

## **Professional Liability Actions**

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### **Rule 1042.1. Professional Liability Actions. Scope. Definition**

(a) The rules of this chapter govern a civil action in which a professional liability claim is asserted against a licensed professional.

(b) As used in this chapter, "licensed professional" means

(1) any person who is licensed pursuant to an Act of Assembly as

(i) a health care provider as defined by Section 503 of the Medical Care Availability and Reduction of Error (Mcare) Act, 40 P.S. § 1303.503;

(ii) an accountant;

NOTE: See the CPA Law, Act of May 26, 1947, No. 318, as reenacted and amended, 63 P.S. § 9.1 et seq.

(iii) an architect;

NOTE: See the Architects Licensure Law, Act of December 14, 1982, P.L. 1227, No. 281, 63 P.S. § 34.1 et seq.

(iv) a chiropractor;

NOTE: See the Chiropractic Practice Act of Dec. 16, 1986, P.L. 1646, No. 188, 63 P.S. § 625.101 et seq.

(v) a dentist;

NOTE: See the Dental Law, Act of May 1, 1933, P.L. 216, 63 P.S. §120 et seq.

(vi) an engineer or land surveyor;

NOTE: See The Engineer, Land Surveyor and Geologist Registration Law, Act of May 23, 1945, P.L. 913, as amended, 63 P.S. §148 et seq.

(vii) a nurse;

NOTE: See the Professional Nursing Law, Act of May 22, 1951, P.L. 317, as amended, 63 P.S. § 211 et seq.

(viii) an optometrist;

NOTE: See the Optometric Practice and Licensure Act of June 6, 1980, P.L. 197, No. 57, 63 P.S. § 244.1 et seq.

(ix) a pharmacist;

NOTE: See the Wholesale Prescription Drug Distributors License Act of December 14, 1992, P.L. 1116, No.145, 63 P.S. § 391.1 et seq.

(x) a physical therapist;

NOTE: See the Physical Therapy Practice Act of October 10, 1975, P.L. 383, No. 110, 63 P.S. § 1301 et seq.

(xi) a psychologist; and

NOTE: See the Professional Psychologists Practice Act of March 23, 1972, P.L. 136, No. 52, 63 P.S. § 1201 et seq.

(xii) a veterinarian.

NOTE: See the Veterinary Medicine Practice Act of December 27, 1974, P.L. 995, No. 326, 63 P.S. § 485.1 et seq.

(2) an attorney at law; and

NOTE: See Rule 76 for the definition of attorney at law.

(3) any professional described in paragraphs (1) and (2) who is licensed by another state.

#### **Rule 1042.2. Complaint**

(a) A complaint shall identify each defendant against whom the plaintiff is asserting a professional liability claim.

NOTE: It is recommended that the complaint read as follows:

“Defendant \_\_\_\_\_ (name) is a licensed professional with offices in \_\_\_\_\_ County, Pennsylvania. Plaintiff is asserting a professional liability claim against this defendant.”

(b) A defendant may raise by preliminary objections the failure of the complaint to comply with subdivision (a) of this rule.

NOTE: The filing of preliminary objections raising failure of a pleading to conform to rule of court is the procedure for bringing before the court the issue whether the complaint is asserting a professional liability claim.

**Rule 1042.3. Certificate of Merit**

(a) In any action based upon an allegation that a licensed professional deviated from an acceptable professional standard, the attorney for the plaintiff, or the plaintiff if not represented, shall file with the complaint or within sixty days after the filing of the complaint, a certificate of merit signed by the attorney or party that either

(1) an appropriate licensed professional has supplied a written statement that there exists a reasonable probability that the care, skill or knowledge exercised or exhibited in the treatment, practice or work that is the subject of the complaint, fell outside acceptable professional standards and that such conduct was a cause in bringing about the harm, or

NOTE: It is not required that the "appropriate licensed professional" who supplies the necessary statement in support of a certificate of merit required by subdivision (a)(1) be the same person who will actually testify at trial. It is required, however, that the "appropriate licensed professional" who supplies such a statement be an expert with sufficient education, training, knowledge and experience to provide credible, competent testimony, or stated another way, the expert who supplies the statement must have qualifications such that the trial court would find them sufficient to allow that expert to testify at trial. For example, in a medical professional liability action against a

physician, the expert who provides the statement in support of a certificate of merit should meet the qualifications set forth in Section 512 of the Medical Care Availability and Reduction of Error (Mcare) Act, 40 P.S. § 1303.512.

(2) the claim that the defendant deviated from an acceptable professional standard is based solely on allegations that other licensed professionals for whom this defendant is responsible deviated from an acceptable professional standard, or

NOTE: Certificates of merit must be filed as to the other licensed professionals whether or not they are named defendants in the action.

(3) expert testimony of an appropriate licensed professional is unnecessary for prosecution of the claim.

NOTE: In the event that the attorney certifies under subdivision (a)(3) that an expert is unnecessary for prosecution of the claim, in the absence of exceptional circumstances the attorney is bound by the certification and, subsequently, the trial court shall preclude the plaintiff from presenting testimony by an expert on the questions of standard of care and causation.

(b) A separate certificate of merit shall be filed as to each licensed professional against whom a claim is asserted.

(c)(1) A defendant who files a counterclaim asserting a claim for professional liability shall file a certificate of merit as required by this rule.

(2) A defendant or an additional defendant who has joined a licensed professional as an additional defendant need not file a certificate of merit unless the joinder is based on acts of negligence that are unrelated to the acts of negligence that are the basis for the claim against the joining party.

(d) The court, upon good cause shown, shall extend the time for filing a certificate of merit for a period not to exceed sixty days. The motion to extend the time for filing a certificate of merit must be filed on or before the filing date that the plaintiff seeks to extend. The filing of a motion to extend tolls the time period within which a certificate of merit must be filed until the court rules upon the motion.

NOTE: There are no restrictions on the number of orders that a court may enter extending the time for filing a certificate of merit provided that each order is entered pursuant to a new motion, timely filed and based on cause shown as of the date of filing the new motion.

The moving party must act with reasonable diligence to see that the motion is promptly presented to the court if required by local practice.

In ruling upon a motion to extend time, the court shall give appropriate consideration to the practicalities of securing expert review. There is a basis for granting an extension of time within which to file the certificate of merit if counsel for the plaintiff was first contacted shortly before the statute of limitations was about to expire, or if, despite diligent efforts by counsel, records necessary to review the validity of the claim are not available.

#### **Rule 1042.4. Responsive Pleading**

A defendant against whom a professional liability claim is asserted shall file a responsive pleading within the time required by Rule 1026 or within twenty days after service of the certificate of merit on that defendant, whichever is later.

**Rule 1042.5. Discovery**

Except for the production of documents and things or the entry upon property for inspection and other purposes, a plaintiff who has asserted a professional liability claim may not, without leave of court, seek any discovery with respect to that claim prior to the filing of a certificate of merit.

NOTE: Upon motion seeking leave of court, the court shall allow any discovery which is required for a licensed professional to make a determination as to whether a defendant deviated from accepted professional standards.

This rule does not preclude a defendant from seeking a protective order under Rule 4012 in response to a request for the production of documents and things or the entry upon property for inspection and other purposes.

**Rule 1042.6. Entry of Judgment of Non Pros for Failure to File Certification**

(a) The prothonotary, on praecipe of the defendant, shall enter a judgment of non pros against the plaintiff for failure to file a certificate of merit within the required time provided that there is no pending timely filed motion seeking to extend the time to file the certificate.

NOTE: The prothonotary may not enter judgment if the certificate of merit has been filed prior to the filing of the praecipe.

Rule 237.1 does not apply to a judgment of non pros entered under this rule.

(b) The praecipe for the entry of a judgment of non pros shall be substantially in the following form:

**(Caption)**

**Praecipe for Entry of Judgment of Non Pros**

**Pursuant to Rule 1042.6**

To the Prothonotary:

Enter judgment of non pros against \_\_\_\_\_ in the professional  
liability claim against \_\_\_\_\_ in the above captioned matter.  
Plaintiff  
Defendant

I, the undersigned, certify that the plaintiff named above has asserted a professional liability claim against the defendant named above who is a licensed professional, that no certificate of merit has been filed within the time required by Pa.R.C.P. 1042.3 and that there is no motion to extend the time for filing the certificate pending before the court.

Date: \_\_\_\_\_

\_\_\_\_\_  
Defendant or Attorney for Defendant



**Rule 1042.7. Sanctions**

(a) If a plaintiff has filed a certificate of merit as to a particular defendant and that defendant is dismissed from the case through voluntary dismissal, verdict or order of court, the plaintiff, within thirty days of the written request of that defendant, shall provide him or her with the written statement obtained from the licensed professional upon which the certificate of merit as to that defendant was based. If a plaintiff's claims against other licensed professionals are still pending, the written statement shall be produced within thirty days of resolution of all claims against the other licensed professionals.

NOTE: Rule 4003.5 governs the discovery of expert testimony, including the written statements of licensed professionals furnished prior to the filing of a certificate of merit, until a defendant has been dismissed from the case.

(b) A court may impose appropriate sanctions, including sanctions provided for in Rule 1023.4, if the court determines that an attorney violated Rule 1042.3(a)(1) and (2) by improperly certifying that an appropriate licensed professional has supplied a written statement that there exists a reasonable probability that the care, skill or knowledge experienced or exhibited in the treatment, practice or work that is the subject of the complaint, fell outside acceptable professional standards and that such conduct was a cause in bringing about the harm.

**Rule 1042.8. Certificate of Merit. Form**

The certificate required by Rule 1042.3(a) shall be substantially in the following form:

**(Caption)**

**Certificate of Merit as to \_\_\_\_\_**  
(Name of Defendant)

I, \_\_\_\_\_, certify that:  
(Attorney or Party)

☐ an appropriate licensed professional has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by this defendant in the treatment, practice or work that is the subject of the complaint, fell outside acceptable professional standards and that such conduct was a cause in bringing about the harm;

OR

☐ the claim that this defendant deviated from an acceptable professional standard is based solely on allegations that other licensed professionals for whom this defendant is responsible deviated from an acceptable professional standard and an appropriate licensed professional has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by the other licensed professionals in the treatment, practice or work that is the subject of the complaint, fell outside acceptable professional standards and that such conduct was a cause in bringing about the harm;

OR

☐ expert testimony of an appropriate licensed professional is unnecessary for prosecution of the claim against this defendant.

Date: \_\_\_\_\_  
(Attorney or Party)

## Conforming Amendments

### Business of the Courts

#### Rule 229. Discontinuance

(a) \*\*\*

(b)(1) [A] Except as otherwise provided in subdivision (b)(2), a discontinuance may not be entered as to less than all defendants except upon the written consent of all parties or leave of court after notice to all parties.

(2) In an action governed by Rule 1042.3, a plaintiff may enter a discontinuance as to a defendant if a certificate of merit as to that defendant has not been filed.

NOTE: Rule 1042.3 requires the filing of a certificate of merit as to a defendant against whom a professional liability claim is asserted.

(c) \*\*\*

NOTE: \*\*\*

### Civil Action

#### Rule 1026. Time for Filing. Notice to Plead

(a) Except as provided by Rule 1042.5 or by subdivision (b) of this rule, every pleading subsequent to the complaint shall be filed within twenty days after service of the preceding pleading, but no pleading need be filed unless the preceding pleading contains a notice to defend or is endorsed with a notice to plead.

NOTE: For the form of notice to defend see Rule 1018.1 and for the form to notice to plead see Rule 1361.

Additional time within which to plead may be sought under Rule 248.

Rule 1042.5 governs actions in which a professional liability claim is asserted.

(b) \*\*\*

## **Depositions and Discovery**

### **Rule 4007.2. When Leave of Court Required**

(a) Except as provided by Rules 1042.5 and 4003.5(a)(2) and by subdivisions (b) and (d) of this rule, a deposition may be taken without leave of court.

NOTE: Rule 1042.5 governs discovery in a professional liability action prior to the filing of a certificate of merit.

See Rule 1930.5(a) providing that there shall be no discovery in specified domestic relations matters unless authorized by the court. See also Rules 1910.9 and 1915.5(c) governing discovery in actions for support and custody, respectively.

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