

By Senator Hays

20-01006-11

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1                                   A bill to be entitled  
2           An act relating to medical malpractice actions;  
3           creating ss. 458.3175 and 459.0066, F.S.; requiring  
4           the Board of Medicine and the Board of Osteopathic  
5           Medicine to issue expert witness certificates to  
6           physicians licensed outside the state; providing  
7           application and certification requirements;  
8           establishing application fees; providing for validity  
9           and use of the certification; exempting a physician  
10          issued a certificate from certain licensure and fee  
11          requirements; requiring the boards to adopt rules;  
12          amending ss. 458.331 and 459.015, F.S.; providing  
13          additional acts that constitute grounds for denial of  
14          a license or disciplinary action to which penalties  
15          apply; amending s. 627.4147, F.S.; deleting a  
16          requirement that medical malpractice insurance  
17          contracts contain a clause authorizing the insurer to  
18          make and conclude certain offers within policy limits  
19          over the insured's veto; amending s. 766.102, F.S.;  
20          revising the length of devoted, professional time  
21          required in order for a health care provider to  
22          qualify to give expert testimony regarding the  
23          prevailing professional standard of care; requiring an  
24          expert witness in certain medical negligence actions  
25          to be licensed under ch. 458 or ch. 459, F.S., or  
26          possess an expert witness certificate under certain  
27          conditions; providing that certain medical expert  
28          testimony is not admissible unless the expert witness  
29          meets certain requirements; amending s. 766.106, F.S.;

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30 requiring claimants for medical malpractice to execute  
31 an authorization form; deleting a provision  
32 prohibiting failure to provide certain presuit notice  
33 from serving as grounds for imposing sanctions;  
34 providing that certain immunity arising from  
35 participation in the presuit screening process does  
36 not prohibit certain physicians from being subject to  
37 certain penalties; allowing prospective medical  
38 malpractice defendants to interview a claimant's  
39 treating health care providers without notice to or  
40 the presence of the claimant or the claimant's legal  
41 representative; authorizing prospective defendants to  
42 take unsworn statements of a claimant's health care  
43 providers; creating s. 766.1065, F.S.; requiring that  
44 presuit notice for medical negligence claims be  
45 accompanied by an authorization for release of  
46 protected health information; providing requirements  
47 for the form of such authorization; amending s.  
48 766.206, F.S.; requiring dismissal of a medical  
49 malpractice claim and payment of certain costs if such  
50 authorization form is not completed in good faith;  
51 providing an effective date.

52  
53 Be It Enacted by the Legislature of the State of Florida:

54  
55 Section 1. Section 458.3175, Florida Statutes, is created  
56 to read:

57 458.3175 Expert witness certificate.-

58 (1) (a) The board shall issue a certificate authorizing a

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59 physician who holds an active and valid license to practice  
60 medicine in another state or a province of Canada to provide  
61 expert testimony in this state if the physician submits to the  
62 board a complete registration application in the format  
63 prescribed by the board, pays an application fee established by  
64 the board not to exceed \$50, and has not had a previous expert  
65 witness certificate revoked by the board.

66 (b) The board shall approve or deny an application for an  
67 expert witness certificate within 5 business days after receipt  
68 of the completed application and payment of the application fee.  
69 An application is approved by default if the board does not act  
70 upon the application within the required period. A physician  
71 must notify the board in writing of his or her intent to rely on  
72 a certificate approved by default.

73 (c) An expert witness certificate is valid for 2 years  
74 after the date of issuance.

75 (2) An expert witness certificate authorizes the physician  
76 to whom the certificate is issued to do only the following:

77 (a) Provide a verified written medical expert opinion as  
78 provided in s. 766.203.

79 (b) Provide expert testimony about the prevailing  
80 professional standard of care in connection with medical  
81 negligence litigation pending in this state against a physician  
82 licensed under this chapter or chapter 459.

83 (3) An expert witness certificate does not authorize a  
84 physician to engage in the practice of medicine as defined in s.  
85 458.305. A physician issued a certificate under this section who  
86 does not otherwise practice medicine in this state is not  
87 required to obtain a license under this chapter or pay any

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88 license fees, including, but not limited to, a neurological  
89 injury compensation assessment.

90 (4) The board shall adopt rules to administer this section.

91 Section 2. Present paragraphs (oo), (pp), and (qq) of  
92 subsection (1) of section 458.331, Florida Statutes, are  
93 redesignated as paragraphs (pp), (qq), and (rr), respectively,  
94 and a new paragraph (oo) is added to that subsection, to read:

95 458.331 Grounds for disciplinary action; action by the  
96 board and department.—

97 (1) The following acts constitute grounds for denial of a  
98 license or disciplinary action, as specified in s. 456.072(2):

99 (oo) Providing misleading, deceptive, or fraudulent expert  
100 witness testimony related to the practice of medicine.

101 Section 3. Section 459.0066, Florida Statutes, is created  
102 to read:

103 459.0066 Expert witness certificate.—

104 (1) (a) The board shall issue a certificate authorizing a  
105 physician who holds an active and valid license to practice  
106 osteopathic medicine in another state or a province of Canada to  
107 provide expert testimony in this state if the physician submits  
108 to the board a complete registration application in the format  
109 prescribed by the board, pays an application fee established by  
110 the board not to exceed \$50, and has not had a previous expert  
111 witness certificate revoked by the board.

112 (b) The board shall approve or deny an application for an  
113 expert witness certificate within 5 business days after receipt  
114 of the completed application and payment of the application fee.  
115 An application is approved by default if the board does not act  
116 upon the application within the required period. A physician

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117 must notify the board in writing of his or her intent to rely on  
118 a certificate approved by default.

119 (c) An expert witness certificate is valid for 2 years  
120 after the date of issuance.

121 (2) An expert witness certificate authorizes the physician  
122 to whom the certificate is issued to do only the following:

123 (a) Provide a verified written medical expert opinion as  
124 provided in s. 766.203.

125 (b) Provide expert testimony about the prevailing  
126 professional standard of care in connection with medical  
127 negligence litigation pending in this state against a physician  
128 licensed under chapter 458 or this chapter.

129 (3) An expert witness certificate does not authorize a  
130 physician to engage in the practice of osteopathic medicine as  
131 defined in s. 459.003. A physician issued a certificate under  
132 this section who does not otherwise practice osteopathic  
133 medicine in this state is not required to obtain a license under  
134 this chapter or pay any license fees, including, but not limited  
135 to, a neurological injury compensation assessment.

136 (4) The board shall adopt rules to administer this section.

137 Section 4. Present paragraphs (qq), (rr), and (ss) of  
138 subsection (1) of section 459.015, Florida Statutes, are  
139 redesignated as paragraphs (rr), (ss), and (tt), respectively,  
140 and a new paragraph (qq) is added to that subsection, to read:

141 459.015 Grounds for disciplinary action; action by the  
142 board and department.—

143 (1) The following acts constitute grounds for denial of a  
144 license or disciplinary action, as specified in s. 456.072(2):

145 (qq) Providing misleading, deceptive, or fraudulent expert

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146 witness testimony related to the practice of osteopathic  
147 medicine.

148 Section 5. Paragraph (b) of subsection (1) of section  
149 627.4147, Florida Statutes, is amended to read:

150 627.4147 Medical malpractice insurance contracts.—

151 (1) In addition to any other requirements imposed by law,  
152 each self-insurance policy as authorized under s. 627.357 or s.  
153 624.462 or insurance policy providing coverage for claims  
154 arising out of the rendering of, or the failure to render,  
155 medical care or services, including those of the Florida Medical  
156 Malpractice Joint Underwriting Association, shall include:

157 ~~(b)1. Except as provided in subparagraph 2., a clause~~  
158 ~~authorizing the insurer or self-insurer to determine, to make,~~  
159 ~~and to conclude, without the permission of the insured, any~~  
160 ~~offer of admission of liability and for arbitration pursuant to~~  
161 ~~s. 766.106, settlement offer, or offer of judgment, if the offer~~  
162 ~~is within the policy limits. It is against public policy for any~~  
163 ~~insurance or self-insurance policy to contain a clause giving~~  
164 ~~the insured the exclusive right to veto any offer for admission~~  
165 ~~of liability and for arbitration made pursuant to s. 766.106,~~  
166 ~~settlement offer, or offer of judgment, when such offer is~~  
167 ~~within the policy limits. However, any offer of admission of~~  
168 ~~liability, settlement offer, or offer of judgment made by an~~  
169 ~~insurer or self-insurer shall be made in good faith and in the~~  
170 ~~best interests of the insured.~~

171 ~~2.a. With respect to dentists licensed under chapter 466, A~~  
172 ~~clause clearly stating whether or not the insured has the~~  
173 ~~exclusive right to veto any offer of admission of liability and~~  
174 ~~for arbitration pursuant to s. 766.106, settlement offer, or~~

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175 offer of judgment if the offer is within policy limits. An  
176 insurer or self-insurer may ~~shall~~ not make or conclude, without  
177 the permission of the insured, any offer of admission of  
178 liability and for arbitration pursuant to s. 766.106, settlement  
179 offer, or offer of judgment, if such offer is outside the policy  
180 limits. However, any offer for admission of liability and for  
181 arbitration made under s. 766.106, settlement offer, or offer of  
182 judgment made by an insurer or self-insurer shall be made in  
183 good faith and in the best interest of the insured.

184 2.b. If the policy contains a clause stating the insured  
185 does not have the exclusive right to veto any offer or admission  
186 of liability and for arbitration made pursuant to s. 766.106,  
187 settlement offer or offer of judgment, the insurer or self-  
188 insurer shall provide to the insured or the insured's legal  
189 representative by certified mail, return receipt requested, a  
190 copy of the final offer of admission of liability and for  
191 arbitration made pursuant to s. 766.106, settlement offer or  
192 offer of judgment and at the same time such offer is provided to  
193 the claimant. A copy of any final agreement reached between the  
194 insurer and claimant shall also be provided to the insurer or  
195 his or her legal representative by certified mail, return  
196 receipt requested not more than 10 days after affecting such  
197 agreement.

198 Section 6. Section 766.102, Florida Statutes, is amended to  
199 read:

200 766.102 Medical negligence; standards of recovery; expert  
201 witness.—

202 (1) In any action for recovery of damages based on the  
203 death or personal injury of any person in which it is alleged

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204 that such death or injury resulted from the negligence of a  
205 health care provider as defined in s. 766.202(4), the claimant  
206 shall have the burden of proving by the greater weight of  
207 evidence that the alleged actions of the health care provider  
208 represented a breach of the prevailing professional standard of  
209 care for that health care provider. The prevailing professional  
210 standard of care for a given health care provider shall be that  
211 level of care, skill, and treatment which, in light of all  
212 relevant surrounding circumstances, is recognized as acceptable  
213 and appropriate by reasonably prudent similar health care  
214 providers.

215 (2)(a) If the injury is claimed to have resulted from the  
216 negligent affirmative medical intervention of the health care  
217 provider, the claimant must, in order to prove a breach of the  
218 prevailing professional standard of care, show that the injury  
219 was not within the necessary or reasonably foreseeable results  
220 of the surgical, medicinal, or diagnostic procedure constituting  
221 the medical intervention, if the intervention from which the  
222 injury is alleged to have resulted was carried out in accordance  
223 with the prevailing professional standard of care by a  
224 reasonably prudent similar health care provider.

225 (b) The provisions of this subsection shall apply only when  
226 the medical intervention was undertaken with the informed  
227 consent of the patient in compliance with the provisions of s.  
228 766.103.

229 (3) The existence of a medical injury shall not create any  
230 inference or presumption of negligence against a health care  
231 provider, and the claimant must maintain the burden of proving  
232 that an injury was proximately caused by a breach of the



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233 prevailing professional standard of care by the health care  
234 provider. However, the discovery of the presence of a foreign  
235 body, such as a sponge, clamp, forceps, surgical needle, or  
236 other paraphernalia commonly used in surgical, examination, or  
237 diagnostic procedures, shall be prima facie evidence of  
238 negligence on the part of the health care provider.

239 (4) The Legislature is cognizant of the changing trends and  
240 techniques for the delivery of health care in this state and the  
241 discretion that is inherent in the diagnosis, care, and  
242 treatment of patients by different health care providers. The  
243 failure of a health care provider to order, perform, or  
244 administer supplemental diagnostic tests shall not be actionable  
245 if the health care provider acted in good faith and with due  
246 regard for the prevailing professional standard of care.

247 (5) A person may not give expert testimony concerning the  
248 prevailing professional standard of care unless that person is a  
249 licensed health care provider and meets the following criteria:

250 (a) If the health care provider against whom or on whose  
251 behalf the testimony is offered is a specialist, the expert  
252 witness must:

253 1. Specialize in the same specialty as the health care  
254 provider against whom or on whose behalf the testimony is  
255 offered; or specialize in a similar specialty that includes the  
256 evaluation, diagnosis, or treatment of the medical condition  
257 that is the subject of the claim and have prior experience  
258 treating similar patients; and

259 2. Have devoted professional time during the 2 ~~3~~ years  
260 immediately preceding the date of the occurrence that is the  
261 basis for the action to:

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262 a. The active clinical practice of, or consulting with  
263 respect to, the same or similar specialty that includes the  
264 evaluation, diagnosis, or treatment of the medical condition  
265 that is the subject of the claim and have prior experience  
266 treating similar patients;

267 b. Instruction of students in an accredited health  
268 professional school or accredited residency or clinical research  
269 program in the same or similar specialty; or

270 c. A clinical research program that is affiliated with an  
271 accredited health professional school or accredited residency or  
272 clinical research program in the same or similar specialty.

273 (b) If the health care provider against whom or on whose  
274 behalf the testimony is offered is a general practitioner, the  
275 expert witness must have devoted professional time during the 2  
276 ~~5~~ years immediately preceding the date of the occurrence that is  
277 the basis for the action to:

278 1. The active clinical practice or consultation as a  
279 general practitioner;

280 2. The instruction of students in an accredited health  
281 professional school or accredited residency program in the  
282 general practice of medicine; or

283 3. A clinical research program that is affiliated with an  
284 accredited medical school or teaching hospital and that is in  
285 the general practice of medicine.

286 (c) If the health care provider against whom or on whose  
287 behalf the testimony is offered is a health care provider other  
288 than a specialist or a general practitioner, the expert witness  
289 must have devoted professional time during the 2 ~~3~~ years  
290 immediately preceding the date of the occurrence that is the

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291 basis for the action to:

292 1. The active clinical practice of, or consulting with  
293 respect to, the same or similar health profession as the health  
294 care provider against whom or on whose behalf the testimony is  
295 offered;

296 2. The instruction of students in an accredited health  
297 professional school or accredited residency program in the same  
298 or similar health profession in which the health care provider  
299 against whom or on whose behalf the testimony is offered; or

300 3. A clinical research program that is affiliated with an  
301 accredited medical school or teaching hospital and that is in  
302 the same or similar health profession as the health care  
303 provider against whom or on whose behalf the testimony is  
304 offered.

305 (6) A physician licensed under chapter 458 or chapter 459  
306 who qualifies as an expert witness under subsection (5) and who,  
307 by reason of active clinical practice or instruction of  
308 students, has knowledge of the applicable standard of care for  
309 nurses, nurse practitioners, certified registered nurse  
310 anesthetists, certified registered nurse midwives, physician  
311 assistants, or other medical support staff may give expert  
312 testimony in a medical negligence action with respect to the  
313 standard of care of such medical support staff.

314 (7) Notwithstanding subsection (5), in a medical negligence  
315 action against a hospital, a health care facility, or medical  
316 facility, a person may give expert testimony on the appropriate  
317 standard of care as to administrative and other nonclinical  
318 issues if the person has substantial knowledge, by virtue of his  
319 or her training and experience, concerning the standard of care

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320 among hospitals, health care facilities, or medical facilities  
321 of the same type as the hospital, health care facility, or  
322 medical facility whose acts or omissions are the subject of the  
323 testimony and which are located in the same or similar  
324 communities at the time of the alleged act giving rise to the  
325 cause of action.

326 (8) If a health care provider described in subsection (5),  
327 subsection (6), or subsection (7) is providing evaluation,  
328 treatment, or diagnosis for a condition that is not within his  
329 or her specialty, a specialist trained in the evaluation,  
330 treatment, or diagnosis for that condition shall be considered a  
331 similar health care provider.

332 (9) (a) In any action for damages involving a claim of  
333 negligence against a physician licensed under chapter 458,  
334 osteopathic physician licensed under chapter 459, podiatric  
335 physician licensed under chapter 461, or chiropractic physician  
336 licensed under chapter 460 providing emergency medical services  
337 in a hospital emergency department, the court shall admit expert  
338 medical testimony only from physicians, osteopathic physicians,  
339 podiatric physicians, and chiropractic physicians who have had  
340 substantial professional experience within the preceding 2 ~~5~~  
341 years while assigned to provide emergency medical services in a  
342 hospital emergency department.

343 (b) For the purposes of this subsection:

344 1. The term "emergency medical services" means those  
345 medical services required for the immediate diagnosis and  
346 treatment of medical conditions which, if not immediately  
347 diagnosed and treated, could lead to serious physical or mental  
348 disability or death.

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349           2. "Substantial professional experience" shall be  
350 determined by the custom and practice of the manner in which  
351 emergency medical coverage is provided in hospital emergency  
352 departments in the same or similar localities where the alleged  
353 negligence occurred.

354           (10) In any action alleging medical negligence, an expert  
355 witness may not testify on a contingency fee basis.

356           (11) Any attorney who proffers a person as an expert  
357 witness pursuant to this section must certify that such person  
358 has not been found guilty of fraud or perjury in any  
359 jurisdiction.

360           (12) If the party against whom or on whose behalf the  
361 expert testimony concerning the prevailing professional standard  
362 of care is offered is a physician licensed under chapter 458 or  
363 chapter 459, the expert witness must be licensed in this state  
364 under chapter 458 or chapter 459 or possess an expert witness  
365 certificate as provided in s. 458.3175 or s. 459.0066. Expert  
366 testimony is not admissible unless the expert providing such  
367 testimony is licensed by this state or possesses an expert  
368 witness certificate as provided in s. 458.3175 or s. 459.0066.

369           (13)~~(12)~~ This section does not limit the power of the trial  
370 court to disqualify or qualify an expert witness on grounds  
371 other than the qualifications in this section.

372           Section 7. Paragraph (a) of subsection (2), subsection  
373 (5), and paragraph (b) of subsection (6) of section 766.106,  
374 Florida Statutes, are amended to read:

375           766.106 Notice before filing action for medical negligence;  
376 presuit screening period; offers for admission of liability and  
377 for arbitration; informal discovery; review.-

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378 (2) PRESUIT NOTICE.—

379 (a) After completion of presuit investigation pursuant to  
380 s. 766.203(2) and prior to filing a complaint for medical  
381 negligence, a claimant shall notify each prospective defendant  
382 by certified mail, return receipt requested, of intent to  
383 initiate litigation for medical negligence. Notice to each  
384 prospective defendant must include, if available, a list of all  
385 known health care providers seen by the claimant for the  
386 injuries complained of subsequent to the alleged act of  
387 negligence, all known health care providers during the 2-year  
388 period prior to the alleged act of negligence who treated or  
389 evaluated the claimant, ~~and~~ copies of all of the medical records  
390 relied upon by the expert in signing the affidavit, and the  
391 executed authorization form provided in s. 766.1065. ~~The~~  
392 ~~requirement of providing the list of known health care providers~~  
393 ~~may not serve as grounds for imposing sanctions for failure to~~  
394 ~~provide presuit discovery.~~

395 (5) DISCOVERY AND ADMISSIBILITY.—A ~~No~~ statement,  
396 discussion, written document, report, or other work product  
397 generated by the presuit screening process is not discoverable  
398 or admissible in any civil action for any purpose by the  
399 opposing party. All participants, including, but not limited to,  
400 physicians, investigators, witnesses, and employees or  
401 associates of the defendant, are immune from civil liability  
402 arising from participation in the presuit screening process.  
403 This subsection does not prevent a physician licensed under  
404 chapter 458 or chapter 459 who submits a verified written expert  
405 medical opinion from being subject to denial of a license or  
406 disciplinary action under s. 458.331(1)(oo) or s.

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407 459.015(1) (qq).

408 (6) INFORMAL DISCOVERY.—

409 (b) Informal discovery may be used by a party to obtain  
410 unsworn statements, the production of documents or things, and  
411 physical and mental examinations, as follows:

412 1. Unsworn statements.—Any party may require other parties  
413 to appear for the taking of an unsworn statement. Such  
414 statements may be used only for the purpose of presuit screening  
415 and are not discoverable or admissible in any civil action for  
416 any purpose by any party. A party desiring to take the unsworn  
417 statement of any party must give reasonable notice in writing to  
418 all parties. The notice must state the time and place for taking  
419 the statement and the name and address of the party to be  
420 examined. Unless otherwise impractical, the examination of any  
421 party must be done at the same time by all other parties. Any  
422 party may be represented by counsel at the taking of an unsworn  
423 statement. An unsworn statement may be recorded electronically,  
424 stenographically, or on videotape. The taking of unsworn  
425 statements is subject to the provisions of the Florida Rules of  
426 Civil Procedure and may be terminated for abuses.

427 2. Documents or things.—Any party may request discovery of  
428 documents or things. The documents or things must be produced,  
429 at the expense of the requesting party, within 20 days after the  
430 date of receipt of the request. A party is required to produce  
431 discoverable documents or things within that party's possession  
432 or control. Medical records shall be produced as provided in s.  
433 766.204.

434 3. Physical and mental examinations.—A prospective  
435 defendant may require an injured claimant to appear for

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436 examination by an appropriate health care provider. The  
437 prospective defendant shall give reasonable notice in writing to  
438 all parties as to the time and place for examination. Unless  
439 otherwise impractical, a claimant is required to submit to only  
440 one examination on behalf of all potential defendants. The  
441 practicality of a single examination must be determined by the  
442 nature of the claimant's condition, as it relates to the  
443 liability of each prospective defendant. Such examination report  
444 is available to the parties and their attorneys upon payment of  
445 the reasonable cost of reproduction and may be used only for the  
446 purpose of presuit screening. Otherwise, such examination report  
447 is confidential and exempt from the provisions of s. 119.07(1)  
448 and s. 24(a), Art. I of the State Constitution.

449 4. Written questions.—Any party may request answers to  
450 written questions, the number of which may not exceed 30,  
451 including subparts. A response must be made within 20 days after  
452 receipt of the questions.

453 5. Ex parte interviews of treating health care providers.—A  
454 prospective defendant or his or her legal representative shall  
455 have access to interview the claimant's treating health care  
456 providers without notice to or the presence of the claimant or  
457 the claimant's legal representative.

458 ~~6.5. Unsworn statements of treating health care providers~~  
459 ~~Medical information release.—The claimant must execute a medical~~  
460 ~~information release that allows~~ A prospective defendant or his  
461 or her legal representative may ~~to~~ take unsworn statements of  
462 the claimant's treating health care providers ~~physicians~~. The  
463 statements must be limited to those areas that are potentially  
464 relevant to the claim of personal injury or wrongful death.



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465 Subject to the procedural requirements of subparagraph 1., a  
466 prospective defendant may take unsworn statements from a  
467 claimant's treating physicians. Reasonable notice and  
468 opportunity to be heard must be given to the claimant or the  
469 claimant's legal representative before taking unsworn  
470 statements. The claimant or claimant's legal representative has  
471 the right to attend the taking of such unsworn statements.

472 Section 8. Section 766.1065, Florida Statutes, is created  
473 to read:

474 766.1065 Authorization form for release of protected health  
475 information.-

476 (1) Presuit notice of intent to initiate litigation for  
477 medical negligence under s. 766.106(2) must be accompanied by an  
478 authorization for release of protected health information in the  
479 form specified by this section, authorizing the disclosure of  
480 protected health information that is potentially relevant to the  
481 claim of personal injury or wrongful death. The presuit notice  
482 is void if this authorization does not accompany the presuit  
483 notice and other materials required by s. 766.106(2).

484 (2) If the authorization required by this section is  
485 revoked, the presuit notice under s. 766.106(2) shall be deemed  
486 retroactively void from the date of issuance, and any tolling  
487 effect that the presuit notice may have had on any applicable  
488 statute-of-limitations period is retroactively rendered void.

489 (3) The authorization required by this section shall be in  
490 the following form and shall be construed in accordance with the  
491 "Standards for Privacy of Individually Identifiable Health  
492 Information" in 45 C.F.R. parts 160 and 164:

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AUTHORIZATION FOR RELEASE OF PROTECTED HEALTH INFORMATION

A. I, (...Name of patient or authorized representative...) [hereinafter "Patient"], authorize that (...Name of health care provider to whom the presuit notice is directed...) and his/her/its insurer(s), self-insurer(s), and attorney(s) may obtain and disclose (within the parameters set out below) the protected health information described below for the following specific purposes:

1. Facilitating the investigation and evaluation of the medical negligence claim described in the accompanying presuit notice; or

2. Defending against any litigation arising out of the medical negligence claim made on the basis of the accompanying presuit notice.

B. The health information obtained, used, or disclosed extends to, and includes, oral as well as the written information, and is described as follows:

1. The health information in the custody of the following health care providers who have examined, evaluated, or treated the Patient in connection with injuries complained of after the alleged act of negligence: (List the name and current address of all health care providers). This authorization extends to any additional health care providers that may in the future evaluate, examine, or treat the Patient for the injuries complained of.

2. The health information in the custody of the

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523 following health care providers who have examined,  
524 evaluated, or treated the Patient during a period  
525 commencing 2 years before the incident which is the  
526 basis of the accompanying presuit notice.

527  
528 (List the name and current address of such health care  
529 providers, if applicable.)

530

531 C. This authorization does not apply to the  
532 following list of health care providers possessing  
533 health care information about the Patient because the  
534 Patient certifies that such health care information is  
535 not potentially relevant to the claim of personal  
536 injury or wrongful death which is the basis of the  
537 accompanying presuit notice.

538

539 (List the name of each health care provider to whom  
540 this authorization does not apply and the inclusive  
541 dates of examination, evaluation, or treatment to be  
542 withheld from disclosure. If none, specify "none.")

543

544 D. The persons or class of persons to whom the  
545 Patient authorizes such health information to be  
546 disclosed, or by whom such health information is to be  
547 used, includes:

548 1. Any health care provider providing care or  
549 treatment for the Patient.

550 2. Any liability insurer or self-insurer  
551 providing liability insurance coverage, self-

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552 insurance, or defense to any health care provider to  
553 whom presuit notice is given regarding the care and  
554 treatment of the Patient.

555 3. Any consulting or testifying expert employed  
556 by or on behalf of (name of health care provider to  
557 whom presuit notice was given) or his/her/its  
558 insurer(s), self-insurer(s), or attorney(s) regarding  
559 the matter of the presuit notice accompanying this  
560 authorization.

561 4. Any attorney (including secretarial, clerical,  
562 or paralegal staff) employed by or on behalf of (name  
563 of health care provider to whom presuit notice was  
564 given) regarding the matter of the presuit notice  
565 accompanying this authorization.

566 5. Any trier of the law or facts relating to any  
567 suit filed seeking damages arising out of the medical  
568 care or treatment of the Patient.

569 E. This authorization expires upon resolution of  
570 the claim or at the conclusion of any litigation  
571 instituted in connection with the matter of the  
572 presuit notice accompanying this authorization,  
573 whichever occurs first.

574 F. The Patient understands that, without  
575 exception, the Patient has the right to revoke this  
576 authorization in writing. The Patient further  
577 understands that the consequence of any such  
578 revocation is that the presuit notice under s.  
579 766.106(2), Florida Statutes, is deemed retroactively  
580 void from the date of issuance, and any tolling effect

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581 that the presuit notice may have had on any applicable  
 582 statute-of-limitations period is retroactively  
 583 rendered void.

584 G. The Patient understands that signing this  
 585 authorization is not a condition for continued  
 586 treatment, payment, enrollment, or eligibility for  
 587 health plan benefits.

588 H. The Patient understands that information used  
 589 or disclosed under this authorization may be subject  
 590 to additional disclosure by the recipient and may not  
 591 be protected by federal HIPAA privacy regulations.

593 Signature of Patient/Representative: ....

594 Date: ....

595 Name of Patient/Representative: ....

596 Description of Representative's Authority: ....

597 Section 9. Subsection (2) of section 766.206, Florida  
 598 Statutes, is amended to read:

599 766.206 Presuit investigation of medical negligence claims  
 600 and defenses by court.-

601 (2) If the court finds that the notice of intent to  
 602 initiate litigation mailed by the claimant does is not comply in  
 603 compliance with the reasonable investigation requirements of ss.  
 604 766.201-766.212, including a review of the claim and a verified  
 605 written medical expert opinion by an expert witness as defined  
 606 in s. 766.202, or that the authorization form accompanying the  
 607 notice of intent provided for in s. 766.1065 was not completed  
 608 in good faith by the claimant, the court shall dismiss the  
 609 claim, and the person who mailed such notice of intent, whether

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610 the claimant or the claimant's attorney, shall be personally  
611 liable for all attorney's fees and costs incurred during the  
612 investigation and evaluation of the claim, including the  
613 reasonable attorney's fees and costs of the defendant or the  
614 defendant's insurer.

615 Section 10. This act shall take effect July 1, 2011.