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From the October 4, 1996 print edition

### Next up at Ohio Supreme Court: 'love Dr.'

#### Hospital groups want earlier rulings reversed

[Catherine Nolte](#)

Staff Reporter

Another chapter in the 10-year-old "love surgery" lawsuit against Dr. James Burt and the Dayton campus of the Franciscan Health System will be written Nov. 13 when the Ohio Supreme Court meets in a one-day session in Urbana.

The Ohio State Medical Association and Ohio Hospital Association have joined the former St. Elizabeth Medical Center in asking the court to reconsider earlier rulings concerning hospital credentialing of physicians and the statute of limitations for filing claims of negligent credentialing. Those are key issues in the lawsuit against the hospital where Burt performed the majority of his surgeries.

Hospital attorney K.C. Green said the hospital's position is that "conditions for immunity were met in the credentialing of Dr. Burt." Attorneys also will ask the court to "modify what constitutes a triggering event that sets off the statute of limitations," Green said.

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The hospital and health care groups want time limits for claims of negligent credentialing to coincide with time limitations for filing malpractice lawsuits. They maintain that when patients become aware they may have been injured, they also

should be aware of the possibility of negligent credentialing.

The lawsuit was filed in Montgomery County in April 1986. Janet Phillips sued Burt and the hospital charging that experimental surgery was performed on her without her consent. Ultimately, more than 40 women filed similar allegations.

In 1991, a jury awarded Phillips \$5 million in damages from Burt but declared the lawsuit against the hospital had not been filed in time for consideration. Burt filed bankruptcy and Phillips never collected, said Trotwood attorney, Marylee Sambol, who represents Phillips.

[The Ohio Supreme Court](#) in 1993 ruled that other plaintiffs had filed their lawsuits against the hospital within the required time. In 1994 Phillips was granted a new trial against the medical center.

The hospital appealed and the Second District Court of Appeals upheld the lower court's decision. Sambol said the hospital then took its appeal to the Ohio Supreme Court and both issues will be aired in the one-day hearing next month.

Sambol said lawsuits filed by 23 other women have been scheduled for pretrial hearings but she is conducting negotiation settlements with Franciscan Health System.

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