From: "Kobrinski, Leigh (CAO)" <Leigh.Kobrinski@miamidade.gov>
Date: Monday, May 4, 2020 at 10:45 AM
To: AO Records <records@americanoversight.org>
Cc: "Kuhns-Neuman, Brenda (CAO)" <Brenda.Kuhns-Neuman@miamidade.gov>, "CAO Public Records Custodian (CAO)" <CAOpublicrecordscustodian@miamidade.gov>
Subject: [Ext]American Oversight Public Records Request

Good morning Ms. Monahan,

We are in receipt of your public records request, attached.

Request # 1) - I have attached records that were readily available and responsive to request # 1. I am in the process of determining if there are any additional records responsive to request # 1 in our office. Depending on if, and how many, records there are, I will provide you with a cost estimate.

Request # 2) - I will work with our IT department to create a search and will be in touch about a cost estimate.

Have a nice day,

Leigh C. Kobrinski
Assistant County Attorney
County Attorney's Office
111 NW 1st Street
Suite 2810
Miami, Florida 33128
(305) 375-1358
(305) 375-5634 (fax)
Assistant: Beverly Jacobs (305) 375-5110

From: Angell, Christopher (CAO) <Christopher.Angell@miamidade.gov>
Sent: Friday, April 03, 2020 1:13 PM EDT
To: Medved, Daniel T <Daniel.Medved@flhealth.gov>
Subject: Accepted: Call w/ DOH and Miami-Dade CAO re: EPI and ME Records

Subject: FW: Call w/ DOH and Miami-Dade CAO re: EPI and ME Records
Location: 1-888-585-9008, code: 385 342 627#

Start: Friday, April 03, 2020 2:00 PM EDT
End: Friday, April 03, 2020 2:30 PM EDT
Show Time As: Busy

Recurrence: None

Meeting Status: Not yet responded

Required Attendees: Kobrinski, Leigh (CAO) <Leigh.Kobrinski@miamidade.gov>

-----Original Appointment-----
From: Medved, Daniel T
Sent: Friday, April 3, 2020 12:57 PM
To: Medved, Daniel T; Angell, Christopher (CAO); Kuhns-Neuman, Brenda (CAO); Bush, Amanda; Beaton, Heather L; Lamia, Christine E
Subject: Call w/ DOH and Miami-Dade CAO re: EPI and ME Records
When: Friday, April 3, 2020 2:00 PM-2:30 PM (UTC-05:00) Eastern Time (US & Canada).
Where: 1-888-585-9008, code: 385 342 627#

Chris, Brenda – Good afternoon. We have set up a meet-me conference line for our follow-up call this afternoon at 2:00 pm. Hope this works well for everyone. Chris Lamia, who joined us yesterday, is out of the office today. I have asked Amanda Bush, Chief Legal Counsel for Disease Control, and Heather Beaton, Chief Legal Counsel for DOH-Miami-Dade, to join us on the call. We also have supplemental information that I will send shortly by separate email for your consideration. Thank you. We look forward to speaking with you at 2:00.

Dan.

DANIEL T. MEDVED
Deputy General Counsel
County Health Departments/County Health Systems
Office of the General Counsel
Florida Department of Health
Office: 386-274-0833; Direct: 386-274-0834
Cell: 386-547-3561; Conf: 386-281-6384; Fax: 386-274-0840

From: Lamia, Christine E <Christine.Lamia@flhealth.gov>
Sent: Thursday, April 09, 2020 3:37 PM EDT
To: Angell, Christopher (CAO) <Christopher.Angell@miamidade.gov>
CC: Medved, Daniel T <Daniel.Medved@flhealth.gov>
Subject: FW: Medical Examiner: General Matters: [EX] Public Record Requests - requests for names of decedents COVID 19 Deaths -

Chris,
To follow up on your email to Dan below, it is my understanding that Jim Martin, counsel for FDLE Medical Examiners Commission, is of the legal opinion that the cause of death is exempt. I am not sure if this clears up any of the confusion mentioned, but wanted to pass this along to you.
Take care and be well!
Chris

Christine E. Lamia
Deputy General Counsel
State Health Offices
Office of the General Counsel
Florida Department of Health
4052 Bald Cypress Way, Bin #A-02
Tallahassee, FL 32399-3265
(850) 245-4005 (OGC Main Line)
(850) 245-4021 (Direct Line)
(850) 245-4790 (Fax)

Mission: To protect, promote, and improve the health of all people in Florida through integrated state, county, & community efforts.
Vision: To be the Healthiest State in the Nation
Values: **ICARE**
I innovation: We search for creative solutions and manage resources wisely.
C collaboration: We use teamwork to achieve common goals & solve problems.
A accountability: We perform with integrity & respect.
R responsiveness: We achieve our mission by serving our customers & engaging our partners.
E excellence: We promote quality outcomes through learning & continuous performance improvement.
Purpose: To protect the public through health care licensure, enforcement and information.
Focus: To be the nation's leader in quality health care regulation.

From: Medved, Daniel T <Daniel.Medved@flhealth.gov>
Sent: Thursday, April 9, 2020 3:13 PM
To: Lamia, Christine E <Christine.Lamia@flhealth.gov>
Subject: FW: [EX] Public Record Requests - requests for names of decedents COVID 19 Deaths -

From: Angell, Christopher (CAO) <Christopher.Angell@miamidade.gov>
Sent: Friday, April 3, 2020 3:31 PM
To: Medved, Daniel T <Daniel.Medved@flhealth.gov>
Subject: Re: [EX] Public Record Requests - requests for names of decedents COVID 19 Deaths -

Good afternoon:

I spoke to the Miami-Dade County Medical Examiner Department's Chief of Operations about our ongoing discussions. He is working from home today but requested that I forward you the below email chain so you could be aware of prior

communications that have been had on this topic and some confusion that has caused.
I will be in contact next week.

Thank you.

Chris Angell
Christopher A. Angell, Esq.
Assistant County Attorney
Miami-Dade County Attorney's Office
Stephen P. Clark Center
111 NW First Street
Suite 2810
Miami, FL 33128
Tel: 305-375-1024
Fax: 305-375-5611

Legal Assistant:
Maria Cruz
Tel: (305) 375-5731
Email: Maria.Cruz2@MiamiDade.gov

Paralegals:
Yenisbel Valdes
Tel: 305-375-1338
Email: Yenisbel.Valdes@MiamiDade.gov

Jarod Rucker
Tel: 305-375-5870
Email: Jarod.Rucker@MiamiDade.gov

Ulla Peralta
Tel: 305-375-2067
Email: Ulla.Peralta@MiamiDade.gov

Due to the unprecedented and changing situation involving COVID-19, the County Attorney's Office is currently working remotely. We will have limited access to regular mail, physical files, and other resources that we would otherwise have while working in-office. As a result, we ask that you please correspond with us by e-mail or send an electronic copy of any physical document you send to our offices to this e-mail address. We also will have limited access to certain physical and other records in response to discovery, public records requests, and other similar requests and ask for your patience and understanding in any delayed or untimely response. To the extent that we have stored data or information online and readily accessible, we will continue to provide it in a timely manner. Please also note that our fax machine has been disconnected and is no longer being used for incoming correspondence at this time. We appreciate your cooperation at this difficult time. Thank you.

From: Martin, James <JamesMartin@fdle.state.fl.us>
Sent: Thursday, March 19, 2020 4:42 PM
To: 'Nelson, Stephen' <StephenNelson@polk-county.net>; 'korozco@volusia.org' <korozco@volusia.org>; 'PWheaton@leegov.com' <PWheaton@leegov.com>; 'Cc:' <wmajors@baycountyfl.gov>; 'Craig.Engelson@brevardfl.gov' <Craig.Engelson@brevardfl.gov>; 'CHBODEN@broward.org' <CHBODEN@broward.org>; 'wpellan@co.pinellas.fl.us' <wpellan@co.pinellas.fl.us>; 'TCrutchfield@coj.net' <TCrutchfield@coj.net>; 'elizabethnunez@d20me.net' <elizabethnunez@d20me.net>; 'Info@dist2me.org' <Info@dist2me.org>; 'medex22@embarqmail.com' <medex22@embarqmail.com>; 'dwinterhalter@fldist12me.com' <dwinterhalter@fldist12me.com>; 'cowanh@hillsboroughcounty.org' <cowanh@hillsboroughcounty.org>; 'ccanard@irsc.edu' <ccanard@irsc.edu>; 'Lindsey.Bayer@marioncountyfl.org' <Lindsey.Bayer@marioncountyfl.org>; Caprara, Darren (ME) <Darren.Caprara@miamidade.gov>; 'Olson-Judy@monroecounty-fl.gov' <Olson-Judy@monroecounty-fl.gov>; 'Sheri.Blanton@ocfl.net' <Sheri.Blanton@ocfl.net>; 'hruiz@pbcgov.org' <hruiz@pbcgov.org>; Wilson, Sheli <SheliWilson@polk-county.net>; 'krogers@sjcfl.us' <krogers@sjcfl.us>; 'ricardocamacho@ufl.edu' <ricardocamacho@ufl.edu>
Cc: Koenig, Vickie <VickieKoenig@fdle.state.fl.us>; Lucas, Steven <StevenChadLucas@fdle.state.fl.us>; Neel, Megan <MeganNeel@fdle.state.fl.us>; Jones, Ken T <Ken.Jones@flhealth.gov>
Subject: RE: [EXTERNAL]: Re: [EX] Public Record Requests - requests for names of decedents COVID 19 Deaths -

---

I concur with Dr. Nelson. I'm not aware of any legal exemption or authority that would prohibit the release of the name of decedent.

James D. Martin, Deputy General Counsel
Florida Department of Law Enforcement
Post Office Box 1489
Tallahassee, Florida 32302-1489
850-410-7679

From: Nelson, Stephen [mailto:StephenNelson@polk-county.net]
Sent: Thursday, March 19, 2020 4:26 PM
To: 'korozco@volusia.org'; 'PWheaton@leegov.com'; 'Cc:'; 'Craig.Engelson@brevardfl.gov'; 'CHBODEN@broward.org'; 'wpellan@co.pinellas.fl.us'; 'TCrutchfield@coj.net'; 'elizabethnunez@d20me.net'; 'Info@dist2me.org'; 'medex22@embarqmail.com'; 'dwinterhalter@fldist12me.com'; 'cowanh@hillsboroughcounty.org'; 'ccanard@irsc.edu'; 'Lindsey.Bayer@marioncountyfl.org'; 'Darren.Caprara@miamidade.gov'; 'Olson-Judy@monroecounty-fl.gov'; 'Sheri.Blanton@ocfl.net'; 'hruiz@pbcgov.org'; Wilson, Sheli; 'krogers@sjcfl.us'; 'ricardocamacho@ufl.edu'
Cc: Martin, James; Koenig, Vickie; Lucas, Steven; Neel, Megan; Jones, Ken T
Subject: RE: [EXTERNAL]: Re: [EX] Public Record Requests - requests for names of decedents COVID 19 Deaths -

Folks,

These public records requests are no different than any other public records request we all receive. They are to be complied with.

As of this writing, there is NO Florida Statutory or Administrative Rule exemption(s) for coronavirus or COVID-19 deaths, including FS 382 et seq.

Stephen J. Nelson, M.A., M.D., F.C.A.P.
District Medical Examiner
10th Judicial Circuit of Florida
(Polk, Hardee, and Highlands Counties)
1021 Jim Keene Boulevard
Winter Haven, FL 33880-8010
863-298-4600 main
863-298-5264 fax
863-687-1344 answering service (24/7/365)

From: Jeff Martin - Director <jmartin@fldme.com>
Sent: Thursday, March 19, 2020 4:01 PM
To: Karla Orozco <korozco@volusia.org>; PWheaton@leegov.com
Cc: wmajors@baycountyfl.gov; Craig.Engelson@brevardfl.gov; CHBODEN@broward.org; wpellan@co.pinellas.fl.us; TCrutchfield@coj.net; elizabethnunez@d20me.net; Info@dist2me.org; medex22@embarqmail.com; dwinterhalter@fldist12me.com; cowanh@hillsboroughcounty.org; ccanard@irsc.edu; Lindsey.Bayer@marioncountyfl.org; Darren.Caprara@miamidade.gov; Olson-Judy@monroecounty-fl.gov; Sheri.Blanton@ocfl.net; hruiz@pbcgov.org; Wilson, Sheli <SheliWilson@polk-county.net>; krogers@sjcfl.us; ricardocamacho@ufl.edu
Subject: [EXTERNAL]: Re: [EX] Public Record Requests - requests for names of decedents COVID 19 Deaths -

We had a similar request from a very impatient individual that threatened us legally. I did provide the names of cases handled between certain dates.

Jef

Jeffrey B. Martin
Director / Chief of Forensic Investigations
(850) 865-2178 - Cellular

Office of the District Medical Examiner
District One - Florida
Central Office
5151 N. 9th Ave.
Pensacola, FL 32504
(850) 416-7210 - Office
(850) 416-6475 - Fax

Annex Office
206 Staff Drive N.E.
Ft. Walton Beach, FL 32548
(850) 651-7771 - Office
(850) 651-7775 - Fax

From: "Karla Orozco" <korozco@volusia.org>
Sent: Thursday, March 19, 2020 2:54 PM
To: PWheaton@leegov.com
Cc: wmajors@baycountyfl.gov, Craig.Engelson@brevardfl.gov, CHBODEN@broward.org, wpellan@co.pinellas.fl.us, TCrutchfield@coj.net, elizabethnunez@d20me.net, Info@dist2me.org, medex22@embarqmail.com, dwinterhalter@fldist12me.com, jmartin@fldme.com, cowanh@hillsboroughcounty.org, ccanard@irsc.edu, Lindsey.Bayer@marioncountyfl.org, Darren.Caprara@miamidade.gov, Olson-Judy@monroecounty-fl.gov, Sheri.Blanton@ocfl.net, hruiz@pbcgov.org, SheliWilson@polk-county.net, krogers@sjcfl.us, ricardocamacho@ufl.edu

Subject: Re: [EX] Public Record Requests - requests for names of decedents COVID 19 Deaths -

Hello all,

We have not had any deaths yet but I had the same concerns and was told by the MEC that they do not know anything that would prevent us from releasing the information. Our health department sent us the attachment citing the relevant statute and FAC for epidemiological investigations which are to be confidential.

I sent the same document to Chad Lucas to see what their legal department thinks about us citing that as the reason we can't release the information.

Karla

Karla Orozco M.S., F-ABMDI
Operations Manager
District 7 Medical Examiner Office
1360 Indian Lake Road
Daytona Beach, FL 32124
Office (386) 258-4060
Fax (386) 258-4061

On Mar 19, 2020, at 3:32 PM, Wheaton, Patricia < PWheaton@leegov.com> wrote:

?
Hello:

Our office has had two deaths related to COVID-19. We initially received a request from media asking for the name of one of the decedents (which we did not provide).

Thereafter, we received two other requests asking for our "log in" book (bodies transported to our office) for the date(s) of the deaths of the two cases. The bodies were not transported from the hospital to our office since we are doing a records review only and the bodies were released directly to the funeral home(s) selected by the families. The request specifically asked for the names, dates of births, and age for the dates specified. The information will not be in the documents they receive since the cases were not transported to our office and therefore not "logged in".

Another media source requested a list of names and dates of birth for cases that died on a specific date. If we were able to pull this type of list together from our database, media would have the name of the decedent whose death was related to COVID-19. Department of Health and the hospital have refused to release this information and have directed our office not to release the name of the decedent pursuant to HIPAA.

Has anyone received such media requests and if so how are you responding? I have reached out to MEC and they have no answers for us. I have reached out to DOH and they verbally advised that our office is not to release the names; however, they have not been able to site statute or otherwise. As we are under a state of emergency (and national and local), does anyone know if the release of this information, which normally would be subject to public record, is now exempt because of the emergency declared?

If you have not already received a request, standby because it will be coming. One request is from Tampa and the another is from Naples so there will soon be national agencies requesting this information.

I would like to be ahead of the eight ball but unfortunately the agencies I was hoping would be able to provide definitive information does not have any answers for us.

Thank you and stay safe.

Patti Wheaton
Operations Manager
District 21 Medical Examiner's Office
70 South Danley Drive
Fort Myers, FL 33907
Phone: 239-533-6339
Fax: 239-277-5017
Email: pwheaton@leegov.com
Website: me21.leegov.com
Serving Lee, Hendry and Glades Counties

Accredited By

<image001.jpg>

<mg_info.txt>

From: Medved, Daniel T <Daniel.Medved@flhealth.gov>
Sent: Friday, April 03, 2020 1:48 PM EDT
To: Angell, Christopher (CAO) <Christopher.Angell@miamidade.gov>; Kuhns-Neuman, Brenda (CAO) <Brenda.Kuhns-Neuman@miamidade.gov>
CC: Lamia, Christine E <Christine.Lamia@flhealth.gov>; Bush, Amanda <Amanda.Bush@flhealth.gov>; Beaton, Heather L <Heather.Beaton@flhealth.gov>
Subject: Medical Examiner: General Matters: COVID-19 Deaths - Legal Resources
Attachment(s): "FDOH Medical Examiner Reporting Letter 4.2.20.pdf","Weaver v Myers (004).pdf","Yeste v Miami Herald Pub Co a div of Knight-Ridder Newspapers Inc.pdf","64D-3.036 (1).pdf"

Chris, Brenda –

As mentioned, one additional line of analysis for consideration:

As referenced above I the Memorandum to the Florida Medical Examiners Commission, physicians, including medical examiners, are mandatory reporters of diseases of public health significance to the Department of Health (DOH). These reports are part of the DOH epidemiological investigation and are therefore confidential. As practicing physicians, medical examiners are mandatory reporters under 381.0031(2), FS, which states that "any practitioner licensed in this state to practice medicine… which diagnoses or suspects the existence of a disease of public health significance shall immediately report the fact to the Department of Health". Subsection 406.11(1)(a)(11), FS, requires the medical examiner to determine the cause of death for any person who dies as a result of a "disease constituting a threat to public health." See also Rule 11G-2.001, FAC. This report from the medical examiner begins or furthers an epidemiological investigation. All information in the report to the Department of Health, including that maintained by the medical examiner, remains confidential for the duration of the epidemiological investigation.

As discussed yesterday, section 381.0031(6), FS, further states that "information submitted in reports required by this section is confidential, exempt for the provision of s.119.07(1)." Furthermore, Rule 64D-3.036, FAC, states "all information in notifiable disease reports and in related to epidemiological investigatory notes is confidential and will only be released as necessary by the State Health Officer". Under Rule 64D-3.041, FAC, epidemiological investigations include follow-up to confirm the diagnosis, treatment, investigation of causes of any disease or condition, and determination of appropriate methods of outbreak and communicable disease control. The Rule further provides that the Department's investigations may include, but are not limited to, medical examination or testing, review of pertinent, relevant medical records, to investigate causes, or to identify other related cases in an area, community, or workplace. The information gathered in the course of an epidemiological investigation and follow-up shall be confidential to the degree permitted under the provisions of sections 119.0712, 381.0031(6), FS.

None of the information contained in laboratory reports, notifiable disease or condition case reports and in related epidemiological investigatory records have been released by the State Health Officer. Therefore, information gathered by the Department which began with the notifiable disease report from the medical examiner, remains confidential. This includes the records of the medical examiner.

Dan.

DANIEL T. MEDVED
Deputy General Counsel
County Health Departments/County Health Systems
Office of the General Counsel
Florida Department of Health
Office: 386-274-0833; Direct: 386-274-0834
Cell: 386-547-3561; Conf: 386-281-6384; Fax: 386-274-0840

From: Lamia, Christine E
Sent: Thursday, April 2, 2020 6:23 PM
To: St Laurent, Louise R <Louise.StLaurent@flhealth.gov>
Cc: Medved, Daniel T <Daniel.Medved@flhealth.gov>
Subject: FW: COVID-19 deaths
Importance: High

Louise,

Please find the email sent to the Miami-Dade County attorney pertaining to the public records request for the confidential information. We will have a follow-up call with him tomorrow.
Chris

Christine E. Lamia
Deputy General Counsel
State Health Offices
Office of the General Counsel
Florida Department of Health
4052 Bald Cypress Way, Bin #A-02
Tallahassee, FL 32399-3265
(850) 245-4005 (OGC Main Line)
(850) 245-4021 (Direct Line)
(850) 245-4790 (Fax)

Mission: To protect, promote, and improve the health of all people in Florida through integrated state, county, & community efforts.
Vision: To be the Healthiest State in the Nation
Values: **ICARE**
I innovation: We search for creative solutions and manage resources wisely.
C collaboration: We use teamwork to achieve common goals & solve problems.
A accountability: We perform with integrity & respect.
R responsiveness: We achieve our mission by serving our customers & engaging our partners.
E excellence: We promote quality outcomes through learning & continuous performance improvement.
Purpose: To protect the public through health care licensure, enforcement and information.
Focus: To be the nation's leader in quality health care regulation.

From: Lamia, Christine E
Sent: Thursday, April 2, 2020 6:21 PM
To: Angell, Christopher (CAO) <Christopher.Angell@miamidade.gov>
Cc: Medved, Daniel T <Daniel.Medved@flhealth.gov>
Subject: RE: COVID-19 deaths

Chris,

Thank you for taking our call this afternoon. Please find attached the letter sent to the Florida Medical Examiners Commission today regarding the ME's mandatory reporting requirements.

As we discussed, it is the Department of Health's position that the information requested in the request below should not be released as it is confidential and exempt from public record disclosure. This position is based upon the following statutes, Florida Administrative Rule and caselaw:

Section 381.0031(6), Florida Statutes, provides that information submitted in reports required by 381.0031 is confidential and exempt from section 119.07(1). Thus, the mandatory report of the medical examiner as required by subsection (2), including the information contained therein, is confidential pursuant to subsection (6). This information includes all of the confidential information collected by the Department pursuant to subsection (7). The confidentiality of these records survive the death of the decedent. See Weaver, attached. I have also attached the administrative rule which implements the cited statute.

Section 382.008(6) Florida Statutes, further exempts the cause of death from section 119.07(1): "All information relating to cause of death in all death and fetal death records… are confidential and exempt from the provisions of section 119.07(1)". Further, section 382.011 requires the medical examiner to certify the cause of death under section 406.11, which specifically implicates section 382.008(6)'s confidentiality exemption.

The above reading of these statutes is supported by Yestes v. Miami Herald Publishing Co., also attached.

I look forward to discussing this further,

Chris

Christine E. Lamia
Deputy General Counsel
State Health Offices
Office of the General Counsel

Florida Department of Health
4052 Bald Cypress Way, Bin #A-02
Tallahassee, FL 32399-3265
(850) 245-4005 (OGC Main Line)
(850) 245-4021 (Direct Line)
(850) 245-4790 (Fax)

Mission: To protect, promote, and improve the health of all people in Florida through integrated state, county, & community efforts.
Vision: To be the Healthiest State in the Nation
Values: **ICARE**
I innovation: We search for creative solutions and manage resources wisely.
C collaboration: We use teamwork to achieve common goals & solve problems.
A accountability: We perform with integrity & respect.
R responsiveness: We achieve our mission by serving our customers & engaging our partners.
E excellence: We promote quality outcomes through learning & continuous performance improvement.
Purpose: To protect the public through health care licensure, enforcement and information.
Focus: To be the nation's leader in quality health care regulation.

From: Angell, Christopher (CAO) <Christopher.Angell@miamidade.gov>
Sent: Thursday, April 2, 2020 5:08 PM
To: Lamia, Christine E <Christine.Lamia@flhealth.gov>
Subject: FW: COVID-19 deaths

Pursuant to your request, please see below.

Chris Angell
Christopher A. Angell, Esq.
Assistant County Attorney
Miami-Dade County Attorney's Office
Stephen P. Clark Center
111 NW First Street
Suite 2810
Miami, FL 33128
Tel: 305-375-1024
Fax: 305-375-5611

Legal Assistant:
Maria Cruz
Tel: (305) 375-5731
Email: Maria.Cruz2@MiamiDade.gov

Paralegals:
Yenisbel Valdes
Tel: 305-375-1338
Email: Yenisbel.Valdes@MiamiDade.gov

Jarod Rucker
Tel: 305-375-5870
Email: Jarod.Rucker@MiamiDade.gov

Ulla Peralta
Tel: 305-375-2067
Email: Ulla.Peralta@MiamiDade.gov

Due to the unprecedented and changing situation involving COVID-19, the County Attorney's Office is currently working remotely. We will have limited access to regular mail, physical files, and other resources that we would otherwise have while working in-office. As a result, we ask that you please correspond with us by e-mail or send an electronic copy of any physical document you send to our offices to this e-mail address. We also will have limited access to certain physical and other records in response to discovery, public records requests, and other similar requests and ask for your patience and understanding in any delayed or untimely response. To the extent that we have stored data or information online and readily accessible, we will continue to provide it in a timely manner. Please also note that our fax machine has been disconnected and is no longer being used for incoming correspondence at this time. We appreciate your cooperation at this difficult time. Thank you.

From: Ovalle, David <dovalle@miamiherald.com>
Sent: Tuesday, March 31, 2020 6:29 PM
To: Caprara, Darren (ME) <Darren.Caprara@miamidade.gov>

Subject: COVID-19 deaths

Hope you are doing well, and please thank Dr. Lew for speaking with me about the ME's role in this horrible pandemic. I hope the story was informative for leaders.

Since the ME must certify and issue COVID-19 deaths, can you please send the names and DOBs of the decedents thus far recorded through the ME's office. So far, the Fla. Dept of Health has noted 7 deaths. Thank you!

David O.

64D-3.036 Notifiable Disease Case Report Content is Confidential.

All information contained in laboratory reports, notifiable disease or condition case reports and in related epidemiological investigatory notes is confidential as provided in Section 381.0031(6), F.S., and will only be released as determined as necessary by the State Health Officer or designee for the protection of the public's health due to the highly infectious nature of the disease, the potential for further outbreaks, and/or the inability to identify or locate specific persons in contact with the cases.

Rulemaking Authority 381.0011, 381.003(2), 381.0031(8), 384.33, 392.66 FS. Law Implemented 381.0011(3), 381.003(1), 381.0031(2), (6), (7), 384.25, 392.53 FS. History–New 11-20-06.

To: District Medical Examiners

From: The Florida Department of Health

Through: The Florida Medical Examiners Commission

Re: Mandatory Reporting of COVID-19 Deaths under Rule 64D-3, Florida Administrative Code

Date: April 2, 2020

COVID-19 IS A REPORTABLE CONDITION OF URGENT PUBLIC HEALTH IMPORTANCE AND MUST BE REPORTED TO THE DEPARTMENT OF HEALTH IMMEDIATELY.

Florida Statutes section 406.11(1)(a)11 requires the local medical examiner to determine the cause of death for any person who dies as a result of a disease constituting a threat to public health. Florida Administrative Code section 64D-3.030(1) also requires all medical examiners to report *without delay* any suspicion or diagnosis of coronavirus infection, including cases in persons who at the time of death were so affected. Reports that cannot timely be made during the County Health Department business day shall be made to the County Health Department after-hours duty official. If unable to do so, examiners are required to contact the Department after-hours duty official at (850)245-4401.

Rule 64D-3.047 provides:

> (1) Any practitioner, hospital or laboratory who is subject to the provisions of this rule who fails to report a disease or condition as required by this rule or otherwise fails to act in accordance with this rule is guilty of a misdemeanor of the second degree, and, upon conviction thereof, shall be fined not more than five hundred dollars ($500.00) as provided in Section 775.082 or 775.083, F.S. Each violation is considered a separate offense.
> (2) All violations by practitioners, hospitals or laboratories shall be reported to the appropriate professional licensing authorities and public financing programs.

Please be advised that strict compliance with this rule is of the utmost importance during this public health emergency. The Department of Health, in conjunction with state, federal, and local authorities, uses this data in real time to prepare and respond to the COVID-19 emergency. *Any* gaps or delays in reporting time hinder efficient emergency response and resource allocation. The Department trusts you, the District Medical Examiner and your Associate Medical Examiners, to meet your obligation to report immediately during this pandemic.

Florida Department of Health
Office of the State Surgeon General
4052 Bald Cypress Way, Bin A-00 • Tallahassee, FL 32399-1701
PHONE: 850/245-4210 • FAX: 850/922-9453
FloridaHealth.gov

229 So.3d 1118
Supreme Court of Florida.

Emma Gayle WEAVER, etc., Petitioner,
v.
Stephen C. MYERS, M.D., et al., Respondents.

No. SC15–1538
|
[November 9, 2017]

Synopsis

Background: Wife, as personal representative of husband's estate, brought medical negligence action against physician and sought declaratory relief and an injunction with regard to the statutory requirement for secret, ex parte interviews of husband's health care providers. The Circuit Court, Escambia County, J. Scott Duncan and Edward P. Nickinson, III, JJ., granted physician's motion to dismiss in part and granted physician's motion for summary judgment. Wife appealed. The District Court of Appeal, 170 So.3d 873, affirmed. Wife petitioned for review.

Holdings: The Supreme Court, Lewis, J., held that:

[1] husband maintained his constitutional right to privacy after his **death**;

[2] a decedent does **not** retroactively lose and can maintain the constitutional right to privacy in protected private matters;

[3] wife had standing to raise husband's right to privacy;

[4] wife did **not** waive husband's right to privacy over all health information by filing medical malpractice claim; and

[5] husband's right to privacy was violated by statutory provisions requiring secret, ex parte interviews.

Quashed and remanded.

Canady, J., filed dissenting opinion in which Polston and Lawson, JJ., joined.

West Headnotes (15)

[1] **Constitutional Law**
Records or Information

Constitutional Law
Medical records or information

Patient and his estate that brought medical malpractice action against physician maintained constitutional right to privacy concerning matters that occurred prior to his **death**, and that privacy could be invoked as a shield to maintain confidence of his protected information, including but **not** limited to medical information; even though patient had died, right to privacy was being used as limited shield from ex parte discovery and **not** as sword to initiate civil action. Fla. Const. art. 1, § 23.

1 Cases that cite this headnote

[2] **Appeal and Error**
Constitutional law

Review is de novo for questions of constitutional law.

[3] **Constitutional Law**
Right to Privacy

The constitutional right of privacy ensures that individuals are able to determine for themselves when, how, and to what extent information about them is communicated to others. Fla. Const. art. 1, § 23.

[4] **Constitutional Law**
Records or Information

Constitutional Law
Medical records or information

In all litigation contexts, a decedent does **not** retroactively lose and can maintain the constitutional right to privacy that may be invoked as a shield in all contexts, including but **not** limited to medical malpractice cases, against the unwanted disclosure of protected private

matters, including medical information that is irrelevant to any underlying claim including but **not** limited to any medical malpractice claim. Fla. Const. art. 1, § 23.

2 Cases that cite this headnote

[5] Constitutional Law
Right to Privacy

Death does **not** retroactively abolish the constitutional protections for privacy that existed at the moment of **death**. Fla. Const. art. 1, § 23.

1 Cases that cite this headnote

[6] Constitutional Law
Right to privacy

Wife, who was personal representative of husband's estate, had standing to raise husband's constitutional right to privacy in protected medical information, in estate's challenge to statutes requiring secret, ex parte interviews with patients' health care providers in medical malpractice actions; administrator of estate could assert privacy right in wrongful **death** actions because he or she was the only person who had standing to file wrongful **death** action in the first place. Fla. Const. art. 1, § 23; Fla. Stat. Ann. §§ 766.106, 766.1065, 768.20.

1 Cases that cite this headnote

[7] Death
Personal Representatives

The personal representative of a decedent's estate is the sole party that may file a decedent's cause of action for wrongful **death**. Fla. Stat. Ann. § 768.20.

[8] Constitutional Law
Waiver in general

Wife, who was personal representative of husband's estate, did **not** waive husband's constitutional right to privacy over all health information by filing medical malpractice claim on estate's behalf; even though wife **waived** right with regard to health information relevant to claim, wife did **not** waive right with regard to irrelevant information, and some irrelevant information would have been open and subject to ex parte exploration proceedings for medical malpractice claims. Fla. Const. art. 1, § 23; Fla. Stat. Ann. §§ 766.106, 766.1065.

[9] Constitutional Law
Medical records or information

Although a claimant may necessarily waive privacy rights to the medical information that is relevant to a medical malpractice claim by filing an action, this does **not** amount to waiver of privacy rights pertaining to all confidential health information that is **not** relevant to the claim. Fla. Const. art. 1, § 23.

3 Cases that cite this headnote

[10] Constitutional Law
Medical records or information

Patient's constitutional right to privacy was violated by statutory provisions requiring secret, ex parte interviews of patient's health care providers as a condition for patient's estate to bring medical malpractice action; ex parte interviews did **not** protect patient from even accidental disclosures of confidential medical information that fell outside scope of claim, and provisions coerced and forced patient to either forego right to privacy or forego fundamental constitutional right to access to courts. Fla. Const. art. 1, §§ 21, 23; Fla. Stat. Ann. §§ 766.106, 766.1065.

1 Cases that cite this headnote

[11] Constitutional Law
Particular Issues and Applications

Constitutional Law
Particular Issues and Applications

Constitutional Law
Right to Privacy

Due to the fundamental and highly guarded nature of the constitutional right to privacy, any law that implicates the right, regardless of the activity, is subject to strict scrutiny and,

therefore, presumptively unconstitutional; thus, the burden of proof rests with the State to justify an intrusion on privacy. Fla. Const. art. 1, § 23.

1 Cases that cite this headnote

[12] Constitutional Law
Conditions, Limitations, and Other Restrictions on Access and Remedies

Courts are generally opposed to any burden being placed on the rights of aggrieved persons to enter the courts because of the constitutional guarantee of access. Fla. Const. art. 1, § 21.

[13] Constitutional Law
Conditions, Limitations, and Other Restrictions on Access and Remedies

The access to courts provision of the state constitution is applicable to wrongful **death** actions. Fla. Const. art. 1, § 21.

[14] Constitutional Law
Conditions, Limitations, and Other Restrictions on Access and Remedies

The scope of protection of access to the courts extends to protect situations in which legislative action significantly obstructs the right of access. Fla. Const. art. 1, § 21.

[15] Constitutional Law
Conditions, Limitations, and Other Restrictions on Access and Remedies

In order to find that a right of access to the courts has been violated it is **not** necessary for the statute to produce a procedural hurdle which is absolutely impossible to surmount, only one which is significantly difficult. Fla. Const. art. 1, § 21.

West Codenotes

Held Unconstitutional

Fla. Stat. Ann. §§ 766.106, 766.1065

***1120** Application for Review of the Decision of the District Court of Appeal—Statutory Validity, First District–Case No. 1D14–3178, (Escambia County)

Attorneys and Law Firms

Virginia M. Buchanan of Levin, Papantonio, Thomas, Mitchell, Rafferty & Proctor, P.A., Pensacola, Florida; Robert S. Peck of Center for Constitutional Litigation, P.C., Fairfax Station, Virginia, for Petitioner

Mark Hicks and Erik P. Bartenhagen of Hicks, Porter, Ebenfeld & Stein, P.A., Miami, Florida, for Respondent

Philip M. Burlington and Adam J. Richardson of Burlington & Rockenbach, P.A., West Palm Beach, Florida, for Amicus Curiae Florida Justice Association

Pamela Jo Bondi, Attorney General, and Jordan E. Pratt, Deputy Solicitor General, Office of the Attorney General, Tallahassee, Florida, for Amicus Curiae State of Florida

***1121** Andrew S. Bolin of Beytin, McLaughlin, McLaughlin, O'Hara, Bocchino & Bolin, P.A., Tampa, Florida, for Amici Curiae Florida Hospital Association, The Florida Medical Association, and The American Medical Association

Mark K. Delegal and Tiffany A. Roddenberry of Holland & Knight LLP, Tallahassee, Florida; and William W. Large, Esq. of Florida Justice Reform Institute, Tallahassee, Florida, for Amicus Curiae The Florida Justice Reform Institute

Opinion

LEWIS, J.

This case involves a Florida constitutional challenge to the 2013 amendments to sections 766.106 and 766.1065 of the Florida Statutes. Generally, the statutes pertain to invasive presuit notice requirements that must be satisfied before a medical negligence action may be filed, as well as an informal discovery process that accompanies that presuit notice process, and the amendments at issue here authorize secret, ex parte interviews as part of the informal discovery process. The First District Court of Appeal upheld the constitutionality of these statutory amendments in Weaver v. Myers, 170 So.3d 873, 883 (Fla. 1st DCA 2015). Weaver then petitioned this Court for review. [1] Because the district court expressly declared a state statute valid, this Court has

discretionary jurisdiction to review the decision. See art. V, § 3(b)(3), Fla. Const. We accept that jurisdiction.

STATUTORY BACKGROUND

Since 2011, before filing a medical negligence action in Florida, a claimant must satisfy statutory requirements, which include conducting a presuit investigation process to ascertain whether there are reasonable grounds to believe that the defendant medical provider was negligent, and that the negligence resulted in injury to the claimant. § 766.203(2)(a)-(b), Fla. Stat. (2016).

Following that investigation, a claimant must give each prospective defendant presuit notice of intent to initiate litigation and make certain disclosures. § 766.106(2)(a), Fla. Stat. (2016). The notice must disclose, where available, a list of all health care providers seen by the claimant for the injuries complained of and all known health care providers seen during the two-year period prior to the alleged act of negligence. Id. Furthermore, a medical malpractice claimant must furnish all **medical records** that the presuit investigation expert relied upon in signing an affidavit indicating a good-faith basis to believe a valid claim exists. See id.

In addition, the presuit notice must include an executed authorization form that is provided in section 766.1065 of the Florida Statutes. Id. That executed authorization form is titled "Authorization for Release of Protected Health Information." § 766.1065, Fla. Stat. (2016). By executing the authorization form in compliance with the statutory presuit notice requirement, the claimant is required to authorize the release of protected verbal and written health information that is potentially relevant to the claim of medical negligence in the possession of the health care providers listed in the notice disclosures. § 766.1065(3)B.1.–2., Fla. Stat. However, this authorization is **not** a blanket authorization—it excludes health care providers who do **not** possess information that is potentially relevant to the claim. § 766.1065(3)C. Nevertheless, the claimant is required to name these providers and provide the dates of treatments rendered by others. Id.

***1122** As part of this presuit machinery unique to medical malpractice claims, "the parties shall make discoverable information available without formal discovery." § 766.106(6)(a), Fla. Stat. Under this informal discovery, a prospective defendant may require a medical malpractice claimant seeking redress to: (1) give an unsworn statement; (2) produce requested documents, things, and **medical records**; (3) submit to a physical or mental examination; (4) answer written questions; and (5) authorize treating health care providers to give unsworn statements. See § 766.106(6)(b), Fla. Stat. The statutory scheme further provides, however, that "work product generated by the presuit screening process is **not** discoverable or admissible in any civil action for any purpose by the opposing party." § 766.106(5), Fla. Stat. But, failure to participate in informal discovery "is grounds for dismissal of claims or defenses ultimately asserted." § 766.106(6)(a), Fla. Stat.

AMENDMENTS AT ISSUE

While it retained the scheme described above, in 2013, the Legislature added secret, ex parte interviews to the list of informal discovery devices to which a medical malpractice claimant seeking redress must consent:

> Interviews of treating health care providers.—A prospective defendant or his or her legal representative may interview the claimant's treating health care providers consistent with the authorization for release of protected health information. This subparagraph does **not** require a claimant's treating health care provider to submit to a request for an interview. Notice of the intent to conduct an interview shall be provided to the claimant or the claimant's legal representative, who shall be responsible for arranging a mutually convenient date, time, and location for the interview within 15 days after the request is made. For subsequent interviews, the prospective defendant or his or her representative shall notify the claimant and his or her legal representative at least 72 hours before the subsequent interview. If the claimant's attorney fails to schedule an interview, the prospective defendant or his or her legal representative may attempt to conduct an interview

> without further notice to the claimant or the claimant's legal representative.

§ 766.106(6)(b) 5., Fla. Stat. (emphasis added); Ch. 2013–108, § 3, at 5, Laws of Fla. Thus, that plain language requires that, upon request by the prospective defendant, the medical malpractice claimant must arrange for an interview between his or her treating health care providers and the prospective defendant or legal representatives of such defendant within fifteen days of the request. Without providing any limitation on the number of interviews, the plain language further provides for arranging subsequent interviews with 72–hours' notice. However, if at any time the medical malpractice claimant's attorney fails to schedule a requested interview, then the prospective defendant or his lawyers may unilaterally and without notice schedule the claimant's treating health care providers for such an interview without any notice to the claimant whatsoever. Nothing prevents multiple attempts at securing such interviews.

Further, the statutorily mandated authorization form was also amended and makes clear that the prospective defendant may interview the claimant's treating health care providers ex parte in secret, without the claimant or the claimant's attorney present:

> This authorization expressly allows the persons or class of persons listed in subsections D.2.–4. above to interview the health care providers listed in subsections B.1.–2. above, without the presence ***1123** of the Patient or the Patient's attorney.

§ 766.1065(3)E., Fla. Stat. (emphasis added); Ch. 2013–108, § 4, at 7, Laws of Fla. However, because "[t]his authorization expressly allows the persons or class of persons listed in subsections D.2.–4. above to interview," the authorization requires a medical malpractice claimant to expose health care providers to such clandestine, ex parte interviews **not** only with the prospective defendant, but also with a broad set of parties, including related insurers, expert witnesses, attorneys, and support staff:

> 2. Any liability insurer or self-insurer providing liability insurance coverage, self-insurance, or defense to any health care provider to whom presuit notice is given, or to any health care provider listed in subsections B.1.–2. above, regarding the care and treatment of the Patient.
>
> 3. Any consulting or testifying expert employed by or on behalf of (name of health care provider to whom presuit notice was given) and his/her/its insurer(s), self-insurer(s), or attorney(s) regarding the matter of the presuit notice accompanying this authorization.
>
> 4. Any attorney (including his/her staff) employed by or on behalf of (name of health care provider to whom presuit notice was given) or employed by or on behalf of any health care provider(s) listed in subsections B.1.–2. above, regarding the matter of the presuit notice accompanying this authorization or the care and treatment of the Patient.

§ 766.1065(3)D.2.–4., Fla. Stat.

The Legislature did **not** amend the statute without some expression of its intent. Specifically, in 2013, the Legislature added a third express purpose for the release of the protected health information: "Obtaining legal advice or representation arising out of the medical negligence claim described in the accompanying presuit notice." § 766.1065(3)A.3., Fla. Stat.; Ch. 2013–108, § 4, at 6, Laws of Fla. Before the amendments, the stated purpose of the mandatory authorization was twofold—to facilitate the investigation and evaluation of the claim, or to defend against any litigation arising out of the claim. § 766.1065(3)A.1.–2., Fla. Stat. (2012); Ch. 2013–108, § 4, at 6, Laws of Fla.

Further, as was true before the 2013 amendments, it remains true today that these conditions imposed by the Legislature are nonnegotiable. Specifically, "If the authorization required by this section is revoked, the presuit notice under s. 766.106(2) is deemed retroactively void from the date of issuance, and any tolling effect that the presuit notice may have had on any applicable statute-of-limitations period is retroactively rendered void." § 766.1065(2), Fla. Stat. (2016); see also generally § 95.11(4)(b), Fla. Stat. (2016) ("An action for medical malpractice shall be commenced within 2 years from the time the incident giving rise to the action occurred or within 2 years from the time the incident is discovered, or should have been discovered with the exercise of due diligence ...."). Thus, as the decision below correctly recognized, a claimant now cannot institute a medical malpractice action without authorizing ex parte interviews between the claimant's health care providers and the potential defendant. Weaver, 170 So.3d at 877.

FACTUAL AND PROCEDURAL BACKGROUND

Faced with the expanded disclosure requirements, Petitioner Emma Gayle Weaver (Weaver), individually and as personal representative of the estate of her late husband Thomas Weaver (Thomas), filed an action against Respondent Dr. Stephen C. Myers for declaratory judgment and ***1124** injunctive relief with regard to the 2013 amendments on the date they became effective. Weaver contended that Dr. Myers provided care to Thomas that allegedly led to his injury and **death**. Relevant here, Weaver contended that the 2013 amendments violated the right of access to courts and the right to privacy under the Florida Constitution.

With regard to the right to privacy claim, the trial court granted in part Dr. Myers' motion to dismiss and dismissed Weaver's privacy claim. The trial court first concluded that an estate cannot assert any privacy rights on behalf of a decedent because such rights under the Florida Constitution absolutely terminate upon **death** and essentially are retroactively destroyed. The court then held that even if Weaver could assert Thomas' privacy rights, the claim should still be dismissed because a constitutional privacy challenge can only be asserted to protect against a government entity or actor even though it is obvious that a state statute is authorizing the invasion here.

With regard to the access to courts challenge, on June 24, 2014, the trial court granted Dr. Myers' motion for summary judgment. The trial court reasoned that the predecessor statute to section 766.106 was held to be valid under the applicable provision of the Florida Constitution. See Lindberg v. Hosp. Corp. of Am., 545 So.2d 1384, 1386 (Fla. 4th DCA 1989), approved 571 So.2d 446 (Fla. 1990). The court then concluded the addition of the secret ex parte interviews do **not** represent a material change sufficient to render the statute an impermissible burden on access to courts.

On appeal, the First District affirmed. Weaver, 170 So.3d at 883. With regard to access to courts, the First District stated that "[a] statute which merely imposes a condition precedent to suit without abolishing or eliminating a substantive right must be upheld in the face of a constitutional challenge unless the statute 'create[s] a significantly difficult impediment to ... right of access.' " Id. at 882 (quoting Henderson v. Crosby, 883 So.2d 847, 854 (Fla. 1st DCA 2004) (quoting Mitchell v. Moore, 786 So.2d 521 (Fla. 2001))). The district court determined that the signing and serving of the mandatory authorization as part of the presuit process does **not** "abolish or eliminate" any substantive right, and concluded that "all that is imposed is a precondition to suit, in addition to those that are already in existence under chapter 766." Id. It then stated:

> Though [Weaver] is correct that the amendments to the authorization for release of protected health information now require the claimant to expressly authorize ex parte interviews between former health care practitioners with information relevant to the potential lawsuit and the potential defendant, we find that like the presuit notice requirement itself, this is a reasonable condition precedent to filing suit, and, thus, does **not** violate her right to access the courts.

Id. at 882–83.

With regard to the privacy challenge, the district court, unlike the trial court, addressed this claim on the merits and concluded that "any privacy rights that might attach to a claimant's medical information are **waived** once that information is placed at issue by filing a medical malpractice claim. Thus, by filing the medical malpractice lawsuit, the decedent's medical condition is at issue." Id. at 883 (citations omitted). The district court further noted that prior to the 2013 amendments, potential claimants were already required to disclose and produce relevant **medical records** to the defense during the presuit process. Id. The court below did **not** acknowledge or even address the concept of ***1125** non-relevant matters and privacy rights related thereto.

Therefore, the district court upheld the constitutionality of the statutes. This review follows.

ANALYSIS

[1] **[2]** Weaver contends that the Legislature's passage of certain amendments to sections 766.106 and 766.1065 of the Florida Statutes are unconstitutional for several reasons. First, Weaver contends that the amendments violate the right to

privacy explicitly provided for in the Florida Constitution. Relatedly, Weaver also contends that placing a prerequisite condition on her action for wrongful **death** requiring the release of Thomas' **medical records** and the facilitation of ex parte, secret presuit interviews with Thomas' medical providers violates the right to access to courts. Because these issues are questions of Florida constitutional law, our review is de novo. Caribbean Conservation Corp. v. Fla. Fish & Wildlife Conservation Comm'n, 838 So.2d 492, 500 (Fla. 2003).

The United States Supreme Court has explained that the United States Constitution does **not** mention the right to privacy, but that it is a pervasive right touching on many aspects of life and the right of privacy finds its roots throughout the Bill of Rights and in the Fourteenth Amendment:

> The Constitution does **not** explicitly mention any right of privacy. In a line of decisions, however, going back perhaps as far as Union Pacific R. Co. v. Botsford, 141 U.S. 250, 251, 11 S.Ct. 1000, 35 L.Ed. 734 (1891), the Court has recognized that a right of personal privacy, or a guarantee of certain areas or zones of privacy, does exist under the Constitution. In varying contexts, the Court or individual Justices have, indeed, found at least the roots of that right in the First Amendment; in the Fourth and Fifth Amendments; in the penumbras of the Bill of Rights; in the Ninth Amendment; or in the concept of liberty guaranteed by the first section of the Fourteenth Amendment. These decisions make it clear that only personal rights that can be deemed "fundamental" or "implicit in the concept of ordered liberty," are included in this guarantee of personal privacy. They also make it clear that the right has some extension to activities relating to marriage; procreation; contraception; family relationships; and child rearing and education.

Roe v. Wade, 410 U.S. 113, 152–53, 93 S.Ct. 705, 35 L.Ed.2d 147 (1973), holding modified by Planned Parenthood of Se. Pa. v. Casey, 505 U.S. 833, 112 S.Ct. 2791, 120 L.Ed.2d 674 (1992) (internal citations omitted).

While the federal right to privacy is pervasive and is revealed by judicial interpretation, we need **not** rely on federal law but look only to the Florida Constitution, which explicitly provides a right to privacy:

> Every natural person has the right to be let alone and free from governmental intrusion into the person's private life except as otherwise provided herein.

Art. I, § 23, Fla. Const. (1980). This provision was added by Florida voters in 1980 and remains unchanged.

[3] We have explained that the right to privacy in the Florida Constitution is broader, more fundamental, and more highly guarded than any federal counterpart:

> This amendment is an independent, freestanding constitutional provision which declares the fundamental right to privacy. Article I, section 23, was intentionally phrased in strong terms. The drafters of the amendment rejected the use of the words "unreasonable" or "unwarranted" before the phrase "governmental intrusion" in order to make the privacy right as strong as possible. Since ***1126** the people of this state exercised their prerogative and enacted an amendment to the Florida Constitution which expressly and succinctly provides for a strong right of privacy **not** found in the United States Constitution, it can only be concluded that the right is much broader in scope than that of the Federal Constitution.

Winfield v. Div. of Pari–Mutuel Wagering, 477 So.2d 544, 548 (Fla. 1985); see N. Fla. Women's Health & Counseling Servs., Inc. v. State, 866 So.2d 612, 634–35 (Fla. 2003). The right of privacy "ensures that individuals are able 'to determine for themselves when, how and to what extent information about them is communicated to others.' " Shaktman v. State, 553 So.2d 148, 150 (Fla. 1989) (quoting A. Westin, Privacy and Freedom 7 (1967)).

Specifically relevant here, we have held in no uncertain terms that "[a] patient's **medical records** enjoy a confidential status by virtue of the right to privacy contained in the Florida Constitution ...." State v. Johnson, 814 So.2d 390, 393 (Fla. 2002). We have further recognized that "[t]he potential for invasion of privacy is inherent in the litigation process." Rasmussen v. S. Fla. Blood Serv., Inc., 500 So.2d 533, 535 (Fla. 1987).

This would **not** be the first time that a Florida court has balanced a decedent's constitutional right to privacy over information occurring during the person's lifetime against the right to access to that information in litigation. In Antico v. Sindt Trucking, Inc., 148 So.3d 163, 164 (Fla. 1st DCA 2014), which also involved a wrongful **death** action, the administrator of an estate raised a constitutional privacy challenge to discovery of the contents of the decedent's cell phone. Specifically, the case involved a fatal automobile accident and the wrongful-**death**-action defendant filed a motion for permission to have an expert inspect the decedent's cellphone for data from the day of the accident—data pertaining to "use and location information, internet website access history, email messages, and social and photo media posted and reviewed on the day of the accident." Id. The administrator of the decedent's estate "objected to the cellphone inspection citing the decedent's privacy rights under the Florida Constitution." Id. The trial court ultimately granted the motion to examine the cell phone, but recognized the decedent's privacy interests and set very strict parameters for the expert's confidential inspection. Id. at 164–65.

Notwithstanding the strict parameters set by the trial court in Antico, the administrator of the estate filed a petition for writ of certiorari with the First District asserting that the trial court's order departed from the essential requirements of law by **not** granting stronger protections. Id. at 165–66. In exercising certiorari jurisdiction over the petition, the First District held that the irreparable harm component of its jurisdiction in that case was satisfied "because irreparable harm can be presumed where a discovery order compels production of matters implicating privacy rights." Id. Thus, by exercising its certiorari jurisdiction, the district court necessarily held that the decedent had an enforceable constitutional right to privacy in the litigation context.

In denying relief from the highly limited grant of discovery over the cell phone's contents, the Antico court noted that the trial court had adequately accounted for the decedent's privacy right:

> The record here indicates that the trial court closely considered how to balance Respondents' discovery rights and the decedent's privacy rights. The order highlighted the relevance of the cellphone's data to the Respondents' defense and it set forth strict procedures ***1127** controlling how the inspection process would proceed.
>
> ....
>
> The other side of the equation—the countervailing privacy interest involved with the discovery of data on a cellphone—is also very important.... But we are satisfied that the order adequately safeguards privacy interests under the circumstances here where Petitioner was given the opportunity, but advanced no alternative plan.

Id. at 166–67 (emphasis added). For emphasis, the Antico court performed its review of the discovery objection pursuant to the constitutional privacy right of the decedent. Id. at 164. ("Citing the privacy provision, article I, section 23, of the Florida Constitution, and the rules of civil procedure, the personal representative of Tabitha Antico's estate (Petitioner) objects to an order entered by the trial court ... Petitioner objected to the cellphone inspection citing the decedent's privacy rights under the Florida Constitution." (emphasis added)).

Consistent with Antico, the decision below did **not** hold that Thomas did **not** have a constitutional right to privacy in his protected medical information. The district court specifically rested its privacy analysis on waiver grounds:

> It is well-established in Florida and across the country that any privacy rights that might attach to a claimant's medical information are **waived** once that information is placed at issue by filing a medical malpractice claim. See, e.g., Barker v. Barker, 909 So.2d 333, 337 (Fla. 2d DCA 2005); Andreatta v. Hunley, 714 N.E.2d 1154, 1157 (Ind. Ct. App. 1999). Thus, by filing the medical malpractice lawsuit, the decedent's medical condition is at issue.

Weaver, 170 So.3d at 883. At no point did the district court hold that the decedent did **not** have a right to privacy. See generally id. Indeed, to the contrary, its waiver analysis was an implicit acknowledgement of that privacy right, as one cannot waive a right he or she does **not** have. No other basis was offered for the First District's holding as to the privacy issue.

[4] **[5]** Thus, we now make explicit what the decision below and Antico necessarily implied—in all litigation contexts, a decedent does **not** retroactively lose and can maintain the constitutional right to privacy that may be invoked as a shield in all contexts, including but **not** limited to medical malpractice cases, against the unwanted disclosure of protected private matters, including medical information that is irrelevant to any underlying claim including but **not** limited to any medical malpractice claim.[2] **Death** does **not** retroactively abolish the constitutional protections for privacy ***1128** that existed at the moment of **death**. To hold otherwise would be ironic because it would afford greater privacy rights to plaintiffs who survived alleged medical malpractice while depriving plaintiffs of the same protections where the alleged medical malpractice was egregious enough to end the lives of those plaintiffs. This is an outcome that our Florida Constitution could **not** possibly sanction. Cf. Estate of Youngblood v. Halifax Convalescent Ctr., Ltd., 874 So.2d 596, 603–04 (Fla. 5th DCA 2004) ("Thus in a case such as this where the suit was filed before the nursing home resident's **death**, all deprivation of Chapter 400 rights, including those resulting in the **death** of a resident but **not** exclusive of those, should survive the **death** of the nursing home resident. A contrary interpretation would encourage nursing homes to drag out litigation until the nursing home resident dies—**not** an impractical solution given the age and state of health of most nursing home residents." (internal citation omitted)). Thus, we reiterate that Thomas and his estate, even after his **death**, maintained a constitutional right to privacy concerning matters that occurred prior to his **death**, and that privacy may be invoked as a shield to maintain the confidence of his protected information, including but **not** limited to medical information.

But Dr. Myers contends that Thomas does **not** have a cognizable right to privacy because his constitutional rights retroactively totally vanished upon his **death**, and even if **not**, Weaver lacks standing to assert his privacy rights. Specifically, Dr. Myers strings together the following language in support of this sweeping contention:

> An individual's right to privacy is personal and dies with the individual. Williams v. City of Minneola, 575 So.2d 683, 689 (Fla. 5th DCA 1991). "[E]ven where a constitutional right to privacy is implicated, that right is a personal one, inuring solely to individuals." Alterra Healthcare Corp. v. Estate of Shelley, 827 So.2d 936, 941 (Fla. 2002). Thus, such privacy rights "may **not** be asserted vicariously." Sieniarecki v. State, 756 So.2d 68, 76 (Fla. 2000). Moreover, this Court has declared unequivocally: "[W]e begin with the premise that a person's constitutional rights terminate at **death**." State v. Powell, 497 So.2d 1188, 1190 (Fla. 1986).

Answer Br. at 45.

However, Dr. Myers' use of quotes out of context and incorrectly expanded arguments to suggest a retroactive absolution of the basic privacy right is both misleading and without effect. The very briefest of review of those cases reveals that it is Dr. Myers' argument that is without life, **not** Thomas' constitutional right to privacy. For example, Dr. Myers referred this Court to Williams, 575 So.2d at 689, for the proposition that a decedent has no right to privacy. However, Williams involved an action for damages arising from the alleged invasion of privacy resulting from the release of autopsy photos. Id. at 689–90. Thus, Williams involved the tort of invasion of privacy on conduct occurring after **death** rather than the invocation of the constitutional right of privacy before **death** occurred.[3]

Likewise, Sieniarecki, 756 So.2d 68, is wholly inapposite. Sieniarecki did **not** involve shielding information from disclosure. Instead, Sieniarecki involved a facial challenge by a defendant found guilty of neglect of a disabled adult, the disabled adult being her mother. See id. at 71–72. Thus, Sieniarecki contended that "because her mother had the right to refuse medical ***1129** treatment, [she] cannot be convicted of neglect for failing to provide proper medical attention." Id. at 76. We held that she could **not** assert a defense based on the privacy right of her mother to refuse medical treatment in that case because "constitutional rights are personal in nature and generally may **not** be asserted vicariously." Id. However, invoking another person's constitutional right to refuse medical treatment **not** for that person's benefit, but to protect against criminal liability is quite different from invoking another person's right to privacy to protect disclosure of that person's constitutionally protected information for that person's benefit. This is even more the case where the person has no effective avenue to preserve the

right himself or herself. Indeed, in a footnote to the statement Dr. Myers quotes out of context, we recognized that there are other situations or "exceptions" that are more akin to the situation here:

> A recognized exception to this rule applies where enforcement of a challenged restriction would adversely affect the rights of non-parties, and there is no effective avenue for them to preserve their rights themselves. Cf. Stall v. State, 570 So.2d 257, 258 (Fla. 1990) ("[a]ssuming that the petitioners [who were alleged vendors of obscene materials] have vicarious standing to raise their customers' privacy interest"). This principle has been extended to apply where it is the petitioners who "stand to lose from the outcome of this case and yet they have no other effective avenue for preserving their rights" than by raising the constitutional rights of non-parties. Jones v. State, 640 So.2d 1084, 1085 (Fla. 1994) (recognizing petitioners' vicarious standing to assert the claimed privacy rights of the underaged girls with whom they had sexual intercourse).

Id. at 76 n.3 (emphasis added).

Powell, 497 So.2d 1188, also provides no support. There, the petitioners challenged a statute authorizing medical examiners to remove corneal tissue from a cadaver for use in a corneal transplant. Id. at 1190. Thus, in Powell, the issue of privacy was raised with regard to conduct that occurred after the person's **death**, **not** during his or her lifetime as is the case here with Thomas Weaver's medical care. Therefore, the quoted out of context language is presented in an attempt to bolster the incorrect argument. Still, in Powell, we also recognized that even with regard to rights after **death**, "[i]f any rights exist, they belong to the decedent's next of kin." Id.

Likewise, the statement in Alterra that "even where a constitutional right to privacy is implicated, that right is a personal one, inuring solely to individuals" is taken out of context because it involved a challenge to the standing of an employer to assert an employee's constitutional privacy rights. Alterra, 827 So.2d at 941. Here again the argument advanced failed to include the context in which the statement was made.

Finally, Dr. Myers further refers us to Nestor v. Posner–Gerstenhaber, 857 So.2d 953 (Fla. 3d DCA 2003), in which the administrator of an estate sought to enforce **confidentiality** agreements entered into between a decedent and his employees, signed just before his **death**. In Nestor, the district court referenced Williams in the contractual context and stated, "Privacy rights are personal and die with the individual." 857 So.2d at 955. However, in the very next sentence, the district court reasoned that in the **confidentiality** agreement "there is no provision that requires **confidentiality** after Posner's **death**." Id. Thus, Nestor is wholly inapposite as it pertains exclusively to a contractual privacy claim rather than a constitutional privacy claim. Indeed, Nestor does **not** even contain any mention or reference to the Florida Constitution, let alone the explicit ***1130** fundamental constitutional right to privacy. Similarly unsupportive, Dr. Myers also refers us to Loft v. Fuller, 408 So.2d 619 (Fla. 4th DCA 1981), which is yet another invasion of privacy case that fails to even mention the Florida Constitution, but rather is focused on the common law right to privacy and its use as a sword, rather than as a shield.

Dr. Myers further contends that "the concept that an individual's constitutional privacy rights expire upon **death** is well accepted across the country," and refers this Court to cases from various federal courts. Answer Br. at 46. However, **not** one of those cases supports that statement because every one of those cases involves conduct that occurred after the **death** of the person whose constitutional rights were at issue. See Silkwood v. Kerr–McGee Corp., 637 F.2d 743, 749 (10th Cir. 1980) ("We agree with the Ninth Circuit that the civil rights of a person cannot be violated once that person has died. It is clear then that the FBI agents could **not** have violated the civil rights of Silkwood by cover-up actions taken after her **death**.") (emphasis added) (citations omitted); Whitehurst v. Wright, 592 F.2d 834, 840–41 (5th Cir. 1979) ("Here, the events of the alleged cover-up took place after Bernard Whitehurst had been shot and killed.... The question presented in the court below and in this court was whether events occurring after his **death** constituted a deprivation of her son's constitutional rights for which plaintiff has stated a claim.") (emphasis added) (footnote omitted); Ravellette v. Smith, 300 F.2d 854, 857 (7th Cir. 1962) ("These cases are inapposite because they are concerned with a violation of the rights of a living person. In the instant case, decedent was dead when the sample was taken.") (emphasis added); Helmer v. Middaugh, 191 F.Supp.2d 283, 285 (N.D.N.Y. 2002) ("As the allegations concerning Lt. Lisi are limited to conduct occurring after the **death** of B. Helmer, plaintiff's amended complaint does **not** allege a viable cause of action against him.") (emphasis added). Indeed, some of those cases even support Weaver's position. See Whitehurst, 592 F.2d at 840 ("No allegation was made that any conspiracy to kill Whitehurst or to cover up the event

existed before the shooting took place.") (emphasis added); Helmer, 191 F.Supp.2d at 285 ("In addition, because the proposed Second Amended Complaint alleges no additional facts to demonstrate Lt. Lisi's involvement prior to the **death** of B. Helmer, it does **not** cure this fatal defect as to Lt. Lisi.") (emphasis added).

Therefore, **not** a single case that Dr. Myers has advanced stands for the broad, incorrect proposition that a person's constitutional rights pertaining to conduct occurring during the person's lifetime are retroactively destroyed upon **death**. Indeed, if Dr. Myers' position were correct, there would be absolutely no protection and no one to assert the protection. We must be ever vigilant as we consider invasions into the fundamental rights of our citizens, particularly when faced with flawed legal arguments. Today we specifically address privacy, which is included among our most cherished rights such as speech, religion, to be free from searches and seizures without a warrant or permissible exception, and the right to due process. Surely, the reflex of any concerned jurist upon consideration of an invasion of fundamental rights would be to protect our citizens as required by our Bill of Rights. Dr. Myers' contention here is that a person loses all of those rights upon **death**. Such a holding would render those rights hollow, chilling the daily operation of them on people as they navigate their lives from moment to moment.

As discussed above, in Florida, the right to privacy is no less fundamental than those other rights and is even more closely ***1131** guarded in some respects. Thus, the slippery slope Dr. Myers invites this Court to slide down is even more perilous with regard to the right to privacy. Indeed, just the potential for retroactive destruction of the right to privacy robs the life of that very protection due to the chill it would cause. If we were to follow Dr. Myers' argument that a person experiences the loss of privacy applicable while living upon the change in status from alive to dead, then the secrets of that person's life, including his or her sexual preferences, political views, religious beliefs, views about family members, medical history, and any other thought or belief the person considered to be private and a secret are subject to full revelation upon **death**. Theoretically, there would be no need for justification for such intrusions or revelations of a person's secrets, **not** even a rational basis. Therefore, what would follow from allowing a retroactive destruction of the fundamental right to privacy is a reality in which ultimately anyone could rummage at any time, without limitation, through every detail of every citizen's most private information.

Here, the right to privacy is being used as a limited shield from ex parte discovery and **not** as a sword to initiate a civil action. Thus, none of those cases asserted by Dr. Myers addressed the right of privacy before **death** in the specific context at issue here. While this may appear subtle, it is a very critical distinction. Failing to note this distinction, Dr. Myers' selective readings of case law has led him to a misdiagnosis of Thomas' right to privacy upon his **death**, a right that remains quite alive.

[6] The inquiry does **not** end here though. Dr. Myers also asserts that Weaver lacks standing to assert a right to privacy here. In Antico, the district court assumed that the estate had standing to assert the decedent's privacy interests. 148 So.3d at 168 n.2 ("We needn't resolve Respondents' additional contention that Petitioner lacks standing in this case to assert the decedent's constitutional privacy rights. The trial court didn't pass on this question. And, as discussed above, relief isn't warranted even if we assume (as this opinion does) that Petitioner can assert the decedent's privacy rights."). Here, in the decision below, the district court did **not** resolve the question of standing, and simply held that Weaver had **waived** the right to privacy by filing a medical malpractice wrongful **death** action. See Weaver, 170 So.3d at 883.

Given that the issue of standing must be considered in this case, unlike the Antico case, we address Dr. Myers' challenge to Weaver's standing. Despite the district court's holding of waiver below, that waiver holding itself provides recognition and a basis for our holding here. Holding that Weaver **waived** the right of privacy by filing the wrongful **death** action implies **not** only that Thomas Weaver had a right to privacy in the litigation context that could be **waived**, but also that Emma Weaver, the administrator of his estate and his wife, had standing to waive such rights. It follows that if she had standing to waive the right to privacy here, she likewise had standing to assert that privacy right. Similarly, if a decedent has a constitutional privacy interest under the Florida Constitution in the context of discovery in litigation, as the Antico court recognized, then someone must be able to assert that privilege.

[7] Florida's Wrongful **Death** Act establishes the personal representative of a decedent's estate as the sole party that may file a decedent's cause of action for wrongful **death**. The statute provides in pertinent part:

> The action shall be brought by the decedent's personal representative, who shall recover for the benefit of the decedent's survivors and estate all damages, ***1132** as specified in this act, caused by the injury resulting in **death**. When a personal injury to the decedent results in **death**, no action for the personal injury shall survive, and any such action pending at the time of **death** shall abate.

§ 768.20, Fla. Stat. (2016); see Roughton v. R.J. Reynolds Tobacco Co., 129 So.3d 1145 (Fla. 1st DCA 2013) (A wrongful **death** action may be brought only by the personal representative for the benefit of the decedent's survivors and estate.); Fla. Emergency Physicians–Kang & Assocs., M.D., P.A. v. Parker, 800 So.2d 631, 633 (Fla. 5th DCA 2001) (same); Benson v. Benson, 533 So.2d 889 (Fla. 3d DCA 1988) (Decedent's parents were without standing to file a wrongful **death** action where decedent's wife, **not** decedent's parents, served as administratrix of decedent's estate.). Thus, if the right exists, which we conclude it does, then it most assuredly must be capable of being advanced. Cf. In re Guardianship of Browning, 568 So.2d 4, 12 (Fla. 1990) ("Indeed, the right of privacy would be an empty right were it **not** to extend to competent and incompetent persons alike."). With regard to wrongful **death** actions, the administrator of the estate may certainly assert that right because he or she is the only person who has standing to file a wrongful **death** action in the first place. Moreover, Weaver's status as wife may further entitle her to assert the right. Cf. Powell, 497 So.2d at 1190 ("If any rights exist, they belong to the decedent's next of kin.") Based upon the foregoing, Weaver, as personal representative of Thomas' estate and his wife, clearly has standing to challenge the provisions at issue by presenting the constitutional right to privacy in Thomas' protected medical information.

[8] **[9]** Dr. Myers further asserts that Weaver has necessarily **waived** all constitutional rights to privacy in this case by filing a claim of medical malpractice. However, the anatomy of such a waiver under Florida law is clear. Although a claimant may necessarily waive privacy rights to the medical information that is relevant to a claim by filing an action, this does **not** amount to waiver of privacy rights pertaining to all confidential health information that is **not** relevant to the claim. See generally Poston v. Wiggins, 112 So.3d 783, 786 (Fla. 1st DCA 2013) (granting certiorari petition and quashing trial court order requiring production of post-accident **medical records** because "[u]nlike the pre-accident pharmacy records which may be relevant, the post-accident **medical records** are entirely irrelevant"); McEnany v. Ryan, 44 So.3d 245, 247 (Fla. 4th DCA 2010) (granting certiorari petition and quashing trial court order which denied petitioner-defendant's objections to motion to compel; "In this case, whether defendant was impaired by a mixture of the drug Ritalin and alcohol at the time of the accident would be a relevant issue. Determining whether petitioner had a current prescription for Ritalin seems to us to be relevant to that inquiry. It is equally apparent to us, however, that most of the **medical records** sought likely have no relevance to that inquiry, and no link was shown at the hearing."); Barker, 909 So.2d at 338 ("By failing to provide for an in camera inspection of [the petitioner's] **medical records** to prevent disclosure of information that is **not** relevant to the litigation, the discovery order departed from the essential requirements of the law."). The decision below erred in holding otherwise to the extent unnecessary information would be open and subject to the ex parte exploration proceedings authorized in the 2013 amendments.

[10] **[11]** Having determined that Weaver is a proper party to assert the constitutional right to privacy in attempting to shield the disclosure of irrelevant, unnecessary, and protected medical information, ***1133** and that she did **not** waive the protection with regard to medical information **not** relevant to the medical negligence action, we now address the question of whether the right to privacy has been violated. Due to the fundamental and highly guarded nature of this right, "any law that implicates the fundamental right of privacy, regardless of the activity, is subject to strict scrutiny and, therefore, presumptively unconstitutional." Gainesville Woman Care, LLC v. State, 210 So.3d 1243, 1245 (Fla. 2017); Winfield, 477 So.2d at 547. Thus, the burden of proof rests with the State to justify an intrusion on privacy. Winfield, 477 So.2d at 547. [4]

In an attempt to sustain the burden under the strict scrutiny test, Dr. Myers and the amici assert that the legislative intent behind the amendments is sufficient: to encourage settlement by providing equal access to relevant information, resulting in the inexpensive and expeditious administration of justice; screening out frivolous claims; and streamlining medical malpractice litigation. However, none of these asserted interests, individually or collectively, are sufficiently compelling to outweigh the interest of a patient in keeping

private medical information that was given in confidence to medical personnel under the protections of both federal and Florida law when that information is **not** relevant to the prospective claim of malpractice.

Moreover, even if those concerns were compelling, rather than address them with a steady hand and surgical precision such that the least intrusive means could be implemented, the amended statutes here have gashed Florida's constitutional right to privacy. Requiring claimants to authorize clandestine, ex parte secret interviews is far from the least intrusive means to accomplish those stated goals. [5]

The ex parte secret interview provisions of sections 766.106 and 766.1065 fail to protect Florida citizens from even accidental disclosures of confidential medical information that falls outside the scope of the claim because there would be no one present on the claimant's behalf to ensure that the potential defendant, his insurers, his attorneys, or his experts do **not** ask for disclosure of information from a former treating health care provider that is totally irrelevant to the claim. This concern with regard to ex parte secret interviews has ***1134** been noted **not** only by this Court but also by multiple other courts. See Acosta v. Richter, 671 So.2d 149, 153 (Fla. 1996) ("Were unsupervised ex parte interviews allowed, medical malpractice plaintiffs could **not** object and act to protect against inadvertent disclosure of privileged information, nor could they effectively prove that improper disclosure actually took place."); see also Wenninger v. Muesing, 307 Minn. 405, 240 N.W.2d 333, 337 (1976); Nelson v. Lewis, 130 N.H. 106, 534 A.2d 720, 723 (1987); Crist v. Moffatt, 326 N.C. 326, 389 S.E.2d 41, 46 (1990); Alsip v. Johnson City Med. Ctr., 197 S.W.3d 722, 727 (Tenn. 2006); Kirkland v. Middleton, 639 So.2d 1002, 1004 (Fla. 5th DCA 1994); Horner v. Rowan Companies, Inc., 153 F.R.D. 597, 601 (S.D. Tex. 1994). While section 766.106 provides that a treating health care provider may have the right to refuse to be secretly interviewed ex parte, as noted by the Arizona Court of Appeals with regard to a similar statute, a provider may nonetheless feel pressured to participate or **not** fully understand his or her right to refuse:

> A physician may lack an understanding of the legal distinction between an informal method of discovery such as an ex parte interview, and formal methods of discovery such as depositions and [interrogatories], and may therefore feel compelled to participate in the ex parte interview. We also note that in Arizona, a substantial number of physicians are insured by a single "doctor owned" insurer. Realistically, this factor could have an impact on the physician's decision. In other words, the physician witness might feel compelled to participate in the ex parte interview because the insurer defending the medical malpractice defendant may also insure the physician witness.

Duquette v. Super. Ct., 161 Ariz. 269, 778 P.2d 634, 641 (Ariz. Ct. App. 1989).

Furthermore, the supposed facilitation of settlement is **not** a reality for either party in medical malpractice litigation. As the Illinois appellate court opined, a secret ex parte interview with a treating health care provider does **not** lead to the discovery of medical information that would **not** otherwise be discoverable, such that it facilitates settlement:

> It is **not** the ex parte conference in and of itself that leads to the early settlement of a case. Rather, it is the information that is obtained during that ex parte conference that leads to a case's settlement. That ... information can be obtained ... by obtaining a copy of the plaintiff's **medical records** or through a deposition of the plaintiff's treating physician. These latter methods will provide defense counsel with the same information that they would obtain in an ex parte conference ... without jeopardizing that physician's fiduciary obligation to his patient.

Petrillo v. Syntex Labs., Inc., 148 Ill.App.3d 581, 102 Ill.Dec. 172, 499 N.E.2d 952, 965–66 (1986).

Under section 766.106(6)(b), the other informal discovery tools available are unsworn statements of the parties and treating health care providers (all with the claimant's counsel allowed to be present), written questions, production of documents and things, and physical and mental examinations. There is nothing to indicate that these tools are deficient in the acquisition of information relevant to a potential medical malpractice claim, such that secret ex parte interviews justify the attendant risk of disclosure of irrelevant, constitutionally protected matters, medical information and otherwise, or serve a compelling interest. See Winfield, 477 So.2d at 547. Therefore, the constitutional right to privacy has been violated in this case.

***1135** The dissent is designed and constructed on a fundamentally flawed basis. The dissent further fosters confusion concerning this clear constitutional violation and is in conflict with the practical realities of today's litigation practice. With regard to medicine in the modern world of strained resources, the reality is that almost every malpractice litigant will be subject to the amendments' no-notice interview provision because it is exceedingly difficult, if **not** impossible, to schedule time with a doctor within fifteen days or seventy-two hours absent a critical, life-threatening situation. See § 766.106(6)(b) 5., Fla. Stat. (2016). The difficulty will surely become more pronounced when a doctor is advised that a patient seeks **not** an appointment for care, but rather to schedule an interview regarding malpractice litigation against one of the **doctor's** colleagues. Yet, if the malpractice litigant at any point does **not** schedule an interview within such narrow time frames, the defense may then repeatedly approach the doctors without any notice and ex parte. See id. Thus, when viewed through the lens of real-life implications, the statute's facilitation of non-secret meetings is merely illusory.

Sprinkled throughout the dissent is reference to the term "relevant" based on the deeply flawed premise that opposing counsel in litigation should be the sole and exclusive arbiter in a secret ex parte, non-recorded meeting of that which is "relevant" with regard to the precious Florida constitutional right of privacy. With this fatal flaw the dissent rings hollow. The dissent's undue reference to the amendment's use of the word "relevant" renders strict scrutiny no different than rational basis scrutiny. History has demonstrated that bar grievance procedures are totally insufficient to protect our fundamental rights of privacy during secret meetings. On the contrary, even the conduct of lawyers in public proceedings is very often beyond proper limitations. Additionally, there is nothing to limit the actions of other investigators and insurance adjusters.

Although the standard to be applied is whether there is a less invasive manner, a contrary interpretation advances the most invasive clandestine secret interrogations as a method to deal with the fundamental constitutional right of our citizens. The dissent even relies on cases that support our holding and conclusions, when those cases are properly and fully analyzed.

In Coralluzzo v. Fass, 450 So.2d 858 (Fla. 1984), superseded by statute, § 456.057, Fla. Stat. (2009); Hasan v. Garvar, 108 So.3d 570 (Fla. 2012); and Acosta, 671 So.2d 149, this Court was **not** presented with a constitutional privacy challenge. Thus, these cases do **not** support the dissent's reliance upon them for the proposition that litigants had no protections prior to the legislative enactment of an evidentiary privilege. Indeed, because no constitutional privacy challenge was raised in any of those cases, this Court prudently did **not** make a single reference to the constitutional right to privacy. As a result, the statement in Coralluzzo that "[n]o law, statutory or common, prohibits—even by implication—[the unilateral, ex parte interviews]," 450 So.2d at 859, is wholly inapposite "because of the dominant force of the Constitution, an authority superior to both the Legislature and the Judiciary." Holley v. Adams, 238 So.2d 401, 405 (Fla. 1970). Therefore, the fact that the litigants in those cases did **not** raise a constitutional challenge does **not** render true the contrary view's very disturbing conclusion that "there was nothing to prevent the ex parte interview with the nonparty treating physician in the absence of legislative protections." Dissenting op. at 1146. This ill-founded conclusion confuses the concept of evidentiary privileges with fundamental Florida constitutional rights. The entire ***1136** contrary argument falls when the confusion is analyzed and recognized.

In an attempt to distract from this misdirection, the contrary view hinges on a clause in our decision in Acosta that "there was no legal impediment to ex parte conversations between a patient's treating doctors and the defendants or their representatives." Dissenting op. at 1147(quoting Acosta, 671 So.2d at 150). Conveniently, however, the dissent does **not** fully present the explanatory clause introducing that statement: "The present controversy has its genesis in Coralluzzo ..., where, in a medical malpractice action, this Court held there was no common law or statutory privilege of **confidentiality** as to physician-patient communications

in Florida and, hence, there was no legal impediment ....” Acosta, 671 So.2d at 150 (emphasis added). Thus, when considered fully the critical fact is exposed and explained that Acosta and Coralluzzo simply did **not** involve a constitutional challenge whatsoever and did **not** have occasion to discuss any constitutional “impediments.” It bears repeating to combat any obfuscation or confusion that just because the litigants did **not** raise the constitutional issue in prior cases does **not** mean the right was non-existent. Likewise, to perpetrate that misconception, a failure of complete analysis violates the tenet of constitutional avoidance this Court generally follows. Moreover, Coralluzzo was reviewed as a certified question of great public importance from a decision to deny a petition for writ of certiorari reviewing the denial of a protective order, and thus, all the courts involved in Coralluzzo were looking through an especially narrow lens focused on finding clearly established law, **not** the creation of new rights, especially none that the parties failed to raise. See Nader v. Fla. Dep't of Highway Safety & Motor Vehicles, 87 So.3d 712, 723 (Fla. 2012) (“[C]ertiorari jurisdiction cannot be used to create new law where the decision below recognizes the correct general law and applies the correct law to a new set of facts to which it has **not** been previously applied. In such a situation, the law at issue is **not** a clearly established principle of law.”); Coralluzzo, 450 So.2d at 858–59. Relatedly, the incident in Coralluzzo did **not** take place until 1981, just one year after the constitutional privacy right was adopted by the voters, and thus, without having raised the issue, it is no surprise the constitutional limitation had **not** been considered with regard to ex parte conferences with medical providers.

By contrast, the contrary view suggested does **not** accommodate that in this case the constitutional right has been raised and fully briefed at all levels for de novo review. Unlike Acosta and Hasan, where the evidentiary privilege statutes at issue were built upon only the spirit of the constitutional protections, thereby negating the need for a constitutional analysis, the amendments at issue today accomplish the opposite, affirmatively trampling on the constitutional privacy right and rendering it necessary, for the first time, to address the express constitutional issue.

Moreover, selective references to Hasan and Acosta ignore the only analogous and relevant portions of those opinions, which actually support our holding today. Specifically, although both cases concerned statutory limitations on ex parte discovery, unlike the supreme constitutional right at issue here today, the statutory rights at issue in those cases involved analyses into the potential for revelation of protected information. Equally applicable here under the least intrusive means standard, the statutory analyses in Hasan and Acosta led this Court to “reject the contention that ex parte conferences with treating physicians may be approved so long as the physicians are **not** required to say anything. We believe it is pure sophistry to suggest that ***1137** the purpose and spirit of the statute would **not** be violated by such conferences.” Hasan, 108 So.3d at 578 (quoting Acosta, 671 So.2d at 156) (emphasis added). The fact that today we analyze the constitutional right to privacy, as opposed to a limited statutory evidentiary privilege, does **not** change our conclusion in Hasan that “efforts to foster an environment conducive to inadvertent disclosures of privileged information ... are impermissible.” Id. In referencing the language “purpose and spirit of the statute,” rather than the overall logic concerning overbreadth and illusory protections that applies equally under any good-faith strict scrutiny analysis, the contrary view expressed today simply changes the subject for discussion, rather than addressing the actual substance of the issues.

Likewise, the lone decision relied upon by the dissent that even touches upon the constitutional right to privacy and its application to ex parte medical interviews, a district court decision, S & A Plumbing v. Kimes, 756 So.2d 1037, 1042 (Fla. 1st DCA 2000), does **not** control in any manner and is wholly inapposite when analyzed in context. Kimes involved ex parte interviews in the workers' compensation context, which is wholly distinguishable from a medical malpractice action in that, as the Kimes court recognized, “The workers' compensation system is clearly intended to be self-executing, with the resort to adversarial proceedings being undertaken only as a last recourse to resolve intractable disputes between petitioners and employers and their insurance carriers.” Id. at 1041 (emphasis added). Further, unlike workers' compensation claims, medical malpractice and wrongful **death** actions are completely adversarial and traditional actions at law resolved in the judicial branch by Article V courts. [6] Therefore, despite any attempt to compare workers' compensation to traditional litigation, this Court's long saga of ensuring the scheme's compliance with the right to access to courts undresses that disguised misconception.

Accordingly, as the Kimes court accurately understood the substantial differences between workers' compensation and traditional litigation, the fact that “[t]he workers' compensation system transposed dispute resolution for workplace injuries from the private law of torts to a

publicly administered and regulated system" was central to its conclusion that no legitimate expectation of privacy exists in the extremely limited workers' compensation context with regard to interviews with physicians specifically hired for compliance with workers' compensation. Id. at 1042 (emphasis added). The Kimes court further recognized the wholly different context of workers' compensation when it concluded that "to accept Kimes' absolute privacy argument would make it impossible to petition for, controvert and decide claims under the workers' compensation law without resort to a system of litigation ...." Id. (emphasis added). Yet, relying on the supposed purpose of the statute at issue here, the contrary view expressed today does ***1138** **not** even acknowledge these differences. However, as already discussed, the purpose of the statute at issue here in potentially encouraging settlement and avoiding litigation is **not** only proven to be fleeting, but also has little bearing on our analysis because it is simply **not** the least intrusive means.

Another very critical distinction arising from the workers' compensation context of the Kimes decision is that the only medical professional to be interviewed was explicitly hired for purposes of workers' compensation to evaluate the causal connection between the work performed and the injury. Id. ("The very foundation of an employee's right to receive benefits under the self-executing system in Chapter 440 requires a healthcare provider to assess the injury, establish a causal connection to the workplace accident, and communicate that information to the employer's insurance carrier."). Yet, the contrary view does **not** include this aspect of the relationship and relies only on the fact that the physicians are treating physicians. While the dissent antagonizes the relevant focus here as a "misreading," it ignores the fact that the constitutional analysis in Kimes focuses and relies specifically on the fact that the treating physicians were required to be hired under the narrow workers' compensation framework. See id. at 1042 ("By presenting himself to be examined by a health care provider for the purpose **not** only for treatment for an injury, but also for evaluation of the injury and assessment of whether it is attributable to his employment, Kimes consented to the provider disclosing to the carrier medical information relating to the claim.") (emphasis added). There is simply no comparison with the physicians hired specifically in the workers' compensation litigation in the Kimes context and the physicians hired by Weaver in the ordinary context of seeking medical care without an eye to litigation. Ex parte interviews with a singular physician in a workers' compensation claim with regard to a specific employment injury are wholly different than conducting ex parte secret meetings with all of the medical professionals a person has visited completely of his or her own volition in the course of regular medical care during the last two years before the medical malpractice action accrued.

In light of these distinctions, and the Kimes court's finding of no expectation of privacy in the mandatory workers' compensation medical visit, the Kimes court did **not** even have occasion to consider the least intrusive means aspect of our constitutional privacy test. In any event, relative to the broad net cast in this scenario, any potential waiver conclusion arising from Kimes is also severely limited by the fact that there was no threat of irrelevant information being disclosed in Kimes.

Thus, Kimes, which concerned the administration of workers' compensation claims, has absolutely no bearing on this wrongful **death** action, which is adversarial and subjects litigants to the full powers conferred on Article V courts. Although the misdirection created by the contrary view must be addressed to ensure there is no unnecessary confusion, in the end the attempt to apply workers' compensation principles in this context is unavailing. Tellingly, **not** even Dr. Myers raised Kimes at any stage in this litigation.

Returning to the salient issue, in light of the adversarial nature and full discovery process applicable to medical malpractice and wrongful **death** actions, the dissent has provided no reason to overcome the fact that the standard discovery procedures with notice and participation of all parties that are employed daily without issue in thousands of cases are more than adequate to secure access to relevant information without trampling on the constitutional privacy rights of a Florida citizen ***1139** plaintiff. The dissent misses the point when it suggests that a defendant would **not** even be interested in obtaining irrelevant medical information. Again, simply put, secret, ex parte non-recorded interviews conducted by adverse litigants, investigators or insurance adjusters are **not** the least intrusive means for gathering otherwise discoverable information. Further, to compel a person's medical professionals to be placed in an environment conducive to even inadvertent disclosures of sensitive protected medical information violates the unambiguous constitutional "right to be let alone and free from governmental intrusion into the person's private life." Art. I, § 23, Fla. Const. Even the possibility that a person's extremely sensitive private medical information will be exposed is the type of governmental intrusion that the Florida

Constitution protects against because it is impossible to know if an inadvertent disclosure occurred when the meetings are **not** only ex parte and without a judge, but also secret without a record. In the case of protected medical information, the danger is uniquely and unconstitutionally great because once the bell has been rung, it cannot be unrung. It defies credibility to compare the physicians in this case to ordinary fact witnesses. Physicians, unlike ordinary fact witnesses, are governed by strict **confidentiality** through **not** only HIPPA, but also the constitutional right to privacy discussed at length today.

Having determined that the statutory amendments impermissibly intruded on the fundamental and explicit constitutional right to privacy by the statutory requirements, the amendments cannot accomplish that end by conditioning the exercise of another highly guarded constitutional right on such submission in light of the constitutional prohibition. This protection from government coercion has been recognized by the United States Supreme Court in what is known as the unconstitutional conditions doctrine. See Koontz v. St. Johns River Water Mgmt. Dist., 570 U.S. 595, 133 S.Ct. 2586, 2595, 186 L.Ed.2d 697 (2013) ("[R]egardless of whether the government ultimately succeeds in pressuring someone into forfeiting a constitutional right, the unconstitutional conditions doctrine forbids burdening the Constitution's enumerated rights by coercively withholding benefits from those who exercise them."). However, such unconstitutional conditioning and coercion is exactly what the amendments to section 766.106 and 766.1065 have done here.

[12] As Weaver contends, the amended statutes at issue here coerce and force victims of medical malpractice into foregoing their fundamental and explicit constitutional right to privacy to exercise their equally explicit and fundamental constitutional right to access to courts. The Florida Constitution provides that "[t]he courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay." Art. I, § 21, Fla. Const. We have explained that "each of the personal liberties enumerated in the Declaration of Rights ... is a fundamental right." State v. J.P., 907 So.2d 1101, 1109 (Fla. 2004). "[C]ourts are generally opposed to any burden being placed on the rights of aggrieved persons to enter the courts because of the constitutional guarantee of access." Bystrom v. Diaz, 514 So.2d 1072, 1075 (Fla. 1987) (quoting Carter v. Sparkman, 335 So.2d 802, 805 (Fla. 1976), receded from on other grounds, Aldana v. Holub, 381 So.2d 231 (Fla. 1980)).

[13] The seminal case for government action and the right of access to courts is Kluger v. White, 281 So.2d 1 (Fla. 1973). In Kluger, this Court explained the limitation on the power of the Legislature:

> [W]here a right of access to the courts for redress for a particular injury has been provided by statutory law predating ***1140** the adoption of the Declaration of Rights of the Constitution of the State of Florida, or where such right has become a part of the common law of the State pursuant to Fla. Stat. § 2.01, F.S.A., the Legislature is without power to abolish such a right without providing a reasonable alternative to protect the rights of the people of the State to redress for injuries, unless the Legislature can show an overpowering public necessity for the abolishment of such right, and no alternative method of meeting such public necessity can be shown.

Id. at 4. At common law, Florida did **not** recognize a cause of action for wrongful **death**; however, the Legislature authorized such an action prior to 1968. See Estate of McCall v. United States, 134 So.3d 894, 915 (Fla. 2014) (citing § 768.01, Fla. Stat. (1941)) (plurality opinion). Therefore, the access to courts provision of the Florida Constitution is applicable to wrongful **death** actions.

[14] **[15]** Although Kluger spoke in terms of total abolishment of a right, the scope of the protection extends to protect situations in which legislative action significantly obstructs the right of access:

> [I]n order to find that a right has been violated it is **not** necessary for the statute to produce a procedural hurdle which is absolutely impossible to surmount, only one which is significantly difficult. This is so because the Florida Constitution provides that "[t]he courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay." Art. I, § 21, Fla. Const. This "openness" and necessity that access be provided "without delay" clearly indicate that a violation

> occurs if the statute obstructs or infringes that right to any significant degree.

Mitchell, 786 So.2d at 527. The First District subsequently interpreted the word "significant" in the context of an access to courts challenge to mean "important" and "of consequence." Henderson, 883 So.2d at 854.

The facts demonstrate that the statutes challenged here would require Weaver to forfeit the constitutional right to privacy and expose her late husband's medical and other information (and potentially hers)[7] up to two years prior to the alleged act of medical negligence, regardless of its relevance to her claim to prying lawyers, insurance companies, experts, and doctors to probe, as a condition to filing a wrongful **death** action. Moreover, the mandatory authorization and secret, ex parte interview provisions empower these individuals and entities to actively engage nonparties in unsupervised interviews without the presence of the claimant, the claimant's representative, or the claimant's attorneys, potentially leaving exposure of irrelevant and constitutionally protected private information otherwise undiscoverable and nearly impossible to address. Cf. Rasmussen, 500 So.2d at 537 ("However, the subpoena in question gives petitioner access to the names and addresses of the blood donors with no restrictions on their use. There is nothing to prohibit petitioner from conducting an investigation without the knowledge of the persons in question. We cannot ignore, therefore, the consequences of disclosure to nonparties, including the possibility that a donor's coworkers, friends, employers, and others may be queried as to the donor's sexual preferences, drug use, or general life-style."). The vulnerable ***1141** state in which a medical malpractice claimant is placed is a sufficiently important and significant impediment to seeking relief from a Florida court.[8] This our Constitution simply does **not** allow.[9]

Having determined that the 2013 amendments to sections 766.106 and 766.1065 of the Florida Statutes are unconstitutional, we now must undertake consideration as to whether to sever the unconstitutional portions. See Ray v. Mortham, 742 So.2d 1276, 1280 (Fla. 1999) ("Severability is a judicial doctrine recognizing the obligation of the judiciary to uphold the constitutionality of legislative enactments where it is possible to strike only the unconstitutional portions." (citing State v. Calhoun Cty., 126 Fla. 376, 170 So. 883, 886 (1936))). Although the 2013 act that amended the statutes did **not** include a severance clause, this presents no barrier. See Fla. Hosp. Waterman, Inc. v. Buster, 984 So.2d 478 (Fla. 2008). In Waterman, we explained the questions that guide our severance analysis:

> (1) [W]hether the legislative purpose expressed in the valid provisions can be accomplished independently of those which are void; (2) if the good and bad features are **not** inseparable and if the Legislature would have passed one without the other; and (3) whether an act complete in itself remains after the invalid provisions are stricken.

Id. at 493 (citing Moreau v. Lewis, 648 So.2d 124, 128 (Fla. 1995)).

Noting the limited nature of our holding today and our severance principles, we make two strikes from the amended statutes. First, we strike in its entirety section 766.1065(3)E., Florida Statutes (2013), which contains the constitutionally infirm language: "This authorization expressly allows the persons or class of persons listed in subsections D.2.–4. above to interview the health care providers listed in subsections B.1.–2. above, without the presence of the Patient or the Patient's attorney." § 766.1065(3)E., Fla. Stat. Second, we strike the last sentence from section 766.106(6)(b) 5., Florida Statutes (2013), which contains the constitutionally infirm language: "If the claimant's attorney fails to schedule an interview, the prospective defendant or his or her legal representative may attempt to conduct an interview without further notice to the claimant or the claimant's legal representative." § 766.106(6)(b) 5., Fla. Stat.

CONCLUSION

In sum, we hold today that the right to privacy in the Florida Constitution attaches during the life of a citizen and is **not** retroactively destroyed by **death**. Here, ***1142** the constitutional protection operates in the specific context of shielding irrelevant, protected medical history and other private information from the medical malpractice litigation process. Furthermore, in the wrongful **death** context, standing in the position of the decedent, the administrator of the decedent's estate has standing to assert the decedent's privacy rights. Finally, the Legislature unconstitutionally conditioned

a plaintiff's right of access to courts for redress of injuries caused by medical malpractice, whether in the wrongful **death** or personal injury context, on the claimant's waiver of the constitutional right to privacy. Therefore, we strike certain unconstitutional language from the 2013 amendments to sections 766.106 and 766.1065 of the Florida Statutes which authorized secret, ex parte interviews. We quash the decision below and remand for further proceedings consistent with this opinion.

It is so ordered.

LABARGA, C.J., and PARIENTE, and QUINCE, JJ., concur.

CANADY, J., dissents with an opinion, in which POLSTON and LAWSON, JJ., concur.

CANADY, J., dissenting.

I disagree with the majority's conclusion that the challenged statutory provisions violate the right to privacy and the right of access to courts protected by the Florida Constitution. I would also reject Weaver's argument that the statutory provisions unconstitutionally encroach on this Court's rulemaking authority and constitute a prohibited special law. The First District correctly concluded that the statutory provisions withstood the constitutional challenges made by Weaver. I therefore dissent from the majority's unwarranted interference with the Legislature's authority.

I. RIGHT TO PRIVACY

A. Background and Waiver

In its decision below, the district court spent only a brief portion of its analysis addressing the issue of privacy, and rightfully so. See Weaver v. Myers, 170 So.3d 873, 883 (Fla. 1st DCA 2015). Medical malpractice claimants have no reasonable expectation of privacy in medical information that is relevant to the alleged malpractice—and that is the only information authorized to be discussed under the ex parte amendments. See § 766.1065(1), Fla. Stat. (2013) (requiring presuit "authorization for release of protected health information ... that is potentially relevant to the claim of personal injury or wrongful **death**"). Consequently, the Legislature did **not** overstep its bounds in 2013 by authorizing ex parte interviews of nonparty treating physicians as part of the presuit, informal discovery process related to medical malpractice actions, given that the interviews are optional on the part of the treating physician and are limited by a relevance standard. [10] Thus, I would affirm the district court's conclusion that the amendments do **not** violate the right to privacy.

Article I, section 23 of the Florida Constitution provides, in part, that "[e]very natural person has the right to be let alone and free from governmental intrusion into ***1143** the person's private life except as otherwise provided herein." Art. I, § 23, Fla. Const. From this language, the majority concludes that a medical malpractice claimant has a constitutional right to prevent a nonparty treating physician from discussing ex parte the claimant's relevant medical information with certain interested parties.

The district court properly focused on the waiver of privacy protections that necessarily accompanies pursuit of medical malpractice claims. Specifically, the district court concluded that "the decedent's medical condition is at issue" and any privacy rights were **waived** because "[i]t is well-established in Florida and across the country that any privacy rights that might attach to a claimant's medical information are **waived** once that information is placed at issue by filing a medical malpractice claim." Weaver, 170 So.3d at 883. In doing so, the district court noted that the 2013 amendments do **not** apply to information that is **not** potentially relevant to the claim. Id. at 883 n.3 (citing § 766.1065(3)C., Fla. Stat.).

Consistent with the district court's analysis, the majority here recognizes that privacy matters must be analyzed differently in the context of litigation: "We have further recognized that '[t]he potential for invasion of privacy is inherent in the litigation process.' " Majority op. at 1126 (alteration in original) (quoting Rasmussen v. S. Fla. Blood Serv., Inc., 500 So.2d 533, 535 (Fla. 1987)). And more specifically, the majority recognizes the concept of privacy waiver in medical malpractice actions, noting that "a claimant may necessarily waive privacy rights to the medical information that is relevant to a claim by filing an action." Majority op. at 1132.

Nevertheless, the majority ends up rejecting the ex parte meetings on constitutional privacy grounds based on the notion that the legislation requires the claimant to waive the right to privacy in "confidential health information that is **not** relevant to the claim." Majority op. at 1132 (emphasis omitted). But nothing in the ex parte amendments authorizes

the discussion of irrelevant medical information. Thus, the majority invalidates the ex parte amendments based on speculation and various assumptions, including that members of the legal profession—who are subject to disciplinary review by this Court—will act outside the law, as well as that members of the medical community will misunderstand both their HIPAA [11] restrictions and the fact that these ex parte interviews are optional and limited by a relevance standard. I strongly disagree with the majority's decision to do so. Instead of invalidating these statutory provisions based on speculative assumptions that individuals will act outside the scope of the statutory authorization, I would approve the district court's analysis and affirm the district court's conclusion that the amendments do **not** violate the right to privacy. [12]

*1144 B. Workers' Compensation Cases

The majority's decision is difficult to reconcile with the fact that ex parte interviews with nonparty treating physicians have long been authorized by Florida statute in the workers' compensation arena. See § 440.13(4)(c), Fla. Stat. (2017). As with the amendments at issue in this case, the workers' compensation ex parte interviews are limited by a relevance standard. Id. The First District long ago rejected a constitutional privacy challenge to the ex parte provisions of the workers' compensation statute. See S & A Plumbing v. Kimes, 756 So.2d 1037, 1042 (Fla. 1st DCA 2000). There is no evidence to suggest that nonparty treating health care providers in the workers' compensation arena have had difficulty limiting their ex parte interviews to relevant medical information—and such ex parte interviews have been taking place for decades. And yet the majority here assumes the opposite result in the medical malpractice context and then bases its constitutional analysis on that speculative assumption. In doing so, the majority seeks to distinguish Kimes and workers' compensation cases, but the majority's reasoning is difficult to reconcile with its holding in this case.

For example, the majority observes that "[t]he workers' compensation system is clearly intended to be self-executing, with the resort to adversarial proceedings being undertaken only as a last recourse to resolve intractable disputes." Majority op. at 1137(quoting Kimes, 756 So.2d at 1041). The majority later reiterates that the workers' compensation system is designed to resolve claims "without resort to a system of litigation." Majority op. at 1137(quoting Kimes, 756 So.2d at 1042). And the majority distinguishes "medical malpractice and wrongful **death** actions" on the basis that those actions "are completely adversarial and traditional actions at law resolved in the judicial branch by Article V courts." Majority op. at 1137. But the majority's argument is flawed in at least two respects. First, implicit in the majority's argument is the premise that workers' compensation cases only become "adversarial" once a dispute becomes "intractable." Majority op. at 1137. Such a premise overlooks "the practical realities," majority op. at 1135, of workplace injury cases and the nature of the competing interests involved in those cases. Indeed, such a premise cannot be reconciled with the facts of Kimes itself, in which the disputed ex parte meeting took place after Kimes' request for authorization for ankle surgery had been denied and after Kimes had filed his claim. See Kimes, 756 So.2d at 1038–39, 1041. Second, the majority's argument overlooks that the ex parte amendments at issue involve a medical malpractice presuit process which this Court has described as being "intended to promote the settlement of meritorious claims at an early stage without the necessity of a full adversarial proceeding." Williams v. Campagnulo, 588 So.2d 982, 983 (Fla. 1991) (emphasis added). Thus, ex parte interviews with nonparty treating physicians are designed to accomplish the same underlying purpose in both instances—that is, to avoid adversarial proceedings.

The majority further attempts to distinguish Kimes by concluding "that the only medical professional to be interviewed was explicitly hired for purposes of workers' compensation to evaluate the causal connection between the work performed and the injury." Majority op. at 1138. The majority's conclusion is problematic in at least three respects. First, in reaching its conclusion, the majority misreads Kimes and oversimplifies the workers' compensation process. As is clear from Kimes, the disputed ex parte interview took place "between Kimes' treating physician and representatives of the employer/carrier's attorney." Kimes, 756 So.2d at 1038 (emphasis ***1145** added). The fact that the employer/carrier in workers' compensation cases generally selects the treating physician does **not** alter the fact that the medical professional at issue was Kimes' treating physician. A physician who treats an alleged workplace injury is no less of a "treating physician" than a physician who treats an alleged medical malpractice injury. Second, it appears the majority's conclusion is based on the assumption that the medical professional in Kimes was somehow **not** in possession of irrelevant protected information. But naturally, any treating physician will obtain information from the patient regarding the patient's medical history and conditions, as well as other information—that is, protected information that may or may **not** be relevant

to establishing a "causal connection between the work performed and the injury." Majority op. at 1138. That, of course, explains why the Legislature limited the workers' compensation ex parte meetings by a relevance standard—just as the Legislature did with the 2013 amendments at issue. Third, as to the majority's suggestion that the ex parte meeting in Kimes was harmless because it was designed to assist in establishing a "causal connection" to the injury, majority op. at 1138, the majority overlooks that the purpose of the medical malpractice presuit process is very much the same—that is, to help defendants and their insurers determine causation and resolve claims. See Cohen v. Dauphinee, 739 So.2d 68, 71 (Fla. 1999) ("[T]he prevailing policy of this state relative to medical malpractice actions is to encourage the early settlement of meritorious claims and to screen out frivolous claims.").

The majority also observes that "the Kimes court even noted that the moment a workers' compensation claim becomes sufficiently adversarial by appointment of an expert medical advisor, ex parte conferences are no longer permissible." Majority op. at 1137 n.6 (citing Kimes, 756 So.2d at 1041 (citing Pierre v. Handi Van, Inc., 717 So.2d 1115, 1117 (Fla. 1st DCA 1998))). But Pierre clearly noted that once an expert medical advisor is appointed, "ex parte discussions with such experts are **not** appropriate." Pierre, 717 So.2d at 1117 (emphasis added). And Pierre went on to note that such meetings were prohibited by "either party." Id. Nothing about this conclusion by Pierre supports the majority's decision here. Again, the amendments at issue contemplate ex parte interviews with nonparty treating physicians—the same fact witnesses to whom the plaintiff already has ex parte access. [13]

Finally, after analyzing Kimes, the majority concludes "that there was no threat of irrelevant information being disclosed in Kimes." Majority op. at 1138 (emphasis added). The majority reaches this conclusion despite the fact that the parties' interests in Kimes were clearly adverse to one another, despite the fact that treating physicians in workers' compensation cases are generally selected **not** by the injured employee but rather by the employer/carrier, and despite the fact that the treating physician in Kimes—just like any other treating physician—undoubtedly possessed irrelevant protected medical information. The majority's reading of Kimes cannot be reconciled with the majority's conclusion and reasoning in the instant case.

In the end, the majority's attempts to distinguish Kimes and workers' compensation cases are logically flawed. And the majority cannot explain why treating physicians—for decades—have had little difficulty ***1146** adhering to a relevance standard in workers' compensation ex parte interviews and why those same medical professionals are unable to do so in medical malpractice ex parte interviews.

C. This Court's Ex–Parte–Interview Jurisprudence

The majority's decision is also difficult to reconcile with the fact that this Court has repeatedly addressed the issue of ex parte interviews of nonparty treating physicians in medical malpractice cases and recognized that the underlying **confidentiality** rights were created by the Legislature. Although the referenced cases did **not** address constitutional challenges to ex parte meetings and are therefore **not** controlling here, the case law helps to illustrate the overreach by the majority. Despite the majority's claim to the contrary, a "proper[ ] and full[ ] analy[sis]" of these cases does **not** support the majority's holding and conclusions. Majority op. at 1135 (emphasis omitted).

In 1984, this Court squarely rejected a medical malpractice plaintiff's attempt to prohibit an ex parte meeting between the defendant health care provider and the plaintiff's treating physician. See Coralluzzo v. Fass, 450 So.2d 858, 859 (Fla. 1984). In doing so, Coralluzzo recognized that there was no such thing as physician/patient **confidentiality** under Florida law at that time. Id. at 859. And Coralluzzo expressly concluded that there was "no reason in law or in equity to" find for the plaintiff and that "[n]o law, statutory or common, prohibits—even by implication—respondents' actions." Id. (emphasis added). In other words, there was nothing to prevent the ex parte interview with the nonparty treating physician in the absence of legislative protections.

The majority describes this dissent's depiction of Coralluzzo as "disturbing" and believes that the absence of a constitutional challenge in Coralluzzo renders this dissent's summary of Coralluzzo "ill-founded." Majority op. at 1135. But the majority misses the point. As an initial matter, the reason there was no constitutional challenge in Coralluzzo is because there was no State action involved—there was no statute to even be challenged. Thus, Coralluzzo concluded that the ex parte meetings were permitted because the Legislature had **not** acted to prohibit them. In other words, the ex parte meetings could only be prevented by State action. Moreover, as explained below, the majority overlooks that this dissent's depiction of Coralluzzo is entirely consistent

with how this Court itself has unanimously described Coralluzzo. See Acosta v. Richter, 671 So.2d 149, 150 (Fla. 1996) (noting that Coralluzzo held that "there was no legal impediment to [the] ex parte conversations" (emphasis added)).

In 1988, the Legislature responded to Coralluzzo by creating a broad physician/patient **confidentiality** privilege —a privilege that previously did **not** exist under Florida law. See ch. 88–208, § 2, at 1194–96, Laws of Fla. That new statutory privilege also carried with it, among other things, a limited exception for medical malpractice actions. Id.

Subsequent to the Legislature's 1988 statutory amendments, this Court has twice revisited the issue of ex parte meetings with nonparty treating physicians in medical malpractice cases, both times striking down the ex parte meetings on the specific grounds that they were precluded by the 1988 statutory amendments. See Hasan v. Garvar, 108 So.3d 570, 578 (Fla. 2012); Acosta, 671 So.2d at 156. As with Coralluzzo, neither Hasan nor Acosta supports the conclusion that the Legislature acted unconstitutionally here.

In Acosta, this Court began by recognizing that the issue presented "ha[d] its genesis in Coralluzzo." ***1147** Acosta, 671 So.2d at 150. In assessing that previous decision, Acosta unanimously explained that Coralluzzo stood for the proposition that "there was no legal impediment to ex parte conversations between a patient's treating doctors and the defendants or their representatives." Id. (emphasis added). Thus, this Court in Acosta summarized Coralluzzo in the exact same manner that the majority here finds to be "disturbing." See majority op. at 1135. Acosta then went on to examine the Legislature's 1988 statutory amendments and ultimately concluded that those amendments provided the previously missing "legal impediment," Acosta, 671 So.2d at 150, to prevent medical malpractice defendants from conducting ex parte meetings with plaintiffs' treating physicians. Specifically, Acosta recognized that the Legislature had "create[d] a physician-patient privilege where none existed before" and had "provide[d] an explicit but limited scheme for the disclosure of personal medical information." Id. at 154. Acosta went on to reject the proposed ex parte conferences because they did **not** fall within the statute's narrow "medical negligence" exception. Id. at 156.[14] In other words, Acosta recognized that the Legislature had broadly protected a patient's medical information and that the Legislature had created "a strict scheme for limited disclosure" which did **not** include a specific exception for the disclosure of protected information during ex parte conferences with treating physicians. Id. In reaching its holding, Acosta noted that "the legislature has considerable latitude in providing Florida citizens with a high degree of privacy in their medical information." Id.

Similarly, Hasan—which was decided in 2012, shortly before the 2013 statutory amendments at issue in this case—noted that the 1988 statutory amendments "broadened the statutory protections for physician-patient **confidentiality**." Hasan, 108 So.3d at 573. And Hasan similarly rejected the ex parte meeting because it did **not** fall within the statute's "limited, defined exceptions." Id. at 578. Thus, Acosta and Hasan both recognized that the Legislature had closed the door on ex parte interviews through the 1988 statutory amendments.

Despite the clear import of these cases, the majority concludes that the cases "actually support" the majority's decision in this case. Majority op. at 1136. Moreover, the majority asserts that this dissent has "selective[ly] reference[d]" the cases and "ignore[d]" those portions which support the majority's decision. Majority op. at 1136. On the contrary, these cases offer no support to the conclusion that the Legislature is powerless to reauthorize these ex parte meetings. For example, the majority points to certain language from Acosta, which was later reiterated in Hasan, in which this Court rejected the idea of permitting ex parte conferences with treating physicians "so long as the physicians are **not** required to say anything." Majority op. at 1136 (quoting Hasan, 108 So.3d at 578 (quoting Acosta, 671 So.2d at 156)). The majority accurately notes that in rejecting that idea, Acosta concluded that "[w]e believe it is pure sophistry to suggest that the purpose and spirit of the statute would **not** be violated by such conferences." Majority op. at 1136-37 (quoting Hasan, 108 So.3d at 578 (quoting ***1148** Acosta, 671 So.2d at 156)). But this quote from Acosta does **not** support the majority's decision here. As is clear from the plain text of the quote, Acosta rejected such sham meetings because they would violate "the purpose and spirit of the statute." Acosta, 671 So.2d at 156 (emphasis added). Again, it was the statute which protected the information, the statute which established the "strict scheme for limited disclosure," id., and the statute which did **not** include an express exception for the disclosure of protected information during ex parte meetings with treating physicians. Thus, Acosta merely recognized the obvious—that it would have been "pure sophistry," id., to permit such sham meetings, given that the statute did **not** permit the discussion of any protected information at such meetings, **not** even relevant information. Here, the

Legislature expressly amended the legislatively created "strict scheme for limited disclosure," id., so as to specifically allow for the discussion of relevant information at ex parte meetings. The quote from Acosta, when properly analyzed, does **not** support the majority's holding. The same is true when Acosta and the other referenced cases are properly analyzed in their entirety.

Lastly, in both its general analysis and its attempt to read the referenced case law to support its holding in this case, the majority repeatedly references "strict scrutiny," "less invasive manner," and "least intrusive means." Majority op. at 1135, 1136, 1137. And the majority asserts that this dissent instead "advances the most invasive clandestine secret interrogations as a method to deal with the fundamental constitutional right of our citizens." Majority op. at 1135. But the majority again misses the point. The issue here is straightforward: whether the Legislature is permitted to once again place medical malpractice defendants on equal footing with plaintiffs with respect to access to an important fact witness. There is no "less restrictive" way to put the defendant on equal footing other than to allow ex parte access by the defendant—the plaintiff, of course, already has ex parte access to that fact witness. Thus, the basic question is whether the Legislature may, in fact, place the defendant on equal footing. This Court's case law, beginning with Coralluzzo, recognizes that prior to the Legislature's 1988 statutory amendments, medical malpractice defendants had equal ex parte access to nonparty treating physicians. Thus, it stands to reason that the Legislature should very well be able to restore the equal access that the Legislature itself took away, so long as it does so in a HIPAA–compliant manner. The majority instead concludes that the Legislature has no business doing so. I respectfully disagree with the majority's analysis and conclusion. [15]

D. Conclusion

To sum up, the majority here holds it unconstitutional for the Legislature to now authorize optional ex parte meetings which are limited by a relevance standard—even though the Legislature is the same independent branch of government that closed the door on ex parte meetings in the first place and no Florida case law has ever held that the constitutional right of privacy precludes the ex parte disclosure of information ***1149** bearing on a malpractice claim. On the contrary, the Legislature was well within its bounds to carve out a limited, HIPAA–compliant exception to a legislatively created right in order to attempt to place plaintiffs and defendants on a level playing field with respect to access to certain important nonparty fact witnesses. See, e.g., Callahan v. Bledsoe, No. 16-2310-JAR-GLR, 2017 WL 590254, at *1 (D. Kan. Feb. 14, 2017) ("[T]his District has a well-established practice of allowing informal ex parte interviews of Plaintiff's treating physicians who are merely fact witnesses as long as a defendant complies with HIPAA and its related regulations."); Arons v. Jutkowitz, 9 N.Y.3d 393, 850 N.Y.S.2d 345, 880 N.E.2d 831, 842 (2007) (finding that "there was no basis for" the plaintiffs to decline to sign "HIPAA–compliant authorizations permitting their treating physicians to discuss the medical condition at issue in the litigation with defense counsel," given that the plaintiffs had "**waived** the physician-patient privilege as to this information when they brought suit").

In short, medical malpractice claimants waive whatever constitutional privacy rights they may have in relevant medical information. Because the 2013 amendments do **not** in any way authorize the discussion of irrelevant medical information, medical malpractice claimants have no constitutional right to prevent the ex parte meetings. I would therefore affirm the district court's conclusion that the ex parte amendments do **not** violate the right to privacy. Consequently, I would **not** address the issue of whether a person's privacy rights survive **death**.

II. ACCESS TO COURTS

The district court properly rejected Weaver's argument that the 2013 ex parte amendments unconstitutionally burden the right to access the courts guaranteed by article I, section 21 of the Florida Constitution. In doing so, the district court examined this Court's decision in Kluger v. White, 281 So.2d 1 (Fla. 1973), and concluded that the amendments did **not** "abolish[ ], eliminate[ ], or severely limit[ ] a substantive right to redress of a specific injury." Weaver, 170 So.3d at 882 (emphasis omitted). The district court then examined this Court's decision in Warren v. State Farm Mutual Automobile Insurance Co., 899 So.2d 1090 (Fla. 2005), and concluded that the amendments authorizing the ex parte interviews were "a reasonable condition precedent to filing suit." Weaver, 170 So.3d at 882. The district court also observed that the predecessor statute to section 766.106—setting forth the original presuit notice and screening requirements—has previously been upheld against an access to courts challenge. Id. (citing Lindberg v. Hosp. Corp. of Am., 545 So.2d 1384,

1386 (Fla. 4th DCA 1989), approved, 571 So.2d 446 (Fla. 1990)).

The majority here instead holds that the amendments violate the right of access to courts under the unconstitutional conditions doctrine. See majority op. at 1139. Specifically, the majority finds that the amendments "require Weaver to forfeit the constitutional right to privacy and expose her late husband's medical and other information (and potentially hers) ... regardless of its relevance to her claim to prying lawyers, insurance companies, experts, and doctors to probe, as a condition to filing a wrongful **death** action." Majority op. at 1140. But the ex parte amendments require no such "forfeit[ure]."

As an initial matter, the majority itself recognizes that any constitutional privacy rights with respect to relevant information are **waived** by plaintiffs in medical malpractice actions. See majority op. at 1132. In other words, the ex parte amendments do **not** establish a plaintiff's waiver of any constitutional privacy rights in relevant information —instead, that waiver is accomplished by the plaintiff's own action in ***1150** pursuing a malpractice claim. Thus, the majority's conclusion rests solely on the notion that the amendments "require" plaintiffs to waive their privacy rights in irrelevant information in order to obtain access to courts. But as noted above, nothing in the 2013 amendments authorizes the discussion of irrelevant medical information. Because the ex parte amendments do **not** "require" a waiver or forfeiture of any privacy rights that are **not** already **waived** by the plaintiff's own action in pursuing a malpractice claim, the amendments cannot be said to unconstitutionally condition a plaintiff's right of access to courts on the waiver of the right to privacy.

This Court has repeatedly recognized the legitimacy of the medical malpractice presuit process. See, e.g., Cohen, 739 So.2d at 71–72 ("[T]he prevailing policy of this state relative to medical malpractice actions is to encourage the early settlement of meritorious claims and to screen out frivolous claims.... This policy is best served by the free and open exchange of information during the presuit screening process."); Kukral v. Mekras, 679 So.2d 278, 284 (Fla. 1996) (recognizing "the legislative policy of requiring the parties to engage in meaningful presuit investigation, discovery and negotiations" and "screening out frivolous lawsuits and defenses"); Weinstock v. Groth, 629 So.2d 835, 838 (Fla. 1993) ("[T]he purpose of the chapter 766 presuit requirements is to alleviate the high cost of medical negligence claims through early determination and prompt resolution of claims ...."); Williams, 588 So.2d at 983 (noting the "legitimate legislative policy" of "promot[ing] the settlement of meritorious claims at an early stage without the necessity of a full adversarial proceeding"). The 2013 ex parte amendments simply add to that legitimate presuit process by "impos[ing] a reasonable condition precedent to filing a [medical malpractice] claim." Warren, 899 So.2d at 1097. Accordingly, I would affirm the district court's conclusion that the amendments do **not** violate the right of access to courts.

III. SEPARATION OF POWERS

The district court rejected Weaver's argument that the 2013 amendments unconstitutionally encroach on this Court's rulemaking authority under article V, section 2(a) of the Florida Constitution. Weaver, 170 So.3d at 880. Specifically, Weaver alleged that the ex parte amendments constitute "a procedural change which impermissibly conflicts with the limitations on informal discovery methods as outlined by Florida Rule of Civil Procedure 1.650." Id. at 878. In rejecting Weaver's argument, the district court correctly concluded that the amendments do **not** conflict with rule 1.650 and "are integral to other substantive portions of the statute." *Id.* at 880.

Rule 1.650 specifically addresses section 766.106, Florida Statutes, and the medical malpractice presuit notice and screening process. Among other things, the rule sets forth the following three types of informal presuit discovery, along with the procedures for conducting same: unsworn statements by parties, production of documents or things, and physical examinations. Fla. R. Civ. P. 1.650(c)(1)-(2). As the district court aptly noted, rule 1.650 was adopted by this Court in 1988 shortly after the enactment of chapter 88–277, § 48, Laws of Florida, in which the Legislature amended the then-existing presuit statute to provide for those same three specific methods of informal presuit discovery.[16] ***1151** Weaver, 170 So.3d at 879–80 (citing ch. 88–277, § 48, at 1494, Laws of Fla.); see also In re Med. Malpractice Presuit Screening Rules —Civil Rules of Procedure, 536 So.2d 193, 193 (Fla. 1988). The ex parte amendments at issue do **not** conflict with rule 1.650. And in any event, that procedural rule does **not** operate to prevent the Legislature from making substantive changes to the medical malpractice presuit process, which is exactly what the Legislature did through the ex parte amendments. See Kuhajda v. Borden Dairy Co. of Ala., LLC., 202 So.3d 391, 396 (Fla. 2016) ("A procedural rule should **not** be strictly construed to defeat a statute it is designed to implement.");

Benyard v. Wainwright, 322 So.2d 473, 475 (Fla. 1975) ("[T]he statute must prevail over our rule because the subject is substantive law.").

This Court has defined substantive law "as that part of the law which creates, defines, and regulates rights, or that part of the law which courts are established to administer." Haven Fed. Sav. & Loan Ass'n v. Kirian, 579 So.2d 730, 732 (Fla. 1991). On the other hand, "[p]rocedural law concerns the means and method to apply and enforce those duties and rights." Benyard, 322 So.2d at 475. This Court has recognized that situations arise in which statutes may contain both substantive and procedural aspects:

> Of course, statutes at times may **not** appear to fall exclusively into either a procedural or substantive classification. We have held that where a statute contains some procedural aspects, but those provisions are so intimately intertwined with the substantive rights created by the statute, that statute will **not** impermissibly intrude on the practice and procedure of the courts in a constitutional sense, causing a constitutional challenge to fail. See Caple v. Tuttle's Design–Build, Inc., 753 So.2d 49, 54 (Fla. 2000); see also State v. Raymond, 906 So.2d 1045, 1049 (Fla. 2005). If a statute is clearly substantive and "operates in an area of legitimate legislative concern," this Court will **not** hold that it constitutes an unconstitutional encroachment on the judicial branch. Caple, 753 So.2d at 53 (quoting VanBibber v. Hartford Accident & Indem. Ins. Co., 439 So.2d 880, 883 (Fla. 1983)).

Massey v. David, 979 So.2d 931, 937 (Fla. 2008).

Here, the amendments are "clearly substantive and 'operate[ ] in an area of legitimate legislative concern.' " Id. (quoting Caple, 753 So.2d at 53). And any procedural aspects are merely incidental. Id. As explained above, this Court has concluded that prior to the 1988 statutory amendments, defendants had the right to attempt to meet with plaintiffs' nonparty treating physicians on an ex parte basis. See Coralluzzo, 450 So.2d at 859. And in the wake of the 1988 statutory amendments, this Court has twice recognized that the Legislature closed the door on those ex parte meetings by creating a broad physician/patient **confidentiality** privilege with only certain limited exceptions. See Hasan, 108 So.3d at 576–77; Acosta, 671 So.2d at 154. The ex parte amendments at issue thus "regulate," Kirian, 579 So.2d at 732, legislatively created rights by once again allowing for ex parte meetings—but only under certain circumstances and conditions. And the amendments do so in a medical malpractice area that this Court has recognized involves "legitimate legislative policy." Williams, 588 So.2d at 983.

As the district court recognized, this Court previously rejected the argument that the medical malpractice presuit notice requirement violates the separation of powers. Weaver, 170 So.3d at 878–79 (citing Williams, 588 So.2d at 983). Williams, ***1152** which involved the original medical malpractice presuit notice and reasonable investigation statute enacted in 1985, examined the overall presuit process, noting that "[t]he statute ... established a process intended to promote the settlement of meritorious claims at an early stage without the necessity of a full adversarial proceeding." Williams, 588 So.2d at 983. And Williams concluded "that the statute is primarily substantive and that it has been procedurally implemented by our rule 1.650, Florida Rules of Civil Procedure." Id. Nothing in Williams supports the opposite conclusion here—that is, that the ex parte amendments are procedural.

I would affirm the district court's conclusion that the ex parte amendments do **not** unconstitutionally encroach on this Court's rulemaking authority.

IV. SPECIAL LAW

The district court rejected Weaver's argument that the 2013 amendments constitute a prohibited special law in violation of article III, section 11 of the Florida Constitution. In doing so, the district court examined the two factors set forth by this Court in Biscayne Kennel Club, Inc. v. Florida State Racing Commission, 165 So.2d 762, 763–64 (Fla. 1964), for determining whether a law that operates through a classification system is a valid general law. Weaver, 170 So.3d at 881. The district court concluded that the ex parte amendments met those two criteria and thus constituted a valid general law. Id. The district court also rejected Weaver's argument that this Court's plurality decision in Estate of McCall v. United States, 134 So.3d 894 (Fla. 2014), compels the conclusion "that medical malpractice plaintiffs now may **not** be treated differently from other plaintiffs because no medical malpractice crisis exists." Weaver, 170 So.3d at 881. I would affirm the district court's conclusion that the 2013 amendments are a valid general law.

Article III, section 11(a) of the Florida Constitution prohibits special laws or general laws of local application pertaining to certain subjects, including "rules of evidence in any court"

and "conditions precedent to bringing any civil or criminal proceedings." Art. III, §§ 11(a)(3), (a)(7), Fla. Const.

This Court has explained that "a special law is one relating to, or designed to operate upon, particular persons or things, or one that purports to operate upon classified persons or things when classification is **not** permissible or the classification adopted is illegal." Dep't of Bus. Reg. v. Classic Mile, Inc., 541 So.2d 1155, 1157 (Fla. 1989) (quoting State ex rel. Landis v. Harris, 120 Fla. 555, 163 So. 237, 240 (1934)).

On the other hand, a law is general if "it operates uniformly upon subjects as they may exist in the state, applies uniformly within permissible classifications, operates universally throughout the state or so long as it relates to a state function or instrumentality." Dep't of Legal Affairs v. Sanford–Orlando Kennel Club, Inc., 434 So.2d 879, 881 (Fla. 1983). "A general law operates uniformly, **not** because it operates upon every person in the state, but because every person brought under the law is affected by it in a uniform fashion." Id.

Here, the ex parte amendments involve a legislative classification—medical malpractice claimants and defendants. Thus, the following two factors determine whether that classification is valid: (1) whether the class is "open to others who may enter it"; and (2) whether there is "a rational distinction between those in the class and those outside it, when the purpose of the legislation and the subject of the regulation are considered." Biscayne Kennel Club, 165 So.2d at 764.

The first Biscayne Kennel Club prong is undoubtedly met—the class here is **not** ***1153** closed but rather is "open" to all future parties to medical malpractice actions. Thus, the only question is whether there is "a rational distinction between those in the class and those outside it, when the purpose of the legislation and the subject of the regulation are considered." Id. The district court correctly concluded that there is such a rational distinction. The ex parte amendments are consistent with decades of precedent finding that it is appropriate to treat medical malpractice claimants and defendants differently than other personal injury claimants and defendants. Medical malpractice is an area that has been historically regulated by the Legislature with the goal of "ensuring the availability of adequate medical care." Weaver, 170 So.3d at 881.

Weaver argues that the ex parte amendments impermissibly treat medical malpractice claimants differently and less favorably than all other personal injury claimants. Weaver also takes issue with the district court's dismissal of McCall. Specifically, Weaver argues that because the McCall plurality found that no medical malpractice insurance crisis currently exists, it was error for the district court below to justify the ex parte amendments by relying on "a decades-old finding" by the Legislature that a medical malpractice crisis existed at the time the presuit process was originally enacted. Weaver's arguments are **not** persuasive.

As an initial matter, McCall has no application to this case. McCall involved an equal protection challenge to statutory caps on noneconomic damages and had nothing to do with the issue of prohibited special laws. McCall, 134 So.3d at 897. Moreover, any suggestion that a medical malpractice "crisis" must, in fact, exist as a prerequisite for permissible legislative classifications involving medical malpractice parties is unwarranted. A special law inquiry does **not** involve this Court acting as a super-legislative body to review the Legislature's policy decisions. Instead, as it relates to the second Biscayne Kennel Club prong, the appropriate inquiry is whether there is "a rational distinction between those in the class and those outside it, when the purpose of the legislation and the subject of the regulation are considered." Biscayne Kennel Club, 165 So.2d at 764 (emphasis added).

As to the "subject of the regulation," id., chapter 766, Florida Statutes, is entitled "Medical Malpractice and Related Matters." Because the subject being regulated is medical malpractice matters—and **not** all personal injury tort matters, including those unrelated to medical malpractice—it obviously makes sense that the ex parte amendments classify medical malpractice claimants and defendants differently than other personal injury claimants and defendants.

As to the "purpose of the legislation," Biscayne Kennel Club, 165 So.2d at 764, the district court noted that the presuit notice and investigation statutes "were originally enacted by the Legislature to combat the financial crisis in the medical liability insurance industry by encouraging early settlement and negotiation of claims." Weaver, 170 So.3d at 881 (citing Univ. of Miami v. Echarte, 618 So.2d 189, 191–92 (Fla. 1993)). In the years since that original enactment, this Court has described the purpose of the presuit process in general terms. Namely, the purpose is to attempt to control "the high cost of medical negligence claims through early determination and prompt resolution of claims," Weinstock, 629 So.2d at 838, and "promot[ing] the settlement of meritorious claims at an early stage without the necessity

of a full adversarial proceeding," Williams, 588 So.2d at 983. "Indeed, the prevailing policy of this state relative to medical malpractice actions is to encourage ***1154** the early settlement of meritorious claims." Cohen, 739 So.2d at 71. And the best way to accomplish that "prevailing policy" is through "the free and open exchange of information during the presuit screening process," id. at 72, and by "requiring the parties to engage in meaningful presuit investigation, discovery and negotiations," Kukral, 679 So.2d at 284. Providing both sides in a medical malpractice suit with the same pretrial access (potentially) to important nonparty fact witnesses is undoubtedly rationally related to the Legislature's interest in promoting early settlement and attempting to keep costs down in order to help make Florida an attractive place for doctors to practice. In other words, the legislative classification here between parties to medical malpractice claims and parties to other personal injury tort claims is rational when considering "the purpose of the legislation." Biscayne Kennel Club, 165 So.2d at 764.

This Court recently explained the burden on a party challenging a legislative classification:

> This Court has held that the law must be upheld unless the Legislature could **not** have any reasonable ground for believing that there were public considerations justifying the particular classification and distinction made. North Ridge Gen. Hosp., Inc. v. City of Oakland Park, 374 So.2d 461, 465 (Fla. 1979). Further, this Court has held that "one who assails the classification has the burden of showing that it is arbitrary and unreasonable." Id. at 465. The appellees have **not** met this burden.

License Acquisitions, LLC v. Debary Real Estate Holdings, LLC, 155 So.3d 1137, 1149 (Fla. 2014). The issue here is **not** whether a medical malpractice "crisis" exists, but rather whether Weaver has shown that "the Legislature could **not** have had any reasonable ground for believing that there were public considerations justifying the particular classification and distinction made." North Ridge Gen. Hosp., 374 So.2d at 465 (emphasis added). And Weaver does **not** come close to meeting this burden.

V. CONCLUSION

For the reasons explained above, I would affirm the First District's decision in Weaver. The ex parte amendments do **not** violate the right to privacy or the right of access to courts protected by the Florida Constitution. And the ex parte amendments do **not** unconstitutionally encroach on this Court's rulemaking authority or constitute a prohibited special law. I dissent.

POLSTON and LAWSON, JJ., concur.

All Citations

229 So.3d 1118, 42 Fla. L. Weekly S906

Footnotes

1 An amicus brief by the Florida Justice Association has been filed in support of Weaver. Amicus briefs by the State of Florida, the Florida Justice Reform Institute, and the Florida Hospital Association/Florida Medical Association/American Medical Association have been filed in support of Dr. Myers.

2 In a related context, application of existing limits and exemptions to access to information by the public bolsters this conclusion. For instance, in the context of the federal Freedom of Information Act, the families of deceased astronauts from the Challenger space shuttle explosion were allowed to claim an exemption for "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." New York Times Co. v. Nat'l Aeronautics & Space Admin., 782 F.Supp. 628, 630 (D.D.C. 1991). In another context, it is well-established law that the right to privacy survives **death**. Florida recognizes both a statutory and common law right of publicity. § 540.08, Fla. Stat. (2016); see, e.g., Cason v. Baskin, 155 Fla. 198, 20 So.2d 243, 245 (Fla. 1944). The right of publicity is a corollary right derived from the right to privacy that allows a person to control the use of his or her name and likeness. Section 540.08, Florida Statutes, authorizes the surviving spouse of a decedent to enforce the decedent's publicity rights for up to forty years. See § 540.08(1), (5)-(7). Thus, it is clear that the right to privacy survives a person's **death**, is **not** retroactively destroyed by **death**, and remains enforceable in tort law by the decedent's family members for decades.

3 Moreover, even in this distinct context, the Williams court recognized that there are certain exceptions in which a decedent's next of kin may properly bring an action for invasion of privacy. 575 So.2d at 689.

4 Dr. Myers contends that he is **not** a government actor, and therefore, the right to privacy challenge fails. However, this Court has previously considered challenges to statutes on the basis that they violate the right to privacy where

both parties to the action are private individuals, but one party benefits from operation of the statute. See, e.g., D.M.T. v. T.M.H., 129 So.3d 320, 330 (Fla. 2013) (donor filed petition to establish parental rights and sought declaration of constitutional invalidity of assisted reproductive technology statute); Von Eiff v. Azicri, 720 So.2d 510, 511–12 (Fla. 1998) (parents challenged statute which provided grandparents with a freestanding cause of action for visitation rights with minor grandchildren); Beagle v. Beagle, 678 So.2d 1271, 1273 (Fla. 1996) (parents contested grandparents' petition for visitation rights with grandchild that was authorized pursuant to statute).

5 Further, although **not** at issue here, requiring potential claimants to list by name health care providers who do **not** have information potentially relevant to the claim, and provide dates of service, see § 766.1065(3)C., in and of itself reveals irrelevant private medical information. For example, if a claimant seeks to file an action based upon alleged malpractice by a podiatrist, the authorization requires him to report if he was seen by a health care provider who specializes in treating HIV, or sexual dysfunction, or depression, or substance abuse. This goes beyond the scope of the claim and intrudes upon a person's right to keep private medical information that has **not** been placed at issue by virtue of the action. However, again, this is **not** at issue here and must also be weighed against the limiting intent behind the requirement.

6 Further supporting our holding today, the Kimes court even noted that the moment a workers' compensation claim becomes sufficiently adversarial by appointment of an expert medical advisor, ex parte conferences are no longer permissible. See Kimes, 756 So.2d at 1041 (citing Pierre v. Handi Van, Inc., 717 So.2d 1115, 1117 (Fla. 1st DCA 1998)). Pierre even noted the impropriety that would flow from ex parte discussions once a matter becomes adversarial:

> Once disputes have arisen and ripened, however, requiring the assistance of [expert medical advisors], the case has become indisputably adversarial so that ex parte discussions with such experts are **not** appropriate ... and the experts so chosen should **not** be subject to even the "appearance of impropriety," which would result from private meetings with either party.

717 So.2d at 1117.

7 Weaver also raised a challenge based on her own right to privacy on the theory that her husband potentially revealed information about her and her medical history during the course of his medical care. In light of our holding today, however, we need **not** address this claim.

8 Dr. Myers contends that the impediment at issue is merely the procedural act of filling out and executing the authorization, which in turn is **not** a significant infringement. Indeed, we have previously upheld conditions precedent to filing a legal action so long as the condition is **not** "significantly difficult" to surmount. For example, in Warren v. State Farm Mutual Automobile Insurance Co., 899 So.2d 1090, 1092 (Fla. 2005), the challenged statute required providers of non-emergency medical services and medical services **not** provided in a hospital to submit a statement of charges to insurers within thirty days of service or be subject to automatic claim denial. This Court held that the statute did **not** violate access to courts because it did **not** abolish the rights of medical providers to file claims for certain insurance benefits and was a reasonable condition precedent to filing such claims. Id. at 1097.

However, viewing the amendments merely in terms of filling out an authorization is a superficial way to perceive and ignore their effect. As we have made clear, this is **not** about paperwork, but privacy.

9 In light of our holding today, we need **not** reach Weaver's other contentions that the 2013 amendments violated separation of powers and the prohibition against special laws under the Florida Constitution.

10 The Legislature first enacted a medical malpractice presuit notice and reasonable investigation requirement in 1985. See ch. 85–175, §§ 12, 14, at 1196–97, 1199–1202, Laws of Fla. In 1988, the Legislature amended the presuit process by imposing a mandatory "presuit investigation" requirement and outlining the permissible "informal discovery" to be used by the parties. See ch. 88–1, §§ 48–53, at 164–68, Laws of Fla.; ch. 88–277, § 48, at 1494–95, Laws of Fla.

11 Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104–191, 110 Stat. 1936 (1996).

12 The majority also offers no explanation for why a defendant would even be interested in obtaining protected information "that is totally irrelevant to the claim." Majority op. at 1133. Any such information would be inadmissible at trial and the discussion of such information would subject the interviewer and interviewee to potential liability and discipline. The majority instead references "the practical realities of today's litigation practice." Majority op. at 1135. But the majority then fails to identify a single "practical" use that would be served either by a defendant's attempt to obtain "totally irrelevant" protected information or by a medical professional's willingness to discuss such information. Instead, the referenced "practical realities" appear to relate to the majority's belief that attorneys "very often" act inappropriately. Majority op. at 1135. Such a belief, of course, should **not** guide the majority's constitutional analysis.

13 In Kimes, an expert medical advisor had **not** even been appointed at the time of the ex parte conference with the treating physician. See Kimes, 756 So.2d at 1041. And yet it can hardly be argued that the dispute in Kimes was **not** "adversarial."

14 The majority suggests that Acosta adopted a quote from Kirkland v. Middleton, 639 So.2d 1002, 1004 (Fla. 5th DCA 1994), which expressed a blanket concern about ex parte interviews and the complete lack of protection to Florida citizens from the disclosure of information "that is totally irrelevant to the claim." Majority op. at 1133-34. But Acosta quoted Kirkland simply to explain how the district court reached its decision in Kirkland. Acosta, 671 So.2d at 152–53.

15 The majority also makes reference to "the standard discovery procedures with notice and participation of all parties that are employed daily without issue in thousands of cases." Majority op. at 1138 (emphasis added). But the majority then fails to mention that in those "thousands of cases," plaintiffs and defendants alike are generally permitted to contact fact witnesses on an ex parte basis. Again, the only reason why post–1988 medical malpractice defendants have **not** had equal ex parte access to those fact witnesses who happen to be nonparty treating physicians is because the Legislature took away that equal access.

16 Rule 1.650 has **not** been updated to reflect other permissible methods of informal presuit discovery subsequently authorized by the Legislature, including the taking of unsworn statements from a claimant's treating health care providers and the submission of written questions. See, e.g., ch. 2003–416, § 49, at 65–66, Laws of Fla.

End of Document

451 So.2d 491
District Court of Appeal of Florida,
Third District.

Glenda YESTE, individually, and as Personal Representative of the estate of Dixon Yeste, M.D., and John Darren Yeste and Michael Scott Yeste, by and through their natural guardian, mother and next friend, Glenda Yeste, Appellants,
v.
The MIAMI HERALD PUBLISHING COMPANY, A DIVISION OF KNIGHT-RIDDER NEWSPAPERS, INC., a Florida corporation, and Steven Sternberg, Appellees.

No. 83–2006
|
April 10, 1984.
|
Rehearing Denied June 19, 1984.

Synopsis

Newspaper and reporter sought writ of mandamus requiring public officials to authorize inspection of medical certification portion of death certificate, and decedent's widow and decedent's two minor sons were permitted to intervene. The Circuit Court, Dade County, Edward S. Klein, J., issued peremptory writ of mandamus, and intervenors appealed. The District Court of Appeal, Hubbart, J., held that the portion of a death certificate which contains the medical certification of the cause of death is made confidential by statute and is therefore exempt from public inspection.

Reversed and remanded.

West Headnotes (6)

[1] **Records** Matters Subject to Disclosure; Exemptions

Portion of death certificate which contains medical certification of cause of death, and which according to statute must be deleted from any certified copy of death certificate unless applicant has "direct and tangible interest in the cause of death," is "confidential" within meaning of Public Records Act and is therefore exempt from public inspection and copying provisions of the Act. West's F.S.A. §§ 119.011(1), 119.07(1)(a, b), (3)(a), 382.35(4).

1 Cases that cite this headnote

[2] **Statutes** Purpose

Statutes Unintended or unreasonable results; absurdity

Court must give full effect to legislative purpose behind statute and avoid constructions which lead to absurd or unreasonable results.

2 Cases that cite this headnote

[3] **Records** Matters Subject to Disclosure; Exemptions

Purpose of making cause of death information confidential, in order to avoid public embarrassment to deceased's family, would be totally defeated if any member of general public could inspect and hand copy confidential portions of death certificate. West's F.S.A. §§ 119.011(1), 119.07(1)(a, b), (3)(a), 382.35(4).

1 Cases that cite this headnote

[4] **Statutes** Literal, precise, or strict meaning; letter of the law

Court must avoid literalistic reading of statute where that reading would defeat entire legislative purpose behind statute.

1 Cases that cite this headnote

[5] **Records** Persons entitled to disclosure; interest or purpose

Newspaper and reporter, which without dispute had no direct or tangible interest in cause of death, were not entitled to receive certified copy of death certificate that included cause of death portion or to inspect cause of death portion of certificate under Public Records Act. West's F.S.A. §§ 119.01 et seq., 119.07(1)(a), (3)(a), 382.35(4).

[6] **Constitutional Law** Access to, and publication of, public information or records

Newspaper did not have free press right of access to medical certification portion of death certificate. West's F.S.A. § 382.35(4).

Attorneys and Law Firms

***492** Robert J. Dickman, Fort Lauderdale, for appellants.

Thomson, Zeder, Bohrer, Werth, Adorno & Razook, Richard J. Ovelmen, Miami, for appellees.

Before BARKDULL, HUBBART and NESBITT, JJ.

Opinion

HUBBART, Judge.

The central question presented for review by this appeal is whether that portion of a death certificate which contains the medical certification of the cause of death is open for public inspection as a public record—or is exempt from such inspection—under the Florida Public Records Act [ch. 119, Fla.Stat. (1983)]. We hold that the above-stated portion of a death certificate is made confidential by Section 382.35(4), Florida Statutes (1983), and is therefore exempt under Section 119.07(3)(a), Florida Statutes (1983), from the public inspection and certified copying provisions of Section 119.07(1)(a), Florida Statutes (1983). We accordingly reverse the final order under review and remand the cause to the trial court with directions to deny the petition for a writ of mandamus filed herein.

On July 12, 1983, Dr. Dixon Yeste died leaving a surviving wife and two minor sons. On July 13, 1983, Dr. Barry Barker, the attending physician to Dr. Yeste during his last illness, filed a medical certification of the cause of death with the Florida Department of Health and Rehabilitative Services, Bureau of Vital Statistics [HRS]. This certificate, in turn, was incorporated into Dr. Yeste's official death certificate issued by HRS. On July 21, 1983, Steven Sternberg, a reporter for The Miami Herald, applied to the local office of HRS to ***493** inspect Dr. Yeste's death certificate. The request was granted except as to the medical certification of the cause of death. Thereafter, the petitioners, The Miami Herald Publishing Company and Steven Sternberg, applied to the trial court for a writ of mandamus requiring HRS and sundry other public entities and officials [1] to authorize the inspection of the medical certification portion of Dr. Yeste's death certificate. At that point, Dr. Yeste's widow, Glenda Yeste, individually and as personal representative of the estate of Dr. Yeste, and his two minor sons, John Darren Yeste and Michael Scott Yeste, were permitted to intervene in the action and oppose the issuance of the writ of mandamus. After receiving full responses from all parties, and on an undisputed set of facts as stated above, the trial court issued a peremptory writ of mandamus directing HRS and other sundry officials to permit the petitioners to inspect the medical certification portion of Dr. Yeste's death certificate. The intervenors appeal.

[1] Without dispute, a death certificate is a public record under Section 119.011(1), Florida Statutes (1983). Ordinarily, then, such a certificate would be subject to the public inspection and copying provisions of Section 119.07(1)(a), (b), Florida Statutes (1983). There is one exception, however, to these public inspection and copying provisions which is set forth in Section 119.07(3)(a), Florida Statutes (1983), as follows:

> *"All public records which are presently provided by law to be confidential* or which are prohibited from being inspected by the public, *whether by general or special law, are exempt from the provisions of subsection (1)."* (emphasis added)

Section 382.35(4), Florida Statutes (1983), in turn, provides as follows:

> "The State Registrar shall furnish a certified copy of all or part of any marriage, dissolution of marriage, or death certificate, *excluding that portion which contains the medical certification of cause of death,* recorded under the provisions of this chapter to any person requesting it upon payment of the fee prescribed by this section. A certified copy of the medical certification of cause of death shall be furnished only to persons having a direct and tangible interest in the cause of death, as provided by rules and regulations of the Department of Health and Rehabilitative Services." (emphasis added)

Under the above statute, the issuance of certified copies of a death certificate is permitted with one important exception. That portion of a death certificate which contains the medical certification of the cause of death must be deleted from any certified copy of a death certificate, unless the person

applying for same has "a direct and tangible interest in the cause of death." We conclude that this required deletion from certified copies of death certificates makes the deleted portion "confidential" within the meaning of Section 119.07(3)(a), Florida Statutes (1983), so as to exempt it from the public inspection and copying provisions of Section 119.07(1)(a), (b), Florida Statutes (1983).

[2] We reach this conclusion because we think the legislative purpose behind the statute [§ 382.35(4), Fla.Stat.(1983)] would be thwarted and an absurd or unreasonable result reached if we construed the statute any other way. We are, of course, constrained by law to give full effect to the legislative purpose behind a statute and to avoid constructions which lead to absurd or unreasonable results. *Foley v. State,* 50 So.2d 179, 184 (Fla.1951). The legislature, as stated above, has mandated that a certain portion of a death certificate [i.e., the medical certification of the cause of death] should be deleted from any certified copy of a death certificate which, by law, is made available to the general public. Only those persons who have "a direct or tangible interest in the cause of death" are ***494** authorized by the statute to receive a certified copy of the entire death certificate, including the medical certification of the cause of death. This legislative mandate, we think, is totally undone if any member of the general public may physically inspect and presumably *hand copy* the above deleted information. There is surely no point in deleting information from a certified copy of a death certificate if one may inspect and hand copy the deleted information in any event. Plainly, the legislature's purpose here was to make the deleted information confidential, except as to those persons having a direct and tangible interest in the cause of death.

[3] The underlying justification for making such cause of death information confidential seems obvious enough. The cause of death as stated in a death certificate represents sensitive and generally private information. If made public, this information could cause public embarrassment to the deceased's family, as, for example, where the deceased has died from an illegal drug overdose, by suicide, or from a socially distasteful disease such as venereal disease. Absent some direct or tangible interest in the deceased's cause of death, it was thought best to keep this portion of the death certificate confidential and deleted so as to spare the feelings of the deceased's family. Obviously, that purpose is totally defeated if any member of the general public may, as urged, inspect and hand copy the confidential portions of the death certificate.

In this connection, we reject The Miami Herald's contrary suggestion that an administrative cost-efficiency purpose lies behind the legislative decision to delete the cause of death information from certified copies of death certificates because otherwise "the administrative burden of providing a multitude of certified copies of cause of death papers could prove overwhelming." [appellee's brief at 17] The short answer to this argument is that the statute does not prohibit the issuance of certified copies of death certificates; indeed, the statute expressly provides for the issuance of same with one above-stated deletion. Administratively accomplishing this deletion from certified copies already made available to the public obviously does not save time or money. On the contrary, it creates an increased administrative burden for governmental officials. The legislative purpose, then, in requiring this deletion could not have been to save time or money. Plainly, its purpose was to make the deleted portion of the death certificate confidential.

[4] In reaching this result, we do not overlook two contrary considerations. First, we agree with the trial court that Section 382.35(4), Florida Statutes (1983), does not expressly preclude public inspection of the aforesaid portion of a death certificate. This conclusion, however, does not mean that said public inspection is permitted, because Section 119.07(3)(a), Florida Statutes (1983) provides that "[a]ll public records which are presently provided by law to be *confidential"* are exempt from public inspection and copying. Section 382.35(4), Florida Statutes (1983), for the reasons stated above, makes the aforesaid portion of a death certificate "confidential," and, therefore, not subject to the public inspection or copying provisions of Section 119.07(1)(a), (b), Florida Statutes (1983). Second, we agree that Section 382.35(4), Florida Statutes (1983), does not expressly make the aforesaid portion of a death certificate "confidential," as does Section 382.35(1), Florida Statutes (1983), with respect to birth certificates. *See* 1982, Op.Att'y Gen.Fla. 82-16 (March 16, 1982). This conclusion, however, does not mean that said portion of a death certificate is not confidential; the legislature, by requiring the aforesaid deletion from certified copies of death certificates, has made the deleted portion confidential by implication. Any other reading of the statute leads, as indicated above, to absurd or unreasonable results. Moreover, we are constrained by law to avoid a literalistic reading of a statute where, as here, such a reading would defeat the entire legislative ***495** purpose behind the statute. *Garner v. Ward,* 251 So.2d 252, 255-56 (Fla.1971).

[5] Turning to the instant case, it is plain that the petitioners herein were not entitled to inspect the cause of death portion of Dr. Yeste's death certificate herein. Without dispute, the petitioners have no direct or tangible interest in Dr. Yeste's cause of death. It therefore follows that they are not entitled to receive a certified copy or to inspect same under the above statute. This being so, the trial court was in error in issuing the peremptory writ of mandamus in this cause.

[6] Finally, we reject The Miami Herald's argument that, apart from any statute, it has a free press right of access to the medical certification portion of Dr. Yeste's death certificate. We are cited to no constitutional authority in Florida or elsewhere which has ever held that a newspaper has a free press right of access to public records such as that presented in the instant case. We decline to be the first court to so hold.

The peremptory writ of mandamus under review is reversed and the cause is remanded to the trial court with directions to dismiss the petition for writ of mandamus filed herein.

All Citations

451 So.2d 491, 10 Media L. Rep. 2298

Footnotes

1 Metropolitan Dade County, Department of Public Health; Richard A. Morgan and Beatrice Marchette, HRS officials.

From: Price-Williams, Abigail (CAO) <Abigail.Price-Williams@miamidade.gov>
Sent: Saturday, April 11, 2020 1:05 PM EDT
To: louise.stlaurent@flhealth.gov <louise.stlaurent@flhealth.gov>
CC: Bonzon-Keenan, Geri (CAO) <Geri.Bonzon-Keenan@miamidade.gov>; Angell, Christopher (CAO) <Christopher.Angell@miamidade.gov>
Subject: Medical Examiner: General Matters: Public records requests to the Miami-Dade County Medical Examiner related to COVID-19
Attachment(s): "Ltr COVID-19 4-11-20 (FINAL).pdf"

Dear Ms. Wilhite-St. Laurent,
I hope that you are doing well. Attached please find my letter to you regarding recent public records requests to the County's Medical Examiner.
While I know that our attorneys have been discussing this matter, please know that I am also available if you wish to discuss further.

All the best,
Abi

Abigail Price-Williams
County Attorney
111 NW 1 ST, Suite 2810
Miami, FL 33128
(305) 375-1319 (Direct Line)
APW1@miamidade.gov

Jenelle Snyder Kresse
CAO Director Agenda Coordination
(305) 375-2342 (Direct Line)
(305) 375-7929 (FAX)
JSNYDER@miamidade.gov

miamidade.gov
"Delivering Excellence Every Day"

COUNTY ATTORNEY
MIAMI-DADE COUNTY, FLORIDA

SUITE 2810, 111 NORTHWEST FIRST STREET
MIAMI, FLORIDA 33128-1993
TELEPHONE: 305.375.5151
FAX: 305.375.5634

April 11, 2020

Louise R. Wilhite-St. Laurent
General Counsel
Florida Department of Health
4052 Bald Cypress Way
Tallahassee, FL 323999
via email to: louise.stlaurent@flhealth.gov

Re: Public records requests to the Miami-Dade County Medical Examiner for information related to COVID-19 deaths

Dear Ms. Wilhite-St. Laurent:

The Miami-Dade County Medical Examiner has received public records requests for the names, dates of birth, and other information of people who have passed away from coronavirus disease 2019/COVID-19 ("Requested Documents"). I am writing to advise you that the County would like to honor the Florida Department of Health's ("Department") request that the Requested Documents not be disclosed, while also protecting the County from any liability as the public records requests were directed to the County.

Florida's public records law requires the County to release public records unless a specific statutory exemption applies. The Department has taken the position that the Requested Documents are exempt from disclosure based on certain public records exemptions, but these exemptions apply specifically to the Department. Florida law does not exempt from public disclosure the Requested Documents in the possession of the Medical Examiner.

Pursuant to chapter 381, Florida Statutes, information contained in reports that are part of a Department epidemiological investigation are exempt from public disclosure. Attorneys from our respective offices have discussed this issue during several telephone calls over the last few weeks. As discussed on April 7, 2020, if the Department provides the County with a written statement that (i) indicates the Requested Documents are part of a Department epidemiological investigation, and (ii) commits to defend and indemnify the County, then the County will not disclose the Requested Documents.

The law requires the County to respond to public records requests within a reasonable time; therefore, we respectfully request that the Department provide the written statement and agreement to defend and indemnify the County no later than 5:00 PM on Wednesday, April 15, 2020.

Thank you and please don't hesitate to contact me if you have any questions.

Sincerely,

Abigail Price-Williams
Miami-Dade County Attorney

From: Angell, Christopher (CAO) <Christopher.Angell@miamidade.gov>
Sent: Friday, April 03, 2020 1:13 PM EDT
To: Medved, Daniel T <Daniel.Medved@flhealth.gov>
Subject: Meeting Forward Notification: Call w/ DOH and Miami-Dade CAO re: EPI and ME Records

Your meeting was forwarded

Angell, Christopher (CAO) has forwarded your meeting request to additional people.

Meeting

Call w/ DOH and Miami-Dade CAO re: EPI and ME Records

Meeting Time

Friday, April 3, 2020 2:00 PM - Friday, April 3, 2020 2:30 PM

Recipients

Kobrinski, Leigh (CAO)

All times listed are in the following time zone: (UTC-05:00) Eastern Time (US & Canada)

AMERICAN OVERSIGHT

April 28, 2020

VIA ELECTRONIC MAIL

Tomeka Ladson
Public Records Custodian
County Attorney's Office
Miami-Dade County
111 NW 1st St., Ste 2810
Miami, FL 33128
CAOPublicRecordsCustodian@miamidade.gov

Re: Public Records Request

Dear Public Records Officer:

Pursuant to Florida's public records laws, as codified at Fla. Stat. Chapter 119, American Oversight makes the following request for records.

Requested Records

American Oversight requests that your office promptly produce the following:

1. All directives, orders, memoranda, or guidance from the Office of Governor Ron DeSantis, the Office of Attorney General Ashley Moody, the Florida Department of Health, or any employees or representatives thereof, regarding the processing of public records requests that seek records regarding the coronavirus outbreak, including, but not limited to, records regarding how public agencies or officials are responding to the coronavirus outbreak.

2. All email communications (including email messages, complete email chains, email attachments, calendar invitations, and calendar invitation attachments) between **(A)** the government officials listed below, and **(B)** anyone with an email address ending in **@eog.myflorida.com, @flgov.com, @flhealth.gov, or @myfloridalegal.com,** that include any of the key terms that follow.

Government Officials

i. County Attorney Abigail Price-Williams
ii. First Assistant County Attorney Geri Bonzon Keenan
iii. Assistant County Attorney Christopher A. Angell
iv. Assistant County Attorney Christopher Kokoruda
v. Assistant County Attorney Laura M. Llorente
vi. Assistant County Attorney Kevin M. Marker
vii. Assistant County Attorney Michael Mastrucci

viii. Assistant County Attorney Jess McCarty
ix. Assistant County Attorney Oren Rosenthal
x. Assistant County Attorney Gerald K. Sanchez
xi. Assistant County Attorney Eugene Shy, Jr.
xii. Assistant County Attorney Javier Zapata

Key Terms:[1]

- "Records requests"
- "Record requests"
- "Records request"
- "Record request"
- "Request for records"
- "Requests for records"
- "PRR"
- "PRRs"
- "PRL"
- "Sunshine law"
- "FOIA"
- "Herald"
- "Klas"
- "Weaver"
- "Ovalle"
- "Neal"
- "Smiley"
- "Chang"
- "Gross"
- "Conarck"
- "Holland & Knight"
- "H&K"
- "H & K"
- "Bohrer"
- "Meros"
- "American Oversight"
- "Evers"
- "Monahan"
- "CREW"
- "Citizens for Responsibility and Ethics in Washington"
- "PILF"
- "Public Interest Legal Foundation"
- "American Civil Rights Union"
- "ACRU"
- "First Amendment Foundation"
- "FAF"
- "FLFAF"

For both items 1 and 2, please provide all responsive records from March 1, 2020, to the date of the search.

Please notify American Oversight of any anticipated fees or costs in excess of $100 prior to incurring such costs or fees.

We understand that your office's capacity may be impacted by the coronavirus outbreak and response efforts. Should that be the case, we would be happy to discuss potential streamlining or narrowing of our request, reasonable delays in processing this request, or other accommodations. Please feel free to contact us at the telephone number listed in the final paragraph of this letter. We look forward to working with you.

[1] American Oversight has sought to avoid phrases related to the public records law that are likely to appear in boilerplate language in officials' signature lines. In the event that one of the key terms above does appear in boilerplate language and produces a high volume of records, please let us know and we can discuss narrowing the request.

American Oversight seeks all responsive records regardless of format, medium, or physical characteristics, and includes any attachments to these records

American Oversight insists that your agency use the most up-to-date technologies to search for responsive information and take steps to ensure that the most complete repositories of information are searched. American Oversight is available to work with you to craft appropriate search terms. **However, custodian searches are still required; your office may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.**

In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. If it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

Please take appropriate steps to ensure that records responsive to this request are not deleted by your office before the completion of processing for this request. If records potentially responsive to this request are likely to be located on systems where they are subject to potential deletion, including on a scheduled basis, please take steps to prevent that deletion, including, as appropriate, by instituting a litigation hold on those records.

To ensure that this request is properly construed, that searches are conducted in an adequate but efficient manner, and that extraneous costs are not incurred, American Oversight welcomes an opportunity to discuss its request with you before you undertake your search or incur search or duplication costs. By working together at the outset, American Oversight and your agency can decrease the likelihood of costly and time-consuming litigation in the future.

Where possible, please provide responsive material in electronic format by email or in PDF or TIF format on a USB drive. Please send any responsive material being sent by mail to American Oversight, 1030 15th Street NW, Suite B255, Washington, DC 20005. If it will accelerate release of responsive records to American Oversight, please also provide responsive material on a rolling basis.

Conclusion

American Oversight is a 501(c)(3) nonprofit with the mission to promote transparency in government, to educate the public about government activities, and to ensure the accountability of government officials. American Oversight uses the information gathered, and its analysis of it, to educate the public through reports, press releases, or other media. American Oversight also makes

materials it gathers available on its public website and promotes their availability on social media platforms, such as Facebook and Twitter.[2]

We share a common mission to promote transparency in government. American Oversight looks forward to working with your agency on this request. If you do not understand any part of this request, have any questions, or foresee any problems in fully releasing the requested records, please contact Christine H. Monahan at records@americanoversight.org or (202) 869-5244.

Sincerely,

Austin R. Evers
Executive Director
American Oversight

[2] American Oversight currently has approximately 15,500 page likes on Facebook and 102,300 followers on Twitter. American Oversight, FACEBOOK, https://www.facebook.com/weareoversight/ (last visited Apr. 22, 2020); American Oversight (@weareoversight), TWITTER, https://twitter.com/weareoversight (last visited Apr. 22, 2020).

From: Angell, Christopher (CAO) <Christopher.Angell@miamidade.gov>
Sent: Thursday, April 09, 2020 4:58 PM EDT
To: Lamia, Christine E <Christine.Lamia@flhealth.gov>
CC: Medved, Daniel T <Daniel.Medved@flhealth.gov>
Subject: RE: Medical Examiner: General Matters: [EX] Public Record Requests - requests for names of decedents COVID 19 Deaths -

No need, I have reached out to him.

Thank you.

Chris Angell
Christopher A. Angell, Esq.
Assistant County Attorney
Miami-Dade County Attorney's Office
Stephen P. Clark Center
111 NW First Street
Suite 2810
Miami, FL 33128
Tel: 305-375-1024
Fax: 305-375-5611

Legal Assistant:
Maria Cruz
Tel: (305) 375-5731
Email: Maria.Cruz2@MiamiDade.gov

Paralegals:
Yenisbel Valdes
Tel: 305-375-1338
Email: Yenisbel.Valdes@MiamiDade.gov

Jarod Rucker
Tel: 305-375-5870
Email: Jarod.Rucker@MiamiDade.gov

Ulla Peralta
Tel: 305-375-2067
Email: Ulla.Peralta@MiamiDade.gov

From: Lamia, Christine E [mailto:Christine.Lamia@flhealth.gov]
Sent: Thursday, April 9, 2020 4:21 PM
To: Angell, Christopher (CAO) <Christopher.Angell@miamidade.gov>
Cc: Medved, Daniel T <Daniel.Medved@flhealth.gov>
Subject: RE: Medical Examiner: General Matters: [EX] Public Record Requests - requests for names of decedents COVID 19 Deaths -

---

Chris,
I do not have a written opinion. Do you mind if I send this email chain to Jim Martin and let him know of your request?
Chris

Christine E. Lamia
Deputy General Counsel
State Health Offices
Office of the General Counsel

Florida Department of Health
4052 Bald Cypress Way, Bin #A-02
Tallahassee, FL 32399-3265
(850) 245-4005 (OGC Main Line)
(850) 245-4021 (Direct Line)
(850) 245-4790 (Fax)

Mission: To protect, promote, and improve the health of all people in Florida through integrated state, county, & community efforts.
Vision: To be the Healthiest State in the Nation
Values: **ICARE**
I innovation: We search for creative solutions and manage resources wisely.
C collaboration: We use teamwork to achieve common goals & solve problems.
A accountability: We perform with integrity & respect.
R responsiveness: We achieve our mission by serving our customers & engaging our partners.
E excellence: We promote quality outcomes through learning & continuous performance improvement.
Purpose: To protect the public through health care licensure, enforcement and information.
Focus: To be the nation's leader in quality health care regulation.

From: Angell, Christopher (CAO) <Christopher.Angell@miamidade.gov>
Sent: Thursday, April 9, 2020 3:56 PM
To: Lamia, Christine E <Christine.Lamia@flhealth.gov>
Cc: Medved, Daniel T <Daniel.Medved@flhealth.gov>
Subject: RE: Medical Examiner: General Matters: [EX] Public Record Requests - requests for names of decedents COVID 19 Deaths -

Good afternoon:

The Miami-Dade County Medical Examiner Department has not received any communicating from Mr. Martin withdrawing his earlier position as expressed in his email dated 03-19-20 below, nor have they received any communication from the Medical Examiners Commission to that effect.
Please advise if Mr. Martin, as counsel for Medical Examiners Commission, has provided a written legal opinion in support of his position that the a cause of death contained in any document in the possession of a medical examiner is confidential and exempt, and if so, please provide me a copy of that written legal opinion.

Thank you.

Chris Angell
Christopher A. Angell, Esq.
Assistant County Attorney
Miami-Dade County Attorney's Office
Stephen P. Clark Center
111 NW First Street
Suite 2810
Miami, FL 33128
Tel: 305-375-1024
Fax: 305-375-5611

Legal Assistant:
Maria Cruz
Tel: (305) 375-5731
Email: Maria.Cruz2@MiamiDade.gov

Paralegals:
Yenisbel Valdes
Tel: 305-375-1338
Email: Yenisbel.Valdes@MiamiDade.gov

Jarod Rucker
Tel: 305-375-5870
Email: Jarod.Rucker@MiamiDade.gov

Ulla Peralta
Tel: 305-375-2067
Email: Ulla.Peralta@MiamiDade.gov

Due to the unprecedented and changing situation involving COVID-19, the County Attorney's Office is currently working remotely. We will have limited access to regular mail, physical files, and other resources that we would otherwise have while working in-office. As a result, we ask that you please correspond with us by e-mail or send an electronic copy of any physical document you send to our offices to this e-mail address. We also will have limited access to certain physical and other records in response to discovery,

public records requests, and other similar requests and ask for your patience and understanding in any delayed or untimely response. To the extent that we have stored data or information online and readily accessible, we will continue to provide it in a timely manner. Please also note that our fax machine has been disconnected and is no longer being used for incoming correspondence at this time. We appreciate your cooperation at this difficult time. Thank you.

From: Lamia, Christine E [mailto:Christine.Lamia@flhealth.gov]
Sent: Thursday, April 9, 2020 3:37 PM
To: Angell, Christopher (CAO) <Christopher.Angell@miamidade.gov>
Cc: Medved, Daniel T <Daniel.Medved@flhealth.gov>
Subject: FW: Medical Examiner: General Matters: [EX] Public Record Requests - requests for names of decedents COVID 19 Deaths -

---

Chris,
To follow up on your email to Dan below, it is my understanding that Jim Martin, counsel for FDLE Medical Examiners Commission, is of the legal opinion that the cause of death is exempt. I am not sure if this clears up any of the confusion mentioned, but wanted to pass this along to you.
Take care and be well!
Chris

Christine E. Lamia
Deputy General Counsel
State Health Offices
Office of the General Counsel
Florida Department of Health
4052 Bald Cypress Way, Bin #A-02
Tallahassee, FL 32399-3265
(850) 245-4005 (OGC Main Line)
(850) 245-4021 (Direct Line)
(850) 245-4790 (Fax)

Mission: To protect, promote, and improve the health of all people in Florida through integrated state, county, & community efforts.
Vision: To be the Healthiest State in the Nation
Values: **ICARE**
I innovation: We search for creative solutions and manage resources wisely.
C collaboration: We use teamwork to achieve common goals & solve problems.
A accountability: We perform with integrity & respect.
R responsiveness: We achieve our mission by serving our customers & engaging our partners.
E excellence: We promote quality outcomes through learning & continuous performance improvement.
Purpose: To protect the public through health care licensure, enforcement and information.
Focus: To be the nation's leader in quality health care regulation.

From: Medved, Daniel T <Daniel.Medved@flhealth.gov>
Sent: Thursday, April 9, 2020 3:13 PM
To: Lamia, Christine E <Christine.Lamia@flhealth.gov>
Subject: FW: [EX] Public Record Requests - requests for names of decedents COVID 19 Deaths -

---

From: Angell, Christopher (CAO) <Christopher.Angell@miamidade.gov>
Sent: Friday, April 3, 2020 3:31 PM
To: Medved, Daniel T <Daniel.Medved@flhealth.gov>
Subject: Re: [EX] Public Record Requests - requests for names of decedents COVID 19 Deaths -

Good afternoon:

I spoke to the Miami-Dade County Medical Examiner Department's Chief of Operations about our ongoing discussions. He is working from home today but requested that I forward you the below email chain so you could be aware of prior communications that have been had on this topic and some confusion that has caused.
I will be in contact next week.

Thank you.

Chris Angell
Christopher A. Angell, Esq.
Assistant County Attorney
Miami-Dade County Attorney's Office
Stephen P. Clark Center
111 NW First Street
Suite 2810
Miami, FL 33128
Tel: 305-375-1024
Fax: 305-375-5611

Legal Assistant:
Maria Cruz
Tel: (305) 375-5731
Email: Maria.Cruz2@MiamiDade.gov

Paralegals:
Yenisbel Valdes
Tel: 305-375-1338
Email: Yenisbel.Valdes@MiamiDade.gov

Jarod Rucker
Tel: 305-375-5870
Email: Jarod.Rucker@MiamiDade.gov

Ulla Peralta
Tel: 305-375-2067
Email: Ulla.Peralta@MiamiDade.gov

From: Martin, James <JamesMartin@fdle.state.fl.us>
Sent: Thursday, March 19, 2020 4:42 PM
To: 'Nelson, Stephen' <StephenNelson@polk-county.net>; 'korozco@volusia.org' <korozco@volusia.org>; 'PWheaton@leegov.com' <PWheaton@leegov.com>; 'Cc:' <wmajors@baycountyfl.gov>; 'Craig.Engelson@brevardfl.gov' <Craig.Engelson@brevardfl.gov>; 'CHBODEN@broward.org' <CHBODEN@broward.org>; 'wpellan@co.pinellas.fl.us' <wpellan@co.pinellas.fl.us>; 'TCrutchfield@coj.net' <TCrutchfield@coj.net>; 'elizabethnunez@d20me.net' <elizabethnunez@d20me.net>; 'Info@dist2me.org' <Info@dist2me.org>; 'medex22@embarqmail.com' <medex22@embarqmail.com>; 'dwinterhalter@fldist12me.com' <dwinterhalter@fldist12me.com>; 'cowanh@hillsboroughcounty.org' <cowanh@hillsboroughcounty.org>; 'ccanard@irsc.edu' <ccanard@irsc.edu>; 'Lindsey.Bayer@marioncountyfl.org' <Lindsey.Bayer@marioncountyfl.org>; Caprara, Darren (ME) <Darren.Caprara@miamidade.gov>; 'Olson-Judy@monroecounty-fl.gov' <Olson-Judy@monroecounty-fl.gov>; 'Sheri.Blanton@ocfl.net' <Sheri.Blanton@ocfl.net>; 'hruiz@pbcgov.org' <hruiz@pbcgov.org>; Wilson, Sheli <SheliWilson@polk-county.net>; 'krogers@sjcfl.us' <krogers@sjcfl.us>; 'ricardocamacho@ufl.edu' <ricardocamacho@ufl.edu>
Cc: Koenig, Vickie <VickieKoenig@fdle.state.fl.us>; Lucas, Steven <StevenChadLucas@fdle.state.fl.us>; Neel, Megan <MeganNeel@fdle.state.fl.us>; Jones, Ken T <Ken.Jones@flhealth.gov>
Subject: RE: [EXTERNAL]: Re: [EX] Public Record Requests - requests for names of decedents COVID 19 Deaths -

I concur with Dr. Nelson. I'm not aware of any legal exemption or authority that would prohibit the release of the name of decedent.

James D. Martin, Deputy General Counsel
Florida Department of Law Enforcement
Post Office Box 1489
Tallahassee, Florida 32302-1489
850-410-7679

From: Nelson, Stephen [mailto:StephenNelson@polk-county.net]
Sent: Thursday, March 19, 2020 4:26 PM
To: 'korozco@volusia.org'; 'PWheaton@leegov.com'; 'Cc:'; 'Craig.Engelson@brevardfl.gov'; 'CHBODEN@broward.org'; 'wpellan@co.pinellas.fl.us'; 'TCrutchfield@coj.net'; 'elizabethnunez@d20me.net'; 'Info@dist2me.org'; 'medex22@embarqmail.com'; 'dwinterhalter@fldist12me.com'; 'cowanh@hillsboroughcounty.org'; 'ccanard@irsc.edu'; 'Lindsey.Bayer@marioncountyfl.org'; 'Darren.Caprara@miamidade.gov'; 'Olson-Judy@monroecounty-fl.gov'; 'Sheri.Blanton@ocfl.net'; 'hruiz@pbcgov.org'; Wilson, Sheli; 'krogers@sjcfl.us'; 'ricardocamacho@ufl.edu'
Cc: Martin, James; Koenig, Vickie; Lucas, Steven; Neel, Megan; Jones, Ken T
Subject: RE: [EXTERNAL]: Re: [EX] Public Record Requests - requests for names of decedents COVID 19 Deaths -

Folks,

These public records requests are no different than any other public records request we all receive. They are to be complied with.

As of this writing, there is NO Florida Statutory or Administrative Rule exemption(s) for coronavirus or COVID-19 deaths, including FS 382 et seq.

Stephen J. Nelson, M.A., M.D., F.C.A.P.
District Medical Examiner
10th Judicial Circuit of Florida
(Polk, Hardee, and Highlands Counties)
1021 Jim Keene Boulevard
Winter Haven, FL 33880-8010
863-298-4600 main
863-298-5264 fax
863-687-1344 answering service (24/7/365)

From: Jeff Martin - Director <jmartin@fldme.com>
Sent: Thursday, March 19, 2020 4:01 PM
To: Karla Orozco <korozco@volusia.org>; PWheaton@leegov.com
Cc: wmajors@baycountyfl.gov; Craig.Engelson@brevardfl.gov; CHBODEN@broward.org; wpellan@co.pinellas.fl.us; TCrutchfield@coj.net; elizabethnunez@d20me.net; Info@dist2me.org; medex22@embarqmail.com; dwinterhalter@fldist12me.com; cowanh@hillsboroughcounty.org; ccanard@irsc.edu; Lindsey.Bayer@marioncountyfl.org; Darren.Caprara@miamidade.gov; Olson-Judy@monroecounty-fl.gov; Sheri.Blanton@ocfl.net; hruiz@pbcgov.org; Wilson, Sheli <SheliWilson@polk-county.net>; krogers@sjcfl.us; ricardocamacho@ufl.edu
Subject: [EXTERNAL]: Re: [EX] Public Record Requests - requests for names of decedents COVID 19 Deaths -

We had a similar request from a very impatient individual that threatened us legally. I did provide the names of cases handled between certain dates.

Jef

Jeffrey B. Martin
Director / Chief of Forensic Investigations
(850) 865-2178 - Cellular

Office of the District Medical Examiner
District One - Florida
Central Office
5151 N. 9th Ave.
Pensacola, FL 32504
(850) 416-7210 - Office
(850) 416-6475 - Fax

Annex Office

206 Staff Drive N.E.
Ft. Walton Beach, FL 32548
(850) 651-7771 - Office
(850) 651-7775 - Fax

From: "Karla Orozco" <korozco@volusia.org>
Sent: Thursday, March 19, 2020 2:54 PM
To: PWheaton@leegov.com
Cc: wmajors@baycountyfl.gov, Craig.Engelson@brevardfl.gov, CHBODEN@broward.org, wpellan@co.pinellas.fl.us, TCrutchfield@coj.net, elizabethnunez@d20me.net, Info@dist2me.org, medex22@embarqmail.com, dwinterhalter@fldist12me.com, jmartin@fldme.com, cowanh@hillsboroughcounty.org, ccanard@irsc.edu, Lindsey.Bayer@marioncountyfl.org, Darren.Caprara@miamidade.gov, Olson-Judy@monroecounty-fl.gov, Sheri.Blanton@ocfl.net, hruiz@pbcgov.org, SheliWilson@polk-county.net, krogers@sjcfl.us, ricardocamacho@ufl.edu
Subject: Re: [EX] Public Record Requests - requests for names of decedents COVID 19 Deaths -

Hello all,

We have not had any deaths yet but I had the same concerns and was told by the MEC that they do not know anything that would prevent us from releasing the information. Our health department sent us the attachment citing the relevant statute and FAC for epidemiological investigations which are to be confidential.

I sent the same document to Chad Lucas to see what their legal department thinks about us citing that as the reason we can't release the information.

Karla

Karla Orozco M.S., F-ABMDI
Operations Manager
District 7 Medical Examiner Office
1360 Indian Lake Road
Daytona Beach, FL 32124
Office (386) 258-4060
Fax (386) 258-4061

On Mar 19, 2020, at 3:32 PM, Wheaton, Patricia < PWheaton@leegov.com> wrote:

?
Hello:

Our office has had two deaths related to COVID-19. We initially received a request from media asking for the name of one of the decedents (which we did not provide).

Thereafter, we received two other requests asking for our "log in" book (bodies transported to our office) for the date(s) of the deaths of the two cases. The bodies were not transported from the hospital to our office since we are doing a records review only and the bodies were released directly to the funeral home(s) selected by the families. The request specifically asked for the names, dates of births, and age for the dates specified. The information will not be in the documents they receive since the cases were not transported to our office and therefore not "logged in".

Another media source requested a list of names and dates of birth for cases that died on a specific date. If we were able to pull this type of list together from our database, media would have the name of the decedent whose death was related to COVID-19. Department of Health and the hospital have refused to release this information and have directed our office not to release the name of the decedent pursuant to HIPAA.

Has anyone received such media requests and if so how are you responding? I have reached out to MEC and they have no answers for us. I have reached out to DOH and they verbally advised that our office is not to release the names; however, they have not been able to site statute or otherwise. As we are under a state of emergency (and national and local), does anyone know if the release of this information, which normally would be subject to public record, is now exempt because of the emergency declared?

If you have not already received a request, standby because it will be coming. One request is from Tampa and the another is from Naples so there will soon be national agencies requesting this information.

I would like to be ahead of the eight ball but unfortunately the agencies I was hoping would be able to provide definitive information does not have any answers for us.

Thank you and stay safe.

Patti Wheaton
Operations Manager
District 21 Medical Examiner's Office
70 South Danley Drive
Fort Myers, FL 33907

Phone: 239-533-6339
Fax: 239-277-5017
Email: pwheaton@leegov.com
Website: me21.leegov.com
Serving Lee, Hendry and Glades Counties

Accredited By

<image001.jpg>

<mg_info.txt>

From: Lamia, Christine E <Christine.Lamia@flhealth.gov>
Sent: Thursday, April 02, 2020 7:26 PM EDT
To: Angell, Christopher (CAO) <Christopher.Angell@miamidade.gov>
CC: Medved, Daniel T <Daniel.Medved@flhealth.gov>; Kuhns-Neuman, Brenda (CAO) <Brenda.Kuhns-Neuman@miamidade.gov>
Subject: RE: Medical Examiner: General Matters: COVID-19 deaths

Yes; thank you. You can call my cell number.

Christine E. Lamia
Deputy General Counsel
State Health Offices
Office of the General Counsel
Florida Department of Health
4052 Bald Cypress Way, Bin #A-02
Tallahassee, FL 32399-3265
(850) 245-4005 (OGC Main Line)
(850) 245-4021 (Direct Line)
(850) 245-4790 (Fax)

Mission: To protect, promote, and improve the health of all people in Florida through integrated state, county, & community efforts.
Vision: To be the Healthiest State in the Nation
Values: **ICARE**
I innovation: We search for creative solutions and manage resources wisely.
C collaboration: We use teamwork to achieve common goals & solve problems.
A accountability: We perform with integrity & respect.
R responsiveness: We achieve our mission by serving our customers & engaging our partners.
E excellence: We promote quality outcomes through learning & continuous performance improvement.
Purpose: To protect the public through health care licensure, enforcement and information.
Focus: To be the nation's leader in quality health care regulation.

From: Angell, Christopher (CAO) <Christopher.Angell@miamidade.gov>
Sent: Thursday, April 2, 2020 7:11 PM
To: Lamia, Christine E <Christine.Lamia@flhealth.gov>
Cc: Medved, Daniel T <Daniel.Medved@flhealth.gov>; Kuhns-Neuman, Brenda (CAO) <Brenda.Kuhns-Neuman@miamidade.gov>
Subject: RE: COVID-19 deaths

Good evening:

I have received your email and the attachments and will review.
In the meantime, please let me know if you are able to speak tomorrow 2:00 PM.

Thank you.

Chris Angell
Christopher A. Angell, Esq.
Assistant County Attorney
Miami-Dade County Attorney's Office
Stephen P. Clark Center
111 NW First Street

Suite 2810
Miami, FL 33128
Tel: 305-375-1024
Fax: 305-375-5611

Legal Assistant:
Maria Cruz
Tel: (305) 375-5731
Email: Maria.Cruz2@MiamiDade.gov

Paralegals:
Yenisbel Valdes
Tel: 305-375-1338
Email: Yenisbel.Valdes@MiamiDade.gov

Jarod Rucker
Tel: 305-375-5870
Email: Jarod.Rucker@MiamiDade.gov

Ulla Peralta
Tel: 305-375-2067
Email: Ulla.Peralta@MiamiDade.gov

From: Lamia, Christine E [mailto:Christine.Lamia@flhealth.gov]
Sent: Thursday, April 2, 2020 6:21 PM
To: Angell, Christopher (CAO) <Christopher.Angell@miamidade.gov>
Cc: Medved, Daniel T <Daniel.Medved@flhealth.gov>
Subject: RE: COVID-19 deaths

Chris,

Thank you for taking our call this afternoon. Please find attached the letter sent to the Florida Medical Examiners Commission today regarding the ME's mandatory reporting requirements.

As we discussed, it is the Department of Health's position that the information requested in the request below should not be released as it is confidential and exempt from public record disclosure. This position is based upon the following statutes, Florida Administrative Rule and caselaw:

Section 381.0031(6), Florida Statutes, provides that information submitted in reports required by 381.0031 is confidential and exempt from section 119.07(1). Thus, the mandatory report of the medical examiner as required by subsection (2), including the information contained therein, is confidential pursuant to subsection (6). This information includes all of the confidential information collected by the Department pursuant to subsection (7). The confidentiality of these records survive the death of the decedent. See Weaver, attached. I have also attached the administrative rule which implements the cited statute.

Section 382.008(6) Florida Statutes, further exempts the cause of death from section 119.07(1): "All information relating to cause of death in all death and fetal death records… are confidential and exempt from the provisions of section 119.07(1)". Further, section 382.011 requires the medical examiner to certify the cause of death under section 406.11, which specifically implicates section 382.008(6)'s confidentiality exemption.

The above reading of these statutes is supported by Yestes v. Miami Herald Publishing Co., also attached.

I look forward to discussing this further,

Chris

Christine E. Lamia

Deputy General Counsel
State Health Offices
Office of the General Counsel
Florida Department of Health
4052 Bald Cypress Way, Bin #A-02
Tallahassee, FL 32399-3265
(850) 245-4005 (OGC Main Line)
(850) 245-4021 (Direct Line)
(850) 245-4790 (Fax)

Mission: To protect, promote, and improve the health of all people in Florida through integrated state, county, & community efforts.
Vision: To be the Healthiest State in the Nation
Values: **ICARE**
I innovation: We search for creative solutions and manage resources wisely.
C collaboration: We use teamwork to achieve common goals & solve problems.
A accountability: We perform with integrity & respect.
R responsiveness: We achieve our mission by serving our customers & engaging our partners.
E excellence: We promote quality outcomes through learning & continuous performance improvement.
Purpose: To protect the public through health care licensure, enforcement and information.
Focus: To be the nation's leader in quality health care regulation.

From: Angell, Christopher (CAO) <Christopher.Angell@miamidade.gov>
Sent: Thursday, April 2, 2020 5:08 PM
To: Lamia, Christine E <Christine.Lamia@flhealth.gov>
Subject: FW: COVID-19 deaths

Pursuant to your request, please see below.

Chris Angell
Christopher A. Angell, Esq.
Assistant County Attorney
Miami-Dade County Attorney's Office
Stephen P. Clark Center
111 NW First Street
Suite 2810
Miami, FL 33128
Tel: 305-375-1024
Fax: 305-375-5611

Legal Assistant:
Maria Cruz
Tel: (305) 375-5731
Email: Maria.Cruz2@MiamiDade.gov

Paralegals:
Yenisbel Valdes
Tel: 305-375-1338
Email: Yenisbel.Valdes@MiamiDade.gov

Jarod Rucker
Tel: 305-375-5870
Email: Jarod.Rucker@MiamiDade.gov

Ulla Peralta
Tel: 305-375-2067
Email: Ulla.Peralta@MiamiDade.gov

Due to the unprecedented and changing situation involving COVID-19, the County Attorney's Office is currently working remotely. We will have limited access to regular mail, physical files, and other resources that we would otherwise have while working in-office. As a result, we ask that you please correspond with us by e-mail or send an electronic copy of any physical document you send to our offices to this e-mail address. We also will have limited access to certain physical and other records in response to discovery, public records requests, and other similar requests and ask for your patience and understanding in any delayed or untimely response. To the extent that we have stored data or information online and readily accessible, we will continue to provide it in a timely manner. Please also note that our fax machine has been disconnected and is no longer being used for incoming correspondence at this time. We appreciate your cooperation at this difficult time. Thank you.

From: Ovalle, David <dovalle@miamiherald.com>
Sent: Tuesday, March 31, 2020 6:29 PM
To: Caprara, Darren (ME) <Darren.Caprara@miamidade.gov>
Subject: COVID-19 deaths

Hope you are doing well, and please thank Dr. Lew for speaking with me about the ME's role in this horrible pandemic. I hope the story was informative for leaders.

Since the ME must certify and issue COVID-19 deaths, can you please send the names and DOBs of the decedents thus far recorded through the ME's office. So far, the Fla. Dept of Health has noted 7 deaths. Thank you!

David O.

Fw: Miami Dade County Attorney Office PR Response Email # 1

AO Records <records@americanoversight.org>
Thu 6/4/2020 10:59 AM

To: Dylan Winters <dylan.winters@americanoversight.org>

3 attachments (349 KB)
RE: 2019-016586-CA-01 : Bal Harbour North South Condo. Assoc., Inc vs Pedro J. Garcia et al; Police Chief's response to officer harassment on Southpointe Drive; RE: Shutdown no excuse for harassment of senior citizens;

Hi Dylan,

Please process the follwoing as FL-MIAMIDADE-20-1068-B (there will be 7 parts that I am forwarding to you and this is part 1)!

Thanks,
Vibha

From: Kobrinski, Leigh (CAO) <Leigh.Kobrinski@miamidade.gov>
Sent: Wednesday, June 3, 2020 7:49 PM
To: AO Records <records@americanoversight.org>
Subject: Miami Dade County Attorney Office PR Response Email # 1

EXTERNAL SENDER
Please see responsive records attached.

Leigh C. Kobrinski
Assistant County Attorney
County Attorney's Office
111 NW 1st Street
Suite 2810
Miami, Florida 33128
(305) 375-1358
(305) 375-5634 (fax)
Assistant: Beverly Jacobs (305) 375-5110

From: Kobrinski, Leigh (CAO) <Leigh.Kobrinski@miamidade.gov>
Sent: Wednesday, June 3, 2020 7:49 PM
To: AO Records <records@americanoversight.org>
Subject: Miami Dade County Attorney Office PR Response Email # 1

Please see responsive records attached.

Leigh C. Kobrinski
Assistant County Attorney
County Attorney's Office
111 NW 1st Street
Suite 2810
Miami, Florida 33128
(305) 375-1358
(305) 375-5634 (fax)
Assistant: Beverly Jacobs (305) 375-5110

From: Governor's Press Office <Governor'sPressOffice@eog.myflorida.com>
Sent: Thursday, March 12, 2020 5:04 PM EDT
To: Undisclosed recipients:
Subject: *REVISED* DeSantis/Nuñez Administrative Schedule for Thursday, March 12, 2020

REVISED
GOVERNOR RON DESANTIS SCHEDULE
FOR
THURSDAY, MARCH 12, 2020

7:45am **CALL WITH CHIEF OF STAFF SHANE STRUM**

10:00am **CALL WITH SHERIFFS AND CORRECTIONAL OFFICERS REGARDING COVID-19**

10:10am **CALL WITH PGA TOUR COMMISSIONER JAY MONAHAN**

10:20am **CALL WITH MLB COMMISSIONER ROB MANFRED**

10:30am **ROUNDTABLE DISCUSSION REGARDING COVID-19**
Location: Jackson Memorial Hospital
Address: 1080 Northwest 19th Street
Miami, FL 33127

11:30am **PRESS CONFERENCE**
Location: Jackson Memorial Hospital
Address: 1080 Northwest 19th Street
Miami, FL 33127

2:30pm **STAFF AND CALL TIME**
Location: Florida State Capitol
Address: 400 South Monroe Street
Tallahassee, FL 32399

4:00pm **CALL WITH DAYTONA SPEEDWAY PRESIDENT CHIP WILE REGARDING COVID-19**

5:00pm **BRIEFING WITH SURGEON GENERAL DR. SCOTT RIVKEES, DIVISION OF EMERGENCY MANAGEMENT DIRECTOR JARED MOSKOWITZ, EDUCATION COMMISSIONER RICHARD CORCORAN, SECRETARY OF STATE LAURAL LEE AND AGENCY FOR HEALTH CARE ADMINISTRATION SECRETARY MARY MAYHEW REGARDING COVID-19**
Location: Florida State Capitol
Address: 400 South Monroe Street
Tallahassee, FL 32399

###

LT. GOVERNOR JEANETTE NUÑEZ SCHEDULE
FOR
THURSDAY, MARCH 12, 2020

10:00am **CALL WITH STATE SURGEON GENERAL DR. SCOTT RIVKEES REGARDING COVID-19**

10:30am **ROUNDTABLE DISCUSSION WITH GOVERNOR RON DESANTIS REGARDING COVID-19**
Location: Jackson Memorial Hospital
Address: 1080 Northwest 19th Street
Miami, FL 33127

11:30am **PRESS CONFERENCE**

Location: Jackson Memorial Hospital
Address: 1080 Northwest 19th Street
Miami, FL 33127

###

From: Governor's Press Office <Governor'sPressOffice@eog.myflorida.com>
Sent: Thursday, March 12, 2020 5:22 PM EDT
To: Undisclosed recipients:
Subject: *REVISED* DeSantis/Nuñez Administrative Schedule for Thursday, March 12, 2020

REVISED
GOVERNOR RON DESANTIS SCHEDULE
FOR
THURSDAY, MARCH 12, 2020

7:45am **CALL WITH CHIEF OF STAFF SHANE STRUM**

10:00am **CALL WITH SHERIFFS AND CORRECTIONAL OFFICERS REGARDING COVID-19**

10:10am **CALL WITH PGA TOUR COMMISSIONER JAY MONAHAN**

10:20am **CALL WITH MLB COMMISSIONER ROB MANFRED**

10:30am **ROUNDTABLE DISCUSSION REGARDING COVID-19**
Location: Jackson Memorial Hospital
Address: 1080 Northwest 19th Street
Miami, FL 33127

11:30am **PRESS CONFERENCE**
Location: Jackson Memorial Hospital
Address: 1080 Northwest 19th Street
Miami, FL 33127

2:30pm **STAFF AND CALL TIME**
Location: Florida State Capitol
Address: 400 South Monroe Street
Tallahassee, FL 32399

4:00pm **CALL WITH DAYTONA SPEEDWAY PRESIDENT CHIP WILE REGARDING COVID-19**

4:50pm **CALL WITH VICE PRESIDENT MIKE PENCE REGARDING COVID-19**

5:00pm **BRIEFING WITH SURGEON GENERAL DR. SCOTT RIVKEES, DIVISION OF EMERGENCY MANAGEMENT DIRECTOR JARED MOSKOWITZ, EDUCATION COMMISSIONER RICHARD CORCORAN, SECRETARY OF STATE LAURAL LEE AND AGENCY FOR HEALTH CARE ADMINISTRATION SECRETARY MARY MAYHEW REGARDING COVID-19**
Location: Florida State Capitol
Address: 400 South Monroe Street
Tallahassee, FL 32399

###

LT. GOVERNOR JEANETTE NUÑEZ SCHEDULE
FOR
THURSDAY, MARCH 12, 2020

10:00am **CALL WITH STATE SURGEON GENERAL DR. SCOTT RIVKEES REGARDING COVID-19**

10:30am **ROUNDTABLE DISCUSSION WITH GOVERNOR RON DESANTIS REGARDING COVID-19**
Location: Jackson Memorial Hospital
Address: 1080 Northwest 19th Street
Miami, FL 33127

11:30am **PRESS CONFERENCE**

Location: Jackson Memorial Hospital
Address: 1080 Northwest 19th Street
Miami, FL 33127

###

From: Medved, Daniel T <Daniel.Medved@flhealth.gov>
Sent: Friday, April 03, 2020 1:48 PM EDT
To: Angell, Christopher (CAO) <Christopher.Angell@miamidade.gov>; Kuhns-Neuman, Brenda (CAO) <Brenda.Kuhns-Neuman@miamidade.gov>
CC: Lamia, Christine E <Christine.Lamia@flhealth.gov>; Bush, Amanda <Amanda.Bush@flhealth.gov>; Beaton, Heather L <Heather.Beaton@flhealth.gov>
Subject: COVID-19 Deaths - Legal Resources
Attachment(s): "FDOH Medical Examiner Reporting Letter 4.2.20.pdf","Weaver v Myers (004).pdf","Yeste v Miami Herald Pub Co a div of Knight-Ridder Newspapers Inc.pdf","64D-3.036 (1).pdf"

Chris, Brenda –

As mentioned, one additional line of analysis for consideration:

As referenced above I the Memorandum to the Florida Medical Examiners Commission, physicians, including medical examiners, are mandatory reporters of diseases of public health significance to the Department of Health (DOH). These reports are part of the DOH epidemiological investigation and are therefore confidential. As practicing physicians, medical examiners are mandatory reporters under 381.0031(2), FS, which states that "any practitioner licensed in this state to practice medicine… which diagnoses or suspects the existence of a disease of public health significance shall immediately report the fact to the Department of Health". Subsection 406.11(1)(a)(11), FS, requires the medical examiner to determine the cause of death for any person who dies as a result of a "disease constituting a threat to public health." See also Rule 11G-2.001, FAC. This report from the medical examiner begins or furthers an epidemiological investigation. All information in the report to the Department of Health, including that maintained by the medical examiner, remains confidential for the duration of the epidemiological investigation.

As discussed yesterday, section 381.0031(6), FS, further states that "information submitted in reports required by this section is confidential, exempt for the provision of s.119.07(1)." Furthermore, Rule 64D-3.036, FAC, states "all information in notifiable disease reports and in related to epidemiological investigatory notes is confidential and will only be released as necessary by the State Health Officer". Under Rule 64D-3.041, FAC, epidemiological investigations include follow-up to confirm the diagnosis, treatment, investigation of causes of any disease or condition, and determination of appropriate methods of outbreak and communicable disease control. The Rule further provides that the Department's investigations may include, but are not limited to, medical examination or testing, review of pertinent, relevant medical records, to investigate causes, or to identify other related cases in an area, community, or workplace. The information gathered in the course of an epidemiological investigation and follow-up shall be confidential to the degree permitted under the provisions of sections 119.0712, 381.0031(6), FS.

None of the information contained in laboratory reports, notifiable disease or condition case reports and in related epidemiological investigatory records have been released by the State Health Officer. Therefore, information gathered by the Department which began with the notifiable disease report from the medical examiner, remains confidential. This includes the records of the medical examiner.

Dan.

DANIEL T. MEDVED
Deputy General Counsel
County Health Departments/County Health Systems
Office of the General Counsel
Florida Department of Health
Office: 386-274-0833; Direct: 386-274-0834
Cell: 386-547-3561; Conf: 386-281-6384; Fax: 386-274-0840

From: Lamia, Christine E
Sent: Thursday, April 2, 2020 6:23 PM
To: St Laurent, Louise R <Louise.StLaurent@flhealth.gov>
Cc: Medved, Daniel T <Daniel.Medved@flhealth.gov>
Subject: FW: COVID-19 deaths
Importance: High

Louise,

Please find the email sent to the Miami-Dade County attorney pertaining to the public records request for the confidential information. We will have a follow-up call with him tomorrow.
Chris

Christine E. Lamia
Deputy General Counsel
State Health Offices
Office of the General Counsel
Florida Department of Health
4052 Bald Cypress Way, Bin #A-02
Tallahassee, FL 32399-3265
(850) 245-4005 (OGC Main Line)
(850) 245-4021 (Direct Line)
(850) 245-4790 (Fax)

Mission: To protect, promote, and improve the health of all people in Florida through integrated state, county, & community efforts.
Vision: To be the Healthiest State in the Nation
Values: **ICARE**
I innovation: We search for creative solutions and manage resources wisely.
C collaboration: We use teamwork to achieve common goals & solve problems.
A accountability: We perform with integrity & respect.
R responsiveness: We achieve our mission by serving our customers & engaging our partners.
E excellence: We promote quality outcomes through learning & continuous performance improvement.
Purpose: To protect the public through health care licensure, enforcement and information.
Focus: To be the nation's leader in quality health care regulation.

From: Lamia, Christine E
Sent: Thursday, April 2, 2020 6:21 PM
To: Angell, Christopher (CAO) <Christopher.Angell@miamidade.gov>
Cc: Medved, Daniel T <Daniel.Medved@flhealth.gov>
Subject: RE: COVID-19 deaths

Chris,

Thank you for taking our call this afternoon. Please find attached the letter sent to the Florida Medical Examiners Commission today regarding the ME's mandatory reporting requirements.

As we discussed, it is the Department of Health's position that the information requested in the request below should not be released as it is confidential and exempt from public record disclosure. This position is based upon the following statutes, Florida Administrative Rule and caselaw:

Section 381.0031(6), Florida Statutes, provides that information submitted in reports required by 381.0031 is confidential and exempt from section 119.07(1). Thus, the mandatory report of the medical examiner as required by subsection (2), including the information contained therein, is confidential pursuant to subsection (6). This information includes all of the confidential information collected by the Department pursuant to subsection (7). The confidentiality of these records survive the death of the decedent. See Weaver, attached. I have also attached the administrative rule which implements the cited statute.

Section 382.008(6) Florida Statutes, further exempts the cause of death from section 119.07(1): "All information relating to cause of death in all death and fetal death records… are confidential and exempt from the provisions of section 119.07(1)". Further, section 382.011 requires the medical examiner to certify the cause of death under section 406.11, which specifically implicates section 382.008(6)'s confidentiality exemption.

The above reading of these statutes is supported by Yestes v. Miami Herald Publishing Co., also attached.

I look forward to discussing this further,

Chris

Christine E. Lamia
Deputy General Counsel
State Health Offices
Office of the General Counsel

Florida Department of Health
4052 Bald Cypress Way, Bin #A-02
Tallahassee, FL 32399-3265
(850) 245-4005 (OGC Main Line)
(850) 245-4021 (Direct Line)
(850) 245-4790 (Fax)

Mission: To protect, promote, and improve the health of all people in Florida through integrated state, county, & community efforts.
Vision: To be the Healthiest State in the Nation
Values: **ICARE**
I innovation: We search for creative solutions and manage resources wisely.
C collaboration: We use teamwork to achieve common goals & solve problems.
A accountability: We perform with integrity & respect.
R responsiveness: We achieve our mission by serving our customers & engaging our partners.
E excellence: We promote quality outcomes through learning & continuous performance improvement.
Purpose: To protect the public through health care licensure, enforcement and information.
Focus: To be the nation's leader in quality health care regulation.

From: Angell, Christopher (CAO) <Christopher.Angell@miamidade.gov>
Sent: Thursday, April 2, 2020 5:08 PM
To: Lamia, Christine E <Christine.Lamia@flhealth.gov>
Subject: FW: COVID-19 deaths

Pursuant to your request, please see below.

Chris Angell
Christopher A. Angell, Esq.
Assistant County Attorney
Miami-Dade County Attorney's Office
Stephen P. Clark Center
111 NW First Street
Suite 2810
Miami, FL 33128
Tel: 305-375-1024
Fax: 305-375-5611

Legal Assistant:
Maria Cruz
Tel: (305) 375-5731
Email: Maria.Cruz2@MiamiDade.gov

Paralegals:
Yenisbel Valdes
Tel: 305-375-1338
Email: Yenisbel.Valdes@MiamiDade.gov

Jarod Rucker
Tel: 305-375-5870
Email: Jarod.Rucker@MiamiDade.gov

Ulla Peralta
Tel: 305-375-2067
Email: Ulla.Peralta@MiamiDade.gov

Due to the unprecedented and changing situation involving COVID-19, the County Attorney's Office is currently working remotely. We will have limited access to regular mail, physical files, and other resources that we would otherwise have while working in-office. As a result, we ask that you please correspond with us by e-mail or send an electronic copy of any physical document you send to our offices to this e-mail address. We also will have limited access to certain physical and other records in response to discovery, public records requests, and other similar requests and ask for your patience and understanding in any delayed or untimely response. To the extent that we have stored data or information online and readily accessible, we will continue to provide it in a timely manner. Please also note that our fax machine has been disconnected and is no longer being used for incoming correspondence at this time. We appreciate your cooperation at this difficult time. Thank you.

From: Ovalle, David <dovalle@miamiherald.com>
Sent: Tuesday, March 31, 2020 6:29 PM
To: Caprara, Darren (ME) <Darren.Caprara@miamidade.gov>

Subject: COVID-19 deaths

Hope you are doing well, and please thank Dr. Lew for speaking with me about the ME's role in this horrible pandemic. I hope the story was informative for leaders.

Since the ME must certify and issue COVID-19 deaths, can you please send the names and DOBs of the decedents thus far recorded through the ME's office. So far, the Fla. Dept of Health has noted 7 deaths. Thank you!

David O.

64D-3.036 Notifiable Disease Case Report Content is Confidential.

All information contained in laboratory reports, notifiable disease or condition case reports and in related epidemiological investigatory notes is confidential as provided in Section 381.0031(6), F.S., and will only be released as determined as necessary by the State Health Officer or designee for the protection of the public's health due to the highly infectious nature of the disease, the potential for further outbreaks, and/or the inability to identify or locate specific persons in contact with the cases.

Rulemaking Authority 381.0011, 381.003(2), 381.0031(8), 384.33, 392.66 FS. Law Implemented 381.0011(3), 381.003(1), 381.0031(2), (6), (7), 384.25, 392.53 FS. History–New 11-20-06.

To: District Medical Examiners

From: The Florida Department of Health

Through: The Florida Medical Examiners Commission

Re: Mandatory Reporting of COVID-19 Deaths under Rule 64D-3, Florida Administrative Code

Date: April 2, 2020

COVID-19 IS A REPORTABLE CONDITION OF URGENT PUBLIC HEALTH IMPORTANCE AND MUST BE REPORTED TO THE DEPARTMENT OF HEALTH IMMEDIATELY.

Florida Statutes section 406.11(1)(a)11 requires the local medical examiner to determine the cause of death for any person who dies as a result of a disease constituting a threat to public health. Florida Administrative Code section 64D-3.030(1) also requires all medical examiners to report *without delay* any suspicion or diagnosis of coronavirus infection, including cases in persons who at the time of death were so affected. Reports that cannot timely be made during the County Health Department business day shall be made to the County Health Department after-hours duty official. If unable to do so, examiners are required to contact the Department after-hours duty official at (850)245-4401.

Rule 64D-3.047 provides:

> (1) Any practitioner, hospital or laboratory who is subject to the provisions of this rule who fails to report a disease or condition as required by this rule or otherwise fails to act in accordance with this rule is guilty of a misdemeanor of the second degree, and, upon conviction thereof, shall be fined not more than five hundred dollars ($500.00) as provided in Section 775.082 or 775.083, F.S. Each violation is considered a separate offense.
> (2) All violations by practitioners, hospitals or laboratories shall be reported to the appropriate professional licensing authorities and public financing programs.

Please be advised that strict compliance with this rule is of the utmost importance during this public health emergency. The Department of Health, in conjunction with state, federal, and local authorities, uses this data in real time to prepare and respond to the COVID-19 emergency. *Any* gaps or delays in reporting time hinder efficient emergency response and resource allocation. The Department trusts you, the District Medical Examiner and your Associate Medical Examiners, to meet your obligation to report immediately during this pandemic.

Florida Department of Health
Office of the State Surgeon General
4052 Bald Cypress Way, Bin A-00 • Tallahassee, FL 32399-1701
PHONE: 850/245-4210 • FAX: 850/922-9453
FloridaHealth.gov

229 So.3d 1118
Supreme Court of Florida.

Emma Gayle WEAVER, etc., Petitioner,
v.
Stephen C. MYERS, M.D., et al., Respondents.

No. SC15–1538
|
[November 9, 2017]

Synopsis

Background: Wife, as personal representative of husband's estate, brought medical negligence action against physician and sought declaratory relief and an injunction with regard to the statutory requirement for secret, ex parte interviews of husband's health care providers. The Circuit Court, Escambia County, J. Scott Duncan and Edward P. Nickinson, III, JJ., granted physician's motion to dismiss in part and granted physician's motion for summary judgment. Wife appealed. The District Court of Appeal, 170 So.3d 873, affirmed. Wife petitioned for review.

Holdings: The Supreme Court, Lewis, J., held that:

[1] husband maintained his constitutional right to privacy after his **death**;

[2] a decedent does **not** retroactively lose and can maintain the constitutional right to privacy in protected private matters;

[3] wife had standing to raise husband's right to privacy;

[4] wife did **not** waive husband's right to privacy over all health information by filing medical malpractice claim; and

[5] husband's right to privacy was violated by statutory provisions requiring secret, ex parte interviews.

Quashed and remanded.

Canady, J., filed dissenting opinion in which Polston and Lawson, JJ., joined.

West Headnotes (15)

[1] **Constitutional Law**
Records or Information

Constitutional Law
Medical records or information

Patient and his estate that brought medical malpractice action against physician maintained constitutional right to privacy concerning matters that occurred prior to his **death**, and that privacy could be invoked as a shield to maintain confidence of his protected information, including but **not** limited to medical information; even though patient had died, right to privacy was being used as limited shield from ex parte discovery and **not** as sword to initiate civil action. Fla. Const. art. 1, § 23.

1 Cases that cite this headnote

[2] **Appeal and Error**
Constitutional law

Review is de novo for questions of constitutional law.

[3] **Constitutional Law**
Right to Privacy

The constitutional right of privacy ensures that individuals are able to determine for themselves when, how, and to what extent information about them is communicated to others. Fla. Const. art. 1, § 23.

[4] **Constitutional Law**
Records or Information

Constitutional Law
Medical records or information

In all litigation contexts, a decedent does **not** retroactively lose and can maintain the constitutional right to privacy that may be invoked as a shield in all contexts, including but **not** limited to medical malpractice cases, against the unwanted disclosure of protected private

matters, including medical information that is irrelevant to any underlying claim including but **not** limited to any medical malpractice claim. Fla. Const. art. 1, § 23.

2 Cases that cite this headnote

[5] Constitutional Law
Right to Privacy

Death does **not** retroactively abolish the constitutional protections for privacy that existed at the moment of **death**. Fla. Const. art. 1, § 23.

1 Cases that cite this headnote

[6] Constitutional Law
Right to privacy

Wife, who was personal representative of husband's estate, had standing to raise husband's constitutional right to privacy in protected medical information, in estate's challenge to statutes requiring secret, ex parte interviews with patients' health care providers in medical malpractice actions; administrator of estate could assert privacy right in wrongful **death** actions because he or she was the only person who had standing to file wrongful **death** action in the first place. Fla. Const. art. 1, § 23; Fla. Stat. Ann. §§ 766.106, 766.1065, 768.20.

1 Cases that cite this headnote

[7] Death
Personal Representatives

The personal representative of a decedent's estate is the sole party that may file a decedent's cause of action for wrongful **death**. Fla. Stat. Ann. § 768.20.

[8] Constitutional Law
Waiver in general

Wife, who was personal representative of husband's estate, did **not** waive husband's constitutional right to privacy over all health information by filing medical malpractice claim on estate's behalf; even though wife **waived** right with regard to health information relevant to claim, wife did **not** waive right with regard to irrelevant information, and some irrelevant information would have been open and subject to ex parte exploration proceedings for medical malpractice claims. Fla. Const. art. 1, § 23; Fla. Stat. Ann. §§ 766.106, 766.1065.

[9] Constitutional Law
Medical records or information

Although a claimant may necessarily waive privacy rights to the medical information that is relevant to a medical malpractice claim by filing an action, this does **not** amount to waiver of privacy rights pertaining to all confidential health information that is **not** relevant to the claim. Fla. Const. art. 1, § 23.

3 Cases that cite this headnote

[10] Constitutional Law
Medical records or information

Patient's constitutional right to privacy was violated by statutory provisions requiring secret, ex parte interviews of patient's health care providers as a condition for patient's estate to bring medical malpractice action; ex parte interviews did **not** protect patient from even accidental disclosures of confidential medical information that fell outside scope of claim, and provisions coerced and forced patient to either forego right to privacy or forego fundamental constitutional right to access to courts. Fla. Const. art. 1, §§ 21, 23; Fla. Stat. Ann. §§ 766.106, 766.1065.

1 Cases that cite this headnote

[11] Constitutional Law
Particular Issues and Applications

Constitutional Law
Particular Issues and Applications

Constitutional Law
Right to Privacy

Due to the fundamental and highly guarded nature of the constitutional right to privacy, any law that implicates the right, regardless of the activity, is subject to strict scrutiny and,

therefore, presumptively unconstitutional; thus, the burden of proof rests with the State to justify an intrusion on privacy. Fla. Const. art. 1, § 23.

1 Cases that cite this headnote

[12] Constitutional Law
Conditions, Limitations, and Other Restrictions on Access and Remedies

Courts are generally opposed to any burden being placed on the rights of aggrieved persons to enter the courts because of the constitutional guarantee of access. Fla. Const. art. 1, § 21.

[13] Constitutional Law
Conditions, Limitations, and Other Restrictions on Access and Remedies

The access to courts provision of the state constitution is applicable to wrongful **death** actions. Fla. Const. art. 1, § 21.

[14] Constitutional Law
Conditions, Limitations, and Other Restrictions on Access and Remedies

The scope of protection of access to the courts extends to protect situations in which legislative action significantly obstructs the right of access. Fla. Const. art. 1, § 21.

[15] Constitutional Law
Conditions, Limitations, and Other Restrictions on Access and Remedies

In order to find that a right of access to the courts has been violated it is **not** necessary for the statute to produce a procedural hurdle which is absolutely impossible to surmount, only one which is significantly difficult. Fla. Const. art. 1, § 21.

West Codenotes

Held Unconstitutional

Fla. Stat. Ann. §§ 766.106, 766.1065

***1120** Application for Review of the Decision of the District Court of Appeal—Statutory Validity, First District–Case No. 1D14–3178, (Escambia County)

Attorneys and Law Firms

Virginia M. Buchanan of Levin, Papantonio, Thomas, Mitchell, Rafferty & Proctor, P.A., Pensacola, Florida; Robert S. Peck of Center for Constitutional Litigation, P.C., Fairfax Station, Virginia, for Petitioner

Mark Hicks and Erik P. Bartenhagen of Hicks, Porter, Ebenfeld & Stein, P.A., Miami, Florida, for Respondent

Philip M. Burlington and Adam J. Richardson of Burlington & Rockenbach, P.A., West Palm Beach, Florida, for Amicus Curiae Florida Justice Association

Pamela Jo Bondi, Attorney General, and Jordan E. Pratt, Deputy Solicitor General, Office of the Attorney General, Tallahassee, Florida, for Amicus Curiae State of Florida

***1121** Andrew S. Bolin of Beytin, McLaughlin, McLaughlin, O'Hara, Bocchino & Bolin, P.A., Tampa, Florida, for Amici Curiae Florida Hospital Association, The Florida Medical Association, and The American Medical Association

Mark K. Delegal and Tiffany A. Roddenberry of Holland & Knight LLP, Tallahassee, Florida; and William W. Large, Esq. of Florida Justice Reform Institute, Tallahassee, Florida, for Amicus Curiae The Florida Justice Reform Institute

Opinion

LEWIS, J.

This case involves a Florida constitutional challenge to the 2013 amendments to sections 766.106 and 766.1065 of the Florida Statutes. Generally, the statutes pertain to invasive presuit notice requirements that must be satisfied before a medical negligence action may be filed, as well as an informal discovery process that accompanies that presuit notice process, and the amendments at issue here authorize secret, ex parte interviews as part of the informal discovery process. The First District Court of Appeal upheld the constitutionality of these statutory amendments in Weaver v. Myers, 170 So.3d 873, 883 (Fla. 1st DCA 2015). Weaver then petitioned this Court for review. [1] Because the district court expressly declared a state statute valid, this Court has

discretionary jurisdiction to review the decision. See art. V, § 3(b)(3), Fla. Const. We accept that jurisdiction.

STATUTORY BACKGROUND

Since 2011, before filing a medical negligence action in Florida, a claimant must satisfy statutory requirements, which include conducting a presuit investigation process to ascertain whether there are reasonable grounds to believe that the defendant medical provider was negligent, and that the negligence resulted in injury to the claimant. § 766.203(2)(a)-(b), Fla. Stat. (2016).

Following that investigation, a claimant must give each prospective defendant presuit notice of intent to initiate litigation and make certain disclosures. § 766.106(2)(a), Fla. Stat. (2016). The notice must disclose, where available, a list of all health care providers seen by the claimant for the injuries complained of and all known health care providers seen during the two-year period prior to the alleged act of negligence. Id. Furthermore, a medical malpractice claimant must furnish all **medical records** that the presuit investigation expert relied upon in signing an affidavit indicating a good-faith basis to believe a valid claim exists. See id.

In addition, the presuit notice must include an executed authorization form that is provided in section 766.1065 of the Florida Statutes. Id. That executed authorization form is titled "Authorization for Release of Protected Health Information." § 766.1065, Fla. Stat. (2016). By executing the authorization form in compliance with the statutory presuit notice requirement, the claimant is required to authorize the release of protected verbal and written health information that is potentially relevant to the claim of medical negligence in the possession of the health care providers listed in the notice disclosures. § 766.1065(3)B.1.–2., Fla. Stat. However, this authorization is **not** a blanket authorization—it excludes health care providers who do **not** possess information that is potentially relevant to the claim. § 766.1065(3)C. Nevertheless, the claimant is required to name these providers and provide the dates of treatments rendered by others. Id.

***1122** As part of this presuit machinery unique to medical malpractice claims, "the parties shall make discoverable information available without formal discovery." § 766.106(6)(a), Fla. Stat. Under this informal discovery, a prospective defendant may require a medical malpractice claimant seeking redress to: (1) give an unsworn statement; (2) produce requested documents, things, and **medical records**; (3) submit to a physical or mental examination; (4) answer written questions; and (5) authorize treating health care providers to give unsworn statements. See § 766.106(6)(b), Fla. Stat. The statutory scheme further provides, however, that "work product generated by the presuit screening process is **not** discoverable or admissible in any civil action for any purpose by the opposing party." § 766.106(5), Fla. Stat. But, failure to participate in informal discovery "is grounds for dismissal of claims or defenses ultimately asserted." § 766.106(6)(a), Fla. Stat.

AMENDMENTS AT ISSUE

While it retained the scheme described above, in 2013, the Legislature added secret, ex parte interviews to the list of informal discovery devices to which a medical malpractice claimant seeking redress must consent:

> Interviews of treating health care providers.—A prospective defendant or his or her legal representative may interview the claimant's treating health care providers consistent with the authorization for release of protected health information. This subparagraph does **not** require a claimant's treating health care provider to submit to a request for an interview. Notice of the intent to conduct an interview shall be provided to the claimant or the claimant's legal representative, who shall be responsible for arranging a mutually convenient date, time, and location for the interview within 15 days after the request is made. For subsequent interviews, the prospective defendant or his or her representative shall notify the claimant and his or her legal representative at least 72 hours before the subsequent interview. If the claimant's attorney fails to schedule an interview, the prospective defendant or his or her legal representative may attempt to conduct an interview

> without further notice to the claimant or the claimant's legal representative.

§ 766.106(6)(b) 5., Fla. Stat. (emphasis added); Ch. 2013–108, § 3, at 5, Laws of Fla. Thus, that plain language requires that, upon request by the prospective defendant, the medical malpractice claimant must arrange for an interview between his or her treating health care providers and the prospective defendant or legal representatives of such defendant within fifteen days of the request. Without providing any limitation on the number of interviews, the plain language further provides for arranging subsequent interviews with 72–hours' notice. However, if at any time the medical malpractice claimant's attorney fails to schedule a requested interview, then the prospective defendant or his lawyers may unilaterally and without notice schedule the claimant's treating health care providers for such an interview without any notice to the claimant whatsoever. Nothing prevents multiple attempts at securing such interviews.

Further, the statutorily mandated authorization form was also amended and makes clear that the prospective defendant may interview the claimant's treating health care providers ex parte in secret, without the claimant or the claimant's attorney present:

> This authorization expressly allows the persons or class of persons listed in subsections D.2.–4. above to interview the health care providers listed in subsections B.1.–2. above, without the presence ***1123** of the Patient or the Patient's attorney.

§ 766.1065(3)E., Fla. Stat. (emphasis added); Ch. 2013–108, § 4, at 7, Laws of Fla. However, because "[t]his authorization expressly allows the persons or class of persons listed in subsections D.2.–4. above to interview," the authorization requires a medical malpractice claimant to expose health care providers to such clandestine, ex parte interviews **not** only with the prospective defendant, but also with a broad set of parties, including related insurers, expert witnesses, attorneys, and support staff:

> 2. Any liability insurer or self-insurer providing liability insurance coverage, self-insurance, or defense to any health care provider to whom presuit notice is given, or to any health care provider listed in subsections B.1.–2. above, regarding the care and treatment of the Patient.
>
> 3. Any consulting or testifying expert employed by or on behalf of (name of health care provider to whom presuit notice was given) and his/her/its insurer(s), self-insurer(s), or attorney(s) regarding the matter of the presuit notice accompanying this authorization.
>
> 4. Any attorney (including his/her staff) employed by or on behalf of (name of health care provider to whom presuit notice was given) or employed by or on behalf of any health care provider(s) listed in subsections B.1.–2. above, regarding the matter of the presuit notice accompanying this authorization or the care and treatment of the Patient.

§ 766.1065(3)D.2.–4., Fla. Stat.

The Legislature did **not** amend the statute without some expression of its intent. Specifically, in 2013, the Legislature added a third express purpose for the release of the protected health information: "Obtaining legal advice or representation arising out of the medical negligence claim described in the accompanying presuit notice." § 766.1065(3)A.3., Fla. Stat.; Ch. 2013–108, § 4, at 6, Laws of Fla. Before the amendments, the stated purpose of the mandatory authorization was twofold—to facilitate the investigation and evaluation of the claim, or to defend against any litigation arising out of the claim. § 766.1065(3)A.1.–2., Fla. Stat. (2012); Ch. 2013–108, § 4, at 6, Laws of Fla.

Further, as was true before the 2013 amendments, it remains true today that these conditions imposed by the Legislature are nonnegotiable. Specifically, "If the authorization required by this section is revoked, the presuit notice under s. 766.106(2) is deemed retroactively void from the date of issuance, and any tolling effect that the presuit notice may have had on any applicable statute-of-limitations period is retroactively rendered void." § 766.1065(2), Fla. Stat. (2016); see also generally § 95.11(4)(b), Fla. Stat. (2016) ("An action for medical malpractice shall be commenced within 2 years from the time the incident giving rise to the action occurred or within 2 years from the time the incident is discovered, or should have been discovered with the exercise of due diligence ...."). Thus, as the decision below correctly recognized, a claimant now cannot institute a medical malpractice action without authorizing ex parte interviews between the claimant's health care providers and the potential defendant. Weaver, 170 So.3d at 877.

FACTUAL AND PROCEDURAL BACKGROUND

Faced with the expanded disclosure requirements, Petitioner Emma Gayle Weaver (Weaver), individually and as personal representative of the estate of her late husband Thomas Weaver (Thomas), filed an action against Respondent Dr. Stephen C. Myers for declaratory judgment and ***1124** injunctive relief with regard to the 2013 amendments on the date they became effective. Weaver contended that Dr. Myers provided care to Thomas that allegedly led to his injury and **death**. Relevant here, Weaver contended that the 2013 amendments violated the right of access to courts and the right to privacy under the Florida Constitution.

With regard to the right to privacy claim, the trial court granted in part Dr. Myers' motion to dismiss and dismissed Weaver's privacy claim. The trial court first concluded that an estate cannot assert any privacy rights on behalf of a decedent because such rights under the Florida Constitution absolutely terminate upon **death** and essentially are retroactively destroyed. The court then held that even if Weaver could assert Thomas' privacy rights, the claim should still be dismissed because a constitutional privacy challenge can only be asserted to protect against a government entity or actor even though it is obvious that a state statute is authorizing the invasion here.

With regard to the access to courts challenge, on June 24, 2014, the trial court granted Dr. Myers' motion for summary judgment. The trial court reasoned that the predecessor statute to section 766.106 was held to be valid under the applicable provision of the Florida Constitution. See Lindberg v. Hosp. Corp. of Am., 545 So.2d 1384, 1386 (Fla. 4th DCA 1989), approved 571 So.2d 446 (Fla. 1990). The court then concluded the addition of the secret ex parte interviews do **not** represent a material change sufficient to render the statute an impermissible burden on access to courts.

On appeal, the First District affirmed. Weaver, 170 So.3d at 883. With regard to access to courts, the First District stated that "[a] statute which merely imposes a condition precedent to suit without abolishing or eliminating a substantive right must be upheld in the face of a constitutional challenge unless the statute 'create[s] a significantly difficult impediment to ... right of access.' " Id. at 882 (quoting Henderson v. Crosby, 883 So.2d 847, 854 (Fla. 1st DCA 2004) (quoting Mitchell v. Moore, 786 So.2d 521 (Fla. 2001))). The district court determined that the signing and serving of the mandatory authorization as part of the presuit process does **not** "abolish or eliminate" any substantive right, and concluded that "all that is imposed is a precondition to suit, in addition to those that are already in existence under chapter 766." Id. It then stated:

> Though [Weaver] is correct that the amendments to the authorization for release of protected health information now require the claimant to expressly authorize ex parte interviews between former health care practitioners with information relevant to the potential lawsuit and the potential defendant, we find that like the presuit notice requirement itself, this is a reasonable condition precedent to filing suit, and, thus, does **not** violate her right to access the courts.

Id. at 882–83.

With regard to the privacy challenge, the district court, unlike the trial court, addressed this claim on the merits and concluded that "any privacy rights that might attach to a claimant's medical information are **waived** once that information is placed at issue by filing a medical malpractice claim. Thus, by filing the medical malpractice lawsuit, the decedent's medical condition is at issue." Id. at 883 (citations omitted). The district court further noted that prior to the 2013 amendments, potential claimants were already required to disclose and produce relevant **medical records** to the defense during the presuit process. Id. The court below did **not** acknowledge or even address the concept of ***1125** non-relevant matters and privacy rights related thereto.

Therefore, the district court upheld the constitutionality of the statutes. This review follows.

ANALYSIS

[1] **[2]** Weaver contends that the Legislature's passage of certain amendments to sections 766.106 and 766.1065 of the Florida Statutes are unconstitutional for several reasons. First, Weaver contends that the amendments violate the right to

privacy explicitly provided for in the Florida Constitution. Relatedly, Weaver also contends that placing a prerequisite condition on her action for wrongful **death** requiring the release of Thomas' **medical records** and the facilitation of ex parte, secret presuit interviews with Thomas' medical providers violates the right to access to courts. Because these issues are questions of Florida constitutional law, our review is de novo. Caribbean Conservation Corp. v. Fla. Fish & Wildlife Conservation Comm'n, 838 So.2d 492, 500 (Fla. 2003).

The United States Supreme Court has explained that the United States Constitution does **not** mention the right to privacy, but that it is a pervasive right touching on many aspects of life and the right of privacy finds its roots throughout the Bill of Rights and in the Fourteenth Amendment:

> The Constitution does **not** explicitly mention any right of privacy. In a line of decisions, however, going back perhaps as far as Union Pacific R. Co. v. Botsford, 141 U.S. 250, 251, 11 S.Ct. 1000, 35 L.Ed. 734 (1891), the Court has recognized that a right of personal privacy, or a guarantee of certain areas or zones of privacy, does exist under the Constitution. In varying contexts, the Court or individual Justices have, indeed, found at least the roots of that right in the First Amendment; in the Fourth and Fifth Amendments; in the penumbras of the Bill of Rights; in the Ninth Amendment; or in the concept of liberty guaranteed by the first section of the Fourteenth Amendment. These decisions make it clear that only personal rights that can be deemed "fundamental" or "implicit in the concept of ordered liberty," are included in this guarantee of personal privacy. They also make it clear that the right has some extension to activities relating to marriage; procreation; contraception; family relationships; and child rearing and education.

Roe v. Wade, 410 U.S. 113, 152–53, 93 S.Ct. 705, 35 L.Ed.2d 147 (1973), holding modified by Planned Parenthood of Se. Pa. v. Casey, 505 U.S. 833, 112 S.Ct. 2791, 120 L.Ed.2d 674 (1992) (internal citations omitted).

While the federal right to privacy is pervasive and is revealed by judicial interpretation, we need **not** rely on federal law but look only to the Florida Constitution, which explicitly provides a right to privacy:

> Every natural person has the right to be let alone and free from governmental intrusion into the person's private life except as otherwise provided herein.

Art. I, § 23, Fla. Const. (1980). This provision was added by Florida voters in 1980 and remains unchanged.

[3] We have explained that the right to privacy in the Florida Constitution is broader, more fundamental, and more highly guarded than any federal counterpart:

> This amendment is an independent, freestanding constitutional provision which declares the fundamental right to privacy. Article I, section 23, was intentionally phrased in strong terms. The drafters of the amendment rejected the use of the words "unreasonable" or "unwarranted" before the phrase "governmental intrusion" in order to make the privacy right as strong as possible. Since ***1126** the people of this state exercised their prerogative and enacted an amendment to the Florida Constitution which expressly and succinctly provides for a strong right of privacy **not** found in the United States Constitution, it can only be concluded that the right is much broader in scope than that of the Federal Constitution.

Winfield v. Div. of Pari–Mutuel Wagering, 477 So.2d 544, 548 (Fla. 1985); see N. Fla. Women's Health & Counseling Servs., Inc. v. State, 866 So.2d 612, 634–35 (Fla. 2003). The right of privacy "ensures that individuals are able 'to determine for themselves when, how and to what extent information about them is communicated to others.' " Shaktman v. State, 553 So.2d 148, 150 (Fla. 1989) (quoting A. Westin, Privacy and Freedom 7 (1967)).

Specifically relevant here, we have held in no uncertain terms that "[a] patient's **medical records** enjoy a confidential status by virtue of the right to privacy contained in the Florida Constitution ...." State v. Johnson, 814 So.2d 390, 393 (Fla. 2002). We have further recognized that "[t]he potential for invasion of privacy is inherent in the litigation process." Rasmussen v. S. Fla. Blood Serv., Inc., 500 So.2d 533, 535 (Fla. 1987).

This would **not** be the first time that a Florida court has balanced a decedent's constitutional right to privacy over information occurring during the person's lifetime against the right to access to that information in litigation. In Antico v. Sindt Trucking, Inc., 148 So.3d 163, 164 (Fla. 1st DCA 2014), which also involved a wrongful **death** action, the administrator of an estate raised a constitutional privacy challenge to discovery of the contents of the decedent's cell phone. Specifically, the case involved a fatal automobile accident and the wrongful-**death**-action defendant filed a motion for permission to have an expert inspect the decedent's cellphone for data from the day of the accident—data pertaining to "use and location information, internet website access history, email messages, and social and photo media posted and reviewed on the day of the accident." Id. The administrator of the decedent's estate "objected to the cellphone inspection citing the decedent's privacy rights under the Florida Constitution." Id. The trial court ultimately granted the motion to examine the cell phone, but recognized the decedent's privacy interests and set very strict parameters for the expert's confidential inspection. Id. at 164–65.

Notwithstanding the strict parameters set by the trial court in Antico, the administrator of the estate filed a petition for writ of certiorari with the First District asserting that the trial court's order departed from the essential requirements of law by **not** granting stronger protections. Id. at 165–66. In exercising certiorari jurisdiction over the petition, the First District held that the irreparable harm component of its jurisdiction in that case was satisfied "because irreparable harm can be presumed where a discovery order compels production of matters implicating privacy rights." Id. Thus, by exercising its certiorari jurisdiction, the district court necessarily held that the decedent had an enforceable constitutional right to privacy in the litigation context.

In denying relief from the highly limited grant of discovery over the cell phone's contents, the Antico court noted that the trial court had adequately accounted for the decedent's privacy right:

> The record here indicates that the trial court closely considered how to balance Respondents' discovery rights and the decedent's privacy rights. The order highlighted the relevance of the cellphone's data to the Respondents' defense and it set forth strict procedures ***1127** controlling how the inspection process would proceed.
>
> ....
>
> The other side of the equation—the countervailing privacy interest involved with the discovery of data on a cellphone—is also very important.... But we are satisfied that the order adequately safeguards privacy interests under the circumstances here where Petitioner was given the opportunity, but advanced no alternative plan.

Id. at 166–67 (emphasis added). For emphasis, the Antico court performed its review of the discovery objection pursuant to the constitutional privacy right of the decedent. Id. at 164. ("Citing the privacy provision, article I, section 23, of the Florida Constitution, and the rules of civil procedure, the personal representative of Tabitha Antico's estate (Petitioner) objects to an order entered by the trial court ... Petitioner objected to the cellphone inspection citing the decedent's privacy rights under the Florida Constitution." (emphasis added)).

Consistent with Antico, the decision below did **not** hold that Thomas did **not** have a constitutional right to privacy in his protected medical information. The district court specifically rested its privacy analysis on waiver grounds:

> It is well-established in Florida and across the country that any privacy rights that might attach to a claimant's medical information are **waived** once that information is placed at issue by filing a medical malpractice claim. See, e.g., Barker v. Barker, 909 So.2d 333, 337 (Fla. 2d DCA 2005); Andreatta v. Hunley, 714 N.E.2d 1154, 1157 (Ind. Ct. App. 1999). Thus, by filing the medical malpractice lawsuit, the decedent's medical condition is at issue.

Weaver, 170 So.3d at 883. At no point did the district court hold that the decedent did **not** have a right to privacy. See generally id. Indeed, to the contrary, its waiver analysis was an implicit acknowledgement of that privacy right, as one cannot waive a right he or she does **not** have. No other basis was offered for the First District's holding as to the privacy issue.

[4] **[5]** Thus, we now make explicit what the decision below and Antico necessarily implied—in all litigation contexts, a decedent does **not** retroactively lose and can maintain the constitutional right to privacy that may be invoked as a shield in all contexts, including but **not** limited to medical malpractice cases, against the unwanted disclosure of protected private matters, including medical information that is irrelevant to any underlying claim including but **not** limited to any medical malpractice claim.[2] **Death** does **not** retroactively abolish the constitutional protections for privacy ***1128** that existed at the moment of **death**. To hold otherwise would be ironic because it would afford greater privacy rights to plaintiffs who survived alleged medical malpractice while depriving plaintiffs of the same protections where the alleged medical malpractice was egregious enough to end the lives of those plaintiffs. This is an outcome that our Florida Constitution could **not** possibly sanction. Cf. Estate of Youngblood v. Halifax Convalescent Ctr., Ltd., 874 So.2d 596, 603–04 (Fla. 5th DCA 2004) ("Thus in a case such as this where the suit was filed before the nursing home resident's **death**, all deprivation of Chapter 400 rights, including those resulting in the **death** of a resident but **not** exclusive of those, should survive the **death** of the nursing home resident. A contrary interpretation would encourage nursing homes to drag out litigation until the nursing home resident dies—**not** an impractical solution given the age and state of health of most nursing home residents." (internal citation omitted)). Thus, we reiterate that Thomas and his estate, even after his **death**, maintained a constitutional right to privacy concerning matters that occurred prior to his **death**, and that privacy may be invoked as a shield to maintain the confidence of his protected information, including but **not** limited to medical information.

But Dr. Myers contends that Thomas does **not** have a cognizable right to privacy because his constitutional rights retroactively totally vanished upon his **death**, and even if **not**, Weaver lacks standing to assert his privacy rights. Specifically, Dr. Myers strings together the following language in support of this sweeping contention:

> An individual's right to privacy is personal and dies with the individual. Williams v. City of Minneola, 575 So.2d 683, 689 (Fla. 5th DCA 1991). "[E]ven where a constitutional right to privacy is implicated, that right is a personal one, inuring solely to individuals." Alterra Healthcare Corp. v. Estate of Shelley, 827 So.2d 936, 941 (Fla. 2002). Thus, such privacy rights "may **not** be asserted vicariously." Sieniarecki v. State, 756 So.2d 68, 76 (Fla. 2000). Moreover, this Court has declared unequivocally: "[W]e begin with the premise that a person's constitutional rights terminate at **death**." State v. Powell, 497 So.2d 1188, 1190 (Fla. 1986).

Answer Br. at 45.

However, Dr. Myers' use of quotes out of context and incorrectly expanded arguments to suggest a retroactive absolution of the basic privacy right is both misleading and without effect. The very briefest of review of those cases reveals that it is Dr. Myers' argument that is without life, **not** Thomas' constitutional right to privacy. For example, Dr. Myers referred this Court to Williams, 575 So.2d at 689, for the proposition that a decedent has no right to privacy. However, Williams involved an action for damages arising from the alleged invasion of privacy resulting from the release of autopsy photos. Id. at 689–90. Thus, Williams involved the tort of invasion of privacy on conduct occurring after **death** rather than the invocation of the constitutional right of privacy before **death** occurred.[3]

Likewise, Sieniarecki, 756 So.2d 68, is wholly inapposite. Sieniarecki did **not** involve shielding information from disclosure. Instead, Sieniarecki involved a facial challenge by a defendant found guilty of neglect of a disabled adult, the disabled adult being her mother. See id. at 71–72. Thus, Sieniarecki contended that "because her mother had the right to refuse medical ***1129** treatment, [she] cannot be convicted of neglect for failing to provide proper medical attention." Id. at 76. We held that she could **not** assert a defense based on the privacy right of her mother to refuse medical treatment in that case because "constitutional rights are personal in nature and generally may **not** be asserted vicariously." Id. However, invoking another person's constitutional right to refuse medical treatment **not** for that person's benefit, but to protect against criminal liability is quite different from invoking another person's right to privacy to protect disclosure of that person's constitutionally protected information for that person's benefit. This is even more the case where the person has no effective avenue to preserve the

right himself or herself. Indeed, in a footnote to the statement Dr. Myers quotes out of context, we recognized that there are other situations or "exceptions" that are more akin to the situation here:

> A recognized exception to this rule applies where enforcement of a challenged restriction would adversely affect the rights of non-parties, and there is no effective avenue for them to preserve their rights themselves. Cf. Stall v. State, 570 So.2d 257, 258 (Fla. 1990) ("[a]ssuming that the petitioners [who were alleged vendors of obscene materials] have vicarious standing to raise their customers' privacy interest"). This principle has been extended to apply where it is the petitioners who "stand to lose from the outcome of this case and yet they have no other effective avenue for preserving their rights" than by raising the constitutional rights of non-parties. Jones v. State, 640 So.2d 1084, 1085 (Fla. 1994) (recognizing petitioners' vicarious standing to assert the claimed privacy rights of the underaged girls with whom they had sexual intercourse).

Id. at 76 n.3 (emphasis added).

Powell, 497 So.2d 1188, also provides no support. There, the petitioners challenged a statute authorizing medical examiners to remove corneal tissue from a cadaver for use in a corneal transplant. Id. at 1190. Thus, in Powell, the issue of privacy was raised with regard to conduct that occurred after the person's **death**, **not** during his or her lifetime as is the case here with Thomas Weaver's medical care. Therefore, the quoted out of context language is presented in an attempt to bolster the incorrect argument. Still, in Powell, we also recognized that even with regard to rights after **death**, "[i]f any rights exist, they belong to the decedent's next of kin." Id.

Likewise, the statement in Alterra that "even where a constitutional right to privacy is implicated, that right is a personal one, inuring solely to individuals" is taken out of context because it involved a challenge to the standing of an employer to assert an employee's constitutional privacy rights. Alterra, 827 So.2d at 941. Here again the argument advanced failed to include the context in which the statement was made.

Finally, Dr. Myers further refers us to Nestor v. Posner–Gerstenhaber, 857 So.2d 953 (Fla. 3d DCA 2003), in which the administrator of an estate sought to enforce **confidentiality** agreements entered into between a decedent and his employees, signed just before his **death**. In Nestor, the district court referenced Williams in the contractual context and stated, "Privacy rights are personal and die with the individual." 857 So.2d at 955. However, in the very next sentence, the district court reasoned that in the **confidentiality** agreement "there is no provision that requires **confidentiality** after Posner's **death**." Id. Thus, Nestor is wholly inapposite as it pertains exclusively to a contractual privacy claim rather than a constitutional privacy claim. Indeed, Nestor does **not** even contain any mention or reference to the Florida Constitution, let alone the explicit ***1130** fundamental constitutional right to privacy. Similarly unsupportive, Dr. Myers also refers us to Loft v. Fuller, 408 So.2d 619 (Fla. 4th DCA 1981), which is yet another invasion of privacy case that fails to even mention the Florida Constitution, but rather is focused on the common law right to privacy and its use as a sword, rather than as a shield.

Dr. Myers further contends that "the concept that an individual's constitutional privacy rights expire upon **death** is well accepted across the country," and refers this Court to cases from various federal courts. Answer Br. at 46. However, **not** one of those cases supports that statement because every one of those cases involves conduct that occurred after the **death** of the person whose constitutional rights were at issue. See Silkwood v. Kerr–McGee Corp., 637 F.2d 743, 749 (10th Cir. 1980) ("We agree with the Ninth Circuit that the civil rights of a person cannot be violated once that person has died. It is clear then that the FBI agents could **not** have violated the civil rights of Silkwood by cover-up actions taken after her **death**.") (emphasis added) (citations omitted); Whitehurst v. Wright, 592 F.2d 834, 840–41 (5th Cir. 1979) ("Here, the events of the alleged cover-up took place after Bernard Whitehurst had been shot and killed.... The question presented in the court below and in this court was whether events occurring after his **death** constituted a deprivation of her son's constitutional rights for which plaintiff has stated a claim.") (emphasis added) (footnote omitted); Ravellette v. Smith, 300 F.2d 854, 857 (7th Cir. 1962) ("These cases are inapposite because they are concerned with a violation of the rights of a living person. In the instant case, decedent was dead when the sample was taken.") (emphasis added); Helmer v. Middaugh, 191 F.Supp.2d 283, 285 (N.D.N.Y. 2002) ("As the allegations concerning Lt. Lisi are limited to conduct occurring after the **death** of B. Helmer, plaintiff's amended complaint does **not** allege a viable cause of action against him.") (emphasis added). Indeed, some of those cases even support Weaver's position. See Whitehurst, 592 F.2d at 840 ("No allegation was made that any conspiracy to kill Whitehurst or to cover up the event

existed before the shooting took place.") (emphasis added); Helmer, 191 F.Supp.2d at 285 ("In addition, because the proposed Second Amended Complaint alleges no additional facts to demonstrate Lt. Lisi's involvement prior to the **death** of B. Helmer, it does **not** cure this fatal defect as to Lt. Lisi.") (emphasis added).

Therefore, **not** a single case that Dr. Myers has advanced stands for the broad, incorrect proposition that a person's constitutional rights pertaining to conduct occurring during the person's lifetime are retroactively destroyed upon **death**. Indeed, if Dr. Myers' position were correct, there would be absolutely no protection and no one to assert the protection. We must be ever vigilant as we consider invasions into the fundamental rights of our citizens, particularly when faced with flawed legal arguments. Today we specifically address privacy, which is included among our most cherished rights such as speech, religion, to be free from searches and seizures without a warrant or permissible exception, and the right to due process. Surely, the reflex of any concerned jurist upon consideration of an invasion of fundamental rights would be to protect our citizens as required by our Bill of Rights. Dr. Myers' contention here is that a person loses all of those rights upon **death**. Such a holding would render those rights hollow, chilling the daily operation of them on people as they navigate their lives from moment to moment.

As discussed above, in Florida, the right to privacy is no less fundamental than those other rights and is even more closely ***1131** guarded in some respects. Thus, the slippery slope Dr. Myers invites this Court to slide down is even more perilous with regard to the right to privacy. Indeed, just the potential for retroactive destruction of the right to privacy robs the life of that very protection due to the chill it would cause. If we were to follow Dr. Myers' argument that a person experiences the loss of privacy applicable while living upon the change in status from alive to dead, then the secrets of that person's life, including his or her sexual preferences, political views, religious beliefs, views about family members, medical history, and any other thought or belief the person considered to be private and a secret are subject to full revelation upon **death**. Theoretically, there would be no need for justification for such intrusions or revelations of a person's secrets, **not** even a rational basis. Therefore, what would follow from allowing a retroactive destruction of the fundamental right to privacy is a reality in which ultimately anyone could rummage at any time, without limitation, through every detail of every citizen's most private information.

Here, the right to privacy is being used as a limited shield from ex parte discovery and **not** as a sword to initiate a civil action. Thus, none of those cases asserted by Dr. Myers addressed the right of privacy before **death** in the specific context at issue here. While this may appear subtle, it is a very critical distinction. Failing to note this distinction, Dr. Myers' selective readings of case law has led him to a misdiagnosis of Thomas' right to privacy upon his **death**, a right that remains quite alive.

[6] The inquiry does **not** end here though. Dr. Myers also asserts that Weaver lacks standing to assert a right to privacy here. In Antico, the district court assumed that the estate had standing to assert the decedent's privacy interests. 148 So.3d at 168 n.2 ("We needn't resolve Respondents' additional contention that Petitioner lacks standing in this case to assert the decedent's constitutional privacy rights. The trial court didn't pass on this question. And, as discussed above, relief isn't warranted even if we assume (as this opinion does) that Petitioner can assert the decedent's privacy rights."). Here, in the decision below, the district court did **not** resolve the question of standing, and simply held that Weaver had **waived** the right to privacy by filing a medical malpractice wrongful **death** action. See Weaver, 170 So.3d at 883.

Given that the issue of standing must be considered in this case, unlike the Antico case, we address Dr. Myers' challenge to Weaver's standing. Despite the district court's holding of waiver below, that waiver holding itself provides recognition and a basis for our holding here. Holding that Weaver **waived** the right of privacy by filing the wrongful **death** action implies **not** only that Thomas Weaver had a right to privacy in the litigation context that could be **waived**, but also that Emma Weaver, the administrator of his estate and his wife, had standing to waive such rights. It follows that if she had standing to waive the right to privacy here, she likewise had standing to assert that privacy right. Similarly, if a decedent has a constitutional privacy interest under the Florida Constitution in the context of discovery in litigation, as the Antico court recognized, then someone must be able to assert that privilege.

[7] Florida's Wrongful **Death** Act establishes the personal representative of a decedent's estate as the sole party that may file a decedent's cause of action for wrongful **death**. The statute provides in pertinent part:

> The action shall be brought by the decedent's personal representative, who shall recover for the benefit of the decedent's survivors and estate all damages, ***1132** as specified in this act, caused by the injury resulting in **death**. When a personal injury to the decedent results in **death**, no action for the personal injury shall survive, and any such action pending at the time of **death** shall abate.

§ 768.20, Fla. Stat. (2016); see Roughton v. R.J. Reynolds Tobacco Co., 129 So.3d 1145 (Fla. 1st DCA 2013) (A wrongful **death** action may be brought only by the personal representative for the benefit of the decedent's survivors and estate.); Fla. Emergency Physicians–Kang & Assocs., M.D., P.A. v. Parker, 800 So.2d 631, 633 (Fla. 5th DCA 2001) (same); Benson v. Benson, 533 So.2d 889 (Fla. 3d DCA 1988) (Decedent's parents were without standing to file a wrongful **death** action where decedent's wife, **not** decedent's parents, served as administratrix of decedent's estate.). Thus, if the right exists, which we conclude it does, then it most assuredly must be capable of being advanced. Cf. In re Guardianship of Browning, 568 So.2d 4, 12 (Fla. 1990) ("Indeed, the right of privacy would be an empty right were it **not** to extend to competent and incompetent persons alike."). With regard to wrongful **death** actions, the administrator of the estate may certainly assert that right because he or she is the only person who has standing to file a wrongful **death** action in the first place. Moreover, Weaver's status as wife may further entitle her to assert the right. Cf. Powell, 497 So.2d at 1190 ("If any rights exist, they belong to the decedent's next of kin.") Based upon the foregoing, Weaver, as personal representative of Thomas' estate and his wife, clearly has standing to challenge the provisions at issue by presenting the constitutional right to privacy in Thomas' protected medical information.

[8] **[9]** Dr. Myers further asserts that Weaver has necessarily **waived** all constitutional rights to privacy in this case by filing a claim of medical malpractice. However, the anatomy of such a waiver under Florida law is clear. Although a claimant may necessarily waive privacy rights to the medical information that is relevant to a claim by filing an action, this does **not** amount to waiver of privacy rights pertaining to all confidential health information that is **not** relevant to the claim. See generally Poston v. Wiggins, 112 So.3d 783, 786 (Fla. 1st DCA 2013) (granting certiorari petition and quashing trial court order requiring production of post-accident **medical records** because "[u]nlike the pre-accident pharmacy records which may be relevant, the post-accident **medical records** are entirely irrelevant"); McEnany v. Ryan, 44 So.3d 245, 247 (Fla. 4th DCA 2010) (granting certiorari petition and quashing trial court order which denied petitioner-defendant's objections to motion to compel; "In this case, whether defendant was impaired by a mixture of the drug Ritalin and alcohol at the time of the accident would be a relevant issue. Determining whether petitioner had a current prescription for Ritalin seems to us to be relevant to that inquiry. It is equally apparent to us, however, that most of the **medical records** sought likely have no relevance to that inquiry, and no link was shown at the hearing."); Barker, 909 So.2d at 338 ("By failing to provide for an in camera inspection of [the petitioner's] **medical records** to prevent disclosure of information that is **not** relevant to the litigation, the discovery order departed from the essential requirements of the law."). The decision below erred in holding otherwise to the extent unnecessary information would be open and subject to the ex parte exploration proceedings authorized in the 2013 amendments.

[10] **[11]** Having determined that Weaver is a proper party to assert the constitutional right to privacy in attempting to shield the disclosure of irrelevant, unnecessary, and protected medical information, ***1133** and that she did **not** waive the protection with regard to medical information **not** relevant to the medical negligence action, we now address the question of whether the right to privacy has been violated. Due to the fundamental and highly guarded nature of this right, "any law that implicates the fundamental right of privacy, regardless of the activity, is subject to strict scrutiny and, therefore, presumptively unconstitutional." Gainesville Woman Care, LLC v. State, 210 So.3d 1243, 1245 (Fla. 2017); Winfield, 477 So.2d at 547. Thus, the burden of proof rests with the State to justify an intrusion on privacy. Winfield, 477 So.2d at 547. [4]

In an attempt to sustain the burden under the strict scrutiny test, Dr. Myers and the amici assert that the legislative intent behind the amendments is sufficient: to encourage settlement by providing equal access to relevant information, resulting in the inexpensive and expeditious administration of justice; screening out frivolous claims; and streamlining medical malpractice litigation. However, none of these asserted interests, individually or collectively, are sufficiently compelling to outweigh the interest of a patient in keeping

private medical information that was given in confidence to medical personnel under the protections of both federal and Florida law when that information is **not** relevant to the prospective claim of malpractice.

Moreover, even if those concerns were compelling, rather than address them with a steady hand and surgical precision such that the least intrusive means could be implemented, the amended statutes here have gashed Florida's constitutional right to privacy. Requiring claimants to authorize clandestine, ex parte secret interviews is far from the least intrusive means to accomplish those stated goals. [5]

The ex parte secret interview provisions of sections 766.106 and 766.1065 fail to protect Florida citizens from even accidental disclosures of confidential medical information that falls outside the scope of the claim because there would be no one present on the claimant's behalf to ensure that the potential defendant, his insurers, his attorneys, or his experts do **not** ask for disclosure of information from a former treating health care provider that is totally irrelevant to the claim. This concern with regard to ex parte secret interviews has ***1134** been noted **not** only by this Court but also by multiple other courts. See Acosta v. Richter, 671 So.2d 149, 153 (Fla. 1996) ("Were unsupervised ex parte interviews allowed, medical malpractice plaintiffs could **not** object and act to protect against inadvertent disclosure of privileged information, nor could they effectively prove that improper disclosure actually took place."); see also Wenninger v. Muesing, 307 Minn. 405, 240 N.W.2d 333, 337 (1976); Nelson v. Lewis, 130 N.H. 106, 534 A.2d 720, 723 (1987); Crist v. Moffatt, 326 N.C. 326, 389 S.E.2d 41, 46 (1990); Alsip v. Johnson City Med. Ctr., 197 S.W.3d 722, 727 (Tenn. 2006); Kirkland v. Middleton, 639 So.2d 1002, 1004 (Fla. 5th DCA 1994); Horner v. Rowan Companies, Inc., 153 F.R.D. 597, 601 (S.D. Tex. 1994). While section 766.106 provides that a treating health care provider may have the right to refuse to be secretly interviewed ex parte, as noted by the Arizona Court of Appeals with regard to a similar statute, a provider may nonetheless feel pressured to participate or **not** fully understand his or her right to refuse:

> A physician may lack an understanding of the legal distinction between an informal method of discovery such as an ex parte interview, and formal methods of discovery such as depositions and [interrogatories], and may therefore feel compelled to participate in the ex parte interview. We also note that in Arizona, a substantial number of physicians are insured by a single "doctor owned" insurer. Realistically, this factor could have an impact on the physician's decision. In other words, the physician witness might feel compelled to participate in the ex parte interview because the insurer defending the medical malpractice defendant may also insure the physician witness.

Duquette v. Super. Ct., 161 Ariz. 269, 778 P.2d 634, 641 (Ariz. Ct. App. 1989).

Furthermore, the supposed facilitation of settlement is **not** a reality for either party in medical malpractice litigation. As the Illinois appellate court opined, a secret ex parte interview with a treating health care provider does **not** lead to the discovery of medical information that would **not** otherwise be discoverable, such that it facilitates settlement:

> It is **not** the ex parte conference in and of itself that leads to the early settlement of a case. Rather, it is the information that is obtained during that ex parte conference that leads to a case's settlement. That ... information can be obtained ... by obtaining a copy of the plaintiff's **medical records** or through a deposition of the plaintiff's treating physician. These latter methods will provide defense counsel with the same information that they would obtain in an ex parte conference ... without jeopardizing that physician's fiduciary obligation to his patient.

Petrillo v. Syntex Labs., Inc., 148 Ill.App.3d 581, 102 Ill.Dec. 172, 499 N.E.2d 952, 965–66 (1986).

Under section 766.106(6)(b), the other informal discovery tools available are unsworn statements of the parties and treating health care providers (all with the claimant's counsel allowed to be present), written questions, production of documents and things, and physical and mental examinations. There is nothing to indicate that these tools are deficient in the acquisition of information relevant to a potential medical malpractice claim, such that secret ex parte interviews justify the attendant risk of disclosure of irrelevant, constitutionally protected matters, medical information and otherwise, or serve a compelling interest. See Winfield, 477 So.2d at 547. Therefore, the constitutional right to privacy has been violated in this case.

***1135** The dissent is designed and constructed on a fundamentally flawed basis. The dissent further fosters confusion concerning this clear constitutional violation and is in conflict with the practical realities of today's litigation practice. With regard to medicine in the modern world of strained resources, the reality is that almost every malpractice litigant will be subject to the amendments' no-notice interview provision because it is exceedingly difficult, if **not** impossible, to schedule time with a doctor within fifteen days or seventy-two hours absent a critical, life-threatening situation. See § 766.106(6)(b) 5., Fla. Stat. (2016). The difficulty will surely become more pronounced when a doctor is advised that a patient seeks **not** an appointment for care, but rather to schedule an interview regarding malpractice litigation against one of the **doctor's** colleagues. Yet, if the malpractice litigant at any point does **not** schedule an interview within such narrow time frames, the defense may then repeatedly approach the doctors without any notice and ex parte. See id. Thus, when viewed through the lens of real-life implications, the statute's facilitation of non-secret meetings is merely illusory.

Sprinkled throughout the dissent is reference to the term "relevant" based on the deeply flawed premise that opposing counsel in litigation should be the sole and exclusive arbiter in a secret ex parte, non-recorded meeting of that which is "relevant" with regard to the precious Florida constitutional right of privacy. With this fatal flaw the dissent rings hollow. The dissent's undue reference to the amendment's use of the word "relevant" renders strict scrutiny no different than rational basis scrutiny. History has demonstrated that bar grievance procedures are totally insufficient to protect our fundamental rights of privacy during secret meetings. On the contrary, even the conduct of lawyers in public proceedings is very often beyond proper limitations. Additionally, there is nothing to limit the actions of other investigators and insurance adjusters.

Although the standard to be applied is whether there is a less invasive manner, a contrary interpretation advances the most invasive clandestine secret interrogations as a method to deal with the fundamental constitutional right of our citizens. The dissent even relies on cases that support our holding and conclusions, when those cases are properly and fully analyzed.

In Coralluzzo v. Fass, 450 So.2d 858 (Fla. 1984), superseded by statute, § 456.057, Fla. Stat. (2009); Hasan v. Garvar, 108 So.3d 570 (Fla. 2012); and Acosta, 671 So.2d 149, this Court was **not** presented with a constitutional privacy challenge. Thus, these cases do **not** support the dissent's reliance upon them for the proposition that litigants had no protections prior to the legislative enactment of an evidentiary privilege. Indeed, because no constitutional privacy challenge was raised in any of those cases, this Court prudently did **not** make a single reference to the constitutional right to privacy. As a result, the statement in Coralluzzo that "[n]o law, statutory or common, prohibits—even by implication—[the unilateral, ex parte interviews]," 450 So.2d at 859, is wholly inapposite "because of the dominant force of the Constitution, an authority superior to both the Legislature and the Judiciary." Holley v. Adams, 238 So.2d 401, 405 (Fla. 1970). Therefore, the fact that the litigants in those cases did **not** raise a constitutional challenge does **not** render true the contrary view's very disturbing conclusion that "there was nothing to prevent the ex parte interview with the nonparty treating physician in the absence of legislative protections." Dissenting op. at 1146. This ill-founded conclusion confuses the concept of evidentiary privileges with fundamental Florida constitutional rights. The entire ***1136** contrary argument falls when the confusion is analyzed and recognized.

In an attempt to distract from this misdirection, the contrary view hinges on a clause in our decision in Acosta that "there was no legal impediment to ex parte conversations between a patient's treating doctors and the defendants or their representatives." Dissenting op. at 1147(quoting Acosta, 671 So.2d at 150). Conveniently, however, the dissent does **not** fully present the explanatory clause introducing that statement: "The present controversy has its genesis in Coralluzzo ..., where, in a medical malpractice action, this Court held there was no common law or statutory privilege of **confidentiality** as to physician-patient communications

in Florida and, hence, there was no legal impediment ....” Acosta, 671 So.2d at 150 (emphasis added). Thus, when considered fully the critical fact is exposed and explained that Acosta and Coralluzzo simply did **not** involve a constitutional challenge whatsoever and did **not** have occasion to discuss any constitutional “impediments.” It bears repeating to combat any obfuscation or confusion that just because the litigants did **not** raise the constitutional issue in prior cases does **not** mean the right was non-existent. Likewise, to perpetrate that misconception, a failure of complete analysis violates the tenet of constitutional avoidance this Court generally follows. Moreover, Coralluzzo was reviewed as a certified question of great public importance from a decision to deny a petition for writ of certiorari reviewing the denial of a protective order, and thus, all the courts involved in Coralluzzo were looking through an especially narrow lens focused on finding clearly established law, **not** the creation of new rights, especially none that the parties failed to raise. See Nader v. Fla. Dep't of Highway Safety & Motor Vehicles, 87 So.3d 712, 723 (Fla. 2012) (“[C]ertiorari jurisdiction cannot be used to create new law where the decision below recognizes the correct general law and applies the correct law to a new set of facts to which it has **not** been previously applied. In such a situation, the law at issue is **not** a clearly established principle of law.”); Coralluzzo, 450 So.2d at 858–59. Relatedly, the incident in Coralluzzo did **not** take place until 1981, just one year after the constitutional privacy right was adopted by the voters, and thus, without having raised the issue, it is no surprise the constitutional limitation had **not** been considered with regard to ex parte conferences with medical providers.

By contrast, the contrary view suggested does **not** accommodate that in this case the constitutional right has been raised and fully briefed at all levels for de novo review. Unlike Acosta and Hasan, where the evidentiary privilege statutes at issue were built upon only the spirit of the constitutional protections, thereby negating the need for a constitutional analysis, the amendments at issue today accomplish the opposite, affirmatively trampling on the constitutional privacy right and rendering it necessary, for the first time, to address the express constitutional issue.

Moreover, selective references to Hasan and Acosta ignore the only analogous and relevant portions of those opinions, which actually support our holding today. Specifically, although both cases concerned statutory limitations on ex parte discovery, unlike the supreme constitutional right at issue here today, the statutory rights at issue in those cases involved analyses into the potential for revelation of protected information. Equally applicable here under the least intrusive means standard, the statutory analyses in Hasan and Acosta led this Court to “reject the contention that ex parte conferences with treating physicians may be approved so long as the physicians are **not** required to say anything. We believe it is pure sophistry to suggest that ***1137** the purpose and spirit of the statute would **not** be violated by such conferences.” Hasan, 108 So.3d at 578 (quoting Acosta, 671 So.2d at 156) (emphasis added). The fact that today we analyze the constitutional right to privacy, as opposed to a limited statutory evidentiary privilege, does **not** change our conclusion in Hasan that “efforts to foster an environment conducive to inadvertent disclosures of privileged information ... are impermissible.” Id. In referencing the language “purpose and spirit of the statute,” rather than the overall logic concerning overbreadth and illusory protections that applies equally under any good-faith strict scrutiny analysis, the contrary view expressed today simply changes the subject for discussion, rather than addressing the actual substance of the issues.

Likewise, the lone decision relied upon by the dissent that even touches upon the constitutional right to privacy and its application to ex parte medical interviews, a district court decision, S & A Plumbing v. Kimes, 756 So.2d 1037, 1042 (Fla. 1st DCA 2000), does **not** control in any manner and is wholly inapposite when analyzed in context. Kimes involved ex parte interviews in the workers' compensation context, which is wholly distinguishable from a medical malpractice action in that, as the Kimes court recognized, “The workers' compensation system is clearly intended to be self-executing, with the resort to adversarial proceedings being undertaken only as a last recourse to resolve intractable disputes between petitioners and employers and their insurance carriers.” Id. at 1041 (emphasis added). Further, unlike workers' compensation claims, medical malpractice and wrongful **death** actions are completely adversarial and traditional actions at law resolved in the judicial branch by Article V courts. [6] Therefore, despite any attempt to compare workers' compensation to traditional litigation, this Court's long saga of ensuring the scheme's compliance with the right to access to courts undresses that disguised misconception.

Accordingly, as the Kimes court accurately understood the substantial differences between workers' compensation and traditional litigation, the fact that “[t]he workers' compensation system transposed dispute resolution for workplace injuries from the private law of torts to a

publicly administered and regulated system" was central to its conclusion that no legitimate expectation of privacy exists in the extremely limited workers' compensation context with regard to interviews with physicians specifically hired for compliance with workers' compensation. Id. at 1042 (emphasis added). The Kimes court further recognized the wholly different context of workers' compensation when it concluded that "to accept Kimes' absolute privacy argument would make it impossible to petition for, controvert and decide claims under the workers' compensation law without resort to a system of litigation ...." Id. (emphasis added). Yet, relying on the supposed purpose of the statute at issue here, the contrary view expressed today does ***1138** **not** even acknowledge these differences. However, as already discussed, the purpose of the statute at issue here in potentially encouraging settlement and avoiding litigation is **not** only proven to be fleeting, but also has little bearing on our analysis because it is simply **not** the least intrusive means.

Another very critical distinction arising from the workers' compensation context of the Kimes decision is that the only medical professional to be interviewed was explicitly hired for purposes of workers' compensation to evaluate the causal connection between the work performed and the injury. Id. ("The very foundation of an employee's right to receive benefits under the self-executing system in Chapter 440 requires a healthcare provider to assess the injury, establish a causal connection to the workplace accident, and communicate that information to the employer's insurance carrier."). Yet, the contrary view does **not** include this aspect of the relationship and relies only on the fact that the physicians are treating physicians. While the dissent antagonizes the relevant focus here as a "misreading," it ignores the fact that the constitutional analysis in Kimes focuses and relies specifically on the fact that the treating physicians were required to be hired under the narrow workers' compensation framework. See id. at 1042 ("By presenting himself to be examined by a health care provider for the purpose **not** only for treatment for an injury, but also for evaluation of the injury and assessment of whether it is attributable to his employment, Kimes consented to the provider disclosing to the carrier medical information relating to the claim.") (emphasis added). There is simply no comparison with the physicians hired specifically in the workers' compensation litigation in the Kimes context and the physicians hired by Weaver in the ordinary context of seeking medical care without an eye to litigation. Ex parte interviews with a singular physician in a workers' compensation claim with regard to a specific employment injury are wholly different than conducting ex parte secret meetings with all of the medical professionals a person has visited completely of his or her own volition in the course of regular medical care during the last two years before the medical malpractice action accrued.

In light of these distinctions, and the Kimes court's finding of no expectation of privacy in the mandatory workers' compensation medical visit, the Kimes court did **not** even have occasion to consider the least intrusive means aspect of our constitutional privacy test. In any event, relative to the broad net cast in this scenario, any potential waiver conclusion arising from Kimes is also severely limited by the fact that there was no threat of irrelevant information being disclosed in Kimes.

Thus, Kimes, which concerned the administration of workers' compensation claims, has absolutely no bearing on this wrongful **death** action, which is adversarial and subjects litigants to the full powers conferred on Article V courts. Although the misdirection created by the contrary view must be addressed to ensure there is no unnecessary confusion, in the end the attempt to apply workers' compensation principles in this context is unavailing. Tellingly, **not** even Dr. Myers raised Kimes at any stage in this litigation.

Returning to the salient issue, in light of the adversarial nature and full discovery process applicable to medical malpractice and wrongful **death** actions, the dissent has provided no reason to overcome the fact that the standard discovery procedures with notice and participation of all parties that are employed daily without issue in thousands of cases are more than adequate to secure access to relevant information without trampling on the constitutional privacy rights of a Florida citizen ***1139** plaintiff. The dissent misses the point when it suggests that a defendant would **not** even be interested in obtaining irrelevant medical information. Again, simply put, secret, ex parte non-recorded interviews conducted by adverse litigants, investigators or insurance adjusters are **not** the least intrusive means for gathering otherwise discoverable information. Further, to compel a person's medical professionals to be placed in an environment conducive to even inadvertent disclosures of sensitive protected medical information violates the unambiguous constitutional "right to be let alone and free from governmental intrusion into the person's private life." Art. I, § 23, Fla. Const. Even the possibility that a person's extremely sensitive private medical information will be exposed is the type of governmental intrusion that the Florida

Constitution protects against because it is impossible to know if an inadvertent disclosure occurred when the meetings are **not** only ex parte and without a judge, but also secret without a record. In the case of protected medical information, the danger is uniquely and unconstitutionally great because once the bell has been rung, it cannot be unrung. It defies credibility to compare the physicians in this case to ordinary fact witnesses. Physicians, unlike ordinary fact witnesses, are governed by strict **confidentiality** through **not** only HIPPA, but also the constitutional right to privacy discussed at length today.

Having determined that the statutory amendments impermissibly intruded on the fundamental and explicit constitutional right to privacy by the statutory requirements, the amendments cannot accomplish that end by conditioning the exercise of another highly guarded constitutional right on such submission in light of the constitutional prohibition. This protection from government coercion has been recognized by the United States Supreme Court in what is known as the unconstitutional conditions doctrine. See Koontz v. St. Johns River Water Mgmt. Dist., 570 U.S. 595, 133 S.Ct. 2586, 2595, 186 L.Ed.2d 697 (2013) ("[R]egardless of whether the government ultimately succeeds in pressuring someone into forfeiting a constitutional right, the unconstitutional conditions doctrine forbids burdening the Constitution's enumerated rights by coercively withholding benefits from those who exercise them."). However, such unconstitutional conditioning and coercion is exactly what the amendments to section 766.106 and 766.1065 have done here.

[12] As Weaver contends, the amended statutes at issue here coerce and force victims of medical malpractice into foregoing their fundamental and explicit constitutional right to privacy to exercise their equally explicit and fundamental constitutional right to access to courts. The Florida Constitution provides that "[t]he courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay." Art. I, § 21, Fla. Const. We have explained that "each of the personal liberties enumerated in the Declaration of Rights ... is a fundamental right." State v. J.P., 907 So.2d 1101, 1109 (Fla. 2004). "[C]ourts are generally opposed to any burden being placed on the rights of aggrieved persons to enter the courts because of the constitutional guarantee of access." Bystrom v. Diaz, 514 So.2d 1072, 1075 (Fla. 1987) (quoting Carter v. Sparkman, 335 So.2d 802, 805 (Fla. 1976), receded from on other grounds, Aldana v. Holub, 381 So.2d 231 (Fla. 1980)).

[13] The seminal case for government action and the right of access to courts is Kluger v. White, 281 So.2d 1 (Fla. 1973). In Kluger, this Court explained the limitation on the power of the Legislature:

> [W]here a right of access to the courts for redress for a particular injury has been provided by statutory law predating ***1140** the adoption of the Declaration of Rights of the Constitution of the State of Florida, or where such right has become a part of the common law of the State pursuant to Fla. Stat. § 2.01, F.S.A., the Legislature is without power to abolish such a right without providing a reasonable alternative to protect the rights of the people of the State to redress for injuries, unless the Legislature can show an overpowering public necessity for the abolishment of such right, and no alternative method of meeting such public necessity can be shown.

Id. at 4. At common law, Florida did **not** recognize a cause of action for wrongful **death**; however, the Legislature authorized such an action prior to 1968. See Estate of McCall v. United States, 134 So.3d 894, 915 (Fla. 2014) (citing § 768.01, Fla. Stat. (1941)) (plurality opinion). Therefore, the access to courts provision of the Florida Constitution is applicable to wrongful **death** actions.

[14] **[15]** Although Kluger spoke in terms of total abolishment of a right, the scope of the protection extends to protect situations in which legislative action significantly obstructs the right of access:

> [I]n order to find that a right has been violated it is **not** necessary for the statute to produce a procedural hurdle which is absolutely impossible to surmount, only one which is significantly difficult. This is so because the Florida Constitution provides that "[t]he courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay." Art. I, § 21, Fla. Const. This "openness" and necessity that access be provided "without delay" clearly indicate that a violation

> occurs if the statute obstructs or infringes that right to any significant degree.

Mitchell, 786 So.2d at 527. The First District subsequently interpreted the word "significant" in the context of an access to courts challenge to mean "important" and "of consequence." Henderson, 883 So.2d at 854.

The facts demonstrate that the statutes challenged here would require Weaver to forfeit the constitutional right to privacy and expose her late husband's medical and other information (and potentially hers)[7] up to two years prior to the alleged act of medical negligence, regardless of its relevance to her claim to prying lawyers, insurance companies, experts, and doctors to probe, as a condition to filing a wrongful **death** action. Moreover, the mandatory authorization and secret, ex parte interview provisions empower these individuals and entities to actively engage nonparties in unsupervised interviews without the presence of the claimant, the claimant's representative, or the claimant's attorneys, potentially leaving exposure of irrelevant and constitutionally protected private information otherwise undiscoverable and nearly impossible to address. Cf. Rasmussen, 500 So.2d at 537 ("However, the subpoena in question gives petitioner access to the names and addresses of the blood donors with no restrictions on their use. There is nothing to prohibit petitioner from conducting an investigation without the knowledge of the persons in question. We cannot ignore, therefore, the consequences of disclosure to nonparties, including the possibility that a donor's coworkers, friends, employers, and others may be queried as to the donor's sexual preferences, drug use, or general life-style."). The vulnerable ***1141** state in which a medical malpractice claimant is placed is a sufficiently important and significant impediment to seeking relief from a Florida court.[8] This our Constitution simply does **not** allow.[9]

Having determined that the 2013 amendments to sections 766.106 and 766.1065 of the Florida Statutes are unconstitutional, we now must undertake consideration as to whether to sever the unconstitutional portions. See Ray v. Mortham, 742 So.2d 1276, 1280 (Fla. 1999) ("Severability is a judicial doctrine recognizing the obligation of the judiciary to uphold the constitutionality of legislative enactments where it is possible to strike only the unconstitutional portions." (citing State v. Calhoun Cty., 126 Fla. 376, 170 So. 883, 886 (1936))). Although the 2013 act that amended the statutes did **not** include a severance clause, this presents no barrier. See Fla. Hosp. Waterman, Inc. v. Buster, 984 So.2d 478 (Fla. 2008). In Waterman, we explained the questions that guide our severance analysis:

> (1) [W]hether the legislative purpose expressed in the valid provisions can be accomplished independently of those which are void; (2) if the good and bad features are **not** inseparable and if the Legislature would have passed one without the other; and (3) whether an act complete in itself remains after the invalid provisions are stricken.

Id. at 493 (citing Moreau v. Lewis, 648 So.2d 124, 128 (Fla. 1995)).

Noting the limited nature of our holding today and our severance principles, we make two strikes from the amended statutes. First, we strike in its entirety section 766.1065(3)E., Florida Statutes (2013), which contains the constitutionally infirm language: "This authorization expressly allows the persons or class of persons listed in subsections D.2.–4. above to interview the health care providers listed in subsections B.1.–2. above, without the presence of the Patient or the Patient's attorney." § 766.1065(3)E., Fla. Stat. Second, we strike the last sentence from section 766.106(6)(b) 5., Florida Statutes (2013), which contains the constitutionally infirm language: "If the claimant's attorney fails to schedule an interview, the prospective defendant or his or her legal representative may attempt to conduct an interview without further notice to the claimant or the claimant's legal representative." § 766.106(6)(b) 5., Fla. Stat.

CONCLUSION

In sum, we hold today that the right to privacy in the Florida Constitution attaches during the life of a citizen and is **not** retroactively destroyed by **death**. Here, ***1142** the constitutional protection operates in the specific context of shielding irrelevant, protected medical history and other private information from the medical malpractice litigation process. Furthermore, in the wrongful **death** context, standing in the position of the decedent, the administrator of the decedent's estate has standing to assert the decedent's privacy rights. Finally, the Legislature unconstitutionally conditioned

a plaintiff's right of access to courts for redress of injuries caused by medical malpractice, whether in the wrongful **death** or personal injury context, on the claimant's waiver of the constitutional right to privacy. Therefore, we strike certain unconstitutional language from the 2013 amendments to sections 766.106 and 766.1065 of the Florida Statutes which authorized secret, ex parte interviews. We quash the decision below and remand for further proceedings consistent with this opinion.

It is so ordered.

LABARGA, C.J., and PARIENTE, and QUINCE, JJ., concur.

CANADY, J., dissents with an opinion, in which POLSTON and LAWSON, JJ., concur.

CANADY, J., dissenting.

I disagree with the majority's conclusion that the challenged statutory provisions violate the right to privacy and the right of access to courts protected by the Florida Constitution. I would also reject Weaver's argument that the statutory provisions unconstitutionally encroach on this Court's rulemaking authority and constitute a prohibited special law. The First District correctly concluded that the statutory provisions withstood the constitutional challenges made by Weaver. I therefore dissent from the majority's unwarranted interference with the Legislature's authority.

I. RIGHT TO PRIVACY

A. Background and Waiver

In its decision below, the district court spent only a brief portion of its analysis addressing the issue of privacy, and rightfully so. See Weaver v. Myers, 170 So.3d 873, 883 (Fla. 1st DCA 2015). Medical malpractice claimants have no reasonable expectation of privacy in medical information that is relevant to the alleged malpractice—and that is the only information authorized to be discussed under the ex parte amendments. See § 766.1065(1), Fla. Stat. (2013) (requiring presuit "authorization for release of protected health information ... that is potentially relevant to the claim of personal injury or wrongful **death**"). Consequently, the Legislature did **not** overstep its bounds in 2013 by authorizing ex parte interviews of nonparty treating physicians as part of the presuit, informal discovery process related to medical malpractice actions, given that the interviews are optional on the part of the treating physician and are limited by a relevance standard. [10] Thus, I would affirm the district court's conclusion that the amendments do **not** violate the right to privacy.

Article I, section 23 of the Florida Constitution provides, in part, that "[e]very natural person has the right to be let alone and free from governmental intrusion into ***1143** the person's private life except as otherwise provided herein." Art. I, § 23, Fla. Const. From this language, the majority concludes that a medical malpractice claimant has a constitutional right to prevent a nonparty treating physician from discussing ex parte the claimant's relevant medical information with certain interested parties.

The district court properly focused on the waiver of privacy protections that necessarily accompanies pursuit of medical malpractice claims. Specifically, the district court concluded that "the decedent's medical condition is at issue" and any privacy rights were **waived** because "[i]t is well-established in Florida and across the country that any privacy rights that might attach to a claimant's medical information are **waived** once that information is placed at issue by filing a medical malpractice claim." Weaver, 170 So.3d at 883. In doing so, the district court noted that the 2013 amendments do **not** apply to information that is **not** potentially relevant to the claim. Id. at 883 n.3 (citing § 766.1065(3)C., Fla. Stat.).

Consistent with the district court's analysis, the majority here recognizes that privacy matters must be analyzed differently in the context of litigation: "We have further recognized that '[t]he potential for invasion of privacy is inherent in the litigation process.' " Majority op. at 1126 (alteration in original) (quoting Rasmussen v. S. Fla. Blood Serv., Inc., 500 So.2d 533, 535 (Fla. 1987)). And more specifically, the majority recognizes the concept of privacy waiver in medical malpractice actions, noting that "a claimant may necessarily waive privacy rights to the medical information that is relevant to a claim by filing an action." Majority op. at 1132.

Nevertheless, the majority ends up rejecting the ex parte meetings on constitutional privacy grounds based on the notion that the legislation requires the claimant to waive the right to privacy in "confidential health information that is **not** relevant to the claim." Majority op. at 1132 (emphasis omitted). But nothing in the ex parte amendments authorizes

the discussion of irrelevant medical information. Thus, the majority invalidates the ex parte amendments based on speculation and various assumptions, including that members of the legal profession—who are subject to disciplinary review by this Court—will act outside the law, as well as that members of the medical community will misunderstand both their HIPAA [11] restrictions and the fact that these ex parte interviews are optional and limited by a relevance standard. I strongly disagree with the majority's decision to do so. Instead of invalidating these statutory provisions based on speculative assumptions that individuals will act outside the scope of the statutory authorization, I would approve the district court's analysis and affirm the district court's conclusion that the amendments do **not** violate the right to privacy. [12]

*1144 B. Workers' Compensation Cases

The majority's decision is difficult to reconcile with the fact that ex parte interviews with nonparty treating physicians have long been authorized by Florida statute in the workers' compensation arena. See § 440.13(4)(c), Fla. Stat. (2017). As with the amendments at issue in this case, the workers' compensation ex parte interviews are limited by a relevance standard. Id. The First District long ago rejected a constitutional privacy challenge to the ex parte provisions of the workers' compensation statute. See S & A Plumbing v. Kimes, 756 So.2d 1037, 1042 (Fla. 1st DCA 2000). There is no evidence to suggest that nonparty treating health care providers in the workers' compensation arena have had difficulty limiting their ex parte interviews to relevant medical information—and such ex parte interviews have been taking place for decades. And yet the majority here assumes the opposite result in the medical malpractice context and then bases its constitutional analysis on that speculative assumption. In doing so, the majority seeks to distinguish Kimes and workers' compensation cases, but the majority's reasoning is difficult to reconcile with its holding in this case.

For example, the majority observes that "[t]he workers' compensation system is clearly intended to be self-executing, with the resort to adversarial proceedings being undertaken only as a last recourse to resolve intractable disputes." Majority op. at 1137(quoting Kimes, 756 So.2d at 1041). The majority later reiterates that the workers' compensation system is designed to resolve claims "without resort to a system of litigation." Majority op. at 1137(quoting Kimes, 756 So.2d at 1042). And the majority distinguishes "medical malpractice and wrongful **death** actions" on the basis that those actions "are completely adversarial and traditional actions at law resolved in the judicial branch by Article V courts." Majority op. at 1137. But the majority's argument is flawed in at least two respects. First, implicit in the majority's argument is the premise that workers' compensation cases only become "adversarial" once a dispute becomes "intractable." Majority op. at 1137. Such a premise overlooks "the practical realities," majority op. at 1135, of workplace injury cases and the nature of the competing interests involved in those cases. Indeed, such a premise cannot be reconciled with the facts of Kimes itself, in which the disputed ex parte meeting took place after Kimes' request for authorization for ankle surgery had been denied and after Kimes had filed his claim. See Kimes, 756 So.2d at 1038–39, 1041. Second, the majority's argument overlooks that the ex parte amendments at issue involve a medical malpractice presuit process which this Court has described as being "intended to promote the settlement of meritorious claims at an early stage without the necessity of a full adversarial proceeding." Williams v. Campagnulo, 588 So.2d 982, 983 (Fla. 1991) (emphasis added). Thus, ex parte interviews with nonparty treating physicians are designed to accomplish the same underlying purpose in both instances—that is, to avoid adversarial proceedings.

The majority further attempts to distinguish Kimes by concluding "that the only medical professional to be interviewed was explicitly hired for purposes of workers' compensation to evaluate the causal connection between the work performed and the injury." Majority op. at 1138. The majority's conclusion is problematic in at least three respects. First, in reaching its conclusion, the majority misreads Kimes and oversimplifies the workers' compensation process. As is clear from Kimes, the disputed ex parte interview took place "between Kimes' treating physician and representatives of the employer/carrier's attorney." Kimes, 756 So.2d at 1038 (emphasis ***1145** added). The fact that the employer/carrier in workers' compensation cases generally selects the treating physician does **not** alter the fact that the medical professional at issue was Kimes' treating physician. A physician who treats an alleged workplace injury is no less of a "treating physician" than a physician who treats an alleged medical malpractice injury. Second, it appears the majority's conclusion is based on the assumption that the medical professional in Kimes was somehow **not** in possession of irrelevant protected information. But naturally, any treating physician will obtain information from the patient regarding the patient's medical history and conditions, as well as other information—that is, protected information that may or may **not** be relevant

to establishing a "causal connection between the work performed and the injury." Majority op. at 1138. That, of course, explains why the Legislature limited the workers' compensation ex parte meetings by a relevance standard—just as the Legislature did with the 2013 amendments at issue. Third, as to the majority's suggestion that the ex parte meeting in Kimes was harmless because it was designed to assist in establishing a "causal connection" to the injury, majority op. at 1138, the majority overlooks that the purpose of the medical malpractice presuit process is very much the same—that is, to help defendants and their insurers determine causation and resolve claims. See Cohen v. Dauphinee, 739 So.2d 68, 71 (Fla. 1999) ("[T]he prevailing policy of this state relative to medical malpractice actions is to encourage the early settlement of meritorious claims and to screen out frivolous claims.").

The majority also observes that "the Kimes court even noted that the moment a workers' compensation claim becomes sufficiently adversarial by appointment of an expert medical advisor, ex parte conferences are no longer permissible." Majority op. at 1137 n.6 (citing Kimes, 756 So.2d at 1041 (citing Pierre v. Handi Van, Inc., 717 So.2d 1115, 1117 (Fla. 1st DCA 1998))). But Pierre clearly noted that once an expert medical advisor is appointed, "ex parte discussions with such experts are **not** appropriate." Pierre, 717 So.2d at 1117 (emphasis added). And Pierre went on to note that such meetings were prohibited by "either party." Id. Nothing about this conclusion by Pierre supports the majority's decision here. Again, the amendments at issue contemplate ex parte interviews with nonparty treating physicians—the same fact witnesses to whom the plaintiff already has ex parte access. [13]

Finally, after analyzing Kimes, the majority concludes "that there was no threat of irrelevant information being disclosed in Kimes." Majority op. at 1138 (emphasis added). The majority reaches this conclusion despite the fact that the parties' interests in Kimes were clearly adverse to one another, despite the fact that treating physicians in workers' compensation cases are generally selected **not** by the injured employee but rather by the employer/carrier, and despite the fact that the treating physician in Kimes—just like any other treating physician—undoubtedly possessed irrelevant protected medical information. The majority's reading of Kimes cannot be reconciled with the majority's conclusion and reasoning in the instant case.

In the end, the majority's attempts to distinguish Kimes and workers' compensation cases are logically flawed. And the majority cannot explain why treating physicians—for decades—have had little difficulty ***1146** adhering to a relevance standard in workers' compensation ex parte interviews and why those same medical professionals are unable to do so in medical malpractice ex parte interviews.

C. This Court's Ex–Parte–Interview Jurisprudence

The majority's decision is also difficult to reconcile with the fact that this Court has repeatedly addressed the issue of ex parte interviews of nonparty treating physicians in medical malpractice cases and recognized that the underlying **confidentiality** rights were created by the Legislature. Although the referenced cases did **not** address constitutional challenges to ex parte meetings and are therefore **not** controlling here, the case law helps to illustrate the overreach by the majority. Despite the majority's claim to the contrary, a "proper[ ] and full[ ] analy[sis]" of these cases does **not** support the majority's holding and conclusions. Majority op. at 1135 (emphasis omitted).

In 1984, this Court squarely rejected a medical malpractice plaintiff's attempt to prohibit an ex parte meeting between the defendant health care provider and the plaintiff's treating physician. See Coralluzzo v. Fass, 450 So.2d 858, 859 (Fla. 1984). In doing so, Coralluzzo recognized that there was no such thing as physician/patient **confidentiality** under Florida law at that time. Id. at 859. And Coralluzzo expressly concluded that there was "no reason in law or in equity to" find for the plaintiff and that "[n]o law, statutory or common, prohibits—even by implication—respondents' actions." Id. (emphasis added). In other words, there was nothing to prevent the ex parte interview with the nonparty treating physician in the absence of legislative protections.

The majority describes this dissent's depiction of Coralluzzo as "disturbing" and believes that the absence of a constitutional challenge in Coralluzzo renders this dissent's summary of Coralluzzo "ill-founded." Majority op. at 1135. But the majority misses the point. As an initial matter, the reason there was no constitutional challenge in Coralluzzo is because there was no State action involved—there was no statute to even be challenged. Thus, Coralluzzo concluded that the ex parte meetings were permitted because the Legislature had **not** acted to prohibit them. In other words, the ex parte meetings could only be prevented by State action. Moreover, as explained below, the majority overlooks that this dissent's depiction of Coralluzzo is entirely consistent

with how this Court itself has unanimously described Coralluzzo. See Acosta v. Richter, 671 So.2d 149, 150 (Fla. 1996) (noting that Coralluzzo held that "there was no legal impediment to [the] ex parte conversations" (emphasis added)).

In 1988, the Legislature responded to Coralluzzo by creating a broad physician/patient **confidentiality** privilege —a privilege that previously did **not** exist under Florida law. See ch. 88–208, § 2, at 1194–96, Laws of Fla. That new statutory privilege also carried with it, among other things, a limited exception for medical malpractice actions. Id.

Subsequent to the Legislature's 1988 statutory amendments, this Court has twice revisited the issue of ex parte meetings with nonparty treating physicians in medical malpractice cases, both times striking down the ex parte meetings on the specific grounds that they were precluded by the 1988 statutory amendments. See Hasan v. Garvar, 108 So.3d 570, 578 (Fla. 2012); Acosta, 671 So.2d at 156. As with Coralluzzo, neither Hasan nor Acosta supports the conclusion that the Legislature acted unconstitutionally here.

In Acosta, this Court began by recognizing that the issue presented "ha[d] its genesis in Coralluzzo." ***1147** Acosta, 671 So.2d at 150. In assessing that previous decision, Acosta unanimously explained that Coralluzzo stood for the proposition that "there was no legal impediment to ex parte conversations between a patient's treating doctors and the defendants or their representatives." Id. (emphasis added). Thus, this Court in Acosta summarized Coralluzzo in the exact same manner that the majority here finds to be "disturbing." See majority op. at 1135. Acosta then went on to examine the Legislature's 1988 statutory amendments and ultimately concluded that those amendments provided the previously missing "legal impediment," Acosta, 671 So.2d at 150, to prevent medical malpractice defendants from conducting ex parte meetings with plaintiffs' treating physicians. Specifically, Acosta recognized that the Legislature had "create[d] a physician-patient privilege where none existed before" and had "provide[d] an explicit but limited scheme for the disclosure of personal medical information." Id. at 154. Acosta went on to reject the proposed ex parte conferences because they did **not** fall within the statute's narrow "medical negligence" exception. Id. at 156.[14] In other words, Acosta recognized that the Legislature had broadly protected a patient's medical information and that the Legislature had created "a strict scheme for limited disclosure" which did **not** include a specific exception for the disclosure of protected information during ex parte conferences with treating physicians. Id. In reaching its holding, Acosta noted that "the legislature has considerable latitude in providing Florida citizens with a high degree of privacy in their medical information." Id.

Similarly, Hasan—which was decided in 2012, shortly before the 2013 statutory amendments at issue in this case—noted that the 1988 statutory amendments "broadened the statutory protections for physician-patient **confidentiality**." Hasan, 108 So.3d at 573. And Hasan similarly rejected the ex parte meeting because it did **not** fall within the statute's "limited, defined exceptions." Id. at 578. Thus, Acosta and Hasan both recognized that the Legislature had closed the door on ex parte interviews through the 1988 statutory amendments.

Despite the clear import of these cases, the majority concludes that the cases "actually support" the majority's decision in this case. Majority op. at 1136. Moreover, the majority asserts that this dissent has "selective[ly] reference[d]" the cases and "ignore[d]" those portions which support the majority's decision. Majority op. at 1136. On the contrary, these cases offer no support to the conclusion that the Legislature is powerless to reauthorize these ex parte meetings. For example, the majority points to certain language from Acosta, which was later reiterated in Hasan, in which this Court rejected the idea of permitting ex parte conferences with treating physicians "so long as the physicians are **not** required to say anything." Majority op. at 1136 (quoting Hasan, 108 So.3d at 578 (quoting Acosta, 671 So.2d at 156)). The majority accurately notes that in rejecting that idea, Acosta concluded that "[w]e believe it is pure sophistry to suggest that the purpose and spirit of the statute would **not** be violated by such conferences." Majority op. at 1136-37 (quoting Hasan, 108 So.3d at 578 (quoting ***1148** Acosta, 671 So.2d at 156)). But this quote from Acosta does **not** support the majority's decision here. As is clear from the plain text of the quote, Acosta rejected such sham meetings because they would violate "the purpose and spirit of the statute." Acosta, 671 So.2d at 156 (emphasis added). Again, it was the statute which protected the information, the statute which established the "strict scheme for limited disclosure," id., and the statute which did **not** include an express exception for the disclosure of protected information during ex parte meetings with treating physicians. Thus, Acosta merely recognized the obvious—that it would have been "pure sophistry," id., to permit such sham meetings, given that the statute did **not** permit the discussion of any protected information at such meetings, **not** even relevant information. Here, the

Legislature expressly amended the legislatively created "strict scheme for limited disclosure," id., so as to specifically allow for the discussion of relevant information at ex parte meetings. The quote from Acosta, when properly analyzed, does **not** support the majority's holding. The same is true when Acosta and the other referenced cases are properly analyzed in their entirety.

Lastly, in both its general analysis and its attempt to read the referenced case law to support its holding in this case, the majority repeatedly references "strict scrutiny," "less invasive manner," and "least intrusive means." Majority op. at 1135, 1136, 1137. And the majority asserts that this dissent instead "advances the most invasive clandestine secret interrogations as a method to deal with the fundamental constitutional right of our citizens." Majority op. at 1135. But the majority again misses the point. The issue here is straightforward: whether the Legislature is permitted to once again place medical malpractice defendants on equal footing with plaintiffs with respect to access to an important fact witness. There is no "less restrictive" way to put the defendant on equal footing other than to allow ex parte access by the defendant—the plaintiff, of course, already has ex parte access to that fact witness. Thus, the basic question is whether the Legislature may, in fact, place the defendant on equal footing. This Court's case law, beginning with Coralluzzo, recognizes that prior to the Legislature's 1988 statutory amendments, medical malpractice defendants had equal ex parte access to nonparty treating physicians. Thus, it stands to reason that the Legislature should very well be able to restore the equal access that the Legislature itself took away, so long as it does so in a HIPAA–compliant manner. The majority instead concludes that the Legislature has no business doing so. I respectfully disagree with the majority's analysis and conclusion. [15]

D. Conclusion

To sum up, the majority here holds it unconstitutional for the Legislature to now authorize optional ex parte meetings which are limited by a relevance standard—even though the Legislature is the same independent branch of government that closed the door on ex parte meetings in the first place and no Florida case law has ever held that the constitutional right of privacy precludes the ex parte disclosure of information ***1149** bearing on a malpractice claim. On the contrary, the Legislature was well within its bounds to carve out a limited, HIPAA–compliant exception to a legislatively created right in order to attempt to place plaintiffs and defendants on a level playing field with respect to access to certain important nonparty fact witnesses. See, e.g., Callahan v. Bledsoe, No. 16-2310-JAR-GLR, 2017 WL 590254, at *1 (D. Kan. Feb. 14, 2017) ("[T]his District has a well-established practice of allowing informal ex parte interviews of Plaintiff's treating physicians who are merely fact witnesses as long as a defendant complies with HIPAA and its related regulations."); Arons v. Jutkowitz, 9 N.Y.3d 393, 850 N.Y.S.2d 345, 880 N.E.2d 831, 842 (2007) (finding that "there was no basis for" the plaintiffs to decline to sign "HIPAA–compliant authorizations permitting their treating physicians to discuss the medical condition at issue in the litigation with defense counsel," given that the plaintiffs had "**waived** the physician-patient privilege as to this information when they brought suit").

In short, medical malpractice claimants waive whatever constitutional privacy rights they may have in relevant medical information. Because the 2013 amendments do **not** in any way authorize the discussion of irrelevant medical information, medical malpractice claimants have no constitutional right to prevent the ex parte meetings. I would therefore affirm the district court's conclusion that the ex parte amendments do **not** violate the right to privacy. Consequently, I would **not** address the issue of whether a person's privacy rights survive **death**.

II. ACCESS TO COURTS

The district court properly rejected Weaver's argument that the 2013 ex parte amendments unconstitutionally burden the right to access the courts guaranteed by article I, section 21 of the Florida Constitution. In doing so, the district court examined this Court's decision in Kluger v. White, 281 So.2d 1 (Fla. 1973), and concluded that the amendments did **not** "abolish[ ], eliminate[ ], or severely limit[ ] a substantive right to redress of a specific injury." Weaver, 170 So.3d at 882 (emphasis omitted). The district court then examined this Court's decision in Warren v. State Farm Mutual Automobile Insurance Co., 899 So.2d 1090 (Fla. 2005), and concluded that the amendments authorizing the ex parte interviews were "a reasonable condition precedent to filing suit." Weaver, 170 So.3d at 882. The district court also observed that the predecessor statute to section 766.106—setting forth the original presuit notice and screening requirements—has previously been upheld against an access to courts challenge. Id. (citing Lindberg v. Hosp. Corp. of Am., 545 So.2d 1384,

1386 (Fla. 4th DCA 1989), approved, 571 So.2d 446 (Fla. 1990)).

The majority here instead holds that the amendments violate the right of access to courts under the unconstitutional conditions doctrine. See majority op. at 1139. Specifically, the majority finds that the amendments "require Weaver to forfeit the constitutional right to privacy and expose her late husband's medical and other information (and potentially hers) ... regardless of its relevance to her claim to prying lawyers, insurance companies, experts, and doctors to probe, as a condition to filing a wrongful **death** action." Majority op. at 1140. But the ex parte amendments require no such "forfeit[ure]."

As an initial matter, the majority itself recognizes that any constitutional privacy rights with respect to relevant information are **waived** by plaintiffs in medical malpractice actions. See majority op. at 1132. In other words, the ex parte amendments do **not** establish a plaintiff's waiver of any constitutional privacy rights in relevant information —instead, that waiver is accomplished by the plaintiff's own action in ***1150** pursuing a malpractice claim. Thus, the majority's conclusion rests solely on the notion that the amendments "require" plaintiffs to waive their privacy rights in irrelevant information in order to obtain access to courts. But as noted above, nothing in the 2013 amendments authorizes the discussion of irrelevant medical information. Because the ex parte amendments do **not** "require" a waiver or forfeiture of any privacy rights that are **not** already **waived** by the plaintiff's own action in pursuing a malpractice claim, the amendments cannot be said to unconstitutionally condition a plaintiff's right of access to courts on the waiver of the right to privacy.

This Court has repeatedly recognized the legitimacy of the medical malpractice presuit process. See, e.g., Cohen, 739 So.2d at 71–72 ("[T]he prevailing policy of this state relative to medical malpractice actions is to encourage the early settlement of meritorious claims and to screen out frivolous claims.... This policy is best served by the free and open exchange of information during the presuit screening process."); Kukral v. Mekras, 679 So.2d 278, 284 (Fla. 1996) (recognizing "the legislative policy of requiring the parties to engage in meaningful presuit investigation, discovery and negotiations" and "screening out frivolous lawsuits and defenses"); Weinstock v. Groth, 629 So.2d 835, 838 (Fla. 1993) ("[T]he purpose of the chapter 766 presuit requirements is to alleviate the high cost of medical negligence claims through early determination and prompt resolution of claims ...."); Williams, 588 So.2d at 983 (noting the "legitimate legislative policy" of "promot[ing] the settlement of meritorious claims at an early stage without the necessity of a full adversarial proceeding"). The 2013 ex parte amendments simply add to that legitimate presuit process by "impos[ing] a reasonable condition precedent to filing a [medical malpractice] claim." Warren, 899 So.2d at 1097. Accordingly, I would affirm the district court's conclusion that the amendments do **not** violate the right of access to courts.

III. SEPARATION OF POWERS

The district court rejected Weaver's argument that the 2013 amendments unconstitutionally encroach on this Court's rulemaking authority under article V, section 2(a) of the Florida Constitution. Weaver, 170 So.3d at 880. Specifically, Weaver alleged that the ex parte amendments constitute "a procedural change which impermissibly conflicts with the limitations on informal discovery methods as outlined by Florida Rule of Civil Procedure 1.650." Id. at 878. In rejecting Weaver's argument, the district court correctly concluded that the amendments do **not** conflict with rule 1.650 and "are integral to other substantive portions of the statute." *Id.* at 880.

Rule 1.650 specifically addresses section 766.106, Florida Statutes, and the medical malpractice presuit notice and screening process. Among other things, the rule sets forth the following three types of informal presuit discovery, along with the procedures for conducting same: unsworn statements by parties, production of documents or things, and physical examinations. Fla. R. Civ. P. 1.650(c)(1)-(2). As the district court aptly noted, rule 1.650 was adopted by this Court in 1988 shortly after the enactment of chapter 88–277, § 48, Laws of Florida, in which the Legislature amended the then-existing presuit statute to provide for those same three specific methods of informal presuit discovery.[16] ***1151** Weaver, 170 So.3d at 879–80 (citing ch. 88–277, § 48, at 1494, Laws of Fla.); see also In re Med. Malpractice Presuit Screening Rules —Civil Rules of Procedure, 536 So.2d 193, 193 (Fla. 1988). The ex parte amendments at issue do **not** conflict with rule 1.650. And in any event, that procedural rule does **not** operate to prevent the Legislature from making substantive changes to the medical malpractice presuit process, which is exactly what the Legislature did through the ex parte amendments. See Kuhajda v. Borden Dairy Co. of Ala., LLC., 202 So.3d 391, 396 (Fla. 2016) ("A procedural rule should **not** be strictly construed to defeat a statute it is designed to implement.");

Benyard v. Wainwright, 322 So.2d 473, 475 (Fla. 1975) ("[T]he statute must prevail over our rule because the subject is substantive law.").

This Court has defined substantive law "as that part of the law which creates, defines, and regulates rights, or that part of the law which courts are established to administer." Haven Fed. Sav. & Loan Ass'n v. Kirian, 579 So.2d 730, 732 (Fla. 1991). On the other hand, "[p]rocedural law concerns the means and method to apply and enforce those duties and rights." Benyard, 322 So.2d at 475. This Court has recognized that situations arise in which statutes may contain both substantive and procedural aspects:

> Of course, statutes at times may **not** appear to fall exclusively into either a procedural or substantive classification. We have held that where a statute contains some procedural aspects, but those provisions are so intimately intertwined with the substantive rights created by the statute, that statute will **not** impermissibly intrude on the practice and procedure of the courts in a constitutional sense, causing a constitutional challenge to fail. See Caple v. Tuttle's Design–Build, Inc., 753 So.2d 49, 54 (Fla. 2000); see also State v. Raymond, 906 So.2d 1045, 1049 (Fla. 2005). If a statute is clearly substantive and "operates in an area of legitimate legislative concern," this Court will **not** hold that it constitutes an unconstitutional encroachment on the judicial branch. Caple, 753 So.2d at 53 (quoting VanBibber v. Hartford Accident & Indem. Ins. Co., 439 So.2d 880, 883 (Fla. 1983)).

Massey v. David, 979 So.2d 931, 937 (Fla. 2008).

Here, the amendments are "clearly substantive and 'operate[ ] in an area of legitimate legislative concern.' " Id. (quoting Caple, 753 So.2d at 53). And any procedural aspects are merely incidental. Id. As explained above, this Court has concluded that prior to the 1988 statutory amendments, defendants had the right to attempt to meet with plaintiffs' nonparty treating physicians on an ex parte basis. See Coralluzzo, 450 So.2d at 859. And in the wake of the 1988 statutory amendments, this Court has twice recognized that the Legislature closed the door on those ex parte meetings by creating a broad physician/patient **confidentiality** privilege with only certain limited exceptions. See Hasan, 108 So.3d at 576–77; Acosta, 671 So.2d at 154. The ex parte amendments at issue thus "regulate," Kirian, 579 So.2d at 732, legislatively created rights by once again allowing for ex parte meetings—but only under certain circumstances and conditions. And the amendments do so in a medical malpractice area that this Court has recognized involves "legitimate legislative policy." Williams, 588 So.2d at 983.

As the district court recognized, this Court previously rejected the argument that the medical malpractice presuit notice requirement violates the separation of powers. Weaver, 170 So.3d at 878–79 (citing Williams, 588 So.2d at 983). Williams, ***1152** which involved the original medical malpractice presuit notice and reasonable investigation statute enacted in 1985, examined the overall presuit process, noting that "[t]he statute ... established a process intended to promote the settlement of meritorious claims at an early stage without the necessity of a full adversarial proceeding." Williams, 588 So.2d at 983. And Williams concluded "that the statute is primarily substantive and that it has been procedurally implemented by our rule 1.650, Florida Rules of Civil Procedure." Id. Nothing in Williams supports the opposite conclusion here—that is, that the ex parte amendments are procedural.

I would affirm the district court's conclusion that the ex parte amendments do **not** unconstitutionally encroach on this Court's rulemaking authority.

IV. SPECIAL LAW

The district court rejected Weaver's argument that the 2013 amendments constitute a prohibited special law in violation of article III, section 11 of the Florida Constitution. In doing so, the district court examined the two factors set forth by this Court in Biscayne Kennel Club, Inc. v. Florida State Racing Commission, 165 So.2d 762, 763–64 (Fla. 1964), for determining whether a law that operates through a classification system is a valid general law. Weaver, 170 So.3d at 881. The district court concluded that the ex parte amendments met those two criteria and thus constituted a valid general law. Id. The district court also rejected Weaver's argument that this Court's plurality decision in Estate of McCall v. United States, 134 So.3d 894 (Fla. 2014), compels the conclusion "that medical malpractice plaintiffs now may **not** be treated differently from other plaintiffs because no medical malpractice crisis exists." Weaver, 170 So.3d at 881. I would affirm the district court's conclusion that the 2013 amendments are a valid general law.

Article III, section 11(a) of the Florida Constitution prohibits special laws or general laws of local application pertaining to certain subjects, including "rules of evidence in any court"

and "conditions precedent to bringing any civil or criminal proceedings." Art. III, §§ 11(a)(3), (a)(7), Fla. Const.

This Court has explained that "a special law is one relating to, or designed to operate upon, particular persons or things, or one that purports to operate upon classified persons or things when classification is **not** permissible or the classification adopted is illegal." Dep't of Bus. Reg. v. Classic Mile, Inc., 541 So.2d 1155, 1157 (Fla. 1989) (quoting State ex rel. Landis v. Harris, 120 Fla. 555, 163 So. 237, 240 (1934)).

On the other hand, a law is general if "it operates uniformly upon subjects as they may exist in the state, applies uniformly within permissible classifications, operates universally throughout the state or so long as it relates to a state function or instrumentality." Dep't of Legal Affairs v. Sanford–Orlando Kennel Club, Inc., 434 So.2d 879, 881 (Fla. 1983). "A general law operates uniformly, **not** because it operates upon every person in the state, but because every person brought under the law is affected by it in a uniform fashion." Id.

Here, the ex parte amendments involve a legislative classification—medical malpractice claimants and defendants. Thus, the following two factors determine whether that classification is valid: (1) whether the class is "open to others who may enter it"; and (2) whether there is "a rational distinction between those in the class and those outside it, when the purpose of the legislation and the subject of the regulation are considered." Biscayne Kennel Club, 165 So.2d at 764.

The first Biscayne Kennel Club prong is undoubtedly met—the class here is **not** ***1153** closed but rather is "open" to all future parties to medical malpractice actions. Thus, the only question is whether there is "a rational distinction between those in the class and those outside it, when the purpose of the legislation and the subject of the regulation are considered." Id. The district court correctly concluded that there is such a rational distinction. The ex parte amendments are consistent with decades of precedent finding that it is appropriate to treat medical malpractice claimants and defendants differently than other personal injury claimants and defendants. Medical malpractice is an area that has been historically regulated by the Legislature with the goal of "ensuring the availability of adequate medical care." Weaver, 170 So.3d at 881.

Weaver argues that the ex parte amendments impermissibly treat medical malpractice claimants differently and less favorably than all other personal injury claimants. Weaver also takes issue with the district court's dismissal of McCall. Specifically, Weaver argues that because the McCall plurality found that no medical malpractice insurance crisis currently exists, it was error for the district court below to justify the ex parte amendments by relying on "a decades-old finding" by the Legislature that a medical malpractice crisis existed at the time the presuit process was originally enacted. Weaver's arguments are **not** persuasive.

As an initial matter, McCall has no application to this case. McCall involved an equal protection challenge to statutory caps on noneconomic damages and had nothing to do with the issue of prohibited special laws. McCall, 134 So.3d at 897. Moreover, any suggestion that a medical malpractice "crisis" must, in fact, exist as a prerequisite for permissible legislative classifications involving medical malpractice parties is unwarranted. A special law inquiry does **not** involve this Court acting as a super-legislative body to review the Legislature's policy decisions. Instead, as it relates to the second Biscayne Kennel Club prong, the appropriate inquiry is whether there is "a rational distinction between those in the class and those outside it, when the purpose of the legislation and the subject of the regulation are considered." Biscayne Kennel Club, 165 So.2d at 764 (emphasis added).

As to the "subject of the regulation," id., chapter 766, Florida Statutes, is entitled "Medical Malpractice and Related Matters." Because the subject being regulated is medical malpractice matters—and **not** all personal injury tort matters, including those unrelated to medical malpractice—it obviously makes sense that the ex parte amendments classify medical malpractice claimants and defendants differently than other personal injury claimants and defendants.

As to the "purpose of the legislation," Biscayne Kennel Club, 165 So.2d at 764, the district court noted that the presuit notice and investigation statutes "were originally enacted by the Legislature to combat the financial crisis in the medical liability insurance industry by encouraging early settlement and negotiation of claims." Weaver, 170 So.3d at 881 (citing Univ. of Miami v. Echarte, 618 So.2d 189, 191–92 (Fla. 1993)). In the years since that original enactment, this Court has described the purpose of the presuit process in general terms. Namely, the purpose is to attempt to control "the high cost of medical negligence claims through early determination and prompt resolution of claims," Weinstock, 629 So.2d at 838, and "promot[ing] the settlement of meritorious claims at an early stage without the necessity

of a full adversarial proceeding," Williams, 588 So.2d at 983. "Indeed, the prevailing policy of this state relative to medical malpractice actions is to encourage ***1154** the early settlement of meritorious claims." Cohen, 739 So.2d at 71. And the best way to accomplish that "prevailing policy" is through "the free and open exchange of information during the presuit screening process," id. at 72, and by "requiring the parties to engage in meaningful presuit investigation, discovery and negotiations," Kukral, 679 So.2d at 284. Providing both sides in a medical malpractice suit with the same pretrial access (potentially) to important nonparty fact witnesses is undoubtedly rationally related to the Legislature's interest in promoting early settlement and attempting to keep costs down in order to help make Florida an attractive place for doctors to practice. In other words, the legislative classification here between parties to medical malpractice claims and parties to other personal injury tort claims is rational when considering "the purpose of the legislation." Biscayne Kennel Club, 165 So.2d at 764.

This Court recently explained the burden on a party challenging a legislative classification:

> This Court has held that the law must be upheld unless the Legislature could **not** have any reasonable ground for believing that there were public considerations justifying the particular classification and distinction made. North Ridge Gen. Hosp., Inc. v. City of Oakland Park, 374 So.2d 461, 465 (Fla. 1979). Further, this Court has held that "one who assails the classification has the burden of showing that it is arbitrary and unreasonable." Id. at 465. The appellees have **not** met this burden.

License Acquisitions, LLC v. Debary Real Estate Holdings, LLC, 155 So.3d 1137, 1149 (Fla. 2014). The issue here is **not** whether a medical malpractice "crisis" exists, but rather whether Weaver has shown that "the Legislature could **not** have had any reasonable ground for believing that there were public considerations justifying the particular classification and distinction made." North Ridge Gen. Hosp., 374 So.2d at 465 (emphasis added). And Weaver does **not** come close to meeting this burden.

V. CONCLUSION

For the reasons explained above, I would affirm the First District's decision in Weaver. The ex parte amendments do **not** violate the right to privacy or the right of access to courts protected by the Florida Constitution. And the ex parte amendments do **not** unconstitutionally encroach on this Court's rulemaking authority or constitute a prohibited special law. I dissent.

POLSTON and LAWSON, JJ., concur.

All Citations

229 So.3d 1118, 42 Fla. L. Weekly S906

Footnotes

1 An amicus brief by the Florida Justice Association has been filed in support of Weaver. Amicus briefs by the State of Florida, the Florida Justice Reform Institute, and the Florida Hospital Association/Florida Medical Association/American Medical Association have been filed in support of Dr. Myers.

2 In a related context, application of existing limits and exemptions to access to information by the public bolsters this conclusion. For instance, in the context of the federal Freedom of Information Act, the families of deceased astronauts from the Challenger space shuttle explosion were allowed to claim an exemption for "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." New York Times Co. v. Nat'l Aeronautics & Space Admin., 782 F.Supp. 628, 630 (D.D.C. 1991). In another context, it is well-established law that the right to privacy survives **death**. Florida recognizes both a statutory and common law right of publicity. § 540.08, Fla. Stat. (2016); see, e.g., Cason v. Baskin, 155 Fla. 198, 20 So.2d 243, 245 (Fla. 1944). The right of publicity is a corollary right derived from the right to privacy that allows a person to control the use of his or her name and likeness. Section 540.08, Florida Statutes, authorizes the surviving spouse of a decedent to enforce the decedent's publicity rights for up to forty years. See § 540.08(1), (5)-(7). Thus, it is clear that the right to privacy survives a person's **death**, is **not** retroactively destroyed by **death**, and remains enforceable in tort law by the decedent's family members for decades.

3 Moreover, even in this distinct context, the Williams court recognized that there are certain exceptions in which a decedent's next of kin may properly bring an action for invasion of privacy. 575 So.2d at 689.

4 Dr. Myers contends that he is **not** a government actor, and therefore, the right to privacy challenge fails. However, this Court has previously considered challenges to statutes on the basis that they violate the right to privacy where

both parties to the action are private individuals, but one party benefits from operation of the statute. See, e.g., D.M.T. v. T.M.H., 129 So.3d 320, 330 (Fla. 2013) (donor filed petition to establish parental rights and sought declaration of constitutional invalidity of assisted reproductive technology statute); Von Eiff v. Azicri, 720 So.2d 510, 511–12 (Fla. 1998) (parents challenged statute which provided grandparents with a freestanding cause of action for visitation rights with minor grandchildren); Beagle v. Beagle, 678 So.2d 1271, 1273 (Fla. 1996) (parents contested grandparents' petition for visitation rights with grandchild that was authorized pursuant to statute).

5 Further, although **not** at issue here, requiring potential claimants to list by name health care providers who do **not** have information potentially relevant to the claim, and provide dates of service, see § 766.1065(3)C., in and of itself reveals irrelevant private medical information. For example, if a claimant seeks to file an action based upon alleged malpractice by a podiatrist, the authorization requires him to report if he was seen by a health care provider who specializes in treating HIV, or sexual dysfunction, or depression, or substance abuse. This goes beyond the scope of the claim and intrudes upon a person's right to keep private medical information that has **not** been placed at issue by virtue of the action. However, again, this is **not** at issue here and must also be weighed against the limiting intent behind the requirement.

6 Further supporting our holding today, the Kimes court even noted that the moment a workers' compensation claim becomes sufficiently adversarial by appointment of an expert medical advisor, ex parte conferences are no longer permissible. See Kimes, 756 So.2d at 1041 (citing Pierre v. Handi Van, Inc., 717 So.2d 1115, 1117 (Fla. 1st DCA 1998)). Pierre even noted the impropriety that would flow from ex parte discussions once a matter becomes adversarial:

> Once disputes have arisen and ripened, however, requiring the assistance of [expert medical advisors], the case has become indisputably adversarial so that ex parte discussions with such experts are **not** appropriate ... and the experts so chosen should **not** be subject to even the "appearance of impropriety," which would result from private meetings with either party.

717 So.2d at 1117.

7 Weaver also raised a challenge based on her own right to privacy on the theory that her husband potentially revealed information about her and her medical history during the course of his medical care. In light of our holding today, however, we need **not** address this claim.

8 Dr. Myers contends that the impediment at issue is merely the procedural act of filling out and executing the authorization, which in turn is **not** a significant infringement. Indeed, we have previously upheld conditions precedent to filing a legal action so long as the condition is **not** "significantly difficult" to surmount. For example, in Warren v. State Farm Mutual Automobile Insurance Co., 899 So.2d 1090, 1092 (Fla. 2005), the challenged statute required providers of non-emergency medical services and medical services **not** provided in a hospital to submit a statement of charges to insurers within thirty days of service or be subject to automatic claim denial. This Court held that the statute did **not** violate access to courts because it did **not** abolish the rights of medical providers to file claims for certain insurance benefits and was a reasonable condition precedent to filing such claims. Id. at 1097.

However, viewing the amendments merely in terms of filling out an authorization is a superficial way to perceive and ignore their effect. As we have made clear, this is **not** about paperwork, but privacy.

9 In light of our holding today, we need **not** reach Weaver's other contentions that the 2013 amendments violated separation of powers and the prohibition against special laws under the Florida Constitution.

10 The Legislature first enacted a medical malpractice presuit notice and reasonable investigation requirement in 1985. See ch. 85–175, §§ 12, 14, at 1196–97, 1199–1202, Laws of Fla. In 1988, the Legislature amended the presuit process by imposing a mandatory "presuit investigation" requirement and outlining the permissible "informal discovery" to be used by the parties. See ch. 88–1, §§ 48–53, at 164–68, Laws of Fla.; ch. 88–277, § 48, at 1494–95, Laws of Fla.

11 Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104–191, 110 Stat. 1936 (1996).

12 The majority also offers no explanation for why a defendant would even be interested in obtaining protected information "that is totally irrelevant to the claim." Majority op. at 1133. Any such information would be inadmissible at trial and the discussion of such information would subject the interviewer and interviewee to potential liability and discipline. The majority instead references "the practical realities of today's litigation practice." Majority op. at 1135. But the majority then fails to identify a single "practical" use that would be served either by a defendant's attempt to obtain "totally irrelevant" protected information or by a medical professional's willingness to discuss such information. Instead, the referenced "practical realities" appear to relate to the majority's belief that attorneys "very often" act inappropriately. Majority op. at 1135. Such a belief, of course, should **not** guide the majority's constitutional analysis.

13 In Kimes, an expert medical advisor had **not** even been appointed at the time of the ex parte conference with the treating physician. See Kimes, 756 So.2d at 1041. And yet it can hardly be argued that the dispute in Kimes was **not** "adversarial."

14 The majority suggests that Acosta adopted a quote from Kirkland v. Middleton, 639 So.2d 1002, 1004 (Fla. 5th DCA 1994), which expressed a blanket concern about ex parte interviews and the complete lack of protection to Florida citizens from the disclosure of information "that is totally irrelevant to the claim." Majority op. at 1133-34. But Acosta quoted Kirkland simply to explain how the district court reached its decision in Kirkland. Acosta, 671 So.2d at 152–53.

15 The majority also makes reference to "the standard discovery procedures with notice and participation of all parties that are employed daily without issue in thousands of cases." Majority op. at 1138 (emphasis added). But the majority then fails to mention that in those "thousands of cases," plaintiffs and defendants alike are generally permitted to contact fact witnesses on an ex parte basis. Again, the only reason why post–1988 medical malpractice defendants have **not** had equal ex parte access to those fact witnesses who happen to be nonparty treating physicians is because the Legislature took away that equal access.

16 Rule 1.650 has **not** been updated to reflect other permissible methods of informal presuit discovery subsequently authorized by the Legislature, including the taking of unsworn statements from a claimant's treating health care providers and the submission of written questions. See, e.g., ch. 2003–416, § 49, at 65–66, Laws of Fla.

End of Document

451 So.2d 491
District Court of Appeal of Florida,
Third District.

Glenda YESTE, individually, and as Personal Representative of the estate of Dixon Yeste, M.D., and John Darren Yeste and Michael Scott Yeste, by and through their natural guardian, mother and next friend, Glenda Yeste, Appellants,
v.
The MIAMI HERALD PUBLISHING COMPANY, A DIVISION OF KNIGHT-RIDDER NEWSPAPERS, INC., a Florida corporation, and Steven Sternberg, Appellees.

No. 83–2006
|
April 10, 1984.
|
Rehearing Denied June 19, 1984.

Synopsis

Newspaper and reporter sought writ of mandamus requiring public officials to authorize inspection of medical certification portion of death certificate, and decedent's widow and decedent's two minor sons were permitted to intervene. The Circuit Court, Dade County, Edward S. Klein, J., issued peremptory writ of mandamus, and intervenors appealed. The District Court of Appeal, Hubbart, J., held that the portion of a death certificate which contains the medical certification of the cause of death is made confidential by statute and is therefore exempt from public inspection.

Reversed and remanded.

West Headnotes (6)

[1] **Records** Matters Subject to Disclosure; Exemptions

Portion of death certificate which contains medical certification of cause of death, and which according to statute must be deleted from any certified copy of death certificate unless applicant has "direct and tangible interest in the cause of death," is "confidential" within meaning of Public Records Act and is therefore exempt from public inspection and copying provisions of the Act. West's F.S.A. §§ 119.011(1), 119.07(1)(a, b), (3)(a), 382.35(4).

1 Cases that cite this headnote

[2] **Statutes** Purpose

Statutes Unintended or unreasonable results; absurdity

Court must give full effect to legislative purpose behind statute and avoid constructions which lead to absurd or unreasonable results.

2 Cases that cite this headnote

[3] **Records** Matters Subject to Disclosure; Exemptions

Purpose of making cause of death information confidential, in order to avoid public embarrassment to deceased's family, would be totally defeated if any member of general public could inspect and hand copy confidential portions of death certificate. West's F.S.A. §§ 119.011(1), 119.07(1)(a, b), (3)(a), 382.35(4).

1 Cases that cite this headnote

[4] **Statutes** Literal, precise, or strict meaning; letter of the law

Court must avoid literalistic reading of statute where that reading would defeat entire legislative purpose behind statute.

1 Cases that cite this headnote

[5] **Records** Persons entitled to disclosure; interest or purpose

Newspaper and reporter, which without dispute had no direct or tangible interest in cause of death, were not entitled to receive certified copy of death certificate that included cause of death portion or to inspect cause of death portion of certificate under Public Records Act. West's F.S.A. §§ 119.01 et seq., 119.07(1)(a), (3)(a), 382.35(4).

[6] **Constitutional Law** Access to, and publication of, public information or records

Newspaper did not have free press right of access to medical certification portion of death certificate. West's F.S.A. § 382.35(4).

Attorneys and Law Firms

***492** Robert J. Dickman, Fort Lauderdale, for appellants.

Thomson, Zeder, Bohrer, Werth, Adorno & Razook, Richard J. Ovelmen, Miami, for appellees.

Before BARKDULL, HUBBART and NESBITT, JJ.

Opinion

HUBBART, Judge.

The central question presented for review by this appeal is whether that portion of a death certificate which contains the medical certification of the cause of death is open for public inspection as a public record—or is exempt from such inspection—under the Florida Public Records Act [ch. 119, Fla.Stat. (1983)]. We hold that the above-stated portion of a death certificate is made confidential by Section 382.35(4), Florida Statutes (1983), and is therefore exempt under Section 119.07(3)(a), Florida Statutes (1983), from the public inspection and certified copying provisions of Section 119.07(1)(a), Florida Statutes (1983). We accordingly reverse the final order under review and remand the cause to the trial court with directions to deny the petition for a writ of mandamus filed herein.

On July 12, 1983, Dr. Dixon Yeste died leaving a surviving wife and two minor sons. On July 13, 1983, Dr. Barry Barker, the attending physician to Dr. Yeste during his last illness, filed a medical certification of the cause of death with the Florida Department of Health and Rehabilitative Services, Bureau of Vital Statistics [HRS]. This certificate, in turn, was incorporated into Dr. Yeste's official death certificate issued by HRS. On July 21, 1983, Steven Sternberg, a reporter for The Miami Herald, applied to the local office of HRS to ***493** inspect Dr. Yeste's death certificate. The request was granted except as to the medical certification of the cause of death. Thereafter, the petitioners, The Miami Herald Publishing Company and Steven Sternberg, applied to the trial court for a writ of mandamus requiring HRS and sundry other public entities and officials [1] to authorize the inspection of the medical certification portion of Dr. Yeste's death certificate. At that point, Dr. Yeste's widow, Glenda Yeste, individually and as personal representative of the estate of Dr. Yeste, and his two minor sons, John Darren Yeste and Michael Scott Yeste, were permitted to intervene in the action and oppose the issuance of the writ of mandamus. After receiving full responses from all parties, and on an undisputed set of facts as stated above, the trial court issued a peremptory writ of mandamus directing HRS and other sundry officials to permit the petitioners to inspect the medical certification portion of Dr. Yeste's death certificate. The intervenors appeal.

[1] Without dispute, a death certificate is a public record under Section 119.011(1), Florida Statutes (1983). Ordinarily, then, such a certificate would be subject to the public inspection and copying provisions of Section 119.07(1)(a), (b), Florida Statutes (1983). There is one exception, however, to these public inspection and copying provisions which is set forth in Section 119.07(3)(a), Florida Statutes (1983), as follows:

> *"All public records which are presently provided by law to be confidential* or which are prohibited from being inspected by the public, *whether by general or special law, are exempt from the provisions of subsection (1)."* (emphasis added)

Section 382.35(4), Florida Statutes (1983), in turn, provides as follows:

> "The State Registrar shall furnish a certified copy of all or part of any marriage, dissolution of marriage, or death certificate, *excluding that portion which contains the medical certification of cause of death,* recorded under the provisions of this chapter to any person requesting it upon payment of the fee prescribed by this section. A certified copy of the medical certification of cause of death shall be furnished only to persons having a direct and tangible interest in the cause of death, as provided by rules and regulations of the Department of Health and Rehabilitative Services." (emphasis added)

Under the above statute, the issuance of certified copies of a death certificate is permitted with one important exception. That portion of a death certificate which contains the medical certification of the cause of death must be deleted from any certified copy of a death certificate, unless the person

applying for same has "a direct and tangible interest in the cause of death." We conclude that this required deletion from certified copies of death certificates makes the deleted portion "confidential" within the meaning of Section 119.07(3)(a), Florida Statutes (1983), so as to exempt it from the public inspection and copying provisions of Section 119.07(1)(a), (b), Florida Statutes (1983).

[2] We reach this conclusion because we think the legislative purpose behind the statute [§ 382.35(4), Fla.Stat.(1983)] would be thwarted and an absurd or unreasonable result reached if we construed the statute any other way. We are, of course, constrained by law to give full effect to the legislative purpose behind a statute and to avoid constructions which lead to absurd or unreasonable results. *Foley v. State,* 50 So.2d 179, 184 (Fla.1951). The legislature, as stated above, has mandated that a certain portion of a death certificate [i.e., the medical certification of the cause of death] should be deleted from any certified copy of a death certificate which, by law, is made available to the general public. Only those persons who have "a direct or tangible interest in the cause of death" are ***494** authorized by the statute to receive a certified copy of the entire death certificate, including the medical certification of the cause of death. This legislative mandate, we think, is totally undone if any member of the general public may physically inspect and presumably *hand copy* the above deleted information. There is surely no point in deleting information from a certified copy of a death certificate if one may inspect and hand copy the deleted information in any event. Plainly, the legislature's purpose here was to make the deleted information confidential, except as to those persons having a direct and tangible interest in the cause of death.

[3] The underlying justification for making such cause of death information confidential seems obvious enough. The cause of death as stated in a death certificate represents sensitive and generally private information. If made public, this information could cause public embarrassment to the deceased's family, as, for example, where the deceased has died from an illegal drug overdose, by suicide, or from a socially distasteful disease such as venereal disease. Absent some direct or tangible interest in the deceased's cause of death, it was thought best to keep this portion of the death certificate confidential and deleted so as to spare the feelings of the deceased's family. Obviously, that purpose is totally defeated if any member of the general public may, as urged, inspect and hand copy the confidential portions of the death certificate.

In this connection, we reject The Miami Herald's contrary suggestion that an administrative cost-efficiency purpose lies behind the legislative decision to delete the cause of death information from certified copies of death certificates because otherwise "the administrative burden of providing a multitude of certified copies of cause of death papers could prove overwhelming." [appellee's brief at 17] The short answer to this argument is that the statute does not prohibit the issuance of certified copies of death certificates; indeed, the statute expressly provides for the issuance of same with one above-stated deletion. Administratively accomplishing this deletion from certified copies already made available to the public obviously does not save time or money. On the contrary, it creates an increased administrative burden for governmental officials. The legislative purpose, then, in requiring this deletion could not have been to save time or money. Plainly, its purpose was to make the deleted portion of the death certificate confidential.

[4] In reaching this result, we do not overlook two contrary considerations. First, we agree with the trial court that Section 382.35(4), Florida Statutes (1983), does not expressly preclude public inspection of the aforesaid portion of a death certificate. This conclusion, however, does not mean that said public inspection is permitted, because Section 119.07(3)(a), Florida Statutes (1983) provides that "[a]ll public records which are presently provided by law to be *confidential"* are exempt from public inspection and copying. Section 382.35(4), Florida Statutes (1983), for the reasons stated above, makes the aforesaid portion of a death certificate "confidential," and, therefore, not subject to the public inspection or copying provisions of Section 119.07(1)(a), (b), Florida Statutes (1983). Second, we agree that Section 382.35(4), Florida Statutes (1983), does not expressly make the aforesaid portion of a death certificate "confidential," as does Section 382.35(1), Florida Statutes (1983), with respect to birth certificates. *See* 1982, Op.Att'y Gen.Fla. 82-16 (March 16, 1982). This conclusion, however, does not mean that said portion of a death certificate is not confidential; the legislature, by requiring the aforesaid deletion from certified copies of death certificates, has made the deleted portion confidential by implication. Any other reading of the statute leads, as indicated above, to absurd or unreasonable results. Moreover, we are constrained by law to avoid a literalistic reading of a statute where, as here, such a reading would defeat the entire legislative ***495** purpose behind the statute. *Garner v. Ward,* 251 So.2d 252, 255-56 (Fla.1971).

[5] Turning to the instant case, it is plain that the petitioners herein were not entitled to inspect the cause of death portion of Dr. Yeste's death certificate herein. Without dispute, the petitioners have no direct or tangible interest in Dr. Yeste's cause of death. It therefore follows that they are not entitled to receive a certified copy or to inspect same under the above statute. This being so, the trial court was in error in issuing the peremptory writ of mandamus in this cause.

[6] Finally, we reject The Miami Herald's argument that, apart from any statute, it has a free press right of access to the medical certification portion of Dr. Yeste's death certificate. We are cited to no constitutional authority in Florida or elsewhere which has ever held that a newspaper has a free press right of access to public records such as that presented in the instant case. We decline to be the first court to so hold.

The peremptory writ of mandamus under review is reversed and the cause is remanded to the trial court with directions to dismiss the petition for writ of mandamus filed herein.

All Citations

451 So.2d 491, 10 Media L. Rep. 2298

Footnotes

1 Metropolitan Dade County, Department of Public Health; Richard A. Morgan and Beatrice Marchette, HRS officials.

End of Document

From: Governor's Press Office <Governor'sPressOffice@eog.myflorida.com>
Sent: Saturday, March 28, 2020 2:48 PM EDT
To: Undisclosed recipients:
Subject: DeSantis/Nuñez Administrative Schedule for Saturday, March 28, 2020

GOVERNOR RON DESANTIS SCHEDULE
FOR
SATURDAY, MARCH 28, 2020

10:00am **MEETING WITH CHIEF OF STAFF SHANE STRUM**
Location: Florida State Capitol
Address: 400 South Monroe Street
Tallahassee, FL 32399

10:30am **CALL WITH STATE SURGEON GENERAL DR. SCOTT RIVKEES REGARDING COVID-19**

10:45am **CALL WITH DIVISION OF EMERGENCY MANAGEMENT DIRECTOR JARED MOSKOWITZ REGARDING COVID-19**

11:00am **CALL WITH ABBOTT LABORATORIES VICE PRESIDENT TOM EVERS REGARDING COVID-19**

11:15am **CALL WITH CONGRESSMAN MICHAEL WALTZ REGARDING COVID-19**

11:45am **CALL WITH PRESIDENT DONALD TRUMP REGARDING COVID-19**

12:15pm **CALL WITH VICE PRESIDENT OF THE VILLAGES GARY LESTER REGARDING COVID-10**

12:30pm **CALL WITH GEORGIA GOVERNOR BRIAN KEMP REGARDING COVID-19**

3:00pm **LIVE STREAM BRIEFING REGARDING COVID-19**
Location: Florida State Capitol
Address: 400 South Monroe Street
Tallahassee, FL 32399

4:00pm **STAFF AND CALL TIME**
Location: Florida State Capitol
Address: 400 South Monroe Street
Tallahassee, FL 32399

###

LT. GOVERNOR JEANETTE NUÑEZ SCHEDULE
FOR
SATURDAY, MARCH 28, 2020

10:00am **CALL WITH HOSPITALS AND FLORIDA HOSPITAL ASSOCIATION REGARDING COVID-19**

11:15am **CALL WITH COUNTY EMERGENCY MANAGEMENT OFFICIALS REGARDING COVID-19**

4:15pm **CALL ON AGING AND VULNERABLE POPULATION REGARDING COVID-19**

###

From: Governor's Press Office <Governor'sPressOffice@eog.myflorida.com>
Sent: Thursday, March 12, 2020 11:30 AM EDT
To: Undisclosed recipients:
Subject: DeSantis/Nuñez Administrative Schedule for Thursday, March 12, 2020

GOVERNOR RON DESANTIS SCHEDULE
FOR
THURSDAY, MARCH 12, 2020

7:45am **CALL WITH CHIEF OF STAFF SHANE STRUM**

10:00am **CALL WITH SHERIFFS AND CORRECTIONAL OFFICERS REGARDING COVID-19**

10:10am **CALL WITH PGA TOUR COMMISSIONER JAY MONAHAN REGARDING COVID-19**

10:20am **CALL WITH MLB COMMISSIONER ROB MANFRED REGARDING COVID-19**

10:30am **ROUNDTABLE DISCUSSION REGARDING COVID-19**
Location: Jackson Memorial Hospital
Address: 1080 Northwest 19th Street
Miami, FL 33127

11:30am **PRESS CONFERENCE**
Location: Jackson Memorial Hospital
Address: 1080 Northwest 19th Street
Miami, FL 33127

2:30pm **STAFF AND CALL TIME**
Location: Florida State Capitol
Address: 400 South Monroe Street
Tallahassee, FL 32399

###

LT. GOVERNOR JEANETTE NUÑEZ SCHEDULE
FOR
THURSDAY, MARCH 12, 2020

9:30am **CALL WITH STATE SURGEON GENERAL DR. SCOTT RIVKEES REGARDING COVID-19**

10:30am **ROUNDTABLE DISCUSSION WITH GOVERNOR RON DESANTIS REGARDING COVID-19**
Location: Jackson Memorial Hospital
Address: 1080 Northwest 19th Street
Miami, FL 33127

11:30am **PRESS CONFERENCE**
Location: Jackson Memorial Hospital
Address: 1080 Northwest 19th Street
Miami, FL 33127

###

From: Lamia, Christine E <Christine.Lamia@flhealth.gov>
Sent: Thursday, April 09, 2020 3:37 PM EDT
To: Angell, Christopher (CAO) <Christopher.Angell@miamidade.gov>
CC: Medved, Daniel T <Daniel.Medved@flhealth.gov>
Subject: FW: [EX] Public Record Requests - requests for names of decedents COVID 19 Deaths -

---

Chris,
To follow up on your email to Dan below, it is my understanding that Jim Martin, counsel for FDLE Medical Examiners Commission, is of the legal opinion that the cause of death is exempt. I am not sure if this clears up any of the confusion mentioned, but wanted to pass this along to you.
Take care and be well!
Chris

Christine E. Lamia
Deputy General Counsel
State Health Offices
Office of the General Counsel
Florida Department of Health
4052 Bald Cypress Way, Bin #A-02
Tallahassee, FL 32399-3265
(850) 245-4005 (OGC Main Line)
(850) 245-4021 (Direct Line)
(850) 245-4790 (Fax)

Mission: To protect, promote, and improve the health of all people in Florida through integrated state, county, & community efforts.
Vision: To be the Healthiest State in the Nation
Values: **ICARE**
I innovation: We search for creative solutions and manage resources wisely.
C collaboration: We use teamwork to achieve common goals & solve problems.
A accountability: We perform with integrity & respect.
R responsiveness: We achieve our mission by serving our customers & engaging our partners.
E excellence: We promote quality outcomes through learning & continuous performance improvement.
Purpose: To protect the public through health care licensure, enforcement and information.
Focus: To be the nation's leader in quality health care regulation.

From: Medved, Daniel T <Daniel.Medved@flhealth.gov>
Sent: Thursday, April 9, 2020 3:13 PM
To: Lamia, Christine E <Christine.Lamia@flhealth.gov>
Subject: FW: [EX] Public Record Requests - requests for names of decedents COVID 19 Deaths -

---

From: Angell, Christopher (CAO) <Christopher.Angell@miamidade.gov>
Sent: Friday, April 3, 2020 3:31 PM
To: Medved, Daniel T <Daniel.Medved@flhealth.gov>
Subject: Re: [EX] Public Record Requests - requests for names of decedents COVID 19 Deaths -

Good afternoon:

I spoke to the Miami-Dade County Medical Examiner Department's Chief of Operations about our ongoing discussions. He is working from home today but requested that I forward you the below email chain so you could be aware of prior communications that have been had on this topic and some confusion that has caused.

I will be in contact next week.

Thank you.

Chris Angell
Christopher A. Angell, Esq.
Assistant County Attorney
Miami-Dade County Attorney's Office
Stephen P. Clark Center
111 NW First Street
Suite 2810
Miami, FL 33128
Tel: 305-375-1024
Fax: 305-375-5611

Legal Assistant:
Maria Cruz
Tel: (305) 375-5731
Email: Maria.Cruz2@MiamiDade.gov

Paralegals:
Yenisbel Valdes
Tel: 305-375-1338
Email: Yenisbel.Valdes@MiamiDade.gov

Jarod Rucker
Tel: 305-375-5870
Email: Jarod.Rucker@MiamiDade.gov

Ulla Peralta
Tel: 305-375-2067
Email: Ulla.Peralta@MiamiDade.gov

Due to the unprecedented and changing situation involving COVID-19, the County Attorney's Office is currently working remotely. We will have limited access to regular mail, physical files, and other resources that we would otherwise have while working in-office. As a result, we ask that you please correspond with us by e-mail or send an electronic copy of any physical document you send to our offices to this e-mail address. We also will have limited access to certain physical and other records in response to discovery, public records requests, and other similar requests and ask for your patience and understanding in any delayed or untimely response. To the extent that we have stored data or information online and readily accessible, we will continue to provide it in a timely manner. Please also note that our fax machine has been disconnected and is no longer being used for incoming correspondence at this time. We appreciate your cooperation at this difficult time. Thank you.

From: Martin, James <JamesMartin@fdle.state.fl.us>
Sent: Thursday, March 19, 2020 4:42 PM
To: 'Nelson, Stephen' <StephenNelson@polk-county.net>; 'korozco@volusia.org' <korozco@volusia.org>; 'PWheaton@leegov.com' <PWheaton@leegov.com>; 'Cc:' <wmajors@baycountyfl.gov>; 'Craig.Engelson@brevardfl.gov' <Craig.Engelson@brevardfl.gov>; 'CHBODEN@broward.org' <CHBODEN@broward.org>; 'wpellan@co.pinellas.fl.us' <wpellan@co.pinellas.fl.us>; 'TCrutchfield@coj.net' <TCrutchfield@coj.net>; 'elizabethnunez@d20me.net' <elizabethnunez@d20me.net>; 'Info@dist2me.org' <Info@dist2me.org>; 'medex22@embarqmail.com' <medex22@embarqmail.com>; 'dwinterhalter@fldist12me.com' <dwinterhalter@fldist12me.com>; 'cowanh@hillsboroughcounty.org' <cowanh@hillsboroughcounty.org>; 'ccanard@irsc.edu' <ccanard@irsc.edu>; 'Lindsey.Bayer@marioncountyfl.org' <Lindsey.Bayer@marioncountyfl.org>; Caprara, Darren (ME) <Darren.Caprara@miamidade.gov>; 'Olson-Judy@monroecounty-fl.gov' <Olson-Judy@monroecounty-fl.gov>; 'Sheri.Blanton@ocfl.net' <Sheri.Blanton@ocfl.net>; 'hruiz@pbcgov.org' <hruiz@pbcgov.org>; Wilson, Sheli <SheliWilson@polk-county.net>; 'krogers@sjcfl.us' <krogers@sjcfl.us>; 'ricardocamacho@ufl.edu' <ricardocamacho@ufl.edu>
Cc: Koenig, Vickie <VickieKoenig@fdle.state.fl.us>; Lucas, Steven <StevenChadLucas@fdle.state.fl.us>; Neel, Megan <MeganNeel@fdle.state.fl.us>; Jones, Ken T <Ken.Jones@flhealth.gov>
Subject: RE: [EXTERNAL]: Re: [EX] Public Record Requests - requests for names of decedents COVID 19 Deaths -

---

I concur with Dr. Nelson. I'm not aware of any legal exemption or authority that would prohibit the release of the name of decedent.

James D. Martin, Deputy General Counsel

Florida Department of Law Enforcement
Post Office Box 1489
Tallahassee, Florida 32302-1489
850-410-7679

From: Nelson, Stephen [mailto:StephenNelson@polk-county.net]
Sent: Thursday, March 19, 2020 4:26 PM
To: 'korozco@volusia.org'; 'PWheaton@leegov.com'; 'Cc:'; 'Craig.Engelson@brevardfl.gov'; 'CHBODEN@broward.org'; 'wpellan@co.pinellas.fl.us'; 'TCrutchfield@coj.net'; 'elizabethnunez@d20me.net'; 'Info@dist2me.org'; 'medex22@embarqmail.com'; 'dwinterhalter@fldist12me.com'; 'cowanh@hillsboroughcounty.org'; 'ccanard@irsc.edu'; 'Lindsey.Bayer@marioncountyfl.org'; 'Darren.Caprara@miamidade.gov'; 'Olson-Judy@monroecounty-fl.gov'; 'Sheri.Blanton@ocfl.net'; 'hruiz@pbcgov.org'; Wilson, Sheli; 'krogers@sjcfl.us'; 'ricardocamacho@ufl.edu'
Cc: Martin, James; Koenig, Vickie; Lucas, Steven; Neel, Megan; Jones, Ken T
Subject: RE: [EXTERNAL]: Re: [EX] Public Record Requests - requests for names of decedents COVID 19 Deaths -

Folks,

These public records requests are no different than any other public records request we all receive. They are to be complied with.

As of this writing, there is NO Florida Statutory or Administrative Rule exemption(s) for coronavirus or COVID-19 deaths, including FS 382 et seq.

Stephen J. Nelson, M.A., M.D., F.C.A.P.
District Medical Examiner
10th Judicial Circuit of Florida
(Polk, Hardee, and Highlands Counties)
1021 Jim Keene Boulevard
Winter Haven, FL 33880-8010
863-298-4600 main
863-298-5264 fax
863-687-1344 answering service (24/7/365)

From: Jeff Martin - Director <jmartin@fldme.com>
Sent: Thursday, March 19, 2020 4:01 PM
To: Karla Orozco <korozco@volusia.org>; PWheaton@leegov.com
Cc: wmajors@baycountyfl.gov; Craig.Engelson@brevardfl.gov; CHBODEN@broward.org; wpellan@co.pinellas.fl.us; TCrutchfield@coj.net; elizabethnunez@d20me.net; Info@dist2me.org; medex22@embarqmail.com; dwinterhalter@fldist12me.com; cowanh@hillsboroughcounty.org; ccanard@irsc.edu; Lindsey.Bayer@marioncountyfl.org; Darren.Caprara@miamidade.gov; Olson-Judy@monroecounty-fl.gov; Sheri.Blanton@ocfl.net; hruiz@pbcgov.org; Wilson, Sheli <SheliWilson@polk-county.net>; krogers@sjcfl.us; ricardocamacho@ufl.edu
Subject: [EXTERNAL]: Re: [EX] Public Record Requests - requests for names of decedents COVID 19 Deaths -

We had a similar request from a very impatient individual that threatened us legally. I did provide the names of cases handled between certain dates.

Jef

Jeffrey B. Martin
Director / Chief of Forensic Investigations
(850) 865-2178 - Cellular

Office of the District Medical Examiner
District One - Florida
Central Office
5151 N. 9th Ave.
Pensacola, FL 32504
(850) 416-7210 - Office
(850) 416-6475 - Fax

Annex Office
206 Staff Drive N.E.
Ft. Walton Beach, FL 32548
(850) 651-7771 - Office
(850) 651-7775 - Fax

From: "Karla Orozco" <korozco@volusia.org>
Sent: Thursday, March 19, 2020 2:54 PM
To: PWheaton@leegov.com
Cc: wmajors@baycountyfl.gov, Craig.Engelson@brevardfl.gov, CHBODEN@broward.org, wpellan@co.pinellas.fl.us, TCrutchfield@coj.net, elizabethnunez@d20me.net, Info@dist2me.org, medex22@embarqmail.com, dwinterhalter@fldist12me.com, jmartin@fldme.com, cowanh@hillsboroughcounty.org, ccanard@irsc.edu, Lindsey.Bayer@marioncountyfl.org, Darren.Caprara@miamidade.gov, Olson-Judy@monroecounty-fl.gov, Sheri.Blanton@ocfl.net, hruiz@pbcgov.org, SheliWilson@polk-county.net, krogers@sjcfl.us, ricardocamacho@ufl.edu
Subject: Re: [EX] Public Record Requests - requests for names of decedents COVID 19 Deaths -

Hello all,

We have not had any deaths yet but I had the same concerns and was told by the MEC that they do not know anything that would prevent us from releasing the information. Our health department sent us the attachment citing the relevant statute and FAC for epidemiological investigations which are to be confidential.

I sent the same document to Chad Lucas to see what their legal department thinks about us citing that as the reason we can't release the information.

Karla

Karla Orozco M.S., F-ABMDI
Operations Manager
District 7 Medical Examiner Office
1360 Indian Lake Road
Daytona Beach, FL 32124
Office (386) 258-4060
Fax (386) 258-4061

On Mar 19, 2020, at 3:32 PM, Wheaton, Patricia < PWheaton@leegov.com> wrote:

?
Hello:

Our office has had two deaths related to COVID-19. We initially received a request from media asking for the name of one of the decedents (which we did not provide).

Thereafter, we received two other requests asking for our "log in" book (bodies transported to our office) for the date(s) of the deaths of the two cases. The bodies were not transported from the hospital to our office since we are doing a records review only and the bodies were released directly to the funeral home(s) selected by the families. The request specifically asked for the names, dates of births, and age for the dates specified. The information will not be in the documents they receive since the cases were not transported to our office and therefore not "logged in".

Another media source requested a list of names and dates of birth for cases that died on a specific date. If we were able to pull this type of list together from our database, media would have the name of the decedent whose death was related to COVID-19. Department of Health and the hospital have refused to release this information and have directed our office not to release the name of the decedent pursuant to HIPAA.

Has anyone received such media requests and if so how are you responding? I have reached out to MEC and they have no answers for us. I have reached out to DOH and they verbally advised that our office is not to release the names; however, they have not been able to site statute or otherwise. As we are under a state of emergency (and national and local), does anyone know if the release of this information, which normally would be subject to public record, is now exempt because of the emergency declared?

If you have not already received a request, standby because it will be coming. One request is from Tampa and the another is from Naples so there will soon be national agencies requesting this information.

I would like to be ahead of the eight ball but unfortunately the agencies I was hoping would be able to provide definitive information does not have any answers for us.

Thank you and stay safe.

Patti Wheaton
Operations Manager
District 21 Medical Examiner's Office
70 South Danley Drive
Fort Myers, FL 33907
Phone: 239-533-6339
Fax: 239-277-5017
Email: pwheaton@leegov.com
Website: me21.leegov.com
Serving Lee, Hendry and Glades Counties

Accredited By

<image001.jpg>

<mg_info.txt>

From: Angell, Christopher (CAO) <Christopher.Angell@miamidade.gov>
Sent: Thursday, April 02, 2020 5:07 PM EDT
To: christine.lamia@flhealth.gov <christine.lamia@flhealth.gov>
Subject: FW: COVID-19 deaths

Pursuant to your request, please see below.

Chris Angell
Christopher A. Angell, Esq.
Assistant County Attorney
Miami-Dade County Attorney's Office
Stephen P. Clark Center
111 NW First Street
Suite 2810
Miami, FL 33128
Tel: 305-375-1024
Fax: 305-375-5611

Legal Assistant:
Maria Cruz
Tel: (305) 375-5731
Email: Maria.Cruz2@MiamiDade.gov

Paralegals:
Yenisbel Valdes
Tel: 305-375-1338
Email: Yenisbel.Valdes@MiamiDade.gov

Jarod Rucker
Tel: 305-375-5870
Email: Jarod.Rucker@MiamiDade.gov

Ulla Peralta
Tel: 305-375-2067
Email: Ulla.Peralta@MiamiDade.gov

Due to the unprecedented and changing situation involving COVID-19, the County Attorney's Office is currently working remotely. We will have limited access to regular mail, physical files, and other resources that we would otherwise have while working in-office. As a result, we ask that you please correspond with us by e-mail or send an electronic copy of any physical document you send to our offices to this e-mail address. We also will have limited access to certain physical and other records in response to discovery, public records requests, and other similar requests and ask for your patience and understanding in any delayed or untimely response. To the extent that we have stored data or information online and readily accessible, we will continue to provide it in a timely manner. Please also note that our fax machine has been disconnected and is no longer being used for incoming correspondence at this time. We appreciate your cooperation at this difficult time. Thank you.

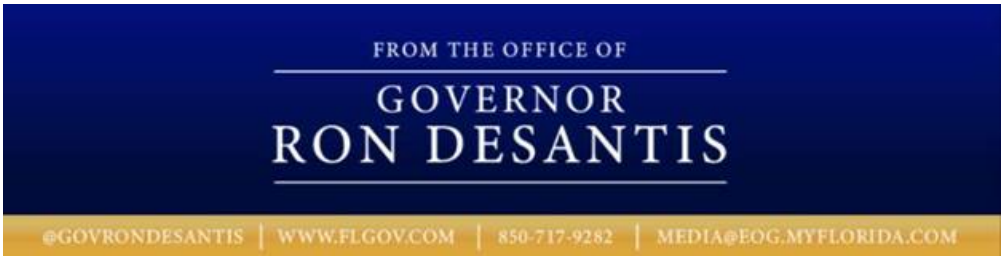
From: Ovalle, David <dovalle@miamiherald.com>
Sent: Tuesday, March 31, 2020 6:29 PM
To: Caprara, Darren (ME) <Darren.Caprara@miamidade.gov>
Subject: COVID-19 deaths

Hope you are doing well, and please thank Dr. Lew for speaking with me about the ME's role in this horrible pandemic. I hope the story was informative for leaders.

Since the ME must certify and issue COVID-19 deaths, can you please send the names and DOBs of the decedents thus far recorded through the ME's office. So far, the Fla. Dept of Health has noted 7 deaths. Thank you!

David O.

From: Governor's Press Office <Governor'sPressOffice@eog.myflorida.com>
Sent: Wednesday, March 04, 2020 1:19 PM EST
To: Undisclosed recipients:
Subject: Governor Ron DeSantis Announces Department of Children and Families Lawsuit Against Florida Coalition Against Domestic Violence, Executive Leadership and Board Members



For Immediate Release
March 4, 2020

Contact: Governor's Press Office
(850) 717-9282
Media@eog.myflorida.com

Governor Ron DeSantis Announces Department of Children and Families Lawsuit Against Florida Coalition Against Domestic Violence, Executive Leadership and Board Members

Allegations Against Former CEO, Tiffany Carr, Include Fraudulent Concealment and Civil Conspiracy

Tallahassee, Fla. – Today, Governor Ron DeSantis announced the Department of Children and Families (DCF) filed a lawsuit in the circuit court of the Second Judicial Circuit against the Florida Coalition Against Domestic Violence (FCADV), as well as the organization's executive leadership and board members. Former Chief Executive Officer, Tiffany Carr, who is at the center of the ongoing investigation into FCADV's overcompensation practices, is included as a defendant.

Allegations against FCADV include Breach of Contract, Breach of the Implied Duty of Good Faith and Fair Dealing, and Breach of Fiduciary Duty. Carr is facing allegations of Fraudulent Concealment, Fraudulent Misrepresentation, Negligent Misrepresentation and Civil Conspiracy.

"The recent revelations regarding the Florida Coalition Against Domestic Violence are alarming and disturbing," **said Governor DeSantis**. "The Coalition's deliberate abuse of state dollars, inexcusable lack of transparency and calculated breach of public trust is untenable. We will continue with our efforts to ensure those involved are held accountable for their actions, while also ensuring that survivors are being provided with proper care and support."

"I am sincerely appreciative of the support DCF has received from the Governor and the Legislature as we worked to expose the fiscal irresponsibility that infiltrated FCADV under Tiffany Carr's leadership," **said DCF Secretary Chad Poppell**. "We will ensure all who knowingly complied answer for their actions."

"Today we stand united against a very sad chapter of exploitation in our state," **said Senator Aaron Bean.** "To betray the public's trust will not come without consequences. I appreciate the Governor's resolve to bring this injustice to the light as well as closure to the victims it has affected."

"The Coalition's lack of transparency and blatant disregard of the Florida taxpayer's trust has led us to take necessary action to right a wrong," **said Representative Tom Leek.** "I appreciate the Governor's strong leadership in filing a lawsuit against the Coalition and anticipate that this will bring swift justice to the organization's executive leadership and board members."

"I am confident that the legal action taken by Governor DeSantis will serve as a message that Florida will not stand for this gross abuse of power," **said Representative Juan Fernandez-Barquin.** "As this lawsuit goes through its progression, I hope we will soon be able to get the much-needed dollars for services back to the victims of domestic violence."

For a PDF copy of the lawsuit filed, click **HERE**.

###

From: Morillo, Wilma (CAO) <Wilma.Morillo@miamidade.gov>
Sent: Thursday, April 02, 2020 2:32 PM EDT
To: Timothy.Dennis@myfloridalegal.com <Timothy.Dennis@myfloridalegal.com>
CC: Jon.Annette@myfloridalegal.com <Jon.Annette@myfloridalegal.com>; Rebecca.Padgett@myfloridalegal.com <Rebecca.Padgett@myfloridalegal.com>; stew@RVMRLAW.COM <stew@RVMRLAW.COM>; jalvarez@RVMRLAW.COM <jalvarez@RVMRLAW.COM>; Mastrucci, Michael (CAO) <Michael.Mastrucci@miamidade.gov>
Subject: Maizon Apartments LP vs. Pedro Garcia - (19-20839 CA 01)
Attachment(s): "Final Judgment Stip Release of LP (Maizon).pdf"

Good afternoon,

Please see attached for your review and signature proposed Partial Final Judgment with regard to the above referenced matter.

Should you have any questions please feel free to contact me.

Thank you,

Wilma Morillo
Legal Assistant to County Attorneys
James Edwin "Eddie" Kirtley, Jr., Assistant County Attorney
Abbie Schwaderer-Raurell, Assistant County Attorney
Michael Mastrucci, Assistant County Attorney

MIAMI-DADE COUNTY ATTORNEY'S OFFICE
Stephen P. Clark Center, Suite 2810
111 NW 1st Street
Miami, Florida 33128-1993
TEL: (305) 375-5151
DIRECT: (305) 375-3928
FAX: (305) 375-5634
Email: **morillo@miamidade.gov**

"Delivering Excellence Every Day"

PLEASE NOTE: Due to the unprecedented and changing situation involving COVID-19, the County Attorney's Office is currently working remotely. We will have limited access to regular mail, physical files, and other resources that we would otherwise have while working in-office. As a result, we ask that you please correspond with us by e-mail or send an electronic copy of any physical document you send to our offices to this e-mail address. We also will have limited access to certain physical and other records in response to discovery, public records requests, and other similar requests and ask for your patience and understanding in any delayed or untimely response. To the extent that we have stored data or information online and readily accessible, we will continue to provide it in a timely manner. Please also note that our fax machine has been disconnected and is no longer being used for incoming correspondence at this time. We appreciate your cooperation at this difficult time. Thank you.

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO. 2019-20839 CA 01

MAIZON APARTMENTS, LP, a Delaware limited partnership,

Plaintiff,

vs.

PEDRO J. GARCIA, as Property Appraiser of Miami-Dade County, Florida; MARCUS SAIZ DE LA MORA, as Tax Collector of Miami-Dade County, Florida; and JIM ZINGALE, as Executive Director of the State of Florida Department of Revenue,

Defendants.
_____/

STIPULATED FINAL JUDGMENT AND RELEASE OF LIS PENDENS

A. STIPULATION

Plaintiff MAIZON APARTMENTS, LP ("Taxpayer") and Defendants PEDRO J. GARCIA, as Property Appraiser of Miami-Dade County, Florida (the "Property Appraiser"), MARCUS SAIZ DE LA MORA, as Tax Collector of Miami-Dade County, Florida (the "Tax Collector," and together with the Property Appraiser, the "County") and LEON M. BIEGALSKI, as Executive Director of the State of Florida Department of Revenue ("Department of Revenue"), through their undersigned authorized representatives, stipulate to the entry of, and respectfully request that the Court enter, the Final Judgment set forth below.

FOR PROPERTY APPRAISER AND TAX COLLECTOR:

ABIGAIL PRICE-WILLIAMS
Miami-Dade County Attorney
Attorneys for Property Appraiser
and Tax Collector
Stephen P. Clark Center, Suite 2810
111 Northwest First Street
Miami, Florida 33128-1993
Telephone: (305) 375-5151
Facsimile: (305) 375-5634

By: _____
Michael J. Mastrucci
Assistant County Attorney
Florida Bar No. 86130

FOR DEPARTMENT OF REVENUE:
ASHLEY MOODY
ATTORNEY GENERAL

_____
Timothy E. Dennis
Chief Assistant Attorney General Florida
Bar No. 575410
Office of the Attorney General Revenue
Litigation Bureau
PL-01, The Capitol
Tallahassee, FL 32399-1050
Timothy.Dennis@myfloridalegal.com
Jon.Annette@myfloridalegal.com
Rebecca.Padgett@myfloridalegal.com
Telephone (850) 414-3781

FOR TAXPAYER:

RENNERT VOGEL MANDLER &
RODRIGUEZ, P.A.
Attorneys for Taxpayer
Miami Tower, Suite 2900
100 S.E. Second Street
Miami, Florida 33131
Telephone (305) 577-4177
Facsimile (305) 373-6036

By Spencer Tew
_____
Spencer Tew, Esq.
Florida Bar No. 537071

B. FINAL JUDGMENT AND RELEASE OF LIS PENDENS

THIS CAUSE came before the Court upon the County's and Taxpayer's stipulation for entry of final judgment. Having reviewed the stipulation and the record in this matter, it is ORDERED and ADJUDGED as follows:

1. The just value for *ad valorem* tax assessment purposes of the subject property described by the folio numbers and tax year noted below is as follows:

Tax Years 2018 and 2019:

See attached Exhibit A

2. The Miami-Dade County Tax Collector is authorized and directed to submit to the Taxpayer a revised bill for deficiencies in taxes based on the just valuation set forth in paragraph 1 of this Judgment plus interest at the rate of twelve percent (12%) per annum from April 1 of the year following the tax assessment year here involved or from the first day of the month following the issuance of the VAB refund, whichever is later, to the date of this Judgment. Additionally, the Tax Collector is authorized and directed to submit to the Taxpayer a revised bill for any deficiency in interest based on the just valuation set forth in paragraph 1 of this Judgment for interest previously refunded to the Taxpayer pursuant to §194.014(2) of the Florida Statutes. Said taxes and interest shall become delinquent and bear interest at the rate of eighteen percent (18%) per annum if unpaid at the expiration of thirty (30) days from the date of issuance of the revised tax bill in accordance with this judgment and at such time the Tax Collector shall be authorized to enforce the collection of such taxes as delinquent taxes as provided by law, without further order of this Court. In the alternative, if there exists an excess of taxes paid as a result of the just value of the subject property set forth in paragraph 1 of this Judgment, the Miami-Dade County Tax Collector is authorized and directed to issue a refund of such excess

taxes to the Taxpayer.

3. This is a Final Judgment as to all parties, each party to bear its own costs and attorney's fees.

4. The payment of the additional taxes or issuance of the refund based upon the just value as mandated by paragraph 2 of this Judgment shall operate as a Satisfaction of this Judgment.

5. Any temporary restraining order or injunction previously entered in this cause enjoining the collection of taxes, or any *lis pendens* recorded in conjunction herewith is hereby dissolved.

EXHIBIT A

Folios	2018 Market Values	2018 Assessed Values
01-4138-051-0170	$3,724,000	$3,724,000
01-4138-051-0310	$1,995,000	$1,995,000
01-4138-051-0320	$1,995,000	$1,995,000
01-4138-051-0330	$997,500	$997,500
01-4138-051-0340	$997,500	$997,500
01-4138-051-0350	$1,995,000	$1,995,000
01-4138-051-0360	$1,795,500	$1,795,500
01-4138-051-0370	$1,197,000	$1,197,000
Total	**$14,696,500**	**$14,696,500**

Folios	2019 Market Values	2019 Assessed Values
01-4138-051-0170	$4,900,000	$4,095,300
01-4138-051-0310	$2,625,000	$2,194,500
01-4138-051-0320	$2,625,000	$2,193,400
01-4138-051-0330	$1,312,500	$1,097,250
01-4138-051-0340	$1,312,500	$1,096,150
01-4138-051-0350	$2,625,000	$2,193,400
01-4138-051-0360	$2,362,500	$1,975,050
01-4138-051-0370	$1,575,000	$1,315,600
Total	**$19,337,500**	**$16,160,650**

From: Morillo, Wilma (CAO) <Wilma.Morillo@miamidade.gov>
Sent: Friday, April 03, 2020 12:46 PM EDT
To: Timothy.Dennis@myfloridalegal.com <Timothy.Dennis@myfloridalegal.com>
CC: Jon.Annette@myfloridalegal.com <Jon.Annette@myfloridalegal.com>; Rebecca.Padgett@myfloridalegal.com <Rebecca.Padgett@myfloridalegal.com>; Mastrucci, Michael (CAO) <Michael.Mastrucci@miamidade.gov>; hjay01@gmail.com <hjay01@gmail.com>; jackr@clevelonly.com <jackr@clevelonly.com>
Subject: Pedro Garcia v. Fontainebleau III Ocean Club Condominium Association, Inc.; TY 2017 (18-24350 CA 01)
Attachment(s): "Partial Final Judgement Stipulation and Release of lis Pendens re Unit 1007.pdf"

Good afternoon,

Please see attached for your review and signature proposed Partial Final Judgment with regard to the above referenced matter.

Should you have any questions please feel free to contact me.

Thank you,

Wilma Morillo
Legal Assistant to County Attorneys
James Edwin "Eddie" Kirtley, Jr., Assistant County Attorney
Abbie Schwaderer-Raurell, Assistant County Attorney
Michael Mastrucci, Assistant County Attorney

MIAMI-DADE COUNTY ATTORNEY'S OFFICE
Stephen P. Clark Center, Suite 2810
111 NW 1st Street
Miami, Florida 33128-1993
TEL: (305) 375-5151
DIRECT: (305) 375-3928
FAX: (305) 375-5634
Email: **morillo@miamidade.gov**

"Delivering Excellence Every Day"

PLEASE NOTE: Due to the unprecedented and changing situation involving COVID-19, the County Attorney's Office is currently working remotely. We will have limited access to regular mail, physical files, and other resources that we would otherwise have while working in-office. As a result, we ask that you please correspond with us by e-mail or send an electronic copy of any physical document you send to our offices to this e-mail address. We also will have limited access to certain physical and other records in response to discovery, public records requests, and other similar requests and ask for your patience and understanding in any delayed or untimely response. To the extent that we have stored data or information online and readily accessible, we will continue to provide it in a timely manner. Please also note that our fax machine has been disconnected and is no longer being used for incoming correspondence at this time. We appreciate your cooperation at this difficult time. Thank you.

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

PEDRO J. GARCIA, as Property Appraiser of Miami-Dade County, Florida,

Plaintiff,

vs.

FONTAINEBLEAU III OCEAN CLUB CONDOMINIUM ASSOCIATION, INC., et al.,

Defendants.
_____/

CASE NO.: 2018-24350 CA 01

PARTIAL FINAL JUDGMENT, STIPULATION AND RELEASE OF LIS PENDENS (AS TO FOLIO 02-3223-026-1040 ONLY)

A. STIPULATION

Plaintiff, PEDRO J. GARCIA, as Property Appraiser for Miami-Dade County, Florida ("Property Appraiser") and Defendant HOWARD NESTLER ("Taxpayer") and LEON M. BIEGALSKI, as Executive Director of the State of Florida Department of Revenue ("Department of Revenue"), through their undersigned authorized representatives, stipulate to the entry of, and respectfully request that the Court enter, the Final Judgment set forth below.

FOR PROPERTY APPRAISER:

ABIGAIL PRICE-WILLIAMS
Miami-Dade County Attorney
Attorneys for Property Appraiser
Stephen P. Clark Center, Suite 2810
111 Northwest First Street
Miami, Florida 33128-1993
Telephone: (305) 375-5151
Facsimile: (305) 375-5634

By: _____
Michael J. Mastrucci
Assistant County Attorney
Florida Bar No. 86130

FOR DEPARTMENT OF REVENUE
ASHLEY MOODY
ATTORNEY GENERAL

_____
Timothy E. Dennis
Chief Assistant Attorney General Florida
Bar No. 575410
Office of the Attorney General Revenue
Litigation Bureau
PL-01, The Capitol
Tallahassee, FL 32399-1050
Timothy.Dennis@myfloridalegal.com
Jon.Annette@myfloridalegal.com
Rebecca.Padgett@myfloridalegal.com
Telephone (850) 414-3781

TAXPAYER:

_____
Howard Nestler
300 Winston Drive
Apt. 1521
Cliffside Park NJ 07070
Telephone: 646-441-0088
E-mail: hjay01@gmail.com;
jackr@clevelonly.com

B. PARTIAL FINAL JUDGMENT

THIS CAUSE came before the Court upon the Property Appraiser's and Taxpayer's stipulation for entry of final judgment. Having reviewed the stipulation and the record in this matter, it is ORDERED and ADJUDGED as follows:

1. The just value for ad valorem tax assessment purposes of the subject property described by the folio number and tax year noted below is as follows:

Property Address: 4391 Collins Avenue, Unit 1007, Miami Beach, FL 33140

TAX YEAR 2017:

Folio Number	Market Value	Assessed Value	School Board Taxable Value	Non- School Board Taxable Value
02-3223-026-1040	$768,099	$768,099	$768,099	$768,099

In addition, to comply with the requirements of Article VII, Section 4 of the Florida Constitution of 1968, and its implementing statutes, including Sections 193.155, 193.1554 193.1555 of the Florida Statutes, Defendant agrees to the processing of the increase in assessed value (non-school board taxable value) for **Tax Year 2018** due to this settlement as follows:

TAX YEAR 2018:

Folio Number	Market Value	Assessed Value	School Board Taxable Value	Non- School Board Taxable Value
02-3223-026-1040	$768,099	$768,099	$768,099	$768,099

2. The Miami-Dade County Tax Collector is authorized and directed to submit to the Taxpayer a revised bill for deficiencies in taxes based on the just valuation set forth in paragraph 1 of this Judgment plus interest at the rate of twelve percent (12%) per annum from April 1 of the year following the tax assessment year here involved or from the first day of the month following the issuance of the VAB refund, whichever is later, to the date of this Judgment. Additionally, the Tax Collector is authorized and directed to submit to the Taxpayer a revised bill for any deficiency

in interest based on the just valuation set forth in paragraph 1 of this Judgment for interest previously refunded to the Taxpayer pursuant to §194.014(2) of the Florida Statutes. Said taxes and interest shall become delinquent and bear interest at the rate of eighteen percent (18%) per annum if unpaid at the expiration of thirty (30) days from the date of issuance of the revised tax bill in accordance with this judgment and at such time the Tax Collector shall be authorized to enforce the collection of such taxes as delinquent taxes as provided by law, without further order of this Court. In the alternative, if there exists an excess of taxes paid as a result of the just value of the subject property set forth in paragraph 1 of this Judgment, the Miami-Dade County Tax Collector is authorized and directed to issue a refund of such excess taxes to the Taxpayer.

3. This is a Final Judgment as to all parties only as it pertains to the folio referenced herein, each party to bear its own costs and attorney's fees. This does not close the matter with respect to the remaining folios at issue.

4. With regard to the folio referenced herein, any temporary restraining order or injunction previously entered in this cause enjoining the collection of taxes, or any lis pendens recorded in conjunction herewith is hereby dissolved.

5. The payment of the additional taxes or issuance of the refund based upon the just value as mandated by paragraph 2 of this Judgment shall operate as a Satisfaction of this Judgment.

From: YCP@Valentine.US <YCP@Valentine.US>
Sent: Monday, April 20, 2020 11:38 AM EDT
To: richardclements@miamibeachfl.gov <richardclements@miamibeachfl.gov>
CC: DanGelber@miamibeachfl.gov <DanGelber@miamibeachfl.gov>; GovernorRon.Desantis@eog.myflorida.com <GovernorRon.Desantis@eog.myflorida.com>; LtGovernorJeanette.Nunez@eog.myflorida.com <LtGovernorJeanette.Nunez@eog.myflorida.com>; waynejones@miamibeachfl.gov <waynejones@miamibeachfl.gov>; paulacosta@miamibeachfl.gov <paulacosta@miamibeachfl.gov>; daviddelaespriella@maimibeachfl.gov <daviddelaespriella@maimibeachfl.gov>; enriquedoce@miamibeachfl.gov <enriquedoce@miamibeachfl.gov>; samirguerrero@miamibeachfl.gov <samirguerrero@miamibeachfl.gov>; mickysteinberg@miamibeachfl.gov <mickysteinberg@miamibeachfl.gov>; tathianetrofino@miamibeachfl.gov <tathianetrofino@miamibeachfl.gov>; MarkSamuelian@miamibeachfl.gov <MarkSamuelian@miamibeachfl.gov>; EliasGonzalez@miamibeachfl.gov <EliasGonzalez@miamibeachfl.gov>; Michael@miamibeachfl.gov <Michael@miamibeachfl.gov>; dianafontani@miamibeachfl.gov <dianafontani@miamibeachfl.gov>; stevenmeiner@miamibeachfl.gov <stevenmeiner@miamibeachfl.gov>; AmadeusHuff@miamibeachfl.gov <AmadeusHuff@miamibeachfl.gov>; rickyarriola@miamibeachfl.gov <rickyarriola@miamibeachfl.gov>; erickchiroles@miamibeachfl.gov <erickchiroles@miamibeachfl.gov>; DavidRichardson@miamibeachfl.gov <DavidRichardson@miamibeachfl.gov>; LuisCallejas@miamibeachfl.gov <LuisCallejas@miamibeachfl.gov>; Jordan, Barbara (DIST1) <Barbara.Jordan@miamidade.gov>; District1 <District1@miamidade.gov>; District2 (DIST2) <District2@miamidade.gov>; District3 <District3@miamidade.gov>; District4 <District4@miamidade.gov>; District5 <District5@miamidade.gov>; District6 <District6@miamidade.gov>; District7 <District7@miamidade.gov>; District8 <District8@miamidade.gov>; Moss, Dennis C. (DIST9) <Dennis.Moss@miamidade.gov>; District9 <District9.District9@miamidade.gov>; District10 <District10@miamidade.gov>; District11 <District11@miamidade.gov>; District12 <District12@miamidade.gov>; District 13 <district13@miamidade.gov>; Price-Williams, Abigail (CAO) <Abigail.Price-Williams@miamidade.gov>; Bonzon-Keenan, Geri (CAO) <Geri.Bonzon-Keenan@miamidade.gov>; SOFNA SOFNA <sofna@sofna.org>
Subject: Police Chief's response to officer harassment on Southpointe Drive

Dear Chief Richard M. Clements,

Your response to my serious harassment charge was both inadequate and inappropriate. I write this at 6:00 am Saturday morning and will have my staff send it on Monday.

On Friday afternoon, I received a call from Officer “Aww Shucks” Acosta, the officer well known for PR in South Beach, so I knew your had not taken the complaint with the gravity it deserves. Acosta was light and airy and he provided lame defenses for every single action and decision the out-of-line officer made regarding me and the responder. I took Acosta about as seriously as you have taken this complaint. And I want all of the many folks who have responded to me about this incident to know just how serious the Miami Beach Police Department is about our concerns in general and about the harassment by local senior citizens and responders by our imported officers.

We all know Acosta down here South of Fifth as being a nice guy and schmoozer. Rather than apologizing to me for the incident; rather than being even the least bit remorseful about the responder who was upset by the incident; rather than admitting any wrongdoing whatsoever by the officer - and there were four distinct wrongdoings in a row, which is what prompted the call - instead Acosta couldn’t care less that I was upset by the incident; couldn’t care less that my passenger responder was upset; couldn’t care less that the incident occurred. If this is the response of the police department, then it only goes to show that they’re very much out of touch with all the people who responded to me; the people I BCC'd on that email that I sent to the Police Chief of Miami Beach, to the mayor and commissioners of Miami Beach, to their counterparts in county and city governments of Miami, and to our Governor.

The concerned and sympathetic Citizens who responded to me said that the Miami Beach Police are very much out of touch with how the citizenry believes the police should be treating the residence of South of Fifth during this crisis. They believe that they have been responsive to the temporary cessation of their rights but that the authorities have taken far too much for granted.

Acosta defended the officer for tailgating and harassing us by saying that car thieves are causing to steal cars. ONE: I drove right by the Officer’s police car. TWO: I had my windows down and when I made the long looping slow turnaround at the end of Southpointe Drive, he had a long clear look at a senior citizen and his passenger with her Cavalier Spaniel service dog in her lap, hardly a couple of car thieves. The officer should have let it go right there and then. My guess is that he was protecting his take from the kava bar (rumored to deal drugs), where he could have done lots of other work, like remove all the people inside drinking kava. These druggies shouldn’t be allowed around our children who frequent the beach.

Acosta not only failed to apologize, but actually defended the officer's SQUAWKING AT ME as I remained stopped at the stop sign waiting for 8 cyclists southbound on Collins headed for the intersection at high speed. Indeed they did not stop. If I had crossed the intersection when prompted by the officer, I would have hit them or they me! No apology, just a lame defense.

The real kicker: Acosta asked ME if I had gotten the officer's name! So the police department had not reprimanded the officer and had not even looked into their records to see who the officer was who had that beat on THURSDAY NIGHT 8:40 pm. All they did was have Acosta the schmoozer do that thing he does when he comes to the SOFNA meetings and pretends that the police have our backs, when they do not. They have THEIR backs. They do not even keep track of their officers! Acosta didn't know! When I got the Miami Beach Police Chief fired a decade or so ago, the same lax type of non-monitoring was going on and is a RED FLAG to citizens for lots of wrongdoing.

Chief, "out of touch" is a bad place to be right now. It's unwise and it's going to cost you and us if you don't get your officers in line. As Police Chief it's your job to set the tone and it's pretty obvious that you're setting an oppressive tone, an overbearing tone, when understanding and compassion is the order of the day.

That proper tone has been adopted by the citizens who get it and who are beginning to realize that our police departments and government authorities do not get it.

I gave you a nice slow easy pitch right across the center of the plate and you whiffed, admitting no wrongdoing whatsoever, sending a fluff guy in Acosta instead of responding to the email seriously with the authority of your position, promising to keep your officers in line. You blew it!

See Thursday's email BELOW.

Thank you,

Valentine

305-535-3000

YCP@Valentine.US

UPPER case indicates SIGNIFICANCE

> Dear Police Chief,
> I rise to write this email at 11:00 pm after tossing and turning for 2 hours in reaction to being harassed by one of your officers for no reason.
> I will instruct my staff to send it in the morning to all related city and county government and governor's offices who need to know what harassment holds for them from just ONE of the many folks my age who grew up with freedoms and aren't going to let any unreasonable intrusions slide simply because we have a medical shut down. Offices and officers are hereby put on notice NOT to push beyond their bounds during this shut down.
> Why did your officer decide to harass me last night when I was simply driving my car at a very slow speed, minding my own business?
> Do we pay your officers to come to our neighborhood and harass us?
> Why was he parked watching young people his own age sitting inside the kava bar and congregating outside—not observing social distancing—but ignoring them and choosing to pull out and follow me when I drove past him?
> Why did he tailgate me without his headlights on but with his top lights on static and not pull me over, just harassed me?
> Why did he not pull me over and instead pull up beside me in the middle of the road, again without his lights on?
> Why did he use his squawk mechanism when I was stopped at a stoplight and saw that there was a pack of cyclists coming down Collins Avenue towards Southpoint Drive when it would've been dangerous for them and for me to have pulled out when he squawked?
> Was he so intent on me that he didn't see the obvious?
> Aren't officers supposed to be aware of the road and encourage safe rather than unsafe driving?
> This is how it happened:
> I was driving a responder who worked a long day volunteering at a free food facility in Fort Lauderdale and then taking her service dog to provide emotional comfort to people stressed out about the pandemic. All she wanted for herself was an ice cream cone so we drove to the Häagen-Dazs shop at the end of Southpointe Drive at 8:40 pm when we passed a Miami beach police officer parked several doors east of the Häagen-Dazs shop and crowded kava bar with his headlights off but his upper lights on static. I drove at 5 mph, appropriate for the narrow street and the skateboarders and people mingling in the area. We were wondering why the officer was allowing blatant use of the kava bar for more than outtake, a bar rumored to be a front for drug dealing and known to be a druggie dive, when the officer pulled out and tailgated us. Was he on the take and didn't want

senior citizens poking their noses into his business?
My window was down as I made a big, long, slow looping turn around the circle at the end of Southpoint Drive. So the officer got a good long look at a senior citizen driving slowly and safely but still he tailgated us right on my bumper, making my female volunteer responder so uncomfortable she asked me to proceed without parking to go get a take-out ice cream
We proceeded slowly to the stop sign at Collins Avenue with the officer tailgating me the entire time, making my tired, generous friend unduly upset.
I waited at the stoplight because I saw a pack of bicycles about 200 feet up the road on Collins coming quickly south towards the intersection. They looked like they were definitely not gonna stop at the stop sign when the officer squawked at me with his squawk mechanism, a disturbing sound. He said nothing over his speaker, just squawked, obviously so focused on harassing me that he didn't even see the 8 cyclists and was pressuring me to put them and myself in harm's way!
The cyclist pack indeed did not stop at the stop sign.
If I had pulled out when the officers squawked at me to do so I would've hit those bicycles.
After they cleared the intersection I proceeded slowly with the officer close to my rear bumper and noticed the liquor and sundries store—which carries more than just alcohol—and thought maybe they might carry some rubbing alcohol, which I have not been able to find anywhere
I turned my left turn signal on and the police car popped out from behind me and pulled up next to me, blocking my left lane change!
With his window down he started to question me while we were driving! I stopped and answered his intrusive questions.
He stated with: "Is there a problem?"
I said "No, what's going on?"
He said he didn't like the way I was cruising!
I told him I lived at the Yacht Club and wanted to change lanes to go to the sundries/liquor store to see if they had rubbing alcohol.
He said they will not. I said, well they may have Everclear or some substitute since I could not find any.
I asked him if it mattered.
And he said, "That depends."
I knew then he was just trying to pick a fight and drove away.
I did not take the bait.
But I was FORCED OFF THE STREET with the ice cream and without any rubbing alcohol.
I took my friend home. She was upset; her dog was upset! She never got her ice cream.
I am not a nice guy when things like this come up. In fact, I turn very, very nasty. I let your little officer boy slide for the sake of my upset friend.
I'm gonna tell you this once: I expect you to do something about this officer.
If this kind of thing happens again, you, your department and this city will never recover from the legal action that I will bring against you.
That's not a threat, that's a promise
I suggest that you make sure your little 20-something-year-old hot shot jacked up stud punk officers looking to pick a fight with a senior citizen understand that this shut down is not a shut down of people's rights and not an excuse for them to harass senior citizens minding their own business.
In case you forgot who you're dealing with I'm gonna remind you who I am and what I do:
I made the city of Miami Beach put in the World War II Victory Gardens. I didn't ask; I told. Those World War II Victory Gardens survived because of me and me alone. I spent thousands of dollars and a lot of time on their original location, cleaning it up, installing a water system, and getting great soil. The city decided they were going to put a parking lot there. We made a deal that the Victory Gardens would go to the lot that they're on now on Collins. The city had no other option but to allow the WWII Victory Gardens to survive, something they really didn't want to do. The city threw their whole crew against me to no avail.
I was the behind-the-scenes operative who exposed the code enforcement officers who were letting code violations slide in return for free VIP service at nightclubs I frequented at the time.
In another scandal, I was instrumental in getting a Police Chief fired.
I am the singular reason that there's no stinky loud diesel generator pump in the middle of that wonderful little triangular park at Alton and 1st Street. I didn't ask; I told them they would not be able to put it there.
I am singularly responsible for making the city (and federal) government use a 60 inch sewage pipe from Miami Beach to Brickell Key, avoiding the disastrous smaller pipe they were planning to use.
The Miami Beach Police Department and the city of Miami Beach does not want to deal with me over some little ageist racist cop who wanted to harass a white senior citizen and a generous responder and her service dog minding their own business at the end of a long day. That's a fight you will lose if I decide to bring it.
Get your officers in line or I will do it for you.
I'm not asking.
Thank you,

Valentine
305-535-3000
YCP@Valentine.US

UPPER case indicates SIGNIFICANCE

From: Price-Williams, Abigail (CAO) <Abigail.Price-Williams@miamidade.gov>
Sent: Saturday, April 11, 2020 1:05 PM EDT
To: louise.stlaurent@flhealth.gov <louise.stlaurent@flhealth.gov>
CC: Bonzon-Keenan, Geri (CAO) <Geri.Bonzon-Keenan@miamidade.gov>; Angell, Christopher (CAO) <Christopher.Angell@miamidade.gov>
Subject: Public records requests to the Miami-Dade County Medical Examiner related to COVID-19
Attachment(s): "Ltr COVID-19 4-11-20 (FINAL).pdf"

Dear Ms. Wilhite-St. Laurent,
I hope that you are doing well. Attached please find my letter to you regarding recent public records requests to the County's Medical Examiner.
While I know that our attorneys have been discussing this matter, please know that I am also available if you wish to discuss further.

All the best,
Abi

Abigail Price-Williams
County Attorney
111 NW 1 ST, Suite 2810
Miami, FL 33128
(305) 375-1319 (Direct Line)
APW1@miamidade.gov

Jenelle Snyder Kresse
CAO Director Agenda Coordination
(305) 375-2342 (Direct Line)
(305) 375-7929 (FAX)
JSNYDER@miamidade.gov

miamidade.gov
"Delivering Excellence Every Day"

COUNTY ATTORNEY
MIAMI-DADE COUNTY, FLORIDA

SUITE 2810, 111 NORTHWEST FIRST STREET
MIAMI, FLORIDA 33128-1993
TELEPHONE: 305.375.5151
FAX: 305.375.5634

April 11, 2020

Louise R. Wilhite-St. Laurent
General Counsel
Florida Department of Health
4052 Bald Cypress Way
Tallahassee, FL 323999
via email to: louise.stlaurent@flhealth.gov

Re: Public records requests to the Miami-Dade County Medical Examiner for information related to COVID-19 deaths

Dear Ms. Wilhite-St. Laurent:

The Miami-Dade County Medical Examiner has received public records requests for the names, dates of birth, and other information of people who have passed away from coronavirus disease 2019/COVID-19 ("Requested Documents"). I am writing to advise you that the County would like to honor the Florida Department of Health's ("Department") request that the Requested Documents not be disclosed, while also protecting the County from any liability as the public records requests were directed to the County.

Florida's public records law requires the County to release public records unless a specific statutory exemption applies. The Department has taken the position that the Requested Documents are exempt from disclosure based on certain public records exemptions, but these exemptions apply specifically to the Department. Florida law does not exempt from public disclosure the Requested Documents in the possession of the Medical Examiner.

Pursuant to chapter 381, Florida Statutes, information contained in reports that are part of a Department epidemiological investigation are exempt from public disclosure. Attorneys from our respective offices have discussed this issue during several telephone calls over the last few weeks. As discussed on April 7, 2020, if the Department provides the County with a written statement that (i) indicates the Requested Documents are part of a Department epidemiological investigation, and (ii) commits to defend and indemnify the County, then the County will not disclose the Requested Documents.

The law requires the County to respond to public records requests within a reasonable time; therefore, we respectfully request that the Department provide the written statement and agreement to defend and indemnify the County no later than 5:00 PM on Wednesday, April 15, 2020.

Thank you and please don't hesitate to contact me if you have any questions.

Sincerely,

Abigail Price-Williams
Miami-Dade County Attorney

From: Lifshitz, Daija (CAO) <Daija.Lifshitz@miamidade.gov>
Sent: Wednesday, April 22, 2020 1:36 PM EDT
To: cmap-no-reply@jud11.flcourts.org <cmap-no-reply@jud11.flcourts.org>; Price-Williams, Abigail (CAO) <Abigail.Price-Williams@miamidade.gov>; Negrin, Yolanda (CAO) <Yolanda.Negrin@miamidade.gov>; Prieto, Jessica (CAO) <Jessica.Prieto@miamidade.gov>; servicetax@rvmrlaw.com <servicetax@rvmrlaw.com>; dperez@rvmrlaw.com <dperez@rvmrlaw.com>; robert.elson@myfloridalegal.com <robert.elson@myfloridalegal.com>; lisa.ryder@myfloridalegal.com <lisa.ryder@myfloridalegal.com>; jon.annette@myfloridalegal.com <jon.annette@myfloridalegal.com>
CC: Block, Jason (jblock@rvmrlaw.com) <jblock@rvmrlaw.com>
Subject: RE: 2019-016586-CA-01 : Bal Harbour North South Condo. Assoc., Inc vs Pedro J. Garcia et al
Attachment(s): "AGREED ORDER DESIGNATING MASTER CASE NUMBER.PDF"

Good afternoon Judge,

There are more claims to adjudicate. The various partial final judgments relate to condominium units that were settled with each owner individually. The other condominium units in the building are still at issue. This case has also been consolidated with three related cases, which challenged the values of the condominium units for prior tax years. For ease of reference, the order listing all of the related cases is attached. I am happy to answer any more questions you may have. Thank you.

Sincerely,

Daija Page Lifshitz
Assistant County Attorney
Miami-Dade County Attorney's Office
111 N.W. 1st Street, Suite 2810
Miami, FL 33128
phone: 305-375-5868
fax: 305-375-5634

Due to the unprecedented and changing situation involving COVID-19, the County Attorney's Office is currently working remotely. We will have limited access to regular mail, physical files, and other resources that we would otherwise have while working in-office. As a result, we ask that you please correspond with us by e-mail or send an electronic copy of any physical document you send to our offices to this e-mail address as well as to Jessica.Prieto@miamidade.gov. We also will have limited access to certain physical and other records in response to discovery, public records requests, and other similar requests and ask for your patience and understanding in any delayed or untimely response. To the extent that we have stored data or information online and readily accessible, we will continue to provide it in a timely manner. Please also note that our fax machine has been disconnected and is no longer being used for incoming correspondence at this time. We appreciate your cooperation at this difficult time. Thank you.

-----Original Message-----
From: cmap-no-reply@jud11.flcourts.org [mailto:cmap-no-reply@jud11.flcourts.org]
Sent: Wednesday, April 22, 2020 1:13 PM
To: Price-Williams, Abigail (CAO) <Abigail.Price-Williams@miamidade.gov>; Negrin, Yolanda (CAO) <Yolanda.Negrin@miamidade.gov>; Lifshitz, Daija (CAO) <Daija.Lifshitz@miamidade.gov>; Prieto, Jessica (CAO) <Jessica.Prieto@miamidade.gov>; servicetax@rvmrlaw.com; dperez@rvmrlaw.com; robert.elson@myfloridalegal.com; lisa.ryder@myfloridalegal.com; jon.annette@myfloridalegal.com; Prieto, Jessica (CAO) <Jessica.Prieto@miamidade.gov>
Subject: 2019-016586-CA-01 : Bal Harbour North South Condo. Assoc., Inc vs Pedro J. Garcia et al

Dear Counsel:

Do the various final judgments in this case bring the matter to a close or are there more claims to adjuducate?

Sincerely,

Alan S. Fine

Circuit Court Judge

Please respond to CA02@jud11.flcourts.org

Please visit the Judge's webpage (https://www.jud11.flcourts.org/About-the-Court/Judges/Judicial-Directory) for additional instructions.

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CASE NO: 2018-024475-CA-01
SECTION: CA02
JUDGE: Alan Fine

Pedro J. Garcia (Property Appraiser)
Plaintiff(s)

vs.

Bal Harbour North South Condominium Assn., Inc et al
Defendant(s)

_____/

AGREED ORDER DESIGNATING MASTER CASE NUMBER

1. The following cases have already been consolidated by the Court:

Case Style	Case Number	Tax Year
Bal Harbour North South Condo. Assn. v. Pedro Garcia, et al.	17-18200 CA 02	2016
Pedro Garcia v. Bal Harbour North South Condo. Assn., et al.	18-24475 CA 02	2017
Bal Harbour North South Condo. Assn. v. Pedro Garcia, et al.	18-17631 CA 02	2017
Bal Harbour North South Condo. Assn. v. Pedro Garcia, et al.	19-16586 CA 02	2018

2. The docket in case number 17-18200 CA 02 shall constitute the master docket for trial of this consolidated action.

3. All discovery or trial documents that are subsequently filed shall be filed under case number 17-18200 CA 02. However, releases of lis pendens or settlements may still be filed under their respective case numbers.

4. Any prior trial orders entered in any of the above consolidated cases are hereby vacated.

5. Any subsequent trial order entered in case number 17-18200 CA 02 constitutes a trial order for all of the consolidated

cases.

DONE and **ORDERED** in Chambers at Miami-Dade County, Florida on this 10th day of December, 2019.

2018-024475-CA-01 12-10-2019 4:32 PM

Hon. Alan Fine

CIRCUIT COURT JUDGE

Electronically Signed

No Further Judicial Action Required on **THIS MOTION**

CLERK TO **RECLOSE** CASE IF POST JUDGMENT

Copies Furnished To:

Abigail Price-Williams , Email : Jessipr@miamidade.gov
Abigail Price-Williams , Email : Mastrucc@miamidade.gov
Daija Page Lifshitz , Email : Jessica.Prieto@miamidade.gov
Daija Page Lifshitz , Email : daija@miamidade.gov
Jason R Block , Email : dperez@rvmrlaw.com
Jason R Block , Email : servicetax@rvmrlaw.com
Jorge D Martinez-Esteve , Email : jme@miamidade.gov
Jorge D Martinez-Esteve , Email : kih@miamidade.gov
Michael J. Mastrucci, Assistant County Attorney , Email : Mastrucc@miamidade.gov
Michael Mastrucci , Email : mastrucc@miamidade.gov
Michael Mastrucci , Email : wilma.morillo@miamidade.gov
Robert P Elson , Email : lisa.ryder@myfloridalegal.com
Robert P Elson , Email : robert.elson@myfloridalegal.com
Robert P Elson , Email : jon.annette@myfloridalegal.com

From: Angell, Christopher (CAO) <Christopher.Angell@miamidade.gov>
Sent: Friday, April 03, 2020 3:31 PM EDT
To: Medved, Daniel T <Daniel.Medved@flhealth.gov>
Subject: Re: [EX] Public Record Requests - requests for names of decedents COVID 19 Deaths -

Good afternoon:

I spoke to the Miami-Dade County Medical Examiner Department's Chief of Operations about our ongoing discussions. He is working from home today but requested that I forward you the below email chain so you could be aware of prior communications that have been had on this topic and some confusion that has caused.
I will be in contact next week.

Thank you.

Chris Angell
Christopher A. Angell, Esq.
Assistant County Attorney
Miami-Dade County Attorney's Office
Stephen P. Clark Center
111 NW First Street
Suite 2810
Miami, FL 33128
Tel: 305-375-1024
Fax: 305-375-5611

Legal Assistant:
Maria Cruz
Tel: (305) 375-5731
Email: Maria.Cruz2@MiamiDade.gov

Paralegals:
Yenisbel Valdes
Tel: 305-375-1338
Email: Yenisbel.Valdes@MiamiDade.gov

Jarod Rucker
Tel: 305-375-5870
Email: Jarod.Rucker@MiamiDade.gov

Ulla Peralta
Tel: 305-375-2067
Email: Ulla.Peralta@MiamiDade.gov

Due to the unprecedented and changing situation involving COVID-19, the County Attorney's Office is currently working remotely. We will have limited access to regular mail, physical files, and other resources that we would otherwise have while working in-office. As a result, we ask that you please correspond with us by e-mail or send an electronic copy of any physical document you send to our offices to this e-mail address. We also will have limited access to certain physical and other records in response to discovery, public records requests, and other similar requests and ask for your patience and understanding in any delayed or untimely response. To the extent that we have stored data or information online and readily accessible, we will continue to provide it in a timely manner. Please also note that our fax machine has been disconnected and is no longer being used for incoming correspondence at this time. We appreciate your cooperation at this difficult time. Thank you.

From: Martin, James <JamesMartin@fdle.state.fl.us>
Sent: Thursday, March 19, 2020 4:42 PM
To: 'Nelson, Stephen' <StephenNelson@polk-county.net>; 'korozco@volusia.org' <korozco@volusia.org>; 'PWheaton@leegov.com' <PWheaton@leegov.com>; 'Cc:' <wmajors@baycountyfl.gov>; 'Craig.Engelson@brevardfl.gov' <Craig.Engelson@brevardfl.gov>; 'CHBODEN@broward.org' <CHBODEN@broward.org>; 'wpellan@co.pinellas.fl.us' <wpellan@co.pinellas.fl.us>; 'TCrutchfield@coj.net' <TCrutchfield@coj.net>; 'elizabethnunez@d20me.net' <elizabethnunez@d20me.net>; 'Info@dist2me.org' <Info@dist2me.org>; 'medex22@embarqmail.com' <medex22@embarqmail.com>; 'dwinterhalter@fldist12me.com' <dwinterhalter@fldist12me.com>; 'cowanh@hillsboroughcounty.org' <cowanh@hillsboroughcounty.org>; 'ccanard@irsc.edu' <ccanard@irsc.edu>; 'Lindsey.Bayer@marioncountyfl.org' <Lindsey.Bayer@marioncountyfl.org>; Caprara, Darren (ME) <Darren.Caprara@miamidade.gov>; 'Olson-Judy@monroecounty-fl.gov' <Olson-Judy@monroecounty-fl.gov>; 'Sheri.Blanton@ocfl.net' <Sheri.Blanton@ocfl.net>; 'hruiz@pbcgov.org' <hruiz@pbcgov.org>; Wilson, Sheli <SheliWilson@polk-county.net>; 'krogers@sjcfl.us' <krogers@sjcfl.us>; 'ricardocamacho@ufl.edu' <ricardocamacho@ufl.edu>
Cc: Koenig, Vickie <VickieKoenig@fdle.state.fl.us>; Lucas, Steven <StevenChadLucas@fdle.state.fl.us>; Neel, Megan <MeganNeel@fdle.state.fl.us>; Jones, Ken T <Ken.Jones@flhealth.gov>
Subject: RE: [EXTERNAL]: Re: [EX] Public Record Requests - requests for names of decedents COVID 19 Deaths -

I concur with Dr. Nelson. I'm not aware of any legal exemption or authority that would prohibit the release of the name of decedent.

James D. Martin, Deputy General Counsel
Florida Department of Law Enforcement
Post Office Box 1489
Tallahassee, Florida 32302-1489
850-410-7679

From: Nelson, Stephen [mailto:StephenNelson@polk-county.net]
Sent: Thursday, March 19, 2020 4:26 PM
To: 'korozco@volusia.org'; 'PWheaton@leegov.com'; 'Cc:'; 'Craig.Engelson@brevardfl.gov'; 'CHBODEN@broward.org'; 'wpellan@co.pinellas.fl.us'; 'TCrutchfield@coj.net'; 'elizabethnunez@d20me.net'; 'Info@dist2me.org'; 'medex22@embarqmail.com'; 'dwinterhalter@fldist12me.com'; 'cowanh@hillsboroughcounty.org'; 'ccanard@irsc.edu'; 'Lindsey.Bayer@marioncountyfl.org'; 'Darren.Caprara@miamidade.gov'; 'Olson-Judy@monroecounty-fl.gov'; 'Sheri.Blanton@ocfl.net'; 'hruiz@pbcgov.org'; Wilson, Sheli; 'krogers@sjcfl.us'; 'ricardocamacho@ufl.edu'
Cc: Martin, James; Koenig, Vickie; Lucas, Steven; Neel, Megan; Jones, Ken T
Subject: RE: [EXTERNAL]: Re: [EX] Public Record Requests - requests for names of decedents COVID 19 Deaths -

Folks,

These public records requests are no different than any other public records request we all receive. They are to be complied with.

As of this writing, there is NO Florida Statutory or Administrative Rule exemption(s) for coronavirus or COVID-19 deaths, including FS 382 et seq.

Stephen J. Nelson, M.A., M.D., F.C.A.P.
District Medical Examiner
10th Judicial Circuit of Florida
(Polk, Hardee, and Highlands Counties)
1021 Jim Keene Boulevard
Winter Haven, FL 33880-8010
863-298-4600 main
863-298-5264 fax
863-687-1344 answering service (24/7/365)

From: Jeff Martin - Director <jmartin@fldme.com>
Sent: Thursday, March 19, 2020 4:01 PM
To: Karla Orozco <korozco@volusia.org>; PWheaton@leegov.com
Cc: wmajors@baycountyfl.gov; Craig.Engelson@brevardfl.gov; CHBODEN@broward.org; wpellan@co.pinellas.fl.us; TCrutchfield@coj.net; elizabethnunez@d20me.net; Info@dist2me.org; medex22@embarqmail.com; dwinterhalter@fldist12me.com; cowanh@hillsboroughcounty.org; ccanard@irsc.edu; Lindsey.Bayer@marioncountyfl.org; Darren.Caprara@miamidade.gov; Olson-Judy@monroecounty-fl.gov; Sheri.Blanton@ocfl.net; hruiz@pbcgov.org; Wilson, Sheli <SheliWilson@polk-county.net>; krogers@sjcfl.us; ricardocamacho@ufl.edu
Subject: [EXTERNAL]: Re: [EX] Public Record Requests - requests for names of decedents COVID 19 Deaths -

We had a similar request from a very impatient individual that threatened us legally. I did provide the names of cases handled between certain dates.

Jef

Jeffrey B. Martin
Director / Chief of Forensic Investigations
(850) 865-2178 - Cellular

Office of the District Medical Examiner
District One - Florida
Central Office
5151 N. 9th Ave.
Pensacola, FL 32504
(850) 416-7210 - Office
(850) 416-6475 - Fax

Annex Office
206 Staff Drive N.E.
Ft. Walton Beach, FL 32548
(850) 651-7771 - Office
(850) 651-7775 - Fax

From: "Karla Orozco" <korozco@volusia.org>
Sent: Thursday, March 19, 2020 2:54 PM
To: PWheaton@leegov.com
Cc: wmajors@baycountyfl.gov, Craig.Engelson@brevardfl.gov, CHBODEN@broward.org, wpellan@co.pinellas.fl.us, TCrutchfield@coj.net, elizabethnunez@d20me.net, Info@dist2me.org, medex22@embarqmail.com, dwinterhalter@fldist12me.com, jmartin@fldme.com, cowanh@hillsboroughcounty.org, ccanard@irsc.edu, Lindsey.Bayer@marioncountyfl.org, Darren.Caprara@miamidade.gov, Olson-Judy@monroecounty-fl.gov, Sheri.Blanton@ocfl.net, hruiz@pbcgov.org, SheliWilson@polk-county.net, krogers@sjcfl.us, ricardocamacho@ufl.edu
Subject: Re: [EX] Public Record Requests - requests for names of decedents COVID 19 Deaths -

Hello all,

We have not had any deaths yet but I had the same concerns and was told by the MEC that they do not know anything that would prevent us from releasing the information. Our health department sent us the attachment citing the relevant statute and FAC for epidemiological investigations which are to be confidential.

I sent the same document to Chad Lucas to see what their legal department thinks about us citing that as the reason we can't release the information.

Karla

Karla Orozco M.S., F-ABMDI
Operations Manager
District 7 Medical Examiner Office
1360 Indian Lake Road
Daytona Beach, FL 32124
Office (386) 258-4060
Fax (386) 258-4061

On Mar 19, 2020, at 3:32 PM, Wheaton, Patricia < PWheaton@leegov.com> wrote:

?
Hello:

Our office has had two deaths related to COVID-19. We initially received a request from media asking for the name of one of the decedents (which we did not provide).

Thereafter, we received two other requests asking for our "log in" book (bodies transported to our office) for the date(s) of the deaths of the two cases. The bodies were not transported from the hospital to our office since we are doing a records review only and the bodies were released directly to the funeral home(s) selected by the families. The request specifically asked for the names, dates of births, and age for the dates specified. The information will not be in the documents they receive since the cases were not transported to our office and therefore not "logged in".

Another media source requested a list of names and dates of birth for cases that died on a specific date. If we were able to pull this type of list together from our database, media would have the name of the decedent whose death was related to COVID-19. Department of Health and the hospital have refused to release this information and have directed our office not to release the name of the decedent pursuant to HIPAA.

Has anyone received such media requests and if so how are you responding? I have reached out to MEC and they have no answers for us. I have reached out to DOH and they verbally advised that our office is not to release the names; however, they have not been able to site statute or otherwise. As we are under a state of emergency (and national and local), does anyone know if the release of this information, which normally would be subject to public record, is now exempt because of the emergency declared?

If you have not already received a request, standby because it will be coming. One request is from Tampa and the another is from Naples so there will soon be national agencies requesting this information.

I would like to be ahead of the eight ball but unfortunately the agencies I was hoping would be able to provide definitive information does not have any answers for us.

Thank you and stay safe.

Patti Wheaton
Operations Manager
District 21 Medical Examiner's Office
70 South Danley Drive

Fort Myers, FL 33907
Phone: 239-533-6339
Fax: 239-277-5017
Email: pwheaton@leegov.com
Website: me21.leegov.com
Serving Lee, Hendry and Glades Counties

Accredited By

<image001.jpg>

<mg_info.txt>

From: Angell, Christopher (CAO) <Christopher.Angell@miamidade.gov>
Sent: Thursday, April 02, 2020 7:10 PM EDT
To: Lamia, Christine E <Christine.Lamia@flhealth.gov>
CC: Medved, Daniel T <Daniel.Medved@flhealth.gov>; Kuhns-Neuman, Brenda (CAO) <Brenda.Kuhns-Neuman@miamidade.gov>
Subject: RE: COVID-19 deaths

Good evening:

I have received your email and the attachments and will review.
In the meantime, please let me know if you are able to speak tomorrow 2:00 PM.

Thank you.

Chris Angell
Christopher A. Angell, Esq.
Assistant County Attorney
Miami-Dade County Attorney's Office
Stephen P. Clark Center
111 NW First Street
Suite 2810
Miami, FL 33128
Tel: 305-375-1024
Fax: 305-375-5611

Legal Assistant:
Maria Cruz
Tel: (305) 375-5731
Email: Maria.Cruz2@MiamiDade.gov

Paralegals:
Yenisbel Valdes
Tel: 305-375-1338
Email: Yenisbel.Valdes@MiamiDade.gov

Jarod Rucker
Tel: 305-375-5870
Email: Jarod.Rucker@MiamiDade.gov

Ulla Peralta
Tel: 305-375-2067
Email: Ulla.Peralta@MiamiDade.gov

Due to the unprecedented and changing situation involving COVID-19, the County Attorney's Office is currently working remotely. We will have limited access to regular mail, physical files, and other resources that we would otherwise have while working in-office. As a result, we ask that you please correspond with us by e-mail or send an electronic copy of any physical document you send to our offices to this e-mail address. We also will have limited access to certain physical and other records in response to discovery, public records requests, and other similar requests and ask for your patience and understanding in any delayed or untimely response. To the extent that we have stored data or information online and readily accessible, we will continue to provide it in a timely manner. Please also note that our fax machine has been disconnected and is no longer being used for incoming correspondence at this time. We appreciate your cooperation at this difficult time. Thank you.

From: Lamia, Christine E [mailto:Christine.Lamia@flhealth.gov]
Sent: Thursday, April 2, 2020 6:21 PM
To: Angell, Christopher (CAO) <Christopher.Angell@miamidade.gov>
Cc: Medved, Daniel T <Daniel.Medved@flhealth.gov>
Subject: RE: COVID-19 deaths

Chris,

Thank you for taking our call this afternoon. Please find attached the letter sent to the Florida Medical Examiners Commission today regarding the ME's mandatory reporting requirements.

As we discussed, it is the Department of Health's position that the information requested in the request below should not be released as it is confidential and exempt from public record disclosure. This position is based upon the following statutes. Florida

Administrative Rule and caselaw:

Section 381.0031(6), Florida Statutes, provides that information submitted in reports required by 381.0031 is confidential and exempt from section 119.07(1). Thus, the mandatory report of the medical examiner as required by subsection (2), including the information contained therein, is confidential pursuant to subsection (6). This information includes all of the confidential information collected by the Department pursuant to subsection (7). The confidentiality of these records survive the death of the decedent. See Weaver, attached. I have also attached the administrative rule which implements the cited statute.

Section 382.008(6) Florida Statutes, further exempts the cause of death from section 119.07(1): "All information relating to cause of death in all death and fetal death records… are confidential and exempt from the provisions of section 119.07(1)". Further, section 382.011 requires the medical examiner to certify the cause of death under section 406.11, which specifically implicates section 382.008(6)'s confidentiality exemption.

The above reading of these statutes is supported by Yestes v. Miami Herald Publishing Co., also attached.

I look forward to discussing this further,

Chris

Christine E. Lamia
Deputy General Counsel
State Health Offices
Office of the General Counsel
Florida Department of Health
4052 Bald Cypress Way, Bin #A-02
Tallahassee, FL 32399-3265
(850) 245-4005 (OGC Main Line)
(850) 245-4021 (Direct Line)
(850) 245-4790 (Fax)

Mission: To protect, promote, and improve the health of all people in Florida through integrated state, county, & community efforts.
Vision: To be the Healthiest State in the Nation
Values: **ICARE**
I innovation: We search for creative solutions and manage resources wisely.
C collaboration: We use teamwork to achieve common goals & solve problems.
A accountability: We perform with integrity & respect.
R responsiveness: We achieve our mission by serving our customers & engaging our partners.
E excellence: We promote quality outcomes through learning & continuous performance improvement.
Purpose: To protect the public through health care licensure, enforcement and information.
Focus: To be the nation's leader in quality health care regulation.

From: Angell, Christopher (CAO) <Christopher.Angell@miamidade.gov>
Sent: Thursday, April 2, 2020 5:08 PM
To: Lamia, Christine E <Christine.Lamia@flhealth.gov>
Subject: FW: COVID-19 deaths

Pursuant to your request, please see below.

Chris Angell
Christopher A. Angell, Esq.
Assistant County Attorney
Miami-Dade County Attorney's Office
Stephen P. Clark Center
111 NW First Street
Suite 2810
Miami, FL 33128
Tel: 305-375-1024
Fax: 305-375-5611

Legal Assistant:
Maria Cruz

Paralegals:
Yenisbel Valdes

Tel: (305) 375-5731
Email: Maria.Cruz2@MiamiDade.gov

Tel: 305-375-1338
Email: Yenisbel.Valdes@MiamiDade.gov

Jarod Rucker
Tel: 305-375-5870
Email: Jarod.Rucker@MiamiDade.gov

Ulla Peralta
Tel: 305-375-2067
Email: Ulla.Peralta@MiamiDade.gov

From: Ovalle, David <dovalle@miamiherald.com>
Sent: Tuesday, March 31, 2020 6:29 PM
To: Caprara, Darren (ME) <Darren.Caprara@miamidade.gov>
Subject: COVID-19 deaths

Hope you are doing well, and please thank Dr. Lew for speaking with me about the ME's role in this horrible pandemic. I hope the story was informative for leaders.

Since the ME must certify and issue COVID-19 deaths, can you please send the names and DOBs of the decedents thus far recorded through the ME's office. So far, the Fla. Dept of Health has noted 7 deaths. Thank you!

David O.

From: Lamia, Christine E <Christine.Lamia@flhealth.gov>
Sent: Thursday, April 02, 2020 6:20 PM EDT
To: Angell, Christopher (CAO) <Christopher.Angell@miamidade.gov>
CC: Medved, Daniel T <Daniel.Medved@flhealth.gov>
Subject: RE: COVID-19 deaths
Attachment(s): "FDOH Medical Examiner Reporting Letter 4.2.20.pdf","Weaver v Myers (004).pdf","Yeste v Miami Herald Pub Co a div of Knight-Ridder Newspapers Inc.pdf","64D-3.036 (1).pdf"

Chris,

Thank you for taking our call this afternoon. Please find attached the letter sent to the Florida Medical Examiners Commission today regarding the ME's mandatory reporting requirements.

As we discussed, it is the Department of Health's position that the information requested in the request below should not be released as it is confidential and exempt from public record disclosure. This position is based upon the following statutes, Florida Administrative Rule and caselaw:

Section 381.0031(6), Florida Statutes, provides that information submitted in reports required by 381.0031 is confidential and exempt from section 119.07(1). Thus, the mandatory report of the medical examiner as required by subsection (2), including the information contained therein, is confidential pursuant to subsection (6). This information includes all of the confidential information collected by the Department pursuant to subsection (7). The confidentiality of these records survive the death of the decedent. See Weaver, attached. I have also attached the administrative rule which implements the cited statute.

Section 382.008(6) Florida Statutes, further exempts the cause of death from section 119.07(1): "All information relating to cause of death in all death and fetal death records… are confidential and exempt from the provisions of section 119.07(1)". Further, section 382.011 requires the medical examiner to certify the cause of death under section 406.11, which specifically implicates section 382.008(6)'s confidentiality exemption.

The above reading of these statutes is supported by Yestes v. Miami Herald Publishing Co., also attached.

I look forward to discussing this further,

Chris

Christine E. Lamia
Deputy General Counsel
State Health Offices
Office of the General Counsel
Florida Department of Health
4052 Bald Cypress Way, Bin #A-02
Tallahassee, FL 32399-3265
(850) 245-4005 (OGC Main Line)
(850) 245-4021 (Direct Line)
(850) 245-4790 (Fax)

Mission: To protect, promote, and improve the health of all people in Florida through integrated state, county, & community efforts.
Vision: To be the Healthiest State in the Nation
Values: **ICARE**
I innovation: We search for creative solutions and manage resources wisely.
C collaboration: We use teamwork to achieve common goals & solve problems.
A accountability: We perform with integrity & respect.
R responsiveness: We achieve our mission by serving our customers & engaging our partners.
E excellence: We promote quality outcomes through learning & continuous performance improvement.
Purpose: To protect the public through health care licensure, enforcement and information.
Focus: To be the nation's leader in quality health care regulation.

Please note:
Florida has a very broad public records law. Most written communications to or from state officials regarding state business are public records available to the public and media upon request. Your e-mail communications may therefore be subject to public disclosure. Please consider the environment before printing this e-mail.

From: Angell, Christopher (CAO) <Christopher.Angell@miamidade.gov>
Sent: Thursday, April 2, 2020 5:08 PM
To: Lamia, Christine E <Christine.Lamia@flhealth.gov>
Subject: FW: COVID-19 deaths

Pursuant to your request, please see below.

Chris Angell
Christopher A. Angell, Esq.
Assistant County Attorney
Miami-Dade County Attorney's Office
Stephen P. Clark Center
111 NW First Street
Suite 2810
Miami, FL 33128
Tel: 305-375-1024
Fax: 305-375-5611

Legal Assistant:
Maria Cruz
Tel: (305) 375-5731
Email: Maria.Cruz2@MiamiDade.gov

Paralegals:
Yenisbel Valdes
Tel: 305-375-1338
Email: Yenisbel.Valdes@MiamiDade.gov

Jarod Rucker
Tel: 305-375-5870
Email: Jarod.Rucker@MiamiDade.gov

Ulla Peralta
Tel: 305-375-2067
Email: Ulla.Peralta@MiamiDade.gov

Due to the unprecedented and changing situation involving COVID-19, the County Attorney's Office is currently working remotely. We will have limited access to regular mail, physical files, and other resources that we would otherwise have while working in-office. As a result, we ask that you please correspond with us by e-mail or send an electronic copy of any physical document you send to our offices to this e-mail address. We also will have limited access to certain physical and other records in response to discovery, public records requests, and other similar requests and ask for your patience and understanding in any delayed or untimely response. To the extent that we have stored data or information online and readily accessible, we will continue to provide it in a timely manner. Please also note that our fax machine has been disconnected and is no longer being used for incoming correspondence at this time. We appreciate your cooperation at this difficult time. Thank you.

From: Ovalle, David <dovalle@miamiherald.com>
Sent: Tuesday, March 31, 2020 6:29 PM
To: Caprara, Darren (ME) <Darren.Caprara@miamidade.gov>
Subject: COVID-19 deaths

Hope you are doing well, and please thank Dr. Lew for speaking with me about the ME's role in this horrible pandemic. I hope the story was informative for leaders.

Since the ME must certify and issue COVID-19 deaths, can you please send the names and

DOBs of the decedents thus far recorded through the ME's office. So far, the Fla. Dept of Health has noted 7 deaths. Thank you!

David O.

64D-3.036 Notifiable Disease Case Report Content is Confidential.

All information contained in laboratory reports, notifiable disease or condition case reports and in related epidemiological investigatory notes is confidential as provided in Section 381.0031(6), F.S., and will only be released as determined as necessary by the State Health Officer or designee for the protection of the public's health due to the highly infectious nature of the disease, the potential for further outbreaks, and/or the inability to identify or locate specific persons in contact with the cases.

Rulemaking Authority 381.0011, 381.003(2), 381.0031(8), 384.33, 392.66 FS. Law Implemented 381.0011(3), 381.003(1), 381.0031(2), (6), (7), 384.25, 392.53 FS. History–New 11-20-06.

To: District Medical Examiners

From: The Florida Department of Health

Through: The Florida Medical Examiners Commission

Re: Mandatory Reporting of COVID-19 Deaths under Rule 64D-3, Florida Administrative Code

Date: April 2, 2020

COVID-19 IS A REPORTABLE CONDITION OF URGENT PUBLIC HEALTH IMPORTANCE AND MUST BE REPORTED TO THE DEPARTMENT OF HEALTH IMMEDIATELY.

Florida Statutes section 406.11(1)(a)11 requires the local medical examiner to determine the cause of death for any person who dies as a result of a disease constituting a threat to public health. Florida Administrative Code section 64D-3.030(1) also requires all medical examiners to report *without delay* any suspicion or diagnosis of coronavirus infection, including cases in persons who at the time of death were so affected. Reports that cannot timely be made during the County Health Department business day shall be made to the County Health Department after-hours duty official. If unable to do so, examiners are required to contact the Department after-hours duty official at (850)245-4401.

Rule 64D-3.047 provides:

> (1) Any practitioner, hospital or laboratory who is subject to the provisions of this rule who fails to report a disease or condition as required by this rule or otherwise fails to act in accordance with this rule is guilty of a misdemeanor of the second degree, and, upon conviction thereof, shall be fined not more than five hundred dollars ($500.00) as provided in Section 775.082 or 775.083, F.S. Each violation is considered a separate offense.
> (2) All violations by practitioners, hospitals or laboratories shall be reported to the appropriate professional licensing authorities and public financing programs.

Please be advised that strict compliance with this rule is of the utmost importance during this public health emergency. The Department of Health, in conjunction with state, federal, and local authorities, uses this data in real time to prepare and respond to the COVID-19 emergency. *Any* gaps or delays in reporting time hinder efficient emergency response and resource allocation. The Department trusts you, the District Medical Examiner and your Associate Medical Examiners, to meet your obligation to report immediately during this pandemic.

229 So.3d 1118
Supreme Court of Florida.

Emma Gayle WEAVER, etc., Petitioner,
v.
Stephen C. MYERS, M.D., et al., Respondents.

No. SC15–1538
|
[November 9, 2017]

Synopsis

Background: Wife, as personal representative of husband's estate, brought medical negligence action against physician and sought declaratory relief and an injunction with regard to the statutory requirement for secret, ex parte interviews of husband's health care providers. The Circuit Court, Escambia County, J. Scott Duncan and Edward P. Nickinson, III, JJ., granted physician's motion to dismiss in part and granted physician's motion for summary judgment. Wife appealed. The District Court of Appeal, 170 So.3d 873, affirmed. Wife petitioned for review.

Holdings: The Supreme Court, Lewis, J., held that:

[1] husband maintained his constitutional right to privacy after his **death**;

[2] a decedent does **not** retroactively lose and can maintain the constitutional right to privacy in protected private matters;

[3] wife had standing to raise husband's right to privacy;

[4] wife did **not** waive husband's right to privacy over all health information by filing medical malpractice claim; and

[5] husband's right to privacy was violated by statutory provisions requiring secret, ex parte interviews.

Quashed and remanded.

Canady, J., filed dissenting opinion in which Polston and Lawson, JJ., joined.

West Headnotes (15)

[1] **Constitutional Law**
Records or Information

Constitutional Law
Medical records or information

Patient and his estate that brought medical malpractice action against physician maintained constitutional right to privacy concerning matters that occurred prior to his **death**, and that privacy could be invoked as a shield to maintain confidence of his protected information, including but **not** limited to medical information; even though patient had died, right to privacy was being used as limited shield from ex parte discovery and **not** as sword to initiate civil action. Fla. Const. art. 1, § 23.

1 Cases that cite this headnote

[2] **Appeal and Error**
Constitutional law

Review is de novo for questions of constitutional law.

[3] **Constitutional Law**
Right to Privacy

The constitutional right of privacy ensures that individuals are able to determine for themselves when, how, and to what extent information about them is communicated to others. Fla. Const. art. 1, § 23.

[4] **Constitutional Law**
Records or Information

Constitutional Law
Medical records or information

In all litigation contexts, a decedent does **not** retroactively lose and can maintain the constitutional right to privacy that may be invoked as a shield in all contexts, including but **not** limited to medical malpractice cases, against the unwanted disclosure of protected private

matters, including medical information that is irrelevant to any underlying claim including but **not** limited to any medical malpractice claim. Fla. Const. art. 1, § 23.

2 Cases that cite this headnote

[5] Constitutional Law
Right to Privacy

Death does **not** retroactively abolish the constitutional protections for privacy that existed at the moment of **death**. Fla. Const. art. 1, § 23.

1 Cases that cite this headnote

[6] Constitutional Law
Right to privacy

Wife, who was personal representative of husband's estate, had standing to raise husband's constitutional right to privacy in protected medical information, in estate's challenge to statutes requiring secret, ex parte interviews with patients' health care providers in medical malpractice actions; administrator of estate could assert privacy right in wrongful **death** actions because he or she was the only person who had standing to file wrongful **death** action in the first place. Fla. Const. art. 1, § 23; Fla. Stat. Ann. §§ 766.106, 766.1065, 768.20.

1 Cases that cite this headnote

[7] Death
Personal Representatives

The personal representative of a decedent's estate is the sole party that may file a decedent's cause of action for wrongful **death**. Fla. Stat. Ann. § 768.20.

[8] Constitutional Law
Waiver in general

Wife, who was personal representative of husband's estate, did **not** waive husband's constitutional right to privacy over all health information by filing medical malpractice claim on estate's behalf; even though wife **waived** right with regard to health information relevant to claim, wife did **not** waive right with regard to irrelevant information, and some irrelevant information would have been open and subject to ex parte exploration proceedings for medical malpractice claims. Fla. Const. art. 1, § 23; Fla. Stat. Ann. §§ 766.106, 766.1065.

[9] Constitutional Law
Medical records or information

Although a claimant may necessarily waive privacy rights to the medical information that is relevant to a medical malpractice claim by filing an action, this does **not** amount to waiver of privacy rights pertaining to all confidential health information that is **not** relevant to the claim. Fla. Const. art. 1, § 23.

3 Cases that cite this headnote

[10] Constitutional Law
Medical records or information

Patient's constitutional right to privacy was violated by statutory provisions requiring secret, ex parte interviews of patient's health care providers as a condition for patient's estate to bring medical malpractice action; ex parte interviews did **not** protect patient from even accidental disclosures of confidential medical information that fell outside scope of claim, and provisions coerced and forced patient to either forego right to privacy or forego fundamental constitutional right to access to courts. Fla. Const. art. 1, §§ 21, 23; Fla. Stat. Ann. §§ 766.106, 766.1065.

1 Cases that cite this headnote

[11] Constitutional Law
Particular Issues and Applications

Constitutional Law
Particular Issues and Applications

Constitutional Law
Right to Privacy

Due to the fundamental and highly guarded nature of the constitutional right to privacy, any law that implicates the right, regardless of the activity, is subject to strict scrutiny and,

therefore, presumptively unconstitutional; thus, the burden of proof rests with the State to justify an intrusion on privacy. Fla. Const. art. 1, § 23.

1 Cases that cite this headnote

[12] **Constitutional Law**
Conditions, Limitations, and Other Restrictions on Access and Remedies

Courts are generally opposed to any burden being placed on the rights of aggrieved persons to enter the courts because of the constitutional guarantee of access. Fla. Const. art. 1, § 21.

[13] **Constitutional Law**
Conditions, Limitations, and Other Restrictions on Access and Remedies

The access to courts provision of the state constitution is applicable to wrongful **death** actions. Fla. Const. art. 1, § 21.

[14] **Constitutional Law**
Conditions, Limitations, and Other Restrictions on Access and Remedies

The scope of protection of access to the courts extends to protect situations in which legislative action significantly obstructs the right of access. Fla. Const. art. 1, § 21.

[15] **Constitutional Law**
Conditions, Limitations, and Other Restrictions on Access and Remedies

In order to find that a right of access to the courts has been violated it is **not** necessary for the statute to produce a procedural hurdle which is absolutely impossible to surmount, only one which is significantly difficult. Fla. Const. art. 1, § 21.

West Codenotes

Held Unconstitutional

Fla. Stat. Ann. §§ 766.106, 766.1065

***1120** Application for Review of the Decision of the District Court of Appeal—Statutory Validity, First District–Case No. 1D14–3178, (Escambia County)

Attorneys and Law Firms

Virginia M. Buchanan of Levin, Papantonio, Thomas, Mitchell, Rafferty & Proctor, P.A., Pensacola, Florida; Robert S. Peck of Center for Constitutional Litigation, P.C., Fairfax Station, Virginia, for Petitioner

Mark Hicks and Erik P. Bartenhagen of Hicks, Porter, Ebenfeld & Stein, P.A., Miami, Florida, for Respondent

Philip M. Burlington and Adam J. Richardson of Burlington & Rockenbach, P.A., West Palm Beach, Florida, for Amicus Curiae Florida Justice Association

Pamela Jo Bondi, Attorney General, and Jordan E. Pratt, Deputy Solicitor General, Office of the Attorney General, Tallahassee, Florida, for Amicus Curiae State of Florida

***1121** Andrew S. Bolin of Beytin, McLaughlin, McLaughlin, O'Hara, Bocchino & Bolin, P.A., Tampa, Florida, for Amici Curiae Florida Hospital Association, The Florida Medical Association, and The American Medical Association

Mark K. Delegal and Tiffany A. Roddenberry of Holland & Knight LLP, Tallahassee, Florida; and William W. Large, Esq. of Florida Justice Reform Institute, Tallahassee, Florida, for Amicus Curiae The Florida Justice Reform Institute

Opinion

LEWIS, J.

This case involves a Florida constitutional challenge to the 2013 amendments to sections 766.106 and 766.1065 of the Florida Statutes. Generally, the statutes pertain to invasive presuit notice requirements that must be satisfied before a medical negligence action may be filed, as well as an informal discovery process that accompanies that presuit notice process, and the amendments at issue here authorize secret, ex parte interviews as part of the informal discovery process. The First District Court of Appeal upheld the constitutionality of these statutory amendments in Weaver v. Myers, 170 So.3d 873, 883 (Fla. 1st DCA 2015). Weaver then petitioned this Court for review. [1] Because the district court expressly declared a state statute valid, this Court has

discretionary jurisdiction to review the decision. See art. V, § 3(b)(3), Fla. Const. We accept that jurisdiction.

STATUTORY BACKGROUND

Since 2011, before filing a medical negligence action in Florida, a claimant must satisfy statutory requirements, which include conducting a presuit investigation process to ascertain whether there are reasonable grounds to believe that the defendant medical provider was negligent, and that the negligence resulted in injury to the claimant. § 766.203(2)(a)-(b), Fla. Stat. (2016).

Following that investigation, a claimant must give each prospective defendant presuit notice of intent to initiate litigation and make certain disclosures. § 766.106(2)(a), Fla. Stat. (2016). The notice must disclose, where available, a list of all health care providers seen by the claimant for the injuries complained of and all known health care providers seen during the two-year period prior to the alleged act of negligence. Id. Furthermore, a medical malpractice claimant must furnish all **medical records** that the presuit investigation expert relied upon in signing an affidavit indicating a good-faith basis to believe a valid claim exists. See id.

In addition, the presuit notice must include an executed authorization form that is provided in section 766.1065 of the Florida Statutes. Id. That executed authorization form is titled "Authorization for Release of Protected Health Information." § 766.1065, Fla. Stat. (2016). By executing the authorization form in compliance with the statutory presuit notice requirement, the claimant is required to authorize the release of protected verbal and written health information that is potentially relevant to the claim of medical negligence in the possession of the health care providers listed in the notice disclosures. § 766.1065(3)B.1.–2., Fla. Stat. However, this authorization is **not** a blanket authorization—it excludes health care providers who do **not** possess information that is potentially relevant to the claim. § 766.1065(3)C. Nevertheless, the claimant is required to name these providers and provide the dates of treatments rendered by others. Id.

***1122** As part of this presuit machinery unique to medical malpractice claims, "the parties shall make discoverable information available without formal discovery." § 766.106(6)(a), Fla. Stat. Under this informal discovery, a prospective defendant may require a medical malpractice claimant seeking redress to: (1) give an unsworn statement; (2) produce requested documents, things, and **medical records**; (3) submit to a physical or mental examination; (4) answer written questions; and (5) authorize treating health care providers to give unsworn statements. See § 766.106(6)(b), Fla. Stat. The statutory scheme further provides, however, that "work product generated by the presuit screening process is **not** discoverable or admissible in any civil action for any purpose by the opposing party." § 766.106(5), Fla. Stat. But, failure to participate in informal discovery "is grounds for dismissal of claims or defenses ultimately asserted." § 766.106(6)(a), Fla. Stat.

AMENDMENTS AT ISSUE

While it retained the scheme described above, in 2013, the Legislature added secret, ex parte interviews to the list of informal discovery devices to which a medical malpractice claimant seeking redress must consent:

> Interviews of treating health care providers.—A prospective defendant or his or her legal representative may interview the claimant's treating health care providers consistent with the authorization for release of protected health information. This subparagraph does **not** require a claimant's treating health care provider to submit to a request for an interview. Notice of the intent to conduct an interview shall be provided to the claimant or the claimant's legal representative, who shall be responsible for arranging a mutually convenient date, time, and location for the interview within 15 days after the request is made. For subsequent interviews, the prospective defendant or his or her representative shall notify the claimant and his or her legal representative at least 72 hours before the subsequent interview. If the claimant's attorney fails to schedule an interview, the prospective defendant or his or her legal representative may attempt to conduct an interview

> without further notice to the claimant or the claimant's legal representative.

§ 766.106(6)(b) 5., Fla. Stat. (emphasis added); Ch. 2013–108, § 3, at 5, Laws of Fla. Thus, that plain language requires that, upon request by the prospective defendant, the medical malpractice claimant must arrange for an interview between his or her treating health care providers and the prospective defendant or legal representatives of such defendant within fifteen days of the request. Without providing any limitation on the number of interviews, the plain language further provides for arranging subsequent interviews with 72–hours' notice. However, if at any time the medical malpractice claimant's attorney fails to schedule a requested interview, then the prospective defendant or his lawyers may unilaterally and without notice schedule the claimant's treating health care providers for such an interview without any notice to the claimant whatsoever. Nothing prevents multiple attempts at securing such interviews.

Further, the statutorily mandated authorization form was also amended and makes clear that the prospective defendant may interview the claimant's treating health care providers ex parte in secret, without the claimant or the claimant's attorney present:

> This authorization expressly allows the persons or class of persons listed in subsections D.2.–4. above to interview the health care providers listed in subsections B.1.–2. above, without the presence ***1123** of the Patient or the Patient's attorney.

§ 766.1065(3)E., Fla. Stat. (emphasis added); Ch. 2013–108, § 4, at 7, Laws of Fla. However, because "[t]his authorization expressly allows the persons or class of persons listed in subsections D.2.–4. above to interview," the authorization requires a medical malpractice claimant to expose health care providers to such clandestine, ex parte interviews **not** only with the prospective defendant, but also with a broad set of parties, including related insurers, expert witnesses, attorneys, and support staff:

> 2. Any liability insurer or self-insurer providing liability insurance coverage, self-insurance, or defense to any health care provider to whom presuit notice is given, or to any health care provider listed in subsections B.1.–2. above, regarding the care and treatment of the Patient.
>
> 3. Any consulting or testifying expert employed by or on behalf of (name of health care provider to whom presuit notice was given) and his/her/its insurer(s), self-insurer(s), or attorney(s) regarding the matter of the presuit notice accompanying this authorization.
>
> 4. Any attorney (including his/her staff) employed by or on behalf of (name of health care provider to whom presuit notice was given) or employed by or on behalf of any health care provider(s) listed in subsections B.1.–2. above, regarding the matter of the presuit notice accompanying this authorization or the care and treatment of the Patient.

§ 766.1065(3)D.2.–4., Fla. Stat.

The Legislature did **not** amend the statute without some expression of its intent. Specifically, in 2013, the Legislature added a third express purpose for the release of the protected health information: "Obtaining legal advice or representation arising out of the medical negligence claim described in the accompanying presuit notice." § 766.1065(3)A.3., Fla. Stat.; Ch. 2013–108, § 4, at 6, Laws of Fla. Before the amendments, the stated purpose of the mandatory authorization was twofold—to facilitate the investigation and evaluation of the claim, or to defend against any litigation arising out of the claim. § 766.1065(3)A.1.–2., Fla. Stat. (2012); Ch. 2013–108, § 4, at 6, Laws of Fla.

Further, as was true before the 2013 amendments, it remains true today that these conditions imposed by the Legislature are nonnegotiable. Specifically, "If the authorization required by this section is revoked, the presuit notice under s. 766.106(2) is deemed retroactively void from the date of issuance, and any tolling effect that the presuit notice may have had on any applicable statute-of-limitations period is retroactively rendered void." § 766.1065(2), Fla. Stat. (2016); see also generally § 95.11(4)(b), Fla. Stat. (2016) ("An action for medical malpractice shall be commenced within 2 years from the time the incident giving rise to the action occurred or within 2 years from the time the incident is discovered, or should have been discovered with the exercise of due diligence ...."). Thus, as the decision below correctly recognized, a claimant now cannot institute a medical malpractice action without authorizing ex parte interviews between the claimant's health care providers and the potential defendant. Weaver, 170 So.3d at 877.

FACTUAL AND PROCEDURAL BACKGROUND

Faced with the expanded disclosure requirements, Petitioner Emma Gayle Weaver (Weaver), individually and as personal representative of the estate of her late husband Thomas Weaver (Thomas), filed an action against Respondent Dr. Stephen C. Myers for declaratory judgment and ***1124** injunctive relief with regard to the 2013 amendments on the date they became effective. Weaver contended that Dr. Myers provided care to Thomas that allegedly led to his injury and **death**. Relevant here, Weaver contended that the 2013 amendments violated the right of access to courts and the right to privacy under the Florida Constitution.

With regard to the right to privacy claim, the trial court granted in part Dr. Myers' motion to dismiss and dismissed Weaver's privacy claim. The trial court first concluded that an estate cannot assert any privacy rights on behalf of a decedent because such rights under the Florida Constitution absolutely terminate upon **death** and essentially are retroactively destroyed. The court then held that even if Weaver could assert Thomas' privacy rights, the claim should still be dismissed because a constitutional privacy challenge can only be asserted to protect against a government entity or actor even though it is obvious that a state statute is authorizing the invasion here.

With regard to the access to courts challenge, on June 24, 2014, the trial court granted Dr. Myers' motion for summary judgment. The trial court reasoned that the predecessor statute to section 766.106 was held to be valid under the applicable provision of the Florida Constitution. See Lindberg v. Hosp. Corp. of Am., 545 So.2d 1384, 1386 (Fla. 4th DCA 1989), approved 571 So.2d 446 (Fla. 1990). The court then concluded the addition of the secret ex parte interviews do **not** represent a material change sufficient to render the statute an impermissible burden on access to courts.

On appeal, the First District affirmed. Weaver, 170 So.3d at 883. With regard to access to courts, the First District stated that "[a] statute which merely imposes a condition precedent to suit without abolishing or eliminating a substantive right must be upheld in the face of a constitutional challenge unless the statute 'create[s] a significantly difficult impediment to ... right of access.' " Id. at 882 (quoting Henderson v. Crosby, 883 So.2d 847, 854 (Fla. 1st DCA 2004) (quoting Mitchell v. Moore, 786 So.2d 521 (Fla. 2001))). The district court determined that the signing and serving of the mandatory authorization as part of the presuit process does **not** "abolish or eliminate" any substantive right, and concluded that "all that is imposed is a precondition to suit, in addition to those that are already in existence under chapter 766." Id. It then stated:

> Though [Weaver] is correct that the amendments to the authorization for release of protected health information now require the claimant to expressly authorize ex parte interviews between former health care practitioners with information relevant to the potential lawsuit and the potential defendant, we find that like the presuit notice requirement itself, this is a reasonable condition precedent to filing suit, and, thus, does **not** violate her right to access the courts.

Id. at 882–83.

With regard to the privacy challenge, the district court, unlike the trial court, addressed this claim on the merits and concluded that "any privacy rights that might attach to a claimant's medical information are **waived** once that information is placed at issue by filing a medical malpractice claim. Thus, by filing the medical malpractice lawsuit, the decedent's medical condition is at issue." Id. at 883 (citations omitted). The district court further noted that prior to the 2013 amendments, potential claimants were already required to disclose and produce relevant **medical records** to the defense during the presuit process. Id. The court below did **not** acknowledge or even address the concept of ***1125** non-relevant matters and privacy rights related thereto.

Therefore, the district court upheld the constitutionality of the statutes. This review follows.

ANALYSIS

[1] **[2]** Weaver contends that the Legislature's passage of certain amendments to sections 766.106 and 766.1065 of the Florida Statutes are unconstitutional for several reasons. First, Weaver contends that the amendments violate the right to

privacy explicitly provided for in the Florida Constitution. Relatedly, Weaver also contends that placing a prerequisite condition on her action for wrongful **death** requiring the release of Thomas' **medical records** and the facilitation of ex parte, secret presuit interviews with Thomas' medical providers violates the right to access to courts. Because these issues are questions of Florida constitutional law, our review is de novo. Caribbean Conservation Corp. v. Fla. Fish & Wildlife Conservation Comm'n, 838 So.2d 492, 500 (Fla. 2003).

The United States Supreme Court has explained that the United States Constitution does **not** mention the right to privacy, but that it is a pervasive right touching on many aspects of life and the right of privacy finds its roots throughout the Bill of Rights and in the Fourteenth Amendment:

> The Constitution does **not** explicitly mention any right of privacy. In a line of decisions, however, going back perhaps as far as Union Pacific R. Co. v. Botsford, 141 U.S. 250, 251, 11 S.Ct. 1000, 35 L.Ed. 734 (1891), the Court has recognized that a right of personal privacy, or a guarantee of certain areas or zones of privacy, does exist under the Constitution. In varying contexts, the Court or individual Justices have, indeed, found at least the roots of that right in the First Amendment; in the Fourth and Fifth Amendments; in the penumbras of the Bill of Rights; in the Ninth Amendment; or in the concept of liberty guaranteed by the first section of the Fourteenth Amendment. These decisions make it clear that only personal rights that can be deemed "fundamental" or "implicit in the concept of ordered liberty," are included in this guarantee of personal privacy. They also make it clear that the right has some extension to activities relating to marriage; procreation; contraception; family relationships; and child rearing and education.

Roe v. Wade, 410 U.S. 113, 152–53, 93 S.Ct. 705, 35 L.Ed.2d 147 (1973), holding modified by Planned Parenthood of Se. Pa. v. Casey, 505 U.S. 833, 112 S.Ct. 2791, 120 L.Ed.2d 674 (1992) (internal citations omitted).

While the federal right to privacy is pervasive and is revealed by judicial interpretation, we need **not** rely on federal law but look only to the Florida Constitution, which explicitly provides a right to privacy:

> Every natural person has the right to be let alone and free from governmental intrusion into the person's private life except as otherwise provided herein.

Art. I, § 23, Fla. Const. (1980). This provision was added by Florida voters in 1980 and remains unchanged.

[3] We have explained that the right to privacy in the Florida Constitution is broader, more fundamental, and more highly guarded than any federal counterpart:

> This amendment is an independent, freestanding constitutional provision which declares the fundamental right to privacy. Article I, section 23, was intentionally phrased in strong terms. The drafters of the amendment rejected the use of the words "unreasonable" or "unwarranted" before the phrase "governmental intrusion" in order to make the privacy right as strong as possible. Since ***1126** the people of this state exercised their prerogative and enacted an amendment to the Florida Constitution which expressly and succinctly provides for a strong right of privacy **not** found in the United States Constitution, it can only be concluded that the right is much broader in scope than that of the Federal Constitution.

Winfield v. Div. of Pari–Mutuel Wagering, 477 So.2d 544, 548 (Fla. 1985); see N. Fla. Women's Health & Counseling Servs., Inc. v. State, 866 So.2d 612, 634–35 (Fla. 2003). The right of privacy "ensures that individuals are able 'to determine for themselves when, how and to what extent information about them is communicated to others.' " Shaktman v. State, 553 So.2d 148, 150 (Fla. 1989) (quoting A. Westin, Privacy and Freedom 7 (1967)).

Specifically relevant here, we have held in no uncertain terms that "[a] patient's **medical records** enjoy a confidential status by virtue of the right to privacy contained in the Florida Constitution ...." State v. Johnson, 814 So.2d 390, 393 (Fla. 2002). We have further recognized that "[t]he potential for invasion of privacy is inherent in the litigation process." Rasmussen v. S. Fla. Blood Serv., Inc., 500 So.2d 533, 535 (Fla. 1987).

This would **not** be the first time that a Florida court has balanced a decedent's constitutional right to privacy over information occurring during the person's lifetime against the right to access to that information in litigation. In Antico v. Sindt Trucking, Inc., 148 So.3d 163, 164 (Fla. 1st DCA 2014), which also involved a wrongful **death** action, the administrator of an estate raised a constitutional privacy challenge to discovery of the contents of the decedent's cell phone. Specifically, the case involved a fatal automobile accident and the wrongful-**death**-action defendant filed a motion for permission to have an expert inspect the decedent's cellphone for data from the day of the accident—data pertaining to "use and location information, internet website access history, email messages, and social and photo media posted and reviewed on the day of the accident." Id. The administrator of the decedent's estate "objected to the cellphone inspection citing the decedent's privacy rights under the Florida Constitution." Id. The trial court ultimately granted the motion to examine the cell phone, but recognized the decedent's privacy interests and set very strict parameters for the expert's confidential inspection. Id. at 164–65.

Notwithstanding the strict parameters set by the trial court in Antico, the administrator of the estate filed a petition for writ of certiorari with the First District asserting that the trial court's order departed from the essential requirements of law by **not** granting stronger protections. Id. at 165–66. In exercising certiorari jurisdiction over the petition, the First District held that the irreparable harm component of its jurisdiction in that case was satisfied "because irreparable harm can be presumed where a discovery order compels production of matters implicating privacy rights." Id. Thus, by exercising its certiorari jurisdiction, the district court necessarily held that the decedent had an enforceable constitutional right to privacy in the litigation context.

In denying relief from the highly limited grant of discovery over the cell phone's contents, the Antico court noted that the trial court had adequately accounted for the decedent's privacy right:

> The record here indicates that the trial court closely considered how to balance Respondents' discovery rights and the decedent's privacy rights. The order highlighted the relevance of the cellphone's data to the Respondents' defense and it set forth strict procedures ***1127** controlling how the inspection process would proceed.
>
> ....
>
> The other side of the equation—the countervailing privacy interest involved with the discovery of data on a cellphone—is also very important.... But we are satisfied that the order adequately safeguards privacy interests under the circumstances here where Petitioner was given the opportunity, but advanced no alternative plan.

Id. at 166–67 (emphasis added). For emphasis, the Antico court performed its review of the discovery objection pursuant to the constitutional privacy right of the decedent. Id. at 164. ("Citing the privacy provision, article I, section 23, of the Florida Constitution, and the rules of civil procedure, the personal representative of Tabitha Antico's estate (Petitioner) objects to an order entered by the trial court ... Petitioner objected to the cellphone inspection citing the decedent's privacy rights under the Florida Constitution." (emphasis added)).

Consistent with Antico, the decision below did **not** hold that Thomas did **not** have a constitutional right to privacy in his protected medical information. The district court specifically rested its privacy analysis on waiver grounds:

> It is well-established in Florida and across the country that any privacy rights that might attach to a claimant's medical information are **waived** once that information is placed at issue by filing a medical malpractice claim. See, e.g., Barker v. Barker, 909 So.2d 333, 337 (Fla. 2d DCA 2005); Andreatta v. Hunley, 714 N.E.2d 1154, 1157 (Ind. Ct. App. 1999). Thus, by filing the medical malpractice lawsuit, the decedent's medical condition is at issue.

Weaver, 170 So.3d at 883. At no point did the district court hold that the decedent did **not** have a right to privacy. See generally id. Indeed, to the contrary, its waiver analysis was an implicit acknowledgement of that privacy right, as one cannot waive a right he or she does **not** have. No other basis was offered for the First District's holding as to the privacy issue.

[4] **[5]** Thus, we now make explicit what the decision below and Antico necessarily implied—in all litigation contexts, a decedent does **not** retroactively lose and can maintain the constitutional right to privacy that may be invoked as a shield in all contexts, including but **not** limited to medical malpractice cases, against the unwanted disclosure of protected private matters, including medical information that is irrelevant to any underlying claim including but **not** limited to any medical malpractice claim.[2] **Death** does **not** retroactively abolish the constitutional protections for privacy ***1128** that existed at the moment of **death**. To hold otherwise would be ironic because it would afford greater privacy rights to plaintiffs who survived alleged medical malpractice while depriving plaintiffs of the same protections where the alleged medical malpractice was egregious enough to end the lives of those plaintiffs. This is an outcome that our Florida Constitution could **not** possibly sanction. Cf. Estate of Youngblood v. Halifax Convalescent Ctr., Ltd., 874 So.2d 596, 603–04 (Fla. 5th DCA 2004) ("Thus in a case such as this where the suit was filed before the nursing home resident's **death**, all deprivation of Chapter 400 rights, including those resulting in the **death** of a resident but **not** exclusive of those, should survive the **death** of the nursing home resident. A contrary interpretation would encourage nursing homes to drag out litigation until the nursing home resident dies—**not** an impractical solution given the age and state of health of most nursing home residents." (internal citation omitted)). Thus, we reiterate that Thomas and his estate, even after his **death**, maintained a constitutional right to privacy concerning matters that occurred prior to his **death**, and that privacy may be invoked as a shield to maintain the confidence of his protected information, including but **not** limited to medical information.

But Dr. Myers contends that Thomas does **not** have a cognizable right to privacy because his constitutional rights retroactively totally vanished upon his **death**, and even if **not**, Weaver lacks standing to assert his privacy rights. Specifically, Dr. Myers strings together the following language in support of this sweeping contention:

> An individual's right to privacy is personal and dies with the individual. Williams v. City of Minneola, 575 So.2d 683, 689 (Fla. 5th DCA 1991). "[E]ven where a constitutional right to privacy is implicated, that right is a personal one, inuring solely to individuals." Alterra Healthcare Corp. v. Estate of Shelley, 827 So.2d 936, 941 (Fla. 2002). Thus, such privacy rights "may **not** be asserted vicariously." Sieniarecki v. State, 756 So.2d 68, 76 (Fla. 2000). Moreover, this Court has declared unequivocally: "[W]e begin with the premise that a person's constitutional rights terminate at **death**." State v. Powell, 497 So.2d 1188, 1190 (Fla. 1986).

Answer Br. at 45.

However, Dr. Myers' use of quotes out of context and incorrectly expanded arguments to suggest a retroactive absolution of the basic privacy right is both misleading and without effect. The very briefest of review of those cases reveals that it is Dr. Myers' argument that is without life, **not** Thomas' constitutional right to privacy. For example, Dr. Myers referred this Court to Williams, 575 So.2d at 689, for the proposition that a decedent has no right to privacy. However, Williams involved an action for damages arising from the alleged invasion of privacy resulting from the release of autopsy photos. Id. at 689–90. Thus, Williams involved the tort of invasion of privacy on conduct occurring after **death** rather than the invocation of the constitutional right of privacy before **death** occurred.[3]

Likewise, Sieniarecki, 756 So.2d 68, is wholly inapposite. Sieniarecki did **not** involve shielding information from disclosure. Instead, Sieniarecki involved a facial challenge by a defendant found guilty of neglect of a disabled adult, the disabled adult being her mother. See id. at 71–72. Thus, Sieniarecki contended that "because her mother had the right to refuse medical ***1129** treatment, [she] cannot be convicted of neglect for failing to provide proper medical attention." Id. at 76. We held that she could **not** assert a defense based on the privacy right of her mother to refuse medical treatment in that case because "constitutional rights are personal in nature and generally may **not** be asserted vicariously." Id. However, invoking another person's constitutional right to refuse medical treatment **not** for that person's benefit, but to protect against criminal liability is quite different from invoking another person's right to privacy to protect disclosure of that person's constitutionally protected information for that person's benefit. This is even more the case where the person has no effective avenue to preserve the

right himself or herself. Indeed, in a footnote to the statement Dr. Myers quotes out of context, we recognized that there are other situations or "exceptions" that are more akin to the situation here:

> A recognized exception to this rule applies where enforcement of a challenged restriction would adversely affect the rights of non-parties, and there is no effective avenue for them to preserve their rights themselves. Cf. Stall v. State, 570 So.2d 257, 258 (Fla. 1990) ("[a]ssuming that the petitioners [who were alleged vendors of obscene materials] have vicarious standing to raise their customers' privacy interest"). This principle has been extended to apply where it is the petitioners who "stand to lose from the outcome of this case and yet they have no other effective avenue for preserving their rights" than by raising the constitutional rights of non-parties. Jones v. State, 640 So.2d 1084, 1085 (Fla. 1994) (recognizing petitioners' vicarious standing to assert the claimed privacy rights of the underaged girls with whom they had sexual intercourse).

Id. at 76 n.3 (emphasis added).

Powell, 497 So.2d 1188, also provides no support. There, the petitioners challenged a statute authorizing medical examiners to remove corneal tissue from a cadaver for use in a corneal transplant. Id. at 1190. Thus, in Powell, the issue of privacy was raised with regard to conduct that occurred after the person's **death**, **not** during his or her lifetime as is the case here with Thomas Weaver's medical care. Therefore, the quoted out of context language is presented in an attempt to bolster the incorrect argument. Still, in Powell, we also recognized that even with regard to rights after **death**, "[i]f any rights exist, they belong to the decedent's next of kin." Id.

Likewise, the statement in Alterra that "even where a constitutional right to privacy is implicated, that right is a personal one, inuring solely to individuals" is taken out of context because it involved a challenge to the standing of an employer to assert an employee's constitutional privacy rights. Alterra, 827 So.2d at 941. Here again the argument advanced failed to include the context in which the statement was made.

Finally, Dr. Myers further refers us to Nestor v. Posner–Gerstenhaber, 857 So.2d 953 (Fla. 3d DCA 2003), in which the administrator of an estate sought to enforce **confidentiality** agreements entered into between a decedent and his employees, signed just before his **death**. In Nestor, the district court referenced Williams in the contractual context and stated, "Privacy rights are personal and die with the individual." 857 So.2d at 955. However, in the very next sentence, the district court reasoned that in the **confidentiality** agreement "there is no provision that requires **confidentiality** after Posner's **death**." Id. Thus, Nestor is wholly inapposite as it pertains exclusively to a contractual privacy claim rather than a constitutional privacy claim. Indeed, Nestor does **not** even contain any mention or reference to the Florida Constitution, let alone the explicit ***1130** fundamental constitutional right to privacy. Similarly unsupportive, Dr. Myers also refers us to Loft v. Fuller, 408 So.2d 619 (Fla. 4th DCA 1981), which is yet another invasion of privacy case that fails to even mention the Florida Constitution, but rather is focused on the common law right to privacy and its use as a sword, rather than as a shield.

Dr. Myers further contends that "the concept that an individual's constitutional privacy rights expire upon **death** is well accepted across the country," and refers this Court to cases from various federal courts. Answer Br. at 46. However, **not** one of those cases supports that statement because every one of those cases involves conduct that occurred after the **death** of the person whose constitutional rights were at issue. See Silkwood v. Kerr–McGee Corp., 637 F.2d 743, 749 (10th Cir. 1980) ("We agree with the Ninth Circuit that the civil rights of a person cannot be violated once that person has died. It is clear then that the FBI agents could **not** have violated the civil rights of Silkwood by cover-up actions taken after her **death**.") (emphasis added) (citations omitted); Whitehurst v. Wright, 592 F.2d 834, 840–41 (5th Cir. 1979) ("Here, the events of the alleged cover-up took place after Bernard Whitehurst had been shot and killed.... The question presented in the court below and in this court was whether events occurring after his **death** constituted a deprivation of her son's constitutional rights for which plaintiff has stated a claim.") (emphasis added) (footnote omitted); Ravellette v. Smith, 300 F.2d 854, 857 (7th Cir. 1962) ("These cases are inapposite because they are concerned with a violation of the rights of a living person. In the instant case, decedent was dead when the sample was taken.") (emphasis added); Helmer v. Middaugh, 191 F.Supp.2d 283, 285 (N.D.N.Y. 2002) ("As the allegations concerning Lt. Lisi are limited to conduct occurring after the **death** of B. Helmer, plaintiff's amended complaint does **not** allege a viable cause of action against him.") (emphasis added). Indeed, some of those cases even support Weaver's position. See Whitehurst, 592 F.2d at 840 ("No allegation was made that any conspiracy to kill Whitehurst or to cover up the event

existed before the shooting took place.") (emphasis added); Helmer, 191 F.Supp.2d at 285 ("In addition, because the proposed Second Amended Complaint alleges no additional facts to demonstrate Lt. Lisi's involvement prior to the **death** of B. Helmer, it does **not** cure this fatal defect as to Lt. Lisi.") (emphasis added).

Therefore, **not** a single case that Dr. Myers has advanced stands for the broad, incorrect proposition that a person's constitutional rights pertaining to conduct occurring during the person's lifetime are retroactively destroyed upon **death**. Indeed, if Dr. Myers' position were correct, there would be absolutely no protection and no one to assert the protection. We must be ever vigilant as we consider invasions into the fundamental rights of our citizens, particularly when faced with flawed legal arguments. Today we specifically address privacy, which is included among our most cherished rights such as speech, religion, to be free from searches and seizures without a warrant or permissible exception, and the right to due process. Surely, the reflex of any concerned jurist upon consideration of an invasion of fundamental rights would be to protect our citizens as required by our Bill of Rights. Dr. Myers' contention here is that a person loses all of those rights upon **death**. Such a holding would render those rights hollow, chilling the daily operation of them on people as they navigate their lives from moment to moment.

As discussed above, in Florida, the right to privacy is no less fundamental than those other rights and is even more closely ***1131** guarded in some respects. Thus, the slippery slope Dr. Myers invites this Court to slide down is even more perilous with regard to the right to privacy. Indeed, just the potential for retroactive destruction of the right to privacy robs the life of that very protection due to the chill it would cause. If we were to follow Dr. Myers' argument that a person experiences the loss of privacy applicable while living upon the change in status from alive to dead, then the secrets of that person's life, including his or her sexual preferences, political views, religious beliefs, views about family members, medical history, and any other thought or belief the person considered to be private and a secret are subject to full revelation upon **death**. Theoretically, there would be no need for justification for such intrusions or revelations of a person's secrets, **not** even a rational basis. Therefore, what would follow from allowing a retroactive destruction of the fundamental right to privacy is a reality in which ultimately anyone could rummage at any time, without limitation, through every detail of every citizen's most private information.

Here, the right to privacy is being used as a limited shield from ex parte discovery and **not** as a sword to initiate a civil action. Thus, none of those cases asserted by Dr. Myers addressed the right of privacy before **death** in the specific context at issue here. While this may appear subtle, it is a very critical distinction. Failing to note this distinction, Dr. Myers' selective readings of case law has led him to a misdiagnosis of Thomas' right to privacy upon his **death**, a right that remains quite alive.

[6] The inquiry does **not** end here though. Dr. Myers also asserts that Weaver lacks standing to assert a right to privacy here. In Antico, the district court assumed that the estate had standing to assert the decedent's privacy interests. 148 So.3d at 168 n.2 ("We needn't resolve Respondents' additional contention that Petitioner lacks standing in this case to assert the decedent's constitutional privacy rights. The trial court didn't pass on this question. And, as discussed above, relief isn't warranted even if we assume (as this opinion does) that Petitioner can assert the decedent's privacy rights."). Here, in the decision below, the district court did **not** resolve the question of standing, and simply held that Weaver had **waived** the right to privacy by filing a medical malpractice wrongful **death** action. See Weaver, 170 So.3d at 883.

Given that the issue of standing must be considered in this case, unlike the Antico case, we address Dr. Myers' challenge to Weaver's standing. Despite the district court's holding of waiver below, that waiver holding itself provides recognition and a basis for our holding here. Holding that Weaver **waived** the right of privacy by filing the wrongful **death** action implies **not** only that Thomas Weaver had a right to privacy in the litigation context that could be **waived**, but also that Emma Weaver, the administrator of his estate and his wife, had standing to waive such rights. It follows that if she had standing to waive the right to privacy here, she likewise had standing to assert that privacy right. Similarly, if a decedent has a constitutional privacy interest under the Florida Constitution in the context of discovery in litigation, as the Antico court recognized, then someone must be able to assert that privilege.

[7] Florida's Wrongful **Death** Act establishes the personal representative of a decedent's estate as the sole party that may file a decedent's cause of action for wrongful **death**. The statute provides in pertinent part:

> The action shall be brought by the decedent's personal representative, who shall recover for the benefit of the decedent's survivors and estate all damages, ***1132** as specified in this act, caused by the injury resulting in **death**. When a personal injury to the decedent results in **death**, no action for the personal injury shall survive, and any such action pending at the time of **death** shall abate.

§ 768.20, Fla. Stat. (2016); see Roughton v. R.J. Reynolds Tobacco Co., 129 So.3d 1145 (Fla. 1st DCA 2013) (A wrongful **death** action may be brought only by the personal representative for the benefit of the decedent's survivors and estate.); Fla. Emergency Physicians–Kang & Assocs., M.D., P.A. v. Parker, 800 So.2d 631, 633 (Fla. 5th DCA 2001) (same); Benson v. Benson, 533 So.2d 889 (Fla. 3d DCA 1988) (Decedent's parents were without standing to file a wrongful **death** action where decedent's wife, **not** decedent's parents, served as administratrix of decedent's estate.). Thus, if the right exists, which we conclude it does, then it most assuredly must be capable of being advanced. Cf. In re Guardianship of Browning, 568 So.2d 4, 12 (Fla. 1990) ("Indeed, the right of privacy would be an empty right were it **not** to extend to competent and incompetent persons alike."). With regard to wrongful **death** actions, the administrator of the estate may certainly assert that right because he or she is the only person who has standing to file a wrongful **death** action in the first place. Moreover, Weaver's status as wife may further entitle her to assert the right. Cf. Powell, 497 So.2d at 1190 ("If any rights exist, they belong to the decedent's next of kin.") Based upon the foregoing, Weaver, as personal representative of Thomas' estate and his wife, clearly has standing to challenge the provisions at issue by presenting the constitutional right to privacy in Thomas' protected medical information.

[8] **[9]** Dr. Myers further asserts that Weaver has necessarily **waived** all constitutional rights to privacy in this case by filing a claim of medical malpractice. However, the anatomy of such a waiver under Florida law is clear. Although a claimant may necessarily waive privacy rights to the medical information that is relevant to a claim by filing an action, this does **not** amount to waiver of privacy rights pertaining to all confidential health information that is **not** relevant to the claim. See generally Poston v. Wiggins, 112 So.3d 783, 786 (Fla. 1st DCA 2013) (granting certiorari petition and quashing trial court order requiring production of post-accident **medical records** because "[u]nlike the pre-accident pharmacy records which may be relevant, the post-accident **medical records** are entirely irrelevant"); McEnany v. Ryan, 44 So.3d 245, 247 (Fla. 4th DCA 2010) (granting certiorari petition and quashing trial court order which denied petitioner-defendant's objections to motion to compel; "In this case, whether defendant was impaired by a mixture of the drug Ritalin and alcohol at the time of the accident would be a relevant issue. Determining whether petitioner had a current prescription for Ritalin seems to us to be relevant to that inquiry. It is equally apparent to us, however, that most of the **medical records** sought likely have no relevance to that inquiry, and no link was shown at the hearing."); Barker, 909 So.2d at 338 ("By failing to provide for an in camera inspection of [the petitioner's] **medical records** to prevent disclosure of information that is **not** relevant to the litigation, the discovery order departed from the essential requirements of the law."). The decision below erred in holding otherwise to the extent unnecessary information would be open and subject to the ex parte exploration proceedings authorized in the 2013 amendments.

[10] **[11]** Having determined that Weaver is a proper party to assert the constitutional right to privacy in attempting to shield the disclosure of irrelevant, unnecessary, and protected medical information, ***1133** and that she did **not** waive the protection with regard to medical information **not** relevant to the medical negligence action, we now address the question of whether the right to privacy has been violated. Due to the fundamental and highly guarded nature of this right, "any law that implicates the fundamental right of privacy, regardless of the activity, is subject to strict scrutiny and, therefore, presumptively unconstitutional." Gainesville Woman Care, LLC v. State, 210 So.3d 1243, 1245 (Fla. 2017); Winfield, 477 So.2d at 547. Thus, the burden of proof rests with the State to justify an intrusion on privacy. Winfield, 477 So.2d at 547. [4]

In an attempt to sustain the burden under the strict scrutiny test, Dr. Myers and the amici assert that the legislative intent behind the amendments is sufficient: to encourage settlement by providing equal access to relevant information, resulting in the inexpensive and expeditious administration of justice; screening out frivolous claims; and streamlining medical malpractice litigation. However, none of these asserted interests, individually or collectively, are sufficiently compelling to outweigh the interest of a patient in keeping

private medical information that was given in confidence to medical personnel under the protections of both federal and Florida law when that information is **not** relevant to the prospective claim of malpractice.

Moreover, even if those concerns were compelling, rather than address them with a steady hand and surgical precision such that the least intrusive means could be implemented, the amended statutes here have gashed Florida's constitutional right to privacy. Requiring claimants to authorize clandestine, ex parte secret interviews is far from the least intrusive means to accomplish those stated goals. [5]

The ex parte secret interview provisions of sections 766.106 and 766.1065 fail to protect Florida citizens from even accidental disclosures of confidential medical information that falls outside the scope of the claim because there would be no one present on the claimant's behalf to ensure that the potential defendant, his insurers, his attorneys, or his experts do **not** ask for disclosure of information from a former treating health care provider that is totally irrelevant to the claim. This concern with regard to ex parte secret interviews has ***1134** been noted **not** only by this Court but also by multiple other courts. See Acosta v. Richter, 671 So.2d 149, 153 (Fla. 1996) ("Were unsupervised ex parte interviews allowed, medical malpractice plaintiffs could **not** object and act to protect against inadvertent disclosure of privileged information, nor could they effectively prove that improper disclosure actually took place."); see also Wenninger v. Muesing, 307 Minn. 405, 240 N.W.2d 333, 337 (1976); Nelson v. Lewis, 130 N.H. 106, 534 A.2d 720, 723 (1987); Crist v. Moffatt, 326 N.C. 326, 389 S.E.2d 41, 46 (1990); Alsip v. Johnson City Med. Ctr., 197 S.W.3d 722, 727 (Tenn. 2006); Kirkland v. Middleton, 639 So.2d 1002, 1004 (Fla. 5th DCA 1994); Horner v. Rowan Companies, Inc., 153 F.R.D. 597, 601 (S.D. Tex. 1994). While section 766.106 provides that a treating health care provider may have the right to refuse to be secretly interviewed ex parte, as noted by the Arizona Court of Appeals with regard to a similar statute, a provider may nonetheless feel pressured to participate or **not** fully understand his or her right to refuse:

> A physician may lack an understanding of the legal distinction between an informal method of discovery such as an ex parte interview, and formal methods of discovery such as depositions and [interrogatories], and may therefore feel compelled to participate in the ex parte interview. We also note that in Arizona, a substantial number of physicians are insured by a single "doctor owned" insurer. Realistically, this factor could have an impact on the physician's decision. In other words, the physician witness might feel compelled to participate in the ex parte interview because the insurer defending the medical malpractice defendant may also insure the physician witness.

Duquette v. Super. Ct., 161 Ariz. 269, 778 P.2d 634, 641 (Ariz. Ct. App. 1989).

Furthermore, the supposed facilitation of settlement is **not** a reality for either party in medical malpractice litigation. As the Illinois appellate court opined, a secret ex parte interview with a treating health care provider does **not** lead to the discovery of medical information that would **not** otherwise be discoverable, such that it facilitates settlement:

> It is **not** the ex parte conference in and of itself that leads to the early settlement of a case. Rather, it is the information that is obtained during that ex parte conference that leads to a case's settlement. That ... information can be obtained ... by obtaining a copy of the plaintiff's **medical records** or through a deposition of the plaintiff's treating physician. These latter methods will provide defense counsel with the same information that they would obtain in an ex parte conference ... without jeopardizing that physician's fiduciary obligation to his patient.

Petrillo v. Syntex Labs., Inc., 148 Ill.App.3d 581, 102 Ill.Dec. 172, 499 N.E.2d 952, 965–66 (1986).

Under section 766.106(6)(b), the other informal discovery tools available are unsworn statements of the parties and treating health care providers (all with the claimant's counsel allowed to be present), written questions, production of documents and things, and physical and mental examinations. There is nothing to indicate that these tools are deficient in the acquisition of information relevant to a potential medical malpractice claim, such that secret ex parte interviews justify the attendant risk of disclosure of irrelevant, constitutionally protected matters, medical information and otherwise, or serve a compelling interest. See Winfield, 477 So.2d at 547. Therefore, the constitutional right to privacy has been violated in this case.

***1135** The dissent is designed and constructed on a fundamentally flawed basis. The dissent further fosters confusion concerning this clear constitutional violation and is in conflict with the practical realities of today's litigation practice. With regard to medicine in the modern world of strained resources, the reality is that almost every malpractice litigant will be subject to the amendments' no-notice interview provision because it is exceedingly difficult, if **not** impossible, to schedule time with a doctor within fifteen days or seventy-two hours absent a critical, life-threatening situation. See § 766.106(6)(b) 5., Fla. Stat. (2016). The difficulty will surely become more pronounced when a doctor is advised that a patient seeks **not** an appointment for care, but rather to schedule an interview regarding malpractice litigation against one of the **doctor's** colleagues. Yet, if the malpractice litigant at any point does **not** schedule an interview within such narrow time frames, the defense may then repeatedly approach the doctors without any notice and ex parte. See id. Thus, when viewed through the lens of real-life implications, the statute's facilitation of non-secret meetings is merely illusory.

Sprinkled throughout the dissent is reference to the term "relevant" based on the deeply flawed premise that opposing counsel in litigation should be the sole and exclusive arbiter in a secret ex parte, non-recorded meeting of that which is "relevant" with regard to the precious Florida constitutional right of privacy. With this fatal flaw the dissent rings hollow. The dissent's undue reference to the amendment's use of the word "relevant" renders strict scrutiny no different than rational basis scrutiny. History has demonstrated that bar grievance procedures are totally insufficient to protect our fundamental rights of privacy during secret meetings. On the contrary, even the conduct of lawyers in public proceedings is very often beyond proper limitations. Additionally, there is nothing to limit the actions of other investigators and insurance adjusters.

Although the standard to be applied is whether there is a less invasive manner, a contrary interpretation advances the most invasive clandestine secret interrogations as a method to deal with the fundamental constitutional right of our citizens. The dissent even relies on cases that support our holding and conclusions, when those cases are properly and fully analyzed.

In Coralluzzo v. Fass, 450 So.2d 858 (Fla. 1984), superseded by statute, § 456.057, Fla. Stat. (2009); Hasan v. Garvar, 108 So.3d 570 (Fla. 2012); and Acosta, 671 So.2d 149, this Court was **not** presented with a constitutional privacy challenge. Thus, these cases do **not** support the dissent's reliance upon them for the proposition that litigants had no protections prior to the legislative enactment of an evidentiary privilege. Indeed, because no constitutional privacy challenge was raised in any of those cases, this Court prudently did **not** make a single reference to the constitutional right to privacy. As a result, the statement in Coralluzzo that "[n]o law, statutory or common, prohibits—even by implication—[the unilateral, ex parte interviews]," 450 So.2d at 859, is wholly inapposite "because of the dominant force of the Constitution, an authority superior to both the Legislature and the Judiciary." Holley v. Adams, 238 So.2d 401, 405 (Fla. 1970). Therefore, the fact that the litigants in those cases did **not** raise a constitutional challenge does **not** render true the contrary view's very disturbing conclusion that "there was nothing to prevent the ex parte interview with the nonparty treating physician in the absence of legislative protections." Dissenting op. at 1146. This ill-founded conclusion confuses the concept of evidentiary privileges with fundamental Florida constitutional rights. The entire ***1136** contrary argument falls when the confusion is analyzed and recognized.

In an attempt to distract from this misdirection, the contrary view hinges on a clause in our decision in Acosta that "there was no legal impediment to ex parte conversations between a patient's treating doctors and the defendants or their representatives." Dissenting op. at 1147(quoting Acosta, 671 So.2d at 150). Conveniently, however, the dissent does **not** fully present the explanatory clause introducing that statement: "The present controversy has its genesis in Coralluzzo ..., where, in a medical malpractice action, this Court held there was no common law or statutory privilege of **confidentiality** as to physician-patient communications

in Florida and, hence, there was no legal impediment ....” Acosta, 671 So.2d at 150 (emphasis added). Thus, when considered fully the critical fact is exposed and explained that Acosta and Coralluzzo simply did **not** involve a constitutional challenge whatsoever and did **not** have occasion to discuss any constitutional “impediments.” It bears repeating to combat any obfuscation or confusion that just because the litigants did **not** raise the constitutional issue in prior cases does **not** mean the right was non-existent. Likewise, to perpetrate that misconception, a failure of complete analysis violates the tenet of constitutional avoidance this Court generally follows. Moreover, Coralluzzo was reviewed as a certified question of great public importance from a decision to deny a petition for writ of certiorari reviewing the denial of a protective order, and thus, all the courts involved in Coralluzzo were looking through an especially narrow lens focused on finding clearly established law, **not** the creation of new rights, especially none that the parties failed to raise. See Nader v. Fla. Dep't of Highway Safety & Motor Vehicles, 87 So.3d 712, 723 (Fla. 2012) (“[C]ertiorari jurisdiction cannot be used to create new law where the decision below recognizes the correct general law and applies the correct law to a new set of facts to which it has **not** been previously applied. In such a situation, the law at issue is **not** a clearly established principle of law.”); Coralluzzo, 450 So.2d at 858–59. Relatedly, the incident in Coralluzzo did **not** take place until 1981, just one year after the constitutional privacy right was adopted by the voters, and thus, without having raised the issue, it is no surprise the constitutional limitation had **not** been considered with regard to ex parte conferences with medical providers.

By contrast, the contrary view suggested does **not** accommodate that in this case the constitutional right has been raised and fully briefed at all levels for de novo review. Unlike Acosta and Hasan, where the evidentiary privilege statutes at issue were built upon only the spirit of the constitutional protections, thereby negating the need for a constitutional analysis, the amendments at issue today accomplish the opposite, affirmatively trampling on the constitutional privacy right and rendering it necessary, for the first time, to address the express constitutional issue.

Moreover, selective references to Hasan and Acosta ignore the only analogous and relevant portions of those opinions, which actually support our holding today. Specifically, although both cases concerned statutory limitations on ex parte discovery, unlike the supreme constitutional right at issue here today, the statutory rights at issue in those cases involved analyses into the potential for revelation of protected information. Equally applicable here under the least intrusive means standard, the statutory analyses in Hasan and Acosta led this Court to “reject the contention that ex parte conferences with treating physicians may be approved so long as the physicians are **not** required to say anything. We believe it is pure sophistry to suggest that ***1137** the purpose and spirit of the statute would **not** be violated by such conferences.” Hasan, 108 So.3d at 578 (quoting Acosta, 671 So.2d at 156) (emphasis added). The fact that today we analyze the constitutional right to privacy, as opposed to a limited statutory evidentiary privilege, does **not** change our conclusion in Hasan that “efforts to foster an environment conducive to inadvertent disclosures of privileged information ... are impermissible.” Id. In referencing the language “purpose and spirit of the statute,” rather than the overall logic concerning overbreadth and illusory protections that applies equally under any good-faith strict scrutiny analysis, the contrary view expressed today simply changes the subject for discussion, rather than addressing the actual substance of the issues.

Likewise, the lone decision relied upon by the dissent that even touches upon the constitutional right to privacy and its application to ex parte medical interviews, a district court decision, S & A Plumbing v. Kimes, 756 So.2d 1037, 1042 (Fla. 1st DCA 2000), does **not** control in any manner and is wholly inapposite when analyzed in context. Kimes involved ex parte interviews in the workers' compensation context, which is wholly distinguishable from a medical malpractice action in that, as the Kimes court recognized, “The workers' compensation system is clearly intended to be self-executing, with the resort to adversarial proceedings being undertaken only as a last recourse to resolve intractable disputes between petitioners and employers and their insurance carriers.” Id. at 1041 (emphasis added). Further, unlike workers' compensation claims, medical malpractice and wrongful **death** actions are completely adversarial and traditional actions at law resolved in the judicial branch by Article V courts. [6] Therefore, despite any attempt to compare workers' compensation to traditional litigation, this Court's long saga of ensuring the scheme's compliance with the right to access to courts undresses that disguised misconception.

Accordingly, as the Kimes court accurately understood the substantial differences between workers' compensation and traditional litigation, the fact that “[t]he workers' compensation system transposed dispute resolution for workplace injuries from the private law of torts to a

publicly administered and regulated system" was central to its conclusion that no legitimate expectation of privacy exists in the extremely limited workers' compensation context with regard to interviews with physicians specifically hired for compliance with workers' compensation. Id. at 1042 (emphasis added). The Kimes court further recognized the wholly different context of workers' compensation when it concluded that "to accept Kimes' absolute privacy argument would make it impossible to petition for, controvert and decide claims under the workers' compensation law without resort to a system of litigation ...." Id. (emphasis added). Yet, relying on the supposed purpose of the statute at issue here, the contrary view expressed today does ***1138** **not** even acknowledge these differences. However, as already discussed, the purpose of the statute at issue here in potentially encouraging settlement and avoiding litigation is **not** only proven to be fleeting, but also has little bearing on our analysis because it is simply **not** the least intrusive means.

Another very critical distinction arising from the workers' compensation context of the Kimes decision is that the only medical professional to be interviewed was explicitly hired for purposes of workers' compensation to evaluate the causal connection between the work performed and the injury. Id. ("The very foundation of an employee's right to receive benefits under the self-executing system in Chapter 440 requires a healthcare provider to assess the injury, establish a causal connection to the workplace accident, and communicate that information to the employer's insurance carrier."). Yet, the contrary view does **not** include this aspect of the relationship and relies only on the fact that the physicians are treating physicians. While the dissent antagonizes the relevant focus here as a "misreading," it ignores the fact that the constitutional analysis in Kimes focuses and relies specifically on the fact that the treating physicians were required to be hired under the narrow workers' compensation framework. See id. at 1042 ("By presenting himself to be examined by a health care provider for the purpose **not** only for treatment for an injury, but also for evaluation of the injury and assessment of whether it is attributable to his employment, Kimes consented to the provider disclosing to the carrier medical information relating to the claim.") (emphasis added). There is simply no comparison with the physicians hired specifically in the workers' compensation litigation in the Kimes context and the physicians hired by Weaver in the ordinary context of seeking medical care without an eye to litigation. Ex parte interviews with a singular physician in a workers' compensation claim with regard to a specific employment injury are wholly different than conducting ex parte secret meetings with all of the medical professionals a person has visited completely of his or her own volition in the course of regular medical care during the last two years before the medical malpractice action accrued.

In light of these distinctions, and the Kimes court's finding of no expectation of privacy in the mandatory workers' compensation medical visit, the Kimes court did **not** even have occasion to consider the least intrusive means aspect of our constitutional privacy test. In any event, relative to the broad net cast in this scenario, any potential waiver conclusion arising from Kimes is also severely limited by the fact that there was no threat of irrelevant information being disclosed in Kimes.

Thus, Kimes, which concerned the administration of workers' compensation claims, has absolutely no bearing on this wrongful **death** action, which is adversarial and subjects litigants to the full powers conferred on Article V courts. Although the misdirection created by the contrary view must be addressed to ensure there is no unnecessary confusion, in the end the attempt to apply workers' compensation principles in this context is unavailing. Tellingly, **not** even Dr. Myers raised Kimes at any stage in this litigation.

Returning to the salient issue, in light of the adversarial nature and full discovery process applicable to medical malpractice and wrongful **death** actions, the dissent has provided no reason to overcome the fact that the standard discovery procedures with notice and participation of all parties that are employed daily without issue in thousands of cases are more than adequate to secure access to relevant information without trampling on the constitutional privacy rights of a Florida citizen ***1139** plaintiff. The dissent misses the point when it suggests that a defendant would **not** even be interested in obtaining irrelevant medical information. Again, simply put, secret, ex parte non-recorded interviews conducted by adverse litigants, investigators or insurance adjusters are **not** the least intrusive means for gathering otherwise discoverable information. Further, to compel a person's medical professionals to be placed in an environment conducive to even inadvertent disclosures of sensitive protected medical information violates the unambiguous constitutional "right to be let alone and free from governmental intrusion into the person's private life." Art. I, § 23, Fla. Const. Even the possibility that a person's extremely sensitive private medical information will be exposed is the type of governmental intrusion that the Florida

Constitution protects against because it is impossible to know if an inadvertent disclosure occurred when the meetings are **not** only ex parte and without a judge, but also secret without a record. In the case of protected medical information, the danger is uniquely and unconstitutionally great because once the bell has been rung, it cannot be unrung. It defies credibility to compare the physicians in this case to ordinary fact witnesses. Physicians, unlike ordinary fact witnesses, are governed by strict **confidentiality** through **not** only HIPPA, but also the constitutional right to privacy discussed at length today.

Having determined that the statutory amendments impermissibly intruded on the fundamental and explicit constitutional right to privacy by the statutory requirements, the amendments cannot accomplish that end by conditioning the exercise of another highly guarded constitutional right on such submission in light of the constitutional prohibition. This protection from government coercion has been recognized by the United States Supreme Court in what is known as the unconstitutional conditions doctrine. See Koontz v. St. Johns River Water Mgmt. Dist., 570 U.S. 595, 133 S.Ct. 2586, 2595, 186 L.Ed.2d 697 (2013) ("[R]egardless of whether the government ultimately succeeds in pressuring someone into forfeiting a constitutional right, the unconstitutional conditions doctrine forbids burdening the Constitution's enumerated rights by coercively withholding benefits from those who exercise them."). However, such unconstitutional conditioning and coercion is exactly what the amendments to section 766.106 and 766.1065 have done here.

[12] As Weaver contends, the amended statutes at issue here coerce and force victims of medical malpractice into foregoing their fundamental and explicit constitutional right to privacy to exercise their equally explicit and fundamental constitutional right to access to courts. The Florida Constitution provides that "[t]he courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay." Art. I, § 21, Fla. Const. We have explained that "each of the personal liberties enumerated in the Declaration of Rights ... is a fundamental right." State v. J.P., 907 So.2d 1101, 1109 (Fla. 2004). "[C]ourts are generally opposed to any burden being placed on the rights of aggrieved persons to enter the courts because of the constitutional guarantee of access." Bystrom v. Diaz, 514 So.2d 1072, 1075 (Fla. 1987) (quoting Carter v. Sparkman, 335 So.2d 802, 805 (Fla. 1976), receded from on other grounds, Aldana v. Holub, 381 So.2d 231 (Fla. 1980)).

[13] The seminal case for government action and the right of access to courts is Kluger v. White, 281 So.2d 1 (Fla. 1973). In Kluger, this Court explained the limitation on the power of the Legislature:

> [W]here a right of access to the courts for redress for a particular injury has been provided by statutory law predating ***1140** the adoption of the Declaration of Rights of the Constitution of the State of Florida, or where such right has become a part of the common law of the State pursuant to Fla. Stat. § 2.01, F.S.A., the Legislature is without power to abolish such a right without providing a reasonable alternative to protect the rights of the people of the State to redress for injuries, unless the Legislature can show an overpowering public necessity for the abolishment of such right, and no alternative method of meeting such public necessity can be shown.

Id. at 4. At common law, Florida did **not** recognize a cause of action for wrongful **death**; however, the Legislature authorized such an action prior to 1968. See Estate of McCall v. United States, 134 So.3d 894, 915 (Fla. 2014) (citing § 768.01, Fla. Stat. (1941)) (plurality opinion). Therefore, the access to courts provision of the Florida Constitution is applicable to wrongful **death** actions.

[14] **[15]** Although Kluger spoke in terms of total abolishment of a right, the scope of the protection extends to protect situations in which legislative action significantly obstructs the right of access:

> [I]n order to find that a right has been violated it is **not** necessary for the statute to produce a procedural hurdle which is absolutely impossible to surmount, only one which is significantly difficult. This is so because the Florida Constitution provides that "[t]he courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay." Art. I, § 21, Fla. Const. This "openness" and necessity that access be provided "without delay" clearly indicate that a violation

> occurs if the statute obstructs or infringes that right to any significant degree.

Mitchell, 786 So.2d at 527. The First District subsequently interpreted the word "significant" in the context of an access to courts challenge to mean "important" and "of consequence." Henderson, 883 So.2d at 854.

The facts demonstrate that the statutes challenged here would require Weaver to forfeit the constitutional right to privacy and expose her late husband's medical and other information (and potentially hers)[7] up to two years prior to the alleged act of medical negligence, regardless of its relevance to her claim to prying lawyers, insurance companies, experts, and doctors to probe, as a condition to filing a wrongful **death** action. Moreover, the mandatory authorization and secret, ex parte interview provisions empower these individuals and entities to actively engage nonparties in unsupervised interviews without the presence of the claimant, the claimant's representative, or the claimant's attorneys, potentially leaving exposure of irrelevant and constitutionally protected private information otherwise undiscoverable and nearly impossible to address. Cf. Rasmussen, 500 So.2d at 537 ("However, the subpoena in question gives petitioner access to the names and addresses of the blood donors with no restrictions on their use. There is nothing to prohibit petitioner from conducting an investigation without the knowledge of the persons in question. We cannot ignore, therefore, the consequences of disclosure to nonparties, including the possibility that a donor's coworkers, friends, employers, and others may be queried as to the donor's sexual preferences, drug use, or general life-style."). The vulnerable ***1141** state in which a medical malpractice claimant is placed is a sufficiently important and significant impediment to seeking relief from a Florida court.[8] This our Constitution simply does **not** allow.[9]

Having determined that the 2013 amendments to sections 766.106 and 766.1065 of the Florida Statutes are unconstitutional, we now must undertake consideration as to whether to sever the unconstitutional portions. See Ray v. Mortham, 742 So.2d 1276, 1280 (Fla. 1999) ("Severability is a judicial doctrine recognizing the obligation of the judiciary to uphold the constitutionality of legislative enactments where it is possible to strike only the unconstitutional portions." (citing State v. Calhoun Cty., 126 Fla. 376, 170 So. 883, 886 (1936))). Although the 2013 act that amended the statutes did **not** include a severance clause, this presents no barrier. See Fla. Hosp. Waterman, Inc. v. Buster, 984 So.2d 478 (Fla. 2008). In Waterman, we explained the questions that guide our severance analysis:

> (1) [W]hether the legislative purpose expressed in the valid provisions can be accomplished independently of those which are void; (2) if the good and bad features are **not** inseparable and if the Legislature would have passed one without the other; and (3) whether an act complete in itself remains after the invalid provisions are stricken.

Id. at 493 (citing Moreau v. Lewis, 648 So.2d 124, 128 (Fla. 1995)).

Noting the limited nature of our holding today and our severance principles, we make two strikes from the amended statutes. First, we strike in its entirety section 766.1065(3)E., Florida Statutes (2013), which contains the constitutionally infirm language: "This authorization expressly allows the persons or class of persons listed in subsections D.2.–4. above to interview the health care providers listed in subsections B.1.–2. above, without the presence of the Patient or the Patient's attorney." § 766.1065(3)E., Fla. Stat. Second, we strike the last sentence from section 766.106(6)(b) 5., Florida Statutes (2013), which contains the constitutionally infirm language: "If the claimant's attorney fails to schedule an interview, the prospective defendant or his or her legal representative may attempt to conduct an interview without further notice to the claimant or the claimant's legal representative." § 766.106(6)(b) 5., Fla. Stat.

CONCLUSION

In sum, we hold today that the right to privacy in the Florida Constitution attaches during the life of a citizen and is **not** retroactively destroyed by **death**. Here, ***1142** the constitutional protection operates in the specific context of shielding irrelevant, protected medical history and other private information from the medical malpractice litigation process. Furthermore, in the wrongful **death** context, standing in the position of the decedent, the administrator of the decedent's estate has standing to assert the decedent's privacy rights. Finally, the Legislature unconstitutionally conditioned

a plaintiff's right of access to courts for redress of injuries caused by medical malpractice, whether in the wrongful **death** or personal injury context, on the claimant's waiver of the constitutional right to privacy. Therefore, we strike certain unconstitutional language from the 2013 amendments to sections 766.106 and 766.1065 of the Florida Statutes which authorized secret, ex parte interviews. We quash the decision below and remand for further proceedings consistent with this opinion.

It is so ordered.

LABARGA, C.J., and PARIENTE, and QUINCE, JJ., concur.

CANADY, J., dissents with an opinion, in which POLSTON and LAWSON, JJ., concur.

CANADY, J., dissenting.

I disagree with the majority's conclusion that the challenged statutory provisions violate the right to privacy and the right of access to courts protected by the Florida Constitution. I would also reject Weaver's argument that the statutory provisions unconstitutionally encroach on this Court's rulemaking authority and constitute a prohibited special law. The First District correctly concluded that the statutory provisions withstood the constitutional challenges made by Weaver. I therefore dissent from the majority's unwarranted interference with the Legislature's authority.

I. RIGHT TO PRIVACY

A. Background and Waiver

In its decision below, the district court spent only a brief portion of its analysis addressing the issue of privacy, and rightfully so. See Weaver v. Myers, 170 So.3d 873, 883 (Fla. 1st DCA 2015). Medical malpractice claimants have no reasonable expectation of privacy in medical information that is relevant to the alleged malpractice—and that is the only information authorized to be discussed under the ex parte amendments. See § 766.1065(1), Fla. Stat. (2013) (requiring presuit "authorization for release of protected health information ... that is potentially relevant to the claim of personal injury or wrongful **death**"). Consequently, the Legislature did **not** overstep its bounds in 2013 by authorizing ex parte interviews of nonparty treating physicians as part of the presuit, informal discovery process related to medical malpractice actions, given that the interviews are optional on the part of the treating physician and are limited by a relevance standard. [10] Thus, I would affirm the district court's conclusion that the amendments do **not** violate the right to privacy.

Article I, section 23 of the Florida Constitution provides, in part, that "[e]very natural person has the right to be let alone and free from governmental intrusion into ***1143** the person's private life except as otherwise provided herein." Art. I, § 23, Fla. Const. From this language, the majority concludes that a medical malpractice claimant has a constitutional right to prevent a nonparty treating physician from discussing ex parte the claimant's relevant medical information with certain interested parties.

The district court properly focused on the waiver of privacy protections that necessarily accompanies pursuit of medical malpractice claims. Specifically, the district court concluded that "the decedent's medical condition is at issue" and any privacy rights were **waived** because "[i]t is well-established in Florida and across the country that any privacy rights that might attach to a claimant's medical information are **waived** once that information is placed at issue by filing a medical malpractice claim." Weaver, 170 So.3d at 883. In doing so, the district court noted that the 2013 amendments do **not** apply to information that is **not** potentially relevant to the claim. Id. at 883 n.3 (citing § 766.1065(3)C., Fla. Stat.).

Consistent with the district court's analysis, the majority here recognizes that privacy matters must be analyzed differently in the context of litigation: "We have further recognized that '[t]he potential for invasion of privacy is inherent in the litigation process.' " Majority op. at 1126 (alteration in original) (quoting Rasmussen v. S. Fla. Blood Serv., Inc., 500 So.2d 533, 535 (Fla. 1987)). And more specifically, the majority recognizes the concept of privacy waiver in medical malpractice actions, noting that "a claimant may necessarily waive privacy rights to the medical information that is relevant to a claim by filing an action." Majority op. at 1132.

Nevertheless, the majority ends up rejecting the ex parte meetings on constitutional privacy grounds based on the notion that the legislation requires the claimant to waive the right to privacy in "confidential health information that is **not** relevant to the claim." Majority op. at 1132 (emphasis omitted). But nothing in the ex parte amendments authorizes

the discussion of irrelevant medical information. Thus, the majority invalidates the ex parte amendments based on speculation and various assumptions, including that members of the legal profession—who are subject to disciplinary review by this Court—will act outside the law, as well as that members of the medical community will misunderstand both their HIPAA [11] restrictions and the fact that these ex parte interviews are optional and limited by a relevance standard. I strongly disagree with the majority's decision to do so. Instead of invalidating these statutory provisions based on speculative assumptions that individuals will act outside the scope of the statutory authorization, I would approve the district court's analysis and affirm the district court's conclusion that the amendments do **not** violate the right to privacy. [12]

***1144 B. Workers' Compensation Cases**

The majority's decision is difficult to reconcile with the fact that ex parte interviews with nonparty treating physicians have long been authorized by Florida statute in the workers' compensation arena. See § 440.13(4)(c), Fla. Stat. (2017). As with the amendments at issue in this case, the workers' compensation ex parte interviews are limited by a relevance standard. Id. The First District long ago rejected a constitutional privacy challenge to the ex parte provisions of the workers' compensation statute. See S & A Plumbing v. Kimes, 756 So.2d 1037, 1042 (Fla. 1st DCA 2000). There is no evidence to suggest that nonparty treating health care providers in the workers' compensation arena have had difficulty limiting their ex parte interviews to relevant medical information—and such ex parte interviews have been taking place for decades. And yet the majority here assumes the opposite result in the medical malpractice context and then bases its constitutional analysis on that speculative assumption. In doing so, the majority seeks to distinguish Kimes and workers' compensation cases, but the majority's reasoning is difficult to reconcile with its holding in this case.

For example, the majority observes that "[t]he workers' compensation system is clearly intended to be self-executing, with the resort to adversarial proceedings being undertaken only as a last recourse to resolve intractable disputes." Majority op. at 1137(quoting Kimes, 756 So.2d at 1041). The majority later reiterates that the workers' compensation system is designed to resolve claims "without resort to a system of litigation." Majority op. at 1137(quoting Kimes, 756 So.2d at 1042). And the majority distinguishes "medical malpractice and wrongful **death** actions" on the basis that those actions "are completely adversarial and traditional actions at law resolved in the judicial branch by Article V courts." Majority op. at 1137. But the majority's argument is flawed in at least two respects. First, implicit in the majority's argument is the premise that workers' compensation cases only become "adversarial" once a dispute becomes "intractable." Majority op. at 1137. Such a premise overlooks "the practical realities," majority op. at 1135, of workplace injury cases and the nature of the competing interests involved in those cases. Indeed, such a premise cannot be reconciled with the facts of Kimes itself, in which the disputed ex parte meeting took place after Kimes' request for authorization for ankle surgery had been denied and after Kimes had filed his claim. See Kimes, 756 So.2d at 1038–39, 1041. Second, the majority's argument overlooks that the ex parte amendments at issue involve a medical malpractice presuit process which this Court has described as being "intended to promote the settlement of meritorious claims at an early stage without the necessity of a full adversarial proceeding." Williams v. Campagnulo, 588 So.2d 982, 983 (Fla. 1991) (emphasis added). Thus, ex parte interviews with nonparty treating physicians are designed to accomplish the same underlying purpose in both instances—that is, to avoid adversarial proceedings.

The majority further attempts to distinguish Kimes by concluding "that the only medical professional to be interviewed was explicitly hired for purposes of workers' compensation to evaluate the causal connection between the work performed and the injury." Majority op. at 1138. The majority's conclusion is problematic in at least three respects. First, in reaching its conclusion, the majority misreads Kimes and oversimplifies the workers' compensation process. As is clear from Kimes, the disputed ex parte interview took place "between Kimes' treating physician and representatives of the employer/carrier's attorney." Kimes, 756 So.2d at 1038 (emphasis ***1145** added). The fact that the employer/carrier in workers' compensation cases generally selects the treating physician does **not** alter the fact that the medical professional at issue was Kimes' treating physician. A physician who treats an alleged workplace injury is no less of a "treating physician" than a physician who treats an alleged medical malpractice injury. Second, it appears the majority's conclusion is based on the assumption that the medical professional in Kimes was somehow **not** in possession of irrelevant protected information. But naturally, any treating physician will obtain information from the patient regarding the patient's medical history and conditions, as well as other information—that is, protected information that may or may **not** be relevant

to establishing a "causal connection between the work performed and the injury." Majority op. at 1138. That, of course, explains why the Legislature limited the workers' compensation ex parte meetings by a relevance standard—just as the Legislature did with the 2013 amendments at issue. Third, as to the majority's suggestion that the ex parte meeting in Kimes was harmless because it was designed to assist in establishing a "causal connection" to the injury, majority op. at 1138, the majority overlooks that the purpose of the medical malpractice presuit process is very much the same—that is, to help defendants and their insurers determine causation and resolve claims. See Cohen v. Dauphinee, 739 So.2d 68, 71 (Fla. 1999) ("[T]he prevailing policy of this state relative to medical malpractice actions is to encourage the early settlement of meritorious claims and to screen out frivolous claims.").

The majority also observes that "the Kimes court even noted that the moment a workers' compensation claim becomes sufficiently adversarial by appointment of an expert medical advisor, ex parte conferences are no longer permissible." Majority op. at 1137 n.6 (citing Kimes, 756 So.2d at 1041 (citing Pierre v. Handi Van, Inc., 717 So.2d 1115, 1117 (Fla. 1st DCA 1998))). But Pierre clearly noted that once an expert medical advisor is appointed, "ex parte discussions with such experts are **not** appropriate." Pierre, 717 So.2d at 1117 (emphasis added). And Pierre went on to note that such meetings were prohibited by "either party." Id. Nothing about this conclusion by Pierre supports the majority's decision here. Again, the amendments at issue contemplate ex parte interviews with nonparty treating physicians—the same fact witnesses to whom the plaintiff already has ex parte access. [13]

Finally, after analyzing Kimes, the majority concludes "that there was no threat of irrelevant information being disclosed in Kimes." Majority op. at 1138 (emphasis added). The majority reaches this conclusion despite the fact that the parties' interests in Kimes were clearly adverse to one another, despite the fact that treating physicians in workers' compensation cases are generally selected **not** by the injured employee but rather by the employer/carrier, and despite the fact that the treating physician in Kimes—just like any other treating physician—undoubtedly possessed irrelevant protected medical information. The majority's reading of Kimes cannot be reconciled with the majority's conclusion and reasoning in the instant case.

In the end, the majority's attempts to distinguish Kimes and workers' compensation cases are logically flawed. And the majority cannot explain why treating physicians—for decades—have had little difficulty ***1146** adhering to a relevance standard in workers' compensation ex parte interviews and why those same medical professionals are unable to do so in medical malpractice ex parte interviews.

C. This Court's Ex–Parte–Interview Jurisprudence

The majority's decision is also difficult to reconcile with the fact that this Court has repeatedly addressed the issue of ex parte interviews of nonparty treating physicians in medical malpractice cases and recognized that the underlying **confidentiality** rights were created by the Legislature. Although the referenced cases did **not** address constitutional challenges to ex parte meetings and are therefore **not** controlling here, the case law helps to illustrate the overreach by the majority. Despite the majority's claim to the contrary, a "proper[ ] and full[ ] analy[sis]" of these cases does **not** support the majority's holding and conclusions. Majority op. at 1135 (emphasis omitted).

In 1984, this Court squarely rejected a medical malpractice plaintiff's attempt to prohibit an ex parte meeting between the defendant health care provider and the plaintiff's treating physician. See Coralluzzo v. Fass, 450 So.2d 858, 859 (Fla. 1984). In doing so, Coralluzzo recognized that there was no such thing as physician/patient **confidentiality** under Florida law at that time. Id. at 859. And Coralluzzo expressly concluded that there was "no reason in law or in equity to" find for the plaintiff and that "[n]o law, statutory or common, prohibits—even by implication—respondents' actions." Id. (emphasis added). In other words, there was nothing to prevent the ex parte interview with the nonparty treating physician in the absence of legislative protections.

The majority describes this dissent's depiction of Coralluzzo as "disturbing" and believes that the absence of a constitutional challenge in Coralluzzo renders this dissent's summary of Coralluzzo "ill-founded." Majority op. at 1135. But the majority misses the point. As an initial matter, the reason there was no constitutional challenge in Coralluzzo is because there was no State action involved—there was no statute to even be challenged. Thus, Coralluzzo concluded that the ex parte meetings were permitted because the Legislature had **not** acted to prohibit them. In other words, the ex parte meetings could only be prevented by State action. Moreover, as explained below, the majority overlooks that this dissent's depiction of Coralluzzo is entirely consistent

with how this Court itself has unanimously described Coralluzzo. See Acosta v. Richter, 671 So.2d 149, 150 (Fla. 1996) (noting that Coralluzzo held that "there was no legal impediment to [the] ex parte conversations" (emphasis added)).

In 1988, the Legislature responded to Coralluzzo by creating a broad physician/patient **confidentiality** privilege —a privilege that previously did **not** exist under Florida law. See ch. 88–208, § 2, at 1194–96, Laws of Fla. That new statutory privilege also carried with it, among other things, a limited exception for medical malpractice actions. Id.

Subsequent to the Legislature's 1988 statutory amendments, this Court has twice revisited the issue of ex parte meetings with nonparty treating physicians in medical malpractice cases, both times striking down the ex parte meetings on the specific grounds that they were precluded by the 1988 statutory amendments. See Hasan v. Garvar, 108 So.3d 570, 578 (Fla. 2012); Acosta, 671 So.2d at 156. As with Coralluzzo, neither Hasan nor Acosta supports the conclusion that the Legislature acted unconstitutionally here.

In Acosta, this Court began by recognizing that the issue presented "ha[d] its genesis in Coralluzzo." ***1147** Acosta, 671 So.2d at 150. In assessing that previous decision, Acosta unanimously explained that Coralluzzo stood for the proposition that "there was no legal impediment to ex parte conversations between a patient's treating doctors and the defendants or their representatives." Id. (emphasis added). Thus, this Court in Acosta summarized Coralluzzo in the exact same manner that the majority here finds to be "disturbing." See majority op. at 1135. Acosta then went on to examine the Legislature's 1988 statutory amendments and ultimately concluded that those amendments provided the previously missing "legal impediment," Acosta, 671 So.2d at 150, to prevent medical malpractice defendants from conducting ex parte meetings with plaintiffs' treating physicians. Specifically, Acosta recognized that the Legislature had "create[d] a physician-patient privilege where none existed before" and had "provide[d] an explicit but limited scheme for the disclosure of personal medical information." Id. at 154. Acosta went on to reject the proposed ex parte conferences because they did **not** fall within the statute's narrow "medical negligence" exception. Id. at 156.[14] In other words, Acosta recognized that the Legislature had broadly protected a patient's medical information and that the Legislature had created "a strict scheme for limited disclosure" which did **not** include a specific exception for the disclosure of protected information during ex parte conferences with treating physicians. Id. In reaching its holding, Acosta noted that "the legislature has considerable latitude in providing Florida citizens with a high degree of privacy in their medical information." Id.

Similarly, Hasan—which was decided in 2012, shortly before the 2013 statutory amendments at issue in this case—noted that the 1988 statutory amendments "broadened the statutory protections for physician-patient **confidentiality**." Hasan, 108 So.3d at 573. And Hasan similarly rejected the ex parte meeting because it did **not** fall within the statute's "limited, defined exceptions." Id. at 578. Thus, Acosta and Hasan both recognized that the Legislature had closed the door on ex parte interviews through the 1988 statutory amendments.

Despite the clear import of these cases, the majority concludes that the cases "actually support" the majority's decision in this case. Majority op. at 1136. Moreover, the majority asserts that this dissent has "selective[ly] reference[d]" the cases and "ignore[d]" those portions which support the majority's decision. Majority op. at 1136. On the contrary, these cases offer no support to the conclusion that the Legislature is powerless to reauthorize these ex parte meetings. For example, the majority points to certain language from Acosta, which was later reiterated in Hasan, in which this Court rejected the idea of permitting ex parte conferences with treating physicians "so long as the physicians are **not** required to say anything." Majority op. at 1136 (quoting Hasan, 108 So.3d at 578 (quoting Acosta, 671 So.2d at 156)). The majority accurately notes that in rejecting that idea, Acosta concluded that "[w]e believe it is pure sophistry to suggest that the purpose and spirit of the statute would **not** be violated by such conferences." Majority op. at 1136-37 (quoting Hasan, 108 So.3d at 578 (quoting ***1148** Acosta, 671 So.2d at 156)). But this quote from Acosta does **not** support the majority's decision here. As is clear from the plain text of the quote, Acosta rejected such sham meetings because they would violate "the purpose and spirit of the statute." Acosta, 671 So.2d at 156 (emphasis added). Again, it was the statute which protected the information, the statute which established the "strict scheme for limited disclosure," id., and the statute which did **not** include an express exception for the disclosure of protected information during ex parte meetings with treating physicians. Thus, Acosta merely recognized the obvious—that it would have been "pure sophistry," id., to permit such sham meetings, given that the statute did **not** permit the discussion of any protected information at such meetings, **not** even relevant information. Here, the

Legislature expressly amended the legislatively created "strict scheme for limited disclosure," id., so as to specifically allow for the discussion of relevant information at ex parte meetings. The quote from Acosta, when properly analyzed, does **not** support the majority's holding. The same is true when Acosta and the other referenced cases are properly analyzed in their entirety.

Lastly, in both its general analysis and its attempt to read the referenced case law to support its holding in this case, the majority repeatedly references "strict scrutiny," "less invasive manner," and "least intrusive means." Majority op. at 1135, 1136, 1137. And the majority asserts that this dissent instead "advances the most invasive clandestine secret interrogations as a method to deal with the fundamental constitutional right of our citizens." Majority op. at 1135. But the majority again misses the point. The issue here is straightforward: whether the Legislature is permitted to once again place medical malpractice defendants on equal footing with plaintiffs with respect to access to an important fact witness. There is no "less restrictive" way to put the defendant on equal footing other than to allow ex parte access by the defendant—the plaintiff, of course, already has ex parte access to that fact witness. Thus, the basic question is whether the Legislature may, in fact, place the defendant on equal footing. This Court's case law, beginning with Coralluzzo, recognizes that prior to the Legislature's 1988 statutory amendments, medical malpractice defendants had equal ex parte access to nonparty treating physicians. Thus, it stands to reason that the Legislature should very well be able to restore the equal access that the Legislature itself took away, so long as it does so in a HIPAA–compliant manner. The majority instead concludes that the Legislature has no business doing so. I respectfully disagree with the majority's analysis and conclusion. [15]

D. Conclusion

To sum up, the majority here holds it unconstitutional for the Legislature to now authorize optional ex parte meetings which are limited by a relevance standard—even though the Legislature is the same independent branch of government that closed the door on ex parte meetings in the first place and no Florida case law has ever held that the constitutional right of privacy precludes the ex parte disclosure of information ***1149** bearing on a malpractice claim. On the contrary, the Legislature was well within its bounds to carve out a limited, HIPAA–compliant exception to a legislatively created right in order to attempt to place plaintiffs and defendants on a level playing field with respect to access to certain important nonparty fact witnesses. See, e.g., Callahan v. Bledsoe, No. 16-2310-JAR-GLR, 2017 WL 590254, at *1 (D. Kan. Feb. 14, 2017) ("[T]his District has a well-established practice of allowing informal ex parte interviews of Plaintiff's treating physicians who are merely fact witnesses as long as a defendant complies with HIPAA and its related regulations."); Arons v. Jutkowitz, 9 N.Y.3d 393, 850 N.Y.S.2d 345, 880 N.E.2d 831, 842 (2007) (finding that "there was no basis for" the plaintiffs to decline to sign "HIPAA–compliant authorizations permitting their treating physicians to discuss the medical condition at issue in the litigation with defense counsel," given that the plaintiffs had "**waived** the physician-patient privilege as to this information when they brought suit").

In short, medical malpractice claimants waive whatever constitutional privacy rights they may have in relevant medical information. Because the 2013 amendments do **not** in any way authorize the discussion of irrelevant medical information, medical malpractice claimants have no constitutional right to prevent the ex parte meetings. I would therefore affirm the district court's conclusion that the ex parte amendments do **not** violate the right to privacy. Consequently, I would **not** address the issue of whether a person's privacy rights survive **death**.

II. ACCESS TO COURTS

The district court properly rejected Weaver's argument that the 2013 ex parte amendments unconstitutionally burden the right to access the courts guaranteed by article I, section 21 of the Florida Constitution. In doing so, the district court examined this Court's decision in Kluger v. White, 281 So.2d 1 (Fla. 1973), and concluded that the amendments did **not** "abolish[ ], eliminate[ ], or severely limit[ ] a substantive right to redress of a specific injury." Weaver, 170 So.3d at 882 (emphasis omitted). The district court then examined this Court's decision in Warren v. State Farm Mutual Automobile Insurance Co., 899 So.2d 1090 (Fla. 2005), and concluded that the amendments authorizing the ex parte interviews were "a reasonable condition precedent to filing suit." Weaver, 170 So.3d at 882. The district court also observed that the predecessor statute to section 766.106—setting forth the original presuit notice and screening requirements—has previously been upheld against an access to courts challenge. Id. (citing Lindberg v. Hosp. Corp. of Am., 545 So.2d 1384,

1386 (Fla. 4th DCA 1989), approved, 571 So.2d 446 (Fla. 1990)).

The majority here instead holds that the amendments violate the right of access to courts under the unconstitutional conditions doctrine. See majority op. at 1139. Specifically, the majority finds that the amendments "require Weaver to forfeit the constitutional right to privacy and expose her late husband's medical and other information (and potentially hers) ... regardless of its relevance to her claim to prying lawyers, insurance companies, experts, and doctors to probe, as a condition to filing a wrongful **death** action." Majority op. at 1140. But the ex parte amendments require no such "forfeit[ure]."

As an initial matter, the majority itself recognizes that any constitutional privacy rights with respect to relevant information are **waived** by plaintiffs in medical malpractice actions. See majority op. at 1132. In other words, the ex parte amendments do **not** establish a plaintiff's waiver of any constitutional privacy rights in relevant information —instead, that waiver is accomplished by the plaintiff's own action in ***1150** pursuing a malpractice claim. Thus, the majority's conclusion rests solely on the notion that the amendments "require" plaintiffs to waive their privacy rights in irrelevant information in order to obtain access to courts. But as noted above, nothing in the 2013 amendments authorizes the discussion of irrelevant medical information. Because the ex parte amendments do **not** "require" a waiver or forfeiture of any privacy rights that are **not** already **waived** by the plaintiff's own action in pursuing a malpractice claim, the amendments cannot be said to unconstitutionally condition a plaintiff's right of access to courts on the waiver of the right to privacy.

This Court has repeatedly recognized the legitimacy of the medical malpractice presuit process. See, e.g., Cohen, 739 So.2d at 71–72 ("[T]he prevailing policy of this state relative to medical malpractice actions is to encourage the early settlement of meritorious claims and to screen out frivolous claims.... This policy is best served by the free and open exchange of information during the presuit screening process."); Kukral v. Mekras, 679 So.2d 278, 284 (Fla. 1996) (recognizing "the legislative policy of requiring the parties to engage in meaningful presuit investigation, discovery and negotiations" and "screening out frivolous lawsuits and defenses"); Weinstock v. Groth, 629 So.2d 835, 838 (Fla. 1993) ("[T]he purpose of the chapter 766 presuit requirements is to alleviate the high cost of medical negligence claims through early determination and prompt resolution of claims ...."); Williams, 588 So.2d at 983 (noting the "legitimate legislative policy" of "promot[ing] the settlement of meritorious claims at an early stage without the necessity of a full adversarial proceeding"). The 2013 ex parte amendments simply add to that legitimate presuit process by "impos[ing] a reasonable condition precedent to filing a [medical malpractice] claim." Warren, 899 So.2d at 1097. Accordingly, I would affirm the district court's conclusion that the amendments do **not** violate the right of access to courts.

III. SEPARATION OF POWERS

The district court rejected Weaver's argument that the 2013 amendments unconstitutionally encroach on this Court's rulemaking authority under article V, section 2(a) of the Florida Constitution. Weaver, 170 So.3d at 880. Specifically, Weaver alleged that the ex parte amendments constitute "a procedural change which impermissibly conflicts with the limitations on informal discovery methods as outlined by Florida Rule of Civil Procedure 1.650." Id. at 878. In rejecting Weaver's argument, the district court correctly concluded that the amendments do **not** conflict with rule 1.650 and "are integral to other substantive portions of the statute." *Id.* at 880.

Rule 1.650 specifically addresses section 766.106, Florida Statutes, and the medical malpractice presuit notice and screening process. Among other things, the rule sets forth the following three types of informal presuit discovery, along with the procedures for conducting same: unsworn statements by parties, production of documents or things, and physical examinations. Fla. R. Civ. P. 1.650(c)(1)-(2). As the district court aptly noted, rule 1.650 was adopted by this Court in 1988 shortly after the enactment of chapter 88–277, § 48, Laws of Florida, in which the Legislature amended the then-existing presuit statute to provide for those same three specific methods of informal presuit discovery.[16] ***1151** Weaver, 170 So.3d at 879–80 (citing ch. 88–277, § 48, at 1494, Laws of Fla.); see also In re Med. Malpractice Presuit Screening Rules —Civil Rules of Procedure, 536 So.2d 193, 193 (Fla. 1988). The ex parte amendments at issue do **not** conflict with rule 1.650. And in any event, that procedural rule does **not** operate to prevent the Legislature from making substantive changes to the medical malpractice presuit process, which is exactly what the Legislature did through the ex parte amendments. See Kuhajda v. Borden Dairy Co. of Ala., LLC., 202 So.3d 391, 396 (Fla. 2016) ("A procedural rule should **not** be strictly construed to defeat a statute it is designed to implement.");

Benyard v. Wainwright, 322 So.2d 473, 475 (Fla. 1975) ("[T]he statute must prevail over our rule because the subject is substantive law.").

This Court has defined substantive law "as that part of the law which creates, defines, and regulates rights, or that part of the law which courts are established to administer." Haven Fed. Sav. & Loan Ass'n v. Kirian, 579 So.2d 730, 732 (Fla. 1991). On the other hand, "[p]rocedural law concerns the means and method to apply and enforce those duties and rights." Benyard, 322 So.2d at 475. This Court has recognized that situations arise in which statutes may contain both substantive and procedural aspects:

> Of course, statutes at times may **not** appear to fall exclusively into either a procedural or substantive classification. We have held that where a statute contains some procedural aspects, but those provisions are so intimately intertwined with the substantive rights created by the statute, that statute will **not** impermissibly intrude on the practice and procedure of the courts in a constitutional sense, causing a constitutional challenge to fail. See Caple v. Tuttle's Design–Build, Inc., 753 So.2d 49, 54 (Fla. 2000); see also State v. Raymond, 906 So.2d 1045, 1049 (Fla. 2005). If a statute is clearly substantive and "operates in an area of legitimate legislative concern," this Court will **not** hold that it constitutes an unconstitutional encroachment on the judicial branch. Caple, 753 So.2d at 53 (quoting VanBibber v. Hartford Accident & Indem. Ins. Co., 439 So.2d 880, 883 (Fla. 1983)).

Massey v. David, 979 So.2d 931, 937 (Fla. 2008).

Here, the amendments are "clearly substantive and 'operate[ ] in an area of legitimate legislative concern.' " Id. (quoting Caple, 753 So.2d at 53). And any procedural aspects are merely incidental. Id. As explained above, this Court has concluded that prior to the 1988 statutory amendments, defendants had the right to attempt to meet with plaintiffs' nonparty treating physicians on an ex parte basis. See Coralluzzo, 450 So.2d at 859. And in the wake of the 1988 statutory amendments, this Court has twice recognized that the Legislature closed the door on those ex parte meetings by creating a broad physician/patient **confidentiality** privilege with only certain limited exceptions. See Hasan, 108 So.3d at 576–77; Acosta, 671 So.2d at 154. The ex parte amendments at issue thus "regulate," Kirian, 579 So.2d at 732, legislatively created rights by once again allowing for ex parte meetings—but only under certain circumstances and conditions. And the amendments do so in a medical malpractice area that this Court has recognized involves "legitimate legislative policy." Williams, 588 So.2d at 983.

As the district court recognized, this Court previously rejected the argument that the medical malpractice presuit notice requirement violates the separation of powers. Weaver, 170 So.3d at 878–79 (citing Williams, 588 So.2d at 983). Williams, ***1152** which involved the original medical malpractice presuit notice and reasonable investigation statute enacted in 1985, examined the overall presuit process, noting that "[t]he statute ... established a process intended to promote the settlement of meritorious claims at an early stage without the necessity of a full adversarial proceeding." Williams, 588 So.2d at 983. And Williams concluded "that the statute is primarily substantive and that it has been procedurally implemented by our rule 1.650, Florida Rules of Civil Procedure." Id. Nothing in Williams supports the opposite conclusion here—that is, that the ex parte amendments are procedural.

I would affirm the district court's conclusion that the ex parte amendments do **not** unconstitutionally encroach on this Court's rulemaking authority.

IV. SPECIAL LAW

The district court rejected Weaver's argument that the 2013 amendments constitute a prohibited special law in violation of article III, section 11 of the Florida Constitution. In doing so, the district court examined the two factors set forth by this Court in Biscayne Kennel Club, Inc. v. Florida State Racing Commission, 165 So.2d 762, 763–64 (Fla. 1964), for determining whether a law that operates through a classification system is a valid general law. Weaver, 170 So.3d at 881. The district court concluded that the ex parte amendments met those two criteria and thus constituted a valid general law. Id. The district court also rejected Weaver's argument that this Court's plurality decision in Estate of McCall v. United States, 134 So.3d 894 (Fla. 2014), compels the conclusion "that medical malpractice plaintiffs now may **not** be treated differently from other plaintiffs because no medical malpractice crisis exists." Weaver, 170 So.3d at 881. I would affirm the district court's conclusion that the 2013 amendments are a valid general law.

Article III, section 11(a) of the Florida Constitution prohibits special laws or general laws of local application pertaining to certain subjects, including "rules of evidence in any court"

and "conditions precedent to bringing any civil or criminal proceedings." Art. III, §§ 11(a)(3), (a)(7), Fla. Const.

This Court has explained that "a special law is one relating to, or designed to operate upon, particular persons or things, or one that purports to operate upon classified persons or things when classification is **not** permissible or the classification adopted is illegal." Dep't of Bus. Reg. v. Classic Mile, Inc., 541 So.2d 1155, 1157 (Fla. 1989) (quoting State ex rel. Landis v. Harris, 120 Fla. 555, 163 So. 237, 240 (1934)).

On the other hand, a law is general if "it operates uniformly upon subjects as they may exist in the state, applies uniformly within permissible classifications, operates universally throughout the state or so long as it relates to a state function or instrumentality." Dep't of Legal Affairs v. Sanford–Orlando Kennel Club, Inc., 434 So.2d 879, 881 (Fla. 1983). "A general law operates uniformly, **not** because it operates upon every person in the state, but because every person brought under the law is affected by it in a uniform fashion." Id.

Here, the ex parte amendments involve a legislative classification—medical malpractice claimants and defendants. Thus, the following two factors determine whether that classification is valid: (1) whether the class is "open to others who may enter it"; and (2) whether there is "a rational distinction between those in the class and those outside it, when the purpose of the legislation and the subject of the regulation are considered." Biscayne Kennel Club, 165 So.2d at 764.

The first Biscayne Kennel Club prong is undoubtedly met—the class here is **not** ***1153** closed but rather is "open" to all future parties to medical malpractice actions. Thus, the only question is whether there is "a rational distinction between those in the class and those outside it, when the purpose of the legislation and the subject of the regulation are considered." Id. The district court correctly concluded that there is such a rational distinction. The ex parte amendments are consistent with decades of precedent finding that it is appropriate to treat medical malpractice claimants and defendants differently than other personal injury claimants and defendants. Medical malpractice is an area that has been historically regulated by the Legislature with the goal of "ensuring the availability of adequate medical care." Weaver, 170 So.3d at 881.

Weaver argues that the ex parte amendments impermissibly treat medical malpractice claimants differently and less favorably than all other personal injury claimants. Weaver also takes issue with the district court's dismissal of McCall. Specifically, Weaver argues that because the McCall plurality found that no medical malpractice insurance crisis currently exists, it was error for the district court below to justify the ex parte amendments by relying on "a decades-old finding" by the Legislature that a medical malpractice crisis existed at the time the presuit process was originally enacted. Weaver's arguments are **not** persuasive.

As an initial matter, McCall has no application to this case. McCall involved an equal protection challenge to statutory caps on noneconomic damages and had nothing to do with the issue of prohibited special laws. McCall, 134 So.3d at 897. Moreover, any suggestion that a medical malpractice "crisis" must, in fact, exist as a prerequisite for permissible legislative classifications involving medical malpractice parties is unwarranted. A special law inquiry does **not** involve this Court acting as a super-legislative body to review the Legislature's policy decisions. Instead, as it relates to the second Biscayne Kennel Club prong, the appropriate inquiry is whether there is "a rational distinction between those in the class and those outside it, when the purpose of the legislation and the subject of the regulation are considered." Biscayne Kennel Club, 165 So.2d at 764 (emphasis added).

As to the "subject of the regulation," id., chapter 766, Florida Statutes, is entitled "Medical Malpractice and Related Matters." Because the subject being regulated is medical malpractice matters—and **not** all personal injury tort matters, including those unrelated to medical malpractice—it obviously makes sense that the ex parte amendments classify medical malpractice claimants and defendants differently than other personal injury claimants and defendants.

As to the "purpose of the legislation," Biscayne Kennel Club, 165 So.2d at 764, the district court noted that the presuit notice and investigation statutes "were originally enacted by the Legislature to combat the financial crisis in the medical liability insurance industry by encouraging early settlement and negotiation of claims." Weaver, 170 So.3d at 881 (citing Univ. of Miami v. Echarte, 618 So.2d 189, 191–92 (Fla. 1993)). In the years since that original enactment, this Court has described the purpose of the presuit process in general terms. Namely, the purpose is to attempt to control "the high cost of medical negligence claims through early determination and prompt resolution of claims," Weinstock, 629 So.2d at 838, and "promot[ing] the settlement of meritorious claims at an early stage without the necessity

of a full adversarial proceeding," Williams, 588 So.2d at 983. "Indeed, the prevailing policy of this state relative to medical malpractice actions is to encourage ***1154** the early settlement of meritorious claims." Cohen, 739 So.2d at 71. And the best way to accomplish that "prevailing policy" is through "the free and open exchange of information during the presuit screening process," id. at 72, and by "requiring the parties to engage in meaningful presuit investigation, discovery and negotiations," Kukral, 679 So.2d at 284. Providing both sides in a medical malpractice suit with the same pretrial access (potentially) to important nonparty fact witnesses is undoubtedly rationally related to the Legislature's interest in promoting early settlement and attempting to keep costs down in order to help make Florida an attractive place for doctors to practice. In other words, the legislative classification here between parties to medical malpractice claims and parties to other personal injury tort claims is rational when considering "the purpose of the legislation." Biscayne Kennel Club, 165 So.2d at 764.

This Court recently explained the burden on a party challenging a legislative classification:

> This Court has held that the law must be upheld unless the Legislature could **not** have any reasonable ground for believing that there were public considerations justifying the particular classification and distinction made. North Ridge Gen. Hosp., Inc. v. City of Oakland Park, 374 So.2d 461, 465 (Fla. 1979). Further, this Court has held that "one who assails the classification has the burden of showing that it is arbitrary and unreasonable." Id. at 465. The appellees have **not** met this burden.

License Acquisitions, LLC v. Debary Real Estate Holdings, LLC, 155 So.3d 1137, 1149 (Fla. 2014). The issue here is **not** whether a medical malpractice "crisis" exists, but rather whether Weaver has shown that "the Legislature could **not** have had any reasonable ground for believing that there were public considerations justifying the particular classification and distinction made." North Ridge Gen. Hosp., 374 So.2d at 465 (emphasis added). And Weaver does **not** come close to meeting this burden.

V. CONCLUSION

For the reasons explained above, I would affirm the First District's decision in Weaver. The ex parte amendments do **not** violate the right to privacy or the right of access to courts protected by the Florida Constitution. And the ex parte amendments do **not** unconstitutionally encroach on this Court's rulemaking authority or constitute a prohibited special law. I dissent.

POLSTON and LAWSON, JJ., concur.

All Citations

229 So.3d 1118, 42 Fla. L. Weekly S906

Footnotes

1 An amicus brief by the Florida Justice Association has been filed in support of Weaver. Amicus briefs by the State of Florida, the Florida Justice Reform Institute, and the Florida Hospital Association/Florida Medical Association/American Medical Association have been filed in support of Dr. Myers.

2 In a related context, application of existing limits and exemptions to access to information by the public bolsters this conclusion. For instance, in the context of the federal Freedom of Information Act, the families of deceased astronauts from the Challenger space shuttle explosion were allowed to claim an exemption for "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." New York Times Co. v. Nat'l Aeronautics & Space Admin., 782 F.Supp. 628, 630 (D.D.C. 1991). In another context, it is well-established law that the right to privacy survives **death**. Florida recognizes both a statutory and common law right of publicity. § 540.08, Fla. Stat. (2016); see, e.g., Cason v. Baskin, 155 Fla. 198, 20 So.2d 243, 245 (Fla. 1944). The right of publicity is a corollary right derived from the right to privacy that allows a person to control the use of his or her name and likeness. Section 540.08, Florida Statutes, authorizes the surviving spouse of a decedent to enforce the decedent's publicity rights for up to forty years. See § 540.08(1), (5)-(7). Thus, it is clear that the right to privacy survives a person's **death**, is **not** retroactively destroyed by **death**, and remains enforceable in tort law by the decedent's family members for decades.

3 Moreover, even in this distinct context, the Williams court recognized that there are certain exceptions in which a decedent's next of kin may properly bring an action for invasion of privacy. 575 So.2d at 689.

4 Dr. Myers contends that he is **not** a government actor, and therefore, the right to privacy challenge fails. However, this Court has previously considered challenges to statutes on the basis that they violate the right to privacy where

both parties to the action are private individuals, but one party benefits from operation of the statute. See, e.g., D.M.T. v. T.M.H., 129 So.3d 320, 330 (Fla. 2013) (donor filed petition to establish parental rights and sought declaration of constitutional invalidity of assisted reproductive technology statute); Von Eiff v. Azicri, 720 So.2d 510, 511–12 (Fla. 1998) (parents challenged statute which provided grandparents with a freestanding cause of action for visitation rights with minor grandchildren); Beagle v. Beagle, 678 So.2d 1271, 1273 (Fla. 1996) (parents contested grandparents' petition for visitation rights with grandchild that was authorized pursuant to statute).

5 Further, although **not** at issue here, requiring potential claimants to list by name health care providers who do **not** have information potentially relevant to the claim, and provide dates of service, see § 766.1065(3)C., in and of itself reveals irrelevant private medical information. For example, if a claimant seeks to file an action based upon alleged malpractice by a podiatrist, the authorization requires him to report if he was seen by a health care provider who specializes in treating HIV, or sexual dysfunction, or depression, or substance abuse. This goes beyond the scope of the claim and intrudes upon a person's right to keep private medical information that has **not** been placed at issue by virtue of the action. However, again, this is **not** at issue here and must also be weighed against the limiting intent behind the requirement.

6 Further supporting our holding today, the Kimes court even noted that the moment a workers' compensation claim becomes sufficiently adversarial by appointment of an expert medical advisor, ex parte conferences are no longer permissible. See Kimes, 756 So.2d at 1041 (citing Pierre v. Handi Van, Inc., 717 So.2d 1115, 1117 (Fla. 1st DCA 1998)). Pierre even noted the impropriety that would flow from ex parte discussions once a matter becomes adversarial:

> Once disputes have arisen and ripened, however, requiring the assistance of [expert medical advisors], the case has become indisputably adversarial so that ex parte discussions with such experts are **not** appropriate ... and the experts so chosen should **not** be subject to even the "appearance of impropriety," which would result from private meetings with either party.

717 So.2d at 1117.

7 Weaver also raised a challenge based on her own right to privacy on the theory that her husband potentially revealed information about her and her medical history during the course of his medical care. In light of our holding today, however, we need **not** address this claim.

8 Dr. Myers contends that the impediment at issue is merely the procedural act of filling out and executing the authorization, which in turn is **not** a significant infringement. Indeed, we have previously upheld conditions precedent to filing a legal action so long as the condition is **not** "significantly difficult" to surmount. For example, in Warren v. State Farm Mutual Automobile Insurance Co., 899 So.2d 1090, 1092 (Fla. 2005), the challenged statute required providers of non-emergency medical services and medical services **not** provided in a hospital to submit a statement of charges to insurers within thirty days of service or be subject to automatic claim denial. This Court held that the statute did **not** violate access to courts because it did **not** abolish the rights of medical providers to file claims for certain insurance benefits and was a reasonable condition precedent to filing such claims. Id. at 1097.

However, viewing the amendments merely in terms of filling out an authorization is a superficial way to perceive and ignore their effect. As we have made clear, this is **not** about paperwork, but privacy.

9 In light of our holding today, we need **not** reach Weaver's other contentions that the 2013 amendments violated separation of powers and the prohibition against special laws under the Florida Constitution.

10 The Legislature first enacted a medical malpractice presuit notice and reasonable investigation requirement in 1985. See ch. 85–175, §§ 12, 14, at 1196–97, 1199–1202, Laws of Fla. In 1988, the Legislature amended the presuit process by imposing a mandatory "presuit investigation" requirement and outlining the permissible "informal discovery" to be used by the parties. See ch. 88–1, §§ 48–53, at 164–68, Laws of Fla.; ch. 88–277, § 48, at 1494–95, Laws of Fla.

11 Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104–191, 110 Stat. 1936 (1996).

12 The majority also offers no explanation for why a defendant would even be interested in obtaining protected information "that is totally irrelevant to the claim." Majority op. at 1133. Any such information would be inadmissible at trial and the discussion of such information would subject the interviewer and interviewee to potential liability and discipline. The majority instead references "the practical realities of today's litigation practice." Majority op. at 1135. But the majority then fails to identify a single "practical" use that would be served either by a defendant's attempt to obtain "totally irrelevant" protected information or by a medical professional's willingness to discuss such information. Instead, the referenced "practical realities" appear to relate to the majority's belief that attorneys "very often" act inappropriately. Majority op. at 1135. Such a belief, of course, should **not** guide the majority's constitutional analysis.

13 In Kimes, an expert medical advisor had **not** even been appointed at the time of the ex parte conference with the treating physician. See Kimes, 756 So.2d at 1041. And yet it can hardly be argued that the dispute in Kimes was **not** "adversarial."

14 The majority suggests that Acosta adopted a quote from Kirkland v. Middleton, 639 So.2d 1002, 1004 (Fla. 5th DCA 1994), which expressed a blanket concern about ex parte interviews and the complete lack of protection to Florida citizens from the disclosure of information "that is totally irrelevant to the claim." Majority op. at 1133-34. But Acosta quoted Kirkland simply to explain how the district court reached its decision in Kirkland. Acosta, 671 So.2d at 152–53.

15 The majority also makes reference to "the standard discovery procedures with notice and participation of all parties that are employed daily without issue in thousands of cases." Majority op. at 1138 (emphasis added). But the majority then fails to mention that in those "thousands of cases," plaintiffs and defendants alike are generally permitted to contact fact witnesses on an ex parte basis. Again, the only reason why post–1988 medical malpractice defendants have **not** had equal ex parte access to those fact witnesses who happen to be nonparty treating physicians is because the Legislature took away that equal access.

16 Rule 1.650 has **not** been updated to reflect other permissible methods of informal presuit discovery subsequently authorized by the Legislature, including the taking of unsworn statements from a claimant's treating health care providers and the submission of written questions. See, e.g., ch. 2003–416, § 49, at 65–66, Laws of Fla.

End of Document

451 So.2d 491
District Court of Appeal of Florida,
Third District.

Glenda YESTE, individually, and as Personal Representative of the estate of Dixon Yeste, M.D., and John Darren Yeste and Michael Scott Yeste, by and through their natural guardian, mother and next friend, Glenda Yeste, Appellants,
v.
The MIAMI HERALD PUBLISHING COMPANY, A DIVISION OF KNIGHT-RIDDER NEWSPAPERS, INC., a Florida corporation, and Steven Sternberg, Appellees.

No. 83–2006
|
April 10, 1984.
|
Rehearing Denied June 19, 1984.

Synopsis

Newspaper and reporter sought writ of mandamus requiring public officials to authorize inspection of medical certification portion of death certificate, and decedent's widow and decedent's two minor sons were permitted to intervene. The Circuit Court, Dade County, Edward S. Klein, J., issued peremptory writ of mandamus, and intervenors appealed. The District Court of Appeal, Hubbart, J., held that the portion of a death certificate which contains the medical certification of the cause of death is made confidential by statute and is therefore exempt from public inspection.

Reversed and remanded.

West Headnotes (6)

[1] **Records** Matters Subject to Disclosure; Exemptions

Portion of death certificate which contains medical certification of cause of death, and which according to statute must be deleted from any certified copy of death certificate unless applicant has "direct and tangible interest in the cause of death," is "confidential" within meaning of Public Records Act and is therefore exempt from public inspection and copying provisions of the Act. West's F.S.A. §§ 119.011(1), 119.07(1)(a, b), (3)(a), 382.35(4).

1 Cases that cite this headnote

[2] **Statutes** Purpose

Statutes Unintended or unreasonable results; absurdity

Court must give full effect to legislative purpose behind statute and avoid constructions which lead to absurd or unreasonable results.

2 Cases that cite this headnote

[3] **Records** Matters Subject to Disclosure; Exemptions

Purpose of making cause of death information confidential, in order to avoid public embarrassment to deceased's family, would be totally defeated if any member of general public could inspect and hand copy confidential portions of death certificate. West's F.S.A. §§ 119.011(1), 119.07(1)(a, b), (3)(a), 382.35(4).

1 Cases that cite this headnote

[4] **Statutes** Literal, precise, or strict meaning; letter of the law

Court must avoid literalistic reading of statute where that reading would defeat entire legislative purpose behind statute.

1 Cases that cite this headnote

[5] **Records** Persons entitled to disclosure; interest or purpose

Newspaper and reporter, which without dispute had no direct or tangible interest in cause of death, were not entitled to receive certified copy of death certificate that included cause of death portion or to inspect cause of death portion of certificate under Public Records Act. West's F.S.A. §§ 119.01 et seq., 119.07(1)(a), (3)(a), 382.35(4).

[6] **Constitutional Law** Access to, and publication of, public information or records

Newspaper did not have free press right of access to medical certification portion of death certificate. West's F.S.A. § 382.35(4).

Attorneys and Law Firms

***492** Robert J. Dickman, Fort Lauderdale, for appellants.

Thomson, Zeder, Bohrer, Werth, Adorno & Razook, Richard J. Ovelmen, Miami, for appellees.

Before BARKDULL, HUBBART and NESBITT, JJ.

Opinion

HUBBART, Judge.

The central question presented for review by this appeal is whether that portion of a death certificate which contains the medical certification of the cause of death is open for public inspection as a public record—or is exempt from such inspection—under the Florida Public Records Act [ch. 119, Fla.Stat. (1983)]. We hold that the above-stated portion of a death certificate is made confidential by Section 382.35(4), Florida Statutes (1983), and is therefore exempt under Section 119.07(3)(a), Florida Statutes (1983), from the public inspection and certified copying provisions of Section 119.07(1)(a), Florida Statutes (1983). We accordingly reverse the final order under review and remand the cause to the trial court with directions to deny the petition for a writ of mandamus filed herein.

On July 12, 1983, Dr. Dixon Yeste died leaving a surviving wife and two minor sons. On July 13, 1983, Dr. Barry Barker, the attending physician to Dr. Yeste during his last illness, filed a medical certification of the cause of death with the Florida Department of Health and Rehabilitative Services, Bureau of Vital Statistics [HRS]. This certificate, in turn, was incorporated into Dr. Yeste's official death certificate issued by HRS. On July 21, 1983, Steven Sternberg, a reporter for The Miami Herald, applied to the local office of HRS to ***493** inspect Dr. Yeste's death certificate. The request was granted except as to the medical certification of the cause of death. Thereafter, the petitioners, The Miami Herald Publishing Company and Steven Sternberg, applied to the trial court for a writ of mandamus requiring HRS and sundry other public entities and officials [1] to authorize the inspection of the medical certification portion of Dr. Yeste's death certificate. At that point, Dr. Yeste's widow, Glenda Yeste, individually and as personal representative of the estate of Dr. Yeste, and his two minor sons, John Darren Yeste and Michael Scott Yeste, were permitted to intervene in the action and oppose the issuance of the writ of mandamus. After receiving full responses from all parties, and on an undisputed set of facts as stated above, the trial court issued a peremptory writ of mandamus directing HRS and other sundry officials to permit the petitioners to inspect the medical certification portion of Dr. Yeste's death certificate. The intervenors appeal.

[1] Without dispute, a death certificate is a public record under Section 119.011(1), Florida Statutes (1983). Ordinarily, then, such a certificate would be subject to the public inspection and copying provisions of Section 119.07(1)(a), (b), Florida Statutes (1983). There is one exception, however, to these public inspection and copying provisions which is set forth in Section 119.07(3)(a), Florida Statutes (1983), as follows:

> *"All public records which are presently provided by law to be confidential* or which are prohibited from being inspected by the public, *whether by general or special law, are exempt from the provisions of subsection (1)."* (emphasis added)

Section 382.35(4), Florida Statutes (1983), in turn, provides as follows:

> "The State Registrar shall furnish a certified copy of all or part of any marriage, dissolution of marriage, or death certificate, *excluding that portion which contains the medical certification of cause of death,* recorded under the provisions of this chapter to any person requesting it upon payment of the fee prescribed by this section. A certified copy of the medical certification of cause of death shall be furnished only to persons having a direct and tangible interest in the cause of death, as provided by rules and regulations of the Department of Health and Rehabilitative Services." (emphasis added)

Under the above statute, the issuance of certified copies of a death certificate is permitted with one important exception. That portion of a death certificate which contains the medical certification of the cause of death must be deleted from any certified copy of a death certificate, unless the person

applying for same has "a direct and tangible interest in the cause of death." We conclude that this required deletion from certified copies of death certificates makes the deleted portion "confidential" within the meaning of Section 119.07(3)(a), Florida Statutes (1983), so as to exempt it from the public inspection and copying provisions of Section 119.07(1)(a), (b), Florida Statutes (1983).

[2] We reach this conclusion because we think the legislative purpose behind the statute [§ 382.35(4), Fla.Stat.(1983)] would be thwarted and an absurd or unreasonable result reached if we construed the statute any other way. We are, of course, constrained by law to give full effect to the legislative purpose behind a statute and to avoid constructions which lead to absurd or unreasonable results. *Foley v. State,* 50 So.2d 179, 184 (Fla.1951). The legislature, as stated above, has mandated that a certain portion of a death certificate [i.e., the medical certification of the cause of death] should be deleted from any certified copy of a death certificate which, by law, is made available to the general public. Only those persons who have "a direct or tangible interest in the cause of death" are ***494** authorized by the statute to receive a certified copy of the entire death certificate, including the medical certification of the cause of death. This legislative mandate, we think, is totally undone if any member of the general public may physically inspect and presumably *hand copy* the above deleted information. There is surely no point in deleting information from a certified copy of a death certificate if one may inspect and hand copy the deleted information in any event. Plainly, the legislature's purpose here was to make the deleted information confidential, except as to those persons having a direct and tangible interest in the cause of death.

[3] The underlying justification for making such cause of death information confidential seems obvious enough. The cause of death as stated in a death certificate represents sensitive and generally private information. If made public, this information could cause public embarrassment to the deceased's family, as, for example, where the deceased has died from an illegal drug overdose, by suicide, or from a socially distasteful disease such as venereal disease. Absent some direct or tangible interest in the deceased's cause of death, it was thought best to keep this portion of the death certificate confidential and deleted so as to spare the feelings of the deceased's family. Obviously, that purpose is totally defeated if any member of the general public may, as urged, inspect and hand copy the confidential portions of the death certificate.

In this connection, we reject The Miami Herald's contrary suggestion that an administrative cost-efficiency purpose lies behind the legislative decision to delete the cause of death information from certified copies of death certificates because otherwise "the administrative burden of providing a multitude of certified copies of cause of death papers could prove overwhelming." [appellee's brief at 17] The short answer to this argument is that the statute does not prohibit the issuance of certified copies of death certificates; indeed, the statute expressly provides for the issuance of same with one above-stated deletion. Administratively accomplishing this deletion from certified copies already made available to the public obviously does not save time or money. On the contrary, it creates an increased administrative burden for governmental officials. The legislative purpose, then, in requiring this deletion could not have been to save time or money. Plainly, its purpose was to make the deleted portion of the death certificate confidential.

[4] In reaching this result, we do not overlook two contrary considerations. First, we agree with the trial court that Section 382.35(4), Florida Statutes (1983), does not expressly preclude public inspection of the aforesaid portion of a death certificate. This conclusion, however, does not mean that said public inspection is permitted, because Section 119.07(3)(a), Florida Statutes (1983) provides that "[a]ll public records which are presently provided by law to be *confidential"* are exempt from public inspection and copying. Section 382.35(4), Florida Statutes (1983), for the reasons stated above, makes the aforesaid portion of a death certificate "confidential," and, therefore, not subject to the public inspection or copying provisions of Section 119.07(1)(a), (b), Florida Statutes (1983). Second, we agree that Section 382.35(4), Florida Statutes (1983), does not expressly make the aforesaid portion of a death certificate "confidential," as does Section 382.35(1), Florida Statutes (1983), with respect to birth certificates. *See* 1982, Op.Att'y Gen.Fla. 82-16 (March 16, 1982). This conclusion, however, does not mean that said portion of a death certificate is not confidential; the legislature, by requiring the aforesaid deletion from certified copies of death certificates, has made the deleted portion confidential by implication. Any other reading of the statute leads, as indicated above, to absurd or unreasonable results. Moreover, we are constrained by law to avoid a literalistic reading of a statute where, as here, such a reading would defeat the entire legislative ***495** purpose behind the statute. *Garner v. Ward,* 251 So.2d 252, 255-56 (Fla.1971).

[5] Turning to the instant case, it is plain that the petitioners herein were not entitled to inspect the cause of death portion of Dr. Yeste's death certificate herein. Without dispute, the petitioners have no direct or tangible interest in Dr. Yeste's cause of death. It therefore follows that they are not entitled to receive a certified copy or to inspect same under the above statute. This being so, the trial court was in error in issuing the peremptory writ of mandamus in this cause.

[6] Finally, we reject The Miami Herald's argument that, apart from any statute, it has a free press right of access to the medical certification portion of Dr. Yeste's death certificate. We are cited to no constitutional authority in Florida or elsewhere which has ever held that a newspaper has a free press right of access to public records such as that presented in the instant case. We decline to be the first court to so hold.

The peremptory writ of mandamus under review is reversed and the cause is remanded to the trial court with directions to dismiss the petition for writ of mandamus filed herein.

All Citations

451 So.2d 491, 10 Media L. Rep. 2298

Footnotes

1 Metropolitan Dade County, Department of Public Health; Richard A. Morgan and Beatrice Marchette, HRS officials.

End of Document

From: Lamia, Christine E <Christine.Lamia@flhealth.gov>
Sent: Thursday, April 02, 2020 7:26 PM EDT
To: Angell, Christopher (CAO) <Christopher.Angell@miamidade.gov>
CC: Medved, Daniel T <Daniel.Medved@flhealth.gov>; Kuhns-Neuman, Brenda (CAO) <Brenda.Kuhns-Neuman@miamidade.gov>
Subject: RE: COVID-19 deaths

Yes; thank you. You can call my cell number.

Christine E. Lamia
Deputy General Counsel
State Health Offices
Office of the General Counsel
Florida Department of Health
4052 Bald Cypress Way, Bin #A-02
Tallahassee, FL 32399-3265
(850) 245-4005 (OGC Main Line)
(850) 245-4021 (Direct Line)
(850) 245-4790 (Fax)

Mission: To protect, promote, and improve the health of all people in Florida through integrated state, county, & community efforts.
Vision: To be the Healthiest State in the Nation
Values: **ICARE**
I innovation: We search for creative solutions and manage resources wisely.
C collaboration: We use teamwork to achieve common goals & solve problems.
A accountability: We perform with integrity & respect.
R responsiveness: We achieve our mission by serving our customers & engaging our partners.
E excellence: We promote quality outcomes through learning & continuous performance improvement.
Purpose: To protect the public through health care licensure, enforcement and information.
Focus: To be the nation's leader in quality health care regulation.

From: Angell, Christopher (CAO) <Christopher.Angell@miamidade.gov>
Sent: Thursday, April 2, 2020 7:11 PM
To: Lamia, Christine E <Christine.Lamia@flhealth.gov>
Cc: Medved, Daniel T <Daniel.Medved@flhealth.gov>; Kuhns-Neuman, Brenda (CAO) <Brenda.Kuhns-Neuman@miamidade.gov>
Subject: RE: COVID-19 deaths

Good evening:

I have received your email and the attachments and will review.
In the meantime, please let me know if you are able to speak tomorrow 2:00 PM.

Thank you.

Chris Angell

Christopher A. Angell, Esq.
Assistant County Attorney
Miami-Dade County Attorney's Office
Stephen P. Clark Center
111 NW First Street

Suite 2810
Miami, FL 33128
Tel: 305-375-1024
Fax: 305-375-5611

Legal Assistant:
Maria Cruz
Tel: (305) 375-5731
Email: Maria.Cruz2@MiamiDade.gov

Paralegals:
Yenisbel Valdes
Tel: 305-375-1338
Email: Yenisbel.Valdes@MiamiDade.gov

Jarod Rucker
Tel: 305-375-5870
Email: Jarod.Rucker@MiamiDade.gov

Ulla Peralta
Tel: 305-375-2067
Email: Ulla.Peralta@MiamiDade.gov

From: Lamia, Christine E [mailto:Christine.Lamia@flhealth.gov]
Sent: Thursday, April 2, 2020 6:21 PM
To: Angell, Christopher (CAO) <Christopher.Angell@miamidade.gov>
Cc: Medved, Daniel T <Daniel.Medved@flhealth.gov>
Subject: RE: COVID-19 deaths

Chris,

Thank you for taking our call this afternoon. Please find attached the letter sent to the Florida Medical Examiners Commission today regarding the ME's mandatory reporting requirements.

As we discussed, it is the Department of Health's position that the information requested in the request below should not be released as it is confidential and exempt from public record disclosure. This position is based upon the following statutes, Florida Administrative Rule and caselaw:

Section 381.0031(6), Florida Statutes, provides that information submitted in reports required by 381.0031 is confidential and exempt from section 119.07(1). Thus, the mandatory report of the medical examiner as required by subsection (2), including the information contained therein, is confidential pursuant to subsection (6). This information includes all of the confidential information collected by the Department pursuant to subsection (7). The confidentiality of these records survive the death of the decedent. See Weaver, attached. I have also attached the administrative rule which implements the cited statute.

Section 382.008(6) Florida Statutes, further exempts the cause of death from section 119.07(1): "All information relating to cause of death in all death and fetal death records… are confidential and exempt from the provisions of section 119.07(1)". Further, section 382.011 requires the medical examiner to certify the cause of death under section 406.11, which specifically implicates section 382.008(6)'s confidentiality exemption.

The above reading of these statutes is supported by Yestes v. Miami Herald Publishing Co., also attached.

I look forward to discussing this further,

Chris

Christine E. Lamia

Deputy General Counsel
State Health Offices
Office of the General Counsel
Florida Department of Health
4052 Bald Cypress Way, Bin #A-02
Tallahassee, FL 32399-3265
(850) 245-4005 (OGC Main Line)
(850) 245-4021 (Direct Line)
(850) 245-4790 (Fax)

Mission: To protect, promote, and improve the health of all people in Florida through integrated state, county, & community efforts.
Vision: To be the Healthiest State in the Nation
Values: **ICARE**
I innovation: We search for creative solutions and manage resources wisely.
C collaboration: We use teamwork to achieve common goals & solve problems.
A accountability: We perform with integrity & respect.
R responsiveness: We achieve our mission by serving our customers & engaging our partners.
E excellence: We promote quality outcomes through learning & continuous performance improvement.
Purpose: To protect the public through health care licensure, enforcement and information.
Focus: To be the nation's leader in quality health care regulation.

From: Angell, Christopher (CAO) <Christopher.Angell@miamidade.gov>
Sent: Thursday, April 2, 2020 5:08 PM
To: Lamia, Christine E <Christine.Lamia@flhealth.gov>
Subject: FW: COVID-19 deaths

Pursuant to your request, please see below.

Chris Angell
Christopher A. Angell, Esq.
Assistant County Attorney
Miami-Dade County Attorney's Office
Stephen P. Clark Center
111 NW First Street
Suite 2810
Miami, FL 33128
Tel: 305-375-1024
Fax: 305-375-5611

Legal Assistant:
Maria Cruz
Tel: (305) 375-5731
Email: Maria.Cruz2@MiamiDade.gov

Paralegals:
Yenisbel Valdes
Tel: 305-375-1338
Email: Yenisbel.Valdes@MiamiDade.gov

Jarod Rucker
Tel: 305-375-5870
Email: Jarod.Rucker@MiamiDade.gov

Ulla Peralta
Tel: 305-375-2067
Email: Ulla.Peralta@MiamiDade.gov

Due to the unprecedented and changing situation involving COVID-19, the County Attorney's Office is currently working remotely. We will have limited access to regular mail, physical files, and other resources that we would otherwise have while working in-office. As a result, we ask that you please correspond with us by e-mail or send an electronic copy of any physical document you send to our offices to this e-mail address. We also will have limited access to certain physical and other records in response to discovery, public records requests, and other similar requests and ask for your patience and understanding in any delayed or untimely response. To the extent that we have stored data or information online and readily accessible, we will continue to provide it in a timely manner. Please also note that our fax machine has been disconnected and is no longer being used for incoming correspondence at this time. We appreciate your cooperation at this difficult time. Thank you.

From: Ovalle, David <dovalle@miamiherald.com>
Sent: Tuesday, March 31, 2020 6:29 PM
To: Caprara, Darren (ME) <Darren.Caprara@miamidade.gov>
Subject: COVID-19 deaths

Hope you are doing well, and please thank Dr. Lew for speaking with me about the ME's role in this horrible pandemic. I hope the story was informative for leaders.

Since the ME must certify and issue COVID-19 deaths, can you please send the names and DOBs of the decedents thus far recorded through the ME's office. So far, the Fla. Dept of Health has noted 7 deaths. Thank you!

David O.

From: Harpaul-Yapp, Karla (CAO) <Karla.Harpaul@miamidade.gov>
Sent: Wednesday, April 08, 2020 9:51 AM EDT
To: Dan Weiss <dweiss@dawlawpa.com>; Martinez-Esteve, Jorge (CAO) <Jorge.Martinez-Esteve@miamidade.gov>; Robert Elson <Robert.Elson@myfloridalegal.com>; Susan Lenis <slenis@dawlawpa.com>; Susan Lenis <susanlenis@gmail.com>; Ward, Thomas S. <tward@rvmrlaw.com>
CC: jon.annette@myfloridalegal.com <jon.annette@myfloridalegal.com>; Susan Lenis <slenis@dawlawpa.com>; Susan Lenis <susanlenis@gmail.com>; Mastrucci, Michael (CAO) <Michael.Mastrucci@miamidade.gov>; Morillo, Wilma (CAO) <Wilma.Morillo@miamidade.gov>
Subject: RE: FPT Florida Land, LLC vs. Pedro Garcia; (19-35066 CA 11) (PA File No. 2020-0004): FPT order
Attachment(s): "Agreed Order Granting Motion to Withdraw PROPOSED #2.doc"

Good morning Mr. Weiss,

I hope you are doing well.

This case belongs to Michael Mastrucci, who I copied on this email. Michael, please see below email from Mr. Weiss, thank you.

Sincerely,

Karla

Karla Harpaul-Yapp
Paralegal Specialist/Legal Assistant to:
Eduardo W. Gonzalez, Assistant County Attorney
Jorge Martinez-Esteve, Assistant County Attorney
Miami Dade County Attorney's Office
111 NW 1st Street Suite 2810
Miami, FL 33128
Tel. (305) 375-1320; Fax: (305) 375-5634

"Delivering Excellence Every Day"
Please consider the environment before printing this email

Due to the unprecedented and changing situation involving COVID-19, the County Attorney's Office is currently working remotely. We will have limited access to regular mail, physical files, and other resources that we would otherwise have while working in-office. As a result, we ask that you please correspond with us by e-mail or send an electronic copy of any physical document you send to our offices to this e-mail address. We also will have limited access to certain physical and other records in response to discovery, public records requests, and other similar requests and ask for your patience and understanding in any delayed or untimely response. To the extent that we have stored data or information online and readily accessible, we will continue to provide it in a timely manner. Please also note that our fax machine has been disconnected and is no longer being used for incoming correspondence at this time. We appreciate your cooperation at this difficult time. Thank you.

From: Dan Weiss <dweiss@dawlawpa.com>
Sent: Tuesday, April 7, 2020 4:57 PM
To: Martinez-Esteve, Jorge (CAO) <Jorge.Martinez-Esteve@miamidade.gov>; Robert Elson <Robert.Elson@myfloridalegal.com>; Susan Lenis <slenis@dawlawpa.com>; Susan Lenis <susanlenis@gmail.com>; Ward, Thomas S. <tward@rvmrlaw.com>
Cc: Harpaul-Yapp, Karla (CAO) <Karla.Harpaul@miamidade.gov>; jon.annette@myfloridalegal.com; Susan Lenis <slenis@dawlawpa.com>; Susan Lenis <susanlenis@gmail.com>
Subject: Fw: FPT Florida Land, LLC vs. Pedro Garcia; (19-35066 CA 11) (PA File No. 2020-0004): FPT order

---

At your convenience, please review the attached proposed agreed order granting motion of undersigned to withdraw as co-counsel and approve fir submittal of entry by Judge Ruiz.

Thank you.

Regards,
daw

From: Susan Lenis <slenis@dawlawpa.com>
Sent: Tuesday, April 7, 2020 4:04 PM
To: Dan Weiss <dweiss@dawlawpa.com>
Subject: FPT order

IN THE CIRCUIT COURT OF THE 11th JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA
CIRCUIT CIVIL DIVISION

FPT FLORIDA LAND, LLC,

Case No. 19-035066 CA01 11

Plaintiff,

vs.

PEDRO J. GARCIA, ET AL.,

Defendants.
_____/

AGREED ORDER GRANTING MOTION TO WITHDRAW

THIS CAUSE HAVING come before this Court on Co-Counsel DANIEL A. WEISS, P.A.'s Motion to Withdraw as Counsel for the Plaintiff [hereinafter "CLIENT"], and it having been represented that all parties are in agreement that the Motion should be granted, and the Court approving of such disposition, it is therefore

ORDERED AND ADJUDGED as follows:

1) The Motion to Withdraw is GRANTED.

2) Movant shall provide a copy of this order to CLIENT forthwith.

3) Plaintiff has already in place the law firm of RENNERT VOGEL MANDLER & RODRIGUEZ, P.A. to proceed in this case.

DONE AND ORDERED in Miami-Dade County, Florida on this _____ day of _____ 2020.

_____
MAVEL RUIZ
Circuit Judge

Copies furnished:
Thomas S. Ward, Esq. jalvarez@rvmrlaw.com; ServiceThomasWard@rvmrlaw.com
Jorge Martinez-Esteve, Esq., ACA jme@miamidade.gov; kih@miamidade.gov
Robert Elson, Esq., Sr Assist. Attorney General robert.elson@myfloridalegal.com; jon.annette@myfloridalegal.com; lisa.ryder@myfloridalegal.com
Daniel A. Weiss, P.A., dweiss@dawlawpa.com; jgarcia@dawlawpa.com; slenis@dawlawpa.com

From: Harpaul-Yapp, Karla (CAO) <Karla.Harpaul@miamidade.gov>
Sent: Wednesday, April 08, 2020 9:53 AM EDT
To: Robert Elson <Robert.Elson@myfloridalegal.com>; Dan Weiss <dweiss@dawlawpa.com>; Martinez-Esteve, Jorge (CAO) <Jorge.Martinez-Esteve@miamidade.gov>; Susan Lenis <slenis@dawlawpa.com>; Susan Lenis <susanlenis@gmail.com>; Ward, Thomas S. <tward@rvmrlaw.com>
CC: Jon Annette <Jon.Annette@myfloridalegal.com>; Susan Lenis <slenis@dawlawpa.com>; Susan Lenis <susanlenis@gmail.com>; Lisa Ryder <Lisa.Ryder@myfloridalegal.com>; Mastrucci, Michael (CAO) <Michael.Mastrucci@miamidade.gov>; Morillo, Wilma (CAO) <Wilma.Morillo@miamidade.gov>
Subject: RE: FPT Florida Land, LLC vs. Pedro Garcia; (19-35066 CA 11) (PA File No. 2020-0004): FPT order

Hi Michael,

Please see below response from Mr. Elson, thank you.

Karla Harpaul-Yapp
Paralegal Specialist/Legal Assistant to:
Eduardo W. Gonzalez, Assistant County Attorney
Jorge Martinez-Esteve, Assistant County Attorney
Miami Dade County Attorney's Office
111 NW 1st Street Suite 2810
Miami, FL 33128
Tel. (305) 375-1320; Fax: (305) 375-5634

"Delivering Excellence Every Day"
Please consider the environment before printing this email

Due to the unprecedented and changing situation involving COVID-19, the County Attorney's Office is currently working remotely. We will have limited access to regular mail, physical files, and other resources that we would otherwise have while working in-office. As a result, we ask that you please correspond with us by e-mail or send an electronic copy of any physical document you send to our offices to this e-mail address. We also will have limited access to certain physical and other records in response to discovery, public records requests, and other similar requests and ask for your patience and understanding in any delayed or untimely response. To the extent that we have stored data or information online and readily accessible, we will continue to provide it in a timely manner. Please also note that our fax machine has been disconnected and is no longer being used for incoming correspondence at this time. We appreciate your cooperation at this difficult time. Thank you.

From: Robert Elson <Robert.Elson@myfloridalegal.com>
Sent: Tuesday, April 7, 2020 7:39 PM
To: Dan Weiss <dweiss@dawlawpa.com>; Martinez-Esteve, Jorge (CAO) <Jorge.Martinez-Esteve@miamidade.gov>; Susan Lenis <slenis@dawlawpa.com>; Susan Lenis <susanlenis@gmail.com>; Ward, Thomas S. <tward@rvmrlaw.com>
Cc: Harpaul-Yapp, Karla (CAO) <Karla.Harpaul@miamidade.gov>; Jon Annette <Jon.Annette@myfloridalegal.com>; Susan Lenis <slenis@dawlawpa.com>; Susan Lenis <susanlenis@gmail.com>; Lisa Ryder <Lisa.Ryder@myfloridalegal.com>
Subject: RE: FPT Florida Land, LLC vs. Pedro Garcia; (19-35066 CA 11) (PA File No. 2020-0004): FPT order

---

Robert P. Elson
Senior Assistant Attorney General
Revenue Litigation Bureau
Office of the Attorney General

Tel. (850) 414-3786
robert.elson@myfloridalegal.com

From: Dan Weiss <dweiss@dawlawpa.com>
Sent: Tuesday, April 7, 2020 4:57 PM
To: Martinez-Esteve, Jorge (CAO) <Jorge.Martinez-Esteve@miamidade.gov>; Robert Elson <Robert.Elson@myfloridalegal.com>; Susan Lenis <slenis@dawlawpa.com>; Susan Lenis <susanlenis@gmail.com>; Ward, Thomas S. <tward@rvmrlaw.com>
Cc: Harpaul-Yapp, Karla (CAO) <Karla.Harpaul@miamidade.gov>; Jon Annette <Jon.Annette@myfloridalegal.com>; Susan Lenis <slenis@dawlawpa.com>; Susan Lenis <susanlenis@gmail.com>
Subject: Fw: FPT order

Gentlemen:

At your convenience, please review the attached proposed agreed order granting motion of undersigned to withdraw as co-counsel and approve fir submittal of entry by Judge Ruiz.

Thank you.

Regards,
daw

From: Susan Lenis <slenis@dawlawpa.com>
Sent: Tuesday, April 7, 2020 4:04 PM
To: Dan Weiss <dweiss@dawlawpa.com>
Subject: FPT order

From: Mastrucci, Michael (CAO) <Michael.Mastrucci@miamidade.gov>
Sent: Wednesday, April 08, 2020 4:05 PM EDT
To: Susan Lenis <slenis@dawlawpa.com>; Dan Weiss <dweiss@dawlawpa.com>; Robert Elson <Robert.Elson@myfloridalegal.com>; Ward, Thomas S. <tward@rvmrlaw.com>
CC: jon.annette@myfloridalegal.com <jon.annette@myfloridalegal.com>; Rosenstein, Emily B. (CAO) <Emily.Rosenstein@miamidade.gov>
Subject: Re: FPT order

Good afternoon,

I have no objection to the proposed agreed order.

Thanks,

Michael J. Mastrucci
Assistant County Attorney
Miami-Dade County Attorney's Office
111 NW 1st Street, Suite 2810
Miami, FL 33128
Tel: 305-375-5040
Fax: 305-375-5634

From: Susan Lenis <slenis@dawlawpa.com>
Sent: Wednesday, April 8, 2020 3:48 PM
To: Dan Weiss <dweiss@dawlawpa.com>; Robert Elson <Robert.Elson@myfloridalegal.com>; Mastrucci, Michael (CAO) <Michael.Mastrucci@miamidade.gov>; Ward, Thomas S. <tward@rvmrlaw.com>
Cc: 'jon.annette@myfloridalegal.com' <jon.annette@myfloridalegal.com>; Rosenstein, Emily B. (CAO) <Emily.Rosenstein@miamidade.gov>
Subject: FPT order

At your convenience, please review the attached proposed agreed order granting motion of Daniel A. Weiss to withdraw as co-counsel and approve for submittal of entry by Judge Ruiz.

Thank you.

Susan Lenis
Paralegal for
Daniel A. Weiss, P.A.
MUSEUM TOWER, PENTHOUSE 2850
150 W. FLAGLER STREET
MIAMI, FLORIDA 33130
TEL: 305-928-2422

Super Lawyer 2014 – 2019
State, County and Municipal Law

https://www.avvo.com/attorneys/33130-fl-daniel-weiss-1257917.html

“If the city or county touches your life, don’t think twice, call Weiss.”

From: Dan Weiss <dweiss@dawlawpa.com>
Sent: Wednesday, April 08, 2020 4:20 PM EDT
To: Mastrucci, Michael (CAO) <Michael.Mastrucci@miamidade.gov>; Susan Lenis <slenis@dawlawpa.com>; Robert Elson <Robert.Elson@myfloridalegal.com>; Ward, Thomas S. <tward@rvmrlaw.com>
CC: jon.annette@myfloridalegal.com <jon.annette@myfloridalegal.com>; Rosenstein, Emily B. (CAO) <Emily.Rosenstein@miamidade.gov>
Subject: Re: FPT order

Michael:

Thanks. Hope all is well with you and yours.

Mr. Elson:

I believe you also signaled your assent?

Regards,
daw

From: Mastrucci, Michael (CAO) <Michael.Mastrucci@miamidade.gov>
Sent: Wednesday, April 8, 2020 4:05 PM
To: Susan Lenis <slenis@dawlawpa.com>; Dan Weiss <dweiss@dawlawpa.com>; Robert Elson <Robert.Elson@myfloridalegal.com>; Ward, Thomas S. <tward@rvmrlaw.com>
Cc: 'jon.annette@myfloridalegal.com' <jon.annette@myfloridalegal.com>; Rosenstein, Emily B. (CAO) <Emily.Rosenstein@miamidade.gov>
Subject: Re: FPT order

Good afternoon,

I have no objection to the proposed agreed order.

Thanks,

Michael J. Mastrucci
Assistant County Attorney
Miami-Dade County Attorney's Office
111 NW 1st Street, Suite 2810
Miami, FL 33128
Tel: 305-375-5040
Fax: 305-375-5634

PLEASE NOTE: Due to the unprecedented and changing situation involving COVID-19, the County Attorney's Office is currently working remotely. We will have limited access to regular mail, physical files, and other resources that we would otherwise have while working in-office. As a result, we ask that you please correspond with us by e-mail or send an electronic copy of any physical document you send to our offices to this e-mail address. We also will have limited access to certain physical and other records in response to discovery, public records requests, and other similar requests and ask for your patience and understanding in any delayed or untimely response. To the extent that we have stored data or information online and readily accessible, we will continue to provide it in a timely manner. Please also note that our fax machine has been disconnected and is no longer being used for incoming correspondence at this time. We appreciate your cooperation at this difficult time. Thank you.

From: Susan Lenis <slenis@dawlawpa.com>
Sent: Wednesday, April 8, 2020 3:48 PM
To: Dan Weiss <dweiss@dawlawpa.com>; Robert Elson <Robert.Elson@myfloridalegal.com>; Mastrucci, Michael (CAO) <Michael.Mastrucci@miamidade.gov>; Ward, Thomas S. <tward@rvmrlaw.com>
Cc: 'jon.annette@myfloridalegal.com' <jon.annette@myfloridalegal.com>; Rosenstein, Emily B. (CAO) <Emily.Rosenstein@miamidade.gov>
Subject: FPT order

EMAIL RECEIVED FROM EXTERNAL SOURCE.

At your convenience, please review the attached proposed agreed order granting motion of Daniel A. Weiss to withdraw as co-counsel and approve for submittal of entry by Judge Ruiz.

Thank you.

Susan Lenis
Paralegal for
Daniel A. Weiss, P.A.
MUSEUM TOWER, PENTHOUSE 2850
150 W. FLAGLER STREET
MIAMI, FLORIDA 33130
TEL: 305-928-2422

Super Lawyer 2014 – 2019
State, County and Municipal Law

https://www.avvo.com/attorneys/33130-fl-daniel-weiss-1257917.html

"If the city or county touches your life, don't think twice, call Weiss."

From: Randi Dincher <Randi.Dincher@myfloridalegal.com>
Sent: Friday, April 03, 2020 2:32 PM EDT
To: Tew, Spencer <stew@RVMRLAW.COM>; Mastrucci, Michael (CAO) <Michael.Mastrucci@miamidade.gov>
CC: Timothy Dennis <Timothy.Dennis@myfloridalegal.com>; Lorann Jennings <Lorann.Jennings@myfloridalegal.com>
Subject: RE: Maizon Apartments LP vs. Pedro Garcia - (19-20839 CA 01)

Good morning.

Please be advised that this case was assigned to me and I previously filed my notice of appearance on behalf of DOR. In order to not unnecessarily burden Tim Dennis, could you please direct future emails etc on this case to me.

As to the settlement agreement, please put my name in the signature block.

Also, to assist DOR in reviewing the terms of settlement, for the 2018 tax year can you state for each parcel if the agreement (1) returns the value to the PA's original value; or (2) if the PA's original value is restored after a reduction by the VAB; or (3) if the parties agreed to a value different from that determined by the VAB.

As to the 2019 tax year values, no complaint was filed so I have nothing to compare parcel values. But DOR still needs to know for each parcel if the agreement (1) returns the value to the PA's original value; or (2) if the PA's original value is restored after a reduction by the VAB; or (3) if the parties agreed to a value different from that determined by the VAB.

My understanding the sought after information is to assist in processing DOR's review of settlement agreements, for a faster response. Thank you.

Randi

Randi E. Dincher
Assistant Attorney General
Revenue Litigation Bureau
Office of the Attorney General
Telephone: (850) 414-3784
Randi.Dincher@myfloridalegal.com

From: Timothy Dennis <Timothy.Dennis@myfloridalegal.com>
Sent: Thursday, April 2, 2020 5:16 PM
To: Randi Dincher <Randi.Dincher@myfloridalegal.com>
Subject: FW: Maizon Apartments LP vs. Pedro Garcia - (19-20839 CA 01)

Timothy E. Dennis
Chief Assistant Attorney General
Revenue Litigation Bureau
Office of the Attorney General

Telephone: (850) 414-3781
Timothy.Dennis@myfloridalegal.com

From: Morillo, Wilma (CAO) <Wilma.Morillo@miamidade.gov>
Sent: Thursday, April 2, 2020 2:32 PM
To: Timothy Dennis <Timothy.Dennis@myfloridalegal.com>
Cc: Jon Annette <Jon.Annette@myfloridalegal.com>; Rebecca Padgett <Rebecca.Padgett@myfloridalegal.com>; stew@RVMRLAW.COM; jalvarez@RVMRLAW.COM; Mastrucci, Michael (CAO) <Michael.Mastrucci@miamidade.gov>
Subject: Maizon Apartments LP vs. Pedro Garcia - (19-20839 CA 01)

Good afternoon,

Please see attached for your review and signature proposed Partial Final Judgment with regard to the above referenced matter.

Should you have any questions please feel free to contact me.

Thank you,

Wilma Morillo
Legal Assistant to County Attorneys
James Edwin "Eddie" Kirtley, Jr., Assistant County Attorney
Abbie Schwaderer-Raurell, Assistant County Attorney
Michael Mastrucci, Assistant County Attorney

MIAMI-DADE COUNTY ATTORNEY'S OFFICE
Stephen P. Clark Center, Suite 2810
111 NW 1st Street
Miami, Florida 33128-1993
TEL: (305) 375-5151
DIRECT: (305) 375-3928
FAX: (305) 375-5634
Email: **morillo@miamidade.gov**

miamidade.gov
"Delivering Excellence Every Day"

PLEASE NOTE: Due to the unprecedented and changing situation involving COVID-19, the County Attorney's Office is currently working remotely. We will have limited access to regular mail, physical files, and other resources that we would otherwise have while working in-office. As a result, we ask that you please correspond with us by e-mail or send an electronic copy of any physical document you send to our offices to this e-mail address. We also will have limited access to certain physical and other records in response to discovery, public records requests, and other similar requests and ask for your patience and understanding in any delayed or untimely response. To the extent that we have stored data or information online and readily accessible, we will continue to provide it in a timely manner. Please also note that our fax machine has been disconnected and is no longer being used for incoming correspondence at this time. We appreciate your cooperation at this difficult time. Thank you.

From: Randi Dincher <Randi.Dincher@myfloridalegal.com>
Sent: Tuesday, April 07, 2020 11:10 AM EDT
To: Tew, Spencer <stew@RVMRLAW.COM>; Mastrucci, Michael (CAO) <Michael.Mastrucci@miamidade.gov>
CC: Lorann Jennings <Lorann.Jennings@myfloridalegal.com>
Subject: RE: Maizon Apartments vs. Garcia, 2019-20839; agreement

Please update my signature block to as follows:

ASHLEY B. MOODY
ATTORNEY GENERAL

/s/ Randi E. Dincher
RANDI E. DINCHER
Assistant Attorney General
Florida Bar No. 0018580
Office of the Attorney General
Revenue Litigation Bureau
PL-01, The Capitol
Tallahassee, FL 32399-1050
(850) 414-3784
Randi.Dincher@myfloridalegal.com
Jon.Annette@myfloridalegal.com
Lorann.Jennings@myfloridalegal.com
Counsel for the Defendant,
State of Florida Department of Revenue

Once this change is made, DOR approves the agreement terms. You can apply my electronic signature.

Thankyou.

Randi E. Dincher
Assistant Attorney General
Office of the Attorney General
Revenue Litigation Bureau
(850) 414-3784
Randi.Dincher@myfloridalegal.com

From: Randi Dincher
Sent: Friday, April 3, 2020 2:33 PM
To: Tew, Spencer <stew@RVMRLAW.COM>; Mastrucci, Michael (CAO) <Michael.Mastrucci@miamidade.gov>
Cc: Timothy Dennis <Timothy.Dennis@myfloridalegal.com>; Lorann Jennings <Lorann.Jennings@myfloridalegal.com>
Subject: RE: Maizon Apartments LP vs. Pedro Garcia - (19-20839 CA 01)

Good morning.

Please be advised that this case was assigned to me and I previously filed my notice of appearance on behalf of DOR. In order to not unnecessarily burden Tim Dennis, could you please direct future emails etc on this case to me.

As to the settlement agreement, please put my name in the signature block.

Also, to assist DOR in reviewing the terms of settlement, for the 2018 tax year can you state for each parcel if the agreement (1) returns the value to the PA's original value; or (2) if the PA's original value is restored after a reduction by the VAB; or (3) if the parties agreed to a value different from that determined by the VAB.

As to the 2019 tax year values, no complaint was filed so I have nothing to compare parcel values. But DOR still needs to know for each parcel if the agreement (1) returns the value to the PA's original value; or (2) if the PA's original value is restored after a reduction by the VAB; or (3) if the parties agreed to a value different from that determined by the VAB.

My understanding the sought after information is to assist in processing DOR's review of settlement agreements, for a faster response. Thank you.

Randi

Randi E. Dincher
Assistant Attorney General
Revenue Litigation Bureau
Office of the Attorney General
Telephone: (850) 414-3784
Randi.Dincher@myfloridalegal.com

From: Timothy Dennis <Timothy.Dennis@myfloridalegal.com>
Sent: Thursday, April 2, 2020 5:16 PM
To: Randi Dincher <Randi.Dincher@myfloridalegal.com>
Subject: FW: Maizon Apartments LP vs. Pedro Garcia - (19-20839 CA 01)

Timothy E. Dennis
Chief Assistant Attorney General
Revenue Litigation Bureau
Office of the Attorney General

Telephone: (850) 414-3781
Timothy.Dennis@myfloridalegal.com

From: Morillo, Wilma (CAO) <Wilma.Morillo@miamidade.gov>
Sent: Thursday, April 2, 2020 2:32 PM
To: Timothy Dennis <Timothy.Dennis@myfloridalegal.com>
Cc: Jon Annette <Jon.Annette@myfloridalegal.com>; Rebecca Padgett <Rebecca.Padgett@myfloridalegal.com>; stew@RVMRLAW.COM; jalvarez@RVMRLAW.COM; Mastrucci, Michael (CAO) <Michael.Mastrucci@miamidade.gov>
Subject: Maizon Apartments LP vs. Pedro Garcia - (19-20839 CA 01)

Good afternoon,

Please see attached for your review and signature proposed Partial Final Judgment with regard to the above referenced matter.

Should you have any questions please feel free to contact me.

Thank you,

Wilma Morillo
Legal Assistant to County Attorneys
James Edwin "Eddie" Kirtley, Jr., Assistant County Attorney
Abbie Schwaderer-Raurell, Assistant County Attorney
Michael Mastrucci, Assistant County Attorney

MIAMI-DADE COUNTY ATTORNEY'S OFFICE
Stephen P. Clark Center, Suite 2810
111 NW 1st Street
Miami, Florida 33128-1993
TEL: (305) 375-5151
DIRECT: (305) 375-3928
FAX: (305) 375-5634
Email: **morillo@miamidade.gov**

miamidade.gov
"Delivering Excellence Every Day"

PLEASE NOTE: Due to the unprecedented and changing situation involving COVID-19, the County Attorney's Office is currently working remotely. We will have limited access to regular mail, physical files, and other resources that we would otherwise have while working in-office. As a result, we ask that you please correspond with us by e-mail or send an electronic copy of any physical document you send to our offices to this e-mail address. We also will have limited access to certain physical and other records in response to discovery, public records requests, and other similar requests and ask for your patience and understanding in any delayed or untimely response. To the extent that we have stored data or information online and readily accessible, we will continue to provide it in a timely manner. Please also note that our fax machine has been disconnected and is no longer being used for incoming correspondence at this time. We appreciate your cooperation at this difficult time. Thank you.

From: Lamia, Christine E <Christine.Lamia@flhealth.gov>
Sent: Thursday, April 09, 2020 4:21 PM EDT
To: Angell, Christopher (CAO) <Christopher.Angell@miamidade.gov>
CC: Medved, Daniel T <Daniel.Medved@flhealth.gov>
Subject: RE: Medical Examiner: General Matters: [EX] Public Record Requests - requests for names of decedents COVID 19 Deaths -

Chris,
I do not have a written opinion. Do you mind if I send this email chain to Jim Martin and let him know of your request?
Chris

Christine E. Lamia
Deputy General Counsel
State Health Offices
Office of the General Counsel
Florida Department of Health
4052 Bald Cypress Way, Bin #A-02
Tallahassee, FL 32399-3265
(850) 245-4005 (OGC Main Line)
(850) 245-4021 (Direct Line)
(850) 245-4790 (Fax)

Mission: To protect, promote, and improve the health of all people in Florida through integrated state, county, & community efforts.
Vision: To be the Healthiest State in the Nation
Values: **ICARE**
I innovation: We search for creative solutions and manage resources wisely.
C collaboration: We use teamwork to achieve common goals & solve problems.
A accountability: We perform with integrity & respect.
R responsiveness: We achieve our mission by serving our customers & engaging our partners.
E excellence: We promote quality outcomes through learning & continuous performance improvement.
Purpose: To protect the public through health care licensure, enforcement and information.
Focus: To be the nation's leader in quality health care regulation.

From: Angell, Christopher (CAO) <Christopher.Angell@miamidade.gov>
Sent: Thursday, April 9, 2020 3:56 PM
To: Lamia, Christine E <Christine.Lamia@flhealth.gov>
Cc: Medved, Daniel T <Daniel.Medved@flhealth.gov>
Subject: RE: Medical Examiner: General Matters: [EX] Public Record Requests - requests for names of decedents COVID 19 Deaths -

Good afternoon:

The Miami-Dade County Medical Examiner Department has not received any communicating from Mr. Martin withdrawing his earlier position as expressed in his email dated 03-19-20 below, nor have they received any communication from the Medical Examiners Commission to that effect.
Please advise if Mr. Martin, as counsel for Medical Examiners Commission, has provided a written legal opinion in support of his position that the a cause of death contained in any document in the possession of a medical examiner is confidential and exempt, and if so, please provide me a copy of that written legal opinion.

Thank you.

Chris Angell
Christopher A. Angell, Esq.
Assistant County Attorney
Miami-Dade County Attorney's Office
Stephen P. Clark Center
111 NW First Street
Suite 2810
Miami, FL 33128
Tel: 305-375-1024
Fax: 305-375-5611

Legal Assistant:
Maria Cruz
Tel: (305) 375-5731
Email: Maria.Cruz2@MiamiDade.gov

Paralegals:
Yenisbel Valdes
Tel: 305-375-1338
Email: Yenisbel.Valdes@MiamiDade.gov

Jarod Rucker
Tel: 305-375-5870
Email: Jarod.Rucker@MiamiDade.gov

Ulla Peralta
Tel: 305-375-2067
Email: Ulla.Peralta@MiamiDade.gov

Due to the unprecedented and changing situation involving COVID-19, the County Attorney's Office is currently working remotely. We will have limited access to regular mail, physical files, and other resources that we would otherwise have while working in-office. As a result, we ask that you please correspond with us by e-mail or send an electronic copy of any physical document you send to our offices to this e-mail address. We also will have limited access to certain physical and other records in response to discovery, public records requests, and other similar requests and ask for your patience and understanding in any delayed or untimely response. To the extent that we have stored data or information online and readily accessible, we will continue to provide it in a timely manner. Please also note that our fax machine has been disconnected and is no longer being used for incoming correspondence at this time. We appreciate your cooperation at this difficult time. Thank you.

From: Lamia, Christine E [mailto:Christine.Lamia@flhealth.gov]
Sent: Thursday, April 9, 2020 3:37 PM
To: Angell, Christopher (CAO) <Christopher.Angell@miamidade.gov>
Cc: Medved, Daniel T <Daniel.Medved@flhealth.gov>
Subject: FW: Medical Examiner: General Matters: [EX] Public Record Requests - requests for names of decedents COVID 19 Deaths -

---

Chris,
To follow up on your email to Dan below, it is my understanding that Jim Martin, counsel for FDLE Medical Examiners Commission, is of the legal opinion that the cause of death is exempt. I am not sure if this clears up any of the confusion mentioned, but wanted to pass this along to you.
Take care and be well!
Chris

Christine E. Lamia
Deputy General Counsel
State Health Offices
Office of the General Counsel
Florida Department of Health
4052 Bald Cypress Way, Bin #A-02
Tallahassee, FL 32399-3265
(850) 245-4005 (OGC Main Line)
(850) 245-4021 (Direct Line)
(850) 245-4790 (Fax)

Mission: To protect, promote, and improve the health of all people in Florida through integrated state, county, & community efforts.

Vision: To be the Healthiest State in the Nation
Values: **ICARE**
I innovation: We search for creative solutions and manage resources wisely.
C collaboration: We use teamwork to achieve common goals & solve problems.
A accountability: We perform with integrity & respect.
R responsiveness: We achieve our mission by serving our customers & engaging our partners.
E excellence: We promote quality outcomes through learning & continuous performance improvement.
Purpose: To protect the public through health care licensure, enforcement and information.
Focus: To be the nation's leader in quality health care regulation.

Please note:
Florida has a very broad public records law. Most written communications to or from state officials regarding state business are public records available to the public and media upon request. Your e-mail communications may therefore be subject to public disclosure. Please consider the environment before printing this e-mail.

From: Medved, Daniel T <Daniel.Medved@flhealth.gov>
Sent: Thursday, April 9, 2020 3:13 PM
To: Lamia, Christine E <Christine.Lamia@flhealth.gov>
Subject: FW: [EX] Public Record Requests - requests for names of decedents COVID 19 Deaths -

---

From: Angell, Christopher (CAO) <Christopher.Angell@miamidade.gov>
Sent: Friday, April 3, 2020 3:31 PM
To: Medved, Daniel T <Daniel.Medved@flhealth.gov>
Subject: Re: [EX] Public Record Requests - requests for names of decedents COVID 19 Deaths -

Good afternoon:

I spoke to the Miami-Dade County Medical Examiner Department's Chief of Operations about our ongoing discussions. He is working from home today but requested that I forward you the below email chain so you could be aware of prior communications that have been had on this topic and some confusion that has caused.
I will be in contact next week.

Thank you.

Chris Angell
Christopher A. Angell, Esq.
Assistant County Attorney
Miami-Dade County Attorney's Office
Stephen P. Clark Center
111 NW First Street
Suite 2810
Miami, FL 33128
Tel: 305-375-1024
Fax: 305-375-5611

Legal Assistant:
Maria Cruz
Tel: (305) 375-5731
Email: Maria.Cruz2@MiamiDade.gov

Paralegals:
Yenisbel Valdes
Tel: 305-375-1338
Email: Yenisbel.Valdes@MiamiDade.gov

Jarod Rucker
Tel: 305-375-5870
Email: Jarod.Rucker@MiamiDade.gov

Ulla Peralta
Tel: 305-375-2067
Email: Ulla.Peralta@MiamiDade.gov

Due to the unprecedented and changing situation involving COVID-19, the County Attorney's Office is currently working remotely. We will have limited access to regular mail, physical files, and other resources that we would otherwise have while working in-office. As a result, we ask that you please correspond with us by e-mail or send an electronic copy of any physical document you send to our offices to this e-mail address. We also will have limited access to certain physical and other records in response to discovery, public records requests, and other similar requests and ask for your patience and understanding in any delayed or untimely response. To the extent that we have stored data or information online and readily accessible, we will continue to provide it in a timely manner. Please also note that our fax machine has been disconnected and is no longer being used for incoming correspondence at this time. We appreciate your cooperation at this difficult time. Thank you.

From: Martin, James <JamesMartin@fdle.state.fl.us>
Sent: Thursday, March 19, 2020 4:42 PM
To: 'Nelson, Stephen' <StephenNelson@polk-county.net>; 'korozco@volusia.org' <korozco@volusia.org>; 'PWheaton@leegov.com' <PWheaton@leegov.com>; 'Cc:' <wmajors@baycountyfl.gov>; 'Craig.Engelson@brevardfl.gov' <Craig.Engelson@brevardfl.gov>; 'CHBODEN@broward.org' <CHBODEN@broward.org>; 'wpellan@co.pinellas.fl.us' <wpellan@co.pinellas.fl.us>; 'TCrutchfield@coj.net' <TCrutchfield@coj.net>; 'elizabethnunez@d20me.net' <elizabethnunez@d20me.net>; 'Info@dist2me.org' <Info@dist2me.org>; 'medex22@embarqmail.com' <medex22@embarqmail.com>; 'dwinterhalter@fldist12me.com' <dwinterhalter@fldist12me.com>; 'cowanh@hillsboroughcounty.org' <cowanh@hillsboroughcounty.org>; 'ccanard@irsc.edu' <ccanard@irsc.edu>; 'Lindsey.Bayer@marioncountyfl.org' <Lindsey.Bayer@marioncountyfl.org>; Caprara, Darren (ME) <Darren.Caprara@miamidade.gov>; 'Olson-Judy@monroecounty-fl.gov' <Olson-Judy@monroecounty-fl.gov>; 'Sheri.Blanton@ocfl.net' <Sheri.Blanton@ocfl.net>; 'hruiz@pbcgov.org' <hruiz@pbcgov.org>; Wilson, Sheli <SheliWilson@polk-county.net>; 'krogers@sjcfl.us' <krogers@sjcfl.us>; 'ricardocamacho@ufl.edu' <ricardocamacho@ufl.edu>
Cc: Koenig, Vickie <VickieKoenig@fdle.state.fl.us>; Lucas, Steven <StevenChadLucas@fdle.state.fl.us>; Neel, Megan <MeganNeel@fdle.state.fl.us>; Jones, Ken T <Ken.Jones@flhealth.gov>
Subject: RE: [EXTERNAL]: Re: [EX] Public Record Requests - requests for names of decedents COVID 19 Deaths -

---

I concur with Dr. Nelson. I'm not aware of any legal exemption or authority that would prohibit the release of the name of decedent.

James D. Martin, Deputy General Counsel
Florida Department of Law Enforcement
Post Office Box 1489
Tallahassee, Florida 32302-1489
850-410-7679

From: Nelson, Stephen [mailto:StephenNelson@polk-county.net]
Sent: Thursday, March 19, 2020 4:26 PM
To: 'korozco@volusia.org'; 'PWheaton@leegov.com'; 'Cc:'; 'Craig.Engelson@brevardfl.gov'; 'CHBODEN@broward.org'; 'wpellan@co.pinellas.fl.us'; 'TCrutchfield@coj.net'; 'elizabethnunez@d20me.net'; 'Info@dist2me.org'; 'medex22@embarqmail.com'; 'dwinterhalter@fldist12me.com'; 'cowanh@hillsboroughcounty.org'; 'ccanard@irsc.edu'; 'Lindsey.Bayer@marioncountyfl.org'; 'Darren.Caprara@miamidade.gov'; 'Olson-Judy@monroecounty-fl.gov'; 'Sheri.Blanton@ocfl.net'; 'hruiz@pbcgov.org'; Wilson, Sheli; 'krogers@sjcfl.us'; 'ricardocamacho@ufl.edu'
Cc: Martin, James; Koenig, Vickie; Lucas, Steven; Neel, Megan; Jones, Ken T
Subject: RE: [EXTERNAL]: Re: [EX] Public Record Requests - requests for names of decedents COVID 19 Deaths -

Folks,

These public records requests are no different than any other public records request we all receive. They are to be complied with.

As of this writing, there is NO Florida Statutory or Administrative Rule exemption(s) for coronavirus or COVID-19 deaths, including FS 382 et seq.

Stephen J. Nelson, M.A., M.D., F.C.A.P.
District Medical Examiner
10th Judicial Circuit of Florida
(Polk, Hardee, and Highlands Counties)
1021 Jim Keene Boulevard
Winter Haven, FL 33880-8010
863-298-4600 main
863-298-5264 fax
863-687-1344 answering service (24/7/365)

From: Jeff Martin - Director <jmartin@fldme.com>
Sent: Thursday, March 19, 2020 4:01 PM
To: Karla Orozco <korozco@volusia.org>; PWheaton@leegov.com
Cc: wmajors@baycountyfl.gov; Craig.Engelson@brevardfl.gov; CHBODEN@broward.org; wpellan@co.pinellas.fl.us; TCrutchfield@coj.net; elizabethnunez@d20me.net; Info@dist2me.org; medex22@embarqmail.com; dwinterhalter@fldist12me.com; cowanh@hillsboroughcounty.org; ccanard@irsc.edu; Lindsey.Bayer@marioncountyfl.org; Darren.Caprara@miamidade.gov; Olson-Judy@monroecounty-fl.gov; Sheri.Blanton@ocfl.net; hruiz@pbcgov.org; Wilson, Sheli <SheliWilson@polk-county.net>; krogers@sjcfl.us;

ricardocamacho@ufl.edu
Subject: [EXTERNAL]: Re: [EX] Public Record Requests - requests for names of decedents COVID 19 Deaths -

We had a similar request from a very impatient individual that threatened us legally. I did provide the names of cases handled between certain dates.

Jef

Jeffrey B. Martin
Director / Chief of Forensic Investigations
(850) 865-2178 - Cellular

Office of the District Medical Examiner
District One - Florida
Central Office
5151 N. 9th Ave.
Pensacola, FL 32504
(850) 416-7210 - Office
(850) 416-6475 - Fax

Annex Office
206 Staff Drive N.E.
Ft. Walton Beach, FL 32548
(850) 651-7771 - Office
(850) 651-7775 - Fax

From: "Karla Orozco" <korozco@volusia.org>
Sent: Thursday, March 19, 2020 2:54 PM
To: PWheaton@leegov.com
Cc: wmajors@baycountyfl.gov, Craig.Engelson@brevardfl.gov, CHBODEN@broward.org, wpellan@co.pinellas.fl.us, TCrutchfield@coj.net, elizabethnunez@d20me.net, Info@dist2me.org, medex22@embarqmail.com, dwinterhalter@fldist12me.com, jmartin@fldme.com, cowanh@hillsboroughcounty.org, ccanard@irsc.edu, Lindsey.Bayer@marioncountyfl.org, Darren.Caprara@miamidade.gov, Olson-Judy@monroecounty-fl.gov, Sheri.Blanton@ocfl.net, hruiz@pbcgov.org, SheliWilson@polk-county.net, krogers@sjcfl.us, ricardocamacho@ufl.edu
Subject: Re: [EX] Public Record Requests - requests for names of decedents COVID 19 Deaths -

Hello all,

We have not had any deaths yet but I had the same concerns and was told by the MEC that they do not know anything that would prevent us from releasing the information. Our health department sent us the attachment citing the relevant statute and FAC for epidemiological investigations which are to be confidential.

I sent the same document to Chad Lucas to see what their legal department thinks about us citing that as the reason we can't release the information.

Karla

Karla Orozco M.S., F-ABMDI
Operations Manager
District 7 Medical Examiner Office
1360 Indian Lake Road
Daytona Beach, FL 32124
Office (386) 258-4060
Fax (386) 258-4061

> On Mar 19, 2020, at 3:32 PM, Wheaton, Patricia < PWheaton@leegov.com> wrote:
>
> ?
> Hello:
>
> Our office has had two deaths related to COVID-19. We initially received a request from media asking for the name of one of the decedents (which we did not provide).
>
> Thereafter, we received two other requests asking for our "log in" book (bodies transported to our office) for the date(s) of the deaths of the two cases. The bodies were not transported from the hospital to our office since we are doing a records review only and the bodies were released directly to the funeral home(s) selected by the families. The request specifically asked for the names, dates of births, and age for the dates specified. The information will not be in the documents they receive since the cases were not transported to our office and therefore not "logged in".
>
> Another media source requested a list of names and dates of birth for cases that died on a specific date. If we were able to pull this type of list together from our database, media would have the name of the decedent whose death was related to COVID-19. Department of Health and the hospital have refused to release this information and have directed our office not to release the name of the decedent pursuant to HIPAA.
>
> Has anyone received such media requests and if so how are you responding? I have reached out to MEC

and they have no answers for us. I have reached out to DOH and they verbally advised that our office is not to release the names; however, they have not been able to site statute or otherwise. As we are under a state of emergency (and national and local), does anyone know if the release of this information, which normally would be subject to public record, is now exempt because of the emergency declared?

If you have not already received a request, standby because it will be coming. One request is from Tampa and the another is from Naples so there will soon be national agencies requesting this information.

I would like to be ahead of the eight ball but unfortunately the agencies I was hoping would be able to provide definitive information does not have any answers for us.

Thank you and stay safe.

Patti Wheaton
Operations Manager
District 21 Medical Examiner's Office
70 South Danley Drive
Fort Myers, FL 33907
Phone: 239-533-6339
Fax: 239-277-5017
Email: pwheaton@leegov.com
Website: me21.leegov.com
Serving Lee, Hendry and Glades Counties

Accredited By

<image001.jpg>

From: Angell, Christopher (CAO) <Christopher.Angell@miamidade.gov>
Sent: Thursday, April 09, 2020 3:56 PM EDT
To: Lamia, Christine E <Christine.Lamia@flhealth.gov>
CC: Medved, Daniel T <Daniel.Medved@flhealth.gov>
Subject: RE: Medical Examiner: General Matters: [EX] Public Record Requests - requests for names of decedents COVID 19 Deaths -

Good afternoon:

The Miami-Dade County Medical Examiner Department has not received any communicating from Mr. Martin withdrawing his earlier position as expressed in his email dated 03-19-20 below, nor have they received any communication from the Medical Examiners Commission to that effect.
Please advise if Mr. Martin, as counsel for Medical Examiners Commission, has provided a written legal opinion in support of his position that the a cause of death contained in any document in the possession of a medical examiner is confidential and exempt, and if so, please provide me a copy of that written legal opinion.

Thank you.

Chris Angell
Christopher A. Angell, Esq.
Assistant County Attorney
Miami-Dade County Attorney's Office
Stephen P. Clark Center
111 NW First Street
Suite 2810
Miami, FL 33128
Tel: 305-375-1024
Fax: 305-375-5611

Legal Assistant:
Maria Cruz
Tel: (305) 375-5731
Email: Maria.Cruz2@MiamiDade.gov

Paralegals:
Yenisbel Valdes
Tel: 305-375-1338
Email: Yenisbel.Valdes@MiamiDade.gov

Jarod Rucker
Tel: 305-375-5870
Email: Jarod.Rucker@MiamiDade.gov

Ulla Peralta
Tel: 305-375-2067
Email: Ulla.Peralta@MiamiDade.gov

Due to the unprecedented and changing situation involving COVID-19, the County Attorney's Office is currently working remotely. We will have limited access to regular mail, physical files, and other resources that we would otherwise have while working in-office. As a result, we ask that you please correspond with us by e-mail or send an electronic copy of any physical document you send to our offices to this e-mail address. We also will have limited access to certain physical and other records in response to discovery, public records requests, and other similar requests and ask for your patience and understanding in any delayed or untimely response. To the extent that we have stored data or information online and readily accessible, we will continue to provide it in a timely manner. Please also note that our fax machine has been disconnected and is no longer being used for incoming correspondence at this time. We appreciate your cooperation at this difficult time. Thank you.

From: Lamia, Christine E [mailto:Christine.Lamia@flhealth.gov]
Sent: Thursday, April 9, 2020 3:37 PM
To: Angell, Christopher (CAO) <Christopher.Angell@miamidade.gov>
Cc: Medved, Daniel T <Daniel.Medved@flhealth.gov>
Subject: FW: Medical Examiner: General Matters: [EX] Public Record Requests - requests for names of decedents COVID 19 Deaths -

---

Chris,
To follow up on your email to Dan below, it is my understanding that Jim Martin, counsel for FDLE Medical Examiners Commission, is of the legal opinion that the cause of death is exempt. I am not sure if this clears up any of the confusion mentioned, but wanted to

pass this along to you.
Take care and be well!
Chris

Christine E. Lamia
Deputy General Counsel
State Health Offices
Office of the General Counsel
Florida Department of Health
4052 Bald Cypress Way, Bin #A-02
Tallahassee, FL 32399-3265
(850) 245-4005 (OGC Main Line)
(850) 245-4021 (Direct Line)
(850) 245-4790 (Fax)

Mission: To protect, promote, and improve the health of all people in Florida through integrated state, county, & community efforts.
Vision: To be the Healthiest State in the Nation
Values: **ICARE**
I innovation: We search for creative solutions and manage resources wisely.
C collaboration: We use teamwork to achieve common goals & solve problems.
A accountability: We perform with integrity & respect.
R responsiveness: We achieve our mission by serving our customers & engaging our partners.
E excellence: We promote quality outcomes through learning & continuous performance improvement.
Purpose: To protect the public through health care licensure, enforcement and information.
Focus: To be the nation's leader in quality health care regulation.

From: Medved, Daniel T <Daniel.Medved@flhealth.gov>
Sent: Thursday, April 9, 2020 3:13 PM
To: Lamia, Christine E <Christine.Lamia@flhealth.gov>
Subject: FW: [EX] Public Record Requests - requests for names of decedents COVID 19 Deaths -

---

From: Angell, Christopher (CAO) <Christopher.Angell@miamidade.gov>
Sent: Friday, April 3, 2020 3:31 PM
To: Medved, Daniel T <Daniel.Medved@flhealth.gov>
Subject: Re: [EX] Public Record Requests - requests for names of decedents COVID 19 Deaths -

Good afternoon:

I spoke to the Miami-Dade County Medical Examiner Department's Chief of Operations about our ongoing discussions. He is working from home today but requested that I forward you the below email chain so you could be aware of prior communications that have been had on this topic and some confusion that has caused.
I will be in contact next week.

Thank you.

Chris Angell

Christopher A. Angell, Esq.
Assistant County Attorney
Miami-Dade County Attorney's Office
Stephen P. Clark Center
111 NW First Street
Suite 2810
Miami, FL 33128
Tel: 305-375-1024
Fax: 305-375-5611

Legal Assistant:
Maria Cruz
Tel: (305) 375-5731
Email: Maria.Cruz2@MiamiDade.gov

Paralegals:
Yenisbel Valdes
Tel: 305-375-1338
Email: Yenisbel.Valdes@MiamiDade.gov

Jarod Rucker
Tel: 305-375-5870
Email: Jarod.Rucker@MiamiDade.gov

Ulla Peralta
Tel: 305-375-2067
Email: Ulla.Peralta@MiamiDade.gov

Due to the unprecedented and changing situation involving COVID-19, the County Attorney's Office is currently working remotely. We will have limited access to regular mail, physical files, and other resources that we would otherwise have while working in-office. As a result, we ask that you please correspond with us by e-mail or send an electronic copy of any physical document you send to our offices to this e-mail address. We also will have limited access to certain physical and other records in response to discovery, public records requests, and other similar requests and ask for your patience and understanding in any delayed or untimely response. To the extent that we have stored data or information online and readily accessible, we will continue to provide it in a timely manner. Please also note that our fax machine has been disconnected and is no longer being used for incoming correspondence at this time. We appreciate your cooperation at this difficult time. Thank you.

From: Martin, James <JamesMartin@fdle.state.fl.us>
Sent: Thursday, March 19, 2020 4:42 PM
To: 'Nelson, Stephen' <StephenNelson@polk-county.net>; 'korozco@volusia.org' <korozco@volusia.org>; 'PWheaton@leegov.com' <PWheaton@leegov.com>; 'Cc:' <wmajors@baycountyfl.gov>; 'Craig.Engelson@brevardfl.gov' <Craig.Engelson@brevardfl.gov>; 'CHBODEN@broward.org' <CHBODEN@broward.org>; 'wpellan@co.pinellas.fl.us' <wpellan@co.pinellas.fl.us>; 'TCrutchfield@coj.net' <TCrutchfield@coj.net>; 'elizabethnunez@d20me.net' <elizabethnunez@d20me.net>; 'Info@dist2me.org' <Info@dist2me.org>; 'medex22@embarqmail.com' <medex22@embarqmail.com>; 'dwinterhalter@fldist12me.com' <dwinterhalter@fldist12me.com>; 'cowanh@hillsboroughcounty.org' <cowanh@hillsboroughcounty.org>; 'ccanard@irsc.edu' <ccanard@irsc.edu>; 'Lindsey.Bayer@marioncountyfl.org' <Lindsey.Bayer@marioncountyfl.org>; Caprara, Darren (ME) <Darren.Caprara@miamidade.gov>; 'Olson-Judy@monroecounty-fl.gov' <Olson-Judy@monroecounty-fl.gov>; 'Sheri.Blanton@ocfl.net' <Sheri.Blanton@ocfl.net>; 'hruiz@pbcgov.org' <hruiz@pbcgov.org>; Wilson, Sheli <SheliWilson@polk-county.net>; 'krogers@sjcfl.us' <krogers@sjcfl.us>; 'ricardocamacho@ufl.edu' <ricardocamacho@ufl.edu>
Cc: Koenig, Vickie <VickieKoenig@fdle.state.fl.us>; Lucas, Steven <StevenChadLucas@fdle.state.fl.us>; Neel, Megan <MeganNeel@fdle.state.fl.us>; Jones, Ken T <Ken.Jones@flhealth.gov>
Subject: RE: [EXTERNAL]: Re: [EX] Public Record Requests - requests for names of decedents COVID 19 Deaths -

---

I concur with Dr. Nelson. I'm not aware of any legal exemption or authority that would prohibit the release of the name of decedent.

James D. Martin, Deputy General Counsel
Florida Department of Law Enforcement
Post Office Box 1489
Tallahassee, Florida 32302-1489
850-410-7679

From: Nelson, Stephen [mailto:StephenNelson@polk-county.net]
Sent: Thursday, March 19, 2020 4:26 PM
To: 'korozco@volusia.org'; 'PWheaton@leegov.com'; 'Cc:'; 'Craig.Engelson@brevardfl.gov'; 'CHBODEN@broward.org'; 'wpellan@co.pinellas.fl.us'; 'TCrutchfield@coj.net'; 'elizabethnunez@d20me.net'; 'Info@dist2me.org'; 'medex22@embarqmail.com'; 'dwinterhalter@fldist12me.com'; 'cowanh@hillsboroughcounty.org'; 'ccanard@irsc.edu'; 'Lindsey.Bayer@marioncountyfl.org'; 'Darren.Caprara@miamidade.gov'; 'Olson-Judy@monroecounty-fl.gov'; 'Sheri.Blanton@ocfl.net'; 'hruiz@pbcgov.org'; Wilson, Sheli; 'krogers@sjcfl.us'; 'ricardocamacho@ufl.edu'
Cc: Martin, James; Koenig, Vickie; Lucas, Steven; Neel, Megan; Jones, Ken T
Subject: RE: [EXTERNAL]: Re: [EX] Public Record Requests - requests for names of decedents COVID 19 Deaths -

Folks,

These public records requests are no different than any other public records request we all receive. They are to be complied with.

As of this writing, there is NO Florida Statutory or Administrative Rule exemption(s) for coronavirus or COVID-19 deaths, including FS 382 et seq.

Stephen J. Nelson, M.A., M.D., F.C.A.P.
District Medical Examiner
10th Judicial Circuit of Florida
(Polk, Hardee, and Highlands Counties)
1021 Jim Keene Boulevard
Winter Haven, FL 33880-8010
863-298-4600 main
863-298-5264 fax
863-687-1344 answering service (24/7/365)

From: Jeff Martin - Director <jmartin@fldme.com>
Sent: Thursday, March 19, 2020 4:01 PM
To: Karla Orozco <korozco@volusia.org>; PWheaton@leegov.com
Cc: wmajors@baycountyfl.gov; Craig.Engelson@brevardfl.gov; CHBODEN@broward.org; wpellan@co.pinellas.fl.us; TCrutchfield@coj.net; elizabethnunez@d20me.net; Info@dist2me.org; medex22@embarqmail.com; dwinterhalter@fldist12me.com; cowanh@hillsboroughcounty.org; ccanard@irsc.edu; Lindsey.Bayer@marioncountyfl.org; Darren.Caprara@miamidade.gov; Olson-Judy@monroecounty-fl.gov; Sheri.Blanton@ocfl.net; hruiz@pbcgov.org; Wilson, Sheli <SheliWilson@polk-county.net>; krogers@sjcfl.us; ricardocamacho@ufl.edu
Subject: [EXTERNAL]: Re: [EX] Public Record Requests - requests for names of decedents COVID 19 Deaths -

We had a similar request from a very impatient individual that threatened us legally. I did provide the names of cases handled between certain dates.

Jef

Jeffrey B. Martin
Director / Chief of Forensic Investigations
(850) 865-2178 - Cellular

Office of the District Medical Examiner
District One - Florida
Central Office
5151 N. 9th Ave.
Pensacola, FL 32504
(850) 416-7210 - Office
(850) 416-6475 - Fax

Annex Office
206 Staff Drive N.E.
Ft. Walton Beach, FL 32548
(850) 651-7771 - Office
(850) 651-7775 - Fax

From: "Karla Orozco" <korozco@volusia.org>
Sent: Thursday, March 19, 2020 2:54 PM
To: PWheaton@leegov.com
Cc: wmajors@baycountyfl.gov, Craig.Engelson@brevardfl.gov, CHBODEN@broward.org, wpellan@co.pinellas.fl.us, TCrutchfield@coj.net, elizabethnunez@d20me.net, Info@dist2me.org, medex22@embarqmail.com, dwinterhalter@fldist12me.com, jmartin@fldme.com, cowanh@hillsboroughcounty.org, ccanard@irsc.edu, Lindsey.Bayer@marioncountyfl.org, Darren.Caprara@miamidade.gov, Olson-Judy@monroecounty-fl.gov, Sheri.Blanton@ocfl.net, hruiz@pbcgov.org, SheliWilson@polk-county.net, krogers@sjcfl.us, ricardocamacho@ufl.edu
Subject: Re: [EX] Public Record Requests - requests for names of decedents COVID 19 Deaths -

Hello all,

We have not had any deaths yet but I had the same concerns and was told by the MEC that they do not know anything that would prevent us from releasing the information. Our health department sent us the attachment citing the relevant statute and FAC for epidemiological investigations which are to be confidential.

I sent the same document to Chad Lucas to see what their legal department thinks about us citing that as the reason we can't release the information.

Karla

Karla Orozco M.S., F-ABMDI
Operations Manager
District 7 Medical Examiner Office
1360 Indian Lake Road
Daytona Beach, FL 32124
Office (386) 258-4060
Fax (386) 258-4061

On Mar 19, 2020, at 3:32 PM, Wheaton, Patricia < PWheaton@leegov.com> wrote:

?
Hello:

Our office has had two deaths related to COVID-19. We initially received a request from media asking for the name of one of the decedents (which we did not provide).

Thereafter, we received two other requests asking for our “log in” book (bodies transported to our office) for the date(s) of the deaths of the two cases. The bodies were not transported from the hospital to our office since we are doing a records review only and the bodies were released directly to the funeral home(s) selected by the families. The request specifically asked for the names, dates of births, and age for the dates specified. The information will not be in the documents they receive since the cases were not transported to our office and therefore not “logged in”.

Another media source requested a list of names and dates of birth for cases that died on a specific date. If we were able to pull this type of list together from our database, media would have the name of the decedent whose death was related to COVID-19. Department of Health and the hospital have refused to release this information and have directed our office not to release the name of the decedent pursuant to HIPAA.

Has anyone received such media requests and if so how are you responding? I have reached out to MEC and they have no answers for us. I have reached out to DOH and they verbally advised that our office is not to release the names; however, they have not been able to site statute or otherwise. As we are under a state of emergency (and national and local), does anyone know if the release of this information, which normally would be subject to public record, is now exempt because of the emergency declared?

If you have not already received a request, standby because it will be coming. One request is from Tampa and the another is from Naples so there will soon be national agencies requesting this information.

I would like to be ahead of the eight ball but unfortunately the agencies I was hoping would be able to provide definitive information does not have any answers for us.

Thank you and stay safe.

Patti Wheaton
Operations Manager
District 21 Medical Examiner’s Office
70 South Danley Drive
Fort Myers, FL 33907
Phone: 239-533-6339
Fax: 239-277-5017
Email: pwheaton@leegov.com
Website: me21.leegov.com
Serving Lee, Hendry and Glades Counties

Accredited By

<image001.jpg>

From: Angell, Christopher (CAO) <Christopher.Angell@miamidade.gov>
Sent: Thursday, April 09, 2020 4:58 PM EDT
To: Lamia, Christine E <Christine.Lamia@flhealth.gov>
CC: Medved, Daniel T <Daniel.Medved@flhealth.gov>
Subject: RE: Medical Examiner: General Matters: [EX] Public Record Requests - requests for names of decedents COVID 19 Deaths -

No need, I have reached out to him.

Thank you.

Chris Angell
Christopher A. Angell, Esq.
Assistant County Attorney
Miami-Dade County Attorney's Office
Stephen P. Clark Center
111 NW First Street
Suite 2810
Miami, FL 33128
Tel: 305-375-1024
Fax: 305-375-5611

Legal Assistant:
Maria Cruz
Tel: (305) 375-5731
Email: Maria.Cruz2@MiamiDade.gov

Paralegals:
Yenisbel Valdes
Tel: 305-375-1338
Email: Yenisbel.Valdes@MiamiDade.gov

Jarod Rucker
Tel: 305-375-5870
Email: Jarod.Rucker@MiamiDade.gov

Ulla Peralta
Tel: 305-375-2067
Email: Ulla.Peralta@MiamiDade.gov

From: Lamia, Christine E [mailto:Christine.Lamia@flhealth.gov]
Sent: Thursday, April 9, 2020 4:21 PM
To: Angell, Christopher (CAO) <Christopher.Angell@miamidade.gov>
Cc: Medved, Daniel T <Daniel.Medved@flhealth.gov>
Subject: RE: Medical Examiner: General Matters: [EX] Public Record Requests - requests for names of decedents COVID 19 Deaths -

---

Chris,
I do not have a written opinion. Do you mind if I send this email chain to Jim Martin and let him know of your request?
Chris

Christine E. Lamia
Deputy General Counsel
State Health Offices
Office of the General Counsel

Florida Department of Health
4052 Bald Cypress Way, Bin #A-02
Tallahassee, FL 32399-3265
(850) 245-4005 (OGC Main Line)
(850) 245-4021 (Direct Line)
(850) 245-4790 (Fax)

Mission: To protect, promote, and improve the health of all people in Florida through integrated state, county, & community efforts.
Vision: To be the Healthiest State in the Nation
Values: **ICARE**
I innovation: We search for creative solutions and manage resources wisely.
C collaboration: We use teamwork to achieve common goals & solve problems.
A accountability: We perform with integrity & respect.
R responsiveness: We achieve our mission by serving our customers & engaging our partners.
E excellence: We promote quality outcomes through learning & continuous performance improvement.
Purpose: To protect the public through health care licensure, enforcement and information.
Focus: To be the nation's leader in quality health care regulation.

From: Angell, Christopher (CAO) <Christopher.Angell@miamidade.gov>
Sent: Thursday, April 9, 2020 3:56 PM
To: Lamia, Christine E <Christine.Lamia@flhealth.gov>
Cc: Medved, Daniel T <Daniel.Medved@flhealth.gov>
Subject: RE: Medical Examiner: General Matters: [EX] Public Record Requests - requests for names of decedents COVID 19 Deaths -

Good afternoon:

The Miami-Dade County Medical Examiner Department has not received any communicating from Mr. Martin withdrawing his earlier position as expressed in his email dated 03-19-20 below, nor have they received any communication from the Medical Examiners Commission to that effect.
Please advise if Mr. Martin, as counsel for Medical Examiners Commission, has provided a written legal opinion in support of his position that the a cause of death contained in any document in the possession of a medical examiner is confidential and exempt, and if so, please provide me a copy of that written legal opinion.

Thank you.

Chris Angell
Christopher A. Angell, Esq.
Assistant County Attorney
Miami-Dade County Attorney's Office
Stephen P. Clark Center
111 NW First Street
Suite 2810
Miami, FL 33128
Tel: 305-375-1024
Fax: 305-375-5611

Legal Assistant:
Maria Cruz
Tel: (305) 375-5731
Email: Maria.Cruz2@MiamiDade.gov

Paralegals:
Yenisbel Valdes
Tel: 305-375-1338
Email: Yenisbel.Valdes@MiamiDade.gov

Jarod Rucker
Tel: 305-375-5870
Email: Jarod.Rucker@MiamiDade.gov

Ulla Peralta
Tel: 305-375-2067
Email: Ulla.Peralta@MiamiDade.gov

Due to the unprecedented and changing situation involving COVID-19, the County Attorney's Office is currently working remotely. We will have limited access to regular mail, physical files, and other resources that we would otherwise have while working in-office. As a result, we ask that you please correspond with us by e-mail or send an electronic copy of any physical document you send to our offices to this e-mail address. We also will have limited access to certain physical and other records in response to discovery,

public records requests, and other similar requests and ask for your patience and understanding in any delayed or untimely response. To the extent that we have stored data or information online and readily accessible, we will continue to provide it in a timely manner. Please also note that our fax machine has been disconnected and is no longer being used for incoming correspondence at this time. We appreciate your cooperation at this difficult time. Thank you.

From: Lamia, Christine E [mailto:Christine.Lamia@flhealth.gov]
Sent: Thursday, April 9, 2020 3:37 PM
To: Angell, Christopher (CAO) <Christopher.Angell@miamidade.gov>
Cc: Medved, Daniel T <Daniel.Medved@flhealth.gov>
Subject: FW: Medical Examiner: General Matters: [EX] Public Record Requests - requests for names of decedents COVID 19 Deaths -

---

Chris,
To follow up on your email to Dan below, it is my understanding that Jim Martin, counsel for FDLE Medical Examiners Commission, is of the legal opinion that the cause of death is exempt. I am not sure if this clears up any of the confusion mentioned, but wanted to pass this along to you.
Take care and be well!
Chris

Christine E. Lamia
Deputy General Counsel
State Health Offices
Office of the General Counsel
Florida Department of Health
4052 Bald Cypress Way, Bin #A-02
Tallahassee, FL 32399-3265
(850) 245-4005 (OGC Main Line)
(850) 245-4021 (Direct Line)
(850) 245-4790 (Fax)

Mission: To protect, promote, and improve the health of all people in Florida through integrated state, county, & community efforts.
Vision: To be the Healthiest State in the Nation
Values: **ICARE**
I innovation: We search for creative solutions and manage resources wisely.
C collaboration: We use teamwork to achieve common goals & solve problems.
A accountability: We perform with integrity & respect.
R responsiveness: We achieve our mission by serving our customers & engaging our partners.
E excellence: We promote quality outcomes through learning & continuous performance improvement.
Purpose: To protect the public through health care licensure, enforcement and information.
Focus: To be the nation's leader in quality health care regulation.

From: Medved, Daniel T <Daniel.Medved@flhealth.gov>
Sent: Thursday, April 9, 2020 3:13 PM
To: Lamia, Christine E <Christine.Lamia@flhealth.gov>
Subject: FW: [EX] Public Record Requests - requests for names of decedents COVID 19 Deaths -

---

From: Angell, Christopher (CAO) <Christopher.Angell@miamidade.gov>
Sent: Friday, April 3, 2020 3:31 PM
To: Medved, Daniel T <Daniel.Medved@flhealth.gov>
Subject: Re: [EX] Public Record Requests - requests for names of decedents COVID 19 Deaths -

Good afternoon:

I spoke to the Miami-Dade County Medical Examiner Department's Chief of Operations about our ongoing discussions. He is working from home today but requested that I forward you the below email chain so you could be aware of prior communications that have been had on this topic and some confusion that has caused.
I will be in contact next week.

Thank you.

Chris Angell
Christopher A. Angell, Esq.
Assistant County Attorney
Miami-Dade County Attorney's Office
Stephen P. Clark Center
111 NW First Street
Suite 2810
Miami, FL 33128
Tel: 305-375-1024
Fax: 305-375-5611

Legal Assistant:
Maria Cruz
Tel: (305) 375-5731
Email: Maria.Cruz2@MiamiDade.gov

Paralegals:
Yenisbel Valdes
Tel: 305-375-1338
Email: Yenisbel.Valdes@MiamiDade.gov

Jarod Rucker
Tel: 305-375-5870
Email: Jarod.Rucker@MiamiDade.gov

Ulla Peralta
Tel: 305-375-2067
Email: Ulla.Peralta@MiamiDade.gov

From: Martin, James <JamesMartin@fdle.state.fl.us>
Sent: Thursday, March 19, 2020 4:42 PM
To: 'Nelson, Stephen' <StephenNelson@polk-county.net>; 'korozco@volusia.org' <korozco@volusia.org>; 'PWheaton@leegov.com' <PWheaton@leegov.com>; 'Cc:' <wmajors@baycountyfl.gov>; 'Craig.Engelson@brevardfl.gov' <Craig.Engelson@brevardfl.gov>; 'CHBODEN@broward.org' <CHBODEN@broward.org>; 'wpellan@co.pinellas.fl.us' <wpellan@co.pinellas.fl.us>; 'TCrutchfield@coj.net' <TCrutchfield@coj.net>; 'elizabethnunez@d20me.net' <elizabethnunez@d20me.net>; 'Info@dist2me.org' <Info@dist2me.org>; 'medex22@embarqmail.com' <medex22@embarqmail.com>; 'dwinterhalter@fldist12me.com' <dwinterhalter@fldist12me.com>; 'cowanh@hillsboroughcounty.org' <cowanh@hillsboroughcounty.org>; 'ccanard@irsc.edu' <ccanard@irsc.edu>; 'Lindsey.Bayer@marioncountyfl.org' <Lindsey.Bayer@marioncountyfl.org>; Caprara, Darren (ME) <Darren.Caprara@miamidade.gov>; 'Olson-Judy@monroecounty-fl.gov' <Olson-Judy@monroecounty-fl.gov>; 'Sheri.Blanton@ocfl.net' <Sheri.Blanton@ocfl.net>; 'hruiz@pbcgov.org' <hruiz@pbcgov.org>; Wilson, Sheli <SheliWilson@polk-county.net>; 'krogers@sjcfl.us' <krogers@sjcfl.us>; 'ricardocamacho@ufl.edu' <ricardocamacho@ufl.edu>
Cc: Koenig, Vickie <VickieKoenig@fdle.state.fl.us>; Lucas, Steven <StevenChadLucas@fdle.state.fl.us>; Neel, Megan <MeganNeel@fdle.state.fl.us>; Jones, Ken T <Ken.Jones@flhealth.gov>
Subject: RE: [EXTERNAL]: Re: [EX] Public Record Requests - requests for names of decedents COVID 19 Deaths -

I concur with Dr. Nelson. I'm not aware of any legal exemption or authority that would prohibit the release of the name of decedent.

James D. Martin, Deputy General Counsel
Florida Department of Law Enforcement
Post Office Box 1489
Tallahassee, Florida 32302-1489
850-410-7679

From: Nelson, Stephen [mailto:StephenNelson@polk-county.net]
Sent: Thursday, March 19, 2020 4:26 PM
To: 'korozco@volusia.org'; 'PWheaton@leegov.com'; 'Cc:'; 'Craig.Engelson@brevardfl.gov'; 'CHBODEN@broward.org'; 'wpellan@co.pinellas.fl.us'; 'TCrutchfield@coj.net'; 'elizabethnunez@d20me.net'; 'Info@dist2me.org'; 'medex22@embarqmail.com'; 'dwinterhalter@fldist12me.com'; 'cowanh@hillsboroughcounty.org'; 'ccanard@irsc.edu'; 'Lindsey.Bayer@marioncountyfl.org'; 'Darren.Caprara@miamidade.gov'; 'Olson-Judy@monroecounty-fl.gov'; 'Sheri.Blanton@ocfl.net'; 'hruiz@pbcgov.org'; Wilson, Sheli; 'krogers@sjcfl.us'; 'ricardocamacho@ufl.edu'
Cc: Martin, James; Koenig, Vickie; Lucas, Steven; Neel, Megan; Jones, Ken T
Subject: RE: [EXTERNAL]: Re: [EX] Public Record Requests - requests for names of decedents COVID 19 Deaths -

Folks,

These public records requests are no different than any other public records request we all receive. They are to be complied with.

As of this writing, there is NO Florida Statutory or Administrative Rule exemption(s) for coronavirus or COVID-19 deaths, including FS 382 et seq.

Stephen J. Nelson, M.A., M.D., F.C.A.P.
District Medical Examiner
10th Judicial Circuit of Florida
(Polk, Hardee, and Highlands Counties)
1021 Jim Keene Boulevard
Winter Haven, FL 33880-8010
863-298-4600 main
863-298-5264 fax
863-687-1344 answering service (24/7/365)

From: Jeff Martin - Director <jmartin@fldme.com>
Sent: Thursday, March 19, 2020 4:01 PM
To: Karla Orozco <korozco@volusia.org>; PWheaton@leegov.com
Cc: wmajors@baycountyfl.gov; Craig.Engelson@brevardfl.gov; CHBODEN@broward.org; wpellan@co.pinellas.fl.us; TCrutchfield@coj.net; elizabethnunez@d20me.net; Info@dist2me.org; medex22@embarqmail.com; dwinterhalter@fldist12me.com; cowanh@hillsboroughcounty.org; ccanard@irsc.edu; Lindsey.Bayer@marioncountyfl.org; Darren.Caprara@miamidade.gov; Olson-Judy@monroecounty-fl.gov; Sheri.Blanton@ocfl.net; hruiz@pbcgov.org; Wilson, Sheli <SheliWilson@polk-county.net>; krogers@sjcfl.us; ricardocamacho@ufl.edu
Subject: [EXTERNAL]: Re: [EX] Public Record Requests - requests for names of decedents COVID 19 Deaths -

We had a similar request from a very impatient individual that threatened us legally. I did provide the names of cases handled between certain dates.

Jef

Jeffrey B. Martin
Director / Chief of Forensic Investigations
(850) 865-2178 - Cellular

Office of the District Medical Examiner
District One - Florida
Central Office
5151 N. 9th Ave.
Pensacola, FL 32504
(850) 416-7210 - Office
(850) 416-6475 - Fax

Annex Office

206 Staff Drive N.E.
Ft. Walton Beach, FL 32548
(850) 651-7771 - Office
(850) 651-7775 - Fax

From: "Karla Orozco" <korozco@volusia.org>
Sent: Thursday, March 19, 2020 2:54 PM
To: PWheaton@leegov.com
Cc: wmajors@baycountyfl.gov, Craig.Engelson@brevardfl.gov, CHBODEN@broward.org, wpellan@co.pinellas.fl.us, TCrutchfield@coj.net, elizabethnunez@d20me.net, Info@dist2me.org, medex22@embarqmail.com, dwinterhalter@fldist12me.com, jmartin@fldme.com, cowanh@hillsboroughcounty.org, ccanard@irsc.edu, Lindsey.Bayer@marioncountyfl.org, Darren.Caprara@miamidade.gov, Olson-Judy@monroecounty-fl.gov, Sheri.Blanton@ocfl.net, hruiz@pbcgov.org, SheliWilson@polk-county.net, krogers@sjcfl.us, ricardocamacho@ufl.edu
Subject: Re: [EX] Public Record Requests - requests for names of decedents COVID 19 Deaths -

Hello all,

We have not had any deaths yet but I had the same concerns and was told by the MEC that they do not know anything that would prevent us from releasing the information. Our health department sent us the attachment citing the relevant statute and FAC for epidemiological investigations which are to be confidential.

I sent the same document to Chad Lucas to see what their legal department thinks about us citing that as the reason we can't release the information.

Karla

Karla Orozco M.S., F-ABMDI
Operations Manager
District 7 Medical Examiner Office
1360 Indian Lake Road
Daytona Beach, FL 32124
Office (386) 258-4060
Fax (386) 258-4061

On Mar 19, 2020, at 3:32 PM, Wheaton, Patricia < PWheaton@leegov.com> wrote:

?
Hello:

Our office has had two deaths related to COVID-19. We initially received a request from media asking for the name of one of the decedents (which we did not provide).

Thereafter, we received two other requests asking for our "log in" book (bodies transported to our office) for the date(s) of the deaths of the two cases. The bodies were not transported from the hospital to our office since we are doing a records review only and the bodies were released directly to the funeral home(s) selected by the families. The request specifically asked for the names, dates of births, and age for the dates specified. The information will not be in the documents they receive since the cases were not transported to our office and therefore not "logged in".

Another media source requested a list of names and dates of birth for cases that died on a specific date. If we were able to pull this type of list together from our database, media would have the name of the decedent whose death was related to COVID-19. Department of Health and the hospital have refused to release this information and have directed our office not to release the name of the decedent pursuant to HIPAA.

Has anyone received such media requests and if so how are you responding? I have reached out to MEC and they have no answers for us. I have reached out to DOH and they verbally advised that our office is not to release the names; however, they have not been able to site statute or otherwise. As we are under a state of emergency (and national and local), does anyone know if the release of this information, which normally would be subject to public record, is now exempt because of the emergency declared?

If you have not already received a request, standby because it will be coming. One request is from Tampa and the another is from Naples so there will soon be national agencies requesting this information.

I would like to be ahead of the eight ball but unfortunately the agencies I was hoping would be able to provide definitive information does not have any answers for us.

Thank you and stay safe.

Patti Wheaton
Operations Manager
District 21 Medical Examiner's Office
70 South Danley Drive
Fort Myers, FL 33907

Phone: 239-533-6339
Fax: 239-277-5017
Email: pwheaton@leegov.com
Website: me21.leegov.com
Serving Lee, Hendry and Glades Counties

Accredited By

<image001.jpg>

<mg_info.txt>

From: Mastrucci, Michael (CAO) <Michael.Mastrucci@miamidade.gov>
Sent: Friday, April 03, 2020 1:41 PM EDT
To: Timothy Dennis <Timothy.Dennis@myfloridalegal.com>; Morillo, Wilma (CAO) <Wilma.Morillo@miamidade.gov>
CC: Jon Annette <Jon.Annette@myfloridalegal.com>; Rebecca Padgett <Rebecca.Padgett@myfloridalegal.com>
Subject: Re: Pedro Garcia v. Fontainebleau III Ocean Club Condominium Association, Inc.; TY 2017 (18-24350 CA 01)

Hi Tim,

Yes, it is simply reinstating the PA's preliminary assessment for 2017 for the condo unit in question and then carrying forward that value to 2018 per Fla. Stat. 193.155.

Hope you are well, and please let me know if you have any other questions.

Thanks,

Michael J. Mastrucci
Assistant County Attorney
Miami-Dade County Attorney's Office
111 NW 1st Street, Suite 2810
Miami, FL 33128
Tel: 305-375-5040
Fax: 305-375-5634

From: Timothy Dennis <Timothy.Dennis@myfloridalegal.com>
Sent: Friday, April 3, 2020 1:06 PM
To: Morillo, Wilma (CAO) <Wilma.Morillo@miamidade.gov>
Cc: Jon Annette <Jon.Annette@myfloridalegal.com>; Rebecca Padgett <Rebecca.Padgett@myfloridalegal.com>; Mastrucci, Michael (CAO) <Michael.Mastrucci@miamidade.gov>
Subject: RE: Pedro Garcia v. Fontainebleau III Ocean Club Condominium Association, Inc.; TY 2017 (18-24350 CA 01)

Thank you Wilma!

Mike – can you let me know if this simply a return to the PA's assessed value for both 2017 and 2018 tax years?

Thanks!

Timothy E. Dennis
Chief Assistant Attorney General
Revenue Litigation Bureau
Tel: (850) 414-3781
Timothy.Dennis@myfloridalegal.com

From: Morillo, Wilma (CAO) <Wilma.Morillo@miamidade.gov>
Sent: Friday, April 3, 2020 12:47 PM
To: Timothy Dennis <Timothy.Dennis@myfloridalegal.com>
Cc: Jon Annette <Jon.Annette@myfloridalegal.com>; Rebecca Padgett <Rebecca.Padgett@myfloridalegal.com>; Mastrucci, Michael (CAO) <Michael.Mastrucci@miamidade.gov>; hjay01@gmail.com; jackr@clevelonly.com
Subject: Pedro Garcia v. Fontainebleau III Ocean Club Condominium Association, Inc.; TY 2017 (18-24350 CA 01)

Good afternoon,

Please see attached for your review and signature proposed Partial Final Judgment with regard to the above referenced matter.

Should you have any questions please feel free to contact me.

Thank you,

Wilma Morillo
Legal Assistant to County Attorneys

James Edwin “Eddie” Kirtley, Jr., Assistant County Attorney
Abbie Schwaderer-Raurell, Assistant County Attorney
Michael Mastrucci, Assistant County Attorney

MIAMI-DADE COUNTY ATTORNEY'S OFFICE
Stephen P. Clark Center, Suite 2810
111 NW 1st Street
Miami, Florida 33128-1993
TEL: (305) 375-5151
DIRECT: (305) 375-3928
FAX: (305) 375-5634
Email: **morillo@miamidade.gov**

“Delivering Excellence Every Day”

PLEASE NOTE: Due to the unprecedented and changing situation involving COVID-19, the County Attorney’s Office is currently working remotely. We will have limited access to regular mail, physical files, and other resources that we would otherwise have while working in-office. As a result, we ask that you please correspond with us by e-mail or send an electronic copy of any physical document you send to our offices to this e-mail address. We also will have limited access to certain physical and other records in response to discovery, public records requests, and other similar requests and ask for your patience and understanding in any delayed or untimely response. To the extent that we have stored data or information online and readily accessible, we will continue to provide it in a timely manner. Please also note that our fax machine has been disconnected and is no longer being used for incoming correspondence at this time. We appreciate your cooperation at this difficult time. Thank you.

From: Morillo, Wilma (CAO) <Wilma.Morillo@miamidade.gov>
Sent: Friday, April 03, 2020 7:23 PM EDT
To: Timothy Dennis <Timothy.Dennis@myfloridalegal.com>
CC: Jon Annette <Jon.Annette@myfloridalegal.com>; Rebecca Padgett <Rebecca.Padgett@myfloridalegal.com>; Mastrucci, Michael (CAO) <Michael.Mastrucci@miamidade.gov>; hjay01@gmail.com <hjay01@gmail.com>; jackr@clevelonly.com <jackr@clevelonly.com>
Subject: RE: Pedro Garcia v. Fontainebleau III Ocean Club Condominium Association, Inc.; TY 2017 (18-24350 CA 01)

Good afternoon Mr. Dennis,

Please provide a signed copy on Monday, we will submit the FJ for entry then.

Thank you, stay safe!

Wilma Morillo
Legal Assistant to County Attorneys
James Edwin "Eddie" Kirtley, Jr., Assistant County Attorney
Abbie Schwaderer-Raurell, Assistant County Attorney
Michael Mastrucci, Assistant County Attorney

MIAMI-DADE COUNTY ATTORNEY'S OFFICE
Stephen P. Clark Center, Suite 2810
111 NW 1st Street
Miami, Florida 33128-1993
TEL: (305) 375-5151
DIRECT: (305) 375-3928
FAX: (305) 375-5634
Email: **morillo@miamidade.gov**

miamidade.gov
"Delivering Excellence Every Day"

PLEASE NOTE: Due to the unprecedented and changing situation involving COVID-19, the County Attorney's Office is currently working remotely. We will have limited access to regular mail, physical files, and other resources that we would otherwise have while working in-office. As a result, we ask that you please correspond with us by e-mail or send an electronic copy of any physical document you send to our offices to this e-mail address. We also will have limited access to certain physical and other records in response to discovery, public records requests, and other similar requests and ask for your patience and understanding in any delayed or untimely response. To the extent that we have stored data or information online and readily accessible, we will continue to provide it in a timely manner. Please also note that our fax machine has been disconnected and is no longer being used for incoming correspondence at this time. We appreciate your cooperation at this difficult time. Thank you.

From: Timothy Dennis <Timothy.Dennis@myfloridalegal.com>
Sent: Friday, April 3, 2020 4:17 PM
To: Morillo, Wilma (CAO) <Wilma.Morillo@miamidade.gov>
Cc: Jon Annette <Jon.Annette@myfloridalegal.com>; Rebecca Padgett <Rebecca.Padgett@myfloridalegal.com>; Mastrucci, Michael (CAO) <Michael.Mastrucci@miamidade.gov>; hjay01@gmail.com; jackr@clevelonly.com
Subject: RE: Pedro Garcia v. Fontainebleau III Ocean Club Condominium Association, Inc.; TY 2017 (18-24350 CA 01)

Good afternoon,

The Defendant, Executive Director of the Florida Department of Revenue has no objection to the proposed Partial Final Judgment. I will be unable, however, to return a signed copy until Monday, April 6, or perhaps this weekend. I apologize for the delay, and thank you for your understanding. If you are able, I authorize use of my e-signature on the PFJ.

Stay safe.

Timothy E. Dennis
Chief Assistant Attorney General
Revenue Litigation Bureau
Office of the Attorney General

Telephone: (850) 414-3781
Timothy.Dennis@myfloridalegal.com

From: Morillo, Wilma (CAO) <Wilma.Morillo@miamidade.gov>
Sent: Friday, April 3, 2020 12:47 PM
To: Timothy Dennis <Timothy.Dennis@myfloridalegal.com>
Cc: Jon Annette <Jon.Annette@myfloridalegal.com>; Rebecca Padgett <Rebecca.Padgett@myfloridalegal.com>; Mastrucci, Michael (CAO) <Michael.Mastrucci@miamidade.gov>; hjay01@gmail.com; jackr@clevelonly.com
Subject: Pedro Garcia v. Fontainebleau III Ocean Club Condominium Association, Inc.; TY 2017 (18-24350 CA 01)

Good afternoon,

Please see attached for your review and signature proposed Partial Final Judgment with regard to the above referenced matter.

Should you have any questions please feel free to contact me.

Thank you,

Wilma Morillo
Legal Assistant to County Attorneys
James Edwin "Eddie" Kirtley, Jr., Assistant County Attorney
Abbie Schwaderer-Raurell, Assistant County Attorney
Michael Mastrucci, Assistant County Attorney

MIAMI-DADE COUNTY ATTORNEY'S OFFICE
Stephen P. Clark Center, Suite 2810
111 NW 1st Street
Miami, Florida 33128-1993
TEL: (305) 375-5151
DIRECT: (305) 375-3928
FAX: (305) 375-5634
Email: **morillo@miamidade.gov**

"Delivering Excellence Every Day"

PLEASE NOTE: Due to the unprecedented and changing situation involving COVID-19, the County Attorney's Office is currently working remotely. We will have limited access to regular mail, physical files, and other resources that we would otherwise have while working in-office. As a result, we ask that you please correspond with us by e-mail or send an electronic copy of any physical document you send to our offices to this e-mail address. We also will have limited access to certain physical and other records in response to discovery, public records requests, and other similar requests and ask for your patience and understanding in any delayed or untimely response. To the extent that we have stored data or information online and readily accessible, we will continue to provide it in a timely manner. Please also note that our fax machine has been disconnected and is no longer being used for incoming correspondence at this time. We appreciate your cooperation at this difficult time. Thank you.

From: Timothy Dennis <Timothy.Dennis@myfloridalegal.com>
Sent: Friday, April 03, 2020 4:16 PM EDT
To: Morillo, Wilma (CAO) <Wilma.Morillo@miamidade.gov>
CC: Jon Annette <Jon.Annette@myfloridalegal.com>; Rebecca Padgett <Rebecca.Padgett@myfloridalegal.com>; Mastrucci, Michael (CAO) <Michael.Mastrucci@miamidade.gov>; hjay01@gmail.com <hjay01@gmail.com>; jackr@clevelonly.com <jackr@clevelonly.com>
Subject: RE: Pedro Garcia v. Fontainebleau III Ocean Club Condominium Association, Inc.; TY 2017 (18-24350 CA 01)

Good afternoon,

The Defendant, Executive Director of the Florida Department of Revenue has no objection to the proposed Partial Final Judgment. I will be unable, however, to return a signed copy until Monday, April 6, or perhaps this weekend. I apologize for the delay, and thank you for your understanding. If you are able, I authorize use of my e-signature on the PFJ.

Stay safe.

Timothy E. Dennis
Chief Assistant Attorney General
Revenue Litigation Bureau
Office of the Attorney General

Telephone: (850) 414-3781
Timothy.Dennis@myfloridalegal.com

From: Morillo, Wilma (CAO) <Wilma.Morillo@miamidade.gov>
Sent: Friday, April 3, 2020 12:47 PM
To: Timothy Dennis <Timothy.Dennis@myfloridalegal.com>
Cc: Jon Annette <Jon.Annette@myfloridalegal.com>; Rebecca Padgett <Rebecca.Padgett@myfloridalegal.com>; Mastrucci, Michael (CAO) <Michael.Mastrucci@miamidade.gov>; hjay01@gmail.com; jackr@clevelonly.com
Subject: Pedro Garcia v. Fontainebleau III Ocean Club Condominium Association, Inc.; TY 2017 (18-24350 CA 01)

Good afternoon,

Please see attached for your review and signature proposed Partial Final Judgment with regard to the above referenced matter.

Should you have any questions please feel free to contact me.

Thank you,

Wilma Morillo
Legal Assistant to County Attorneys
James Edwin "Eddie" Kirtley, Jr., Assistant County Attorney
Abbie Schwaderer-Raurell, Assistant County Attorney
Michael Mastrucci, Assistant County Attorney

MIAMI-DADE COUNTY ATTORNEY'S OFFICE
Stephen P. Clark Center, Suite 2810
111 NW 1st Street
Miami, Florida 33128-1993
TEL: (305) 375-5151
DIRECT: (305) 375-3928
FAX: (305) 375-5634
Email: **morillo@miamidade.gov**

miamidade.gov
"Delivering Excellence Every Day"

otherwise have while working in-office. As a result, we ask that you please correspond with us by e-mail or send an electronic copy of any physical document you send to our offices to this e-mail address. We also will have limited access to certain physical and other records in response to discovery, public records requests, and other similar requests and ask for your patience and understanding in any delayed or untimely response. To the extent that we have stored data or information online and readily accessible, we will continue to provide it in a timely manner. Please also note that our fax machine has been disconnected and is no longer being used for incoming correspondence at this time. We appreciate your cooperation at this difficult time. Thank you.

From: Timothy Dennis <Timothy.Dennis@myfloridalegal.com>
Sent: Friday, April 03, 2020 1:06 PM EDT
To: Morillo, Wilma (CAO) <Wilma.Morillo@miamidade.gov>
CC: Jon Annette <Jon.Annette@myfloridalegal.com>; Rebecca Padgett <Rebecca.Padgett@myfloridalegal.com>; Mastrucci, Michael (CAO) <Michael.Mastrucci@miamidade.gov>
Subject: RE: Pedro Garcia v. Fontainebleau III Ocean Club Condominium Association, Inc.; TY 2017 (18-24350 CA 01)

Thank you Wilma!

Mike – can you let me know if this simply a return to the PA's assessed value for both 2017 and 2018 tax years?

Thanks!

Timothy E. Dennis
Chief Assistant Attorney General
Revenue Litigation Bureau
Tel: (850) 414-3781
Timothy.Dennis@myfloridalegal.com

From: Morillo, Wilma (CAO) <Wilma.Morillo@miamidade.gov>
Sent: Friday, April 3, 2020 12:47 PM
To: Timothy Dennis <Timothy.Dennis@myfloridalegal.com>
Cc: Jon Annette <Jon.Annette@myfloridalegal.com>; Rebecca Padgett <Rebecca.Padgett@myfloridalegal.com>; Mastrucci, Michael (CAO) <Michael.Mastrucci@miamidade.gov>; hjay01@gmail.com; jackr@clevelonly.com
Subject: Pedro Garcia v. Fontainebleau III Ocean Club Condominium Association, Inc.; TY 2017 (18-24350 CA 01)

Good afternoon,

Please see attached for your review and signature proposed Partial Final Judgment with regard to the above referenced matter.

Should you have any questions please feel free to contact me.

Thank you,

Wilma Morillo
Legal Assistant to County Attorneys
James Edwin "Eddie" Kirtley, Jr., Assistant County Attorney
Abbie Schwaderer-Raurell, Assistant County Attorney
Michael Mastrucci, Assistant County Attorney

MIAMI-DADE COUNTY ATTORNEY'S OFFICE
Stephen P. Clark Center, Suite 2810
111 NW 1st Street
Miami, Florida 33128-1993
TEL: (305) 375-5151
DIRECT: (305) 375-3928
FAX: (305) 375-5634
Email: **morillo@miamidade.gov**

miamidade.gov
"Delivering Excellence Every Day"

PLEASE NOTE: Due to the unprecedented and changing situation involving COVID-19, the County Attorney's Office is currently working remotely. We will have limited access to regular mail, physical files, and other resources that we would otherwise have while working in-office. As a result, we ask that you please correspond with us by e-mail or send an electronic copy of any physical document you send to our offices to this e-mail address. We also will have limited access to certain physical and other records in response to discovery, public records requests, and other similar requests and ask for

your patience and understanding in any delayed or untimely response. To the extent that we have stored data or information online and readily accessible, we will continue to provide it in a timely manner. Please also note that our fax machine has been disconnected and is no longer being used for incoming correspondence at this time. We appreciate your cooperation at this difficult time. Thank you.

From: Clements, Rick <RickClements@miamibeachfl.gov>
Sent: Friday, April 17, 2020 11:00 AM EDT
To: YCP@Valentine.US <YCP@Valentine.US>; Acosta, Paul <PaulAcosta@miamibeachfl.gov>; Jones, Wayne <WayneJones@miamibeachfl.gov>
CC: DanGelber@miamibeachfl.gov <DanGelber@miamibeachfl.gov>; GovernorRon.Desantis@eog.myflorida.com <GovernorRon.Desantis@eog.myflorida.com>; LtGovernorJeanette.Nunez@eog.myflorida.com <LtGovernorJeanette.Nunez@eog.myflorida.com>; Jones, Wayne <WayneJones@miamibeachfl.gov>; Acosta, Paul <PaulAcosta@miamibeachfl.gov>; daviddelaespriella@maimibeachfl.gov <daviddelaespriella@maimibeachfl.gov>; Doce, Enrique <EnriqueDoce@miamibeachfl.gov>; Guerrero, Samir <SamirGuerrero@miamibeachfl.gov>; mickysteinberg@miamibeachfl.gov <mickysteinberg@miamibeachfl.gov>; Trofino, Tathiane <TathianeTrofino@miamibeachfl.gov>; Samuelian, Mark <Mark@miamibeachfl.gov>; Gonzalez, Elias <EliasGonzalez@miamibeachfl.gov>; Gongora, Michael <Michael@miamibeachfl.gov>; Fontani, Diana <DianaFontani@miamibeachfl.gov>; Meiner, Steven <StevenMeiner@miamibeachfl.gov>; Huff, Amadeus <AmadeusHuff@miamibeachfl.gov>; rickyarriola@miamibeachfl.gov <rickyarriola@miamibeachfl.gov>; Chiroles, Erick <ErickChiroles@miamibeachfl.gov>; Richardson, David <DavidRichardson@miamibeachfl.gov>; Callejas, Luis <LuisCallejas@miamibeachfl.gov>; Jordan, Barbara (DIST1) <Barbara.Jordan@miamidade.gov>; District1 <District1@miamidade.gov>; District2 (DIST2) <District2@miamidade.gov>; District3 <District3@miamidade.gov>; District4 <District4@miamidade.gov>; District5 <District5@miamidade.gov>; District6 <District6@miamidade.gov>; District7 <District7@miamidade.gov>; District8 <District8@miamidade.gov>; Moss, Dennis C. (DIST9) <Dennis.Moss@miamidade.gov>; District9 <District9.District9@miamidade.gov>; District10 <District10@miamidade.gov>; District11 <District11@miamidade.gov>; District12 <District12@miamidade.gov>; District 13 <district13@miamidade.gov>; Price-Williams, Abigail (CAO) <Abigail.Price-Williams@miamidade.gov>; Bonzon-Keenan, Geri (CAO) <Geri.Bonzon-Keenan@miamidade.gov>; SOUTH OF FIFTH NEIGHBORHOOD <sofna@sofna.org>
Subject: RE: Shutdown no excuse for harassment of senior citizens

Valentine,

I am in receipt of your email and would like to follow-up with you about your concerns. I will ask my Assistant Chief, Paul Acosta, to do just that and find a time to discuss this with you.

Respectfully,

R. Clements

MIAMIBEACH
Richard Clements, Chief of Police
MIAMI BEACH POLICE DEPARTMENT
1100 Washington Ave, Miami Beach, FL 33139
Tel: 305-673-7776, ext. 25214
Rickclements@miamibeachfl.gov

Vision: A safe and welcoming environment for everyone.
Values: Honorable, Professional, Resilient.
Goals: Use innovative approaches to address crime. Maintain and enhance a professional and well trained workforce. Enhance the public perception of the Miami Beach Police Department.

From: YCP@Valentine.US <YCP@Valentine.US>
Sent: Friday, April 17, 2020 10:35 AM
To: Clements, Rick <RickClements@miamibeachfl.gov>
Cc: Gelber, Dan <DanGelber@miamibeachfl.gov>; GovernorRon.Desantis@eog.myflorida.com; LtGovernorJeanette.Nunez@eog.myflorida.com; Jones, Wayne <WayneJones@miamibeachfl.gov>; Acosta, Paul <PaulAcosta@miamibeachfl.gov>; daviddelaespriella@maimibeachfl.gov; Doce, Enrique <EnriqueDoce@miamibeachfl.gov>; Guerrero, Samir <SamirGuerrero@miamibeachfl.gov>; Steinberg, Micky <MickySteinberg@miamibeachfl.gov>; Trofino, Tathiane <TathianeTrofino@miamibeachfl.gov>; Samuelian, Mark <Mark@miamibeachfl.gov>; Gonzalez, Elias

<EliasGonzalez@miamibeachfl.gov>; Gongora, Michael <Michael@miamibeachfl.gov>; Fontani, Diana <DianaFontani@miamibeachfl.gov>; Meiner, Steven <StevenMeiner@miamibeachfl.gov>; Huff, Amadeus <AmadeusHuff@miamibeachfl.gov>; Arriola, Ricky <RickyArriola@miamibeachfl.gov>; Chiroles, Erick <ErickChiroles@miamibeachfl.gov>; Richardson, David <DavidRichardson@miamibeachfl.gov>; Callejas, Luis <LuisCallejas@miamibeachfl.gov>; bjordan@miamidade.gov; District1@miamidade.gov; district2@miamidade.gov; district3@miamidade.gov; district4@miamidade.gov; district5@miamidade.gov; district6@miamidade.gov; district7@miamidade.gov; district8@miamidade.gov; DennisMoss@miamidade.gov; district9@miamidade.gov; district10@miamidade.gov; district11@miamidade.gov; district12@miamidade.gov; district13@miamidade.gov; apw1@miamidade.gov; gbk@miamidade.gov; SOUTH OF FIFTH NEIGHBORHOOD <sofna@sofna.org>
Subject: Shutdown no excuse for harassment of senior citizens

Dear Police Chief,
I rise to write this email at 11:00 pm after tossing and turning for 2 hours in reaction to being harassed by one of your officers for no reason.

I will instruct my staff to send it in the morning to all related city and county government and governor's offices who need to know what harassment holds for them from just ONE of the many folks my age who grew up with freedoms and aren't going to let any unreasonable intrusions slide simply because we have a medical shut down. Offices and officers are hereby put on notice NOT to push beyond their bounds during this shut down.

Why did your officer decide to harass me last night when I was simply driving my car at a very slow speed, minding my own business?

Do we pay your officers to come to our neighborhood and harass us?

Why was he parked watching young people his own age sitting inside the kava bar and congregating outside —not observing social distancing—but ignoring them and choosing to pull out and follow me when I drove past him?

Why did he tailgate me without his headlights on but with his top lights on static and not pull me over, just harassed me?

Why did he not pull me over and instead pull up beside me in the middle of the road, again without his lights on?

Why did he use his squawk mechanism when I was stopped at a stoplight and saw that there was a pack of cyclists coming down Collins Avenue towards Southpoint Drive when it would've been dangerous for them and for me to have pulled out when he squawked?

Was he so intent on me that he didn't see the obvious?

Aren't officers supposed to be aware of the road and encourage safe rather than unsafe driving?

This is how it happened:

I was driving a responder who worked a long day volunteering at a free food facility in Fort Lauderdale and then taking her service dog to provide emotional comfort to people stressed out about the pandemic. All she wanted for herself was an ice cream cone so we drove to the Häagen-Dazs shop at the end of Southpointe Drive at 8:40 pm when we passed a Miami beach police officer parked several doors east of the Häagen-Dazs shop and crowded kava bar with his headlights off but his upper lights on static. I drove at 5 mph, appropriate for the narrow street and the skateboarders and people mingling in the area. We were wondering why the officer was allowing blatant use of the kava bar for more than outtake, a bar rumored to be a front for drug dealing and known to be a druggie dive, when the officer pulled out and tailgated us. Was he on the take and didn't want senior citizens poking their noses into his business?

My window was down as I made a big, long, slow looping turn around the circle at the end of Southpoint Drive. So the officer got a good long look at a senior citizen driving slowly and safely but still he tailgated us right on my bumper, making my female volunteer responder so uncomfortable she asked me to proceed without parking to go get a take-out ice cream

We proceeded slowly to the stop sign at Collins Avenue with the officer tailgating me the entire time, making my tired, generous friend unduly upset.

I waited at the stoplight because I saw a pack of bicycles about 200 feet up the road on Collins coming quickly south towards the intersection. They looked like they were definitely not gonna stop at the stop sign when the officer squawked at me with his squawk mechanism, a disturbing sound. He said nothing over his speaker, just squawked, obviously so focused on harassing me that he didn't even see the 8 cyclists and was pressuring me to put them and myself in harm's way!

The cyclist pack indeed did not stop at the stop sign.

If I had pulled out when the officers squawked at me to do so I would've hit those bicycles.

After they cleared the intersection I proceeded slowly with the officer close to my rear bumper and noticed the liquor and sundries store—which carries more than just alcohol—and thought maybe they might carry some rubbing alcohol, which I have not been able to find anywhere

I turned my left turn signal on and the police car popped out from behind me and pulled up next to me, blocking my left lane change!

With his window down he started to question me while we were driving! I stopped and answered his intrusive questions.

He stated with: "Is there a problem?"

I said "No, what's going on?"

He said he didn't like the way I was cruising!

I told him I lived at the Yacht Club and wanted to change lanes to go to the sundries/liquor store to see if they had rubbing alcohol.

He said they will not. I said, well they may have Everclear or some substitute since I could not find any.

I asked him if it mattered.

And he said, "That depends."

I knew then he was just trying to pick a fight and drove away.

I did not take the bait.

But I was FORCED OFF THE STREET with the ice cream and without any rubbing alcohol.

I took my friend home. She was upset; her dog was upset! She never got her ice cream.

I am not a nice guy when things like this come up. In fact, I turn very, very nasty. I let your little officer boy slide for the sake of my upset friend.

I'm gonna tell you this once: I expect you to do something about this officer.

If this kind of thing happens again, you, your department and this city will never recover from the legal action that I will bring against you.

That's not a threat, that's a promise

I suggest that you make sure your little 20-something-year-old hot shot jacked up stud punk officers looking to pick a fight with a senior citizen understand that this shut down is not a shut down of people's rights and not an excuse for them to harass senior citizens minding their own business.

In case you forgot who you're dealing with I'm gonna remind you who I am and what I do:

I made the city of Miami Beach put in the World War II Victory Gardens. I didn't ask; I told. Those World War II Victory Gardens survived because of me and me alone. I spent thousands of dollars and a lot of time on their original location, cleaning it up, installing a water system, and getting great soil. The city decided they were going to put a parking lot there. We made a deal that the Victory Gardens would go to the lot that they're on now on Collins. The city had no other option but to allow the WWII Victory Gardens to survive, something they really didn't want to do. The city threw their whole crew against me to no avail.

I was the behind-the-scenes operative who exposed the code enforcement officers who were letting code violations slide in return for free VIP service at nightclubs I frequented at the time.

In another scandal, I was instrumental in getting a Police Chief fired.

I am the singular reason that there's no stinky loud diesel generator pump in the middle of that wonderful little triangular park at Alton and 1st Street. I didn't ask; I told them they would not be able to put it there.

I am singularly responsible for making the city (and federal) government use a 60 inch sewage pipe from Miami Beach to Brickell Key, avoiding the disastrous smaller pipe they were planning to use.

The Miami Beach Police Department and the city of Miami Beach does not want to deal with me over some little ageist racist cop who wanted to harass a white senior citizen and a generous responder and her service dog minding their own business at the end of a long day. That's a fight you will lose if I decide to bring it.

Get your officers in line or I will do it for you.

I'm not asking.

Thank you,
Valentine
305-535-3000
YCP@Valentine.US
UPPER case indicates SIGNIFICANCE