

CHAMBER ACTION

1 The Health & Families Council recommends the following:

2
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to medical negligence litigation; creating
7 ss. 458.3175 and 459.0066, F.S.; requiring the Board of
8 Medicine and the Board of Osteopathic Medicine,
9 respectively, to issue expert witness certificates to
10 certain licensed physicians under certain circumstances;
11 providing requirements for certification; providing a
12 limitation; requiring the boards to implement rules and
13 set fees; amending ss. 458.331 and 459.015, F.S.;
14 providing that certain fraudulent, deceptive, or
15 misleading expert witness testimony is grounds for
16 disciplinary action; providing penalties; amending s.
17 766.102, F.S.; revising criteria for prevailing
18 professional standards of care for health care providers
19 in certain actions; providing that certain medical expert
20 testimony is not admissible unless the expert witness
21 meets certain requirements; amending s. 766.203, F.S.;
22 requiring claimants in medical negligence litigation to
23 conduct a presuit investigation of each named prospective

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24 | defendant; providing severability; providing an effective
25 | date.

26 |
27 | Be It Enacted by the Legislature of the State of Florida:

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29 | Section 1. Section 458.3175, Florida Statutes, is created
30 | to read:

31 | 458.3175 Expert witness certificate.--

32 | (1) Any physician who is licensed to practice allopathic
33 | medicine in any other state or in Canada, whose license is
34 | currently active and valid, who completes a registration form
35 | prescribed by the board, who pays the application fee, and who
36 | has not had a previous expert witness certificate revoked by the
37 | board shall be issued a certificate to provide expert testimony.
38 | For the purpose of this section, an expert witness certificate
39 | shall be considered a license as defined in s. 456.001 and
40 | treated as a license in any applicable disciplinary action
41 | pursuant to this chapter.

42 | (2) A physician possessing an expert witness certificate
43 | may use the certificate solely to give a verified written
44 | medical expert opinion as provided in s. 766.203 and to provide
45 | expert testimony concerning the prevailing professional standard
46 | of care in connection with any medical negligence litigation
47 | pending in this state against a physician licensed under this
48 | chapter or chapter 459. The possession of an expert witness
49 | certificate alone does not entitle the physician to engage in
50 | the practice of medicine as defined in s. 458.305.

51 (3) Every application for an expert witness certificate
 52 shall be approved or denied within 5 business days after receipt
 53 of a completed application. Any application for a certificate
 54 that is not approved or denied within the required time period
 55 is considered approved. Any applicant for an expert witness
 56 certificate seeking to claim certification by default shall
 57 notify the board, in writing, of the intent to rely on the
 58 default certification provision of this subsection.

59 (4) All licensure fees other than the initial application
 60 fee, including neurological injury compensation assessments,
 61 shall be waived for those persons obtaining an expert witness
 62 certificate but not otherwise allowed to practice medicine in
 63 this state.

64 (5) The board shall adopt rules pursuant to ss. 120.536(1)
 65 and 120.54 to implement this section, including rules setting
 66 the amount of the expert witness certificate application fee.
 67 The application fee for the expert witness certificate may not
 68 exceed \$50. An expert witness certificate shall expire 2 years
 69 after the date of issuance.

70 Section 2. Paragraph (oo) is added to subsection (1) of
 71 section 458.331, Florida Statutes, to read:

72 458.331 Grounds for disciplinary action; action by the
 73 board and department.--

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

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

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78 Section 3. Section 459.0066, Florida Statutes, is created
79 to read:

80 459.0066 Expert witness certificate.--

81 (1) Any physician who is licensed to practice osteopathic
82 medicine in any other state or in Canada, whose license is
83 currently active and valid, who completes a registration form
84 prescribed by the board, who pays the application fee, and who
85 has not had a previous expert witness certificate revoked by the
86 board shall be issued a certificate to provide expert testimony.
87 For the purpose of this section, an expert witness certificate
88 shall be considered a license as defined in s. 456.001 and
89 treated as a license in any applicable disciplinary action
90 pursuant to this chapter.

91 (2) A physician possessing an expert witness certificate
92 may use the certificate solely to give a verified written
93 medical expert opinion as provided in s. 766.203 and to provide
94 expert testimony concerning the prevailing professional standard
95 of care in connection with any medical negligence litigation
96 pending in this state against a physician licensed under this
97 chapter or chapter 458. The possession of an expert witness
98 certificate alone does not entitle the physician to engage in
99 the practice of osteopathic medicine as defined in s. 459.003.

100 (3) Every application for an expert witness certificate
101 shall be approved or denied within 5 business days after receipt
102 of a completed application. Any application for a certificate
103 that is not approved or denied within the required time period
104 is considered approved. Any applicant for an expert witness
105 certificate seeking to claim certification by default shall

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106 notify the board, in writing, of the intent to rely on the
107 default certification provision of this subsection.

108 (4) All licensure fees other than the initial application
109 fee, including neurological injury compensation assessments,
110 shall be waived for those persons obtaining an expert witness
111 certificate but not otherwise allowed to practice osteopathic
112 medicine in this state.

113 (5) The board shall adopt rules pursuant to ss. 120.536(1)
114 and 120.54 to implement this section, including rules setting
115 the amount of the expert witness certificate application fee.
116 The application fee for the expert witness certificate may not
117 exceed \$50. An expert witness certificate shall expire 2 years
118 after the date of issuance.

119 Section 4. Paragraph (qq) is added to subsection (1) of
120 section 459.015, Florida Statutes, to read:

121 459.015 Grounds for disciplinary action; action by the
122 board and department.--

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

125 (qq) Providing misleading, deceptive, or fraudulent expert
126 witness testimony related to the practice of medicine.

127 Section 5. Subsection (1) of section 766.102, Florida
128 Statutes, is amended, subsection (12) of that section is
129 renumbered as subsection (13), and a new subsection (12) is
130 added to that section, to read:

131 766.102 Medical negligence; standards of recovery; expert
132 witness.--

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133 (1) In any action for recovery of damages based on the
134 death or personal injury of any person in which it is alleged
135 that such death or injury resulted from the negligence of a
136 health care provider as defined in s. 766.202(4), the claimant
137 shall have the burden of proving by the greater weight of
138 evidence that the alleged actions of the health care provider
139 represented a breach of the prevailing professional standard of
140 care for that health care provider. The prevailing professional
141 standard of care for a given health care provider shall be that
142 level of care, skill, and treatment which, in light of all
143 relevant surrounding circumstances, is recognized as acceptable
144 and appropriate by reasonably prudent ~~similar~~ health care
145 providers trained, licensed, and practicing in the same area of
146 medical specialty.

147 (12) If the party against whom or on whose behalf the
148 expert testimony concerning the prevailing professional standard
149 of care is offered is a physician licensed under chapter 458 or
150 chapter 459, the expert witness must be licensed in this state
151 under chapter 458 or chapter 459 or possess an expert witness
152 certificate as provided in s. 458.3175 or s. 459.0066. Expert
153 testimony is not admissible unless the expert providing such
154 testimony is licensed by this state or possesses an expert
155 witness certificate.

156 Section 6. Subsection (2) of section 766.203, Florida
157 Statutes, is amended to read:

158 766.203 Presuit investigation of medical negligence claims
159 and defenses by prospective parties.--

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160 (2) PRESUIT INVESTIGATION BY CLAIMANT.--Prior to issuing
161 notification of intent to initiate medical negligence litigation
162 pursuant to s. 766.106, the claimant shall conduct an
163 investigation to ascertain that there are reasonable grounds to
164 believe that:

165 (a) Each ~~Any~~ named prospective defendant in the litigation
166 was negligent in the care or treatment of the claimant; and

167 (b) Such negligence resulted in injury to the claimant.
168

169 Corroboration of reasonable grounds to initiate medical
170 negligence litigation shall be provided by the claimant's
171 submission of a verified written medical expert opinion from a
172 medical expert as defined in s. 766.202(6), at the time the
173 notice of intent to initiate litigation is mailed, which
174 statement shall corroborate reasonable grounds to support the
175 claim of medical negligence.

176 Section 7. If any provision of this act or the application
177 thereof to any person or circumstance is held invalid, the
178 invalidity shall not affect other provisions or applications of
179 the act which can be given effect without the invalid provision
180 or application, and to this end the provisions of this act are
181 declared severable.

182 Section 8. This act shall take effect October 1, 2006.