

Bill No. CS for SB 2-B

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1 execution, unless otherwise mutually agreed to in writing by
2 the parties. Such adverse final judgment shall include any
3 cross-claim, counterclaim, or claim for indemnity or
4 contribution arising from the claim of medical malpractice.
5 Upon notification of the existence of an unsatisfied judgment
6 or payment pursuant to this subparagraph, the department shall
7 notify the licensee by certified mail that he or she shall be
8 subject to disciplinary action unless, within 30 days from the
9 date of mailing, he or she either:

10 a. Shows proof that the unsatisfied judgment has been
11 paid in the amount specified in this subparagraph; or

12 b. Furnishes the department with a copy of a timely
13 filed notice of appeal and either:

14 (I) A copy of a supersedeas bond properly posted in
15 the amount required by law; or

16 (II) An order from a court of competent jurisdiction
17 staying execution on the final judgment pending disposition of
18 the appeal.

19 2. The Department of Health shall issue an emergency
20 order suspending the license of any licensee who, after 30
21 days following receipt of a notice from the Department of
22 Health, has failed to: satisfy a medical malpractice claim
23 against him or her; furnish the Department of Health a copy of
24 a timely filed notice of appeal; furnish the Department of
25 Health a copy of a supersedeas bond properly posted in the
26 amount required by law; or furnish the Department of Health an
27 order from a court of competent jurisdiction staying execution
28 on the final judgment pending disposition of the appeal.

29 3. Upon the next meeting of the probable cause panel
30 of the board following 30 days after the date of mailing the
31 notice of disciplinary action to the licensee, the panel shall

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1 make a determination of whether probable cause exists to take
2 disciplinary action against the licensee pursuant to
3 subparagraph 1.

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

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

19

20 A licensee who meets the requirements of this paragraph shall
21 be required either to post notice in the form of a sign
22 prominently displayed in the reception area and clearly
23 noticeable by all patients or to provide a written statement
24 to any person to whom medical services are being provided.

25 Such sign or statement shall state: "Under Florida law,
26 physicians are generally required to carry medical malpractice
27 insurance or otherwise demonstrate financial responsibility to
28 cover potential claims for medical malpractice. YOUR DOCTOR
29 HAS DECIDED NOT TO CARRY MEDICAL MALPRACTICE INSURANCE. This
30 is permitted under Florida law subject to certain conditions.

31 Florida law imposes penalties against noninsured physicians

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1 | who fail to satisfy adverse judgments arising from claims of
2 | medical malpractice. This notice is provided pursuant to
3 | Florida law."

4 | (6) Any deceptive, untrue, or fraudulent
5 | representation by the licensee with respect to any provision
6 | of this section shall result in permanent disqualification
7 | from any exemption to mandated financial responsibility as
8 | provided in this section and shall constitute grounds for
9 | disciplinary action under s. 458.331.

10 | (7) Any licensee who relies on any exemption from the
11 | financial responsibility requirement shall notify the
12 | department, in writing, of any change of circumstance
13 | regarding his or her qualifications for such exemption and
14 | shall demonstrate that he or she is in compliance with the
15 | requirements of this section.

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

30 | ~~(9)(8)~~ The board shall adopt rules to implement the
31 | provisions of this section.

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1 Section 27. Effective upon this act becoming a law and
2 applying to claims accruing on or after that date, section
3 459.0085, Florida Statutes, is amended to read:

4 459.0085 Financial responsibility.--

5 (1) As a condition of licensing and maintaining an
6 active license, and prior to the issuance or renewal of an
7 active license or reactivation of an inactive license for the
8 practice of osteopathic medicine, an applicant must ~~shall~~ by
9 one of the following methods demonstrate to the satisfaction
10 of the board and the department financial responsibility to
11 pay claims and costs ancillary thereto arising out of the
12 rendering of, or the failure to render, medical care or
13 services:

14 (a) Establishing and maintaining an escrow account
15 consisting of cash or assets eligible for deposit in
16 accordance with s. 625.52 in the per-claim amounts specified
17 in paragraph (b).

18 (b) Obtaining and maintaining professional liability
19 coverage for the current year and for each of the prior years
20 that the applicant or licensee has been in the active practice
21 of medicine, up to a maximum of 4 prior years, in an amount
22 not less than \$100,000 per claim, with a minimum annual
23 aggregate of not less than \$300,000, from an authorized
24 insurer as defined under s. 624.09, from a surplus lines
25 insurer as defined under s. 626.914(2), from a risk retention
26 group as defined under s. 627.942, from the Joint Underwriting
27 Association established under s. 627.351(4), or through a plan
28 of self-insurance as provided in s. 627.357. The required
29 coverage amount set forth in this paragraph may not be used
30 for litigation costs or attorney's fees for the defense of any
31 medical malpractice claim.

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1 (c) Obtaining and maintaining an unexpired,
2 irrevocable letter of credit, established pursuant to chapter
3 675, for the current year and for each of the prior years that
4 the applicant or licensee has been in the active practice of
5 medicine, up to a maximum of 4 prior years, in an amount not
6 less than \$100,000 per claim, with a minimum aggregate
7 availability of credit of not less than \$300,000. The letter
8 of credit must ~~shall~~ be payable to the osteopathic physician
9 as beneficiary upon presentment of a final judgment indicating
10 liability and awarding damages to be paid by the osteopathic
11 physician or upon presentment of a settlement agreement signed
12 by all parties to such agreement when such final judgment or
13 settlement is a result of a claim arising out of the rendering
14 of, or the failure to render, medical care and services. Such
15 letter of credit must ~~shall~~ be nonassignable and
16 nontransferable. Such letter of credit must ~~shall~~ be issued by
17 any bank or savings association organized and existing under
18 the laws of this state or any bank or savings association
19 organized under the laws of the United States which ~~that~~ has
20 its principal place of business in this state or has a branch
21 office that ~~which~~ is authorized under the laws of this state
22 or of the United States to receive deposits in this state.

23 (2) Osteopathic physicians who perform surgery in an
24 ambulatory surgical center licensed under chapter 395, and, as
25 a continuing condition of hospital staff privileges,
26 osteopathic physicians who have ~~with~~ staff privileges must
27 ~~shall~~ also ~~be required to~~ establish financial responsibility
28 by one of the following methods:

29 (a) Establishing and maintaining an escrow account
30 consisting of cash or assets eligible for deposit in
31 accordance with s. 625.52 in the per-claim amounts specified

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1 in paragraph (b).

2 (b) Obtaining and maintaining professional liability
3 coverage for the current year and for each of the prior years
4 that the applicant or licensee has been in the active practice
5 of medicine, up to a maximum of 4 prior years, in an amount
6 not less than \$250,000 per claim, with a minimum annual
7 aggregate of not less than \$750,000 from an authorized insurer
8 as defined under s. 624.09, from a surplus lines insurer as
9 defined under s. 626.914(2), from a risk retention group as
10 defined under s. 627.942, from the Joint Underwriting
11 Association established under s. 627.351(4), through a plan of
12 self-insurance as provided in s. 627.357, or through a plan of
13 self-insurance that which meets the conditions specified for
14 satisfying financial responsibility in s. 766.110.

15 (c) Obtaining and maintaining an unexpired,
16 irrevocable letter of credit, established pursuant to chapter
17 675, for the current year and for each of the prior years that
18 the applicant or licensee has been in the active practice of
19 medicine, up to a maximum of 4 prior years, in an amount not
20 less than \$250,000 per claim, with a minimum aggregate
21 availability of credit of not less than \$750,000. The letter
22 of credit must shall be payable to the osteopathic physician
23 as beneficiary upon presentment of a final judgment indicating
24 liability and awarding damages to be paid by the osteopathic
25 physician or upon presentment of a settlement agreement signed
26 by all parties to such agreement when such final judgment or
27 settlement is a result of a claim arising out of the rendering
28 of, or the failure to render, medical care and services. The
29 Such letter of credit must shall be nonassignable and
30 nontransferable. The Such letter of credit must shall be
31 issued by any bank or savings association organized and

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1 existing under the laws of this state or any bank or savings
2 association organized under the laws of the United States
3 which ~~that~~ has its principal place of business in this state
4 or has a branch office that ~~which~~ is authorized under the laws
5 of this state or of the United States to receive deposits in
6 this state.

7
8 This subsection shall be inclusive of the coverage in
9 subsection (1).

10 (3)(a) ~~The financial responsibility requirements of~~
11 ~~subsections (1) and (2) shall apply to claims for incidents~~
12 ~~that occur on or after January 1, 1987, or the initial date of~~
13 ~~licensure in this state, whichever is later.~~

14 (b) Meeting the financial responsibility requirements
15 of this section or the criteria for any exemption from such
16 requirements must ~~shall~~ be established at the time of issuance
17 or renewal of a license ~~on or after January 1, 1987.~~

18 (b)(c) Any person may, at any time, submit to the
19 department a request for an advisory opinion regarding such
20 person's qualifications for exemption.

21 (4)(a) Each insurer, self-insurer, risk retention
22 group, or joint underwriting association must ~~shall~~ promptly
23 notify the department of cancellation or nonrenewal of
24 insurance required by this section. Unless the osteopathic
25 physician demonstrates that he or she is otherwise in
26 compliance with the requirements of this section, the
27 department shall suspend the license of the osteopathic
28 physician pursuant to ss. 120.569 and 120.57 and notify all
29 health care facilities licensed under chapter 395, part IV of
30 chapter 394, or part I of chapter 641 of such action. Any
31 suspension under this subsection remains ~~shall remain~~ in

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1 effect until the osteopathic physician demonstrates compliance
2 with the requirements of this section. If any judgments or
3 settlements are pending at the time of suspension, those
4 judgments or settlements must be paid in accordance with this
5 section unless otherwise mutually agreed to in writing by the
6 parties. This paragraph does not abrogate a judgment debtor's
7 obligation to satisfy the entire amount of any judgment except
8 that a license suspended under paragraph (5)(g) shall not be
9 reinstated until the osteopathic physician demonstrates
10 compliance with the requirements of that provision.

11 (b) If financial responsibility requirements are met
12 by maintaining an escrow account or letter of credit as
13 provided in this section, upon the entry of an adverse final
14 judgment arising from a medical malpractice arbitration award,
15 from a claim of medical malpractice either in contract or
16 tort, or from noncompliance with the terms of a settlement
17 agreement arising from a claim of medical malpractice either
18 in contract or tort, the licensee shall pay the entire amount
19 of the judgment together with all accrued interest or the
20 amount maintained in the escrow account or provided in the
21 letter of credit as required by this section, whichever is
22 less, within 60 days after the date such judgment became final
23 and subject to execution, unless otherwise mutually agreed to
24 in writing by the parties. If timely payment is not made by
25 the osteopathic physician, the department shall suspend the
26 license of the osteopathic physician pursuant to procedures
27 set forth in subparagraphs (5)(g)3., 4., and 5. Nothing in
28 this paragraph shall abrogate a judgment debtor's obligation
29 to satisfy the entire amount of any judgment.

30 (5) The requirements of subsections (1), (2), and (3)
31 do shall not apply to:

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1 (a) Any person licensed under this chapter who
2 practices medicine exclusively as an officer, employee, or
3 agent of the Federal Government or of the state or its
4 agencies or its subdivisions. For the purposes of this
5 subsection, an agent of the state, its agencies, or its
6 subdivisions is a person who is eligible for coverage under
7 any self-insurance or insurance program authorized by the
8 provisions of s. 768.28(15).

9 (b) Any person whose license has become inactive under
10 this chapter and who is not practicing medicine in this state.
11 Any person applying for reactivation of a license must show
12 either that such licensee maintained tail insurance coverage
13 ~~that~~ ~~which~~ provided liability coverage for incidents that
14 occurred on or after January 1, 1987, or the initial date of
15 licensure in this state, whichever is later, and incidents
16 that occurred before the date on which the license became
17 inactive; or such licensee must submit an affidavit stating
18 that such licensee has no unsatisfied medical malpractice
19 judgments or settlements at the time of application for
20 reactivation.

21 (c) Any person holding a limited license pursuant to
22 s. 459.0075 and practicing under the scope of such limited
23 license.

24 (d) Any person licensed or certified under this
25 chapter who practices only in conjunction with his or her
26 teaching duties at a college of osteopathic medicine. Such
27 person may engage in the practice of osteopathic medicine to
28 the extent that such practice is incidental to and a necessary
29 part of duties in connection with the teaching position in the
30 college of osteopathic medicine.

31 (e) Any person holding an active license under this

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1 chapter who is not practicing osteopathic medicine in this
 2 state. If such person initiates or resumes any practice of
 3 osteopathic medicine in this state, he or she must notify the
 4 department of such activity and fulfill the financial
 5 responsibility requirements of this section before resuming
 6 the practice of osteopathic medicine in this state.

7 (f) Any person holding an active license under this
 8 chapter who meets all of the following criteria:

9 1. The licensee has held an active license to practice
 10 in this state or another state or some combination thereof for
 11 more than 15 years.

12 2. The licensee has either retired from the practice
 13 of osteopathic medicine or maintains a part-time practice of
 14 osteopathic medicine of no more than 1,000 patient contact
 15 hours per year.

16 3. The licensee has had no more than two claims for
 17 medical malpractice resulting in an indemnity exceeding
 18 \$25,000 within the previous 5-year period.

19 4. The licensee has not been convicted of, or pled
 20 guilty or nolo contendere to, any criminal violation specified
 21 in this chapter or the practice act of any other state.

22 5. The licensee has not been subject within the last
 23 10 years of practice to license revocation or suspension for
 24 any period of time, probation for a period of 3 years or
 25 longer, or a fine of \$500 or more for a violation of this
 26 chapter or the medical practice act of another jurisdiction.

27 The regulatory agency's acceptance of an osteopathic
 28 physician's relinquishment of a license, stipulation, consent
 29 order, or other settlement, offered in response to or in
 30 anticipation of the filing of administrative charges against
 31 the osteopathic physician's license, constitutes ~~shall be~~

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1 ~~construed as~~ action against the physician's license for the
2 purposes of this paragraph.

3 6. The licensee has submitted a form supplying
4 necessary information as required by the department and an
5 affidavit affirming compliance with ~~the provisions of~~ this
6 paragraph.

7 7. The licensee must ~~shall~~ submit biennially to the
8 department a certification stating compliance with ~~the~~
9 ~~provisions of~~ this paragraph. The licensee must ~~shall~~, upon
10 request, demonstrate to the department information verifying
11 compliance with this paragraph.

12
13 A licensee who meets the requirements of this paragraph must
14 ~~shall be required either to~~ post notice in the form of a sign
15 prominently displayed in the reception area and clearly
16 noticeable by all patients or ~~to~~ provide a written statement
17 to any person to whom medical services are being provided. The
18 ~~Such~~ sign or statement must read as follows ~~shall state that:~~

19 "Under Florida law, osteopathic physicians are generally
20 required to carry medical malpractice insurance or otherwise
21 demonstrate financial responsibility to cover potential claims
22 for medical malpractice. However, certain part-time
23 osteopathic physicians who meet state requirements are exempt
24 from the financial responsibility law. YOUR OSTEOPATHIC
25 PHYSICIAN MEETS THESE REQUIREMENTS AND HAS DECIDED NOT TO
26 CARRY MEDICAL MALPRACTICE INSURANCE. This notice is provided
27 pursuant to Florida law."

28 (g) Any person holding an active license under this
29 chapter who agrees to meet all of the following criteria.

30 1. Upon the entry of an adverse final judgment arising
31 from a medical malpractice arbitration award, from a claim of

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1 | medical malpractice either in contract or tort, or from
2 | noncompliance with the terms of a settlement agreement arising
3 | from a claim of medical malpractice either in contract or
4 | tort, the licensee shall pay the judgment creditor the lesser
5 | of the entire amount of the judgment with all accrued interest
6 | or either \$100,000, if the osteopathic physician is licensed
7 | pursuant to this chapter but does not maintain hospital staff
8 | privileges, or \$250,000, if the osteopathic physician is
9 | licensed pursuant to this chapter and maintains hospital staff
10 | privileges, within 60 days after the date such judgment became
11 | final and subject to execution, unless otherwise mutually
12 | agreed to in writing by the parties. Such adverse final
13 | judgment shall include any cross-claim, counterclaim, or claim
14 | for indemnity or contribution arising from the claim of
15 | medical malpractice. Upon notification of the existence of an
16 | unsatisfied judgment or payment pursuant to this subparagraph,
17 | the department shall notify the licensee by certified mail
18 | that he or she shall be subject to disciplinary action unless,
19 | within 30 days from the date of mailing, the licensee either:
20 | a. Shows proof that the unsatisfied judgment has been
21 | paid in the amount specified in this subparagraph; or
22 | b. Furnishes the department with a copy of a timely
23 | filed notice of appeal and either:
24 | (I) A copy of a supersedeas bond properly posted in
25 | the amount required by law; or
26 | (II) An order from a court of competent jurisdiction
27 | staying execution on the final judgment, pending disposition
28 | of the appeal.
29 | 2. The Department of Health shall issue an emergency
30 | order suspending the license of any licensee who, after 30
31 | days following receipt of a notice from the Department of

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1 Health, has failed to: satisfy a medical malpractice claim
2 against him or her; furnish the Department of Health a copy of
3 a timely filed notice of appeal; furnish the Department of
4 Health a copy of a supersedeas bond properly posted in the
5 amount required by law; or furnish the Department of Health an
6 order from a court of competent jurisdiction staying execution
7 on the final judgment pending disposition of the appeal.

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

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

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

29
30 A licensee who meets the requirements of this paragraph shall
31 be required either to post notice in the form of a sign

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1 prominently displayed in the reception area and clearly
2 noticeable by all patients or to provide a written statement
3 to any person to whom medical services are being provided.
4 Such sign or statement shall state: "Under Florida law,
5 osteopathic physicians are generally required to carry medical
6 malpractice insurance or otherwise demonstrate financial
7 responsibility to cover potential claims for medical
8 malpractice. YOUR OSTEOPATHIC PHYSICIAN HAS DECIDED NOT TO
9 CARRY MEDICAL MALPRACTICE INSURANCE. This is permitted under
10 Florida law subject to certain conditions. Florida law
11 imposes strict penalties against noninsured osteopathic
12 physicians who fail to satisfy adverse judgments arising from
13 claims of medical malpractice. This notice is provided
14 pursuant to Florida law."

15 (6) Any deceptive, untrue, or fraudulent
16 representation by the licensee with respect to any provision
17 of this section shall result in permanent disqualification
18 from any exemption to mandated financial responsibility as
19 provided in this section and shall constitute grounds for
20 disciplinary action under s. 459.015.

21 (7) Any licensee who relies on any exemption from the
22 financial responsibility requirement shall notify the
23 department in writing of any change of circumstance regarding
24 his or her qualifications for such exemption and shall
25 demonstrate that he or she is in compliance with the
26 requirements of this section.

27 (8) If a physician is either a resident physician,
28 assistant resident physician, or intern in an approved
29 postgraduate training program, as defined by the board's
30 rules, and is supervised by a physician who is participating
31 in the Florida Birth-Related Neurological Injury Compensation

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1 Plan, such resident physician, assistant resident physician,
2 or intern is deemed to be a participating physician without
3 the payment of the assessment set forth in s. 766.314(4).

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

19 ~~(10)(9)~~ The board shall adopt rules to implement the
20 provisions of this section.

21
22

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

24 And the title is amended as follows:

25 On page 7, lines 26-27 and on page 8, lines 11-13,
26 delete the words "providing for an alternative method of
27 providing financial responsibility;"

28
29
30
31