

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 Department of
 4 Health to issue expert witness certificates to certain
 5 physicians licensed outside of the state; providing
 6 application and certification requirements; establishing
 7 application fees; providing for the validity and use of
 8 certifications; exempting physicians issued certifications
 9 from certain licensure and fee requirements; amending ss.
 10 458.331 and 459.015, F.S.; providing additional acts that
 11 constitute grounds for denial of a license or disciplinary
 12 action to which penalties apply; providing construction
 13 with respect to the doctrine of incorporation by
 14 reference; amending ss. 458.351 and 459.026, F.S.;
 15 requiring the boards to adopt within a specified period
 16 certain patient forms specifying cataract surgery risks;
 17 specifying that an incident resulting from risks disclosed
 18 in the patient form is not an adverse incident; providing
 19 for the execution and admissibility of the patient forms
 20 in civil and administrative proceedings; creating a
 21 rebuttable presumption that a physician disclosed cataract
 22 surgery risks if the patient form is executed; amending s.
 23 627.4147, F.S.; deleting a requirement that medical
 24 malpractice insurance contracts contain a clause
 25 authorizing the insurer to make and conclude certain
 26 offers within policy limits over the insured's veto;
 27 amending s. 766.102, F.S.; defining terms; providing that
 28 certain insurance information is not admissible as

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

54 |
55 | Be It Enacted by the Legislature of the State of Florida:
56 |

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

59 458.3175 Expert witness certificate.-

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

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

72 2. An application fee of \$50.

73 (b) The department shall approve an application for an
 74 expert witness certificate within 7 business days after receipt
 75 of the completed application and payment of the application fee
 76 if the applicant holds an active and valid license to practice
 77 medicine in another state or a province of Canada and has not
 78 had a previous expert witness certificate revoked by the board.
 79 An application is approved by default if the department does not
 80 act upon the application within the required period. A physician
 81 must notify the department in writing of his or her intent to
 82 rely on a certificate approved by default.

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

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

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

89 (b) Provide expert testimony about the prevailing
 90 professional standard of care in connection with medical
 91 negligence litigation pending in this state against a physician
 92 licensed under this chapter or chapter 459.

93 (3) An expert witness certificate does not authorize a
 94 physician to engage in the practice of medicine as defined in s.
 95 458.305. A physician issued a certificate under this section who
 96 does not otherwise practice medicine in this state is not
 97 required to obtain a license under this chapter or pay any
 98 license fees, including, but not limited to, a neurological
 99 injury compensation assessment. An expert witness certificate
 100 shall be treated as a license in any disciplinary action, and
 101 the holder of an expert witness certificate shall be subject to
 102 discipline by the board.

103 Section 2. Subsection (11) is added to section 458.331,
 104 Florida Statutes, paragraphs (oo) through (qq) of subsection (1)
 105 of that section are redesignated as paragraphs (pp) through
 106 (rr), respectively, and a new paragraph (oo) is added to that
 107 subsection, to read:

108 458.331 Grounds for disciplinary action; action by the
 109 board and department.—

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

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

114 (11) The purpose of this section is to facilitate uniform
 115 discipline for those acts made punishable under this section
 116 and, to this end, a reference to this section constitutes a
 117 general reference under the doctrine of incorporation by
 118 reference.

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

122 458.351 Reports of adverse incidents in office practice
 123 settings.—

124 (6) (a) The board shall adopt rules establishing a standard
 125 informed consent form that sets forth the recognized specific
 126 risks related to cataract surgery. The board must propose such
 127 rules within 90 days after the effective date of this
 128 subsection.

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

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

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

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140 (e) In a civil action or administrative proceeding against
141 a physician based on his or her alleged failure to properly
142 disclose the risks of cataract surgery, a patient's informed
143 consent executed as provided in paragraph (c) on the form
144 adopted by the board is admissible as evidence and creates a
145 rebuttable presumption that the physician properly disclosed the
146 risks.

147 Section 4. Section 459.0066, Florida Statutes, is created
148 to read:

149 459.0066 Expert witness certificate.-

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

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

162 2. An application fee of \$50.

163 (b) The department shall approve an application for an
164 expert witness certificate within 7 business days after receipt
165 of the completed application and payment of the application fee
166 if the applicant holds an active and valid license to practice
167 osteopathic medicine in another state or a province of Canada

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168 and has not had a previous expert witness certificate revoked by
169 the board. An application is approved by default if the
170 department does not act upon the application within the required
171 period. A physician must notify the department in writing of his
172 or her intent to rely on a certificate approved by default.

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

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

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

179 (b) Provide expert testimony about the prevailing
180 professional standard of care in connection with medical
181 negligence litigation pending in this state against a physician
182 licensed under chapter 458 or this chapter.

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

193 Section 5. Subsection (11) is added to section 459.015,
194 Florida Statutes, paragraphs (qq) through (ss) of subsection (1)
195 of that section are redesignated as paragraphs (rr) through

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196 (tt), respectively, and a new paragraph (qq) is added to that
 197 subsection, to read:

198 459.015 Grounds for disciplinary action; action by the
 199 board and department.—

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

202 (qq) Providing misleading, deceptive, or fraudulent expert
 203 witness testimony related to the practice of osteopathic
 204 medicine.

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

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

213 459.026 Reports of adverse incidents in office practice
 214 settings.—

215 (6) (a) The board shall adopt rules establishing a standard
 216 informed consent form that sets forth the recognized specific
 217 risks related to cataract surgery. The board must propose such
 218 rules within 90 days after the effective date of this
 219 subsection.

220 (b) Before formally proposing the rule, the board must
 221 consider information from physicians licensed under chapter 458
 222 or this chapter regarding recognized specific risks related to
 223 cataract surgery and the standard informed consent forms adopted

224 for use in the medical field by other states.

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

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

231 (e) In a civil action or administrative proceeding against
 232 a physician based on his or her alleged failure to properly
 233 disclose the risks of cataract surgery, a patient's informed
 234 consent executed as provided in paragraph (c) on the form
 235 adopted by the board is admissible as evidence and creates a
 236 rebuttable presumption that the physician properly disclosed the
 237 risks.

238 Section 7. Paragraph (b) of subsection (1) of section
 239 627.4147, Florida Statutes, is amended to read:

240 627.4147 Medical malpractice insurance contracts.—

241 (1) In addition to any other requirements imposed by law,
 242 each self-insurance policy as authorized under s. 627.357 or s.
 243 624.462 or insurance policy providing coverage for claims
 244 arising out of the rendering of, or the failure to render,
 245 medical care or services, including those of the Florida Medical
 246 Malpractice Joint Underwriting Association, shall include:

247 (b)1. ~~Except as provided in subparagraph 2., a clause~~
 248 ~~authorizing the insurer or self-insurer to determine, to make,~~
 249 ~~and to conclude, without the permission of the insured, any~~
 250 ~~offer of admission of liability and for arbitration pursuant to~~
 251 ~~s. 766.106, settlement offer, or offer of judgment, if the offer~~

252 ~~is within the policy limits. It is against public policy for any~~
 253 ~~insurance or self-insurance policy to contain a clause giving~~
 254 ~~the insured the exclusive right to veto any offer for admission~~
 255 ~~of liability and for arbitration made pursuant to s. 766.106,~~
 256 ~~settlement offer, or offer of judgment, when such offer is~~
 257 ~~within the policy limits. However, any offer of admission of~~
 258 ~~liability, settlement offer, or offer of judgment made by an~~
 259 ~~insurer or self-insurer shall be made in good faith and in the~~
 260 ~~best interests of the insured.~~

261 ~~2.a. With respect to dentists licensed under chapter 466,~~
 262 A clause clearly stating whether or not the insured has the
 263 exclusive right to veto any offer of admission of liability and
 264 for arbitration pursuant to s. 766.106, settlement offer, or
 265 offer of judgment if the offer is within policy limits. An
 266 insurer or self-insurer shall not make or conclude, without the
 267 permission of the insured, any offer of admission of liability
 268 and for arbitration pursuant to s. 766.106, settlement offer, or
 269 offer of judgment, if such offer is outside the policy limits.
 270 However, any offer for admission of liability and for
 271 arbitration made under s. 766.106, settlement offer, or offer of
 272 judgment made by an insurer or self-insurer shall be made in
 273 good faith and in the best interest of the insured.

274 ~~2.b.~~ If the policy contains a clause stating the insured
 275 does not have the exclusive right to veto any offer or admission
 276 of liability and for arbitration made pursuant to s. 766.106,
 277 settlement offer or offer of judgment, the insurer or self-
 278 insurer shall provide to the insured or the insured's legal
 279 representative by certified mail, return receipt requested, a

280 copy of the final offer of admission of liability and for
 281 arbitration made pursuant to s. 766.106, settlement offer or
 282 offer of judgment and at the same time such offer is provided to
 283 the claimant. A copy of any final agreement reached between the
 284 insurer and claimant shall also be provided to the insurer or
 285 his or her legal representative by certified mail, return
 286 receipt requested not more than 10 days after affecting such
 287 agreement.

288 Section 8. Subsections (3), (4), and (5) of section
 289 766.102, Florida Statutes, are amended, subsection (12) of that
 290 section is renumbered as subsection (14), and new subsections
 291 (12) and (13) are added to that section, to read:

292 766.102 Medical negligence; standards of recovery; expert
 293 witness.—

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

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

297 2. "Reimbursement determination" means an insurer's
 298 determination of the amount that the insurer will reimburse a
 299 health care provider for health care services.

300 3. "Reimbursement policies" means an insurer's policies
 301 and procedures governing its decisions regarding health
 302 insurance coverage and method of payment and the data upon which
 303 such policies and procedures are based, including, but not
 304 limited to, data from national research groups and other patient
 305 safety data as defined in s. 766.1016.

306 (b) The existence of a medical injury ~~does shall~~ not
 307 create any inference or presumption of negligence against a

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308 health care provider, and the claimant must maintain the burden
309 of proving that an injury was proximately caused by a breach of
310 the prevailing professional standard of care by the health care
311 provider. Any records, policies, or testimony of an insurer's
312 reimbursement policies or reimbursement determination regarding
313 the care provided to the plaintiff are not admissible as
314 evidence in any medical negligence action. However, the
315 discovery of the presence of a foreign body, such as a sponge,
316 clamp, forceps, surgical needle, or other paraphernalia commonly
317 used in surgical, examination, or diagnostic procedures, shall
318 be prima facie evidence of negligence on the part of the health
319 care provider.

320 (4) (a) The Legislature is cognizant of the changing trends
321 and techniques for the delivery of health care in this state and
322 the discretion that is inherent in the diagnosis, care, and
323 treatment of patients by different health care providers. The
324 failure of a health care provider to order, perform, or
325 administer supplemental diagnostic tests is ~~shall~~ not be
326 actionable if the health care provider acted in good faith and
327 with due regard for the prevailing professional standard of
328 care.

329 (b) In an action for damages based on death or personal
330 injury which alleges that such death or injury resulted from the
331 failure of a health care provider to order, perform, or
332 administer supplemental diagnostic tests, the claimant has the
333 burden of proving by clear and convincing evidence that the
334 alleged actions of the health care provider represented a breach
335 of the prevailing professional standard of care.

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

341 (a) If the health care provider against whom or on whose
 342 behalf the testimony is offered is a specialist, the expert
 343 witness must:

344 1. Specialize in the same specialty as the health care
 345 provider against whom or on whose behalf the testimony is
 346 offered; or specialize in a similar specialty that includes the
 347 evaluation, diagnosis, or treatment of the medical condition
 348 that is the subject of the claim and have prior experience
 349 treating similar patients; and

350 2. Have devoted professional time during the 5 ~~3~~ years
 351 immediately preceding the date of the occurrence that is the
 352 basis for the action to:

353 a. The active clinical practice of, or consulting with
 354 respect to, the same or similar specialty that includes the
 355 evaluation, diagnosis, or treatment of the medical condition
 356 that is the subject of the claim and have prior experience
 357 treating similar patients;

358 b. Instruction of students in an accredited health
 359 professional school or accredited residency or clinical research
 360 program in the same or similar specialty; or

361 c. A clinical research program that is affiliated with an
 362 accredited health professional school or accredited residency or
 363 clinical research program in the same or similar specialty.

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

369 1. The active clinical practice or consultation as a
 370 general practitioner;

371 2. The instruction of students in an accredited health
 372 professional school or accredited residency program in the
 373 general practice of medicine; or

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

377 (c) If the health care provider against whom or on whose
 378 behalf the testimony is offered is a health care provider other
 379 than a specialist or a general practitioner, the expert witness
 380 must have devoted professional time during the 5 ~~3~~ years
 381 immediately preceding the date of the occurrence that is the
 382 basis for the action to:

383 1. The active clinical practice of, or consulting with
 384 respect to, the same or similar health profession as the health
 385 care provider against whom or on whose behalf the testimony is
 386 offered;

387 2. The instruction of students in an accredited health
 388 professional school or accredited residency program in the same
 389 or similar health profession in which the health care provider
 390 against whom or on whose behalf the testimony is offered; or

391 3. A clinical research program that is affiliated with an

392 accredited medical school or teaching hospital and that is in
 393 the same or similar health profession as the health care
 394 provider against whom or on whose behalf the testimony is
 395 offered.

396 (12) If a physician licensed under chapter 458 or chapter
 397 459 is the party against whom, or on whose behalf, expert
 398 testimony about the prevailing professional standard of care is
 399 offered, the expert witness must be licensed under chapter 458
 400 or chapter 459 or possess a valid expert witness certificate
 401 issued under s. 458.3175 or s. 459.0066.

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

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

408 766.106 Notice before filing action for medical
 409 negligence; presuit screening period; offers for admission of
 410 liability and for arbitration; informal discovery; review.—

411 (2) PRESUIT NOTICE.—

412 (a) After completion of presuit investigation pursuant to
 413 s. 766.203(2) and prior to filing a complaint for medical
 414 negligence, a claimant shall notify each prospective defendant
 415 by certified mail, return receipt requested, of intent to
 416 initiate litigation for medical negligence. Notice to each
 417 prospective defendant must include, if available, a list of all
 418 known health care providers seen by the claimant for the
 419 injuries complained of subsequent to the alleged act of

420 negligence, all known health care providers during the 2-year
421 period prior to the alleged act of negligence who treated or
422 evaluated the claimant, ~~and~~ copies of all of the medical records
423 relied upon by the expert in signing the affidavit, and the
424 executed authorization form provided in s. 766.1065. The
425 ~~requirement of providing the list of known health care providers~~
426 ~~may not serve as grounds for imposing sanctions for failure to~~
427 ~~provide presuit discovery.~~

428 (5) DISCOVERY AND ADMISSIBILITY.—A ~~No~~ statement,
429 discussion, written document, report, or other work product
430 generated by the presuit screening process is not discoverable
431 or admissible in any civil action for any purpose by the
432 opposing party. All participants, including, but not limited to,
433 physicians, investigators, witnesses, and employees or
434 associates of the defendant, are immune from civil liability
435 arising from participation in the presuit screening process.
436 This subsection does not prevent a physician licensed under
437 chapter 458 or chapter 459 who submits a verified written expert
438 medical opinion from being subject to denial of a license or
439 disciplinary action under s. 458.331(1)(oo) or s.
440 459.015(1)(qq).

441 (6) INFORMAL DISCOVERY.—

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

445 1. Unsworn statements.—Any party may require other parties
446 to appear for the taking of an unsworn statement. Such
447 statements may be used only for the purpose of presuit screening

448 and are not discoverable or admissible in any civil action for
449 any purpose by any party. A party desiring to take the unsworn
450 statement of any party must give reasonable notice in writing to
451 all parties. The notice must state the time and place for taking
452 the statement and the name and address of the party to be
453 examined. Unless otherwise impractical, the examination of any
454 party must be done at the same time by all other parties. Any
455 party may be represented by counsel at the taking of an unsworn
456 statement. An unsworn statement may be recorded electronically,
457 stenographically, or on videotape. The taking of unsworn
458 statements is subject to the provisions of the Florida Rules of
459 Civil Procedure and may be terminated for abuses.

460 2. Documents or things.—Any party may request discovery of
461 documents or things. The documents or things must be produced,
462 at the expense of the requesting party, within 20 days after the
463 date of receipt of the request. A party is required to produce
464 discoverable documents or things within that party's possession
465 or control. Medical records shall be produced as provided in s.
466 766.204.

467 3. Physical and mental examinations.—A prospective
468 defendant may require an injured claimant to appear for
469 examination by an appropriate health care provider. The
470 prospective defendant shall give reasonable notice in writing to
471 all parties as to the time and place for examination. Unless
472 otherwise impractical, a claimant is required to submit to only
473 one examination on behalf of all potential defendants. The
474 practicality of a single examination must be determined by the
475 nature of the claimant's condition, as it relates to the

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476 liability of each prospective defendant. Such examination report
477 is available to the parties and their attorneys upon payment of
478 the reasonable cost of reproduction and may be used only for the
479 purpose of presuit screening. Otherwise, such examination report
480 is confidential and exempt from the provisions of s. 119.07(1)
481 and s. 24(a), Art. I of the State Constitution.

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

486 5. Ex parte interviews of treating health care providers.—
487 A prospective defendant or his or her legal representative may
488 interview the claimant's treating health care providers without
489 notice to or the presence of the claimant or the claimant's
490 legal representative.

491 6.5. Unsworn statements of treating health care providers
492 ~~Medical information release. The claimant must execute a medical~~
493 ~~information release that allows~~ A prospective defendant or his
494 or her legal representative may also ~~to~~ take unsworn statements
495 of the claimant's treating health care providers ~~physicians~~. The
496 statements must be limited to those areas that are potentially
497 relevant to the claim of personal injury or wrongful death.
498 Subject to the procedural requirements of subparagraph 1., a
499 prospective defendant may take unsworn statements from a
500 claimant's treating physicians. Reasonable notice and
501 opportunity to be heard must be given to the claimant or the
502 claimant's legal representative before taking unsworn
503 statements. The claimant or claimant's legal representative has

504 the right to attend the taking of such unsworn statements.

505 Section 10. Section 766.1065, Florida Statutes, is created
506 to read:

507 766.1065 Authorization for release of protected health
508 information.-

509 (1) Presuit notice of intent to initiate litigation for
510 medical negligence under s. 766.106(2) must be accompanied by an
511 authorization for release of protected health information in the
512 form specified by this section, authorizing the disclosure of
513 protected health information that is potentially relevant to the
514 claim of personal injury or wrongful death. The presuit notice
515 is void if this authorization does not accompany the presuit
516 notice and other materials required by s. 766.106(2).

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

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

526
527 AUTHORIZATION FOR RELEASE OF PROTECTED HEALTH INFORMATION

528
529 A. I, (...Name of patient or authorized
530 representative...) [hereinafter "Patient"], authorize that
531 (...Name of health care provider to whom the presuit

532 notice is directed...) and his/her/its insurer(s), self-
533 insurer(s), and attorney(s) may obtain and disclose
534 (within the parameters set out below) the protected health
535 information described below for the following specific
536 purposes:

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

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

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

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

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

560
561 (List the name and current address of such health care
562 providers, if applicable.)

563
564 C. This authorization does not apply to the
565 following list of health care providers possessing health
566 care information about the Patient because the Patient
567 certifies that such health care information is not
568 potentially relevant to the claim of personal injury or
569 wrongful death which is the basis of the accompanying
570 presuit notice.

571
572 (List the name of each health care provider to whom this
573 authorization does not apply and the inclusive dates of
574 examination, evaluation, or treatment to be withheld from
575 disclosure. If none, specify "none.")

576
577 D. The persons or class of persons to whom the
578 Patient authorizes such health information to be disclosed
579 or by whom such health information is to be used:

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

582 2. Any liability insurer or self-insurer providing
583 liability insurance coverage, self-insurance, or defense
584 to any health care provider to whom presuit notice is
585 given regarding the care and treatment of the Patient.

586 3. Any consulting or testifying expert employed by
587 or on behalf of (name of health care provider to whom

588 presuit notice was given) his/her/its insurer(s), self-
589 insurer(s), or attorney(s) regarding to the matter of the
590 presuit notice accompanying this authorization.

591 4. Any attorney (including secretarial, clerical, or
592 paralegal staff) employed by or on behalf of (name of
593 health care provider to whom presuit notice was given)
594 regarding the matter of the presuit notice accompanying
595 this authorization.

596 5. Any trier of the law or facts relating to any
597 suit filed seeking damages arising out of the medical care
598 or treatment of the Patient.

599 E. This authorization expires upon resolution of the
600 claim or at the conclusion of any litigation instituted in
601 connection with the matter of the presuit notice
602 accompanying this authorization, whichever occurs first.

603 F. The Patient understands that, without exception,
604 the Patient has the right to revoke this authorization in
605 writing. The Patient further understands that the
606 consequence of any such revocation is that the presuit
607 notice under s. 766.106(2), Florida Statutes, is deemed
608 retroactively void from the date of issuance, and any
609 tolling effect that the presuit notice may have had on any
610 applicable statute-of-limitations period is retroactively
611 rendered void.

612 G. The Patient understands that signing this
613 authorization is not a condition for continued treatment,
614 payment, enrollment, or eligibility for health plan
615 benefits.

616 H. The Patient understands that information used or
 617 disclosed under this authorization may be subject to
 618 additional disclosure by the recipient and may not be
 619 protected by federal HIPAA privacy regulations.

620
 621 Signature of Patient/Representative:

622 Date:

623 Name of Patient/Representative:

624 Description of Representative's Authority:

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

627 766.206 Presuit investigation of medical negligence claims
 628 and defenses by court.—

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

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643 Section 12. Section 768.0981, Florida Statutes, is amended
644 to read:

645 768.0981 Limitation on actions against insurers, prepaid
646 limited health service organizations, health maintenance
647 organizations, hospitals, or prepaid health clinics.—An entity
648 licensed or certified under chapter 395, chapter 624, chapter
649 636, or chapter 641 is ~~shall~~ not ~~be~~ liable for the medical
650 negligence of a health care provider with whom the licensed or
651 certified entity has entered into a contract, other than an
652 employee of such licensed or certified entity, unless the
653 licensed or certified entity expressly directs or exercises
654 actual control over the specific conduct that caused injury.

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