

By Senator Baker

20-811A-05

1	A bill to be entitled
2	An act relating to medical tort reform;
3	creating s. 458.3175, F.S.; providing for
4	out-of-state physicians to obtain an expert
5	witness certificate upon approval by the Board
6	of Medicine; authorizing the board to revoke an
7	expert witness certificate under certain
8	circumstances; requiring the board to adopt
9	rules; providing a limit on the amount of the
10	application fee for an expert witness
11	certificate; providing for renewal; amending s.
12	458.331, F.S.; providing that false, deceptive,
13	or misleading expert testimony related to the
14	practice of medicine constitutes grounds for
15	disciplinary action or denial of a license;
16	creating s. 459.0066, F.S.; providing for
17	out-of-state osteopathic physicians to obtain
18	an expert witness certificate upon approval by
19	the Board of Osteopathic Medicine; authorizing
20	the board to approve or revoke an expert
21	witness certificate under certain
22	circumstances; requiring the board to adopt
23	rules; providing a limit on the amount of the
24	application fee for an expert witness
25	certificate; providing for renewal; amending s.
26	459.015; providing that false, deceptive, or
27	misleading expert testimony related to the
28	practice of osteopathic medicine constitutes
29	grounds for disciplinary action or denial of a
30	medical license; amending s. 627.4147, F.S.;
31	deleting a provision that requires a clause

1 authorizing an insured health care professional
2 to make or determine any offer of admission of
3 liability and arbitration in a medical
4 malpractice insurance contract; requiring a
5 medical malpractice insurance contract to
6 include a clause stating whether the insured
7 health care professional has the exclusive
8 right to veto any offer of admission of
9 liability and for arbitration, settlement
10 offer, or offer of judgment; amending s.
11 766.106, F.S.; requiring a claimant in an
12 action for medical negligence to provide a
13 prospective defendant with a medical release
14 form that allows each prospective defendant to
15 access the claimant's medical records and to
16 interview, ex parte, the claimant's health care
17 providers; providing an effective date.
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19 Be It Enacted by the Legislature of the State of Florida:
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21 Section 1. Section 458.3175, Florida Statutes, is
22 created to read:

23 458.3175 Expert witness certificate.--

24 (1) Any physician who holds a valid, active license to
25 practice medicine in any other state, who pays an application
26 fee in an amount set by the board, and who has not had a
27 previous expert witness certificate revoked by the board may
28 apply for a certificate to provide expert medical testimony in
29 connection with any medical negligence litigation pending in
30 this state.
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1 (2) The board shall approve an expert witness
2 certificate for any physician who holds a valid, active
3 license to practice medicine in another state, but may deny
4 approval of an expert witness certificate for an applicant if
5 the board finds that the applicant has been disciplined in
6 another state by the medical licensing entity for fraud,
7 dishonesty, deception, coercion, intimidation, undue
8 influence, incompetence, or substance abuse. Once an expert
9 medical certificate is granted, the board may revoke the
10 expert witness certificate if the board finds that the
11 certificateholder has been disciplined in another state by the
12 medical licensing entity for fraud, dishonesty, deception,
13 coercion, intimidation, undue influence, incompetence, or
14 substance abuse or if the board finds that the
15 certificateholder has committed these acts while testifying in
16 a medical negligence proceeding in this state.

17 (3) This section does not authorize a physician who is
18 not licensed to practice medicine in this state to qualify for
19 or otherwise engage in the practice of medicine in this state.

20 (4) The board shall adopt rules to administer this
21 section, including rules setting the amount of the application
22 fee for an expert witness certificate. The application fees
23 for expert witness certificates may not exceed the cost to
24 administer the certification program. An expert witness
25 certificate may be renewed, upon payment of applicable fees
26 and approval by the board, every 2 years.

27 Section 2. Paragraph (oo) is added to subsection (1)
28 of section 458.331, Florida Statutes, to read:

29 458.331 Grounds for disciplinary action; action by the
30 board and department.--
31

1 (1) The following acts constitute grounds for denial
2 of a license or disciplinary action, as specified in s.
3 456.072(2):

4 ~~(oo) Providing false, deceptive, or misleading expert~~
5 ~~witness testimony related to the practice of medicine.~~

6 Section 3. Section 459.0066, Florida Statutes, is
7 created to read:

8 459.0066 Expert witness certificate.--

9 (1) Any osteopathic physician who holds a valid,
10 active license to practice osteopathic medicine in any other
11 state, who pays an application fee in an amount set by the
12 board, and who has not had a previous expert witness
13 certificate revoked by the board may apply for a certificate
14 to provide expert medical testimony in connection with any
15 medical negligence litigation pending in this state.

16 (2) The board shall approve an expert witness
17 certificate for any osteopathic physician who holds a valid,
18 active license to practice medicine in another state, but may
19 deny approval of an expert witness certificate for an
20 applicant if the board finds that the applicant has been
21 disciplined in another state by the medical licensing entity
22 for fraud, dishonesty, deception, coercion, intimidation,
23 undue influence, incompetence, or substance abuse. Once an
24 expert medical certificate is granted, the board may revoke
25 the expert witness certificate if the board finds that the
26 certificateholder has been disciplined in another state by the
27 medical licensing entity for fraud, dishonesty, deception,
28 coercion, intimidation, undue influence, incompetence, or
29 substance abuse or if the board finds that the
30 certificateholder has committed these acts while testifying in
31 a medical negligence proceeding in this state.

1 (3) This section does not authorize an osteopathic
2 physician who is not licensed to practice osteopathic medicine
3 in this state to qualify for or otherwise engage in the
4 practice of osteopathic medicine in this state.

5 (4) The board shall adopt rules to administer this
6 section, including rules setting the amount of the application
7 fee for an expert witness certificate. The application fees
8 for expert witness certificates may not exceed the cost to
9 administer the certification program. An expert witness
10 certificate may be renewed, upon payment of applicable fees
11 and approval by the board, every 2 years.

12 Section 4. Paragraph (qq) is added to subsection (1)
13 of section 459.015, Florida Statutes, to read:

14 459.015 Grounds for disciplinary action; action by the
15 board and department.--

16 (1) The following acts constitute grounds for denial
17 of a license or disciplinary action, as specified in s.
18 456.072(2):

19 (qq) Providing false, deceptive, or misleading expert
20 witness testimony related to the practice of medicine.

21 Section 5. Subsection (1) of section 627.4147, Florida
22 Statutes, is amended to read:

23 627.4147 Medical malpractice insurance contracts.--

24 (1) In addition to any other requirements imposed by
25 law, each self-insurance policy as authorized under s. 627.357
26 or s. 624.462 or insurance policy providing coverage for
27 claims arising out of the rendering of, or the failure to
28 render, medical care or services, including those of the
29 Florida Medical Malpractice Joint Underwriting Association,
30 shall include:
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1 (a) A clause requiring the insured to cooperate fully
2 in the review process prescribed under s. 766.106 if a notice
3 of intent to file a claim for medical malpractice is made
4 against the insured.

5 (b)1. ~~Except as provided in subparagraph 2., a clause~~
6 ~~authorizing the insurer or self insurer to determine, to make,~~
7 ~~and to conclude, without the permission of the insured, any~~
8 ~~offer of admission of liability and for arbitration pursuant~~
9 ~~to s. 766.106, settlement offer, or offer of judgment, if the~~
10 ~~offer is within the policy limits. It is against public policy~~
11 ~~for any insurance or self insurance policy to contain a clause~~
12 ~~giving the insured the exclusive right to veto any offer for~~
13 ~~admission of liability and for arbitration made pursuant to s.~~
14 ~~766.106, settlement offer, or offer of judgment, when such~~
15 ~~offer is within the policy limits. However, any offer of~~
16 ~~admission of liability, settlement offer, or offer of judgment~~
17 ~~made by an insurer or self insurer shall be made in good faith~~
18 ~~and in the best interests of the insured.~~

19 ~~2.a. With respect to dentists licensed under chapter~~
20 ~~466,~~ A clause clearly stating whether or not the insured has
21 the exclusive right to veto any offer of admission of
22 liability and for arbitration pursuant to s. 766.106,
23 settlement offer, or offer of judgment if the offer is within
24 policy limits. An insurer or self-insurer shall not make or
25 conclude, without the permission of the insured, any offer of
26 admission of liability and for arbitration pursuant to s.
27 766.106, settlement offer, or offer of judgment, if such offer
28 is outside the policy limits. However, any offer for admission
29 of liability and for arbitration made under s. 766.106,
30 settlement offer, or offer of judgment made by an insurer or
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1 self-insurer shall be made in good faith and in the best
2 interest of the insured.

3 ~~2.b.~~ If the policy contains a clause stating the
4 insured does not have the exclusive right to veto any offer or
5 admission of liability and for arbitration made pursuant to s.
6 766.106, settlement offer or offer of judgment, the insurer or
7 self-insurer shall provide to the insured or the insured's
8 legal representative by certified mail, return receipt
9 requested, a copy of the final offer of admission of liability
10 and for arbitration made pursuant to s. 766.106, settlement
11 offer or offer of judgment and at the same time such offer is
12 provided to the claimant. A copy of any final agreement
13 reached between the insurer and claimant shall also be
14 provided to the insurer or his or her legal representative by
15 certified mail, return receipt requested not more than 10 days
16 after affecting such agreement.

17 (c) A clause requiring the insurer or self-insurer to
18 notify the insured no less than 90 days prior to the effective
19 date of cancellation of the policy or contract and, in the
20 event of a determination by the insurer or self-insurer not to
21 renew the policy or contract, to notify the insured no less
22 than 90 days prior to the end of the policy or contract
23 period. If cancellation or nonrenewal is due to nonpayment or
24 loss of license, 10 days' notice is required.

25 (d) A clause requiring the insurer or self-insurer to
26 notify the insured no less than 60 days prior to the effective
27 date of a rate increase. The provisions of s. 627.4133 shall
28 apply to such notice and to the failure of the insurer to
29 provide such notice to the extent not in conflict with this
30 section.

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1 Section 6. Paragraph (a) of subsection (2) of section
2 766.106, Florida Statutes, is amended to read:

3 766.106 Notice before filing action for medical
4 negligence; presuit screening period; offers for admission of
5 liability and for arbitration; informal discovery; review.--

6 (2) PRESUIT NOTICE.--

7 (a) After completion of presuit investigation pursuant
8 to s. 766.203(2) and prior to filing a complaint for medical
9 negligence, a claimant shall notify each prospective defendant
10 by certified mail, return receipt requested, of intent to
11 initiate litigation for medical negligence. Notice to each
12 prospective defendant must include, if available, a list of
13 all known health care providers seen by the claimant for the
14 injuries complained of subsequent to the alleged act of
15 negligence, all known health care providers during the 2-year
16 period prior to the alleged act of negligence who treated or
17 evaluated the claimant, and copies of all of the medical
18 records relied upon by the expert in signing the affidavit.

19 The claimant shall also provide to the defendant a signed
20 medical release form granting each prospective defendant or
21 legal representative access to the claimant's medical records
22 from each of the physicians listed in the notification.
23 Notwithstanding any other provision of law, such release form
24 must also permit each prospective defendant or legal
25 representative to interview, ex parte, any health care
26 provider listed by the claimant pursuant to this paragraph.
27 Such an interview must be limited to issues of causation, the
28 claimant's current physical condition, and the mental
29 impressions of the care and treatment rendered by the
30 defendant health care provider or any other health care
31 provider alleged to be responsible for the patient's injury or

1 death. Such an interview with a claimant's treating physician
2 may occur only after the claimant has given notice of intent
3 to initiate a claim for medical malpractice and before the
4 dismissal, settlement, or other final resolution of the claim.

5 The requirement of providing the list of known health care
6 providers may not serve as grounds for imposing sanctions for
7 failure to provide presuit discovery.

8 Section 7. This act shall take effect July 1, 2005.

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11 SENATE SUMMARY

12 Provides that certain physicians and certain osteopathic
13 physicians may obtain an expert witness certificate.
14 Provides that the Board of Medicine or the Board of
15 Osteopathic Medicine may approve or revoke an expert
16 witness certificate under certain circumstances. Requires
17 each board to adopt rules. Provides for a limit on the
18 application fee for an expert witness certificate.
19 Provides that giving false, deceptive, or misleading
20 expert testimony related to the practice of medicine or
21 the practice of osteopathic medicine constitutes grounds
22 for disciplinary action or denial of a license. Deletes a
23 provision that requires a clause authorizing an insured
24 health care professional to make or determine any offer
25 of admission of liability and for arbitration in a
26 medical malpractice insurance contract. Requires a
27 medical malpractice insurance contract to include a
28 clause stating whether the insured health care
29 professional has the exclusive right to veto any offer of
30 admission of liability and for arbitration, settlement
31 offer, or offer of judgment. Requires a claimant in an
action for medical negligence to provide a prospective
defendant with a medical release form that allows each
prospective defendant to access the claimant's medical
records and to interview, ex parte, the claimant's health
care providers.