

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; amending s. 768.0981, F.S.; providing  
27          that a hospital is not liable for the medical  
28          negligence of certain health care providers; providing

29 | an effective date.

30 |

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

32 |

33 | Section 1. Paragraph (a) of subsection (7) and subsection  
 34 | (8) of section 456.057, Florida Statutes, are amended to read:

35 | 456.057 Ownership and control of patient records; report  
 36 | or copies of records to be furnished.-

37 | (7) (a) Except as otherwise provided in this section and in  
 38 | s. 440.13(4) (c), such records may not be furnished to, ~~and the~~  
 39 | ~~medical condition of a patient may not be discussed with,~~ any  
 40 | person other than the patient, or the patient's legal  
 41 | representative, or other health care practitioners and providers  
 42 | involved in the patient's care or treatment ~~of the patient,~~  
 43 | except upon written authorization from ~~of~~ the patient. However,  
 44 | such records may be furnished without written authorization  
 45 | under the following circumstances:

46 | 1. To any person, firm, or corporation that has procured  
 47 | or furnished such care ~~examination~~ or treatment with the  
 48 | patient's consent.

49 | 2. When compulsory physical examination is made pursuant  
 50 | to Rule 1.360, Florida Rules of Civil Procedure, in which case  
 51 | copies of the medical records shall be furnished to both the  
 52 | defendant and the plaintiff.

53 | 3. In any civil or criminal action, unless otherwise  
 54 | prohibited by law, upon the issuance of a subpoena from a court  
 55 | of competent jurisdiction and proper notice to the patient or  
 56 | the patient's legal representative by the party seeking such

57 records.

58 4. For statistical and scientific research, provided the  
 59 information is abstracted in such a way as to protect the  
 60 identity of the patient or provided written permission is  
 61 received from the patient or the patient's legal representative.

62 5. To a regional poison control center for purposes of  
 63 treating a poison episode under evaluation, case management of  
 64 poison cases, or compliance with data collection and reporting  
 65 requirements of s. 395.1027 and the professional organization  
 66 that certifies poison control centers in accordance with federal  
 67 law.

68 6. To an attorney for the health care practitioner or  
 69 provider, or to the attorney's staff, for the purpose of  
 70 obtaining legal services, whether the attorney is hired directly  
 71 by the practitioner or provider or by his or her insurer.

72 (8) Information disclosed to a health care practitioner or  
 73 provider by a patient in the course of the care and treatment of  
 74 such patient is confidential and may be disclosed only:

75 (a) When limited to the proper release of records as  
 76 provided under subsection (7);

77 (b) To other health care practitioners and providers  
 78 involved in the care or treatment of the patient;

79 (c) Pursuant to s. 766.106(6)(b)5.;

80 (d) As provided for in the Authorization For Release of  
 81 Protected Health Information signed by a patient pursuant to s.  
 82 766.1065;

83 (e) If permitted by written authorization from the  
 84 patient;

85 (f) If compelled by subpoena at a deposition, evidentiary  
 86 hearing, or trial for which proper notice has been given;

87 (g) To an attorney for the health care practitioner or  
 88 provider, or to the attorney's staff, whether the attorney is  
 89 hired directly by the practitioner or provider or by his or her  
 90 insurer; or

91 (h) In the context of a medical negligence action or  
 92 administrative proceeding, if the health care practitioner or  
 93 provider is, or reasonably expects to be, named as a defendant  
 94 ~~Except in a medical negligence action or administrative~~  
 95 ~~proceeding when a health care practitioner or provider is or~~  
 96 ~~reasonably expects to be named as a defendant, information~~  
 97 ~~disclosed to a health care practitioner by a patient in the~~  
 98 ~~course of the care and treatment of such patient is confidential~~  
 99 ~~and may be disclosed only to other health care practitioners and~~  
 100 ~~providers involved in the care or treatment of the patient, or~~  
 101 ~~if permitted by written authorization from the patient or~~  
 102 ~~compelled by subpoena at a deposition, evidentiary hearing, or~~  
 103 ~~trial for which proper notice has been given.~~

104 Section 2. Subsection (4), paragraph (a) of subsection  
 105 (5), and subsection (14) of section 766.102, Florida Statutes,  
 106 are amended to read:

107 766.102 Medical negligence; standards of recovery; expert  
 108 witness.—

109 (4) (a) The Legislature is cognizant of the changing trends  
 110 and techniques for the delivery of health care in this state and  
 111 the discretion that is inherent in the diagnosis, care, and  
 112 treatment of patients by different health care providers. The

113 failure of a health care provider to order, perform, or  
114 administer supplemental diagnostic tests shall not be actionable  
115 if the health care provider acted in good faith and with due  
116 regard for the prevailing professional standard of care.

117 (b) In an action for damages based on death or personal  
118 injury which alleges that such death or injury resulted from the  
119 failure of a health care provider to order, perform, or  
120 administer supplemental diagnostic tests, the claimant has the  
121 burden of proving by clear and convincing evidence that the  
122 alleged actions of the health care provider represented a breach  
123 of the prevailing professional standard of care.

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

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

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

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

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

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

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

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

155 Section 3. Paragraph (b) of subsection (6) of section  
156 766.106, Florida Statutes, is amended to read:

157 766.106 Notice before filing action for medical  
158 negligence; presuit screening period; offers for admission of  
159 liability and for arbitration; informal discovery; review.—

160 (6) INFORMAL DISCOVERY.—

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

164 1. Unsworn statements.—Any party may require other parties  
165 to appear for the taking of an unsworn statement. Such  
166 statements may be used only for the purpose of presuit screening  
167 and are not discoverable or admissible in any civil action for  
168 any purpose by any party. A party desiring to take the unsworn

169 statement of any party must give reasonable notice in writing to  
170 all parties. The notice must state the time and place for taking  
171 the statement and the name and address of the party to be  
172 examined. Unless otherwise impractical, the examination of any  
173 party must be done at the same time by all other parties. Any  
174 party may be represented by counsel at the taking of an unsworn  
175 statement. An unsworn statement may be recorded electronically,  
176 stenographically, or on videotape. The taking of unsworn  
177 statements is subject to the provisions of the Florida Rules of  
178 Civil Procedure and may be terminated for abuses.

179 2. Documents or things.—Any party may request discovery of  
180 documents or things. The documents or things must be produced,  
181 at the expense of the requesting party, within 20 days after the  
182 date of receipt of the request. A party is required to produce  
183 discoverable documents or things within that party's possession  
184 or control. Medical records shall be produced as provided in s.  
185 766.204.

186 3. Physical and mental examinations.—A prospective  
187 defendant may require an injured claimant to appear for  
188 examination by an appropriate health care provider. The  
189 prospective defendant shall give reasonable notice in writing to  
190 all parties as to the time and place for examination. Unless  
191 otherwise impractical, a claimant is required to submit to only  
192 one examination on behalf of all potential defendants. The  
193 practicality of a single examination must be determined by the  
194 nature of the claimant's condition, as it relates to the  
195 liability of each prospective defendant. Such examination report  
196 is available to the parties and their attorneys upon payment of

197 the reasonable cost of reproduction and may be used only for the  
198 purpose of presuit screening. Otherwise, such examination report  
199 is confidential and exempt from the provisions of s. 119.07(1)  
200 and s. 24(a), Art. I of the State Constitution.

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

205 5. Ex parte interviews of treating health care providers.—  
206 A prospective defendant or his or her legal representative may  
207 interview the claimant's treating health care providers without  
208 notice to or the presence of the claimant or the claimant's  
209 legal representative.

210 ~~6.5.~~ Unsworn statements of treating health care  
211 providers.—A prospective defendant or his or her legal  
212 representative may also take unsworn statements of the  
213 claimant's treating health care providers. The statements must  
214 be limited to those areas that are potentially relevant to the  
215 claim of personal injury or wrongful death. Subject to the  
216 procedural requirements of subparagraph 1., a prospective  
217 defendant may take unsworn statements from a claimant's treating  
218 physicians. Reasonable notice and opportunity to be heard must  
219 be given to the claimant or the claimant's legal representative  
220 before taking unsworn statements. The claimant or claimant's  
221 legal representative has the right to attend the taking of such  
222 unsworn statements.

223 Section 4. Subsection (3) of section 766.1065, Florida  
224 Statutes, is amended to read:



225 766.1065 Authorization for release of protected health  
 226 information.—

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

231 AUTHORIZATION FOR RELEASE OF  
 232 PROTECTED HEALTH INFORMATION

233 A. I, (...Name of patient or authorized representative...)  
 234 [hereinafter "Patient"], authorize that (...Name of health  
 235 care provider to whom the presuit notice is directed...)  
 236 and his/her/its insurer(s), self-insurer(s), ~~and~~  
 237 attorney(s), and the designated treating physicians(s)  
 238 listed below and their insurer(s), self-insurer(s), and  
 239 attorney(s), may obtain and disclose (within the parameters  
 240 set out below) the protected health information described  
 241 below for the following specific purposes:

- 242 1. Facilitating the investigation and evaluation of the  
 243 medical negligence claim described in the accompanying  
 244 presuit notice; ~~or~~
- 245 2. Defending against any litigation arising out of the  
 246 medical negligence claim made on the basis of the  
 247 accompanying presuit notice; or
- 248 3. Obtaining legal advice or representation arising out of  
 249 the medical negligence claim described in the accompanying  
 250 presuit notice.

251 B. The health information obtained, used, or disclosed  
 252 extends to, and includes, the verbal as well as the written

253 and is described as follows:

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

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

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

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

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

279 D. The persons or class of persons to whom the Patient  
 280 authorizes such health information to be disclosed or by

281 | whom such health information is to be used:

282 | 1. Any health care provider providing care or treatment

283 | for the Patient.

284 | 2. Any liability insurer or self-insurer providing

285 | liability insurance coverage, self-insurance, or defense to

286 | any health care provider to whom presuit notice is given,

287 | or to any health care provider listed in B., above,

288 | regarding the care and treatment of the Patient.

289 | 3. Any consulting or testifying expert employed by or on

290 | behalf of (name of health care provider to whom presuit

291 | notice was given) and his/her/its insurer(s), self-

292 | insurer(s), or attorney(s) regarding the matter of the

293 | presuit notice accompanying this authorization.

294 | 4. Any attorney (including the attorney's ~~secretarial,~~

295 | ~~clerical, or paralegal~~ staff) employed by or on behalf of

296 | (name of health care provider to whom presuit notice was

297 | given), or employed by or on behalf of any health care

298 | provider(s) listed in B., above, regarding the matter of

299 | the presuit notice accompanying this authorization or the

300 | care and treatment of the Patient.

301 | 5. Any trier of the law or facts relating to any suit

302 | filed seeking damages arising out of the medical care or

303 | treatment of the Patient.

304 | E. This authorization expressly permits the persons or

305 | class of persons listed in 2.-4., above, to interview the

306 | health care providers listed in B., above, without notice

307 | to or the presence of the Patient or the Patient's legal

308 | representative.

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

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

322 | ~~H.G.~~ The Patient understands that signing this  
 323 | authorization is not a condition for continued treatment,  
 324 | payment, enrollment, or eligibility for health plan  
 325 | benefits.

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

330 | Signature of Patient/Representative: ....

331 | Date: ....

332 | Name of Patient/Representative: ....

333 | Description of Representative's Authority: ....

334 | Section 5. Section 768.0981, Florida Statutes, is amended  
 335 | to read:

336 | 768.0981 Limitation on actions against hospitals,

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2013

337 insurers, prepaid limited health service organizations, health  
338 maintenance organizations, or prepaid health clinics.—An entity  
339 licensed or certified under chapter 395, chapter 624, chapter  
340 636, or chapter 641 shall not be liable for the medical  
341 negligence of a health care provider with whom the licensed or  
342 certified entity has entered into a contract, other than an  
343 employee of such licensed or certified entity, unless the  
344 licensed or certified entity expressly directs or exercises  
345 actual control over the specific conduct that caused injury.

346 Section 6. This act shall take effect July 1, 2013.