

IN THE SUPREME COURT OF FLORIDA

KAYNAN FITCHNER, as Personal
Representative of the ESTATE of
CHASE FITCHNER, deceased,

Petitioner/Plaintiff,

vs.

CASE NO. SC08-174
Lower Tribunal Nos. 1D06-4475
1D06-4597

LIFESOUTH COMMUNITY BLOOD
CENTERS, INC., a Florida corporation,

Respondent/Defendant.

**FLORIDA ASSOCIATION OF BLOOD BANKS, INC.'S
AMICUS CURIAE BRIEF ON BEHALF OF
RESPONDENT LIFESOUTH COMMUNITY BLOOD CENTERS, INC.**

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STATEMENT OF INTEREST

The Florida Association of Blood Banks (“FABB”) is a non-profit charitable organization formed in 1947 to facilitate the sharing of resources between its members; to develop standards in compliance with emerging scientific medical knowledge regarding blood services and transfusion; and to assist regulatory and legislative bodies in implementing policies to ensure a safe and adequate blood supply. FABB is composed of nine regional blood centers located in the larger metropolitan areas of the state. Its members rely exclusively on volunteer donors in providing all of the blood and components utilized in transfusing patients in the State of Florida.

The FABB has a compelling interest in establishing blood banks as health care providers of irreplaceable medical services. Blood banks cannot survive large verdicts such as in *Fitchner* and continue to provide the services needed. This case implicates critical public policy issues with regard to the Legislature’s decision in 2003 to extend medical malpractice reforms to blood banks.

FABB has participated as amicus curiae before this court on issues which impact the ability of blood banks to provide an adequate supply of safe blood. See *Rasmussen v. South Fla. Blood Serv., Inc.*, 500 So. 2d 533 (Fla. 1987); *Silva v. Southwest Fla. Blood Bank, Inc.*, 601 So. 2d 1184 (Fla. 1992).

SUMMARY OF ARGUMENT

The collection and testing of blood involves medical science. While risks of infectious viruses and diseases have been dramatically reduced, they cannot be eliminated. These circumstances create the potential for large verdicts against blood banks. This could cause a blood bank to cease operations, leaving patients without critical services. These are the same ruinous consequences that other health care providers faced from medical liability claims and thus blood banks were included in the 2003 statutory amendments to chapter 766. The Legislature defined blood banks as health care providers who provide a medical service. In the 2003 statutory amendments to chapter 766, the Legislature overruled the *Silva* decision and made all provisions of chapter 766 applicable to blood banks.

Petitioner elected not to comply with the presuit requirements of chapter 766. She did not raise the application of presuit as a denial of access to the courts either in the trial or appellate courts. Therefore, this Court should not consider the issue based upon clear precedent.

Finally, Petitioner has failed to establish a basis to conclude that she could not have complied with presuit requirements. Petitioner cites to no authority which would excuse her decision to ignore presuit.

ARGUMENT

I. BLOOD BANKS PROVIDE MEDICAL SERVICES FOR PATIENTS.

- A. Because of the nature of the medical services provided and the liability crisis confronting health care providers, the Legislature included blood banks in the 2003 amendments to chapter 766.**

Despite truly remarkable advances in detecting and preventing the transmission of infection through blood transfusion, not all transfusion-transmitted infections can be prevented. For example, with respect to HIV and Hepatitis C, “window periods” exist during which the viruses can be transmitted even though the donor tests non-reactive. (Busch, Kleinman, Nemo, *Current and Emerging Infectious Risks of Blood Transfusion*, J. Am. Med. Ass’n, Feb. 26, 2003, Vol. 289, No. 8.) (APP1.)¹ In addition, until a disease/infection, such as West Nile Virus, is studied, it is often not known whether it can be transmitted through blood. In light of these inherent risks, the provision of blood and related therapies to patients for transfusion requires the collaboration of multiple clinical/medical disciplines. (Michael P. Busch, *Transfusion-Transmitted Viral Infections: Building Bridges to Transfusion Medicine to Reduce Risks and Understand Epidemiology and Pathogenesis*, TRANSFUSION, Sept. 2006, Vol. 46 at 1624.) (APP2.) Physicians

¹ FABB’s appendix pages are referred to as “APP” following by the index tab number (*i.e.*, APP1.) For all other abbreviations, FABB adopts the Preliminary Statement contained in the Answer Brief of Respondent, LifeSouth Community Blood Centers.

and medical investigators engage in the continuing process of investigating and identifying potential transfusion-transmitted agents. (Busch, *Transfusion-Transmitted Viral Infections, et al.* at 1635. However, blood banks must continue to provide these services which have the potential of transmitting a fatal disease or virus which cannot be prevented.²

In 2002, the West Nile Virus emerged as a viral disease. When Chase Fitchner received 57 units of blood and a bone marrow transplant to treat his underlying Fanconi's anemia, the medical community did not know whether West Nile Virus could be transmitted through blood. There was no test to detect West Nile Virus nor was there a question on the Single Donation Record (SDR) that would have led the donor specialist to believe the donor may have been exposed to West Nile Virus.³ (Busch, *Transfusion-Transmitted Viral Infections, et al.*, at 1635; Montgomery, Brown, et al., *Transfusion Associated Transmission of West Nile Virus, et al.*, at 2038-39.)

² Blood services are a recognized sub-specialty of the medical specialty of pathology. These services are regulated by the FDA. *See* 21 C.F.R. §§ 640.3 and 640.4.

³ Initially, in 2003 questions related to the existence of a fever or whether the donor felt well were believed to be indicative of symptoms of West Nile Virus. However, subsequent research revealed that they were not predictive of West Nile Virus. (Montgomery, Brown, et al., *Transfusion Associated Transmission of West Nile Virus, United States 2003-2005*, TRANSFUSION, Dec. 2006, Vol. 46 at 2038, 2044.) (APP 3.) However, the donor reported no symptoms or fever in this case.

Despite these unavoidable potential risks, blood banks must continue to provide blood for transfusion therapy. LifeSouth, like other blood banks in Florida, serves many patients in hospitals with red blood cells, platelets, plasma and apheresis components 24 hours per day, seven days a week. (R14 2565-66; APP4.) It is the exclusive provider of these services in its region, which includes Shands at the University of Florida. (R14 2567-68; APP4.) Patients like Chase Fitchner, who received 57 blood components to support his bone marrow transplant, require a high level program of donor recruitment and therapeutic services. (R14 2568; APP4.)⁴ Blood and components needed to treat patients like Chase Fitchner are in very tight supply. Platelets last only five days from donation and red blood cells 42 days. (R14 2569; APP4.) Often no more than a one to two-day supply of components needed to treat patients exists. (R14 2569; APP4.) While other blood centers could assist LifeSouth, or any other blood bank, in an emergency, they cannot replace the services provided by LifeSouth. (R14 2571;

⁴ LifeSouth is the regional National Bone Marrow Registry matching marrow transplants with patients. It also operates an umbilical cord blood bank in conjunction with Shands. (R14 2567.) This is part of a statewide consortium to develop cord blood for use by the public. (§ 381.0615, Fla Stat.) Providing bone marrow for transplant like organs and other tissue, is treated similar to blood in its regulation. Bone marrow and other tissue are considered a service not a product. (§ 672.316(6), Fla. Stat.) Testing of tissue for infectious disease is required. (§ 381.0041, Fla. Stat.) The identity of donors providing tissue for transplant is protected. (§ 381.004(3), Fla. Stat.) Procurement of organ and tissue must be under the supervision of a physician. (§ 765.545, Fla. Stat.)

APP4.) There can be no doubt that the medical services provided are irreplaceable and critical to the health care of patients.

A large verdict, such as the jury verdict rendered in *Fitchner*, will exceed the limits of insurance available, the ability of a blood bank to post an appeal bond and threatens the very existence of the blood bank.⁵ (R14 2570-71; APP4.) While it is understandable that a jury may be swayed by sympathy and emotion because of the transmission of a fatal virus resulting in the death of a patient, the impact of a large verdict may well cause a blood bank to consider bankruptcy or cease operations. (R14 2671; APP4.) If this occurs, severe medical consequences will occur to patients relying on these services including potential loss of life. (R14 2671; APP4.) In short, critical medical services will not be available.

In 2002, pursuant an executive order issued by the Governor, the Governor's Select Task Force on Healthcare Professional Liability Insurance undertook a broad investigation of the then-current state of Florida's healthcare delivery system in light of the critical reduction in the quality of healthcare available in Florida.⁶

⁵ Respondent's Motion to Reduce Amount of Bond to Stay Execution of a Money Judgment Pending Appeal. (R14 2572-73; R15 2674-2761.)

⁶ The Governor's 2003 Task Force Report is available on the State of Florida's web site at <http://www.doh.state.fl.us/myflorida/DOH-Large-Final%20Book.pdf>. The Executive Order directed the Task Force to make recommendations designed to protect Floridians access to high-quality and affordable healthcare.

The Task Force held public hearings throughout the State and took testimony from numerous individuals involved in various aspects of the health care system. The Task Force also analyzed similar reforms previously undertaken by other states, such as California, to determine whether the reforms implemented had been successful in achieving the ultimate objective – ensuring the availability of quality healthcare to all residents.

The Task Force closely examined California’s medical negligence legislation, Medical Injury Compensation Reform Act of 1975 (MICRA), finding it successful where Florida’s past attempts at medical liability reform were not. The 2003 amendments mirrored certain aspects of MICRA with respect to issues concerning the imposition of damages caps, expanding the definition of healthcare providers to include, among other things, health dispensaries (which, under California law, includes blood banks); and expanding claims of medical negligence to cover the professional services of healthcare providers. *See* Cal.Civ.Code §§3333.1; 3333.2.

B. Blood is not a product but rather an essential medical service.

Contrary to Petitioner’s and Amicus FJA’s arguments, blood is not a commodity. To suggest that units of blood or components are simply goods that are bought and sold belies the true nature of the services provided by blood banks.

As has been described in LifeSouth’s principal brief, the examination and screening of donors and testing of blood involves medical services which are performed only for transfusion recipients under the direct supervision of a physician.

The services blood banks provide to patients do not end after donation and testing. Patients may require specific components in order to provide for particular needs. For example, Chase Fitchner required specific blood components to meet his unique medical needs. (R14 2568.)

The interdependent nature of the medical service between the blood bank and the ultimate transfusion recipient is further evidenced in the “look back” procedures undertaken each time a virus, such as HIV or HCV, is diagnosed in a patient after a blood transfusion.⁷ The blood bank initiates the investigation, gathers the relevant records, identifies the source and is then responsible for counseling the patient about the increased risk of potential infection, the need for further testing, and to obtain follow-up care if necessary.⁸ All of this is performed under the supervision of a medical physician – the director of the blood bank.

⁷ Although rare, a donor may have tested negative for the disease but has been infective nevertheless due to a “window period” of infectivity. *See* Busch, *Transfusion-Transmitted Viral Infections, et al.*, TRANSFUSION, *supra* 959.

⁸ When a blood bank receives information from the transfusion recipient of an infection, it is required to identify the potential donor who may have been the

C. Florida law recognizes that blood banks provide medical services.

As far back as 1969, the Florida Legislature recognized that providing blood, components and related therapies was a medical service, requiring the knowledge and expertise of the medical community and was not the sale of a product. The preamble to section 672.316, Florida Statutes (1969), reflects the Legislature's finding that "... the procurement, processing, storage, distribution or use of whole blood ... for the purpose of injecting or transfusing the same ... into the human body provides the general public with a desirable and necessary **medical service**, and ... the rendering of this service is an **intricate part of the practice of medicine** ..."⁹ (Ch. 69-159, Laws of Fla.) (Emphasis supplied.)

In 2003, the Legislature amended section 672.316(5), Florida Statutes, making the procurement, processing, distribution and use of blood and its components a service without exception:

source of the infection, review the twelve months before the donor's most recent non-reactive screening test and quarantine any blood or blood components remaining and notify hospitals to which blood was supplied so that it can identify potential recipients. The blood bank is then required to take actions to notify transfusion recipient(s) of the increased risk of potential infection and the need for further testing and counseling. (21 C.F.R. §§ 610.46, 610.47 and 610.48.)

⁹ Prior to the 2003 amendments to the statute, section 672.316(5) provided an exception allowing the implied warranty of merchantability to be applied to blood in limited circumstances. The 2003 amendment removed this exception, making the procurement, processing, storage, distribution or use of whole blood a service in all circumstances.

The procurement, processing, storage, distribution or use of whole blood, plasma, blood products and blood . . . for any purpose whatsoever is **declared to be the rendering of a service by any person participating therein and does not constitute a sale. . . .**

(§ 672.316(5), Fla. Stat. (2003).) “The legislature has the final word on declarations on public policy, and the courts are bound to give great weight to legislative determinations of fact.” *Univ. of Miami v. Echarte*, 618 So. 2d 189, 196 (Fla. 1993) (opinion that “legislative determinations of public purpose and facts are presumed correct and entitled to deference, unless clearly erroneous.”).

Also in 2003, the Legislature amended various provisions of chapter 766, Florida Statutes. With respect to blood banks, these amendments eliminated any continued reliance on *Silva v. Southwest Florida Blood Bank*, 601 So. 2d 1184 (Fla. 1992). In *Silva*, the Court noted that the Legislature had not addressed whether a blood bank was a “health care provider.” It stated:

We can find no indication that the legislature intended for blood banks to be considered “providers of health care” for purposes of the medical malpractice statute of limitations. Nor do we find it permissible generally to construe that term broadly. In the absence of clear legislative intent to the contrary, we are not at liberty to construe that term so as to deprive plaintiffs of their causes of action.

Id. at 1189. With the 2003 amendments, the Legislature expressed its intent that blood banks are to be considered providers of health care and that medical negligence claims are to cover the provision of medical care or services.¹⁰

II. COMPLIANCE WITH PRESUIT IS NEITHER IMPOSSIBLE NOR BURDENSOME.

There is no record evidence or testimony supporting Petitioner’s argument that LifeSouth would not have complied with a presuit request for information. This self-serving argument is simply inaccurate and reflects a lack of understanding of the role played by blood banks in the provision of health care.

Because blood banks are licensed clinical laboratories and perform clinical laboratory procedures, information contained in the SDR and test results, with the identity of the donor redacted, are routinely provided to transfusion recipients if requested.¹¹ Additionally, since the 2003 amendments, blood banks are defined as

¹⁰ Petitioner suggests that subsequent consideration of bills by the Legislature regarding the inclusion of the term “medical service” in section 672.316(5) or to otherwise amend statutes to define providing blood as a “medical service” somehow reveals an intent by the Legislature that blood banks should not be considered providers of medical services. First, the record is devoid of any legislative intent on this point other than counsel’s argument. Moreover, a more logical interpretation of the Legislature’s failure to enact further legislation is that it concluded it was unnecessary in light of the 2003 amendments discussed herein.

¹¹ Blood banks are clinical laboratories licensed under chapter 483, Florida Statutes. As a clinical laboratory, blood banks examine “fluids or other materials taken from the human body . . . for use in . . . the diagnosis, prevention or treatment of a disease or the identification or assessment of a medical or physical

health care providers subject to all of the provisions of chapter 766, including responding to presuit requests for information. (§ 766.202(4), Fla. Stat.) To suggest that a blood bank could disregard a request from a transfusion recipient ignores these statutes and the practices of blood banks.

The information contained on the SDR and laboratory test results with the donor's identification redacted, is sufficient to allow an expert in the field of blood banking and transfusion medicine to assess whether the questions and tests were performed in compliance with the current state of medical knowledge and standards of practice. Obtaining this information and having it reviewed by an expert is neither onerous nor burdensome.

Petitioner's implicit after-the-fact argument is that she would not have been able to comply with presuit because of donor confidentiality concerns which would have precluded disclosure of any information.¹² First, provisions providing for

condition.” (§ 483.041(2), Fla. Stat.) Examination of a human specimen must be at the request of a licensed practitioner or other person authorized by law to use the findings of the clinical laboratory examination. (§ 483.181, Fla. Stat.)

¹² Section 381.0043, Florida Statutes, adopted in 2005, provides that a blood donor's identity or identifying characteristics may not be disclosed, absent written consent from the donor. At the time of this donation in September 2002, section 381.004(3)(e)9a, Florida Statutes (2002), provided the identity and test results of a person who had been tested for HIV (all blood donors) could not be disclosed. These statutes reflect legislative policies to encourage blood donation and foster candid responses to very personal inquiries about health and sexual

donor confidentiality would not prevent disclosure of the SDR or test results with the donor's identity redacted. If more information was required, for example, an interview of donor staff or an interview of the donor if necessary, it could be requested. (§ 766.205(4), Fla. Stat.) If the blood bank did not comply with the request, then it might be deemed to have waived the requirement that a corroborating affidavit be filed. (§ 766.205(3), Fla. Stat.)

Petitioner and Amicus argue that because there was no “privity” between the blood bank and the patient there is an impediment to obtaining a patient’s medical records. Although Petitioner and Amicus do not specify what they mean by “privity,” it is presumed they are referring to section 95.11(4)(b), Florida Statutes, which limits the medical malpractice statute of limitations to “the health care provider and persons in privity with the provider of health care.” If true, Petitioner and Amicus miss the mark. A blood bank’s obligation to provide records to a transfusion recipient arises from the duty owed to the patient – not from the statute of limitations. Furthermore, while there is no express written contract between the blood bank and the patient, there may also be no written contract between the patient and every physician who might render care. However, there is no question that there is a legal relationship between the provider of the medical service and

activity by maintaining this information confidential. *See Rasmussen v. South Fla. Blood Serv., Inc.*, 500 So. 2d 533, 537 (Fla. 1987).

the patient sufficient to impose a professional duty of care. If it were otherwise, Petitioner would have no legal basis to bring a claim against LifeSouth.

III. THE ISSUE OF DENIAL OF ACCESS TO THE COURTS IS NOT PROPERLY BEFORE THIS COURT.

A. A constitutional challenge as to the application of statutes providing for presuit is improper when not raised below.

(1) Petitioner elected not to develop a record regarding presuit.

When Petitioner filed her Complaint in April 2004, she ignored the presuit requirements, arguing to the trial court that chapter 766 did not apply to blood banks. On appeal to the First District Court of Appeal, she argued that LifeSouth was not entitled to any of the protections afforded by chapter 766. Only after the First District reversed the trial court's decision and held that LifeSouth was a health care provider, who provided medical services to patients and thus, was entitled to presuit, did Petitioner, for the first time, raise the issue of whether application of the presuit requirements would unconstitutionally deny her access to the courts. She did so in her motion for certification and clarification, requesting that the First District certify the issue to be considered by the Supreme Court as unconstitutionally denying her access to the courts. Petitioner posed the issue in terms of whether requiring a recipient of contaminated blood to presuit a blood bank "unconstitutionally denied them access to the courts." The First District did not certify the question as posed but rather limited the certified question to the

issues which Petitioner had presented on appeal. The First District certified the following issue for consideration by this Court.

DO THE PRESUIT NOTICE REQUIREMENTS OF SECTION 766.106(2), FLORIDA STATUTES, APPLY TO A BLOOD BANK THAT IS SUPPLYING BLOOD TO A PATIENT?

Thus, an access to courts argument has not been certified to this Court.

(2) When a constitutional argument is not presented below, an appellate court should not consider it.

There are good reasons why the First District did not certify the issue regarding access to courts. It was not considered below and the First District did not have a record upon which to consider the proposed certified question advanced by Petitioner. This Court has held that where a party elects not to present a constitutional argument regarding the unconstitutional application of a statute to the lower court, appellate courts should not consider it on appeal. *Fla. Dep't of Fin. Serv. v. Freeman*, 921 So. 2d 598 (Fla. 2006).

In *Freeman*, an attorney argued for the first time before this Court that a statutory limit on attorneys' fees was unconstitutional as applied to him. This Court rejected the attorney's argument holding that:

This argument was never raised below and cannot be raised for the first time on appeal.

Id. at 602.

This principle has been adhered to on multiple occasions involving similar attempts to raise constitutional issues for the first time on appeal. In *Bush v. Holmes*, 886 So. 2d 340 (Fla. 1st DCA 2004), the First District Court of Appeal rejected an attempt to raise for the first time on appeal whether the no-aid provision of the Constitution violated the Florida Free Exercise Clause. The First District explained:

Whether the application of a statute, or here the no-aid provision, is constitutional must be raised first at the trial level. . . .

Id. at 365. Similarly, in *Thompson v. Napotnik*, 923 So. 2d 537 (Fla. 5th DCA 2006), the Fifth District Court of Appeal held that the failure of a city commissioner facing a recall petition to challenge the constitutionality of the recall statute in the trial court precluded its consideration on appeal. As the court stated:

The law is well-settled that constitutional issues not raised in the trial court cannot be raised for the first time before a district court of appeal.

Id. at 540.

In *Cantor v. Davis*, 489 So. 2d 18, 20 (Fla. 1986), this Court considered the constitutionality of the retroactive application of section 768.56 and noted that “. . . prudence dictates that issues such as the constitutionality of a statute's application to specific facts should normally be considered at the trial level to assure that such issues are not later deemed waived” Here, Petitioner decided

not to raise a denial of access to courts argument nor develop a record before the trial court and has waived the right to bring it now.

(3) Where the constitutional issue involves a mixed question of fact and law, it should not be considered without a trial record.

In *Dade County School Adm'rs Ass'n, Local 77, AFSA, AFL-CIO v. School Bd. of Miami-Dade County*, 840 So. 2d 1103 (Fla. 1st DCA 2003), the First District held that “[w]hen the constitutionality of a statute is a mixed question of law and fact, involving the existence of valid reasons for the legislation, it is preferable to have a record developed in a lower court before a finder of fact.” *Id.* at 1104-05. This rule was summarized in *Glendale Fed. Savings & Loan Ass'n v. State, Dept. of Ins.*, 485 So. 2d 1321 (Fla. 1st DCA 1986):

The wisdom of this rule is particularly evident in this case where we have been asked to rule for the first time on constitutional questions of considerable magnitude, without the benefit of any record It is a familiar canon of appellate review that appellate courts are loath to rule upon issues not directly ruled upon by the trial court.

Id. at 1325. As the court further noted, “the constitutionality of the statute predicated upon the existence of a particular state of facts may be challenged by showing that these facts never existed or have ceased to exist.” *Id.* at 1326. As is apparent here, a significant dispute exists as to what facts would have existed with respect to a blood bank’s compliance with presuit.

IV. PETITIONER AND AMICUS FAIL TO DEMONSTRATE THAT COMPLIANCE WITH PRESUIT WAS NOT REQUIRED.

Petitioner and Amicus cite to no case authority supporting the proposition that presuit notice obligations can simply be ignored. Rather, every case which has considered the issue of whether the application of provisions of chapter 766 would deny access to the courts has involved circumstances in which the claimant attempted to comply with presuit notice but was unable to fully comply with its technical provisions. *See Kukral v. Mekras*, 679 So. 2d 278, 281 (Fla. 1996) (involving late-filed corroborating opinions); *Jackson v. Morillo*, 976 So. 2d 1125, 1128 (Fla. 5th DCA 2007) (the corroborating affidavit did not identify each instance of negligence); *Michael v. Medical Staffing Network, Inc.*, 947 So. 2d 614, 618 (Fla. 3d DCA 2007) (failure to name every nurse by name); *Robinson v. Scott*, 974 So. 2d 1090, 1093 (Fla. 3d DCA 2007) (late filing of presuit discovery did not prejudice defendant); *Vincent v. Kaufman*, 855 So. 2d 1153, 1156 (Fla. 4th DCA 2003) (failure to provide discovery timely did not warrant dismissal where there was no prejudice to the defendant). Moreover, each case involved an initial consideration of the issue by the trial court. These circumstances are not present here.

This case does not involve an issue of strict construction of the constitutional protection of access to courts as discussed in *Weinstock v. Groth*, 629 So. 2d 835

(Fla. 1993). In *Weinstock*, the clinical psychologist was not defined as a health care provider and strict construction requirements precluded application of presuit. *See id.* at 838. Here, a blood bank is specifically defined as a health care provider.

Finally, Petitioner attempts to equate the imposition of financial payments to seek judicial relief to the recovery of medical records to evaluate her claim. Clearly, there is no connection. *Mitchell v. Moore*, 786 So. 2d 521 (Fla. 2001), *T. A. Enterprises, Inc. v. Olarte, Inc.*, 931 So. 2d 1016 (Fla. 4th DCA 2006), and *Psychiatric Associates v. Segal, et al.*, 610 So. 2d 419 (Fla. 1992), receded from on other grounds by *Agency for Healthcare Admin. v. Associated Indus. of Fla., Inc.*, 678 So.2d 1239 (Fla. 1996), all imposed financial obligations as preconditions to seeking judicial relief. No analogous impediment exists here. There is no record evidence that a blood bank would refuse to provide records or charge excessively for the records. Thus, the arguments raised are simply not applicable.

This Court has already concluded that the failure to timely comply with presuit requires dismissal of the action. *Williams v. Campagnulo*, 588 So. 2d 278 (Fla. 1991); *Kukral v. Mekras*, 679 So. 2d 278, 281 (Fla. 1996); *Hosp. Corp. of America v. Lindburgh*, 571 So. 2d 446 (Fla. 1990). The Court has further acknowledged the validity of the Legislature's purpose behind presuit: alleviating the high cost of medical negligence claims through early determination and prompt resolution of claims. *See Kukral*, 679 So. 2d at 284; *Weinstock v. Groth*, 629

So. 2d 835 (Fla. 1993). Petitioner provides no justification for ignoring these important objectives.

CONCLUSION

The First District Court of Appeal correctly concluded that blood banks provide medical services and the presuit provisions of chapter 766 applied to this claim. Because Plaintiff chose to ignore these provisions, her claim was properly dismissed. Petitioner did not raise an access to courts argument below or on appeal. It would be inappropriate and unproductive to consider it in this appeal. The decision of the First District Court of Appeal should be affirmed.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served this ____ day of August, 2008, by regular U. S. Mail, upon Dean R. LeBoeuf, Esq. and Rhonda Bennett, Esq., Brooks, LeBoeuf, Bennett, Foster & Gwartney, P.A., 909 East Park Avenue, Tallahassee, FL 32301; Raymond T. Elligett, Jr., Esq., Buell & Elligett, P.A., 3003 West Azeele Street, Suite 100, Tampa, FL 33609-3138; Benjamin W. Newman, Esq., Paula B. Leite, Esq., Bobo, Ciotoli, Bocchino, Newman & Corsini, P.A., Suite 510, Landmark Center One, 315 East Robinson Street, Orlando, FL 32801-1949; Robert E. Biasotti, Esq., John R. Blue, Esq., Carlton Fields, P.A., One Progress Plaza, Suite 2300, 200 Central Avenue (zip: 33701-4352), Post Office Box 2861, St. Petersburg, FL 33731-2861; Ms. Kimberly E. Kinsell, Corporate Counsel, LifeSouth Community Blood Centers, 4039 Newberry Road, Gainesville, FL 32607; Christine R. Davis, Esq., Carlton Fields, P.A., Post Office Box 190, Tallahassee, FL 32302; Lincoln J. Connolly, Esq., Rossman, Baumberger, Rebozo & Spier, P.A., 44 West Flagler Street, Courthouse Tower, Miami, FL 33130; Edward M. Mansfield, Esq., Belin Lamson McCormick Zumbach Flynn, PC, 666 Walnut Street, Suite 2000, Des Moines, IA 50309.

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CERTIFICATE OF TYPE SIZE AND STYLE

The undersigned certifies that the type size and style used in this motion is Times New Roman 14-Point proportionately spaced in accordance with the requirements of Florida Rule of Appellate Procedure 9.100.

Attorney