

By Representative Arza

1 A bill to be entitled
2 An act relating to medical negligence; amending
3 s. 766.102, F.S.; revising language with
4 respect to standards of recovery for medical
5 negligence; creating s. 766.1025, F.S.;
6 providing for an offer of judgment in any civil
7 action for medical negligence or wrongful death
8 resulting from medical negligence; amending s.
9 766.202, F.S.; redefining the term "medical
10 expert"; amending s. 456.057, F.S.; providing
11 for interviews by a defendant health care
12 provider in certain actions; providing
13 procedures for such interviews; amending s.
14 768.78, F.S.; deleting reference to future
15 economic losses with respect to certain actions
16 for damages based on personal injury or
17 wrongful death arising out of medical
18 malpractice; providing an effective date.

19
20 Be It Enacted by the Legislature of the State of Florida:

21
22 Section 1. Subsection (2) of section 766.102, Florida
23 Statutes, is amended to read:

24 766.102 Medical negligence; standards of recovery.--

25 (2)(a) If the health care provider whose negligence is
26 claimed to have created the cause of action is not certified
27 by the appropriate American board as being a specialist, is
28 not trained and experienced in a medical specialty, or does
29 not hold himself or herself out as a specialist, a "similar
30 health care provider" is one who:

31

- 1 1. Is licensed by the appropriate regulatory agency of
2 this state;
- 3 2. Is trained and experienced in the same discipline
4 or school of practice; ~~and~~
- 5 3. Practices in the same or similar medical community;
6 and
- 7 4. Has, during the 5 years immediately preceding the
8 date of the occurrence that is the basis for the action,
9 engaged in any combination of the following:
- 10 a. Active clinical practice;
- 11 b. Instruction of students in an accredited health
12 professional school or accredited residency program in the
13 same health profession as the health care provider against
14 whom or on whose behalf the testimony is offered; or
- 15 c. Participation in a clinical research program that
16 is affiliated with an accredited medical school or teaching
17 hospital in the same health profession as the health care
18 provider against whom or on whose behalf the testimony is
19 offered.
- 20 (b) If the health care provider whose negligence is
21 claimed to have created the cause of action is certified by
22 the appropriate American board as a specialist, is trained and
23 experienced in a medical specialty, or holds himself or
24 herself out as a specialist, a "similar health care provider"
25 is one who:
- 26 1. Is trained and experienced in the same specialty;
27 ~~and~~
- 28 2. Is certified by the appropriate American board in
29 the same specialty; and
- 30
- 31

1 3. Has, during the 5 years immediately preceding the
2 date of the occurrence that is the basis for the action,
3 engaged in any combination of the following:

4 a. Active clinical practice in the same specialty or a
5 similar specialty that includes the evaluation, diagnosis, or
6 treatment of the medical condition or procedure that is the
7 subject of the action;

8 b. Instruction of students in an accredited health
9 professional school or accredited residency program in the
10 same health profession and the same or similar specialty as
11 the health care provider against whom or on whose behalf the
12 testimony is offered; or

13 c. Participation in a clinical research program that
14 is affiliated with an accredited medical school or teaching
15 hospital and that is in the same health profession and the
16 same or similar specialty as the health care provider against
17 whom or on whose behalf the testimony is offered and that is
18 in the general practice of medicine.

19
20 However, if any health care provider described in this
21 paragraph is providing treatment or diagnosis for a condition
22 which is not within his or her specialty, a specialist trained
23 in the treatment or diagnosis for that condition shall be
24 considered a "similar health care provider."

25 ~~(c) The purpose of this subsection is to establish a~~
26 ~~relative standard of care for various categories and~~
27 ~~classifications of health care providers. Any health care~~
28 ~~provider may testify as an expert in any action if he or she:~~

29 ~~1. Is a similar health care provider pursuant to~~
30 ~~paragraph (a) or paragraph (b); or~~

31

1 ~~2. Is not a similar health care provider pursuant to~~
2 ~~paragraph (a) or paragraph (b) but, to the satisfaction of the~~
3 ~~court, possesses sufficient training, experience, and~~
4 ~~knowledge as a result of practice or teaching in the specialty~~
5 ~~of the defendant or practice or teaching in a related field of~~
6 ~~medicine, so as to be able to provide such expert testimony as~~
7 ~~to the prevailing professional standard of care in a given~~
8 ~~field of medicine. Such training, experience, or knowledge~~
9 ~~must be as a result of the active involvement in the practice~~
10 ~~or teaching of medicine within the 5-year period before the~~
11 ~~incident giving rise to the claim.~~

12 Section 2. Section 766.1025, Florida Statutes, is
13 created to read:

14 766.1025 Offer of judgment.--In any civil action for
15 medical negligence or wrongful death resulting from medical
16 negligence, a plaintiff may employ the provisions of s.
17 768.79, provided that the demand for judgment may not be
18 served upon the defendant until 180 days after the actual
19 service of the complaint on the defendant. The defendant has
20 90 days to consider the demand and to either accept or reject
21 the demand. In the event that the demand is not accepted or
22 rejected and the plaintiff recovers a judgment with an amount
23 at least 25 percent greater than the demand, said plaintiff
24 shall be entitled to recoverable costs and attorney fees
25 incurred from the date of the filing of the demand. All other
26 provisions of s. 768.79 shall be applied so long as they are
27 not inconsistent with the provisions set forth in this
28 section.

29 Section 3. Subsection (5) of section 766.202, Florida
30 Statutes, is amended to read:

31

1 766.202 Definitions; ss. 766.201-766.212.--As used in
2 ss. 766.201-766.212, the term:

3 (5) "Medical expert" means a person duly and regularly
4 engaged in the practice of his or her profession who holds a
5 health care professional degree from a university or college
6 and who meets the requirements of an expert witness as set
7 forth in s. 766.102 ~~has had special professional training and~~
8 ~~experience or one possessed of special health care knowledge~~
9 ~~or skill about the subject upon which he or she is called to~~
10 ~~testify or provide an opinion.~~

11 Section 4. Subsection (20) is added to section
12 456.057, Florida Statutes, to read:

13 456.057 Ownership and control of patient records;
14 report or copies of records to be furnished.--

15 (20) Notwithstanding any other provision of law, when
16 an action is brought after July 1, 2002, for damages resulting
17 from personal injury or death caused by the negligence of a
18 health care provider as defined in s. 766.101, the defendant
19 health care provider alleged to be responsible for the injury
20 or death, or the defendant health care provider's insurer or
21 legal representative, may interview ex parte, as set forth in
22 this subsection, any other health care provider involved in
23 the patient's care. Such an interview may occur only after
24 notice is provided to the claimant's attorney and must be
25 limited to issues of causation, the patient's current physical
26 condition, and the mental impressions of the care and
27 treatment rendered by the defendant health care provider or
28 any other health care provider alleged to be responsible for
29 the patient's injury or death. Such interviews with a
30 patient's treating physician may occur only after the claimant
31 has given notice of intent to initiate a claim for medical

1 malpractice and before the dismissal, settlement, or other
2 final resolution of the claim.

3 Section 5. Subsection (2) of section 768.78, Florida
4 Statutes, is amended to read:

5 768.78 Alternative methods of payment of damage
6 awards.--

7 (2)(a) In any action for damages based on personal
8 injury or wrongful death arising out of medical malpractice,
9 whether in tort or contract, in which the trier of fact makes
10 an award to compensate the claimant ~~for future economic~~
11 ~~losses~~, payment of amounts intended to compensate the claimant
12 ~~for these losses~~ shall be made by one of the following means:

13 1. The defendant may make a lump-sum payment for all
14 damages so assessed, ~~with future economic losses and expenses~~
15 reduced to present value; or

16 2. The court shall, at the request of either party,
17 enter a judgment ordering all ~~future economic~~ damages, ~~as~~
18 ~~itemized pursuant to s. 768.77~~, to be paid by periodic
19 payments rather than lump sum.

20 (b) For purposes of this subsection, "periodic
21 payment" means provision for the spreading of ~~future economic~~
22 damage payments, in whole or in part, over a period of time,
23 as follows:

24 1. A specific finding of the dollar amount of periodic
25 payments which will compensate the claimant for all ~~these~~
26 ~~future~~ damages after offset for collateral sources shall be
27 made. The total dollar amount of the periodic payments shall
28 equal the dollar amount of all ~~such future~~ damages before any
29 reduction to present value.

30 2. The defendant shall be required to post a bond or
31 security or otherwise to assure full payment of these damages

1 awarded. A bond is not adequate unless it is written by a
2 company authorized to do business in this state and is rated
3 A+ by Best's. If the defendant is unable to adequately assure
4 full payment of the damages, all damages, reduced to present
5 value, shall be paid to the claimant in a lump sum. No bond
6 may be canceled or be subject to cancellation unless at least
7 60 days' advance written notice is filed with the court and
8 the claimant. Upon termination of periodic payments, the
9 security, or so much as remains, shall be returned to the
10 defendant.

11 3. The provision for payment of ~~future~~ damages by
12 periodic payments shall specify the recipient or recipients of
13 the payments, the dollar amounts of the payments, the interval
14 between payments, and the number of payments or the period of
15 time over which payments shall be made.

16 Section 6. This act shall take effect July 1, 2002.

17

18 *****

19 HOUSE SUMMARY

20

21 Revises provisions of law with respect to medical
22 negligence to revise language with respect to standards
23 of recovery, to provide for an offer of judgment in any
24 civil action for medical negligence or wrongful death
25 resulting from medical negligence, to redefine the term
26 "medical expert," to permit defendant health care
27 providers to conduct described interviews with other
28 health care providers involved in the patient's care, and
29 to delete reference to future economic losses in
30 described actions for damages based on personal injury or
31 wrongful death arising out of medical malpractice. See
bill for details.

27

28

29

30

31