

IN THE SUPREME COURT OF THE STATE OF FLORIDA

CASE NO: SC09-1814  
L.T. Case No. 4D08-1429

COLUMBIA HOSPITAL  
CORPORATION OF SOUTH  
BROWARD, d/b/a WESTSIDE  
REGIONAL MEDICAL CENTER, a  
foreign for profit corporation,

Petitioner/Defendant,

vs.

REBECCA FAIN, as Personal Representative  
of the Estate of WILLIAM THOMAS FAIN,  
deceased,

Respondent/Plaintiff.

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RESPONDENT'S AMENDED BRIEF ON JURISDICTION

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On Discretionary Review from a Decision  
of the Fourth District Court of Appeal

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## STATEMENT OF THE CASE AND FACTS

Respondent REBECCA FAIN, as Personal Representative of the Estate of WILLIAM THOMAS FAIN, (hereinafter "FAIN") agrees, with one minor exception, with the Statement Of The Case And Facts submitted by WESTSIDE MEMORIAL REGIONAL MEDICAL CENTER (hereinafter "WESTSIDE").

On page 2 of its brief, WESTSIDE contends that:

In denying the petition the Fourth District held that Amendment 7 eliminated a healthcare facility's right to object to a discovery request on the basis that the request was overbroad, burdensome or irrelevant. (Opinion at 4-5).

This is incorrect. The Fourth District properly held only that an **Amendment 7 request** "[I]s not an ordinary discovery request" subject to the restraints imposed by the Florida procedural rules.

## SUMMARY OF THE ARGUMENT

This Court should decline to exercise its discretionary jurisdiction to review the decision of the Fourth District Court of Appeal.

In this case the Fourth District construed and applied Amendment 7, a constitutional provision this Court has addressed in *Lakeland Regional Med. Ctr. v. Nealy*, 8 So.3d 1268 (Fla. 2009); *Benjamin v. Tandem Healthcare Inc.*, 998 So.2d 565 (Fla. 2009); and *Florida Hospital Waterman Inc. v. Buster*, 984 So.2d 478 (Fla. 2008).

The Fourth District's decisions in *Columbia Hosp. Corp. v. Fain*, 16 So.3d 236 (Fla. 4<sup>th</sup> DCA 2009) and *Amisub Northridge Hospital v. Sonaglia*, 995 So.2d 999 (Fla. 4<sup>th</sup> DCA 2008) and the Second District's decision in *Morton Plant Hospital Ass'n v. Shahbas*, 960 So.2d 820 (Fla. 2<sup>nd</sup> DCA 2007) reject WESTSIDE's argument that an Amendment 7 request is governed by the restraints imposed by Rule 1.280 Fla. R. Civ. P. In addition both *Fain* and *W. Fla. Reg'l Med. Ctr., Inc. v. See* 2009 App. Lexus 14400, 34 Fla. L. Weekly, D 1947 (September 25, 2009 1<sup>st</sup> DCA) reject WESTSIDE's contention that Amended 7 is preempted by HCQIA (Health Care Quality Improvement Act of 1986). Because the district courts of this state, guided primarily by this Court's decision in *Florida Hospital Waterman, Inc. v. Buster*, have uniformly applied and interpreted Amendment 7, this Court should decline to exercise jurisdiction in this case.

## ARGUMENT

### BECAUSE THE FLORIDA DISTRICT COURTS HAVE UNIFORMLY INTERPRETED AMENDMENT 7, THIS COURT SHOULD DECLINE TO EXERCISE ITS DISCRETIONARY JURISDICTION

WESTSIDE contends that this Court should exercise its discretionary jurisdiction pursuant to Article V, Section 3(b)(3) of the Florida Constitution to address the issues of whether an Amendment 7 request is subject to a healthcare facility's right to object pursuant to Rule 1.280 Fla. R. Civ. P. on the grounds that the request is overbroad, unduly burdensome, or irrelevant and whether Amendment 7 is preempted by HCQIA. In *Fain*; *Amisub North Ridge Hospital*; and *Morton Plant Hospital Ass'n*, the First and Fourth Districts had little difficulty in determining that an Amended 7 discovery request is not subject to the constraints imposed by Rule 1.280 Fla. R. Civ. P.

In addition, on the issue of preemption, both the Fourth District in *Fain* and the First District in *West Florida Regional Medical Center*, concluded that nothing in the HCQIA conflicts with Amendment 7 such that Amendment 7 violates the Supremacy Clause of the Constitution of The United States.

As further pointed out in *West Florida Regional Medical Center Inc.*, the federal courts have uniformly recognized the lack of a medical peer review privilege in the HCQIA and have deemed this omission a policy choice by Congress. *Id.* at 13-15.

Accordingly, since the Florida District Courts of Appeal have uniformly rejected

WESTSIDE's arguments, there is no need for this Court to exercise its discretionary jurisdiction. Similarly, to date, the district courts have properly applied this Court's decision in *Florida Hospital Watermen Inc. v. Buster*. Thus, since there are no district court decisions conflicting with *Fain* or *Buster*, this Court should decline to exercise its discretionary jurisdiction to address issues which are not subject to dispute.

### **CONCLUSION**

For the reasons set forth above, the Court should decline to exercise its discretionary jurisdiction pursuant to Article V, Section 3 (b) (3) of the Florida Constitution.

**CERTIFICATE OF MAILING**

WE HEREBY CERTIFY, that a true and correct copy of the foregoing was sent U.S. Mail this 4<sup>TH</sup> day of November, 2009, to: Stephen J. Bronis, Esq., Carlton Fields, 4000 International Place, 100 S.E. 2<sup>nd</sup> Street, Miami, Florida 33131-2114.

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**CERTIFICATE OF COMPLIANCE**

WE HEREBY CERTIFY that this Respondent's Amended Brief on Jurisdiction was prepared in 14-point Times New Roman font and electronically filed with the clerk of court on November 4, 2009.

BY: \_\_\_\_\_  
CHRISTOPHER J. LYNCH