

By Senator Bennett

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1                                   A bill to be entitled  
2           An act relating to health care; creating ss. 458.3175  
3           and 459.0066, F.S.; requiring the Board of Medicine  
4           and the Board of Osteopathic Medicine to issue expert  
5           witness certificates to certain physicians licensed  
6           outside the state; providing application and  
7           certification requirements; establishing application  
8           fees; providing for validity and use of certificates;  
9           exempting physicians issued certificates from certain  
10          licensure and fee requirements; requiring the boards  
11          to adopt rules; amending ss. 458.331 and 459.015,  
12          F.S.; providing additional acts that constitute  
13          grounds for denial of a license or disciplinary action  
14          to which penalties apply; providing construction with  
15          respect to the doctrine of incorporation by reference;  
16          amending ss. 458.351 and 459.026, F.S.; requiring the  
17          boards to adopt within a specified period certain  
18          patient forms specifying cataract surgery risks;  
19          exempting rules adopting the patient forms from  
20          certain administrative procedures; specifying that an  
21          incident resulting from risks disclosed in the patient  
22          form is not an adverse incident; providing for the  
23          execution and admissibility of the patient forms in  
24          civil and administrative proceedings; creating a  
25          rebuttable presumption that a physician disclosed  
26          cataract surgery risks if the patient form is  
27          executed; amending s. 464.012, F.S.; expanding the  
28          scope of practice to authorize an advanced registered  
29          nurse practitioner to order, administer, monitor, and

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30 alter any drug or drug therapies that are necessary  
31 for the proper medical care and treatment of a patient  
32 under specified circumstances; requiring that the  
33 Board of Nursing adopt rules; authorizing a certified  
34 registered nurse anesthetist, while participating in  
35 the management of a patient in the postanesthesia  
36 recovery area, to order the administration of drugs  
37 that are commonly used to alleviate pain; amending s.  
38 627.4147, F.S.; deleting a requirement that medical  
39 malpractice insurance contracts contain a clause  
40 authorizing the insurer to make and conclude certain  
41 offers within policy limits over the insured's veto;  
42 amending s. 766.102, F.S.; revising the burden of  
43 proof that a claimant must demonstrate in order to  
44 prove medical negligence by a health care provider;  
45 defining terms; providing that certain insurance  
46 information is not admissible as evidence in civil  
47 actions; requiring that certain expert witnesses who  
48 provide expert testimony meet certain licensure or  
49 certification requirements; establishing the burden of  
50 proof that a claimant must meet in certain damage  
51 claims against health care providers based on death or  
52 personal injury; excluding a health care provider's  
53 failure to comply with or a breach of federal  
54 requirements from evidence in medical negligence cases  
55 in the state; amending s. 766.106, F.S.; requiring  
56 claimants for medical malpractice to execute an  
57 authorization form; allowing prospective medical  
58 malpractice defendants to interview a claimant's

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59 treating health care provider without notice to or the  
60 presence of the claimant or the claimant's legal  
61 representative; authorizing prospective defendants to  
62 take unsworn statements of a claimant's health care  
63 provider; creating s. 766.1065, F.S.; requiring that  
64 presuit notice for medical negligence claims be  
65 accompanied by an authorization for release of  
66 protected health information; providing requirements  
67 for the form of such authorization; amending s.  
68 766.206, F.S.; requiring dismissal of a medical  
69 malpractice claim if such authorization is not  
70 completed in good faith; amending s. 768.0981, F.S.;  
71 limiting the liability of hospitals related to certain  
72 medical negligence claims; providing an effective  
73 date.

74

75 Be It Enacted by the Legislature of the State of Florida:

76

77 Section 1. Section 458.3175, Florida Statutes, is created  
78 to read:

79 458.3175 Expert witness certificate.-

80 (1) (a) The board shall issue a certificate authorizing a  
81 physician who holds an active and valid license to practice  
82 medicine in another state or a province of Canada to provide  
83 expert testimony in this state if the physician submits to the  
84 board a complete registration application in the format  
85 prescribed by the board, pays an application fee established by  
86 the board not to exceed \$50, and has not had a previous expert  
87 witness certificate revoked by the board.

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88       (b) The board shall approve or deny an application for an  
89 expert witness certificate within 5 business days after receipt  
90 of the completed application and payment of the application fee.  
91 An application is approved by default if the board does not act  
92 upon the application within the required period. A physician  
93 must notify the board in writing of his or her intent to rely on  
94 a certificate approved by default.

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

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

99       (a) Provide a verified written medical expert opinion as  
100 provided in s. 766.203.

101       (b) Provide expert testimony about the prevailing  
102 professional standard of care in connection with medical  
103 negligence litigation pending in this state against a physician  
104 licensed under this chapter or chapter 459.

105       (3) An expert witness certificate does not authorize a  
106 physician to engage in the practice of medicine as defined in s.  
107 458.305. A physician issued a certificate under this section who  
108 does not otherwise practice medicine in this state is not  
109 required to obtain a license under this chapter or pay any  
110 license fees, including, but not limited to, a neurological  
111 injury compensation assessment.

112       (4) The board shall adopt rules to administer this section.

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

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117 added to that subsection, to read:

118 458.331 Grounds for disciplinary action; action by the  
119 board and department.—

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

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

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

129 Section 3. Present subsection (6) of section 458.351,  
130 Florida Statutes, is renumbered as subsection (7), and a new  
131 subsection (6) is added to that section, to read:

132 458.351 Reports of adverse incidents in office practice  
133 settings.—

134 (6) (a) The board shall adopt rules establishing a standard  
135 informed consent form that sets forth the recognized specific  
136 risks related to cataract surgery. The board must propose such  
137 rules by October 1, 2011, and the provisions of s. 120.541  
138 relating to adverse impacts, estimated regulatory costs, and  
139 legislative ratification of rules do not apply to such rules.

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

145 (c) A patient's informed consent is not executed until the

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146 patient, or a person authorized by the patient to give consent,  
147 and a competent witness sign the form adopted by the board.

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

151 (e) In a civil action or administrative proceeding against  
152 a physician based on his or her alleged failure to properly  
153 disclose the risks of cataract surgery, a patient's informed  
154 consent executed as provided in paragraph (c) on the form  
155 adopted by the board is admissible as evidence and creates a  
156 rebuttable presumption that the physician properly disclosed the  
157 risks. This rebuttable presumption shall be included in the  
158 charge to the jury in a civil action.

159 Section 4. Section 459.0066, Florida Statutes, is created  
160 to read:

161 459.0066 Expert witness certificate.—

162 (1) (a) The board shall issue a certificate authorizing a  
163 physician who holds an active and valid license to practice  
164 osteopathic medicine in another state or a province of Canada to  
165 provide expert testimony in this state if the physician submits  
166 to the board a complete registration application in the format  
167 prescribed by the board, pays an application fee established by  
168 the board not to exceed \$50, and has not had a previous expert  
169 witness certificate revoked by the board.

170 (b) The board shall approve or deny an application for an  
171 expert witness certificate within 5 business days after receipt  
172 of the completed application and payment of the application fee.  
173 An application is approved by default if the board does not act  
174 upon the application within the required period. A physician

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175 must notify the board in writing of his or her intent to rely on  
176 a certificate approved by default.

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

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

181 (a) Provide a verified written medical expert opinion as  
182 provided in s. 766.203.

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

187 (3) An expert witness certificate does not authorize a  
188 physician to engage in the practice of osteopathic medicine as  
189 defined in s. 459.003. A physician issued a certificate under  
190 this section who does not otherwise practice osteopathic  
191 medicine in this state is not required to obtain a license under  
192 this chapter or pay any license fees, including, but not limited  
193 to, a neurological injury compensation assessment.

194 (4) The board shall adopt rules to administer this section.

195 Section 5. Subsection (11) is added to section 459.015,  
196 Florida Statutes, present paragraphs (qq) through (ss) of  
197 subsection (1) of that section are redesignated as paragraphs  
198 (rr) through (tt), respectively, and a new paragraph (qq) is  
199 added to that subsection, to read:

200 459.015 Grounds for disciplinary action; action by the  
201 board and department.—

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

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204       (qq) Providing misleading, deceptive, or fraudulent expert  
205 witness testimony related to the practice of osteopathic  
206 medicine.

207       (11) The purpose of this section is to facilitate uniform  
208 discipline for those acts made punishable under this section  
209 and, to this end, a reference to this section constitutes a  
210 general reference under the doctrine of incorporation by  
211 reference.

212       Section 6. Present subsection (6) of section 459.026,  
213 Florida Statutes, is renumbered as subsection (7), and a new  
214 subsection (6) is added to that section, to read:

215       459.026 Reports of adverse incidents in office practice  
216 settings.—

217       (6) (a) The board shall adopt rules establishing a standard  
218 informed consent form that sets forth the recognized specific  
219 risks related to cataract surgery. The board must propose such  
220 rules by October 1, 2011, and the provisions of s. 120.541  
221 relating to adverse impacts, estimated regulatory costs, and  
222 legislative ratification of rules do not apply to such rules.

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

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

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



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

234 (e) In a civil action or administrative proceeding against  
235 a physician based on his or her alleged failure to properly  
236 disclose the risks of cataract surgery, a patient's informed  
237 consent executed as provided in paragraph (c) on the form  
238 adopted by the board is admissible as evidence and creates a  
239 rebuttable presumption that the physician properly disclosed the  
240 risks. This rebuttable presumption shall be included in the  
241 charge to the jury in a civil action.

242 Section 7. Subsection (3) and paragraph (a) of subsection  
243 (4) of section 464.012, Florida Statutes, are amended to read:

244 464.012 Certification of advanced registered nurse  
245 practitioners; fees.—

246 (3) An advanced registered nurse practitioner shall perform  
247 those functions authorized in this section within the framework  
248 of an established protocol that is filed with the board upon  
249 biennial license renewal and within 30 days after entering into  
250 a supervisory relationship with a physician or changes to the  
251 protocol. The board shall review the protocol to ensure  
252 compliance with applicable regulatory standards for protocols.  
253 The board shall refer to the department licensees submitting  
254 protocols that are not compliant with the regulatory standards  
255 for protocols. A practitioner currently licensed under chapter  
256 458, chapter 459, or chapter 466 shall maintain supervision for  
257 directing the specific course of medical treatment. Within the  
258 established framework, an advanced registered nurse practitioner  
259 may:

260 (a) Order, administer, monitor, and alter any drug or drug  
261 therapies that are necessary for the proper medical care and

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262 treatment of a patient, including Schedule II through Schedule V  
263 controlled substances under chapter 893 and those drugs agreed  
264 upon by the advanced registered nurse practitioner and the  
265 supervising practitioner and specified in the protocol. An  
266 advanced registered nurse practitioner may order or administer  
267 such drugs under the following conditions:

268 1. The drugs are ordered or administered by an advanced  
269 registered nurse practitioner in accordance with a protocol  
270 developed by the advanced registered nurse practitioner and the  
271 supervising practitioner, and the drugs ordered are consistent  
272 with the advanced registered nurse practitioner's educational  
273 preparation or for which clinical competency has been  
274 established and maintained.

275 2. The protocol covering the order or administration of  
276 drugs specifies the name of the advanced registered nurse  
277 practitioner who may administer or order drugs, the drugs that  
278 may be ordered and the circumstances under which they may be  
279 ordered, the extent of the practitioner's supervision of the  
280 advanced registered nurse practitioner, and the method of  
281 periodic review of the advanced registered nurse practitioner's  
282 competence, including peer review. The protocol for  
283 administering Schedule II controlled substances must address the  
284 illness, injury, or condition for which a Schedule II controlled  
285 substance is administered.

286 3. The administering or ordering of drugs by an advanced  
287 registered nurse practitioner occurs under practitioner  
288 supervision. As used in this paragraph, the term "practitioner  
289 supervision" means a collaboration between the advanced  
290 registered nurse practitioner and the supervising practitioner

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291 on the development of the protocol and the availability of the  
292 supervising practitioner via telephonic contact at the time the  
293 patient is examined by the advanced registered nurse  
294 practitioner. The term does not mean that the physical presence  
295 of the supervising practitioner is required. A practitioner may  
296 not supervise more than four advanced registered nurse  
297 practitioners at any one time.

298 4. The controlled substances are administered or ordered in  
299 accordance with a patient-specific protocol approved by the  
300 treating or supervising practitioner if Schedule II or Schedule  
301 III controlled substances are administered or ordered by the  
302 advanced registered nurse practitioner. A copy of the section of  
303 the advanced registered nurse practitioner's protocol relating  
304 to controlled substances must be provided upon request to the  
305 licensed pharmacist who dispenses the drugs.

306 5. The board has certified that the advanced registered  
307 nurse practitioner has satisfactorily completed:

308 a. At least 6 months of direct supervision in the  
309 administering and ordering of drugs; and

310 b. A course in pharmacology covering the order, use,  
311 administration, and dispensing of controlled substances.

312  
313 The board shall adopt rules to administer this paragraph.

314 (b) Initiate appropriate therapies for certain conditions.

315 (c) Perform additional functions as may be determined by  
316 rule in accordance with s. 464.003(2).

317 (d) Order diagnostic tests and physical and occupational  
318 therapy.

319 (4) In addition to the general functions specified in

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320 subsection (3), an advanced registered nurse practitioner may  
321 perform the following acts within his or her specialty:

322 (a) The certified registered nurse anesthetist may, to the  
323 extent authorized by established protocol approved by the  
324 medical staff of the facility in which the anesthetic service is  
325 performed, perform any or all of the following:

326 1. Determine the health status of the patient as it relates  
327 to the risk factors and to the anesthetic management of the  
328 patient through the performance of the general functions.

329 2. Based on history, physical assessment, and supplemental  
330 laboratory results, determine, with the consent of the  
331 responsible physician, the appropriate type of anesthesia within  
332 the framework of the protocol.

333 3. Order under the protocol preanesthetic medication.

334 4. Perform under the protocol procedures commonly used to  
335 render the patient insensible to pain during the performance of  
336 surgical, obstetrical, therapeutic, or diagnostic clinical  
337 procedures. These procedures include ordering and administering  
338 regional, spinal, and general anesthesia; inhalation agents and  
339 techniques; intravenous agents and techniques; and techniques of  
340 hypnosis.

341 5. Order or perform monitoring procedures indicated as  
342 pertinent to the anesthetic health care management of the  
343 patient.

344 6. Support life functions during anesthesia health care,  
345 including induction and intubation procedures, the use of  
346 appropriate mechanical supportive devices, and the management of  
347 fluid, electrolyte, and blood component balances.

348 7. Recognize and take appropriate corrective action for

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349 abnormal patient responses to anesthesia, adjunctive medication,  
350 or other forms of therapy.

351 8. Recognize and treat a cardiac arrhythmia while the  
352 patient is under anesthetic care.

353 9. Participate in management of the patient while in the  
354 postanesthesia recovery area, including ordering the  
355 administration of fluids and drugs, which include those drugs  
356 that are commonly used to alleviate pain.

357 10. Place special peripheral and central venous and  
358 arterial lines for blood sampling and monitoring as appropriate.

359 Section 8. Paragraph (b) of subsection (1) of section  
360 627.4147, Florida Statutes, is amended to read:

361 627.4147 Medical malpractice insurance contracts.—

362 (1) In addition to any other requirements imposed by law,  
363 each self-insurance policy as authorized under s. 627.357 or s.  
364 624.462 or insurance policy providing coverage for claims  
365 arising out of the rendering of, or the failure to render,  
366 medical care or services, including those of the Florida Medical  
367 Malpractice Joint Underwriting Association, shall include:

368 (b)1. ~~Except as provided in subparagraph 2., a clause~~  
369 ~~authorizing the insurer or self-insurer to determine, to make,~~  
370 ~~and to conclude, without the permission of the insured, any~~  
371 ~~offer of admission of liability and for arbitration pursuant to~~  
372 ~~s. 766.106, settlement offer, or offer of judgment, if the offer~~  
373 ~~is within the policy limits. It is against public policy for any~~  
374 ~~insurance or self-insurance policy to contain a clause giving~~  
375 ~~the insured the exclusive right to veto any offer for admission~~  
376 ~~of liability and for arbitration made pursuant to s. 766.106,~~  
377 ~~settlement offer, or offer of judgment, when such offer is~~

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378 ~~within the policy limits. However, any offer of admission of~~  
379 ~~liability, settlement offer, or offer of judgment made by an~~  
380 ~~insurer or self-insurer shall be made in good faith and in the~~  
381 ~~best interests of the insured.~~

382 ~~2.a. With respect to dentists licensed under chapter 466, A~~  
383 ~~clause clearly stating whether or not the insured has the~~  
384 ~~exclusive right to veto any offer of admission of liability and~~  
385 ~~for arbitration pursuant to s. 766.106, settlement offer, or~~  
386 ~~offer of judgment if the offer is within policy limits. An~~  
387 ~~insurer or self-insurer shall not make or conclude, without the~~  
388 ~~permission of the insured, any offer of admission of liability~~  
389 ~~and for arbitration pursuant to s. 766.106, settlement offer, or~~  
390 ~~offer of judgment, if such offer is outside the policy limits.~~  
391 ~~However, any offer for admission of liability and for~~  
392 ~~arbitration made under s. 766.106, settlement offer, or offer of~~  
393 ~~judgment made by an insurer or self-insurer shall be made in~~  
394 ~~good faith and in the best interest of the insured.~~

395 ~~2.b.~~ 2.b. If the policy contains a clause stating the insured  
396 does not have the exclusive right to veto any offer or admission  
397 of liability and for arbitration made pursuant to s. 766.106,  
398 settlement offer or offer of judgment, the insurer or self-  
399 insurer shall provide to the insured or the insured's legal  
400 representative by certified mail, return receipt requested, a  
401 copy of the final offer of admission of liability and for  
402 arbitration made pursuant to s. 766.106, settlement offer or  
403 offer of judgment and at the same time such offer is provided to  
404 the claimant. A copy of any final agreement reached between the  
405 insurer and claimant shall also be provided to the insurer or  
406 his or her legal representative by certified mail, return

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407 receipt requested not more than 10 days after affecting such  
408 agreement.

409 Section 9. Subsections (1), (3), (4), and (5) of section  
410 766.102, Florida Statutes, are amended, present subsection (12)  
411 of that section is renumbered as subsection (14), and new  
412 subsections (12) and (13) are added to that section, to read:

413 766.102 Medical negligence; standards of recovery; expert  
414 witness.—

415 (1) In any action for recovery of damages based on the  
416 death or personal injury of any person in which it is alleged  
417 that such death or injury resulted from the negligence of a  
418 health care provider as defined in s. 766.202(4), the claimant  
419 shall have the burden of proving by clear and convincing ~~the~~  
420 ~~greater weight of~~ evidence that the alleged actions of the  
421 health care provider represented a breach of the prevailing  
422 professional standard of care for that health care provider. The  
423 prevailing professional standard of care for a given health care  
424 provider shall be that level of care, skill, and treatment  
425 which, in light of all relevant surrounding circumstances, is  
426 recognized as acceptable and appropriate by reasonably prudent  
427 similar health care providers.

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

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

431 2. "Reimbursement determination" means an insurer's  
432 determination of the amount that the insurer will reimburse a  
433 health care provider for health care services.

434 3. "Reimbursement policies" means an insurer's policies and  
435 procedures governing its decisions regarding health insurance

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436 coverage and method of payment and the data upon which such  
437 policies and procedures are based, including, but not limited  
438 to, data from national research groups and other patient safety  
439 data as defined in s. 766.1016.

440 (b) The existence of a medical injury does ~~shall~~ not create  
441 any inference or presumption of negligence against a health care  
442 provider, and the claimant must maintain the burden of proving  
443 that an injury was proximately caused by a breach of the  
444 prevailing professional standard of care by the health care  
445 provider. Any records, policies, or testimony of an insurer's  
446 reimbursement policies or reimbursement determination regarding  
447 the care provided to the plaintiff are not admissible as  
448 evidence in any civil action. However, the discovery of the  
449 presence of a foreign body, such as a sponge, clamp, forceps,  
450 surgical needle, or other paraphernalia commonly used in  
451 surgical, examination, or diagnostic procedures, shall be prima  
452 facie evidence of negligence on the part of the health care  
453 provider.

454 (4) (a) The Legislature is cognizant of the changing trends  
455 and techniques for the delivery of health care in this state and  
456 the discretion that is inherent in the diagnosis, care, and  
457 treatment of patients by different health care providers. The  
458 failure of a health care provider to order, perform, or  
459 administer supplemental diagnostic tests is ~~shall~~ not ~~be~~  
460 actionable if the health care provider acted in good faith and  
461 with due regard for the prevailing professional standard of  
462 care.

463 (b) In an action for damages based on death or personal  
464 injury which alleges that such death or injury resulted from the



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465 failure of a health care provider to order, perform, or  
466 administer supplemental diagnostic tests, the claimant has the  
467 burden of proving by clear and convincing evidence that the  
468 alleged actions of the health care provider represented a breach  
469 of the prevailing professional standard of care.

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

475 (a) If the health care provider against whom or on whose  
476 behalf the testimony is offered is a specialist, the expert  
477 witness must:

478 1. Specialize in the same specialty as the health care  
479 provider against whom or on whose behalf the testimony is  
480 offered; or specialize in a similar specialty that includes the  
481 evaluation, diagnosis, or treatment of the medical condition  
482 that is the subject of the claim and have prior experience  
483 treating similar patients; and

484 2. Have devoted professional time during the 5 ~~3~~ years  
485 immediately preceding the date of the occurrence that is the  
486 basis for the action to:

487 a. The active clinical practice of, or consulting with  
488 respect to, the same or similar specialty that includes the  
489 evaluation, diagnosis, or treatment of the medical condition  
490 that is the subject of the claim and have prior experience  
491 treating similar patients;

492 b. Instruction of students in an accredited health  
493 professional school or accredited residency or clinical research

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494 program in the same or similar specialty; or

495 c. A clinical research program that is affiliated with an  
496 accredited health professional school or accredited residency or  
497 clinical research program in the same or similar specialty.

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

503 1. The active clinical practice or consultation as a  
504 general practitioner;

505 2. The instruction of students in an accredited health  
506 professional school or accredited residency program in the  
507 general practice of medicine; or

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

511 (c) If the health care provider against whom or on whose  
512 behalf the testimony is offered is a health care provider other  
513 than a specialist or a general practitioner, the expert witness  
514 must have devoted professional time during the 5 ~~3~~ years  
515 immediately preceding the date of the occurrence that is the  
516 basis for the action to:

517 1. The active clinical practice of, or consulting with  
518 respect to, the same or similar health profession as the health  
519 care provider against whom or on whose behalf the testimony is  
520 offered;

521 2. The instruction of students in an accredited health  
522 professional school or accredited residency program in the same

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523 or similar health profession in which the health care provider  
524 against whom or on whose behalf the testimony is offered; or

525 3. A clinical research program that is affiliated with an  
526 accredited medical school or teaching hospital and that is in  
527 the same or similar health profession as the health care  
528 provider against whom or on whose behalf the testimony is  
529 offered.

530 (12) If a physician licensed under chapter 458 or chapter  
531 459 is the party against whom, or on whose behalf, expert  
532 testimony about the prevailing professional standard of care is  
533 offered, the expert witness must be licensed under chapter 458  
534 or chapter 459 or possess a valid expert witness certificate  
535 issued under s. 458.3175 or s. 459.0066.

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

539 Section 10. Paragraph (a) of subsection (2), subsection  
540 (5), and paragraph (b) of subsection (6) of section 766.106,  
541 Florida Statutes, are amended to read:

542 766.106 Notice before filing action for medical negligence;  
543 presuit screening period; offers for admission of liability and  
544 for arbitration; informal discovery; review.—

545 (2) PRESUIT NOTICE.—

546 (a) After completion of presuit investigation pursuant to  
547 s. 766.203(2) and prior to filing a complaint for medical  
548 negligence, a claimant shall notify each prospective defendant  
549 by certified mail, return receipt requested, of intent to  
550 initiate litigation for medical negligence. Notice to each  
551 prospective defendant must include, if available, a list of all

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552 known health care providers seen by the claimant for the  
553 injuries complained of subsequent to the alleged act of  
554 negligence, all known health care providers during the 2-year  
555 period prior to the alleged act of negligence who treated or  
556 evaluated the claimant, ~~and~~ copies of all of the medical records  
557 relied upon by the expert in signing the affidavit, and the  
558 executed authorization form provided in s. 766.1065. ~~The~~  
559 ~~requirement of providing the list of known health care providers~~  
560 ~~may not serve as grounds for imposing sanctions for failure to~~  
561 ~~provide presuit discovery.~~

562 (5) DISCOVERY AND ADMISSIBILITY.—A ~~No~~ statement,  
563 discussion, written document, report, or other work product  
564 generated by the presuit screening process is not discoverable  
565 or admissible in any civil action for any purpose by the  
566 opposing party. All participants, including, but not limited to,  
567 physicians, investigators, witnesses, and employees or  
568 associates of the defendant, are immune from civil liability  
569 arising from participation in the presuit screening process.  
570 This subsection does not prevent a physician licensed under  
571 chapter 458 or chapter 459 who submits a verified written expert  
572 medical opinion from being subject to denial of a license or  
573 disciplinary action under s. 458.331(1)(oo) or s.  
574 459.015(1)(qq).

575 (6) INFORMAL DISCOVERY.—

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

579 1. Unsworn statements.—Any party may require other parties  
580 to appear for the taking of an unsworn statement. Such

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581 statements may be used only for the purpose of presuit screening  
582 and are not discoverable or admissible in any civil action for  
583 any purpose by any party. A party desiring to take the unsworn  
584 statement of any party must give reasonable notice in writing to  
585 all parties. The notice must state the time and place for taking  
586 the statement and the name and address of the party to be  
587 examined. Unless otherwise impractical, the examination of any  
588 party must be done at the same time by all other parties. Any  
589 party may be represented by counsel at the taking of an unsworn  
590 statement. An unsworn statement may be recorded electronically,  
591 stenographically, or on videotape. The taking of unsworn  
592 statements is subject to the provisions of the Florida Rules of  
593 Civil Procedure and may be terminated for abuses.

594 2. Documents or things.—Any party may request discovery of  
595 documents or things. The documents or things must be produced,  
596 at the expense of the requesting party, within 20 days after the  
597 date of receipt of the request. A party is required to produce  
598 discoverable documents or things within that party's possession  
599 or control. Medical records shall be produced as provided in s.  
600 766.204.

601 3. Physical and mental examinations.—A prospective  
602 defendant may require an injured claimant to appear for  
603 examination by an appropriate health care provider. The  
604 prospective defendant shall give reasonable notice in writing to  
605 all parties as to the time and place for examination. Unless  
606 otherwise impractical, a claimant is required to submit to only  
607 one examination on behalf of all potential defendants. The  
608 practicality of a single examination must be determined by the  
609 nature of the claimant's condition, as it relates to the

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610 liability of each prospective defendant. Such examination report  
611 is available to the parties and their attorneys upon payment of  
612 the reasonable cost of reproduction and may be used only for the  
613 purpose of presuit screening. Otherwise, such examination report  
614 is confidential and exempt from the provisions of s. 119.07(1)  
615 and s. 24(a), Art. I of the State Constitution.

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

620 5. Ex parte interviews of treating health care providers.—A  
621 prospective defendant or his or her legal representative shall  
622 have access to interview the claimant's treating health care  
623 providers without notice to or the presence of the claimant or  
624 the claimant's legal representative.

625 6.5. Unsworn statements of treating health care providers  
626 ~~Medical information release.—The claimant must execute a medical~~  
627 ~~information release that allows~~ A prospective defendant or his  
628 or her legal representative may also ~~to~~ take unsworn statements  
629 of the claimant's treating health care providers ~~physicians~~. The  
630 statements must be limited to those areas that are potentially  
631 relevant to the claim of personal injury or wrongful death.  
632 Subject to the procedural requirements of subparagraph 1., a  
633 prospective defendant may take unsworn statements from a  
634 claimant's treating physicians. Reasonable notice and  
635 opportunity to be heard must be given to the claimant or the  
636 claimant's legal representative before taking unsworn  
637 statements. The claimant or claimant's legal representative has  
638 the right to attend the taking of such unsworn statements.

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639 Section 11. Section 766.1065, Florida Statutes, is created  
640 to read:

641 766.1065 Authorization for release of protected health  
642 information.-

643 (1) Presuit notice of intent to initiate litigation for  
644 medical negligence under s. 766.106(2) must be accompanied by an  
645 authorization for release of protected health information in the  
646 form specified by this section, authorizing the disclosure of  
647 protected health information that is potentially relevant to the  
648 claim of personal injury or wrongful death. The presuit notice  
649 is void if this authorization does not accompany the presuit  
650 notice and other materials required by s. 766.106(2).

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

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

661 AUTHORIZATION FOR RELEASE OF PROTECTED HEALTH INFORMATION

662  
663 A. I, (...Name of patient or authorized  
664 representative...) [hereinafter "Patient"], authorize  
665 that (...Name of health care provider to whom the  
666 presuit notice is directed...) and his/her/its  
667 insurer(s), self-insurer(s), and attorney(s) may

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668 obtain and disclose (within the parameters set out  
669 below) the protected health information described  
670 below for the following specific purposes:

671 1. Facilitating the investigation and evaluation  
672 of the medical negligence claim described in the  
673 accompanying presuit notice; or

674 2. Defending against any litigation arising out  
675 of the medical negligence claim made on the basis of  
676 the accompanying presuit notice.

677 B. The health information obtained, used, or  
678 disclosed extends to, and includes, the verbal, as  
679 well as the written, and is described as follows:

680 1. The health information in the custody of the  
681 following health care providers who have examined,  
682 evaluated, or treated the Patient in connection with  
683 injuries complained of after the alleged act of  
684 negligence: (List the name and current address of all  
685 health care providers). This authorization extends to  
686 any additional health care providers that may in the  
687 future evaluate, examine, or treat the Patient for the  
688 injuries complained of.

689 2. The health information in the custody of the  
690 following health care providers who have examined,  
691 evaluated, or treated the Patient during a period  
692 commencing 2 years before the incident that is the  
693 basis of the accompanying presuit notice.

694  
695 (List the name and current address of such health care  
696 providers, if applicable.)



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697  
698           C. This authorization does not apply to the  
699           following list of health care providers possessing  
700           health care information about the Patient because the  
701           Patient certifies that such health care information is  
702           not potentially relevant to the claim of personal  
703           injury or wrongful death which is the basis of the  
704           accompanying presuit notice.

705  
706           (List the name of each health care provider to whom  
707           this authorization does not apply and the inclusive  
708           dates of examination, evaluation, or treatment to be  
709           withheld from disclosure. If none, specify "none.")

710  
711           D. The persons or class of persons to whom the  
712           Patient authorizes such health information to be  
713           disclosed or by whom such health information is to be  
714           used:

715           1. Any health care provider providing care or  
716           treatment for the Patient.

717           2. Any liability insurer or self-insurer  
718           providing liability insurance coverage, self-  
719           insurance, or defense to any health care provider to  
720           whom presuit notice is given regarding the care and  
721           treatment of the Patient.

722           3. Any consulting or testifying expert employed  
723           by or on behalf of (name of health care provider to  
724           whom presuit notice was given) his/her/its insurer(s),  
725           self-insurer(s), or attorney(s) regarding the matter

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726 of the presuit notice accompanying this authorization.

727 4. Any attorney (including secretarial, clerical,  
728 or paralegal staff) employed by or on behalf of (name  
729 of health care provider to whom presuit notice was  
730 given) regarding the matter of the presuit notice  
731 accompanying this authorization.

732 5. Any trier of the law or facts relating to any  
733 suit filed seeking damages arising out of the medical  
734 care or treatment of the Patient.

735 E. This authorization expires upon resolution of  
736 the claim or at the conclusion of any litigation  
737 instituted in connection with the matter of the  
738 presuit notice accompanying this authorization,  
739 whichever occurs first.

740 F. The Patient understands that, without  
741 exception, the Patient has the right to revoke this  
742 authorization in writing. The Patient further  
743 understands that the consequence of any such  
744 revocation is that the presuit notice under s.  
745 766.106(2), Florida Statutes, is deemed retroactively  
746 void from the date of issuance, and any tolling effect  
747 that the presuit notice may have had on any applicable  
748 statute-of-limitations period is retroactively  
749 rendered void.

750 G. The Patient understands that signing this  
751 authorization is not a condition for continued  
752 treatment, payment, enrollment, or eligibility for  
753 health plan benefits.

754 H. The Patient understands that information used

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755 or disclosed under this authorization may be subject  
 756 to additional disclosure by the recipient and may not  
 757 be protected by federal HIPAA privacy regulations.

758  
 759 Signature of Patient/Representative: ....

760 Date: ....

761 Name of Patient/Representative: ....

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

763 Section 12. Subsection (2) of section 766.206, Florida  
 764 Statutes, is amended to read:

765 766.206 Presuit investigation of medical negligence claims  
 766 and defenses by court.-

767 (2) If the court finds that the notice of intent to  
 768 initiate litigation mailed by the claimant does is not comply in  
 769 compliance with the reasonable investigation requirements of ss.  
 770 766.201-766.212, including a review of the claim and a verified  
 771 written medical expert opinion by an expert witness as defined  
 772 in s. 766.202, or that the authorization accompanying the notice  
 773 of intent required under s. 766.1065 is not completed in good  
 774 faith by the claimant, the court shall dismiss the claim, and  
 775 the person who mailed such notice of intent, whether the  
 776 claimant or the claimant's attorney, is shall be personally  
 777 liable for all attorney's fees and costs incurred during the  
 778 investigation and evaluation of the claim, including the  
 779 reasonable attorney's fees and costs of the defendant or the  
 780 defendant's insurer.

781 Section 13. Section 768.0981, Florida Statutes, is amended  
 782 to read:

783 768.0981 Limitation on actions against insurers, prepaid

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784 limited health service organizations, health maintenance  
785 organizations, hospitals, or prepaid health clinics.—An entity  
786 licensed or certified under chapter 395, chapter 624, chapter  
787 636, or chapter 641 is ~~shall~~ not be liable for the medical  
788 negligence of a health care provider with whom the licensed or  
789 certified entity has entered into a contract, other than an  
790 employee of such licensed or certified entity, unless the  
791 licensed or certified entity expressly directs or exercises  
792 actual control over the specific conduct that caused injury.

793 Section 14. This act shall take effect July 1, 2011.