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IN THE SUPREME COURT OF OHIO

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| <p>ProMedica Health System and The Toledo Hospital,</p> <p style="text-align: right;">Appellants,</p> <p>v.</p> <p>Virginia King,</p> <p style="text-align: right;">Appellee.</p> | <p>On Appeal From The Lucas County Court of Appeals Sixth Appellate District</p> <p>Court of Appeals Case No. L-09-1282</p> <p style="font-size: 2em; font-weight: bold;">10-1236</p> |
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**MEMORANDUM OF AMICI CURIAE
MERCY HEALTH PARTNERS AND CATHOLIC
HEALTHCARE PARTNERS IN SUPPORT
OF JURISDICTION**

Garrick O. White (0070102) (Counsel of Record)
Richard F. Ellenberger (0016463)
ANSPACH MEEKS ELLENBERGER LLP
300 Madison Ave., Suite 1600
Toledo, OH 43604-2633
(419) 246-5757 Telephone
(419) 321-6979 Facsimile
gwhite@anspachlaw.com

Barry F. Hudgin (0015847)
Vice President & General Counsel
Mercy Health Partners
2200 Jefferson Avenue
Toledo, OH 43604
(419) 251-2889 Telephone
(419) 251-0548 Facsimile
Barry_Hudgin@mhsnr.org
COUNSEL FOR *AMICI CURIAE* MERCY HEALTH
PARTNERS AND CATHOLIC HEALTHCARE PARTNERS

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(Counsel for Parties Listed on Following Page)

Marshall A. Bennett, Jr. (0015845) (Counsel of Record)
Jennifer J. Dawson (0033707)
Marshall & Melhorn, LLC
Four Seagate, Eighth Floor
Toledo, OH 43604
(419) 249-7100 Telephone
(419) 249-7151 Facsimile
bennett@marshall-melhorn.com
COUNSEL FOR APPELLANTS PROMEDICA HEALTH
SYSTEM AND THE TOLEDO HOSPITAL

John T. Murray (0008793) (Counsel of Record)
Leslie O. Murray (0081496)
Murray & Murray Co., L.P.A.
111 East Shoreline Drive
Sandusky, OH 44870
(419) 624-3000 Telephone
(419) 624-0707 Facsimile
jotm@murrayandmurray.com

John L. Huffman (0039658)
Mickel & Huffman
520 Spitzer Building
Toledo, OH 43604
(419) 242-8461 Telephone
(419) 242-6866 Facsimile
jhuffman@aol.com
COUNSEL FOR APPELLEE VIRGINIA KING

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I. Statement as to Why the Virginia King Case is of Public and/or Great General Interest

All medical providers, health insuring corporations, insurance carriers, and patients throughout the State of Ohio are notably impacted by the Decision and Judgment dated June 4, 2010 from the 6th District Court of Appeals for Lucas County, Ohio in Virginia King v. ProMedica Health System, et al., 2010-Ohio-2578 (6th Dist. CA Lucas Cty. 2010). That decision, which erroneously interprets Ohio Revised Code §1751.60 as prohibiting medical providers from seeking compensation from any entity other than a patient's health insuring corporation, including all potentially liable payors, significantly affects entities statewide other than just the parties to the Virginia King case, thereby making the appeal of the decision a matter of "public or great general interest" so as to warrant the exercise of jurisdiction by the Ohio Supreme Court pursuant to Rule II, §1(A)(3) of the Rules of Practice of the Ohio Supreme Court. Accordingly, this Court should exercise its discretionary jurisdiction over the Virginia King case.

The 6th District Court of Appeals' decision in the Virginia King case clearly changes and redefines the intent and scope of Ohio Revised Code §1751.60 by prohibiting medical providers from seeking compensation for covered services from any potentially responsible entity other than a patient's health insuring corporation. The Ohio Supreme Court must exercise its discretionary jurisdiction in the Virginia King case because the decision contains a statutory interpretation that significantly affects all medical care providers throughout the State of Ohio, as well as various other entities, including health insuring corporations, insurance carriers, and individual patients.

In addition, the decision from the 6th District Court of Appeals clearly raises issues of significant constitutional importance. Specifically, the statutory interpretation by the 6th District Court of Appeals lacks sufficient and adequate analysis and further leaves Ohio Revised Code

§1751.60 in conflict with Ohio and Federal Statutes. The 6th District Court of Appeals' construction and interpretation of Ohio Revised Code §1751.60 ignores the intent of the statute to provide protection for individual enrollees and subscribers, fails to perceive the ambiguity present within the statute, rejects the fundamental inconsistency between its decision and other Ohio and Federal statutes including Ohio Revised Code §3902.11, focuses myopically on the single word "solely" within the statute, and cites for authority only the 11th District Court of Appeals' decision in the *Hayberg v. Physicians Emergency Serv. Inc.* case¹, which is clearly not controlling precedent², and the secondary authority of *Black's Law Dictionary*. The decision from the 6th District Court of Appeals mandating that medical providers seek compensation only from the health insuring corporation subject to a contract for covered services and expressly prohibiting medical providers from seeking compensation from any other potentially responsible entity is in inherent conflict with Ohio's coordination of benefits statutes, Ohio Revised Code §§3902.11, *et seq.*, and Federal Medicare statutes.

The practical impact of the decision from the 6th District Court of Appeals demonstrates that the statutory interpretation and subsequent application of the statute is of significant public or great general interest. Medical providers throughout the State of Ohio currently seek compensation for covered medical services through long-standing and industry-recognized billing practices that allow such providers to seek payment from any and all potentially responsible payors, taking into account Ohio's coordination of benefits statutes. If the 6th

¹ 2008-Ohio-6180 (11th Dist. CA Portage Cty. 2008), appeal not accepted for review (2009), 121 Ohio St.3d 1442, 2009-Ohio-1638.

² As an opinion of one judge with a concurrence in judgment only and not as to the opinion by another judge and a dissenting opinion by the third judge, the decision rendered is entitled to no precedential value beyond the parties involved therein. See, *People v. Petros*, 198 Mich.App. 401, 499 N.W.2d 784 (1993); *Hester by Scott v. Rymer*, 717 S.W.2d 251 (Mo. Ct. App. S.D. 1986); and, *Northern Indiana Public Service Co. v. Citizens Action Coalition of Indiana, Inc.*, 548 N.E.2d 153 (Ind. 1989).

District Court of Appeals' erroneous decision is permitted to stand, medical providers may only seek compensation from a patient's health insuring corporation, to the exclusion of other entities. Should the patient's health insuring corporation determine, pursuant to Ohio's coordination of benefits statutes, that the health insuring corporation does not provide primary coverage for the covered services provided to the patient, the health insuring corporation may properly refuse to remit payment to the medical provider until such time as the primary coverage is exhausted. Under the 6th District Court of Appeals' decision, that same medical provider which provided covered medical services to the patient is prohibited from seeking compensation from any other entity and, thus, the primary coverage is never exhausted, the health insuring corporation never has to remit payment as the secondary insurance coverage, and the medical provider never receives any payment. Whatever the Ohio Supreme Court ultimately decides is the correct interpretation and application of Ohio Revised Code §1751.60, it is undeniable that the General Assembly in the passage and enactment of the statute did not anticipate such a scenario and clearly did not intend such an impact on medical providers throughout the State of Ohio.

There is no controlling precedent within the decisions of this Court providing any proper interpretation, application and/or construction of Ohio Revised Code §1751.60. The exercise of discretionary jurisdiction by the Ohio Supreme Court, as the highest Court in Ohio, will provide the 6th District Court of Appeals and all other appellate courts in Ohio with an authoritative determination of the rights, duties, and obligations of medical providers in seeking compensation for covered medical services provided to patients throughout the State of Ohio under Ohio Revised Code §1751.60. The obvious need for an authoritative determination by this Court further demonstrates why this matter is of such public or great general interest so as to warrant the exercise of discretionary jurisdiction by this Court over the Virginia King case.

II. Statement of the Interest of the *Amici Curiae*:

Both Mercy Health Partners and Catholic Healthcare Partners, as operators of health care facilities and healthcare systems within the State of Ohio, have significant interest in the determination of the correct statutory interpretation, construction and application of Ohio Revised Code §1751.60 by the Ohio Supreme Court. The potential impact of the statutory interpretation on the billing and registration practices and procedures for Mercy Health Partners and Catholic Healthcare Partners, as well as all medical providers throughout the State of Ohio, is significant and warrants the exercise of discretionary jurisdiction by this Court.

In addition, Mercy Health Partners is involved in ongoing litigation in a companion case captioned *Dorothy Streeter v. Mercy Health Partners, et al.*, currently pending on the docket of Judge Gene Zmuda of the Lucas County Court of Common Pleas, Case No. CI 200903601. In the Dorothy Streeter case, the issues and allegations against Mercy Health Partners are virtually identical to those raised against ProMedica Health System and The Toledo Hospital within the Virginia King case. Both companion actions are purported class actions filed by the same counsel against the two (2) largest healthcare providers in Northwest Ohio and both purported class actions allege that the respective healthcare providers violated Ohio Revised Code §1751.60 through their respective billing procedures when the healthcare provider seeks compensation from a third-party insurer, such as an automobile liability insurance carrier.

The Judgment Entry dated October 1, 2009 from Judge Ruth Ann Franks of the Lucas County Court of Common Pleas and the Decision and Judgment dated June 4, 2010 from the 6th District Court of Appeals for Lucas County, Ohio in the Virginia King case are both of direct significance in the Dorothy Streeter litigation. Specifically, Mercy Health Partners similarly contests the interpretation and applicability of Ohio Revised Code §1751.60, as set forth by

counsel for plaintiff in the Virginia King case and the 6th District Court of Appeals. Mercy Health Partners contends that Ohio Revised Code §1751.60 is not applicable in the Dorothy Streeter litigation and that, even if found to be applicable, was not violated by Mercy Health Partners.

As a result thereof, Mercy Health Partners filed a motion to stay the proceedings in the Dorothy Streeter case until such time as the 6th District Court of Appeals for Lucas County, Ohio had made its determination of the appeal taken in the Virginia King case. The Motion to Stay was granted by Judge Zmuda and the Dorothy Streeter case remains stayed as of this date pending the anticipated discretionary appeal taken by ProMedica Health System and The Toledo Hospital with the Ohio Supreme Court.

In addition to the interest of Mercy Health System resulting from the ongoing litigation of the Dorothy Streeter case, Mercy Health System operates seven (7) facilities within four (4) different counties, which are in-turn under the jurisdiction of both the 6th and the 3rd Appellate Districts. Mercy Health Partners operates Mercy St. Vincent Medical Center³, Mercy St. Charles Hospital⁴, Mercy St. Anne Hospital⁵, and Mercy Children's Hospital⁶ within Lucas County, Ohio and Mercy Willard Hospital⁷ within Huron County, Ohio, all of which are within the jurisdiction of the 6th Appellate District. Mercy Health Partners also operates Mercy Tiffin Hospital⁸ within

³ Located in Toledo, Ohio, Mercy St. Vincent Medical Center has 880 physicians on staff and employs 3,578 individuals.

⁴ Located in Oregon, Ohio, Mercy St. Charles Hospital has 540 physicians on staff and employs 1,286 individuals.

⁵ Located in Toledo, Ohio, Mercy St. Anne Hospital has 573 physicians on staff and employs 750 individuals.

⁶ Located in Toledo, Ohio, Mercy Children's Hospital has a 72 bed inpatient unit and 207 physicians on staff.

⁷ Located in Willard, Ohio, Mercy Willard Hospital has 133 physicians on staff and employs 194 individuals.

⁸ Located in Tiffin, Ohio, Mercy Tiffin Hospital has 167 physicians on staff and employs 431

Seneca County, Ohio and Mercy Hospital of Defiance⁹ within Defiance County, Ohio, both of which are within the jurisdiction of the 3rd Appellate District. The potential impact of the statutory interpretation within the decision on Mercy Health Partners, as an entity which employs over five thousand (5,000) individuals and has over fifteen hundred (1,500) physicians on staff at its various facilities, clearly demonstrates the state-wide impact of the decision and why the matter is of public and great general interest.

In addition to the economic impact of the erroneous statutory interpretation on Mercy Health Partners,¹⁰ the business impact¹¹ on well-established, long-standing, and functional practices and procedures which have gained state-wide acceptance and which already have taken into account the interplay between various State and Federal Statutes, as well as the secondary impact on entities doing business with Mercy Health Partners, further demonstrates the significant impact that the erroneous statutory interpretation currently has and will continue to have on various entities throughout the State of Ohio.

Similarly, Catholic Healthcare Partners, the parent company of Mercy Health Partners, is a mission-driven, non-profit health system which operates acute care hospitals, long-term care facilities, housing sites for the elderly, home health agencies, hospice programs, wellness centers and other healthcare organizations. Catholic Healthcare Partners is the largest health system in the State of Ohio and one of the largest non-profit health systems in the United States. As the fourth largest employer in the State of Ohio and a company that operates over one hundred (100)

individuals.

⁹ Located in Defiance, Ohio, Mercy Hospital of Defiance has 91 physicians on staff and employs 139 individuals.

¹⁰ Mercy Health Partners has projected that the revision of its billing and registration practices and procedures in accordance with the decision from the 6th District Court of Appeals in the Virginia King case will result in lost revenue of approximately \$1 million over the next year.

¹¹ Including, but not limited to, the significant expenditure of time, energies and resources in the revision and amendment of billing and registration practices and procedures.

healthcare organizations meeting the healthcare needs of the people of Ohio, Kentucky, Tennessee and Pennsylvania, Catholic Healthcare Partners clearly has a significant interest in the issues raised by ProMedica and the Toledo Hospital within the appeal taken in the Virginia King case, as the determination of those issues will undoubtedly impact all of the healthcare organizations and facilities operated by Catholic Healthcare Partners throughout the entire State of Ohio.

In addition to the facilities operated by Mercy Health Partners on its behalf, Catholic Healthcare Partners operates additional facilities and healthcare organizations located in Hamilton County, Ohio¹² within the 1st Appellate District, Clermont County, Ohio¹³ and Butler County, Ohio¹⁴ within the 12th Appellate District, Mahoning County, Ohio¹⁵ within the 7th Appellate District, Allen County, Ohio¹⁶ within the 3rd Appellate District, Lorain County, Ohio¹⁷ within the 9th Appellate District, Clark County, Ohio¹⁸ and Champaign County, Ohio¹⁹ within the 2nd Appellate District, and Trumbull County, Ohio²⁰ within the 11th Appellate District. Clearly, as a significant employer within the State of Ohio which provides a wide range of health care services to patients throughout all of Ohio, Catholic Healthcare Partners has a vested interest in the determination by the Ohio Supreme Court of the proper interpretation and application of

¹² Mercy Hospital Anderson located in Anderson, Ohio, and The Jewish Hospital, Mercy Hospital Mt. Airy, and Western Hills all of which are located in Cincinnati, Ohio.

¹³ Mercy Hospital Clermont located in Batavia, Ohio.

¹⁴ Mercy Hospital Fairfield located in Fairfield, Ohio.

¹⁵ St. Elizabeth Boardman Health Center located in Boardman, Ohio, and St. Elizabeth Health Center located in Youngstown, Ohio.

¹⁶ St. Rita's Medical Center located in Lima, Ohio, and Allen Community Hospital located in Oberlin, Ohio.

¹⁷ Catholic Healthcare Partners Regional Medical Center located in Lorain, Ohio.

¹⁸ Springfield Regional Medical Center located in Springfield, Ohio.

¹⁹ Mercy Memorial Hospital located in Urbana, Ohio.

²⁰ St. Joseph Health Center located in Warren, Ohio.

Ohio Revised Code §1751.60, an Ohio statute that is in need of clarification and uniformity of application.

III. Propositions of Law

A. The Erroneous Statutory Interpretation of Ohio Revised Code §1751.60 by the 6th District Court of Appeals Significantly Impacts a Variety of Entities throughout the State of Ohio:

The statutory interpretation contained within the Decision and Judgment dated June 4, 2010 from the 6th District Court of Appeals for Lucas County, Ohio in the Virginia King case clearly has a significant impact on various entities throughout the State of Ohio, including medical providers, health insuring corporations, insurance carriers, and individual patients.

As a result of the decision from the 6th District Court of Appeals, medical providers throughout the State of Ohio have been placed in a position of major uncertainty regarding the ability to continue established and uniform billing practices and procedures for seeking compensation for medical services provided to patients. Medical providers are also left with a significant quandary regarding the interplay between various Ohio Revised Code statutes, including Ohio Revised Code §1751.60 and Ohio's coordination of benefits statute, Ohio Revised Code §3902.11, *et seq.*, as well as the interplay between Ohio statutes and various Federal statutes such as the Medicare statutes, 42 U.S.C. §1395, *et seq.*

Health insuring corporations doing business within the State of Ohio are left with potentially significant increases in the number of claims presented by medical providers, as the health insuring corporations become the only entities from whom the medical providers may seek compensation. In contrast, insurance carriers, such as automobile insurance carriers, who have accepted premiums and written policies containing primary medical payment coverage, are

now insulated from having to remit payment to the medical providers for medical services provided to their insureds.

Finally and most importantly, patients throughout the State of Ohio are left with significant changes to the medical care benefits available to the patient and to the manner in which the individual patient can navigate the health care benefits available. Patients with medical benefits provided through a health insuring corporation and additional medical benefits coverage through a policy of insurance written by another insurance carrier, such as an automobile insurance policy with medical payment coverage, have now lost the ability to have their medical bills submitted to the primary insurance carrier and will be confronted with confusing and unintelligible Explanation of Benefits statements.

In summary, the interpretation of Ohio Revised Code §1751.60 contained within the Decision and Judgment dated June 4, 2010 from the 6th District Court of Appeals leaves all of Ohio in a climate of confusion regarding the ability of medical providers to seek compensation for covered medical services provided to patients. The Ohio Supreme Court, as the Court of last resort in Ohio, should exercise its discretionary jurisdiction over the Virginia King case and provide clear guidance to all interested entities and individuals, including medical providers, health insuring corporations, insurance carriers and patients throughout the State of Ohio.

Pursuant to Rule 4 of the Supreme Court Rules for the Reporting of Opinions:

- (C) Unless otherwise ordered by the Supreme Court, court of appeals opinions may always be cited and relied upon for any of the following purposes:
 - (1) Seeking certification to the Supreme Court of Ohio of a conflict question within the provisions of sections 2(B)(2)(f) and 3(B)(4) of Article IV of the Ohio Constitution;
 - (2) Demonstrating to an appellate court that the decision, or a later decision addressing the same point of law, is of *recurring importance* or for other reasons warrants further judicial review;
 - (3) Establishing *res judicata*, estoppel, double jeopardy, the law of the case, notice, or sanctionable conduct;

- (4) Any other proper purpose between the parties, or those otherwise directly affected by a decision (*emphasis added*).

The significant impact on medical providers throughout the State of Ohio clearly demonstrates that the issue of the correct interpretation, construction and application of Ohio Revised Code §1751.60 is of *recurring importance* to all medical providers, healthcare-related entities and individual patients throughout the State. Currently, the improper and inadequate statutory interpretation from the 6th District Court of Appeals in the Virginia King case can be cited as authoritative. This impact alone clearly demonstrates why this matter is of significant public and/or great general interest such that this Court should exercise its discretionary jurisdiction over the Virginia King case.

B. Ohio Revised Code §1751.60 Should be Properly Interpreted Utilizing All Applicable Rules of Statutory Construction:

The 6th District Court of Appeals' decision in the Virginia King case clearly changes and redefines the scope of coverage provided under Ohio Revised Code §1751.60. Specifically, the decision from the 6th District Court of Appeals interprets Ohio Revised Code §1751.60 as prohibiting any and all medical care providers from seeking compensation for covered services from any entity other than a patient's health insuring corporation, with the only authority cited in support of the statutory interpretation being the non-precedential decision by the 11th District Court of Appeals in the *Hayberg v. Physicians Emergency Serv. Inc.* case and the secondary authority of *Black's Law Dictionary*. The 6th District Court of Appeals' decision does not contain any other detailed and/or adequate analysis of Ohio Revised Code §1751.60, yet its decision substantially and significantly impacts the current practices and procedures of all medical care providers throughout the State of Ohio. Accordingly, the Virginia King case

clearly is of significant public or great general interest so as to warrant the exercise of jurisdiction by the Ohio Supreme Court.

It is well established that a court must examine a statute in its entirety rather than focusing on an isolated word or phrase within the statute. See *Massilon City School Dist. Bd. of Education v. Massilon* (2004), 104 Ohio St.3d 518, 2004-Ohio-6775, at ¶37. A court should not “pick out one sentence and disassociate it from the context, but must look at the four corners of the enactment to determine the intent of the enacting body.” *State v. Jackson* (2004), 102 Ohio St.3d 380, 2004-Ohio-3206, at ¶34. In contrast, the 6th District Court of Appeals for Lucas County, Ohio merely examined and defined a single word from Ohio Revised Code §1751.60 within its Decision and Judgment dated June 4, 2010, and then extrapolated an interpretation of the entire statute from the single word.

As stated by this Court in *Sarmiento v. Grange Mut. Cas. Co.* (2005), 106 Ohio St.3d 403, 2005-Ohio-5410, at ¶25, “... none of the language employed in a statute should be disregarded.” However, a simple review of the statutory interpretation of Ohio Revised Code §1751.60 found within the decision of the 6th District Court of Appeals reveals that the court clearly disregarded the remaining language utilized in the statute. Specifically, the 6th District Court of Appeals clearly disregarded all of the language within Ohio Revised Code §1751.60 with the only exception being the single term “solely” which the 6th District Court of Appeals defined utilizing *Black’s Law Dictionary* (6th Edition 1991), a secondary source. The interpretation of the statute by the 6th District Court of Appeals is clearly erroneous and, more importantly for this Court, the effect of the erroneous interpretation is statewide and significant.

C. Ohio Revised Code §1751.60, as Interpreted, is Ambiguous and in Conflict with Ohio and Federal Statutes:

A statute is considered ambiguous when its language is subject to more than one reasonable interpretation. See *Family Medicine Found, Inc. v. Bright* (2002), 96 Ohio St.3d 183, 2002-Ohio-4034, at ¶8 (citing *State v. Jordan* (2000), 89 Ohio St.3d 488, 492). In the Virginia King case, and the companion case of *Dorothy Streeter v. Mercy Health Partners*, the statute at issue, Ohio Revised Code §1751.60, is subject to more than one reasonable interpretation and the statute is, therefore, ambiguous.

Specifically, one such interpretation is that Ohio Revised Code §1751.60 simply provides protection for individual enrollees and subscribers of a health insuring corporation from a medical provider seeking compensation directly from the individual for anything other than co-payments or deductibles. This is the interpretation of the statute that Mercy Health Partners and Catholic Healthcare Partners believe is the proper interpretation of Ohio Revised Code §1751.60. This interpretation is also consistent with the remaining subsections of the statute, which provide that a patient with medical care benefits provided by a health insuring corporation is not liable to a contracting medical provider for covered health services if the patient has provided evidence of coverage²¹ and which permit the Superintendent of Insurance in Ohio to waive any requirements found within subsections (A) and (B) of Ohio Revised Code §1751.60 if the Superintendent is satisfied that the health insuring corporation has given the medical provider financial guarantees covering the cost of the services provided to the patient²².

The second interpretation is that Ohio Revised Code §1751.60 prohibits a medical provider from seeking compensation from any entity other than a patient's health insuring

²¹ Ohio Revised Code §1751.60(B).

²² Ohio Revised Code §1751.60(E).

corporation. This is the statutory interpretation advanced by counsel for Virginia King and Dorothy Streeter. The fact that the statute is subject to more than one interpretation establishes that Ohio Revised Code §1751.60 is ambiguous and that determination of the legislative intent is needed. See Vaughn Industries, Inc. v. Dimech Services, 167 Ohio App.3d 634, 641-2, 2006-Ohio-3381 (2006), at ¶23. Because the 6th District Court of Appeals failed to appropriately determine the legislative intent of the statute and failed to clarify the inherent ambiguity found within the statute through a detailed and thorough analysis thereof, the Ohio Supreme Court should exercise its discretionary jurisdiction over the Virginia King case and provide the necessary determination and analysis.

Moreover, the application of the statute, as interpreted by the 6th District Court of Appeals, is in conflict with several Ohio and Federal Statutes. Specifically, the coordination of benefits statutes under Ohio law, Ohio Revised Code §§3902.11, *et seq.*, are clearly in conflict with Ohio Revised Code §1751.60, as that statute is interpreted by the 6th District Court of Appeals. Because Ohio Revised Code §1751.60 and Ohio Revised Code §§3902.11, *et seq.* relate to the same subject matter, the statutes are *in pari materia* and the statutes must be read together in order to ascertain and effectuate the legislative intent. See D.A.B.E., Inc. v. Toledo-Lucas County Bd. of Health (2002), 96 Ohio St.3d 250, 2002-Ohio-4172; and, State ex rel. Pratt v. Weygandt (1956), 164 Ohio St. 463, ¶2 of the Syllabus. Statutes relating to the same subject matter should be read together as if a single statute. Bosher v. Euclid Income Tax Bd. of Rev. (2003), 99 Ohio St.3d 330, 2003-Ohio-3886, at ¶14. Under the statutory interpretation contained within the 6th District Court of Appeals' decision, Ohio Revised Code §1751.60 cannot be effectively read in concert with the coordination of benefits statutes under Ohio law, even though such statutes are *in pari materia* with Ohio Revised Code §1751.60.

In addition, the statutory interpretation contained within the 6th District Court of Appeals decision is fundamentally inconsistent with the Medicare statutes under Federal law. See 42 U.S.C. §§1395y²³ and 1395w-22²⁴. As explained within the handbook *Medicare & You 2009* from the U.S. Department of Health & Human Services, “the following types of coverage always pay first: no-fault insurance (including automobile insurance), liability (including automobile insurance), Black Lung benefits, and workers’ compensation.” *Medicare & You 2009*, U.S. Dept. of Health & Human Services, Centers for Medicare & Medicaid, §2 – Decide How to Get Your Medicare, p.74 under *How Your Bills Get Paid If You Have Other Health Insurance*. It is clear that in those circumstances where a patient receives medical benefits from Medicare and from a secondary source, such as a health insuring corporation, Medicare guidelines mandate that other insurance pay before Medicare is responsible for medical expenses. In order for the other insurance carrier to pay, that other insurance carrier must receive a bill from the medical provider.

However, under the statutory interpretation contained in the 6th District Court of Appeals’ decision in the Virginia King case, medical providers within the State of Ohio are expressly prohibited from seeking compensation from other insurance carriers, such as automobile insurance carriers. Again, it is clear that the interpretation of Ohio Revised Code §1751.60 from the 6th District Court of Appeals cannot be read in concert with the federal Medicare statutes, yet the statutes relate to the same or similar subject matter. This disconnect, and in fact conflict, between the statutes demonstrates the need for this Court to exercise its discretionary jurisdiction over the Virginia King case and to provide an appropriate determination and interpretation of Ohio Revised Code §1751.60.

²³ Titled: *Exclusion from Coverage and Medicare as Secondary Payer*.

²⁴ Titled: *Benefits and Beneficiary Protections*.

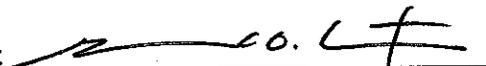
IV. Conclusion

The dramatic statewide impact resulting from the 6th District Court of Appeals' erroneous statutory interpretation of Ohio Revised Code §1751.60 overrides the well-established principle that error correction is not the primary function of this Court and clearly mandates the exercise of this Court's discretionary jurisdiction over the Virginia King case pursuant to Rule II, §1(A)(3) of the Rules of Practice of the Ohio Supreme Court.

The significant effect of the decision from the 6th District Court of Appeals is clearly widespread throughout the entire State of Ohio on all medical providers, health insuring corporations, insurance carriers, and individual patients. The effect of the erroneous statutory interpretation from the 6th District Court of Appeals is not limited to only those entities within the jurisdiction of the 6th Appellate District, but also to a variety of entities and individuals throughout the State of Ohio, pursuant to Rule 4 of the Supreme Court Rules for the Reporting of Opinions. This significant impact throughout the State of Ohio on a variety of entities and individuals demonstrates why the Ohio Supreme Court should exercise its discretionary jurisdiction over the Virginia King case pursuant to Rule II, §1(A)(3) of the Rules of Practice of the Ohio Supreme Court.

Respectfully submitted,

ANSPACH MEEKS ELLENBERGER LLP

By: 
Garrick O. White (0070102)
Counsel of Record

*Counsel for Amici Curiae Mercy Health
Partners and Catholic Healthcare Partners*

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **Memorandum of *Amici Curiae* Mercy Health Partners and Catholic Healthcare Partners in Support of Jurisdiction** was served via regular U.S. mail, postage prepaid, on this 15th day of July 2010, on the following:

Marshall A. Bennett, Jr.
Jennifer J. Dawson
Marshall & Melhorn, LLC
Four SeaGate, Eighth Floor
Toledo, Ohio 43604

Counsel for Appellants ProMedica Health System and The Toledo Hospital

John T. Murray
Leslie O. Murray
Murray & Murray Co., L.P.A.
111 East Shoreline Drive
Sandusky, OH 44870

-and-

John L. Huffman
Mickel & Huffman
520 Spitzer Building
Toledo, OH 43604

Counsel for Appellee Virginia King

Respectfully submitted,

ANSPACH MEEKS ELLENBERGER LLP

By: 
Garrick O. White (0070102)
Counsel of Record

Counsel for Amici Curiae Mercy Health Partners and Catholic Healthcare Partners