No.___

In the

# Supreme Court of the United States

Sandra A. Zikry
*Petitioner,*

V.

*Respondent* [redacted], *etal..*
Exodus Women's Center Inc.

**MOTION FOR EXTENSION OF TIME TO FILE PETITION OF WRIT OF CERTIORARI**

**FLORIDA SECOND DCA - 2D-22-2010 (CONSOLIDATED WITH 2D-22-2013, & 2D-22-2017) - FLORIDA SUPREME COURT ORDER ATTACHED**

Petitioner, Sandra A. Zikry respectfully requests an extension of time to file her petition of writ of certiorari.
June 17th, 2024 the Florida Supreme Courts refused to accept jurisdiction on a Notice of Mandatory review due to invalid or unconstitutional statute.

90 days from June 17, 2024 is September 16th, 2024 without an extension. An added 60 day extension from September 16th, 2024 - is November 15th, 2024.

We seek an extension because

1. We would like to seek petition of writ of mandamus and prohibition in the Florida & US SUPREME COURTS first, to consolidate all issues.
2. It takes a lot of time to create these petitions, especially with lack of legal representation, the petitioner does not have their paperwork ready, is homeschooling their child, and have ongoing litigation for their own child in connection to this case.
3. The petitioner has adhesive arachnoiditis as a result of this case due to assault and battery, and is suffering from permanent and ongoing health issues, and is in need of time to create the petition.
4. The petitioner was deprived due process, was discriminated against, and faced racial biased by the Florida Court system in attempting to seek justice for experiencing a hate crime and assault committed by her own providers during labor and delivery. The Final Order of dismissal and the appellate process involved a lot of civil rights violations deprivation of due process, discrimination, loss of right, unconstitutional statues being applied to civil claims that don't apply to those claims, fraud amongst the courts committed by judges and attorney, etc. These parties intend to file federal complaints for these civil right violations, and for fraud amongst the courts and perjury that has affect civil torts and claims, illegal harassment, and potential criminal prosecution -.

SUPPORTIVE LEGAL ARGUMENTS -

denial of due process, a right to be heard, and to the appellant violated the Free Exercise Clause of the First Amendment & 4th amendment

the trial court's reasoning did not satisfy the Fourteenth Amendment prohibition against discrimination.

PORTIONS OF PLAINTIFF'S EXPERT WITNESS REPORTS -

Dr.Ertner affidavit in part: "I am board certified in Anesthesiology and am engaged in the practice of providing care to patients such as the

patient that is subject to this Notice of Intent. I am familiar with the standard of care as it pertains to the allegations of Sandra Zikry against H. D. Vann, Gina Washington, Jill Hechtman, Sobiah Mallick, Leah Dilone, Baycare Health Systems Inc. d/b/a St.Joseph's women's hospital including those acting as agents Thereof and documented in the medical records as having rendered care surrounding the incident outlined in the Notice of Intent. Further included in Mrs.Zikry's Notice of Intent are American Anesthesiology of Florida Inc., Exodus Womens Center Inc, & Tampa Obstetrics P.A.," "I have been retained to provide my assessment of the care provided by H. D. Vann, Gina Washington, & St.Joseph's women's hospital on July 5, 2017" "Mrs.Zikry remembers Dr.Vann performing the procedure." "Medical record documentation indicates H. D. Vann performed the epidural procedure at the request of Gina Washington" "Mrs.Zikry further remembers another anesthesia provider coming into her her room & attending to her. The nursing notes support that the anesthesia services was consulted for evaluation of Mrs.Zikry's pain at 1:00 AM on the morning of July 6. There's no documentation of this consultations, the findings, or any interventions provided in the anesthesia records." "**The lack of documentation** surrounding the care Ms.Zikry received from the anesthesia care team during her labor is concerning and represents a **failure to adhere to the standard-of-care** as it pertains to adequacy of that documentation." "..bolus consisted of 20ml of plain 0.2% ropivacaine. While not a deviation from any specific standard-of-care, this is a substantially higher dose than would be ordinarily given to a patient like Ms.Zikry under ordinary circumstances by most reasonably trained anesthesia providers. **Further, that dose deviates from the manufacturer's recommendations** provided in the package insert for the medication (obtainable on the FDA's website) which states: "During epidural administration, Naropin should be administered in incremental doses of 3 to 5 mL with sufficient time between dose to detect toxic manifestations of unintentional intravascular or intrathecal injection" "Mrs.Zikry maintains that she did not want to receive the epidural and denies having signed any consent forms for its placement. She further denies that there was any discussions of the risks or benefits prior to being administered to her." "The consent form is not specific as to what type of anesthesia would be performed" "According to the two handwriting analyses of the informed consent form noted above, the signature is not Ms.Zikry's. According to this analysis, informed

consent was not properly obtained, and Ms.Zikry's signature as it appears on the consent form is not, in fact her own. **This constitutes a violation of the standard-of-care** as it pertains to the performance of any medical procedure upon a patient being administered care in any clinical setting where that procedure is non-emergent. Thus, any injuries that she sustained during the placement, maintenance, or removal of her epidural was caused as a direct result of the above-noted negligence in properly obtaining appropriate informed consent."delay in diagnosing adhesive arachnoiditis was because it was an "uncommon disorder" that requires, "specialized imaging based on a high index of suspicion by a provider who has some familiarity with its signs and symptoms." Certification that Dr. Ertner had not been found guilty of fraud or perjury in any jurisdiction.(R.160-162) (Dr.Arandas affidavit in part)-

8. I have had specialized Ivy League training and experience and have specialized knowledge concerning the subject of standards of care for the proper diagnosis and treatment of patients like **Sandra Zikry** (DOB 04/09/1997). A copy of my current curriculum vitae is attached hereto as **Exhibit "A"**.

9. I have reviewed carefully the applicable case files and medical records belonging JR. MD, Hayley J Morris, AA, Leah M Dilone, AA, Laura T Williams RN, Paula J Bryant-Barnett, ARNP, and Amy K. Reinke, RN, together with any professional associations, partnerships or corporations with which these individuals/entities were affiliated while rendering care to Sandra Zirky (DOB: 04/09/1997). The above-named health care providers, acting directly and/or through their employees, agents, representatives, nurses or physicians, both individually and collectively, deviated from the standard of care in at least the following ways:

12. After a careful review and analysis of Sandra Zikry's (DOB: 04/09/1997) medical records made available to me, as well as, my personal evaluation of Sandra Zikry's (DOB: 04/09/1997) in September 2019, it is my professional opinion that there are reasonable grounds to believe that the standard of care was violated during the placement of the epidural(s) and/or anesthesia for labor and delivery at St. Joseph's Women's Hospital on approximately between the dates of July 5, 2017 and July 9, 2017. As such, this serves to corroborate that there are reasonable grounds for initiating medical malpractice litigation against St. Joseph's Women's Hospital, Jill L. Hechtman MD , Sandra Valiquette RN, Gina P. Washington, MD, Rebecca Heller, RN, HD Vann,

13. The actions and omissions of St. Joseph's Women's Hospital, Jill L. Hechtman MD , Sandra Valiquette RN, Gina P. Washington, MD, Rebecca Heller, RN, HD Vann, JR. MD, Hayley J Morris, AA, Leah M Deione, AA, Laura T Williams, RN, Paul J Bryant-Barnett, ARNP, and Amy K. Reinke, RN, acting directly and/or through their employees, agents, representatives, nurses or physicians, as described in paragraph 12, above, were negligent and below applicable standards of care for hospitals, physicians, physician assistants and nurse practitioners practicing in Hillsborough County, Florida, and similar medical communities and were below the standards of care set forth in §766.102, Fla. Stat. (i.e., below that level of care, skill, and treatment which, in light of all relevant circumstances, was considered appropriate by reasonably careful physicians and nurses in similar communities having the same facilities).

(Nowhere does the statute say that a claimant must individually name each future defendant in the affidavit." *Mirza v. Trombley, 946 So. 2d 1096, 1100) (Fla. 5th DCA 2006)* as long as the presuit investigation corroborates reasonable grounds "as to one theory of

negligence," the affidavit requirement is satisfied. (*Columbia/JFK, 805 So. 2d at 29. (COHEN v. DAUPHINEE (1999)*- hold that the presuit affidavit required by *sections 766.203(2) and (3)* is protected by the provisions of section *766.205(4).)* An opposing party may not impeach an expert witness in satisfaction of the requirements of sections 766.203(2) and (3).) The claimant's failure to produce the corroborating medical expert opinion prior to the running of the statute of limitations will not result in dismissal of the complaint as a matter of law, (*Stebilla v. Mussallem, 595 So.2d 136 (Fla. 5th DCA), rev. den., Mussallem v. Stebilla, 604 So.2d 487 (Fla. 1992).* "[K]nowledge an agent or employee acquires within the scope of her authority may be imputed to her principal/employer." *Chang v. JPMorgan Chase Bank, N.A., 845 F.3d 1087, 1095 (11th Cir. 2017)*

It is entirely improper for the courts to take considerations of statements that are not true, nor supported with any evidence, when the affidavit of Dr.Ertner on its face does allege a breach of the standard of care. This is perjury amongst the courts.

There is presence of a foreign body in the spine of the Plaintiff. (R.1004-1027) Experts have confirmed via MRI that there is a white mass at the exact location of the epidural placement, & is likely due to the high dosage of the anesthesia and potentially fragments in the spine, which is an establishment of prima facie evidence & presumed negligence upon the provider as provided under Section **766.102(3)(b)**

**Under 458.331 and 464.018 "It shall be legally presumed that prescribing, dispensing, administering, mixing, or otherwise preparing legend drugs, including all controlled substance such,**

**inappropriately, or in excessive or inappropriate quantities is not in the best interest of the patient & is not in the court of physicians professional practice, without regard to his or her intent.**

INAPPROPRIATE BIASED FROM THE JUDGE & HIS COMMENTS -

·THE COURT:· So who issues certificates?· You
get that at the county fair or?

·THE COURT: Okay. Okay. Don't keep reading me from that. Okay?· I just need you to -- you got any -- else you want to summarize?

THE COURT" "do you have any idea what she's talking about?"

THE COURT: "I don't know anything about this case, but you are never going to win on your own."

At the beginning of the May 23rd, 2022, Hearing the judge asks the court reporter, "if she is ready for more fun." It was later found that the court reporter tampered with the transcripts, falsified the transcripts, and removed over 25 statements. The Court of Appeals in the 2nd DCA of Florida State approved the changes made to the errata sheet and was on the official record.

OBJECTIONS WERE MADE DURING THE HEARING AND THE JUDGE OVERRULED THE OBJECTIONS WITHOUT EVEN HEARING WHAT THE OBJECTIONS WERE -

Pursuant to Florida Statute **766.106(6)(1),** unsworn statements are not admissible or discoverable in any civil action for any purposes., THESE PARTIES ATTEMPTED TO OBJECT THAT THE UNSWORN

STATEMENTS OF THE PLAINTIFF WAS BEING USED AGAINST THEM IN A CIVIL CASE DESPITE THAT THEY ARE NOT ADMISSIBLE.

THERE WERE SEVERAL TORT CLAIMS THAT WERE DISMISSED WITHOUT REASON OR LEGL ARGUMENTS AND IS NOT SUBJECTED TO THE MEDICAL MALPRACTICE STATUTES -

A. There is no legal analysis from the civil circuit court dismissal to support the dismissal of several claims, no has there been any legal arguments from the opposing party to support the dismissal

1. Vicarious liability
2. Negligence
3. Gross negligence/ willful wanton conduct
4. Assault
5. Battery
6. Intentional misrepresentation
7. Medicaid/insurance fraud
8. Sexual assault
9. Attempt of murder
10. Fraud/forgery
11. Fraudulent concealment
12. DIRECTING INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

A health care provider may be liable for battery and medical negligence if the provider performed some activity on the patient without the patient's informed consent (See ***Vomacka v. Hervey,*** 382 So. 2D 41, 42 (Fla.2d DCA 1979); ***O' Grady v. Wickman,*** 213 So. 2d 321, 327 (Fla. 4th DCA 1968); See ***[Brown v. Wood*** 202 So. 2d 125, 130 (Fla. 2d DCA 1967);

The opposing counsel misrepresented to these courts & to the trial courts the legal principles, the testimony of the plaintiff, & the plaintiffs complaint/allegations. The order of dismissal is a complete fraudulent misrepresentation of the plaintiffs claim.

STATUTE OF LIMITATIONS FOR INTENTIONAL TORTS DIFFER FROM MEDICAL MALPRACTICE SOL -

(4 years. *Fla. Stat. § 95.11(3).* Florida applies the discovery rule, thereby triggering accrual on the date that the facts giving rise to the cause of action were discovered.) (Fla. Stat. § 95.031(2)(a)- An action founded upon fraud under *s. 95.11(3)*, begins running when the facts were discovered, **no later than 12 years of commission**.)

(*Puchner v. Bache Halsey Stuart, Inc., 553 So. 2d 216 (Fla. 3d DCA 1989)* (whether the plaintiff should have known that he had a cause of action for fraud is ordinarily a jury question) (SOL begins to run from the discovery of the forgery. See *Miami Beach First Nat'l Bank v. Edgerly, 121 So. 2d 417, 418 (Fla. 1960).)*See ((R.3472-76, R.3024-3031) ("A defendant's knowing concealment or non-disclosure of a material fact may only support an action for fraud where there is a duty to disclose"); *State v. Mark Marks, P.A., 654 So. 2d 1184, 1189 (Fla. 4th DCA 1995)* Whether or not fraudulent concealment is sufficient to toll the statute of limitations is a question of fact. (*see Hearndon v. Graham, 767 So. 2d at 1184-1185.)*

FAILURE TO HOLD AN EVIDENTIARY HEARING -

arguments regarding insufficiency of a presuit investigation are generally not a proper matter to be considered on a Motion to Dismiss, but should be determined after an evidentiary hearing because when considering a Motion to Dismiss, the Court is confined to the four-corners of a complaint, draw all inferences in favor of the pleader, and accept as true all well pled allegations, is not intended to determine issues of ultimate fact. See, ***Martin v. Fla. Power & Light Co.***, 963 So.2d 258 (Fla. 3d DCA 2007); ***Woods v. Sapolsky***, 821 So.2d 376 (Fla. 1st DCA 2002); ***Fox v. Prof'l***

***Wrecker Operators of Fla., Inc.***, 801 So.2d 175, 178 (Fla. 5th DCA 2001). ***Roberts v. Children's Med. Servs.***, 751 So.2d 672, 673 (Fla. 2d DCA 2000) and do not require that the corroborating expert's affidavit give notice of every possible instance of medical negligence." **Jackson**, 976 So. 2d at 1128 (citing ***Davis v. Orlando Reg'l Med. Ctr.*** 654 So. 2d 664, 665 (Fla. 5th DCA 1995)

The failure of the trial court to conduct such an evidentiary under section **766.206** prior to its imposition of the drastic sanction of dismissal constitutes reversible error. See ***Faber v. Wrobel***, 673 So. 2d 871, 872- 73 (Fla. 2d DCA 1996)

DEFENDANTS FAILURE TO RENDER FULL MEDICAL RECORDS -

Defendants failed to render fetal monitor strips(R.746-747 & R.760-765), insurance records (R.749), ultrasound records, and failed to maintain documentation notes of the second Anesthesiologist (R.160-162), documentation of catheter placement/removal (R.1195), documentation of the depth of the needle placement, test dosage,(R.160-162) & documentation of anesthesia vitals.(R.433) The Defendants, also engaged in numerous discovery delays. (R.768, R.771-773, R.777-778)

If defendant did not timely provide medical records pursuant to § **766.204(2)**,, such motion to dismiss shall be denied and the requirement for a claimant to file a corroborating medical affidavit may be waived.See

***Martin Mem'l Med. Ctr., Inc. v. Herber,*** 984 So. 2d 661, 664 (Fla. 4th DCA 2008), ***Watson v. Beckman***, 695 So. 2d 436, 437 (Fla. 3d DCA 1997), ***Escobar v. Olortegui DDS***, 662 So. 2d 1361-1364(Fla. 4th DCA 1995) See, e.g.,

See ***Medina v. Pub Health Trust*** *743 So. 2d 541 (Fl. 3rd DCA 1999) See also* ***Otto v. Rodriguez****, 710 So.2d 1 (Fla. 4th DCA), review denied, 718 So.2d 170 (Fla. 1998).*

(reason that a number of courts in other jurisdictions have created a rebuttable presumption shifting the burden of persuasion to a health care provider who negligently alters or loses medical records relevant to a malpractice claim. See ***Bondu v. Gurvich***, 473 So. 2d 1307, 1313 n.5 (Fla. Dist. App. 1984)

Under Florida Supreme Court case law the failure to create an operative report creates a presumption of negligence that waived the presuit expert requirement. See ***Public Health Trust v. Valcin,*** 507 So. 2d 596, 599-601 (Fla. 1987);

(*Fla. Stat. 395.3025 & 456.057, Fla. Admin. Code Ch. 10D-28.59, Florida Regulations 59A-3.245, Rule 64B8-10.002(3), FAC, 458.331(1)(m)*, requires all medical records to be produced & maintained by both doctors & hospitals.)

Medical records were requested for the first time in July of 2019 to conduct an investigation, medical records were missing in 2019. (Appellee(s) were not entitled to a corroborating report, but was furnished one, proving there's

inadequacy of medical records & informed failure to provide full documentation & discovery requests waivers defenses)

(*see Escobar v. Olortegui, 662 So.2d 1361 (Fla. 4th DCA 1995)* (doctor/defendant waived the corroborating medical opinion requirement where the doctor had previously received a notice of intent to file suit but failed to comply with discovery requirements);*Watson v. Beckman, 695 So.2d 436 (Fla. 3d DCA 1997)* (holding that the defendant/dentist waived the corroborating expert opinion requirement where he received a notice of intent but failed to comply with plaintiff's request for dental records). (plaintiffs "could have filed notice and then requested the [medical] records" and the "corroborating medical opinion requirement would then be waived upon [the physician's] failure to comply." *Otto, 710 So. 2d at 2.*)

Medical records were requested during the first presuit that was initiated in 2020, **the same medical records were missing** (R.433-434, 495). In the second NOI 2021, Dr.Ertner signed an affidavit, **the same medical records were missing.** Both expert affidavits (Dr.Aranda & Dr.Ertner) established that there is lack of documentation in the medical records.

A. There's no documentation of the depth of the epidural placement, a test dosage of the anesthesia. (R.160-162) documentation of catheter placement/removal (R.1195), Anesthesia vitals are missing. (R.433, 329, 547) see R.771, R.1371-1372

B. There is no medical insurance that supports authorization of the anesthesia & L&D services. (R.749)

C. Failed to render fetal monitor strips (R.746-747 & R.760-765, R.2671, 2673)

D. There is no documentation of the second anesthesiologist that came in the room during a pain evaluation(R.439). Around 1 AM on 7/6/17, to assess epidural complications, and "injected more medicine.".There is no documentation of what happened, who came in the room, how much anesthesia was injected, etc. (R.160-162)

(If the employee doctor is found to have deliberately omitted making the report, or the hospital is found to have deliberately failed to maintain it, "then a conclusive, irrebuttable presumption that the surgical procedure was negligently performed will arise, and judgment as to liability shall be entered against the hospital leaving only the issue of damages to be decided by the jury. *"Although it is the duty of the physician, the hospital has a separate duty on it to see to it that the medical records contain surgical treatment notes. Bondu v. Gurvich, 473 So.2d 1307 (Fla. 3rd D.C.A. 1985), public health trust v. valcin, 507 so.2d 596, 599 (fla. 1987), (Garcia v. Tarrio, 380 So.2d 1068 (Fla. 3d CCA 1980),* every hospital would do well to ensure that a patient's medical records contain a sufficient operative note.)

(Failure to comply with presuit discovery constitutes a waiver of the corroboration requirement, sanctions, and striking defenses under the Act *F.S. 766.205(1-4),* where the defendants withheld medical records R.3146-3147, its relevant policies, procedures, dosage guidelines, prior to the first NOI (R.695, 2012, R.786-787, R.791) & thereafter, alleging it is not relevant or in "scope". See Motion for Sanctions cited in I.B., R.2698 & R.1485.) *766.106(6)(b)(2)*- Medical records shall be produced as provided in s. *766.204*.

The Defendants, also, retained an expert witness who is affiliated with the hospital and anesthesia group in this action. This is considered a conflict of interest. (R.218-227)

The affidavit did not comply with the statutory provisions, **766.203(3),**

"Of which statement shall corroborate reasonable grounds for lack of negligent injury sufficient to support the response denying negligent injury"

And instead the affidavit states (in part) that: **nothing** David Vann, M.D., Leah Dilone, A.A., and American Anesthesiology of Florida, Inc. **did cause or contributed to the outcome in this case**.

The Appellee's experts did not dispute the anesthesia dosage, inadequate documentation, nor disputes that consent was properly obtained or what aspect of negligence is being refuted with supporting facts.

> (see *Duffey vs. Brooker* - inadequate verified medical expert opinion may be prima facie evidence of the lack of a reasonable basis to deny a claim when there's no additional facts or what aspect of alleged negligence being refuted.)

FACTUAL DISPUTES IN REGARDS TO THE STATUTE OF LIMITATIONS -

Statute of limitations involving allegations of fraud is not an issue of law, but rather a jury question. Therefore, improper to address during a Motion to Dismiss. The statute of limitations does not begin to run until there's knowledge of all the elements to a completed tort, including the negligence act, the injury, and causal connection between the two. See **Ash v. Stella**, 457 So 2d 1337 (Fla. 1984), **Florida Patient's Compensation Fund v. Tillman**, 487 So. 2d 1032 (Fla. 1986), and the **Florida's Compensation Fund v. Cohen.** 488 So. 2d 56 (Fla.1986)

FRAUDULENT CONCEALMENT PLAYED A ROLE IN THE TOLLING OF THE SOL -

Lay persons should not be charged with greater knowledge of their physical condition or that particular symptoms suggest an act of negligence than that possessed by the physicians on whose advice they must rely. It is unfair to expect patients to realize there is a causal connection when their own doctors do not

Fraudulent concealment by a defendant to prevent the plaintiffs from discovering their cause of action, where the physician has fraudulently concealed the facts showing negligence,will toll the statute of limitations until such facts of fraudulent concealment, negligent act, or resulting injury can be discovered. **Section 768.28(11)** ***S.A.P. v. State Department of Health & Rehabilitative Services,*** 22 Fla. L. Weekly D2095 (Fla. 1st DCA Sept. 3, 1997). (***Nardone v. Reynolds,*** 333 So. 2d 25, 37 (Fla. 1976)). Similarly, in ***Vargas v. Glades General Hospital,*** 566 So. 2d 282 (Fla. 4th DCA 1990), See ***Goodlet v. Steckler,*** 586 So. 2d 74, 77 (Fla. 2d DCA 1991) (Lehan, J., concurring), ***Carr v. Broward County,*** 541 So. 2d 92, 94 (Fla.1989)

Statements in a hospital's records that are false or unsupported to obscure the cause of injury or death is a form of fraudulent concealment.

(See ***Alfred vs. Summerlin*** 362 So. 2d 103 (Fla 1st DCA 1978.) **See §§ 95.05, 95.07,** Fla. Stat. (1949). See ***Hankey v. Yarian,*** 735 So. 2d 93 (Fla.2000), ***Burbank v Kero***, 813 So. 2d 292 (Fla. 5th DCA 2002), ***Rothschild v. NME Hospitals, Inc.***, 707 So. 2d 952 (Fla. 4th DCA 1998) This means 90 days for the time extension that was filed plus an additional

90 days for the pre-suit investigation period for both the statute of limitations period and the statute of repose period. See ***Musculoskeletal Institute Chartered, D/B/A Florida Orthopaedic Institute, et al v. Parham***, 745 So. 2d 946 (Fla. 1999.) - See ***City of Miami v. Brooks***, 70 So. 2d 306 (Fla.1954)

There exists a duty to speak . . . [and] mere silence, non-disclosure, and failure to make a full disclosure of material fact, constitutes fraudulent concealment. See ***Kalbacn v Day***, 589 So.2d 448 (1991); The courts field that the extension begins to run after the 90 day tolling provision under section **766.106** and **766.104(2**) which commences after the notice of intent to initiate litigation has been mailed & addition to other tolling periods.

(owed reasonable duty of care to protect Pt. from the foreseeable, intentionally harmful conduct of employee(s) while she was a patient on its premises during business hours.) (hospital owed a non-delegable duty for patient safety, policies for obtaining consent, negligent retention for battery related incidents, Ch.766 doesn't apply) *Simmons v. Jackson Memorial Hospital*, No. 3D17-2291 (.whether a physician had apparent authority to act for a hospital is often a question for the jury)(it is not enough for a court to merely speculate that the party had knowledge because he or she filed a petition or a request for medical records pursuant to Chapter 766. *Mobley v. Homestead Hospital, Inc., 291 So. 3d 987, 991 (Fla. 3d DCA 2019)*. (*Gouveia v. Phillips, 823 So.2d 215 (2002)* "the issue of whether the plaintiff consented to the amputation of his fingers deserves to be determined by the jury.") (Defendants' duty to obtain consent from their patients & disclose risks under *42 CFR § 482.13.*) (Medical consent is the equivalent of a contract, *Chambers v. Nottebaum, 96 So. 2d 716, 718 (Fla. 3d DCA 1957*). "It is elementary that fraud in its procurement is ground for recission and cancellation of any contract," *Isom v. Equitable Life Assurance Soc'y, 189 So. 253, 259 (1939).)* (*Fla. Stat. 395.1051, 395, 395.0197, 766.110* discusses a hospital's duty to notify patients of adverse incidents, *Fla. Stat. 465.0575* - every licensed health care practitioner to inform adverse incidents that result in serious harm to

the patient.) *(Southern Neurosurgical Associates v. Fine, 591 So.2d 252, 256 (Fla. 4th DCA 1991)*, (mere knowledge of the adverse result, standing alone, does not necessarily trigger the running of the statute of limitations.) *(Moore v. Morris, 475 So.2d 666 (Fla. 1985).*- even though there is notice of the act itself, if its negligent character cannot become known until its consequences become apparent, then the statute does not begin to run until *notice of the consequences.*) *(Bryant v. Adventist Health Sys. Sunbelt, Inc., 869 So. 2d 681, 685 (Fla. 5th DCA 2004)* (the statute of limitations was tolled due to the providers intentionally concealing their negligence and misrepresentation that no complications occurred, & genuine disputed material facts in regards to concealment tolls the statute of limitations )) *(Williams v. Lake City, 62 So. 2d 732 (Fla. 1953); Crovella v. Cochrane, 102 So. 2d 307 (Fla. 1st DCA 1958).(see also Rogers v. Ruiz, 594 So. 2d 756, 764 (Fla. 2d DCA 1991)* ("[T]he parameter of notice of only injury should not be construed, in which case a plaintiff would be barred from suit without there being any evidence that plaintiff had any notice of even the person or of any of the circumstances which caused the injury." (*See Nardone v. Reynolds 333 So. 2d 25 (Fla 1976)* (The holding in Nardone is simply that a medical provider has a fiduciary duty to disclose possible causes of a known injury to the patient, and the doctor's failure to do so, & conceals their negligence, may amount to a fraudulent withholding of facts sufficient to toll the running of the statute of limitations. The context of the physician-patient relationship, the physician has a duty to disclose "known facts" as to the possible causes of harm done to the patient, his negligent act or the fact that an injury indeed occurred, the supreme court recognized that the fiduciary, confidential relationship between a doctor and a patient imposes a duty to disclose known adverse conditions..) (Florida law specifies that the existence of a medical injury does not create any inference or presumption of a provider's negligence.) **(***See Almangor v. Dade County, 359 So. 2d 892 (Fla. 3d DCA 1978)* where defendants knew of a physical injury to the baby inflicted during birth but failed to so inform the Plaintiff.) (*Allen v. Orlando Regional Medical Center, 666 So. 2d 665 (Fla. 5th DCA 1992)* (Statute of Limitations tolled when defendants concealed the cause of Mrs. Phillips' problems and "continued to treat the Plaintiff and to intentionally misrepresent to her that her problems were normal and not due to negligent care.") *Phillips v. Mease Hosp. and Clinic, 445*

*So. 2d 1058)* (See, e.g., *Walker v. Dunne, 368 So. 2d 640, 641 (Fla. 2d DCA 1979)* (holding that disputed facts concerning concealment preclude summary judgment based on a statute of limitations). *(PROCTOR v. SCHOMBERG, 63 So.2d 68 (Fla. 1953).* -the statute of limitations is an affirmative defense.)([t]he mere fact that a plaintiff becomes aware of a medical condition or suspects some wrongdoing is not sufficient to determine when the statute of limitations accrues of which is .'fact-specific, genuine issue of material fact and within the province of the jury, not the trial judge." *(Tanner vs. Hartog, 618 at 181-82)*

Affirming dismissal on the basis that the affidavits provided with the Plaintiffs Notice of Intent was insufficient would deviate from prior proceedings and Florida Statute 766.102(2)(a)-(b). where lack of consent and medical battery claims do not require expert affidavits in a medical malpractice claim. (See Chambers v. Nottebaum, 96 *224 So.2d 716, 718 (Fla. 3d DCA 1957). Zaretsky v. Jacobson, 99 So.2d 730 (Fla. 3d DCA 1958), Gouveia v. Phillips, 823 So.2d 215, 226 (Fla. 4th DCA 2002) (See also Meretsky v. Ellenby, 370 So.2d 1222 (Fla. 3rd DCA1979)). See also MAYA KOWALSKI JOHNS HOPKINS ALL CHILDREN'S HOSPITAL, INC. WHERE HOSPITAL WAS DEEMED LIABLE FOR MEDICAL BATTERY.

- The trial court's order granting dismissal rested entirely on case law articulating the wrong standard for evaluating Sandra Zikry's medical malpractice & intentional tort claims, which would be subjected to reversal.. See Byrd v. BT Foods, Inc., 948 So. 2d 921, 924 (Fla. 4th DCA 2007) (noting that federal cases based on Federal Rule of Civil Procedure 56).See Applegate v. Barnett Bank of Tallahassee, 377 So. 2d 1150, 1152 (Fla. 1979) (explaining that a trial court's misconception of the controlling principles of law can constitute grounds for reversal); Knight v. City of Miami, 173 So. 801, 803 (Fla. 1937) ("[A]n appellate court will reverse a judgment or decree harmful to appellant when it appears to have resulted from the judge or chancellor's misconception of the controlling principles of law applicable to

the controversy."); Paul v. Wells Fargo Bank, N.A., 68 So. 3d 979, 986 (Fla. 2d DCA 2011)

- This court held that chapter 766 "did not abolish ordinary negligence claims against those who may be in the business of providing medical care or services. If a plaintiff can successfully allege factual matters constituting ordinary negligence, he or she is not precluded from doing so." 685 So. 2d at 885.

NO NEED FOR EXPERT WITNESS FOR MEDICAL BATTERY CLAIMS

Florida courts have held that expert witnesses are not required for a lack of consent claim in a medical malpractice case, as we contend the same here in this case. A civil action may be based on a claim that failure to obtain consent was a result of simple negligence, gross negligence, willfulness, wantonness, or intention of any legal standard of care.

(If statute of limitations is not pled in the answer it can be deemed to have been waived.) This court "cannot employ the tipsy coachman rule where a lower court has not made factual findings on an issue and it would be inappropriate for an appellate court to do so." (*Salazar v. Hometeam Pest Def., Inc., 230 So.3d 619, 622 (Fla. 2d DCA 2017*)

For example, Chambers v. Nottebaum, 96 *224 So.2d 716, 718 (Fla. 3d DCA 1957). Chambers involved a physician who administered a spinal anesthetic, contrary to his patient's explicit instructions. The patient sued the physician for assault. The jury found in favor of the patient.

There is no mention in the Chambers opinion of any medical expert witness requirement to support plaintiff's cause of action. (See also Zaretsky v. Jacobson, 99 So.2d 730 (Fla. 3d DCA 1958), See Gouveia v. Phillips, 823 So.2d 215, 226 (Fla. 4th DCA 2002) (See also Meretsky v. Ellenby, 370 So.2d 1222 (Fla. 3rd DCA1979)).

Quoting from Chambers In explaining its reversal of the directed verdict, the court explained that: "It appears the trial court was of the opinion that in order for the plaintiff to recover against the doctor for performance of an operation without the patient's consent, or which was contrary to the patient's express instructions, it was essential for the plaintiff to present evidence of medical experts that the doctor's action was contrary to an accepted standard of medical practice among members of the medical profession with similar training and experience in the same or similar medical community; and the appellee so contends on appeal. We hold such evidence was not required in this case. [e.s.]" See Florida Statute 766.102(2)(a)-(

PCA CONFLICTS WITH PRIOR OPINIONS, FLORIDA STATUTES, AND CIVIL RIGHTS - DEFENDANTS ACTED WITH MALICIOUS INTENT, FRAUDULENT MISREPRESENTATION, AND COMMITTING PERJURY BEFORE THE CIVIL & APPELLATE COURTS

An appellee cannot hide behind the "presumption of correctness" of an order that the appellee itself procured by misrepresenting the law or the facts.

- A PCA CONFLICTS WITH Florida's policies favoring access to courts ... weigh against interpreting the presuit conditions in chapter 766 to regulate statutory rights not mentioned in chapter 766. Nothing in section 766.106 compels this court to read that statute in an expansive manner to include claims filed under section 400.022(1)( l ).

a. the four corners of the complaint do not contain the facts necessary to determine whether the statute of limitations bars the action, See Musculoskeletal Institute Chartered, D/B/A Florida Orthopaedic Institute, et al v. Parham, 745 So. 2d 946 (Fla. 1999.)

b. The courts Relied on facts outside of 4 corners

c. Cohen vs. Baxt- Where there is a question as to notice or discovery in a medical malpractice action, it is for the jury to decide when the statute of limitations begins to run. Phillips v. Mease Hospital and Clinic, 445 So.2d 1058, 1061 (Fla. 2d DCA) (the issue of when appellants discovered or should have discovered the doctor's alleged negligence is one of fact and "is for a jury and not the proper subject for summary judgment"), rev. denied, 453 So.2d 44 (Fla. 1984) Salvaggio v. Austin, 336 So.2d 1282 (Fla. 2d DCA 1976)"Since the pain experienced by [appellant] constitutes a factual question as to whether it was sufficient notice of the consequences of the alleged negligence of [appellee], summary judgment is precluded where such a genuine issue of material fact exists. Woods v. Sapolsky, 821 So.2d 376 (Fla. 1st DCA 2002); Because the four corners of her complaint do not contain the facts necessary to determine whether the statute of limitations bars the action, we reverse. the movants in the case at issue were required to conclusively show that there exists no disputed issue of fact with respect to the date of commencement of the limitations period. The decision expressly construes a provision of the state or federal constitution and expressly and directly conflicts with a decision of another district court of appeal or of the supreme court on the same question of law.

"To rule on a motion to dismiss, a court's gaze is limited to the four corners of the complaint, including the attachments incorporated in it, and all well pleaded allegations are taken as true." U.S. Project Mgmt., Inc. v. Parc Royale E. Dev., Inc., 861 So. 2d 74, 76 (Fla. 4th DCA 2003) Similarly, on appeal, "[i]n reviewing an order granting a motion to dismiss . . . [an appellate] court may not go beyond the four corners of the complaint and must accept the facts alleged 2 therein and exhibits attached as true." Edwards v. Landsman, 51 So. 3d 1208, 1213 (Fla. 4th DCA 2011) (citation and quotation marks omitted).

See Appeallant 4th amended complaint - 34.The rights of the plaintiff and tolling of the statute of limitations, and the running of the statute of limitations, has been reserved due to the "delayed discovery doctrine", delayed discovery of the injury and delayed discovery of malpractice and rise to file a claim based of lack of consent due to "fraudulent and active concealment and/or destroying records", "intentional misrepresentation", forgery, falsifying medical records and consent forms, illegal threats/harassment, discovery abuse, and bad faith investigation performed by THE DEFENDANTS and their attorneys. Here, the circuit court's order granting the defendant's motion to dismiss the plaintiff's causes of action with prejudice clearly went beyond the four corners of the complaint and its attachment. The order instead relies upon the allegations contained in the defendant's motion to dismiss, the defendant's misrepresentation of the facts, evidence, & legal principles, and the exhibit attached, through which the defendant seeks a finding that it owes no duty to defend or indemnify the plaintiff. By relying on these allegations beyond the four corners of the complaint and its attachment, the circuit court erred. See Barbado v. Green & Murphy, P.A., 758 So. 2d 1173, 1175 (Fla. 4th DCA 2000) (reversing final judgment and remanding with directions to reinstate the plaintiff's cause of action where "it was error for the trial court to consider collateral matters and make a determination of whether [the plaintiff] would ultimately be able to prove her case.") ("It is well settled that it is error for a court to grant a dismissal based upon factual evidence not contained in, and contradictory to, the complaint's allegations."); Fla. Farm Bureau Gen. Ins. Co. v. Ins. Co. of N. Am., 763 So. 2d 429, 432 (Fla. 5th DCA 2000) ("A motion to dismiss should not be used to determine issues of ultimate fact and may not act as a substitute for summary judgment.") Roberts, 751 So.2d at 673;see also Bilbrey v. Myers, 91 So.3d 887, 890 (Fla. 5th DCA 2012) (holding that the "purpose of a motion to dismiss is to test the legal sufficiency of a complaint, not determine factual issues ... [and that 'u]nlike a motion for summary judgment, the trial court may not rely on facts adduced in depositions, affidavits, or other proofs' ") Affirming dismissal conflicts with Section 768.28(11) See S.A.P. v. State Department of Health & Rehabilitative Services, 22 Fla. L. Weekly D2095 (Fla. 1st DCA Sept. 3, 1997). (Nardone v. Reynolds, 333 So. 2d 25, 37 (Fla. 1976)). Similarly, in Vargas v. Glades General Hospital, 566 So. 2d 282 (Fla. 4th DCA

1990), See Goodlet v. Steckler, 586 So. 2d 74, 77 (Fla. 2d DCA 1991) (Lehan, J., concurring), Carr v. Broward County, 541 So. 2d 92, 94 (Fla.1989) (See Alfred vs. Summerlin 362 So. 2d 103 (Fla 1st DCA 1978.) See §§ 95.05, 95.07, Fla. Stat. (1949). The purchased 90-day extension is added to the original two-year statute of limitations/REPOSE, pls 90 day tolling for presuit notice, and the statute of limitations becomes 2 years plus 180 days. Cortes, 850 So. 2d at 634.

3. THE COURTS ARE DEPRIVING DUE PROCESS FROM THE APPELLANT BY AFFIRMING DISMISSAL WHEN THE MOTION TO DISMISS, THE HEARING, AND ORDER ONLY ADDRESSED A SMALL PORTION OF THE COMPLAINT YET DISMISSES THE COMPLAINT OF ITS ENTIRETY A. Affirming dismissal on the intentional tort claims for battery, assault, fraud, various other torts, and ordinary negligence would violate due process of the appellant, as the courts never had any discussions of any of the intentional torts, nor discussions about it in the order of dismissal, or during the motion to dismiss hearing. Issuing a PCA in a claim where the courts barely discussed a small portion of a claim, and then dismissing the entire complaint without even addressing or discussing any of the issues, is a violation of the appeallants due process and various other opinions in these courts and other courts. The courts cannot show favoritism to one party, and biased to another party, and ignore the facts and case law. This is not what justice is made for. Justice is meant for everyone, despite color, or race, religion, or sex. The PCA further would conflict with various case law and Florida statutes.

The courts cant just affirm an order on issues that were not litigated, not discussed. This is becoming an appellate issue, and a continued example of systematic oppression that continues, as the systematic oppression and deep state was the initial reason for the appellants damages, it is a hate crime. It is battery. It is fraud. The pleadings, allegations, and complaint supports these conclusions, and the courts cannot go beyond the four corners of the complaint. The Appellant has sworn affidavits of a nurse forging her consent forms to procedures she did not consent, there is absolutely no reason to dismiss a claim against the appellees for fraud in this regard when none of the appellees ever disputes the fraud.

The PCA further conflicts with - (See Vomacka v. Hervey, 382 So. 2D 41, 42 (Fla.2d DCA 1979); O' Grady v. Wickman, 213 So. 2d 321, 327 (Fla. 4th DCA 1968); See [Brown v. Wood 202 So. 2d 125, 130 (Fla. 2d DCA 1967). When a patient wants to seek redress for assault and lack of consent.

Section 95.031(2)(a) cannot provide unwarranted protection to those who commit fraud or act as a complete bar to recovery for fraud victims without violating the Florida Constitution. The Order reads Section 95.031(2)(a) in a manner that protects those who commit fraud and bars fraud victims from recovering.

(4 years. Fla. Stat. § 95.11(3). Florida applies the discovery rule, thereby triggering accrual on the date that the facts giving rise to the cause of action were discovered.) (Fla. Stat. § 95.031(2)(a)- An action founded upon fraud under s. 95.11(3), begins running when the facts were discovered, no later than 12 years of commission.) (Puchner v. Bache Halsey Stuart, Inc., 553 So. 2d 216 (Fla. 3d DCA 1989) (whether the plaintiff should have known that he had a cause of action for fraud is ordinarily a jury question) (SOL begins to run from the discovery of the forgery. See Miami Beach First Nat'l Bank v. Edgerly, 121 So. 2d 417, 418 (Fla. 1960).)See ((R.3472-76, R.3024-3031) ("A defendant's knowing concealment or non-disclosure of a material fact may only support an action for fraud where there is a duty to disclose"); State v. Mark Marks, P.A., 654 So. 2d 1184, 1189 (Fla. 4th DCA 1995) Whether or not fraudulent concealment is sufficient to toll the statute of limitations is a question of fact. (see Hearndon v. Graham, 767 So. 2d at 1184-1185.) (Salazar v. Hometeam Pest Def., Inc., 230 So.3d 619, 622 (Fla. 2d DCA 2017)

4. THE COURTS CONTINUE TO IGNORE THE FACT THAT THE APPELLEES FAILED TO RENDER FULL MEDICAL RECORDS & A PCA

CONFLICTS WITH VARIOUS FLORIDA STATUTES, APPELLATE RULES & PROCEDURES, & PAST PRECEDENTS A. The courts never gave the appellant an opportunity to be heard in regards to if the defendant's have made a reasonable presuit investigation, reasonable denied the plaintiffs claims, and whether or not the defendants rendered full medical records as required by Florida Statutes. The trial courts never heard the various motions filed by the Plaintiff seeking an evidentiary hearing, seeking a hearing in regards to the clerk's defaults issued against Tampa OB, and Exodus. (There is nothing in the record OR briefs that supports the dismissal of Exodus or Tampa O.B.) Affirming dismissal without an evidentiary hearing to see if the defendants conducted a reasonable presuit investigation in denying a claim, rendered full medical records, conflicts with Florida statutes and case law., and would also violate a Florida Supreme Court proceeding, Valcin v. Public Health Trust, 507 So. 2d 596, 599 (Fla. 1987)., where courts waive presuit requirements, and waive a defendant's defenses, thus includes arguments of the statute of limitations. The courts affirming dismissal completely violates the civil and human rights of the appellant, where the courts are deliberately depriving life. justice, and sanity from its own citizens. The Courts affirming dismissal goes beyond legislative intent, goes beyond various proceedings, and breaks all the state and federal laws meant to protect a citizen in these exact circumstances, and completely denies any type of due process and violates several amendments.

the PCA had the effect of declaring a statute or constitutional provision invalid, effect cases that may affect large numbers of persons (such as minorities, mothers, women, and pro-se litigants) and cases that interpret fundamental legal or constitutional rights." Florida has violated the Declaration of Rights and the fourteenth amendment of the United States Constitution on issuing this PCA. Supreme Court could exercise its conflict jurisdiction under Fla. Const. art. V, §3(b)(3), when this PCA conflicts with various laws and precedents. PCA's without opinion must be found within the constitution, The PCA on this appeal without opinion has sufficient precedential value to cause the constitutionally required

direct conflict,the equal protection clause, article I, section 1, 2, 9, 21, 22 and ARTICLE V, JUDICIARY of the Florida Constitution., and the Constitution in the state of Florida and United States.

because it is necessary to "maintain uniformity in the court's decisions," meaning because the opinion in the case conflicts with other opinions of the same appellate court on the same issue. The conflicting decisions in this case are "so inconsistent and disharmonious that they would not have been rendered by the same panel of the court, the panel could have decided the opinion only by ignoring established case law.. The PCA & many prior precedents cited on the I.B. is inconsistent with the directive from our supreme court that "the medical malpractice statutory scheme must be interpreted liberally so as to not unduly restrict a Florida citizen's constitutionally guaranteed access to the courts. The Second DCA has turned a blind eye to this widespread fraudulent conduct, refusing to hold Appellees accountable to the rule of law. There is a clear pattern of bias in the Second DCA which the trial Court has declined to address, leaving this Court to confront the fraud and bias that violated Sandra Zikry's due process rights under the 5th and 14th Amendments to the U.S. Constitution. The use of a PCA to avoid addressing fraudulent evidence violates the U.S. Constitution. Because fraud on the courts pollutes the process society relies on for dispute-resolution, courts reason that "a decision produced by fraud on the court is not in essence a decision at all, and never becomes final. Judgments ... obtained by fraud or collusion are void, and confer no vested title." League v. De Young, 52 U.S. 185, 203, 13 L. Ed. 657 (1850). Due process does not permit fraud on the court to deprive any person of life, liberty or property. A biased court also violates constitutional due process guarantees by tolerating that fraud. Darden v. Wainwright, 477 U.S. 168, 181-82 (1986) (improper argument and manipulation or misstatement of evidence violates Due Process) The courts shall be open to every person for redress of any injury, and justice shall be ad- ministered without sale, denial or delay. F.L. A. CONST., art. I, § 21 The invidious discrimination in the present case is a denial of due process because it denies equal protection this case is a disturbing example of reprehensible practice. That such fraudulent evidentiary filings are being submitted

to courts is both violate of the rules of court and ethically indefensible. The conduct ... displays a serious and alarming lack of respect of the nation's judiciaries. Because the courts never afforded these parties any type of due process and the judgments are believed to be voided and fraudulent. A void judgment is a nullity from the beginning, and is attended by none of the conseguences of a valid judgment. It is entitled to no respect whatsoever because it does not affect, impair, or create legal rights." Ex parte Seidel, 39 S.W.3d 221, 225 (Tex. Crim. App. 2001), Ex parte Spaulding, 687 S.W.2d at 745 (Teague, J.,concuning). A Party Affected by VOID Judicial Action Need Not APPEAL. State ex rel. Latty, 907 S.W.2d at 486. The law is well-settled that a void order or judgement is void even before reversal", VALLEY v. NORTHERN FIRE & MARINE INS. CO., 254 U.S. 348,41 S. Ct. 116 (1920) "Courts are constituted by authority and they cannot go beyond that power delegated to them. If they act beyond that authority, and certainly in contravention of it, their judgements and orders are regarded as nullities; they are not voidable, but simply void, and this even prior to reversal." WILLIAMSON v. BERRY, 8 HOW. 945, 540 12 L. Ed. 1170, 1189 (1850). It has also been held that"It is not necessary to take any steps to have a void judgment reversed, vacated, or set aside, It may be impeached in any action direct or, collateral.' Holder v. Scott, 396 S.W.2d 906, (Tex.Civ.App., Texarkana, 1965, writ ref., n.r.e.). A court'cannot confer jurisdiction where none existed and cannot make a void proceeding valid. It is clear and well established law that a void order can be challenged in any court", OLD WAYNE MUT. L. ASSOC. v. McDONOUGH, 204 U. S. 8,27 S. Ct. 236 (1907). Judgment is a void judgment if the court that rendered the judgment acted in a manner inconsistent with due process, Fed. Rules Civ. Proc., Rule 60(b)(4),28 U.S.C.A., U.S.C.A. Const. Rule 1.540(b) and Rule 60(b), Fed. R. Civ. P. savings clause of Rule 60(b). When appeal is taken from a void judgment, the appellate court must declare the judgment void, because the appellate court may not address the merits, it must set aside the trial court's judgment and dismiss the appeal. A void judgment may be attacked at any time by a person whose rights are affected. Fraud Upon The Court without lack of standing on a Void Judgment, is illegal. A Remand will not support No Due Process Law after the crime was committed based upon Fraud Upon The Court. Constitutional Laws were violated here, that was covered up illegally with illegal orders based upon fraud and fraud upon the court's. When rule providing for relief from void judgments is applicable, relief is not discretionary matter,but is mandatory, Omer.

V. Shalala, 30 F.3d 1307 (Cob. 1994). FRAUD UPON THE COURT: In the United States, when an officer of the Court is found to have fraudulently presented facts to court so that the court is impaired in the impartial performance of its legal task, the act, known as "fraud upon the court", is a crime deemed so severe and fundamentally opposed to the operation of justice that it is not subject to any statute of limitation. Officers of the court include: lawyers, judges, referees, and those appointed; guardian ad litem, parenting time expeditors, mediators, rule 114 neutrals, evaluators, administrators, special appointees, and any others whose influence are part of the judicial mechanism. Fraud upon the court" has been defined by the 7th Circuit Court of Appeals to "embrace that species of fraud which does, or attempts to, defile the court itself. Whenever any officer of the court commits fraud during a proceeding in the court, he/she is engaged in "fraud upon the court".

In Bulloch v. United States, 763 F.2d 1115, 1121(10th Cir. 1985), the court stated "Fraud upon the court is fraud which is directed to the judicial machinery itself and is not fraud between the parties or fraudulent documents, false statements or perjury....

It is where the court or a member is corrupted or influenced or influence is attempted or where the judge has not performed his judicial function - - - thus where the impartial functions of the court have been directly corrupted. Where the unsuccessful party has been prevented from exhibiting fully his case by fraud or deception practised on him by his opponent, as by keeping him away from court

when a PCA conflicts with an opinion from the Supreme Court or another district court because the Supreme Court could exercise its conflict jurisdiction under Fla. Const. art. V, §3(b)(3. A PCA in this case expressly and directly conflicts with a decision earlier opinions from the same court, other district courts, and the Supreme Court on the same question of law. The record does not demonstrate there were any arguments in the answer briefs regarding a cause of action for fraud. Affirming the dismissal on a cause of action for fraud would become an Appellate

issue, & potential review from the Florida Supreme Courts because the Second DCA is exceeding its legislative authority, & abused it's discretion by affirming on a cause of action for fraud, battery, assault and various other torts, when the trial courts DID NOT make any factual findings that would support dismissal for such claims, and the defendant's counsel failed to make any arguments that would support dismissal for fraud, battery, etc., and certainly failed to raise any arguments in regards to the statute of limitations for fraud, of which, has discovery & tolling provisions. The Second DCA affirming a dismissal for fraud, would be a violation of the Appellate Rules & Procedures, and furthermore conflict with (Salazar v. Hometeam Pest Def., Inc., 230 So.3d 619, 622 (Fla. 2d DCA 2017) where - (If statute of limitations is not pled in the answer it can be deemed to have been waived.) This court "cannot employ the tipsy coachman rule where a lower court has not made factual findings on an issue and it would be inappropriate for an appellate court to do so." We would ask the Florida Supreme Court to resolve this split of authority via Article V, § 3(b)(3), of the Florida Constitution, and Fla. R. App. P. 9.030(a)(2)(A)(iv), which provides that the state supreme court has jurisdiction when an opinion "expressly and directly conflict[s] with a decision of another district court of appeal or of the supreme court on the same question of law." The case presents a question of great public importance because affirmance on this ground jeopardizes the legislative intent

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The courts sign a proposed order alleging failure to provide an affidavit pursuant to Fla. Stat. §§ 766.102(5)-(7), however, there was no discussion on the record by the defendants about an experts qualifications under **766.102(7)** which states-

A **person** may give expert testimony on the standard of care against a hospital, as to administrative and other nonclinical issues if the person has substantial knowledge, by virtue of his or her training and experience.

"The surgeon must contain complete records of each surgical procedure as set forth in Rule 25 64(b)(8)9.003 anesthesia records when applicable and the records shall contain written informed consent from the patient reflecting the patient's knowledge of identified risk, consent of the procedure,type of anesthesia,anesthesia provider."

(Fla. Stat. 395.1051, 395, 395.0197, 766.110 discusses a hospital's duty to notify patients of adverse incidents, Fla. Stat. 465.0575 - every licensed health care practitioner to inform adverse incidents that result in serious harm to the patient.) (Fla. Stat. 395.3025 & 456.057, Fla. Admin. Code Ch. 10D-28.59, Florida Regulations 59A-3.245, Rule 64B8-10.002(3), FAC, 458.331(1)(m), requires all medical records to be produced & maintained by both doctors & hospitals.)

Under Section **766.110** and **395.0197**-

Hospitals have non-delegable duties to assert patient safety & informed consent process, by policies set by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO). Lack of patient autonomy is recognized for imposing a non delegable duty on hospitals and sufficient to create a jury question.

Statutes and regulations impose this duty for non-negligent anesthesia services on all surgical hospitals,as it is deemed non-delegable without a patient's express consent. See § **765.102(1)**, Fla. Stat., and **§ 765.106**, Fla. Stat.

Under **Rule 59 A-3.2085(4)** and **59A-3.245(1)(b)** of Florida's Administrative Code requires each Class I, Class II, and Class III hospital providing surgical or obstetrical services to have an anesthesia department to be organized under written policies and procedures regarding surgical privileges.

See ***Wax v. Tenet Health System Hospitals, Inc.*** No. 4D04-1673 (Fla. Dist. Ct. App. Mar. 7, 2007), when it imposed a non-delegable duty on a hospital to provide anesthesia services to surgical patients consistent with the established standards. Such a duty cannot be avoided by delegating these services to an independent contractor.

See also ***Pope v. Winter Park Healthcare Group, Ltd.***, 939 So.2d 185 (Fla. 5th DCA 2006), and ***Chapter 395.***

**42 C.F.R. § 482.1** also imposes a non-delegable duty on hospitals based on the hospitals participation in the federal Medicare program. This regulation ensures that medical services are provided in a safe manner (even if those services are provided by independent contractors). Accreditation by JCAHO is required for Medicaid reimbursement and recognition under state licensing requirements. JCAHO is considered evidence of the standard of care by many courts in determining whether a hospital has been negligent.. By adhering to the JCAHO standards, the hospital exerts control over the informed consent process.

Florida Supreme Courts share that: "The Court also noted that it was not ruling on the issue of the constitutionality of the same specialty requirement or the effect of a Florida Supreme Court action in which the Supreme Court declined to adopt the "same specialty" requirement to the extent it is procedural (see In re ***Amendments to the Florida Evidence Code***, 210 So. 3d 1231, 1239 (Fla. 2017).

(See Hospital's Advertisement & duties (R. 875-902) - Maternity services, accommodations, offer 24/7 anesthesia services, exceptional nursing & medical

support during labor, care provided respect religious beliefs refusal for medical treatment; (An Implied contract)

DEFENDANTS FAILURE TO ALLEGE PREJUDICE

Failure to comply with presuit does not mandate dismissal of a claim. Dismissal in the absence of any prejudice to the defendant is improper. See *Kukral v. Mekras* 679 So. 2d 278 (1996), ***Vincent v. Kaufman,*** 855 So. 2d 1153 (Fla. 4th DCA 2003)., ***De La Torre v. Orta,*** 785 So. 2d 553 (Fla. 3d DCA 2001) ***Wainscott v. Rindley***, 610 So. 2d 649, 650 (Fla. 3rd DCA 1992). ***DeCristo v. Columbia Hosp. Palm Beaches****, Ltd.,* 896 So.2d 909, 911 (Fla. 4th DCA 2005)*;* ***Wolford v. Boone***, 874 So.2d 1207, 1210 (Fla. 5th DCA 2004) ***Micheal v. Med. Staffing Network, Inc.***, 947 So.2d 614, 619 (Fla. 3d DCA 2007); ***Holden v. Bober***, 39 So. 3d 396, 400 (Fla. 2d DCA 2010).

In ***Morris v. Muniz*** 252 So. 3d 1143 (Fla. 2018) the Supreme Court of Florida reversed a dismissal.

Defendant argued that the plaintiff's expert was not qualified under section **766.102(5)(a)2**, Florida Statues or **766.102(6),** Florida Statutes, Id. at 1148. The Supreme court disagreed and held that; 1) estate's expert was qualified to render presuit medical expert opinion; 2) defendants were not entitled to depose expert to determine whether she was qualified; and 3) dismissal of action was not warranted absent finding of prejudice.

The purpose of the presuit process is to facilitate the resolution of medical malpractice claims but it can also have the effect of infringing on the constitutional right to access to the courts, therefore, the provisions for governing the presuit screening process for medical malpractice claims, must be construed "in a manner that favors access to courts". See ***Pierrot v. Osceola Mental Health, Inc.***, 106 So. 3d 491, 493 (Fla.5th DCA 2013) (citing ***Integrated Health Care Servs., Inc. v. Lang-Redway***, 840 So. 2d 974, 980 (Fla. 2002); ***Weinstock v. Groth,*** 629 So. 2d 835, 838 (Fla. 1993)); ***Mirza v. Trombley***, 946 So. 2d 1096, 1101 (Fla. 5th DCA 2006), **Fort Walton Beach Med. Ctr., Inc. v. Dingler,***F* 697 So.2d 575 (Fla. 1st DCA 1997).

President Joe Biden has admitted that the court systems across the United States are being weaponized, pushing for an agenda that harms minorities, and calls for a "no one is above the law amendment", to regulate the ethics in our court systems. The court systems in this nation have adopted procedures, policies, and internal bias towards minorities and women of color, and systematically designed the system to oppress those of color, whereas, justice is being denied to those simply because of color, and a system where there are white judges with racist intent. There is no possibility of achieving any justice with these racial practices that have been ongoing for nearly hundreds of years, and supported scholar articles that prove and show that racial bias still exists in our court systems. The Petitioner is indigent, and a clerk copy is attached with this motion. We do not believe that the Final Order of Dismissal stands, as it is fraudulent, void, and these parties intend to attack the judgments due to fraud amongst the courts, and intend to attack the proceedings in federal courts for lack of due process, racism and discrimination. The final orders were produced fraudulently, criminally, and with malicious intent to destroy justice to minorities. There was no due process, but instead, a white judge making extremely inappropriate and hurtful comments to a pro-se litigant seeking justice for the hate crimes they are a victim to. The Florida court system is

refusing to abide by their own laws and statutes, and instead, disregard their own rules and procedures.

Canon 1: A Judge Should Uphold the Integrity and Independence of the Judiciary
Canon 2: A Judge Should Avoid Impropriety and the Appearance of Impropriety in All Activities
Canon 3: A Judge Should Perform the Duties of the Office Fairly, Impartially and Diligently
Canon 4: A Judge May Engage in Extrajudicial Activities That are Consistent With the Obligations of Judicial Office
Canon 5: A Judge Should Refrain From Political Activity

CERTIFICATE OF SERVICE I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been filed through the Florida Court's E-Portal this 28th day of August, 2024, and furnished electronically to: Mindy McLaughlin, Esq., Carissa W. Brumby, Esq., Beytin, Mclaughlin, Mclaughlin,O'Hara & Bocchino, P.A., 1706 East Eleventh Avenue, Tampa, FL 33605, mmeservice@law-fla.com, lawfla@outlook.com, and Dinah S. Stein, Esq., Hicks, Porter, Ebenfeld & Stein, P.A., 799 Brickell Plaza, 9th Floor, Miami, Florida 33131, dstein@mhickslaw.com, eclerk@mhickslaw.com Counsel for Baycare 3 Health Systems, Inc. d/b/a St. Joseph's Hospital, Inc. d/b/a St. Joseph's Women's Hospital, Pamela Taylor, R.N. and Sandra Valiquette, R.N., Alyssa M. Reiter, Esq., Nichole M. Koford, Esq., Wicker, Smith, O'Hara, McCoy & Ford, P.A., 100 S. Ashley Drive, Suite #1800, Tampa, FL 33602, Jason M. Azzarone, Esquire, Louis J. La Cava, Esq., La Cava Jacobson & Goodies, P.A., 501 E. Kennedy Blvd., Suite 1250, Tampa, FL 33602, llacava@lgllegal.com , jazzarone@ljglegal.com mramirez@ljglegal.com Counsel for Jill L. Hetchman, M.D., Gina Washington, M.D., Sobiah Mallick, M.D., Tampa Obstetrics, P.A. and Exodus Women's Center, Inc.

A copy of this motion is being mailed to - Supreme Court of the United States
1 First Street, NE
Washington, DC 20543 within 5-10 days after this motion being filed in the Florida Court system

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