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Summary of the Key Provisions of Florida Medical Malpractice Statutes

e. Bad Faith Actions

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766.1185. Bad faith actions

In all actions for bad faith against a medical malpractice insurer relating to professional liability insurance coverage for medical negligence, and in determining whether the insurer could and should have settled the claim within the policy limits had it acted fairly and honestly towards its insured with due regard for her or his interest, whether under statute or common law:

(1)(a) An insurer shall not be held in bad faith for failure to pay its policy limits if it tenders its policy limits and meets other reasonable conditions of settlement by the earlier of either:

1. The 210th day after service of the complaint in the medical negligence action upon the insured. The time period specified in this subparagraph shall be extended by an additional 60 days if the court in the bad faith action finds that, at any time during such period and after the 150th day after service of the complaint, the claimant provided new information previously unavailable to the insurer relating to the identity or testimony of any material witnesses or the identity of any additional claimants or defendants, if such disclosure materially alters the risk to the insured of an excess judgment; or
2. The 60th day after the conclusion of all of the following:
 - a. Deposition of all claimants named in the complaint or amended complaint.
 - b. Deposition of all defendants named in the complaint or amended complaint, including, in the case of a corporate defendant, deposition of a designated representative.
 - c. Deposition of all of the claimants' expert witnesses.
 - d. The initial disclosure of witnesses and production of documents.
 - e. Mediation as provided in [s. 766.108](#).

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(b) Either party may request that the court enter an order finding that the other party has unnecessarily or inappropriately delayed any of the events specified in subparagraph (a)2. If the court finds that the claimant was responsible for such unnecessary or inappropriate delay, subparagraph (a)1. shall not apply to the insurer's tendering of policy limits. If the court finds that the defendant or insurer was responsible for such unnecessary or inappropriate delay, subparagraph (a)2. shall not apply to the insurer's tendering of policy limits.

(c) If any party to an action alleging medical negligence amends its witness list after service of the complaint in such action, that party shall provide a copy of the amended witness list to the insurer of the defendant health care provider.

(d) The fact that the insurer did not tender policy limits during the time periods specified in this paragraph is not presumptive evidence that the insurer acted in bad faith.

(2) When subsection (1) does not apply, the trier of fact, in determining whether an insurer has acted in bad faith, shall consider:

(a) The insurer's willingness to negotiate with the claimant in anticipation of settlement.

(b) The propriety of the insurer's methods of investigating and evaluating the claim.

(c) Whether the insurer timely informed the insured of an offer to settle within the limits of coverage, the right to retain personal counsel, and the risk of litigation.

(d) Whether the insured denied liability or requested that the case be defended after the insurer fully advised the insured as to the facts and risks.

(e) Whether the claimant imposed any condition, other than the tender of the policy limits, on the settlement of the claim.

(f) Whether the claimant provided relevant information to the insurer on a timely basis.

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(g) Whether and when other defendants in the case settled or were dismissed from the case.

(h) Whether there were multiple claimants seeking, in the aggregate, compensation in excess of policy limits from the defendant or the defendant's insurer.

(i) Whether the insured misrepresented material facts to the insurer or made material omissions of fact to the insurer.

(j) In addition to the foregoing, the court shall allow consideration of such additional factors as the court determines to be relevant.

(3) The provisions of [s. 624.155](#) shall be applicable in all cases brought pursuant to that section unless specifically controlled by this section.

(4) An insurer that tenders policy limits shall be entitled to a release of its insured if the claimant accepts the tender.