

By Representatives Villalobos, Stafford and Edwards

1 A bill to be entitled
2 An act relating to health care; amending ss.
3 458.320 and 459.0085, F.S.; requiring
4 maintenance of financial responsibility as a
5 condition of licensure of physicians and
6 osteopathic physicians; providing for payment
7 of any outstanding judgments or settlements
8 pending at the time a physician or osteopathic
9 physician is suspended by the Department of
10 Health; repealing an alternative method of
11 providing financial responsibility; correcting
12 cross references; amending s. 455.245, F.S.;
13 requiring the department to issue an emergency
14 order suspending the license of a physician or
15 osteopathic physician who the agency has
16 probable cause to believe has violated s.
17 458.320 or s. 459.0085, F.S.; providing
18 applicability; providing an effective date.

19
20 Be It Enacted by the Legislature of the State of Florida:

21
22 Section 1. Section 458.320, Florida Statutes, 1996
23 Supplement, is amended to read:

24 458.320 Financial responsibility.--

25 (1) As a condition of licensing and maintaining an
26 active license, and prior to the issuance or renewal of an
27 active license or reactivation of an inactive license for the
28 practice of medicine, an applicant or licensee must ~~shall~~ by
29 one of the following methods demonstrate to the satisfaction
30 of the board and the department financial responsibility to
31 pay claims and costs ancillary thereto arising out of the

1 rendering of, or the failure to render, medical care or
2 services:

3 (a) Establishing and maintaining an escrow account
4 consisting of cash or assets eligible for deposit in
5 accordance with s. 625.52 in the per claim amounts specified
6 in paragraph (b).

7 (b) Obtaining and maintaining professional liability
8 coverage for the current year and for each of the prior years
9 that the applicant or licensee has been in the active practice
10 of medicine, up to a maximum of 4 prior years, in an amount
11 not less than \$100,000 per claim, with a minimum annual
12 aggregate of not less than \$300,000, from an authorized
13 insurer as defined under s. 624.09, from a surplus lines
14 insurer as defined under s. 626.914(2), from a risk retention
15 group as defined under s. 627.942, from the Joint Underwriting
16 Association established under s. 627.351(4), or through a plan
17 of self-insurance as provided in s. 627.357.

18 (c) Obtaining and maintaining an unexpired,
19 irrevocable letter of credit, established pursuant to chapter
20 675, for the current year and for each of the prior years that
21 the applicant or licensee has been in the active practice of
22 medicine, up to a maximum of 4 prior years, in an amount not
23 less than \$100,000 per claim, with a minimum aggregate
24 availability of credit of not less than \$300,000. The letter
25 of credit must ~~shall~~ be payable to the physician as
26 beneficiary upon presentment of a final judgment indicating
27 liability and awarding damages to be paid by the physician or
28 upon presentment of a settlement agreement signed by all
29 parties to such agreement when such final judgment or
30 settlement is a result of a claim arising out of the rendering
31 of, or the failure to render, medical care and services. The

1 ~~Such~~ letter of credit must ~~shall~~ be nonassignable and
2 nontransferable. ~~The~~ ~~Such~~ letter of credit must ~~shall~~ be
3 issued by any bank or savings association organized and
4 existing under the laws of this state or any bank or savings
5 association organized under the laws of the United States that
6 has its principal place of business in this state or has a
7 branch office that ~~which~~ is authorized under the laws of this
8 state or of the United States to receive deposits in this
9 state.

10 (2) Physicians who perform surgery in an ambulatory
11 surgical center licensed under chapter 395 and, as a
12 continuing condition of hospital staff privileges, physicians
13 who have with staff privileges must ~~shall~~ ~~also be required to~~
14 establish financial responsibility by one of the following
15 methods:

16 (a) Establishing and maintaining an escrow account
17 consisting of cash or assets eligible for deposit in
18 accordance with s. 625.52 in the per claim amounts specified
19 in paragraph (b).

20 (b) Obtaining and maintaining professional liability
21 coverage for the current year and for each of the prior years
22 that the applicant or licensee has been in the active practice
23 of medicine, up to a maximum of 4 prior years, in an amount
24 not less than \$250,000 per claim, with a minimum annual
25 aggregate of not less than \$750,000 from an authorized insurer
26 as defined under s. 624.09, from a surplus lines insurer as
27 defined under s. 626.914(2), from a risk retention group as
28 defined under s. 627.942, from the Joint Underwriting
29 Association established under s. 627.351(4), through a plan of
30 self-insurance as provided in s. 627.357, or through a plan of
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1 self-insurance that ~~which~~ meets the conditions specified for
2 satisfying financial responsibility in s. 766.110.

3 (c) Obtaining and maintaining an unexpired irrevocable
4 letter of credit, established pursuant to chapter 675, for the
5 current year and for each of the prior years that the
6 applicant or licensee has been in the active practice of
7 medicine, up to a maximum of 4 prior years, in an amount not
8 less than \$250,000 per claim, with a minimum aggregate
9 availability of credit of not less than \$750,000. The letter
10 of credit must ~~shall~~ be payable to the physician as
11 beneficiary upon presentment of a final judgment indicating
12 liability and awarding damages to be paid by the physician or
13 upon presentment of a settlement agreement signed by all
14 parties to such agreement when such final judgment or
15 settlement is a result of a claim arising out of the rendering
16 of, or the failure to render, medical care and services. The
17 ~~Such~~ letter of credit must ~~shall~~ be nonassignable and
18 nontransferable. The ~~Such~~ letter of credit must ~~shall~~ be
19 issued by any bank or savings association organized and
20 existing under the laws of this state or any bank or savings
21 association organized under the laws of the United States that
22 has its principal place of business in this state or has a
23 branch office that ~~which~~ is authorized under the laws of this
24 state or of the United States to receive deposits in this
25 state.

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27 This subsection shall be inclusive of the coverage in
28 subsection (1).

29 (3)(a) The financial responsibility requirements of
30 subsections (1) and (2) ~~shall~~ apply to claims for incidents
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1 that occur ~~on or~~ after ~~January 1, 1987,~~ or the initial date of
2 licensure in this state, ~~whichever is later.~~

3 (b) Meeting the financial responsibility requirements
4 of this section or the criteria for any exemption from such
5 requirements must ~~shall~~ be established at the time of issuance
6 or renewal of a license ~~on or after January 1, 1987.~~

7 (c) Any person may, at any time, submit to the
8 department a request for an advisory opinion regarding such
9 person's qualifications for exemption.

10 (4)(a) Each insurer, self-insurer, risk retention
11 group, or Joint Underwriting Association must ~~shall~~ promptly
12 notify the department of cancellation or nonrenewal of
13 insurance required by this section. Unless the physician
14 demonstrates that he is otherwise in compliance with the
15 requirements of this section, the department shall suspend the
16 license of the physician pursuant to ss. 120.569 and 120.57
17 and notify all health care facilities licensed under chapter
18 395 of such action. Any suspension under this subsection
19 remains ~~shall remain~~ in effect until the physician
20 demonstrates compliance with the requirements of this section.
21 If any judgments or settlements are pending at the time of
22 suspension, those judgments or settlements must be paid in
23 accordance with this section unless otherwise mutually agreed
24 to in writing by the parties. This paragraph does not abrogate
25 a judgment debtor's obligation to satisfy the entire amount of
26 any judgment, ~~except that a license suspended under paragraph~~
27 ~~(5)(g) shall not be reinstated until the physician~~
28 ~~demonstrates compliance with the requirements of that~~
29 ~~provision.~~

30 (b) If financial responsibility requirements are met
31 by maintaining an escrow account or letter of credit as

1 provided in this section, upon the entry of an adverse final
2 judgment arising from a medical malpractice arbitration award,
3 from a claim of medical malpractice either in contract or
4 tort, or from noncompliance with the terms of a settlement
5 agreement arising from a claim of medical malpractice either
6 in contract or tort, the licensee must ~~shall~~ pay the entire
7 amount of the judgment together with all accrued interest, or
8 the amount maintained in the escrow account or provided in the
9 letter of credit as required by this section, whichever is
10 less, within 60 days after the date the ~~such~~ judgment became
11 final and subject to execution, unless otherwise mutually
12 agreed to in writing by the parties. If timely payment is not
13 made by the physician, the department shall suspend the
14 license of the physician ~~pursuant to procedures set forth in~~
15 ~~subparagraphs (5)(g)2., 3., and 4. Nothing in This paragraph~~
16 does not ~~shall~~ abrogate a judgment debtor's obligation to
17 satisfy the entire amount of any judgment.

18 (5) The requirements of subsections (1), (2), and (3)
19 do ~~shall~~ not apply to:

20 (a) Any person licensed under this chapter who
21 practices medicine exclusively as an officer, employee, or
22 agent of the Federal Government or of the state or its
23 agencies or its subdivisions. For the purposes of this
24 subsection, an agent of the state, its agencies, or its
25 subdivisions is a person who is eligible for coverage under
26 any self-insurance or insurance program authorized by the
27 provisions of s. 768.28(15)~~(14)~~.

28 (b) Any person whose license has become inactive under
29 this chapter and who is not practicing medicine in this state.
30 Any person applying for reactivation of a license must show
31 either that such licensee maintained tail insurance coverage

1 ~~that~~ which provided liability coverage for incidents that
2 occurred on or after January 1, 1987, or the initial date of
3 licensure in this state, whichever is later, and incidents
4 that occurred before the date on which the license became
5 inactive; or such licensee must submit an affidavit stating
6 that such licensee has no unsatisfied medical malpractice
7 judgments or settlements at the time of application for
8 reactivation.

9 (c) Any person holding a limited license pursuant to
10 s. 458.317 and practicing under the scope of such limited
11 license.

12 (d) Any person licensed or certified under this
13 chapter who practices only in conjunction with his teaching
14 duties at an accredited medical school or in its main teaching
15 hospitals. ~~Such person may engage in the practice of medicine
16 to the extent that such practice is incidental to and a
17 necessary part of duties in connection with the teaching
18 position in the medical school.~~

19 (e) Any person holding an active license under this
20 chapter who is not practicing medicine in this state. If such
21 person initiates or resumes any practice of medicine in this
22 state, he must notify the department of such activity and
23 fulfill the financial responsibility requirements of this
24 section before resuming the practice of medicine in this
25 state.

26 (f) Any person holding an active license under this
27 chapter who meets all of the following criteria:

28 1. The licensee has held an active license to practice
29 in this state or another state or some combination thereof for
30 more than 15 years.

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1 2. The licensee has either retired from the practice
2 of medicine or maintains a part-time practice of no more than
3 1,000 patient contact hours per year.

4 3. The licensee has had no more than two claims for
5 medical malpractice resulting in an indemnity exceeding
6 \$10,000 within the previous 5-year period.

7 4. The licensee has not been convicted of, or pled
8 guilty or nolo contendere to, any criminal violation specified
9 in this chapter or the medical practice act of any other
10 state.

11 5. The licensee has not been subject within the last
12 10 years of practice to license revocation or suspension for
13 any period of time; probation for a period of 3 years or
14 longer; or a fine of \$500 or more for a violation of this
15 chapter or the medical practice act of another jurisdiction.
16 The regulatory agency's acceptance of a physician's
17 relinquishment of a license, stipulation, consent order, or
18 other settlement, offered in response to or in anticipation of
19 the filing of administrative charges against the physician's
20 license, constitutes ~~shall be construed as~~ action against the
21 physician's license for the purposes of this paragraph.

22 6. The licensee has submitted a form supplying
23 necessary information as required by the department and an
24 affidavit affirming compliance with ~~the provisions of~~ this
25 paragraph.

26 7. The licensee must ~~shall~~ submit biennially to the
27 department certification stating compliance with ~~the~~
28 ~~provisions of~~ this paragraph. The licensee must ~~shall~~, upon
29 request, demonstrate to the department information verifying
30 compliance with this paragraph.

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1 A licensee who meets the requirements of this paragraph must
2 ~~shall be required~~ either to post notice in the form of a sign
3 prominently displayed in the reception area and clearly
4 noticeable by all patients or provide a written statement to
5 any person to whom medical services are being provided. The
6 ~~Such~~ sign or statement must ~~shall~~ state that: Under Florida
7 law, physicians are generally required to carry medical
8 malpractice insurance or otherwise demonstrate financial
9 responsibility to cover potential claims for medical
10 malpractice. However, certain part-time physicians who meet
11 state requirements are exempt from the financial
12 responsibility law. YOUR DOCTOR MEETS THESE REQUIREMENTS AND
13 HAS DECIDED NOT TO CARRY MEDICAL MALPRACTICE INSURANCE. This
14 notice is provided pursuant to Florida law.

15 ~~(g) Any person holding an active license under this~~
16 ~~chapter who agrees to meet all of the following criteria:~~

17 ~~1. Upon the entry of an adverse final judgment arising~~
18 ~~from a medical malpractice arbitration award, from a claim of~~
19 ~~medical malpractice either in contract or tort, or from~~
20 ~~noncompliance with the terms of a settlement agreement arising~~
21 ~~from a claim of medical malpractice either in contract or~~
22 ~~tort, the licensee shall pay the judgment creditor the lesser~~
23 ~~of the entire amount of the judgment with all accrued interest~~
24 ~~or either \$100,000, if the physician is licensed pursuant to~~
25 ~~this chapter but does not maintain hospital staff privileges,~~
26 ~~or \$250,000, if the physician is licensed pursuant to this~~
27 ~~chapter and maintains hospital staff privileges, within 60~~
28 ~~days after the date such judgment became final and subject to~~
29 ~~execution, unless otherwise mutually agreed to in writing by~~
30 ~~the parties. Such adverse final judgment shall include any~~
31 ~~cross-claim, counterclaim, or claim for indemnity or~~

1 ~~contribution arising from the claim of medical malpractice.~~
2 ~~Upon notification of the existence of an unsatisfied judgment~~
3 ~~or payment pursuant to this subparagraph, the department shall~~
4 ~~notify the licensee by certified mail that he shall be subject~~
5 ~~to disciplinary action unless, within 30 days from the date of~~
6 ~~mailing, he either:~~

7 ~~a. Shows proof that the unsatisfied judgment has been~~
8 ~~paid in the amount specified in this subparagraph; or~~

9 ~~b. Furnishes the department with a copy of a timely~~
10 ~~filed notice of appeal and either:~~

11 ~~(I) A copy of a supersedeas bond properly posted in~~
12 ~~the amount required by law; or~~

13 ~~(II) An order from a court of competent jurisdiction~~
14 ~~staying execution on the final judgment pending disposition of~~
15 ~~the appeal.~~

16 ~~2. Upon the next meeting of the probable cause panel~~
17 ~~of the board following 30 days after the date of mailing the~~
18 ~~notice of disciplinary action to the licensee, the panel shall~~
19 ~~make a determination of whether probable cause exists to take~~
20 ~~disciplinary action against the licensee pursuant to~~
21 ~~subparagraph 1.~~

22 ~~3. If the board determines that the factual~~
23 ~~requirements of subparagraph 1. are met, it shall take~~
24 ~~disciplinary action as it deems appropriate against the~~
25 ~~licensee. Such disciplinary action shall include, at a~~
26 ~~minimum, probation of the license with the restriction that~~
27 ~~the licensee must make payments to the judgment creditor on a~~
28 ~~schedule determined by the board to be reasonable and within~~
29 ~~the financial capability of the physician. Notwithstanding any~~
30 ~~other disciplinary penalty imposed, the disciplinary penalty~~
31 ~~may include suspension of the license for a period not to~~

1 ~~exceed 5 years. In the event that an agreement to satisfy a~~
2 ~~judgment has been met, the board shall remove any restriction~~
3 ~~on the license.~~

4 ~~4. The licensee has completed a form supplying~~
5 ~~necessary information as required by the department.~~

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7 ~~A licensee who meets the requirements of this paragraph shall~~
8 ~~be required to either post notice in the form of a sign~~
9 ~~prominently displayed in the reception area and clearly~~
10 ~~noticeable by all patients or provide a written statement to~~
11 ~~any person to whom medical services are being provided. Such~~
12 ~~sign or statement shall state that: Under Florida law,~~
13 ~~physicians are generally required to carry medical malpractice~~
14 ~~insurance or otherwise demonstrate financial responsibility to~~
15 ~~cover potential claims for medical malpractice. YOUR DOCTOR~~
16 ~~HAS DECIDED NOT TO CARRY MEDICAL MALPRACTICE INSURANCE. This~~
17 ~~is permitted under Florida law subject to certain conditions.~~
18 ~~Florida law imposes penalties against noninsured physicians~~
19 ~~who fail to satisfy adverse judgments arising from claims of~~
20 ~~medical malpractice. This notice is provided pursuant to~~
21 ~~Florida law.~~

22 (6) Any deceptive, untrue, or fraudulent
23 representation by the licensee with respect to any provision
24 of this section shall result in permanent disqualification
25 from any exemption to mandated financial responsibility as
26 provided in this section and shall constitute grounds for
27 disciplinary action as specified in s. 458.331.

28 (7) Any licensee who relies on any exemption from the
29 financial responsibility requirement must ~~shall~~ notify the
30 department, in writing, of any change of circumstance
31 regarding his qualifications for the ~~such~~ exemption and must

1 ~~shall~~ demonstrate that he is in compliance with the
2 requirements of this section.

3 (8) The board shall adopt rules to implement the
4 provisions of this section.

5 Section 2. Section 459.0085, Florida Statutes, 1996
6 Supplement, is amended to read:

7 459.0085 Financial responsibility.--

8 (1) As a condition of licensing and maintaining an
9 active license, and prior to the issuance or renewal of an
10 active license or reactivation of an inactive license for the
11 practice of osteopathic medicine, an applicant or licensee
12 must ~~shall~~ by one of the following methods demonstrate to the
13 satisfaction of the board and the department financial
14 responsibility to pay claims and costs ancillary thereto
15 arising out of the rendering of, or the failure to render,
16 medical care or services:

17 (a) Establishing and maintaining an escrow account
18 consisting of cash or assets eligible for deposit in
19 accordance with s. 625.52 in the per-claim amounts specified
20 in paragraph (b).

21 (b) Obtaining and maintaining professional liability
22 coverage for the current year and for each of the prior years
23 that the applicant or licensee has been in the active practice
24 of medicine, up to a maximum of 4 prior years, in an amount
25 not less than \$100,000 per claim, with a minimum annual
26 aggregate of not less than \$300,000, from an authorized
27 insurer as defined under s. 624.09, from a surplus lines
28 insurer as defined under s. 626.914(2), from a risk retention
29 group as defined under s. 627.942, from the Joint Underwriting
30 Association established under s. 627.351(4), or through a plan
31 of self-insurance as provided in s. 627.357.

1 (c) Obtaining and maintaining an unexpired,
2 irrevocable letter of credit, established pursuant to chapter
3 675, for the current year and for each of the prior years that
4 the applicant or licensee has been in the active practice of
5 medicine, up to a maximum of 4 prior years, in an amount not
6 less than \$100,000 per claim, with a minimum aggregate
7 availability of credit of not less than \$300,000. The letter
8 of credit must ~~shall~~ be payable to the osteopathic physician
9 as beneficiary upon presentment of a final judgment indicating
10 liability and awarding damages to be paid by the osteopathic
11 physician or upon presentment of a settlement agreement signed
12 by all parties to such agreement when such final judgment or
13 settlement is a result of a claim arising out of the rendering
14 of, or the failure to render, medical care and services. The
15 ~~Such~~ letter of credit must ~~shall~~ be nonassignable and
16 nontransferable. The ~~Such~~ letter of credit must ~~shall~~ be
17 issued by any bank or savings association organized and
18 existing under the laws of this state or any bank or savings
19 association organized under the laws of the United States that
20 has its principal place of business in this state or has a
21 branch office that ~~which~~ is authorized under the laws of this
22 state or of the United States to receive deposits in this
23 state.

24 (2) Osteopaths who perform surgery in an ambulatory
25 surgical center licensed under chapter 395 and, as a
26 continuing condition of hospital staff privileges, osteopathic
27 physicians who have ~~with~~ staff privileges must ~~shall~~ also ~~be~~
28 ~~required to~~ establish financial responsibility by one of the
29 following methods:

30 (a) Establishing and maintaining an escrow account
31 consisting of cash or assets eligible for deposit in

1 accordance with s. 625.52 in the per-claim amounts specified
2 in paragraph (b).

3 (b) Obtaining and maintaining professional liability
4 coverage for the current year and for each of the prior years
5 that the applicant or licensee has been in the active practice
6 of medicine, up to a maximum of 4 prior years, in an amount
7 not less than \$250,000 per claim, with a minimum annual
8 aggregate of not less than \$750,000 from an authorized insurer
9 as defined under s. 624.09, from a surplus lines insurer as
10 defined under s. 626.914(2), from a risk retention group as
11 defined under s. 627.942, from the Joint Underwriting
12 Association established under s. 627.351(4), through a plan of
13 self-insurance as provided in s. 627.357, or through a plan of
14 self-insurance that ~~which~~ meets the conditions specified for
15 satisfying financial responsibility in s. 766.110.

16 (c) Obtaining and maintaining an unexpired,
17 irrevocable letter of credit, established pursuant to chapter
18 675, for the current year and for each of the prior years that
19 the applicant or licensee has been in the active practice of
20 medicine, up to a maximum of 4 prior years, in an amount not
21 less than \$250,000 per claim, with a minimum aggregate
22 availability of credit of not less than \$750,000. The letter
23 of credit must ~~shall~~ be payable to the osteopathic physician
24 as beneficiary upon presentment of a final judgment indicating
25 liability and awarding damages to be paid by the osteopathic
26 physician or upon presentment of a settlement agreement signed
27 by all parties to such agreement when such final judgment or
28 settlement is a result of a claim arising out of the rendering
29 of, or the failure to render, medical care and services. The
30 ~~Such~~ letter of credit must ~~shall~~ be nonassignable and
31 nontransferable. The ~~Such~~ letter of credit must ~~shall~~ be

1 issued by any bank or savings association organized and
2 existing under the laws of this state or any bank or savings
3 association organized under the laws of the United States that
4 has its principal place of business in this state or has a
5 branch office that ~~which~~ is authorized under the laws of this
6 state or of the United States to receive deposits in this
7 state.

8
9 This subsection shall be inclusive of the coverage in
10 subsection (1).

11 (3)(a) The financial responsibility requirements of
12 subsections (1) and (2) ~~shall~~ apply to claims for incidents
13 that occur ~~on or after January 1, 1987, or the initial date of~~
14 licensure in this state, ~~whichever is later.~~

15 (b) Meeting the financial responsibility requirements
16 of this section or the criteria for any exemption from such
17 requirements must ~~shall~~ be established at the time of issuance
18 or renewal of a license ~~on or after January 1, 1987.~~

19 (c) Any person may, at any time, submit to the
20 department a request for an advisory opinion regarding such
21 person's qualifications for exemption.

22 (4)(a) Each insurer, self-insurer, risk retention
23 group, or joint underwriting association must ~~shall~~ promptly
24 notify the department of cancellation or nonrenewal of
25 insurance required by this section. Unless the osteopathic
26 physician demonstrates that he is otherwise in compliance with
27 the requirements of this section, the department shall suspend
28 the license of the osteopathic physician pursuant to ss.
29 120.569 and 120.57 and notify all health care facilities
30 licensed under chapter 395, part IV of chapter 394, or part I
31 of chapter 641 of such action. Any suspension under this

1 subsection remains ~~shall remain~~ in effect until the
2 osteopathic physician demonstrates compliance with the
3 requirements of this section. If any judgments or settlements
4 are pending at the time of suspension, those judgments or
5 settlements must be paid in accordance with this section
6 unless otherwise mutually agreed to in writing by the parties.
7 This paragraph does not abrogate a judgment debtor's
8 obligation to satisfy the entire amount of any judgment except
9 ~~that a license suspended under paragraph (5)(g) shall not be~~
10 ~~reinstated until the osteopathic physician demonstrates~~
11 ~~compliance with the requirements of that provision.~~

12 (b) If financial responsibility requirements are met
13 by maintaining an escrow account or letter of credit as
14 provided in this section, upon the entry of an adverse final
15 judgment arising from a medical malpractice arbitration award,
16 from a claim of medical malpractice either in contract or
17 tort, or from noncompliance with the terms of a settlement
18 agreement arising from a claim of medical malpractice either
19 in contract or tort, the licensee must ~~shall~~ pay the entire
20 amount of the judgment together with all accrued interest or
21 the amount maintained in the escrow account or provided in the
22 letter of credit as required by this section, whichever is
23 less, within 60 days after the date such judgment became final
24 and subject to execution, unless otherwise mutually agreed to
25 in writing by the parties. If timely payment is not made by
26 the osteopathic physician, the department shall suspend the
27 license of the osteopathic physician ~~pursuant to procedures~~
28 ~~set forth in subparagraphs (5)(g)2., 3., and 4. Nothing in~~
29 This paragraph does not shall abrogate a judgment debtor's
30 obligation to satisfy the entire amount of any judgment.

31

1 (5) The requirements of subsections (1), (2), and (3)
2 do shall not apply to:

3 (a) Any person licensed under this chapter who
4 practices medicine exclusively as an officer, employee, or
5 agent of the Federal Government or of the state or its
6 agencies or its subdivisions. For the purposes of this
7 subsection, an agent of the state, its agencies, and
8 subdivisions is a person who is eligible for coverage under
9 any self-insurance or insurance program authorized by the
10 provisions of s. 768.28(15)~~(14)~~.

11 (b) Any person whose license has become inactive under
12 this chapter and who is not practicing medicine in this state.
13 Any person applying for reactivation of a license must show
14 either that such licensee maintained tail insurance coverage
15 that ~~which~~ provided liability coverage for incidents that
16 occurred on or after January 1, 1987, or the initial date of
17 licensure in this state, whichever is later, and incidents
18 that occurred before the date on which the license became
19 inactive; or such licensee must submit an affidavit stating
20 that such licensee has no unsatisfied medical malpractice
21 judgments or settlements at the time of application for
22 reactivation.

23 (c) Any person holding a limited license pursuant to
24 s. 459.0075 and practicing under the scope of such limited
25 license.

26 (d) Any person licensed or certified under this
27 chapter who practices only in conjunction with his teaching
28 duties at a college of osteopathic medicine. ~~Such person may~~
29 ~~engage in the practice of osteopathic medicine to the extent~~
30 ~~that such practice is incidental to and a necessary part of~~
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1 ~~duties in connection with the teaching position in the college~~
2 ~~of osteopathic medicine.~~

3 (e) Any person holding an active license under this
4 chapter who is not practicing osteopathic medicine in this
5 state. If such person initiates or resumes any practice of
6 osteopathic medicine in this state, he must notify the
7 department of such activity and fulfill the financial
8 responsibility requirements of this section before resuming
9 the practice of osteopathic medicine in this state.

10 (f) Any person holding an active license under this
11 chapter who meets all of the following criteria:

12 1. The licensee has held an active license to practice
13 in this state or another state or some combination thereof for
14 more than 15 years.

15 2. The licensee has either retired from the practice
16 of osteopathic medicine or maintains a part-time practice of
17 osteopathic medicine of no more than 1,000 patient contact
18 hours per year.

19 3. The licensee has had no more than two claims for
20 medical malpractice resulting in an indemnity exceeding
21 \$10,000 within the previous 5-year period.

22 4. The licensee has not been convicted of, or pled
23 guilty or nolo contendere to, any criminal violation specified
24 in this chapter or the practice act of any other state.

25 5. The licensee has not been subject within the last
26 10 years of practice to license revocation or suspension for
27 any period of time, probation for a period of 3 years or
28 longer, or a fine of \$500 or more for a violation of this
29 chapter or the medical practice act of another jurisdiction.
30 The regulatory agency's acceptance of an osteopathic
31 physician's relinquishment of a license, stipulation, consent

1 order, or other settlement, offered in response to or in
2 anticipation of the filing of administrative charges against
3 the osteopathic physician's license, constitutes ~~shall be~~
4 ~~construed as~~ action against the physician's license for the
5 purposes of this paragraph.

6 6. The licensee has submitted a form supplying
7 necessary information as required by the department and an
8 affidavit affirming compliance with ~~the provisions of~~ this
9 paragraph.

10 7. The licensee must ~~shall~~ submit biennially to the
11 department a certification stating compliance with ~~the~~
12 ~~provisions of~~ this paragraph. The licensee must ~~shall~~, upon
13 request, demonstrate to the department information verifying
14 compliance with this paragraph.

15
16 A licensee who meets the requirements of this paragraph must
17 ~~shall be required~~ either to post notice in the form of a sign
18 prominently displayed in the reception area and clearly
19 noticeable by all patients or to provide a written statement
20 to any person to whom medical services are being provided. The
21 ~~Such~~ sign or statement must ~~shall~~ state that: Under Florida
22 law, osteopathic physicians are generally required to carry
23 medical malpractice insurance or otherwise demonstrate
24 financial responsibility to cover potential claims for medical
25 malpractice. However, certain part-time osteopathic physicians
26 who meet state requirements are exempt from the financial
27 responsibility law. YOUR OSTEOPATHIC PHYSICIAN MEETS THESE
28 REQUIREMENTS AND HAS DECIDED NOT TO CARRY MEDICAL MALPRACTICE
29 INSURANCE. This notice is provided pursuant to Florida law.

30 ~~(g) Any person holding an active license under this~~
31 ~~chapter who agrees to meet all of the following criteria:~~

1 ~~1. Upon the entry of an adverse final judgment arising~~
2 ~~from a medical malpractice arbitration award, from a claim of~~
3 ~~medical malpractice either in contract or tort, or from~~
4 ~~noncompliance with the terms of a settlement agreement arising~~
5 ~~from a claim of medical malpractice either in contract or~~
6 ~~tort, the licensee shall pay the judgment creditor the lesser~~
7 ~~of the entire amount of the judgment with all accrued interest~~
8 ~~or either \$100,000, if the osteopathic physician is licensed~~
9 ~~pursuant to this chapter but does not maintain hospital staff~~
10 ~~privileges, or \$250,000, if the osteopathic physician is~~
11 ~~licensed pursuant to this chapter and maintains hospital staff~~
12 ~~privileges, within 60 days after the date such judgment became~~
13 ~~final and subject to execution, unless otherwise mutually~~
14 ~~agreed to in writing by the parties. Such adverse final~~
15 ~~judgment shall include any cross claim, counterclaim, or claim~~
16 ~~for indemnity or contribution arising from the claim of~~
17 ~~medical malpractice. Upon notification of the existence of an~~
18 ~~unsatisfied judgment or payment pursuant to this subparagraph,~~
19 ~~the department shall notify the licensee by certified mail~~
20 ~~that he shall be subject to disciplinary action unless, within~~
21 ~~30 days from the date of mailing, he either:~~
22 ~~a. Shows proof that the unsatisfied judgment has been~~
23 ~~paid in the amount specified in this subparagraph; or~~
24 ~~b. Furnishes the department with a copy of a timely~~
25 ~~filed notice of appeal and either:~~
26 ~~(I) A copy of a supersedeas bond properly posted in~~
27 ~~the amount required by law; or~~
28 ~~(II) An order from a court of competent jurisdiction~~
29 ~~staying execution on the final judgment, pending disposition~~
30 ~~of the appeal.~~
31

1 ~~2. Upon the next meeting of the probable cause panel~~
2 ~~of the board following 30 days after the date of mailing the~~
3 ~~notice of disciplinary action to the licensee, the panel shall~~
4 ~~make a determination of whether probable cause exists to take~~
5 ~~disciplinary action against the licensee pursuant to~~
6 ~~subparagraph 1.~~

7 ~~3. If the board determines that the factual~~
8 ~~requirements of subparagraph 1. are met, it shall take~~
9 ~~disciplinary action as it deems appropriate against the~~
10 ~~licensee. Such disciplinary action shall include, at a~~
11 ~~minimum, probation of the license with the restriction that~~
12 ~~the licensee must make payments to the judgment creditor on a~~
13 ~~schedule determined by the board to be reasonable and within~~
14 ~~the financial capability of the osteopathic physician.~~
15 ~~Notwithstanding any other disciplinary penalty imposed, the~~
16 ~~disciplinary penalty may include suspension of the license for~~
17 ~~a period not to exceed 5 years. In the event that an~~
18 ~~agreement to satisfy a judgment has been met, the board shall~~
19 ~~remove any restriction on the license.~~

20 ~~4. The licensee has completed a form supplying~~
21 ~~necessary information as required by the department.~~

22
23 ~~A licensee who meets the requirements of this paragraph shall~~
24 ~~be required to either post notice in the form of a sign~~
25 ~~prominently displayed in the reception area and clearly~~
26 ~~noticeable by all patients or provide a written statement to~~
27 ~~any person to whom medical services are being provided. Such~~
28 ~~sign or statement shall state that: Under Florida law,~~
29 ~~osteopathic physicians are generally required to carry medical~~
30 ~~malpractice insurance or otherwise demonstrate financial~~
31 ~~responsibility to cover potential claims for medical~~

1 ~~malpractice. YOUR OSTEOPATHIC PHYSICIAN HAS DECIDED NOT TO~~
2 ~~CARRY MEDICAL MALPRACTICE INSURANCE. This is permitted under~~
3 ~~Florida law subject to certain conditions. Florida law~~
4 ~~imposes strict penalties against noninsured osteopathic~~
5 ~~physicians who fail to satisfy adverse judgments arising from~~
6 ~~claims of medical malpractice. This notice is provided~~
7 ~~pursuant to Florida law.~~

8 (6) Any deceptive, untrue, or fraudulent
9 representation by the licensee with respect to any provision
10 of this section shall result in permanent disqualification
11 from any exemption to mandated financial responsibility as
12 provided in this section and shall constitute grounds for
13 disciplinary action as specified in s. 459.015.

14 (7) Any licensee who relies on any exemption from the
15 financial responsibility requirement must ~~shall~~ notify the
16 department in writing of any change of circumstance regarding
17 his qualifications for the ~~such~~ exemption and must ~~shall~~
18 demonstrate that he is in compliance with the requirements of
19 this section.

20 (8) If a physician is either a resident physician,
21 assistant resident physician, or intern in an approved
22 postgraduate training program, as defined by the board's
23 rules, and is supervised by a physician who is participating
24 in the Florida Birth-Related Neurological Injury Compensation
25 Plan, such resident physician, assistant resident physician,
26 or intern is deemed to be a participating physician without
27 the payment of the assessment set forth in s. 766.314(4).

28 (9) The board shall adopt rules to implement the
29 provisions of this section.

30 Section 3. Subsection (3) is added to section 455.245,
31 Florida Statutes, to read:

509-142B-97

1 455.245 Certain health care practitioners; immediate
2 suspension of license.--

3 (3) The Department of Health shall issue an emergency
4 order suspending the license of any physician licensed under
5 chapter 458 or any osteopathic physician licensed under
6 chapter 459 who the department has probable cause to believe
7 is in violation of the provisions of s. 458.320 or s.
8 459.0085.

9 Section 4. This act shall take effect January 1, 1998,
10 and shall apply to claims accruing on or after that date.

11
12 *****

13 HOUSE SUMMARY

14 Requires physicians and osteopathic physicians to
15 maintain financial responsibility as a condition of
16 licensure. Requires physicians and osteopathic physicians
17 to pay outstanding judgments or settlements pending at
18 the time their license is suspended by the Department of
19 Health. Repeals an alternative method available to
20 physicians and osteopathic physicians to provide
21 financial responsibility. Requires the department to
22 issue an emergency order suspending the license of a
23 physician or osteopathic physician when the agency has
24 probable cause to believe such person has violated s.
25 458.320 or s. 459.0085, F.S.
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31