

## CHAPTER 23

### NOTICE OF INTENT TO INITIATE

#### MEDICAL (NURSING) MALPRACTICE LITIGATION

##### **I. INTRODUCTION**

A Notice of Intent ("NOI") to Initiate Medical Malpractice Litigation is sometimes called a Letter of Intent ("LOI"). This is a method for notifying a nurse or other health care provider in writing that she is facing a claim by a patient (or the patient's family) and that the patient was harmed because of medical or nursing negligence. It is almost always in the form of a letter from an attorney. It should also provide enough specific details, including an affidavit from an expert, so that you can determine what incident or incidents are giving rise to the claim. A NOI is required by Florida law before a law suit ("complaint") may be filed with a court in a medical or nursing negligence case.

The law requires the notice to be sent by certified mail, return receipt requested, with a copy sent to the Department of Health (DOH). On receipt, a nurse and her insurer have only 90 days in which to investigate and evaluate the patient's claim and take action on it. The law also requires that an affidavit by a similar health care provider be attached to the NOI supporting the claimant's allegations. The NOI automatically tolls (stops) the statute of limitations in a medical/nursing negligence case for 90 days as to all potential defendants.

The requirement for a NOI is set forth in Section 766.106, Florida Statutes. The procedures that govern pre-suit screening in Florida medical negligence cases, that must be followed after a NOI is received is set forth in Section 766.201, et seq., Florida Statutes

##### **II. WHAT TO DO IF YOU RECEIVE A NOI**

After receiving an NOI the first thing you should do is immediately notify your professional liability insurance company (if you have one). Telefax a copy of the NOI to your insurance company using a letter with the date, your complete name, address, telephone number and the insurance policy number. Also include the insurer's name, address and the telefax number and be sure to get a telefax receipt. Be sure to mail a follow-up copy to the insurance company. Always keep a complete copy for your records.

After notifying your insurance carrier you should next notify the employer(s) for whom you were working at the time of the incident(s) specified in the NOI. Notify them in the same way you notified the insurance company.

The third thing you should do is to consult with a qualified medical malpractice defense attorney or health care lawyer regarding what to do. If you have a professional liability insurance policy, your insurer should hire an attorney to represent you. If you were employed, often your employer (or its insurer) will retain an attorney to represent you. You should always request a different attorney to represent you from any attorney representing another party named in the NOI, especially if your employer was a hospital or nursing home.

Always remember not to discuss the case with the claimant, the claimant's attorney, other nurses and physicians involved in care and treatment of the claimant or a hospital representative (unless your own attorney advises this). These parties may be named as codefendants should future litigation be filed, and things you say to them could later be used against you.

### **III. WHAT TO EXPECT**

If you are obtaining representation through either your insurance or your employer's insurance carrier, you will be contacted by a representative from your insurance company to arrange a meeting to discuss your medical records and care and treatment of the claimant. If you have obtained counsel on your own your attorney will schedule time to meet with you and have an expert review your medical records and care and treatment of the claimant. Prepare for this by familiarizing yourself with the records and anticipating questions to counter the affidavit of the claimant's expert. If possible, have available any pertinent literature, text books, journal articles or protocols and procedures that may apply.

Your attorney or insurance representative will obtain all pertinent records and have them reviewed by a consultant in your speciality. Your assistance in obtaining this review may be necessary.

Following a review of the records, your attorney or insurance representative may wish to discuss the review with you. In the event there is a request from the claimant's attorney for an unsworn statement, or if you receive written inquiries, do not respond on your own!

If an unsworn statement is taken of the claimant, you are encouraged to attend with your attorney.

### **IV. WHAT OPTIONS ARE AVAILABLE TO THE NURSE AT THE END OF THE INVESTIGATION PERIOD**

One of three things will have to happen at the end of the 90-day presuit investigation period.

1. You (or your insurance company) will have to deny the claims made in the NOI. If a supportive affidavit is obtained, it is sent with a written denial to the claimant. If you do not respond, it is deemed a final rejection of the claim.
2. You (or your insurance company) may offer to settle the case. In the event, you cannot obtain an expert who supports your position, or the investigation reveals possible problems in defending the claim, you have the option of responding to the NOI by making a settlement offer on or before the expiration period. Although, a settlement offer may be for a small amount of money, whatever amount is offered must be in good faith.
3. You (or your insurance company) may admit liability and agree to binding arbitration. Agreeing to arbitrate the claim caps the non-economic damages (pain and suffering) at \$250,000. The claimant must also agree

to this in order for arbitration to go forward. If arbitration is rejected by the claimant, non-economic damages are then capped at a level set by the Florida Legislature during litigation and admission of liability on your part would not be admissible in court.

**IV. WHAT OPTIONS ARE AVAILABLE TO THE CLAIMANT AT THE END OF THE INVESTIGATION PERIOD**

At the end of the 90-day investigation period the claimant will have four options to pursue.

1. The claimant may drop the claim.
2. The claimant may accept any offer to settle that has been made or may attempt to negotiate a higher settlement amount, if an offer has been made.
3. The claimant may agree to arbitrate the case, if the nurse has offered to arbitrate the case.
4. The claimant may file suit. Upon receiving notice of termination of the 90-day period, the claimant has the remainder of the period of the statute of limitations to file suit, or 60 days, whichever is longer.

**V. CONCLUSION**

The Notice of Intent (NOI) is a very important legal document. If you receive one and you are employed by the same person or organization as you were employed by when the events in the NOI first took place, you should notify and give a copy to your employer. Regardless of anything else, if you have your own professional liability insurance, you should immediately notify your insurance company, send it a copy of the NOI by certified mail, return receipt requested, and request that your insurance company provide a legal defense for you. If you do not have professional liability insurance, then we recommend that you consult with a qualified medical malpractice insurance defense attorney anyway, to make sure that your interests are protected.

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