

By Senator Peaden

2-947-03

1                                   A bill to be entitled  
2           An act relating to health care; amending s.  
3           395.004, F.S., relating to licensure of certain  
4           health care facilities; providing for  
5           discounted medical liability insurance based on  
6           certification of programs that reduce adverse  
7           incidents; requiring the Department of  
8           Financial Services to consider certain  
9           information in reviewing discounted rates;  
10          creating s. 395.0056, F.S.; requiring a  
11          licensed facility to notify the Agency for  
12          Health Care Administration of actions filed  
13          against the facility or health care  
14          practitioners for whom it assumes liability;  
15          requiring the agency to review files for  
16          compliance with requirements relating to notice  
17          of adverse incidents; requiring the agency to  
18          annually publish information about litigation  
19          affecting licensed facilities; creating s.  
20          395.0187, F.S.; requiring facilities to  
21          establish a nurse-to-patient ratio based upon a  
22          specified methodology; providing for varying  
23          the ratio while ensuring quality of care;  
24          amending s. 395.0193, F.S., relating to peer  
25          review and disciplinary actions; providing for  
26          discipline of a physician for mental or  
27          physical abuse of staff; limiting liability of  
28          certain participants in certain disciplinary  
29          actions at a licensed facility; clarifying that  
30          certain documents and communications are not  
31          privileged; requiring that certain committees

1 and other specified entities provide a list of  
2 documents or communications for which privilege  
3 is asserted; providing for in camera review;  
4 providing for determination of whether  
5 privilege applies as asserted; specifying  
6 information included in such a list; providing  
7 for protection of patient-identifying  
8 information; amending s. 395.0197, F.S.,  
9 relating to internal risk management programs;  
10 deleting an exception from the risk prevention  
11 education requirement for certain health care  
12 practitioners; requiring a system for notifying  
13 patients that they are victims of an adverse  
14 incident; requiring risk managers or their  
15 designees to give notice; requiring licensed  
16 facilities to annually report certain  
17 information about health care practitioners for  
18 whom they assume liability; requiring the  
19 Agency for Health Care Administration and the  
20 Department of Health to annually publish  
21 statistics about licensed facilities that  
22 assume liability for health care practitioners;  
23 providing for disciplinary action against a  
24 person who has a duty to report an adverse  
25 incident but who fails to timely do so;  
26 providing for a fine for each day an adverse  
27 incident is not timely reported; revising the  
28 circumstances under which a risk manager or  
29 designee must notify the agency that an adverse  
30 incident occurred; requiring notification that  
31 an adverse incident has possibly occurred;

1 deleting a list of certain specific adverse  
2 incidents about which the agency must be  
3 notified; including errors, omissions, or  
4 negligence within the information that the  
5 agency is required to publish on its website;  
6 requiring the agency to annually publish report  
7 cards providing statistics and narrative  
8 explanations for each such facility's incident  
9 reports; requiring the report cards to be  
10 available to the public on-line and through  
11 other means by a specified date; specifying  
12 organization and minimum contents of the report  
13 cards; requiring a statement regarding the use  
14 of adverse incident data in assessing a  
15 facility; requiring risk managers to report  
16 allegations of sexual misconduct occurring in a  
17 licensed facility to the agency; requiring  
18 certain licensed facilities to offer victims of  
19 sexual abuse testing for sexually transmissible  
20 diseases at no cost; authorizing the agency to  
21 publish information about certain adverse  
22 incidents that it discovers were not timely  
23 reported; amending s. 456.025, F.S.;  
24 eliminating certain restrictions on the setting  
25 of licensure renewal fees for health care  
26 practitioners; amending s. 456.026, F.S.,  
27 relating to an annual report published by the  
28 Department of Health; requiring that the  
29 department publish the report to its website;  
30 requiring the department to include certain  
31 detailed information; amending s. 456.041,

1 F.S., relating to practitioner profiles;  
2 requiring the Department of Health to compile  
3 certain specified information in a practitioner  
4 profile; establishing a timeframe for certain  
5 health care practitioners to report specified  
6 information; providing for disciplinary action  
7 and a fine for untimely submissions; deleting  
8 provisions that provide that a profile need not  
9 indicate whether a criminal history check was  
10 performed to corroborate information in the  
11 profile; authorizing the department or  
12 regulatory board to investigate any information  
13 received; requiring the department to provide a  
14 narrative explanation, in plain English,  
15 concerning final disciplinary action taken  
16 against a practitioner; requiring a hyperlink  
17 to each final order on the department's website  
18 which provides information about disciplinary  
19 actions; requiring the department to provide a  
20 hyperlink to certain comparison reports  
21 pertaining to claims experience; requiring the  
22 department to include the date that a reported  
23 disciplinary action was taken by a licensed  
24 facility and a characterization of the  
25 practitioner's conduct that resulted in the  
26 action; deleting provisions requiring the  
27 department to consult with a regulatory board  
28 before including certain information in a  
29 health care practitioner's profile; providing  
30 for a penalty for failure to comply with the  
31 timeframe for verifying and correcting a

1 practitioner profile; requiring the department  
2 to add a statement to a practitioner profile  
3 when the profile information has not been  
4 verified by the practitioner; requiring the  
5 department to provide, in the practitioner  
6 profile, an explanation of disciplinary action  
7 taken and the reason for sanctions imposed;  
8 requiring the department to include a hyperlink  
9 to a practitioner's website when requested;  
10 amending s. 456.042, F.S.; providing for the  
11 update of practitioner profiles; designating a  
12 timeframe within which a practitioner must  
13 submit new information to update his or her  
14 profile; providing for quarterly departmental  
15 updates of practitioner profiles; amending s.  
16 456.049, F.S., relating to practitioner reports  
17 on professional liability claims and actions;  
18 deleting a requirement that a practitioner  
19 report only if the claim or action was not  
20 covered by an insurer that is required to  
21 report; imposing a fine on practitioners who  
22 fail to comply with the requirements for  
23 reporting claims and actions within a specified  
24 period; imposing an additional fine for  
25 continued failure to comply with reporting  
26 requirements; providing that unreported  
27 information is subject to discovery; amending  
28 s. 456.051, F.S.; establishing the  
29 responsibility of the Department of Health to  
30 provide reports of professional liability  
31 actions and bankruptcies; requiring the

1 department to include such reports in a  
2 practitioner's profile within a specified  
3 period; amending s. 458.320, F.S., relating to  
4 financial responsibility requirements for  
5 medical physicians; specifying dimensions,  
6 placement, and font size for certain notices;  
7 revising mandatory language to be included in a  
8 required sign; requiring the department to  
9 suspend the license of a medical physician who  
10 has not paid, up to the amounts required by any  
11 applicable financial responsibility provision,  
12 any outstanding judgment, arbitration award,  
13 other order, or settlement; amending s.  
14 458.331, F.S.; providing grounds for  
15 disciplinary actions; requiring an explicit  
16 statement of certain findings in a recommended  
17 order or a final order or a publication;  
18 providing that refusal to provide health care  
19 to a patient participating in pending or past  
20 litigation or a disciplinary action is grounds  
21 for disciplinary action under certain  
22 circumstances; increasing the monetary  
23 threshold amount for establishing that a  
24 medical physician has engaged in repeated  
25 malpractice; amending s. 459.0085, F.S.,  
26 relating to financial responsibility  
27 requirements for osteopathic physicians;  
28 requiring that the department suspend the  
29 license of an osteopathic physician who has not  
30 paid, up to the amounts required by any  
31 applicable financial responsibility provision,

1 any outstanding judgment, arbitration award,  
2 other order, or settlement; amending s.  
3 459.015, F.S., relating to grounds for  
4 disciplinary actions; increasing the monetary  
5 threshold amount for establishing that an  
6 osteopathic physician has engaged in repeated  
7 malpractice; providing civil immunity for  
8 certain participants in quality improvement  
9 processes; designating as privileged certain  
10 communications by patient safety organizations;  
11 clarifying that certain documents and  
12 communications are not privileged; requiring  
13 that certain committees and other specified  
14 entities provide a list of documents or  
15 communications for which privilege is asserted;  
16 providing for in camera review; providing for  
17 determination of whether privilege applies as  
18 asserted; specifying information included in  
19 such a list; providing for protection of  
20 patient-identifying information; requiring that  
21 patient safety data be given quarterly to the  
22 Department of Health, the Agency for Health  
23 Care Administration, and the Department of  
24 Financial Services; directing the Department of  
25 Health and the Department of Financial Services  
26 to jointly publish a list of certain specified  
27 health care practitioners who do not carry  
28 malpractice insurance and stating the last date  
29 the practitioner was covered by professional  
30 liability insurance; requiring that a specific  
31 statement be included in each final settlement

1 statement relating to medical malpractice  
2 actions; prohibiting confidential legal  
3 settlements in medical malpractice actions;  
4 providing requirements for the closed claim  
5 form of the Department of Financial Services;  
6 requiring the Department of Financial Services  
7 to compile annual statistical reports  
8 pertaining to closed claims; requiring  
9 historical statistical summaries; specifying  
10 certain information to be included on the  
11 closed claim form; providing for severability;  
12 providing an effective date.

13

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

15

16 Section 1. Subsection (3) is added to section 395.004,  
17 Florida Statutes, to read:

18 395.004 Application for license, fees; expenses.--

19 (3) A licensed facility may apply to the agency for  
20 certification of a quality improvement program that results in  
21 the reduction of adverse incidents at that facility. The  
22 agency, in consultation with the Department of Financial  
23 Services, shall develop criteria for such certification.  
24 Insurers shall file with the Department of Financial Services  
25 a discount in the rate or rates applicable for medical  
26 liability insurance coverage to reflect the implementation of  
27 a certified program. In reviewing insurance company filings  
28 with respect to rate discounts authorized under this  
29 subsection, the Department of Financial Services shall  
30 consider whether, and the extent to which, the program  
31 certified under this subsection is otherwise covered under a



1 program of risk management offered by an insurance company or  
2 self-insurance plan providing medical liability coverage.

3 Section 2. Section 395.0056, Florida Statutes, is  
4 created to read:

5 395.0056 Litigation notice requirement.--

6 (1) A licensed facility must notify the agency of all  
7 medical malpractice lawsuits filed against it or a member of  
8 its staff, when the underlying cause of action pertaining to  
9 the staff member involves the licensed facility, within 15  
10 calendar days after it receives notice or otherwise becomes  
11 aware that such an action has been initiated against it or a  
12 current or former staff member.

13 (2) The plaintiff shall provide a copy of the claim to  
14 the agency, which shall review its adverse incident report  
15 files pertaining to each licensed facility that submits notice  
16 as required by this section to determine whether the facility  
17 timely complied with the requirements of s. 395.0197. The  
18 agency shall annually publish information about litigation  
19 filed against licensed facilities sufficient for the public to  
20 be able to clearly understand the issues raised and the status  
21 of the litigation at the time of publication.

22 Section 3. Section 395.0187, Florida Statutes, is  
23 created to read:

24 395.0187 Nurse-to-patient ratio required.--Each  
25 licensed facility shall establish a nurse to patient ratio  
26 consistent with the findings of the "Pennsylvania Study" that  
27 was funded by a grant from the National Institute of Nursing  
28 Research. Each licensed facility shall work with the agency to  
29 determine the circumstances and methods for varying an  
30 established ratio that is designed to ensure that a patient's  
31 quality of care is minimally impacted.

1           Section 4. Subsections (3), (8), and (9) of section  
2 395.0193, Florida Statutes, are amended to read:

3           395.0193 Licensed facilities; peer review;  
4 disciplinary powers; agency or partnership with physicians.--

5           (3) If reasonable belief exists that conduct by a  
6 staff member or physician who delivers health care services at  
7 the licensed facility may constitute one or more grounds for  
8 discipline as provided in this subsection, a peer review panel  
9 shall investigate and determine whether grounds for discipline  
10 exist with respect to such staff member or physician. The  
11 governing board of any licensed facility, after considering  
12 the recommendations of its peer review panel, shall suspend,  
13 deny, revoke, or curtail the privileges, or reprimand,  
14 counsel, or require education, of any such staff member or  
15 physician after a final determination has been made that one  
16 or more of the following grounds exist:

17           (a) Incompetence.

18           (b) Being found to be a habitual user of intoxicants  
19 or drugs to the extent that he or she is deemed dangerous to  
20 himself, herself, or others.

21           (c) Mental or physical impairment which may adversely  
22 affect patient care.

23           (d) Mental or physical abuse of a nurse or other staff  
24 member.

25           ~~(e)(d)~~ Being found liable by a court of competent  
26 jurisdiction for medical negligence or malpractice involving  
27 negligent conduct.

28           ~~(f)(e)~~ One or more settlements exceeding \$10,000 for  
29 medical negligence or malpractice involving negligent conduct  
30 by the staff member.

31

1           (g)~~(f)~~ Medical negligence other than as specified in  
2 paragraph (d) or paragraph (e).

3           (h)~~(g)~~ Failure to comply with the policies,  
4 procedures, or directives of the risk management program or  
5 any quality assurance committees of any licensed facility.

6           (8)(a) The investigations, proceedings, and records of  
7 the peer review panel, a committee of a hospital, a  
8 disciplinary board, or a governing board, or agent thereof  
9 with whom there is a specific written contract for that  
10 purpose, as described in this section shall not be subject to  
11 discovery or introduction into evidence in any civil or  
12 administrative action against a provider of professional  
13 health services arising out of the matters which are the  
14 subject of evaluation and review by such group or its agent,  
15 and a person who was in attendance at a meeting of such group  
16 or its agent may not be permitted or required to testify in  
17 any such civil or administrative action as to any evidence or  
18 other matters produced or presented during the proceedings of  
19 such group or its agent or as to any findings,  
20 recommendations, evaluations, opinions, or other actions of  
21 such group or its agent or any members thereof. However,  
22 information, documents, or records otherwise available from  
23 original sources are not to be construed as immune from  
24 discovery or use in any such civil or administrative action  
25 merely because they were presented during proceedings of such  
26 group, and any person who testifies before such group or who  
27 is a member of such group may not be prevented from testifying  
28 as to matters within his or her knowledge, but such witness  
29 may not be asked about his or her testimony before such a  
30 group or opinions formed by him or her as a result of such  
31 group hearings.

1           (b) Documents and communications pertaining to the  
2 professional conduct of a physician or staff of the hospital  
3 or pertaining to service delivered by a physician or staff  
4 member of the hospital that are not generated during the  
5 course of deliberation, investigation, or analysis of a peer  
6 review panel, a committee of a hospital, a disciplinary board,  
7 or a governing board, or agent thereof with whom there is a  
8 specific written contract for that purpose, as described in  
9 this section, are not privileged. In response to a request for  
10 discovery, a claim of privilege by any such entities or agents  
11 must be accompanied by a list identifying all documents or  
12 communications for which privilege is asserted. The list, and  
13 a document or communication, when appropriate, shall be  
14 reviewed in camera for determination of whether the document  
15 or communication is privileged. Patient-identifying  
16 information shall be redacted or otherwise excluded from the  
17 list, unless a court of competent jurisdiction orders  
18 disclosure of such information in the list. A list of  
19 documents or communications for which privilege is asserted  
20 must include:

21           1. The date the subject document or communication was  
22 created.

23           2. The name and address of the document's author or  
24 communication's originator, unless a patient whose identity  
25 has not been ordered disclosed by a court of competent  
26 jurisdiction.

27           3. The name and address of the party from whom the  
28 document or communication was received.

29           4. The date the document or communication was  
30 received.

31

1           5. The name and address of the original document's  
2 custodian or communication's originator.

3           6. The statutory or case law on which the privilege is  
4 asserted.

5           (9)(a) If the defendant prevails in an action brought  
6 by a staff member or physician who delivers health care  
7 services at the licensed facility against any person or entity  
8 that initiated, participated in, was a witness in, or  
9 conducted any review as authorized by this section, the court  
10 shall award reasonable attorney's fees and costs to the  
11 defendant.

12           (b) As a condition of any staff member or physician  
13 bringing any action against any person or entity that  
14 initiated, participated in, was a witness in, or conducted any  
15 review as authorized by this section and before any responsive  
16 pleading is due, the staff member or physician shall post a  
17 bond or other security, as set by the court having  
18 jurisdiction of the action, in an amount sufficient to pay the  
19 costs and attorney's fees. A defendant's monetary liability  
20 under this section shall not exceed \$250,000.

21           Section 5. Section 395.0197, Florida Statutes, is  
22 amended to read:

23           395.0197 Internal risk management program.--

24           (1) Every licensed facility shall, as a part of its  
25 administrative functions, establish an internal risk  
26 management program that includes all of the following  
27 components:

28           (a) The investigation and analysis of the frequency  
29 and causes of general categories and specific types of adverse  
30 incidents to patients.

31

1 (b) The development of appropriate measures to  
2 minimize the risk of adverse incidents to patients, including,  
3 but not limited to:

4 1. Risk management and risk prevention education and  
5 training of all nonphysician personnel as follows:

6 a. Such education and training of all nonphysician  
7 personnel as part of their initial orientation; and

8 b. At least 1 hour of such education and training  
9 annually for all personnel of the licensed facility working in  
10 clinical areas and providing patient care, ~~except those~~  
11 ~~persons licensed as health care practitioners who are required~~  
12 ~~to complete continuing education coursework pursuant to~~  
13 ~~chapter 456 or the respective practice act.~~

14 2. A prohibition, except when emergency circumstances  
15 require otherwise, against a staff member of the licensed  
16 facility attending a patient in the recovery room, unless the  
17 staff member is authorized to attend the patient in the  
18 recovery room and is in the company of at least one other  
19 person. However, a licensed facility is exempt from the  
20 two-person requirement if it has:

21 a. Live visual observation;

22 b. Electronic observation; or

23 c. Any other reasonable measure taken to ensure  
24 patient protection and privacy.

25 3. A prohibition against an unlicensed person from  
26 assisting or participating in any surgical procedure unless  
27 the facility has authorized the person to do so following a  
28 competency assessment, and such assistance or participation is  
29 done under the direct and immediate supervision of a licensed  
30 physician and is not otherwise an activity that may only be  
31 performed by a licensed health care practitioner.

1           4. Development, implementation, and ongoing evaluation  
2 of procedures, protocols, and systems to accurately identify  
3 patients, planned procedures, and the correct site of the  
4 planned procedure so as to minimize the performance of a  
5 surgical procedure on the wrong patient, a wrong surgical  
6 procedure, a wrong-site surgical procedure, or a surgical  
7 procedure otherwise unrelated to the patient's diagnosis or  
8 medical condition.

9           (c) The analysis of patient grievances that relate to  
10 patient care and the quality of medical services.

11           (d) A system for giving written notification to a  
12 patient, a family member of the patient, or a designated  
13 representative of a patient who is specified in accordance  
14 with the requirements of chapter 709, chapter 744, or chapter  
15 765, that the patient was the subject of an adverse incident,  
16 as defined in subsection (5). Such notice shall be given by  
17 the risk manager, or his or her designee, as soon as  
18 practicable to allow the patient an opportunity to minimize  
19 damage or injury.

20           ~~(e)(d)~~ The development and implementation of an  
21 incident reporting system based upon the affirmative duty of  
22 all health care providers and all agents and employees of the  
23 licensed health care facility to report adverse incidents to  
24 the risk manager, or to his or her designee, within 3 business  
25 days after their occurrence.

26           (2) The internal risk management program is the  
27 responsibility of the governing board of the health care  
28 facility. Each licensed facility shall hire a risk manager,  
29 licensed under s. 395.10974, who is responsible for  
30 implementation and oversight of such facility's internal risk  
31 management program as required by this section. A risk

1 manager must not be made responsible for more than four  
2 internal risk management programs in separate licensed  
3 facilities, unless the facilities are under one corporate  
4 ownership or the risk management programs are in rural  
5 hospitals.

6 (3) In addition to the programs mandated by this  
7 section, other innovative approaches intended to reduce the  
8 frequency and severity of medical malpractice and patient  
9 injury claims shall be encouraged and their implementation and  
10 operation facilitated. Such additional approaches may include  
11 extending internal risk management programs to health care  
12 providers' offices and the assuming of provider liability by a  
13 licensed health care facility for acts or omissions occurring  
14 within the licensed facility. Each licensed facility shall  
15 annually report to the agency and the Department of Health the  
16 name, license number, period of coverage, notices of intent to  
17 sue received, and judgments entered against each health care  
18 practitioner for which it assumes liability. The agency and  
19 Department of Health, in their respective annual reports,  
20 shall include statistics that report the number of licensed  
21 facilities that assume such liability and the number of health  
22 care practitioners, by profession, for whom they assume  
23 liability.

24 (4) The agency shall adopt rules governing the  
25 establishment of internal risk management programs to meet the  
26 needs of individual licensed facilities. Each internal risk  
27 management program shall include the use of incident reports  
28 to be filed with an individual of responsibility who is  
29 competent in risk management techniques in the employ of each  
30 licensed facility, such as an insurance coordinator, or who is  
31 retained by the licensed facility as a consultant. The



1 individual responsible for the risk management program shall  
2 have free access to all medical records of the licensed  
3 facility. The incident reports are part of the workpapers of  
4 the attorney defending the licensed facility in litigation  
5 relating to the licensed facility and are subject to  
6 discovery, but are not admissible as evidence in court. A  
7 person filing an incident report is not subject to civil suit  
8 by virtue of such incident report. A person who has the duty  
9 to file an incident report but who fails to do so within the  
10 timeframes established under this section shall be subject to  
11 disciplinary action by the licensed facility and the  
12 appropriate regulatory board and is subject to a fine of up to  
13 \$1,000 for each day the report was not timely submitted.As a  
14 part of each internal risk management program, the incident  
15 reports shall be used to develop categories of incidents which  
16 identify problem areas. Once identified, procedures shall be  
17 adjusted to correct the problem areas.

18 (5) For purposes of reporting to the agency pursuant  
19 to this section, the term "adverse incident" means an event  
20 over which health care personnel could exercise control and  
21 which is associated in whole or in part with medical  
22 intervention, rather than the condition for which such  
23 intervention occurred, and which:

- 24 (a) Results in one of the following injuries:
- 25 1. Death;
  - 26 2. Brain or spinal damage;
  - 27 3. Permanent disfigurement;
  - 28 4. Fracture or dislocation of bones or joints;
  - 29 5. A resulting limitation of neurological, physical,
  - 30 or sensory function which continues after discharge from the
  - 31 facility;

1           6. Any condition that required specialized medical  
2 attention or surgical intervention resulting from nonemergency  
3 medical intervention, other than an emergency medical  
4 condition, to which the patient has not given his or her  
5 informed consent; or

6           7. Any condition that required the transfer of the  
7 patient, within or outside the facility, to a unit providing a  
8 more acute level of care due to the adverse incident, rather  
9 than the patient's condition prior to the adverse incident;

10           (b) Was the performance of a surgical procedure on the  
11 wrong patient, a wrong surgical procedure, a wrong-site  
12 surgical procedure, or a surgical procedure otherwise  
13 unrelated to the patient's diagnosis or medical condition;

14           (c) Required the surgical repair of damage resulting  
15 to a patient from a planned surgical procedure, where the  
16 damage was not a recognized specific risk, as disclosed to the  
17 patient and documented through the informed-consent process;  
18 or

19           (d) Was a procedure to remove unplanned foreign  
20 objects remaining from a surgical procedure.

21           (6)(a) Each licensed facility subject to this section  
22 shall submit an annual report to the agency summarizing the  
23 incident reports that have been filed in the facility for that  
24 year. The report shall include:

- 25           1. The total number of adverse incidents.  
26           2. A listing, by category, of the types of operations,  
27 diagnostic or treatment procedures, or other actions causing  
28 the injuries, and the number of incidents occurring within  
29 each category.  
30  
31

1           3. A listing, by category, of the types of injuries  
2 caused and the number of incidents occurring within each  
3 category.

4           4. A code number using the health care professional's  
5 licensure number and a separate code number identifying all  
6 other individuals directly involved in adverse incidents to  
7 patients, the relationship of the individual to the licensed  
8 facility, and the number of incidents in which each individual  
9 has been directly involved. Each licensed facility shall  
10 maintain names of the health care professionals and  
11 individuals identified by code numbers for purposes of this  
12 section.

13           5. A description of all malpractice claims filed  
14 against the licensed facility, including the total number of  
15 pending and closed claims and the nature of the incident which  
16 led to, the persons involved in, and the status and  
17 disposition of each claim. Each report shall update status and  
18 disposition for all prior reports.

19           (b) The information reported to the agency pursuant to  
20 paragraph (a) which relates to persons licensed under chapter  
21 458, chapter 459, chapter 461, or chapter 466 shall be  
22 reviewed by the agency. The agency shall determine whether  
23 any of the incidents potentially involved conduct by a health  
24 care professional who is subject to disciplinary action, in  
25 which case the provisions of s. 456.073 shall apply.

26           (c) The report submitted to the agency shall also  
27 contain the name and license number of the risk manager of the  
28 licensed facility, a copy of its policy and procedures which  
29 govern the measures taken by the facility and its risk manager  
30 to reduce the risk of injuries and adverse incidents, and the  
31 results of such measures. The annual report is confidential

1 and is not available to the public pursuant to s. 119.07(1) or  
2 any other law providing access to public records. The annual  
3 report is not discoverable or admissible in any civil or  
4 administrative action, except in disciplinary proceedings by  
5 the agency or the appropriate regulatory board. The annual  
6 report is not available to the public as part of the record of  
7 investigation for and prosecution in disciplinary proceedings  
8 made available to the public by the agency or the appropriate  
9 regulatory board. However, the agency or the appropriate  
10 regulatory board shall make available, upon written request by  
11 a health care professional against whom probable cause has  
12 been found, any such records which form the basis of the  
13 determination of probable cause.

14 (7) The licensed facility shall notify the agency no  
15 later than 1 business day after the risk manager or his or her  
16 designee has received a report pursuant to paragraph (1)(d)  
17 ~~and can determine within 1 business day that an any of the~~  
18 following adverse incident, as defined in subsection (5),  
19 incidents has occurred, or there is a reasonable possibility  
20 that it has occurred, whether occurring in the licensed  
21 facility or arising from health care prior to admission in the  
22 licensed facility.†

23 (a) ~~The death of a patient;~~

24 (b) ~~Brain or spinal damage to a patient;~~

25 (c) ~~The performance of a surgical procedure on the~~  
26 ~~wrong patient;~~

27 (d) ~~The performance of a wrong-site surgical~~  
28 ~~procedure; or~~

29 (e) ~~The performance of a wrong surgical procedure.~~

30  
31

1 The notification must be made in writing and be provided by  
2 facsimile device or overnight mail delivery. The notification  
3 must include information regarding the identity of the  
4 affected patient, the type of adverse incident, the initiation  
5 of an investigation by the facility, and whether the events  
6 causing or resulting in the adverse incident represent a  
7 potential risk to other patients.

8       (8) An adverse incident, as defined in subsection (5)  
9 ~~Any of the following adverse incidents~~, whether occurring in  
10 the licensed facility or arising from health care prior to  
11 admission in the licensed facility, shall be reported by the  
12 facility to the agency within 15 calendar days after its  
13 occurrence.†

14       ~~(a) The death of a patient;~~

15       ~~(b) Brain or spinal damage to a patient;~~

16       ~~(c) The performance of a surgical procedure on the~~  
17 ~~wrong patient;~~

18       ~~(d) The performance of a wrong-site surgical~~  
19 ~~procedure;~~

20       ~~(e) The performance of a wrong surgical procedure;~~

21       ~~(f) The performance of a surgical procedure that is~~  
22 ~~medically unnecessary or otherwise unrelated to the patient's~~  
23 ~~diagnosis or medical condition;~~

24       ~~(g) The surgical repair of damage resulting to a~~  
25 ~~patient from a planned surgical procedure, where the damage is~~  
26 ~~not a recognized specific risk, as disclosed to the patient~~  
27 ~~and documented through the informed-consent process; or~~

28       ~~(h) The performance of procedures to remove unplanned~~  
29 ~~foreign objects remaining from a surgical procedure.~~

30  
31

1 The agency may grant extensions to this reporting requirement  
2 for more than 15 days upon justification submitted in writing  
3 by the facility administrator to the agency. The agency may  
4 require an additional, final report. These reports shall not  
5 be available to the public pursuant to s. 119.07(1) or any  
6 other law providing access to public records, nor be  
7 ~~discoverable~~ or admissible in any civil or administrative  
8 action, except in disciplinary proceedings by the agency or  
9 the appropriate regulatory board, nor shall they be available  
10 to the public as part of the record of investigation for and  
11 prosecution in disciplinary proceedings made available to the  
12 public by the agency or the appropriate regulatory board.  
13 However, the agency or the appropriate regulatory board shall  
14 make available, upon written request by a health care  
15 professional against whom probable cause has been found, any  
16 such records which form the basis of the determination of  
17 probable cause. The agency may investigate, as it deems  
18 appropriate, any such incident and prescribe measures that  
19 must or may be taken in response to the incident. The agency  
20 shall review each incident and determine whether it  
21 potentially involved conduct by the health care professional  
22 who is subject to disciplinary action, in which case the  
23 provisions of s. 456.073 shall apply.

24 (9) The agency shall publish on the agency's website,  
25 no less than quarterly, a summary and trend analysis of  
26 adverse incident reports received pursuant to this section,  
27 which shall not include information that would identify the  
28 patient, the reporting facility, or the health care  
29 practitioners involved. The agency shall publish on the  
30 agency's website an annual summary and trend analysis of all  
31 adverse incident reports and malpractice claims and errors,

1 omissions, or negligence information provided by facilities in  
2 their annual reports or as reported under ss. 627.912 and  
3 627.9122, which shall not include information that would  
4 identify the patient, the reporting facility, or the  
5 practitioners involved. The purpose of the publication of the  
6 summary and trend analysis is to promote the rapid  
7 dissemination of information relating to adverse incidents and  
8 malpractice claims to assist in avoidance of similar incidents  
9 and reduce morbidity and mortality.

10 (10) The agency shall annually publish a report card  
11 providing statistical summaries and narrative explanation, as  
12 appropriate, of the information contained in the annual  
13 incident reports submitted by licensed facilities pursuant to  
14 subsection (6) and disciplinary actions reported to the agency  
15 pursuant to s. 395.0193. The report card must be made  
16 available to the public through the Internet and other  
17 commonly used means of distribution no later than July 1 of  
18 each year. The report card must be organized by county and, at  
19 a minimum, for each facility licensed under this part, present  
20 an itemized list showing:

21 (a) The name and address of the facility.

22 (b) Whether the entity is a private, for-profit, or  
23 not-for-profit, public, or teaching facility.

24 (c) The total number of beds.

25 (d) A description of the categories of services  
26 provided by the facility.

27 (e) Whether the hospital facility, including the  
28 emergency room or trauma center, has medical equipment and  
29 instruments appropriate for pediatric care.

30 (f) On an annual basis, the percentage of adverse  
31 incidents per total number of patients in the facility, by

1 category of reported incident and by type of professional  
2 involved.

3 (g) A listing, by category, of the types of  
4 operations, diagnostic or treatment procedures, or other  
5 actions or inactions giving rise to the adverse incidents and  
6 the number of adverse incidents in each category.

7 (h) Types of malpractice claims filed, by type of  
8 professional involved.

9 (i) Disciplinary actions taken against professionals,  
10 by type of professional involved.

11 (j) The abduction of an infant or discharge of an  
12 infant to the wrong family.

13 (k) Pertinent information reported to the Department  
14 of Financial Services under s. 627.912 or s. 627.9122.

15  
16 The report card must include the following statement: "Adverse  
17 incident reports are just one part of the picture that emerges  
18 about a facility. You should also consider that facility's  
19 survey results and complaint investigations and conduct your  
20 own research on a facility before forming your final  
21 conclusion about that facility. When making comparisons among  
22 facilities, some may have many more adverse incidents than  
23 others because this report is not adjusted for the size of the  
24 facility nor the severity or complexity of the health problems  
25 of the people it serves."

26 (11)~~(10)~~ The internal risk manager of each licensed  
27 facility shall:

28 (a) Investigate every allegation of sexual misconduct  
29 which is made against a member of the facility's personnel who  
30 has direct patient contact, when the allegation is that the

31



1 sexual misconduct occurred at the facility or on the grounds  
2 of the facility.

3 (b) Report every allegation of sexual misconduct to  
4 the administrator of the licensed facility and the agency.

5 (c) Notify the family or guardian of the victim, if a  
6 minor, that an allegation of sexual misconduct has been made  
7 and that an investigation is being conducted.

8 (d) Report to the Department of Health every  
9 allegation of sexual misconduct, as defined in chapter 456 and  
10 the respective practice act, by a licensed health care  
11 practitioner that involves a patient.

12 (12)~~(11)~~ Any witness who witnessed or who possesses  
13 actual knowledge of the act that is the basis of an allegation  
14 of sexual abuse shall:

15 (a) Notify the local police; and

16 (b) Notify the hospital risk manager and the  
17 administrator.

18  
19 For purposes of this subsection, "sexual abuse" means acts of  
20 a sexual nature committed for the sexual gratification of  
21 anyone upon, or in the presence of, a vulnerable adult,  
22 without the vulnerable adult's informed consent, or a minor.  
23 "Sexual abuse" includes, but is not limited to, the acts  
24 defined in s. 794.011(1)(h), fondling, exposure of a  
25 vulnerable adult's or minor's sexual organs, or the use of the  
26 vulnerable adult or minor to solicit for or engage in  
27 prostitution or sexual performance. "Sexual abuse" does not  
28 include any act intended for a valid medical purpose or any  
29 act which may reasonably be construed to be a normal  
30 caregiving action.

31

1           (13) If appropriate, a licensed facility in which  
2 sexual abuse occurs must offer the victim of sexual abuse  
3 testing for sexually transmissible diseases and shall provide  
4 all such testing at no cost to the victim.

5           ~~(14)~~~~(12)~~ A person who, with malice or with intent to  
6 discredit or harm a licensed facility or any person, makes a  
7 false allegation of sexual misconduct against a member of a  
8 licensed facility's personnel is guilty of a misdemeanor of  
9 the second degree, punishable as provided in s. 775.082 or s.  
10 775.083.

11           ~~(15)~~~~(13)~~ In addition to any penalty imposed pursuant  
12 to this section, the agency shall require a written plan of  
13 correction from the facility. For a single incident or series  
14 of isolated incidents that are nonwillful violations of the  
15 reporting requirements of this section, the agency shall first  
16 seek to obtain corrective action by the facility. If the  
17 correction is not demonstrated within the timeframe  
18 established by the agency or if there is a pattern of  
19 nonwillful violations of this section, the agency may impose  
20 an administrative fine, not to exceed \$5,000 for any violation  
21 of the reporting requirements of this section. The  
22 administrative fine for repeated nonwillful violations shall  
23 not exceed \$10,000 for any violation. The administrative fine  
24 for each intentional and willful violation may not exceed  
25 \$25,000 per violation, per day. The fine for an intentional  
26 and willful violation of this section may not exceed \$250,000.  
27 In determining the amount of fine to be levied, the agency  
28 shall be guided by s. 395.1065(2)(b). This subsection does not  
29 apply to the notice requirements under subsection (7). The  
30 agency may make available to the public information about any  
31 nonwillful or willful adverse incident that it discovers was

1 not timely reported as required under this section in addition  
2 to the sanctions authorized under this subsection.

3 (16)~~(14)~~ The agency shall have access to all licensed  
4 facility records necessary to carry out the provisions of this  
5 section. The records obtained by the agency under subsection  
6 (6), subsection (8), or subsection(11)~~(10)~~ are not available  
7 to the public under s. 119.07(1), nor shall they be  
8 discoverable or admissible in any civil or administrative  
9 action, except in disciplinary proceedings by the agency or  
10 the appropriate regulatory board, nor shall records obtained  
11 pursuant to s. 456.071 be available to the public as part of  
12 the record of investigation for and prosecution in  
13 disciplinary proceedings made available to the public by the  
14 agency or the appropriate regulatory board. However, the  
15 agency or the appropriate regulatory board shall make  
16 available, upon written request by a health care professional  
17 against whom probable cause has been found, any such records  
18 which form the basis of the determination of probable cause,  
19 except that, with respect to medical review committee records,  
20 s. 766.101 controls.

21 (17)~~(15)~~ The meetings of the committees and governing  
22 board of a licensed facility held solely for the purpose of  
23 achieving the objectives of risk management as provided by  
24 this section shall not be open to the public under the  
25 provisions of chapter 286. The records of such meetings are  
26 confidential and exempt from s. 119.07(1), except as provided  
27 in subsection(16)~~(14)~~.

28 (18)~~(16)~~ The agency shall review, as part of its  
29 licensure inspection process, the internal risk management  
30 program at each licensed facility regulated by this section to  
31 determine whether the program meets standards established in

1 statutes and rules, whether the program is being conducted in  
2 a manner designed to reduce adverse incidents, and whether the  
3 program is appropriately reporting incidents under this  
4 section.

5 (19)~~(17)~~ There shall be no monetary liability on the  
6 part of, and no cause of action for damages shall arise  
7 against, any risk manager, licensed under s. 395.10974, for  
8 the implementation and oversight of the internal risk  
9 management program in a facility licensed under this chapter  
10 or chapter 390 as required by this section, for any act or  
11 proceeding undertaken or performed within the scope of the  
12 functions of such internal risk management program if the risk  
13 manager acts without intentional fraud.

14 (20)~~(18)~~ A privilege against civil liability is hereby  
15 granted to any licensed risk manager or licensed facility with  
16 regard to information furnished pursuant to this chapter,  
17 unless the licensed risk manager or facility acted in bad  
18 faith or with malice in providing such information.

19 (21)~~(19)~~ If the agency, through its receipt of any  
20 reports required under this section or through any  
21 investigation, has a reasonable belief that conduct by a staff  
22 member or employee of a licensed facility is grounds for  
23 disciplinary action by the appropriate regulatory board, the  
24 agency shall report this fact to such regulatory board.

25 (22)~~(20)~~ It shall be unlawful for any person to  
26 coerce, intimidate, or preclude a risk manager from lawfully  
27 executing his or her reporting obligations pursuant to this  
28 chapter. Such unlawful action shall be subject to civil  
29 monetary penalties not to exceed \$10,000 per violation.

30 Section 6. Subsection (1) of section 456.025, Florida  
31 Statutes, is amended to read:

1           456.025 Fees; receipts; disposition.--

2           (1) It is the intent of the Legislature that all costs  
3 of regulating health care professions and practitioners shall  
4 be borne solely by licensees and licensure applicants. It is  
5 also the intent of the Legislature that fees should be  
6 reasonable and not serve as a barrier to licensure. Moreover,  
7 it is the intent of the Legislature that the department  
8 operate as efficiently as possible and regularly report to the  
9 Legislature additional methods to streamline operational  
10 costs. Therefore, the boards in consultation with the  
11 department, or the department if there is no board, shall, by  
12 rule, set renewal fees which:

13           (a) Shall be based on revenue projections prepared  
14 using generally accepted accounting procedures;

15           (b) Shall be adequate to cover all expenses relating  
16 to that board identified in the department's long-range policy  
17 plan, as required by s. 456.005;

18           (c) Shall be reasonable, fair, and not serve as a  
19 barrier to licensure;

20           (d) Shall be based on potential earnings from working  
21 under the scope of the license;

22           (e) Shall be similar to fees imposed on similar  
23 licensure types; and

24           ~~(f) Shall not be more than 10 percent greater than the~~  
25 ~~fee imposed for the previous biennium;~~

26           ~~(g) Shall not be more than 10 percent greater than the~~  
27 ~~actual cost to regulate that profession for the previous~~  
28 ~~biennium; and~~

29           (f)(h) Shall be subject to challenge pursuant to  
30 chapter 120.

31

1           Section 7. Section 456.026, Florida Statutes, is  
2 amended to read:  
3           456.026 Annual report concerning finances,  
4 administrative complaints, disciplinary actions, and  
5 recommendations.--The department is directed to prepare and  
6 submit a report to the President of the Senate and the Speaker  
7 of the House of Representatives by November 1 of each year.  
8 The department shall publish the report to its website  
9 simultaneously with delivery to the President of the Senate  
10 and the Speaker of the House of Representatives. The report  
11 must be directly accessible on the department's Internet  
12 homepage highlighted by easily identifiable links and buttons.  
13 In addition to finances and any other information the  
14 Legislature may require, the report shall include statistics  
15 and relevant information, profession by profession, detailing:  
16           (1) The number of health care practitioners licensed  
17 by the department or otherwise authorized to provide services  
18 in the state, if known to the department.  
19           (2)~~(1)~~ The revenues, expenditures, and cash balances  
20 for the prior year, and a review of the adequacy of existing  
21 fees.  
22           (3)~~(2)~~ The number of complaints received and  
23 investigated.  
24           (4)~~(3)~~ The number of findings of probable cause made.  
25           (5)~~(4)~~ The number of findings of no probable cause  
26 made.  
27           (6)~~(5)~~ The number of administrative complaints filed.  
28           (7)~~(6)~~ The disposition of all administrative  
29 complaints.  
30           (8)~~(7)~~ A description of disciplinary actions taken.  
31

1           (9) For licensees under chapter 458, chapter 459,  
2 chapter 461, or chapter 466, the professional liability claims  
3 and actions reported by insurers, as provided in s. 627.912.  
4 This information must be provided in a separate section of the  
5 report restricted to providing professional liability claims  
6 and actions data.

7           (10) For licensees under part I of chapter 641, any  
8 claim or action for damages caused by the errors, omissions,  
9 or negligence of officers or directors, as provided in s.  
10 627.9122. This information must be provided in a separate  
11 section of the report restricted to providing professional  
12 liability claims and actions data.

13           (11)~~(8)~~ A description of any effort by the department  
14 to reduce or otherwise close any investigation or disciplinary  
15 proceeding not before the Division of Administrative Hearings  
16 under chapter 120 or otherwise not completed within 1 year  
17 after the initial filing of a complaint under this chapter.

18           (12)~~(9)~~ The status of the development and  
19 implementation of rules providing for disciplinary guidelines  
20 pursuant to s. 456.079.

21           (13)~~(10)~~ Such recommendations for administrative and  
22 statutory changes necessary to facilitate efficient and  
23 cost-effective operation of the department and the various  
24 boards.

25           Section 8. Section 456.041, Florida Statutes, is  
26 amended to read:

27           456.041 Practitioner profile; creation.--

28           (1)(a) Beginning July 1, 1999, the Department of  
29 Health shall compile the information submitted pursuant to s.  
30 456.039 into a practitioner profile of the applicant  
31 submitting the information, except that the Department of

1 Health ~~shall~~ ~~may~~ develop a format to compile uniformly any  
2 information submitted under s. 456.039(4)(b). Beginning July  
3 1, 2001, the Department of Health may compile the information  
4 submitted pursuant to s. 456.0391 into a practitioner profile  
5 of the applicant submitting the information.

6 (b) Each practitioner licensed under chapter 458 or  
7 chapter 459 must report to the Department of Health and the  
8 Board of Medicine or the Board of Osteopathic Medicine,  
9 respectively, all final disciplinary actions, sanctions by a  
10 governmental agency or a facility or entity licensed under  
11 state law, and claims or actions, as provided under s.  
12 456.051, to which he or she is subjected no later than 15  
13 calendar days after such action or sanction is imposed.  
14 Failure to submit the requisite information within 15 calendar  
15 days, in accordance with the requirements of this section,  
16 shall subject the practitioner to discipline by the Board of  
17 Medicine or the Board of Osteopathic Medicine and a fine of  
18 \$100 for each day that the information is not submitted after  
19 the expiration of the 15-day reporting period provided under  
20 this section.

21 (c) The department shall take no longer than 15  
22 business days to update the practitioner's profile in  
23 accordance with the requirements of subsection (7).

24 (2) On the profile published under subsection (1), the  
25 department shall indicate if the information provided under s.  
26 456.039(1)(a)7. or s. 456.0391(1)(a)7. is or is not  
27 corroborated by a criminal history check conducted according  
28 to this subsection. ~~If the information provided under s.~~  
29 ~~456.039(1)(a)7. or s. 456.0391(1)(a)7. is corroborated by the~~  
30 ~~criminal history check, the fact that the criminal history~~  
31 ~~check was performed need not be indicated on the profile.~~The



1 department, or the board having regulatory authority over the  
2 practitioner acting on behalf of the department, shall  
3 investigate any information received by the department or the  
4 board ~~when it has reasonable grounds to believe that the~~  
5 ~~practitioner has violated any law that relates to the~~  
6 ~~practitioner's practice.~~

7 (3) The Department of Health shall ~~may~~ include in each  
8 practitioner's practitioner profile that criminal information  
9 that directly relates to the practitioner's ability to  
10 competently practice his or her profession. The department  
11 must include in each practitioner's practitioner profile the  
12 following statement: "The criminal history information, if  
13 any exists, may be incomplete; federal criminal history  
14 information is not available to the public." The department  
15 shall provide in each practitioner profile, for every final  
16 disciplinary action taken against the practitioner, a  
17 narrative description, written in plain English that explains  
18 the administrative complaint filed against the practitioner  
19 and the final disciplinary action imposed on the practitioner.  
20 The department shall include a hyperlink to each final order  
21 listed in its website report of dispositions of recent  
22 disciplinary actions taken against practitioners.

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

1 chapter 458, chapter 459, or chapter 461, information relating  
2 to liability actions which has been reported under s. 456.049  
3 or s. 627.912 within the previous 10 years for any paid claim  
4 that exceeds \$5,000. Such claims information shall be reported  
5 in the context of comparing an individual practitioner's  
6 claims to the experience of other practitioners within the  
7 same specialty, or profession if the practitioner is not a  
8 specialist, ~~to the extent such information is available to the~~  
9 ~~Department of Health.~~ The department must provide a hyperlink  
10 in such practitioner's profile to all such comparison reports.

11 If information relating to a liability action is included in a  
12 practitioner's practitioner profile, the profile must also  
13 include the following statement: "Settlement of a claim may  
14 occur for a variety of reasons that do not necessarily reflect  
15 negatively on the professional competence or conduct of the  
16 practitioner. A payment in settlement of a medical  
17 malpractice action or claim should not be construed as  
18 creating a presumption that medical malpractice has occurred."

19 (5) The Department of Health shall ~~may not~~ include the  
20 date of a hospital or ambulatory surgical center disciplinary  
21 action taken by a licensed hospital or an ambulatory surgical  
22 center, in accordance with the requirements of s. 395.0193, in  
23 the practitioner profile. Any practitioner disciplined under  
24 paragraph (1)(b) must report to the department the date the  
25 disciplinary action was imposed. The department shall state  
26 whether the action related to professional competence and  
27 whether it related to the delivery of services to a patient.

28 (6) The Department of Health may include in the  
29 practitioner's practitioner profile any other information that  
30 is a public record of any governmental entity and that relates  
31 to a practitioner's ability to competently practice his or her

1 ~~profession. However, the department must consult with the~~  
2 ~~board having regulatory authority over the practitioner before~~  
3 ~~such information is included in his or her profile.~~

4       (7) Upon the completion of a practitioner profile  
5 under this section, the Department of Health shall furnish the  
6 practitioner who is the subject of the profile a copy of it  
7 for review and verification. The practitioner has a period of  
8 30 days in which to review and verify the contents of the  
9 profile and to correct any factual inaccuracies in it. The  
10 Department of Health shall make the profile available to the  
11 public at the end of the 30-day period regardless of whether  
12 the practitioner has provided verification of the profile  
13 content. A practitioner shall be subject to a fine of up to  
14 \$100 per day for failure to verify the profile contents and to  
15 correct any factual errors in his or her profile within the  
16 30-day period.The department shall make the profiles  
17 available to the public through the World Wide Web and other  
18 commonly used means of distribution. The department must  
19 include the following statement, in boldface type, in each  
20 profile that has not been reviewed by the practitioner to  
21 which it applies: "The practitioner has not verified the  
22 information contained in this profile."

23       (8) The Department of Health must provide in each  
24 profile an easy-to-read explanation of any disciplinary action  
25 taken and the reason the sanction or sanctions were imposed.

26       (9) The Department of Health may provide one link in  
27 each profile to a practitioner's professional website if the  
28 practitioner requests that such a link be included in his or  
29 her profile.

1            (10)~~(8)~~ Making a practitioner profile available to the  
2 public under this section does not constitute agency action  
3 for which a hearing under s. 120.57 may be sought.

4            Section 9. Section 456.042, Florida Statutes, is  
5 amended to read:

6            456.042 Practitioner profiles; update.--A practitioner  
7 must submit updates of required information within 15 days  
8 after the final activity that renders such information a fact.  
9 The Department of Health shall update each practitioner's  
10 practitioner profile quarterly ~~periodically~~. An updated  
11 profile is subject to the same requirements as an original  
12 profile ~~with respect to the period within which the~~  
13 ~~practitioner may review the profile for the purpose of~~  
14 ~~correcting factual inaccuracies.~~

15            Section 10. Subsection (1) of section 456.049, Florida  
16 Statutes, is amended, and subsections (3) and (4) are added to  
17 that section, to read:

18            456.049 Health care practitioners; reports on  
19 professional liability claims and actions.--

20            (1) Any practitioner of medicine licensed pursuant to  
21 the provisions of chapter 458, practitioner of osteopathic  
22 medicine licensed pursuant to the provisions of chapter 459,  
23 podiatric physician licensed pursuant to the provisions of  
24 chapter 461, or dentist licensed pursuant to the provisions of  
25 chapter 466 shall report to the department any claim or action  
26 for damages for personal injury alleged to have been caused by  
27 error, omission, or negligence in the performance of such  
28 licensee's professional services or based on a claimed  
29 performance of professional services without consent ~~if the~~  
30 ~~claim was not covered by an insurer required to report under~~  
31 ~~s. 627.912 and the claim resulted in:~~

- 1 (a) A final judgment in any amount.  
2 (b) A settlement in any amount.  
3 (c) A final disposition not resulting in payment on  
4 behalf of the licensee.

5  
6 Reports shall be filed with the department no later than 60  
7 days following the occurrence of any event listed in paragraph  
8 (a), paragraph (b), or paragraph (c).

9 (3) Failure of a practitioner, as specified in  
10 subsection (1), to comply with the requirements of this  
11 section within 60 days after the payment of a claim or  
12 disposition of action for damages has been determined shall  
13 result in a fine of up to \$500 imposed by the board, or  
14 department when there is no board. Failure to comply within 90  
15 days shall subject the practitioner to a fine of up to an  
16 additional \$1,000.

17 (4) A practitioner who has not complied with the  
18 provisions of this section and who is the subject of a  
19 subsequent action for damages at which time it is determined  
20 that he or she paid or had paid on his or her behalf a claim  
21 or was the subject of an action for damages, as provided in  
22 subsection (1), shall be subject to discovery of all such  
23 unreported information during the subsequent action.

24 Section 11. Section 456.051, Florida Statutes, is  
25 amended to read:

26 456.051 Reports of professional liability actions;  
27 bankruptcies; Department of Health's responsibility to  
28 provide.--

29 (1) The report of a claim or action for damages for  
30 personal injury which is required to be provided to the  
31 Department of Health under s. 456.049 or s. 627.912 is public

1 information except for the name of the claimant or injured  
2 person, which remains confidential as provided in ss.  
3 456.049(2)(d) and 627.912(2)(e). The Department of Health  
4 shall, upon request, make such report available to any person.  
5 The department shall make such report available as a part of  
6 the practitioner's profile within 15 calendar days after  
7 receipt.

8 (2) Any information in the possession of the  
9 Department of Health which relates to a bankruptcy proceeding  
10 by a practitioner of medicine licensed under chapter 458, a  
11 practitioner of osteopathic medicine licensed under chapter  
12 459, a podiatric physician licensed under chapter 461, or a  
13 dentist licensed under chapter 466 is public information. The  
14 Department of Health shall, upon request, make such  
15 information available to any person. The department shall make  
16 such report available as a part of the practitioner's profile  
17 within 15 calendar days after receipt.

18 Section 12. Paragraph (g) of subsection (5) of section  
19 458.320, Florida Statutes, is amended, present subsection (8)  
20 of that section is redesignated as subsection (9), and a new  
21 subsection (8) is added to that section, to read:

22 458.320 Financial responsibility.--

23 (5) The requirements of subsections (1), (2), and (3)  
24 shall not apply to:

25 (g) Any person holding an active license under this  
26 chapter who agrees to meet all of the following criteria:

27 1. Upon the entry of an adverse final judgment arising  
28 from a medical malpractice arbitration award, from a claim of  
29 medical malpractice either in contract or tort, or from  
30 noncompliance with the terms of a settlement agreement arising  
31 from a claim of medical malpractice either in contract or

1 | tort, the licensee shall pay the judgment creditor the lesser  
2 | of the entire amount of the judgment with all accrued interest  
3 | or either \$100,000, if the physician is licensed pursuant to  
4 | this chapter but does not maintain hospital staff privileges,  
5 | or \$250,000, if the physician is licensed pursuant to this  
6 | chapter and maintains hospital staff privileges, within 60  
7 | days after the date such judgment became final and subject to  
8 | execution, unless otherwise mutually agreed to in writing by  
9 | the parties. Such adverse final judgment shall include any  
10 | cross-claim, counterclaim, or claim for indemnity or  
11 | contribution arising from the claim of medical malpractice.  
12 | Upon notification of the existence of an unsatisfied judgment  
13 | or payment pursuant to this subparagraph, the department shall  
14 | notify the licensee by certified mail that he or she shall be  
15 | subject to disciplinary action unless, within 30 days from the  
16 | date of mailing, he or she either:

17 |         a. Shows proof that the unsatisfied judgment has been  
18 | paid in the amount specified in this subparagraph; or

19 |         b. Furnishes the department with a copy of a timely  
20 | filed notice of appeal and either:

21 |                 (I) A copy of a supersedeas bond properly posted in  
22 | the amount required by law; or

23 |                 (II) An order from a court of competent jurisdiction  
24 | staying execution on the final judgment pending disposition of  
25 | the appeal.

26 |         2. The Department of Health shall issue an emergency  
27 | order suspending the license of any licensee who, after 30  
28 | days following receipt of a notice from the Department of  
29 | Health, has failed to: satisfy a medical malpractice claim  
30 | against him or her; furnish the Department of Health a copy of  
31 | a timely filed notice of appeal; furnish the Department of

1 Health a copy of a supersedeas bond properly posted in the  
2 amount required by law; or furnish the Department of Health an  
3 order from a court of competent jurisdiction staying execution  
4 on the final judgment pending disposition of the appeal.

5 3. Upon the next meeting of the probable cause panel  
6 of the board following 30 days after the date of mailing the  
7 notice of disciplinary action to the licensee, the panel shall  
8 make a determination of whether probable cause exists to take  
9 disciplinary action against the licensee pursuant to  
10 subparagraph 1.

11 4. If the board determines that the factual  
12 requirements of subparagraph 1. are met, it shall take  
13 disciplinary action as it deems appropriate against the  
14 licensee. Such disciplinary action shall include, at a  
15 minimum, probation of the license with the restriction that  
16 the licensee must make payments to the judgment creditor on a  
17 schedule determined by the board to be reasonable and within  
18 the financial capability of the physician. Notwithstanding any  
19 other disciplinary penalty imposed, the disciplinary penalty  
20 may include suspension of the license for a period not to  
21 exceed 5 years. In the event that an agreement to satisfy a  
22 judgment has been met, the board shall remove any restriction  
23 on the license.

24 5. The licensee has completed a form supplying  
25 necessary information as required by the department.

26  
27 A licensee who meets the requirements of this paragraph shall  
28 be required either to post notice in the form of a sign, with  
29 dimensions of 8 and 1/2 inches by 11 inches in boldface type  
30 that is at least 1/2 inch in height in a font style specified  
31 by the department, prominently displayed in at least two



1 distinct spaces in the reception area and each space or room  
2 used for examination or treatment of patients. Such notice  
3 must be and clearly visible to noticeable by all patients and  
4 other persons who may accompany a patient on an office visit.  
5 Alternatively, a licensee may or to provide a written  
6 statement, printed in bold-face type with a minimum font size  
7 of 12, to each any person to whom medical services are being  
8 provided. Such sign or statement must shall state: "Under  
9 Florida law, physicians are generally required to carry  
10 medical malpractice insurance or otherwise demonstrate  
11 financial responsibility to cover potential claims for medical  
12 malpractice.YOUR DOCTOR HAS DECIDED NOT TO CARRY MEDICAL  
13 MALPRACTICE INSURANCE. This is permitted under Florida law  
14 subject to certain conditions. Florida law imposes penalties  
15 against noninsured physicians who fail to satisfy adverse  
16 judgments arising from claims of medical malpractice. This  
17 notice is provided pursuant to Florida law."

18 (8) Notwithstanding any other provision of this  
19 section, the department shall suspend the license of any  
20 physician against whom has been entered a final judgment,  
21 arbitration award, or other order or who has entered into a  
22 settlement agreement to pay damages arising out of a claim for  
23 medical malpractice, if all appellate remedies have been  
24 exhausted and payment up to the amounts required by this  
25 section has not been made within 30 days after the entering of  
26 such judgment, award, or order or agreement, until proof of  
27 payment is received by the department. This subsection does  
28 not apply to a physician who has met the financial  
29 responsibility requirements in paragraphs (1)(b) and (2)(b).

30 Section 13. Subsections (1) and (6) of section  
31 458.331, Florida Statutes, are amended to read:

1           458.331 Grounds for disciplinary action; action by the  
2 board and department.--

3           (1) The following acts constitute grounds for denial  
4 of a license or disciplinary action, as specified in s.  
5 456.072(2):

6           (a) Attempting to obtain, obtaining, or renewing a  
7 license to practice medicine by bribery, by fraudulent  
8 misrepresentations, or through an error of the department or  
9 the board.

10           (b) Having a license or the authority to practice  
11 medicine revoked, suspended, or otherwise acted against,  
12 including the denial of licensure, by the licensing authority  
13 of any jurisdiction, including its agencies or subdivisions.  
14 The licensing authority's acceptance of a physician's  
15 relinquishment of a license, stipulation, consent order, or  
16 other settlement, offered in response to or in anticipation of  
17 the filing of administrative charges against the physician's  
18 license, shall be construed as action against the physician's  
19 license.

20           (c) Being convicted or found guilty of, or entering a  
21 plea of nolo contendere to, regardless of adjudication, a  
22 crime in any jurisdiction which directly relates to the  
23 practice of medicine or to the ability to practice medicine.

24           (d) False, deceptive, or misleading advertising.

25           (e) Failing to report to the department any person who  
26 the licensee knows is in violation of this chapter or of the  
27 rules of the department or the board. A treatment provider  
28 approved pursuant to s. 456.076 shall provide the department  
29 or consultant with information in accordance with the  
30 requirements of s. 456.076(3), (4), (5), and (6).

31

1           (f) Aiding, assisting, procuring, or advising any  
2 unlicensed person to practice medicine contrary to this  
3 chapter or to a rule of the department or the board.

4           (g) Failing to perform any statutory or legal  
5 obligation placed upon a licensed physician.

6           (h) Making or filing a report which the licensee knows  
7 to be false, intentionally or negligently failing to file a  
8 report or record required by state or federal law, willfully  
9 impeding or obstructing such filing or inducing another person  
10 to do so. Such reports or records shall include only those  
11 which are signed in the capacity as a licensed physician.

12           (i) Paying or receiving any commission, bonus,  
13 kickback, or rebate, or engaging in any split-fee arrangement  
14 in any form whatsoever with a physician, organization, agency,  
15 or person, either directly or indirectly, for patients  
16 referred to providers of health care goods and services,  
17 including, but not limited to, hospitals, nursing homes,  
18 clinical laboratories, ambulatory surgical centers, or  
19 pharmacies. The provisions of this paragraph shall not be  
20 construed to prevent a physician from receiving a fee for  
21 professional consultation services.

22           (j) Exercising influence within a patient-physician  
23 relationship for purposes of engaging a patient in sexual  
24 activity. A patient shall be presumed to be incapable of  
25 giving free, full, and informed consent to sexual activity  
26 with his or her physician.

27           (k) Making deceptive, untrue, or fraudulent  
28 representations in or related to the practice of medicine or  
29 employing a trick or scheme in the practice of medicine.

30           (l) Soliciting patients, either personally or through  
31 an agent, through the use of fraud, intimidation, undue

1 influence, or a form of overreaching or vexatious conduct. A  
2 solicitation is any communication which directly or implicitly  
3 requests an immediate oral response from the recipient.

4 (m) Failing to keep legible, as defined by department  
5 rule in consultation with the board, medical records that  
6 identify the licensed physician or the physician extender and  
7 supervising physician by name and professional title who is or  
8 are responsible for rendering, ordering, supervising, or  
9 billing for each diagnostic or treatment procedure and that  
10 justify the course of treatment of the patient, including, but  
11 not limited to, patient histories; examination results; test  
12 results; records of drugs prescribed, dispensed, or  
13 administered; and reports of consultations and  
14 hospitalizations.

15 (n) Exercising influence on the patient or client in  
16 such a manner as to exploit the patient or client for  
17 financial gain of the licensee or of a third party, which  
18 shall include, but not be limited to, the promoting or selling  
19 of services, goods, appliances, or drugs.

20 (o) Promoting or advertising on any prescription form  
21 of a community pharmacy unless the form shall also state "This  
22 prescription may be filled at any pharmacy of your choice."

23 (p) Performing professional services which have not  
24 been duly authorized by the patient or client, or his or her  
25 legal representative, except as provided in s. 743.064, s.  
26 766.103, or s. 768.13.

27 (q) Prescribing, dispensing, administering, mixing, or  
28 otherwise preparing a legend drug, including any controlled  
29 substance, other than in the course of the physician's  
30 professional practice. For the purposes of this paragraph, it  
31 shall be legally presumed that prescribing, dispensing,

1 administering, mixing, or otherwise preparing legend drugs,  
2 including all controlled substances, inappropriately or in  
3 excessive or inappropriate quantities is not in the best  
4 interest of the patient and is not in the course of the  
5 physician's professional practice, without regard to his or  
6 her intent.

7 (r) Prescribing, dispensing, or administering any  
8 medicinal drug appearing on any schedule set forth in chapter  
9 893 by the physician to himself or herself, except one  
10 prescribed, dispensed, or administered to the physician by  
11 another practitioner authorized to prescribe, dispense, or  
12 administer medicinal drugs.

13 (s) Being unable to practice medicine with reasonable  
14 skill and safety to patients by reason of illness or use of  
15 alcohol, drugs, narcotics, chemicals, or any other type of  
16 material or as a result of any mental or physical condition.  
17 In enforcing this paragraph, the department shall have, upon a  
18 finding of the secretary or the secretary's designee that  
19 probable cause exists to believe that the licensee is unable  
20 to practice medicine because of the reasons stated in this  
21 paragraph, the authority to issue an order to compel a  
22 licensee to submit to a mental or physical examination by  
23 physicians designated by the department. If the licensee  
24 refuses to comply with such order, the department's order  
25 directing such examination may be enforced by filing a  
26 petition for enforcement in the circuit court where the  
27 licensee resides or does business. The licensee against whom  
28 the petition is filed may not be named or identified by  
29 initials in any public court records or documents, and the  
30 proceedings shall be closed to the public. The department  
31 shall be entitled to the summary procedure provided in s.

1 51.011. A licensee or certificateholder affected under this  
2 paragraph shall at reasonable intervals be afforded an  
3 opportunity to demonstrate that he or she can resume the  
4 competent practice of medicine with reasonable skill and  
5 safety to patients.

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

1 similar conditions and circumstances," or any combination  
2 thereof, and any publication by the board must so specify.

3 (u) Performing any procedure or prescribing any  
4 therapy which, by the prevailing standards of medical practice  
5 in the community, would constitute experimentation on a human  
6 subject, without first obtaining full, informed, and written  
7 consent.

8 (v) Practicing or offering to practice beyond the  
9 scope permitted by law or accepting and performing  
10 professional responsibilities which the licensee knows or has  
11 reason to know that he or she is not competent to perform. The  
12 board may establish by rule standards of practice and  
13 standards of care for particular practice settings, including,  
14 but not limited to, education and training, equipment and  
15 supplies, medications including anesthetics, assistance of and  
16 delegation to other personnel, transfer agreements,  
17 sterilization, records, performance of complex or multiple  
18 procedures, informed consent, and policy and procedure  
19 manuals.

20 (w) Delegating professional responsibilities to a  
21 person when the licensee delegating such responsibilities  
22 knows or has reason to know that such person is not qualified  
23 by training, experience, or licensure to perform them.

24 (x) Violating a lawful order of the board or  
25 department previously entered in a disciplinary hearing or  
26 failing to comply with a lawfully issued subpoena of the  
27 department.

28 (y) Conspiring with another licensee or with any other  
29 person to commit an act, or committing an act, which would  
30 tend to coerce, intimidate, or preclude another licensee from  
31 lawfully advertising his or her services.

1           (z) Procuring, or aiding or abetting in the procuring  
2 of, an unlawful termination of pregnancy.

3           (aa) Presigning blank prescription forms.

4           (bb) Prescribing any medicinal drug appearing on  
5 Schedule II in chapter 893 by the physician for office use.

6           (cc) Prescribing, ordering, dispensing, administering,  
7 supplying, selling, or giving any drug which is a Schedule II  
8 amphetamine or a Schedule II sympathomimetic amine drug or any  
9 compound thereof, pursuant to chapter 893, to or for any  
10 person except for:

11           1. The treatment of narcolepsy; hyperkinesis;  
12 behavioral syndrome characterized by the developmentally  
13 inappropriate symptoms of moderate to severe distractability,  
14 short attention span, hyperactivity, emotional lability, and  
15 impulsivity; or drug-induced brain dysfunction;

16           2. The differential diagnostic psychiatric evaluation  
17 of depression or the treatment of depression shown to be  
18 refractory to other therapeutic modalities; or

19           3. The clinical investigation of the effects of such  
20 drugs or compounds when an investigative protocol therefor is  
21 submitted to, reviewed, and approved by the board before such  
22 investigation is begun.

23           (dd) Failing to supervise adequately the activities of  
24 those physician assistants, paramedics, emergency medical  
25 technicians, or advanced registered nurse practitioners acting  
26 under the supervision of the physician.

27           (ee) Prescribing, ordering, dispensing, administering,  
28 supplying, selling, or giving growth hormones, testosterone or  
29 its analogs, human chorionic gonadotropin (HCG), or other  
30 hormones for the purpose of muscle building or to enhance  
31 athletic performance. For the purposes of this subsection, the



1 term "muscle building" does not include the treatment of  
2 injured muscle. A prescription written for the drug products  
3 listed above may be dispensed by the pharmacist with the  
4 presumption that the prescription is for legitimate medical  
5 use.

6 (ff) Prescribing, ordering, dispensing, administering,  
7 supplying, selling, or giving amygdalin (laetrile) to any  
8 person.

9 (gg) Misrepresenting or concealing a material fact at  
10 any time during any phase of a licensing or disciplinary  
11 process or procedure.

12 (hh) Improperly interfering with an investigation or  
13 with any disciplinary proceeding.

14 (ii) Failing to report to the department any licensee  
15 under this chapter or under chapter 459 who the physician or  
16 physician assistant knows has violated the grounds for  
17 disciplinary action set out in the law under which that person  
18 is licensed and who provides health care services in a  
19 facility licensed under chapter 395, or a health maintenance  
20 organization certificated under part I of chapter 641, in  
21 which the physician or physician assistant also provides  
22 services.

23 (jj) Being found by any court in this state to have  
24 provided corroborating written medical expert opinion attached  
25 to any statutorily required notice of claim or intent or to  
26 any statutorily required response rejecting a claim, without  
27 reasonable investigation.

28 (kk) Failing to report to the board, in writing,  
29 within 30 days if action as defined in paragraph (b) has been  
30 taken against one's license to practice medicine in another  
31 state, territory, or country.

1           (11) Advertising or holding oneself out as a  
2 board-certified specialist, if not qualified under s.  
3 458.3312, in violation of this chapter.

4           (mm) Failing to comply with the requirements of ss.  
5 381.026 and 381.0261 to provide patients with information  
6 about their patient rights and how to file a patient  
7 complaint.

8           (nn) Violating any provision of this chapter or  
9 chapter 456, or any rules adopted pursuant thereto.

10           ~~(oo) Refusing to provide health care based on a~~  
11 patient's participation in pending or past litigation or  
12 participation in any disciplinary action conducted pursuant to  
13 this chapter, unless such litigation or disciplinary action  
14 directly involves the physician requested to provide services.

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

29           Section 14. Present subsection (9) of section  
30 459.0085, Florida Statutes, is redesignated as subsection  
31

1 (10), and a new subsection (9) is added to that section, to  
2 read:

3       459.0085 Financial responsibility.--  
4       (9) Notwithstanding any other provision of this  
5 section, the department shall suspend the license of any  
6 osteopathic physician against whom has been entered a final  
7 judgment, arbitration award, or other order or who has entered  
8 into a settlement agreement to pay damages arising out of a  
9 claim for medical malpractice, if all appellate remedies have  
10 been exhausted and payment up to the amounts required by this  
11 section has not been made within 30 days after the entering of  
12 such judgment, award, or order or agreement, until proof of  
13 payment is received by the department. This subsection does  
14 not apply to an osteopathic physician who has met the  
15 financial responsibility requirements in paragraphs (1)(b) and  
16 (2)(b).

17       Section 15. Subsections (1) and (6) of section  
18 459.015, Florida Statutes, are amended to read:

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

21       (1) The following acts constitute grounds for denial  
22 of a license or disciplinary action, as specified in s.  
23 456.072(2):

24       (a) Attempting to obtain, obtaining, or renewing a  
25 license to practice osteopathic medicine or a certificate  
26 issued under this chapter by bribery, by fraudulent  
27 misrepresentations, or through an error of the department or  
28 the board.

29       (b) Having a license or the authority to practice  
30 osteopathic medicine revoked, suspended, or otherwise acted  
31 against, including the denial of licensure, by the licensing

1 authority of any jurisdiction, including its agencies or  
2 subdivisions. The licensing authority's acceptance of a  
3 physician's relinquishment of license, stipulation, consent  
4 order, or other settlement offered in response to or in  
5 anticipation of the filing of administrative charges against  
6 the physician shall be construed as action against the  
7 physician's license.

8 (c) Being convicted or found guilty, regardless of  
9 adjudication, of a crime in any jurisdiction which directly  
10 relates to the practice of osteopathic medicine or to the  
11 ability to practice osteopathic medicine. A plea of nolo  
12 contendere shall create a rebuttable presumption of guilt to  
13 the underlying criminal charges.

14 (d) False, deceptive, or misleading advertising.

15 (e) Failing to report to the department or the  
16 department's impaired professional consultant any person who  
17 the licensee or certificateholder knows is in violation of  
18 this chapter or of the rules of the department or the board.  
19 A treatment provider, approved pursuant to s. 456.076, shall  
20 provide the department or consultant with information in  
21 accordance with the requirements of s. 456.076(3), (4), (5),  
22 and (6).

23 (f) Aiding, assisting, procuring, or advising any  
24 unlicensed person to practice osteopathic medicine contrary to  
25 this chapter or to a rule of the department or the board.

26 (g) Failing to perform any statutory or legal  
27 obligation placed upon a licensed osteopathic physician.

28 (h) Giving false testimony in the course of any legal  
29 or administrative proceedings relating to the practice of  
30 medicine or the delivery of health care services.

31

1           (i) Making or filing a report which the licensee knows  
2 to be false, intentionally or negligently failing to file a  
3 report or record required by state or federal law, willfully  
4 impeding or obstructing such filing, or inducing another  
5 person to do so. Such reports or records shall include only  
6 those which are signed in the capacity as a licensed  
7 osteopathic physician.

8           (j) Paying or receiving any commission, bonus,  
9 kickback, or rebate, or engaging in any split-fee arrangement  
10 in any form whatsoever with a physician, organization, agency,  
11 person, partnership, firm, corporation, or other business  
12 entity, for patients referred to providers of health care  
13 goods and services, including, but not limited to, hospitals,  
14 nursing homes, clinical laboratories, ambulatory surgical  
15 centers, or pharmacies. The provisions of this paragraph  
16 shall not be construed to prevent an osteopathic physician  
17 from receiving a fee for professional consultation services.

18           (k) Refusing to provide health care based on a  
19 patient's participation in pending or past litigation or  
20 participation in any disciplinary action conducted pursuant to  
21 this chapter, unless such litigation or disciplinary action  
22 directly involves the osteopathic physician requested to  
23 provide services.

24           (l) Exercising influence within a patient-physician  
25 relationship for purposes of engaging a patient in sexual  
26 activity. A patient shall be presumed to be incapable of  
27 giving free, full, and informed consent to sexual activity  
28 with his or her physician.

29           (m) Making deceptive, untrue, or fraudulent  
30 representations in or related to the practice of osteopathic  
31

1 medicine or employing a trick or scheme in the practice of  
2 osteopathic medicine.

3 (n) Soliciting patients, either personally or through  
4 an agent, through the use of fraud, intimidation, undue  
5 influence, or forms of overreaching or vexatious conduct. A  
6 solicitation is any communication which directly or implicitly  
7 requests an immediate oral response from the recipient.

8 (o) Failing to keep legible, as defined by department  
9 rule in consultation with the board, medical records that  
10 identify the licensed osteopathic physician or the osteopathic  
11 physician extender and supervising osteopathic physician by  
12 name and professional title who is or are responsible for  
13 rendering, ordering, supervising, or billing for each  
14 diagnostic or treatment procedure and that justify the course  
15 of treatment of the patient, including, but not limited to,  
16 patient histories; examination results; test results; records  
17 of drugs prescribed, dispensed, or administered; and reports  
18 of consultations and hospitalizations.

19 (p) Fraudulently altering or destroying records  
20 relating to patient care or treatment, including, but not  
21 limited to, patient histories, examination results, and test  
22 results.

23 (q) Exercising influence on the patient or client in  
24 such a manner as to exploit the patient or client for  
25 financial gain of the licensee or of a third party which shall  
26 include, but not be limited to, the promotion or sale of  
27 services, goods, appliances, or drugs.

28 (r) Promoting or advertising on any prescription form  
29 of a community pharmacy, unless the form shall also state  
30 "This prescription may be filled at any pharmacy of your  
31 choice."

1           (s) Performing professional services which have not  
2 been duly authorized by the patient or client or his or her  
3 legal representative except as provided in s. 743.064, s.  
4 766.103, or s. 768.13.

5           (t) Prescribing, dispensing, administering, supplying,  
6 selling, giving, mixing, or otherwise preparing a legend drug,  
7 including all controlled substances, other than in the course  
8 of the osteopathic physician's professional practice. For the  
9 purposes of this paragraph, it shall be legally presumed that  
10 prescribing, dispensing, administering, supplying, selling,  
11 giving, mixing, or otherwise preparing legend drugs, including  
12 all controlled substances, inappropriately or in excessive or  
13 inappropriate quantities is not in the best interest of the  
14 patient and is not in the course of the osteopathic  
15 physician's professional practice, without regard to his or  
16 her intent.

17           (u) Prescribing or dispensing any medicinal drug  
18 appearing on any schedule set forth in chapter 893 by the  
19 osteopathic physician for himself or herself or administering  
20 any such drug by the osteopathic physician to himself or  
21 herself unless such drug is prescribed for the osteopathic  
22 physician by another practitioner authorized to prescribe  
23 medicinal drugs.

24           (v) Prescribing, ordering, dispensing, administering,  
25 supplying, selling, or giving amygdalin (laetrile) to any  
26 person.

27           (w) Being unable to practice osteopathic medicine with  
28 reasonable skill and safety to patients by reason of illness  
29 or use of alcohol, drugs, narcotics, chemicals, or any other  
30 type of material or as a result of any mental or physical  
31 condition. In enforcing this paragraph, the department shall,

1 upon a finding of the secretary or the secretary's designee  
2 that probable cause exists to believe that the licensee is  
3 unable to practice medicine because of the reasons stated in  
4 this paragraph, have the authority to issue an order to compel  
5 a licensee to submit to a mental or physical examination by  
6 physicians designated by the department. If the licensee  
7 refuses to comply with such order, the department's order  
8 directing such examination may be enforced by filing a  
9 petition for enforcement in the circuit court where the  
10 licensee resides or does business. The licensee against whom  
11 the petition is filed shall not be named or identified by  
12 initials in any public court records or documents, and the  
13 proceedings shall be closed to the public. The department  
14 shall be entitled to the summary procedure provided in s.  
15 51.011. A licensee or certificateholder affected under this  
16 paragraph shall at reasonable intervals be afforded an  
17 opportunity to demonstrate that he or she can resume the  
18 competent practice of medicine with reasonable skill and  
19 safety to patients.

20 (x) Gross or repeated malpractice or the failure to  
21 practice osteopathic medicine with that level of care, skill,  
22 and treatment which is recognized by a reasonably prudent  
23 similar osteopathic physician as being acceptable under  
24 similar conditions and circumstances. The board shall give  
25 great weight to the provisions of s. 766.102 when enforcing  
26 this paragraph. As used in this paragraph, "repeated  
27 malpractice" includes, but is not limited to, three or more  
28 claims for medical malpractice within the previous 5-year  
29 period resulting in indemnities being paid in excess of  
30 \$50,000~~\$25,000~~ each to the claimant in a judgment or  
31 settlement and which incidents involved negligent conduct by



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

19 (y) Performing any procedure or prescribing any  
20 therapy which, by the prevailing standards of medical practice  
21 in the community, would constitute experimentation on human  
22 subjects, without first obtaining full, informed, and written  
23 consent.

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

1 | delegation to other personnel, transfer agreements,  
2 | sterilization, records, performance of complex or multiple  
3 | procedures, informed consent, and policy and procedure  
4 | manuals.

5 |       (aa) Delegating professional responsibilities to a  
6 | person when the licensee delegating such responsibilities  
7 | knows or has reason to know that such person is not qualified  
8 | by training, experience, or licensure to perform them.

9 |       (bb) Violating a lawful order of the board or  
10 | department previously entered in a disciplinary hearing or  
11 | failing to comply with a lawfully issued subpoena of the board  
12 | or department.

13 |       (cc) Conspiring with another licensee or with any  
14 | other person to commit an act, or committing an act, which  
15 | would tend to coerce, intimidate, or preclude another licensee  
16 | from lawfully advertising his or her services.

17 |       (dd) Procuring, or aiding or abetting in the procuring  
18 | of, an unlawful termination of pregnancy.

19 |       (ee) Presigning blank prescription forms.

20 |       (ff) Prescribing any medicinal drug appearing on  
21 | Schedule II in chapter 893 by the osteopathic physician for  
22 | office use.

23 |       (gg) Prescribing, ordering, dispensing, administering,  
24 | supplying, selling, or giving any drug which is a Schedule II  
25 | amphetamine or Schedule II sympathomimetic amine drug or any  
26 | compound thereof, pursuant to chapter 893, to or for any  
27 | person except for:

28 |           1. The treatment of narcolepsy; hyperkinesis;  
29 | behavioral syndrome characterized by the developmentally  
30 | inappropriate symptoms of moderate to severe distractability,  
31 |

1 short attention span, hyperactivity, emotional lability, and  
2 impulsivity; or drug-induced brain dysfunction;

3 2. The differential diagnostic psychiatric evaluation  
4 of depression or the treatment of depression shown to be  
5 refractory to other therapeutic modalities; or

6 3. The clinical investigation of the effects of such  
7 drugs or compounds when an investigative protocol therefor is  
8 submitted to, reviewed, and approved by the board before such  
9 investigation is begun.

10 (hh) Failing to supervise adequately the activities of  
11 those physician assistants, paramedics, emergency medical  
12 technicians, advanced registered nurse practitioners, or other  
13 persons acting under the supervision of the osteopathic  
14 physician.

15 (ii) Prescribing, ordering, dispensing, administering,  
16 supplying, selling, or giving growth hormones, testosterone or  
17 its analogs, human chorionic gonadotropin (HCG), or other  
18 hormones for the purpose of muscle building or to enhance  
19 athletic performance. For the purposes of this subsection, the  
20 term "muscle building" does not include the treatment of  
21 injured muscle. A prescription written for the drug products  
22 listed above may be dispensed by the pharmacist with the  
23 presumption that the prescription is for legitimate medical  
24 use.

25 (jj) Misrepresenting or concealing a material fact at  
26 any time during any phase of a licensing or disciplinary  
27 process or procedure.

28 (kk) Improperly interfering with an investigation or  
29 with any disciplinary proceeding.

30 (ll) Failing to report to the department any licensee  
31 under chapter 458 or under this chapter who the osteopathic

1 physician or physician assistant knows has violated the  
2 grounds for disciplinary action set out in the law under which  
3 that person is licensed and who provides health care services  
4 in a facility licensed under chapter 395, or a health  
5 maintenance organization certificated under part I of chapter  
6 641, in which the osteopathic physician or physician assistant  
7 also provides services.

8 (mm) Being found by any court in this state to have  
9 provided corroborating written medical expert opinion attached  
10 to any statutorily required notice of claim or intent or to  
11 any statutorily required response rejecting a claim, without  
12 reasonable investigation.

13 (nn) Advertising or holding oneself out as a  
14 board-certified specialist in violation of this chapter.

15 (oo) Failing to comply with the requirements of ss.  
16 381.026 and 381.0261 to provide patients with information  
17 about their patient rights and how to file a patient  
18 complaint.

19 (pp) Violating any provision of this chapter or  
20 chapter 456, or any rules adopted pursuant thereto.

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

1 | exceeding~~\$50,000~~~~\$25,000~~ each within the previous 5-year  
2 | period, the department shall investigate the occurrences upon  
3 | which the claims were based and determine if action by the  
4 | department against the osteopathic physician is warranted.

5 |       Section 16. Civil immunity for members of or  
6 | consultants to certain boards, committees, or other  
7 | entities.--

8 |       (1) Each member of, or health care professional  
9 | consultant to, any committee, board, group, commission, or  
10 | other entity shall be immune from civil liability for any act,  
11 | decision, omission, or utterance done or made in performance  
12 | of his duties while serving as a member of or consultant to  
13 | such committee, board, group, commission, or other entity  
14 | established and operated for purposes of quality improvement  
15 | review, evaluation, and planning in a state-licensed health  
16 | care facility. Such entities must function primarily to  
17 | review, evaluate, or make recommendations relating to:

18 |       (a) The duration of patient stays in health care  
19 | facilities;

20 |       (b) The professional services furnished with respect  
21 | to the medical, dental, psychological, podiatric,  
22 | chiropractic, or optometric necessity for such services;

23 |       (c) The purpose of promoting the most efficient use of  
24 | available health care facilities and services;

25 |       (d) The adequacy or quality of professional services;

26 |       (e) The competency and qualifications for professional  
27 | staff privileges;

28 |       (f) The reasonableness or appropriateness of charges  
29 | made by or on behalf of health care facilities; or

30 |       (g) Patient safety, including entering into contracts  
31 | with patient safety organizations.

1           (2) Such committee, board, group, commission, or other  
2 entity must be established in accordance with state law or in  
3 accordance with requirements of the Joint Commission on  
4 Accreditation of Healthcare Organizations, established and  
5 duly constituted by one or more public or licensed private  
6 hospitals or behavioral health agencies, or established by a  
7 governmental agency. To be protected by this section, the act,  
8 decision, omission, or utterance may not be made or done in  
9 bad faith or with malicious intent.

10           Section 17. Privileged communications of certain  
11 committees and entities developing, maintaining, and sharing  
12 patient safety data.--

13           (1) As used in this section, the term:

14           (a) "Patient safety data" means reports made to  
15 patient safety organizations, including all health care data,  
16 interviews, memoranda, analyses, root cause analyses, products  
17 of quality assurance or quality improvement processes,  
18 corrective action plans, or information collected or created  
19 by a health care provider as a result of an occurrence related  
20 to the provision of health care services which exacerbates an  
21 existing medical condition or could result in injury, illness,  
22 or death.

23           (b) "Patient safety organization" means any  
24 organization, group, or other entity that collects and  
25 analyzes patient safety data for the purpose of improving  
26 patient safety and health care outcomes and that is  
27 independent and not under the control of the entity that  
28 reports patient safety data.

29           (2)(a) The proceedings, minutes, records, and reports  
30 of any medical staff committee, utilization review committee,  
31 or other committee, board, group, commission, or other entity,

1 as specified in chapter 395 or chapter 641, Florida Statutes,  
2 including all communications, both oral and written,  
3 originating in the course of deliberation, investigation, or  
4 analysis of such committees or entities, are privileged  
5 communications that may not be disclosed or obtained by legal  
6 discovery proceedings unless a circuit court, after a hearing  
7 and for good cause, orders the disclosure of such proceedings,  
8 minutes, records, reports, or communications. For the purposes  
9 of this section, accreditation and peer review records are  
10 considered privileged communications.

11 (b) Documents and communications pertaining to the  
12 professional conduct of a physician or staff of the facility  
13 or pertaining to service delivered by a physician or staff  
14 member of the facility which are not generated during the  
15 course of deliberation, investigation, and analysis of a  
16 patient safety organization are not considered privileged. In  
17 response to a request for discovery, a claim of privilege by a  
18 patient safety organization must be accompanied by a list  
19 identifying all documents or communications for which  
20 privilege is asserted. The list, and a document or  
21 communication, when appropriate, shall be reviewed in camera  
22 for a determination of whether the document or communication  
23 is privileged. Patient identifying information shall be  
24 redacted or otherwise excluded from the list, unless a court  
25 of competent jurisdiction orders disclosure of such  
26 information. A list of documents or communications for which  
27 privilege is asserted must include:

28 1. The date the subject document or communication was  
29 created.

30 2. The name and address of the document's author or  
31 communication's originator, unless the author or originator is

1 a patient whose identity has not been ordered disclosed by a  
2 court of competent jurisdiction.

3 3. The name and address of the party from whom the  
4 document or communication was received.

5 4. The date the document or communication was  
6 received.

7 5. The name and address of the original document's  
8 custodian or communication's originator.

9 6. The statutory or case law on which the privilege is  
10 asserted.

11 (3) This section does not provide any additional  
12 privilege to a hospital; to a physician, for services provided  
13 in a licensed physician office; or for behavioral health  
14 provider medical records kept with respect to any patient in  
15 the ordinary course of business of operating a hospital,  
16 licensed physician's office, or behavioral health provider or  
17 to any facts or information contained in such records. This  
18 section does not preclude or affect discovery of or production  
19 of evidence relating to hospitalization or treatment of any  
20 patient in the ordinary course of hospitalization or treatment  
21 of such patient.

22 (4) A patient safety organization shall promptly  
23 remove all patient-identifying information after receipt of a  
24 complete patient safety data report unless such organization  
25 is otherwise permitted by state or federal law to maintain  
26 such information. Patient safety organizations shall maintain  
27 the confidentiality of all patient-identifying information and  
28 may not disseminate such information, except as permitted by  
29 state or federal law.

30 (5) The exchange of patient safety data among health  
31 care providers or patient safety organizations which does not



1 identify any patient shall not constitute a waiver of any  
2 privilege established in this section.

3 (6) Reports of patient safety data to patient safety  
4 organizations does not abrogate obligations to make reports to  
5 the Department of Health, the Agency for Health Care  
6 Administration, or other state or federal law regulatory  
7 agencies.

8 (7) An employer may not take retaliatory action  
9 against an employee who in good faith makes a report of  
10 patient safety data to a patient safety organization.

11 (8) Each patient safety organization convened under  
12 this section shall quarterly submit statistical reports of its  
13 findings to the Department of Health, the Agency for Health  
14 Care Administration, and the Department of Financial Services.  
15 Each department shall use such statistics for comparison to  
16 information the department generates from its regulatory  
17 operations and to improve its regulation of health care  
18 providers.

19 Section 18. The Department of Health and the  
20 Department of Financial Services shall jointly publish a list,  
21 updated semiannually, of all health care professionals  
22 authorized to practice in this state, licensed under chapter  
23 458 or chapter 459, Florida Statutes, and who do not carry  
24 medical malpractice insurance. This list must indicate the  
25 last date such health care professional was covered by  
26 professional liability insurance and any explanation of  
27 insurance status deemed appropriate.

28 Section 19. Each final settlement statement relating  
29 to medical malpractice shall include the following statement:  
30 "The decision to settle a case may reflect the economic  
31 practicalities pertaining to the cost of litigation and is

1 not, alone, an admission that the insured failed to meet the  
2 required standard of care applicable to the patient's  
3 treatment. The decision to settle a case may be made by the  
4 insurance company without consulting its client for input."

5 Section 20. Notwithstanding any other provision of law  
6 to the contrary, confidential legal settlements pertaining to  
7 medical malpractice actions are prohibited. A legal settlement  
8 shall be public information.

9 Section 21. Department of Financial Services; closed  
10 claim forms; report required.--The Department of Financial  
11 Services shall revise its closed claim form for readability at  
12 the 9th grade level. The department shall compile annual  
13 statistical reports that provide data summaries of all closed  
14 claims, including, but not limited to, the number of closed  
15 claims on file pertaining to the referent health care  
16 professional or health care entity, the nature of the errant  
17 conduct, the size of payments, and the frequency and size of  
18 noneconomic damage awards. The department shall develop  
19 annualized historical statistical summaries beginning with the  
20 1976 state fiscal year and publish these reports on its  
21 website no later than the 2005 state fiscal year. The form  
22 must accommodate the following minimum requirements:

23 (1) A practitioner of medicine licensed pursuant to  
24 chapter 458, Florida Statutes, or a practitioner of  
25 osteopathic medicine licensed pursuant to chapter 459, Florida  
26 Statutes, shall report to the Department of Financial Services  
27 and the Department of Health any claim or action for damages  
28 for personal injury alleged to have been caused by error,  
29 omission, or negligence in the performance of such licensee's  
30 professional services or based on a claimed performance of  
31 professional services without consent if the claim was not

1 covered by an insurer required to report under section  
2 627.912, Florida Statutes, is not a claim for medical  
3 malpractice that is subject to the provisions of section  
4 766.106, Florida Statutes, and the claim resulted in:  
5 (a) A final judgment in any amount.  
6 (b) A settlement in any amount.  
7 (c) A final disposition not resulting in payment on  
8 behalf of the licensee.  
9  
10 Reports shall be filed with the Department of Financial  
11 Services no later than 60 days following the occurrence of any  
12 event listed in this subsection.  
13 (2) Health professional reports must contain:  
14 (a) The name and address of the licensee.  
15 (b) The alleged occurrence.  
16 (c) The date of the alleged occurrence.  
17 (d) The date the claim or action was reported to the  
18 licensee.  
19 (e) The name and address of the opposing party.  
20 (f) The date of suit, if filed.  
21 (g) The injured person's age and sex.  
22 (h) The total number and names of all defendants  
23 involved in the claim.  
24 (i) The date and amount of judgment or settlement, if  
25 any, including the itemization of the verdict, together with a  
26 copy of the settlement or judgment.  
27 (j) In the case of a settlement, any information  
28 required by the Department of Financial Services concerning  
29 the injured person's incurred and anticipated medical expense,  
30 wage loss, and other expenses.  
31

1           (k) The loss adjustment expense paid to defense  
2 counsel, and all other allocated loss adjustment expense paid.

3           (l) The date and reason for final disposition, if  
4 there was no judgment or settlement.

5           (m) A summary of the occurrence that created the  
6 claim, which must include:

7           1. The name of the institution, if any, and the  
8 location within such institution, at which the injury  
9 occurred.

10           2. The final diagnosis for which treatment was sought  
11 or rendered, including the patient's actual condition.

12           3. A description of the misdiagnosis made, if any, of  
13 the patient's actual condition.

14           4. The operation or the diagnostic or treatment  
15 procedure causing the injury.

16           5. A description of the principal injury giving rise  
17 to the claim.

18           6. The safety management steps that have been taken by  
19 the licensee to make similar occurrences or injuries less  
20 likely in the future.

21           (n) Any other information required by the Department  
22 of Financial Services to analyze and evaluate the nature,  
23 causes, location, cost, and damages involved in professional  
24 liability cases.

25           Section 22. If any provision of this act or its  
26 application to any person or circumstance is held invalid, the  
27 invalidity does not affect other provisions or applications of  
28 the act which can be given effect without the invalid  
29 provision or application, and to this end the provisions of  
30 this act are severable.

31

1 Section 23. This act shall take effect upon becoming a  
2 law.

3  
4 \*\*\*\*\*

5 SENATE SUMMARY

6 Revises various provisions of law governing medical  
7 malpractice. Provides for discounted medical liability  
8 insurance based on certification of programs that reduce  
9 adverse incidents. Requires licensed facilities to notify  
10 the Agency for Health Care Administration of actions  
11 filed against the facility or health care practitioners  
12 for whom it assumes liability. Requires facilities to  
13 establish a nurse-to-patient ratio based upon a specified  
14 methodology. Provides for discipline of a physician for  
15 mental or physical abuse of a staff member. Clarifies  
16 provisions governing privileged documents and  
17 communications. Provides for notifying a patient who is  
18 the victim of an adverse incident. Provides for  
19 disciplinary action against a person who has a duty to  
20 report an adverse incident but who fails to do so.  
21 Requires risk managers to report allegations of sexual  
22 misconduct occurring in a licensed facility to the Agency  
23 for Health Care Administration. Requires that the  
24 Department of Health compile certain information in a  
25 practitioner profile. Requires the department to provide  
26 information concerning final disciplinary action taken  
27 against a practitioner. Provides for fines against  
28 practitioners who fail to comply with the requirements  
29 for reporting claims and actions within a specified  
30 period. Requires the Department of Health to suspend the  
31 license of a medical physician or osteopathic physician  
who has not paid, up to the amounts required by any  
applicable financial responsibility provision, any  
outstanding judgment, arbitration award, other order, or  
settlement. Increases to \$50,000 the monetary threshold  
amount for establishing that a medical physician or  
osteopathic physician has engaged in repeated  
malpractice. Provides civil immunity for certain  
participants in a quality improvement process. Requires  
the Department of Health and the Department of Financial  
Services to publish a list of certain health care  
practitioners who do not carry malpractice insurance.  
Prohibits a confidential legal settlement in a medical  
malpractice action. (See bill for details.)