

**IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA**

**ROSANNE SCAROLA BILELLO, as
Personal Representative of the ESTATE
OF PATRICK BILELLO, deceased, and
ROSANNE SCAROLA BILELLO,
individually,**

**CIVIL DIVISION "AN"
CASE NO. 502004CA009140XXXXMB**

Plaintiffs,

v.

**PRISON HEALTH SERVICES, INC.,
AMERICA SERVICE GROUP, INC.,
DR. EDGAR ESCOBAR, DR. ERIN CODY,
and EDWARD W. BIELUCH, in his official
capacity as the Sheriff of Palm Beach County,**

Defendants.

FILED
JUN 30 - 2 PM 4:01
THOMAS A. BILLO
PALM BEACH COUNTY FL
CIRCUIT CIVIL 7

ORDER GRANTING PLAINTIFF'S MOTION TO COMPEL

THIS CAUSE came before the Court upon Plaintiff's Amended Motion to Compel Defendant Prison Health Services, Inc. Response to Request to Produce Pursuant to Article 10, Section 25 (Amendment 7) ("Motion") on June 30, 2005, and the Court, having reviewed the Motion, having heard argument of counsel, and being otherwise fully advised in the premises, hereby makes the following findings:

1. In the Motion, Plaintiff requests that the Court compel Defendants to produce, among other things, records made and/or received in the course of business relating to all adverse medical incidents, pursuant to constitutional amendment Article X, Section 25 of the Florida Constitution ("Amendment 7"), as requested in their Request for Production dated February 16,

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2005. In response, Defendants have filed a Motion for Protective Order and Memorandum of Law, arguing in part that Amendment 7 cannot be retroactively applied.

2. In order to implement Amendment 7, the Florida Legislature enacted Section 381.028, Florida Statutes (2005), effective June 20, 2005, which provides that patients have the right to access records made and/or kept within the course of business pertinent to adverse medical incidents. The Court finds that Amendment 7 is self-executing, and the enactment of Section 381.028 was unnecessary to effectuate the Amendment. Amendment 7 was approved by a majority vote on November 2, 2004. According to *Gray v. Bryant*, 125 So. 2d 846, 851 (Fla. 1960), the seminal decision on whether or not a constitutional amendment is self-executing:

“The basic guide, or test, in determining whether a constitutional provision should be construed to be self-executing or not self-executing, is whether or not the provision lays down a sufficient rule by means of which the right or purpose which it gives or is intended to accomplish may be determined, enjoyed, or protected without the aid of legislative enactment.”

The Court agrees with the language of *McHale v. Tenewitz*, 2005 WL 900744, 4 (Fla. 18th Jud. Cir. Ct., Feb. 28, 2005), cited with approval in *Bean v. Pare*, Case No. 02-919 CA (Fla. 19th Jud. Cir. Ct., Sept. 21, 2005), that the Constitutional Amendment “reads like a Statute” and a close reading of the Amendment clearly indicates it establishes a sufficient rule by which the intent and purpose of the constitutional provision can be fulfilled without additional legislation. Moreover, Florida law requires a presumption that constitutional provisions are self-executing, since “in the absence of such presumption the legislature would have the power to nullify the will of the people expressed in their constitution, the most sacrosanct of all expressions of the people.” *NAACP v. Florida Bd. of Regents*, 876 So. 2d 636, 639 (Fla. 1st DCA 2004)(quoting

Gray v. Bryant, supra at 851).

3. Section 381.028 purports to construe Amendment 7 by providing that its application is prospective from November 2, 2004. Plaintiff is challenging the constitutionality of Section 381.028, arguing that the Amendment entitles her to all records regardless of their date. The Court agrees with the Plaintiff and holds that Section 381.028, to the extent it attempts to delimit the effect of Amendment 7 to post-November 2, 2004, is unconstitutional. It is true that statutes come “clothed with a presumption of constitutionality.” *See Dep’t of Legal Affairs v. Sanford-Orlando Kennel Club*, 434 So. 2d 879, 881 (Fla. 1983). Moreover, it is a fundamental rule of statutory construction that, if possible, a statute should be construed to be constitutional. *See Van Bibber v. Hartford Accident and Indemn. Ins. Co.*, 439 So. 2d 880, 883 (Fla. 1983). Generally, the court is bound “to resolve all doubts as to the validity of [the] statute in favor of its constitutionality, provided the statute may be given a fair construction that is consistent with the federal and state constitutions as well as with the legislative intent.” *State v. Stalder*, 630 So. 2d 1072, 1076 (Fla. 1994) (quoting *State v. Elder*, 382 So. 2d 687, 690 (Fla. 1980)).

4. However, the “fundamental object to be sought in construing a constitutional provision is to ascertain the intent of the framers and the provision must be construed or interpreted in such manner as to fulfill the intent of the people, never to defeat it.” *Gray v. Bryant, supra* at 852; *see also In re Advisory Opinion to Governor Request of June 29, 1979*, 374 So. 2d 959, 964 (Fla. 1979).

5. The clear intent and purpose of the framers of Amendment 7 is to allow access to information to past patients or patients considering undergoing treatment concerning a healthcare provider’s or treating facilities’ past adverse medical incidents. *See Metro. Dade County v.*

Chase Federal Housing Corp., 737 So. 2d 494, 500 (Fla. 1997) (“In order to determine the legislative intent as to retroactivity, both the terms of the Statute and the purpose of the enactment must be considered.”). Amendment 7 defines a “patient” entitled to records of adverse medical incidents as an individual “who has sought, is seeking, is undergoing, or has undergone care or treatment.” Art. X, §25, FLA. CONST. In order to achieve the purpose of Amendment 7, patients must be entitled to records of adverse medical incidents regardless of the date on which the records were created. A patient is entitled to these records to give an accurate depiction of their healthcare provider.

6. Prospective disclosure of documents relating to adverse medical incidents was not the intent of either the drafters of Amendment 7 or the voters in the November 2004 ballot. In *Weinburger v. Board of Public Instruction of St. John’s County*, 112 So. 253, 256 (Fla. 1927), the Court held that when the Constitution prescribes the manner of doing an act, the manner prescribed is exclusive, and it is beyond the power of the legislature to enact a statute that would defeat the purpose of the constitutional provision. The general rule is that when the Constitution provides the ways and means for accomplishing a purpose, the means provided is exclusive of every other means, even those attempted by the Legislature. See *State v. Volusia County School Bldg. Auth.*, 60 So. 2d 761, 762 (Fla. 1952). Thus, when the Constitution prescribes a remedy, while the Legislature may regulate the manner of its exercise, it may not revoke or change it, or place undue burden on its exercise. See *Holmer v. State ex rel. Stewart*, 28 So. 2d 586, 588 (Fla. 1947).

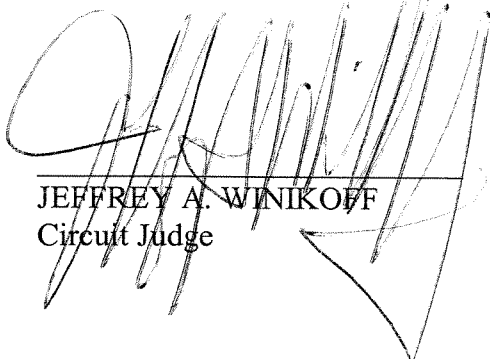
7. If this Court were to accept the constitutionality of Section 381.028, a patient who requested records the day after the Amendment went into effect would be entitled to **no**

information. This Court cannot construe Article X, Section 25 to create such an absurd result. *See In re Advisory Opinion to Governor Request of June 29, 1979*, 374 So. 2d 959, 964 (Fla. 1979) (“In construing provisions of the Constitution ... constructions which ... lead to absurd results ... must be avoided.”).

Accordingly, it is hereby **ORDERED AND ADJUDGED** that:

Plaintiffs’ Motion is **GRANTED**, and Defendants shall produce those documents relating to adverse medical incidents within thirty (30) days of the date of this order. Plaintiff shall keep confidential these documents and the information contained therein.

DONE AND ORDERED, in Chambers, at West Palm Beach, Palm Beach County, Florida, on this 2 day of November, 2005.



JEFFREY A. WINIKOFF
Circuit Judge

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