No.___

In the

Supreme Court of the United States

Sandra A. Zikry
Petitioner,

V.

Respondent

PETITION FOR WRIT OF CERTIORARI & OBJECTIONS

PROCEEDINGS DIRECTLY RELATED

- Lower tribunal courts - 13th Judicial Hillsborough County - 21-CA-010144
- Second DCA Appeals - 2D-22-2017, 2D-22-2010, 2D-2013
- Florida Supreme Court Cases -
- Potential writs of mandamus and prohibition to the FL & US supreme courts may be filed
- Notices for Pending federal & state claims torts are currently in the movement to reclaim redress due to fraud amongst the courts, civil & federal violations, fraud, and various other torts against the Respondents, the State of Florida, the United State, various other parties, and several law enforcement agencies in connection the the claims above and potentially, from these proceedings as well.
- The child of the plaintiff is not a party to this case or any of these cases, and is currently pending with NICA and civil courts.

QUESTIONS PRESENTED

1. Whether it is a denial of due process, (1) notice; (2) an opportunity to be heard; and (3) an impartial tribunal, to not allow the Petitioner an opportunity to have an evidentiary hearing for her intentional tort claims for fraud, battery, attempt of murder, etc. & medical malpractice claims for battery; despite allegations of fraud amongst the courts, fraudulent evidence, abuse of process, opposing counsel misconduct, violating the 5th Amendment and 14th Amendment, and applying legal standards that do not apply to medical malpractice battery claims?.
2. Whether it is a violation of due process for the trial courts to consider evidence that is privileged, & inadmissible under Florida Statute 766 of presuit affidavits & unsworn statements of a plaintiff, in violation of the 5th and 14th Amendment of the US Constitution and Article X Section 4 of the Florida Constitution?
3. Whether it is a violation of due process & exceeded authority for the trial courts render a void judgment when the courts engaged in fraudulent & criminal behavior of a defendant, & deprived due process, & in violation of

the 5th and 14th Amendment of the US Constitution and Article X Section 4 of the Florida Constitution?

4. Whether the Second District Court of Appeals in the State of Florida is exceeding its jurisdiction in currently reviewing the merits of an appeal(s) of a void judgment that involves fraud, abuse of process, fraud amongst the courts & abuse of process, and conflicts with prior proceedings and basic principle of law and due process?
5. Whether a motion to dismiss can be granted on alleged presuit deficiencies & statute of limitations when an evidentiary hearing was not held, there are factual and material disputes, when there are disputes in regards to the defendants presuit violations that would have required the trial courts to waive defenses when a defendant failed to comply with CH 766 FL. and render full medical records of a missing doctor that injected an unknown substance to a pregnant patient without consent?
6. Whether a motion to dismiss can be granted when privileged & inadmissible evidence was submitted & used against a plaintiff in attempting to dismiss a claim by fraudulent means? Per Ch.766 unsworn statements are admissible in civil claims, in which the defendants used inadmissible evidence to persuade the judge in ruling in their favor.
7. Whether the due process protections enshrined in the 5th and 14th Amendments of the U. S. Constitution prohibit Florida Courts from turning a blind eye to the use of fraudulent evidence barred by State & Federal constitution nd to ignore objective reasons to question the impartiality of those Florida Courts that require disqualification?
8. Does a trial court depart from the essential requirements of law by failing to hold an evidentiary hearing for Florida Statutes 766, medical malpractice claims for medical battery,
9. Does a trial court depart from the essential requirements of law applying the legal standard that the plaintiff needs an affidavit to pursue medical battery claims when the laws clearly established that they do not?
10. Does a trial court depart from the essential requirements of law by DISMISSING AN INTENTIONAL TORT claim without any written disputes from the defendants or any discussions by the defendants?

11. Does a trial court depart from the essential requirements of law by dismissing a claim with clerk defaults and no written defenses for dismissal for those parties by the judge or the defendants?
12. Does a trial court depart from the essential requirements of law by dismissing claims for fraud when there was no discussion about dismissal and intentional torts are not subjected to medical malpractice claims?
13. Does the Florida Supreme court have jurisdiction of a mandatory notice of appeal of constitutional violations and clear abuse of discretion of the Florida courts in not adhering to basic laws, rights and due process?

WHEREAS By the Courts of this State that "fraud upon the Court" occurs where: "it can be demonstrated, clearly and convincingly, that a party has sentiently set in motion some unconscionable scheme calculated to interfere with the judicial system's ability impartially to adjudicate a matter by improperly influencing the trier of fact or unfairly hampering the presentation of the opposing party's claim or defense." See E.I. DuPont De Nemours & Co., Inc., v. Sidran, 2014 WL 1613656 (Fla.3d DCA 2014)

FOR FRAUD - MALLICK - DR.VANN FORGED SIGNATURE DR.BITCH

JURISDICTION

The second district Court ofAppeals in Tampa Florida entered judgment on December 27, 2023. The Florida Supreme courts declined a notice of mandatory review on June 17, 2024. This Court has jurisdiction under 28 U.S.C. § 1254(1), and article V, section 3(b)(3) of the Florida Constitution, under Article III, section 2, of the United States Constitution which empower's this court to act in "all cases, in law and equity, arising under [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.

Statement of Facts:

PLEASE REFER TO COMPLAINT IN APPENDIX FOR FULL DETAILS. July 1st, 2017 Sandra Zikry (Pregnant) went to the Emergency Room at St.Joseph's Women's Hospital due to fluid leakage. Ms.Zikry, a minority woman, informed staff of religious beliefs against epidurals. The nurse replied: "you can't make those decisions only the doctor can." & was sent home. 7/5/17 Ms.Zikry presented at Exodus, and was sent to the Hospital (1pm) due to low amniotic fluids.(There were abnormal bloodpressure readings & fetal distress, and (a period where the unborn child's heartbeat stopped) noted all throughout labor & delivery) During labor, Dr.Washington proceeds to "break Ms.Zikry's water",an unknown object was inserted into vaginal cavity, which is sexual assault, (5:45 pm), despite patient refusal, & was held down by medical staff against will. Dr.Washington leaves, stating to the nurse, "Give her the epidural now." Nurse Valiquette interrogated and THREATENED Ms.Zikry for several hours, stating (such as but not limited to): "The epidural is mandatory." "It's doctors' orders" "there's no risk to the epidural." "if you don't take the epidural now, we're going to cut you open with no pain medicine" Plaintiff relied on the fraudulent misrepresentation, that there was "no other choice". At 8:25pm, the epidural was placed by Dr.Vann. A placental infection was diagnosed around this time.He did not state his name, nor any of the risks.

There are no consent forms presented and signed for the epidural. The epidural did not work, and caused complications. At 1AM on 7/6/17, an anesthesiologist came due to complications & injected “more medicine”.There is no recording of who this doctor is, what they did, etc. but only a note of their presence. After discharging Mrs.ZIKRY against her will and with clinical indications that something was wrong, Ms.Zikry sought medical help and was not formally diagnosed by her providers or diagnostic testing. There was no explanation as to the conditions Mrs.Zikry was left with by anyone or anything. July 2019, Ms.Zikry obtained her medical records and filed for a 90-day extension to conduct a reasonable investigation. August 2019 forgery was suspected. September, 2019; Plaintiff was formally diagnosed with adhesive arachnoiditis due to the epidural. September 2019 the Hospital opened a settlement offer and discussions. The Plaintiff did not respond just yet, wanted an attorney, and initiated presuit February 2020 with an affidavit attesting there was no consent to the anesthesia, complcations, injuries, and missing medical records. August 2020, an MRI confirmed the diagnosis and cause. September 28th, 2021; Ms.Zikry amended her Notice of Intent with two handwriting experts, a billing/coding expert and an anesthesiologist. Some medical records were requested again, and they were still fabricated and

much were missing, such as insurance records, fetal monitor strips, ultrasound records, and vital anesthesia documentation. The defendants have admitted to these missing records during presuit and litigation. 2021, Forgery analysis reveals Nurse Valiquette had forged several consent forms, and signed off as Dr.Vann, (consent forms has no obstetrician signature, states “I consent to anesthesia.”, “Name: I, Sandra Mallick consent to Dr.Mallick”). The medical records revealed various instances of fraud and falsification, which is seen in the appendix & throughout the record. Dr.Ertner in 2021 & Dr.Aranda (anesthesiologists) executed an affidavit alleging lack of consent to the labor epidural, lack of proper documentation, a high dosage of anesthesia, and an injury correlating. Defendants served with such opinion prior to suit. December 27th, 2021 suit was filed for medical malpractice and later amended to add a count of intentional tort, with a request of punitive damages. The basis of the medical malpractice claim involves breach of non-delegable duties, lack of consent, destruction/fabrication of medical records, fraud/forgery, retention of a foreign body/substance, prime facie evidence, invoking the delayed discovery doctrine and fraudulent concealment tolling provisions. The basis of the Intentional Tort involves (SUCH AS BUT NOT LIMITED TO) battery, assault, fraud. Defendants argued statute of limitations and presuit

deficiencies - (**§766.202(6)**, §**766.203(2)**, and **§766.102(5),** in regards to the proffered expert affidavit(s) of a medical malpractice during a motion to dismiss hearing of the 4th amended complaint, with the court's ruling in defendants favor. The claims were dismissed due to issues with presuit affidavits and no evidentiary hearing, however, medical battery claims, the basis of the complaint, do not require this standard, and this was never considered by the judge who is racist, bias, and has insulted the plaintiff various times. All counts of the Intentional Tort were dismissed without any discussion. There was no evidentiary hearing, and clerk defaults that were not aside on co-defendants. The defendants have made intentional misrepresentation of the facts of the case, the evidence, and legal analysis.

Summary of Arguments:

The trial court's orders on appeal should be reversed and remanded on a basis of error of law, such as admitting improper evidence (unsworn statements), may be determined to be harmful and therefore reversible error. The court committed reversible error by dismissing an intentional tort claim without any reasoning or discussion; dismissing a medical malpractice claim with clerk defaults on a co-defendant, failed to hold an evidentiary hearing, despite compliance of filing expert affidavits and/or waiver of presuit requirements of a collaborating expert affidavit due to the cause of action, (lack of consent) not requiring expert affidavits, and Defendants various violations of F.S. 766 (such as discovery violations,

failure to render full medical records, and experts affidavits failure to collaborate lack of negligent injury). Reversible error to find statute of limitations is time barred because the statute was tolled due to fraud, intentional misrepresentation, and delayed discovery of the injuries in connection with the negligent act, thus constitutes prejudicial errors**. Lastly,** the concerns of the Judge's remarks, showing bias and prejudice to a pro-se litigant, and a great fear that these parties were not given the proper due diligence and due process. The actions of the trial court & appellate courts is a violation of Equal protection act, and violates and conflicts previous proceedings and current case law. Trial court abused discretion in dismissing entire action as a sanction while only addressing a small portion of the complaint itself, and applying legal standards that shouldn't apply to this case.

PETITION FOR WRIT OF CERTIORARI

Sandra A. ZIKRY respectfully petitions for a Writ of Certiorari to review the judgment of the civil trial courts, the Second DCA JUDGEMENTS, AND the orders of Florida Supreme Court after they declined to accept jurisdiction.

The trial court's judgment is deemed void & fraudulent, it is 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. The courts failures to adhere to fundamental rights, indicates that this case was no properly heard, adjudicated, denying access to justice, affected criminal proceedings,

The respondents, throughout the civil trial & appellate process committed fraudulent & intentional misrepresentation schemes to their advantage, misrepresenting the pleadings & evidence.

The civil & appellate courts rather a failure to follow the law which goes to the fundamental issue of a Constitutional guarantee under Article X Section 4 of the Florida Constitution. And it shows the racism & discrimination is concurrently active within our court system

PETITIONER'S CLAIMS WERE DISMISSED FOR PRESUIT AFFIDAVIT DECIFICINCIES/ISSUES, HOWEVER, THE REQUIREMENT TO PROVIDE A FLORIDA CH. 766 PRESUIT AFFIDAVIT DOESN'T APPLY TO CLAIMS FOR MEDICAL MALPRACTICE- MEDICAL BATTERY OR INTENTIONAL TORTS FOR BATTERY, & AFFIRMING DISMISSAL VIOLATES BASIC DUE PROCESS, CIVIL RIGHTS, STATE AND FEDERAL RIGHTS, AND VIOLATES PREVIOUS PROCEEDINGS AND CASE LAW.

Plaintiff Sandra A. Zikry sought a medical malpractice claim SOLELY for the reasons of medical battery and assault. Mrs.Zikry was forced into procedures she did not consent to. This has been represented in her pleadings, in her briefs, all through the record that the basis of her medical malpractice and intentional tort case rested solely on medical battery. The defendants had awareness that these were the claims of the Plaintiff, but instead, insisted that she needs medical malpractice presuit expert witness affidavits to submit an affidavit for her medical battery cases, misrepresented her allegations and evidence, and the complaints were dismissed based off of misrepresentation of the sworn affidavits of the plaintiff, without an evidentiary hearing, and without addressing the fact that this legal standard of rendering a sworn affidavit doesn't apply to the plaintiffs claims for medical battery.

(Defendants had issue with the affidavits submitted by Mrs.Zikry, but the content of the affidavits is irrelevant because medical battery claims do not even require expert affidavit reports, and Mrs.Zikry was never afforded an opportunity or an evidentiary hearing to even respond to the false claims the defendants made about the affidavit, such as but not limited to, alleging that the affidavits "don't state that the standard of care was breached" when it did on its face. This is flat out fraud. And the judge refused to hear refuting arguments about the contents of the affidavits) Florida chapter 766 sworn affidavits are not applicable to Medical battery claims nor intentional torts. This standard does not apply to the plaintiffs case, the courts cannot improperly apply these standards to the plaintiffs case, dismiss her claim and bar any recovery on principle of laws that clearly do not apply to her claims, and clearly, cannot be applied to medical battery claims as shown below in this subsection with supporting case law. Applying these standards to Mrs.Zikry's claims is completely inapplicable, deprives constitutional, federal, and state rights of accessing the courts, and most importantly, conflicts with basic

standard laws and procedures. And conflicts with many case laws. Those issues on whether the patient consented or not is A JURY QUESTION.

- 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.

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); 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. 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).

THE TRIAL COURTS FAILED TO HOLD AN EVIDENTIARY HEARING IN REGARDS TO ANY PRESUIT DEFICIENCIES ON BEHALF OF THE PLAINTIFF OR THE DEFENDANTS, THUS IS A CONSTITUTIONAL AND STATUTORY RIGHT FOR THE PLAINTIFF -

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) 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)

THERE WAS NO EVIDENTIARY HEARING HELD FOR ANY ALLEGED PRESUIT DEFICIENCIES OF FL. CH 766 The plaintiffs fears they will not receive a fair hearing because of the Court's demonstrable prejudice against plaintiffs, and its clear pre-judgment of the case, having already decided an outcome for the case without evidence or adherence to fundamental procedural rules or due process, And when no substantive evidence had been introduced, no hearing had been held, no testimony had been offered or heard, no cross-examination had been allowed, no argument was permitted, no objections were entertained, and no inquiry was made whatsoever of either party concerning the merits of the allegations of the civil claim. , reminding the Court that the plaintiff was entitled to an evidentiary hearing and that no evidence had been presented to support any ruling or judgment, on a fraudulent and void judgment. The conduct of the Court in the instant case establishes a reasonable and objective fear that she will not receive a fair and impartial hearing. The Court's ruling on the merits in favor of Petitioner lacked any legal, evidentiary, or procedural basis, and demonstrates

a clear bias or prejudice against Respondent inasmuch as the Court expressed its intention to grant the subject Petition before the case was even at issue and before any evidence had been presented, admitted, or considered.no burden of proof or standard of proof had been met or found, and no factual findings were made to justify any Court action on the merits of the subject Petition. These actions were in total derogation of applicable statutes, rules of procedure, rules of evidence, and basic constitutional due process to the detriment of Respondent and to the benefit of Petitioner.“the medical malpractice statutory scheme must be interpreted liberally so as not to unduly restrict a Florida citizen’s constitutionally guaranteed access to the courts.” Id. at 400 (quoting Kukral, 679 So. 2d at 284).In Williams, the defendant moved to dismiss the medical malpractice complaint, arguing that the plaintiff’s expert’s affidavit did not establish that he was an expert “in the field of cardiology,” and, thus, the plaintiff “failed to attach a corroborating affidavit from a qualified medical expert.” Id. at 1131. Concluding that the First District improperly granted certiorari review of the trial court’s denial of the defendant’s motion to dismiss, we explained that the First District should have “dismissed the petition and remanded the case to the trial court for an evidentiary hearing on whether [the expert] was qualified.” Id. at 1137; see also Bery v. Fahel, 88 So. 3d 236, 237-38 (Fla. 3d DCA 2011) (remanding for an evidentiary hearing on the presuit expert’s qualifications where the presuit expert attempted to withdraw his affidavit “because he felt he was not qualified to act as an expert witness”); Holden, 39 So. 3d at 402-03 (reversing a dismissal order and remanding for an evidentiary hearing on the presuit expert’s qualifications where the expert’s affidavit did not on its face establish that his qualifications could be considered a similar specialty to the doctor).

DEFENDANTS FAILURE TO RENDER FULL MEDICAL RECORDS CONSTITUTES TO WAIVER OF DEFENSES -

Defendants failed to render fetal monitor strips, insurance records, ultrasound records, and failed to maintain documentation notes of the second Anesthesiologist documentation of catheter placement/removal , documentation of the depth of the needle placement, test dosage, & documentation of anesthesia vitals. The Defendants, also engaged in numerous discovery delays. - 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 (prior to the first NOI that was served in 2020), medical records were missing in 2019. (Appellee(s) were not entitled to a corroborating report, but was furnished SEVERAL affidavits stating that there is missing and incomplete medical records deviates the standard of care)

(*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**. 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. documentation of catheter placement/removal, Anesthesia vitals are missing.
B. There is no medical insurance that supports authorization of the anesthesia & L&D services.
C. Failed to render fetal monitor strips
D. There is no documentation of the second anesthesiologist that came in the room during a pain evaluation. 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. according to medical records, anesthesia was called into the room for a pain evaluation, There is no further documentation after this encounter. There is no documentation of what happened, who came in the room, what did they do, how much anesthesia was injected, what did they "fix" etc. or what was even injected into the spine of Mrs.Zikry Dr.Ertner's affidavit makes it clear about the missing doctor that came in the room
E. Failed to provide any ultrasounds on 7/1/2017, 7/3/2017, 7/5/2017, and 7/6/2017
F. The plaintiff has a right to know what was injected into her spine, and to this day, does not have any answers as to what is inside her spine.

(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, its relevant policies, procedures, dosage guidelines, prior to the first NOI & 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. 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.)

DEFENDANTS COMMITTED FRAUD AND PERJURY OF THE PLAINTIFFS AFFIDAVITS, WHEN THEY STATED THAT THE PRESUIT AFFIDAVITS DON'T STATE THAT THE STANDARD OF CARE WAS BREACHED, WHEN

IT DID ON THE FACE, THE JUDGE SIGNED A PROPOSED ORDER STATING THAT THE CLAIMS WERE DISMISSED FOR FAILURE TO STATE THAT THE STANDARD OF CARE WAS BREACHED, WHEN IT CLEARLY SAID SO ON THE FACE OF THE AFFIDAVITS, AND THE JUDGE REFUSED FOR THESE PARTIES TO READ THE AFFIDAVITS DURING THE HEARING - PORTIONS OF PLAINTIFF'S EXPERT WITNESS REPORTS below -

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).

(*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).*There is presence of a foreign body in the spine of the Plaintiff. 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 courts clearly established bias and racial discrimination to a party who is seeking justice from acts of racism and assault.

·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. The defendants have used the unsworn statements against the plaintiff in their motion to dismiss & the hearing. The judge overruled the objection before even hearing the objection & written disputes are documented.

This is a violation of basic civil rights, due process, & the constitution.

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

A. There is no legal analysis or adjudication from the civil circuit court dismissal to support the dismissal of several claims of the intentional torts,

nor has there been any legal arguments from the opposing party to support the dismissal of these claims below.

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 (murder has no statute of limitations under criminal and civil statutes, and under the same statutes and provisions, is listed "attempted of murder", which also, does not have a statute of limitations and is seen in the same degree under the law as severe as murder. s. (dosage crimes lead to prosecution where Drs. knew were dangerous, assaulting a person & giving agents known to cause harm is an attempt of murder- See F.S. 784.05)
10. Fraud/forgery
11. Fraudulent concealment
12. DIRECTING INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

Dismissing several intentional tort claims without a judge adjudicating them, without discussing them, nor the defendants making any legal or factual disputes about the intentional torts, is a violation of due process, and civil rights and rights to access the courts.

It is improper for the courts to dismiss a claim of its entirety without an evidentiary hearing, it's inappropriate for a court to tell a plaintiff to "be quiet & stop reading" from the affidavits that supported the claims and was intentionally misrepresented by the defendants.

The courts cannot dismiss several intentional courts and the claims of its entirety without explaining. If there are no written arguments about the statute of limitations for any of the intentional torts, it cannot be brought up for the first time on appeal.(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*)

STATUTE OF LIMITATIONS FOR INTENTIONAL TORTS DIFFER FROM MEDICAL MALPRACTICE SOL AND WERE NEVER DISPUTED IN COURT,THE COURTS CANNOT DISMISS ACTIONS WITHOUT REASONING -

There were no legal arguments by the defendants in the circuit court explaining a legal reason to dismiss several intentional torts on the basis of the statute of limitation. In fact, there's been no legal arguments in ANY of the intentional tort claims. The defendants, for the very first time, made arguments about the statute of limitations in regards to battery & assault DURING AN APPEAL, but fail to address the fraud, the forgery, the attempt of murder claims, there is no explanation from the trial courts on why fraud, and attempt of murder torts should be dismissed, & no arguments by the defendants on appeal as to why those claims should be dismissed, especially when there are sworn expert testimony of fraud, the courts have no standing ground to dismiss those claims with no explanation. That is the departure of the essential requirements of the law and basic due process. Fraud has an extended statute of limitations to 12 years.

There's nothing in the lower court or appellate court record showing supportive reasons why fraud should be dismissed, especially when there are sworn affidavits and reports showing fraud, forgery, & intentional misrepresentation and conduct by the defendants. (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**.) (there are disputes in regards to the discovery of the action, the accrual,and allegations of fraud, concealment, and misrepresentation which are all factors that were never addressed or considered by a court, especially when these are factual and material disputes, and all jury questions) (*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).* ("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.)*

FACTUAL DISPUTES IN REGARDS TO THE STATUTE OF LIMITATIONS FOR MEDICAL MALPRACTICE & INTENTIONAL TORTS

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 FOR INTENTIONAL TORTS AND MEDICAL MALPRACTICE WHICH IS PLED ON THE COMPLAINT -

There are disputes in regard to the statute of limitations made on the record in regards to the medical battery claim ONLY by the defendants. There are factual & material disputes on when the plaintiff discovered the cause of action. This is for the jury to decide, because there are allegations and evidence of fraud, concealment, and misrepresentation all of which were never accounted for. The causes of action were timely filed within the 7 year statute of repose for causes of action of medical malpractice that involves fraud, and even then, it was filed within the 4 year statute of repose, because

the discovery of the cause of action, and the injuries was past two years but within the repose period, fraud tolled the SOL, the accrual, and discovery of the cause of action. The Plaintiff did not have requisite knowledge of the injury because she was not diagnosed with arachnoiditis or CSF leak due to the epidural until 2019 and confirmed via MRI in 2020 nor accompanied knowledge of a reasonable possibility that the injury was caused by medical malpractice until December 2021 when an expert witness reviewed the treating physician's affidavit, all the available evidence, and all the issues regarding lack of proper medical documentation, because the defendants failed to disclose any risks to the plaintiff, forged various consent forms, intentionally destroyed & fabricated evidence to obscure that malpractice occurred, & intentional misrepresented the fact that the epidural & AROM was “mandatory” and “doctors orders”. The defendants battered and assaulted the plaintiff, and disguised is as “medical practice”, and the plaintiff believed in the misrepresentation that a patient has no choice but to abide by the doctors orders. They were only 20, and did not understand that this is assault, and has no knowledge that the nurse forged consent forms at that time. This is not the plaintiffs fault. See City of Miami v. Brooks, 70 So. 2d 306 (Fla.1954) Ms.Zikry ordered her medical records July 2019 for the first time, filed for a 90 day extension to conduct a reasonable investigation, thus is within the four year statute of repose. August 2019 there was suspicion of fraud/forgery.

August 2021, it was confirmed various consent forms were forged by the nurse, some even signed on 7/1/17 during an emergency room visit, days prior to the epidural. 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. 180 added to the 4 year statute of repose. 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) BECAUSE THIS STANDARD DOESN'T APPLY. (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)

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 Appellate 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 appellants 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. (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 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, 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 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.) 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.

> "The surgeon must maintain complete records of each surgical procedure, as set forth in rule 64B8-9.003, F.A.C., including anesthesia records, the records shall contain written informed consent from the patient, consent to the procedure, type of anesthesia and anesthesia provider." " Each physician is legally responsible to the patient for any alleged negligence of any other physician arising out of the scope of their agreement to treat that condition. Formal arguments during hearing. (R.3545-3561) " " Furthermore, a surgeon may be liable for the negligence of an anesthesiologist, whereas, if a surgeon was a contributing factor to the negligence and/or had a controlling effect of the anesthesia" "The courts has addressed the liability of a surgeon for the acts of hospital support personnel in other contexts, as the "captain of the ship," See Buzan v. Mercy Hosp., Inc., 203 So.2d 11 (Fla. 3d DCA 1967), e.g. Hudmon v. Martin, 315 So.2d 516 (Fla. 1st DCA 1975);"

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 - 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

When faced with a claim that a party has committed a pre-suit violation, this case (along with Ham v. Dunmire, 891 So. 2d 492 (Fla. 2004) and Kukral v. Mekras, 679 So. 2d 278 (Fla. 1996)) suggests that "the reviewing court should determine whether there was, in fact, a discovery violation and whether that violation prejudiced the defendant." The preferred hearing to do this is an "evidentiary" hearing. Dismissing a case without these findings, **may deprive a plaintiff of their constitutional right to access the courts.** In other words, the courts should not allow nitpicking on pre-suit disagreements unless the cause is substantial. 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), **F*ort Walton Beach Med. Ctr., Inc. v. Dingler,****F*** 697 So.2d 575 (Fla. 1st DCA 1997). Particularly where the two-year statute of limitations for medical malpractice actions has expired and the defendant has suffered no prejudice, courts have consistently recognized that dismissal is a drastic sanction. See, e.g., Vincent, 855 So. 2d at 1156-57 (concluding that the dismissal of the plaintiff's medical malpractice action, "the effect of which permanently barred her claim since the statute of limitations had since run, was not warranted where there was no prejudice to the defendant doctor"); Kukral, 679 So. 2d at 279

CONCLUSIONS

As a result of the Defendants' conduct, and the trial court's and Second District's exceedingly restrictive reading of chapter 766, and Florida Supreme courts failure to adhere to their own proceedings. has thus far been deprived of her right to access the courts. To uphold the result in this case would permanently deprive the plaintiff of her right to such access to pursue her medical malpractice claim for. Such a result not only frustrates constitutional right to access to the courts, but also does nothing to advance the Legislature's purpose in creating the medical malpractice presuit statutory scheme, We ask these courts to remand the case back to court for an evidentiary hearing and an actual adjudicating of the claims, for the appellate courts to write an opinion, or to declare final judgment as void and fraudulent.

OBJECTIONS

THIS PETITION IS INCOMPLETE DUE TO RECENT MEDICAL EMERGENCIES AND THE DENIAL FOR US TO HAVE ANOTHER EXTENSION OR IN ALTERNATIVE TO AMEND THE PETITION IS A VIOLATION OF OUR CIVIL RIGHTS. WE ARE SUBMITTING A MOTION FOR REQUESTING TIME OR TO AMEND WITH THIS PETITION

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.

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 14th day of November, 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
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