

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 by or on behalf of a patient or client of the licensed professional against

(1) a licensed professional, and/or

(2) a partnership, unincorporated association, corporation or similar entity where the entity is responsible for a licensed professional who deviated from an acceptable professional standard, and

(b) A professional liability claim asserted against a licensed professional includes a claim for lack of informed consent.

[(b)] (c) * * *

Rule 1042.2. Complaint

(a) * * *

(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.] The filing of preliminary objections pursuant to Rule 1042.2(b) is not a prerequisite to the filing of a notice of intent to enter a judgment of non pros on a professional liability claim pursuant to Rule 1042.6.

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

Note: The requirements of subdivision (a) apply to a claim for lack of informed consent.

(1) * * *

(2) * * *

(3) * * *

(b) * * *

(c)(1) A defendant who files a counterclaim asserting a claim for professional responsibility 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 or asserted a cross-claim against a licensed professional need not file a certificate of merit unless the joinder or cross-claim is based on acts of negligence that are unrelated to the acts of negligence that are the basis for the claim against the joining or cross-claiming 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. A 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.] by the thirtieth day after the filing of a notice of intention to enter judgment of non pros on a professional liability claim under Rule 1042.6(a) or on or before the expiration of the extended time where a court has granted a motion to extend the time to file a certificate of merit, whichever is greater. 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: * * *

Rule 1042.6. Notice of Intent to Enter Judgment of Non Pros for Failure to File Certificate of Merit. Motion to Determine Necessity to File Certificate. Form of Notice (NEW)

(a) Except as provided by subdivision (b), a defendant seeking to enter a judgment of non pros under Rule 1042.7(a) shall file a written notice of intention to file the praecipe and serve it on the party's attorney of record or on the party if unrepresented, no sooner than the thirty-first day after the filing of the complaint.

(b) A judgment of non pros may be entered as provided by Rule 1042.7(a) without notice if

(1) the court has granted a motion to extend the time to file the certificate and the plaintiff has failed to file it within the extended time, or

(2) the court has denied the motion to extend the time.

(c) Upon the filing of a notice under subdivision (a) of this rule, a plaintiff may file a motion seeking a determination by the court as to the necessity of filing a certificate of merit. The filing of the motion tolls the time period within which a certificate of merit must be filed until the court rules upon the motion. If it is determined that a certificate of merit is required, the plaintiff must file the certificate within twenty days of entry of the court order on the docket or the original time period, whichever is later.

Note: The motion may be filed at any time prior to the entry of a judgment of non pros.

Once the judgment of non pros is entered, a party cannot raise the claim that the filing of a certificate of merit was not required.

(d) The notice required by subdivision (a) of this rule shall be substantially in the following form:

(CAPTION)

**NOTICE OF INTENTION TO ENTER
JUDGMENT OF NON PROS
ON PROFESSIONAL LIABILITY CLAIM**

To: _____
(Identify Party)

Pursuant to Pennsylvania Rule of Civil Procedure 1042.7, I intend to enter a judgment of non pros against you after thirty (30) days of the date of the filing of this notice if a certificate of merit is not filed as required by Rule 1042.3.

I am serving this notice on behalf of _____.
(Name of party)

The judgment of non pros will be entered as to the following claims: _____

(State if a judgment is to be entered as to all claims. Otherwise, identify claims set forth in the complaint as to which a judgment of non pros will be entered.)

(Attorney)

(Address)

(Telephone Number)

Rule [1042.6.] 1042.7.

**Entry of Judgment of Non Pros for Failure to File
Certification, Form of Praecipe**

(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

(1) there is no pending motion for determination that the filing of a certificate is not required or no pending timely filed motion seeking to extend the time to file the certificate[.].

(2) no certificate of merit has been filed.

(3) except as provided by Rule 1042.6(b), the defendant has attached to the praecipe a certificate of service of the notice of intention to enter the judgment of non pros, and

(4) except as provided by Rule 1042.6(b), the praecipe is filed no less than thirty days after the date of the filing of the notice of intention to enter the judgment of non pros.

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.

See Rule 208.2(a)(4) for the content of the certificate of service.

(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] 1042.7

To the Prothonotary:

[Enter judgment of non pros against _____ in the
Plaintiff
Professional liability claim against _____ in the above
Defendant
captioned matter.]

Enter judgment of non pros in the above-captioned matter against _____

as to

Identify Party

(1) all claims against _____
Identify Party

OR

(2) only the following claims against _____ :
Identify Party

Identify Claims

[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]
_____ (Identify Party)

Note: Where applicable, a certificate of service of the notice of intention to enter judgment of non pros shall be attached to the praecipe.

Rule [1042.7.] 1042.8.

Sanctions

* * *

Rule [1042.8.] 1042.9.

Certificate of Merit. Form

* * *

Explanatory Comment

Current Rules 1042.6, 1042.7 and 1042.8 have been renumbered as Rules 1042.7, 1042.8 and 1042.9, respectively, and new Rule 1042.6 has been promulgated to govern notice of intent to enter a judgment of *non pros* for failure to file a certificate of merit.

The highlights of the amendments are as follows:

1. Present Rule 1042.1 governing the scope of the rules has been amended in two respects. First, subdivision (a) was revised to make clear that Rule 1042.1 et seq. (1) applies to claims by or on behalf of patients or clients against licensed professionals and (2) includes professional liability actions against a partnership, an unincorporated association, a corporation or a similar entity where the entity “is responsible for a licensed professional who deviated from an acceptable professional standard.”

Second, new subdivision (b) was added to Rule 1042.1 to make clear that a professional liability action against a health care provider includes a claim for lack of informed consent.

2. Present Rule 1042.2(b) provides that “[a] defendant may raise by preliminary objections the failure of the complaint to comply with subdivision (a) of this rule.” The note to present Rule 1042.2(b) has been amended because new Rule 1042.6(c) permits a plaintiff to file a motion seeking a determination by the court as to the necessity of filing a certificate of merit.

3. New Rules 1042.6 and 1042.7 address concerns that the present rules (1) permit the entry of a judgment of *non pros* where a plaintiff may believe that the rules governing certificates of merit do not apply and (2) provide for the entry of a judgment of *non pros* where there has been no notice of intent to enter such a judgment.

Several revisions to these rules remedy this situation. First, new Rule 1042.6(a) requires a defendant to give a thirty-day notice of intention to file a praecipe for a judgment of *non pros* for failure to file a certificate of merit. Subdivision (d) provides a form of notice. The new rule retains the basic sixty-day period for the filing of a certificate of merit under present practice since the notice may be filed no earlier than the thirty-first day after the filing of the complaint and the judgment may not be filed earlier than thirty days after the filing of the notice. Subdivision (b) sets forth exceptions to the notice requirement where the court (1) has granted an extension of time to file a certificate of merit and the plaintiff has failed to do so or (2) has denied a motion to extend the time for filing a certificate.

Second, new Rule 1042.6(c) provides that once a notice of intention to seek a judgment of *non pros* has been filed, the plaintiff may file a motion to seek “a determination by the court that the filing of a certificate of merit is not required.” As in the case of a motion to extend the time for filing a certificate under Rule 1042.3(d), the “filing of the motion tolls the time period within which a certificate of merit must be filed until the court rules upon the motion.”

Third, present Rule 1042.6 was renumbered as Rule 1042.7 and revised. As revised, subdivision (a) of the rule has been expanded to set forth four conditions for the entry of a judgment of *non pros*. The form of praecipe to enter the judgment in subdivision (b) has been revised to conform to the new procedure.

By the Civil Procedural
Rules Committee:

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Chair