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Summary of the Key Provisions of Florida Medical Malpractice Statutes

h. Wrongful Death Statute

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768.18. Definitions

As used in [ss. 768.16-768.26](#):

(1) "Survivors" means the decedent's spouse, children, parents, and, when partly or wholly dependent on the decedent for support or services, any blood relatives and adoptive brothers and sisters. It includes the child born out of wedlock of a mother, but not the child born out of wedlock of the father unless the father has recognized a responsibility for the child's support.

(2) "Minor children" means children under 25 years of age, notwithstanding the age of majority.

(3) "Support" includes contributions in kind as well as money.

(4) "Services" means tasks, usually of a household nature, regularly performed by the decedent that will be a necessary expense to the survivors of the decedent. These services may vary according to the identity of the decedent and survivor and shall be determined under the particular facts of each case.

(5) "Net accumulations" means the part of the decedent's expected net business or salary income, including pension benefits, that the decedent probably would have retained as savings and left as part of her or his estate if the decedent had lived her or his normal life expectancy. "Net business or salary income" is the part of the decedent's probable gross income after taxes, excluding income from investments continuing beyond death, that remains after deducting the decedent's personal expenses and support of survivors, excluding contributions in kind.

768.19. Right of action

When the death of a person is caused by the wrongful act, negligence, default, or breach of contract or warranty of any person, including those occurring on navigable waters, and the event would have entitled the person injured to maintain an action

Summary of the Key Provisions of Florida Medical Malpractice Statutes

h. Wrongful Death Statute

and recover damages if death had not ensued, the person or watercraft that would have been liable in damages if death had not ensued shall be liable for damages as specified in this act notwithstanding the death of the person injured, although death was caused under circumstances constituting a felony.

768.20. Parties

The action shall be brought by the decedent's personal representative, who shall recover for the benefit of the decedent's survivors and estate all damages, as specified in this act, caused by the injury resulting in death. When a personal injury to the decedent results in death, no action for the personal injury shall survive, and any such action pending at the time of death shall abate. The wrongdoer's personal representative shall be the defendant if the wrongdoer dies before or pending the action. A defense that would bar or reduce a survivor's recovery if she or he were the plaintiff may be asserted against the survivor, but shall not affect the recovery of any other survivor.

768.21. Damages

All potential beneficiaries of a recovery for wrongful death, including the decedent's estate, shall be identified in the complaint, and their relationships to the decedent shall be alleged. Damages may be awarded as follows:

- (1) Each survivor may recover the value of lost support and services from the date of the decedent's injury to her or his death, with interest, and future loss of support and services from the date of death and reduced to present value. In evaluating loss of support and services, the survivor's relationship to the decedent, the amount of the decedent's probable net income available for distribution to the particular survivor, and the replacement value of the decedent's services to the survivor may be considered. In computing the duration of future losses, the joint life expectancies of the survivor and the decedent and the period of minority, in the case of healthy minor children, may be considered.
- (2) The surviving spouse may also recover for loss of the decedent's companionship and protection and for mental pain and suffering from the date of injury.

Summary of the Key Provisions of Florida Medical Malpractice Statutes

h. Wrongful Death Statute

(3) Minor children of the decedent, and all children of the decedent if there is no surviving spouse, may also recover for lost parental companionship, instruction, and guidance and for mental pain and suffering from the date of injury. For the purposes of this subsection, if both spouses die within 30 days of one another as a result of the same wrongful act or series of acts arising out of the same incident, each spouse is considered to have been predeceased by the other.

(4) Each parent of a deceased minor child may also recover for mental pain and suffering from the date of injury. Each parent of an adult child may also recover for mental pain and suffering if there are no other survivors.

(5) Medical or funeral expenses due to the decedent's injury or death may be recovered by a survivor who has paid them.

(6) The decedent's personal representative may recover for the decedent's estate the following:

(a) Loss of earnings of the deceased from the date of injury to the date of death, less lost support of survivors excluding contributions in kind, with interest. Loss of the prospective net accumulations of an estate, which might reasonably have been expected but for the wrongful death, reduced to present money value, may also be recovered:

1. If the decedent's survivors include a surviving spouse or lineal descendants; or
2. If the decedent is not a minor child as defined in [s. 768.18\(2\)](#), there are no lost support and services recoverable under subsection (1), and there is a surviving parent.

(b) Medical or funeral expenses due to the decedent's injury or death that have become a charge against her or his estate or that were paid by or on behalf of decedent, excluding amounts recoverable under subsection (5).

(c) Evidence of remarriage of the decedent's spouse is admissible.

Summary of the Key Provisions of Florida Medical Malpractice Statutes

h. Wrongful Death Statute

(7) All awards for the decedent's estate are subject to the claims of creditors who have complied with the requirements of probate law concerning claims.

(8) The damages specified in subsection (3) shall not be recoverable by adult children and the damages specified in subsection (4) shall not be recoverable by parents of an adult child with respect to claims for medical negligence as defined by [s. 766.106\(1\)](#).