ELAINE RANDLE : NUMBER: 553,317-B

VERSUS : FIRST JUDICIAL DISTRICT COURT

LOUISIANA STATE UNIVERSITY : CADDO PARISH, LOUISIANA

HEALTH SCIENCES CENTER

 **REASONS FOR JUDGMENT**

The evidence presented at the November 14, 2011 prescription hearing primarily included medical reports of LSUHSC concerning treatment rendered to plaintiff Elaine Randle on November 21 and December 19, 2003, January 9, 2004 and October 22, 2010, the latter date of which Ms. Randle alleges that the brain mass was revealed to her. It is significant that Ms. Randle chose not to testify at the November 14. Of course, the Court is duty-bound to consider only the evidence admitted, which are certified medical records from LSUHSC.

In argument, plaintiff counsel has asserted continuing tort and contra non valentem theories that prescription for this event, which occurred about 7 years ago, did not begin to run until October 22, 2010. The Court agrees with defense counsel for LSUHSC that the claim is prescribed on its face and, accordingly, plaintiff Elaine Randle bears the burden of proof. What Ms. Randle knew about the December 19, 2003 MRI and the January 9, 2004 consultation, or what she did not know, is not before the Court as she did not testify in connection with the prescription hearing. What is clear to the Court, based on the certified medical records, is that: (1) on November 21, 2003, the plaintiff was seen by the ophthalmology clinic of LSUHSC regarding her complaints of severe vision deterioration in her left eye; (2) on December 19, 2003, a MRI was performed and a mass was noted (although it is unlikely Ms. Randle was told of the finding on that date); (3) on January 9, 2004, Ms. Randle had a follow-up examination in the neuro-ophthalmology clinic with respect to the December 19, 2003 examination; (4) on January 9, 2004 Ms. Randle was instructed to return to LSUHSC, and she failed to comply with those orders; (5) between January 2004 and 2010 Ms. Randle was treated by other departments of LSUHSC for totally unrelated medical issues.

Considering the evidence in this prescription exception record, this Court rejects the continuing tort/contra non valentem arguments of plaintiff counsel. Many years have passed between the date of the alleged malpractice and the date of plaintiff’s claim; there is no suspension and therefore the prescriptive (or peremptive) period set forth under R.S. 9:5628, as applied, mandates that the peremptory exception of prescription be sustained and that the claims of the plaintiff be dismissed, with prejudice, at her costs.

Signed this 15th day of November, 2011, in Shreveport, Caddo Parish, Louisiana.

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 SCOTT J. CRICHTON

 DISTRICT JUDGE

DISTRIBUTION:

Frank M. Ferrell, Counsel for Elaine Randle

Barbara Bell Melton, Counsel for LSUHSC-Shreveport`