DENNIS SWANEY, : NUMBER: 544,857-B

INDIVIDUALLY AND ON

BEHALF OF HIS DECEASED

MOTHER, LOIS GUETERMAN

VERSUS : FIRST JUDICIAL DISTRICT COURT

LOUISIANA STATE : CADDO PARISH, LOUISIANA

UNIVERSITY HEALTH SCIENCE

CENTER, ET AL

**REASONS FOR JUDGMENT**

**ON EXCEPTION OF PEREMPTION OR PRESCRIPTION**

On May 10, 2011, trial was held on the Exception of Peremption or Prescription, filed December 23, 2010 by LSU Health Sciences Center (LSUHSC) and Dr. Mary Mancini. The Court heard testimony from Dennis Swaney and Dr. Mancini and received into evidence the certified medical records of Lois Gueterman as well as other exhibits. After thorough consideration of the testimony, exhibits, entire record, applicable law and for reasons which follow, the Court concludes that the exception should be sustained and Mr. Swaney’s claims dismissed with prejudice.

On October 5, 2010, Dennis Swaney filed a request to empanel a medical review panel with the Louisiana Division of Administration and a petition in district court asserting claims of medical malpractice, fraud and misrepresentation which allegedly occurred at LSUHSC between June 3-19, 2006.

Mr. Swaney’s mother, Lois Gueterman, presented at LSUHSC on June 3, 2006 with a self-inflicted gunshot wound to her chest. Mr. Swaney testified that he filed this petition based on information that he received from Dr. Cuthbert Simpkins, a terminated surgeon of LSUHSC, and/or Dr. Simpkins’ attorneys, on or about October 5, 2009. The information he received on that date led him to believe fraud, misrepresentation and medical malpractice were involved in his mother’s treatment and subsequent death. The competent evidence in the record is the testimony of Dr. Mancini and the certified records of LSUHSC. This evidence supports the conclusion that although Ms. Gueterman, by her self-inflicted wound to her chest, clearly wanted to die, LSUHSC through its medical team, including Dr. Mancini, valiantly but unsuccessfully worked to save her life. A review of this evidence reflects no cover-up, misrepresentation, fraud or malpractice. It is significant that Dr. Simpkins, who was not involved in the case of Ms. Gueterman and had no first-hand knowledge of her treatment, did not testify in this proceeding. In accordance with the Louisiana Code of Evidence, Mr. Swaney’s testimony of what Dr. Simpkins told him was not offered/admitted for the truth of the matter asserted but, rather for the sole purpose of showing why Mr. Swaney took action. Furthermore, there was no coroner’s autopsy report, no forensic pathologist’s expert opinion, and no expert whatsoever presented by plaintiff counsel at the exception trial to support the allegations. Finally, Mr. Swaney could have obtained his deceased mother’s medical records from LSUHSC and timely taken legal action if he felt it warranted. Clearly, in light of the dates of June 2006 and October 2010 (“four years, four months”, as defense counsel observes) and the lack of any competent evidence of concealment or malpractice, this case is subject to the peremptive period set forth in R.S. 9:5628 as interpreted in recent jurisprudence from our supreme court. Accordingly, the Exception of Peremption or Prescription filed by LSUHSC and Dr. Mancini is sustained and Mr. Swaney’s claims are dismissed with prejudice.

Counsel shall submit a formal Judgment in accordance with La. Dist. Ct. R. 9.4.

Signed this 17th day of May, 2011 in Shreveport, Caddo Parish, Louisiana.

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SCOTT J. CRICHTON

DISTRICT JUDGE

DISTRIBUTION:

Susan Hamm, Counsel for plaintiff

Brian Landry, Counsel for defendants