

**ANTI-DUMPING STATUTE
By Ted Babbitt**

Fla. Stat. 395.1041 was enacted July 1, 2004. The introduction describes the Legislature's concern that every citizen in need of emergency services has it provided by the hospitals of this state. Sec. 3 requires every hospital with an emergency department to provide emergency care and prohibits a hospital from turning away any patient based upon any extrinsic factor including the patient's inability to pay for the services. The statute expressly requires every hospital to have a physician available within every specialty for which the hospital provides service or make alternative arrangements with physicians or other hospitals for the provision of any emergent care in that specialty. The statute provides for the revocation of the hospital's license, a fine and for a civil action by any person who suffers personal injury as a result of the violation of the statute. In addition to damages, any person bringing an action under this statute is entitled to recover reasonable attorney's fees.

The recent slip opinion of St. Joseph's Hospital, Inc. v. Cintron, 34 Fla. L. Weekly D99 (Fla. 2nd DCA, Jan. 16, 2009) answers a number of questions about an action brought under the statute. In that case, a writ of certiorari was sought by the defendant hospital because the trial court denied a motion to dismiss based upon the plaintiff's failure to follow the presuit screening requirements set forth in Chapter 766 of the Florida Statutes. In addition, the instant action was filed more than two years after the events complained of and thus would be barred by the medical malpractice statute of limitations. The question before the District Court was whether or not an action brought under Fla. Stat. 395.1041 was or was not a medical malpractice action and, thus, whether presuit screening or the malpractice statute of limitations applied. The Second District held that an action for "patient dumping" or "anti-dumping" under the above-cited statute is not an action for medical malpractice. The statute itself provides for a statutory cause of action in Sec. 5(b):

(b) Any person who suffers personal harm as a result of a violation of this section or the rules adopted hereunder may recover, in a civil action against the responsible hospital administrative or medical staff or personnel, damages, reasonable attorney's fees, and other appropriate relief. . . .

The Second District simply denied the petition for writ of certiorari finding that there was insufficient evidence that the trial court had departed from the essential requirements of law but cautioned in a footnote that if the case developed into a medical malpractice claim appropriate objections could be raised by the defendant.

Hospitals and physicians faced with the same economic realities that plague this entire country are reluctant to accept patients without insurance or the financial ability to pay. This statute requires the provision of emergency services regardless of ability to pay and creates a cause of action in the event of an injury which is created as a result of the violation of this statute.

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