

Matt Powell †
K. Mitch Espat
Anita DiGiacomo
Marcia Sampson

MATTLAW.

304 South Plant Avenue • Tampa • Florida 33606
813-222-2222 • Fax 813-254-2226 • MattLaw.com
Matt Powell Email - Matt@MattLaw.com



Hutchinson House - 1906

† Board Certified Civil Trial Lawyer by the Florida Bar and the National Board of Trial Advocacy

January 13, 2019

**NOTICE OF INTENT TO INITIATE
LITIGATION FOR MEDICAL NEGLIGENCE**

CERTIFIED MAIL #

- RETURN RECEIPT

REQUESTED

Dr. ABCD, M.D.
46912 Central Avenue
Tampa, FL 44678

Re: Our Client: Jane Doe
Date of malpractice: 6/01/2018

Dear Dr. ABCD:

Pursuant to Section §766.106 (6)(b)(4), as well as other sections of Chapter 766 of the Florida Statutes, and in accordance with the Florida Medical Malpractice Pre-suit Screening Rule 1.650 Florida Rules of Civil Procedure, the undersigned attorney now serves upon you by Certified Mail, Return Receipt Requested, a Notice of Intent to Initiate Litigation for Medical Negligence on behalf of Jane Doe and Jimmy Doe their (spouse/parent/child). This claim pertains to injuries and damages sustained by Jane Doe as a result of treatment provided by you to Jane Doe on or about 6/01/2018.

Pursuant to Section 766.203, Florida Statutes, a verified written medical expert opinion of Dr. Expert, M.D. and Dr. Second Expert medical expert(s) as defined in Section 766.102 and Section 766.202(6), Florida Statutes, are enclosed hereto as Exhibit "A" to corroborate reasonable grounds to support that you were negligent in the care or treatment of Jane Doe and that such negligence was a substantial cause of loss, injury, damages and or the death of Jane Doe. Copies of all of the medical records relied upon by the expert(s) in signing the affidavit(s) are enclosed as Exhibit "B". The undersigned attorney certifies, pursuant to Section 766.102(11), Florida Statutes, that neither Dr. Expert nor Dr. Second Expert have been found guilty of fraud or perjury in any jurisdiction.

Pursuant to Section 766.106(2)(a), Florida Statutes, a list of all known health care providers seen by Jane Doe for the loss, injury and damages complained of subsequent to the alleged acts of negligence is enclosed as Exhibit "C", and a list of all known health care providers during the two years prior to the alleged act of negligence who treated or evaluated Jane Doe is enclosed as Exhibit "D".

Pursuant to Section 766.1065, Florida Statutes, an executed authorization form is enclosed as Exhibit "E".

The names and addresses of the other prospective defendants receiving notice of intent to initiate litigation for medical negligence arising from this incident are none; OR (include: and copies of the Notice of Intent to Initiate Medical Negligence directed to them are attached as Exhibit "F".

We contend that your treatment of Jane Doe fell below the acceptable standard of care in the following respects, to wit:

1. Failure to recognize *** ____ *** performed on
2. Failure to follow up with ** __ ** on following the treatment on .
3. Failure to review the pathology report regarding the, Dilation and Curettage and failing to notify _____ of the results and provide immediate additional treatment.
4. Failure to properly document the care and treatment of Jane Doe.
5. Failing to keep proper records and documentation of the care and treatment of Jane Doe.

Florida Statutes §766.106(3) (a), provides that no suit shall be filed for a period of ninety (90) days after notice is served upon a prospective defendant. During this 90-day period, you or your insurer are to conduct a good-faith investigation of this claim, employing one of the several procedures provided for in the Statute. I am sure you are aware that any unreasonable failure to comply with this section justifies the dismissal of defenses in the event a subsequent lawsuit is filed.

In addition to the above, Florida Statutes §766.106(6), and Rule 1.650(c) provides that, 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.

Accordingly, I ask that within twenty (20) days, either you or your representative respond in writing to the written interrogatory questions provided in Exhibit "G" and forward to me your answers. Additionally, I ask that within twenty (20) days, either you or your representative produce the documents requested in the Request for Production of documents the items listed in Exhibit "H".

The purpose of this ninety (90) day investigatory period is to allow all parties concerned an opportunity to determine the validity of a claim, fairly assess the extent of damages, and hopefully resolve the matter without the necessity of suit. It is my intent to fully cooperate with you and your agents and therefore, I expect the same cooperation from you.

In the event that you or your representatives fail to fully comply with the requirements contained within the applicable Statutes, I will move to strike any and all defenses raised in response to a lawsuit if one is ultimately filed.

Thank you for your cooperation. I look forward to your timely reply.

Sincerely,

Matthew D. Powell
MDP/MDP
§-Pp-502

Enclosures:

- Exhibit A Affidavit and Curriculum Vitae of Dr. Expert, M.D.
- Exhibit B Copies of All Medical Records Relied Upon by the experts in signing the affidavits;
- Exhibit C List of all known health care providers seen by Jane Doe for the injuries complained of subsequent to the alleged acts of negligence;
- Exhibit D List of all known health care providers during the two years prior to the alleged act of negligence who treated or evaluated the claimant;
- Exhibit E Executed authorization Form under Section 766.1065, Florida Statutes
- Exhibit F Copies of all Notice of Intent to Initiate Litigation for Medical Negligence sent to (list all other potential defendants).
- Exhibit G Claimant's Request for Answers to Written Questions pursuant to Section 766.106(6)(b)(4), Florida Statutes;
- Exhibit H Claimant's Request for Documents under Section 766.106(b)(2), Florida Statutes;
- Exhibit I Claimant's Request for Insurance Disclosure pursuant to Section 637.4137, Florida Statutes
- Exhibit J Claimant's Request for Medical Records requested pursuant to Florida Statutes 766, with copies of the certified mail return receipt requested as proof of mailing the request.

cc: State of Florida
Department of Insurance
Division of Risk Management
Larson Building
200 East Gaines Street
Tallahassee, FL 32399-0338

State of Florida
Patient's Compensation Fund
Post Office Box 13359
Tallahassee, FL 32317-3359

EXHIBIT A

*AFFIDAVIT AND C.V. OF Dr. Expert, M.D.
AND Dr. Second Expert, M.D.*

EXHIBIT B

*COPIES OF THE MEDICAL RECORDS RELIED UPON
BY THE EXPERT(S) IN SIGNING THE AFFIDAVIT(S)*

EXHIBIT C

LIST OF ALL KNOWN HEALTH CARE PROVIDERS SEEN BY JANE DOE FOR THE INJURIES COMPLAINED OF SUBSEQUENT TO THE ALLEGED ACTS OF NEGLIGENCE

Dr. QWERT, M.D.
QWERT, M.D., P.A.
14204 North Dale Avenue
Tampa, Florida 44789

Dr. YUIO, M.D.
93020 Easy Parkway
Tampa, Florida 44789

ZXCVB MRI, Inc.
1121 Lakeland Hills Blvd.
Tampa, FL 44789

Tampa General Hospital
1 Tampa General Circle
Tampa, Florida 33606

EXHIBIT D

*LIST OF ALL KNOWN HEALTH CARE PROVIDERS SEEN BY
JANE DOE IN THE TWO YEARS PRIOR TO THE ALLEGED ACT OF NEGLIGENCE WHO
TREATED OR EVALUATED JANE DOE*

Dr. QWERT, M.D.
QWERT, M.D., P.A.
14204 North Dale Avenue
Tampa, Florida 44789

Dr. YUIO, M.D.
93020 Easy Parkway
Tampa, Florida 44789

ZXCVB MRI, Inc.
1121 Lakeland Hills Blvd.
Tampa, FL 44789

Tampa General Hospital
1 Tampa General Circle
Tampa, Florida 33606

EXHIBIT E

*EXECUTED AUTHORIZATION FORM
UNDER SECTION 766.1065, FLORIDA STATUTES*

AUTHORIZATION FOR RELEASE OF PROTECTED HEALTH INFORMATION

A. I, Jane Doe, or Jimmy Doe, authorized representative of Jane Doe who is hereinafter identified as "Patient", authorize that Dr. ABCD and their insurer(s), self-insurer(s), and attorney(s) and the designated treating health care provider(s) listed below and his/her/its insurer(s), self-insurer(s), and attorney(s), and the designated treating health care provider(s) listed below and his/her/its insurer(s), self-insurer(s), and attorney(s) may obtain and disclose (within the parameters set out below) the protected health information described below for the following specific purposes:

1. Facilitating the investigation and evaluation of the medical negligence claim described in the accompanying presuit notice;
2. Defending against any litigation arising out of the medical negligence claim made on the basis of the accompanying presuit notice; or
3. Obtaining legal advice or representation arising out of the medical negligence claim described in the accompanying presuit notice.

B. The health information obtained, used, or disclosed extends to, and includes, the verbal health information as well as the written health information and is described as follows:

1. The health information in the custody of the following health care providers who have examined, evaluated, or treated the Patient in connection with injuries complained of after the alleged act of negligence:

Dr. QWERT, M.D.
QWERT, M.D., P.A.
14204 North Dale Avenue
Tampa, Florida 44789

Dr. YUIO, M.D.
93020 Easy Parkway
Tampa, Florida 44789

ZXCVB MRI, Inc.
1121 Lakeland Hills Blvd.
Tampa, FL 44789

Tampa General Hospital
1 Tampa General Circle
Tampa, Florida 33606

This authorization extends to any additional health care providers that may in the future evaluate, examine, or treat the Patient for the injuries complained of.

2. The health information in the custody of the following health care providers who have examined, evaluated, or treated the Patient during a period commencing 2 years before the incident that is the basis of the accompanying presuit notice.

Dr. QWERT, M.D.
QWERT, M.D., P.A.
14204 North Dale Avenue
Tampa, Florida 44789

Dr. YUIO, M.D.
93020 Easy Parkway
Tampa, Florida 44789

ZXCVB MRI, Inc.
1121 Lakeland Hills Blvd.
Tampa, FL 44789

Tampa General Hospital
1 Tampa General Circle
Tampa, Florida 33606

C. This authorization does not apply to the following list of health care providers possessing health care information about the Patient because the Patient certifies that such health care information is not potentially relevant to the claim of personal injury or wrongful death that is the basis of the accompanying presuit notice.

(None)

D. The persons or class of persons to whom the Patient authorizes such health information to be disclosed or by whom such health information is to be used:

1. Any health care provider providing care or treatment for the Patient.
2. Any liability insurer or self-insurer providing liability insurance coverage, self-insurance, or defense to any health care provider to whom presuit notice is given regarding the care and treatment of the Patient.
3. Any consulting or testifying expert employed by or on behalf of Defendant (name) and his/her/its insurer(s), self-insurer(s), or attorney(s) regarding the matter of the presuit notice accompanying this authorization.
4. Any attorney (including his/her staff) employed by or on behalf of Defendant (name) or employed by or on behalf of any health care provider(s) listed in subsection B.1.-2. above, regarding the matter of the presuit notice accompanying this authorization or the care and treatment of the Patient.
5. Any trier of the law or facts relating to any suit filed seeking damages arising out of the medical care or treatment of the Patient.

E. UNCONSTITUTIONAL provision removed pursuant to Ward v. Myers, 229 So.3d 1118 (2017) stating that under the Florida Constitution, the patients right of privacy may not be

violated by any Ex Parte communication without the presence of the Patient or the Patient's attorney.

F. This authorization expires upon resolution of the claim or at the conclusion of any litigation instituted in connection with the matter of the presuit notice accompanying this authorization, whichever occurs first.

G. The Patient understands that, without exception, the Patient has the right to revoke this authorization in writing. The Patient further understands that the consequence of any such revocation is that the presuit notice under s.766.106(2), Florida Statutes, is deemed retroactively void from the date of issuance, and any tolling effect that the presuit notice may have had on any applicable statute of limitations period is retroactively rendered void.

H. The Patient understands that signing this authorization is not a condition for continued treatment, payment, enrollment, or eligibility for health plan benefits.

I. The Patient understands that information used or disclosed under this authorization may be subject to additional disclosure by the recipient and may not be protected by federal HIPAA privacy regulations.

Signature of Patient/Representative _____ Date _____

Name of Patient/Representative: _____

Description of Representative's Authority: (parent/ PR)

EXHIBIT F

Copy of Notice of Intent to Initiate Claim for Medical Negligence to:

EXHIBIT G

*CLAIMANT'S REQUEST FOR ANSWERS TO WRITTEN INTERROGATORY QUESTIONS
PURSUANT TO SECTION 766.106(6) (b)(4), FLORIDA STATUTES*

Pursuant to Section 766.106(6)(b)(4), Florida Statutes, request Prospective Defendant Dr. ABCD, M.D. to answer the following written questions within 20 days of receipt:

1. In the event you contend that this Notice is directed to an improperly named or insufficiently identified entity, or that notice is required to any additional entity for legal sufficiency, please notify me immediately of the proper designation of the entity or the identity of any additional entity to which this Notice should be directed. If you do not notify me within ten (10) days of any such error or insufficiency of Notice, you will be deemed to have waived any later claim of legal insufficiency of Notice.
2. Do you contend that this Notice and/or the attached affidavit (if required) are legally insufficient or defective in any manner? If so, please state with particularity the manner in which the notice and/or affidavit are deficient.
3. At the time of the medical care and treatment you provided to Jane Doe from (date) through (date) were you employed by or in a legal relationship with any corporation, professional association, professional corporation, partnership, limited liability company, limited liability partnership, or other legal entity? If so, please state the name and address of the entity and the name and address of the entity's registered agent.
4. Please provide the full name, present address, and current employment status of each person with knowledge relating to the care and treatment of Jane Doe from (date) through (date).
5. Have you heard or do you know about any statement or remark made by or on behalf of any other person, other than yourself, concerning the medical care and treatment provided to Jane Doe? If so, state the name and address of each person who made the statement or statements, the name and address of each person who heard it, and the date, time, place, and substance of each statement.
6. Have you provided an oral or written statement to anyone relating to the medical care and treatment provided to Jane Doe? If yes, please state the date of the statement, nature of the statement, and identify the statement in a manner that will enable Claimant's attorneys to assess the applicability of any privilege or protection claimed relating to the statement pursuant to Rule 1.280(b)(5), Florida Rules of Civil Procedure.
7. Have you heard or do you know about any statement or remark made by or on behalf of Jane Doe concerning the medical care and treatment provided to Jane Doe? If so, state the name and address of each person who made the statement or statements, the name and address of each person who heard it, and the date, time, place, and substance of each statement.
8. Do you contend any person or entity other than you is, or may be, liable in whole or in part for the claims made against you in this Notice of Intent to Initiate Claim for Medical Negligence? If so, state the full name and address of each such person or entity, the legal

basis for your contention, the facts, or evidence upon which your contention is based, and whether or not you have notified each such person or entity of your contention.

9. Do you contend that the Notice of Intent to Initiate a Claim for Medical Negligence or the Affidavits of Dr. Expert, M.D. and Dr. Second Expert, M.D., are legally insufficient or defective under Chapter 766, Florida Statutes, in any manner? If so, please state with particularity the manner in which the notice and/or any of the affidavits are deficient.
10. Do you contend that Dr. Expert and/or Dr. Second Expert do not meet the criteria for a medical expert under Section 766.102(5), Florida Statutes? If so, please state in detail every fact upon which you base that contention.
11. Do you believe this claim should be barred by the Statute of Limitations? If your answer is yes, please state the date you believe the claim accrued for purposes of application of the statute of limitation and explain your belief that the claim is barred.
12. Please state the name, address, occupation and employer of the person or persons investigating this claim and the specific investigative procedure used to evaluate this claim, as prescribed in Florida Statutes §766.106(3)(a).
13. If any other written document or report concerning your treatment of Jane Doe is believed to exist but is not in your possession or control, please provide the present location and custodian of the same.
14. Please provide the full names and present addresses of all witnesses to the treatment of Jane Doe, and all persons having knowledge of such treatment. In addition to their names and present addresses, please briefly indicate each individual's interest in this matter, i.e., treating nurse, referring physician, eyewitness, etc., and the subject matter of their knowledge.
15. Please provide the full names and present addresses of any and all health care providers you either know or believe may have treated, reviewed, interpreted, or were consulted with in connection with the subject treatment of Jane Doe.
16. In an effort to comply with the requirements of Florida Statutes §766.106.(3)(d), please provide me with your opinions as to the possibility of settlement, admission of liability or offer of arbitration on damages, as well as an evaluation of the time it will take to process this claim.
17. Is it your contention that someone other than yourself was responsible in whole or in part for the occurrence of any of the damages or injuries alleged on behalf of Jane Doe? If so, please state each person's name, address and job title, along with the facts upon which you base your contention that he/she was responsible for such damages or injuries to Jane Doe.

18. Taking into consideration everything that you presently know regarding Jane Doe and the condition for which you rendered treatment, state whether or not, in your opinion at the present time, if any damages or injuries alleged on his/her behalf could have been avoided if some step had been taken or had some step been avoided during the course of his/her treatment by your agents, employees and/or servants. If upon such a consideration of the case at the present time, you have an opinion that such damages or injuries could have been avoided in such a manner, please describe what step(s) you feel should have been taken or could have been taken so as to prevent the damages or injuries.
19. Please state the name, profession, and professional address of each person who has submitted a written report or opinion related to this matter and provide a copy of such written report or opinion.
20. Please provide a date, time, and location at which I can take your informal statement regarding this matter in the presence of a court reporter. This conference is requested to take place within the next thirty (30) days in order to provide me with adequate time in which to thoroughly investigate, review, and evaluate this matter.
21. Do you contend that there is any deviation from the Florida Statutes governing the Presuit Notice of Intent To Initiate Litigation For Medical Negligence, including the authorization for release of protected health information provided in Exhibit "E" pursuant to Florida Statute 766.1065, if so, state specifically what deviations you believe are in violation of Florida Statute 766.1065.

EXHIBIT H

*CLAIMANT'S REQUEST FOR DOCUMENTS
PURSUANT TO SECTION 766.106(6) (b)(4), FLORIDA STATUTES*

Pursuant to Section 766.106(6)(b)(2), Florida Statutes, request Prospective Defendant, Dr. ABCD, M.D., to produce the following documents within its possession or control within 20 days of receipt of this request:

1. Color copies of all medical records in your possession or control relating to the medical care and treatment you provided to Jane Doe, including, but not limited to, progress notes, orders, reports, telephone messages, electronic mail, memos, incident reports, written notes, X-rays, photographs, all radiological studies and any other pertinent documents or reports photographs, and any other documents or written or electronic materials pertaining to your care and treatment of Jane Doe.
2. Please provide copies of any evidence of employment agreements or other documentation of your legal relationship with any corporation, professional association, professional corporation, partnership, limited liability company, limited liability partnership, or other legal entity at the time you provided medical care and treatment to Jane Doe.
3. Please provide a complete copy of any and all professional liability insurance policies, including any excess or umbrella policies of insurance that may provide coverage for the incident described in the Notice of Intent to Initiate Litigation for Medical Negligence.
4. Pursuant to Section 458.323, Florida Statutes, please produce an itemized statement of the specific services rendered to Jane Doe and the charge for each such service.
5. All adverse incident reports in your possession or control relating to the medical care and treatment provided to Jane Doe. If you object, please provide a privilege log.
6. Copies of any contracts or agreements between Dr. ABCD, M.D. and XYZ Hospital.
7. A copy of the current Curriculum Vitae of Dr. ABCD, M.D.
8. Index of Policy & Procedure Manual(s) which were in effect from (date) through (date) relating to _____.
9. A copy of the current Curriculum Vitae of any person performing any services relating to performing the Presuit investigation on behalf of Dr. ABCD, M.D. in this cause.

EXHIBIT I

*CLAIMANT'S REQUEST FOR INSURANCE DISCLOSURE
PURSUANT TO SECTION 637.4137, FLORIDA STATUTES*

EXHIBIT I
CLAIMANT'S REQUEST FOR INSURANCE DISCLOSURE PURSUANT TO
SECTION 627.4137, FLORIDA STATUTES

Each insurer which does or may provide liability insurance coverage to pay all or a portion of this claim which might be made shall provide within 30 days of this written request of the claimant {PRI MAT:INJURED PARTY}, a statement, under oath, of a corporate officer of the insurer's claims manager or superintendent setting forth the following information with regard to each known policy of insurance, including excess or umbrella insurance:

1. The name of the insurer;
2. The name of each insured;
3. The limits of liability coverage;
4. A statement of any policy or coverage defense which such insurer reasonably believes is available to such insurer at the time of providing this disclosure;
5. A copy of the insurance policy.
6. If this request is being received by a self-insured corporation, provide the name and address of your registered agent.
7. If you do not carry medical malpractice insurance, please provide proof of your compliance with §458.320.

EXHIBIT J

CLAIMANT'S REQUEST FOR MEDICAL RECORDS REQUESTED PURSUANT TO FLORIDA STATUTES 766, WITH COPIES OF THE CERTIFIED MAIL RETURN RECEIPT REQUESTED AS PROOF OF MAILING THE REQUEST.