

1 A bill to be entitled
2 An act relating to health care; creating s.
3 381.0409, F.S.; providing that creation of the
4 Florida Center for Excellence in Health Care is
5 contingent on the enactment of a public-records
6 exemption; creating the Florida Center for
7 Excellence in Health Care; providing goals and
8 duties of the center; providing definitions;
9 providing limitations on the center's liability
10 for any lawful actions taken; requiring the
11 center to issue patient safety recommendations;
12 requiring the development of a statewide
13 electronic infrastructure to improve patient
14 care and the delivery and quality of health
15 care services; providing requirements for
16 development of a core electronic medical
17 record; authorizing access to the electronic
18 medical records and other data maintained by
19 the center; providing for the use of
20 computerized physician medication ordering
21 systems; providing for the establishment of a
22 simulation center for high technology
23 intervention surgery and intensive care;
24 providing for the immunity of specified
25 information in adverse incident reports from
26 discovery or admissibility in civil or
27 administrative actions; providing limitations
28 on liability of specified health care
29 practitioners and facilities under specified
30 conditions; providing requirements for the
31 appointment of a board of directors for the

1 center; establishing a mechanism for financing
2 the center through the assessment of specified
3 fees; requiring the Florida Center for
4 Excellence in Health Care to develop a business
5 and financing plan; authorizing state agencies
6 to contract with the center for specified
7 projects; authorizing the use of center funds
8 and the use of state purchasing and travel
9 contracts for the center; requiring the center
10 to submit an annual report and providing
11 requirements for the annual report; providing
12 for the center's books, records, and audits to
13 be open to the public; requiring the center to
14 annually furnish an audited report to the
15 Governor and Legislature; creating s. 395.1012,
16 F.S.; requiring facilities to adopt a patient
17 safety plan; providing requirements for a
18 patient safety plan; requiring facilities to
19 appoint a patient safety officer and a patient
20 safety committee and providing duties for the
21 patient safety officer and committee; amending
22 s. 395.004, F.S., relating to licensure of
23 certain health care facilities; providing for
24 discounted medical liability insurance based on
25 certification of programs that reduce adverse
26 incidents; requiring the Office of Insurance
27 Regulation to consider certain information in
28 reviewing discounted rates; amending s.
29 766.106, F.S.; providing that the claimant must
30 also provide the Agency for Health Care
31 Administration with a copy of a complaint

1 alleging medical malpractice after filing a
2 complaint; requiring the Agency for Health Care
3 Administration to review such complaints for
4 licensure noncompliance; creating s. 395.0056,
5 F.S.; requiring the Agency for Health Care
6 Administration to review complaints submitted
7 if the defendant is a hospital; amending s.
8 395.0193, F.S., relating to peer review and
9 disciplinary actions; providing for discipline
10 of a physician for mental or physical abuse of
11 staff; limiting liability of certain
12 participants in certain disciplinary actions at
13 a licensed facility; providing that a
14 defendant's monetary liability shall not exceed
15 \$250,000 on any action brought under this
16 section; amending s. 395.0197, F.S., relating
17 to internal risk management programs; requiring
18 a system for notifying patients that they are
19 victims of an adverse incident; requiring risk
20 managers or their designees to give notice;
21 requiring licensed facilities to annually
22 report certain information about health care
23 practitioners for whom they assume liability;
24 requiring the Agency for Health Care
25 Administration and the Department of Health to
26 annually publish statistics about licensed
27 facilities that assume liability for health
28 care practitioners; requiring a licensed
29 facility at which sexual abuse occurs to offer
30 testing for sexually transmitted disease at no
31 cost to the victim; amending s. 456.025, F.S.;

1 eliminating certain restrictions on the setting
2 of licensure renewal fees for health care
3 practitioners; directing the Agency for Health
4 Care Administration to conduct or contract for
5 a study to determine what information to
6 provide to the public comparing hospitals,
7 based on inpatient quality indicators developed
8 by the federal Agency for Healthcare Research
9 and Quality; creating s. 395.1051, F.S.;
10 requiring certain facilities to notify patients
11 about adverse incidents under specified
12 conditions; creating s. 456.0575, F.S.;
13 requiring licensed healthcare practitioners to
14 notify patients about adverse incidents under
15 certain conditions; amending s. 456.026, F.S.,
16 relating to an annual report published by the
17 Department of Health; requiring that the
18 department publish the report to its website;
19 requiring the department to include certain
20 detailed information; amending s. 456.041,
21 F.S., relating to practitioner profiles;
22 requiring the Department of Health to compile
23 certain specified information in a practitioner
24 profile; deleting provisions that provide that
25 a profile need not indicate whether a criminal
26 history check was performed to corroborate
27 information in the profile; authorizing the
28 department or regulatory board to investigate
29 any information received; requiring the
30 department to provide a narrative explanation,
31 in plain English, concerning final disciplinary

1 action taken against a practitioner; requiring
2 a hyperlink to each final order on the
3 department's website which provides information
4 about disciplinary actions; requiring the
5 department to provide a hyperlink to certain
6 comparison reports pertaining to claims
7 experience; requiring the department to include
8 the date that a reported disciplinary action
9 was taken by a licensed facility and a
10 characterization of the practitioner's conduct
11 that resulted in the action; deleting
12 provisions requiring the department to consult
13 with a regulatory board before including
14 certain information in a health care
15 practitioner's profile; providing for a penalty
16 for failure to comply with the timeframe for
17 verifying and correcting a practitioner
18 profile; requiring the department to add a
19 statement to a practitioner profile when the
20 profile information has not been verified by
21 the practitioner; requiring the department to
22 provide, in the practitioner profile, an
23 explanation of disciplinary action taken and
24 the reason for sanctions imposed; requiring the
25 department to include a hyperlink to a
26 practitioner's website when requested;
27 providing that practitioners licensed under ch.
28 458 or ch. 459, F.S. shall have claim
29 information concerning an indemnity payment
30 greater than \$100,000 posted in the
31 practitioner profile; amending s. 456.042,

1 F.S.; providing for the update of practitioner
2 profiles; designating a timeframe within which
3 a practitioner must submit new information to
4 update his or her profile; amending s. 456.049,
5 F.S., relating to practitioner reports on
6 professional liability claims and actions;
7 deleting a requirement that a practitioner
8 report only if the claim or action was not
9 covered by an insurer that is required to
10 report; amending s. 456.051, F.S.; establishing
11 the responsibility of the Department of Health
12 to provide reports of professional liability
13 actions and bankruptcies; requiring the
14 department to include such reports in a
15 practitioner's profile within a specified
16 period; amending s. 458.320, F.S., relating to
17 financial responsibility requirements for
18 medical physicians; requiring the department to
19 suspend the license of a medical physician who
20 has not paid, up to the amounts required by any
21 applicable financial responsibility provision,
22 any outstanding judgment, arbitration award,
23 other order, or settlement; amending s.
24 459.0085, F.S., relating to financial
25 responsibility requirements for osteopathic
26 physicians; requiring that the department
27 suspend the license of an osteopathic physician
28 who has not paid, up to the amounts required by
29 any applicable financial responsibility
30 provision, any outstanding judgment,
31 arbitration award, other order, or settlement;

1 providing civil immunity for certain
2 participants in quality improvement processes;
3 defining the terms "patient safety data" and
4 "patient safety organization"; providing for
5 use of patient safety data by patient safety
6 organization; providing limitations on use of
7 patient safety data; providing for protection
8 of patient-identifying information; providing
9 for determination of whether privilege applies
10 as asserted; providing that an employer may not
11 take retaliatory action against an employee who
12 makes a good-faith report concerning patient
13 safety data; requiring that a specific
14 statement be included in each final settlement
15 statement relating to medical malpractice
16 actions; providing requirements for the closed
17 claim form of the Office of Insurance
18 Regulation; requiring the Office of Insurance
19 Regulation to compile annual statistical
20 reports pertaining to closed claims; requiring
21 historical statistical summaries; specifying
22 certain information to be included on the
23 closed claim form; amending s. 456.039, F.S.;
24 amending the information required to be
25 furnished to the Department of Health for
26 licensure purposes; amending s. 456.057, F.S.;
27 allowing the department to obtain patient
28 records by subpoena without the patient's
29 written authorization, in specified
30 circumstances; amending s. 456.063, F.S.;
31 providing for adopting rules to implement

1 requirements for reporting allegations of
2 sexual misconduct; authorizing health care
3 practitioner regulatory boards to adopt rules
4 to establish standards of practice for
5 prescribing drugs to patients via the Internet;
6 amending s. 456.072, F.S.; providing for
7 determining the amount of any costs to be
8 assessed in a disciplinary proceeding;
9 prescribing the standard of proof in certain
10 disciplinary proceedings; amending s. 456.073,
11 F.S.; authorizing the Department of Health to
12 investigate certain paid claims made on behalf
13 of practitioners licensed under ch. 458 or ch.
14 459, F.S.; amending procedures for certain
15 disciplinary proceedings; providing a deadline
16 for raising issues of material fact; providing
17 a deadline relating to notice of receipt of a
18 request for a formal hearing; amending s.
19 456.077, F.S.; providing a presumption related
20 to an undisputed citation; amending s. 456.078,
21 F.S.; revising standards for determining which
22 violations of the applicable professional
23 practice act are appropriate for mediation;
24 amending s. 458.331, F.S., relating to grounds
25 for disciplinary action of a physician;
26 redefining the term "repeated malpractice";
27 revising the standards for the burden of proof
28 in an administrative action against a
29 physician; revising the minimum amount of a
30 claim against a licensee which will trigger a
31 departmental investigation; amending s.

1 459.015, F.S., relating to grounds for
2 disciplinary action against an osteopathic
3 physician; redefining the term "repeated
4 malpractice"; revising the standards for the
5 burden of proof in an administrative action
6 against an osteopathic physician; amending
7 conditions that necessitate a departmental
8 investigation of an osteopathic physician;
9 revising the minimum amount of a claim against
10 a licensee which will trigger a departmental
11 investigation; amending s. 461.013, F.S.,
12 relating to grounds for disciplinary action
13 against a podiatric physician; redefining the
14 term "repeated malpractice"; amending the
15 minimum amount of a claim against such a
16 physician which will trigger a department
17 investigation; amending s. 466.028, F.S.,
18 relating to grounds for disciplinary action
19 against a dentist or a dental hygienist;
20 redefining the term "dental malpractice";
21 revising the minimum amount of a claim against
22 a dentist which will trigger a departmental
23 investigation; amending s. 627.912, F.S.;
24 amending provisions prescribing conditions
25 under which insurers must file certain reports
26 with the Department of Insurance; requiring the
27 Office of Program Policy Analysis and
28 Government Accountability and the Office of the
29 Auditor General to conduct an audit, as
30 specified, and to report to the Legislature;
31 creating ss. 1004.08, 1005.07, F.S.; requiring

1 schools, colleges, and universities to include
2 material on patient safety in their curricula
3 if the institution awards specified degrees;
4 creating a workgroup to study the health care
5 practitioner disciplinary process; providing
6 for workgroup membership; providing that the
7 workgroup deliver its report by January 1,
8 2004; providing for severability; providing
9 appropriations and authorizing positions;
10 providing an effective date.

11
12 Be It Enacted by the Legislature of the State of Florida:

13
14 Section 1. Effective upon this act becoming law if CS
15 for SB 566 or similar legislation is adopted in the same
16 legislative session or an extension thereof and becomes law,
17 section 381.0409, Florida Statutes, is created to read:

18 381.0409 Florida Center for Excellence in Health
19 Care.--There is created the Florida Center for Excellence in
20 Health Care which shall be responsible for performing
21 activities and functions that are designed to improve the
22 quality of health care delivered by health care facilities and
23 health care practitioners. The principal goals of the center
24 are to improve health care quality and patient safety. The
25 long-term goal is to improve diagnostic and treatment
26 decisions, thus further improving quality.

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

28 (a) "Center" means the Center for Excellence in Health
29 Care.

30 (b) "Health care practitioner" means any person as
31 defined under s. 456.001(4).

1 (c) "Health care facility" means any facility licensed
2 under chapter 395.

3 (d) "Health research entity" means any university or
4 academic health center engaged in research designed to
5 improve, prevent, diagnose, or treat diseases or medical
6 conditions or an entity that receives state or federal funds
7 for such research.

8 (e) "Patient safety data" means any data, reports,
9 records, memoranda, or analyses of patient safety events and
10 adverse incidents reported by a licensed facility pursuant to
11 s. 395.0197 which are submitted to the Florida Center for
12 Health Care Excellence or the corrective actions taken in
13 response to such patient safety events or adverse incidents.

14 (f) "Patient safety event" means an event over which
15 health care personnel could exercise control and which is
16 associated in whole or in part with medical intervention,
17 rather than the condition for which such intervention
18 occurred, and which could have resulted, but did not result in
19 serious patient injury or death.

20 (2) The center shall, either directly or by contract:

21 (a) Analyze patient safety data for the purpose of
22 recommending changes in practices and procedures which may be
23 implemented by health care practitioners and health care
24 facilities to prevent future adverse incidents.

25 (b) Collect, analyze, and evaluate patient safety data
26 submitted voluntarily by a health care practitioner or health
27 care facility. The center shall recommend to health care
28 practitioners and health care facilities changes in practices
29 and procedures that may be implemented for the purpose of
30 improving patient safety and preventing patient safety events.

31

1 (c) Foster the development of a statewide electronic
2 infrastructure, which may be implemented in phases over a
3 multiyear period, that is designed to improve patient care and
4 the delivery and quality of health care services by health
5 care facilities and practitioners. The electronic
6 infrastructure shall be a secure platform for communication
7 and the sharing of clinical and other data, such as business
8 data, among providers and between patients and providers. The
9 electronic infrastructure shall include a "core" electronic
10 medical record. Health care practitioners and health care
11 facilities shall have access to individual electronic medical
12 records subject to the consent of the individual. Health
13 insurers licensed under chapter 627 or chapter 641 shall have
14 access to the electronic medical records of their policy
15 holders and, subject to the provisions of s. 381.04091, to
16 other data if such access is for the sole purpose of
17 conducting research to identify diagnostic tests and
18 treatments that are medically effective. Health research
19 entities shall have access to the electronic medical records
20 of individuals subject to the consent of the individual and
21 subject to the provisions of s. 381.04091 and to other data if
22 such access is for the sole purpose of conducting research to
23 identify diagnostic tests and treatments that are medically
24 effective.

25 (d) Inventory hospitals to determine the current
26 status of implementation of computerized physician medication
27 ordering systems and recommend a plan for expediting
28 implementation statewide or, in hospitals where the center
29 determines that implementation of such systems is not
30 practicable, alternative methods to reduce medication errors.
31 The center shall identify in its plan any barriers to

1 statewide implementation and shall include recommendations to
2 the Legislature of statutory changes that may be necessary to
3 eliminate those barriers.

4 (e) Establish a simulation center for high technology
5 intervention surgery and intensive care for use by all
6 hospitals.

7 (f) Identify best practices and share this information
8 with health care providers.

9
10 Nothing in this section shall serve to limit the scope of
11 services provided by the center with regard to engaging in
12 other activities that improve health care quality, improve the
13 diagnosis and treatment of diseases and medical conditions,
14 increase the efficiency of the delivery of health care
15 services, increase administrative efficiency, and increase
16 access to quality health care services.

17 (3) Notwithstanding s. 381.04091, the center may
18 release deidentified information contained in patient safety
19 data to any health care practitioner or health care facility
20 when recommending changes in practices and procedures which
21 may be implemented by such practitioner or facility to prevent
22 patient safety events or adverse incidents.

23 (4) All information related to adverse incident
24 reports and all patient safety data submitted to or received
25 by the center shall not be subject to discovery or
26 introduction into evidence in any civil or administrative
27 action. Individuals in attendance at meetings held for the
28 purpose of discussing information related to adverse incidents
29 and patient safety data and meetings held to formulate
30 recommendations to prevent future adverse incidents or patient
31 safety events may not be permitted or required to testify in

1 any civil or administrative action related to such events.
2 There shall be no liability on the part of, and no cause of
3 action of any nature shall arise against, any employee or
4 agent of the center for any lawful action taken by such
5 individual in advising health practitioners or health care
6 facilities with regard to carrying out their duties under this
7 section. There shall be no liability on the part of, and no
8 cause of action of any nature shall arise against, a health
9 care practitioner or health care facility, its agents, or
10 employees, when it acts in reliance on any advice or
11 information provided by the center.

12 (5) The center shall be a nonprofit corporation
13 registered, incorporated, organized, and operated in
14 compliance with chapter 617, and shall have all powers
15 necessary to carry out the purposes of this section,
16 including, but not limited to, the power to receive and accept
17 from any source contributions of money, property, labor, or
18 any other thing of value, to be held, used, and applied for
19 the purpose of this section.

20 (6) The center shall:

21 1. Be designed and operated by an individual or entity
22 with demonstrated expertise in health care quality data and
23 systems analysis, health information management, systems
24 thinking and analysis, human factors analysis, and
25 identification of latent and active errors.

26 2. Include procedures for ensuring the confidentiality
27 of data which are consistent with state and federal law.

28 (7) The center shall be governed by a 10-member board
29 of directors appointed by the Governor.

30 (a) The Governor shall appoint two members
31 representing hospitals, one member representing physicians,

1 one member representing nurses, one member representing health
2 insurance indemnity plans, one member representing health
3 maintenance organizations, one member representing business,
4 and one member representing consumers. The Governor shall
5 appoint members for a 2-year term. Such members shall serve
6 until their successors are appointed. Members are eligible to
7 be reappointed for additional terms.

8 (b) The Secretary of Health or his or her designee
9 shall be a member of the board.

10 (c) The Secretary of Health Care Administration or his
11 or her designee shall be a member of the board.

12 (d) The members shall elect a chairperson.

13 (e) Board members shall serve without compensation but
14 may be reimbursed for travel expenses pursuant to s. 112.061.

15 (8) The center shall be financed as follows:

16 (a) Notwithstanding any law to the contrary, each
17 health insurer issued a certificate of authority under part
18 VI, part VII, or part VIII of chapter 627 shall, as a
19 condition of maintaining such certificate, make payment to the
20 center on April 1 of each year, in the amount of \$1 for each
21 individual included in every insurance policy issued during
22 the previous calendar year. Accompanying any payment shall be
23 a certification under oath by the chief executive officer that
24 states the number of individuals that such payment was based
25 on. The health insurer may collect this \$1 from policyholders.
26 The center may direct the insurer to provide an independent
27 audit of the certification that shall be furnished within 90
28 days. If payment is not received by the center within 30 days
29 after April 1, interest at the annualized rate of 18 percent
30 shall begin to be charged on the amount due. If payment has
31 not been received within 60 days after interest is charged,

1 the center shall notify the Office of Insurance Regulation
2 that payment has not been received pursuant to the
3 requirements of this paragraph. An insurer that refuses to
4 comply with the requirements of this paragraph is subject to
5 the forfeiture of its certificate of authority.

6 (b) Notwithstanding any law to the contrary, each
7 health maintenance organization issued a certificate of
8 authority under part I of chapter 641 and each prepaid clinic
9 issued a certificate of authority under part II of chapter 641
10 shall, as a condition of maintaining such certificate, make
11 payment to the center on April 1 of each year, in the amount
12 of \$1 for each individual who is eligible to receive services
13 pursuant to a contract with the health maintenance
14 organization or the prepaid clinic during the previous
15 calendar year. Accompanying any payment shall be a
16 certification under oath by the chief executive officer that
17 states the number of individuals that such payment was based
18 on. The health maintenance organization or prepaid clinic may
19 collect the \$1 from individuals eligible to receive services
20 under contract. The center may direct the health maintenance
21 organization or prepaid clinic to provide an independent audit
22 of the certification that shall be furnished within 90 days.
23 If payment is not received by the center within 30 days after
24 April 1, interest at the annualized rate of 18 percent shall
25 begin to be charged on the amount due. If payment has not been
26 received within 60 days after interest is charged, the center
27 shall notify the Department of Financial Services that payment
28 has not been received pursuant to the requirements of this
29 paragraph. A health maintenance organization or prepaid clinic
30 that refuses to comply with the requirements of this paragraph
31 is subject to the forfeiture of its certificate of authority.

1 (c) Notwithstanding any law to the contrary, each
2 hospital and ambulatory surgical center licensed under chapter
3 395 shall, as a condition of licensure, make payment to the
4 center on April 1 of each year, in the amount of \$1 for each
5 individual during the previous 12 months who was an inpatient
6 discharged by the hospital or who was a patient in the
7 ambulatory surgical center. Accompanying payment shall be a
8 certification under oath by the chief executive officer that
9 states the number of individuals that such payment was based
10 on. The facility may collect the \$1 from patients discharged
11 from the facility. The center may direct the facility to
12 provide an independent audit of the certification that shall
13 be furnished within 90 days. If payment is not received by the
14 center within 30 days after April 1, interest at the
15 annualized rate of 18 percent shall begin to be charged on the
16 amount due. If payment has not been received within 60 days
17 after interest is charged, the center shall notify the Agency
18 for Health Care Administration that payment has not been
19 received pursuant to the requirements of this paragraph. An
20 entity that refuses to comply with the requirements of this
21 paragraph is subject to the forfeiture of its license.

22 (d) Notwithstanding any law to the contrary, each
23 nursing home licensed under part II of chapter 400, each
24 assisted living facility licensed under part III of chapter
25 400, each home health agency licensed under part IV of chapter
26 400, each hospice licensed under part VI of chapter 400, each
27 prescribed pediatric extended care center licensed under part
28 IX of chapter 400, and each health care services pool licensed
29 under part XII of chapter 400 shall, as a condition of
30 licensure, make payment to the center on April 1 of each year,
31 in the amount of \$1 for each individual served by each

1 aforementioned entity during the previous 12 months.
2 Accompanying payment shall be a certification under oath by
3 the chief executive officer that states the number of
4 individuals that such payment was based on. The entity may
5 collect the \$1 from individuals served by the entity. The
6 center may direct the entity to provide an independent audit
7 of the certification that shall be furnished within 90 days.
8 If payment is not received by the center within 30 days after
9 April 1, interest at the annualized rate of 18 percent shall
10 begin to be charged on the amount due. If payment has not been
11 received within 60 days after interest is charged, the center
12 shall notify the Agency for Health Care Administration that
13 payment has not been received pursuant to the requirements of
14 this paragraph. An entity that refuses to comply with the
15 requirements of this paragraph is subject to the forfeiture of
16 its license.

17 (e) Notwithstanding any law to the contrary, each
18 initial application and renewal fee for each license and each
19 fee for certification or recertification for each person
20 licensed or certified under chapter 401 or chapter 404, and
21 for each person licensed as a health care practitioner defined
22 in s. 456.001(4), shall be increased by the amount of \$1 for
23 each year for which the license or certification is issued.
24 The Department of Health shall make payment to the center on
25 April 1 of each year in the amount of the total received
26 pursuant to this paragraph during the preceding 12 months.

27 (f) The center shall develop a business and financing
28 plan to obtain funds through other means if funds beyond those
29 that are provided for in this subsection are needed to
30 accomplish the objectives of the center.

31

1 (9) The center may enter into affiliations with
2 universities for any purpose.

3 (10) Pursuant to s. 287.057(5)(f)6., state agencies
4 may contract with the center on a sole source basis for
5 projects to improve the quality of program administration,
6 such as, but not limited to, the implementation of an
7 electronic medical record for Medicaid program recipients.

8 (11) All travel and per diem paid with center funds
9 shall be in accordance with s. 112.061.

10 (12) The center may use state purchasing and travel
11 contracts and the state communications system in accordance
12 with s. 282.105(3).

13 (13) The center may acquire, enjoy, use, and dispose
14 of patents, copyrights, trademarks and any licenses,
15 royalties, and other rights or interests thereunder or
16 therein.

17 (14) The center shall submit an annual report to the
18 Governor, the President of the Senate, and the Speaker of the
19 House of Representatives no later than October 1 of each year
20 which includes:

21 (a) The status report on the implementation of a
22 program to analyze data concerning adverse incidents and
23 patient safety events.

24 (b) The status report on the implementation of a
25 computerized physician medication ordering system.

26 (c) The status report on the implementation of an
27 electronic medical record.

28 (d) Other pertinent information relating to the
29 efforts of the center to improve health care quality and
30 efficiency.

31 (e) A financial statement and balance sheet.

1
2 The initial report shall include any recommendations that the
3 center deems appropriate regarding revisions in the definition
4 of adverse incidents in s. 395.0197 and the reporting of such
5 adverse incidents by licensed facilities.

6 (15) The center may establish and manage an operating
7 fund for the purposes of addressing the center's cash-flow
8 needs and facilitating the fiscal management of the
9 corporation. Upon dissolution of the corporation, any
10 remaining cash balances of any state funds shall revert to the
11 General Revenue Fund, or such other state funds consistent
12 with appropriated funding, as provided by law.

13 (16) The center may carry over funds from year to
14 year.

15 (17) All books, records, and audits of the center
16 shall be open to the public unless exempted by law.

17 (18) The center shall furnish an annual audited report
18 to the Governor and Legislature by March 1 of each year.

19 (19) In carrying out this section, the center shall
20 consult with and develop partnerships, as appropriate, with
21 all segments of the health care industry, including, among
22 others, health practitioners, health care facilities, health
23 care consumers, professional organizations, agencies, health
24 care practitioner licensing boards, and educational
25 institutions.

26 Section 2. Section 395.1012, Florida Statutes, is
27 created to read:

28 395.1012 Patient safety.--

29 (1) Each licensed facility must adopt a patient safety
30 plan. A plan adopted to implement the requirements of 42 CFR
31 482.21 shall be deemed to comply with this requirement.

1 (2) Each licensed facility shall appoint a patient
2 safety officer and a patient safety committee, which shall
3 include at least one person who is neither employed by nor
4 practicing in the facility, for the purpose of promoting the
5 health and safety of patients, reviewing and evaluating the
6 quality of patient safety measures used by the facility, and
7 for assisting in the implementation of the facility patient
8 safety plan.

9 Section 3. Subsection (3) is added to section 395.004,
10 Florida Statutes, to read:

11 395.004 Application for license, fees; expenses.--

12 (3) A licensed facility may apply to the agency for
13 certification of a quality improvement program that results in
14 the reduction of adverse incidents at that facility. The
15 agency, in consultation with the Office of Insurance
16 Regulation, shall develop criteria for such certification.
17 Insurers shall file with the Office of Insurance Regulation a
18 discount in the rate or rates applicable for medical liability
19 insurance coverage to reflect the implementation of a
20 certified program. In reviewing insurance company filings with
21 respect to rate discounts authorized under this subsection,
22 the Office of Insurance Regulation shall consider whether, and
23 the extent to which, the program certified under this
24 subsection is otherwise covered under a program of risk
25 management offered by an insurance company or self-insurance
26 plan providing medical liability coverage.

27 Section 4. Subsection (2) of section 766.106, Florida
28 Statutes, is amended to read:

29 766.106 Notice before filing action for medical
30 malpractice; presuit screening period; offers for admission of
31 liability and for arbitration; informal discovery; review.--

1 (2) After completion of presuit investigation pursuant
2 to s. 766.203 and prior to filing a claim for medical
3 malpractice, a claimant shall notify each prospective
4 defendant by certified mail, return receipt requested, of
5 intent to initiate litigation for medical malpractice.
6 Following the initiation of a suit alleging medical
7 malpractice with a court of competent jurisdiction, and
8 service of the complaint upon a defendant, the claimant shall
9 provide a copy of the complaint to the Department of Health
10 and, if the complaint involves a facility licensed under
11 chapter 395, the Agency for Health Care Administration. The
12 requirement of providing the complaint to the Department of
13 Health or the Agency for Health Care Administration does not
14 impair the claimant's legal rights or ability to seek relief
15 for his or her claim. The Department of Health or the Agency
16 for Health Care Administration shall review each incident that
17 is the subject of the complaint and determine whether it
18 involved conduct by a licensee which is potentially subject to
19 disciplinary action, in which case the provisions of s.
20 456.073 or s. 395.1046 apply.

21 Section 5. Section 395.0056, Florida Statutes, is
22 created to read:

23 395.0056 Litigation notice requirement.--Upon receipt
24 of a copy of a complaint filed against a hospital as a
25 defendant in a medical malpractice action as required by s.
26 766.106(2), the agency shall:

27 (1) Review its adverse incident report files
28 pertaining to the licensed facility that is the subject of the
29 complaint to determine whether the facility timely complied
30 with the requirements of s. 395.0197; and

31

1 (2) Review the incident that is the subject of the
2 complaint and determine whether it involved conduct by a
3 licensee which is potentially subject to disciplinary action.

4 Section 6. Subsections (3) and (9) of section
5 395.0193, Florida Statutes, are amended to read:

6 395.0193 Licensed facilities; peer review;
7 disciplinary powers; agency or partnership with physicians.--

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

20 (a) Incompetence.

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

24 (c) Mental or physical impairment which may adversely
25 affect patient care.

26 (d) Mental or physical abuse of a nurse or other staff
27 member.

28 (e)~~(d)~~ Being found liable by a court of competent
29 jurisdiction for medical negligence or malpractice involving
30 negligent conduct.

31

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

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

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

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

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

25 Section 7. Subsections (1), (3), and (8) of section
26 395.0197, Florida Statutes, are amended, present subsections
27 (12) through (20) of that section are redesignated as
28 subsections (13) through (21), respectively, and a new
29 subsection (12) is added to that section, to read:

30 395.0197 Internal risk management program.--
31

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

5 (a) The investigation and analysis of the frequency
6 and causes of general categories and specific types of adverse
7 incidents to patients.

8 (b) The development of appropriate measures to
9 minimize the risk of adverse incidents to patients, including,
10 but not limited to:

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

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

15 b. At least 1 hour of such education and training
16 annually for all personnel of the licensed facility working in
17 clinical areas and providing patient care, except those
18 persons licensed as health care practitioners who are required
19 to complete continuing education coursework pursuant to
20 chapter 456 or the respective practice act.

21 2. A prohibition, except when emergency circumstances
22 require otherwise, against a staff member of the licensed
23 facility attending a patient in the recovery room, unless the
24 staff member is authorized to attend the patient in the
25 recovery room and is in the company of at least one other
26 person. However, a licensed facility is exempt from the
27 two-person requirement if it has:

28 a. Live visual observation;

29 b. Electronic observation; or

30 c. Any other reasonable measure taken to ensure
31 patient protection and privacy.

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

8 4. Development, implementation, and ongoing evaluation
9 of procedures, protocols, and systems to accurately identify
10 patients, planned procedures, and the correct site of the
11 planned procedure so as to minimize the performance of a
12 surgical procedure on the wrong patient, a wrong surgical
13 procedure, a wrong-site surgical procedure, or a surgical
14 procedure otherwise unrelated to the patient's diagnosis or
15 medical condition.

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

18 (d) A system for informing a patient or an individual
19 identified pursuant to s. 765.401(1) that the patient was the
20 subject of an adverse incident, as defined in subsection (5).
21 Such notice shall be given by the risk manager, or his or her
22 designee, as soon as practicable to allow the patient an
23 opportunity to minimize damage or injury.

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

30 (3) In addition to the programs mandated by this
31 section, other innovative approaches intended to reduce the

1 frequency and severity of medical malpractice and patient
2 injury claims shall be encouraged and their implementation and
3 operation facilitated. Such additional approaches may include
4 extending internal risk management programs to health care
5 providers' offices and the assuming of provider liability by a
6 licensed health care facility for acts or omissions occurring
7 within the licensed facility. Each licensed facility shall
8 annually report to the agency and the Department of Health the
9 name and judgments entered against each health care
10 practitioner for which it assumes liability. The agency and
11 Department of Health, in their respective annual reports,
12 shall include statistics that report the number of licensed
13 facilities that assume such liability and the number of health
14 care practitioners, by profession, for whom they assume
15 liability.

16 (8) Any of the following adverse incidents, whether
17 occurring in the licensed facility or arising from health care
18 prior to admission in the licensed facility, shall be reported
19 by the facility to the agency within 15 calendar days after
20 its occurrence:

21 (a) The death of a patient;

22 (b) Brain or spinal damage to a patient;

23 (c) The performance of a surgical procedure on the
24 wrong patient;

25 (d) The performance of a wrong-site surgical
26 procedure;

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

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

31

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

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

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

1 ambulatory surgical centers shall be forwarded to the Center
2 for Health Care Excellence, as defined in s. 381.0409, for
3 analysis by experts who may make recommendations regarding the
4 prevention of such incidents. Such information shall remain
5 confidential as otherwise provided by law.

6 (12) If appropriate, a licensed facility in which
7 sexual abuse occurs must offer the victim of sexual abuse
8 testing for sexually transmissible diseases and shall provide
9 all such testing at no cost to the victim.

10 Section 8. Subsection (1) of section 456.025, Florida
11 Statutes, is amended to read:

12 456.025 Fees; receipts; disposition.--

13 (1) It is the intent of the Legislature that all costs
14 of regulating health care professions and practitioners shall
15 be borne solely by licensees and licensure applicants. It is
16 also the intent of the Legislature that fees should be
17 reasonable and not serve as a barrier to licensure. Moreover,
18 it is the intent of the Legislature that the department
19 operate as efficiently as possible and regularly report to the
20 Legislature additional methods to streamline operational
21 costs. Therefore, the boards in consultation with the
22 department, or the department if there is no board, shall, by
23 rule, set renewal fees which:

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

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

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

31

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

3 (e) Shall be similar to fees imposed on similar
4 licensure types; and

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

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

10 (f)(h) Shall be subject to challenge pursuant to
11 chapter 120.

12 Section 9. (1) The Agency for Health Care
13 Administration shall conduct or contract for a study to
14 determine what information is most feasible to provide to the
15 public comparing state-licensed hospitals on certain inpatient
16 quality indicators developed by the federal Agency for
17 Healthcare Research and Quality. Such indicators shall be
18 designed to identify information about specific procedures
19 performed in hospitals for which there is strong evidence of a
20 link to quality of care. The Agency for Health Care
21 Administration or the study contractor shall refer to the
22 hospital quality reports published in New York and Texas as
23 guides during the evaluation.

24 (2) The following concepts shall be specifically
25 addressed in the study report:

26 (a) Whether hospital discharge data about services can
27 be translated into understandable and meaningful information
28 for the public.

29 (b) Whether the following measures are useful consumer
30 guides relating to care provided in state-licensed hospitals:

31 1. Inpatient mortality for medical conditions;

- 1 2. Inpatient mortality for procedures;
2 3. Utilization of procedures for which there are
3 questions of overuse, underuse, or misuse; and
4 4. Volume of procedures for which there is evidence
5 that a higher volume of procedures is associated with lower
6 mortality.
7 (c) Whether there are quality indicators that are
8 particularly useful relative to the state's unique
9 demographics.
10 (d) Whether all hospitals should be included in the
11 comparison.
12 (e) The criteria for comparison.
13 (f) Whether comparisons are best within metropolitan
14 statistical areas or some other geographic configuration.
15 (g) Identify several websites to which such a report
16 should be published to achieve the broadest dissemination of
17 the information.
18 (3) The Agency for Health Care Administration shall
19 consider the input of all interested parties, including
20 hospitals, physicians, consumer organizations, and patients,
21 and submit the final report to the Governor and the presiding
22 officers of the Legislature by January 1, 2004.
23 Section 10. Section 395.1051, Florida Statutes, is
24 created to read:
25 395.1051 Duty to notify patients.--Every licensed
26 facility shall inform each patient, or an individual
27 identified pursuant to s. 765.401(1), in person about adverse
28 incidents that result in serious harm to the patient.
29 Notification of outcomes of care that result in harm to the
30 patient under this section shall not constitute an
31

1 acknowledgement or admission of liability, nor can it be
2 introduced as evidence.

3 Section 11. Section 456.0575, Florida Statutes, is
4 created to read:

5 456.0575 Duty to notify patients.--Every licensed
6 healthcare practitioner shall inform each patient, or an
7 individual identified pursuant to s. 765.401(1), in person
8 about adverse incidents that result in serious harm to the
9 patient. Notification of outcomes of care that result in harm
10 to the patient under this section shall not constitute an
11 acknowledgement of admission of liability, nor can such
12 notifications be introduced as evidence.

13 Section 12. Section 456.026, Florida Statutes, is
14 amended to read:

15 456.026 Annual report concerning finances,
16 administrative complaints, disciplinary actions, and
17 recommendations.--The department is directed to prepare and
18 submit a report to the President of the Senate and the Speaker
19 of the House of Representatives by November 1 of each year.
20 The department shall publish the report to its website
21 simultaneously with delivery to the President of the Senate
22 and the Speaker of the House of Representatives. The report
23 must be directly accessible on the department's Internet
24 homepage highlighted by easily identifiable links and buttons.
25 In addition to finances and any other information the
26 Legislature may require, the report shall include statistics
27 and relevant information, profession by profession, detailing:
28 (1) The number of health care practitioners licensed
29 by the Division of Medical Quality Assurance or otherwise
30 authorized to provide services in the state, if known to the
31 department.

1 ~~(2)(1)~~ The revenues, expenditures, and cash balances
2 for the prior year, and a review of the adequacy of existing
3 fees.

4 ~~(3)(2)~~ The number of complaints received and
5 investigated.

6 ~~(4)(3)~~ The number of findings of probable cause made.

7 ~~(5)(4)~~ The number of findings of no probable cause
8 made.

9 ~~(6)(5)~~ The number of administrative complaints filed.

10 ~~(7)(6)~~ The disposition of all administrative
11 complaints.

12 ~~(8)(7)~~ A description of disciplinary actions taken.

13 ~~(9)~~ For licensees under chapter 458, chapter 459,
14 chapter 461, or chapter 466, the professional liability claims
15 and actions reported by insurers, as provided in s. 627.912.
16 This information must be provided in a separate section of the
17 report restricted to providing professional liability claims
18 and actions data.

19 ~~(10)(8)~~ A description of any effort by the department
20 to reduce or otherwise close any investigation or disciplinary
21 proceeding not before the Division of Administrative Hearings
22 under chapter 120 or otherwise not completed within 1 year
23 after the initial filing of a complaint under this chapter.

24 ~~(11)(9)~~ The status of the development and
25 implementation of rules providing for disciplinary guidelines
26 pursuant to s. 456.079.

27 ~~(12)(10)~~ Such recommendations for administrative and
28 statutory changes necessary to facilitate efficient and
29 cost-effective operation of the department and the various
30 boards.

31

1 Section 13. Section 456.041, Florida Statutes, is
2 amended to read:

3 456.041 Practitioner profile; creation.--

4 (1)(a) Beginning July 1, 1999, the Department of
5 Health shall compile the information submitted pursuant to s.
6 456.039 into a practitioner profile of the applicant
7 submitting the information, except that the Department of
8 Health shall ~~may~~ develop a format to compile uniformly any
9 information submitted under s. 456.039(4)(b). Beginning July
10 1, 2001, the Department of Health may compile the information
11 submitted pursuant to s. 456.0391 into a practitioner profile
12 of the applicant submitting the information.

13 (b) The department shall take no longer than 45
14 business days to update the practitioner's profile in
15 accordance with the requirements of subsection (7).

16 (2) On the profile published under subsection (1), the
17 department shall indicate if the information provided under s.
18 456.039(1)(a)7. or s. 456.0391(1)(a)7. is or is not
19 corroborated by a criminal history check conducted according
20 to this subsection. ~~If the information provided under s.~~
21 ~~456.039(1)(a)7. or s. 456.0391(1)(a)7. is corroborated by the~~
22 ~~criminal history check, the fact that the criminal history~~
23 ~~check was performed need not be indicated on the profile.~~The
24 department, or the board having regulatory authority over the
25 practitioner acting on behalf of the department, shall
26 investigate any information received by the department or the
27 board ~~when it has reasonable grounds to believe that the~~
28 ~~practitioner has violated any law that relates to the~~
29 ~~practitioner's practice.~~

30 (3) The Department of Health shall ~~may~~ include in each
31 practitioner's practitioner profile that criminal information

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

15 (4) The Department of Health shall include, with
16 respect to a practitioner licensed under chapter 458 or
17 chapter 459, a statement of how the practitioner has elected
18 to comply with the financial responsibility requirements of s.
19 458.320 or s. 459.0085. The department shall include, with
20 respect to practitioners subject to s. 456.048, a statement of
21 how the practitioner has elected to comply with the financial
22 responsibility requirements of that section. The department
23 shall include, with respect to practitioners licensed under
24 ~~chapter 458, chapter 459, or~~ chapter 461, information relating
25 to liability actions which has been reported under s. 456.049
26 or s. 627.912 within the previous 10 years for any paid claim
27 that exceeds \$5,000. The department shall include, with
28 respect to practitioners licensed under chapter 458 or chapter
29 459, information relating to liability actions which has been
30 reported under s. 456.049 or s. 627.912 within the previous 10
31 years for any paid claim that exceeds \$100,000.Such claims

1 information shall be reported in the context of comparing an
2 individual practitioner's claims to the experience of other
3 practitioners within the same specialty, or profession if the
4 practitioner is not a specialist, ~~to the extent such~~
5 ~~information is available to the Department of Health. The~~
6 department must provide a hyperlink in such practitioner's
7 profile to all such comparison reports. If information
8 relating to a liability action is included in a practitioner's
9 practitioner profile, the profile must also include the
10 following statement: "Settlement of a claim may occur for a
11 variety of reasons that do not necessarily reflect negatively
12 on the professional competence or conduct of the practitioner.
13 A payment in settlement of a medical malpractice action or
14 claim should not be construed as creating a presumption that
15 medical malpractice has occurred."

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

25 (6) The Department of Health may include in the
26 practitioner's practitioner profile any other information that
27 is a public record of any governmental entity and that relates
28 to a practitioner's ability to competently practice his or her
29 profession. ~~However, the department must consult with the~~
30 ~~board having regulatory authority over the practitioner before~~
31 ~~such information is included in his or her profile.~~

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

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

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

27 (10)~~(8)~~ Making a practitioner profile available to the
28 public under this section does not constitute agency action
29 for which a hearing under s. 120.57 may be sought.

30 Section 14. Section 456.042, Florida Statutes, is
31 amended to read:

1 456.042 Practitioner profiles; update.--A practitioner
2 must submit updates of required information within 15 days
3 after the final activity that renders such information a fact.

4 The Department of Health shall update each practitioner's
5 practitioner profile periodically. An updated profile is
6 subject to the same requirements as an original profile ~~with~~
7 ~~respect to the period within which the practitioner may review~~
8 ~~the profile for the purpose of correcting factual~~
9 ~~inaccuracies.~~

10 Section 15. Subsection (1) of section 456.049, Florida
11 Statutes, is amended to read:

12 456.049 Health care practitioners; reports on
13 professional liability claims and actions.--

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

26 (a) A final judgment in any amount.

27 (b) A settlement in any amount.

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

30

31

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

4 Section 16. Section 456.051, Florida Statutes, is
5 amended to read:

6 456.051 Reports of professional liability actions;
7 bankruptcies; Department of Health's responsibility to
8 provide.--

9 (1) The report of a claim or action for damages for
10 personal injury which is required to be provided to the
11 Department of Health under s. 456.049 or s. 627.912 is public
12 information except for the name of the claimant or injured
13 person, which remains confidential as provided in ss.
14 456.049(2)(d) and 627.912(2)(e). The Department of Health
15 shall, upon request, make such report available to any person.
16 The department shall make such report available as a part of
17 the practitioner's profile within 45 calendar days after
18 receipt.

19 (2) Any information in the possession of the
20 Department of Health which relates to a bankruptcy proceeding
21 by a practitioner of medicine licensed under chapter 458, a
22 practitioner of osteopathic medicine licensed under chapter
23 459, a podiatric physician licensed under chapter 461, or a
24 dentist licensed under chapter 466 is public information. The
25 Department of Health shall, upon request, make such
26 information available to any person. The department shall make
27 such report available as a part of the practitioner's profile
28 within 45 calendar days after receipt.

29 Section 17. Present subsection (8) of section 458.320,
30 Florida Statutes, is redesignated as subsection (9), and a new
31 subsection (8) is added to that section, to read:

1 458.320 Financial responsibility.--
2 (8) Notwithstanding any other provision of this
3 section, the department shall suspend the license of any
4 physician against whom has been entered a final judgment,
5 arbitration award, or other order or who has entered into a
6 settlement agreement to pay damages arising out of a claim for
7 medical malpractice, if all appellate remedies have been
8 exhausted and payment up to the amounts required by this
9 section has not been made within 30 days after the entering of
10 such judgment, award, or order or agreement, until proof of
11 payment is received by the department or a payment schedule
12 has been agreed upon by the physician and the claimant and
13 presented to the department. This subsection does not apply to
14 a physician who has met the financial responsibility
15 requirements in paragraphs (1)(b) and (2)(b).

16 Section 18. Present subsection (9) of section
17 459.0085, Florida Statutes, is redesignated as subsection
18 (10), and a new subsection (9) is added to that section, to
19 read:

20 459.0085 Financial responsibility.--
21 (9) Notwithstanding any other provision of this
22 section, the department shall suspend the license of any
23 osteopathic physician against whom has been entered a final
24 judgment, arbitration award, or other order or who has entered
25 into a settlement agreement to pay damages arising out of a
26 claim for medical malpractice, if all appellate remedies have
27 been exhausted and payment up to the amounts required by this
28 section has not been made within 30 days after the entering of
29 such judgment, award, or order or agreement, until proof of
30 payment is received by the department or a payment schedule
31 has been agreed upon by the osteopathic physician and the

1 claimant and presented to the department. This subsection does
2 not apply to an osteopathic physician who has met the
3 financial responsibility requirements in paragraphs (1)(b) and
4 (2)(b).

5 Section 19. 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 20. Patient safety data privilege.--

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

12 (a) "Patient safety data" means reports made to
13 patient safety organizations, including all health care data,
14 interviews, memoranda, analyses, root cause analyses, products
15 of quality assurance or quality improvement processes,
16 corrective action plans, or information collected or created
17 by a health care facility licensed under chapter 395 or a
18 health care practitioner as defined in section 456.001(4),
19 Florida Statutes, as a result of an occurrence related to the
20 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) Patient safety data shall not be subject to
30 discovery or introduction into evidence in any civil or
31 administrative action.

1 (3) Unless otherwise provided by law, a patient safety
2 organization shall promptly remove all patient-identifying
3 information after receipt of a complete patient safety data
4 report unless such organization is otherwise permitted by
5 state or federal law to maintain such information. Patient
6 safety organizations shall maintain the confidentiality of all
7 patient-identifying information and may not disseminate such
8 information, except as permitted by state or federal law.

9 (4) The exchange of patient safety data among health
10 care facilities licensed under chapter 395 or health care
11 practitioners as defined in section 456.001 (4), Florida
12 Statutes, or patient safety organizations which does not
13 identify any patient shall not constitute a waiver of any
14 privilege established in this section.

15 (5) Reports of patient safety data to patient safety
16 organizations does not abrogate obligations to make reports to
17 the Department of Health, the Agency for Health Care
18 Administration, or other state or federal regulatory agencies.

19 (6) An employer may not take retaliatory action
20 against an employee who in good faith makes a report of
21 patient safety data to a patient safety organization.

22 Section 21. Each final settlement statement relating
23 to medical malpractice shall include the following statement:

24 "The decision to settle a case may reflect the economic
25 practicalities pertaining to the cost of litigation and is
26 not, alone, an admission that the insured failed to meet the
27 required standard of care applicable to the patient's
28 treatment. The decision to settle a case may be made by the
29 insurance company without consulting its client for input,
30 unless otherwise provided by the insurance policy."

31

1 Section 22. Office of Insurance Regulation; closed
2 claim forms; report required.--The Office of Insurance
3 Regulation shall revise its closed claim form for readability
4 at the 9th grade level. The office shall compile annual
5 statistical reports that provide data summaries of all closed
6 claims, including, but not limited to, the number of closed
7 claims on file pertaining to the referent health care
8 professional or health care entity, the nature of the errant
9 conduct, the size of payments, and the frequency and size of
10 noneconomic damage awards. The office shall develop annualized
11 historical statistical summaries beginning with the 1976 state
12 fiscal year and publish these reports on its website no later
13 than the 2005 state fiscal year. The form must accommodate the
14 following minimum requirements:

15 (1) A practitioner of medicine licensed pursuant to
16 chapter 458, Florida Statutes, or a practitioner of
17 osteopathic medicine licensed pursuant to chapter 459, Florida
18 Statutes, shall report to the Office of Insurance Regulation
19 and the Department of Health any claim or action for damages
20 for personal injury alleged to have been caused by error,
21 omission, or negligence in the performance of such licensee's
22 professional services or based on a claimed performance of
23 professional services without consent if the claim was not
24 covered by an insurer required to report under section
25 627.912, Florida Statutes, is not a claim for medical
26 malpractice that is subject to the provisions of section
27 766.106, Florida Statutes, and the claim resulted in:

28 (a) A final judgment in any amount.

29 (b) A settlement in any amount.

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

1
2 Reports shall be filed with the Office of Insurance Regulation
3 no later than 60 days following the occurrence of any event
4 listed in this subsection.

5 (2) Health professional reports must contain:

6 (a) The name and address of the licensee.

7 (b) The alleged occurrence.

8 (c) The date of the alleged occurrence.

9 (d) The date the claim or action was reported to the
10 licensee.

11 (e) The name and address of the opposing party.

12 (f) The date of suit, if filed.

13 (g) The injured person's age and sex.

14 (h) The total number and names of all defendants
15 involved in the claim.

16 (i) The date and amount of judgment or settlement, if
17 any, including the itemization of the verdict, together with a
18 copy of the settlement or judgment.

19 (j) In the case of a settlement, any information
20 required by the Office of Insurance Regulation concerning the
21 injured person's incurred and anticipated medical expense,
22 wage loss, and other expenses.

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

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

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

29 1. The name of the institution, if any, and the
30 location within such institution, at which the injury
31 occurred.

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

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

5 4. The operation or the diagnostic or treatment
6 procedure causing the injury.

7 5. A description of the principal injury giving rise
8 to the claim.

9 6. The safety management steps that have been taken by
10 the licensee to make similar occurrences or injuries less
11 likely in the future.

12 (n) Any other information required by the Office of
13 Insurance Regulation to analyze and evaluate the nature,
14 causes, location, cost, and damages involved in professional
15 liability cases.

16 Section 23. Paragraph (a) of subsection (1) of section
17 456.039, Florida Statutes, is amended to read:

18 456.039 Designated health care professionals;
19 information required for licensure.--

20 (1) Each person who applies for initial licensure as a
21 physician under chapter 458, chapter 459, chapter 460, or
22 chapter 461, except a person applying for registration
23 pursuant to ss. 458.345 and 459.021, must, at the time of
24 application, and each physician who applies for license
25 renewal under chapter 458, chapter 459, chapter 460, or
26 chapter 461, except a person registered pursuant to ss.
27 458.345 and 459.021, must, in conjunction with the renewal of
28 such license and under procedures adopted by the Department of
29 Health, and in addition to any other information that may be
30 required from the applicant, furnish the following information
31 to the Department of Health:

1 (a)1. The name of each medical school that the
2 applicant has attended, with the dates of attendance and the
3 date of graduation, and a description of all graduate medical
4 education completed by the applicant, excluding any coursework
5 taken to satisfy medical licensure continuing education
6 requirements.

7 2. The name of each hospital at which the applicant
8 has privileges.

9 3. The address at which the applicant will primarily
10 conduct his or her practice.

11 4. Any certification that the applicant has received
12 from a specialty board that is recognized by the board to
13 which the applicant is applying.

14 5. The year that the applicant began practicing
15 medicine.

16 6. Any appointment to the faculty of a medical school
17 which the applicant currently holds and an indication as to
18 whether the applicant has had the responsibility for graduate
19 medical education within the most recent 10 years.

20 7. A description of any criminal offense of which the
21 applicant has been found guilty, regardless of whether
22 adjudication of guilt was withheld, or to which the applicant
23 has pled guilty or nolo contendere. A criminal offense
24 committed in another jurisdiction which would have been a
25 felony or misdemeanor if committed in this state must be
26 reported. If the applicant indicates that a criminal offense
27 is under appeal and submits a copy of the notice for appeal of
28 that criminal offense, the department must state that the
29 criminal offense is under appeal if the criminal offense is
30 reported in the applicant's profile. If the applicant
31 indicates to the department that a criminal offense is under

1 appeal, the applicant must, upon disposition of the appeal,
2 submit to the department a copy of the final written order of
3 disposition.

4 8. A description of any final disciplinary action
5 taken within the previous 10 years against the applicant by
6 the agency regulating the profession that the applicant is or
7 has been licensed to practice, whether in this state or in any
8 other jurisdiction, by a specialty board that is recognized by
9 the American Board of Medical Specialties, the American
10 Osteopathic Association, or a similar national organization,
11 or by a licensed hospital, health maintenance organization,
12 prepaid health clinic, ambulatory surgical center, or nursing
13 home. Disciplinary action includes resignation from or
14 nonrenewal of medical staff membership or the restriction of
15 privileges at a licensed hospital, health maintenance
16 organization, prepaid health clinic, ambulatory surgical
17 center, or nursing home taken in lieu of or in settlement of a
18 pending disciplinary case related to competence or character.
19 If the applicant indicates that the disciplinary action is
20 under appeal and submits a copy of the document initiating an
21 appeal of the disciplinary action, the department must state
22 that the disciplinary action is under appeal if the
23 disciplinary action is reported in the applicant's profile.

24 9. Relevant professional qualifications as defined by
25 the applicable board.

26 Section 24. Paragraph (a) of subsection (7) of section
27 456.057, Florida Statutes, is amended to read:

28 456.057 Ownership and control of patient records;
29 report or copies of records to be furnished.--

30 (7)(a)1. The department may obtain patient records
31 pursuant to a subpoena without written authorization from the

1 patient if the department and the probable cause panel of the
2 appropriate board, if any, find reasonable cause to believe
3 that a health care practitioner has excessively or
4 inappropriately prescribed any controlled substance specified
5 in chapter 893 in violation of this chapter or any
6 professional practice act or that a health care practitioner
7 has practiced his or her profession below that level of care,
8 skill, and treatment required as defined by this chapter or
9 any professional practice act and also find that appropriate,
10 reasonable attempts were made to obtain a patient release.

11 2. The department may obtain patient records and
12 insurance information pursuant to a subpoena without written
13 authorization from the patient if the department and the
14 probable cause panel of the appropriate board, if any, find
15 reasonable cause to believe that a health care practitioner
16 has provided inadequate medical care based on termination of
17 insurance and also find that appropriate, reasonable attempts
18 were made to obtain a patient release.

19 3. The department may obtain patient records, billing
20 records, insurance information, provider contracts, and all
21 attachments thereto pursuant to a subpoena without written
22 authorization from the patient if the department and probable
23 cause panel of the appropriate board, if any, find reasonable
24 cause to believe that a health care practitioner has submitted
25 a claim, statement, or bill using a billing code that would
26 result in payment greater in amount than would be paid using a
27 billing code that accurately describes the services performed,
28 requested payment for services that were not performed by that
29 health care practitioner, used information derived from a
30 written report of an automobile accident generated pursuant to
31 chapter 316 to solicit or obtain patients personally or

1 through an agent regardless of whether the information is
2 derived directly from the report or a summary of that report
3 or from another person, solicited patients fraudulently,
4 received a kickback as defined in s. 456.054, violated the
5 patient brokering provisions of s. 817.505, or presented or
6 caused to be presented a false or fraudulent insurance claim
7 within the meaning of s. 817.234(1)(a), and also find that,
8 within the meaning of s. 817.234(1)(a), patient authorization
9 cannot be obtained because the patient cannot be located or is
10 deceased, incapacitated, or suspected of being a participant
11 in the fraud or scheme, and if the subpoena is issued for
12 specific and relevant records. For purposes of this
13 subsection, if the patient refuses to cooperate, is
14 unavailable, or fails to execute a patient release, the
15 department may obtain patient records pursuant to a subpoena
16 without written authorization from the patient.

17 Section 25. Subsection (4) is added to section
18 456.063, Florida Statutes, to read:

19 456.063 Sexual misconduct; disqualification for
20 license, certificate, or registration.--

21 (4) Each board, or the department if there is no
22 board, may adopt rules to implement the requirements for
23 reporting allegations of sexual misconduct, including rules to
24 determine the sufficiency of the allegations.

25 Section 26. Each board within the Department of Health
26 which has jurisdiction over health care practitioners who are
27 authorized to prescribe drugs may adopt by rule standards of
28 practice for practitioners who are under that board's
29 jurisdiction for the safe and ethical prescription of drugs to
30 patients via the Internet or other electronic means.

31

1 Section 27. Subsection (4) of section 456.072, Florida
2 Statutes, is amended, and a new subsection (7) is added to
3 that section to read:

4 456.072 Grounds for discipline; penalties;
5 enforcement.--

6 (4) In addition to any other discipline imposed
7 through final order, or citation, entered on or after July 1,
8 2001, pursuant to this section or discipline imposed through
9 final order, or citation, entered on or after July 1, 2001,
10 for a violation of any practice act, the board, or the
11 department when there is no board, shall assess costs related
12 to the investigation and prosecution of the case. The board,
13 or the department when there is no board, shall determine the
14 amount of costs to be assessed.In any case where the board or
15 the department imposes a fine or assessment and the fine or
16 assessment is not paid within a reasonable time, such
17 reasonable time to be prescribed in the rules of the board, or
18 the department when there is no board, or in the order
19 assessing such fines or costs, the department or the
20 Department of Legal Affairs may contract for the collection
21 of, or bring a civil action to recover, the fine or
22 assessment.

23 (7) In any formal administrative hearing conducted
24 under s. 120.57(1), the department shall establish grounds for
25 the discipline of a licensee by the greater weight of the
26 evidence.

27 Section 28. Subsections (1) and (5) of section
28 456.073, Florida Statutes, are amended to read:

29 456.073 Disciplinary proceedings.--Disciplinary
30 proceedings for each board shall be within the jurisdiction of
31 the department.

1 (1) The department, for the boards under its
2 jurisdiction, shall cause to be investigated any complaint
3 that is filed before it if the complaint is in writing, signed
4 by the complainant, and legally sufficient. A complaint is
5 legally sufficient if it contains ultimate facts that show
6 that a violation of this chapter, of any of the practice acts
7 relating to the professions regulated by the department, or of
8 any rule adopted by the department or a regulatory board in
9 the department has occurred. In order to determine legal
10 sufficiency, the department may require supporting information
11 or documentation. The department may investigate, and the
12 department or the appropriate board may take appropriate final
13 action on, a complaint even though the original complainant
14 withdraws it or otherwise indicates a desire not to cause the
15 complaint to be investigated or prosecuted to completion. The
16 department may investigate an anonymous complaint if the
17 complaint is in writing and is legally sufficient, if the
18 alleged violation of law or rules is substantial, and if the
19 department has reason to believe, after preliminary inquiry,
20 that the violations alleged in the complaint are true. The
21 department may investigate a complaint made by a confidential
22 informant if the complaint is legally sufficient, if the
23 alleged violation of law or rule is substantial, and if the
24 department has reason to believe, after preliminary inquiry,
25 that the allegations of the complainant are true. The
26 department may initiate an investigation if it has reasonable
27 cause to believe that a licensee or a group of licensees has
28 violated a Florida statute, a rule of the department, or a
29 rule of a board. The department may investigate information
30 filed pursuant to s. 456.041(4) relating to liability actions
31 with respect to practitioners licensed under chapter 458 and

1 chapter 459 which have been reported under s. 456.049 or s.
2 627.912 within the previous 10 years for any paid claim that
3 exceeds \$50,000.Except as provided in ss. 458.331(9),
4 459.015(9), 460.413(5), and 461.013(6), when an investigation
5 of any subject is undertaken, the department shall promptly
6 furnish to the subject or the subject's attorney a copy of the
7 complaint or document that resulted in the initiation of the
8 investigation. The subject may submit a written response to
9 the information contained in such complaint or document within
10 20 days after service to the subject of the complaint or
11 document. The subject's written response shall be considered
12 by the probable cause panel. The right to respond does not
13 prohibit the issuance of a summary emergency order if
14 necessary to protect the public. However, if the secretary, or
15 the secretary's designee, and the chair of the respective
16 board or the chair of its probable cause panel agree in
17 writing that such notification would be detrimental to the
18 investigation, the department may withhold notification. The
19 department may conduct an investigation without notification
20 to any subject if the act under investigation is a criminal
21 offense.

22 (5) A formal hearing before an administrative law
23 judge from the Division of Administrative Hearings shall be
24 held pursuant to chapter 120 if there are any disputed issues
25 of material fact. The administrative law judge shall issue a
26 recommended order pursuant to chapter 120. Notwithstanding s.
27 120.569(2), the department shall notify the division within 45
28 days after receipt of a petition or request for a formal
29 hearing.~~If any party raises an issue of disputed fact during~~
30 ~~an informal hearing, the hearing shall be terminated and a~~
31 ~~formal hearing pursuant to chapter 120 shall be held.~~

1 Section 29. Subsection (1) of section 456.077, Florida
2 Statutes, is amended to read:

3 456.077 Authority to issue citations.--

4 (1) Notwithstanding s. 456.073, the board, or the
5 department if there is no board, shall adopt rules to permit
6 the issuance of citations. The citation shall be issued to the
7 subject and shall contain the subject's name and address, the
8 subject's license number if applicable, a brief factual
9 statement, the sections of the law allegedly violated, and the
10 penalty imposed. The citation must clearly state that the
11 subject may choose, in lieu of accepting the citation, to
12 follow the procedure under s. 456.073. If the subject disputes
13 the matter in the citation, the procedures set forth in s.
14 456.073 must be followed. However, if the subject does not
15 dispute the matter in the citation with the department within
16 30 days after the citation is served, the citation becomes a
17 final order and does not constitute ~~constitutes~~ discipline for
18 a first offense. The penalty shall be a fine or other
19 conditions as established by rule.

20 Section 30. Subsection (1) of section 456.078, Florida
21 Statutes, is amended to read:

22 456.078 Mediation.--

23 (1) Notwithstanding the provisions of s. 456.073, the
24 board, or the department when there is no board, shall adopt
25 rules to designate which violations of the applicable
26 professional practice act, including standard-of-care
27 violations, are appropriate for mediation. The board, or the
28 department when there is no board, must ~~may~~ designate as
29 mediation offenses those complaints where harm caused by the
30 licensee is economic in nature or can be remedied by the
31 licensee.

1 Section 31. Paragraph (t) of subsection (1) and
2 subsections (3) and (6) of section 458.331, Florida Statutes,
3 are amended to read:

4 458.331 Grounds for disciplinary action; action by the
5 board and department.--

6 (1) The following acts constitute grounds for denial
7 of a license or disciplinary action, as specified in s.
8 456.072(2):

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

1 committed "gross malpractice," "repeated malpractice," or
2 "failure to practice medicine with that level of care, skill,
3 and treatment which is recognized as being acceptable under
4 similar conditions and circumstances," or any combination
5 thereof, and any publication by the board must so specify.

6 (3) In any administrative action against a physician
7 ~~which does not involve revocation or suspension of license,~~
8 the division shall have the burden, by the greater weight of
9 the evidence, to establish the existence of grounds for
10 disciplinary action. ~~The division shall establish grounds for~~
11 ~~revocation or suspension of license by clear and convincing~~
12 ~~evidence.~~

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

27 Section 32. Paragraph (x) of subsection (1) and
28 subsections (3) and (6) of section 459.015, Florida Statutes,
29 are amended to read:

30 459.015 Grounds for disciplinary action; action by the
31 board and department.--

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

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

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

3 (3) In any administrative action against a physician
4 ~~which does not involve revocation or suspension of license,~~
5 the division shall have the burden, by the greater weight of
6 the evidence, to establish the existence of grounds for
7 disciplinary action. ~~The division shall establish grounds for~~
8 ~~revocation or suspension of license by clear and convincing~~
9 ~~evidence.~~

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

25 Section 33. Paragraph (s) of subsection (1) and
26 paragraph (a) of subsection (5) of section 461.013, Florida
27 Statutes, are amended to read:

28 461.013 Grounds for disciplinary action; action by the
29 board; investigations by department.--
30
31

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

4 (s) Gross or repeated malpractice or the failure to
5 practice podiatric medicine at a level of care, skill, and
6 treatment which is recognized by a reasonably prudent
7 podiatric physician as being acceptable under similar
8 conditions and circumstances. The board shall give great
9 weight to the standards for malpractice in s. 766.102 in
10 interpreting this section. As used in this paragraph,
11 "repeated malpractice" includes, but is not limited to, three
12 or more claims for medical malpractice within the previous
13 5-year period resulting in indemnities being paid in excess of
14 \$50,000~~\$10,000~~ each to the claimant in a judgment or
15 settlement and which incidents involved negligent conduct by
16 the podiatric physicians. As used in this paragraph, "gross
17 malpractice" or "the failure to practice podiatric medicine
18 with the level of care, skill, and treatment which is
19 recognized by a reasonably prudent similar podiatric physician
20 as being acceptable under similar conditions and
21 circumstances" shall not be construed so as to require more
22 than one instance, event, or act.

23 (5)(a) Upon the department's receipt from an insurer
24 or self-insurer of a report of a closed claim against a
25 podiatric physician pursuant to s. 627.912, or upon the
26 receipt from a claimant of a presuit notice against a
27 podiatric physician pursuant to s. 766.106, the department
28 shall review each report and determine whether it potentially
29 involved conduct by a licensee that is subject to disciplinary
30 action, in which case the provisions of s. 456.073 shall
31 apply. However, if it is reported that a podiatric physician

1 has had three or more claims with indemnities exceeding
2 \$50,000~~\$25,000~~ each within the previous 5-year period, the
3 department shall investigate the occurrences upon which the
4 claims were based and determine if action by the department
5 against the podiatric physician is warranted.

6 Section 34. Paragraph (x) of subsection (1) of section
7 466.028, Florida Statutes, is amended to read:

8 466.028 Grounds for disciplinary action; action by the
9 board.--

10 (1) The following acts constitute grounds for denial
11 of a license or disciplinary action, as specified in s.
12 456.072(2):

13 (x) Being guilty of incompetence or negligence by
14 failing to meet the minimum standards of performance in
15 diagnosis and treatment when measured against generally
16 prevailing peer performance, including, but not limited to,
17 the undertaking of diagnosis and treatment for which the
18 dentist is not qualified by training or experience or being
19 guilty of dental malpractice. For purposes of this paragraph,
20 it shall be legally presumed that a dentist is not guilty of
21 incompetence or negligence by declining to treat an individual
22 if, in the dentist's professional judgment, the dentist or a
23 member of her or his clinical staff is not qualified by
24 training and experience, or the dentist's treatment facility
25 is not clinically satisfactory or properly equipped to treat
26 the unique characteristics and health status of the dental
27 patient, provided the dentist refers the patient to a
28 qualified dentist or facility for appropriate treatment. As
29 used in this paragraph, "dental malpractice" includes, but is
30 not limited to, three or more claims within the previous
31 5-year period which resulted in indemnity being paid, or any

1 single indemnity paid in excess of \$25,000~~\$5,000~~ in a
2 judgment or settlement, as a result of negligent conduct on
3 the part of the dentist.

4 Section 35. Subsection (1) of section 627.912, Florida
5 Statutes, is amended to read:

6 627.912 Professional liability claims and actions;
7 reports by insurers.--

8 (1) Each self-insurer authorized under s. 627.357 and
9 each insurer or joint underwriting association providing
10 professional liability insurance to a practitioner of medicine
11 licensed under chapter 458, to a practitioner of osteopathic
12 medicine licensed under chapter 459, to a podiatric physician
13 licensed under chapter 461, to a dentist licensed under
14 chapter 466, to a hospital licensed under chapter 395, to a
15 crisis stabilization unit licensed under part IV of chapter
16 394, to a health maintenance organization certificated under
17 part I of chapter 641, to clinics included in chapter 390, to
18 an ambulatory surgical center as defined in s. 395.002, or to
19 a member of The Florida Bar shall report in duplicate to the
20 Department of Insurance any claim or action for damages for
21 personal injuries claimed to have been caused by error,
22 omission, or negligence in the performance of such insured's
23 professional services or based on a claimed performance of
24 professional services without consent, if the claim resulted
25 in:

26 (a) A final judgment in any amount.

27 (b) A settlement in any amount.

28
29 Reports shall be filed with the department ~~and~~, If the
30 insured party is licensed under chapter 458, chapter 459, or
31 chapter 461, and the final judgment or settlement amount was

1 \$50,000 or more, or if the insured party is licensed under
2 chapter 466 and the final judgment or settlement amount was
3 \$25,000 or more, the report shall be filed ~~or chapter 466,~~
4 with the Department of Health, no later than 30 days following
5 the occurrence of any event listed in paragraph (a) or
6 paragraph (b). The Department of Health shall review each
7 report and determine whether any of the incidents that
8 resulted in the claim potentially involved conduct by the
9 licensee that is subject to disciplinary action, in which case
10 the provisions of s. 456.073 shall apply. The Department of
11 Health, as part of the annual report required by s. 456.026,
12 shall publish annual statistics, without identifying
13 licensees, on the reports it receives, including final action
14 taken on such reports by the Department of Health or the
15 appropriate regulatory board.

16 Section 36. The Office of Program Policy Analysis and
17 Government Accountability and the Office of the Auditor
18 General must jointly conduct an audit of the Department of
19 Health's health care practitioner disciplinary process and
20 closed claims that are filed with the department under section
21 627.912, Florida Statutes. The Office of Program Policy
22 Analysis and Government Accountability and the Office of the
23 Auditor General shall submit a report to the Legislature by
24 January 1, 2004.

25 Section 37. Section 1004.08, Florida Statutes, is
26 created to read:

27 1004.08 Patient safety instructional
28 requirements.--Each public school, college, and university
29 that offers degrees in medicine, nursing, or allied health
30 shall include in the curricula applicable to such degrees
31 material on patient safety, including patient safety

1 improvement. Materials shall include, but need not be limited
2 to, effective communication and teamwork; epidemiology of
3 patient injuries and medical errors; medical injuries;
4 vigilance, attention and fatigue; checklists and inspections;
5 automation, technological, and computer support; psychological
6 factors in human error; and reporting systems.

7 Section 38. Section 1005.07, Florida Statutes, is
8 created to read:

9 1005.07 Patient safety instructional
10 requirements.--Each private school, college, and university
11 that offers degrees in medicine, nursing, and allied health
12 shall include in the curricula applicable to such degrees
13 material on patient safety, including patient safety
14 improvement. Materials shall include, but need not be limited
15 to, effective communication and teamwork; epidemiology of
16 patient injuries and medical errors; medical injuries;
17 vigilance, attention and fatigue; checklists and inspections;
18 automation, technological, and computer support; psychological
19 factors in human error; and reporting systems.

20 Section 39. If any provision of this act or its
21 application to any person or circumstance is held invalid, the
22 invalidity does not affect other provisions or applications of
23 the act which can be given effect without the invalid
24 provision or application, and to this end the provisions of
25 this act are severable.

26 Section 40. No later than September 1, 2003, the
27 Department of Health shall convene a workgroup to study the
28 current healthcare practitioner disciplinary process. The
29 workgroup shall include a representative of the Administrative
30 Law section of The Florida Bar, a representative of the Health
31 Law section of The Florida Bar, a representative of the

1 Florida Medical Association, a representative of the Florida
2 Osteopathic Medical Association, a representative of the
3 Florida Dental Association, a member of the Florida Board of
4 Medicine who has served on the probable cause panel, a member
5 of the Board of Osteopathic Medicine who has served on the
6 probable cause panel, and a member of the Board of Dentistry
7 who has served on the probable cause panel. The workgroup
8 shall also include one consumer member of the Board of
9 Medicine. The Department of Health shall present the findings
10 and recommendations to the Governor, the President of the
11 Senate, and the Speaker of the House of Representatives no
12 later than January 1, 2004. The sponsoring organizations shall
13 assume the costs of their representative.

14 Section 41. The sum of \$687,786 is appropriated from
15 the Medical Quality Assurance Trust Fund to the Department of
16 Health, and seven positions are authorized, for the purpose of
17 implementing this act during the 2003-2004 fiscal year. The
18 sum of \$452,122 is appropriated from the General Revenue Fund
19 to the Agency for Health Care Administration, and five
20 positions are authorized, for the purpose of implementing this
21 act during the 2003-2004 fiscal year.

22 Section 42. This act shall take effect July 1, 2003.
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