

By Senator Lee

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1 A bill to be entitled
2 An act relating to medical negligence actions;
3 amending s. 766.102, F.S.; establishing standard of
4 proof in actions based on the failure of a health care
5 provider to order, perform, or administer certain
6 tests; shifting burden of proof to claimant; revising
7 qualifications to give expert testimony on the
8 prevailing professional standard of care; deleting
9 provision regarding limitations of section; providing
10 an effective date.

11
12 Be It Enacted by the Legislature of the State of Florida:
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14 Section 1. Subsection (4), paragraph (a) of subsection (5),
15 and subsection (14) of section 766.102, Florida Statutes, are
16 amended to read:

17 766.102 Medical negligence; standards of recovery; expert
18 witness.—

19 (4) The Legislature is cognizant of the changing trends and
20 techniques for the delivery of health care in this state and the
21 discretion that is inherent in the diagnosis, care, and
22 treatment of patients by different health care providers. The
23 failure of a health care provider to order, perform, or
24 administer supplemental diagnostic tests is ~~shall~~ not be
25 actionable if the health care provider acted in good faith and
26 with due regard for the prevailing professional standard of
27 care. In an action for damages based on death or personal injury
28 which alleges that such death or injury resulted from the
29 failure of a health care provider to order, perform, or

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30 administer supplemental diagnostic tests, the claimant has the
31 burden of proving by clear and convincing evidence that the
32 alleged action of the health care provider represented a breach
33 of the prevailing professional standard of care.

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

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

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

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

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

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

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

62 ~~(14) This section does not limit the power of the trial~~
63 ~~court to disqualify or qualify an expert witness on grounds~~
64 ~~other than the qualifications in this section.~~

65 Section 2. This act shall take effect July 1, 2013.