

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 a claimant for medical malpractice to execute an
41 | authorization form; revising provisions relating to
42 | discovery and admissibility; allowing a prospective
43 | medical malpractice defendant to interview a claimant's
44 | treating health care providers without the presence of the
45 | claimant or the claimant's legal representative; requiring
46 | a prospective defendant to provide 10 days' notice before
47 | such interviews; authorizing a prospective defendant to
48 | take unsworn statements of a claimant's health care
49 | providers; creating s. 766.1065, F.S.; requiring that
50 | presuit notice for medical negligence claims be
51 | accompanied by an authorization for release of protected
52 | health information; providing requirements for the form of
53 | such authorization; amending s. 766.206, F.S.; requiring
54 | dismissal of a medical malpractice claim if such
55 | authorization is not completed in good faith; amending s.
56 | 768.0981, F.S.; limiting the liability of hospitals

57 related to certain medical negligence claims; amending s.
 58 768.135, F.S.; providing immunity for volunteer team
 59 physicians under certain circumstances; providing an
 60 effective date.

61
 62 Be It Enacted by the Legislature of the State of Florida:

63
 64 Section 1. Section 458.3175, Florida Statutes, is created
 65 to read:

66 458.3175 Expert witness certificate.-

67 (1) (a) The department shall issue a certificate
 68 authorizing a physician who holds an active and valid license to
 69 practice medicine in another state or a province of Canada to
 70 provide expert testimony in this state, if the physician submits
 71 to the department:

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

79 2. An application fee of \$50.

80 (b) The department shall approve an application for an
 81 expert witness certificate within 7 business days after receipt
 82 of the completed application and payment of the application fee
 83 if the applicant holds an active and valid license to practice
 84 medicine in another state or a province of Canada and has not

85 had a previous expert witness certificate revoked by the board.
86 An application is approved by default if the department does not
87 act upon the application within the required period. A physician
88 must notify the department in writing of his or her intent to
89 rely on a certificate approved by default.

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

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

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

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

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

110 Section 2. Subsection (11) is added to section 458.331,
111 Florida Statutes, paragraphs (oo) through (qq) of subsection (1)
112 of that section are redesignated as paragraphs (pp) through

113 (rr), respectively, and a new paragraph (oo) is added to that
 114 subsection, to read:

115 458.331 Grounds for disciplinary action; action by the
 116 board and department.—

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

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

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

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

129 458.351 Reports of adverse incidents in office practice
 130 settings.—

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

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

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

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

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

154 Section 4. Section 459.0066, Florida Statutes, is created
 155 to read:

156 459.0066 Expert witness certificate.-

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

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

169 2. An application fee of \$50.

170 (b) The department shall approve an application for an
171 expert witness certificate within 7 business days after receipt
172 of the completed application and payment of the application fee
173 if the applicant holds an active and valid license to practice
174 osteopathic medicine in another state or a province of Canada
175 and has not had a previous expert witness certificate revoked by
176 the board. An application is approved by default if the
177 department does not act upon the application within the required
178 period. A physician must notify the department in writing of his
179 or her intent to rely on a certificate approved by default.

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

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

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

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

190 (3) An expert witness certificate does not authorize a
191 physician to engage in the practice of osteopathic medicine as
192 defined in s. 459.003. A physician issued a certificate under
193 this section who does not otherwise practice osteopathic
194 medicine in this state is not required to obtain a license under
195 this chapter or pay any license fees, including, but not limited
196 to, a neurological injury compensation assessment. An expert

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197 witness certificate shall be treated as a license in any
 198 disciplinary action, and the holder of an expert witness
 199 certificate shall be subject to discipline by the board.

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

205 459.015 Grounds for disciplinary action; action by the
 206 board and department.—

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

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

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

216 Section 6. Section 466.005, Florida Statutes, is created
 217 to read:

218 466.005 Expert witness certificate.—

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

224 1. A complete registration application containing the

225 dentist's legal name, mailing address, telephone number,
226 business locations, the names of the jurisdictions where the
227 dentist holds an active and valid license to practice dentistry,
228 and the license number or other identifying number issued to the
229 dentist by the jurisdiction's licensing entity; and

230 2. An application fee of \$50.

231 (b) The department shall approve an application for an
232 expert witness certificate within 7 business days after receipt
233 of the completed application and payment of the application fee
234 if the applicant holds an active and valid license to practice
235 dentistry in another state or a province of Canada and has not
236 had a previous expert witness certificate revoked by the board.
237 An application is approved by default if the department does not
238 act upon the application within the required period. A dentist
239 must notify the department in writing of his or her intent to
240 rely on a certificate approved by default.

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

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

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

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

251 (3) An expert witness certificate does not authorize a
252 dentist to engage in the practice of dentistry as defined in s.

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

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

264 466.028 Grounds for disciplinary action; action by the
 265 board.—

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

268 (ll) Providing deceptive or fraudulent expert witness
 269 testimony related to the practice of dentistry.

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

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

278 459.026 Reports of adverse incidents in office practice
 279 settings.—

280 (6) (a) The board shall adopt rules establishing a standard

281 informed consent form that sets forth the recognized specific
282 risks related to cataract surgery. The board must propose such
283 rules within 90 days after the effective date of this
284 subsection.

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

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

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

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

303 Section 9. Paragraph (b) of subsection (1) of section
304 627.4147, Florida Statutes, is amended to read:

305 627.4147 Medical malpractice insurance contracts.—

306 (1) In addition to any other requirements imposed by law,
307 each self-insurance policy as authorized under s. 627.357 or s.
308 624.462 or insurance policy providing coverage for claims

309 arising out of the rendering of, or the failure to render,
 310 medical care or services, including those of the Florida Medical
 311 Malpractice Joint Underwriting Association, shall include:

312 (b)1. ~~Except as provided in subparagraph 2., a clause~~
 313 ~~authorizing the insurer or self-insurer to determine, to make,~~
 314 ~~and to conclude, without the permission of the insured, any~~
 315 ~~offer of admission of liability and for arbitration pursuant to~~
 316 ~~s. 766.106, settlement offer, or offer of judgment, if the offer~~
 317 ~~is within the policy limits. It is against public policy for any~~
 318 ~~insurance or self-insurance policy to contain a clause giving~~
 319 ~~the insured the exclusive right to veto any offer for admission~~
 320 ~~of liability and for arbitration made pursuant to s. 766.106,~~
 321 ~~settlement offer, or offer of judgment, when such offer is~~
 322 ~~within the policy limits. However, any offer of admission of~~
 323 ~~liability, settlement offer, or offer of judgment made by an~~
 324 ~~insurer or self-insurer shall be made in good faith and in the~~
 325 ~~best interests of the insured.~~

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

337 judgment made by an insurer or self-insurer shall be made in
 338 good faith and in the best interest of the insured.

339 ~~2.b.~~ If the policy contains a clause stating the insured
 340 does not have the exclusive right to veto any offer or admission
 341 of liability and for arbitration made pursuant to s. 766.106,
 342 settlement offer or offer of judgment, the insurer or self-
 343 insurer shall provide to the insured or the insured's legal
 344 representative by certified mail, return receipt requested, a
 345 copy of the final offer of admission of liability and for
 346 arbitration made pursuant to s. 766.106, settlement offer or
 347 offer of judgment and at the same time such offer is provided to
 348 the claimant. A copy of any final agreement reached between the
 349 insurer and claimant shall also be provided to the insurer or
 350 his or her legal representative by certified mail, return
 351 receipt requested not more than 10 days after affecting such
 352 agreement.

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

357 766.102 Medical negligence; standards of recovery; expert
 358 witness.—

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

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

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

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

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

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

393 care.

394 (b) In an action for damages based on death or personal
 395 injury which alleges that such death or injury resulted from the
 396 failure of a health care provider to order, perform, or
 397 administer supplemental diagnostic tests, the claimant has the
 398 burden of proving by clear and convincing evidence that the
 399 alleged actions of the health care provider represented a breach
 400 of the prevailing professional standard of care.

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

406 (a) If the health care provider against whom or on whose
 407 behalf the testimony is offered is a specialist, the expert
 408 witness must:

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

415 2. Have devoted professional time during the 3 years
 416 immediately preceding the date of the occurrence that is the
 417 basis for the action to:

418 a. The active clinical practice of, or consulting with
 419 respect to, the same or similar specialty that includes the
 420 evaluation, diagnosis, or treatment of the medical condition

421 that is the subject of the claim and have prior experience
 422 treating similar patients;

423 b. Instruction of students in an accredited health
 424 professional school or accredited residency or clinical research
 425 program in the same or similar specialty; or

426 c. A clinical research program that is affiliated with an
 427 accredited health professional school or accredited residency or
 428 clinical research program in the same or similar specialty.

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

434 1. The active clinical practice or consultation as a
 435 general practitioner;

436 2. The instruction of students in an accredited health
 437 professional school or accredited residency program in the
 438 general practice of medicine; or

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

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

448 1. The active clinical practice of, or consulting with

449 | respect to, the same or similar health profession as the health
450 | care provider against whom or on whose behalf the testimony is
451 | offered;

452 | 2. The instruction of students in an accredited health
453 | professional school or accredited residency program in the same
454 | or similar health profession in which the health care provider
455 | against whom or on whose behalf the testimony is offered; or

456 | 3. A clinical research program that is affiliated with an
457 | accredited medical school or teaching hospital and that is in
458 | the same or similar health profession as the health care
459 | provider against whom or on whose behalf the testimony is
460 | offered.

461 | (12) If a physician licensed under chapter 458 or chapter
462 | 459 or a dentist licensed under chapter 466 is the party against
463 | whom, or on whose behalf, expert testimony about the prevailing
464 | professional standard of care is offered, the expert witness
465 | must be licensed under chapter 458, chapter 459, or chapter 466
466 | or possess a valid expert witness certificate issued under s.
467 | 458.3175, s. 459.0066, or s. 466.005.

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

471 | Section 11. Paragraph (a) of subsection (2), subsection
472 | (5), and paragraph (b) of subsection (6) of section 766.106,
473 | Florida Statutes, are amended to read:

474 | 766.106 Notice before filing action for medical
475 | negligence; presuit screening period; offers for admission of
476 | liability and for arbitration; informal discovery; review.—

477 (2) PRESUIT NOTICE.—

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

494 (5) DISCOVERY AND ADMISSIBILITY.—A ~~No~~ statement,
 495 discussion, written document, report, or other work product
 496 generated by the presuit screening process is not discoverable
 497 or admissible in any civil action for any purpose by the
 498 opposing party. All participants, including, but not limited to,
 499 physicians, investigators, witnesses, and employees or
 500 associates of the defendant, are immune from civil liability
 501 arising from participation in the presuit screening process.
 502 This subsection does not prevent a physician licensed under
 503 chapter 458 or chapter 459 or a dentist licensed under chapter
 504 466 who submits a verified written expert medical opinion from

505 being subject to denial of a license or disciplinary action
506 under s. 458.331(1)(oo), s. 459.015(1)(qq), or s.
507 466.028(1)(ll).

508 (6) INFORMAL DISCOVERY.—

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

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

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

533 766.204.

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

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

553 5. Ex parte interviews of treating health care providers.—
554 A prospective defendant or his or her legal representative may
555 interview the claimant's treating health care providers without
556 the presence of the claimant or the claimant's legal
557 representative. A prospective defendant or his or her legal
558 representative that intends to interview a claimant's health
559 care providers must provide the claimant with notice of such
560 intent at least 10 days prior to the interview.

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561 ~~6.5.~~ Unsworn statements of treating health care providers
562 ~~Medical information release. The claimant must execute a medical~~
563 ~~information release that allows~~ A prospective defendant or his
564 or her legal representative may also ~~to~~ take unsworn statements
565 of the claimant's treating health care providers ~~physicians~~. The
566 statements must be limited to those areas that are potentially
567 relevant to the claim of personal injury or wrongful death.
568 Subject to the procedural requirements of subparagraph 1., a
569 prospective defendant may take unsworn statements from a
570 claimant's treating physicians. Reasonable notice and
571 opportunity to be heard must be given to the claimant or the
572 claimant's legal representative before taking unsworn
573 statements. The claimant or claimant's legal representative has
574 the right to attend the taking of such unsworn statements.

575 Section 12. Section 766.1065, Florida Statutes, is created
576 to read:

577 766.1065 Authorization for release of protected health
578 information.-

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

587 (2) If the authorization required by this section is
588 revoked, the presuit notice under s. 766.106(2) is deemed

589 retroactively void from the date of issuance, and any tolling
 590 effect that the presuit notice may have had on any applicable
 591 statute-of-limitations period is retroactively rendered void.

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

597 AUTHORIZATION FOR RELEASE OF PROTECTED HEALTH INFORMATION

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

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

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

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

616 1. The health information in the custody of the

617 following health care providers who have examined,
618 evaluated, or treated the Patient in connection with
619 injuries complained of after the alleged act of
620 negligence: (List the name and current address of all
621 health care providers). This authorization extends to
622 any additional health care providers that may in the
623 future evaluate, examine, or treat the Patient for the
624 injuries complained of.

625 2. The health information in the custody of the
626 following health care providers who have examined,
627 evaluated, or treated the Patient during a period
628 commencing 2 years before the incident that is the
629 basis of the accompanying presuit notice.

630
631 (List the name and current address of such health care
632 providers, if applicable.)

633
634 C. This authorization does not apply to the
635 following list of health care providers possessing
636 health care information about the Patient because the
637 Patient certifies that such health care information is
638 not potentially relevant to the claim of personal
639 injury or wrongful death that is the basis of the
640 accompanying presuit notice.

641
642 (List the name of each health care provider to whom
643 this authorization does not apply and the inclusive
644 dates of examination, evaluation, or treatment to be

645 withheld from disclosure. If none, specify "none.")

646

647 D. The persons or class of persons to whom the
648 Patient authorizes such health information to be
649 disclosed or by whom such health information is to be
650 used:

651 1. Any health care provider providing care or
652 treatment for the Patient.

653 2. Any liability insurer or self-insurer
654 providing liability insurance coverage, self-
655 insurance, or defense to any health care provider to
656 whom presuit notice is given regarding the care and
657 treatment of the Patient.

658 3. Any consulting or testifying expert employed
659 by or on behalf of (name of health care provider to
660 whom presuit notice was given) and his/her/its
661 insurer(s), self-insurer(s), or attorney(s) regarding
662 to the matter of the presuit notice accompanying this
663 authorization.

664 4. Any attorney (including secretarial,
665 clerical, or paralegal staff) employed by or on behalf
666 of (name of health care provider to whom presuit
667 notice was given) regarding the matter of the presuit
668 notice accompanying this authorization.

669 5. Any trier of the law or facts relating to any
670 suit filed seeking damages arising out of the medical
671 care or treatment of the Patient.

672 E. This authorization expires upon resolution of

673 | the claim or at the conclusion of any litigation
 674 | instituted in connection with the matter of the
 675 | presuit notice accompanying this authorization,
 676 | whichever occurs first.

677 | F. The Patient understands that, without
 678 | exception, the Patient has the right to revoke this
 679 | authorization in writing. The Patient further
 680 | understands that the consequence of any such
 681 | revocation is that the presuit notice under s.
 682 | 766.106(2), Florida Statutes, is deemed retroactively
 683 | void from the date of issuance, and any tolling effect
 684 | that the presuit notice may have had on any applicable
 685 | statute-of-limitations period is retroactively
 686 | rendered void.

687 | G. The Patient understands that signing this
 688 | authorization is not a condition for continued
 689 | treatment, payment, enrollment, or eligibility for
 690 | health plan benefits.

691 | H. The Patient understands that information used
 692 | or disclosed under this authorization may be subject
 693 | to additional disclosure by the recipient and may not
 694 | be protected by federal HIPAA privacy regulations.

695 |
 696 | Signature of Patient/Representative:

697 | Date:

698 | Name of Patient/Representative:

699 | Description of Representative's Authority:

700 | Section 13. Subsection (2) of section 766.206, Florida

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701 Statutes, is amended to read:

702 766.206 Presuit investigation of medical negligence claims
703 and defenses by court.—

704 (2) If the court finds that the notice of intent to
705 initiate litigation mailed by the claimant does ~~is~~ not comply in
706 ~~compliance~~ with the reasonable investigation requirements of ss.
707 766.201-766.212, including a review of the claim and a verified
708 written medical expert opinion by an expert witness as defined
709 in s. 766.202, or that the authorization accompanying the notice
710 of intent required under s. 766.1065 is not completed in good
711 faith by the claimant, the court shall dismiss the claim, and
712 the person who mailed such notice of intent, whether the
713 claimant or the claimant's attorney, is ~~shall be~~ personally
714 liable for all attorney's fees and costs incurred during the
715 investigation and evaluation of the claim, including the
716 reasonable attorney's fees and costs of the defendant or the
717 defendant's insurer.

718 Section 14. Section 768.0981, Florida Statutes, is amended
719 to read:

720 768.0981 Limitation on actions against insurers, prepaid
721 limited health service organizations, health maintenance
722 organizations, hospitals, or prepaid health clinics.—An entity
723 licensed or certified under chapter 395, chapter 624, chapter
724 636, or chapter 641 is ~~shall~~ not be liable for the medical
725 negligence of a health care provider with whom the licensed or
726 certified entity has entered into a contract, other than an
727 employee of such licensed or certified entity, unless the
728 licensed or certified entity expressly directs or exercises

729 actual control over the specific conduct that caused injury.

730 Section 15. Section 768.135, Florida Statutes, is amended
731 to read:

732 768.135 Volunteer team physicians; immunity.—

733 (1) A volunteer team physician is any person licensed to
734 practice medicine pursuant to chapter 458, chapter 459, chapter
735 460, chapter 461, or chapter 466:

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

739 (b) ~~(2)~~ Who gratuitously and in good faith prior to the
740 athletic event agrees to render emergency care or treatment to
741 any participant in such event in connection with an emergency
742 arising during or as the result of such event, without objection
743 of such participant.

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

751 (3) A practitioner licensed under chapter 458, chapter
752 459, chapter 460, or s. 464.012 who gratuitously and in good
753 faith conducts an evaluation pursuant to s. 1006.20(2)(c) is not
754 liable for any civil damages arising from that evaluation unless
755 the evaluation was conducted in a wrongful manner.

756 (4) As used in this section, the term "wrongful manner"

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757 means in bad faith or with malicious purpose or in a manner
758 exhibiting wanton and willful disregard of human rights, safety,
759 or property, and shall be construed in conformity with the
760 standard set forth in s. 768.28(9)(a).

761 Section 16. This act shall take effect July 1, 2011.