

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

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

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

58

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

61 458.3175 Expert witness certificate.-

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

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

74 2. An application fee of \$50.

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

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

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

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

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

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

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

110 458.331 Grounds for disciplinary action; action by the
111 board and department.—

112 (1) The following acts constitute grounds for denial of a

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113 license or disciplinary action, as specified in s. 456.072(2):

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

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

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

124 458.351 Reports of adverse incidents in office practice
125 settings.—

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

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

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

139 (d) An incident resulting from recognized specific risks
140 described in the signed consent form is not considered an

141 adverse incident for purposes of s. 395.0197 and this section.

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

149 Section 4. Section 459.0066, Florida Statutes, is created
 150 to read:

151 459.0066 Expert witness certificate.-

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

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

164 2. An application fee of \$50.

165 (b) The department shall approve an application for an
 166 expert witness certificate within 7 business days after receipt
 167 of the completed application and payment of the application fee
 168 if the applicant holds an active and valid license to practice

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

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

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

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

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

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

195 Section 5. Subsection (11) is added to section 459.015,
196 Florida Statutes, paragraphs (qq) through (ss) of subsection (1)

197 of that section are redesignated as paragraphs (rr) through
 198 (tt), respectively, and a new paragraph (qq) is added to that
 199 subsection, to read:

200 459.015 Grounds for disciplinary action; action by the
 201 board and department.—

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

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

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

212 Section 6. Section 466.005, Florida Statutes, is created
 213 to read:

214 466.005 Expert witness certificate.—

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

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

225 dentist by the jurisdiction's licensing entity; and
 226 2. An application fee of \$50.
 227 (b) The department shall approve an application for an
 228 expert witness certificate within 7 business days after receipt
 229 of the completed application and payment of the application fee
 230 if the applicant holds an active and valid license to practice
 231 dentistry in another state or a province of Canada and has not
 232 had a previous expert witness certificate revoked by the board.
 233 An application is approved by default if the department does not
 234 act upon the application within the required period. A dentist
 235 must notify the department in writing of his or her intent to
 236 rely on a certificate approved by default.
 237 (c) An expert witness certificate is valid for 2 years
 238 after the date of issuance.
 239 (2) An expert witness certificate authorizes the dentist
 240 to whom the certificate is issued to do only the following:
 241 (a) Provide a verified written medical expert opinion as
 242 provided in s. 766.203.
 243 (b) Provide expert testimony about the prevailing
 244 professional standard of care in connection with medical
 245 negligence litigation pending in this state against a dentist
 246 licensed under this chapter.
 247 (3) An expert witness certificate does not authorize a
 248 dentist to engage in the practice of dentistry as defined in s.
 249 466.003. A dentist issued a certificate under this section who
 250 does not otherwise practice dentistry in this state is not
 251 required to obtain a license under this chapter or pay any
 252 license fees. An expert witness certificate shall be treated as

253 a license in any disciplinary action, and the holder of an
 254 expert witness certificate shall be subject to discipline by the
 255 board.

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

260 466.028 Grounds for disciplinary action; action by the
 261 board.—

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

264 (11) Providing misleading, deceptive, or fraudulent expert
 265 witness testimony related to the practice of dentistry.

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

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

274 459.026 Reports of adverse incidents in office practice
 275 settings.—

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

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

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

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

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

299 Section 9. Paragraph (b) of subsection (1) of section
 300 627.4147, Florida Statutes, is amended to read:

301 627.4147 Medical malpractice insurance contracts.—

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

308 (b)1. ~~Except as provided in subparagraph 2., a clause~~

309 ~~authorizing the insurer or self-insurer to determine, to make,~~
 310 ~~and to conclude, without the permission of the insured, any~~
 311 ~~offer of admission of liability and for arbitration pursuant to~~
 312 ~~s. 766.106, settlement offer, or offer of judgment, if the offer~~
 313 ~~is within the policy limits. It is against public policy for any~~
 314 ~~insurance or self-insurance policy to contain a clause giving~~
 315 ~~the insured the exclusive right to veto any offer for admission~~
 316 ~~of liability and for arbitration made pursuant to s. 766.106,~~
 317 ~~settlement offer, or offer of judgment, when such offer is~~
 318 ~~within the policy limits. However, any offer of admission of~~
 319 ~~liability, settlement offer, or offer of judgment made by an~~
 320 ~~insurer or self-insurer shall be made in good faith and in the~~
 321 ~~best interests of the insured.~~

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

335 ~~2.b.~~ If the policy contains a clause stating the insured
 336 does not have the exclusive right to veto any offer or admission

337 of liability and for arbitration made pursuant to s. 766.106,
 338 settlement offer or offer of judgment, the insurer or self-
 339 insurer shall provide to the insured or the insured's legal
 340 representative by certified mail, return receipt requested, a
 341 copy of the final offer of admission of liability and for
 342 arbitration made pursuant to s. 766.106, settlement offer or
 343 offer of judgment and at the same time such offer is provided to
 344 the claimant. A copy of any final agreement reached between the
 345 insurer and claimant shall also be provided to the insurer or
 346 his or her legal representative by certified mail, return
 347 receipt requested not more than 10 days after affecting such
 348 agreement.

349 Section 10. Subsections (3), (4), and (5) of section
 350 766.102, Florida Statutes, are amended, subsection (12) of that
 351 section is renumbered as subsection (14), and new subsections
 352 (12) and (13) are added to that section, to read:

353 766.102 Medical negligence; standards of recovery; expert
 354 witness.—

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

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

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

361 3. "Reimbursement policies" means an insurer's policies
 362 and procedures governing its decisions regarding health
 363 insurance coverage and method of payment and the data upon which
 364 such policies and procedures are based, including, but not

365 limited to, data from national research groups and other patient
366 safety data as defined in s. 766.1016.

367 (b) The existence of a medical injury does ~~shall~~ not
368 create any inference or presumption of negligence against a
369 health care provider, and the claimant must maintain the burden
370 of proving that an injury was proximately caused by a breach of
371 the prevailing professional standard of care by the health care
372 provider. Any records, policies, or testimony of an insurer's
373 reimbursement policies or reimbursement determination regarding
374 the care provided to the plaintiff are not admissible as
375 evidence in any medical negligence action. However, the
376 discovery of the presence of a foreign body, such as a sponge,
377 clamp, forceps, surgical needle, or other paraphernalia commonly
378 used in surgical, examination, or diagnostic procedures, shall
379 be prima facie evidence of negligence on the part of the health
380 care provider.

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

390 (b) In an action for damages based on death or personal
391 injury which alleges that such death or injury resulted from the
392 failure of a health care provider to order, perform, or

393 administer supplemental diagnostic tests, the claimant has the
394 burden of proving by clear and convincing evidence that the
395 alleged actions of the health care provider represented a breach
396 of the prevailing professional standard of care.

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

402 (a) If the health care provider against whom or on whose
403 behalf the testimony is offered is a specialist, the expert
404 witness must:

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

411 2. Have devoted professional time during the 3 years
412 immediately preceding the date of the occurrence that is the
413 basis for the action to:

414 a. The active clinical practice of, or consulting with
415 respect to, the same or similar specialty that includes the
416 evaluation, diagnosis, or treatment of the medical condition
417 that is the subject of the claim and have prior experience
418 treating similar patients;

419 b. Instruction of students in an accredited health
420 professional school or accredited residency or clinical research

421 program in the same or similar specialty; or

422 c. A clinical research program that is affiliated with an
 423 accredited health professional school or accredited residency or
 424 clinical research program in the same or similar specialty.

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

430 1. The active clinical practice or consultation as a
 431 general practitioner;

432 2. The instruction of students in an accredited health
 433 professional school or accredited residency program in the
 434 general practice of medicine; or

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

438 (c) If the health care provider against whom or on whose
 439 behalf the testimony is offered is a health care provider other
 440 than a specialist or a general practitioner, the expert witness
 441 must have devoted professional time during the 3 years
 442 immediately preceding the date of the occurrence that is the
 443 basis for the action to:

444 1. The active clinical practice of, or consulting with
 445 respect to, the same or similar health profession as the health
 446 care provider against whom or on whose behalf the testimony is
 447 offered;

448 2. The instruction of students in an accredited health

449 professional school or accredited residency program in the same
 450 or similar health profession in which the health care provider
 451 against whom or on whose behalf the testimony is offered; or

452 3. A clinical research program that is affiliated with an
 453 accredited medical school or teaching hospital and that is in
 454 the same or similar health profession as the health care
 455 provider against whom or on whose behalf the testimony is
 456 offered.

457 (12) If a physician licensed under chapter 458 or chapter
 458 459 or a dentist licensed under chapter 466 is the party against
 459 whom, or on whose behalf, expert testimony about the prevailing
 460 professional standard of care is offered, the expert witness
 461 must be licensed under chapter 458, chapter 459, or chapter 466
 462 or possess a valid expert witness certificate issued under s.
 463 458.3175, s. 459.0066, or s. 466.005.

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

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

470 766.106 Notice before filing action for medical
 471 negligence; presuit screening period; offers for admission of
 472 liability and for arbitration; informal discovery; review.—

473 (2) PRESUIT NOTICE.—

474 (a) After completion of presuit investigation pursuant to
 475 s. 766.203(2) and prior to filing a complaint for medical
 476 negligence, a claimant shall notify each prospective defendant

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477 by certified mail, return receipt requested, of intent to
478 initiate litigation for medical negligence. Notice to each
479 prospective defendant must include, if available, a list of all
480 known health care providers seen by the claimant for the
481 injuries complained of subsequent to the alleged act of
482 negligence, all known health care providers during the 2-year
483 period prior to the alleged act of negligence who treated or
484 evaluated the claimant, ~~and~~ copies of all of the medical records
485 relied upon by the expert in signing the affidavit, and the
486 executed authorization form provided in s. 766.1065. ~~The~~
487 ~~requirement of providing the list of known health care providers~~
488 ~~may not serve as grounds for imposing sanctions for failure to~~
489 ~~provide presuit discovery.~~

490 (5) DISCOVERY AND ADMISSIBILITY.—A ~~No~~ statement,
491 discussion, written document, report, or other work product
492 generated by the presuit screening process is not discoverable
493 or admissible in any civil action for any purpose by the
494 opposing party. All participants, including, but not limited to,
495 physicians, investigators, witnesses, and employees or
496 associates of the defendant, are immune from civil liability
497 arising from participation in the presuit screening process.
498 This subsection does not prevent a physician licensed under
499 chapter 458 or chapter 459 or a dentist licensed under chapter
500 466 who submits a verified written expert medical opinion from
501 being subject to denial of a license or disciplinary action
502 under s. 458.331(1)(oo), s. 459.015(1)(qq), or s.
503 466.028(1)(ll).

504 (6) INFORMAL DISCOVERY.—

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

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

523 2. Documents or things.—Any party may request discovery of
524 documents or things. The documents or things must be produced,
525 at the expense of the requesting party, within 20 days after the
526 date of receipt of the request. A party is required to produce
527 discoverable documents or things within that party's possession
528 or control. Medical records shall be produced as provided in s.
529 766.204.

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

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533 prospective defendant shall give reasonable notice in writing to
534 all parties as to the time and place for examination. Unless
535 otherwise impractical, a claimant is required to submit to only
536 one examination on behalf of all potential defendants. The
537 practicality of a single examination must be determined by the
538 nature of the claimant's condition, as it relates to the
539 liability of each prospective defendant. Such examination report
540 is available to the parties and their attorneys upon payment of
541 the reasonable cost of reproduction and may be used only for the
542 purpose of presuit screening. Otherwise, such examination report
543 is confidential and exempt from the provisions of s. 119.07(1)
544 and s. 24(a), Art. I of the State Constitution.

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

549 5. Ex parte interviews of treating health care providers.—
550 A prospective defendant or his or her legal representative may
551 interview the claimant's treating health care providers without
552 notice to or the presence of the claimant or the claimant's
553 legal representative.

554 ~~6.5. Unsworn statements of treating health care providers~~
555 ~~Medical information release.—The claimant must execute a medical~~
556 ~~information release that allows~~ A prospective defendant or his
557 or her legal representative may also ~~to~~ take unsworn statements
558 of the claimant's treating health care providers ~~physicians~~. The
559 statements must be limited to those areas that are potentially
560 relevant to the claim of personal injury or wrongful death.

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561 Subject to the procedural requirements of subparagraph 1., a
562 prospective defendant may take unsworn statements from a
563 claimant's treating physicians. Reasonable notice and
564 opportunity to be heard must be given to the claimant or the
565 claimant's legal representative before taking unsworn
566 statements. The claimant or claimant's legal representative has
567 the right to attend the taking of such unsworn statements.

568 Section 12. Section 766.1065, Florida Statutes, is created
569 to read:

570 766.1065 Authorization for release of protected health
571 information.-

572 (1) Presuit notice of intent to initiate litigation for
573 medical negligence under s. 766.106(2) must be accompanied by an
574 authorization for release of protected health information in the
575 form specified by this section, authorizing the disclosure of
576 protected health information that is potentially relevant to the
577 claim of personal injury or wrongful death. The presuit notice
578 is void if this authorization does not accompany the presuit
579 notice and other materials required by s. 766.106(2).

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

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

589
590 AUTHORIZATION FOR RELEASE OF PROTECTED HEALTH INFORMATION
591

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

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

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

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

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

616 evaluate, examine, or treat the Patient for the injuries
617 complained of.

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

623
624 (List the name and current address of such health care
625 providers, if applicable.)

626
627 C. This authorization does not apply to the
628 following list of health care providers possessing health
629 care information about the Patient because the Patient
630 certifies that such health care information is not
631 potentially relevant to the claim of personal injury or
632 wrongful death that is the basis of the accompanying
633 presuit notice.

634
635 (List the name of each health care provider to whom this
636 authorization does not apply and the inclusive dates of
637 examination, evaluation, or treatment to be withheld from
638 disclosure. If none, specify "none.")

639
640 D. The persons or class of persons to whom the
641 Patient authorizes such health information to be disclosed
642 or by whom such health information is to be used:

- 643 1. Any health care provider providing care or
644 treatment for the Patient.
- 645 2. Any liability insurer or self-insurer providing
646 liability insurance coverage, self-insurance, or defense
647 to any health care provider to whom presuit notice is
648 given regarding the care and treatment of the Patient.
- 649 3. Any consulting or testifying expert employed by
650 or on behalf of (name of health care provider to whom
651 presuit notice was given), his/her/its insurer(s), self-
652 insurer(s), or attorney(s) regarding to the matter of the
653 presuit notice accompanying this authorization.
- 654 4. Any attorney (including secretarial, clerical, or
655 paralegal staff) employed by or on behalf of (name of
656 health care provider to whom presuit notice was given)
657 regarding the matter of the presuit notice accompanying
658 this authorization.
- 659 5. Any trier of the law or facts relating to any
660 suit filed seeking damages arising out of the medical care
661 or treatment of the Patient.
- 662 E. This authorization expires upon resolution of the
663 claim or at the conclusion of any litigation instituted in
664 connection with the matter of the presuit notice
665 accompanying this authorization, whichever occurs first.
- 666 F. The Patient understands that, without exception,
667 the Patient has the right to revoke this authorization in
668 writing. The Patient further understands that the
669 consequence of any such revocation is that the presuit
670 notice under s. 766.106(2), Florida Statutes, is deemed

671 retroactively void from the date of issuance, and any
 672 tolling effect that the presuit notice may have had on any
 673 applicable statute-of-limitations period is retroactively
 674 rendered void.

675 G. The Patient understands that signing this
 676 authorization is not a condition for continued treatment,
 677 payment, enrollment, or eligibility for health plan
 678 benefits.

679 H. The Patient understands that information used or
 680 disclosed under this authorization may be subject to
 681 additional disclosure by the recipient and may not be
 682 protected by federal HIPAA privacy regulations.

684 Signature of Patient/Representative:

685 Date:

686 Name of Patient/Representative:

687 Description of Representative's Authority:

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

690 766.206 Presuit investigation of medical negligence claims
 691 and defenses by court.—

692 (2) If the court finds that the notice of intent to
 693 initiate litigation mailed by the claimant does is not comply in
 694 compliance with the reasonable investigation requirements of ss.
 695 766.201-766.212, including a review of the claim and a verified
 696 written medical expert opinion by an expert witness as defined
 697 in s. 766.202, or that the authorization accompanying the notice
 698 of intent required under s. 766.1065 is not completed in good

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699 faith by the claimant, the court shall dismiss the claim, and
700 the person who mailed such notice of intent, whether the
701 claimant or the claimant's attorney, shall be personally liable
702 for all attorney's fees and costs incurred during the
703 investigation and evaluation of the claim, including the
704 reasonable attorney's fees and costs of the defendant or the
705 defendant's insurer.

706 Section 14. Section 768.0981, Florida Statutes, is amended
707 to read:

708 768.0981 Limitation on actions against insurers, prepaid
709 limited health service organizations, health maintenance
710 organizations, hospitals, or prepaid health clinics.—An entity
711 licensed or certified under chapter 395, chapter 624, chapter
712 636, or chapter 641 is ~~shall~~ not be liable for the medical
713 negligence of a health care provider with whom the licensed or
714 certified entity has entered into a contract, other than an
715 employee of such licensed or certified entity, unless the
716 licensed or certified entity expressly directs or exercises
717 actual control over the specific conduct that caused injury.

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