

Bill No. CS for CS for SB 370

Amendment No.      Barcode 510902

<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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Senator Saunders moved the following **amendment to amendment** (104940):

**Senate Amendment (with title amendment)**

On page 11, line 22, through  
page 14, line 18, delete those lines

and insert:

Section 16. Paragraphs (t) and (v) of subsection (1) and subsection (6) of section 458.331, Florida Statutes, are amended to read:

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

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

(t) Gross or repeated malpractice or the failure to practice medicine with that level of care, skill, and treatment which is recognized by a reasonably prudent similar physician as being acceptable under similar conditions and circumstances. The board shall give great weight to the

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

17 (v) Practicing or offering to practice beyond the  
18 scope permitted by law or accepting and performing  
19 professional responsibilities which the licensee knows or has  
20 reason to know that he or she is not competent to perform. The  
21 board may establish by rule standards of practice and  
22 standards of care for particular practice settings, including,  
23 but not limited to, education and training, equipment and  
24 supplies, medications including anesthetics, assistance of and  
25 delegation to other personnel, except licensed practitioners  
26 under s. 464.012(4)(a), who may continue to practice under the  
27 supervision of the operating room surgeon in accordance with  
28 chapter 464, transfer agreements, sterilization, records,  
29 performance of complex or multiple procedures, informed  
30 consent, and policy and procedure manuals.

31 (6) Upon the department's receipt from an insurer or

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1 self-insurer of a report of a closed claim against a physician  
2 pursuant to s. 627.912 or from a health care practitioner of a  
3 report pursuant to s. 456.049, or upon the receipt from a  
4 claimant of a presuit notice against a physician pursuant to  
5 s. 766.106, the department shall review each report and  
6 determine whether it potentially involved conduct by a  
7 licensee that is subject to disciplinary action, in which case  
8 the provisions of s. 456.073 shall apply. However, if it is  
9 reported that a physician has had three or more claims with  
10 indemnities exceeding ~~\$50,000~~ ~~\$25,000~~ each within the previous  
11 5-year period, the department shall investigate the  
12 occurrences upon which the claims were based and determine  
13 whether if action by the department against the physician is  
14 warranted.

15 Section 17. Paragraphs (x) and (z) of subsection (1)  
16 and subsection (6) of section 459.015, Florida Statutes, are  
17 amended to read:

18 459.015 Grounds for disciplinary action; action by the  
19 board and department.--

20 (1) The following acts constitute grounds for denial  
21 of a license or disciplinary action, as specified in s.  
22 456.072(2):

23 (x) Gross or repeated malpractice or the failure to  
24 practice osteopathic medicine with that level of care, skill,  
25 and treatment which is recognized by a reasonably prudent  
26 similar osteopathic physician as being acceptable under  
27 similar conditions and circumstances. The board shall give  
28 great weight to the provisions of s. 766.102 when enforcing  
29 this paragraph. As used in this paragraph, "repeated  
30 malpractice" includes, but is not limited to, three or more  
31 claims for medical malpractice within the previous 5-year

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1 period resulting in indemnities being paid in excess of  
2 ~~\$50,000~~~~\$25,000~~ each to the claimant in a judgment or  
3 settlement and which incidents involved negligent conduct by  
4 the osteopathic physician. As used in this paragraph, "gross  
5 malpractice" or "the failure to practice osteopathic medicine  
6 with that level of care, skill, and treatment which is  
7 recognized by a reasonably prudent similar osteopathic  
8 physician as being acceptable under similar conditions and  
9 circumstances" shall not be construed so as to require more  
10 than one instance, event, or act. Nothing in this paragraph  
11 shall be construed to require that an osteopathic physician be  
12 incompetent to practice osteopathic medicine in order to be  
13 disciplined pursuant to this paragraph. A recommended order  
14 by an administrative law judge or a final order of the board  
15 finding a violation under this paragraph shall specify whether  
16 the licensee was found to have committed "gross malpractice,"  
17 "repeated malpractice," or "failure to practice osteopathic  
18 medicine with that level of care, skill, and treatment which  
19 is recognized as being acceptable under similar conditions and  
20 circumstances," or any combination thereof, and any  
21 publication by the board shall so specify.

22 (z) Practicing or offering to practice beyond the  
23 scope permitted by law or accepting and performing  
24 professional responsibilities which the licensee knows or has  
25 reason to know that he or she is not competent to perform. The  
26 board may establish by rule standards of practice and  
27 standards of care for particular practice settings, including,  
28 but not limited to, education and training, equipment and  
29 supplies, medications including anesthetics, assistance of and  
30 delegation to other personnel, except licensed practitioners  
31 under s. 464.012(4)(a), who may continue to practice under the

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1 supervision of the operating surgeon in accordance with  
2 chapter 464,transfer agreements, sterilization, records,  
3 performance of complex or multiple procedures, informed  
4 consent, and policy and procedure manuals.

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

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22 ===== T I T L E A M E N D M E N T =====

23 And the title is amended as follows:  
24 On page 99, line 20, after the semicolon  
25  
26 insert:  
27 providing an exemption from disciplinary action  
28 for specified personnel;

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