

# M24097

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(Requestor's Name)

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(City/State/Zip/Phone #)

☐ PICK-UP

☐ WAIT

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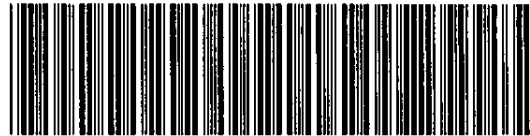
\_\_\_\_\_  
(Business Entity Name)

\_\_\_\_\_  
(Document Number)

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AND  
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13 DEC -2 PM 1:48  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

C. LEWIS  
DEC 9 2013  
EXAMINER

**COVER LETTER**

**TO:** Amendment Section  
Division of Corporations

**SUBJECT:** FRANK J. LOMAGISTRO, M. D., P.A.

**DOCUMENT NUMBER:** M24097

The enclosed **Articles of Dissolution** and fee are submitted for filing.

Please return all correspondence concerning this matter to the following:

Frank R Brady

(Name of Contact Person)

Brady & Brady PA

(Firm/Company)

350 Camino Gardens Blvd., Suite 300

(Address)

Boca Raton, FL 33432

(City/State and Zip Code)

For further information concerning this matter, please call:

Frank R Brady

(Name of Contact Person)

at ( 561 ) 338-9256

(Area Code & Daytime Telephone Number)

Enclosed is a check for the following amount:

- ☐ \$35 Filing Fee    ☐ \$43.75 Filing Fee & Certificate of Status    ☒ \$43.75 Filing Fee & Certified Copy (Additional copy is enclosed)    ☐ \$52.50 Filing Fee, Certificate of Status & Certified Copy (Additional copy is enclosed)

**MAILING ADDRESS:**

Amendment Section  
Division of Corporations  
P.O. Box 6327  
Tallahassee, FL 32314

**STREET ADDRESS:**

Amendment Section  
Division of Corporations  
Clifton Building  
2661 Executive Center Circle  
Tallahassee, FL 32301

APPROVED  
AND  
FILED

13 DEC -2 PM 1:48

SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

ARTICLES OF DISSOLUTION OF  
FRANK J. LOMAGISTRO, M.D., P.A.

The undersigned, for the purpose of dissolving a professional service corporation under and pursuant to sections 607.1402 and 621.13, Florida Statutes, hereby adopts the following Articles of Dissolution:

ARTICLE ONE

The name of this corporation as currently on file with the Florida Department of State is FRANK J. LOMAGISTRO, M.D., P.A. The document number of this corporation is M24097.

ARTICLE TWO

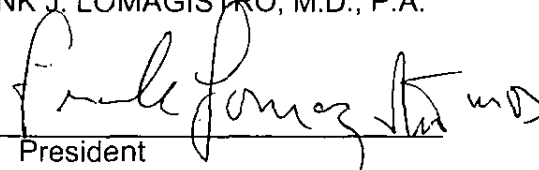
The dissolution of this corporation was authorized and approved by its shareholders. The number of votes cast by the shareholders for the dissolution of this corporation was sufficient for approval. A copy of the Plan of Complete Liquidation and Wind-up of Business Affairs approved by the shareholders is attached hereto.

ARTICLE THREE

The effective date of dissolution is November 30, 2012.

IN WITNESS WHEREOF, the undersigned president of the Corporation has hereunto set his hand in accordance with the written direction to do so of the affirmative vote of the registered owners of all shares of stock of the corporation issued and outstanding.

FRANK J. LOMAGISTRO, M.D., P.A.

By:   
President

APPROVED  
AND  
FILED

13 DEC -2 PM 1:48

SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

### Notice of Corporate Dissolution

This notice is submitted by the dissolved corporation named below for resolution of payment of unknown claims against this corporation as provided in sections 607.1407, 621.13 and 95.11(4)(b) and 95.031, Florida Statutes.

This "**Notice of Corporate Dissolution**" is optional and is not required when filing a voluntary dissolution.

Name of Corporation: FRANK J. LOMAGISTRO, M.D., P.A.

The date of dissolution will be the date the dissolution is filed with the Florida Department of State, or as specified in the Articles of Dissolution.

Description of information that must be included in a claim:

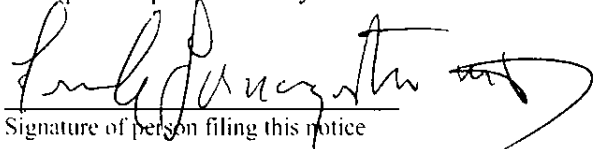
Name, current address, telephone number and contact person of the claimant; a document evidencing the basis for the claim; the amount of the claim; a description of the nature of and basis for the claim; and claimant's certification under oath or declaration under penalty of perjury that the claim is valid, was incurred by the corporation prior to its dissolution and is unpaid. If the claim is for alleged medical malpractice, the claimant must follow the pre-suit notice and other requirements for the filing of such claims under chapter 766, Florida Statutes (see Plan of Dissolution filed contemporaneously herewith).

Mailing address where claims can be sent: (claims cannot be sent to the Division of Corporations)

FRANK J. LOMAGISTRO, M.D., P.A.  
c/o Law Office of Brady & Brady, P.A.  
350 Camino Gardens Blvd., Suite 300  
Boca Raton, Florida 33432

A claim against the above named corporation for medical negligence or malpractice will be barred unless a proceeding to enforce the claim is commenced within the period prescribed by section 95.11(4)(b), Florida Statutes and all pre-suit notice requirements of chapter 766, Florida Statutes have been satisfied. All other claims against the above named corporation will be barred unless a proceeding to enforce the claim is commenced within 4 years after the filing of this notice with the Florida Division of Corporations. This notice is neither intended nor to be construed as a waiver of any requirements of chapter 766, Florida Statutes or an extension of any limitations period prescribed by Florida law for claims of medical negligence or professional malpractice

FRANK J. LOMAGISTRO M.D.  
printed name of person filing this notice

  
Signature of person filing this notice

**Fee: No charge if included with Articles of Dissolution. If filed separately \$35.00**

## PLAN OF COMPLETE LIQUIDATION AND WIND-UP OF BUSINESS AFFAIRS

For the purpose of liquidating Frank J. Lomagistro, P.A., a Florida professional services corporation (the "Corporation"), under pursuant to sections 607.1402, 607.1403 and 620.13 Florida Statutes, the Corporation adopts and shall follow the procedures prescribed by sections 607.1406 and 607.1407, Florida Statutes with respect to claims for ordinary business debts of the Corporation. A true and authentic copy of sections 607.1406 and 607.1407, Florida Statutes, Florida Statutes is attached hereto and incorporated herein as the plan of liquidating the Corporation.

For the purpose of disposing of any claims against the Corporation for medical negligence or professional malpractice, the Corporation does not waive, and the claimant must follow, the pre-suit notice requirements of chapter 766, Florida Statutes and section 95.11(4)(b), Florida Statutes. The Corporation adopts and incorporates herein the pre-suit notice requirements of chapter 766, Florida Statutes (contained at Fla.Stat. §§ 766.106, 766.203 and 766.206) and section 95.11(4)(b), Florida Statutes as a modification of the procedures prescribed by sections 607.1406 and 607.1407, Florida Statutes with respect to disposing of any claims against the Corporation for medical negligence or professional malpractice. Thus, this Plan of Complete Liquidation and Wind-up of Business Affairs of the Corporation is neither intended nor to be construed as a waiver of the requirements of chapter 766, Florida Statutes and section 95.11(4)(b), Florida Statutes or an extension of any applicable limitations within which to initiate a proceeding to enforce a claim for medical negligence or professional malpractice under section 95.11(4)(b), Florida Statutes. A true and authentic copy of sections 95.11, 766.106, 766.203 and 766.206, Florida Statutes, Florida Statutes is attached hereto and incorporated herein as the plan of disposing of any claims against the Corporation for medical negligence or professional malpractice.

**C**

**Effective: October 1, 2009**

West's Florida Statutes Annotated Currentness

Title XXXVI. Business Organizations (Chapters 606-623)

Chapter 607. Corporations (Refs & Annos)

→ → **607.1406. Known claims against dissolved corporation**

(1) A dissolved corporation or successor entity, as defined in subsection (15), may dispose of the known claims against it by following the procedures described in subsections (2), (3), and (4).

(2) The dissolved corporation or successor entity shall deliver to each of its known claimants written notice of the dissolution at any time after its effective date. The written notice shall:

(a) Provide a reasonable description of the claim that the claimant may be entitled to assert;

(b) State whether the claim is admitted or not admitted, in whole or in part, and, if admitted:

1. The amount that is admitted, which may be as of a given date; and

2. Any interest obligation if fixed by an instrument of indebtedness;

(c) Provide a mailing address where a claim may be sent;

(d) State the deadline, which may not be fewer than 120 days after the effective date of the written notice, by which confirmation of the claim must be delivered to the dissolved corporation or successor entity; and

(e) State that the corporation or successor entity may make distributions thereafter to other claimants and the corporation's shareholders or persons interested as having been such without further notice.

(3) A dissolved corporation or successor entity may reject, in whole or in part, any claim made by a claimant pursuant to this subsection by mailing notice of such rejection to the claimant within 90 days after receipt of such claim and, in all events, at least 150 days before expiration of 3 years following the effective date of dissolution. A notice sent by the dissolved corporation or successor entity pursuant to this subsection shall be accompanied by a copy of this section.

(4) A dissolved corporation or successor entity electing to follow the procedures described in subsections (2) and (3) shall also give notice of the dissolution of the corporation to persons with known claims, that are contingent upon the occurrence or nonoccurrence of future events or otherwise conditional or unmatured, and request that such persons present such claims in accordance with the terms of such notice. Such notice shall be in substantially the same form, and sent in the same manner, as described in subsection (2).

(5) A dissolved corporation or successor entity shall offer any claimant whose known claim is contingent, conditional, or unmatured such security as the corporation or such entity determines is sufficient to provide compensation to the claimant if the claim matures. The dissolved corporation or successor entity shall deliver such offer to the claimant within 90 days after receipt of such claim and, in all events, at least 150 days before expiration of 3 years following the effective date of dissolution. If the claimant offered such security does not deliver in writing to the dissolved corporation or successor entity a notice rejecting the offer within 120 days after receipt of such offer for security, the claimant is deemed to have accepted such security as the sole source from which to satisfy his or her claim against the corporation.

(6) A dissolved corporation or successor entity which has given notice in accordance with subsections (2) and (4) shall petition the circuit court in the county where the corporation's principal office is located or was located at the effective date of dissolution to determine the amount and form of security that will be sufficient to provide compensation to any claimant who has rejected the offer for security made pursuant to subsection (5).

(7) A dissolved corporation or successor entity which has given notice in accordance with subsection (2) shall petition the circuit court in the county where the corporation's principal office is located or was located at the effective date of dissolution to determine the amount and form of security which will be sufficient to provide compensation to claimants whose claims are known to the corporation or successor entity but whose identities are unknown. The court shall appoint a guardian ad litem to represent all claimants whose identities are unknown in any proceeding brought under this subsection. The reasonable fees and expenses of such guardian, including all reasonable expert witness fees, shall be paid by the petitioner in such proceeding.

(8) The giving of any notice or making of any offer pursuant to the provisions of this section shall not revive any claim then barred or constitute acknowledgment by the dissolved corporation or successor entity that any person to whom such notice is sent is a proper claimant and shall not operate as a waiver of any defense or counterclaim in respect of any claim asserted by any person to whom such notice is sent.

(9) A dissolved corporation or successor entity which has followed the procedures described in subsections (2)-(7):

(a) Shall pay the claims admitted or made and not rejected in accordance with subsection (3);

(b) Shall post the security offered and not rejected pursuant to subsection (5);

(c) Shall post any security ordered by the circuit court in any proceeding under subsections (6) and (7); and

(d) Shall pay or make provision for all other known obligations of the corporation or such successor entity.

Such claims or obligations shall be paid in full, and any such provision for payments shall be made in full if there are sufficient funds. If there are insufficient funds, such claims and obligations shall be paid or provided for according to their priority and, among claims of equal priority, ratably to the extent of funds legally available therefor. Any remaining funds shall be distributed to the shareholders of the dissolved corporation; however, such distribution may not be made before the expiration of 150 days from the date of the last notice of rejections given pursuant to subsection (3). In the absence of actual fraud, the judgment of the directors of the dissolved corporation or the governing persons of such successor entity as to the provisions made for the payment of all obligations under paragraph (d) is conclusive.

(10) A dissolved corporation or successor entity which has not followed the procedures described in subsections (2) and (3) shall pay or make reasonable provision to pay all known claims and obligations, including all contingent, conditional, or unmatured claims known to the corporation or such successor entity and all claims which are known to the dissolved corporation or such successor entity but for which the identity of the claimant is unknown. Such claims shall be paid in full, and any such provision for payment made shall be made in full if there are sufficient funds. If there are insufficient funds, such claims and obligations shall be paid or provided for according to their priority and, among claims of equal priority, ratably to the extent of funds legally available therefor. Any remaining funds shall be distributed to the shareholders of the dissolved corporation.

(11) Directors of a dissolved corporation or governing persons of a successor entity which has complied with subsection (9) or subsection (10) are not personally liable to the claimants of the dissolved corporation.

(12) A shareholder of a dissolved corporation the assets of which were distributed pursuant to subsection (9) or subsection (10) is not liable for any claim against the corporation in an amount in excess of such shareholder's pro rata share of the claim or the amount distributed to the shareholder, whichever is less.

(13) A shareholder of a dissolved corporation, the assets of which were distributed pursuant to subsection (9), is not liable for any claim against the corporation, which claim is known to the corporation or successor entity, on which a proceeding is not begun prior to the expiration of 3 years following the effective date of dissolution.

(14) The aggregate liability of any shareholder of a dissolved corporation for claims against the dissolved corporation arising under this section, s. 607.1407, or otherwise, may not exceed the amount distributed to the shareholder in dissolution.

(15) As used in this section or s. 607.1407, the term "successor entity" includes any trust, receivership, or other legal entity governed by the laws of this state to which the remaining assets and liabilities of a dissolved corporation are transferred and which exists solely for the purposes of prosecuting and defending suits by or against the dissolved corporation, enabling the dissolved corporation to settle and close the business of the dissolved corporation, to dispose of and convey the property of the dissolved corporation, to discharge the liabilities of the dissolved corporation, and to distribute to the dissolved corporation's shareholders any remaining assets, but not for the purpose of continuing the business for which the dissolved corporation was organized.



CREDIT(S)

Laws 1989, c. 89-154, § 126; Laws 1990, c. 90-179, § 155. Amended by Laws 1993, c. 93-281, § 37, eff. May 15, 1993; Laws 1997, c. 97-102, § 33, eff. July 1, 1997; Laws 2003, c. 2003-283, § 34, eff. Oct. 1, 2003; Laws 2009, c. 2009-205, § 5, eff. Oct. 1, 2009.

Current through Chapter 229 (End) of the 2012 Second Regular Session and the 2012 Extraordinary Apportionment Session of the Twenty-Second Legislature

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C

Effective: June 29, 2004

West's Florida Statutes Annotated Currentness

Title XXXVI. Business Organizations (Chapters 606-623)

Chapter 607. Corporations (Refs & Annos)

→ → **607.1407. Unknown claims against dissolved corporation**

A dissolved corporation or successor entity, as defined in s. 607.1406(15), may choose to execute one of the following procedures to resolve payment of unknown claims.

(1) A dissolved corporation or successor entity may file notice of its dissolution with the Department of State on the form prescribed by the Department of State and request that persons with claims against the corporation which are not known to the corporation or successor entity present them in accordance with the notice. The notice shall:

(a) State the name of the corporation and the date of dissolution;

(b) Describe the information that must be included in a claim and provide a mailing address to which the claim may be sent; and

(c) State that a claim against the corporation under this subsection will be barred unless a proceeding to enforce the claim is commenced within 4 years after the filing of the notice.

(2) A dissolved corporation or successor entity may, within 10 days after filing articles of dissolution with the Department of State, publish a "Notice of Corporate Dissolution." The notice shall appear once a week for 2 consecutive weeks in a newspaper of general circulation in a county in the state in which the corporation has its principal office, if any, or, if none, in a county in the state in which the corporation owns real or personal property. Such newspaper shall meet the requirements as are prescribed by law for such purposes. The notice shall:

(a) State the name of the corporation and the date of dissolution;

(b) Describe the information that must be included in a claim and provide a mailing address to which the claim may be sent; and

(c) State that a claim against the corporation under this subsection will be barred unless a proceeding to enforce the claim is commenced within 4 years after the date of the second consecutive weekly publication of the notice authorized by this section.

(3) If the dissolved corporation or successor entity complies with subsection (1) or subsection (2), the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation within 4 years after the date of filing the notice with the Department of State or the date of the second consecutive weekly publication, as applicable:

(a) A claimant who did not receive written notice under s. 607.1406(9), or whose claim was not provided for under s. 607.1406(10), whether such claim is based on an event occurring before or after the effective date of dissolution.

(b) A claimant whose claim was timely sent to the dissolved corporation but on which no action was taken.

(4) A claim may be entered under this section:

(a) Against the dissolved corporation, to the extent of its undistributed assets; or

(b) If the assets have been distributed in liquidation, against a shareholder of the dissolved corporation to the extent of such shareholder's pro rata share of the claim or the corporate assets distributed to such shareholder in liquidation, whichever is less, provided that the aggregate liability of any shareholder of a dissolved corporation arising under this section, s. 607.1406, or otherwise may not exceed the amount distributed to the shareholder in dissolution.

Nothing in this section shall preclude or relieve the corporation from its notification to claimants otherwise set forth in this chapter.

#### CREDIT(S)

Added by Laws 2003, c. 2003-283, § 35, eff. Oct. 1, 2003. Amended by Laws 2004, c. 2004-5, § 99, eff. June 29, 2004; Laws 2004, c. 2004-378, § 3, eff. June 24, 2004.

Current through Chapter 229 (End) of the 2012 Second Regular Session and the 2012 Extraordinary Apportionment Session of the Twenty-Second Legislature

(C) 2012 Thomson Reuters. No Claim to Orig. US Gov. Works.

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**Effective: July 1, 2012 to September 30, 2012**

West's Florida Statutes Annotated Currentness

Title VIII. Limitations (Chapters 93-96)

Chapter 95. Limitations of Actions; Adverse Possession (Refs & Annos)

→ → **95. 11. Limitations other than for the recovery of real property**

Actions other than for recovery of real property shall be commenced as follows:

**(1) Within twenty years.--**An action on a judgment or decree of a court of record in this state.

**(2) Within five years.--**

(a) An action on a judgment or decree of any court, not of record, of this state or any court of the United States, any other state or territory in the United States, or a foreign country.

(b) A legal or equitable action on a contract, obligation, or liability founded on a written instrument, except for an action to enforce a claim against a payment bond, which shall be governed by the applicable provisions of ss. 255.05(10) and 713.23(1)(e).

(c) An action to foreclose a mortgage.

(d) An action alleging a willful violation of s. 448.110.

(e) Notwithstanding paragraph (b), an action for breach of a property insurance contract, with the period running from the date of loss.

**(3) Within four years.--**

(a) An action founded on negligence.

(b) An action relating to the determination of paternity, with the time running from the date the child reaches the age of majority.

(c) An action founded on the design, planning, or construction of an improvement to real property, with the time running from the date of actual possession by the owner, the date of the issuance of a certificate of occupancy,

the date of abandonment of construction if not completed, or the date of completion or termination of the contract between the professional engineer, registered architect, or licensed contractor and his or her employer, whichever date is latest; except that, when the action involves a latent defect, the time runs from the time the defect is discovered or should have been discovered with the exercise of due diligence. In any event, the action must be commenced within 10 years after the date of actual possession by the owner, the date of the issuance of a certificate of occupancy, the date of abandonment of construction if not completed, or the date of completion or termination of the contract between the professional engineer, registered architect, or licensed contractor and his or her employer, whichever date is latest.

(d) An action to recover public money or property held by a public officer or employee, or former public officer or employee, and obtained during, or as a result of, his or her public office or employment.

(e) An action for injury to a person founded on the design, manufacture, distribution, or sale of personal property that is not permanently incorporated in an improvement to real property, including fixtures.

(f) An action founded on a statutory liability.

(g) An action for trespass on real property.

(h) An action for taking, detaining, or injuring personal property.

(i) An action to recover specific personal property.

(j) A legal or equitable action founded on fraud.

(k) A legal or equitable action on a contract, obligation, or liability not founded on a written instrument, including an action for the sale and delivery of goods, wares, and merchandise, and on store accounts.

(l) An action to rescind a contract.

(m) An action for money paid to any governmental authority by mistake or inadvertence.

(n) An action for a statutory penalty or forfeiture.

(o) An action for assault, battery, false arrest, malicious prosecution, malicious interference, false imprisonment, or any other intentional tort, except as provided in subsections (4), (5), and (7).

(p) Any action not specifically provided for in these statutes.

(q) An action alleging a violation, other than a willful violation, of s. 448.110.

**(4) Within two years.--**

(a) An action for professional malpractice, other than medical malpractice, whether founded on contract or tort; provided that the period of limitations shall run from the time the cause of action is discovered or should have been discovered with the exercise of due diligence. However, the limitation of actions herein for professional malpractice shall be limited to persons in privity with the professional.

(b) An action for medical malpractice shall be commenced within 2 years from the time the incident giving rise to the action occurred or within 2 years from the time the incident is discovered, or should have been discovered with the exercise of due diligence; however, in no event shall the action be commenced later than 4 years from the date of the incident or occurrence out of which the cause of action accrued, except that this 4-year period shall not bar an action brought on behalf of a minor on or before the child's eighth birthday. An "action for medical malpractice" is defined as a claim in tort or in contract for damages because of the death, injury, or monetary loss to any person arising out of any medical, dental, or surgical diagnosis, treatment, or care by any provider of health care. The limitation of actions within this subsection shall be limited to the health care provider and persons in privity with the provider of health care. In those actions covered by this paragraph in which it can be shown that fraud, concealment, or intentional misrepresentation of fact prevented the discovery of the injury the period of limitations is extended forward 2 years from the time that the injury is discovered or should have been discovered with the exercise of due diligence, but in no event to exceed 7 years from the date the incident giving rise to the injury occurred, except that this 7-year period shall not bar an action brought on behalf of a minor on or before the child's eighth birthday. This paragraph shall not apply to actions for which ss. 766.301-766.316 provide the exclusive remedy.

(c) An action to recover wages or overtime or damages or penalties concerning payment of wages and overtime.

(d) An action for wrongful death.

(e) An action founded upon a violation of any provision of chapter 517, with the period running from the time the facts giving rise to the cause of action were discovered or should have been discovered with the exercise of due diligence, but not more than 5 years from the date such violation occurred.

(f) An action for personal injury caused by contact with or exposure to phenoxy herbicides while serving either as a civilian or as a member of the Armed Forces of the United States during the period January 1, 1962, through May 7, 1975; the period of limitations shall run from the time the cause of action is discovered or should have been discovered with the exercise of due diligence.

(g) An action for libel or slander.

**(5) Within one year.--**

- (a) An action for specific performance of a contract.
- (b) An action to enforce an equitable lien arising from the furnishing of labor, services, or material for the improvement of real property.
- (c) An action to enforce rights under the Uniform Commercial Code--Letters of Credit, chapter 675.
- (d) An action against any guaranty association and its insured, with the period running from the date of the deadline for filing claims in the order of liquidation.
- (e) An action to enforce any claim against a payment bond on which the principal is a contractor, subcontractor, or sub-subcontractor as defined in s. 713.01, for private work as well as public work, from the last furnishing of labor, services, or materials or from the last furnishing of labor, services, or materials by the contractor if the contractor is the principal on a bond on the same construction project, whichever is later.
- (f) Except for actions described in subsection (8), a petition for extraordinary writ, other than a petition challenging a criminal conviction, filed by or on behalf of a prisoner as defined in s. 57.085.
- (g) Except for actions described in subsection (8), an action brought by or on behalf of a prisoner, as defined in s. 57.085, relating to the conditions of the prisoner's confinement.
- (6) Laches.**--Laches shall bar any action unless it is commenced within the time provided for legal actions concerning the same subject matter regardless of lack of knowledge by the person sought to be held liable that the person alleging liability would assert his or her rights and whether the person sought to be held liable is injured or prejudiced by the delay. This subsection shall not affect application of laches at an earlier time in accordance with law.
- (7) For intentional torts based on abuse.**--An action founded on alleged abuse, as defined in s. 39.01, s. 415.102, or s. 984.03, or incest, as defined in s. 826.04, may be commenced at any time within 7 years after the age of majority, or within 4 years after the injured person leaves the dependency of the abuser, or within 4 years from the time of discovery by the injured party of both the injury and the causal relationship between the injury and the abuse, whichever occurs later.
- (8) Within 30 days for actions challenging correctional disciplinary proceedings.**--Any court action challenging prisoner disciplinary proceedings conducted by the Department of Corrections pursuant to s. 944.28(2) must be commenced within 30 days after final disposition of the prisoner disciplinary proceedings through the administrative grievance process under chapter 33, Florida Administrative Code. Any action challenging prisoner disciplinary proceedings shall be barred by the court unless it is commenced within the time period provided by this section.

**(9) Sexual battery offenses on victims under age 16.**--An action related to an act constituting a violation of s. 794.011 involving a victim who was under the age of 16 at the time of the act may be commenced at any time. This subsection applies to any such action other than one which would have been time barred on or before July 1, 2010.

**(10) For intentional torts resulting in death from acts described in s. 782.04 or s. 782.07.**--Notwithstanding paragraph (4)(d), an action for wrongful death seeking damages authorized under s. 768.21 brought against a natural person for an intentional tort resulting in death from acts described in s. 782.04 or s. 782.07 may be commenced at any time. This subsection shall not be construed to require an arrest, the filing of formal criminal charges, or a conviction for a violation of s. 782.04 or s. 782.07 as a condition for filing a civil action.

**(11) Court costs and fines.**--Notwithstanding subsection (1), an action to collect court costs, fees, or fines owed to the state may be commenced at any time.

#### CREDIT(S)

Laws 1872, c. 1869, § 10; Laws 1889, c. 3900, § 1; Rev.St.1892, § 1294; Gen.St.1906, § 1725; Laws 1919, c. 7838, § 10, subd. 19; Rev.Gen.St.1920, § 2939; Comp.Gen.Laws 1927, § 4663; Laws 1943, c. 21892, § 1; Laws 1947, c. 24337, § 7, subd. B; Laws 1957, c. 57-1, § 24; Laws 1959, c. 59-188, § 1; Laws 1967, c. 67-284, § 1; Laws 1971, c. 71-254, § 1; Laws 1973, c. 73-333, § 30; Laws 1974, c. 74-382, § 7; Laws 1975, c. 75-9, § 7; Laws 1977, c. 77-174, § 1; Laws 1978, c. 78-435, § 11; Laws 1980, c. 80-322, § 1. Amended by Laws 1983, c. 83-38, § 34, eff. May 16, 1983; Laws 1984, c. 84-13, § 1, eff. May 3, 1984; Laws 1985, c. 85-63, § 1, eff. July 30, 1985; Laws 1986, c. 86-220, § 139, eff. Oct. 1, 1986; Laws 1986, c. 86-231, § 1, eff. Oct. 1, 1986; Laws 1986, c. 86-272, § 1, eff. Oct. 1, 1986; Laws 1988, c. 88-397, § 1, eff. Oct. 1, 1988; Laws 1990, c. 90-109, § 20, eff. Jan. 1, 1991; Laws 1992, c. 92-102, § 1, eff. April 8, 1992; Laws 1995, c. 95-147, § 520, eff. July 10, 1995; Laws 1995, c. 95-283, § 2, eff. June 15, 1995; Laws 1996, c. 96-106, § 4, eff. July 1, 1996; Laws 1996, c. 96-167, § 1, eff. July 1, 1996; Laws 1998, c. 98-280, § 15, eff. June 30, 1998; Laws 1999, c. 99-5, § 2, eff. July 29, 1999; Laws 1999, c. 99-137, § 12, eff. July 1, 1999; Laws 2001, c. 2001-211, § 2, eff. July 1, 2001; Laws 2005, c. 2005-230, § 15, eff. Oct. 1, 2005; Laws 2005, c. 2005-353, § 1, eff. Dec. 12, 2005; Laws 2006, c. 2006-145, § 1, eff. July 1, 2006; Laws 2010, c. 2010-45, § 2, eff. May 11, 2010; Laws 2010, c. 2010-54, § 1, eff. July 1, 2010; Laws 2011, c. 2011-39, § 1, eff. May 17, 2011; Laws 2012, c. 2012-100, § 13, eff. July 1, 2012.

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West's Florida Statutes Annotated Currentness

Title XLV. Torts (Chapters 766-774) (Refs & Annos)

Chapter 766. Medical Malpractice and Related Matters (Refs & Annos)

→ → **766. 106. Notice before filing action for medical negligence; presuit screening period; offers for admission of liability and for arbitration; informal discovery; review**

(1) **Definitions.**--As used in this section, the term:

(a) "Claim for medical negligence" or "claim for medical malpractice" means a claim, arising out of the rendering of, or the failure to render, medical care or services.

(b) "Self-insurer" means any self-insurer authorized under s. 627.357 or any uninsured prospective defendant.

(c) "Insurer" includes the Joint Underwriting Association.

(2) **Presuit notice.**--

(a) After completion of presuit investigation pursuant to s. 766.203(2) and prior to filing a complaint for medical negligence, a claimant shall notify each prospective defendant by certified mail, return receipt requested, of intent to initiate litigation for medical negligence. Notice to each prospective defendant must include, if available, a list of all known health care providers seen by the claimant for the injuries complained of subsequent to the alleged act of negligence, all known health care providers during the 2-year period prior to the alleged act of negligence who treated or evaluated the claimant, copies of all of the medical records relied upon by the expert in signing the affidavit, and the executed authorization form provided in s. 766.1065.

(b) Following the initiation of a suit alleging medical negligence with a court of competent jurisdiction, and service of the complaint upon a defendant, the claimant shall provide a copy of the complaint to the Department of Health and, if the complaint involves a facility licensed under chapter 395, the Agency for Health Care Administration. The requirement of providing the complaint to the Department of Health or the Agency for Health Care Administration does not impair the claimant's legal rights or ability to seek relief for his or her claim. The Department of Health or the Agency for Health Care Administration shall review each incident that is the subject of the complaint and determine whether it involved conduct by a licensee which is potentially subject to disciplinary action, in which case, for a licensed health care practitioner, the provisions of s. 456.073 apply and, for a licensed facility, the provisions of part I of chapter 395 apply.

**(3) Presuit investigation by prospective defendant.--**

(a) No suit may be filed for a period of 90 days after notice is mailed to any prospective defendant. During the 90-day period, the prospective defendant or the defendant's insurer or self-insurer shall conduct a review as provided in s. 766.203(3) to determine the liability of the defendant. Each insurer or self-insurer shall have a procedure for the prompt investigation, review, and evaluation of claims during the 90-day period. This procedure shall include one or more of the following:

1. Internal review by a duly qualified claims adjuster;
2. Creation of a panel comprised of an attorney knowledgeable in the prosecution or defense of medical negligence actions, a health care provider trained in the same or similar medical specialty as the prospective defendant, and a duly qualified claims adjuster;
3. A contractual agreement with a state or local professional society of health care providers, which maintains a medical review committee;
4. Any other similar procedure which fairly and promptly evaluates the pending claim.

Each insurer or self-insurer shall investigate the claim in good faith, and both the claimant and prospective defendant shall cooperate with the insurer in good faith. If the insurer requires, a claimant shall appear before a pretrial screening panel or before a medical review committee and shall submit to a physical examination, if required. Unreasonable failure of any party to comply with this section justifies dismissal of claims or defenses. There shall be no civil liability for participation in a pretrial screening procedure if done without intentional fraud.

(b) At or before the end of the 90 days, the prospective defendant or the prospective defendant's insurer or self-insurer shall provide the claimant with a response:

1. Rejecting the claim;
2. Making a settlement offer; or
3. Making an offer to arbitrate in which liability is deemed admitted and arbitration will be held only on the issue of damages. This offer may be made contingent upon a limit of general damages.

(c) The response shall be delivered to the claimant if not represented by counsel or to the claimant's attorney, by certified mail, return receipt requested. Failure of the prospective defendant or insurer or self-insurer to reply to the notice within 90 days after receipt shall be deemed a final rejection of the claim for purposes of this section.

(d) Within 30 days of receipt of a response by a prospective defendant, insurer, or self-insurer to a claimant represented by an attorney, the attorney shall advise the claimant in writing of the response, including:

1. The exact nature of the response under paragraph (b).
2. The exact terms of any settlement offer, or admission of liability and offer of arbitration on damages.
3. The legal and financial consequences of acceptance or rejection of any settlement offer, or admission of liability, including the provisions of this section.
4. An evaluation of the time and likelihood of ultimate success at trial on the merits of the claimant's action.
5. An estimation of the costs and attorney's fees of proceeding through trial.

**(4) Service of presuit notice and tolling.**--The notice of intent to initiate litigation shall be served within the time limits set forth in s. 95.11. However, during the 90-day period, the statute of limitations is tolled as to all potential defendants. Upon stipulation by the parties, the 90-day period may be extended and the statute of limitations is tolled during any such extension. Upon receiving notice of termination of negotiations in an extended period, the claimant shall have 60 days or the remainder of the period of the statute of limitations, whichever is greater, within which to file suit.

**(5) Discovery and admissibility.**--A statement, discussion, written document, report, or other work product generated by the presuit screening process is not discoverable or admissible in any civil action for any purpose by the opposing party. All participants, including, but not limited to, physicians, investigators, witnesses, and employees or associates of the defendant, are immune from civil liability arising from participation in the presuit screening process. This subsection does not prevent a physician licensed under chapter 458 or chapter 459 or a dentist licensed under chapter 466 who submits a verified written expert medical opinion from being subject to denial of a license or disciplinary action under s. 458.33(1)(oo), s. 459.015(1)(qq), or s. 466.028(1)(ll).

**(6) Informal discovery.**--

(a) Upon receipt by a prospective defendant of a notice of claim, the parties shall make discoverable information available without formal discovery. Failure to do so is grounds for dismissal of claims or defenses ultimately asserted.

(b) Informal discovery may be used by a party to obtain unsworn statements, the production of documents or things, and physical and mental examinations, as follows:

1. *Unsworn statements.*--Any party may require other parties to appear for the taking of an unsworn statement. Such statements may be used only for the purpose of presuit screening and are not discoverable or admissible in

any civil action for any purpose by any party. A party desiring to take the unsworn statement of any party must give reasonable notice in writing to all parties. The notice must state the time and place for taking the statement and the name and address of the party to be examined. Unless otherwise impractical, the examination of any party must be done at the same time by all other parties. Any party may be represented by counsel at the taking of an unsworn statement. An unsworn statement may be recorded electronically, stenographically, or on videotape. The taking of unsworn statements is subject to the provisions of the Florida Rules of Civil Procedure and may be terminated for abuses.

2. *Documents or things.*--Any party may request discovery of documents or things. The documents or things must be produced, at the expense of the requesting party, within 20 days after the date of receipt of the request. A party is required to produce discoverable documents or things within that party's possession or control. Medical records shall be produced as provided in s. 766.204.

3. *Physical and mental examinations.*--A prospective defendant may require an injured claimant to appear for examination by an appropriate health care provider. The prospective defendant shall give reasonable notice in writing to all parties as to the time and place for examination. Unless otherwise impractical, a claimant is required to submit to only one examination on behalf of all potential defendants. The practicality of a single examination must be determined by the nature of the claimant's condition, as it relates to the liability of each prospective defendant. Such examination report is available to the parties and their attorneys upon payment of the reasonable cost of reproduction and may be used only for the purpose of presuit screening. Otherwise, such examination report is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

4. *Written questions.*--Any party may request answers to written questions, the number of which may not exceed 30, including subparts. A response must be made within 20 days after receipt of the questions.

5. *Unsworn statements of treating health care providers.*--A prospective defendant or his or her legal representative may also take unsworn statements of the claimant's treating health care providers. The statements must be limited to those areas that are potentially relevant to the claim of personal injury or wrongful death. Subject to the procedural requirements of subparagraph 1., a prospective defendant may take unsworn statements from a claimant's treating physicians. Reasonable notice and opportunity to be heard must be given to the claimant or the claimant's legal representative before taking unsworn statements. The claimant or claimant's legal representative has the right to attend the taking of such unsworn statements.

(c) Each request for and notice concerning informal presuit discovery pursuant to this section must be in writing, and a copy thereof must be sent to all parties. Such a request or notice must bear a certificate of service identifying the name and address of the person to whom the request or notice is served, the date of the request or notice, and the manner of service thereof.

(d) Copies of any documents produced in response to the request of any party must be served upon all other parties. The party serving the documents or his or her attorney shall identify, in a notice accompanying the documents, the name and address of the parties to whom the documents were served, the date of service, the manner

of service, and the identity of the document served.

**(7) Sanctions.**--Failure to cooperate on the part of any party during the presuit investigation may be grounds to strike any claim made, or defense raised, by such party in suit.

CREDIT(S)

Laws 1985, c. 85-175, § 14; Laws 1986, c. 86-287, § 9; Fla.St.1987, § 768.57; Laws 1988, c. 88-173, § 3; Laws 1988, c. 88-277, § 48; Laws 1994, c. 94-218, § 245; Laws 1994, c. 94-258, § 1; Laws 1996, c. 96-406, § 424. Amended by Laws 1997, c. 97-102, § 1800, eff. July 1, 1997; Laws 1998, c. 98-166, § 164, eff. July 1, 1998; Laws 2000, c. 2000-160, § 225, eff. July 4, 2000; Laws 2000, c. 2000-318, § 166, eff. July 1, 2000; Laws 2000, c. 2000-341, § 1, eff. June 20, 2000; Laws 2003, c. 2003-416, § 49, eff. Sept. 15, 2003; Laws 2011, c. 2011-233, § 11, eff. Oct. 1, 2011.

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Title XLV. Torts (Chapters 766-774) (Refs &amp; Annos)

Chapter 766. Medical Malpractice and Related Matters (Refs &amp; Annos)

**→→ 766. 203. Presuit investigation of medical negligence claims and defenses by prospective parties**

**(1) Application of presuit investigation.**--Presuit investigation of medical negligence claims and defenses pursuant to this section and ss. 766.204-766.206 shall apply to all medical negligence claims and defenses. This shall include:

(a) Rights of action under s. 768.19 and defenses thereto.

(b) Rights of action involving the state or its agencies or subdivisions, or the officers, employees, or agents thereof, pursuant to s. 768.28 and defenses thereto.

**(2) Presuit investigation by claimant.**--Prior to issuing notification of intent to initiate medical negligence litigation pursuant to s. 766.106, the claimant shall conduct an investigation to ascertain that there are reasonable grounds to believe that:

(a) Any named defendant in the litigation was negligent in the care or treatment of the claimant; and

(b) Such negligence resulted in injury to the claimant.

Corroboration of reasonable grounds to initiate medical negligence litigation shall be provided by the claimant's submission of a verified written medical expert opinion from a medical expert as defined in s. 766.202(6), at the time the notice of intent to initiate litigation is mailed, which statement shall corroborate reasonable grounds to support the claim of medical negligence.

**(3) Presuit investigation by prospective defendant.**--Prior to issuing its response to the claimant's notice of intent to initiate litigation, during the time period for response authorized pursuant to s. 766.106, the prospective defendant or the defendant's insurer or self-insurer shall conduct an investigation as provided in s. 766.106(3) to ascertain whether there are reasonable grounds to believe that:

(a) The defendant was negligent in the care or treatment of the claimant; and

(b) Such negligence resulted in injury to the claimant.

Corroboration of lack of reasonable grounds for medical negligence litigation shall be provided with any response rejecting the claim by the defendant's submission of a verified written medical expert opinion from a medical expert as defined in s. 766.202(6), at the time the response rejecting the claim is mailed, which statement shall corroborate reasonable grounds for lack of negligent injury sufficient to support the response denying negligent injury.

**(4) Presuit medical expert opinion.**--The medical expert opinions required by this section are subject to discovery. The opinions shall specify whether any previous opinion by the same medical expert has been disqualified and if so the name of the court and the case number in which the ruling was issued.

CREDIT(S)

Laws 1988, c. 88-1, § 50; Laws 1988, c. 88-277, § 26; Laws 1991, c. 91-110, § 33; Laws 1992, c. 92-33, § 113; Laws 1992, c. 92-278, § 3. Amended by Laws 2003, c. 2003-416, § 60, eff. Sept. 15, 2003; Laws 2004, c. 2004-5, § 154, eff. June 29, 2004.

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Title XLV. Torts (Chapters 766-774) (Refs &amp; Annos)

Chapter 766. Medical Malpractice and Related Matters (Refs &amp; Annos)

**→ → 766. 206. Presuit investigation of medical negligence claims and defenses by court**

(1) After the completion of presuit investigation by the parties pursuant to s. 766.203 and any discovery pursuant to s. 766.106, any party may file a motion in the circuit court requesting the court to determine whether the opposing party's claim or denial rests on a reasonable basis.

(2) If the court finds that the notice of intent to initiate litigation mailed by the claimant does not comply with the reasonable investigation requirements of ss. 766.201-766.212, including a review of the claim and a verified written medical expert opinion by an expert witness as defined in s. 766.202, or that the authorization accompanying the notice of intent required under s. 766.1065 is not completed in good faith by the claimant, the court shall dismiss the claim, and the person who mailed such notice of intent, whether the claimant or the claimant's attorney, is personally liable for all attorney's fees and costs incurred during the investigation and evaluation of the claim, including the reasonable attorney's fees and costs of the defendant or the defendant's insurer.

(3) If the court finds that the response mailed by a defendant rejecting the claim is not in compliance with the reasonable investigation requirements of ss. 766.201-766.212, including a review of the claim and a verified written medical expert opinion by an expert witness as defined in s. 766.202, the court shall strike the defendant's pleading. The person who mailed such response, whether the defendant, the defendant's insurer, or the defendant's attorney, shall be personally liable for all attorney's fees and costs incurred during the investigation and evaluation of the claim, including the reasonable attorney's fees and costs of the claimant.

(4) If the court finds that an attorney for the claimant mailed notice of intent to initiate litigation without reasonable investigation, or filed a medical negligence claim without first mailing such notice of intent which complies with the reasonable investigation requirements, or if the court finds that an attorney for a defendant mailed a response rejecting the claim without reasonable investigation, the court shall submit its finding in the matter to The Florida Bar for disciplinary review of the attorney. Any attorney so reported three or more times within a 5-year period shall be reported to a circuit grievance committee acting under the jurisdiction of the Supreme Court. If such committee finds probable cause to believe that an attorney has violated this section, such committee shall forward to the Supreme Court a copy of its finding.

(5)(a) If the court finds that the corroborating written medical expert opinion attached to any notice of claim or intent or to any response rejecting a claim lacked reasonable investigation or that the medical expert submitting the opinion did not meet the expert witness qualifications as set forth in s. 766.102(5), the court shall report the



medical expert issuing such corroborating opinion to the Division of Medical Quality Assurance or its designee. If such medical expert is not a resident of the state, the division shall forward such report to the disciplining authority of that medical expert.

(b) The court shall refuse to consider the testimony or opinion attached to any notice of intent or to any response rejecting a claim of an expert who has been disqualified three times pursuant to this section.

CREDIT(S)

Laws 1988, c. 88-1, § 53; Laws 1988, c. 88-277, § 29; Laws 1991, c. 91-110, § 35. Amended by Laws 2003, c. 2003-416, § 61, eff. Sept. 15, 2003; Laws 2004, c. 2004-5, § 155, eff. June 29, 2004; Laws 2011, c. 2011-233, § 14, eff. Oct. 1, 2011.

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