MEDICAL MALPRACTICE TIMELINE AND CHECKLIST

This is a very broad overview of the steps you can and often should take to manage a medical malpractice claim. It is important to know that the laws change occasionally, and you should review the latest statutes, procedural rules and case law to make sure you meet all of the technical requirements to bring a medical malpractice claim.

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Day	Action	Law	Comment
1	You meet the client and decide to investigate the potential medical malpractice case.		
1	Client signs your contingency fee contract with the waiver of the Florida Constitutional Attorney Fee Cap	Article 1, Section 26 of the Florida constitution	Sample waiver See Exhibit A
1	File the automatic 90 day extension of the statute of limitations	§766.104(2)	Cost is $42.00 See Exhibit B
2	Send our your request for medical records only to the Target Defendants giving them 10 days to deliver their records	§766.204	Send the request Certified Mail Return Receipt Requested. See Exhibit C
12	Confirm you have received the medical records you requested 10 days ago.	§766.202(6)	Once you receive the records, you need to find a qualified expert witness to provide you with a “verified written medical expert opinion.

13 only if the records do not arrive in 10 days	11 days after mailing the request for records if the health care provider did not provide the records in a timely manner send your Notice of Intent to Initiate Litigation for Medical Malpractice	§766.204 failure to provide medical records allows you to skip an Expert Opinion to your Notice of Intent to Initiate Litigation.	You should be prepared to file your Notice of Intent quickly to get your case moving. Notice of Intent to Initiate Litigation without medical records. * See note below See Exhibit D
13 if the records are sent in a timely manner.	Upon receiving the medical records, seek out and find a qualified expert who will review all of the medical records and possesses an "Expert Witness Certificate"	§766.102(5), §458.3175, §459.0066 or §466.005	Expert Witness Certificates require Medical Doctors, Osteopathic physicians and dentists to request and obtain their Expert Witness Certificate. https://flboardofmedicine.gov/licensing/expert-witness-certificate/ See Exhibit E
21	Send all of the medical records in your possession to your expert and ask them to review the records and offer their opinion regarding the target health care professional's deviation from the standard of care.		Transmittal Letter to potential expert asking them for their review and opinions regarding the standard of care. See Exhibit F

25	Talk to your expert(s) about their findings when they reviewed the medical records. a) Was there a deviation from the standard of care? b) Was the deviation the cause of the damages? c) Are there other potential defendants that need to be pre-suited?		
25	Sending your expert a letter fully explaining how they must qualify as a Medical Expert under the statute	766.102(5) et. al.	See Exhibit G
25	Prepare the expert affidavit for their review and signature.		Sample Affidavit See Exhibit H
30	Upon receipt of your affidavit from the expert, prepare and send your Notice of Intent to Initiate Litigation via Certified Mail. This starts the 90 day time period for the pre-suit investigation.	766.106(2)(a)	Notice Of Intent to initiate litigation with your Expert Affidavit. See Exhibit I
51	If you sent “Informal Discovery” requests with your Notice of Intent, their responses will be due 20 days after you send the notice. Review your file and if they have not responded, send them a friendly letter asking for their responses.	§766.106(6)(a)	

141	At or before the end of the 90 days, the prospective defendant shall provide a response via Certified Mail: a) Rejecting the claim b) Making a settlement offer, or c) Making an offer to arbitrate when liability is deemed admitted . . . d) (do nothing)	§766.106(3)(b)(1,2, 3)	Typically the defendant will reject the claim, and you are now able to file suit.
142	Send a response letter to the prospective defendant acknowledging that the pre-suit investigation period has ended and state that you believe you have attempted in good faith to fully comply with the statutes by providing them everything they have reasonably asked for. If you feel that the defendant has not participated in the pre-suit investigation in good faith, in your letter state what they did wrong and explain how they have acted in bad faith.		If the defendant does nothing send a confirming letter that Pre-Suit has ended and you will file suit. See Exhibit J
142	Once pre-suit is over, you have 30 days to send your client the statutorily required letter advising the client: a) The nature of or a copy of the response from the defendant b) The exact terms of any settlement offer, or admission of liability and or offer to arbitrate damages c) The legal and financial consequence of acceptance or rejection of any settlement offer	§766.101(3)(c)(1 - 4)	See Exhibit K

	d) An evaluation of the time and likelihood of ultimate success at trial on the merits. e) An estimation of the costs and attorney's fees of proceeding through trial		
142	You can now file suit for your damages		
142	"The complaint or initial pleading shall contain a certificate of counsel that such reasonable investigation gave rise to a good faith belief that grounds exist for an action against each named defendant."	§766.104(1)	You must include a simple statement in your complaint to comply with this statute.
152	"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."	§766.106(2)(b)	Sometime after you file suit and serve a defendant, you are required to send either one letter or two. One to the Department of Health alerting them about your claim, and if you are suing a hospital then you are also required to send a copy of your complaint to AHCA. See Exhibit L See Exhibit M

162	If the Defendant (or Plaintiff) has acted in bad faith in pre-suit and failed to comply with the pre-suit investigation, you may file a Motion requesting the Court to determine whether the opposing party's claim or denial rests on a reasonable basis.	§766.206(1) §766.206(2) §766.206(3) *Michael v. Med. Staffing Network, Inc.,* 947 So.3d 614, 619 *Fla. 3d DCA 2007)	File a motion for sanctions if the defendant has truly failed to comply with the pre-suit investigation. The courts used to grant motions for sanctions often, but the law has evolved such that sanctions are rarely granted. Certainly sanctions are not granted on a mere technicality.
	Calculation of the Statute of Limitations.	§766.106 providing for 90-day notices of intent on medical malpractice defendants provides separate 90-day period from § 766.104 which provides for "automatic 90-day extension"; thus, two may be added together to yield total tolling period of 180 days.	Calculation of the statute of limitations.

Note * In most cases, the medical provider will send the records to you, although late. When you get the records, you should obtain from your qualified expert an affidavit stating the medical provider deviated from the standard of care, and send a new Notice of Intent to Initiate Litigation. You don't want to stand on your original Notice of Intent without any corroborating affidavits. Remember the purpose of pre-suit is a full investigation of the claim, not to play gotcha.

The Florida Supreme Court said in *Morris v. Muniz*, 252 So. 3d 1143, 1151 (Fla. 2018)

I. Chapter 766

Florida's medical malpractice statutory scheme, codified in chapter 766, Florida Statutes, contains an elaborate presuit process for prospective medical malpractice plaintiffs, including a presuit investigation component. *See id.* § 766.201(2). As we have explained, the presuit process was created to "facilitate the expedient, and preferably amicable, resolution of medical malpractice claims." *Williams*, 62 So.3d at 1133 n.1 (citation omitted); *see* § 766.201(2), Fla. Stat. (2011) ("It is the intent of the Legislature to provide a plan for prompt resolution of medical negligence claims."). The Legislature's intent notwithstanding, we have stated that the presuit process "restrict[s] plaintiffs' ability to bring medical malpractice claims." *Dockswell v. Bethesda Mem'l Hosp., Inc.*, 210 So.3d 1201, 1205 (Fla. 2017). Therefore, the requirements of the presuit process must be "interpreted liberally so as not to unduly restrict a Florida citizen's constitutionally guaranteed access to the courts." *Kukral*, 679 So.2d at 284.

IV. Conclusion

It has been observed that "there is an increasingly disturbing trend of prospective defendants attempting to use the [chapter 766] statutory requirements as a sword against plaintiffs." *Michael v. Med. Staffing Network, Inc.*, 947 So.2d 614, 619 (Fla. 3d DCA 2007). Unfortunately, it appears that this was such a case. Despite the sworn affidavit of Morris's presuit medical expert—which stated that she had been a board-certified obstetrician and gynecologist for more than twenty years and served as chief of the OB-GYN department at a large medical center and chief of staff at a small women's specialty hospital—the Defendants in this case used the medical malpractice statutory requirements as a sword.