

Bill No. CS for SB 2750

Amendment No. ____ Barcode 573372

CHAMBER ACTION

Senate

House

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Senator Peaden moved the following amendment:

Senate Amendment (with title amendment)

On page 13, line 6, through
page 27, line 31, delete those lines

and insert:

Section 8. Paragraph (b) of subsection (1) of section
456.0375, Florida Statutes, is amended to read:

456.0375 Registration of certain clinics;
requirements; discipline; exemptions.--

(1)

(b) For purposes of this section, the term "clinic"
does not include and the registration requirements herein do
not apply to:

1. Entities licensed or registered by the state
pursuant to chapter 390, chapter 394, chapter 395, chapter
397, chapter 400, chapter 463, chapter 465, chapter 466,
chapter 478, chapter 480, or chapter 484.

2. Entities exempt from federal taxation under 26
U.S.C. s. 501(c)(3) and community college and university

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1 clinics.

2 3. Sole proprietorships, group practices,
3 partnerships, or corporations that provide health care
4 services by licensed health care practitioners pursuant to
5 chapters 457, 458, 459, 460, 461, 462, 463, 466, 467, 484,
6 486, 490, 491, or part I, part III, part X, part XIII, or part
7 XIV of chapter 468, or s. 464.012, which are wholly owned by
8 licensed health care practitioners or the licensed health care
9 practitioner and the spouse, parent, or child of a licensed
10 health care practitioner, so long as one of the owners who is
11 a licensed health care practitioner is supervising the
12 administrative services performed therein and is legally
13 responsible for the entity's compliance with all federal and
14 state laws. However, no health care practitioner may supervise
15 the health care delivery services beyond the scope of the
16 practitioner's license. Supervision of the administrative
17 services for compliance with federal and state laws is
18 different and distinct from supervision of the delivery of
19 health care services. Health care delivery is the sole
20 responsibility of the health care practitioner delivering
21 health care services.

22 4. Clinical facilities affiliated with an accredited
23 medical school at which training is provided for medical
24 students, residents, or fellows.

25 Section 9. Paragraph (a) of subsection (4) of section
26 456.039, Florida Statutes, is amended to read:

27 456.039 Designated health care professionals;
28 information required for licensure.--

29 (4)(a) An applicant for initial licensure must submit
30 a set of fingerprints to the Department of Health in
31 accordance with s. 458.311, s. 458.3115, s. 458.3124, ~~s.~~

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1 ~~458.313~~, s. 459.0055, s. 460.406, or s. 461.006.

2 Section 10. Subsection (4) of section 456.041, Florida
3 Statutes, is amended to read:

4 456.041 Practitioner profile; creation.--

5 (4) The Department of Health shall include, with
6 respect to a practitioner licensed under chapter 458 or
7 chapter 459, a statement of how the practitioner has elected
8 to comply with the financial responsibility requirements of s.
9 458.320 or s. 459.0085. The department shall include, with
10 respect to practitioners subject to s. 456.048, a statement of
11 how the practitioner has elected to comply with the financial
12 responsibility requirements of that section. The department
13 shall include, with respect to practitioners licensed under
14 chapter 458, chapter 459, or chapter 461, information relating
15 to liability actions which has been reported under s. 456.049
16 or s. 627.912 within the previous 10 years for any paid claim
17 of \$50,000 or more ~~that exceeds \$5,000~~. Such claims
18 information shall be reported in the context of comparing an
19 individual practitioner's claims to the experience of other
20 practitioners within the same specialty, or profession if the
21 practitioner is not a specialist, to the extent such
22 information is available to the Department of Health. If
23 information relating to a liability action is included in a
24 practitioner's practitioner profile, the profile must also
25 include the following statement: "Settlement of a claim may
26 occur for a variety of reasons that do not necessarily reflect
27 negatively on the professional competence or conduct of the
28 practitioner. A payment in settlement of a medical
29 malpractice action or claim should not be construed as
30 creating a presumption that medical malpractice has occurred."

31 Section 11. Subsection (1) of section 456.049, Florida

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1 Statutes, is amended to read:

2 456.049 Health care practitioners; reports on
3 professional liability claims and actions.--

4 (1) Any practitioner of medicine licensed pursuant to
5 the provisions of chapter 458, practitioner of osteopathic
6 medicine licensed pursuant to the provisions of chapter 459,
7 podiatric physician licensed pursuant to the provisions of
8 chapter 461, or dentist licensed pursuant to the provisions of
9 chapter 466 shall report to the department any claim or action
10 for damages for personal injury alleged to have been caused by
11 error, omission, or negligence in the performance of such
12 licensee's professional services or based on a claimed
13 performance of professional services without consent if the
14 claim was not covered by an insurer required to report under
15 s. 627.912 and the claim resulted in:

16 (a) A final judgment of \$50,000 or more or, for a
17 dentist licensed under chapter 466, a final judgment of
18 \$25,000 or more in any amount.

19 (b) A settlement of \$50,000 or more or, for a dentist
20 licensed under chapter 466, a settlement of \$25,000 or more in
21 any amount.

22 (c) A final disposition not resulting in payment on
23 behalf of the licensee.

24
25 Reports shall be filed with the department no later than 60
26 days following the occurrence of any event listed in paragraph
27 (a), paragraph (b), or paragraph (c).

28 Section 12. Paragraph (a) of subsection (7) and
29 subsection (16) of section 456.057, Florida Statutes, are
30 amended to read:

31 456.057 Ownership and control of patient records;

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1 report or copies of records to be furnished.--

2 (7)(a)1. The department may obtain patient records
3 pursuant to a subpoena without written authorization from the
4 patient if the department and the probable cause panel of the
5 appropriate board, if any, find reasonable cause to believe
6 that a health care practitioner has excessively or
7 inappropriately prescribed any controlled substance specified
8 in chapter 893 in violation of this chapter or any
9 professional practice act or that a health care practitioner
10 has practiced his or her profession below that level of care,
11 skill, and treatment required as defined by this chapter or
12 any professional practice act and also find that appropriate,
13 reasonable attempts were made to obtain a patient release.
14 However, if the matter under investigation was reported to the
15 department as a professional liability claim or action
16 pursuant to s. 456.049 or s. 627.912, an attempt to obtain a
17 patient release is not required.

18 2. The department may obtain patient records and
19 insurance information pursuant to a subpoena without written
20 authorization from the patient if the department and the
21 probable cause panel of the appropriate board, if any, find
22 reasonable cause to believe that a health care practitioner
23 has provided inadequate medical care based on termination of
24 insurance and also find that appropriate, reasonable attempts
25 were made to obtain a patient release.

26 3. The department may obtain patient records, billing
27 records, insurance information, provider contracts, and all
28 attachments thereto pursuant to a subpoena without written
29 authorization from the patient if the department and probable
30 cause panel of the appropriate board, if any, find reasonable
31 cause to believe that a health care practitioner has submitted

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1 a claim, statement, or bill using a billing code that would
2 result in payment greater in amount than would be paid using a
3 billing code that accurately describes the services performed,
4 requested payment for services that were not performed by that
5 health care practitioner, used information derived from a
6 written report of an automobile accident generated pursuant to
7 chapter 316 to solicit or obtain patients personally or
8 through an agent regardless of whether the information is
9 derived directly from the report or a summary of that report
10 or from another person, solicited patients fraudulently,
11 received a kickback as defined in s. 456.054, violated the
12 patient brokering provisions of s. 817.505, or presented or
13 caused to be presented a false or fraudulent insurance claim
14 within the meaning of s. 817.234(1)(a), and also find that,
15 within the meaning of s. 817.234(1)(a), patient authorization
16 cannot be obtained because the patient cannot be located or is
17 deceased, incapacitated, or suspected of being a participant
18 in the fraud or scheme, and if the subpoena is issued for
19 specific and relevant records.

20 4. For purposes of this subsection, the department may
21 obtain patient records pursuant to a subpoena without written
22 authorization from the patient if the patient refuses to
23 cooperate or if, in the department's discretion, an attempt to
24 obtain a patient release would be detrimental to the
25 investigation.

26 (16) A health care practitioner or records owner
27 furnishing copies of reports or records or making the reports
28 or records available for digital scanning pursuant to this
29 section shall charge no more than the actual cost of copying,
30 including reasonable staff time, or the amount specified in
31 administrative rule by the appropriate board, or the

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1 department when there is no board. The health care
2 practitioner or owner of the records shall certify that a true
3 and complete copy of the records requested pursuant to a
4 subpoena or patient release has been provided to the
5 department or otherwise identify those documents that have not
6 been provided.

7 Section 13. Subsection (3) of section 456.063, Florida
8 Statutes, is amended to read:

9 456.063 Sexual misconduct; disqualification for
10 license, certificate, or registration.--

11 (3) Licensed health care practitioners shall report
12 allegations of sexual misconduct to the department, regardless
13 of the practice setting in which the alleged sexual misconduct
14 occurred. Each board, or the department if there is no board,
15 may adopt rules to administer the requirements for reporting
16 allegations of sexual misconduct, including rules to determine
17 the sufficiency of the allegations.

18 Section 14. Paragraphs (d), (aa), and (bb) of
19 subsection (1) and subsection (4) of section 456.072, Florida
20 Statutes, are amended, paragraph (dd) is added to subsection
21 (1), and subsection (7) is added to that section, to read:

22 456.072 Grounds for discipline; penalties;
23 enforcement.--

24 (1) The following acts shall constitute grounds for
25 which the disciplinary actions specified in subsection (2) may
26 be taken:

27 (d) Using a Class III or a Class IV laser device or
28 product, as defined by federal regulations, without having
29 complied with the rules adopted pursuant to s. 404.24(2)
30 ~~501.122(2)~~ governing the registration of such devices.

31 (aa) Performing or attempting to perform health care

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1 | services on the wrong patient, a wrong-site procedure, a wrong
2 | procedure, or an unauthorized procedure or a procedure that is
3 | medically unnecessary or otherwise unrelated to the patient's
4 | diagnosis or medical condition. For the purposes of this
5 | paragraph, performing or attempting to perform health care
6 | services includes invasive actions taken in furtherance of the
7 | preparation of the patient, but does not include those
8 | preparations that are noninvasive.

9 | (bb) Leaving a foreign body in a patient, such as a
10 | sponge, clamp, forceps, surgical needle, or other
11 | paraphernalia commonly used in surgical, examination, or other
12 | diagnostic procedures, unless leaving the foreign body is
13 | medically indicated and documented in the patient record. For
14 | the purposes of this paragraph, it shall be legally presumed
15 | that retention of a foreign body is not in the best interest
16 | of the patient and is not within the standard of care of the
17 | profession, unless medically indicated and documented in the
18 | patient record regardless of the intent of the professional.

19 | (dd) Being terminated from an impaired practitioner
20 | program that is overseen by an impaired practitioner
21 | consultant as described in s. 456.076 for failure to comply
22 | with the terms of the monitoring or treatment contract entered
23 | into by the licensee without good cause.

24 | (4) In any addition to any other discipline imposed
25 | through final order, or citation, entered on or after July 1,
26 | 2001, that imposes a penalty or other form of discipline
27 | pursuant to this section or discipline imposed through final
28 | order, or citation, entered on or after July 1, 2001, for a
29 | violation of any practice act, the board, or the department
30 | when there is no board, shall assess costs related to the
31 | investigation and prosecution of the case, including costs

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1 associated with an attorney's time. The amount of costs to be
2 assessed shall be determined by the board, or the department
3 when there is no board, following its consideration of an
4 affidavit of itemized costs and any written objections
5 thereto. In any case where ~~the board or the department imposes~~
6 a fine or assessment of costs imposed by the board or
7 department and ~~the fine or assessment~~ is not paid within a
8 reasonable time, such reasonable time to be prescribed in the
9 rules of the board, or the department when there is no board,
10 or in the order assessing such fines or costs, the department
11 or the Department of Legal Affairs may contract for the
12 collection of, or bring a civil action to recover, the fine or
13 assessment.

14 (7) In any formal administrative hearing conducted
15 under s. 120.57(1), the department shall establish grounds for
16 revocation or suspension of a license by clear and convincing
17 evidence. Any other forms of discipline shall be established
18 by the greater weight of the evidence.

19 Section 15. Subsections (1) and (5) of section
20 456.073, Florida Statutes, are amended to read:

21 456.073 Disciplinary proceedings.--Disciplinary
22 proceedings for each board shall be within the jurisdiction of
23 the department.

24 (1) The department, for the boards under its
25 jurisdiction, shall cause to be investigated any complaint
26 that is filed before it if the complaint is in writing, signed
27 by the complainant, and legally sufficient. A complaint is
28 legally sufficient if it contains ultimate facts that show
29 that a violation of this chapter, of any of the practice acts
30 relating to the professions regulated by the department, or of
31 any rule adopted by the department or a regulatory board in

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1 the department has occurred. In order to determine legal
2 sufficiency, the department may require supporting information
3 or documentation. The department may investigate, and the
4 department or the appropriate board may take appropriate final
5 action on, a complaint even though the original complainant
6 withdraws it or otherwise indicates a desire not to cause the
7 complaint to be investigated or prosecuted to completion. The
8 department may investigate an anonymous complaint if the
9 complaint is in writing and is legally sufficient, if the
10 alleged violation of law or rules is substantial, and if the
11 department has reason to believe, after preliminary inquiry,
12 that the violations alleged in the complaint are true. The
13 department may investigate a complaint made by a confidential
14 informant if the complaint is legally sufficient, if the
15 alleged violation of law or rule is substantial, and if the
16 department has reason to believe, after preliminary inquiry,
17 that the allegations of the complainant are true. The
18 department may initiate an investigation if it has reasonable
19 cause to believe that a licensee or a group of licensees has
20 violated a Florida statute, a rule of the department, or a
21 rule of a board. ~~Except as provided in ss. 458.331(9),~~
22 ~~459.015(9), 460.413(5), and 461.013(6),~~ When an investigation
23 of any subject is undertaken, the department shall promptly
24 furnish to the subject or the subject's attorney a copy of the
25 complaint or document that resulted in the initiation of the
26 investigation. The subject may submit a written response to
27 the information contained in such complaint or document within
28 30 ~~20~~ days after service to the subject of the complaint or
29 document. The subject's written response shall be considered
30 by the probable cause panel. The right to respond does not
31 prohibit the issuance of a summary emergency order if

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1 necessary to protect the public. However, if the secretary, or
2 the secretary's designee, and the chair of the respective
3 board or the chair of its probable cause panel agree in
4 writing that such notification would be detrimental to the
5 investigation, the department may withhold notification. The
6 department may conduct an investigation without notification
7 to any subject if the act under investigation is a criminal
8 offense.

9 (5)(a) A formal hearing before an administrative law
10 judge from the Division of Administrative Hearings shall be
11 requested held pursuant to chapter 120 if there are any
12 disputed issues of material fact raised within 45 days after
13 service of the administrative complaint. ~~The administrative~~
14 ~~law judge shall issue a recommended order pursuant to chapter~~
15 ~~120. If any party raises an issue of disputed fact during an~~
16 ~~informal hearing, the hearing shall be terminated and a formal~~
17 ~~hearing pursuant to chapter 120 shall be held.~~

18 (b) Notwithstanding s. 120.569(2), the department
19 shall notify the division within 45 days after receipt of a
20 petition or request for a hearing which the department has
21 determined requires a formal hearing before an administrative
22 law judge.

23 Section 16. Section 456.077, Florida Statutes, is
24 amended to read:

25 456.077 Authority to issue citations.--

26 (1) Notwithstanding s. 456.073, the board, or the
27 department if there is no board, shall adopt rules to permit
28 the issuance of citations. The citation shall be issued to the
29 subject and shall contain the subject's name and address, the
30 subject's license number if applicable, a brief factual
31 statement, the sections of the law allegedly violated, and the

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1 penalty imposed. The citation must clearly state that the
2 subject may choose, in lieu of accepting the citation, to
3 follow the procedure under s. 456.073. If the subject disputes
4 the matter in the citation, the procedures set forth in s.
5 456.073 must be followed. However, if the subject does not
6 dispute the matter in the citation with the department within
7 30 days after the citation is served, the citation becomes a
8 public final order and does not constitute ~~constitutes~~
9 discipline for a first offense. The penalty shall be a fine or
10 other conditions as established by rule.

11 (2) The board, or the department if there is no board,
12 shall adopt rules designating violations for which a citation
13 may be issued. Such rules shall designate as citation
14 violations those violations for which there is no substantial
15 threat to the public health, safety, and welfare. Violations
16 for which a citation may be issued shall include violations of
17 continuing education requirements; failure to timely pay
18 required fees and fines; failure to comply with the
19 requirements of ss. 381.026 and 381.0261 regarding the
20 dissemination of information regarding patient rights; failure
21 to comply with advertising requirements; failure to timely
22 update practitioner profile and credentialing files; failure
23 to display signs, licenses, and permits; failure to have
24 required reference books available; and all other violations
25 that do not pose a direct and serious threat to the health and
26 safety of the patient.

27 (3) The department shall be entitled to recover the
28 costs of investigation, in addition to any penalty provided
29 according to board or department rule, as part of the penalty
30 levied pursuant to the citation.

31 ~~(4) A citation must be issued within 6 months after~~

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1 ~~the filing of the complaint that is the basis for the~~
 2 ~~citation.~~

3 ~~(4)(5)~~ Service of a citation may be made by personal
 4 service or certified mail, restricted delivery, to the subject
 5 at the subject's last known address.

6 ~~(5)(6)~~ A board has 6 months in which to enact rules
 7 designating violations and penalties appropriate for citation
 8 offenses. Failure to enact such rules gives the department
 9 exclusive authority to adopt rules as required for
 10 implementing this section. A board has continuous authority to
 11 amend its rules adopted pursuant to this section.

12 Section 17. Section 456.078, Florida Statutes, is
 13 amended to read:

14 456.078 Mediation.--

15 (1) Notwithstanding the provisions of s. 456.073, the
 16 board, or the department when there is no board, shall adopt
 17 rules to designate which violations of the applicable
 18 professional practice act are appropriate for mediation. The
 19 board, or the department when there is no board, ~~shall~~ may
 20 designate as mediation offenses those complaints where harm
 21 caused by the licensee is economic in nature, ~~except~~
 22 complaints involving fraud, or can be remedied by the
 23 licensee, or does not result in an adverse incident. For the
 24 purposes of this section, an adverse incident is defined as an
 25 event that results in:

- 26 (a) The death of a patient;
- 27 (b) Brain or spinal damage to a patient;
- 28 (c) The performance of a surgical procedure on the
 29 wrong patient;
- 30 (d) The performance of a wrong-site surgical
 31 procedure;

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1 (e) The performance of a wrong surgical procedure;

2 (f) The performance of a surgical procedure that is
 3 medically unnecessary or otherwise unrelated to the patient's
 4 diagnosis or medical condition;

5 (g) The surgical repair of damage resulting to a
 6 patient from a planned surgical procedure, where the damage is
 7 not a recognized specific risk, as disclosed to the patient
 8 and documented through the informed-consent process; or

9 (h) The performance of procedures to remove unplanned
 10 foreign objects remaining from a surgical procedure.

11 (2) After the department determines a complaint is
 12 legally sufficient and the alleged violations are defined as
 13 mediation offenses, the department or any agent of the
 14 department may conduct informal mediation to resolve the
 15 complaint. If the complainant and the subject of the complaint
 16 agree to a resolution of a complaint within 14 days after
 17 contact by the mediator, the mediator shall notify the
 18 department of the terms of the resolution. The department or
 19 board shall take no further action unless the complainant and
 20 the subject each fail to record with the department an
 21 acknowledgment of satisfaction of the terms of mediation
 22 within 60 days of the mediator's notification to the
 23 department. A successful mediation shall include a statement
 24 of whether or not the resolution constitutes discipline.

25 However, in the event the complainant and subject fail to
 26 reach settlement terms or to record the required
 27 acknowledgment, the department shall process the complaint
 28 according to the provisions of s. 456.073.

29 (3) Conduct or statements made during mediation are
 30 inadmissible in any proceeding pursuant to s. 456.073.

31 Further, any information relating to the mediation of a case

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1 shall be subject to the confidentiality provisions of s.
2 456.073.

3 (4) Any licensee who completes a successful mediation
4 shall pay the department's administrative costs for the
5 mediation. No licensee shall go through the mediation process
6 more than once if the allegation relates to the breach of the
7 standard of care for that health care professional. In any
8 event, no licensee shall go through the mediation process more
9 than three times without approval of the department. The
10 department may consider the subject and dates of the earlier
11 complaints in rendering its decision. Such decision shall not
12 be considered a final agency action for purposes of chapter
13 120.

14 (5) A board has 6 months in which to adopt rules
15 designating violations appropriate for mediation. Failure to
16 adopt such rules gives the department exclusive authority to
17 adopt rules as required for implementing this section ~~Any~~
18 ~~board created on or after January 1, 1995, shall have 6 months~~
19 ~~to adopt rules designating which violations are appropriate~~
20 ~~for mediation, after which time the department shall have~~
21 ~~exclusive authority to adopt rules pursuant to this section.~~ A
22 board shall have continuing authority to amend its rules
23 adopted pursuant to this section.

24
25 (Redesignate subsequent sections.)
26
27

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

29 And the title is amended as follows:

30 On page 1, line 26, through
31 page 3, line 6, delete those lines

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1 and insert:

2 456.0375, F.S.; providing an exemption from
3 registration for community college and
4 university clinics; providing a distinction
5 between supervision of administrative services
6 and supervision of health care delivery
7 services; providing an exemption from
8 registration for clinical facilities where
9 training is provided by certain medical
10 schools; amending s. 456.039, F.S.; deleting a
11 cross-reference; amending s. 456.041, F.S.;
12 revising certain requirements concerning
13 information on paid claims which is included in
14 the practitioner profile; amending s. 456.049,
15 F.S.; specifying the amount of final
16 professional liability claims to be reported
17 for physicians and dentists; amending s.
18 456.057, F.S.; specifying certain circumstances
19 under which a patient release for the
20 furnishing of records is not required;
21 authorizing the department to obtain records
22 pursuant to subpoena; requiring the
23 certification of certain records; amending s.
24 456.063, F.S.; providing professional
25 regulatory boards, or the Department of Health
26 if there is no board, rulemaking authority for
27 reporting allegations of sexual misconduct;
28 amending s. 456.072, F.S.; clarifying grounds
29 for discipline for performing or attempting to
30 perform health care services on the wrong
31 patient or that are otherwise wrong or

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1 unnecessary or leaving a foreign body in the
2 patient; providing for discipline for being
3 terminated from an impaired practitioner
4 program for failing to comply with the terms of
5 a treatment contract; providing for additional
6 costs to be assessed as part of any penalty or
7 other form of discipline; requiring clear and
8 convincing evidence to revoke or suspend a
9 license and the greater weight of the evidence
10 for other forms of discipline; conforming a
11 cross-reference; amending s. 456.073, F.S.;
12 extending the time within which the subject of
13 an investigation may submit a written response
14 to the information in the complaint or other
15 documentation; requiring the Department of
16 Health to give 45 days' notice to the Division
17 of Administrative Hearings when a hearing is
18 needed; amending s. 456.077, F.S.; providing
19 that citations for first offenses do not
20 constitute discipline; deleting the required
21 period for issuing a citation; amending s.
22 456.078, F.S.; requiring designation of certain
23 violations as appropriate for mediation;
24 excluding certain violations from mediation;
25 requiring successful mediation to include a
26 statement of whether or not the resolution
27 constitutes discipline; requiring payment for
28 the administrative costs of mediation;
29 prohibiting mediation more than once involving
30 a breach of the standard of care for health
31 care professionals; providing rulemaking

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authority;