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2011 Legislature

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

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29 | amending s. 766.102, F.S.; defining terms; providing that
30 | certain insurance information is not admissible as
31 | evidence in medical negligence actions; requiring that
32 | certain expert witnesses who provide certain expert
33 | testimony meet certain licensure or certification
34 | requirements; excluding a health care provider's failure
35 | to comply with or breach of federal requirements from
36 | evidence in medical negligence cases in the state;
37 | amending s. 766.106, F.S.; requiring a claimant for
38 | medical malpractice to execute an authorization form;
39 | revising provisions relating to discovery and
40 | admissibility; allowing a prospective medical malpractice
41 | defendant to interview a claimant's treating health care
42 | providers without the presence of the claimant or the
43 | claimant's legal representative; requiring a prospective
44 | defendant to provide 10 days' notice before such
45 | interviews; authorizing a prospective defendant to take
46 | unsworn statements of a claimant's health care providers;
47 | creating s. 766.1065, F.S.; requiring that presuit notice
48 | for medical negligence claims be accompanied by an
49 | authorization for release of protected health information;
50 | providing requirements for the form of such authorization;
51 | amending s. 766.110, F.S.; authorizing a health care
52 | facility to use scientific diagnostic disease
53 | methodologies that use information regarding specific
54 | diseases in health care facilities and that are adopted by
55 | the facility's medical review committee; amending s.
56 | 766.206, F.S.; requiring dismissal of a medical

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57 malpractice claim if such authorization is not completed
 58 in good faith; amending s. 768.135, F.S.; providing
 59 immunity for volunteer team physicians under certain
 60 circumstances; providing an effective 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
 68 authorizing a physician who holds an active and valid license to
 69 practice medicine in another state or a province of Canada to
 70 provide expert testimony in this state, if the physician submits
 71 to the 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 10 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

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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
 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

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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.—

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 deceptive or fraudulent expert witness
 120 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.

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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
 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
 158 authorizing a physician who holds an active and valid license to
 159 practice osteopathic medicine in another state or a province of
 160 Canada to provide expert testimony in this state, if the
 161 physician submits 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

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169 2. An application fee of \$50.

170 (b) The department shall approve an application for an
171 expert witness certificate within 10 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
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

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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
 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 deceptive or fraudulent expert witness
 210 testimony related to the practice of osteopathic medicine.

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

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

218 466.005 Expert witness certificate.—

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

224 1. A complete registration application containing the

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

230 2. An application fee of \$50.

231 (b) The department shall approve an application for an
 232 expert witness certificate within 10 business days after receipt
 233 of the completed application and payment of the application fee
 234 if the applicant holds an active and valid license to practice
 235 dentistry in another state or a province of Canada and has not
 236 had a previous expert witness certificate revoked by the board.
 237 An application is approved by default if the department does not
 238 act upon the application within the required period. A dentist
 239 must notify the department in writing of his or her intent to
 240 rely on a certificate approved by default.

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

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

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

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

251 (3) An expert witness certificate does not authorize a
 252 dentist to engage in the practice of dentistry as defined in s.

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

260 Section 7. Subsection (8) is added to section 466.028,
 261 Florida Statutes, paragraph (11) of subsection (1) of that
 262 section is redesignated as paragraph (mm), and a new paragraph
 263 (11) is added to that subsection, to read:

264 466.028 Grounds for disciplinary action; action by the
 265 board.—

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

268 (11) Providing deceptive or fraudulent expert witness
 269 testimony related to the practice of dentistry.

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

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

278 459.026 Reports of adverse incidents in office practice
 279 settings.—

280 (6) (a) The board shall adopt rules establishing a standard

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281 informed consent form that sets forth the recognized specific
282 risks related to cataract surgery. The board must propose such
283 rules within 90 days after the effective date of this
284 subsection.

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

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

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

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

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

305 627.4147 Medical malpractice insurance contracts.—

306 (1) In addition to any other requirements imposed by law,
307 each self-insurance policy as authorized under s. 627.357 or s.
308 624.462 or insurance policy providing coverage for claims

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309 arising out of the rendering of, or the failure to render,
310 medical care or services, including those of the Florida Medical
311 Malpractice Joint Underwriting Association, shall include:

312 (b)1. ~~Except as provided in subparagraph 2., a clause~~
313 ~~authorizing the insurer or self-insurer to determine, to make,~~
314 ~~and to conclude, without the permission of the insured, any~~
315 ~~offer of admission of liability and for arbitration pursuant to~~
316 ~~s. 766.106, settlement offer, or offer of judgment, if the offer~~
317 ~~is within the policy limits. It is against public policy for any~~
318 ~~insurance or self-insurance policy to contain a clause giving~~
319 ~~the insured the exclusive right to veto any offer for admission~~
320 ~~of liability and for arbitration made pursuant to s. 766.106,~~
321 ~~settlement offer, or offer of judgment, when such offer is~~
322 ~~within the policy limits. However, any offer of admission of~~
323 ~~liability, settlement offer, or offer of judgment made by an~~
324 ~~insurer or self-insurer shall be made in good faith and in the~~
325 ~~best interests of the insured.~~

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

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337 judgment made by an insurer or self-insurer shall be made in
 338 good faith and in the best interest of the insured.

339 ~~2.b.~~ If the policy contains a clause stating the insured
 340 does not have the exclusive right to veto any offer or admission
 341 of liability and for arbitration made pursuant to s. 766.106,
 342 settlement offer or offer of judgment, the insurer or self-
 343 insurer shall provide to the insured or the insured's legal
 344 representative by certified mail, return receipt requested, a
 345 copy of the final offer of admission of liability and for
 346 arbitration made pursuant to s. 766.106, settlement offer or
 347 offer of judgment and at the same time such offer is provided to
 348 the claimant. A copy of any final agreement reached between the
 349 insurer and claimant shall also be provided to the insurer or
 350 his or her legal representative by certified mail, return
 351 receipt requested not more than 10 days after affecting such
 352 agreement.

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

357 766.102 Medical negligence; standards of recovery; expert
 358 witness.—

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

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

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

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

371 (b) The existence of a medical injury does ~~shall~~ not
 372 create any inference or presumption of negligence against a
 373 health care provider, and the claimant must maintain the burden
 374 of proving that an injury was proximately caused by a breach of
 375 the prevailing professional standard of care by the health care
 376 provider. Any records, policies, or testimony of an insurer's
 377 reimbursement policies or reimbursement determination regarding
 378 the care provided to the plaintiff are not admissible as
 379 evidence in any medical negligence action. However, the
 380 discovery of the presence of a foreign body, such as a sponge,
 381 clamp, forceps, surgical needle, or other paraphernalia commonly
 382 used in surgical, examination, or diagnostic procedures, shall
 383 be prima facie evidence of negligence on the part of the health
 384 care provider.

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

390 (a) If the health care provider against whom or on whose
 391 behalf the testimony is offered is a specialist, the expert
 392 witness must:

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393 1. Specialize in the same specialty as the health care
 394 provider against whom or on whose behalf the testimony is
 395 offered; or specialize in a similar specialty that includes the
 396 evaluation, diagnosis, or treatment of the medical condition
 397 that is the subject of the claim and have prior experience
 398 treating similar patients; and

399 2. Have devoted professional time during the 3 years
 400 immediately preceding the date of the occurrence that is the
 401 basis for the action to:

402 a. The active clinical practice of, or consulting with
 403 respect to, the same or similar specialty that includes the
 404 evaluation, diagnosis, or treatment of the medical condition
 405 that is the subject of the claim and have prior experience
 406 treating similar patients;

407 b. Instruction of students in an accredited health
 408 professional school or accredited residency or clinical research
 409 program in the same or similar specialty; or

410 c. A clinical research program that is affiliated with an
 411 accredited health professional school or accredited residency or
 412 clinical research program in the same or similar specialty.

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

418 1. The active clinical practice or consultation as a
 419 general practitioner;

420 2. The instruction of students in an accredited health

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421 professional school or accredited residency program in the
 422 general practice of medicine; or

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

426 (c) If the health care provider against whom or on whose
 427 behalf the testimony is offered is a health care provider other
 428 than a specialist or a general practitioner, the expert witness
 429 must have devoted professional time during the 3 years
 430 immediately preceding the date of the occurrence that is the
 431 basis for the action to:

432 1. The active clinical practice of, or consulting with
 433 respect to, the same or similar health profession as the health
 434 care provider against whom or on whose behalf the testimony is
 435 offered;

436 2. The instruction of students in an accredited health
 437 professional school or accredited residency program in the same
 438 or similar health profession in which the health care provider
 439 against whom or on whose behalf the testimony is offered; 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 same or similar health profession as the health care
 443 provider against whom or on whose behalf the testimony is
 444 offered.

445 (12) If a physician licensed under chapter 458 or chapter
 446 459 or a dentist licensed under chapter 466 is the party against
 447 whom, or on whose behalf, expert testimony about the prevailing
 448 professional standard of care is offered, the expert witness

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449 must be licensed under chapter 458, chapter 459, or chapter 466
 450 or possess a valid expert witness certificate issued under s.
 451 458.3175, s. 459.0066, or s. 466.005.

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

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

458 766.106 Notice before filing action for medical
 459 negligence; presuit screening period; offers for admission of
 460 liability and for arbitration; informal discovery; review.—

461 (2) PRESUIT NOTICE.—

462 (a) After completion of presuit investigation pursuant to
 463 s. 766.203(2) and prior to filing a complaint for medical
 464 negligence, a claimant shall notify each prospective defendant
 465 by certified mail, return receipt requested, of intent to
 466 initiate litigation for medical negligence. Notice to each
 467 prospective defendant must include, if available, a list of all
 468 known health care providers seen by the claimant for the
 469 injuries complained of subsequent to the alleged act of
 470 negligence, all known health care providers during the 2-year
 471 period prior to the alleged act of negligence who treated or
 472 evaluated the claimant, ~~and~~ copies of all of the medical records
 473 relied upon by the expert in signing the affidavit, and the
 474 executed authorization form provided in s. 766.1065. ~~The~~
 475 ~~requirement of providing the list of known health care providers~~
 476 ~~may not serve as grounds for imposing sanctions for failure to~~

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477 ~~provide presuit discovery.~~

478 (5) DISCOVERY AND ADMISSIBILITY.—~~A~~ ~~No~~ statement,
 479 discussion, written document, report, or other work product
 480 generated by the presuit screening process is not discoverable
 481 or admissible in any civil action for any purpose by the
 482 opposing party. All participants, including, but not limited to,
 483 physicians, investigators, witnesses, and employees or
 484 associates of the defendant, are immune from civil liability
 485 arising from participation in the presuit screening process.
 486 This subsection does not prevent a physician licensed under
 487 chapter 458 or chapter 459 or a dentist licensed under chapter
 488 466 who submits a verified written expert medical opinion from
 489 being subject to denial of a license or disciplinary action
 490 under s. 458.331(1)(oo), s. 459.015(1)(qq), or s.
 491 466.028(1)(ll).

492 (6) INFORMAL DISCOVERY.—

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

496 1. Unsworn statements.—Any party may require other parties
 497 to appear for the taking of an unsworn statement. Such
 498 statements may be used only for the purpose of presuit screening
 499 and are not discoverable or admissible in any civil action for
 500 any purpose by any party. A party desiring to take the unsworn
 501 statement of any party must give reasonable notice in writing to
 502 all parties. The notice must state the time and place for taking
 503 the statement and the name and address of the party to be
 504 examined. Unless otherwise impractical, the examination of any

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505 party must be done at the same time by all other parties. Any
506 party may be represented by counsel at the taking of an unsworn
507 statement. An unsworn statement may be recorded electronically,
508 stenographically, or on videotape. The taking of unsworn
509 statements is subject to the provisions of the Florida Rules of
510 Civil Procedure and may be terminated for abuses.

511 2. Documents or things.—Any party may request discovery of
512 documents or things. The documents or things must be produced,
513 at the expense of the requesting party, within 20 days after the
514 date of receipt of the request. A party is required to produce
515 discoverable documents or things within that party's possession
516 or control. Medical records shall be produced as provided in s.
517 766.204.

518 3. Physical and mental examinations.—A prospective
519 defendant may require an injured claimant to appear for
520 examination by an appropriate health care provider. The
521 prospective defendant shall give reasonable notice in writing to
522 all parties as to the time and place for examination. Unless
523 otherwise impractical, a claimant is required to submit to only
524 one examination on behalf of all potential defendants. The
525 practicality of a single examination must be determined by the
526 nature of the claimant's condition, as it relates to the
527 liability of each prospective defendant. Such examination report
528 is available to the parties and their attorneys upon payment of
529 the reasonable cost of reproduction and may be used only for the
530 purpose of presuit screening. Otherwise, such examination report
531 is confidential and exempt from the provisions of s. 119.07(1)
532 and s. 24(a), Art. I of the State Constitution.

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

537 5. Unsworn statements of treating health care providers
 538 ~~Medical information release. The claimant must execute a medical~~
 539 ~~information release that allows~~ A prospective defendant or his
 540 or her legal representative may also ~~to~~ take unsworn statements
 541 of the claimant's treating health care providers ~~physicians~~. The
 542 statements must be limited to those areas that are potentially
 543 relevant to the claim of personal injury or wrongful death.
 544 Subject to the procedural requirements of subparagraph 1., a
 545 prospective defendant may take unsworn statements from a
 546 claimant's treating physicians. Reasonable notice and
 547 opportunity to be heard must be given to the claimant or the
 548 claimant's legal representative before taking unsworn
 549 statements. The claimant or claimant's legal representative has
 550 the right to attend the taking of such unsworn statements.

551 Section 12. Section 766.1065, Florida Statutes, is created
 552 to read:

553 766.1065 Authorization for release of protected health
 554 information.—

555 (1) Presuit notice of intent to initiate litigation for
 556 medical negligence under s. 766.106(2) must be accompanied by an
 557 authorization for release of protected health information in the
 558 form specified by this section, authorizing the disclosure of
 559 protected health information that is potentially relevant to the
 560 claim of personal injury or wrongful death. The presuit notice

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561 is void if this authorization does not accompany the presuit
 562 notice and other materials required by s. 766.106(2).

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

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

572
 573 AUTHORIZATION FOR RELEASE OF PROTECTED HEALTH INFORMATION
 574

575 A. I, (...Name of patient or authorized
 576 representative...) [hereinafter "Patient"], authorize
 577 that (...Name of health care provider to whom the
 578 presuit notice is directed...) and his/her/its
 579 insurer(s), self-insurer(s), and attorney(s) may
 580 obtain and disclose (within the parameters set out
 581 below) the protected health information described
 582 below for the following specific purposes:

583 1. Facilitating the investigation and evaluation
 584 of the medical negligence claim described in the
 585 accompanying presuit notice; or

586 2. Defending against any litigation arising out
 587 of the medical negligence claim made on the basis of
 588 the accompanying presuit notice.

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589 B. The health information obtained, used, or
590 disclosed extends to, and includes, the verbal as well
591 as the written and is described as follows:

592 1. The health information in the custody of the
593 following health care providers who have examined,
594 evaluated, or treated the Patient in connection with
595 injuries complained of after the alleged act of
596 negligence: (List the name and current address of all
597 health care providers). This authorization extends to
598 any additional health care providers that may in the
599 future evaluate, examine, or treat the Patient for the
600 injuries complained of.

601 2. The health information in the custody of the
602 following health care providers who have examined,
603 evaluated, or treated the Patient during a period
604 commencing 2 years before the incident that is the
605 basis of the accompanying presuit notice.

606
607 (List the name and current address of such health care
608 providers, if applicable.)

609
610 C. This authorization does not apply to the
611 following list of health care providers possessing
612 health care information about the Patient because the
613 Patient certifies that such health care information is
614 not potentially relevant to the claim of personal
615 injury or wrongful death that is the basis of the
616 accompanying presuit notice.

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617
618 (List the name of each health care provider to whom
619 this authorization does not apply and the inclusive
620 dates of examination, evaluation, or treatment to be
621 withheld from disclosure. If none, specify "none.")
622

623 D. The persons or class of persons to whom the
624 Patient authorizes such health information to be
625 disclosed or by whom such health information is to be
626 used:

627 1. Any health care provider providing care or
628 treatment for the Patient.

629 2. Any liability insurer or self-insurer
630 providing liability insurance coverage, self-
631 insurance, or defense to any health care provider to
632 whom presuit notice is given regarding the care and
633 treatment of the Patient.

634 3. Any consulting or testifying expert employed
635 by or on behalf of (name of health care provider to
636 whom presuit notice was given) and his/her/its
637 insurer(s), self-insurer(s), or attorney(s) regarding
638 to the matter of the presuit notice accompanying this
639 authorization.

640 4. Any attorney (including secretarial,
641 clerical, or paralegal staff) employed by or on behalf
642 of (name of health care provider to whom presuit
643 notice was given) regarding the matter of the presuit
644 notice accompanying this authorization.

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645 5. Any trier of the law or facts relating to any
 646 suit filed seeking damages arising out of the medical
 647 care or treatment of the Patient.

648 E. This authorization expires upon resolution of
 649 the claim or at the conclusion of any litigation
 650 instituted in connection with the matter of the
 651 presuit notice accompanying this authorization,
 652 whichever occurs first.

653 F. The Patient understands that, without
 654 exception, the Patient has the right to revoke this
 655 authorization in writing. The Patient further
 656 understands that the consequence of any such
 657 revocation is that the presuit notice under s.
 658 766.106(2), Florida Statutes, is deemed retroactively
 659 void from the date of issuance, and any tolling effect
 660 that the presuit notice may have had on any applicable
 661 statute-of-limitations period is retroactively
 662 rendered void.

663 G. The Patient understands that signing this
 664 authorization is not a condition for continued
 665 treatment, payment, enrollment, or eligibility for
 666 health plan benefits.

667 H. The Patient understands that information used
 668 or disclosed under this authorization may be subject
 669 to additional disclosure by the recipient and may not
 670 be protected by federal HIPAA privacy regulations.

671
 672 Signature of Patient/Representative:

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673 Date:
 674 Name of Patient/Representative:
 675 Description of Representative's Authority:
 676 Section 13. Subsection (3) is added to section 766.110,
 677 Florida Statutes, to read:
 678 766.110 Liability of health care facilities.—
 679 (3) In order to ensure comprehensive risk management for
 680 diagnosis of disease, a health care facility, including a
 681 hospital or ambulatory surgical center, as defined in chapter
 682 395, may use scientific diagnostic disease methodologies that
 683 use information regarding specific diseases in health care
 684 facilities and that are adopted by the facility's medical review
 685 committee.
 686 Section 14. Subsection (2) of section 766.206, Florida
 687 Statutes, is amended to read:
 688 766.206 Presuit investigation of medical negligence claims
 689 and defenses by court.—
 690 (2) If the court finds that the notice of intent to
 691 initiate litigation mailed by the claimant does is not comply in
 692 compliance with the reasonable investigation requirements of ss.
 693 766.201-766.212, including a review of the claim and a verified
 694 written medical expert opinion by an expert witness as defined
 695 in s. 766.202, or that the authorization accompanying the notice
 696 of intent required under s. 766.1065 is not completed in good
 697 faith by the claimant, the court shall dismiss the claim, and
 698 the person who mailed such notice of intent, whether the
 699 claimant or the claimant's attorney, is shall be personally
 700 liable for all attorney's fees and costs incurred during the

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701 investigation and evaluation of the claim, including the
 702 reasonable attorney's fees and costs of the defendant or the
 703 defendant's insurer.

704 Section 15. Section 768.135, Florida Statutes, is amended
 705 to read:

706 768.135 Volunteer team physicians; immunity.—

707 (1) A volunteer team physician is any person licensed to
 708 practice medicine pursuant to chapter 458, chapter 459, chapter
 709 460, chapter 461, or chapter 466:

710 (a)~~(1)~~ Who is acting in the capacity of a volunteer team
 711 physician in attendance at an athletic event sponsored by a
 712 public or private elementary or secondary school; and

713 (b)~~(2)~~ Who gratuitously and in good faith prior to the
 714 athletic event agrees to render emergency care or treatment to
 715 any participant in such event in connection with an emergency
 716 arising during or as the result of such event, without objection
 717 of such participant.

718 (2) A volunteer team physician is ~~shall not be held liable~~
 719 for any civil damages as a result of such care or treatment or
 720 as a result of any act or failure to act in providing or
 721 arranging further medical treatment unless the ~~when such~~ care or
 722 treatment was rendered in a wrongful manner ~~as a reasonably~~
 723 ~~prudent person similarly licensed to practice medicine would~~
 724 ~~have acted under the same or similar circumstances.~~

725 (3) A practitioner licensed under chapter 458, chapter
 726 459, chapter 460, or s. 464.012 who gratuitously and in good
 727 faith conducts an evaluation pursuant to s. 1006.20(2)(c) is not
 728 liable for any civil damages arising from that evaluation unless

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729 the evaluation was conducted in a wrongful manner.

730 (4) As used in this section, the term "wrongful manner"
731 means in bad faith or with malicious purpose or in a manner
732 exhibiting wanton and willful disregard of human rights, safety,
733 or property, and shall be construed in conformity with the
734 standard set forth in s. 768.28(9)(a).

735 Section 16. This act shall take effect October 1, 2011,
736 and applies to causes of action accruing on or after that date.