

**IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION**

In re:

Laser Spine Institute, LLC	Case No. 2019-CA-2762
CLM Aviation, LLC	Case No. 2019-CA-2764
LSI HoldCo, LLC	Case No. 2019-CA-2765
LSI Management Company, LLC	Case No. 2019-CA-2766
Laser Spine Surgery Center of Arizona, LLC	Case No. 2019-CA-2767
Laser Spine Surgery Center of Cincinnati, LLC	Case No. 2019-CA-2768
Laser Spine Surgery Center of Cleveland, LLC	Case No. 2019-CA-2769
Laser Spine Surgical Center, LLC	Case No. 2019-CA-2770
Laser Spine Surgery Center of Pennsylvania, LLC	Case No. 2019-CA-2771
Laser Spine Surgery Center of St. Louis, LLC	Case No. 2019-CA-2772
Laser Spine Surgery Center of Warwick, LLC	Case No. 2019-CA-2773
Medical Care Management Services, LLC	Case No. 2019-CA-2774
Spine DME Solutions, LLC	Case No. 2019-CA-2775
Total Spine Care, LLC	Case No. 2019-CA-2776
Laser Spine Institute Consulting, LLC	Case No. 2019-CA-2777
Laser Spine Surgery Center of Oklahoma, LLC	Case No. 2019-CA-2780

Assignors, Division L
To:

Soneet Kapila,

Assignee,

MOTION TO DETERMINE ASSIGNORS' SELF-INSURANCE COMPLIANCE

TERRY E. LEGG and SHERRY LEGG, by and through their undersigned counsel, move this Honorable Court to determine the method of compliance, if any, with the provisions of the applicable Florida Statutes as set forth below, to determine whether any assets over which the Assignee asserts control are, in fact, segregated and/or trust funds allocated to medical malpractice claims pursuant to financial responsibility statutory compliance, and states:

1. Pursuant to § 727.102, Florida Statutes, this Court has jurisdiction over all matters arising under Chapter 727 Assignments.

2. Terry E. Legg and Sherry Legg are plaintiffs in the medical malpractice case of *Terry E. Legg and Sherry Legg v. Mark Andrus Flood, D.O., Anitra Hall-Jeter, LPN, Laser Spine Institute, LLC, and GTB Home Healthcare Solutions, Inc. d/b/a Caremindes Home Care*, Case No. 17-CA-007384, Circuit Court of Hillsborough County, Florida. In that proceeding, Defendants, Laser Spine Institute, LLC and Mark Andrus Flood, D.O., claimed to be self-insured for the first one million dollars of claims.

3. Laser Spine Institute, LLC is a common Florida limited liability company and is not a professional LLC organized pursuant to Chapter 621, Florida Statutes. Pursuant to Chapter 727, Florida Statutes, the Assignors, including Laser Spine Institute, LLC, purport to have effectuated assignments for the benefit of creditors.

4. Laser Spine Institute, LLC and Mark Andrus Flood, D.O., claim to have been “self-insured,” in part, and pursuant to Florida law, Mark Andrus Flood, D.O., through Laser Spine Institute, LLC, was required to post either an irrevocable letter of credit or an escrow account in the amount of \$250,000/\$750,000 in accordance with Chapter 675 for the letter of credit and § 625.52, Florida Statutes, for the escrow account. A copy of the financial responsibility form is attached hereto as Exhibit A.

5. To the extent that the Assignee has taken control of assets of the Assignors, the assets allocated to support either the escrow account or the irrevocable letter of credit are not properly assignable as assets of the estates of the Assignors, or in the alternative, to the extent that said assets are assigned, said assets are subject to the escrow and or letter of credit interests required by the foregoing Florida statutes.

6. It is necessary for this Court to identify and segregate escrow funds and funds supporting letters of credit in order to comply with the applicable Florida statutes as stated

above.

WHEREFORE, TERRY E. LEGG and SHERRY LEGG, respectfully move this Honorable Court to identify and segregate all funds either escrowed or pledged to support irrevocable letters of credit relating to medical malpractice claims as required by Florida law, and for such other relief as the Court deems appropriate.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 2, 2019, a true copy of the foregoing has been filed using the Florida Courts E-Filing Portal, and served by electronic mail upon the following persons:

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Attorneys for Terry Legg and Sherry Legg

Exhibit A

FINANCIAL RESPONSIBILITY

NAME: _____ LICENSE NUMBER: ME _____

MAILING ADDRESS: _____

CITY: _____ STATE: _____ ZIP: _____

NOTE: Mailing addresses are not published on the internet.

Financial Responsibility options are divided into two categories, coverage and exemptions. Choose only one option of the ten provided pursuant to s.458.320, Florida Statutes.

CATEGORY I: FINANCIAL RESPONSIBILITY COVERAGE FOR FLORIDA PRACTICE ONLY

- 1. I do not have hospital staff privileges, I do not perform surgery at an ambulatory surgical center and I have obtained and maintain professional liability coverage in an amount not less than \$100,000 per claim, with a minimum annual aggregate of not less than \$300,000 from an authorized insurer as defined under s. 624.09, F. S., from a surplus lines insurer as defined under s. 626.914(2), F.S., from a risk retention group as defined under s. 627.942, F.S., from the Joint Underwriting Association established under s. 627.351(4), F. S., or through a plan of self-insurance as provided in s. 627.357, F.S.
- 2. I have hospital staff privileges or I perform surgery at an ambulatory surgical center and I have professional liability coverage in an amount not less than \$250,000 per claim, with a minimum annual aggregate of not less than \$750,000 from an authorized insurer as defined under s. 624.09, F. S., from a surplus lines insurer as defined under s. 626.914(2), F. S., from a risk retention group as defined under s. 627.942, F.S., from the Joint Underwriting Association established under s. 627.351(4), F. S., or through a plan of self insurance as provided in s.627.357, F.S.
- 3. I do not have hospital staff privileges, I do not perform surgery at an ambulatory surgical center and I have established an irrevocable letter of credit or an escrow account in an amount of \$100,000/\$300,000, in accordance with Chapter 675, F. S., for a letter of credit and s. 625.52, F. S., for an escrow account.
- 4. I have hospital staff privileges or I perform surgery at an ambulatory surgical center and I have established an irrevocable letter of credit or escrow account in an amount of \$250,000/\$750,000, in accordance with Chapter 675, F. S., for a letter of credit and s. 625.52, F. S., for an escrow account.
- 5. I have elected not to carry medical malpractice insurance, however, I agree to satisfy any adverse judgments up to the minimum amounts pursuant to s. 458.320(5)(g) 1, F. S. I understand that I must either post notice in the form of a "sign" prominently displayed in the reception area or provide a written statement to any person to whom medical services are being provided that I have decided not to carry medical malpractice insurance. I understand that such a sign or notice must contain the wording specified in s. 458.320(5)(g), F. S.

CATEGORY II: FINANCIAL RESPONSIBILITY EXEMPTIONS

- 6. I practice medicine exclusively as an officer, employee, or agent of the federal government, or of the state or its agencies or subdivisions. For the purposes of this subsection, an agent of the state, its agencies, or its subdivisions is a person who is eligible for coverage under any self-insurance or insurance program authorized by the provisions of s.768.28 (16).
- 7. I hold a limited license issued pursuant to s. 458.317, F. S., and practice only under the scope of the limited license.
- 8. I do not practice medicine in the State of Florida. I understand that if I resume any practice of medicine in this state, I must notify the department of such activity and fulfill the financial responsibility requirements of Chapters 458, or 459, F.S. before resuming the practice of medicine in the State of Florida.
- 9. I meet all of the following criteria:
 - (a) I have held an active license to practice in this state or another state or some combination thereof for more than 15 years.
 - (b) I am retired or maintain part time practice of no more than 1000 patient contact hours per year.
 - (c) I have had no more than two claims resulting in an indemnity exceeding \$25,000 within the previous five-year period.
 - (d) I have not been convicted of or pled guilty or nolo contendere to any criminal violation specified in Chapter 458, F.S.
 - (e) I have not been subject, within the past ten years of practice, to license revocation or suspension, probation for a period of three years or longer, or a fine of \$500 or more for a violation of Chapter 458, F.S., or the medical practice act of another jurisdiction. A regulatory agency's acceptance of a relinquishment of license stipulation, consent order or other settlement offered in response to or in anticipation of filing of administrative charges against a license shall be construed as action against a license. I understand if I am claiming an exception under this section that I must either post notice in the form of a sign, prominently displayed in the reception area or provide a written statement to any person to whom medical services are being provided, that **“I have decided not to carry medical malpractice insurance”**. I understand such a sign or notice must contain the wording specified in s. 458.320(5)(f), F. S.
- 10. I practice only in conjunction with my teaching duties at an accredited medical school or its teaching hospitals. I understand that I may practice medicine to the extent that such practice is incidental to and a necessary part of my duties in connection with my teaching position in the medical school.
(Interns and residents do not qualify for this exemption).

If you select an exemption based on number 9, you must also complete the affidavit on the following page.

Signature of Physician

Date

Financial Responsibility Affidavit of Exemption

I, _____, do hereby certify and attest that I meet all of the following criteria:

- (a) I have held an active license to practice in this state or another state or some combination thereof for more than 15 years;
- (b) I am retired or maintain part time practice of no more than 1000 patient contact hours per year;
- (c) I have had no more than two claims resulting in an indemnity exceeding \$25,000 within the previous five-year period;
- (d) I have not been convicted of or pled guilty or nolo contendere to any criminal violation specified in Chapter 458, F. S. or the medical practice act in any other state; and
- (e) I have not been subject, within the past ten years of practice, to license revocation, suspension, or probation for a period of three years or longer, or a fine of \$500 or more for a violation of Chapter 458, F. S., or the medical practice act of another jurisdiction. A regulatory agency's acceptance of a relinquishment of license, stipulation, consent order, or other settlement offered in response to or in anticipation of filing of administrative charges against a license is construed as action against a license. I understand if I am claiming an exception under this section that I must either post notice in a sign prominently displayed in my reception area or provide a written statement to any person to whom medical services are being provided that I have decided not to carry medical malpractice insurance. See Section 458.320(5) (f), F.S., for specific notice requirements.

Dated: _____

Signature: _____

STATE OF _____ COUNTY
OF _____

Sworn to (or affirmed) and subscribed before me this _____ day of _____, by

(Signature of Notary Public - State of Florida)

(Print, Type, or Stamp Commissioned Name of Notary Public) Personally Known

_____ OR Produced Identification _____

Type of Identification Produced _____