

CHAMBER ACTION

1 The Health & Families Council recommends the following:

2
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to medical malpractice; amending s.
7 456.041, F.S.; requiring the Department of Health to
8 verify certain information submitted by a person who
9 applies for initial licensure, or renewal of licensure, as
10 a physician; providing physician profile requirements;
11 creating s. 456.50, F.S.; providing definitions;
12 prohibiting the Board of Medicine or the Board of
13 Osteopathic Medicine from licensing or continuing to
14 license medical doctors found to have committed repeated
15 medical malpractice; providing criteria for certain
16 findings; authorizing the board to verify certain
17 licensees' medical malpractice history; authorizing the
18 board to require certain persons to provide a copy of a
19 trial record resulting in a medical malpractice judgment
20 involving certain incidents; extending a time period for
21 granting or denying certain licensure applications;
22 amending ss. 458.331 and 459.015, F.S.; revising grounds
23 for denial of a license or for disciplinary action;

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24 | prohibiting the Board of Medicine or the Board of
 25 | Osteopathic Medicine from licensing or reinstating the
 26 | license of medical doctors found to have committed
 27 | repeated medical malpractice; providing an effective date.

28 |

29 | Be It Enacted by the Legislature of the State of Florida:

30 |

31 | Section 1. Paragraph (b) of subsection (1) of section
 32 | 456.041, Florida Statutes, is redesignated as paragraph (c) and
 33 | a new paragraph (b) is added to said subsection, to read:

34 | 456.041 Practitioner profile; creation.--

35 | (1)

36 | (b) Beginning July 1, 2005, the department shall verify
 37 | the information submitted by the applicant under s. 456.039
 38 | concerning disciplinary history and medical malpractice claims
 39 | at the time of initial licensure and license renewal using the
 40 | National Practitioner Data Bank. The physician profiles shall
 41 | reflect the disciplinary action and medical malpractice claims
 42 | as reported by the National Practitioner Data Bank.

43 | Section 2. Section 456.50, Florida Statutes, is created to
 44 | read:

45 | 456.50 Repeated medical malpractice.--

46 | (1) For purposes of s. 26, Art. X of the State
 47 | Constitution and ss. 458.331(1)(t), (4), and (5) and
 48 | 459.015(1)(x), (4), and (5):

49 | (a) "Board" means the Board of Medicine, in the case of a
 50 | physician licensed pursuant to chapter 458, or the Board of

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

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

57 (c) "Found to have committed" means the malpractice has
58 been found in a final judgment of a court of law, final
59 administrative agency decision, or decision of binding
60 arbitration.

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

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

66 2. Multiple findings of medical malpractice arising from
67 the same wrongful act or series of wrongful acts associated with
68 the treatment of the same patient shall count as only one
69 incident.

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

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

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

79 malpractice pursuant to this section, any similar wrongful act,
 80 neglect, or default, committed in another state or country,
 81 which if committed in this state would have been considered
 82 medical malpractice as defined in this paragraph, shall be
 83 considered medical malpractice if the standard of care and
 84 burden of proof applied in the other state or country equaled or
 85 exceeded that used in this state.

86 (h) "Repeated medical malpractice" means three or more
 87 incidents of medical malpractice found to have been committed by
 88 a medical doctor. Only an incident occurring on or after
 89 November 2, 2004, shall be considered an incident for purposes
 90 of finding repeated medical malpractice under this section.

91 (2) For purposes of implementing s. 26, Art. X of the
 92 State Constitution, the board shall not license or continue to
 93 license a medical doctor found to have committed repeated
 94 medical malpractice, the finding of which was based upon clear
 95 and convincing evidence. In order to rely on an incident of
 96 medical malpractice to determine whether a license must be
 97 denied or revoked under this section, if the facts supporting
 98 the finding of the incident of medical malpractice were
 99 determined on a standard less stringent than clear and
 100 convincing evidence, the board shall review the record of the
 101 case and determine whether the finding would be supported under
 102 the standard of clear and convincing evidence. Section 456.073
 103 applies to such proceedings. The board may verify on a biennial
 104 basis an out-of-state licensee's medical malpractice history
 105 using federal, state, or other databases. The board may require
 106 licensees and applicants for licensure to provide a copy of the

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107 record of the trial resulting in any medical malpractice
 108 judgment, which may be required to be in an electronic format,
 109 involving an incident that occurred on or after November 2,
 110 2004. For purposes of implementing s. 26, Art. X of the State
 111 Constitution, the 90-day requirement for granting or denying a
 112 complete allopathic or osteopathic licensure application in s.
 113 120.60(1) is extended to 180 days.

114 Section 3. Paragraph (t) of subsection (1) and subsections
 115 (4), (5), and (10) of section 458.331, Florida Statutes, are
 116 amended to read:

117 458.331 Grounds for disciplinary action; action by the
 118 board and department.--

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

121 (t) Notwithstanding s. 456.072(2) but as specified in s.
 122 456.50(2):

123 1. Committing medical malpractice as defined in s. 456.50
 124 ~~Gross or repeated malpractice or the failure to practice~~
 125 ~~medicine with that level of care, skill, and treatment which is~~
 126 ~~recognized by a reasonably prudent similar physician as being~~
 127 ~~acceptable under similar conditions and circumstances. The board~~
 128 shall give great weight to the provisions of s. 766.102 when
 129 enforcing this paragraph. ~~As used in this paragraph, "repeated~~
 130 ~~malpractice" includes, but is not limited to, three or more~~
 131 ~~claims for Medical malpractice within the previous 5-year period~~
 132 ~~resulting in indemnities being paid in excess of \$50,000 each to~~
 133 ~~the claimant in a judgment or settlement and which incidents~~
 134 ~~involved negligent conduct by the physician. As used in this~~

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135 ~~paragraph, "gross malpractice" or "the failure to practice~~
 136 ~~medicine with that level of care, skill, and treatment which is~~
 137 ~~recognized by a reasonably prudent similar physician as being~~
 138 ~~acceptable under similar conditions and circumstances,"~~ shall
 139 not be construed ~~so as~~ to require more than one instance, event,
 140 or act.

141 2. Committing gross medical malpractice.

142 3. Committing repeated medical malpractice as defined in
 143 s. 456.50. No person found by the board to have committed
 144 repeated medical malpractice based on s. 456.50 shall be
 145 licensed or continue to be licensed by this state to provide
 146 health care services as a medical doctor in this state.

147
 148 Nothing in this paragraph shall be construed to require that a
 149 physician be incompetent to practice medicine in order to be
 150 disciplined pursuant to this paragraph. A recommended order by
 151 an administrative law judge or a final order of the board
 152 finding a violation under this paragraph shall specify whether
 153 the licensee was found to have committed "gross medical
 154 malpractice," "repeated medical malpractice," or "medical
 155 malpractice," ~~"failure to practice medicine with that level of~~
 156 ~~care, skill, and treatment which is recognized as being~~
 157 ~~acceptable under similar conditions and circumstances,"~~ or any
 158 combination thereof, and any publication by the board must so
 159 specify.

160 (4) The board shall not reinstate the license of a
 161 physician, or cause a license to be issued to a person it deems
 162 or has deemed unqualified, until such time as it is satisfied

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163 that he or she has complied with all the terms and conditions
 164 set forth in the final order and that such person is capable of
 165 safely engaging in the practice of medicine. However, the board
 166 may not issue a license to, or reinstate the license of, any
 167 medical doctor found by the board to have committed repeated
 168 medical malpractice based on s. 456.50, regardless of the extent
 169 to which the licensee or prospective licensee has complied with
 170 all terms and conditions set forth in the final order and is
 171 capable of safely engaging in the practice of medicine.

172 (5) The board shall by rule establish guidelines for the
 173 disposition of disciplinary cases involving specific types of
 174 violations. Such guidelines may include minimum and maximum
 175 fines, periods of supervision or probation, or conditions of
 176 probation or reissuance of a license. "Gross medical
 177 malpractice," "repeated medical malpractice," and "medical
 178 malpractice" ~~"failure to practice medicine with that level of~~
 179 ~~care, skill, and treatment which is recognized as being~~
 180 ~~acceptable under similar circumstances" under paragraph (1)(t)~~
 181 ~~subsection (10)~~ shall each be considered distinct types of
 182 violations requiring specific individual guidelines.

183 ~~(10) A recommended order by an administrative law judge,~~
 184 ~~or a final order of the board finding a violation under this~~
 185 ~~section shall specify whether the licensee was found to have~~
 186 ~~committed "gross malpractice," "repeated malpractice," or~~
 187 ~~"failure to practice medicine with that level of care, skill,~~
 188 ~~and treatment which is recognized as being acceptable under~~
 189 ~~similar conditions and circumstances" or any combination~~
 190 ~~thereof, and any publication by the board shall so specify.~~

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191 Section 4. Paragraph (x) of subsection (1) and subsections
192 (4) and (5) of section 459.015, Florida Statutes, are amended to
193 read:

194 459.015 Grounds for disciplinary action; action by the
195 board and department.--

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

198 (x) Notwithstanding s. 456.072(2) but as specified in s.
199 456.50(2):

200 1. Committing medical ~~Gross or repeated malpractice as~~
201 ~~defined in s. 456.50 or the failure to practice osteopathic~~
202 ~~medicine with that level of care, skill, and treatment which is~~
203 ~~recognized by a reasonably prudent similar osteopathic physician~~
204 ~~as being acceptable under similar conditions and circumstances.~~
205 The board shall give great weight to the provisions of s.
206 766.102 when enforcing this paragraph. ~~As used in this~~
207 ~~paragraph, "repeated malpractice" includes, but is not limited~~
208 ~~to, three or more claims for Medical malpractice within the~~
209 ~~previous 5-year period resulting in indemnities being paid in~~
210 ~~excess of \$50,000 each to the claimant in a judgment or~~
211 ~~settlement and which incidents involved negligent conduct by the~~
212 ~~osteopathic physician. As used in this paragraph, "gross~~
213 ~~malpractice" or "the failure to practice osteopathic medicine~~
214 ~~with that level of care, skill, and treatment which is~~
215 ~~recognized by a reasonably prudent similar osteopathic physician~~
216 ~~as being acceptable under similar conditions and circumstances"~~
217 shall not be construed so as to require more than one instance,
218 event, or act.

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- 219 2. Committing gross medical malpractice.
- 220 3. Committing repeated medical malpractice as defined in
- 221 s. 456.50. No person found by the board to have committed
- 222 repeated medical malpractice based on s. 456.50 shall be
- 223 licensed or continue to be licensed by this state to provide
- 224 health care services as a medical doctor in this state.

225

226 Nothing in this paragraph shall be construed to require that an

227 osteopathic physician be incompetent to practice osteopathic

228 medicine in order to be disciplined pursuant to this paragraph.

229 A recommended order by an administrative law judge or a final

230 order of the board finding a violation under this paragraph

231 shall specify whether the licensee was found to have committed

232 "gross medical malpractice," "repeated medical malpractice," or

233 "medical malpractice," ~~"failure to practice osteopathic medicine~~

234 ~~with that level of care, skill, and treatment which is~~

235 ~~recognized as being acceptable under similar conditions and~~

236 ~~circumstances,"~~ or any combination thereof, and any publication

237 by the board shall so specify.

238 (4) The board shall not reinstate the license or

239 certificate of an osteopathic physician, or cause a license or

240 certificate to be issued to a person it has deemed unqualified,

241 until such time as it is satisfied that he or she has complied

242 with all the terms and conditions set forth in the final order

243 and that such person is capable of safely engaging in the

244 practice of osteopathic medicine. However, the board may not

245 issue a license to, or reinstate the license of, any medical

246 doctor found by the board to have committed repeated medical

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247 malpractice based on s. 456.50, regardless of the extent to
 248 which the licensee or prospective licensee has complied with all
 249 terms and conditions set forth in the final order and is capable
 250 of safely engaging in the practice of osteopathic medicine.

251 (5) The board shall, by rule, establish comprehensive
 252 guidelines for the disposition of disciplinary cases involving
 253 specific types of violations. Such guidelines shall establish
 254 offenses and circumstances for which revocation will be presumed
 255 to be appropriate, as well as offenses and circumstances for
 256 which suspension for particular periods of time will be presumed
 257 to be appropriate. The guidelines shall also establish minimum
 258 and maximum fines, periods of supervision or probation, or
 259 conditions of probation and conditions for reissuance of a
 260 license with respect to particular circumstances and offenses.
 261 "Gross medical malpractice," "repeated medical malpractice," and
 262 "medical malpractice" ~~"failure to practice osteopathic medicine~~
 263 ~~with that level of care, skill, and treatment which is~~
 264 ~~recognized as being acceptable under similar conditions and~~
 265 ~~circumstances"~~ under paragraph (1)(x) shall each be considered
 266 distinct types of violations requiring specific individual
 267 guidelines.

268 Section 5. This act shall take effect upon becoming a law.