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1 A bill to be entitled
2 An act relating to medical malpractice; creating ss.
3 458.3175, 459.0066, and 466.005, F.S.; requiring the
4 Department of Health to issue expert witness
5 certificates to certain physicians and dentists
6 licensed outside the state; providing application and
7 certification requirements; establishing application
8 fees; providing for the validity and use of
9 certifications; exempting physicians and dentists
10 issued certifications from certain licensure and fee
11 requirements; amending ss. 458.331, 459.015, and
12 466.028, F.S.; providing additional acts that
13 constitute grounds for denial of a license or
14 disciplinary action to which penalties apply;
15 providing construction with respect to the doctrine of
16 incorporation by reference; amending ss. 458.351 and
17 459.026, F.S.; requiring the Board of Medicine and the
18 Board of Osteopathic Medicine to adopt within a
19 specified period certain patient forms specifying
20 cataract surgery risks; specifying that an incident
21 resulting from risks disclosed in the patient form is
22 not an adverse incident; providing for the execution
23 and admissibility of the patient forms in civil and
24 administrative proceedings; creating a rebuttable
25 presumption that a physician disclosed cataract
26 surgery risks if the patient form is executed;
27 amending s. 627.4147, F.S.; deleting a requirement
28 that medical malpractice insurance contracts contain a
29 clause authorizing the insurer to make and conclude

20111590e1

30 certain offers within policy limits over the insured's
31 veto; amending s. 766.102, F.S.; defining terms;
32 providing that certain insurance information is not
33 admissible as evidence in medical negligence actions;
34 requiring that certain expert witnesses who provide
35 certain expert testimony meet certain licensure or
36 certification requirements; excluding a health care
37 provider's failure to comply with or breach of federal
38 requirements from evidence in medical negligence cases
39 in the state; amending s. 766.106, F.S.; requiring
40 claimants for medical malpractice to execute an
41 authorization form; authorizing prospective defendants
42 to take unsworn statements of a claimant's health care
43 provider; creating s. 766.1065, F.S.; requiring that
44 presuit notice for medical negligence claims be
45 accompanied by an authorization for release of
46 protected health information; providing requirements
47 for the form of such authorization; amending s.
48 766.206, F.S.; requiring dismissal of a medical
49 malpractice claim if such authorization is not
50 completed in good faith; amending s. 768.135, F.S.;
51 defining the term "volunteer team physician";
52 providing that a volunteer team physician is not
53 liable for civil damages unless treatment was rendered
54 in a wrongful manner; providing that certain
55 practitioners who conduct certain evaluations are not
56 liable for civil damages unless the evaluation was
57 conducted in a wrongful manner; defining the term
58 "wrongful manner"; providing an effective date.

20111590e1

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

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:

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

2. An application fee of \$50.

(b) The department shall approve an application for an expert witness certificate within 10 business days after receipt of the completed application and payment of the application fee if the applicant holds an active and valid license to practice medicine in another state or a province of Canada and has not had a previous expert witness certificate revoked by the board. An application is approved by default if the department does not act upon the application within the required period. A physician must notify the department in writing of his or her intent to rely on a certificate approved by default.

20111590e1

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

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

92 (a) Provide a verified written medical expert opinion as
93 provided in s. 766.203.

94 (b) Provide expert testimony about the prevailing
95 professional standard of care in connection with medical
96 negligence litigation pending in this state against a physician
97 licensed under this chapter or chapter 459.

98 (3) An expert witness certificate does not authorize a
99 physician to engage in the practice of medicine as defined in s.
100 458.305. A physician issued a certificate under this section who
101 does not otherwise practice medicine in this state is not
102 required to obtain a license under this chapter or pay any
103 license fees, including, but not limited to, a neurological
104 injury compensation assessment. An expert witness certificate
105 shall be treated as a license in any disciplinary action, and
106 the holder of an expert witness certificate shall be subject to
107 discipline by the board.

108 Section 2. Subsection (11) is added to section 458.331,
109 Florida Statutes, paragraphs (oo) through (qq) of subsection (1)
110 of that section are redesignated as paragraphs (pp) through
111 (rr), respectively, and a new paragraph (oo) is added to that
112 subsection, to read:

113 458.331 Grounds for disciplinary action; action by the
114 board and department.—

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

20111590e1

117 (oo) Providing deceptive or fraudulent expert witness
118 testimony related to the practice of medicine.

119 (11) The purpose of this section is to facilitate uniform
120 discipline for those acts made punishable under this section
121 and, to this end, a reference to this section constitutes a
122 general reference under the doctrine of incorporation by
123 reference.

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

127 458.351 Reports of adverse incidents in office practice
128 settings.—

129 (6) (a) The board shall adopt rules establishing a standard
130 informed consent form that sets forth the recognized specific
131 risks related to cataract surgery. The board must propose such
132 rules within 90 days after the effective date of this
133 subsection.

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

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

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

145 (e) In a civil action or administrative proceeding against

20111590e1

146 a physician based on his or her alleged failure to properly
147 disclose the risks of cataract surgery, a patient's informed
148 consent executed as provided in paragraph (c) on the form
149 adopted by the board is admissible as evidence and creates a
150 rebuttable presumption that the physician properly disclosed the
151 risks.

152 Section 4. Section 459.0066, Florida Statutes, is created
153 to read:

154 459.0066 Expert witness certificate.-

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

160 1. A complete registration application containing the
161 physician's legal name, mailing address, telephone number,
162 business locations, the names of the jurisdictions where the
163 physician holds an active and valid license to practice
164 osteopathic medicine, and the license number or other
165 identifying number issued to the physician by the jurisdiction's
166 licensing entity; and

167 2. An application fee of \$50.

168 (b) The department shall approve an application for an
169 expert witness certificate within 10 business days after receipt
170 of the completed application and payment of the application fee
171 if the applicant holds an active and valid license to practice
172 osteopathic medicine in another state or a province of Canada
173 and has not had a previous expert witness certificate revoked by
174 the board. An application is approved by default if the

20111590e1

175 department does not act upon the application within the required
176 period. A physician must notify the department in writing of his
177 or her intent to rely on a certificate approved by default.

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

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

182 (a) Provide a verified written medical expert opinion as
183 provided in s. 766.203.

184 (b) Provide expert testimony about the prevailing
185 professional standard of care in connection with medical
186 negligence litigation pending in this state against a physician
187 licensed under chapter 458 or this chapter.

188 (3) An expert witness certificate does not authorize a
189 physician to engage in the practice of osteopathic medicine as
190 defined in s. 459.003. A physician issued a certificate under
191 this section who does not otherwise practice osteopathic
192 medicine in this state is not required to obtain a license under
193 this chapter or pay any license fees, including, but not limited
194 to, a neurological injury compensation assessment. An expert
195 witness certificate shall be treated as a license in any
196 disciplinary action, and the holder of an expert witness
197 certificate shall be subject to discipline by the board.

198 Section 5. Subsection (11) is added to section 459.015,
199 Florida Statutes, paragraphs (qq) through (ss) of subsection (1)
200 of that section are redesignated as paragraphs (rr) through
201 (tt), respectively, and a new paragraph (qq) is added to that
202 subsection, to read:

203 459.015 Grounds for disciplinary action; action by the

20111590e1

204 board and department.—

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

207 (qq) Providing deceptive or fraudulent expert witness
208 testimony related to the practice of osteopathic medicine.

209 (11) The purpose of this section is to facilitate uniform
210 discipline for those acts made punishable under this section
211 and, to this end, a reference to this section constitutes a
212 general reference under the doctrine of incorporation by
213 reference.

214 Section 6. Section 466.005, Florida Statutes, is created to
215 read:

216 466.005 Expert witness certificate.—

217 (1)(a) The department shall issue a certificate authorizing
218 a dentist who holds an active and valid license to practice
219 dentistry in another state or a province of Canada to provide
220 expert testimony in this state, if the dentist submits to the
221 department:

222 1. A complete registration application containing the
223 dentist's legal name, mailing address, telephone number,
224 business locations, the names of the jurisdictions where the
225 dentist holds an active and valid license to practice dentistry,
226 and the license number or other identifying number issued to the
227 dentist by the jurisdiction's licensing entity; and

228 2. An application fee of \$50.

229 (b) The department shall approve an application for an
230 expert witness certificate within 10 business days after receipt
231 of the completed application and payment of the application fee
232 if the applicant holds an active and valid license to practice

20111590e1

233 dentistry in another state or a province of Canada and has not
234 had a previous expert witness certificate revoked by the board.
235 An application is approved by default if the department does not
236 act upon the application within the required period. A dentist
237 must notify the department in writing of his or her intent to
238 rely on a certificate approved by default.

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

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

243 (a) Provide a verified written medical expert opinion as
244 provided in s. 766.203.

245 (b) Provide expert testimony about the prevailing
246 professional standard of care in connection with medical
247 negligence litigation pending in this state against a dentist
248 licensed under this chapter.

249 (3) An expert witness certificate does not authorize a
250 dentist to engage in the practice of dentistry as defined in s.
251 466.003. A dentist issued a certificate under this section who
252 does not otherwise practice dentistry in this state is not
253 required to obtain a license under this chapter or pay any
254 license fees. An expert witness certificate shall be treated as
255 a license in any disciplinary action, and the holder of an
256 expert witness certificate shall be subject to discipline by the
257 board.

258 Section 7. Subsection (8) is added to section 466.028,
259 Florida Statutes, paragraph (ll) of subsection (1) of that
260 section is redesignated as paragraph (mm), and a new paragraph
261 (ll) is added to that subsection, to read:

20111590e1

262 466.028 Grounds for disciplinary action; action by the
263 board.—

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

266 (11) Providing deceptive or fraudulent expert witness
267 testimony related to the practice of dentistry.

268 (8) The purpose of this section is to facilitate uniform
269 discipline for those acts made punishable under this section
270 and, to this end, a reference to this section constitutes a
271 general reference under the doctrine of incorporation by
272 reference.

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

276 459.026 Reports of adverse incidents in office practice
277 settings.—

278 (6) (a) The board shall adopt rules establishing a standard
279 informed consent form that sets forth the recognized specific
280 risks related to cataract surgery. The board must propose such
281 rules within 90 days after the effective date of this
282 subsection.

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

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

20111590e1

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

294 (e) In a civil action or administrative proceeding against
295 a physician based on his or her alleged failure to properly
296 disclose the risks of cataract surgery, a patient's informed
297 consent executed as provided in paragraph (c) on the form
298 adopted by the board is admissible as evidence and creates a
299 rebuttable presumption that the physician properly disclosed the
300 risks.

301 Section 9. Paragraph (b) of subsection (1) of section
302 627.4147, Florida Statutes, is amended to read:

303 627.4147 Medical malpractice insurance contracts.—

304 (1) In addition to any other requirements imposed by law,
305 each self-insurance policy as authorized under s. 627.357 or s.
306 624.462 or insurance policy providing coverage for claims
307 arising out of the rendering of, or the failure to render,
308 medical care or services, including those of the Florida Medical
309 Malpractice Joint Underwriting Association, shall include:

310 ~~(b)1. Except as provided in subparagraph 2., a clause~~
311 ~~authorizing the insurer or self-insurer to determine, to make,~~
312 ~~and to conclude, without the permission of the insured, any~~
313 ~~offer of admission of liability and for arbitration pursuant to~~
314 ~~s. 766.106, settlement offer, or offer of judgment, if the offer~~
315 ~~is within the policy limits. It is against public policy for any~~
316 ~~insurance or self-insurance policy to contain a clause giving~~
317 ~~the insured the exclusive right to veto any offer for admission~~
318 ~~of liability and for arbitration made pursuant to s. 766.106,~~
319 ~~settlement offer, or offer of judgment, when such offer is~~

20111590e1

320 ~~within the policy limits. However, any offer of admission of~~
321 ~~liability, settlement offer, or offer of judgment made by an~~
322 ~~insurer or self-insurer shall be made in good faith and in the~~
323 ~~best interests of the insured.~~

324 ~~2.a. With respect to dentists licensed under chapter 466, A~~
325 clause clearly stating whether or not the insured has the
326 exclusive right to veto any offer of admission of liability and
327 for arbitration pursuant to s. 766.106, settlement offer, or
328 offer of judgment if the offer is within policy limits. An
329 insurer or self-insurer shall not make or conclude, without the
330 permission of the insured, any offer of admission of liability
331 and for arbitration pursuant to s. 766.106, settlement offer, or
332 offer of judgment, if such offer is outside the policy limits.
333 However, any offer for admission of liability and for
334 arbitration made under s. 766.106, settlement offer, or offer of
335 judgment made by an insurer or self-insurer shall be made in
336 good faith and in the best interest of the insured.

337 ~~2.b.~~ If the policy contains a clause stating the insured
338 does not have the exclusive right to veto any offer or admission
339 of liability and for arbitration made pursuant to s. 766.106,
340 settlement offer or offer of judgment, the insurer or self-
341 insurer shall provide to the insured or the insured's legal
342 representative by certified mail, return receipt requested, a
343 copy of the final offer of admission of liability and for
344 arbitration made pursuant to s. 766.106, settlement offer or
345 offer of judgment and at the same time such offer is provided to
346 the claimant. A copy of any final agreement reached between the
347 insurer and claimant shall also be provided to the insurer or
348 his or her legal representative by certified mail, return

20111590e1

349 receipt requested not more than 10 days after affecting such
350 agreement.

351 Section 10. Subsections (3), (4), and (5) of section
352 766.102, Florida Statutes, are amended, subsection (12) of that
353 section is renumbered as subsection (14), and new subsections
354 (12) and (13) are added to that section, to read:

355 766.102 Medical negligence; standards of recovery; expert
356 witness.—

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

358 1. "Insurer" means any public or private insurer, including
359 the Centers for Medicare and Medicaid Services.

360 2. "Reimbursement determination" means an insurer's
361 determination of the amount that the insurer will reimburse a
362 health care provider for health care services.

363 3. "Reimbursement policies" means an insurer's policies and
364 procedures governing its decisions regarding health insurance
365 coverage and method of payment and the data upon which such
366 policies and procedures are based, including, but not limited
367 to, data from national research groups and other patient safety
368 data as defined in s. 766.1016.

369 (b) The existence of a medical injury does ~~shall~~ not create
370 any inference or presumption of negligence against a health care
371 provider, and the claimant must maintain the burden of proving
372 that an injury was proximately caused by a breach of the
373 prevailing professional standard of care by the health care
374 provider. Any records, policies, or testimony of an insurer's
375 reimbursement policies or reimbursement determination regarding
376 the care provided to the plaintiff are not admissible as
377 evidence in any medical negligence action. However, the

20111590e1

378 discovery of the presence of a foreign body, such as a sponge,
379 clamp, forceps, surgical needle, or other paraphernalia commonly
380 used in surgical, examination, or diagnostic procedures, shall
381 be prima facie evidence of negligence on the part of the health
382 care provider.

383 (4) The Legislature is cognizant of the changing trends and
384 techniques for the delivery of health care in this state and the
385 discretion that is inherent in the diagnosis, care, and
386 treatment of patients by different health care providers. The
387 failure of a health care provider to order, perform, or
388 administer supplemental diagnostic tests is ~~shall~~ not be
389 actionable if the health care provider acted in good faith and
390 with due regard for the prevailing professional standard of
391 care.

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

397 (a) If the health care provider against whom or on whose
398 behalf the testimony is offered is a specialist, the expert
399 witness must:

400 1. Specialize in the same specialty as the health care
401 provider against whom or on whose behalf the testimony is
402 offered; or specialize in a similar specialty that includes the
403 evaluation, diagnosis, or treatment of the medical condition
404 that is the subject of the claim and have prior experience
405 treating similar patients; and

406 2. Have devoted professional time during the 3 years

20111590e1

407 immediately preceding the date of the occurrence that is the
408 basis for the action to:

409 a. The active clinical practice of, or consulting with
410 respect to, the same or similar specialty that includes the
411 evaluation, diagnosis, or treatment of the medical condition
412 that is the subject of the claim and have prior experience
413 treating similar patients;

414 b. Instruction of students in an accredited health
415 professional school or accredited residency or clinical research
416 program in the same or similar specialty; or

417 c. A clinical research program that is affiliated with an
418 accredited health professional school or accredited residency or
419 clinical research program in the same or similar specialty.

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

425 1. The active clinical practice or consultation as a
426 general practitioner;

427 2. The instruction of students in an accredited health
428 professional school or accredited residency program in the
429 general practice of medicine; or

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

433 (c) If the health care provider against whom or on whose
434 behalf the testimony is offered is a health care provider other
435 than a specialist or a general practitioner, the expert witness

20111590e1

436 must have devoted professional time during the 3 years
437 immediately preceding the date of the occurrence that is the
438 basis for the action to:

439 1. The active clinical practice of, or consulting with
440 respect to, the same or similar health profession as the health
441 care provider against whom or on whose behalf the testimony is
442 offered;

443 2. The instruction of students in an accredited health
444 professional school or accredited residency program in the same
445 or similar health profession in which the health care provider
446 against whom or on whose behalf the testimony is offered; or

447 3. A clinical research program that is affiliated with an
448 accredited medical school or teaching hospital and that is in
449 the same or similar health profession as the health care
450 provider against whom or on whose behalf the testimony is
451 offered.

452 (12) If a physician licensed under chapter 458 or chapter
453 459 or a dentist licensed under chapter 466 is the party against
454 whom, or on whose behalf, expert testimony about the prevailing
455 professional standard of care is offered, the expert witness
456 must be licensed under chapter 458, chapter 459, or chapter 466
457 or possess a valid expert witness certificate issued under s.
458 458.3175, s. 459.0066, or s. 466.005.

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

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

20111590e1

465 766.106 Notice before filing action for medical negligence;
466 presuit screening period; offers for admission of liability and
467 for arbitration; informal discovery; review.—

468 (2) PRESUIT NOTICE.—

469 (a) After completion of presuit investigation pursuant to
470 s. 766.203(2) and prior to filing a complaint for medical
471 negligence, a claimant shall notify each prospective defendant
472 by certified mail, return receipt requested, of intent to
473 initiate litigation for medical negligence. Notice to each
474 prospective defendant must include, if available, a list of all
475 known health care providers seen by the claimant for the
476 injuries complained of subsequent to the alleged act of
477 negligence, all known health care providers during the 2-year
478 period prior to the alleged act of negligence who treated or
479 evaluated the claimant, ~~and~~ copies of all of the medical records
480 relied upon by the expert in signing the affidavit, and the
481 executed authorization form provided in s. 766.1065. ~~The~~
482 ~~requirement of providing the list of known health care providers~~
483 ~~may not serve as grounds for imposing sanctions for failure to~~
484 ~~provide presuit discovery.~~

485 (5) DISCOVERY AND ADMISSIBILITY.—A ~~No~~ statement,
486 discussion, written document, report, or other work product
487 generated by the presuit screening process is not discoverable
488 or admissible in any civil action for any purpose by the
489 opposing party. All participants, including, but not limited to,
490 physicians, investigators, witnesses, and employees or
491 associates of the defendant, are immune from civil liability
492 arising from participation in the presuit screening process.
493 This subsection does not prevent a physician licensed under

20111590e1

494 chapter 458 or chapter 459 or a dentist licensed under chapter
495 466 who submits a verified written expert medical opinion from
496 being subject to denial of a license or disciplinary action
497 under s. 458.331(1)(oo), s. 459.015(1)(qq), or s.
498 466.028(1)(ll).

499 (6) INFORMAL DISCOVERY.—

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

503 1. Unsworn statements.—Any party may require other parties
504 to appear for the taking of an unsworn statement. Such
505 statements may be used only for the purpose of presuit screening
506 and are not discoverable or admissible in any civil action for
507 any purpose by any party. A party desiring to take the unsworn
508 statement of any party must give reasonable notice in writing to
509 all parties. The notice must state the time and place for taking
510 the statement and the name and address of the party to be
511 examined. Unless otherwise impractical, the examination of any
512 party must be done at the same time by all other parties. Any
513 party may be represented by counsel at the taking of an unsworn
514 statement. An unsworn statement may be recorded electronically,
515 stenographically, or on videotape. The taking of unsworn
516 statements is subject to the provisions of the Florida Rules of
517 Civil Procedure and may be terminated for abuses.

518 2. Documents or things.—Any party may request discovery of
519 documents or things. The documents or things must be produced,
520 at the expense of the requesting party, within 20 days after the
521 date of receipt of the request. A party is required to produce
522 discoverable documents or things within that party's possession

20111590e1

523 or control. Medical records shall be produced as provided in s.
524 766.204.

525 3. Physical and mental examinations.—A prospective
526 defendant may require an injured claimant to appear for
527 examination by an appropriate health care provider. The
528 prospective defendant shall give reasonable notice in writing to
529 all parties as to the time and place for examination. Unless
530 otherwise impractical, a claimant is required to submit to only
531 one examination on behalf of all potential defendants. The
532 practicality of a single examination must be determined by the
533 nature of the claimant's condition, as it relates to the
534 liability of each prospective defendant. Such examination report
535 is available to the parties and their attorneys upon payment of
536 the reasonable cost of reproduction and may be used only for the
537 purpose of presuit screening. Otherwise, such examination report
538 is confidential and exempt from the provisions of s. 119.07(1)
539 and s. 24(a), Art. I of the State Constitution.

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

544 5. Unsworn statements of treating health care providers
545 ~~Medical information release. The claimant must execute a medical~~
546 ~~information release that allows~~ A prospective defendant or his
547 or her legal representative may also ~~to~~ take unsworn statements
548 of the claimant's treating health care providers ~~physicians~~. The
549 statements must be limited to those areas that are potentially
550 relevant to the claim of personal injury or wrongful death.
551 Subject to the procedural requirements of subparagraph 1., a

20111590e1

552 prospective defendant may take unsworn statements from a
553 claimant's treating physicians. Reasonable notice and
554 opportunity to be heard must be given to the claimant or the
555 claimant's legal representative before taking unsworn
556 statements. The claimant or claimant's legal representative has
557 the right to attend the taking of such unsworn statements.

558 Section 12. Section 766.1065, Florida Statutes, is created
559 to read:

560 766.1065 Authorization for release of protected health
561 information.-

562 (1) Presuit notice of intent to initiate litigation for
563 medical negligence under s. 766.106(2) must be accompanied by an
564 authorization for release of protected health information in the
565 form specified by this section, authorizing the disclosure of
566 protected health information that is potentially relevant to the
567 claim of personal injury or wrongful death. The presuit notice
568 is void if this authorization does not accompany the presuit
569 notice and other materials required by s. 766.106(2).

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

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

580 AUTHORIZATION FOR RELEASE OF PROTECTED HEALTH INFORMATION

20111590e1

581
582 A. I, (...Name of patient or authorized
583 representative...) [hereinafter "Patient"], authorize
584 that (...Name of health care provider to whom the
585 presuit notice is directed...) and his/her/its
586 insurer(s), self-insurer(s), and attorney(s) may
587 obtain and disclose (within the parameters set out
588 below) the protected health information described
589 below for the following specific purposes:

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

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

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

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

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

20111590e1

610 evaluated, or treated the Patient during a period
611 commencing 2 years before the incident that is the
612 basis of the accompanying presuit notice.

613
614 (List the name and current address of such health care
615 providers, if applicable.)

616
617 C. This authorization does not apply to the
618 following list of health care providers possessing
619 health care information about the Patient because the
620 Patient certifies that such health care information is
621 not potentially relevant to the claim of personal
622 injury or wrongful death that is the basis of the
623 accompanying presuit notice.

624
625 (List the name of each health care provider to whom
626 this authorization does not apply and the inclusive
627 dates of examination, evaluation, or treatment to be
628 withheld from disclosure. If none, specify "none.")

629
630 D. The persons or class of persons to whom the
631 Patient authorizes such health information to be
632 disclosed or by whom such health information is to be
633 used:

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

636 2. Any liability insurer or self-insurer
637 providing liability insurance coverage, self-
638 insurance, or defense to any health care provider to

20111590e1

639 whom presuit notice is given regarding the care and
640 treatment of the Patient.

641 3. Any consulting or testifying expert employed
642 by or on behalf of (name of health care provider to
643 whom presuit notice was given), his/her/its
644 insurer(s), self-insurer(s), or attorney(s) regarding
645 to the matter of the presuit notice accompanying this
646 authorization.

647 4. Any attorney (including secretarial, clerical,
648 or paralegal staff) employed by or on behalf of (name
649 of health care provider to whom presuit notice was
650 given) regarding the matter of the presuit notice
651 accompanying this authorization.

652 5. Any trier of the law or facts relating to any
653 suit filed seeking damages arising out of the medical
654 care or treatment of the Patient.

655 E. This authorization expires upon resolution of
656 the claim or at the conclusion of any litigation
657 instituted in connection with the matter of the
658 presuit notice accompanying this authorization,
659 whichever occurs first.

660 F. The Patient understands that, without
661 exception, the Patient has the right to revoke this
662 authorization in writing. The Patient further
663 understands that the consequence of any such
664 revocation is that the presuit notice under s.
665 766.106(2), Florida Statutes, is deemed retroactively
666 void from the date of issuance, and any tolling effect
667 that the presuit notice may have had on any applicable

20111590e1

668 statute-of-limitations period is retroactively
669 rendered void.

670 G. The Patient understands that signing this
671 authorization is not a condition for continued
672 treatment, payment, enrollment, or eligibility for
673 health plan benefits.

674 H. The Patient understands that information used
675 or disclosed under this authorization may be subject
676 to additional disclosure by the recipient and may not
677 be protected by federal HIPAA privacy regulations.

678
679 Signature of Patient/Representative:

680 Date:

681 Name of Patient/Representative:

682 Description of Representative's Authority:

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

685 766.206 Presuit investigation of medical negligence claims
686 and defenses by court.—

687 (2) If the court finds that the notice of intent to
688 initiate litigation mailed by the claimant does is not comply in
689 compliance with the reasonable investigation requirements of ss.
690 766.201-766.212, including a review of the claim and a verified
691 written medical expert opinion by an expert witness as defined
692 in s. 766.202, or that the authorization accompanying the notice
693 of intent required under s. 766.1065 is not completed in good
694 faith by the claimant, the court shall dismiss the claim, and
695 the person who mailed such notice of intent, whether the
696 claimant or the claimant's attorney, shall be personally liable

20111590e1

697 for all attorney's fees and costs incurred during the
698 investigation and evaluation of the claim, including the
699 reasonable attorney's fees and costs of the defendant or the
700 defendant's insurer.

701 Section 14. Section 768.135, Florida Statutes, is amended
702 to read:

703 768.135 Volunteer team physicians; immunity.—

704 (1) As used in this section, the term "volunteer team
705 physician" means any person licensed to practice medicine
706 pursuant to chapter 458, chapter 459, chapter 460, chapter 461,
707 or chapter 466:

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

711 (b) ~~(2)~~ Who gratuitously and in good faith prior to the
712 athletic event agrees to render emergency care or treatment to
713 any participant in such event in connection with an emergency
714 arising during or as the result of such event, without objection
715 of such participant.

716 (2) A volunteer team physician is shall not be held liable
717 for any civil damages as a result of such care or treatment or
718 as a result of any act or failure to act in providing or
719 arranging further medical treatment unless the ~~when such~~ care or
720 treatment was rendered in a wrongful manner as a reasonably
721 prudent person similarly licensed to practice medicine would
722 have acted under the same or similar circumstances.

723 (3) A practitioner licensed under chapter 458, chapter 459,
724 chapter 460, or s. 464.012 who gratuitously and in good faith
725 conducts an evaluation pursuant to s. 1006.20(2)(c) is not

20111590e1

726 liable for any civil damages arising from that evaluation unless
727 the evaluation was conducted in a wrongful manner.

728 (4) As used in this section, the term "wrongful manner"
729 means in bad faith or with malicious purpose or in a manner
730 exhibiting wanton and willful disregard of human rights, safety,
731 or property, and shall be construed in conformity with the
732 standard set forth in s. 768.28(9)(a).

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