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LEGISLATIVE ACTION

Senate	.	House
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The Committee on Health Regulation (Bennett) recommended the following:

Senate Amendment (with title amendment)

Delete lines 198 - 614

and insert:

Section 6. Section 766.102, Florida Statutes, is amended to read:

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

(1) In any action for recovery of damages based on the death or personal injury of any person in which it is alleged that such death or injury resulted from the negligence of a health care provider as defined in s. 766.202(4), the claimant



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13 shall have the burden of proving by the greater weight of
14 evidence that the alleged actions of the health care provider
15 represented a breach of the prevailing professional standard of
16 care for that health care provider. The prevailing professional
17 standard of care for a given health care provider shall be that
18 level of care, skill, and treatment which, in light of all
19 relevant surrounding circumstances, is recognized as acceptable
20 and appropriate by reasonably prudent similar health care
21 providers.

22 (2) (a) If the injury is claimed to have resulted from the
23 negligent affirmative medical intervention of the health care
24 provider, the claimant must, in order to prove a breach of the
25 prevailing professional standard of care, show that the injury
26 was not within the necessary or reasonably foreseeable results
27 of the surgical, medicinal, or diagnostic procedure constituting
28 the medical intervention, if the intervention from which the
29 injury is alleged to have resulted was carried out in accordance
30 with the prevailing professional standard of care by a
31 reasonably prudent similar health care provider.

32 (b) The provisions of this subsection shall apply only when
33 the medical intervention was undertaken with the informed
34 consent of the patient in compliance with the provisions of s.
35 766.103.

36 (3) The existence of a medical injury shall not create any
37 inference or presumption of negligence against a health care
38 provider, and the claimant must maintain the burden of proving
39 that an injury was proximately caused by a breach of the
40 prevailing professional standard of care by the health care
41 provider. However, the discovery of the presence of a foreign



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42 body, such as a sponge, clamp, forceps, surgical needle, or
43 other paraphernalia commonly used in surgical, examination, or
44 diagnostic procedures, shall be prima facie evidence of
45 negligence on the part of the health care provider.

46 (4) The Legislature is cognizant of the changing trends and
47 techniques for the delivery of health care in this state and the
48 discretion that is inherent in the diagnosis, care, and
49 treatment of patients by different health care providers. The
50 failure of a health care provider to order, perform, or
51 administer supplemental diagnostic tests shall not be actionable
52 if the health care provider acted in good faith and with due
53 regard for the prevailing professional standard of care.

54 (5) A person may not give expert testimony concerning the
55 prevailing professional standard of care unless that person is a
56 licensed health care provider and meets the following criteria:

57 (a) If the health care provider against whom or on whose
58 behalf the testimony is offered is a specialist, the expert
59 witness must:

60 1. Specialize in the same specialty as the health care
61 provider against whom or on whose behalf the testimony is
62 offered; ~~or specialize in a similar specialty that includes the~~
63 ~~evaluation, diagnosis, or treatment of the medical condition~~
64 ~~that is the subject of the claim and have prior experience~~
65 ~~treating similar patients;~~ and

66 2. Have devoted professional time during the 2 ~~3~~ years
67 immediately preceding the date of the occurrence that is the
68 basis for the action to:

69 a. The active clinical practice of, ~~or consulting with~~
70 ~~respect to,~~ the same ~~or similar~~ specialty that includes the



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71 evaluation, diagnosis, or treatment of the medical condition
72 that is the subject of the claim and have prior experience
73 treating similar patients;

74 b. Instruction of students in an accredited health
75 professional school or accredited residency or clinical research
76 program in the same ~~or similar~~ specialty; or

77 c. A clinical research program that is affiliated with an
78 accredited health professional school or accredited residency or
79 clinical research program in the same ~~or similar~~ specialty.

80 (b) If the health care provider against whom or on whose
81 behalf the testimony is offered is a general practitioner, the
82 expert witness must have devoted professional time during the 2
83 ~~5~~ years immediately preceding the date of the occurrence that is
84 the basis for the action to:

85 1. The active clinical practice ~~or consultation~~ as a
86 general practitioner;

87 2. The instruction of students in an accredited health
88 professional school or accredited residency program in the
89 general practice of medicine; or

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

93 (c) If the health care provider against whom or on whose
94 behalf the testimony is offered is a health care provider other
95 than a specialist or a general practitioner, the expert witness
96 must have devoted professional time during the 2 ~~3~~ years
97 immediately preceding the date of the occurrence that is the
98 basis for the action to:

99 1. The active clinical practice of, ~~or consulting with~~



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100 ~~respect to,~~ the same ~~or similar~~ health profession as the health
101 care provider against whom or on whose behalf the testimony is
102 offered;

103 2. The instruction of students in an accredited health
104 professional school or accredited residency program in the same
105 ~~or similar~~ health profession in which the health care provider
106 against whom or on whose behalf the testimony is offered; or

107 3. A clinical research program that is affiliated with an
108 accredited medical school or teaching hospital and that is in
109 the same ~~or similar~~ health profession as the health care
110 provider against whom or on whose behalf the testimony is
111 offered.

112 (6) A physician licensed under chapter 458 or chapter 459
113 who qualifies as an expert witness under subsection (5) and who,
114 by reason of active clinical practice or instruction of
115 students, has knowledge of the applicable standard of care for
116 nurses, nurse practitioners, certified registered nurse
117 anesthetists, certified registered nurse midwives, physician
118 assistants, or other medical support staff may give expert
119 testimony in a medical negligence action with respect to the
120 standard of care of such medical support staff.

121 (7) Notwithstanding subsection (5), in a medical negligence
122 action against a hospital, a health care facility, or medical
123 facility, a person may give expert testimony on the appropriate
124 standard of care as to administrative and other nonclinical
125 issues if the person has substantial knowledge, by virtue of his
126 or her training and experience, concerning the standard of care
127 among hospitals, health care facilities, or medical facilities
128 of the same type as the hospital, health care facility, or



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129 medical facility whose acts or omissions are the subject of the
130 testimony and which are located in the same or similar
131 communities at the time of the alleged act giving rise to the
132 cause of action.

133 (8) If a health care provider described in subsection (5),
134 subsection (6), or subsection (7) is providing evaluation,
135 treatment, or diagnosis for a condition that is not within his
136 or her specialty, a specialist trained in the evaluation,
137 treatment, or diagnosis for that condition may give expert
138 testimony concerning the prevailing professional standard of
139 care shall be considered a similar health care provider.

140 (9) (a) In any action for damages involving a claim of
141 negligence against a physician licensed under chapter 458,
142 osteopathic physician licensed under chapter 459, podiatric
143 physician licensed under chapter 461, or chiropractic physician
144 licensed under chapter 460 providing emergency medical services
145 in a hospital emergency department, the court shall admit expert
146 medical testimony only from physicians, osteopathic physicians,
147 podiatric physicians, and chiropractic physicians who have had
148 substantial professional experience within the preceding 2 ~~5~~
149 years while assigned to provide emergency medical services in a
150 hospital emergency department.

151 (b) For the purposes of this subsection:

152 1. The term "emergency medical services" means those
153 medical services required for the immediate diagnosis and
154 treatment of medical conditions which, if not immediately
155 diagnosed and treated, could lead to serious physical or mental
156 disability or death.

157 2. "Substantial professional experience" shall be



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158 determined by the custom and practice of the manner in which
159 emergency medical coverage is provided in hospital emergency
160 departments in the same or similar localities where the alleged
161 negligence occurred.

162 (10) In any action alleging medical negligence, an expert
163 witness may not testify on a contingency fee basis.

164 (11) Any attorney who proffers a person as an expert
165 witness pursuant to this section must certify that such person
166 has not been found guilty of fraud or perjury in any
167 jurisdiction.

168 (12) If the party against whom or on whose behalf the
169 expert testimony concerning the prevailing professional standard
170 of care is offered is a physician licensed under chapter 458 or
171 chapter 459, the expert witness must be licensed in this state
172 under chapter 458 or chapter 459 or possess an expert witness
173 certificate as provided in s. 458.3175 or s. 459.0066. Expert
174 testimony is not admissible unless the expert providing such
175 testimony is licensed by this state or possesses an expert
176 witness certificate as provided in s. 458.3175 or s. 459.0066.

177 (13)~~(12)~~ This section does not limit the power of the trial
178 court to disqualify or qualify an expert witness on grounds
179 other than the qualifications in this section.

180 Section 7. Paragraph (a) of subsection (2), subsection
181 (5), and paragraph (b) of subsection (6) of section 766.106,
182 Florida Statutes, are amended to read:

183 766.106 Notice before filing action for medical negligence;
184 presuit screening period; offers for admission of liability and
185 for arbitration; informal discovery; review.—

186 (2) PRESUIT NOTICE.—



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187 (a) After completion of presuit investigation pursuant to
188 s. 766.203(2) and prior to filing a complaint for medical
189 negligence, a claimant shall notify each prospective defendant
190 by certified mail, return receipt requested, of intent to
191 initiate litigation for medical negligence. Notice to each
192 prospective defendant must include, if available, a list of all
193 known health care providers seen by the claimant for the
194 injuries complained of subsequent to the alleged act of
195 negligence, all known health care providers during the 2-year
196 period prior to the alleged act of negligence who treated or
197 evaluated the claimant, ~~and~~ copies of all of the medical records
198 relied upon by the expert in signing the affidavit, and the
199 executed authorization form provided in s. 766.1065. ~~The~~
200 ~~requirement of providing the list of known health care providers~~
201 ~~may not serve as grounds for imposing sanctions for failure to~~
202 ~~provide presuit discovery.~~

203 (5) DISCOVERY AND ADMISSIBILITY.—A ~~No~~ statement,
204 discussion, written document, report, or other work product
205 generated by the presuit screening process is not discoverable
206 or admissible in any civil action for any purpose by the
207 opposing party. All participants, including, but not limited to,
208 physicians, investigators, witnesses, and employees or
209 associates of the defendant, are immune from civil liability
210 arising from participation in the presuit screening process.
211 This subsection does not prevent a physician licensed under
212 chapter 458 or chapter 459 who submits a verified written expert
213 medical opinion from being subject to denial of a license or
214 disciplinary action under s. 458.331(1)(oo) or s.
215 459.015(1)(qq).



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216 (6) INFORMAL DISCOVERY.—

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

220 1. Unsworn statements.—Any party may require other parties
221 to appear for the taking of an unsworn statement. Such
222 statements may be used only for the purpose of presuit screening
223 and are not discoverable or admissible in any civil action for
224 any purpose by any party. A party desiring to take the unsworn
225 statement of any party must give reasonable notice in writing to
226 all parties. The notice must state the time and place for taking
227 the statement and the name and address of the party to be
228 examined. Unless otherwise impractical, the examination of any
229 party must be done at the same time by all other parties. Any
230 party may be represented by counsel at the taking of an unsworn
231 statement. An unsworn statement may be recorded electronically,
232 stenographically, or on videotape. The taking of unsworn
233 statements is subject to the provisions of the Florida Rules of
234 Civil Procedure and may be terminated for abuses.

235 2. Documents or things.—Any party may request discovery of
236 documents or things. The documents or things must be produced,
237 at the expense of the requesting party, within 20 days after the
238 date of receipt of the request. A party is required to produce
239 discoverable documents or things within that party's possession
240 or control. Medical records shall be produced as provided in s.
241 766.204.

242 3. Physical and mental examinations.—A prospective
243 defendant may require an injured claimant to appear for
244 examination by an appropriate health care provider. The



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245 prospective defendant shall give reasonable notice in writing to
246 all parties as to the time and place for examination. Unless
247 otherwise impractical, a claimant is required to submit to only
248 one examination on behalf of all potential defendants. The
249 practicality of a single examination must be determined by the
250 nature of the claimant's condition, as it relates to the
251 liability of each prospective defendant. Such examination report
252 is available to the parties and their attorneys upon payment of
253 the reasonable cost of reproduction and may be used only for the
254 purpose of presuit screening. Otherwise, such examination report
255 is confidential and exempt from the provisions of s. 119.07(1)
256 and s. 24(a), Art. I of the State Constitution.

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

261 5. Ex parte interviews of treating health care providers.—A
262 prospective defendant or his or her legal representative shall
263 have access to interview the claimant's treating health care
264 providers without notice to or the presence of the claimant or
265 the claimant's legal representative.

266 6.5. Unsworn statements of treating health care providers
267 ~~Medical information release.—The claimant must execute a medical~~
268 ~~information release that allows~~ A prospective defendant or his
269 or her legal representative may ~~to~~ take unsworn statements of
270 the claimant's treating health care providers ~~physicians~~. The
271 statements must be limited to those areas that are potentially
272 relevant to the claim of personal injury or wrongful death.
273 Subject to the procedural requirements of subparagraph 1., a



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274 prospective defendant may take unsworn statements from a
275 claimant's treating physicians. Reasonable notice and
276 opportunity to be heard must be given to the claimant or the
277 claimant's legal representative before taking unsworn
278 statements. The claimant or claimant's legal representative has
279 the right to attend the taking of such unsworn statements.

280 Section 8. Section 766.1065, Florida Statutes, is created
281 to read:

282 766.1065 Authorization form for release of protected health
283 information.-

284 (1) Presuit notice of intent to initiate litigation for
285 medical negligence under s. 766.106(2) must be accompanied by an
286 authorization for release of protected health information in the
287 form specified by this section, authorizing the disclosure of
288 protected health information that is potentially relevant to the
289 claim of personal injury or wrongful death. The presuit notice
290 is void if this authorization does not accompany the presuit
291 notice and other materials required by s. 766.106(2).

292 (2) If the authorization required by this section is
293 revoked, the presuit notice under s. 766.106(2) shall be deemed
294 retroactively void from the date of issuance, and any tolling
295 effect that the presuit notice may have had on any applicable
296 statute-of-limitations period is retroactively rendered void.

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

301
302 AUTHORIZATION FOR RELEASE OF PROTECTED HEALTH INFORMATION



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

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

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

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

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

2. The health information in the custody of the following health care providers who have examined,



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332 evaluated, or treated the Patient during a period
333 commencing 2 years before the incident that is the
334 basis of the accompanying presuit notice.

335
336 (List the name and current address of such health care
337 providers, if applicable.)

338
339 C. This authorization does not apply to the
340 following list of health care providers possessing
341 health care information about the Patient because the
342 Patient certifies that such health care information is
343 not potentially relevant to the claim of personal
344 injury or wrongful death which is the basis of the
345 accompanying presuit notice.

346
347 (List the name of each health care provider to whom
348 this authorization does not apply and the inclusive
349 dates of examination, evaluation, or treatment to be
350 withheld from disclosure. If none, specify "none.")

351
352 D. The persons or class of persons to whom the
353 Patient authorizes such health information to be
354 disclosed, or by whom such health information is to be
355 used, includes:

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

358 2. Any liability insurer or self-insurer
359 providing liability insurance coverage, self-
360 insurance, or defense to any health care provider to



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361 whom presuit notice is given regarding the care and
362 treatment of the Patient.

363 3. Any consulting or testifying expert employed
364 by or on behalf of (name of health care provider to
365 whom presuit notice was given) or his/her/its
366 insurer(s), self-insurer(s), or attorney(s) regarding
367 the matter of the presuit notice accompanying this
368 authorization.

369 4. Any attorney (including secretarial, clerical,
370 or paralegal staff) employed by or on behalf of (name
371 of health care provider to whom presuit notice was
372 given) regarding the matter of the presuit notice
373 accompanying this authorization.

374 5. Any trier of the law or facts relating to any
375 suit filed seeking damages arising out of the medical
376 care or treatment of the Patient.

377 E. This authorization expires upon resolution of
378 the claim or at the conclusion of any litigation
379 instituted in connection with the matter of the
380 presuit notice accompanying this authorization,
381 whichever occurs first.

382 F. The Patient understands that, without
383 exception, the Patient has the right to revoke this
384 authorization in writing. The Patient further
385 understands that the consequence of any such
386 revocation is that the presuit notice under s.
387 766.106(2), Florida Statutes, is deemed retroactively
388 void from the date of issuance, and any tolling effect
389 that the presuit notice may have had on any applicable



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390 statute-of-limitations period is retroactively
391 rendered void.

392 G. The Patient understands that signing this
393 authorization is not a condition for continued
394 treatment, payment, enrollment, or eligibility for
395 health plan benefits.

396 H. The Patient understands that information used
397 or disclosed under this authorization may be subject
398 to additional disclosure by the recipient and may not
399 be protected by federal HIPAA privacy regulations.

400
401 Signature of Patient/Representative:

402 Date:

403 Name of Patient/Representative:

404 Description of Representative's Authority:

405 Section 9. Subsection (2) of section 766.206, Florida
406 Statutes, is amended to read:

407 766.206 Presuit investigation of medical negligence claims
408 and defenses by court.-

409 (2) If the court finds that the notice of intent to
410 initiate litigation mailed by the claimant does is not comply in
411 compliance with the reasonable investigation requirements of ss.
412 766.201-766.212, including a review of the claim and a verified
413 written medical expert opinion by an expert witness as defined
414 in s. 766.202, or that the authorization form accompanying the
415 notice of intent provided for in s. 766.1065 was not completed
416 in good faith by the claimant, the court shall dismiss the
417 claim, and the person who mailed such notice of intent, whether
418 the claimant or the claimant's attorney, shall be personally



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419 liable for all attorney's fees and costs incurred during the
420 investigation and evaluation of the claim, including the
421 reasonable attorney's fees and costs of the defendant or the
422 defendant's insurer.

423 Section 10. Subsections (3), (4), and (5) of section
424 463.002, Florida Statutes, are amended to read:

425 463.002 Definitions.—As used in this chapter, the term:

426 (3) (a) "Licensed practitioner" means a person who is a
427 primary health care provider licensed to engage in the practice
428 of optometry under the authority of this chapter.

429 (b) A licensed practitioner who is not a certified
430 optometrist shall be required to display at her or his place of
431 practice a sign which states, "I am a Licensed Practitioner, not
432 a Certified Optometrist, and I am not able to prescribe ~~topical~~
433 ocular pharmaceutical agents."

434 (c) All practitioners initially licensed after July 1,
435 1993, must be certified optometrists.

436 (4) "Certified optometrist" means a licensed practitioner
437 authorized by the board to administer and prescribe ~~topical~~
438 ocular pharmaceutical agents.

439 (5) "Optometry" means the diagnosis of conditions of the
440 human eye and its appendages; the employment of any objective or
441 subjective means or methods, including the administration of
442 ~~topical~~ ocular pharmaceutical agents, for the purpose of
443 determining the refractive powers of the human eyes, or any
444 visual, muscular, neurological, or anatomic anomalies of the
445 human eyes and their appendages; and the prescribing and
446 employment of lenses, prisms, frames, mountings, contact lenses,
447 orthoptic exercises, light frequencies, and any other means or



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448 methods, including topical ocular pharmaceutical agents, for the
449 correction, remedy, or relief of any insufficiencies or abnormal
450 conditions of the human eyes and their appendages.

451 Section 11. Paragraph (g) of subsection (1) of section
452 463.005, Florida Statutes, is amended to read:

453 463.005 Authority of the board.—

454 (1) The Board of Optometry has authority to adopt rules
455 pursuant to ss. 120.536(1) and 120.54 to implement the
456 provisions of this chapter conferring duties upon it. Such rules
457 shall include, but not be limited to, rules relating to:

458 (g) Administration and prescription of ~~topical~~ ocular
459 pharmaceutical agents.

460 Section 12. Section 463.0055, Florida Statutes, is amended
461 to read:

462 463.0055 Administration and prescription of ~~topical~~ ocular
463 pharmaceutical agents; committee.—

464 (1) Certified optometrists may administer and prescribe
465 ~~topical~~ ocular pharmaceutical agents as provided in this section
466 for the diagnosis and treatment of ocular conditions of the
467 human eye and its appendages without the use of surgery or other
468 invasive techniques. However, a licensed practitioner who is not
469 certified may use topically applied anesthetics solely for the
470 purpose of glaucoma examinations, but is otherwise prohibited
471 from administering or prescribing ~~topical~~ ocular pharmaceutical
472 agents.

473 (2) (a) There is hereby created a committee composed of two
474 optometrists licensed pursuant to this chapter, appointed by the
475 Board of Optometry, two board-certified ophthalmologists
476 licensed pursuant to chapter 458 or chapter 459, appointed by



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477 the Board of Medicine, and one additional person with a
478 doctorate degree in pharmacology who is not licensed pursuant to
479 chapter 458, chapter 459, or this chapter, appointed by the
480 State Surgeon General. The committee shall review requests for
481 additions to, deletions from, or modifications of a formulary of
482 ~~topical~~ ocular pharmaceutical agents for administration and
483 prescription by certified optometrists and shall provide to the
484 board advisory opinions and recommendations on such requests.
485 The formulary shall consist of those ~~topical~~ ocular
486 pharmaceutical agents which the certified optometrist is
487 qualified to use in the practice of optometry. The board shall
488 establish, add to, delete from, or modify the formulary by rule.
489 Notwithstanding any provision of chapter 120 to the contrary,
490 the formulary rule shall become effective 60 days from the date
491 it is filed with the Secretary of State.

492 (b) The formulary may be added to, deleted from, or
493 modified according to the procedure described in paragraph (a).
494 Any person who requests an addition, deletion, or modification
495 of an authorized ~~topical~~ ocular pharmaceutical agent shall have
496 the burden of proof to show cause why such addition, deletion,
497 or modification should be made.

498 (c) The State Surgeon General shall have standing to
499 challenge any rule or proposed rule of the board pursuant to s.
500 120.56. In addition to challenges for any invalid exercise of
501 delegated legislative authority, the administrative law judge,
502 upon such a challenge by the State Surgeon General, may declare
503 all or part of a rule or proposed rule invalid if it:

504 1. Does not protect the public from any significant and
505 discernible harm or damages;



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506 2. Unreasonably restricts competition or the availability
507 of professional services in the state or in a significant part
508 of the state; or

509 3. Unnecessarily increases the cost of professional
510 services without a corresponding or equivalent public benefit.

511
512 However, there shall not be created a presumption of the
513 existence of any of the conditions cited in this subsection in
514 the event that the rule or proposed rule is challenged.

515 (d) Upon adoption of the formulary required by this
516 section, and upon each addition, deletion, or modification to
517 the formulary, the board shall mail a copy of the amended
518 formulary to each certified optometrist and to each pharmacy
519 licensed by the state.

520 (3) A certified optometrist shall be issued a prescriber
521 number by the board. Any prescription written by a certified
522 optometrist for a ~~topical~~ ocular pharmaceutical agent pursuant
523 to this section shall have the prescriber number printed
524 thereon.

525 Section 13. Subsection (3) of section 463.0057, Florida
526 Statutes, is amended to read:

527 463.0057 Optometric faculty certificate.—

528 (3) The holder of a faculty certificate may engage in the
529 practice of optometry as permitted by this section, but may not
530 administer or prescribe ~~topical~~ ocular pharmaceutical agents
531 unless the certificateholder has satisfied the requirements of
532 s. 463.006(1)(b)4. and 5.

533 Section 14. Subsections (2) and (3) of section 463.006,
534 Florida Statutes, are amended to read:



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535 463.006 Licensure and certification by examination.—

536 (2) The examination shall consist of the appropriate
537 subjects, including applicable state laws and rules and general
538 and ocular pharmacology with emphasis on the ~~topical~~ application
539 and side effects of ocular pharmaceutical agents. The board may
540 by rule substitute a national examination as part or all of the
541 examination and may by rule offer a practical examination in
542 addition to the written examination.

543 (3) Each applicant who successfully passes the examination
544 and otherwise meets the requirements of this chapter is entitled
545 to be licensed as a practitioner and to be certified to
546 administer and prescribe ~~topical~~ ocular pharmaceutical agents in
547 the diagnosis and treatment of ocular conditions.

548 Section 15. Subsection (3) and paragraph (a) of subsection
549 (4) of section 464.012, Florida Statutes, are amended to read:

550 464.012 Certification of advanced registered nurse
551 practitioners; fees.—

552 (3) An advanced registered nurse practitioner shall perform
553 those functions authorized in this section within the framework
554 of an established protocol that is filed with the board upon
555 biennial license renewal and within 30 days after entering into
556 a supervisory relationship with a physician or changes to the
557 protocol. The board shall review the protocol to ensure
558 compliance with applicable regulatory standards for protocols.
559 The board shall refer to the department licensees submitting
560 protocols that are not compliant with the regulatory standards
561 for protocols. A practitioner currently licensed under chapter
562 458, chapter 459, or chapter 466 shall maintain supervision for
563 directing the specific course of medical treatment. Within the



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564 established framework, an advanced registered nurse practitioner
565 may:

566 (a) Monitor, prescribe, and alter drug therapies, including
567 controlled substances in Schedule II through Schedule IV under
568 chapter 893.

569 (b) Initiate appropriate therapies for certain conditions.

570 (c) Perform additional functions as may be determined by
571 rule in accordance with s. 464.003(2).

572 (d) Order diagnostic tests and physical and occupational
573 therapy.

574 (4) In addition to the general functions specified in
575 subsection (3), an advanced registered nurse practitioner may
576 perform the following acts within his or her specialty:

577 (a) The certified registered nurse anesthetist may, to the
578 extent authorized by established protocol approved by the
579 medical staff of the facility in which the anesthetic service is
580 performed, perform any or all of the following:

581 1. Determine the health status of the patient as it relates
582 to the risk factors and to the anesthetic management of the
583 patient through the performance of the general functions.

584 2. Based on history, physical assessment, and supplemental
585 laboratory results, determine, with the consent of the
586 responsible physician, the appropriate type of anesthesia within
587 the framework of the protocol.

588 3. Order under the protocol preanesthetic medication.

589 4. Perform under the protocol procedures commonly used to
590 render the patient insensible to pain during the performance of
591 surgical, obstetrical, therapeutic, or diagnostic clinical
592 procedures. These procedures include ordering and administering



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593 regional, spinal, and general anesthesia; inhalation agents and
594 techniques; intravenous agents and techniques; and techniques of
595 hypnosis.

596 5. Order or perform monitoring procedures indicated as
597 pertinent to the anesthetic health care management of the
598 patient.

599 6. Support life functions during anesthesia health care,
600 including induction and intubation procedures, the use of
601 appropriate mechanical supportive devices, and the management of
602 fluid, electrolyte, and blood component balances.

603 7. Recognize and take appropriate corrective action for
604 abnormal patient responses to anesthesia, adjunctive medication,
605 or other forms of therapy.

606 8. Recognize and treat a cardiac arrhythmia while the
607 patient is under anesthetic care.

608 9. Participate in management of the patient while in the
609 postanesthesia recovery area, including ordering the
610 administration of fluids and drugs, which include drugs that are
611 commonly used to alleviate pain.

612 10. Place special peripheral and central venous and
613 arterial lines for blood sampling and monitoring as appropriate.

614 Section 16. Section 768.135, Florida Statutes, is amended
615 to read:

616 768.135 Volunteer team physicians; immunity.—Any person
617 licensed to practice medicine pursuant to chapter 458, chapter
618 459, chapter 460, chapter 461, or chapter 466:

619 (1) Who is acting in the capacity of a volunteer team
620 physician in attendance at an athletic event sponsored by a
621 public or private elementary or secondary school; and



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622 (2) Who gratuitously and in good faith prior to the
623 athletic event agrees to render emergency care or treatment to
624 any participant in such event in connection with an emergency
625 arising during or as the result of such event, without objection
626 of such participant,

627
628 shall not be held liable for any civil damages as a result of
629 such care or treatment or as a result of any act or failure to
630 act in providing or arranging further medical treatment unless
631 ~~when~~ such care or treatment was rendered in a wrongful manner ~~as~~
632 ~~a reasonably prudent person similarly licensed to practice~~
633 ~~medicine would have acted under the same or similar~~
634 ~~circumstances.~~

635 (3) As used in this section, the term "wrongful manner"
636 means bad faith or with malicious purposes or in a manner
637 exhibiting wanton and willful disregard of human rights, safety,
638 or property, and shall be construed in conformity with the
639 standard set forth in s. 768.28(9)(a).

640 Section 17. Subsection (20) of section 893.02, Florida
641 Statutes, is amended to read:

642 893.02 Definitions.—The following words and phrases as used
643 in this chapter shall have the following meanings, unless the
644 context otherwise requires:

645 (20) "Practitioner" means a physician licensed pursuant to
646 chapter 458, a dentist licensed pursuant to chapter 466, a
647 veterinarian licensed pursuant to chapter 474, an osteopathic
648 physician licensed pursuant to chapter 459, a naturopath
649 licensed pursuant to chapter 462, a certified optometrist
650 licensed pursuant to chapter 463, an advanced registered nurse



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651 practitioner licensed pursuant to chapter 464, or a podiatric
652 physician licensed pursuant to chapter 461, if provided such
653 practitioner holds a valid federal controlled substance registry
654 number.

655 Section 18. Subsection (1) of section 893.05, Florida
656 Statutes, is amended to read:

657 893.05 Practitioners and persons administering controlled
658 substances in their absence.—

659 (1) A practitioner, in good faith and in the course of his
660 or her professional practice only, may prescribe, administer,
661 dispense, mix, or otherwise prepare a controlled substance, or
662 the practitioner may cause the same to be administered by a
663 licensed nurse or an intern practitioner under his or her
664 direction and supervision only. A veterinarian may so prescribe,
665 administer, dispense, mix, or prepare a controlled substance for
666 use on animals only, and may cause it to be administered by an
667 assistant or orderly under the veterinarian's direction and
668 supervision only. A certified optometrist licensed under chapter
669 463 may not administer or prescribe ocular pharmaceutical agents
670 listed under Schedule I or Schedule II of the Florida
671 Comprehensive Drug Abuse Prevention and Control Act.

672
673 ===== T I T L E A M E N D M E N T =====

674 And the title is amended as follows:

675 Delete lines 2 - 50

676 and insert:

677 An act relating to health care; creating ss. 458.3175
678 and 459.0066, F.S.; requiring the Board of Medicine
679 and the Board of Osteopathic Medicine to issue expert



680 witness certificates to physicians licensed outside
681 the state; providing application and certification
682 requirements; establishing application fees; providing
683 for validity and use of the certification; exempting a
684 physician issued a certificate from certain licensure
685 and fee requirements; requiring the boards to adopt
686 rules; amending ss. 458.331 and 459.015, F.S.;
687 providing additional acts that constitute grounds for
688 denial of a license or disciplinary action to which
689 penalties apply; amending s. 627.4147, F.S.; deleting
690 a requirement that medical malpractice insurance
691 contracts contain a clause authorizing the insurer to
692 make and conclude certain offers within policy limits
693 over the insured's veto; amending s. 766.102, F.S.;
694 revising the criteria required in order for a health
695 care provider to give expert testimony concerning the
696 prevailing professional standard of care; authorizing
697 certain specialists, rather than certain health care
698 providers, to give expert testimony concerning the
699 prevailing professional standard of care under certain
700 circumstances; requiring an expert witness in certain
701 medical negligence actions to be licensed under ch.
702 458 or ch. 459, F.S., or possess an expert witness
703 certificate under certain conditions; providing that
704 certain medical expert testimony is not admissible
705 unless the expert witness meets certain requirements;
706 amending s. 766.106, F.S.; requiring claimants for
707 medical malpractice to execute an authorization form;
708 deleting a provision prohibiting failure to provide



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709 certain presuit notice from serving as grounds for
710 imposing sanctions; providing that certain immunity
711 arising from participation in the presuit screening
712 process does not prohibit certain physicians from
713 being subject to certain penalties; allowing
714 prospective medical malpractice defendants to
715 interview a claimant's treating health care providers
716 without notice to or the presence of the claimant or
717 the claimant's legal representative; authorizing
718 prospective defendants to take unsworn statements of a
719 claimant's health care providers; creating s.
720 766.1065, F.S.; requiring that presuit notice for
721 medical negligence claims be accompanied by an
722 authorization for release of protected health
723 information; providing requirements for the form of
724 such authorization; amending s. 766.206, F.S.;

725 requiring dismissal of a medical malpractice claim and
726 payment of certain costs if such authorization form is
727 not completed in good faith; amending s. 463.002,
728 F.S.; redefining the terms "licensed practitioner,"
729 "certified optometrist," and "optometry" within the
730 practice of optometry; amending s. 463.005, F.S.;

731 authorizing the Board of Optometry to adopt rules
732 pertaining to the administration and prescription of
733 all ocular pharmaceutical agents; amending s.
734 463.0055, F.S.; expanding the type of ocular
735 pharmaceuticals that are prescribed and administered;
736 amending ss. 463.0057 and 463.006, F.S.; specifying
737 certain persons who may or may not prescribe or



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738 administer any ocular pharmaceutical agents; amending
739 s. 464.012, F.S.; expanding the scope of practice to
740 authorize an advanced registered nurse practitioner to
741 order, administer, monitor, and alter any drug or drug
742 therapies; expanding the scope of practice to
743 authorize a certified registered nurse anesthetist to
744 participate in management of a patient while in the
745 postanesthesia recovery area, including ordering the
746 administration of fluids and drugs that are commonly
747 used to alleviate pain; amending s. 768.135, F.S.;
748 providing the circumstance in which a volunteer team
749 physician or person is liable for civil damages as a
750 result of care or treatment or as a result of any act
751 or failure to act in providing or arranging further
752 medical treatment; defining the term "wrongful manner"
753 as it relates to the immunity for volunteer team
754 physicians; amending s. 893.02, F.S.; redefining the
755 term "practitioner" as it relates to the Florida
756 Comprehensive Drug Abuse Prevention and Control Act;
757 amending s. 893.05, F.S.; prohibiting a certified
758 optometrist from administering or prescribing certain
759 ocular pharmaceutical agents;