

Committee on Judiciary

SB 1792 — Medical Negligence Actions

by Judiciary Committee

This bill clarifies a health care practitioner's or provider's right to legal counsel, authorizes a prospective defendant to interview a claimant's treating health care providers, and revises the qualifications of experts authorized to testify in medical negligence actions against a specialist.

Health Care Practitioner or Provider Access to Legal Counsel

Whether a health care practitioner or provider may consult with legal counsel before serving as a witness in a medical negligence action was made unclear as the result of *Hasan v. Garvar*, 108 So. 3d 570 (Fla. 2012). The bill clarifies that a health care practitioner or provider may consult with an attorney before serving as a witness in a medical negligence action.

During a consultation, the practitioner or provider may disclose to his or her attorney information disclosed by a patient or records created during the course of care or treatment of the patient. However, the bill prohibits the attorney from being a conduit for ex parte communications between the practitioner or provider and the defendant or the defendant's insurer. If the liability insurer for the provider or practitioner represents a defendant or prospective defendant in the action:

- The insurer may not choose an attorney for the practitioner, but may recommend attorneys other than the attorney representing the defendant or a prospective defendant.
- The practitioner's attorney may not disclose any information to the insurer, other than categories of work performed or time billed.

Presuit Investigation of Medical Negligence Claims

This bill revises the informal discovery procedures available for the presuit investigation of a medical negligence claim.

Under existing law, a prospective defendant may not interview the claimant's treating health care providers without the consent of the claimant. Under the bill, the claimant's attorney is responsible for arranging an interview between the prospective defendant and the claimant's treating health care providers within 15 days after receiving a request. For a subsequent interview, a prospective defendant need only provide 72 hours advance notice of taking the interview to the claimant. However, if the claimant's attorney fails to schedule the first interview, the prospective defendant may conduct an interview of the claimant's treating health care providers without notice to the claimant.

The bill does not require a health care provider to submit to an interview.

Medical Specialists as Expert Witnesses

The bill limits the class of individuals who may offer expert testimony in a medical negligence action against a specialist. Under existing law, these experts must specialize in the same or similar specialty as the defendant. Under the bill, these experts must specialize in the same medical specialty as the defendant.

If approved by the Governor, these provisions take effect July 1, 2013.

Vote: Senate 27-12; House 77-38