RULE 1.650 | MEDICAL MALPRACTICE PRESUIT SCREENING RULE

(a) Scope of Rule. This rule applies only to the procedures prescribed by section 766.106, Florida Statutes, for presuit screening of claims for medical malpractice.

(b) Service of Notice of Intent to Initiate Litigation.

(1) Before filing a complaint for medical negligence, a claimant must serve a notice of intent to initiate litigation on each prospective defendant by any of the verifiable means provided by section 766.106(2)(a), Florida Statutes. A notice served on any prospective defendant must operate as notice to that prospective defendant and any other prospective defendant who bears a legal relationship to the prospective defendant served with the notice. The notice must make the served prospective defendant a party to the proceeding under this rule.

(2) The notice must include the names and addresses of all other parties and must be sent to each party.

(3) If, during subsequent litigation, service is challenged in the first response to the complaint, the court must conduct an evidentiary hearing as provided by section 766.106(2)(b)(2), Florida Statutes.

(c) Discovery.

(1) Types. After a prospective defendant has been served with a notice of intent to initiate litigation, the parties may obtain presuit screening discovery by 1 or more of the following methods: unsworn statements on oral examination; production of documents or things; physical examinations; written questions; and unsworn statements of treating health care providers. Unless otherwise provided in this rule, the parties must make discoverable information available without formal discovery. Evidence of failure to comply with this rule may be grounds for dismissal of claims or defenses ultimately asserted

(2) Procedures for Conducting.

(A) Unsworn Statements. Any party may require other parties to appear for the taking of an unsworn statement. The statements must only be used 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 an attorney at the taking of an unsworn statement. Statements may be transcribed or electronically recorded, or audiovisually recorded. The taking of unsworn statements of minors is subject to the provisions of rule 1.310(b)(8). The taking of unsworn statements is subject to the provisions of rule 1.310(d) and may be terminated for abuses. If abuses occur, the abuses must be evidence of failure of that party to comply with the good faith requirements of section 766.106, Florida Statutes.

(B) Documents or Things. At any time after service of a notice of intent to initiate litigation on a prospective defendant, a party may request discoverable documents or things. The documents or things must be produced at the expense of the requesting party within 20 days of serving the request. A party is required to produce discoverable documents or things within that party's possession or control. Copies of documents produced in response to the request of any party must be served on all other parties. The party serving the documents must list the name and address of the parties on whom the documents were served, the date of service, the manner of service, and the identity of the document served in the certificate of service. Failure of a party to comply with the above time limits must not relieve that party of its obligation under the statute but must be evidence of failure of that party to comply with the good faith requirements of section 766.106, Florida Statutes.

(C) Physical Examinations. After a prospective defendant has been served with a notice of intent to initiate litigation and within the presuit screening period, a party may require a claimant to submit to a physical examination. The party must give reasonable notice in writing to all parties of the time and place of the examination. Unless otherwise impractical, a claimant must be required to submit to only one examination on behalf of all parties. The practicality of a single examination must be determined by the nature of the claimant's condition as it relates to the potential liability of each party. The report of examination must be made available to all parties on payment of the reasonable cost of reproduction. The report must not be provided to any person not a party at any time. The report must only be used for the purpose of presuit screening and the examining physician may not testify concerning the examination in any subsequent civil action. All requests for physical examinations or notices of unsworn statements must be in writing and a copy served on all parties. The requests or notices must bear a certificate of service identifying the name and address of the person on whom the request or notice is served, the date of the request or notice, and the manner of service. Any minor required to submit to examination under this rule must have the right to be accompanied by a parent or guardian at all times during the examination, except on a showing that the presence of a parent or guardian is likely to have a material, negative impact on the minor's examination.

(D) Written Questions. Any party may request answers to written questions, the number of which may not exceed 30, including subparts. The party to whom the written questions are directed must respond within 20 days of service of the questions. Copies of the answers to the written questions must be served on all other parties. The party serving the answer to the written questions shall list the name and address of the parties on whom the answers to the written questions were served, the date of

service, and the manner of service in the certificate of service. Failure of a party to comply with the above time limits will not relieve that party of its obligation under the statute, but will be evidence of failure of that party to comply with the good faith requirements of section 766.106, Florida Statutes.

(E) Unsworn Statements of Treating Healthcare Providers. A prospective defendant or his or her legal representative may also take unsworn statements of the claimant's treating healthcare 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 subdivision (c)(2)(A), a prospective defendant may take unsworn statements from claimant's treating health care providers. The statements must only be used 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 treating healthcare providers 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 treating healthcare provider to be examined. Unless otherwise impractical, the examination of any treating healthcare provider must be done at the same time by all other parties. Any party may be represented by an attorney at the taking of an unsworn statement of treating healthcare providers. Statements may be transcribed or electronically recorded, or audiovisually recorded. The taking of unsworn statements of a treating healthcare provider is subject to the provisions of rule 1.310(d) and may be terminated for abuses. If abuses occur, the abuses will be evidence of failure of that party to comply with the good faith requirements of section 766.106, Florida Statutes.

(3) Work Product. Work product generated by the presuit screening process that is subject to exclusion in a subsequent proceeding is limited to verbal or written

communications that originate under the presuit screening process.

(d) Time Requirements.

(1) Before the expiration of any applicable statute of limitations or statute of repose, the notice of intent to initiate litigation must be mailed to the prospective defendant as provided in sections 766.106(2)(a)1.–3., Florida Statutes, or an attempt to serve the prospective defendant must be made in accordance with section 766.106(2)(a)4., Florida Statutes. If an extension has been granted under section 766.104(2), Florida Statutes, or by agreement of the parties, the notice must be mailed or service first attempted within the extended period.

(2) A suit may not be filed against any prospective defendant for a period of 90 days after the notice of intent to initiate litigation was delivered to that party. A suit may be filed against any party at any time after the notice of intent to initiate litigation has been served and after the claimant has received a written rejection of the claim from that party.

(3) To avoid being barred by the applicable statute of limitations, an action must be filed within 60 days or within the remainder of the time of the statute of limitations after the notice of intent to initiate litigation was served, whichever is longer, after the earliest of the following:

(A) The expiration of 90 days after the date of service of the notice of intent to initiate litigation.

(B) The expiration of 180 days after service of the notice of intent to initiate litigation if the claim is controlled by section 768.28(6)(a), Florida Statutes.

(C) Receipt by claimant of a written rejection of the claim.

(D) The expiration of any extension of the 90-day presuit screening period stipulated to by the parties in accordance with section 766.106(4), Florida Statutes.

Committee Notes

2000 Amendment. The reference to the statute of repose was added to subdivision (d)(1) pursuant to *Musculoskeletal Institute Chartered v. Parham, 745 So.2d 946 (Fla. 1999).*