

IN THE CIRCUIT COURT, SEVENTH
JUDICIAL CIRCUIT, IN AND FOR
VOLUSIA COUNTY, FLORIDA

JOHN COLE, as natural parent and
guardian of MEGAN COLE, a minor,

Plaintiff,

CASE NO.: 2004-30116-CIC

vs.

DIV. NO.: 32

HALIFAX HOSPITAL MEDICAL CENTER,
etc., et al.,

Defendants.

_____ /

SUZANNE SUTTON, P.A.

Third Party Plaintiff

v.

THE COMMUNITY MEDICAL CENTER
OF WEST VOLUSIA, P.A., etc., et al.,

Third Party Defendants

_____ /

MARC ANAYAS'S
MEMORANDUM OF LAW IN SUPPORT OF HIS AMENDED
AND SUPPLEMENTAL MOTIONS TO DISMISS AND TO STRIKE AND
FOR 766.206 FINDINGS REGARDING
DEFENDANT SUZANNE SUTTON'S THIRD-PARTY COMPLAINT
AND
MOTION FOR SUMMARY JUDGMENT

COMES NOW, Defendant Marc Anayas, appearing for a specific and limited purpose only, and without making a general appearance, by and through his undersigned counsel, and files this Memorandum of Law in Support of his Amended and Supplemental Motions to Dismiss and to Strike and for 766.206 Findings Regarding Defendant Suzanne

Sutton's Third-Party Complaint and Motion for Summary Judgment, without waiving any objection of defense he may have to improper service, lack of jurisdiction, or otherwise, and states:

I. BACKGROUND AND FACTS

The background and facts, as relevant to this matter and this Memorandum of Law, are contained in paragraphs 1 through 76 of Marc Anayas's Amended and Supplemental Motions to Dismiss and to Strike and for 766.206 Findings Regarding Defendant Suzanne Sutton P.A.'s Third-Party Complaint and Motion for Summary Judgment.

Briefly restated, Marc Anayas is the 23 year old son of Concepcion Anayas. He is a full time college student attending the University of North Florida. He is not a health care professional. He is not an owner, officer, director, manager, or agent of Community Medical Center, P.A. Marc Anayas had no involvement in the matters concerning the care and treatment of Megan Cole.

II. LEGAL ANALYSIS

A. Sutton's Third-Party Complaint Should be Dismissed for Violating Rule 1.180(a), Florida Rules of Civil Procedure

Rule 1.180 (a), Florida Rules of Civil Procedure states, in part, "The defendant need not obtain leave of court if the defendant files the third-party complaint not later than 20 days after the defendant serves the original answer. Otherwise, the defendant must obtain leave on motion and notice to all parties to the action" (Emphasis added.) Defendant Sutton did not move the court for leave prior to filing her Third-Party Complaint.

The Third-Party Complaint must be dismissed for violating Rule 1.180(a), Florida Rules of Civil Procedure, which required Defendant Sutton to move the court for leave prior to filing her Third-Party Complaint.

B. The Service of an Improper, Unauthorized Pleading is a Nullity and the Court Lacks Jurisdiction Over Marc Anayas as a Result

Defendant Sutton's Third-Party Complaint is improper in that she failed to move the Court for leave prior to filing her Third-Party Complaint. As such, her pleading is a nullity and the Court lacks jurisdiction over Marc Anayas. Marc Anayas was never served an authorized copy of Third-Party Complaint.

Accordingly, since Marc Anayas was never served with an authorized complaint the Court has no jurisdiction over him. Osborne v. Shell Oil Co., 104 So.2d 670 (Fla. 1st DCA 1958); Pena v. Tampa Fed'l Sav. & Loan Ass'n, 363 So. 2d 815 (2d DCA 1978), cert. denied 373 So. 2d 461.

Furthermore, Defendant Sutton's Third-Party Complaint does not even address the issue of the jurisdiction of the Court over Marc Anayas. Rule 1.110(b), Florida Rules of Civil Procedure states, in part:

A pleading which sets forth a claim for relief, whether an original claim, counterclaim, crossclaim, or third-party claim, must state a cause of action and shall contain (1) a short and plain statement of the grounds upon which the court's jurisdiction depends, unless the court already has jurisdiction and the claim needs no new grounds for jurisdiction to support it
(Emphasis added.)

Defendant Sutton's Third-Party Complaint must be dismissed for violating Rule 1.110(a), which required Defendant Sutton to provide a short and plain statement of the

grounds upon which the court's jurisdiction depends.

Defendant Sutton's Third-Party Complaint does not even address the issue of the jurisdiction. No ground for jurisdiction is pleaded. The Third-Party Complaint must be dismissed for violating Rule 1.110(a), which required Defendant Sutton to provide a short and plain statement of the grounds upon which the court's jurisdiction depends.

C. Marc Anayas, as a Voluntary Director of a Charitable Not-For-Profit Corporation, Has Immunity

1. The Federal Volunteer Protection Act

Title 42 U.S.C. 14503, titled the Federal Volunteer Protection Act, affords volunteers of not-for-profit organizations, such as Missionaries of Hope, immunity from personal liability. Title 42 U.S.C., Section 14503(a) states:

Except as provided in subsections (b) and (d), no volunteer of a nonprofit organization or governmental entity shall be liable for harm caused by an act or omission of the volunteer on behalf of the organization or entity if--

- (1) the volunteer was acting within the scope of the volunteer's responsibilities in the nonprofit organization or governmental entity at the time of the act or omission;
- (2) if appropriate or required, the volunteer was properly licensed, certified, or authorized by the appropriate authorities for the activities or practice in the State in which the harm occurred, where the activities were or practice was undertaken within the scope of the volunteer's responsibilities in the nonprofit organization or governmental entity;
- (3) the harm was not caused by willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety

of the individual harmed by the volunteer; and

- (4) the harm was not caused by the volunteer operating a motor vehicle, vessel, aircraft, or other vehicle for which the State requires the operator or the owner of the vehicle, craft, or vessel to--

- (A) possess an operator's license; or

- (B) maintain insurance.

In the case of Armendarez v. Glendale Youth Ctr. et al. 265 F. Supp. 2d 1136 (D. Ariz. 2003), the Plaintiff [Armendarez] brought forth a claim against Glendale Youth Center, Inc. ("GYCI") and its individual board members for unpaid wages under the Fair Labor Standards Act. The board members asserted protection from suit under the Federal Volunteer Protection Act ("FVA"). "The VPA protects volunteers of non-profit organizations from both federal and state claims." Id. at 1139. (Emphasis added.)

In dismissing the claims against the board members of GYCI, the District Court held that immunity protections of the Federal Volunteer Protection Act applies to each volunteer member of the GYCI board. Armendarez at 1141. At all relevant times hereto, Marc Anayas has served and acted in good faith within the course and scope of his duties as a volunteer member of the Board of Directors of Missionaries of Hope, a not-for-profit organization.

Pursuant to 42 U.S. C. 14503(a) and the holding in Armendarez, Marc Anayas is immune from liability for civil damages in this matter.

2. The Florida Volunteer Protection Act

Section 768.1355, Florida Statutes, titled the Florida Volunteer Protection Act, provides volunteers of not-for-profit organizations, such as Missionaries of Hope, immunity from personal liability. Section 768.1355(1), Florida Statutes states:

Any person who volunteers to perform any service for any nonprofit organization, including an officer or director of such organization, without compensation, except reimbursement for actual expenses, shall be considered an agent of such nonprofit organization when acting within the scope of any official duties performed under such volunteer services. Such person shall incur no civil liability for any act or omission by such person which results in personal injury or property damage if:

- (a) Such person was acting in good faith within the scope of any official duties performed under such volunteer service and such person was acting as an ordinary reasonably prudent person would have acted under the same or similar circumstances; and
- (b) The injury or damage was not caused by any wanton or willful misconduct on the part of such person in the performance of such duties.
 - 1. For purposes of this act, the term "nonprofit organization" means any organization which is exempt from taxation pursuant to 26 U.S.C., s. 501, or any federal, state, or local governmental entity.
 - 2. For purposes of this act, the term "compensation" does

not include a stipend as provided by the Domestic Service Volunteer Act of 1973, as amended (Pub. L. No. 93-113), or other financial assistance, valued at less than two-thirds of the federal hourly minimum wage standard, paid to a person who would otherwise be financially unable to provide the volunteer service.

Marc Anayas serves as a director of Missionaries of Hope, without compensation. At all relevant times hereto, Marc Anayas has acted as a reasonable and prudent person would act under similar circumstances in serving as a member of the Board of Directors of Missionaries of Hope. Furthermore, the injuries or damages alleged by Suzanne Sutton in her Third-Party Complaint were not caused by any wanton or willful misconduct by Marc Anayas serving as a member of the Board of Directors of Missionaries of Hope. Consequently, Marc Anayas is immune from civil damages in this matter under Section 768.1355, Florida Statutes (The Florida Volunteer Protection Act). See, Campbell v. Kessler, 848 So. 2d 369 (Fla. 4th DCA 2003)¹.

3. Non-For Profit Organization Immunity Statute

Under Section 617.0834, Florida Statutes, Board Members of a not-for-profit organization recognized under Section 501(c)(3), of the Internal Revenue Code, are not

¹ In the case of Campbell v. Kessler, the Fourth District Court of Appeal held that a volunteer of a not-for-profit organization must meet both condition of the Florida Volunteer Protection Act in order to be immune from civil liability.

personally liable for monetary damages to a person. As previously discussed, Missionaries of Hope, of which Marc Anayas is a board member of, is a not-for-profit organization as defined in Section 501(c)(3), of the Internal Revenue Code. Section 617.0834(1), Florida Statutes, states:

An officer or director of a nonprofit organization recognized under s. 501(c)(3) . . . of the Internal Revenue Code of 1986, as amended . . . is not personally liable for monetary damages to any person for any statement, vote, decision, or failure to take an action, regarding organizational management or policy by an officer or director, unless:

- (a) The officer or director breached or failed to perform his or her duties as an officer or director; and
- (b) The officer's or director's breach of, or failure to perform, his or her duties constitutes:
 - 1. A violation of the criminal law, unless the officer or director had reasonable cause to believe his or her own conduct was unlawful . . .
 - 2. A transaction from which the officer or director

derived an improper personal benefit, either directly or indirectly; or

3. Recklessness or an act or omission which was committed in bad faith or with malicious purpose or in a manner exhibiting wanton or willful disregard of human rights, safety or property.

The injuries or damages complained of in Sutton's Third-Party Complaint were as a result of her own negligence, and were unrelated to the actions of Marc Anayas. Marc Anayas is personally immune from liability for civil damages in this matter pursuant to Section 617.0834(1), Florida Statutes.

D. Sutton's Third-Party Complaint Should be Dismissed for Failing to Allege Required Elements for Causes of Action

Defendant Sutton's Third-Party Complaint alleges causes of action for both common law indemnification and statutory indemnification.

The Florida Supreme Court has put forth a two prong test that a party must satisfy in order to prevail on a claim for common law indemnification. "First, the party seeking indemnification must be without fault, and its liability must be vicarious and solely for the wrong of another. Second, indemnification can only come from a party who was at fault." Dade County School Board v. Radio Station WQBA, 731 So. 2d 638, 642 (Fla. 1999). See also Heapy Eng'g LLP, v. Pure Lodging, LTD., 849 So. 2d 424, 425 (Fla. 1st DCA 2003).

Defendant Sutton has failed to properly allege a cause of action for common law indemnification against Marc Anayas.

Count II of Defendant Sutton's Third-Party Complaint is a claim for statutory indemnification purportedly against Marc Anayas. The only authority cited to in Sutton's Third-Party Complaint to support her statutory indemnification claim is Section 458.347(3), Florida Statutes. Section 458.347(3), Florida Statutes states:

Each physician or group of physicians supervising a licensed physician assistant must be qualified in the medical areas in which the physician assistant is to perform and shall be individually or collectively liable for the performance and the acts and omissions of the physician assistant. A physician may not supervise more than four currently licensed physician assistants at one time.

Marc Anayas is not a physician. He is not a group of physicians. He is currently a student at the University of North Florida. On its face, the statutory indemnification provision under Section 458.347(3), Florida Statutes, does not apply to Marc Anayas.

E. Sutton Failed to Plead Sufficient Ultimate Facts

Defendant Sutton has failed to plead sufficient ultimate facts to support her allegations. Her allegations contain conclusory statements and opinions. Rule 1.110(b), Florida Rules of Civil Procedure states:

A pleading that sets forth a claim for relief, whether an original claim, counterclaim, crossclaim, or third-party claims, must state a cause of action and shall contain . . . (2) a short and plain statement of the ultimate facts showing that the pleader is entitled to relief. . . .

Rule 1.110(b), Florida Rules of Civil Procedure, ". . . further provides that a minimum complaint consists of a short and plain statement of the ultimate facts justifying relief."

Foreman v. Seaboard Coast Line R.R., 279 So. 2d 825, 827 (Fla. 1973).

The Third-Party Complaint must be dismissed for violating Rule 1.110(b), Florida Rules of Civil Procedure, which required Defendant Sutton to provide a short and plain statement of the ultimate facts showing she was entitled to relief.

F. Defendant Sutton Has Failed to Comply with Mandatory Pre-suit Notice and Pre-suit Investigation Procedures as Required by Chapter 766, Florida Statutes

This case arises out of alleged medical negligence. Defendant Sutton appears to be alleging in her Third-Party Complaint that the Third-Party defendants are negligent together with her in this matter.

Marc Anayas has never been served with a notice of intent to initiate medical malpractice litigation, nor has he been allowed his right to participate in mandatory pre-suit investigation activities, as required by Chapter 766, Florida Statutes.

Section 766.106(2), Florida Statutes, states, in part,:

Presuit Notice.--

- (a) After completion for presuit investigation pursuant to s. 766.203(2) and prior to filing a complaint for medical negligence, a claimant shall notify each prospective defendant by certified mail, return receipt requested, of intent to initiate litigation for medical negligence. Notice to each prospective defendant must include, if available, a list of all known health care providers seen by the claimant for the injuries complained of subsequent to the alleged act of negligence, all known health care providers during the 2-year period prior to the alleged act of negligence who treated or evaluated the claimant, and copies of all the medical records relied upon by expert signing the affidavit. The requirement of

providing the list of known health care providers may not serve as grounds for imposing sanctions for failure to provide presuit discovery.

Defendant Sutton's claims arise out of alleged medical malpractice, alleging that the Third-Party defendants are negligent together with her in this matter. In the case of Virginia Ins. Reciprocal v. Walker et al., 765 So. 2d 229, 232 (Fla. 1st DCA 2000), the First District Court of Appeal held that presuit notice and investigation requirements for filing a medical malpractice action apply to a joint tortfeasor seeking to recover a share of the loss:

This definition [medical malpractice] makes no distinction between a medical malpractice claim that is asserted directly by the injured party and a medical malpractice claim that is asserted by a joint tortfeasor seeking to recover a share of the loss. Nor would there be any good reason to make such a distinction. The policy considerations underlying the presuit screening procedure are the same in either case. (Emphasis added.)

Virginia Ins. Reciprocal at 232. See, also, Walker v. Virginia Ins. Reciprocal, 842 So. 2d 804, 810 (Fla. 2003). Suzanne Sutton never served Marc Anayas with a notice of intent to initiate medical malpractice litigation. Defendant Sutton was required under Section 766.106, Florida Statutes, to serve a notice of intent to initiate litigation on all Third-Party defendants, including Marc Anayas.

Pursuant to the holdings in Virginia Ins. Reciprocal and Walker, Defendant Sutton's Third-Party Complaint must be dismissed for failing to comply with presuit notice and investigation requirements of Section 766.106, Florida Statutes.

G. Defendant Sutton Has Failed to Comply with Conditions Precedent to Suit

Section 766.106(3)(a), Florida Statutes, prohibits the filing of any medical malpractice suit for a period of ninety (90) days after of notice of intent to initiate litigation is mailed to a prospective defendant. Section 766.103(3)(a), states, in part:

No suit may be filed for a period of 90 days after notice is mailed to any prospective defendant. During the 90-day period, the prospective defendant or the defendant's insurer or self-insurer shall conduct a review as provided in s. 766.203(3) to determine the liability of the defendant. Each insurer or self-insurer shall have a procedure for the prompt investigation, review, and evaluation of the claims during the 90-day period .

...

Marc Anayas was never served with a notice of intent to initiate medical malpractice litigation. Moreover, Defendant Sutton filed her Third-Party Complaint without affording Marc Anayas his statutory right, under Section 766.106(3)(a), Florida Statutes, to conduct a review of the case to determine his liability.

Accordingly, Defendant Sutton has not complied with the conditions precedent to filing a medical malpractice suit. Thus, her Third-Party Complaint must be dismissed.

H. Equitable Estoppel Bars Defendant Sutton From Obtaining Indemnification from her Own Acts of Negligence

Defendant Sutton is equitably estopped from pleading or obtaining indemnification from others for her own acts of negligence.

"The doctrine [equitable estoppel] bars the wrongdoer from asserting that shortcoming and profiting from his or her own misconduct. Equitable estoppel thus functions as a shield, not a sword, and operates against the wrongdoer, not the victim. The Court has applied the doctrine [equitable estoppel] for more than a century and a half." Major League Baseball v. Morsani, 790 So. 2d 1071, 1077 (Fla. 2001).

Defendant Sutton is attempting to obtain indemnification for her own negligence. As Defendant Sutton was the one negligent, she cannot receive indemnification from a party who is only vicariously liable or who would not otherwise be liable if Defendant Sutton were not negligent. Any such cause of action against Marc Anayas is improper and barred by equitable estoppel.

I. The Third-Party Complaint Impermissibly Intertwines Different Causes of Action Against Different Parties

The Third-Party Complaint violates Rule 1.110(f), Florida Rules of Civil Procedure, in that it impermissibly confuses and intertwines different unrelated causes of action against different parties into two vague, general Counts. The Third-Party Complaint fails to specify the facts and actions that may support liability against the specific named party. The Third-Party Complaint also fails to specify clearly which legal cause of action is pleaded against which individual named party and fails to set forth different claims in different numbered counts.

Rule 1.110(f), Florida Rules of Civil Procedure states:

All averments of claim or defense shall be made in consecutively numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances and a paragraph may be referred to by number in all subsequent pleadings. Each claim founded upon a separate transaction or occurrence and each defense other than denials shall be stated in a separate count or defense when a separation facilitates the clear presentation of the matters set forth.

Each claim founded upon a separate transaction or occurrence shall be stated in a

separate count. This notice is provided through the pleadings. George v. Beach Club Villas Condo. Ass'n, 833 So. 2d 816, 820 (Fla. 3rd DCA 2002). Count II of Defendant Sutton's Third-Party Complaint impermissibly intertwines all of the Third-Party Defendants into a single count for statutory indemnification.

J. The Third-Party Complaint Does Not Contain the Certificate Required by Sect. 766.104, Florida Statutes

Section 766.104, Florida Statutes, states, in part,:

No action shall be filed for personal injury or wrongful death arising out of medical negligence, whether in tort or in contract, unless the attorney filing the action has made a reasonable investigation as permitted by the circumstances to determine that there are grounds for a good faith belief that there has been negligence in the care or treatment of the claimant. The complaint or initial pleading shall contain a certificate of counsel that such a reasonable investigation gave rise to a good faith belief that grounds exist for an action against each named defendant

Defendant Sutton filed her Third-Party Complaint alleging medical malpractice by the Third-Party defendants without the required certificate of counsel indicating that a reasonable investigation gave rise to a good faith belief that grounds exist for an action against each Third-Party defendant. Defendant Sutton's Third-Party Complaint must be dismissed for violating Section 766.104, Florida Statutes.

K. The Statutes of Limitation Bars the Claims

The statute of limitation bars some or all of the claims alleged in the Third-Party Complaint.

L. Res Judicata or Collateral Estoppel Bars Sutton's Third-Party Complaint

The Third-Party Complaint must be dismissed on the ground of res judicata, since Defendant Sutton is attempting to re-litigate the issue of Concepcion Anayas's negligence after she was dismissed from this lawsuit with a Final Judgment in her favor.

Moreover, Defendant Sutton's Third-Party Complaint is a thinly veiling attempt to personally harass and intimidate Concepcion Anayas, M.D., by filing vexatious, frivolous and meritless litigation against her personal family members.

Res judicata is a judicially created doctrine designed to prevent re-litigation of matters and enforce the finality of a court's judgment. Hinchee v. Fisher, 93 So. 2d 351, 353 (Fla. 1957); Youngblood v. Taylor, 89 So. 2d 503, 505 (Fla. 1956).

"It seems inequitable to allow a third party complainant to assert his claim against a third party defendant after the main suit against the former by the injured party has concluded." Watson v. G & C Ford Co., 293 So. 2d 101, 103 (Fla. 1st DCA 1974).

A corollary to the doctrine of res judicata, "provides that issues that could have been raised in prior litigation should have been raised and, thus, are barred." Bettcher v. Wadsworth, 825 So. 2d 438, 440 (Fla 2nd DCA 2002).

Defendant Sutton's claims as stated in her Third-Party Complaint are **compulsory claims** which she was required to bring in the original action at the time she served her answer, pursuant to Rule 1.170(a), Florida Rules of Civil Procedure.

M. Sutton's Third-Party Complaint Should Be Stricken

Florida Rules of Civil Procedure, Rule 1.150(a), allows the striking of any pleading that is a sham. Rule 1.150(a), Florida Rules of Civil Procedure states:

If a party deems any pleading or part thereof filed by another party to be a sham, that party may move to strike the pleading or part thereof before the cause is set for trial and the court shall hearing the motion, taking evidence of the respective parties, and if the motion is sustained, the pleading to which the motion is directed shall be stricken

In a case such as this where a party files papers with the Court containing false statements and continues to file frivolous, baseless motions and pleadings, the Court has the inherent power to issue sanctions.

The Court has the inherent authority to sanction those who appear before it. The court's inherent power to impose sanctions for bad faith conduct is not displaced by any sanction scheme of statutes and rules. Chambers v. NASCO, Inc., 501 U.S. 32, 111 S.Ct. 2123, 115 L.Ed.2d 27, rehearing denied 501 U.S. 1269, 112 S.Ct. 12, 115 L.Ed.2d 1097 (1991). In addition to statutory authority, ". . . Courts in this state have recognized that attorney's fees can be awarded in situations where one party has acted vexatiously or in bad faith." Bitterman v. Bitterman, 714 So.2d 356, 365 (Fla. 1998).

"Clearly, a trial judge has the inherent power to do those things necessary to enforce its orders, to conduct its business in a proper manner, and to protect the court from acts obstructing the administration of justice." Levin, Middlebrooks, Mabie, Thomas, Mayes & Mitchell, P.A. v. U.S. Fire Ins. Co., 639 So.2d 606, 608-609 (Fla. 1994).

Defendant Sutton's Third-Party Complaint contains numerous false statements of facts which are listed in Marc Anayas's Motion to Strike as a Sham Pleading Sutton's Third-

Party Complaint and incorporated herein by reference. An affidavit filed in the Court's file and verified motions support this.

N. Marc Anayas is Entitled to Summary Judgment Under Sections 1.150(a) and 1.510(c), Fla.R.Civ.P.

Rule 1.510(c), Florida Rules of Civil Procedure, provides for the granting of summary judgment in favor of a defendant when:

The pleadings, depositions, answers to interrogatories, and admissions of file together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

Where a movant for summary judgment offers sufficient evidence to support its claim of non-existence of material fact, the opposing party must demonstrate the existence of disputed issues of fact either by presenting evidence of counter-veiling facts or justifiable inferences from the facts presented. Woodruff v. Gov't Employees Ins. Co., 669 So.2d 1114, 1116 (Fla. 1st DCA 1996). If the opposing party fails to present such evidence, summary judgment may be entered in favor of the moving party. Woodruff. at 1116.

Where the record demonstrates that a plaintiff cannot prove one or more elements of the cause of action, summary judgment in favor of the defendant is proper. Rodgers v. Bestoff, 640 So.2d 1236 (Fla. 1st DCA 1994). Marc Anayas refers to the affidavits and verified motions of Concepcion Anayas, M.D., Marcelo Anayas, M.D. and Missionaries of Hope and Gene Artrip filed in the Court's file.

Section 1.150(a), Rules of Civil Procedure also provides for the granting of summary judgment against a party who has filed a sham pleading. Section 1.150(a), Florida Rules of

Civil Procedure, states, in part:

Default and summary judgment on the merits may be entered in the discretion of the court or the court may permit additional pleadings to be filed for good cause shown.

Defendant Sutton is not able to show any duty that Marc Anayas owed to her. Defendant Sutton is not able to show that there was a breach of any duty by Marc Anayas. Moreover, Defendant Sutton is unable to show that there is any causation between any act or failure to act by Marc Anayas on December 17, 2002, that caused or contributed to her alleged injury.

In the absence of merely one (1) element of medical negligence, a summary judgment must be entered in favor of Marc Anayas. In this instance, we have shown an absence of three (3) of the required elements. Accordingly summary judgment final judgment in favor of Marc Anayas, is warranted. Pursuant to Rules 1.510(c) and 1.150(a), Florida Rules of Civil Procedure, Marc Anayas is entitled to a summary judgment in his favor and against Defendant Suzanne Sutton.

WHEREFORE, for the reasons for the reasons stated herein and for the reasons set out in his Amended and Supplemental Motions to Dismiss and to Strike and for 766.206 Findings Regarding Defendant Suzanne Sutton's Third Party Complaint and Motion for Summary Judgment, and without waiving any defense or objection to improper service of process or lack of jurisdiction, Marc Anayas respectfully requests that this Court enter an Order dismissing Third-Party Plaintiff Suzanne Sutton's Third-Party Complaint with prejudice as to him, and, alternatively, striking the Complaint or the portions of it containing offensive language set forth above. Additionally, Marc Anayas requests his reasonable

attorney's fees and costs in defending this matter, pursuant to Sections 57.105, Florida Statutes, and the inherent authority of the Court.

CERTIFICATE OF SERVICE

[DELETED]

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