

1 A bill to be entitled
 2 An act relating to medical malpractice; creating s.
 3 456.50, F.S.; providing definitions; prohibiting the Board
 4 of Medicine or the Board of Osteopathic Medicine from
 5 licensing or continuing to license medical doctors found
 6 to have committed repeated medical malpractice; providing
 7 criteria for certain findings; requiring the board to
 8 establish certain review procedures by rule; providing a
 9 limitation and requirements; authorizing the board to
 10 verify certain licensee's medical malpractice history;
 11 amending ss. 458.331 and 459.015, F.S.; revising grounds
 12 for denial of a license or for disciplinary action;
 13 prohibiting the Board of Medicine or the Board of
 14 Osteopathic Medicine from licensing or reinstating the
 15 license of medical doctors found to have committed
 16 repeated medical malpractice; providing an effective date.

17
 18 Be It Enacted by the Legislature of the State of Florida:

19
 20 Section 1. Section 456.50, Florida Statutes, is created to
 21 read:

22 456.50 Repeated medical malpractice.--

23 (1) For purposes of s. 26, Art. X of the State
 24 Constitution and ss. 458.331(1)(t), (4), and (5) and
 25 459.015(1)(x), (4), and (5):

26 (a) "Board" means the Board of Medicine, in the case of a
 27 physician licensed pursuant to chapter 458, or the Board of

28 Osteopathic Medicine, in the case of an osteopathic physician
 29 licensed pursuant to chapter 459.

30 (b) "Final administrative agency decision" means a final
 31 order of the licensing board following a hearing as provided in
 32 s. 120.57(1) or (2) or s. 120.574 finding that the licensee has
 33 violated s. 458.331(1)(t) or s. 459.015(1)(x).

34 (c) "Found to have committed" means the malpractice has
 35 been found in a final judgment of a court of law, final
 36 administrative agency decision, or decision of binding
 37 arbitration.

38 (d) "Incident" means the wrongful act or occurrence from
 39 which the medical malpractice arises, regardless of the number
 40 of claimants or findings. For purposes of this section:

41 1. A single act of medical malpractice, regardless of the
 42 number of claimants, shall count as only one incident.

43 2. Multiple findings of medical malpractice arising from
 44 the same wrongful act or series of wrongful acts associated with
 45 the treatment of the same patient shall count as only one
 46 incident.

47 (e) "Level of care, skill, and treatment recognized in
 48 general law related to health care licensure" means the standard
 49 of care specified in s. 766.102.

50 (f) "Medical doctor" means a physician licensed pursuant
 51 to chapter 458 or chapter 459.

52 (g) "Medical malpractice" means the failure to practice
 53 medicine in accordance with the level of care, skill, and
 54 treatment recognized in general law related to health care
 55 licensure. Only for the purpose of finding repeated medical

56 malpractice pursuant to this section, any similar wrongful act,
57 neglect, or default, committed in another state or country,
58 which if committed in this state would have been considered
59 medical malpractice as defined in this paragraph, shall be
60 considered medical malpractice if the standard of care and
61 burden of proof applied in the other state or country equaled or
62 exceeded that used in this state.

63 (h) "Repeated medical malpractice" means three or more
64 incidents of medical malpractice within a 10-year period which
65 required payment in excess of \$50,000 for each incident to the
66 claimant in a judgment or decision of binding arbitration or
67 findings of medical malpractice in a final administrative agency
68 decision, or combination thereof. Only an incident occurring on
69 or after November 3, 2004, shall be considered an incident for
70 purposes of finding repeated medical malpractice under this
71 section.

72 (2) For purposes of implementing s. 26, Art. X of the
73 State Constitution, the board shall not license or continue to
74 license a medical doctor found to have committed repeated
75 medical malpractice, the finding of which was based upon clear
76 and convincing evidence. In order to rely on an incident of
77 medical malpractice to determine whether a license must be
78 denied or revoked under this section, if the facts supporting
79 the finding of the incident of medical malpractice were
80 determined on a standard less stringent than clear and
81 convincing evidence, the board shall review the record of the
82 case and determine that the finding would be supported under the
83 clear and convincing standard. The board shall establish

84 procedures by rule for conducting a review of the record and
 85 determining whether or not the finding of repeated medical
 86 malpractice is supported under the clear and convincing
 87 standard. These procedures shall not require a de novo hearing
 88 or trial but may permit the submission of briefs and oral
 89 arguments. In addition, the rule shall provide for review by a
 90 panel of physicians licensed pursuant to this chapter, establish
 91 qualifications for physicians serving on the panel, and set
 92 forth the timeframe for completing the review. The board may
 93 verify on a biennial basis an out-of-state licensee's medical
 94 malpractice history using federal, state, or other databases.

95 Section 2. Paragraph (t) of subsection (1) and subsections
 96 (4), (5), and (10) of section 458.331, Florida Statutes, are
 97 amended to read:

98 458.331 Grounds for disciplinary action; action by the
 99 board and department.--

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

102 (t) Notwithstanding s. 456.072(2) but as specified in s.
 103 456.50(2):

104 1. Committing medical malpractice as defined in s. 456.50
 105 ~~Gross or repeated malpractice or the failure to practice~~
 106 ~~medicine with that level of care, skill, and treatment which is~~
 107 ~~recognized by a reasonably prudent similar physician as being~~
 108 ~~acceptable under similar conditions and circumstances. The board~~
 109 shall give great weight to the provisions of s. 766.102 when
 110 enforcing this paragraph. ~~As used in this paragraph, "repeated~~
 111 ~~malpractice" includes, but is not limited to, three or more~~

112 ~~claims for Medical malpractice within the previous 5-year period~~
113 ~~resulting in indemnities being paid in excess of \$50,000 each to~~
114 ~~the claimant in a judgment or settlement and which incidents~~
115 ~~involved negligent conduct by the physician. As used in this~~
116 ~~paragraph, "gross malpractice" or "the failure to practice~~
117 ~~medicine with that level of care, skill, and treatment which is~~
118 ~~recognized by a reasonably prudent similar physician as being~~
119 ~~acceptable under similar conditions and circumstances," shall~~
120 ~~not be construed so as to require more than one instance, event,~~
121 ~~or act.~~

122 2. Committing gross medical malpractice.

123 3. Committing repeated medical malpractice as defined in
124 s. 456.50. No person found by the board to have committed
125 repeated medical malpractice based on s. 456.50 shall be
126 licensed or continue to be licensed by this state to provide
127 health care services as a medical doctor in this state.

128
129 Nothing in this paragraph shall be construed to require that a
130 physician be incompetent to practice medicine in order to be
131 disciplined pursuant to this paragraph. A recommended order by
132 an administrative law judge or a final order of the board
133 finding a violation under this paragraph shall specify whether
134 the licensee was found to have committed "gross medical
135 malpractice," "repeated medical malpractice," or "medical
136 malpractice," ~~"failure to practice medicine with that level of~~
137 ~~care, skill, and treatment which is recognized as being~~
138 ~~acceptable under similar conditions and circumstances," or any~~

139 combination thereof, and any publication by the board must so
 140 specify.

141 (4) The board shall not reinstate the license of a
 142 physician, or cause a license to be issued to a person it deems
 143 or has deemed unqualified, until such time as it is satisfied
 144 that he or she has complied with all the terms and conditions
 145 set forth in the final order and that such person is capable of
 146 safely engaging in the practice of medicine. However, the board
 147 may not issue a license to, or reinstate the license of, any
 148 medical doctor found by the board to have committed repeated
 149 medical malpractice based on s. 456.50, regardless of the extent
 150 to which the licensee or prospective licensee has complied with
 151 all terms and conditions set forth in the final order and is
 152 capable of safely engaging in the practice of medicine.

153 (5) The board shall by rule establish guidelines for the
 154 disposition of disciplinary cases involving specific types of
 155 violations. Such guidelines may include minimum and maximum
 156 fines, periods of supervision or probation, or conditions of
 157 probation or reissuance of a license. "Gross medical
 158 malpractice," "repeated medical malpractice," and "medical
 159 malpractice" ~~"failure to practice medicine with that level of~~
 160 ~~care, skill, and treatment which is recognized as being~~
 161 ~~acceptable under similar circumstances"~~ under paragraph (1)(t)
 162 ~~subsection (10)~~ shall each be considered distinct types of
 163 violations requiring specific individual guidelines.

164 ~~(10) A recommended order by an administrative law judge,~~
 165 ~~or a final order of the board finding a violation under this~~
 166 ~~section shall specify whether the licensee was found to have~~

167 ~~committed "gross malpractice," "repeated malpractice," or~~
 168 ~~"failure to practice medicine with that level of care, skill,~~
 169 ~~and treatment which is recognized as being acceptable under~~
 170 ~~similar conditions and circumstances" or any combination~~
 171 ~~thereof, and any publication by the board shall so specify.~~

172 Section 3. Paragraph (x) of subsection (1) and subsections
 173 (4) and (5) of section 459.015, Florida Statutes, are amended to
 174 read:

175 459.015 Grounds for disciplinary action; action by the
 176 board and department.--

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

179 (x) Notwithstanding s. 456.072(2) but as specified in s.
 180 456.50(2):

181 1. Committing medical ~~Gross or repeated malpractice as~~
 182 defined in s. 456.50 ~~or the failure to practice osteopathic~~
 183 ~~medicine with that level of care, skill, and treatment which is~~
 184 ~~recognized by a reasonably prudent similar osteopathic physician~~
 185 ~~as being acceptable under similar conditions and circumstances.~~

186 The board shall give great weight to the provisions of s.
 187 766.102 when enforcing this paragraph. ~~As used in this~~
 188 ~~paragraph, "repeated malpractice" includes, but is not limited~~
 189 ~~to, three or more claims for Medical malpractice within the~~
 190 ~~previous 5-year period resulting in indemnities being paid in~~
 191 ~~excess of \$50,000 each to the claimant in a judgment or~~
 192 ~~settlement and which incidents involved negligent conduct by the~~
 193 ~~osteopathic physician. As used in this paragraph, "gross~~
 194 ~~malpractice" or "the failure to practice osteopathic medicine~~

195 ~~with that level of care, skill, and treatment which is~~
 196 ~~recognized by a reasonably prudent similar osteopathic physician~~
 197 ~~as being acceptable under similar conditions and circumstances"~~
 198 shall not be construed so as to require more than one instance,
 199 event, or act.

200 2. Committing gross medical malpractice.

201 3. Committing repeated medical malpractice as defined in
 202 s. 456.50. No person found by the board to have committed
 203 repeated medical malpractice based on s. 456.50 shall be
 204 licensed or continue to be licensed by this state to provide
 205 health care services as a medical doctor in this state.

206
 207 Nothing in this paragraph shall be construed to require that an
 208 osteopathic physician be incompetent to practice osteopathic
 209 medicine in order to be disciplined pursuant to this paragraph.
 210 A recommended order by an administrative law judge or a final
 211 order of the board finding a violation under this paragraph
 212 shall specify whether the licensee was found to have committed
 213 "gross medical malpractice," "repeated medical malpractice," or
 214 "medical malpractice," ~~"failure to practice osteopathic medicine~~
 215 ~~with that level of care, skill, and treatment which is~~
 216 ~~recognized as being acceptable under similar conditions and~~
 217 ~~circumstances,"~~ or any combination thereof, and any publication
 218 by the board shall so specify.

219 (4) The board shall not reinstate the license or
 220 certificate of an osteopathic physician, or cause a license or
 221 certificate to be issued to a person it has deemed unqualified,
 222 until such time as it is satisfied that he or she has complied

223 with all the terms and conditions set forth in the final order
 224 and that such person is capable of safely engaging in the
 225 practice of osteopathic medicine. However, the board may not
 226 issue a license to, or reinstate the license of, any medical
 227 doctor found by the board to have committed repeated medical
 228 malpractice based on s. 456.50, regardless of the extent to
 229 which the licensee or prospective licensee has complied with all
 230 terms and conditions set forth in the final order and is capable
 231 of safely engaging in the practice of osteopathic medicine.

232 (5) The board shall, by rule, establish comprehensive
 233 guidelines for the disposition of disciplinary cases involving
 234 specific types of violations. Such guidelines shall establish
 235 offenses and circumstances for which revocation will be presumed
 236 to be appropriate, as well as offenses and circumstances for
 237 which suspension for particular periods of time will be presumed
 238 to be appropriate. The guidelines shall also establish minimum
 239 and maximum fines, periods of supervision or probation, or
 240 conditions of probation and conditions for reissuance of a
 241 license with respect to particular circumstances and offenses.
 242 "Gross medical malpractice," "repeated medical malpractice," and
 243 "medical malpractice" ~~"failure to practice osteopathic medicine~~
 244 ~~with that level of care, skill, and treatment which is~~
 245 ~~recognized as being acceptable under similar conditions and~~
 246 ~~circumstances"~~ under paragraph (1)(x) shall each be considered
 247 distinct types of violations requiring specific individual
 248 guidelines.

249 Section 4. This act shall take effect upon becoming a law.