submitted this 7th day of September, 2010.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing was furnished by electronic mail to counsel listed below at their respective e-mail addresses of record, this 7th day of September, 2010.

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CERTIFICATE OF TYPEFACE COMPLIANCE

I HEREBY CERTIFY that this brief was prepared using Times New Roman 14 point type, a font that is proportionately spaced and in compliance with Florida Rule of Appellate Procedure 9.210.

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