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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/13/2011	.	
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The Committee on Banking and Insurance (Hays) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

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

458.3175 Expert witness certificate.-

(1) (a) The department shall issue a certificate authorizing
a physician who holds an active and valid license to practice
medicine in another state or a province of Canada to provide
expert testimony in this state, if the physician submits to the
department:



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13 1. A complete registration application containing the
14 physician's legal name, mailing address, telephone number,
15 business locations, the names of the jurisdictions where the
16 physician holds an active and valid license to practice
17 medicine, and the license number or other identifying number
18 issued to the physician by the jurisdiction's licensing entity;
19 and

20 2. An application fee of \$50.

21 (b) The department shall approve an application for an
22 expert witness certificate within 7 business days after receipt
23 of the completed application and payment of the application fee
24 if the applicant holds an active and valid license to practice
25 medicine in another state or a province of Canada and has not
26 had a previous expert witness certificate revoked by the board.
27 An application is approved by default if the department does not
28 act upon the application within the required period. A physician
29 must notify the department in writing of his or her intent to
30 rely on a certificate approved by default.

31 (c) An expert witness certificate is valid for 2 years
32 after the date of issuance.

33 (2) An expert witness certificate authorizes the physician
34 to whom the certificate is issued to do only the following:

35 (a) Provide a verified written medical expert opinion as
36 provided in s. 766.203.

37 (b) Provide expert testimony about the prevailing
38 professional standard of care in connection with medical
39 negligence litigation pending in this state against a physician
40 licensed under this chapter or chapter 459.

41 (3) An expert witness certificate does not authorize a



42 physician to engage in the practice of medicine as defined in s.
43 458.305. A physician issued a certificate under this section who
44 does not otherwise practice medicine in this state is not
45 required to obtain a license under this chapter or pay any
46 license fees, including, but not limited to, a neurological
47 injury compensation assessment. An expert witness certificate
48 shall be treated as a license in any disciplinary action, and
49 the holder of an expert witness certificate shall be subject to
50 discipline by the board.

51 Section 2. Subsection (11) is added to section 458.331,
52 Florida Statutes, paragraphs (oo) through (qq) of subsection (1)
53 of that section are redesignated as paragraphs (pp) through
54 (rr), respectively, and a new paragraph (oo) is added to that
55 subsection, to read:

56 458.331 Grounds for disciplinary action; action by the
57 board and department.—

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

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

62 (11) The purpose of this section is to facilitate uniform
63 discipline for those acts made punishable under this section
64 and, to this end, a reference to this section constitutes a
65 general reference under the doctrine of incorporation by
66 reference.

67 Section 3. Subsection (6) of section 458.351, Florida
68 Statutes, is renumbered as subsection (7), and a new subsection
69 (6) is added to that section to read:

70 458.351 Reports of adverse incidents in office practice



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71 settings.-

72 (6) (a) The board shall adopt rules establishing a standard
73 informed consent form that sets forth the recognized specific
74 risks related to cataract surgery. The board must propose such
75 rules within 90 days after the effective date of this
76 subsection.

77 (b) Before formally proposing the rule, the board must
78 consider information from physicians licensed under this chapter
79 or chapter 459 regarding recognized specific risks related to
80 cataract surgery and the standard informed consent forms adopted
81 for use in the medical field by other states.

82 (c) A patient's informed consent is not executed until the
83 patient, or a person authorized by the patient to give consent,
84 and a competent witness sign the form adopted by the board.

85 (d) An incident resulting from recognized specific risks
86 described in the signed consent form is not considered an
87 adverse incident for purposes of s. 395.0197 and this section.

88 (e) In a civil action or administrative proceeding against
89 a physician based on his or her alleged failure to properly
90 disclose the risks of cataract surgery, a patient's informed
91 consent executed as provided in paragraph (c) on the form
92 adopted by the board is admissible as evidence and creates a
93 rebuttable presumption that the physician properly disclosed the
94 risks.

95 Section 4. Section 459.0066, Florida Statutes, is created
96 to read:

97 459.0066 Expert witness certificate.-

98 (1) (a) The department shall issue a certificate authorizing
99 a physician who holds an active and valid license to practice



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100 osteopathic medicine in another state or a province of Canada to
101 provide expert testimony in this state, if the physician submits
102 to the department:

103 1. A complete registration application containing the
104 physician's legal name, mailing address, telephone number,
105 business locations, the names of the jurisdictions where the
106 physician holds an active and valid license to practice
107 osteopathic medicine, and the license number or other
108 identifying number issued to the physician by the jurisdiction's
109 licensing entity; and

110 2. An application fee of \$50.

111 (b) The department shall approve an application for an
112 expert witness certificate within 7 business days after receipt
113 of the completed application and payment of the application fee
114 if the applicant holds an active and valid license to practice
115 osteopathic medicine in another state or a province of Canada
116 and has not had a previous expert witness certificate revoked by
117 the board. An application is approved by default if the
118 department does not act upon the application within the required
119 period. A physician must notify the department in writing of his
120 or her intent to rely on a certificate approved by default.

121 (c) An expert witness certificate is valid for 2 years
122 after the date of issuance.

123 (2) An expert witness certificate authorizes the physician
124 to whom the certificate is issued to do only the following:

125 (a) Provide a verified written medical expert opinion as
126 provided in s. 766.203.

127 (b) Provide expert testimony about the prevailing
128 professional standard of care in connection with medical



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129 negligence litigation pending in this state against a physician
130 licensed under chapter 458 or this chapter.

131 (3) An expert witness certificate does not authorize a
132 physician to engage in the practice of osteopathic medicine as
133 defined in s. 459.003. A physician issued a certificate under
134 this section who does not otherwise practice osteopathic
135 medicine in this state is not required to obtain a license under
136 this chapter or pay any license fees, including, but not limited
137 to, a neurological injury compensation assessment. An expert
138 witness certificate shall be treated as a license in any
139 disciplinary action, and the holder of an expert witness
140 certificate shall be subject to discipline by the board.

141 Section 5. Subsection (11) is added to section 459.015,
142 Florida Statutes, paragraphs (qq) through (ss) of subsection (1)
143 of that section are redesignated as paragraphs (rr) through
144 (tt), respectively, and a new paragraph (qq) is added to that
145 subsection, to read:

146 459.015 Grounds for disciplinary action; action by the
147 board and department.-

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

150 (qq) Providing misleading, deceptive, or fraudulent expert
151 witness testimony related to the practice of osteopathic
152 medicine.

153 (11) The purpose of this section is to facilitate uniform
154 discipline for those acts made punishable under this section
155 and, to this end, a reference to this section constitutes a
156 general reference under the doctrine of incorporation by
157 reference.



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158 Section 6. Section 466.005, Florida Statutes, is created to
159 read:

160 466.005 Expert witness certificate.—

161 (1)(a) The department shall issue a certificate authorizing
162 a dentist who holds an active and valid license to practice
163 dentistry in another state or a province of Canada to provide
164 expert testimony in this state, if the dentist submits to the
165 department:

166 1. A complete registration application containing the
167 dentist's legal name, mailing address, telephone number,
168 business locations, the names of the jurisdictions where the
169 dentist holds an active and valid license to practice dentistry,
170 and the license number or other identifying number issued to the
171 dentist by the jurisdiction's licensing entity; and

172 2. An application fee of \$50.

173 (b) The department shall approve an application for an
174 expert witness certificate within 7 business days after receipt
175 of the completed application and payment of the application fee
176 if the applicant holds an active and valid license to practice
177 dentistry in another state or a province of Canada and has not
178 had a previous expert witness certificate revoked by the board.
179 An application is approved by default if the department does not
180 act upon the application within the required period. A dentist
181 must notify the department in writing of his or her intent to
182 rely on a certificate approved by default.

183 (c) An expert witness certificate is valid for 2 years
184 after the date of issuance.

185 (2) An expert witness certificate authorizes the dentist to
186 whom the certificate is issued to do only the following:



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187 (a) Provide a verified written medical expert opinion as
188 provided in s. 766.203.

189 (b) Provide expert testimony about the prevailing
190 professional standard of care in connection with medical
191 negligence litigation pending in this state against a dentist
192 licensed under this chapter.

193 (3) An expert witness certificate does not authorize a
194 dentist to engage in the practice of dentistry as defined in s.
195 466.003. A dentist issued a certificate under this section who
196 does not otherwise practice dentistry in this state is not
197 required to obtain a license under this chapter or pay any
198 license fees. An expert witness certificate shall be treated as
199 a license in any disciplinary action, and the holder of an
200 expert witness certificate shall be subject to discipline by the
201 board.

202 Section 7. Subsection (8) is added to section 466.028,
203 Florida Statutes, paragraph (ll) of subsection (1) of that
204 section is redesignated as paragraph (mm), and a new paragraph
205 (ll) is added to that subsection, to read:

206 466.028 Grounds for disciplinary action; action by the
207 board.—

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

210 (ll) Providing misleading, deceptive, or fraudulent expert
211 witness testimony related to the practice of dentistry.

212 (8) The purpose of this section is to facilitate uniform
213 discipline for those acts made punishable under this section
214 and, to this end, a reference to this section constitutes a
215 general reference under the doctrine of incorporation by



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216 reference.

217 Section 8. Subsection (6) of section 459.026, Florida
218 Statutes, is renumbered as subsection (7), and a new subsection
219 (6) is added to that section to read:

220 459.026 Reports of adverse incidents in office practice
221 settings.—

222 (6) (a) The board shall adopt rules establishing a standard
223 informed consent form that sets forth the recognized specific
224 risks related to cataract surgery. The board must propose such
225 rules within 90 days after the effective date of this
226 subsection.

227 (b) Before formally proposing the rule, the board must
228 consider information from physicians licensed under chapter 458
229 or this chapter regarding recognized specific risks related to
230 cataract surgery and the standard informed consent forms adopted
231 for use in the medical field by other states.

232 (c) A patient's informed consent is not executed until the
233 patient, or a person authorized by the patient to give consent,
234 and a competent witness sign the form adopted by the board.

235 (d) An incident resulting from recognized specific risks
236 described in the signed consent form is not considered an
237 adverse incident for purposes of s. 395.0197 and this section.

238 (e) In a civil action or administrative proceeding against
239 a physician based on his or her alleged failure to properly
240 disclose the risks of cataract surgery, a patient's informed
241 consent executed as provided in paragraph (c) on the form
242 adopted by the board is admissible as evidence and creates a
243 rebuttable presumption that the physician properly disclosed the
244 risks.



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245 Section 9. Paragraph (b) of subsection (1) of section
246 627.4147, Florida Statutes, is amended to read:

247 627.4147 Medical malpractice insurance contracts.—

248 (1) In addition to any other requirements imposed by law,
249 each self-insurance policy as authorized under s. 627.357 or s.
250 624.462 or insurance policy providing coverage for claims
251 arising out of the rendering of, or the failure to render,
252 medical care or services, including those of the Florida Medical
253 Malpractice Joint Underwriting Association, shall include:

254 ~~(b)1. Except as provided in subparagraph 2., a clause~~
255 ~~authorizing the insurer or self-insurer to determine, to make,~~
256 ~~and to conclude, without the permission of the insured, any~~
257 ~~offer of admission of liability and for arbitration pursuant to~~
258 ~~s. 766.106, settlement offer, or offer of judgment, if the offer~~
259 ~~is within the policy limits. It is against public policy for any~~
260 ~~insurance or self-insurance policy to contain a clause giving~~
261 ~~the insured the exclusive right to veto any offer for admission~~
262 ~~of liability and for arbitration made pursuant to s. 766.106,~~
263 ~~settlement offer, or offer of judgment, when such offer is~~
264 ~~within the policy limits. However, any offer of admission of~~
265 ~~liability, settlement offer, or offer of judgment made by an~~
266 ~~insurer or self-insurer shall be made in good faith and in the~~
267 ~~best interests of the insured.~~

268 ~~2.a. With respect to dentists licensed under chapter 466, A~~
269 ~~clause clearly stating whether or not the insured has the~~
270 ~~exclusive right to veto any offer of admission of liability and~~
271 ~~for arbitration pursuant to s. 766.106, settlement offer, or~~
272 ~~offer of judgment if the offer is within policy limits. An~~
273 ~~insurer or self-insurer shall not make or conclude, without the~~



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274 permission of the insured, any offer of admission of liability
275 and for arbitration pursuant to s. 766.106, settlement offer, or
276 offer of judgment, if such offer is outside the policy limits.
277 However, any offer for admission of liability and for
278 arbitration made under s. 766.106, settlement offer, or offer of
279 judgment made by an insurer or self-insurer shall be made in
280 good faith and in the best interest of the insured.

281 ~~2.b.~~ If the policy contains a clause stating the insured
282 does not have the exclusive right to veto any offer or admission
283 of liability and for arbitration made pursuant to s. 766.106,
284 settlement offer or offer of judgment, the insurer or self-
285 insurer shall provide to the insured or the insured's legal
286 representative by certified mail, return receipt requested, a
287 copy of the final offer of admission of liability and for
288 arbitration made pursuant to s. 766.106, settlement offer or
289 offer of judgment and at the same time such offer is provided to
290 the claimant. A copy of any final agreement reached between the
291 insurer and claimant shall also be provided to the insurer or
292 his or her legal representative by certified mail, return
293 receipt requested not more than 10 days after affecting such
294 agreement.

295 Section 10. Subsections (3), (4), and (5) of section
296 766.102, Florida Statutes, are amended, subsection (12) of that
297 section is renumbered as subsection (14), and new subsections
298 (12) and (13) are added to that section, to read:

299 766.102 Medical negligence; standards of recovery; expert
300 witness.—

301 (3) (a) As used in this subsection, the term:

302 1. "Insurer" means any public or private insurer, including



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303 the Centers for Medicare and Medicaid Services.

304 2. "Reimbursement determination" means an insurer's
305 determination of the amount that the insurer will reimburse a
306 health care provider for health care services.

307 3. "Reimbursement policies" means an insurer's policies and
308 procedures governing its decisions regarding health insurance
309 coverage and method of payment and the data upon which such
310 policies and procedures are based, including, but not limited
311 to, data from national research groups and other patient safety
312 data as defined in s. 766.1016.

313 (b) The existence of a medical injury ~~does~~ shall not create
314 any inference or presumption of negligence against a health care
315 provider, and the claimant must maintain the burden of proving
316 that an injury was proximately caused by a breach of the
317 prevailing professional standard of care by the health care
318 provider. Any records, policies, or testimony of an insurer's
319 reimbursement policies or reimbursement determination regarding
320 the care provided to the plaintiff are not admissible as
321 evidence in any medical negligence action. However, the
322 discovery of the presence of a foreign body, such as a sponge,
323 clamp, forceps, surgical needle, or other paraphernalia commonly
324 used in surgical, examination, or diagnostic procedures, shall
325 be prima facie evidence of negligence on the part of the health
326 care provider.

327 (4) (a) The Legislature is cognizant of the changing trends
328 and techniques for the delivery of health care in this state and
329 the discretion that is inherent in the diagnosis, care, and
330 treatment of patients by different health care providers. The
331 failure of a health care provider to order, perform, or



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332 administer supplemental diagnostic tests is ~~shall~~ not be
333 actionable if the health care provider acted in good faith and
334 with due regard for the prevailing professional standard of
335 care.

336 (b) In an action for damages based on death or personal
337 injury which alleges that such death or injury resulted from the
338 failure of a health care provider to order, perform, or
339 administer supplemental diagnostic tests, the claimant has the
340 burden of proving by clear and convincing evidence that the
341 alleged actions of the health care provider represented a breach
342 of the prevailing professional standard of care.

343 (5) A person may not give expert testimony concerning the
344 prevailing professional standard of care unless the ~~that~~ person
345 is a ~~licensed~~ health care provider who holds an active and valid
346 license and conducts a complete review of the pertinent medical
347 records and meets the following criteria:

348 (a) If the health care provider against whom or on whose
349 behalf the testimony is offered is a specialist, the expert
350 witness must:

351 1. Specialize in the same specialty as the health care
352 provider against whom or on whose behalf the testimony is
353 offered; or specialize in a similar specialty that includes the
354 evaluation, diagnosis, or treatment of the medical condition
355 that is the subject of the claim and have prior experience
356 treating similar patients; and

357 2. Have devoted professional time during the 3 years
358 immediately preceding the date of the occurrence that is the
359 basis for the action to:

360 a. The active clinical practice of, or consulting with



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361 respect to, the same or similar specialty that includes the
362 evaluation, diagnosis, or treatment of the medical condition
363 that is the subject of the claim and have prior experience
364 treating similar patients;

365 b. Instruction of students in an accredited health
366 professional school or accredited residency or clinical research
367 program in the same or similar specialty; or

368 c. A clinical research program that is affiliated with an
369 accredited health professional school or accredited residency or
370 clinical research program in the same or similar specialty.

371 (b) If the health care provider against whom or on whose
372 behalf the testimony is offered is a general practitioner, the
373 expert witness must have devoted professional time during the 5
374 years immediately preceding the date of the occurrence that is
375 the basis for the action to:

376 1. The active clinical practice or consultation as a
377 general practitioner;

378 2. The instruction of students in an accredited health
379 professional school or accredited residency program in the
380 general practice of medicine; or

381 3. A clinical research program that is affiliated with an
382 accredited medical school or teaching hospital and that is in
383 the general practice of medicine.

384 (c) If the health care provider against whom or on whose
385 behalf the testimony is offered is a health care provider other
386 than a specialist or a general practitioner, the expert witness
387 must have devoted professional time during the 3 years
388 immediately preceding the date of the occurrence that is the
389 basis for the action to:



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390 1. The active clinical practice of, or consulting with
391 respect to, the same or similar health profession as the health
392 care provider against whom or on whose behalf the testimony is
393 offered;

394 2. The instruction of students in an accredited health
395 professional school or accredited residency program in the same
396 or similar health profession in which the health care provider
397 against whom or on whose behalf the testimony is offered; or

398 3. A clinical research program that is affiliated with an
399 accredited medical school or teaching hospital and that is in
400 the same or similar health profession as the health care
401 provider against whom or on whose behalf the testimony is
402 offered.

403 (12) If a physician licensed under chapter 458 or chapter
404 459 or a dentist licensed under chapter 466 is the party against
405 whom, or on whose behalf, expert testimony about the prevailing
406 professional standard of care is offered, the expert witness
407 must be licensed under chapter 458, chapter 459, or chapter 466
408 or possess a valid expert witness certificate issued under s.
409 458.3175, s. 459.0066, or s. 466.005.

410 (13) A health care provider's failure to comply with or
411 breach of any federal requirement is not admissible as evidence
412 in any medical negligence case in this state.

413 Section 11. Paragraph (a) of subsection (2), subsection
414 (5), and paragraph (b) of subsection (6) of section 766.106,
415 Florida Statutes, are amended to read:

416 766.106 Notice before filing action for medical negligence;
417 presuit screening period; offers for admission of liability and
418 for arbitration; informal discovery; review.-



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419 (2) PRESUIT NOTICE.—

420 (a) After completion of presuit investigation pursuant to
421 s. 766.203(2) and prior to filing a complaint for medical
422 negligence, a claimant shall notify each prospective defendant
423 by certified mail, return receipt requested, of intent to
424 initiate litigation for medical negligence. Notice to each
425 prospective defendant must include, if available, a list of all
426 known health care providers seen by the claimant for the
427 injuries complained of subsequent to the alleged act of
428 negligence, all known health care providers during the 2-year
429 period prior to the alleged act of negligence who treated or
430 evaluated the claimant, ~~and~~ copies of all of the medical records
431 relied upon by the expert in signing the affidavit, and the
432 executed authorization form provided in s. 766.1065. ~~The~~
433 ~~requirement of providing the list of known health care providers~~
434 ~~may not serve as grounds for imposing sanctions for failure to~~
435 ~~provide presuit discovery.~~

436 (5) DISCOVERY AND ADMISSIBILITY.—A ~~No~~ statement,
437 discussion, written document, report, or other work product
438 generated by the presuit screening process is not discoverable
439 or admissible in any civil action for any purpose by the
440 opposing party. All participants, including, but not limited to,
441 physicians, investigators, witnesses, and employees or
442 associates of the defendant, are immune from civil liability
443 arising from participation in the presuit screening process.
444 This subsection does not prevent a physician licensed under
445 chapter 458 or chapter 459 or a dentist licensed under chapter
446 466 who submits a verified written expert medical opinion from
447 being subject to denial of a license or disciplinary action



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448 under s. 458.331(1)(oo), s. 459.015(1)(qq), or s.
449 466.028(1)(ll).

450 (6) INFORMAL DISCOVERY.—

451 (b) Informal discovery may be used by a party to obtain
452 unsworn statements, the production of documents or things, and
453 physical and mental examinations, as follows:

454 1. Unsworn statements.—Any party may require other parties
455 to appear for the taking of an unsworn statement. Such
456 statements may be used only for the purpose of presuit screening
457 and are not discoverable or admissible in any civil action for
458 any purpose by any party. A party desiring to take the unsworn
459 statement of any party must give reasonable notice in writing to
460 all parties. The notice must state the time and place for taking
461 the statement and the name and address of the party to be
462 examined. Unless otherwise impractical, the examination of any
463 party must be done at the same time by all other parties. Any
464 party may be represented by counsel at the taking of an unsworn
465 statement. An unsworn statement may be recorded electronically,
466 stenographically, or on videotape. The taking of unsworn
467 statements is subject to the provisions of the Florida Rules of
468 Civil Procedure and may be terminated for abuses.

469 2. Documents or things.—Any party may request discovery of
470 documents or things. The documents or things must be produced,
471 at the expense of the requesting party, within 20 days after the
472 date of receipt of the request. A party is required to produce
473 discoverable documents or things within that party's possession
474 or control. Medical records shall be produced as provided in s.
475 766.204.

476 3. Physical and mental examinations.—A prospective



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477 defendant may require an injured claimant to appear for
478 examination by an appropriate health care provider. The
479 prospective defendant shall give reasonable notice in writing to
480 all parties as to the time and place for examination. Unless
481 otherwise impractical, a claimant is required to submit to only
482 one examination on behalf of all potential defendants. The
483 practicality of a single examination must be determined by the
484 nature of the claimant's condition, as it relates to the
485 liability of each prospective defendant. Such examination report
486 is available to the parties and their attorneys upon payment of
487 the reasonable cost of reproduction and may be used only for the
488 purpose of presuit screening. Otherwise, such examination report
489 is confidential and exempt from the provisions of s. 119.07(1)
490 and s. 24(a), Art. I of the State Constitution.

491 4. Written questions.—Any party may request answers to
492 written questions, the number of which may not exceed 30,
493 including subparts. A response must be made within 20 days after
494 receipt of the questions.

495 5. Ex parte interviews of treating health care providers.—A
496 prospective defendant or his or her legal representative may
497 interview the claimant's treating health care providers without
498 notice to or the presence of the claimant or the claimant's
499 legal representative.

500 6.5. Unsworn statements of treating health care providers
501 ~~Medical information release. The claimant must execute a medical~~
502 ~~information release that allows~~ A prospective defendant or his
503 or her legal representative may also ~~to~~ take unsworn statements
504 of the claimant's treating health care providers ~~physicians~~. The
505 statements must be limited to those areas that are potentially



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506 relevant to the claim of personal injury or wrongful death.
507 Subject to the procedural requirements of subparagraph 1., a
508 prospective defendant may take unsworn statements from a
509 claimant's treating physicians. Reasonable notice and
510 opportunity to be heard must be given to the claimant or the
511 claimant's legal representative before taking unsworn
512 statements. The claimant or claimant's legal representative has
513 the right to attend the taking of such unsworn statements.

514 Section 12. Section 766.1065, Florida Statutes, is created
515 to read:

516 766.1065 Authorization for release of protected health
517 information.-

518 (1) Presuit notice of intent to initiate litigation for
519 medical negligence under s. 766.106(2) must be accompanied by an
520 authorization for release of protected health information in the
521 form specified by this section, authorizing the disclosure of
522 protected health information that is potentially relevant to the
523 claim of personal injury or wrongful death. The presuit notice
524 is void if this authorization does not accompany the presuit
525 notice and other materials required by s. 766.106(2).

526 (2) If the authorization required by this section is
527 revoked, the presuit notice under s. 766.106(2) is deemed
528 retroactively void from the date of issuance, and any tolling
529 effect that the presuit notice may have had on any applicable
530 statute-of-limitations period is retroactively rendered void.

531 (3) The authorization required by this section shall be in
532 the following form and shall be construed in accordance with the
533 "Standards for Privacy of Individually Identifiable Health
534 Information" in 45 C.F.R. parts 160 and 164:



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535
536 AUTHORIZATION FOR RELEASE OF PROTECTED HEALTH INFORMATION
537

538 A. I, (...Name of patient or authorized
539 representative...) [hereinafter "Patient"], authorize
540 that (...Name of health care provider to whom the
541 presuit notice is directed...) and his/her/its
542 insurer(s), self-insurer(s), and attorney(s) may
543 obtain and disclose (within the parameters set out
544 below) the protected health information described
545 below for the following specific purposes:

546 1. Facilitating the investigation and evaluation
547 of the medical negligence claim described in the
548 accompanying presuit notice; or

549 2. Defending against any litigation arising out
550 of the medical negligence claim made on the basis of
551 the accompanying presuit notice.

552 B. The health information obtained, used, or
553 disclosed extends to, and includes, the verbal as well
554 as the written and is described as follows:

555 1. The health information in the custody of the
556 following health care providers who have examined,
557 evaluated, or treated the Patient in connection with
558 injuries complained of after the alleged act of
559 negligence: (List the name and current address of all
560 health care providers). This authorization extends to
561 any additional health care providers that may in the
562 future evaluate, examine, or treat the Patient for the
563 injuries complained of.



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2. The health information in the custody of the following health care providers who have examined, evaluated, or treated the Patient during a period commencing 2 years before the incident that is the basis of the accompanying presuit notice.

(List the name and current address of such health care providers, if applicable.)

C. This authorization does not apply to the following list of health care providers possessing health care information about the Patient because the Patient certifies that such health care information is not potentially relevant to the claim of personal injury or wrongful death that is the basis of the accompanying presuit notice.

(List the name of each health care provider to whom this authorization does not apply and the inclusive dates of examination, evaluation, or treatment to be withheld from disclosure. If none, specify "none.")

D. The persons or class of persons to whom the Patient authorizes such health information to be disclosed or by whom such health information is to be used:

1. Any health care provider providing care or treatment for the Patient.

2. Any liability insurer or self-insurer



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593 providing liability insurance coverage, self-
594 insurance, or defense to any health care provider to
595 whom presuit notice is given regarding the care and
596 treatment of the Patient.

597 3. Any consulting or testifying expert employed
598 by or on behalf of (name of health care provider to
599 whom presuit notice was given), his/her/its
600 insurer(s), self-insurer(s), or attorney(s) regarding
601 to the matter of the presuit notice accompanying this
602 authorization.

603 4. Any attorney (including secretarial, clerical,
604 or paralegal staff) employed by or on behalf of (name
605 of health care provider to whom presuit notice was
606 given) regarding the matter of the presuit notice
607 accompanying this authorization.

608 5. Any trier of the law or facts relating to any
609 suit filed seeking damages arising out of the medical
610 care or treatment of the Patient.

611 E. This authorization expires upon resolution of
612 the claim or at the conclusion of any litigation
613 instituted in connection with the matter of the
614 presuit notice accompanying this authorization,
615 whichever occurs first.

616 F. The Patient understands that, without
617 exception, the Patient has the right to revoke this
618 authorization in writing. The Patient further
619 understands that the consequence of any such
620 revocation is that the presuit notice under s.
621 766.106(2), Florida Statutes, is deemed retroactively



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622 void from the date of issuance, and any tolling effect
623 that the presuit notice may have had on any applicable
624 statute-of-limitations period is retroactively
625 rendered void.

626 G. The Patient understands that signing this
627 authorization is not a condition for continued
628 treatment, payment, enrollment, or eligibility for
629 health plan benefits.

630 H. The Patient understands that information used
631 or disclosed under this authorization may be subject
632 to additional disclosure by the recipient and may not
633 be protected by federal HIPAA privacy regulations.

634
635 Signature of Patient/Representative:

636 Date:

637 Name of Patient/Representative:

638 Description of Representative's Authority:

639 Section 13. Subsection (2) of section 766.206, Florida
640 Statutes, is amended to read:

641 766.206 Presuit investigation of medical negligence claims
642 and defenses by court.—

643 (2) If the court finds that the notice of intent to
644 initiate litigation mailed by the claimant does is not comply in
645 compliance with the reasonable investigation requirements of ss.
646 766.201-766.212, including a review of the claim and a verified
647 written medical expert opinion by an expert witness as defined
648 in s. 766.202, or that the authorization accompanying the notice
649 of intent required under s. 766.1065 is not completed in good
650 faith by the claimant, the court shall dismiss the claim, and



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651 the person who mailed such notice of intent, whether the
652 claimant or the claimant's attorney, shall be personally liable
653 for all attorney's fees and costs incurred during the
654 investigation and evaluation of the claim, including the
655 reasonable attorney's fees and costs of the defendant or the
656 defendant's insurer.

657 Section 14. Section 768.0981, Florida Statutes, is amended
658 to read:

659 768.0981 Limitation on actions against insurers, prepaid
660 limited health service organizations, health maintenance
661 organizations, hospitals, or prepaid health clinics.—An entity
662 licensed or certified under chapter 395, chapter 624, chapter
663 636, or chapter 641 is shall not be liable for the medical
664 negligence of a health care provider with whom the licensed or
665 certified entity has entered into a contract, other than an
666 employee of such licensed or certified entity, unless the
667 licensed or certified entity expressly directs or exercises
668 actual control over the specific conduct that caused injury.

669 Section 15. This act shall take effect July 1, 2011.

670
671 ===== T I T L E A M E N D M E N T =====

672 And the title is amended as follows:

673 Delete everything before the enacting clause
674 and insert:

675 A bill to be entitled
676 An act relating to medical malpractice; creating ss.
677 458.3175, 459.0066, and 466.005, F.S.; requiring the
678 Department of Health to issue expert witness
679 certificates to certain physicians and dentists



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680 licensed outside of the state; providing application
681 and certification requirements; establishing
682 application fees; providing for the validity and use
683 of certifications; exempting physicians and dentists
684 issued certifications from certain licensure and fee
685 requirements; amending ss. 458.331, 459.015, and
686 466.028, F.S.; providing additional acts that
687 constitute grounds for denial of a license or
688 disciplinary action to which penalties apply;
689 providing construction with respect to the doctrine of
690 incorporation by reference; amending ss. 458.351 and
691 459.026, F.S.; requiring the Board of Medicine and the
692 Board of Osteopathic Medicine to adopt within a
693 specified period certain patient forms specifying
694 cataract surgery risks; specifying that an incident
695 resulting from risks disclosed in the patient form is
696 not an adverse incident; providing for the execution
697 and admissibility of the patient forms in civil and
698 administrative proceedings; creating a rebuttable
699 presumption that a physician disclosed cataract
700 surgery risks if the patient form is executed;
701 amending s. 627.4147, F.S.; deleting a requirement
702 that medical malpractice insurance contracts contain a
703 clause authorizing the insurer to make and conclude
704 certain offers within policy limits over the insured's
705 veto; amending s. 766.102, F.S.; defining terms;
706 providing that certain insurance information is not
707 admissible as evidence in medical negligence actions;
708 establishing the burden of proof that a claimant must



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709 meet in certain damage claims against health care
710 providers based on death or personal injury; requiring
711 that certain expert witnesses who provide certain
712 expert testimony meet certain licensure or
713 certification requirements; excluding a health care
714 provider's failure to comply with or breach of federal
715 requirements from evidence in medical negligence cases
716 in the state; amending s. 766.106, F.S.; requiring
717 claimants for medical malpractice to execute an
718 authorization form; allowing prospective medical
719 malpractice defendants to interview a claimant's
720 treating health care provider without notice to or the
721 presence of the claimant or the claimant's legal
722 representative; authorizing prospective defendants to
723 take unsworn statements of a claimant's health care
724 provider; creating s. 766.1065, F.S.; requiring that
725 presuit notice for medical negligence claims be
726 accompanied by an authorization for release of
727 protected health information; providing requirements
728 for the form of such authorization; amending s.
729 766.206, F.S.; requiring dismissal of a medical
730 malpractice claim if such authorization is not
731 completed in good faith; amending s. 768.0981, F.S.;
732 limiting the liability of hospitals related to certain
733 medical negligence claims; providing an effective
734 date.