

Supreme Court of Florida

WEDNESDAY, MAY 12, 2004

CASE NO.: SC04-778

ADVISORY OPINION TO THE ATTORNEY GENERAL
RE: PUBLIC PROTECTION FROM REPEATED MEDICAL MALPRACTICE

Charles J. Crist, Jr., pursuant to the provisions of Article IV, section 10, Florida Constitution, and section 16.061, Florida Statutes, has requested this Court's opinion as to whether the text of the proposed amendment seeking to amend the Florida Constitution to provide public protection from doctors who have committed repeated medical malpractice complies with Article XI, section 3, Florida Constitution, and whether the proposed ballot title and substance comply with section 101.161, Florida Statutes. The petition provides:

a) Statement and Purpose:

Under current law, a medical doctor who has repeatedly committed medical malpractice in Florida or while practicing in other states or countries may obtain or continue to hold a professional license to practice medicine in Florida. The purpose of this amendment is to prohibit such a doctor from obtaining or holding a license to practice medicine in Florida.

b) Amendment of Florida Constitution:

Art. X, Fla. Const., is amended by inserting the following new section at the end thereof, to read:

"Section 20. Prohibition of Medical License After Repeated Medical Malpractice.

"a) No person who has been found to have committed three or more incidents of medical malpractice shall be licensed or continue to be licensed by the State of Florida to provide health care services as a medical doctor.

"b) For purposes of this section, the following terms have the following meanings:

"i) The phrase "medical malpractice" means both the failure to practice medicine in Florida with that level of care, skill, and treatment recognized in general law related to health care providers' licensure, and any similar wrongful act, neglect, or default in other states or countries which, if committed in Florida, would have been considered medical malpractice.

"ii) The phrase "found to have committed" means that the malpractice has been found in a final judgment of a court of law, final administrative agency decision, or decision of binding arbitration."

c) Effective Date and Severability:

This amendment shall be effective on the date it is approved by the electorate. If any portion of this measure is held invalid for any reason, the remaining portion of this measure, to the fullest extent possible, shall be severed from the void portion and given the fullest possible force and application.

The ballot title and summary for the proposed amendment provides:

Current law allows medical doctors who have committed repeated malpractice to be licensed to practice medicine in Florida. This amendment prohibits medical doctors who have been found to have committed three or more incidents of medical malpractice from being licensed to practice medicine in Florida.

Section 16.061, Florida Statutes, requires the Attorney General, within thirty (30) days after receipt of the proposed amendment or revision to the State Constitution by initiative petition, to petition this Honorable Court for an advisory opinion regarding compliance of the text of the proposed amendment with Article XI, section 3, Florida Constitution, and compliance of the proposed ballot title and substance with section 101.161, Florida Statutes.

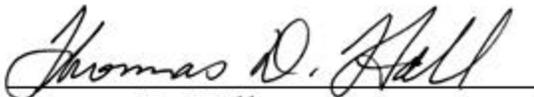
The full text of the Attorney General's letter is attached hereto as an exhibit and made a part thereof.

IT IS, THEREFORE, the order of the Court that interested parties shall **file** their briefs on or before May 24, 2004, and serve a copy thereof on the Attorney General. Answer briefs shall be **filed** on or before June 1, 2004. Please file an original and seven (7) copies of all briefs. In addition to paper briefs, per this Court's Administrative Order In Re: Mandatory Submission of Electronic Copies of Documents on Computer Diskette dated November 13, 2002, counsel are directed to include a copy of all briefs on a DOS formatted 3-1/2 inch diskette in Word Perfect 5.1 (or higher) format compatible in WordPerfect 10. **PLEASE LABEL ENVELOPE TO AVOID ERASURE.** Briefs submitted on diskette will be placed on the Court's Internet site (<http://www.flcourts.org>). Oral argument is scheduled for 9:00 a.m., Monday, June 7, 2004. A maximum of twenty (20) minutes to the side is allowed for the argument. All parties who have filed a brief and have asked to be heard may, in the Court's discretion, be permitted to participate in oral argument.

No motions for extensions of time for the filing of briefs or request for a continuance of oral argument will be entertained by the Court.

A True Copy

Test:



Thomas D. Hall
Clerk, Supreme Court



tc

Served:

HON. GLENDA HOOD
HON. JAMES E. KING
HON. CHARLES J. CRIST, JR.

HON. JEB BUSH, GOVERNOR
HON. JOHNNIE BYRD
SCOTT CARRUTHERS