

29 | except upon written authorization from ~~of~~ the patient. However,
30 | such records may be furnished without written authorization
31 | under the following circumstances:

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

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

39 | 3. In any civil or criminal action, unless otherwise
40 | prohibited by law, upon the issuance of a subpoena from a court
41 | of competent jurisdiction and proper notice to the patient or
42 | the patient's legal representative by the party seeking such
43 | records.

44 | 4. For statistical and scientific research, provided the
45 | information is abstracted in such a way as to protect the
46 | identity of the patient or provided written permission is
47 | received from the patient or the patient's legal representative.

48 | 5. To a regional poison control center for purposes of
49 | treating a poison episode under evaluation, case management of
50 | poison cases, or compliance with data collection and reporting
51 | requirements of s. 395.1027 and the professional organization
52 | that certifies poison control centers in accordance with federal
53 | law.

54 | 6. To an attorney for the health care practitioner or
55 | provider, or to the attorney's staff, for the purpose of
56 | obtaining legal services, whether the attorney is hired directly

57 | by the practitioner or provider or by his or her insurer.

58 | (8) Information disclosed to a health care practitioner or
 59 | provider by a patient in the course of the care and treatment of
 60 | such patient is confidential and may be disclosed only:

61 | (a) When limited to the proper release of records as
 62 | provided under subsection (7);

63 | (b) To other health care practitioners and providers
 64 | involved in the care or treatment of the patient;

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

66 | (d) As provided for in the Authorization For Release of
 67 | Protected Health Information signed by a patient pursuant to s.
 68 | 766.1065;

69 | (e) If permitted by written authorization from the
 70 | patient;

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

73 | (g) To an attorney for the health care practitioner or
 74 | provider, or to the attorney's staff, whether the attorney is
 75 | hired directly by the practitioner or provider or by his or her
 76 | insurer; or

77 | (h) In the context of a medical negligence action or
 78 | administrative proceeding, if the health care practitioner or
 79 | provider is, or reasonably expects to be, named as a defendant
 80 | ~~Except in a medical negligence action or administrative~~
 81 | ~~proceeding when a health care practitioner or provider is or~~
 82 | ~~reasonably expects to be named as a defendant, information~~
 83 | ~~disclosed to a health care practitioner by a patient in the~~
 84 | ~~course of the care and treatment of such patient is confidential~~

85 | ~~and may be disclosed only to other health care practitioners and~~
86 | ~~providers involved in the care or treatment of the patient, or~~
87 | ~~if permitted by written authorization from the patient or~~
88 | ~~compelled by subpoena at a deposition, evidentiary hearing, or~~
89 | ~~trial for which proper notice has been given.~~

90 | Section 2. Paragraph (b) of subsection (6) of section
91 | 766.106, Florida Statutes, is amended to read:

92 | 766.106 Notice before filing action for medical
93 | negligence; presuit screening period; offers for admission of
94 | liability and for arbitration; informal discovery; review.—

95 | (6) INFORMAL DISCOVERY.—

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

99 | 1. Unsworn statements.—Any party may require other parties
100 | to appear for the taking of an unsworn statement. Such
101 | statements may be used only for the purpose of presuit screening
102 | and are not discoverable or admissible in any civil action for
103 | any purpose by any party. A party desiring to take the unsworn
104 | statement of any party must give reasonable notice in writing to
105 | all parties. The notice must state the time and place for taking
106 | the statement and the name and address of the party to be
107 | examined. Unless otherwise impractical, the examination of any
108 | party must be done at the same time by all other parties. Any
109 | party may be represented by counsel at the taking of an unsworn
110 | statement. An unsworn statement may be recorded electronically,
111 | stenographically, or on videotape. The taking of unsworn
112 | statements is subject to the provisions of the Florida Rules of

113 Civil Procedure and may be terminated for abuses.

114 2. Documents or things.—Any party may request discovery of
115 documents or things. The documents or things must be produced,
116 at the expense of the requesting party, within 20 days after the
117 date of receipt of the request. A party is required to produce
118 discoverable documents or things within that party's possession
119 or control. Medical records shall be produced as provided in s.
120 766.204.

121 3. Physical and mental examinations.—A prospective
122 defendant may require an injured claimant to appear for
123 examination by an appropriate health care provider. The
124 prospective defendant shall give reasonable notice in writing to
125 all parties as to the time and place for examination. Unless
126 otherwise impractical, a claimant is required to submit to only
127 one examination on behalf of all potential defendants. The
128 practicality of a single examination must be determined by the
129 nature of the claimant's condition, as it relates to the
130 liability of each prospective defendant. Such examination report
131 is available to the parties and their attorneys upon payment of
132 the reasonable cost of reproduction and may be used only for the
133 purpose of presuit screening. Otherwise, such examination report
134 is confidential and exempt from the provisions of s. 119.07(1)
135 and s. 24(a), Art. I of the State Constitution.

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

140 5. Ex parte interviews of treating health care providers.—

141 | A prospective defendant or his or her legal representative may
 142 | interview the claimant's treating health care providers without
 143 | notice to or the presence of the claimant or the claimant's
 144 | legal representative.

145 | ~~6.5.~~ Unsworn statements of treating health care
 146 | providers.—A prospective defendant or his or her legal
 147 | representative may also take unsworn statements of the
 148 | claimant's treating health care providers. The statements must
 149 | be limited to those areas that are potentially relevant to the
 150 | claim of personal injury or wrongful death. Subject to the
 151 | procedural requirements of subparagraph 1., a prospective
 152 | defendant may take unsworn statements from a claimant's treating
 153 | physicians. Reasonable notice and opportunity to be heard must
 154 | be given to the claimant or the claimant's legal representative
 155 | before taking unsworn statements. The claimant or claimant's
 156 | legal representative has the right to attend the taking of such
 157 | unsworn statements.

158 | Section 3. Subsection (3) of section 766.1065, Florida
 159 | Statutes, is amended to read:

160 | 766.1065 Authorization for release of protected health
 161 | information.—

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

166 | AUTHORIZATION FOR RELEASE OF
 167 | PROTECTED HEALTH INFORMATION

168 | A. I, (...Name of patient or authorized representative...)

169 [hereinafter "Patient"], authorize that (...Name of health
170 care provider to whom the presuit notice is directed...)
171 and his/her/its insurer(s), self-insurer(s), ~~and~~
172 attorney(s), and the designated treating physicians(s)
173 listed below and their insurer(s), self-insurer(s), and
174 attorney(s), may obtain and disclose (within the parameters
175 set out below) the protected health information described
176 below for the following specific purposes:

- 177 1. Facilitating the investigation and evaluation of the
178 medical negligence claim described in the accompanying
179 presuit notice; ~~or~~
- 180 2. Defending against any litigation arising out of the
181 medical negligence claim made on the basis of the
182 accompanying presuit notice; or
- 183 3. Obtaining legal advice or representation arising out of
184 the medical negligence claim described in the accompanying
185 presuit notice.

186 B. The health information obtained, used, or disclosed
187 extends to, and includes, the verbal as well as the written
188 and is described as follows:

- 189 1. The health information in the custody of the following
190 health care providers who have examined, evaluated, or
191 treated the Patient in connection with injuries complained
192 of after the alleged act of negligence: (List the name and
193 current address of all health care providers). This
194 authorization extends to any additional health care
195 providers that may in the future evaluate, examine, or
196 treat the Patient for the injuries complained of.

197 2. The health information in the custody of the following
 198 health care providers who have examined, evaluated, or
 199 treated the Patient during a period commencing 2 years
 200 before the incident that is the basis of the accompanying
 201 presuit notice.

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

204 C. This authorization does not apply to the following list
 205 of health care providers possessing health care information
 206 about the Patient because the Patient certifies that such
 207 health care information is not potentially relevant to the
 208 claim of personal injury or wrongful death that is the
 209 basis of the accompanying presuit notice.

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

214 D. The persons or class of persons to whom the Patient
 215 authorizes such health information to be disclosed or by
 216 whom such health information is to be used:

217 1. Any health care provider providing care or treatment
 218 for the Patient.

219 2. Any liability insurer or self-insurer providing
 220 liability insurance coverage, self-insurance, or defense to
 221 any health care provider to whom presuit notice is given,
 222 or to any health care provider listed in B., above,
 223 regarding the care and treatment of the Patient.

224 3. Any consulting or testifying expert employed by or on

225 | behalf of (name of health care provider to whom presuit
226 | notice was given) and his/her/its insurer(s), self-
227 | insurer(s), or attorney(s) regarding the matter of the
228 | presuit notice accompanying this authorization.

229 | 4. Any attorney (including the attorney's ~~secretarial,~~
230 | ~~clerical, or paralegal~~ staff) employed by or on behalf of
231 | (name of health care provider to whom presuit notice was
232 | given), or employed by or on behalf of any health care
233 | provider(s) listed in B., above, regarding the matter of
234 | the presuit notice accompanying this authorization or the
235 | care and treatment of the Patient.

236 | 5. Any trier of the law or facts relating to any suit
237 | filed seeking damages arising out of the medical care or
238 | treatment of the Patient.

239 | E. This authorization expressly permits the persons or
240 | class of persons listed in 2.-4., above, to interview the
241 | health care providers listed in B., above, without notice
242 | to or the presence of the Patient or the Patient's legal
243 | representative.

244 | ~~F.E.~~ This authorization expires upon resolution of the
245 | claim or at the conclusion of any litigation instituted in
246 | connection with the matter of the presuit notice
247 | accompanying this authorization, whichever occurs first.

248 | ~~G.F.~~ The Patient understands that, without exception, the
249 | Patient has the right to revoke this authorization in
250 | writing. The Patient further understands that the
251 | consequence of any such revocation is that the presuit
252 | notice under s. 766.106(2), Florida Statutes, is deemed

253 retroactively void from the date of issuance, and any
 254 tolling effect that the presuit notice may have had on any
 255 applicable statute-of-limitations period is retroactively
 256 rendered void.

257 H.G. The Patient understands that signing this
 258 authorization is not a condition for continued treatment,
 259 payment, enrollment, or eligibility for health plan
 260 benefits.

261 I.H. The Patient understands that information used or
 262 disclosed under this authorization may be subject to
 263 additional disclosure by the recipient and may not be
 264 protected by federal HIPAA privacy regulations.

265 Signature of Patient/Representative:

266 Date:

267 Name of Patient/Representative:

268 Description of Representative's Authority:

269 Section 4. This act shall take effect July 1, 2013.