IN THE
SUPREME COURT
STATE OF MISSOURI

ANN SPRADLING and GENE SPRADLING Appellants, v. SSM HEALTH CARE ST. LOUIS d/b/a SSM ST. MARY'S HEALTH CENTER and SSM MEDICAL GROUP Respondents.	)	Supreme Court Case No. SC90613 Circuit Court No. 09SL-CC00581

APPEAL TO THE SUPREME COURT OF MISSOURI
FROM THE CIRCUIT COURT OF ST. LOUIS COUNTY, MISSOURI
21ST JUDICIAL CIRCUIT
THE HONORABLE TOM W. DePRIEST, JR., JUDGE

BRIEF OF AMICUS CURIAE, SAINT LOUIS UNIVERSITY

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JURISDICTIONAL STATEMENT

Amicus Curiae Saint Louis University hereby adopts and incorporates herein the jurisdictional statement contained in the brief of Respondents SSM Medical Group, Inc. and SSM Health Care St. Louis. Saint Louis University proffers for filing this Brief of Amicus Curiae pursuant to Missouri Supreme Court Rule 84.05(f)(3) pending leave granted by this Honorable Court.

STATEMENT OF FACTS

Saint Louis University adopts and incorporates herein the Statement of Facts set forth in the Brief of Respondents SSM Medical Group, Inc. and SSM Health Care St. Louis.

STATEMENT OF INTEREST

Saint Louis University respectfully asks this court to uphold the Circuit Court's interpretation of §538.225.2 RSMo (Supp. 2008). Saint Louis University operates under a tax exempt status to provide affordable health care to Missouri residents. As a charitable institution, it does not have a significant reserve of financial resources, thus making it particularly susceptible to the costs of frivolous litigation. The General Assembly enacted the current version of Section 538.225 RSMo to address frivolous medical-negligence claims by requiring an affidavit from a qualified medical professional, certifying the claim is meritorious. This statutory requirement helps medical providers avoid the costs of frivolous claims by preventing suits without a *prima facie* case in later stages of litigation from getting past the initial pleading stage. It also protects claimants by preserving a provider's resources for reconciliation of legitimate disputes, instead of squandering limited funds on trivial matters. Without the protection from frivolous lawsuits found in Section 538.225.2, Saint Louis University has a reduced ability to remain loyal to its educational and charitable mission.

Saint Louis University is a self-insured institution at the primary level. This means that until the "excess" insurance is triggered, the University will be solely responsible for any costs arising out of litigation. Unfortunately, due to the prohibitive costs of litigating even frivolous claims, many health care institutions, including Saint Louis University are forced to make "nuisance" value settlements of these claims. Non-meritorious claims have a dramatic impact on charitable self-insured institutions. Not

only may frivolous malpractice claims be brought to obtain a quick settlement, but they deplete resources that are dedicated to charitable services for Missouri residents.

The General Assembly enacted the affidavit requirement, § 538.225 RSMo, effective since 1986, to control the exploding malpractice costs that threaten the availability of affordable health care to Missouri residents. *Mahoney v. Doerhoff Surgical Services, Inc.*, 807 S.W.2d 503, 507 (Mo. 1991). The affidavit requirement requires a medical professional to certify claims brought against health care providers by rendering an opinion to support a *prima facie* case against the defendant. Teresa M. Waters & Peter P. Budetti et al., *Impact of State Tort Reforms on Physician Malpractice Payments*, 26 HEALTH AFF. 500, 508 (2007) (noting the effectiveness of expert-witness requirements in reducing the costs of malpractice litigation).

In 2005, the General Assembly strengthened the affidavit requirement by clarifying that a "legally qualified health care provider" should be practicing within substantially the same practice as the defendant-physician to certify a case to the court. §538.225.2 RSMo (Supp. 2008). Without this clarification, a pediatrician could testify to a neurosurgeon's standard of care merely because he was legally permitted to perform a certain procedure. Continued practice under the pre-existing loophole would allow establishment of a *prima facie* case, by a certifying health care provider who lacks the training, skill and experience from which to speak to the standards of care applicable to the defendant. By requiring a medical peer, one truly knowledgeable about the defendant's specialty or sub-specialty, the court preserves access to courts for legitimately aggrieved patients, while respecting the particularized training of modern

physician-specialists. *See* Catherine T. Struve, *Improving the Medical Malpractice Litigation Process*, 23 HEALTH AFF. 33, 35 (2004) (explaining that affidavit requirements hold promise to reduce the burden of suits that lack merit with minimal deterrence to valid claims). The Circuit Court has recognized the validity of the affidavit requirement and the similar necessity of the precise clarification of "legally qualified health care provider" by dismissing the plaintiff's action for failure to meet the procedural requirement.

To reduce the burden that frivolous malpractice litigation has on Missouri physicians and Saint Louis University, the Court should uphold the Circuit Court's decision, which was based on the clear language of RSMo Section 538.225.2, and require a legally qualified health care provider to be a member of the defendant's specialty or sub-specialty.

POINT RELIED ON

I. THE TRIAL COURT CORRECTLY DISMISSED PLAINTIFFS' CAUSE OF ACTION BECAUSE THE LEGISLATIVE INTENT AND THE PLAIN WORDING OF SECTION 538.225.2 RSMO (SUPP. 2008) REQUIRES A LEGALLY QUALIFIED HEALTH CARE PROVIDER HAVE PRACTICED IN THE SAME SPECIALTY AS DEFENDANT.

ARGUMENT

I. The trial court correctly dismissed plaintiffs' cause of action because the legislative intent and the plain wording of section 538.225.2 RSMo (Supp. 2008) requires a legally qualified health care provider have practiced in the same specialty as defendant.

In 2005, the Missouri General Assembly enacted House Bill 393, which repealed and amended several sections of the Missouri Revised Statutes relating to claims for damages. Many of the provisions of House Bill 393 relate to claims against health care providers. Within the amendments to Chapter 538, affecting such suits, the General Assembly amended Section 538.225 and defined the "legally qualified health care provider" necessary to support the affidavit required to be filed by a plaintiff within ninety days of suit. Section 538.225.2, added through House Bill 393, provides:

> As used in this section, the term "legally qualified health care provider" shall mean a health care provider licensed in this state or any other state in the same profession as the defendant and either actively practicing or within five years of retirement from actively practicing substantially the same specialty as the defendant."
>
> § 538.225.2 RSMo (Supp. 2008).

Plaintiffs/Appellants, Ann and Gene Spradling, challenge the trial court's plain reading of Section 538.225.2 and the dismissal of their case. The attack on the Circuit Court's order of dismissal ignores the legislative intent of the statute and rules of statutory construction.

A. The definition of "legally qualified health care provider" discourages frivolous suits.

This Court has addressed and upheld the constitutionality of the affidavit requirement in § 538.225 RSMo (1986) in *Mahoney v. Doerhoff Surgical Services, Inc.*, 807 S.W.2d 503 (1991). The 1986 version of Section 538.225 contained a requirement that a legally qualified health care provider opine that the plaintiff's allegations contain a possibility of *prima facie* proof of negligence. *Id.* at 508. The purpose of the section, the Court explained, was "to cull at an early stage of litigation suits for negligence damages against health care providers that lack even color of merit, and so to protect the public and litigants from the cost of ungrounded medical malpractice claims." *Id.* at 507. This "screening process" is a procedural requirement borne by the plaintiffs. *Id.* Through *Mahoney*, the affidavit requirement is seen by the General Assembly as vital to the management of frivolous malpractice lawsuits in Missouri to maintain an affordable and available environment of health care services to Missouri residents. *Id.*

The clarification of a "legally qualified health care provider" in §538.225.2 RSMo (Supp. 2008), requiring a certifying health care provider be of the defendant's same profession and have experience within the defendant's specialty of practice is consistent with *Mahoney* and legislative advances the initial intent. The right of a physician to have his or her actions assessed by medical peers within the same specialty or sub-specialty does not impose a substantive requirement on the plaintiffs, but merely ensures the affidavit requirement is effective to stop frivolous cases at an early stage in litigation. Further, as *Mahoney* noted, the result of a failure satisfying the affidavit requirement is

dismissal *without* prejudice, thereby preserving the plaintiff's right to continue pursuing the case. *Mahoney*, 807 S.W.2d at 508. This process adequately discourages frivolous claims while enabling legitimately aggrieved parties swift access to the full judicial process. Discouraging frivolous claims should reduce the number of cases on the Circuit Courts' dockets. Section 538.225.2 thereby allows parties with cases founded on the opinions of experts of the Defendant's same training and experience to have their claims redressed more quickly.

The General Assembly intended to protect Missouri residents and health care institutions from the burden of litigation that threatens the availability of affordable health care by reducing incentives to pursue ungrounded medical malpractice claims. *Mahoney*, 807 S.W.2d at 507. The Court should remain vigilant of the General Assembly's intent that the provider enlisted to opine on standard of care must be in substantially the same specialty as the defendant. Without a sound affidavit requirement, reinforced by the 2005 amendments, the costs and burdens that threaten the vitality of the Missouri physicians and the efficiency of Missouri courts will persist.

The medical profession has established, and Missouri has long accepted, board certification as a method to identify those physicians recognized by their medical peers as having the requisite training, knowledge and skills that make them expert in their field of practice. This self-imposed standard is the most consistent and cost-effective method to quickly approve a physician as a "legally qualified health care provider." *See e.g.* M.C.L. § 600.2169(1)(a); *Halloran v. Bhan*, 470 Mich. 572 (2004) ("The proposed expert witness must have the same board certification as the party against whom or on whose

behalf the testimony is offered."). Like board certification, requiring the certifying expert to have experience in the same medical specialty of the defendant, eliminates the burden on the courts and parties to address questions of physician qualification.

It is nationally recognized that physician-defendants deserve to be judged by a competent medical peer, not one unfamiliar with the standards of care expected of a specific specialty or sub-specialty. Teresa M. Waters & Peter P. Budetti, *Impact Of State Tort Reforms On Physician Malpractice Payments*, 26 HEALTH AFF. 500 (2007). The essential considerations of the standard of care relevant to a specific specialty extend far beyond the procedure in question. The American Board of Neurological Surgery ("ABNS"), the association that certifies physicians in the specialty of Neurology, explains that obtaining board certification demonstrates that the physician has the "knowledge, skills, and experience necessary to provide quality patient care in neurological surgery." ABNS, http://www.abns.org/content/about_abns.asp. The comprehensive experience necessary for board certification in a given specialty provides a much better basis for assuring an expert's understanding of the applicable standards of care than was relied on under previous Section 538.225. Therefore, the General Assembly has statutorily defined "legally qualified health care provider" § 538.225.2 (Supp. 2008). To ensure the affidavit remains effective, the Court should ensure that a legally qualified health care provider is within the same specialty or sub-specialty as the physician-defendant.

Without a limit on the type of physician suitable to certify a case to the court, the affidavit requirement is ineffective to meet its legislative purpose. The costs of frivolous

medical-negligence cases will drastically affect health care providers that do not have the resources to continually fight such claims, which include charitable self-insured institutions. The Missouri Department of Insurance has taken the position that ". . . lawsuits of suspect merit should not become mere bargaining chips for a settlement with the provider and the insurer." MISSOURI DEPARTMENT OF INSURANCE, MEDICAL MALPRACTICE: INSURANCE IN MISSOURI THE CURRENT DIFFICULTIES IN PERSPECTIVE (Feb. 2003). The commonsense reading of Section 538.225.2 would ensure that legally qualified health care providers have sufficient knowledge of the defendant's specialty. This would allow Missouri health care providers to approach litigation with less skepticism and would also strengthen the physician base in Missouri that serves the beneficiaries of charity care.

The modern practice of medicine is an extremely complicated field requiring years of intense education to become a competent practitioner. Unfortunately, the medical field is no different than others where, as Judge Jack Weinstein puts it, "An expert can be found to testify to the truth of almost any factual theory, no matter how frivolous, thus validating the case sufficiently to . . . force the matter to trial." Jack B. Weinstein, *Improving Expert Testimony*, 20 U. RICH. L. REV. 473, 482 (1986); See also Catherine T. Struve, *Doctors, the Adversary System, ad Procedural Reform in Medical Liability Litigation*, 72 FORDHAM L. REV. 943, 976 (2004) [noting that, in relation to medical professionals, "Courts' leniency concerning expert qualifications may also have contributed to the cynicism of observers who suspected that parties with weak positions shopped for an expert willing to support their views."]. The clarification of "legally

qualified health care provider" in Section 538.225.2 is a rational means to reduce the ability of attorneys to engage *any* physician to certify a case to the court even though the provider may not adequately understand the nuances of the defendant's specialty.

The Missouri Supreme Court has recently acknowledged the problem of so-called "expert-shopping," noting that it is especially a concern in the medical profession. *State ex rel. State v. Parkinson*, 280 S.W.3d 70, 78 (Mo. 2009) (noting, in the concurring opinion, "Other professionals, especially medical professionals, can be heard to complain about the laxity of standards that allows for such expert shopping."). The 2005 amendments to Section 538.225 had the effect of reducing the ability of attorneys to solicit experts merely to support their theory by clearly delineating the providers that could be recruited as reputable experts early in the litigation. *See* Catherine T. Struve, *Expertise in Medical Malpractice Litigation: Special Courts, Screening Panels, and Other Options*, Pew Charitable Trusts 3 (2003) (explaining that attorneys who specialize in medical-negligence cases have broad access to physician-specialists and usually obtain an expert opinion before initiating suit). The consistency afforded by Section 538.225.2 provides much needed transparency to medical-negligence litigation. By requiring the legally qualified health care provider to practice within substantially the same specialty as a defendant, the Court ensures that the provider is sufficiently knowledgeable of the defendant's standard of care to certify the case.

B. Appellants' interpretation is incompatible with rules of statutory construction.

One well-established tenet of statutory construction presumes that legislatures do not intend to enact laws with absurd results, and interpretations that avoid unreasonable results are to be preferred. *Care and Treatment of Schottel v. State*, 159 S.W.3d 836, 842 (Mo. 2005). Appellants in this case attempt to persuade the Court to adopt an interpretation of Section 538.225.2 that would create an untenable result. This interpretation should therefore be rejected by the Court.

§ 538.225.2 RSMo (2009) states:

> As used in this section, the term "legally qualified health care provider" shall mean a health care provider licensed in this state or any other state in the same profession as the defendant and either actively practicing or within five years of retirement from actively practicing substantially the same specialty as the defendant.

Appellants argue that the clause, "substantially the same specialty as the defendant,"[1] only modifies the immediately preceding clause, "within five years of retirement from actively practicing,"[2] but does not modify the "actively practicing" phrase that precedes "or."[3] Thus, subject to additional qualifications, under this interpretation a plaintiff must obtain an affidavit from either (1) an actively practicing

[1] Hereinafter the "Same Specialty" clause.

[2] Hereinafter the "Retired Practitioner" clause.

[3] Hereinafter the "Active Practitioner" clause.

health care provider, or (2) a health care provider that has retired within the last five years from the same specialty as the defendant health care provider. Appellant Brief, p. 17.

In advocating this interpretation, Appellants are essentially applying to Section 538.225.2 a rule of statutory construction known as the Last Antecedent rule. This rule states that qualifying phrases must be applied to words and phrases that immediately precede the qualifying phrase and must not be extended to more remote words or phrases. *Thompson v. Comm. on Legislative Research*, 932 S.W.2d 392, 395 (Mo. 1996); *Rothschild v. State Tax Comm. of Mo.*, 762 S.W.2d 35, 37 (Mo. 1988); *United States v. Friedrich*, 402 F.3d 842, 845 (8th Cir. 2005). When applying this rule, Appellants use the disjunctive "or" to distinguish among the phrases to which the qualifying phrase does and does not apply: those that come before "or" are too remote for qualification, and those coming after "or" receive the qualification. Appellant Brief, p. 17. In other words, under Appellants' use of the rule in Section 538.225.2, the Same Specialty clause is the *qualifying* phrase, the Retired Practitioner clause is the *immediately preceding* phrase that is qualified, and the Active Practitioner clause is the *remote* phrase that is not qualified.

Appellants ignore another well-recognized corollary to the Last Antecedent rule, that it "is . . . merely an aid to construction and will not be adhered to where extension to a more remote antecedent is clearly required by consideration of the entire act." *Union Elec. Co. v. Dir. Of Revenue*, 799 S.W.2d 78, 79 (Mo. 1990); *Norberg v. Montgomery*, 173 S.W.2d 387, 390 (Mo. 1943); *Friedrich*, 402 F.3d at 845. Section 538.225.2 is just such an act, and its interpretation requires more than a selective application of the Last Antecedent rule. In this situation the Last Antecedent rule creates a conflict with the

presumption that the legislature enacts laws that are not absurd. Care and Treatment of Schottel, at 842. Specifically, Appellants' application of the Last Antecedent Rule to § 538.225.2 RSMo would produce unreasonable results in the context of the entire chapter containing the section.

If the Last Antecedent rule is to be applied to the current version of Section 538.225.2 as Appellants propose, then it should be applied consistently to the entire statute. Appellants ignore application of the Last Antecedent rule to the first half of Section 538.225.2, which states that a legally qualified health care provider must be "licensed in this state or any other state in the same profession as the defendant . . ." §538.225.2 RSMo (Supp. 2008). This first half of the subsection has a structure identical to the latter half of the subsection, in that it contains a disjunctive ("or") that separates two distinct phrases ("licensed in this state"[4] and "any other state"[5]) followed by a modifying clause ("in the same profession as the defendant"[6]). Such parallel construction between the two halves of Section 538.225.2 mandates simultaneous application of the Last Antecedent rule if that rule is to be applied. *President Casino v. Dir. of Revenue*, 219 S.W.3d 235, 240 (Mo. 2007), *quoting Marre v. Reed*, 775 S.W.2d 951, 953 (Mo. 1989) ("Related clauses are to be considered when construing a particular portion of a statute."); *State v. Salter*, 250 S.W.3d 705, 711 (Mo. 2008) (noting that provisions of

[4] Hereinafter the "In-State-Licensed" clause.

[5] Hereinafter the "Out-of-State-Licensed" clause.

[6] Hereinafter the "Same Profession" clause.

legislative acts "should be harmonized with each other"). Applying Appellants' logic to the first half of Section 538.225.2, the Same Profession clause should then only modify the Out-of-State-Licensed clause as the *immediately preceding* phrase, but should not modify the In-State-Licensed clause as a *remote* phrase.

The result of this complete and proper application of the Last Antecedent rule is that Section 538.225.2 places the following qualifications on the type of health care provider that can certify a medical malpractice case:

The provider must:

> Be licensed:
>
> (1) in Missouri, or
>
> (2) in another state in the same profession as the defendant, and
>
> Be:
>
> (a) actively practicing, or
>
> (b) within five years of retirement from actively practicing substantially the same specialty as the defendant.

This interpretation leads to unworkable and clearly unintended results. As used in Chapter 538, the term "health care provider" is defined in § 538.205(4):

> Any physician, hospital, health maintenance organization, ambulatory surgical center, long-term care facility including those licensed under chapter 198, RSMo, dentist, registered or licensed practical nurse, optometrist, podiatrist, pharmacist, chiropractor, professional physical therapist, psychologist, physician-in-training,

> and any other person or entity that provides health care services under the authority of a license or certificate." § 538.205(4) RSMo (Supp. 2008).

Application of the Last Antecedent Rule to Section 538.225.2 would allow for any health care provider licensed in Missouri to certify a medical malpractice case without regard to that providers profession or specialty of practice. Under this interpretation, a nurse could meet the affidavit requirements for a case against a neurosurgeon, as long as he or she are licensed in Missouri. For that matter, a dentist, chiropractor, pharmacist or any other number of health care providers licensed in Missouri could support such a case.

Should the first "or" in Section 538.225.2 modify only the succeeding clause, as Appellants suggest, a second classification of "legally qualified health care providers" is created; those not licensed in Missouri. Health care providers licensed in other states must be in the same profession of the defendant. Under this reading of Section 538.225.2 it is only required that a physician certify a case against a defendant physician if the certifying health care provider is not licensed in Missouri. This is not a reasonable interpretation of this statute nor could it reflect its intent. Yet, complete application of the Last Antecedent rule leads to this interpretation.

Giving full effect to the Last Antecedent rule to Section 538.225.2, the second category of "qualified health care providers," must meet further qualifications set out following the conjunction "and." Health care providers

licensed outside Missouri must "either be actively practicing or within five years of actively practicing substantially the same specialty as the defendant." § 538.225.2 RSMo (Supp. 2008). The health care providers licensed in other states must all be of the same profession as the defendant. Here, however, only those not in active practice, although not retired for more than five years, must also have practiced in the same specialty as the defendant. Plaintiffs urge this Court to adopt these varying qualifications between active and retired health care providers, but to ignore any distinctions in the qualifications of those licensed by the State of Missouri and those licensed elsewhere. In effect, they are selectively applying the Last Antecedent rule.

Universal application of the Same Specialty and Same Profession clauses to all health care providers in Section 538.225.2 should be favored over interpretation under the Last Antecedent rule. This would eliminate the absurd results produced by Appellants' interpretation and provide a more reasonable application of the law. A plain reading of Section 538.225.2 lends itself to this interpretation because of the parallel construction in both halves of the subsection (divided by the conjunctive "and"). In the first half of the section the term "licensed" clearly refers to both the In-State-Licensed and Out-of-State-Licensed clauses despite the presence of the disjunctive "or" between them, otherwise the sentence undermines the clear intent of this provision. The in-state/out-of-state parallelism clearly mandates a reading of the sentence so that the In-State-Licensed and Out-of-State-Licensed clauses are read as a single phrase to be modified both by the "licensed in" and "same profession" qualifications. The parallel structure present in the

second half of the subsection requires the same result. Because the language following "and" is a single phrase, the Same Specialty clause should modify the entire phrase rather than a portion of the phrase. This Court has previously held; "[w]here several words are followed by a clause as much applicable to the first and other words as to the last, the clause should be read as applicable to all." *Norberg*, 173 S.W.2d at 390 (applying modifying clause at end of list of terms to entire list). Thus, universal application of the modifying clauses should be preferred over application of the Last Antecedent rule.

One might think that the Same Specialty requirement is simply a subset of the Same Profession requirement, so that if both providers are in the same specialty, then they are necessarily in the same profession. Thus, to apply both the Same Specialty and Same Profession qualifications to certifying providers would be to create a redundancy in the text of the statute. But this reasoning is flawed, because it is possible for two providers to practice in the same specialty and yet hail from different professions. For example, a nurse anesthetist would easily be considered a "health care provider" under § 538.205(4) RSMo, practicing in the medical specialty of anesthesiology, yet would not be considered to be in the same profession as an anesthesiologist, who has obtained a medical degree through much more extensive training. Therefore, a specialty is not necessarily a subset of a profession, so the interpretation of the Circuit Court produces no debilitating redundancies in the statute.

Appellants argue that the legislature enacted Section 538.225.2 out of a concern that "retired physicians were certifying malpractice cases," and, therefore, only retired certifying physicians should be from the same specialty as the defendant. Appellants'

Brief, p. 18. Under Appellants' interpretation, a physician six months removed from obtaining a medical license and practicing in any specialty is more competent and qualified to certify a medical malpractice claim than is an experienced physician six months into retirement, unless the retired physician practiced in the same specialty as the defendant. It is unreasonable to believe that a physician's competency and knowledge in his field of practice would diminish immediately upon retirement.

Even if retired certifying physicians were a concern of the legislature's, limiting application of the Same Specialty clause to the Retired Practitioner clause would do no more to accomplish the intent of the legislature than would application of the Same Specialty clause to both the Retired and Active Practitioner clauses. Under *both* interpretations retired physicians must have retired within five years of practicing in the same specialty. Therefore, Appellants' presumption that the legislature was concerned about retired physician certification does nothing to support Appellants' interpretation over any other interpretation; this particular legislative intent is inapposite as to the qualifying phrase's scope of application. Assuming a legislative purpose of limiting the role of retired physicians in supporting medical malpractice claims, the five year window for their doing so under Section 538.225.2 insures opinions based on relatively recent experience.

This reading of the statute produces cogent results founded on reason, absent from Appellants' interpretation. Under the appropriate interpretation by the Circuit Court, *all* certifying providers must be licensed in the same profession and have practiced in the same specialty as a defendant. Amicus Curiae, Saint Louis University, respectfully

requests this Court affirm the trial of the Circuit Court's order of dismissal upholding the legislative intent and plain meaning of Section 538.225.2.

CONCLUSION

The costs related to groundless malpractice allegations have been the primary impetus for calls for tort reform. *Mahoney*, 807 S.W.2d at 507-8. Legislative measures, such as the definition of "legally qualified health care provider" in Section 538.225.2, have reduced the incentive to bring suits with questionable merit. The affidavit requirement is a rational legislative effort to reduce the costs of questionable litigation that requires medical institutions to allocate resources to defend ungrounded medical negligence claims. A strong affidavit requirement will enable Saint Louis University to more efficiently pursue legitimate claims without the burden of sorting out frivolous claims.

The 2005 amendments to Section 538.225 were meant to shore up the affidavit requirement. The plain meaning of Section 538.225.2 requires only that a health care provider having experience within the same specialty of the defendant provide an assessment of the applicable standard of care. To cultivate a fair and efficient judicial framework that can adequately process malpractice claims, legislative intent should be preserved by upholding the Circuit Court's reading of Section 538.225.2. By doing this, the Court preserves the right of plaintiffs with a prima facie meritorious case to have unfettered access to courts

Saint Louis University respectfully urges this Court to affirm the order of dismissal entered by the Circuit Court.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies to the following:

1. Brief of the Amici Curiae contains the information required by Rule 55.03;

2. Brief of the Amici Curiae complies with the limitations contained in Rule 84.06(b);

3. Brief of the Amici Curiae, excluding the cover page, certificate of service, this certificate and signature blocks, contains 5,018 words, as determined by the word count tool contained in Microsoft Word Office 2007 software with which this Brief was prepared; and

4. The diskette accompanying Brief of the Amici Curiae has been scanned for viruses and to the best knowledge, information and belief of the undersigned is virus free.

February 22, 2010

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Stephen G. Reuter

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, pursuant to Rule 84.06(g), one copy of the foregoing brief and a copy of the brief on disk were mailed, via first-class postage prepaid on this 22nd day of February, 2010, to:

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