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## **Appellate Bulletin**

### Florida Hospital Waterman, Inc. v. Buster

On March 10, 2006, Florida's Fifth District Court of Appeal (Daytona Beach) issued its opinion in Florida Hospital Waterman, Inc. v. Buster, case No. 5D05-2195 (Fla. 5th DCA March 10, 2006). The primary issue was whether recently-enacted article X, section 25 of the Florida Constitution ("Patients' Right To Know Amendment") preempts statutory privileges afforded to health care providers' self-policing procedures. The Court determined that the constitutional amendment does preempt those statutory exemptions: *"We conclude that the trial court correctly held that Amendment 7 is self-executing and allows for the discovery, during the course of litigation by a patient against a health care provider, of information and documents that emanate from the self-policing processes of health care providers."*

The Fifth District did certify three questions to the Florida Supreme Court as matters of great public importance:

- 1) DOES AMENDMENT 7 PREEMPT STATUTORY PRIVILEGES AFFORDED HEALTH CARE PROVIDERS' SELF-POLICING PROCEDURES TO THE EXTENT THAT INFORMATION OBTAINED THROUGH THOSE PROCEDURES IS DISCOVERABLE DURING THE COURSE OF LITIGATION BY A PATIENT AGAINST A HEALTH CARE PROVIDER?
- 2) IS AMENDMENT 7 SELF-EXECUTING?
- 3) SHOULD AMENDMENT 7 BE APPLIED RETROACTIVELY?

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