

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/CS/HB 385 (2012)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	—	(Y/N)
ADOPTED AS AMENDED	—	(Y/N)
ADOPTED W/O OBJECTION	—	(Y/N)
FAILED TO ADOPT	—	(Y/N)
WITHDRAWN	—	(Y/N)
OTHER	—	

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1 Committee/Subcommittee hearing bill: Government Operations  
2 Appropriations Subcommittee  
3 Representative Gaetz offered the following:  
4

5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:  
7 Section 1. Subsection (4) of section 766.102, Florida  
8 Statutes, is amended to read:

9 766.102 Medical negligence; standards of recovery; expert  
10 witness.—

11 (4) (a) The Legislature is cognizant of the changing trends  
12 and techniques for the delivery of health care in this state and  
13 the discretion that is inherent in the diagnosis, care, and  
14 treatment of patients by different health care providers. The  
15 failure of a health care provider to order, perform, or  
16 administer supplemental diagnostic tests is ~~shall~~ not ~~be~~  
17 actionable if the health care provider acted in good faith and  
18 with due regard for the prevailing professional standard of  
19 care.

768213 - h385-strike.docx

Published On: 2/10/2012 5:54:36 PM

Amendment No. 1

20       (b) In an action for damages based on death or personal  
21 injury which alleges that such death or injury resulted from the  
22 failure of a health care provider to order, perform, or  
23 administer supplemental diagnostic tests, the claimant has the  
24 burden of proving by clear and convincing evidence that the  
25 alleged actions of the health care provider represented a breach  
26 of the prevailing professional standard of care.

27       Section 2. Paragraph (b) of subsection (6) of section  
28 766.106, Florida Statutes, is amended to read:

29       766.106 Notice before filing action for medical  
30 negligence; presuit screening period; offers for admission of  
31 liability and for arbitration; informal discovery; review.-

32       (6) INFORMAL DISCOVERY.-

33       (b) Informal discovery may be used by a party to obtain  
34 unsworn statements, the production of documents or things, ~~and~~  
35 physical and mental examinations, and ex parte interviews, as  
36 follows:

37       1. Unsworn statements.-Any party may require other parties  
38 to appear for the taking of an unsworn statement. Such  
39 statements may be used only for the purpose of presuit screening  
40 and are not discoverable or admissible in any civil action for  
41 any purpose by any party. A party desiring to take the unsworn  
42 statement of any party must give reasonable notice in writing to  
43 all parties. The notice must state the time and place for taking  
44 the statement and the name and address of the party to be  
45 examined. Unless otherwise impractical, the examination of any  
46 party must be done at the same time by all other parties. Any  
47 party may be represented by counsel at the taking of an unsworn

768213 - h385-strike.docx

Published On: 2/10/2012 5:54:36 PM

Amendment No. 1

48 statement. An unsworn statement may be recorded electronically,  
49 stenographically, or on videotape. The taking of unsworn  
50 statements is subject to the provisions of the Florida Rules of  
51 Civil Procedure and may be terminated for abuses.

52 2. Documents or things.—Any party may request discovery of  
53 documents or things. The documents or things must be produced,  
54 at the expense of the requesting party, within 20 days after the  
55 date of receipt of the request. A party is required to produce  
56 discoverable documents or things within that party's possession  
57 or control. Medical records shall be produced as provided in s.  
58 766.204.

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

74 4. Written questions.—Any party may request answers to  
75 written questions, the number of which may not exceed 30,

768213 - h385-strike.docx

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Amendment No. 1

76 including subparts. A response must be made within 20 days after  
77 receipt of the questions.

78 5. Unsworn statements of treating health care providers.—A  
79 prospective defendant or his or her legal representative may  
80 also take unsworn statements of the claimant's treating health  
81 care providers. The statements must be limited to those areas  
82 that are potentially relevant to the claim of personal injury or  
83 wrongful death. Subject to the procedural requirements of  
84 subparagraph 1., a prospective defendant may take unsworn  
85 statements from a claimant's treating physicians. Reasonable  
86 notice and opportunity to be heard must be given to the claimant  
87 or the claimant's legal representative before taking unsworn  
88 statements. The claimant or claimant's legal representative has  
89 the right to attend the taking of such unsworn statements.

90 6. Ex parte interviews of treating health care providers.—  
91 A prospective defendant or his or her legal representative may  
92 interview the claimant's treating health care providers without  
93 the presence of the claimant or the claimant's legal  
94 representative. A prospective defendant or his or her legal  
95 representative that intends to interview a claimant's health  
96 care providers must provide the claimant with notice of such  
97 intent at least 10 days before the interview.

98 Section 3. This act shall take effect upon becoming a law  
99 and shall apply to any cause of action accruing on or after that  
100 date.

Amendment No. 1

**T I T L E   A M E N D M E N T**

Remove the entire title and insert:

An act relating to medical malpractice; amending s. 766.102, F.S.; establishing the burden of proof that a claimant must meet in certain damage claims against health care providers based on death or personal injury; amending s. 766.106, F.S.; 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 the claimant notice a specified period before such an interview; providing an effective date.