



**PROPER PLANNING MAY CREATE PEACE OF MIND**



**June 2008**

**MED-MAL STATUTE OF LIMITATIONS DID NOT RUN  
UNTIL GUARDIAN APPOINTED**

The Fifth District Court of Appeal has ruled that the statute of limitations in a medical malpractice claim did not begin to run until a Guardian had been appointed, and accrual of the action is therefore delayed. **Thomas v. Lopez**, Case No. 5DO7-349, April 18, 2008.

Tammy Thomas was twenty eight weeks pregnant when she began experiencing chronic hypertension. After an amniocentesis she began having a reaction and was admitted to the hospital on March 21, 2003 where she went into cardiac and respiratory arrest resulting in brain injury. The child was safely delivered that day.

On December 31, 2003, *our firm* had the Court appoint Mrs. Thomas as Plenary Guardian of her daughter. On March 2, 2005, Mrs. Thomas filed a petition requesting a 90 day extension of the statute of limitations pursuant to F.S. 766.104. This was followed by serving notices of intent to initiate medical malpractice litigation on August 10, 2005, and a complaint on February 1, 2006.

After the health care providers answered the Complaint they filed motions for summary judgment arguing that the

claim was barred by the statute of limitations which ran either when Tammy sustained her injuries or when Mrs. Thomas confronted Dr. Lopez about her suspicions. Mrs. Thomas filed a response and cross-motion for summary judgment alleging that she had no duty nor legal authority to file a claim until she had been appointed Guardian of her daughter. Summary judgment was granted to the defendants.

The Appellate Court opined that due to the significant brain damage Tammy suffered she had no knowledge of her injury or that there was a reasonable probability it was caused by medical malpractice. She therefore did not have sufficient actual notice to trigger the statute of limitations. Her mother's knowledge is not imputed to Tammy until her appointment as plenary guardian. Moreover, summary judgment was improper as there is a question of fact as to the date on which the Guardian should have known with the exercise of reasonable diligence of the possibility of medical negligence.

Kudos to Julie H. Littky-Rubin for her excellent brief and oral argument!

***“We cannot conclude that the family ... of an injured incapacitated party has the right or duty to file suit regarding an emancipated adult child’s cause of action.”***

Ask About Hosting Our  
Free Advanced Level CLE  
at Your Office.

**Firm Facts:**

Stephanie is a Former Chair of The Florida Bar Elder Law Section. Our firm is proud to be a Business Friend of Eagle sponsor for the Florida Justice Association.

**Practice Areas**

**Estate & Incapacity Planning**

- ◆ Last Will & Testament
- ◆ Probate & Trust Administration
- ◆ Revocable Trust
- ◆ Durable Power of Attorney
- ◆ Designation of Healthcare Surrogate
- ◆ Quit Claim Deed
- ◆ Living Will

**Emergency & Advocacy Services**

- ◆ Emergency & Standard Guardianships
- ◆ Long Term Care Facility Residents' Rights
- ◆ Medicaid Applications & Appeals

**Government Assistance**

- ◆ Special Needs Trusts
- ◆ Representation of Special Needs Trust's Trustees
- ◆ Protecting Lawsuit Proceeds and Inheritances While Preserving Medicaid and SSI Eligibility
- ◆ Exceptions to Medicaid Lien Recovery