

By Senator Geller

29-1043-02

1 A bill to be entitled
2 An act relating to health care providers;
3 amending s. 456.041, F.S.; specifying medical
4 liability actions with respect to which the
5 Department of Health must maintain information
6 on certain licensees; amending ss. 458.331,
7 459.015, F.S.; revising the definition of the
8 term "repeated malpractice" for purposes of
9 disciplinary action against physicians and
10 osteopaths; increasing the monetary limits of
11 claims against certain health care providers
12 which result in investigation; amending s.
13 627.912, F.S.; requiring certain professional
14 liability claims to be reported by insurers to
15 the Department of Insurance; requiring certain
16 of those claims to be investigated by the
17 Department of Health; providing an effective
18 date.

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

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22 Section 1. Subsection (4) of section 456.041, Florida
23 Statutes, is amended to read:

24 456.041 Practitioner profile; creation.--

25 (4) The Department of Health shall include, with
26 respect to a practitioner licensed under chapter 458 or
27 chapter 459, a statement of how the practitioner has elected
28 to comply with the financial responsibility requirements of s.
29 458.320 or s. 459.0085. The department shall include, with
30 respect to practitioners subject to s. 456.048, a statement of
31 how the practitioner has elected to comply with the financial

1 responsibility requirements of that section. The department
2 shall include, with respect to practitioners licensed under
3 chapter 458, chapter 459, or chapter 461, information relating
4 to medical liability actions within the previous 7 years which
5 resulted in a verdict in favor of the plaintiff and medical
6 liability actions which have ~~has~~ been reported under s.
7 456.049 or s. 627.912 within the previous 7 ~~10~~ years for any
8 paid claim that exceeds \$50,000 ~~\$5,000~~. Such claims
9 information shall be reported in the context of comparing an
10 individual practitioner's claims to the experience of other
11 practitioners within the same specialty, or profession if the
12 practitioner is not a specialist, to the extent such
13 information is available to the Department of Health. If
14 information relating to a liability action is included in a
15 practitioner's practitioner profile, the profile must also
16 include the following statement: "Settlement of a claim may
17 occur for a variety of reasons that do not necessarily reflect
18 negatively on the professional competence or conduct of the
19 practitioner. A payment in settlement of a medical
20 malpractice action or claim should not be construed as
21 creating a presumption that medical malpractice has occurred."

22 Section 2. Paragraph (t) of subsection (1) and
23 subsection (6) of section 458.331, Florida Statutes, are
24 amended to read:

25 458.331 Grounds for disciplinary action; action by the
26 board and department.--

27 (1) The following acts constitute grounds for denial
28 of a license or disciplinary action, as specified in s.
29 456.072(2):

30 (t) Gross or repeated malpractice or the failure to
31 practice medicine with that level of care, skill, and

1 treatment which is recognized by a reasonably prudent similar
2 physician as being acceptable under similar conditions and
3 circumstances. The board shall give great weight to the
4 provisions of s. 766.102 when enforcing this paragraph. As
5 used in this paragraph, "repeated malpractice" includes, but
6 is not limited to, three or more claims for medical
7 malpractice within the previous 5-year period resulting in
8 indemnities being paid in excess of \$50,000~~\$25,000~~ each to
9 the claimant in a judgment or settlement and which incidents
10 involved negligent conduct by the physician. As used in this
11 paragraph, "gross malpractice" or "the failure to practice
12 medicine with that level of care, skill, and treatment which
13 is recognized by a reasonably prudent similar physician as
14 being acceptable under similar conditions and circumstances,"
15 shall not be construed so as to require more than one
16 instance, event, or act. Nothing in this paragraph shall be
17 construed to require that a physician be incompetent to
18 practice medicine in order to be disciplined pursuant to this
19 paragraph.

20 (6) Upon the department's receipt from an insurer or
21 self-insurer of a report of a closed claim against a physician
22 pursuant to s. 627.912 or from a health care practitioner of a
23 report pursuant to s. 456.049, or upon the receipt from a
24 claimant of a presuit notice against a physician pursuant to
25 s. 766.106, the department shall review each report and
26 determine whether it potentially involved conduct by a
27 licensee that is subject to disciplinary action, in which case
28 the provisions of s. 456.073 shall apply. However, if it is
29 reported that a physician has had three or more claims with
30 indemnities exceeding \$50,000~~\$25,000~~ each within the previous
31 5-year period, the department shall investigate the

1 occurrences upon which the claims were based and determine
2 whether if action by the department against the physician is
3 warranted.

4 Section 3. Paragraph (x) of subsection (1) and
5 subsection (6) of section 459.015, Florida Statutes, are
6 amended to read:

7 459.015 Grounds for disciplinary action; action by the
8 board and department.--

9 (1) The following acts constitute grounds for denial
10 of a license or disciplinary action, as specified in s.
11 456.072(2):

12 (x) Gross or repeated malpractice or the failure to
13 practice osteopathic medicine with that level of care, skill,
14 and treatment which is recognized by a reasonably prudent
15 similar osteopathic physician as being acceptable under
16 similar conditions and circumstances. The board shall give
17 great weight to the provisions of s. 766.102 when enforcing
18 this paragraph. As used in this paragraph, "repeated
19 malpractice" includes, but is not limited to, three or more
20 claims for medical malpractice within the previous 5-year
21 period resulting in indemnities being paid in excess of
22 ~~\$50,000~~\$25,000 each to the claimant in a judgment or
23 settlement and which incidents involved negligent conduct by
24 the osteopathic physician. As used in this paragraph, "gross
25 malpractice" or "the failure to practice osteopathic medicine
26 with that level of care, skill, and treatment which is
27 recognized by a reasonably prudent similar osteopathic
28 physician as being acceptable under similar conditions and
29 circumstances" shall not be construed so as to require more
30 than one instance, event, or act. Nothing in this paragraph
31 shall be construed to require that an osteopathic physician be

1 incompetent to practice osteopathic medicine in order to be
2 disciplined pursuant to this paragraph. A recommended order
3 by an administrative law judge or a final order of the board
4 finding a violation under this paragraph shall specify whether
5 the licensee was found to have committed "gross malpractice,"
6 "repeated malpractice," or "failure to practice osteopathic
7 medicine with that level of care, skill, and treatment which
8 is recognized as being acceptable under similar conditions and
9 circumstances," or any combination thereof, and any
10 publication by the board shall so specify.

11 (6) Upon the department's receipt from an insurer or
12 self-insurer of a report of a closed claim against an
13 osteopathic physician pursuant to s. 627.912 or from a health
14 care practitioner of a report pursuant to s. 456.049, or upon
15 the receipt from a claimant of a presuit notice against an
16 osteopathic physician pursuant to s. 766.106, the department
17 shall review each report and determine whether it potentially
18 involved conduct by a licensee that is subject to disciplinary
19 action, in which case the provisions of s. 456.073 shall
20 apply. However, if it is reported that an osteopathic
21 physician has had three or more claims with indemnities
22 exceeding \$50,000~~\$25,000~~ each within the previous 5-year
23 period, the department shall investigate the occurrences upon
24 which the claims were based and determine if action by the
25 department against the osteopathic physician is warranted.

26 Section 4. Subsection (1) of section 627.912, Florida
27 Statutes, is amended to read:

28 627.912 Professional liability claims and actions;
29 reports by insurers.--

30 (1) Each self-insurer authorized under s. 627.357 and
31 each insurer or joint underwriting association providing

1 professional liability insurance to a practitioner of medicine
2 licensed under chapter 458, to a practitioner of osteopathic
3 medicine licensed under chapter 459, to a podiatric physician
4 licensed under chapter 461, to a dentist licensed under
5 chapter 466, to a hospital licensed under chapter 395, to a
6 crisis stabilization unit licensed under part IV of chapter
7 394, to a health maintenance organization certificated under
8 part I of chapter 641, to clinics included in chapter 390, to
9 an ambulatory surgical center as defined in s. 395.002, or to
10 a member of The Florida Bar shall report in duplicate to the
11 Department of Insurance any claim or action for damages for
12 personal injuries claimed to have been caused by error,
13 omission, or negligence in the performance of such insured's
14 professional services or based on a claimed performance of
15 professional services without consent, if the claim resulted
16 in:

- 17 (a) A final judgment in any amount.
18 (b) A settlement in any amount.

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20 Reports shall be filed with the Department of Insurance.
21 ~~department and~~If the insured party is licensed under chapter
22 458, chapter 459, chapter 461, or chapter 466 and the final
23 judgment or settlement amount exceeded \$50,000, the report
24 must also be filed with the Department of Health, no later
25 than 30 days following the occurrence of any event listed in
26 this subsection ~~paragraph (a) or paragraph (b)~~. The Department
27 of Health shall review each report and determine whether any
28 of the incidents that resulted in the claim potentially
29 involved conduct by the licensee that is subject to
30 disciplinary action, in which case the provisions of s.
31 456.073 shall apply. The Department of Health, as part of the

1 annual report required by s. 456.026, shall publish annual
2 statistics, without identifying licensees, on the reports it
3 receives, including final action taken on such reports by the
4 Department of Health or the appropriate regulatory board.

5 Section 5. This act shall take effect July 1, 2002.

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8 SENATE SUMMARY

9 Revises provisions relating to recordkeeping and
10 reporting of professional liability claims against
11 certain health care professionals. Revises provisions
governing disciplinary actions. (See bill for details.)

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