

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

29 offers within policy limits over the insured's veto;  
30 amending s. 766.102, F.S.; defining terms; providing that  
31 certain insurance information is not admissible as  
32 evidence in civil actions; requiring that certain expert  
33 witnesses who provide certain expert testimony meet  
34 certain licensure or certification requirements;  
35 establishing the burden of proof that a claimant must meet  
36 in certain damage claims against health care providers  
37 based on death or personal injury; excluding a health care  
38 provider's failure to comply with or breach of federal  
39 requirements from evidence in medical negligence cases in  
40 the state; amending s. 766.106, F.S.; requiring claimants  
41 for medical malpractice to execute an authorization form;  
42 allowing prospective medical malpractice defendants to  
43 interview a claimant's treating health care provider  
44 without notice to or the presence of the claimant or the  
45 claimant's legal representative; authorizing prospective  
46 defendants to take unsworn statements of a claimant's  
47 health care provider; creating s. 766.1065, F.S.;  
48 requiring that presuit notice for medical negligence  
49 claims be accompanied by an authorization for release of  
50 protected health information; providing requirements for  
51 the form of such authorization; amending s. 766.206, F.S.;  
52 requiring dismissal of a medical malpractice claim if such  
53 authorization is not completed in good faith; amending s.  
54 768.0981, F.S.; limiting the liability of hospitals  
55 related to certain medical negligence claims; providing an  
56 effective date.

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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 board 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 board a complete registration application in the format prescribed by the board, pays an application fee established by the board not to exceed \$50, and has not had a previous expert witness certificate revoked by the board.

(b) The board shall approve or deny an application for an expert witness certificate within 5 business days after receipt of the completed application and payment of the application fee. An application is approved by default if the board does not act upon the application within the required period. A physician must notify the board in writing of his or her intent to rely on a certificate approved by default.

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

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

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

84 (b) Provide expert testimony about the prevailing  
 85 professional standard of care in connection with medical  
 86 negligence litigation pending in this state against a physician  
 87 licensed under this chapter or chapter 459.

88 (3) An expert witness certificate does not authorize a  
 89 physician to engage in the practice of medicine as defined in s.  
 90 458.305. A physician issued a certificate under this section who  
 91 does not otherwise practice medicine in this state is not  
 92 required to obtain a license under this chapter or pay any  
 93 license fees, including, but not limited to, a neurological  
 94 injury compensation assessment.

95 (4) The board shall adopt rules to administer this  
 96 section.

97 Section 2. Subsection (11) is added to section 458.331,  
 98 Florida Statutes, paragraphs (oo) through (qq) of subsection (1)  
 99 of that section are redesignated as paragraphs (pp) through  
 100 (rr), respectively, and a new paragraph (oo) is added to that  
 101 subsection, to read:

102 458.331 Grounds for disciplinary action; action by the  
 103 board and department.—

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

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

108 (11) The purpose of this section is to facilitate uniform  
 109 discipline for those acts made punishable under this section  
 110 and, to this end, a reference to this section constitutes a

HB 479

2011

111 general reference under the doctrine of incorporation by  
112 reference.

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

116 458.351 Reports of adverse incidents in office practice  
117 settings.—

118 (6) (a) The board shall adopt rules establishing a standard  
119 informed consent form that sets forth the recognized specific  
120 risks related to cataract surgery. The board must propose such  
121 rules within 90 days after the effective date of this  
122 subsection, and the provisions of s. 120.541 relating to adverse  
123 impacts, estimated regulatory costs, and legislative  
124 ratification of rules do not apply to such rules.

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

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

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

136 (e) In a civil action or administrative proceeding against  
137 a physician based on his or her alleged failure to properly  
138 disclose the risks of cataract surgery, a patient's informed

HB 479

2011

139 consent executed as provided in paragraph (c) on the form  
140 adopted by the board is admissible as evidence and creates a  
141 rebuttable presumption that the physician properly disclosed the  
142 risks. This rebuttable presumption shall be included in the  
143 charge to the jury in a civil action.

144 Section 4. Section 459.0066, Florida Statutes, is created  
145 to read:

146 459.0066 Expert witness certificate.-

147 (1) (a) The board shall issue a certificate authorizing a  
148 physician who holds an active and valid license to practice  
149 osteopathic medicine in another state or a province of Canada to  
150 provide expert testimony in this state, if the physician submits  
151 to the board a complete registration application in the format  
152 prescribed by the board, pays an application fee established by  
153 the board not to exceed \$50, and has not had a previous expert  
154 witness certificate revoked by the board.

155 (b) The board shall approve or deny an application for an  
156 expert witness certificate within 5 business days after receipt  
157 of the completed application and payment of the application fee.  
158 An application is approved by default if the board does not act  
159 upon the application within the required period. A physician  
160 must notify the board in writing of his or her intent to rely on  
161 a certificate approved by default.

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

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

166 (a) Provide a verified written medical expert opinion as  
 167 provided in s. 766.203.

168 (b) Provide expert testimony about the prevailing  
 169 professional standard of care in connection with medical  
 170 negligence litigation pending in this state against a physician  
 171 licensed under chapter 458 or this chapter.

172 (3) An expert witness certificate does not authorize a  
 173 physician to engage in the practice of osteopathic medicine as  
 174 defined in s. 459.003. A physician issued a certificate under  
 175 this section who does not otherwise practice osteopathic  
 176 medicine in this state is not required to obtain a license under  
 177 this chapter or pay any license fees, including, but not limited  
 178 to, a neurological injury compensation assessment.

179 (4) The board shall adopt rules to administer this  
 180 section.

181 Section 5. Subsection (11) is added to section 459.015,  
 182 Florida Statutes, paragraphs (qq) through (ss) of subsection (1)  
 183 of that section are redesignated as paragraphs (rr) through  
 184 (tt), respectively, and a new paragraph (qq) is added to that  
 185 subsection, to read:

186 459.015 Grounds for disciplinary action; action by the  
 187 board and department.—

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

190 (qq) Providing misleading, deceptive, or fraudulent expert  
 191 witness testimony related to the practice of osteopathic  
 192 medicine.

193       (11) The purpose of this section is to facilitate uniform  
 194 discipline for those acts made punishable under this section  
 195 and, to this end, a reference to this section constitutes a  
 196 general reference under the doctrine of incorporation by  
 197 reference.

198       Section 6. Subsection (6) of section 459.026, Florida  
 199 Statutes, is renumbered as subsection (7), and a new subsection  
 200 (6) is added to that section, to read:

201       459.026 Reports of adverse incidents in office practice  
 202 settings.—

203       (6) (a) The board shall adopt rules establishing a standard  
 204 informed consent form that sets forth the recognized specific  
 205 risks related to cataract surgery. The board must propose such  
 206 rules within 90 days after the effective date of this  
 207 subsection, and the provisions of s. 120.541 relating to adverse  
 208 impacts, estimated regulatory costs, and legislative  
 209 ratification of rules do not apply to such rules.

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

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

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



221 (e) In a civil action or administrative proceeding against  
 222 a physician based on his or her alleged failure to properly  
 223 disclose the risks of cataract surgery, a patient's informed  
 224 consent executed as provided in paragraph (c) on the form  
 225 adopted by the board is admissible as evidence and creates a  
 226 rebuttable presumption that the physician properly disclosed the  
 227 risks. This rebuttable presumption shall be included in the  
 228 charge to the jury in a civil action.

229 Section 7. Paragraph (b) of subsection (1) of section  
 230 627.4147, Florida Statutes, is amended to read:

231 627.4147 Medical malpractice insurance contracts.—

232 (1) In addition to any other requirements imposed by law,  
 233 each self-insurance policy as authorized under s. 627.357 or s.  
 234 624.462 or insurance policy providing coverage for claims  
 235 arising out of the rendering of, or the failure to render,  
 236 medical care or services, including those of the Florida Medical  
 237 Malpractice Joint Underwriting Association, shall include:

238 (b)1. ~~Except as provided in subparagraph 2., a clause~~  
 239 ~~authorizing the insurer or self-insurer to determine, to make,~~  
 240 ~~and to conclude, without the permission of the insured, any~~  
 241 ~~offer of admission of liability and for arbitration pursuant to~~  
 242 ~~s. 766.106, settlement offer, or offer of judgment, if the offer~~  
 243 ~~is within the policy limits. It is against public policy for any~~  
 244 ~~insurance or self-insurance policy to contain a clause giving~~  
 245 ~~the insured the exclusive right to veto any offer for admission~~  
 246 ~~of liability and for arbitration made pursuant to s. 766.106,~~  
 247 ~~settlement offer, or offer of judgment, when such offer is~~  
 248 ~~within the policy limits. However, any offer of admission of~~

HB 479

2011

249 ~~liability, settlement offer, or offer of judgment made by an~~  
250 ~~insurer or self-insurer shall be made in good faith and in the~~  
251 ~~best interests of the insured.~~

252 ~~2.a. With respect to dentists licensed under chapter 466,~~  
253 A clause clearly stating whether or not the insured has the  
254 exclusive right to veto any offer of admission of liability and  
255 for arbitration pursuant to s. 766.106, settlement offer, or  
256 offer of judgment if the offer is within policy limits. An  
257 insurer or self-insurer shall not make or conclude, without the  
258 permission of the insured, any offer of admission of liability  
259 and for arbitration pursuant to s. 766.106, settlement offer, or  
260 offer of judgment, if such offer is outside the policy limits.  
261 However, any offer for admission of liability and for  
262 arbitration made under s. 766.106, settlement offer, or offer of  
263 judgment made by an insurer or self-insurer shall be made in  
264 good faith and in the best interest of the insured.

265 ~~2.b.~~ If the policy contains a clause stating the insured  
266 does not have the exclusive right to veto any offer or admission  
267 of liability and for arbitration made pursuant to s. 766.106,  
268 settlement offer or offer of judgment, the insurer or self-  
269 insurer shall provide to the insured or the insured's legal  
270 representative by certified mail, return receipt requested, a  
271 copy of the final offer of admission of liability and for  
272 arbitration made pursuant to s. 766.106, settlement offer or  
273 offer of judgment and at the same time such offer is provided to  
274 the claimant. A copy of any final agreement reached between the  
275 insurer and claimant shall also be provided to the insurer or  
276 his or her legal representative by certified mail, return

HB 479

2011

277 receipt requested not more than 10 days after affecting such  
278 agreement.

279 Section 8. Subsections (3), (4), and (5) of section  
280 766.102, Florida Statutes, are amended, subsection (12) of that  
281 section is renumbered as subsection (14), and new subsections  
282 (12) and (13) are added to that section, to read:

283 766.102 Medical negligence; standards of recovery; expert  
284 witness.—

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

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

288 2. "Reimbursement determination" means an insurer's  
289 determination of the amount that the insurer will reimburse a  
290 health care provider for health care services.

291 3. "Reimbursement policies" means an insurer's policies  
292 and procedures governing its decisions regarding health  
293 insurance coverage and method of payment and the data upon which  
294 such policies and procedures are based, including, but not  
295 limited to, data from national research groups and other patient  
296 safety data as defined in s. 766.1016.

297 (b) The existence of a medical injury ~~does shall~~ not  
298 create any inference or presumption of negligence against a  
299 health care provider, and the claimant must maintain the burden  
300 of proving that an injury was proximately caused by a breach of  
301 the prevailing professional standard of care by the health care  
302 provider. Any records, policies, or testimony of an insurer's  
303 reimbursement policies or reimbursement determination regarding  
304 the care provided to the plaintiff are not admissible as

305 evidence in any civil action. However, the discovery of the  
 306 presence of a foreign body, such as a sponge, clamp, forceps,  
 307 surgical needle, or other paraphernalia commonly used in  
 308 surgical, examination, or diagnostic procedures, shall be prima  
 309 facie evidence of negligence on the part of the health care  
 310 provider.

311 (4) (a) The Legislature is cognizant of the changing trends  
 312 and techniques for the delivery of health care in this state and  
 313 the discretion that is inherent in the diagnosis, care, and  
 314 treatment of patients by different health care providers. The  
 315 failure of a health care provider to order, perform, or  
 316 administer supplemental diagnostic tests is ~~shall~~ not be  
 317 actionable if the health care provider acted in good faith and  
 318 with due regard for the prevailing professional standard of  
 319 care.

320 (b) In an action for damages based on death or personal  
 321 injury which alleges that such death or injury resulted from the  
 322 failure of a health care provider to order, perform, or  
 323 administer supplemental diagnostic tests, the claimant has the  
 324 burden of proving by clear and convincing evidence that the  
 325 alleged actions of the health care provider represented a breach  
 326 of the prevailing professional standard of care.

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

332 (a) If the health care provider against whom or on whose

HB 479

2011

333 | behalf the testimony is offered is a specialist, the expert  
334 | witness must:

335 |       1. Specialize in the same specialty as the health care  
336 | provider against whom or on whose behalf the testimony is  
337 | offered; or specialize in a similar specialty that includes the  
338 | evaluation, diagnosis, or treatment of the medical condition  
339 | that is the subject of the claim and have prior experience  
340 | treating similar patients; and

341 |       2. Have devoted professional time during the 5 ~~3~~ years  
342 | immediately preceding the date of the occurrence that is the  
343 | basis for the action to:

344 |       a. The active clinical practice of, or consulting with  
345 | respect to, the same or similar specialty that includes the  
346 | evaluation, diagnosis, or treatment of the medical condition  
347 | that is the subject of the claim and have prior experience  
348 | treating similar patients;

349 |       b. Instruction of students in an accredited health  
350 | professional school or accredited residency or clinical research  
351 | program in the same or similar specialty; or

352 |       c. A clinical research program that is affiliated with an  
353 | accredited health professional school or accredited residency or  
354 | clinical research program in the same or similar specialty.

355 |       (b) If the health care provider against whom or on whose  
356 | behalf the testimony is offered is a general practitioner, the  
357 | expert witness must have devoted professional time during the 5  
358 | years immediately preceding the date of the occurrence that is  
359 | the basis for the action to:

360 |       1. The active clinical practice or consultation as a

361 general practitioner;

362 2. The instruction of students in an accredited health  
 363 professional school or accredited residency program in the  
 364 general practice of medicine; or

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

368 (c) If the health care provider against whom or on whose  
 369 behalf the testimony is offered is a health care provider other  
 370 than a specialist or a general practitioner, the expert witness  
 371 must have devoted professional time during the 5 ~~3~~ years  
 372 immediately preceding the date of the occurrence that is the  
 373 basis for the action to:

374 1. The active clinical practice of, or consulting with  
 375 respect to, the same or similar health profession as the health  
 376 care provider against whom or on whose behalf the testimony is  
 377 offered;

378 2. The instruction of students in an accredited health  
 379 professional school or accredited residency program in the same  
 380 or similar health profession in which the health care provider  
 381 against whom or on whose behalf the testimony is offered; or

382 3. A clinical research program that is affiliated with an  
 383 accredited medical school or teaching hospital and that is in  
 384 the same or similar health profession as the health care  
 385 provider against whom or on whose behalf the testimony is  
 386 offered.

387 (12) If a physician licensed under chapter 458 or chapter  
 388 459 is the party against whom, or on whose behalf, expert

389 testimony about the prevailing professional standard of care is  
 390 offered, the expert witness must be licensed under chapter 458  
 391 or chapter 459 or possess a valid expert witness certificate  
 392 issued under s. 458.3175 or s. 459.0066.

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

396 Section 9. Paragraph (a) of subsection (2), subsection  
 397 (5), and paragraph (b) of subsection (6) of section 766.106,  
 398 Florida Statutes, are amended to read:

399 766.106 Notice before filing action for medical  
 400 negligence; presuit screening period; offers for admission of  
 401 liability and for arbitration; informal discovery; review.—

402 (2) PRESUIT NOTICE.—

403 (a) After completion of presuit investigation pursuant to  
 404 s. 766.203(2) and prior to filing a complaint for medical  
 405 negligence, a claimant shall notify each prospective defendant  
 406 by certified mail, return receipt requested, of intent to  
 407 initiate litigation for medical negligence. Notice to each  
 408 prospective defendant must include, if available, a list of all  
 409 known health care providers seen by the claimant for the  
 410 injuries complained of subsequent to the alleged act of  
 411 negligence, all known health care providers during the 2-year  
 412 period prior to the alleged act of negligence who treated or  
 413 evaluated the claimant, ~~and~~ copies of all of the medical records  
 414 relied upon by the expert in signing the affidavit, and the  
 415 executed authorization form provided in s. 766.1065. ~~The~~  
 416 ~~requirement of providing the list of known health care providers~~

417 ~~may not serve as grounds for imposing sanctions for failure to~~  
 418 ~~provide presuit discovery.~~

419 (5) DISCOVERY AND ADMISSIBILITY.—A ~~No~~ statement,  
 420 discussion, written document, report, or other work product  
 421 generated by the presuit screening process is not discoverable  
 422 or admissible in any civil action for any purpose by the  
 423 opposing party. All participants, including, but not limited to,  
 424 physicians, investigators, witnesses, and employees or  
 425 associates of the defendant, are immune from civil liability  
 426 arising from participation in the presuit screening process.  
 427 This subsection does not prevent a physician licensed under  
 428 chapter 458 or chapter 459 who submits a verified written expert  
 429 medical opinion from being subject to denial of a license or  
 430 disciplinary action under s. 458.331(1)(oo) or s.  
 431 459.015(1)(qq).

432 (6) INFORMAL DISCOVERY.—

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

436 1. Unsworn statements.—Any party may require other parties  
 437 to appear for the taking of an unsworn statement. Such  
 438 statements may be used only for the purpose of presuit screening  
 439 and are not discoverable or admissible in any civil action for  
 440 any purpose by any party. A party desiring to take the unsworn  
 441 statement of any party must give reasonable notice in writing to  
 442 all parties. The notice must state the time and place for taking  
 443 the statement and the name and address of the party to be  
 444 examined. Unless otherwise impractical, the examination of any



445 party must be done at the same time by all other parties. Any  
446 party may be represented by counsel at the taking of an unsworn  
447 statement. An unsworn statement may be recorded electronically,  
448 stenographically, or on videotape. The taking of unsworn  
449 statements is subject to the provisions of the Florida Rules of  
450 Civil Procedure and may be terminated for abuses.

451 2. Documents or things.—Any party may request discovery of  
452 documents or things. The documents or things must be produced,  
453 at the expense of the requesting party, within 20 days after the  
454 date of receipt of the request. A party is required to produce  
455 discoverable documents or things within that party's possession  
456 or control. Medical records shall be produced as provided in s.  
457 766.204.

458 3. Physical and mental examinations.—A prospective  
459 defendant may require an injured claimant to appear for  
460 examination by an appropriate health care provider. The  
461 prospective defendant shall give reasonable notice in writing to  
462 all parties as to the time and place for examination. Unless  
463 otherwise impractical, a claimant is required to submit to only  
464 one examination on behalf of all potential defendants. The  
465 practicality of a single examination must be determined by the  
466 nature of the claimant's condition, as it relates to the  
467 liability of each prospective defendant. Such examination report  
468 is available to the parties and their attorneys upon payment of  
469 the reasonable cost of reproduction and may be used only for the  
470 purpose of presuit screening. Otherwise, such examination report  
471 is confidential and exempt from the provisions of s. 119.07(1)  
472 and s. 24(a), Art. I of the State Constitution.

HB 479

2011

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

477 5. Ex parte interviews of treating health care providers.—  
478 A prospective defendant or his or her legal representative shall  
479 have access to interview the claimant's treating health care  
480 providers without notice to or the presence of the claimant or  
481 the claimant's legal representative.

482 ~~6.5. Unsworn statements of treating health care providers~~  
483 ~~Medical information release.—The claimant must execute a medical~~  
484 ~~information release that allows~~ A prospective defendant or his  
485 or her legal representative may also ~~to~~ take unsworn statements  
486 of the claimant's treating health care providers ~~physicians~~. The  
487 statements must be limited to those areas that are potentially  
488 relevant to the claim of personal injury or wrongful death.  
489 Subject to the procedural requirements of subparagraph 1., a  
490 prospective defendant may take unsworn statements from a  
491 claimant's treating physicians. Reasonable notice and  
492 opportunity to be heard must be given to the claimant or the  
493 claimant's legal representative before taking unsworn  
494 statements. The claimant or claimant's legal representative has  
495 the right to attend the taking of such unsworn statements.

496 Section 10. Section 766.1065, Florida Statutes, is created  
497 to read:

498 766.1065 Authorization for release of protected health  
499 information.—

500       (1) Presuit notice of intent to initiate litigation for  
 501 medical negligence under s. 766.106(2) must be accompanied by an  
 502 authorization for release of protected health information in the  
 503 form specified by this section, authorizing the disclosure of  
 504 protected health information that is potentially relevant to the  
 505 claim of personal injury or wrongful death. The presuit notice  
 506 is void if this authorization does not accompany the presuit  
 507 notice and other materials required by s. 766.106(2).

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

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

517  
 518       AUTHORIZATION FOR RELEASE OF PROTECTED HEALTH INFORMATION  
 519

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

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

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

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

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

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

551  
552           (List the name and current address of such health care  
553 providers, if applicable.)  
554

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

562  
563 (List the name of each health care provider to whom this  
564 authorization does not apply and the inclusive dates of  
565 examination, evaluation, or treatment to be withheld from  
566 disclosure. If none, specify "none.")

567  
568 D. The persons or class of persons to whom the  
569 Patient authorizes such health information to be disclosed  
570 or by whom such health information is to be used:

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

573 2. Any liability insurer or self-insurer providing  
574 liability insurance coverage, self-insurance, or defense  
575 to any health care provider to whom presuit notice is  
576 given regarding the care and treatment of the Patient.

577 3. Any consulting or testifying expert employed by  
578 or on behalf of (name of health care provider to whom  
579 presuit notice was given) his/her/its insurer(s), self-  
580 insurer(s), or attorney(s) regarding to the matter of the  
581 presuit notice accompanying this authorization.

582           4. Any attorney (including secretarial, clerical, or  
583           paralegal staff) employed by or on behalf of (name of  
584           health care provider to whom presuit notice was given)  
585           regarding the matter of the presuit notice accompanying  
586           this authorization.

587           5. Any trier of the law or facts relating to any  
588           suit filed seeking damages arising out of the medical care  
589           or treatment of the Patient.

590           E. This authorization expires upon resolution of the  
591           claim or at the conclusion of any litigation instituted in  
592           connection with the matter of the presuit notice  
593           accompanying this authorization, whichever occurs first.

594           F. The Patient understands that, without exception,  
595           the Patient has the right to revoke this authorization in  
596           writing. The Patient further understands that the  
597           consequence of any such revocation is that the presuit  
598           notice under s. 766.106(2), Florida Statutes, is deemed  
599           retroactively void from the date of issuance, and any  
600           tolling effect that the presuit notice may have had on any  
601           applicable statute-of-limitations period is retroactively  
602           rendered void.

603           G. The Patient understands that signing this  
604           authorization is not a condition for continued treatment,  
605           payment, enrollment, or eligibility for health plan  
606           benefits.

607           H. The Patient understands that information used or  
608           disclosed under this authorization may be subject to

HB 479

2011

609 additional disclosure by the recipient and may not be  
 610 protected by federal HIPAA privacy regulations.

611  
 612 Signature of Patient/Representative: ....

613 Date: ....

614 Name of Patient/Representative: ....

615 Description of Representative's Authority: ....

616 Section 11. Subsection (2) of section 766.206, Florida  
 617 Statutes, is amended to read:

618 766.206 Presuit investigation of medical negligence claims  
 619 and defenses by court.—

620 (2) If the court finds that the notice of intent to  
 621 initiate litigation mailed by the claimant does is not comply in  
 622 compliance with the reasonable investigation requirements of ss.  
 623 766.201-766.212, including a review of the claim and a verified  
 624 written medical expert opinion by an expert witness as defined  
 625 in s. 766.202, or that the authorization accompanying the notice  
 626 of intent required under s. 766.1065 is not completed in good  
 627 faith by the claimant, the court shall dismiss the claim, and  
 628 the person who mailed such notice of intent, whether the  
 629 claimant or the claimant's attorney, shall be personally liable  
 630 for all attorney's fees and costs incurred during the  
 631 investigation and evaluation of the claim, including the  
 632 reasonable attorney's fees and costs of the defendant or the  
 633 defendant's insurer.

634 Section 12. Section 768.0981, Florida Statutes, is amended  
 635 to read:

636 768.0981 Limitation on actions against insurers, prepaid

HB 479

2011

637 limited health service organizations, health maintenance  
638 organizations, hospitals, or prepaid health clinics.—An entity  
639 licensed or certified under chapter 395, chapter 624, chapter  
640 636, or chapter 641 is ~~shall~~ not be liable for the medical  
641 negligence of a health care provider with whom the licensed or  
642 certified entity has entered into a contract, other than an  
643 employee of such licensed or certified entity, unless the  
644 licensed or certified entity expressly directs or exercises  
645 actual control over the specific conduct that caused injury.

646 Section 13. This act shall take effect July 1, 2011.