A bill to be entitled

An act relating to medical malpractice; creating ss. 458.3175, 459.0066, and 466.005, F.S.; requiring the Department of Health to issue expert witness certificates to certain physicians and dentists licensed outside of the state; providing application and certification requirements; establishing application fees; providing for the validity and use of certifications; exempting physicians and dentists issued certifications from certain licensure and fee requirements; amending ss. 458.331, 459.015, and 466.028, F.S.; providing additional acts that constitute grounds for denial of a license or disciplinary action to which penalties apply; providing construction with respect to the doctrine of incorporation by reference; amending ss. 458.351 and 459.026, F.S.; requiring the Board of Medicine and the Board of Osteopathic Medicine to adopt within a specified period certain patient forms specifying cataract surgery risks; specifying that an incident resulting from risks disclosed in the patient form is not an adverse incident; providing for the execution and admissibility of the patient forms in civil and administrative proceedings; creating a rebuttable presumption that a physician disclosed cataract surgery risks if the patient form is executed; amending s. 627.4147, F.S.; deleting a requirement that medical malpractice insurance contracts contain a clause authorizing the insurer to make and conclude certain offers within policy limits over the insured's veto;

amending s. 766.102, F.S.; defining terms; providing that certain insurance information is not admissible as evidence in medical negligence actions; requiring that certain expert witnesses who provide certain expert testimony meet certain licensure or certification requirements; excluding a health care provider's failure to comply with or breach of federal requirements from evidence in medical negligence cases in the state; amending s. 766.106, F.S.; requiring a claimant for medical malpractice to execute an authorization form; revising provisions relating to discovery and admissibility; allowing a prospective medical malpractice defendant to interview a claimant's treating health care providers without the presence of the claimant or the claimant's legal representative; requiring a prospective defendant to provide 10 days' notice before such interviews; authorizing a prospective defendant to take unsworn statements of a claimant's health care providers; creating s. 766.1065, F.S.; requiring that presuit notice for medical negligence claims be accompanied by an authorization for release of protected health information; providing requirements for the form of such authorization; amending s. 766.110, F.S.; authorizing a health care facility to use scientific diagnostic disease methodologies that use information regarding specific diseases in health care facilities and that are adopted by the facility's medical review committee; amending s. 766.206, F.S.; requiring dismissal of a medical

malpractice claim if such authorization is not completed in good faith; amending s. 768.135, F.S.; providing immunity for volunteer team physicians under certain circumstances; providing an effective date.

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

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

458.3175 Expert witness certificate.—

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

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

2. An application fee of $50.

(b) The department shall approve an application for an expert witness certificate within 10 business days after receipt of the completed application and payment of the application fee if the applicant holds an active and valid license to practice medicine in another state or a province of Canada and has not

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

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

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

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

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

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

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

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

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

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

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

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

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

458.351 Reports of adverse incidents in office practice settings.—

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

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

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

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

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

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

459.0066 Expert witness certificate.—

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

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

2. An application fee of $50.

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

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

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

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

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

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

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

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

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

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

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

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

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

466.005 Expert witness certificate.—

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

1. A complete registration application containing the

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

2. An application fee of $50.

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

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

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

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

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

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

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

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

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

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

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

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

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

459.026 Reports of adverse incidents in office practice settings.—

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

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

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

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

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

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

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

627.4147 Medical malpractice insurance contracts.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. The instruction of students in an accredited health

professional school or accredited residency program in the general practice of medicine; or

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

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

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

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

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

(12) If a physician licensed under chapter 458 or chapter 459 or a dentist licensed under chapter 466 is the party against whom, or on whose behalf, expert testimony about the prevailing professional standard of care is offered, the expert witness

must be licensed under chapter 458, chapter 459, or chapter 466 or possess a valid expert witness certificate issued under s. 458.3175, s. 459.0066, or s. 466.005.

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

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

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

(2) PRESUIT NOTICE.—

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

~~provide presuit discovery.~~

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

(6) INFORMAL DISCOVERY.—

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

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

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

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

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

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

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

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

766.1065 Authorization for release of protected health information.—

(1) Presuit notice of intent to initiate litigation for medical negligence under s. 766.106(2) must be accompanied by an authorization for release of protected health information in the form specified by this section, authorizing the disclosure of protected health information that is potentially relevant to the claim of personal injury or wrongful death. The presuit notice

is void if this authorization does not accompany the presuit notice and other materials required by s. 766.106(2).

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

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

AUTHORIZATION FOR RELEASE OF PROTECTED HEALTH INFORMATION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Signature of Patient/Representative: ....

Date: ....

Name of Patient/Representative: ....

Description of Representative's Authority: ....

Section 13. Subsection (3) is added to section 766.110, Florida Statutes, to read:

766.110 Liability of health care facilities.—

(3) In order to ensure comprehensive risk management for diagnosis of disease, a health care facility, including a hospital or ambulatory surgical center, as defined in chapter 395, may use scientific diagnostic disease methodologies that use information regarding specific diseases in health care facilities and that are adopted by the facility's medical review committee.

Section 14. Subsection (2) of section 766.206, Florida Statutes, is amended to read:

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

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

investigation and evaluation of the claim, including the reasonable attorney's fees and costs of the defendant or the defendant's insurer.

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

768.135 Volunteer team physicians; immunity.—

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

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

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

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

(3) A practitioner licensed under chapter 458, chapter 459, chapter 460, or s. 464.012 who gratuitously and in good faith conducts an evaluation pursuant to s. 1006.20(2)(c) is not liable for any civil damages arising from that evaluation unless

the evaluation was conducted in a wrongful manner.

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

Section 15. This act shall take effect October 1, 2011, and applies to causes of action accruing on or after that date.