Florida Senate - 2007

By the Committee on Judiciary; and Senator Peaden

590-2223-07 1 A bill to be entitled 2 An act relating to informed consent; amending s. 401.445, F.S.; adding additional medical 3 personnel to provisions allowing immunity for 4 5 certain emergency examination and treatment of б incapacitated persons done without consent if 7 informed consent would have reasonably been 8 given under the medical consent law; conforming provisions; amending s. 766.103, F.S.; adding 9 additional medical personnel to the medical 10 consent law; providing an effective date. 11 12 13 Be It Enacted by the Legislature of the State of Florida: 14 Section 1. Subsections (1) and (2) of section 401.445, 15 Florida Statutes, are amended to read: 16 17 401.445 Emergency examination and treatment of 18 incapacitated persons. --(1) No recovery shall be allowed in any court in this 19 state against any emergency medical technician, paramedic, or 20 21 physician as defined in this chapter, any advanced registered 22 nurse practitioner certified under s. 464.012, or any 23 physician assistant licensed under s. 458.347 or s. 459.022, or any person acting under the direct medical supervision of a 2.4 physician, in an action brought for examining or treating a 25 patient without his or her informed consent if: 26 27 (a) The patient at the time of examination or 2.8 treatment is intoxicated, under the influence of drugs, or 29 otherwise incapable of providing informed consent as provided in s. 766.103; 30 31

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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, treatment, or procedure if he or she were advised by the 5 6 emergency medical technician, paramedic, or physician, 7 advanced registered nurse practitioner, or physician assistant in accordance with s. 766.103(3). 8 9 10 Examination and treatment provided under this subsection shall be limited to reasonable examination of the patient to 11 12 determine the medical condition of the patient and treatment 13 reasonably necessary to alleviate the emergency medical condition or to stabilize the patient. 14 (2) In examining and treating a person who is 15 apparently intoxicated, under the influence of drugs, or 16 17 otherwise incapable of providing informed consent, the emergency medical technician, paramedic, or physician, 18 advanced registered nurse practitioner, or physician 19 assistant, or any person acting under the direct medical 20 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, the person may be examined, treated, or taken to a hospital or 2.4 other appropriate treatment resource if he or she is in need 25 of emergency attention, without his or her consent, but 26 27 unreasonable force shall not be used. 2.8 Section 2. Subsection (3) of section 766.103, Florida Statutes, is amended to read: 29 766.103 Florida Medical Consent Law .--30 31

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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	<u>s. 459.022</u> 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 <u>as that of</u>
19	the person treating, examining, or operating on the patient
20	for whom the consent is obtained; and
21	2. A reasonable individual, from the information
22	provided by the physician, osteopathic physician, chiropractic
23	physician, podiatric physician, or dentist, <u>advanced</u>
24	registered nurse practitioner, or physician assistant, under
25	the circumstances, would have a general understanding of the
26	procedure, the medically acceptable alternative procedures or
27	treatments, and the substantial risks and hazards inherent in
28	the proposed treatment or procedures, which are recognized
29	among other physicians, osteopathic physicians, chiropractic
30	physicians, podiatric physicians, or dentists in the same or
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<pre>2 procedures; or 3 (b) The patient would reasonably, under all the 4 surrounding circumstances, have undergone such treatment or 5 procedure had he or she been advised by the physician, 6 osteopathic physician, chiropractic physician, podiatric 7 physician, or dentist<u>, advanced registered nurse practitioner.</u> 8 <u>or physician assistant</u> in accordance with the provisions of 9 paragraph (a). 10 Section 3. This act shall take effect July 1, 2007. 11 12 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN 13 <u>SETITUTE FOR</u> 14 15 Revises the applicable standard of care for purposes of 16 determining whether informed consent to that of the person who 18 is responsible for such treatment, examination, or operation. 18 19 20 21 22 33 34 35 36 30 31</pre>	1	similar community who perform similar treatments or
surrounding circumstances, have undergone such treatment or procedure had he or she been advised by the physician, osteopathic physician, chiropractic physician, podiatric physician, or dentist, advanced registered nurse practitioner, or physician assistant in accordance with the provisions of paragraph (a). Section 3. This act shall take effect July 1, 2007. STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN COMMITTEE SUBSTITUTE FOR <u>SE 1508</u> Revises the applicable standard of care for purposes of determining whether informed consent was present in actions brought for treating, examining, or operating on a patient without his or her informed consent to that of the person who is responsible for such treatment, examination, or operation.	2	procedures; or
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