

Bill No. CS/HB 913, 2nd Eng.

Amendment No. Barcode 762502

<u>Senate</u>	CHAMBER ACTION	<u>House</u>
---------------	----------------	--------------

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

·
·
·
·
·

Senator Silver moved the following **amendment to amendment**
(732346):

Senate Amendment (with title amendment)

On page 82, between lines 13 and 14,

insert:

Section 34. 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

Bill No. CS/HB 913, 2nd Eng.

Amendment No. ____ Barcode 762502

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

Bill No. CS/HB 913, 2nd Eng.

Amendment No. ____ Barcode 762502

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 35. 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

Bill No. CS/HB 913, 2nd Eng.

Amendment No. ____ Barcode 762502

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

Bill No. CS/HB 913, 2nd Eng.

Amendment No. ____ Barcode 762502

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 89, line 12, after the semicolon

24
25 insert:

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