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Summary of the Key Provisions of Florida Medical Malpractice Statutes

g. No Joint and Several Liability

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766.112. Comparative fault

(1) Notwithstanding anything in law to the contrary, in an action for damages for personal injury or wrongful death arising out of medical negligence, whether in contract or tort, when an apportionment of damages pursuant to this section is attributed to a teaching hospital as defined in [s. 408.07](#), the court shall enter judgment against the teaching hospital on the basis of such party's percentage of fault and not on the basis of the doctrine of joint and several liability.

(2) In an action for damages for personal injury or wrongful death arising out of medical negligence, whether in contract or tort, when an apportionment of damages pursuant to [s. 768.81](#) is attributed to a board of trustees of a state university, the court shall enter judgment against the board of trustees on the basis of the board's percentage of fault and not on the basis of the doctrine of joint and several liability. The sole remedy available to a claimant to collect a judgment or settlement against a board of trustees, subject to the provisions of this subsection, shall be pursuant to [s. 768.28](#).

768.81. Comparative fault

(1) Definition.--As used in this section, "economic damages" means past lost income and future lost income reduced to present value; medical and funeral expenses; lost support and services; replacement value of lost personal property; loss of appraised fair market value of real property; costs of construction repairs, including labor, overhead, and profit; and any other economic loss which would not have occurred but for the injury giving rise to the cause of action.

(2) Effect of contributory fault.--In an action to which this section applies, any contributory fault chargeable to the claimant diminishes proportionately the amount awarded as economic and noneconomic damages for an injury attributable to the claimant's contributory fault, but does not bar recovery.

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(3) Apportionment of damages.-- In cases to which this section applies, the court shall enter judgment against each party liable on the basis of such party's percentage of fault and not on the basis of the doctrine of joint and several liability.

(a) In order to allocate any or all fault to a nonparty, a defendant must affirmatively plead the fault of a nonparty and, absent a showing of good cause, identify the nonparty, if known, or describe the nonparty as specifically as practicable, either by motion or in the initial responsive pleading when defenses are first presented, subject to amendment any time before trial in accordance with the Florida Rules of Civil Procedure.

(b) In order to allocate any or all fault to a nonparty and include the named or unnamed nonparty on the verdict form for purposes of apportioning damages, a defendant must prove at trial, by a preponderance of the evidence, the fault of the nonparty in causing the plaintiff's injuries.

(4) Applicability.--

(a) This section applies to negligence cases. For purposes of this section, "negligence cases" includes, but is not limited to, civil actions for damages based upon theories of negligence, strict liability, products liability, professional malpractice whether couched in terms of contract or tort, or breach of warranty and like theories. In determining whether a case falls within the term "negligence cases," the court shall look to the substance of the action and not the conclusory terms used by the parties.

(b) This section does not apply to any action brought by any person to recover actual economic damages resulting from pollution, to any action based upon an intentional tort, or to any cause of action as to which application of the doctrine of joint and several liability is specifically provided by chapter 403, chapter 498, chapter 517, chapter 542, or chapter 895.

(5) Notwithstanding anything in law to the contrary, in an action for damages for personal injury or wrongful death arising out of medical malpractice, whether in contract or tort, when an apportionment of damages pursuant to this section is

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attributed to a teaching hospital as defined in [s. 408.07](#), the court shall enter judgment against the teaching hospital on the basis of such party's percentage of fault and not on the basis of the doctrine of joint and several liability.