

1 A bill to be entitled
2 An act relating to medicine; amending s. 456.057,
3 F.S.; revising provisions relating to disclosure of
4 information provided to health care practitioners by
5 patients; amending s. 766.102, F.S.; providing that a
6 claimant has the burden of proving by clear and
7 convincing evidence that the alleged actions of a
8 health care provider represented a breach of the
9 prevailing professional standard of care in certain
10 actions; eliminating authorization for a specialist in
11 a similar specialty to offer testimony under certain
12 circumstances; deleting language providing that the
13 section did not limit the ability of a trial court to
14 disqualify or qualify an expert witness on grounds
15 other than the qualifications in this section;
16 amending s. 766.106, F.S.; providing that in informal
17 discovery, a prospective defendant or his or her legal
18 representative may interview the claimant's treating
19 health care providers without notice to or the
20 presence of the claimant or the claimant's legal
21 representative; amending s. 766.1065, F.S.; revising a
22 form for release of health care information to
23 expressly permit certain persons to interview
24 specified health care providers without notice to or
25 the presence of the patient or the patient's legal
26 representative; creating s. 706.109, F.S.; permitting
27 certain health care providers and prospective patients
28 to agree to arbitration of medical claims; providing

29 | for law governing such arbitrations; permitting limits
 30 | to the damages available in such arbitrations;
 31 | amending s. 768.0981, F.S.; providing that a hospital
 32 | is not liable for the medical negligence of certain
 33 | health care providers; providing an effective date.
 34 |

35 | Be It Enacted by the Legislature of the State of Florida:
 36 |

37 | Section 1. Subsection (8) of section 456.057, Florida
 38 | Statutes, is amended to read:

39 | 456.057 Ownership and control of patient records; report
 40 | or copies of records to be furnished.—

41 | (8) Information disclosed to a health care practitioner by
 42 | a patient in the course of the care and treatment of such
 43 | patient is confidential and may be disclosed only:

44 | (a) To other health care practitioners and providers
 45 | involved in the care or treatment of the patient;

46 | (b) Pursuant to s. 766.106(6)(b)5.;

47 | (c) As provided for in the Authorization For Release of
 48 | Protected Health Information filed by a patient pursuant to s.
 49 | 766.1065;

50 | (d) If permitted by written authorization from the
 51 | patient; or

52 | (e) If compelled by subpoena at a deposition, evidentiary
 53 | hearing, or trial for which proper notice has been given ~~Except~~
 54 | ~~in a medical negligence action or administrative proceeding when~~
 55 | ~~a health care practitioner or provider is or reasonably expects~~
 56 | ~~to be named as a defendant, information disclosed to a health~~

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57 | ~~care practitioner by a patient in the course of the care and~~
58 | ~~treatment of such patient is confidential and may be disclosed~~
59 | ~~only to other health care practitioners and providers involved~~
60 | ~~in the care or treatment of the patient, or if permitted by~~
61 | ~~written authorization from the patient or compelled by subpoena~~
62 | ~~at a deposition, evidentiary hearing, or trial for which proper~~
63 | ~~notice has been given.~~

64 | Section 2. Subsection (4), paragraph (a) of subsection
65 | (5), and subsection (14) of section 766.102, Florida Statutes,
66 | are amended to read:

67 | 766.102 Medical negligence; standards of recovery; expert
68 | witness.—

69 | (4) (a) The Legislature is cognizant of the changing trends
70 | and techniques for the delivery of health care in this state and
71 | the discretion that is inherent in the diagnosis, care, and
72 | treatment of patients by different health care providers. The
73 | failure of a health care provider to order, perform, or
74 | administer supplemental diagnostic tests shall not be actionable
75 | if the health care provider acted in good faith and with due
76 | regard for the prevailing professional standard of care.

77 | (b) In an action for damages based on death or personal
78 | injury which alleges that such death or injury resulted from the
79 | failure of a health care provider to order, perform, or
80 | administer supplemental diagnostic tests, the claimant has the
81 | burden of proving by clear and convincing evidence that the
82 | alleged actions of the health care provider represented a breach
83 | of the prevailing professional standard of care.

84 | (5) A person may not give expert testimony concerning the

85 | prevailing professional standard of care unless the person is a
 86 | health care provider who holds an active and valid license and
 87 | conducts a complete review of the pertinent medical records and
 88 | meets the following criteria:

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

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

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

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

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

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

112 | ~~(14) This section does not limit the power of the trial~~

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113 ~~court to disqualify or qualify an expert witness on grounds~~
114 ~~other than the qualifications in this section.~~

115 Section 3. Paragraph (b) of subsection (6) of section
116 766.106, Florida Statutes, is amended to read:

117 766.106 Notice before filing action for medical
118 negligence; presuit screening period; offers for admission of
119 liability and for arbitration; informal discovery; review.—

120 (6) INFORMAL DISCOVERY.—

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

124 1. Unsworn statements.—Any party may require other parties
125 to appear for the taking of an unsworn statement. Such
126 statements may be used only for the purpose of presuit screening
127 and are not discoverable or admissible in any civil action for
128 any purpose by any party. A party desiring to take the unsworn
129 statement of any party must give reasonable notice in writing to
130 all parties. The notice must state the time and place for taking
131 the statement and the name and address of the party to be
132 examined. Unless otherwise impractical, the examination of any
133 party must be done at the same time by all other parties. Any
134 party may be represented by counsel at the taking of an unsworn
135 statement. An unsworn statement may be recorded electronically,
136 stenographically, or on videotape. The taking of unsworn
137 statements is subject to the provisions of the Florida Rules of
138 Civil Procedure and may be terminated for abuses.

139 2. Documents or things.—Any party may request discovery of
140 documents or things. The documents or things must be produced,

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141 at the expense of the requesting party, within 20 days after the
142 date of receipt of the request. A party is required to produce
143 discoverable documents or things within that party's possession
144 or control. Medical records shall be produced as provided in s.
145 766.204.

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

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

165 5. Ex parte interviews of treating health care providers.—
166 A prospective defendant or his or her legal representative may
167 interview the claimant's treating health care providers without
168 notice to or the presence of the claimant or the claimant's

169 | legal representative.

170 | ~~6.5.~~ Unsworn statements of treating health care
 171 | providers.—A prospective defendant or his or her legal
 172 | representative may also take unsworn statements of the
 173 | claimant's treating health care providers. The statements must
 174 | be limited to those areas that are potentially relevant to the
 175 | claim of personal injury or wrongful death. Subject to the
 176 | procedural requirements of subparagraph 1., a prospective
 177 | defendant may take unsworn statements from a claimant's treating
 178 | physicians. Reasonable notice and opportunity to be heard must
 179 | be given to the claimant or the claimant's legal representative
 180 | before taking unsworn statements. The claimant or claimant's
 181 | legal representative has the right to attend the taking of such
 182 | unsworn statements.

183 | Section 4. Subsection (3) of section 766.1065, Florida
 184 | Statutes, is amended to read:

185 | 766.1065 Authorization for release of protected health
 186 | information.—

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

191 | AUTHORIZATION FOR RELEASE OF
 192 | PROTECTED HEALTH INFORMATION

193 | A. I, (...Name of patient or authorized representative...)
 194 | [hereinafter "Patient"], authorize that (...Name of health
 195 | care provider to whom the presuit notice is directed...)
 196 | and his/her/its insurer(s), self-insurer(s), ~~and~~

197 | attorney(s), and the designated treating physicians(s)
198 | listed below and their insurer(s), self-insurer(s), and
199 | attorney(s), may obtain and disclose (within the parameters
200 | set out below) the protected health information described
201 | below for the following specific purposes:

- 202 | 1. Facilitating the investigation and evaluation of the
203 | medical negligence claim described in the accompanying
204 | presuit notice; ~~or~~
- 205 | 2. Defending against any litigation arising out of the
206 | medical negligence claim made on the basis of the
207 | accompanying presuit notice; or
- 208 | 3. Obtaining legal advice or representation arising out of
209 | the medical negligence claim described in the accompanying
210 | presuit notice.

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

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

222 | 2. The health information in the custody of the following
223 | health care providers who have examined, evaluated, or
224 | treated the Patient during a period commencing 2 years

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225 | before the incident that is the basis of the accompanying
226 | presuit notice.

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

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

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

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

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

244 | 2. Any liability insurer or self-insurer providing
245 | liability insurance coverage, self-insurance, or defense to
246 | any health care provider to whom presuit notice is given,
247 | or to any health care provider listed in B., above,
248 | regarding the care and treatment of the Patient.

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

253 presuit notice accompanying this authorization.

254 4. Any attorney (including the attorney's ~~secretarial,~~
 255 ~~clerical, or paralegal~~ staff) employed by or on behalf of
 256 (name of health care provider to whom presuit notice was
 257 given), or employed by or on behalf of any health care
 258 provider(s) listed in B., above, regarding the matter of
 259 the presuit notice accompanying this authorization or the
 260 care and treatment of the Patient.

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

264 E. This authorization expressly permits the persons or
 265 class of persons listed in 2.-4., above, to interview the
 266 health care providers listed in B., above, without notice
 267 to or the presence of the Patient or the Patient's legal
 268 representative.

269 ~~F.F.~~ This authorization expires upon resolution of the
 270 claim or at the conclusion of any litigation instituted in
 271 connection with the matter of the presuit notice
 272 accompanying this authorization, whichever occurs first.

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

281 rendered void.

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

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

290 Signature of Patient/Representative:

291 Date:

292 Name of Patient/Representative:

293 Description of Representative's Authority:

294 Section 5. Section 706.109, Florida Statutes, is created
 295 to read:

296 706.109 Voluntary binding arbitration; damages.-

297 (1) A health care provider licensed pursuant to chapter
 298 458, chapter 459, or chapter 466; an entity owned in whole or in
 299 part by a health care provider licensed pursuant to chapter 458,
 300 chapter 459, or chapter 466; or a health care clinic licensed
 301 pursuant to part X of chapter 400 and a patient or prospective
 302 patient, may agree in writing to submit to arbitration any claim
 303 for medical negligence that may currently exist or that may
 304 accrue in the future that would otherwise be brought pursuant to
 305 this chapter. Any arbitration agreement entered into under this
 306 section is governed by chapter 682.

307 (2) Any arbitration agreement entered into under
 308 subsection (1) may contain a provision that limits the available

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309 | damages in any arbitration award.

310 | Section 6. Section 768.0981, Florida Statutes, is amended
311 | to read:

312 | 768.0981 Limitation on actions against hospitals,
313 | insurers, prepaid limited health service organizations, health
314 | maintenance organizations, or prepaid health clinics.—An entity
315 | licensed or certified under chapter 395, chapter 624, chapter
316 | 636, or chapter 641 shall not be liable for the medical
317 | negligence of a health care provider with whom the licensed or
318 | certified entity has entered into a contract, other than an
319 | employee of such licensed or certified entity, unless the
320 | licensed or certified entity expressly directs or exercises
321 | actual control over the specific conduct that caused injury.

322 | Section 7. This act shall take effect July 1, 2013.