

**By** the Committee on Banking and Insurance; and Senators Hays and Gaetz

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1                                   A bill to be entitled  
2           An act relating to medical malpractice; creating ss.  
3           458.3175, 459.0066, and 466.005, F.S.; requiring the  
4           Department of Health to issue expert witness  
5           certificates to certain physicians and dentists  
6           licensed outside the state; providing application and  
7           certification requirements; establishing application  
8           fees; providing for the validity and use of  
9           certifications; exempting physicians and dentists  
10          issued certifications from certain licensure and fee  
11          requirements; amending ss. 458.331, 459.015, and  
12          466.028, F.S.; providing additional acts that  
13          constitute grounds for denial of a license or  
14          disciplinary action to which penalties apply;  
15          providing construction with respect to the doctrine of  
16          incorporation by reference; amending ss. 458.351 and  
17          459.026, F.S.; requiring the Board of Medicine and the  
18          Board of Osteopathic Medicine to adopt within a  
19          specified period certain patient forms specifying  
20          cataract surgery risks; specifying that an incident  
21          resulting from risks disclosed in the patient form is  
22          not an adverse incident; providing for the execution  
23          and admissibility of the patient forms in civil and  
24          administrative proceedings; creating a rebuttable  
25          presumption that a physician disclosed cataract  
26          surgery risks if the patient form is executed;  
27          amending s. 627.4147, F.S.; deleting a requirement  
28          that medical malpractice insurance contracts contain a  
29          clause authorizing the insurer to make and conclude

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30 certain offers within policy limits over the insured's  
31 veto; amending s. 766.102, F.S.; defining terms;  
32 providing that certain insurance information is not  
33 admissible as evidence in medical negligence actions;  
34 establishing the burden of proof that a claimant must  
35 meet in certain damage claims against health care  
36 providers based on death or personal injury; requiring  
37 that certain expert witnesses who provide certain  
38 expert testimony meet certain licensure or  
39 certification requirements; excluding a health care  
40 provider's failure to comply with or breach of federal  
41 requirements from evidence in medical negligence cases  
42 in the state; amending s. 766.106, F.S.; requiring  
43 claimants for medical malpractice to execute an  
44 authorization form; allowing prospective medical  
45 malpractice defendants to interview a claimant's  
46 treating health care provider without notice to or the  
47 presence of the claimant or the claimant's legal  
48 representative; authorizing prospective defendants to  
49 take unsworn statements of a claimant's health care  
50 provider; creating s. 766.1065, F.S.; requiring that  
51 presuit notice for medical negligence claims be  
52 accompanied by an authorization for release of  
53 protected health information; providing requirements  
54 for the form of such authorization; amending s.  
55 766.206, F.S.; requiring dismissal of a medical  
56 malpractice claim if such authorization is not  
57 completed in good faith; amending s. 768.0981, F.S.;  
58 limiting the liability of hospitals related to certain

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59 medical negligence claims; providing an effective  
60 date.

61  
62 Be It Enacted by the Legislature of the State of Florida:

63  
64 Section 1. Section 458.3175, Florida Statutes, is created  
65 to read:

66 458.3175 Expert witness certificate.-

67 (1) (a) The department shall issue a certificate authorizing  
68 a physician who holds an active and valid license to practice  
69 medicine in another state or a province of Canada to provide  
70 expert testimony in this state, if the physician submits to the  
71 department:

72 1. A complete registration application containing the  
73 physician's legal name, mailing address, telephone number,  
74 business locations, the names of the jurisdictions where the  
75 physician holds an active and valid license to practice  
76 medicine, and the license number or other identifying number  
77 issued to the physician by the jurisdiction's licensing entity;  
78 and

79 2. An application fee of \$50.

80 (b) The department shall approve an application for an  
81 expert witness certificate within 7 business days after receipt  
82 of the completed application and payment of the application fee  
83 if the applicant holds an active and valid license to practice  
84 medicine in another state or a province of Canada and has not  
85 had a previous expert witness certificate revoked by the board.  
86 An application is approved by default if the department does not  
87 act upon the application within the required period. A physician

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88 must notify the department in writing of his or her intent to  
89 rely on a certificate approved by default.

90 (c) An expert witness certificate is valid for 2 years  
91 after the date of issuance.

92 (2) An expert witness certificate authorizes the physician  
93 to whom the certificate is issued to do only the following:

94 (a) Provide a verified written medical expert opinion as  
95 provided in s. 766.203.

96 (b) Provide expert testimony about the prevailing  
97 professional standard of care in connection with medical  
98 negligence litigation pending in this state against a physician  
99 licensed under this chapter or chapter 459.

100 (3) An expert witness certificate does not authorize a  
101 physician to engage in the practice of medicine as defined in s.  
102 458.305. A physician issued a certificate under this section who  
103 does not otherwise practice medicine in this state is not  
104 required to obtain a license under this chapter or pay any  
105 license fees, including, but not limited to, a neurological  
106 injury compensation assessment. An expert witness certificate  
107 shall be treated as a license in any disciplinary action, and  
108 the holder of an expert witness certificate shall be subject to  
109 discipline by the board.

110 Section 2. Subsection (11) is added to section 458.331,  
111 Florida Statutes, paragraphs (oo) through (qq) of subsection (1)  
112 of that section are redesignated as paragraphs (pp) through  
113 (rr), respectively, and a new paragraph (oo) is added to that  
114 subsection, to read:

115 458.331 Grounds for disciplinary action; action by the  
116 board and department.-

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

119 (oo) Providing misleading, deceptive, or fraudulent expert  
120 witness testimony related to the practice of medicine.

121 (11) The purpose of this section is to facilitate uniform  
122 discipline for those acts made punishable under this section  
123 and, to this end, a reference to this section constitutes a  
124 general reference under the doctrine of incorporation by  
125 reference.

126 Section 3. Subsection (6) of section 458.351, Florida  
127 Statutes, is renumbered as subsection (7), and a new subsection  
128 (6) is added to that section to read:

129 458.351 Reports of adverse incidents in office practice  
130 settings.—

131 (6) (a) The board shall adopt rules establishing a standard  
132 informed consent form that sets forth the recognized specific  
133 risks related to cataract surgery. The board must propose such  
134 rules within 90 days after the effective date of this  
135 subsection.

136 (b) Before formally proposing the rule, the board must  
137 consider information from physicians licensed under this chapter  
138 or chapter 459 regarding recognized specific risks related to  
139 cataract surgery and the standard informed consent forms adopted  
140 for use in the medical field by other states.

141 (c) A patient's informed consent is not executed until the  
142 patient, or a person authorized by the patient to give consent,  
143 and a competent witness sign the form adopted by the board.

144 (d) An incident resulting from recognized specific risks  
145 described in the signed consent form is not considered an

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146 adverse incident for purposes of s. 395.0197 and this section.

147 (e) In a civil action or administrative proceeding against  
148 a physician based on his or her alleged failure to properly  
149 disclose the risks of cataract surgery, a patient's informed  
150 consent executed as provided in paragraph (c) on the form  
151 adopted by the board is admissible as evidence and creates a  
152 rebuttable presumption that the physician properly disclosed the  
153 risks.

154 Section 4. Section 459.0066, Florida Statutes, is created  
155 to read:

156 459.0066 Expert witness certificate.-

157 (1) (a) The department shall issue a certificate authorizing  
158 a physician who holds an active and valid license to practice  
159 osteopathic medicine in another state or a province of Canada to  
160 provide expert testimony in this state, if the physician submits  
161 to the department:

162 1. A complete registration application containing the  
163 physician's legal name, mailing address, telephone number,  
164 business locations, the names of the jurisdictions where the  
165 physician holds an active and valid license to practice  
166 osteopathic medicine, and the license number or other  
167 identifying number issued to the physician by the jurisdiction's  
168 licensing entity; and

169 2. An application fee of \$50.

170 (b) The department shall approve an application for an  
171 expert witness certificate within 7 business days after receipt  
172 of the completed application and payment of the application fee  
173 if the applicant holds an active and valid license to practice  
174 osteopathic medicine in another state or a province of Canada

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175 and has not had a previous expert witness certificate revoked by  
176 the board. An application is approved by default if the  
177 department does not act upon the application within the required  
178 period. A physician must notify the department in writing of his  
179 or her intent to rely on a certificate approved by default.

180 (c) An expert witness certificate is valid for 2 years  
181 after the date of issuance.

182 (2) An expert witness certificate authorizes the physician  
183 to whom the certificate is issued to do only the following:

184 (a) Provide a verified written medical expert opinion as  
185 provided in s. 766.203.

186 (b) Provide expert testimony about the prevailing  
187 professional standard of care in connection with medical  
188 negligence litigation pending in this state against a physician  
189 licensed under chapter 458 or this chapter.

190 (3) An expert witness certificate does not authorize a  
191 physician to engage in the practice of osteopathic medicine as  
192 defined in s. 459.003. A physician issued a certificate under  
193 this section who does not otherwise practice osteopathic  
194 medicine in this state is not required to obtain a license under  
195 this chapter or pay any license fees, including, but not limited  
196 to, a neurological injury compensation assessment. An expert  
197 witness certificate shall be treated as a license in any  
198 disciplinary action, and the holder of an expert witness  
199 certificate shall be subject to discipline by the board.

200 Section 5. Subsection (11) is added to section 459.015,  
201 Florida Statutes, paragraphs (qq) through (ss) of subsection (1)  
202 of that section are redesignated as paragraphs (rr) through  
203 (tt), respectively, and a new paragraph (qq) is added to that

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204 subsection, to read:

205 459.015 Grounds for disciplinary action; action by the  
206 board and department.—

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

209 (qq) Providing misleading, deceptive, or fraudulent expert  
210 witness testimony related to the practice of osteopathic  
211 medicine.

212 (11) The purpose of this section is to facilitate uniform  
213 discipline for those acts made punishable under this section  
214 and, to this end, a reference to this section constitutes a  
215 general reference under the doctrine of incorporation by  
216 reference.

217 Section 6. Section 466.005, Florida Statutes, is created to  
218 read:

219 466.005 Expert witness certificate.—

220 (1) (a) The department shall issue a certificate authorizing  
221 a dentist who holds an active and valid license to practice  
222 dentistry in another state or a province of Canada to provide  
223 expert testimony in this state, if the dentist submits to the  
224 department:

225 1. A complete registration application containing the  
226 dentist's legal name, mailing address, telephone number,  
227 business locations, the names of the jurisdictions where the  
228 dentist holds an active and valid license to practice dentistry,  
229 and the license number or other identifying number issued to the  
230 dentist by the jurisdiction's licensing entity; and

231 2. An application fee of \$50.

232 (b) The department shall approve an application for an



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233 expert witness certificate within 7 business days after receipt  
234 of the completed application and payment of the application fee  
235 if the applicant holds an active and valid license to practice  
236 dentistry in another state or a province of Canada and has not  
237 had a previous expert witness certificate revoked by the board.  
238 An application is approved by default if the department does not  
239 act upon the application within the required period. A dentist  
240 must notify the department in writing of his or her intent to  
241 rely on a certificate approved by default.

242 (c) An expert witness certificate is valid for 2 years  
243 after the date of issuance.

244 (2) An expert witness certificate authorizes the dentist to  
245 whom the certificate is issued to do only the following:

246 (a) Provide a verified written medical expert opinion as  
247 provided in s. 766.203.

248 (b) Provide expert testimony about the prevailing  
249 professional standard of care in connection with medical  
250 negligence litigation pending in this state against a dentist  
251 licensed under this chapter.

252 (3) An expert witness certificate does not authorize a  
253 dentist to engage in the practice of dentistry as defined in s.  
254 466.003. A dentist issued a certificate under this section who  
255 does not otherwise practice dentistry in this state is not  
256 required to obtain a license under this chapter or pay any  
257 license fees. An expert witness certificate shall be treated as  
258 a license in any disciplinary action, and the holder of an  
259 expert witness certificate shall be subject to discipline by the  
260 board.

261 Section 7. Subsection (8) is added to section 466.028,

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262 Florida Statutes, paragraph (ll) of subsection (1) of that  
263 section is redesignated as paragraph (mm), and a new paragraph  
264 (ll) is added to that subsection, to read:

265 466.028 Grounds for disciplinary action; action by the  
266 board.—

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

269 (ll) Providing misleading, deceptive, or fraudulent expert  
270 witness testimony related to the practice of dentistry.

271 (8) The purpose of this section is to facilitate uniform  
272 discipline for those acts made punishable under this section  
273 and, to this end, a reference to this section constitutes a  
274 general reference under the doctrine of incorporation by  
275 reference.

276 Section 8. Subsection (6) of section 459.026, Florida  
277 Statutes, is renumbered as subsection (7), and a new subsection  
278 (6) is added to that section to read:

279 459.026 Reports of adverse incidents in office practice  
280 settings.—

281 (6) (a) The board shall adopt rules establishing a standard  
282 informed consent form that sets forth the recognized specific  
283 risks related to cataract surgery. The board must propose such  
284 rules within 90 days after the effective date of this  
285 subsection.

286 (b) Before formally proposing the rule, the board must  
287 consider information from physicians licensed under chapter 458  
288 or this chapter regarding recognized specific risks related to  
289 cataract surgery and the standard informed consent forms adopted  
290 for use in the medical field by other states.

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291 (c) A patient's informed consent is not executed until the  
292 patient, or a person authorized by the patient to give consent,  
293 and a competent witness sign the form adopted by the board.

294 (d) An incident resulting from recognized specific risks  
295 described in the signed consent form is not considered an  
296 adverse incident for purposes of s. 395.0197 and this section.

297 (e) In a civil action or administrative proceeding against  
298 a physician based on his or her alleged failure to properly  
299 disclose the risks of cataract surgery, a patient's informed  
300 consent executed as provided in paragraph (c) on the form  
301 adopted by the board is admissible as evidence and creates a  
302 rebuttable presumption that the physician properly disclosed the  
303 risks.

304 Section 9. Paragraph (b) of subsection (1) of section  
305 627.4147, Florida Statutes, is amended to read:

306 627.4147 Medical malpractice insurance contracts.—

307 (1) In addition to any other requirements imposed by law,  
308 each self-insurance policy as authorized under s. 627.357 or s.  
309 624.462 or insurance policy providing coverage for claims  
310 arising out of the rendering of, or the failure to render,  
311 medical care or services, including those of the Florida Medical  
312 Malpractice Joint Underwriting Association, shall include:

313 ~~(b)1. Except as provided in subparagraph 2., a clause~~  
314 ~~authorizing the insurer or self-insurer to determine, to make,~~  
315 ~~and to conclude, without the permission of the insured, any~~  
316 ~~offer of admission of liability and for arbitration pursuant to~~  
317 ~~s. 766.106, settlement offer, or offer of judgment, if the offer~~  
318 ~~is within the policy limits. It is against public policy for any~~  
319 ~~insurance or self-insurance policy to contain a clause giving~~

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320 ~~the insured the exclusive right to veto any offer for admission~~  
321 ~~of liability and for arbitration made pursuant to s. 766.106,~~  
322 ~~settlement offer, or offer of judgment, when such offer is~~  
323 ~~within the policy limits. However, any offer of admission of~~  
324 ~~liability, settlement offer, or offer of judgment made by an~~  
325 ~~insurer or self-insurer shall be made in good faith and in the~~  
326 ~~best interests of the insured.~~

327 ~~2.a. With respect to dentists licensed under chapter 466, A~~  
328 ~~clause clearly stating whether or not the insured has the~~  
329 ~~exclusive right to veto any offer of admission of liability and~~  
330 ~~for arbitration pursuant to s. 766.106, settlement offer, or~~  
331 ~~offer of judgment if the offer is within policy limits. An~~  
332 ~~insurer or self-insurer shall not make or conclude, without the~~  
333 ~~permission of the insured, any offer of admission of liability~~  
334 ~~and for arbitration pursuant to s. 766.106, settlement offer, or~~  
335 ~~offer of judgment, if such offer is outside the policy limits.~~  
336 ~~However, any offer for admission of liability and for~~  
337 ~~arbitration made under s. 766.106, settlement offer, or offer of~~  
338 ~~judgment made by an insurer or self-insurer shall be made in~~  
339 ~~good faith and in the best interest of the insured.~~

340 ~~2.b.~~ 2.b. If the policy contains a clause stating the insured  
341 does not have the exclusive right to veto any offer or admission  
342 of liability and for arbitration made pursuant to s. 766.106,  
343 settlement offer or offer of judgment, the insurer or self-  
344 insurer shall provide to the insured or the insured's legal  
345 representative by certified mail, return receipt requested, a  
346 copy of the final offer of admission of liability and for  
347 arbitration made pursuant to s. 766.106, settlement offer or  
348 offer of judgment and at the same time such offer is provided to

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349 the claimant. A copy of any final agreement reached between the  
350 insurer and claimant shall also be provided to the insurer or  
351 his or her legal representative by certified mail, return  
352 receipt requested not more than 10 days after affecting such  
353 agreement.

354 Section 10. Subsections (3), (4), and (5) of section  
355 766.102, Florida Statutes, are amended, subsection (12) of that  
356 section is renumbered as subsection (14), and new subsections  
357 (12) and (13) are added to that section, to read:

358 766.102 Medical negligence; standards of recovery; expert  
359 witness.—

360 (3) (a) As used in this subsection, the term:

361 1. "Insurer" means any public or private insurer, including  
362 the Centers for Medicare and Medicaid Services.

363 2. "Reimbursement determination" means an insurer's  
364 determination of the amount that the insurer will reimburse a  
365 health care provider for health care services.

366 3. "Reimbursement policies" means an insurer's policies and  
367 procedures governing its decisions regarding health insurance  
368 coverage and method of payment and the data upon which such  
369 policies and procedures are based, including, but not limited  
370 to, data from national research groups and other patient safety  
371 data as defined in s. 766.1016.

372 (b) The existence of a medical injury does ~~shall~~ not create  
373 any inference or presumption of negligence against a health care  
374 provider, and the claimant must maintain the burden of proving  
375 that an injury was proximately caused by a breach of the  
376 prevailing professional standard of care by the health care  
377 provider. Any records, policies, or testimony of an insurer's

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378 reimbursement policies or reimbursement determination regarding  
379 the care provided to the plaintiff are not admissible as  
380 evidence in any medical negligence action. However, the  
381 discovery of the presence of a foreign body, such as a sponge,  
382 clamp, forceps, surgical needle, or other paraphernalia commonly  
383 used in surgical, examination, or diagnostic procedures, shall  
384 be prima facie evidence of negligence on the part of the health  
385 care provider.

386 (4) (a) The Legislature is cognizant of the changing trends  
387 and techniques for the delivery of health care in this state and  
388 the discretion that is inherent in the diagnosis, care, and  
389 treatment of patients by different health care providers. The  
390 failure of a health care provider to order, perform, or  
391 administer supplemental diagnostic tests is ~~shall~~ not be  
392 actionable if the health care provider acted in good faith and  
393 with due regard for the prevailing professional standard of  
394 care.

395 (b) In an action for damages based on death or personal  
396 injury which alleges that such death or injury resulted from the  
397 failure of a health care provider to order, perform, or  
398 administer supplemental diagnostic tests, the claimant has the  
399 burden of proving by clear and convincing evidence that the  
400 alleged actions of the health care provider represented a breach  
401 of the prevailing professional standard of care.

402 (5) A person may not give expert testimony concerning the  
403 prevailing professional standard of care unless the ~~that~~ person  
404 is a ~~licensed~~ health care provider who holds an active and valid  
405 license and conducts a complete review of the pertinent medical  
406 records and meets the following criteria:

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407 (a) If the health care provider against whom or on whose  
408 behalf the testimony is offered is a specialist, the expert  
409 witness must:

410 1. Specialize in the same specialty as the health care  
411 provider against whom or on whose behalf the testimony is  
412 offered; or specialize in a similar specialty that includes the  
413 evaluation, diagnosis, or treatment of the medical condition  
414 that is the subject of the claim and have prior experience  
415 treating similar patients; and

416 2. Have devoted professional time during the 3 years  
417 immediately preceding the date of the occurrence that is the  
418 basis for the action to:

419 a. The active clinical practice of, or consulting with  
420 respect to, the same or similar specialty that includes the  
421 evaluation, diagnosis, or treatment of the medical condition  
422 that is the subject of the claim and have prior experience  
423 treating similar patients;

424 b. Instruction of students in an accredited health  
425 professional school or accredited residency or clinical research  
426 program in the same or similar specialty; or

427 c. A clinical research program that is affiliated with an  
428 accredited health professional school or accredited residency or  
429 clinical research program in the same or similar specialty.

430 (b) If the health care provider against whom or on whose  
431 behalf the testimony is offered is a general practitioner, the  
432 expert witness must have devoted professional time during the 5  
433 years immediately preceding the date of the occurrence that is  
434 the basis for the action to:

435 1. The active clinical practice or consultation as a

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436 general practitioner;

437 2. The instruction of students in an accredited health  
438 professional school or accredited residency program in the  
439 general practice of medicine; or

440 3. A clinical research program that is affiliated with an  
441 accredited medical school or teaching hospital and that is in  
442 the general practice of medicine.

443 (c) If the health care provider against whom or on whose  
444 behalf the testimony is offered is a health care provider other  
445 than a specialist or a general practitioner, the expert witness  
446 must have devoted professional time during the 3 years  
447 immediately preceding the date of the occurrence that is the  
448 basis for the action to:

449 1. The active clinical practice of, or consulting with  
450 respect to, the same or similar health profession as the health  
451 care provider against whom or on whose behalf the testimony is  
452 offered;

453 2. The instruction of students in an accredited health  
454 professional school or accredited residency program in the same  
455 or similar health profession in which the health care provider  
456 against whom or on whose behalf the testimony is offered; or

457 3. A clinical research program that is affiliated with an  
458 accredited medical school or teaching hospital and that is in  
459 the same or similar health profession as the health care  
460 provider against whom or on whose behalf the testimony is  
461 offered.

462 (12) If a physician licensed under chapter 458 or chapter  
463 459 or a dentist licensed under chapter 466 is the party against  
464 whom, or on whose behalf, expert testimony about the prevailing



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465 professional standard of care is offered, the expert witness  
466 must be licensed under chapter 458, chapter 459, or chapter 466  
467 or possess a valid expert witness certificate issued under s.  
468 458.3175, s. 459.0066, or s. 466.005.

469 (13) A health care provider's failure to comply with or  
470 breach of any federal requirement is not admissible as evidence  
471 in any medical negligence case in this state.

472 Section 11. Paragraph (a) of subsection (2), subsection  
473 (5), and paragraph (b) of subsection (6) of section 766.106,  
474 Florida Statutes, are amended to read:

475 766.106 Notice before filing action for medical negligence;  
476 presuit screening period; offers for admission of liability and  
477 for arbitration; informal discovery; review.—

478 (2) PRESUIT NOTICE.—

479 (a) After completion of presuit investigation pursuant to  
480 s. 766.203(2) and prior to filing a complaint for medical  
481 negligence, a claimant shall notify each prospective defendant  
482 by certified mail, return receipt requested, of intent to  
483 initiate litigation for medical negligence. Notice to each  
484 prospective defendant must include, if available, a list of all  
485 known health care providers seen by the claimant for the  
486 injuries complained of subsequent to the alleged act of  
487 negligence, all known health care providers during the 2-year  
488 period prior to the alleged act of negligence who treated or  
489 evaluated the claimant, ~~and~~ copies of all of the medical records  
490 relied upon by the expert in signing the affidavit, and the  
491 executed authorization form provided in s. 766.1065. ~~The~~  
492 ~~requirement of providing the list of known health care providers~~  
493 ~~may not serve as grounds for imposing sanctions for failure to~~

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494 ~~provide presuit discovery.~~

495 (5) DISCOVERY AND ADMISSIBILITY.—~~A~~ ~~Ne~~ statement,  
496 discussion, written document, report, or other work product  
497 generated by the presuit screening process is not discoverable  
498 or admissible in any civil action for any purpose by the  
499 opposing party. All participants, including, but not limited to,  
500 physicians, investigators, witnesses, and employees or  
501 associates of the defendant, are immune from civil liability  
502 arising from participation in the presuit screening process.  
503 This subsection does not prevent a physician licensed under  
504 chapter 458 or chapter 459 or a dentist licensed under chapter  
505 466 who submits a verified written expert medical opinion from  
506 being subject to denial of a license or disciplinary action  
507 under s. 458.331(1)(oo), s. 459.015(1)(qq), or s.  
508 466.028(1)(ll).

509 (6) INFORMAL DISCOVERY.—

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

513 1. Unsworn statements.—Any party may require other parties  
514 to appear for the taking of an unsworn statement. Such  
515 statements may be used only for the purpose of presuit screening  
516 and are not discoverable or admissible in any civil action for  
517 any purpose by any party. A party desiring to take the unsworn  
518 statement of any party must give reasonable notice in writing to  
519 all parties. The notice must state the time and place for taking  
520 the statement and the name and address of the party to be  
521 examined. Unless otherwise impractical, the examination of any  
522 party must be done at the same time by all other parties. Any

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523 party may be represented by counsel at the taking of an unsworn  
524 statement. An unsworn statement may be recorded electronically,  
525 stenographically, or on videotape. The taking of unsworn  
526 statements is subject to the provisions of the Florida Rules of  
527 Civil Procedure and may be terminated for abuses.

528       2. Documents or things.—Any party may request discovery of  
529 documents or things. The documents or things must be produced,  
530 at the expense of the requesting party, within 20 days after the  
531 date of receipt of the request. A party is required to produce  
532 discoverable documents or things within that party's possession  
533 or control. Medical records shall be produced as provided in s.  
534 766.204.

535       3. Physical and mental examinations.—A prospective  
536 defendant may require an injured claimant to appear for  
537 examination by an appropriate health care provider. The  
538 prospective defendant shall give reasonable notice in writing to  
539 all parties as to the time and place for examination. Unless  
540 otherwise impractical, a claimant is required to submit to only  
541 one examination on behalf of all potential defendants. The  
542 practicality of a single examination must be determined by the  
543 nature of the claimant's condition, as it relates to the  
544 liability of each prospective defendant. Such examination report  
545 is available to the parties and their attorneys upon payment of  
546 the reasonable cost of reproduction and may be used only for the  
547 purpose of presuit screening. Otherwise, such examination report  
548 is confidential and exempt from the provisions of s. 119.07(1)  
549 and s. 24(a), Art. I of the State Constitution.

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

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

554 5. Ex parte interviews of treating health care providers.—A  
555 prospective defendant or his or her legal representative may  
556 interview the claimant's treating health care providers without  
557 notice to or the presence of the claimant or the claimant's  
558 legal representative.

559 6.5. Unsworn statements of treating health care providers  
560 ~~Medical information release. The claimant must execute a medical~~  
561 ~~information release that allows~~ A prospective defendant or his  
562 or her legal representative may also ~~to~~ take unsworn statements  
563 of the claimant's treating health care providers ~~physicians~~. The  
564 statements must be limited to those areas that are potentially  
565 relevant to the claim of personal injury or wrongful death.  
566 Subject to the procedural requirements of subparagraph 1., a  
567 prospective defendant may take unsworn statements from a  
568 claimant's treating physicians. Reasonable notice and  
569 opportunity to be heard must be given to the claimant or the  
570 claimant's legal representative before taking unsworn  
571 statements. The claimant or claimant's legal representative has  
572 the right to attend the taking of such unsworn statements.

573 Section 12. Section 766.1065, Florida Statutes, is created  
574 to read:

575 766.1065 Authorization for release of protected health  
576 information.—

577 (1) Presuit notice of intent to initiate litigation for  
578 medical negligence under s. 766.106(2) must be accompanied by an  
579 authorization for release of protected health information in the  
580 form specified by this section, authorizing the disclosure of

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581 protected health information that is potentially relevant to the  
582 claim of personal injury or wrongful death. The presuit notice  
583 is void if this authorization does not accompany the presuit  
584 notice and other materials required by s. 766.106(2).

585 (2) If the authorization required by this section is  
586 revoked, the presuit notice under s. 766.106(2) is deemed  
587 retroactively void from the date of issuance, and any tolling  
588 effect that the presuit notice may have had on any applicable  
589 statute-of-limitations period is retroactively rendered void.

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

594  
595 AUTHORIZATION FOR RELEASE OF PROTECTED HEALTH INFORMATION  
596

597 A. I, (...Name of patient or authorized  
598 representative...) [hereinafter "Patient"], authorize  
599 that (...Name of health care provider to whom the  
600 presuit notice is directed...) and his/her/its  
601 insurer(s), self-insurer(s), and attorney(s) may  
602 obtain and disclose (within the parameters set out  
603 below) the protected health information described  
604 below for the following specific purposes:

605 1. Facilitating the investigation and evaluation  
606 of the medical negligence claim described in the  
607 accompanying presuit notice; or

608 2. Defending against any litigation arising out  
609 of the medical negligence claim made on the basis of

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610 the accompanying presuit notice.

611 B. The health information obtained, used, or  
612 disclosed extends to, and includes, the verbal as well  
613 as the written and is described as follows:

614 1. The health information in the custody of the  
615 following health care providers who have examined,  
616 evaluated, or treated the Patient in connection with  
617 injuries complained of after the alleged act of  
618 negligence: (List the name and current address of all  
619 health care providers). This authorization extends to  
620 any additional health care providers that may in the  
621 future evaluate, examine, or treat the Patient for the  
622 injuries complained of.

623 2. The health information in the custody of the  
624 following health care providers who have examined,  
625 evaluated, or treated the Patient during a period  
626 commencing 2 years before the incident that is the  
627 basis of the accompanying presuit notice.

628  
629 (List the name and current address of such health care  
630 providers, if applicable.)

631  
632 C. This authorization does not apply to the  
633 following list of health care providers possessing  
634 health care information about the Patient because the  
635 Patient certifies that such health care information is  
636 not potentially relevant to the claim of personal  
637 injury or wrongful death that is the basis of the  
638 accompanying presuit notice.

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639

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

644

645 D. The persons or class of persons to whom the  
646 Patient authorizes such health information to be  
647 disclosed or by whom such health information is to be  
648 used:

649 1. Any health care provider providing care or  
650 treatment for the Patient.

651 2. Any liability insurer or self-insurer  
652 providing liability insurance coverage, self-  
653 insurance, or defense to any health care provider to  
654 whom presuit notice is given regarding the care and  
655 treatment of the Patient.

656 3. Any consulting or testifying expert employed  
657 by or on behalf of (name of health care provider to  
658 whom presuit notice was given), his/her/its  
659 insurer(s), self-insurer(s), or attorney(s) regarding  
660 to the matter of the presuit notice accompanying this  
661 authorization.

662 4. Any attorney (including secretarial, clerical,  
663 or paralegal staff) employed by or on behalf of (name  
664 of health care provider to whom presuit notice was  
665 given) regarding the matter of the presuit notice  
666 accompanying this authorization.

667 5. Any trier of the law or facts relating to any

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668 suit filed seeking damages arising out of the medical  
669 care or treatment of the Patient.

670 E. This authorization expires upon resolution of  
671 the claim or at the conclusion of any litigation  
672 instituted in connection with the matter of the  
673 presuit notice accompanying this authorization,  
674 whichever occurs first.

675 F. The Patient understands that, without  
676 exception, the Patient has the right to revoke this  
677 authorization in writing. The Patient further  
678 understands that the consequence of any such  
679 revocation is that the presuit notice under s.  
680 766.106(2), Florida Statutes, is deemed retroactively  
681 void from the date of issuance, and any tolling effect  
682 that the presuit notice may have had on any applicable  
683 statute-of-limitations period is retroactively  
684 rendered void.

685 G. The Patient understands that signing this  
686 authorization is not a condition for continued  
687 treatment, payment, enrollment, or eligibility for  
688 health plan benefits.

689 H. The Patient understands that information used  
690 or disclosed under this authorization may be subject  
691 to additional disclosure by the recipient and may not  
692 be protected by federal HIPAA privacy regulations.

693  
694 Signature of Patient/Representative: ....

695 Date: ....

696 Name of Patient/Representative: ....



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697 Description of Representative's Authority: . . . .

698 Section 13. Subsection (2) of section 766.206, Florida  
699 Statutes, is amended to read:

700 766.206 Presuit investigation of medical negligence claims  
701 and defenses by court.—

702 (2) If the court finds that the notice of intent to  
703 initiate litigation mailed by the claimant does is not comply in  
704 compliance with the reasonable investigation requirements of ss.  
705 766.201-766.212, including a review of the claim and a verified  
706 written medical expert opinion by an expert witness as defined  
707 in s. 766.202, or that the authorization accompanying the notice  
708 of intent required under s. 766.1065 is not completed in good  
709 faith by the claimant, the court shall dismiss the claim, and  
710 the person who mailed such notice of intent, whether the  
711 claimant or the claimant's attorney, shall be personally liable  
712 for all attorney's fees and costs incurred during the  
713 investigation and evaluation of the claim, including the  
714 reasonable attorney's fees and costs of the defendant or the  
715 defendant's insurer.

716 Section 14. Section 768.0981, Florida Statutes, is amended  
717 to read:

718 768.0981 Limitation on actions against insurers, prepaid  
719 limited health service organizations, health maintenance  
720 organizations, hospitals, or prepaid health clinics.—An entity  
721 licensed or certified under chapter 395, chapter 624, chapter  
722 636, or chapter 641 is shall not be liable for the medical  
723 negligence of a health care provider with whom the licensed or  
724 certified entity has entered into a contract, other than an  
725 employee of such licensed or certified entity, unless the

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726 licensed or certified entity expressly directs or exercises  
727 actual control over the specific conduct that caused injury.  
728       Section 15. This act shall take effect July 1, 2011.