

IN THE CIRCUIT COURT OF THE
EIGHTEENTH JUDICIAL CIRCUIT
IN AND FOR BREVARD COUNTY,
FLORIDA

CASE NO: 05-2004-CA-18363-XXXX

ROSALINDA QUININE, Individually
as Personal Representative of the
ESTATE OF LEROY QUININE,

Plaintiff,

vs.

JOSEPH STERLING, M.D., and MELBOURNE
SURGERY CENTER, L.P., d/b/a
HEALTHSOUTH MELBOURNE SURGERY
CENTER, and LINDA THORPE C.R.N.A.,

Defendant.

ORDER ON IN CAMERA INSPECTION OF DOCUMENTS

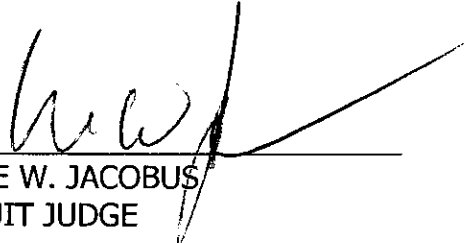
This matter came before the Court based on an In Camera Inspection of certain documents produced by the Defendant regarding incident reports at the facility to which the Defendant, Melbourne Surgery Center, LP, claims as work product. The Defendant, Healthsouth has identified 22 documents that are related to the request to produce propounded by the Plaintiff. They are asserting attorney-client privilege and work product privilege pursuant to Fla.R.Civ.P. 1.280(b)(5). The documents relate to

incident reports that were created due to the requirements of law by medical personnel that may have treated the Plaintiff decedent in this case.

The Court has reviewed all 22 documents. It appears that as far as relevance goes, seven (7) of the documents clearly would be relevant to the Plaintiff's case and the other documents may lead to relevant information, but they themselves do not appear to be relevant. However the question is: Are they discoverable by the Plaintiff? It is quite apparent that Article X, Section 25 of the Florida Constitution clearly amended the statutory law and decisional law as it relates to these incident reports for adverse medical incidents. The constitutional provision trumps any statutory scheme that tries to limit what is provided for in the constitution and also limits any decisional law by courts that would limit the scope of Article X, Section 25.

The Supreme Court in the case of Florida Hospital Waterman, Inc., v. Buster, 984 So.2d 478, set out the effect of the amendment to the Constitution that provided that patients have a right to records relating to adverse medical incidents. Based on the Florida Constitution and on *Buster*, the Court finds that the documents identified by the Defendant, Healthsouth as being privileged are discoverable by the Plaintiff and the documents shall be produced to the Plaintiff, within 10 days from the date of this Order.

DONE AND ORDERED in Chambers at Viera, Brevard County, Florida this 5th day of September, 2008.



BRUCE W. JACOBUS
CIRCUIT JUDGE

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