

By Senator Peadar

2-1193-07

See HB 469

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A bill to be entitled

An act relating to informed consent; amending s. 401.445, F.S.; adding additional medical personnel to provisions allowing immunity for certain emergency examination and treatment of incapacitated persons done without consent if informed consent would have reasonably been given under the medical consent law; conforming provisions; amending s. 766.103, F.S.; adding additional medical personnel to the medical consent law; providing an effective date.

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

Section 1. Subsections (1) and (2) of section 401.445, Florida Statutes, are amended to read:

401.445 Emergency examination and treatment of incapacitated persons.--

(1) No recovery shall be allowed in any court in this state against any emergency medical technician, paramedic, or physician as defined in this chapter, any advanced registered nurse practitioner certified under s. 464.012, or any physician assistant licensed under s. 458.347 or s. 459.022, or any person acting under the direct medical supervision of a physician, in an action brought for examining or treating a patient without his or her informed consent if:

(a) The patient at the time of examination or treatment is intoxicated, under the influence of drugs, or otherwise incapable of providing informed consent as provided in s. 766.103;

1 (b) The patient at the time of examination or
2 treatment is experiencing an emergency medical condition; and

3 (c) The patient would reasonably, under all the
4 surrounding circumstances, undergo such examination,
5 treatment, or procedure if he or she were advised by the
6 emergency medical technician, paramedic, ~~or~~ physician,
7 advanced registered nurse practitioner, or physician assistant
8 in accordance with s. 766.103(3).

9
10 Examination and treatment provided under this subsection shall
11 be limited to reasonable examination of the patient to
12 determine the medical condition of the patient and treatment
13 reasonably necessary to alleviate the emergency medical
14 condition or to stabilize the patient.

15 (2) In examining and treating a person who is
16 apparently intoxicated, under the influence of drugs, or
17 otherwise incapable of providing informed consent, the
18 emergency medical technician, paramedic, ~~or~~ physician,
19 advanced registered nurse practitioner, or physician
20 assistant, or any person acting under the direct medical
21 supervision of a physician, shall proceed wherever possible
22 with the consent of the person. If the person reasonably
23 appears to be incapacitated and refuses his or her consent,
24 the person may be examined, treated, or taken to a hospital or
25 other appropriate treatment resource if he or she is in need
26 of emergency attention, without his or her consent, but
27 unreasonable force shall not be used.

28 Section 2. Subsection (3) of section 766.103, Florida
29 Statutes, is amended to read:

30 766.103 Florida Medical Consent Law.--
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1 (3) No recovery shall be allowed in any court in this
2 state against any physician licensed under chapter 458,
3 osteopathic physician licensed under chapter 459, chiropractic
4 physician licensed under chapter 460, podiatric physician
5 licensed under chapter 461, ~~or~~ dentist licensed under chapter
6 466, advanced registered nurse practitioner certified under s.
7 464.012, or physician assistant licensed under s. 458.347 or
8 s. 459.022 in an action brought for treating, examining, or
9 operating on a patient without his or her informed consent
10 when:

11 (a)1. The action of the physician, osteopathic
12 physician, chiropractic physician, podiatric physician, ~~or~~
13 dentist, advanced registered nurse practitioner, or physician
14 assistant in obtaining the consent of the patient or another
15 person authorized to give consent for the patient was in
16 accordance with an accepted standard of medical practice among
17 members of the medical profession with similar training and
18 experience in the same or similar medical community; and

19 2. A reasonable individual, from the information
20 provided by the physician, osteopathic physician, chiropractic
21 physician, podiatric physician, ~~or~~ dentist, advanced
22 registered nurse practitioner, or physician assistant, under
23 the circumstances, would have a general understanding of the
24 procedure, the medically acceptable alternative procedures or
25 treatments, and the substantial risks and hazards inherent in
26 the proposed treatment or procedures, which are recognized
27 among other physicians, osteopathic physicians, chiropractic
28 physicians, podiatric physicians, or dentists in the same or
29 similar community who perform similar treatments or
30 procedures; or
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1 (b) The patient would reasonably, under all the
2 surrounding circumstances, have undergone such treatment or
3 procedure had he or she been advised by the physician,
4 osteopathic physician, chiropractic physician, podiatric
5 physician, ~~or dentist,~~ advanced registered nurse practitioner,
6 or physician assistant in accordance with the provisions of
7 paragraph (a).

8 Section 3. This act shall take effect July 1, 2007.

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