

Bill No. CS for CS for SB 370

Amendment No. Barcode 801234

<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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Senator Silver 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\$50,000~~\$25,000~~ 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

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26 insert:

27 providing an exemption from disciplinary action
28 for specified personnel;
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