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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;

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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; requiring that  
32 | certain expert witnesses who provide certain expert  
33 | testimony meet certain licensure or certification  
34 | requirements; excluding a health care provider's failure  
35 | to comply with or breach of federal requirements from  
36 | evidence in medical negligence cases in the state;  
37 | amending s. 766.106, F.S.; requiring a claimant for  
38 | medical malpractice to execute an authorization form;  
39 | revising provisions relating to discovery and  
40 | admissibility; allowing a prospective medical malpractice  
41 | defendant to interview a claimant's treating health care  
42 | providers without the presence of the claimant or the  
43 | claimant's legal representative; requiring a prospective  
44 | defendant to provide 10 days' notice before such  
45 | interviews; authorizing a prospective defendant to take  
46 | unsworn statements of a claimant's health care providers;  
47 | creating s. 766.1065, F.S.; requiring that presuit notice  
48 | for 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. 766.110, F.S.; authorizing a health care  
52 | facility to use scientific diagnostic disease  
53 | methodologies that use information regarding specific  
54 | diseases in health care facilities and that are adopted by  
55 | the facility's medical review committee; amending s.  
56 | 766.206, F.S.; requiring dismissal of a medical

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57 malpractice claim if such authorization is not completed  
 58 in good faith; amending s. 768.135, F.S.; providing  
 59 immunity for volunteer team physicians under certain  
 60 circumstances; providing an 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 10 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

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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

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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.

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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

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169       2. An application fee of \$50.

170       (b) The department shall approve an application for an  
171 expert witness certificate within 10 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



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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 10 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.

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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

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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

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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

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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) and (5) of section 766.102,  
 354 Florida Statutes, are amended, subsection (12) of that section  
 355 is renumbered as subsection (14), and new subsections (12) and  
 356 (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.

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

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

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

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

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

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

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

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

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

420 2. The instruction of students in an accredited health

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

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

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

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

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

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

445 (12) If a physician licensed under chapter 458 or chapter  
 446 459 or a dentist licensed under chapter 466 is the party against  
 447 whom, or on whose behalf, expert testimony about the prevailing  
 448 professional standard of care is offered, the expert witness



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449 must be licensed under chapter 458, chapter 459, or chapter 466  
 450 or possess a valid expert witness certificate issued under s.  
 451 458.3175, s. 459.0066, or s. 466.005.

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

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

458 766.106 Notice before filing action for medical  
 459 negligence; presuit screening period; offers for admission of  
 460 liability and for arbitration; informal discovery; review.—

461 (2) PRESUIT NOTICE.—

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

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477 ~~provide presuit discovery.~~

478 (5) DISCOVERY AND ADMISSIBILITY.—~~A~~ ~~No~~ statement,  
 479 discussion, written document, report, or other work product  
 480 generated by the presuit screening process is not discoverable  
 481 or admissible in any civil action for any purpose by the  
 482 opposing party. All participants, including, but not limited to,  
 483 physicians, investigators, witnesses, and employees or  
 484 associates of the defendant, are immune from civil liability  
 485 arising from participation in the presuit screening process.  
 486 This subsection does not prevent a physician licensed under  
 487 chapter 458 or chapter 459 or a dentist licensed under chapter  
 488 466 who submits a verified written expert medical opinion from  
 489 being subject to denial of a license or disciplinary action  
 490 under s. 458.331(1)(oo), s. 459.015(1)(qq), or s.  
 491 466.028(1)(ll).

492 (6) INFORMAL DISCOVERY.—

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

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

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

511 2. Documents or things.—Any party may request discovery of  
512 documents or things. The documents or things must be produced,  
513 at the expense of the requesting party, within 20 days after the  
514 date of receipt of the request. A party is required to produce  
515 discoverable documents or things within that party's possession  
516 or control. Medical records shall be produced as provided in s.  
517 766.204.

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

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

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

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

553 766.1065 Authorization for release of protected health  
 554 information.—

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

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

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

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

572  
 573 AUTHORIZATION FOR RELEASE OF PROTECTED HEALTH INFORMATION  
 574

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

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

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

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

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

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

606  
607           (List the name and current address of such health care  
608           providers, if applicable.)

609  
610           C. This authorization does not apply to the  
611           following list of health care providers possessing  
612           health care information about the Patient because the  
613           Patient certifies that such health care information is  
614           not potentially relevant to the claim of personal  
615           injury or wrongful death that is the basis of the  
616           accompanying presuit notice.

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617  
618 (List the name of each health care provider to whom  
619 this authorization does not apply and the inclusive  
620 dates of examination, evaluation, or treatment to be  
621 withheld from disclosure. If none, specify "none.")  
622

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

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

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

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

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

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

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

653 F. The Patient understands that, without  
 654 exception, the Patient has the right to revoke this  
 655 authorization in writing. The Patient further  
 656 understands that the consequence of any such  
 657 revocation is that the presuit notice under s.  
 658 766.106(2), Florida Statutes, is deemed retroactively  
 659 void from the date of issuance, and any tolling effect  
 660 that the presuit notice may have had on any applicable  
 661 statute-of-limitations period is retroactively  
 662 rendered void.

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

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

671  
 672 Signature of Patient/Representative: ....



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673           Date: ....

674           Name of Patient/Representative: ....

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

676           Section 13. Subsection (3) is added to section 766.110,

677 Florida Statutes, to read:

678           766.110 Liability of health care facilities.—

679           (3) In order to ensure comprehensive risk management for

680 diagnosis of disease, a health care facility, including a

681 hospital or ambulatory surgical center, as defined in chapter

682 395, may use scientific diagnostic disease methodologies that

683 use information regarding specific diseases in health care

684 facilities and that are adopted by the facility's medical review

685 committee.

686           Section 14. Subsection (2) of section 766.206, Florida

687 Statutes, is amended to read:

688           766.206 Presuit investigation of medical negligence claims

689 and defenses by court.—

690           (2) If the court finds that the notice of intent to

691 initiate litigation mailed by the claimant does is not comply in

692 compliance with the reasonable investigation requirements of ss.

693 766.201-766.212, including a review of the claim and a verified

694 written medical expert opinion by an expert witness as defined

695 in s. 766.202, or that the authorization accompanying the notice

696 of intent required under s. 766.1065 is not completed in good

697 faith by the claimant, the court shall dismiss the claim, and

698 the person who mailed such notice of intent, whether the

699 claimant or the claimant's attorney, is shall be personally

700 liable for all attorney's fees and costs incurred during the

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

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

706 768.135 Volunteer team physicians; immunity.—

707 (1) A volunteer team physician is any person licensed to  
 708 practice medicine pursuant to chapter 458, chapter 459, chapter  
 709 460, chapter 461, or chapter 466:

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

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

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

725 (3) A practitioner licensed under chapter 458, chapter  
 726 459, chapter 460, or s. 464.012 who gratuitously and in good  
 727 faith conducts an evaluation pursuant to s. 1006.20(2)(c) is not  
 728 liable for any civil damages arising from that evaluation unless

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729 the evaluation was conducted in a wrongful manner.

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

735 Section 16. This act shall take effect October 1, 2011,  
736 and applies to causes of action accruing on or after that date.