

Bill No. CS for SB 2-B

Amendment No. ____ Barcode 522760

CHAMBER ACTION

Senate

House

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

WD/2R
06/18/2003 12:10 PM

.
. .
. .
. .
. .
. .

Senator Campbell moved the following amendment:

Senate Amendment (with title amendment)

On page 86, line 16, through
page 89, line 17, delete those lines

and insert:

Section 32. Paragraph (t) of subsection (1) and
subsections (3) and (6) of section 458.331, Florida Statutes,
are amended, and paragraph (oo) is added to subsection (1) of
that section, to read:

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

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

(t) Gross or repeated malpractice or the failure to
practice medicine with that level of care, skill, and
treatment which is recognized by a reasonably prudent similar
physician as being acceptable under similar conditions and
circumstances. The board shall give great weight to the

Bill No. CS for SB 2-B

Amendment No. ____ Barcode 522760

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

24 (oo) Except as otherwise provided in this section,
25 delegating a surgeon's responsibilities to a patient before,
26 during, and after surgery to a person other than an
27 equivalently-trained physician licensed under this chapter or
28 chapter 459.

29 (3) In any administrative action against a physician
30 ~~which does not involve revocation or suspension of license,~~
31 the division shall have the burden, by the greater weight of

Bill No. CS for SB 2-B

Amendment No. ____ Barcode 522760

1 the evidence, to establish the existence of grounds for
2 disciplinary action. ~~The division shall establish grounds for~~
3 ~~revocation or suspension of license by clear and convincing~~
4 ~~evidence.~~

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

19 Section 33. Paragraph (x) of subsection (1) and
20 subsections (3) and (6) of section 459.015, Florida Statutes,
21 are amended, and paragraph (qq) is added to subsection (1) of
22 that section, to read:

23 459.015 Grounds for disciplinary action; action by the
24 board and department.--

25 (1) The following acts constitute grounds for denial
26 of a license or disciplinary action, as specified in s.
27 456.072(2):

28 (x) Gross or repeated malpractice or the failure to
29 practice osteopathic medicine with that level of care, skill,
30 and treatment which is recognized by a reasonably prudent
31 similar osteopathic physician as being acceptable under

Bill No. CS for SB 2-B

Amendment No. ____ Barcode 522760

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

27 (qq) Except as otherwise provided in this section,
28 delegating a surgeon's responsibilities to a patient before,
29 during, and after surgery to a person other than an
30 equivalently-trained physician licensed under this chapter or
31 chapter 458.

Bill No. CS for SB 2-B

Amendment No. ____ Barcode 522760

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

2 And the title is amended as follows:

3 On page 9, on line 18 and line 26, after the semicolon,

4

5 insert:

6 providing additional disciplinary grounds for

7 certain health care providers;

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31