

Bill No. CS/HB 507, 2nd Eng.

Amendment No.      Barcode 240338

<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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Senator Silver moved the following amendment:

**Senate Amendment (with title amendment)**

On page 64, line 26, through  
page 66, line 30, delete those lines

and insert:

Section 57. 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 provisions of s. 766.102 when enforcing this paragraph. As

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

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

30 (6) Upon the department's receipt from an insurer or  
31 self-insurer of a report of a closed claim against a physician

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

14 Section 58. Paragraphs (x) and (z) of subsection (1)  
15 and subsection (6) of section 459.015, Florida Statutes, are  
16 amended to read:

17 459.015 Grounds for disciplinary action; action by the  
18 board and department.--

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

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

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

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

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1 chapter 464,transfer agreements, sterilization, records,  
2 performance of complex or multiple procedures, informed  
3 consent, and policy and procedure manuals.

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

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

22 And the title is amended as follows:

23 On page 8, line 15, after the first semicolon,  
24  
25 insert:  
26 providing an exemption from disciplinary action  
27 for specified personnel;

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