LEROY R. FARVE	*	**NO. 2004-C-1424**
VERSUS	*	**COURT OF APPEAL**
DAVID M. JARROTT, M.D.	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
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TOBIAS, J., CONCURS AND ASSIGNS REASONS.

I respectfully concur, but write separately because I question the reasoning of *Sherman v. Touro Infirmary Hospital*, 2000-1365, 2000-1366, 2000-2573, 2000-2574, 2002-1058, 2002-1059 (La. App. 4 Cir. 10/30/02), 832 So.2d 334 and its retroactive application of *LeBreton v. Rabito*, 97-2221 (La. 7/8/98), 714 So.2d 1226.

The rationale of *Sherman* and *LeBreton* is that a party asserting a claim of medical malpractice must assume that the allegedly malpracticing health care provider is a qualified health care provider under La. R.S. 40:1299.41 *et seq.* (hereinafter, "the Act"). Before *LeBreton*, a person had a right to assume that his or her health care provider was not necessarily covered by the Act and could file a suit in the district court that would interrupt prescription. Thereafter, if the health care

provider was determined to be a qualified health care provider, the district court suit would be deemed premature and had to be dismissed. The effect of *LeBreton* was to change the presumption, which has substantive as well as procedural aspects.