

CHAMBER ACTION

1 The Health Care Regulation Committee 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 the regulation of physicians,
7 osteopathic physicians, and physician assistants; amending
8 ss. 458.320 and 459.0085, F.S.; revising the methods and
9 monetary amounts by which certain physician or osteopathic
10 physician licensure applicants must demonstrate financial
11 responsibility; providing additional escrow account
12 requirements; removing provisions exempting physicians or
13 osteopathic physicians from financial responsibility
14 requirements; amending ss. 458.331 and 459.015, F.S.;
15 requiring the inclusion of a licensed physician assistant
16 on certain probable cause panels; providing an effective
17 date.

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

20
21 Section 1. Section 458.320, Florida Statutes, is amended
22 to read:

23 458.320 Financial responsibility.--

24 (1) As a condition of licensing and maintaining an active
 25 license, and prior to the issuance or renewal of an active
 26 license or reactivation of an inactive license for the practice
 27 of medicine, an applicant must by one of the following methods
 28 demonstrate to the satisfaction of the board and the department
 29 financial responsibility to pay claims and costs ancillary
 30 thereto arising out of the rendering of, or the failure to
 31 render, medical care or services:

32 (a) Establishing and maintaining an escrow account
 33 consisting of cash or assets eligible for deposit in accordance
 34 with s. 625.52 in an amount sufficient to meet the minimum
 35 annual aggregate claim amount ~~the per claim amounts~~ specified in
 36 paragraph (b). The escrow account must be payable to the
 37 physician as beneficiary upon presentation of a final judgment
 38 indicating liability and awarding damages to be paid by the
 39 physician or upon presentation of a settlement agreement signed
 40 by all parties to such agreement when such final judgment or
 41 settlement is a result of a claim arising out of the rendering
 42 of, or the failure to render, medical care and services. The
 43 required escrow amount set forth in this paragraph may not be
 44 used for litigation costs or attorney's fees for the defense of
 45 any medical malpractice claim. The escrow account must be
 46 nonassignable and nontransferable. Such escrow account must be
 47 made with and held by the trust department of the bank or saving
 48 association organized and existing under the laws of the United
 49 States which has its principal place of business in this state
 50 or has a branch office that is authorized under the laws of this
 51 state or of the United States to receive deposits in this state.

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52 (b) Obtaining and maintaining professional liability
53 coverage in an amount not less than \$100,000 per claim, with a
54 minimum annual aggregate of not less than \$300,000, from an
55 authorized insurer as defined under s. 624.09, from a surplus
56 lines insurer as defined under s. 626.914(2), from a risk
57 retention group as defined under s. 627.942, from the Joint
58 Underwriting Association established under s. 627.351(4), or
59 through a plan of self-insurance as provided in s. 627.357. The
60 required coverage amount set forth in this paragraph may not be
61 used for litigation costs or attorney's fees for the defense of
62 any medical malpractice claim.

63 (c) Obtaining and maintaining an unexpired, irrevocable
64 letter of credit, established pursuant to chapter 675, in an
65 amount sufficient to meet the minimum annual aggregate claim
66 amount specified in paragraph (b) ~~not less than \$100,000 per~~
67 ~~claim, with a minimum aggregate availability of credit of not~~
68 ~~less than \$300,000~~. The letter of credit must be payable to the
69 physician as beneficiary upon presentment of a final judgment
70 indicating liability and awarding damages to be paid by the
71 physician or upon presentment of a settlement agreement signed
72 by all parties to such agreement when such final judgment or
73 settlement is a result of a claim arising out of the rendering
74 of, or the failure to render, medical care and services. The
75 letter of credit may not be used for litigation costs or
76 attorney's fees for the defense of any medical malpractice
77 claim. The letter of credit must be nonassignable and
78 nontransferable. Such letter of credit must be issued by any
79 bank or savings association organized and existing under the

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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80 | laws of this state or any bank or savings association organized
 81 | under the laws of the United States which has its principal
 82 | place of business in this state or has a branch office that is
 83 | authorized under the laws of this state or of the United States
 84 | to receive deposits in this state.

85 | (2) Physicians who perform surgery in an ambulatory
 86 | surgical center licensed under chapter 395 and, as a continuing
 87 | condition of hospital staff privileges, physicians who have
 88 | staff privileges must also establish financial responsibility by
 89 | one of the following methods:

90 | (a) Establishing and maintaining an escrow account
 91 | consisting of cash or assets eligible for deposit in accordance
 92 | with s. 625.52 ~~in the per claim amounts~~ specified in paragraph

93 | (b). The escrow account must be payable to the physician as
 94 | beneficiary upon presentation of a final judgment indicating
 95 | liability and awarding damages to be paid by the physician or
 96 | upon presentation of a settlement agreement signed by all
 97 | parties to such agreement when such final judgment or settlement
 98 | is a result of a claim arising out of the rendering of, or the
 99 | failure to render, medical care and services. The required
 100 | escrow amount set forth in this paragraph may not be used for
 101 | litigation costs or attorney's fees for the defense of any
 102 | medical malpractice claim. The escrow account must be
 103 | nonassignable and nontransferable. Such escrow account must be
 104 | made with and held by the trust department of a bank or savings
 105 | association organized and existing under the laws of the United
 106 | States which has its principal place of business in this state

107 | or has a branch office that is authorized under the laws of this
 108 | state or of the United States to receive deposits in this state.

109 | (b) Obtaining and maintaining professional liability
 110 | coverage in an amount not less than \$250,000 per claim, with a
 111 | minimum annual aggregate of not less than \$750,000 from an
 112 | authorized insurer as defined under s. 624.09, from a surplus
 113 | lines insurer as defined under s. 626.914(2), from a risk
 114 | retention group as defined under s. 627.942, from the Joint
 115 | Underwriting Association established under s. 627.351(4),
 116 | through a plan of self-insurance as provided in s. 627.357, or
 117 | through a plan of self-insurance which meets the conditions
 118 | specified for satisfying financial responsibility in s. 766.110.
 119 | The required coverage amount set forth in this paragraph may not
 120 | be used for litigation costs or attorney's fees for the defense
 121 | of any medical malpractice claim.

122 | (c) Obtaining and maintaining an unexpired irrevocable
 123 | letter of credit, established pursuant to chapter 675, in an
 124 | amount sufficient to meet the minimum annual aggregate claim
 125 | amount specified in paragraph (b) ~~not less than \$250,000 per~~
 126 | ~~claim, with a minimum aggregate availability of credit of not~~
 127 | ~~less than \$750,000.~~ The letter of credit must be payable to the
 128 | physician as beneficiary upon presentment of a final judgment
 129 | indicating liability and awarding damages to be paid by the
 130 | physician or upon presentment of a settlement agreement signed
 131 | by all parties to such agreement when such final judgment or
 132 | settlement is a result of a claim arising out of the rendering
 133 | of, or the failure to render, medical care and services. The
 134 | letter of credit may not be used for litigation costs or

135 attorney's fees for the defense of any medical malpractice
 136 claim. The letter of credit must be nonassignable and
 137 nontransferable. The letter of credit must be issued by any bank
 138 or savings association organized and existing under the laws of
 139 this state or any bank or savings association organized under
 140 the laws of the United States which has its principal place of
 141 business in this state or has a branch office that is authorized
 142 under the laws of this state or of the United States to receive
 143 deposits in this state.

144
 145 This subsection shall be inclusive of the coverage in subsection
 146 (1).

147 (3)(a) Meeting the financial responsibility requirements
 148 of this section or the criteria for any exemption from such
 149 requirements must be established at the time of issuance or
 150 renewal of a license.

151 (b) Any person may, at any time, submit to the department
 152 a request for an advisory opinion regarding such person's
 153 qualifications for exemption.

154 (4)(a) Each insurer, self-insurer, risk retention group,
 155 or Joint Underwriting Association must promptly notify the
 156 department of cancellation or nonrenewal of insurance required
 157 by this section. Unless the physician demonstrates that he or
 158 she is otherwise in compliance with the requirements of this
 159 section, the department shall suspend the license of the
 160 physician pursuant to ss. 120.569 and 120.57 and notify all
 161 health care facilities licensed under chapter 395 of such
 162 action. Any suspension under this subsection remains in effect

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163 | until the physician demonstrates compliance with the
 164 | requirements of this section. If any judgments or settlements
 165 | are pending at the time of suspension, those judgments or
 166 | settlements must be paid in accordance with this section unless
 167 | otherwise mutually agreed to in writing by the parties. This
 168 | paragraph does not abrogate a judgment debtor's obligation to
 169 | satisfy the entire amount of any judgment.

170 | (b) If financial responsibility requirements are met by
 171 | maintaining an escrow account or letter of credit as provided in
 172 | this section, upon the entry of an adverse final judgment
 173 | arising from a medical malpractice arbitration award, from a
 174 | claim of medical malpractice either in contract or tort, or from
 175 | noncompliance with the terms of a settlement agreement arising
 176 | from a claim of medical malpractice either in contract or tort,
 177 | the licensee shall pay the entire amount of the judgment
 178 | together with all accrued interest, or the amount maintained in
 179 | the escrow account or provided in the letter of credit as
 180 | required by this section, whichever is less, within 60 days
 181 | after the date such judgment became final and subject to
 182 | execution, unless otherwise mutually agreed to in writing by the
 183 | parties. If timely payment is not made by the physician, the
 184 | department shall suspend the license of the physician pursuant
 185 | to the following procedures: ~~set forth in subparagraphs~~
 186 | ~~(5)(g)3., 4., and 5.~~

187 | 1. The Department of Health shall issue an emergency order
 188 | suspending the license of any licensee who, after 30 days
 189 | following receipt of a notice from the Department of Health, has
 190 | failed to: satisfy a medical malpractice claim against him or

191 her; furnish the Department of Health a copy of a timely filed
 192 notice of appeal; furnish the Department of Health a copy of a
 193 supersedeas bond properly posted in the amount required by law;
 194 or furnish the Department of Health an order from a court of
 195 competent jurisdiction staying execution on the final judgment
 196 pending disposition of the appeal.

197 2. Upon the next meeting of the probable cause panel of
 198 the board following 30 days after the date of mailing the notice
 199 of disciplinary action to the licensee, the panel shall make a
 200 determination of whether probable cause exists to take
 201 disciplinary action against the licensee pursuant to
 202 subparagraph 1.

203 3. If the board determines that the factual requirements
 204 of subparagraph 1. are met, it shall take disciplinary action as
 205 it deems appropriate against the licensee. Such disciplinary
 206 action shall include, at a minimum, probation of the license
 207 with the restriction that the licensee must make payments to the
 208 judgment creditor on a schedule determined by the board to be
 209 reasonable and within the financial capability of the physician.
 210 Notwithstanding any other disciplinary penalty imposed, the
 211 disciplinary penalty may include suspension of the license for a
 212 period not to exceed 5 years. In the event that an agreement to
 213 satisfy a judgment has been met, the board shall remove any
 214 restriction on the license.

215
 216 Nothing in this paragraph shall abrogate a judgment debtor's
 217 obligation to satisfy the entire amount of any judgment.

218 (5) The requirements of subsections (1), (2), and (3) do
219 not apply to:

220 (a) Any person licensed under this chapter who practices
221 medicine exclusively as an officer, employee, or agent of the
222 Federal Government or of the state or its agencies or its
223 subdivisions. For the purposes of this subsection, an agent of
224 the state, its agencies, or its subdivisions is a person who is
225 eligible for coverage under any self-insurance or insurance
226 program authorized by the provisions of s. 768.28(16).

227 (b) Any person whose license has become inactive under
228 this chapter and who is not practicing medicine in this state.
229 Any person applying for reactivation of a license must show
230 either that such licensee maintained tail insurance coverage
231 which provided liability coverage for incidents that occurred on
232 or after January 1, 1987, or the initial date of licensure in
233 this state, whichever is later, and incidents that occurred
234 before the date on which the license became inactive; or such
235 licensee must submit an affidavit stating that such licensee has
236 no unsatisfied medical malpractice judgments or settlements at
237 the time of application for reactivation.

238 (c) Any person holding a limited license pursuant to s.
239 458.317 and practicing under the scope of such limited license.

240 (d) Any person licensed or certified under this chapter
241 who practices only in conjunction with his or her teaching
242 duties at an accredited medical school or in its main teaching
243 hospitals. Such person may engage in the practice of medicine to
244 the extent that such practice is incidental to and a necessary

245 | part of duties in connection with the teaching position in the
246 | medical school.

247 | (e) Any person holding an active license under this
248 | chapter who is not practicing medicine in this state. If such
249 | person initiates or resumes any practice of medicine in this
250 | state, he or she must notify the department of such activity and
251 | fulfill the financial responsibility requirements of this
252 | section before resuming the practice of medicine in this state.

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

255 | 1. The licensee has held an active license to practice in
256 | this state or another state or some combination thereof for more
257 | than 15 years.

258 | 2. The licensee has either retired from the practice of
259 | medicine or maintains a part-time practice of no more than 1,000
260 | patient contact hours per year.

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

264 | 4. The licensee has not been convicted of, or pled guilty
265 | or nolo contendere to, any criminal violation specified in this
266 | chapter or the medical practice act of any other state.

267 | 5. The licensee has not been subject within the last 10
268 | years of practice to license revocation or suspension for any
269 | period of time; probation for a period of 3 years or longer; or
270 | a fine of \$500 or more for a violation of this chapter or the
271 | medical practice act of another jurisdiction. The regulatory
272 | agency's acceptance of a physician's relinquishment of a

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273 | license, stipulation, consent order, or other settlement,
 274 | offered in response to or in anticipation of the filing of
 275 | administrative charges against the physician's license,
 276 | constitutes action against the physician's license for the
 277 | purposes of this paragraph.

278 | 6. The licensee has submitted a form supplying necessary
 279 | information as required by the department and an affidavit
 280 | affirming compliance with this paragraph.

281 | 7. The licensee must submit biennially to the department
 282 | certification stating compliance with the provisions of this
 283 | paragraph. The licensee must, upon request, demonstrate to the
 284 | department information verifying compliance with this paragraph.

285 |
 286 | A licensee who meets the requirements of this paragraph must
 287 | post notice in the form of a sign prominently displayed in the
 288 | reception area and clearly noticeable by all patients or provide
 289 | a written statement to any person to whom medical services are
 290 | being provided. The sign or statement must read as follows:
 291 | "Under Florida law, physicians are generally required to carry
 292 | medical malpractice insurance or otherwise demonstrate financial
 293 | responsibility to cover potential claims for medical
 294 | malpractice. However, certain part-time physicians who meet
 295 | state requirements are exempt from the financial responsibility
 296 | law. YOUR DOCTOR MEETS THESE REQUIREMENTS AND HAS DECIDED NOT TO
 297 | CARRY MEDICAL MALPRACTICE INSURANCE. This notice is provided
 298 | pursuant to Florida law."

299 | ~~(g) Any person holding an active license under this~~
 300 | ~~chapter who agrees to meet all of the following criteria:~~

301 ~~1. Upon the entry of an adverse final judgment arising~~
 302 ~~from a medical malpractice arbitration award, from a claim of~~
 303 ~~medical malpractice either in contract or tort, or from~~
 304 ~~noncompliance with the terms of a settlement agreement arising~~
 305 ~~from a claim of medical malpractice either in contract or tort,~~
 306 ~~the licensee shall pay the judgment creditor the lesser of the~~
 307 ~~entire amount of the judgment with all accrued interest or~~
 308 ~~either \$100,000, if the physician is licensed pursuant to this~~
 309 ~~chapter but does not maintain hospital staff privileges, or~~
 310 ~~\$250,000, if the physician is licensed pursuant to this chapter~~
 311 ~~and maintains hospital staff privileges, within 60 days after~~
 312 ~~the date such judgment became final and subject to execution,~~
 313 ~~unless otherwise mutually agreed to in writing by the parties.~~
 314 ~~Such adverse final judgment shall include any cross-claim,~~
 315 ~~counterclaim, or claim for indemnity or contribution arising~~
 316 ~~from the claim of medical malpractice. Upon notification of the~~
 317 ~~existence of an unsatisfied judgment or payment pursuant to this~~
 318 ~~subparagraph, the department shall notify the licensee by~~
 319 ~~certified mail that he or she shall be subject to disciplinary~~
 320 ~~action unless, within 30 days from the date of mailing, he or~~
 321 ~~she either:~~

322 ~~a. Shows proof that the unsatisfied judgment has been paid~~
 323 ~~in the amount specified in this subparagraph; or~~

324 ~~b. Furnishes the department with a copy of a timely filed~~
 325 ~~notice of appeal and either:~~

326 ~~(I) A copy of a supersedeas bond properly posted in the~~
 327 ~~amount required by law; or~~

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328 ~~(II) An order from a court of competent jurisdiction~~
329 ~~staying execution on the final judgment pending disposition of~~
330 ~~the appeal.~~

331 ~~2. The Department of Health shall issue an emergency order~~
332 ~~suspending the license of any licensee who, after 30 days~~
333 ~~following receipt of a notice from the Department of Health, has~~
334 ~~failed to: satisfy a medical malpractice claim against him or~~
335 ~~her; furnish the Department of Health a copy of a timely filed~~
336 ~~notice of appeal; furnish the Department of Health a copy of a~~
337 ~~supersedeas bond properly posted in the amount required by law;~~
338 ~~or furnish the Department of Health an order from a court of~~
339 ~~competent jurisdiction staying execution on the final judgment~~
340 ~~pending disposition of the appeal.~~

341 ~~3. Upon the next meeting of the probable cause panel of~~
342 ~~the board following 30 days after the date of mailing the notice~~
343 ~~of disciplinary action to the licensee, the panel shall make a~~
344 ~~determination of whether probable cause exists to take~~
345 ~~disciplinary action against the licensee pursuant to~~
346 ~~subparagraph 1.~~

347 ~~4. If the board determines that the factual requirements~~
348 ~~of subparagraph 1. are met, it shall take disciplinary action as~~
349 ~~it deems appropriate against the licensee. Such disciplinary~~
350 ~~action shall include, at a minimum, probation of the license~~
351 ~~with the restriction that the licensee must make payments to the~~
352 ~~judgment creditor on a schedule determined by the board to be~~
353 ~~reasonable and within the financial capability of the physician.~~
354 ~~Notwithstanding any other disciplinary penalty imposed, the~~
355 ~~disciplinary penalty may include suspension of the license for a~~

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356 ~~period not to exceed 5 years. In the event that an agreement to~~
 357 ~~satisfy a judgment has been met, the board shall remove any~~
 358 ~~restriction on the license.~~

359 ~~5. The licensee has completed a form supplying necessary~~
 360 ~~information as required by the department.~~

361
 362 ~~A licensee who meets the requirements of this paragraph shall be~~
 363 ~~required either to post notice in the form of a sign prominently~~
 364 ~~displayed in the reception area and clearly noticeable by all~~
 365 ~~patients or to provide a written statement to any person to whom~~
 366 ~~medical services are being provided. Such sign or statement~~
 367 ~~shall state: "Under Florida law, physicians are generally~~
 368 ~~required to carry medical malpractice insurance or otherwise~~
 369 ~~demonstrate financial responsibility to cover potential claims~~
 370 ~~for medical malpractice. YOUR DOCTOR HAS DECIDED NOT TO CARRY~~
 371 ~~MEDICAL MALPRACTICE INSURANCE. This is permitted under Florida~~
 372 ~~law subject to certain conditions. Florida law imposes penalties~~
 373 ~~against noninsured physicians who fail to satisfy adverse~~
 374 ~~judgments arising from claims of medical malpractice. This~~
 375 ~~notice is provided pursuant to Florida law."~~

376 (6) Any deceptive, untrue, or fraudulent representation by
 377 the licensee with respect to any provision of this section shall
 378 result in permanent disqualification from any exemption to
 379 mandated financial responsibility as provided in this section
 380 and shall constitute grounds for disciplinary action under s.
 381 458.331.

382 (7) Any licensee who relies on any exemption from the
 383 financial responsibility requirement shall notify the

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384 department, in writing, of any change of circumstance regarding
 385 his or her qualifications for such exemption and shall
 386 demonstrate that he or she is in compliance with the
 387 requirements of this section.

388 (8) Notwithstanding any other provision of this section,
 389 the department shall suspend the license of any physician
 390 against whom has been entered a final judgment, arbitration
 391 award, or other order or who has entered into a settlement
 392 agreement to pay damages arising out of a claim for medical
 393 malpractice, if all appellate remedies have been exhausted and
 394 payment up to the amounts required by this section has not been
 395 made within 30 days after the entering of such judgment, award,
 396 or order or agreement, until proof of payment is received by the
 397 department or a payment schedule has been agreed upon by the
 398 physician and the claimant and presented to the department. This
 399 subsection does not apply to a physician who has met the
 400 financial responsibility requirements in paragraphs (1)(b) and
 401 (2)(b).

402 (9) The board shall adopt rules to implement the
 403 provisions of this section.

404 Section 2. Subsection (2) of section 458.331, Florida
 405 Statutes, is amended to read:

406 458.331 Grounds for disciplinary action; action by the
 407 board and department.--

408 (2) The board may enter an order denying licensure or
 409 imposing any of the penalties in s. 456.072(2) against any
 410 applicant for licensure or licensee who is found guilty of
 411 violating any provision of subsection (1) of this section or who

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412 is found guilty of violating any provision of s. 456.072(1). A
 413 probable cause panel considering disciplinary action against a
 414 physician assistant pursuant to s. 456.073 shall include a
 415 licensed physician assistant designated by the Council on
 416 Physician Assistants. In determining what action is appropriate,
 417 the board must first consider what sanctions are necessary to
 418 protect the public or to compensate the patient. Only after
 419 those sanctions have been imposed may the disciplining authority
 420 consider and include in the order requirements designed to
 421 rehabilitate the physician. All costs associated with compliance
 422 with orders issued under this subsection are the obligation of
 423 the physician.

424 Section 3. Section 459.0085, Florida Statutes, is amended
 425 to read:

426 459.0085 Financial responsibility.--

427 (1) As a condition of licensing and maintaining an active
 428 license, and prior to the issuance or renewal of an active
 429 license or reactivation of an inactive license for the practice
 430 of osteopathic medicine, an applicant must by one of the
 431 following methods demonstrate to the satisfaction of the board
 432 and the department financial responsibility to pay claims and
 433 costs ancillary thereto arising out of the rendering of, or the
 434 failure to render, medical care or services:

435 (a) Establishing and maintaining an escrow account
 436 consisting of cash or assets eligible for deposit in accordance
 437 with s. 625.52 in an amount sufficient to meet the minimum
 438 annual aggregate claim amount ~~the per-claim amounts~~ specified in
 439 paragraph (b). The escrow account must be payable to the

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440 osteopathic physician as beneficiary upon presentation of a
 441 final judgment indicating liability and awarding damages to be
 442 paid by the osteopathic physician or upon presentation of a
 443 settlement agreement signed by all parties to such agreement
 444 when such final judgment or settlement is a result of a claim
 445 arising out of the rendering of, or the failure to render,
 446 medical care and services. The required escrow amount set forth
 447 in this paragraph may not be used for litigation costs or
 448 attorney's fees for the defense of any medical malpractice
 449 claim. The escrow account must be nonassignable and
 450 nontransferable. Such escrow account must be made with and held
 451 by the trust department of a bank or savings association
 452 organized and existing under the laws of this state or any bank
 453 or savings association organized under the laws of the United
 454 States which has its principal place of business in this state
 455 or has a branch office that is authorized under the laws of this
 456 state or of the United States to receive deposits in this state.

457 (b) Obtaining and maintaining professional liability
 458 coverage in an amount not less than \$100,000 per claim, with a
 459 minimum annual aggregate of not less than \$300,000, from an
 460 authorized insurer as defined under s. 624.09, from a surplus
 461 lines insurer as defined under s. 626.914(2), from a risk
 462 retention group as defined under s. 627.942, from the Joint
 463 Underwriting Association established under s. 627.351(4), or
 464 through a plan of self-insurance as provided in s. 627.357. The
 465 required coverage amount set forth in this paragraph may not be
 466 used for litigation costs or attorney's fees for the defense of
 467 any medical malpractice claim.

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468 (c) Obtaining and maintaining an unexpired, irrevocable
 469 letter of credit, established pursuant to chapter 675, in an
 470 amount sufficient to meet the minimum annual aggregate claim
 471 amount specified in paragraph (b) ~~not less than \$100,000 per~~
 472 ~~claim, with a minimum aggregate availability of credit of not~~
 473 ~~less than \$300,000.~~ The letter of credit must be payable to the
 474 osteopathic physician as beneficiary upon presentment of a final
 475 judgment indicating liability and awarding damages to be paid by
 476 the osteopathic physician or upon presentment of a settlement
 477 agreement signed by all parties to such agreement when such
 478 final judgment or settlement is a result of a claim arising out
 479 of the rendering of, or the failure to render, medical care and
 480 services. The letter of credit may not be used for litigation
 481 costs or attorney's fees for the defense of any medical
 482 malpractice claim. The letter of credit must be nonassignable
 483 and nontransferable. Such letter of credit must be issued by any
 484 bank or savings association organized and existing under the
 485 laws of this state or any bank or savings association organized
 486 under the laws of the United States which has its principal
 487 place of business in this state or has a branch office that is
 488 authorized under the laws of this state or of the United States
 489 to receive deposits in this state.

490 (2) Osteopathic physicians who perform surgery in an
 491 ambulatory surgical center licensed under chapter 395 and, as a
 492 continuing condition of hospital staff privileges, osteopathic
 493 physicians who have staff privileges must also establish
 494 financial responsibility by one of the following methods:

495 (a) Establishing and maintaining an escrow account
 496 consisting of cash or assets eligible for deposit in accordance
 497 with s. 625.52 in an amount sufficient to meet the minimum
 498 annual aggregate claim amount ~~the per-claim amounts~~ specified in
 499 paragraph (b). The escrow account must be payable to the
 500 osteopathic physician as beneficiary upon presentation of a
 501 final judgment indicating liability and awarding damages to be
 502 paid by the osteopathic physician or upon presentation of a
 503 settlement agreement signed by all parties to such agreement
 504 when such final judgment or settlement is a result of a claim
 505 render of, or failure to render, medical care and services. The
 506 required escrow amount set forth in this paragraph may not be
 507 used for litigation costs or attorney's fees for the defense of
 508 any medical malpractice claim. The escrow account must be
 509 nonassignable and nontransferable. Such escrow account must be
 510 made with and held by the trust department of a bank or savings
 511 association organized and existing under the laws of the state
 512 or any bank or savings association organized under the laws of
 513 the United States which has its principal place of business in
 514 this state or has a branch office that is under the laws of the
 515 United States to receive deposits in this state.

516 (b) Obtaining and maintaining professional liability
 517 coverage in an amount not less than \$250,000 per claim, with a
 518 minimum annual aggregate of not less than \$750,000 from an
 519 authorized insurer as defined under s. 624.09, from a surplus
 520 lines insurer as defined under s. 626.914(2), from a risk
 521 retention group as defined under s. 627.942, from the Joint
 522 Underwriting Association established under s. 627.351(4),

523 through a plan of self-insurance as provided in s. 627.357, or
 524 through a plan of self-insurance that meets the conditions
 525 specified for satisfying financial responsibility in s. 766.110.
 526 The required coverage amount set forth in this paragraph may not
 527 be used for litigation costs or attorney's fees for the defense
 528 of any medical malpractice claim.

529 (c) Obtaining and maintaining an unexpired, irrevocable
 530 letter of credit, established pursuant to chapter 675, in an
 531 amount sufficient to meet the minimum annual aggregate claim
 532 amount specified in paragraph (b) not less than \$250,000 per
 533 claim, with a minimum aggregate availability of credit of not
 534 less than \$750,000. The letter of credit must be payable to the
 535 osteopathic physician as beneficiary upon presentment of a final
 536 judgment indicating liability and awarding damages to be paid by
 537 the osteopathic physician or upon presentment of a settlement
 538 agreement signed by all parties to such agreement when such
 539 final judgment or settlement is a result of a claim arising out
 540 of the rendering of, or the failure to render, medical care and
 541 services. The letter of credit may not be used for litigation
 542 costs or attorney's fees for the defense of any medical
 543 malpractice claim. The letter of credit must be nonassignable
 544 and nontransferable. The letter of credit must be issued by any
 545 bank or savings association organized and existing under the
 546 laws of this state or any bank or savings association organized
 547 under the laws of the United States which has its principal
 548 place of business in this state or has a branch office that is
 549 authorized under the laws of this state or of the United States
 550 to receive deposits in this state.

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551
552 This subsection shall be inclusive of the coverage in subsection
553 (1).

554 (3)(a) Meeting the financial responsibility requirements
555 of this section or the criteria for any exemption from such
556 requirements must be established at the time of issuance or
557 renewal of a license.

558 (b) Any person may, at any time, submit to the department
559 a request for an advisory opinion regarding such person's
560 qualifications for exemption.

561 (4)(a) Each insurer, self-insurer, risk retention group,
562 or joint underwriting association must promptly notify the
563 department of cancellation or nonrenewal of insurance required
564 by this section. Unless the osteopathic physician demonstrates
565 that he or she is otherwise in compliance with the requirements
566 of this section, the department shall suspend the license of the
567 osteopathic physician pursuant to ss. 120.569 and 120.57 and
568 notify all health care facilities licensed under chapter 395,
569 part IV of chapter 394, or part I of chapter 641 of such action.
570 Any suspension under this subsection remains in effect until the
571 osteopathic physician demonstrates compliance with the
572 requirements of this section. If any judgments or settlements
573 are pending at the time of suspension, those judgments or
574 settlements must be paid in accordance with this section unless
575 otherwise mutually agreed to in writing by the parties. This
576 paragraph does not abrogate a judgment debtor's obligation to
577 satisfy the entire amount of any judgment.

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578 (b) If financial responsibility requirements are met by
 579 maintaining an escrow account or letter of credit as provided in
 580 this section, upon the entry of an adverse final judgment
 581 arising from a medical malpractice arbitration award, from a
 582 claim of medical malpractice either in contract or tort, or from
 583 noncompliance with the terms of a settlement agreement arising
 584 from a claim of medical malpractice either in contract or tort,
 585 the licensee shall pay the entire amount of the judgment
 586 together with all accrued interest or the amount maintained in
 587 the escrow account or provided in the letter of credit as
 588 required by this section, whichever is less, within 60 days
 589 after the date such judgment became final and subject to
 590 execution, unless otherwise mutually agreed to in writing by the
 591 parties. If timely payment is not made by the osteopathic
 592 physician, the department shall suspend the license of the
 593 osteopathic physician pursuant to the following procedures: ~~set~~
 594 ~~forth in subparagraphs (5)(g)3., 4., and 5.~~

595 1. The Department of Health shall issue an emergency order
 596 suspending the license of any licensee who, after 30 days
 597 following receipt of a notice from the Department of Health, has
 598 failed to: satisfy a medical malpractice claim against him or
 599 her; furnish the Department of Health a copy of a timely filed
 600 notice of appeal; furnish the Department of Health a copy of a
 601 supersedeas bond properly posted in the amount required by law;
 602 or furnish the Department of Health an order from a court of
 603 competent jurisdiction staying execution on the final judgment
 604 pending disposition of the appeal.

605 2. Upon the next meeting of the probable cause panel of
 606 the board following 30 days after the date of mailing the notice
 607 of disciplinary action to the licensee, the panel shall make a
 608 determination of whether probable cause exists to take
 609 disciplinary action against the licensee pursuant to
 610 subparagraph 1.

611 3. If the board determines that the factual requirements
 612 of subparagraph 1. are met, it shall take disciplinary action as
 613 it deems appropriate against the licensee. Such disciplinary
 614 action shall include, at a minimum, probation of the license
 615 with the restriction that the licensee must make payments to the
 616 judgment creditor on a schedule determined by the board to be
 617 reasonable and within the financial capability of the
 618 osteopathic physician. Notwithstanding any other disciplinary
 619 penalty imposed, the disciplinary penalty may include suspension
 620 of the license for a period not to exceed 5 years. In the event
 621 that an agreement to satisfy a judgment has been met, the board
 622 shall remove any restriction on the license.

623
 624 Nothing in this paragraph shall abrogate a judgment debtor's
 625 obligation to satisfy the entire amount of any judgment.

626 (5) The requirements of subsections (1), (2), and (3) do
 627 not apply to:

628 (a) Any person licensed under this chapter who practices
 629 medicine exclusively as an officer, employee, or agent of the
 630 Federal Government or of the state or its agencies or its
 631 subdivisions. For the purposes of this subsection, an agent of
 632 the state, its agencies, or its subdivisions is a person who is

633 eligible for coverage under any self-insurance or insurance
634 program authorized by the provisions of s. 768.28(16).

635 (b) Any person whose license has become inactive under
636 this chapter and who is not practicing medicine in this state.
637 Any person applying for reactivation of a license must show
638 either that such licensee maintained tail insurance coverage
639 that provided liability coverage for incidents that occurred on
640 or after January 1, 1987, or the initial date of licensure in
641 this state, whichever is later, and incidents that occurred
642 before the date on which the license became inactive; or such
643 licensee must submit an affidavit stating that such licensee has
644 no unsatisfied medical malpractice judgments or settlements at
645 the time of application for reactivation.

646 (c) Any person holding a limited license pursuant to s.
647 459.0075 and practicing under the scope of such limited license.

648 (d) Any person licensed or certified under this chapter
649 who practices only in conjunction with his or her teaching
650 duties at a college of osteopathic medicine. Such person may
651 engage in the practice of osteopathic medicine to the extent
652 that such practice is incidental to and a necessary part of
653 duties in connection with the teaching position in the college
654 of osteopathic medicine.

655 (e) Any person holding an active license under this
656 chapter who is not practicing osteopathic medicine in this
657 state. If such person initiates or resumes any practice of
658 osteopathic medicine in this state, he or she must notify the
659 department of such activity and fulfill the financial

660 responsibility requirements of this section before resuming the
661 practice of osteopathic medicine in this state.

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

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

667 2. The licensee has either retired from the practice of
668 osteopathic medicine or maintains a part-time practice of
669 osteopathic medicine of no more than 1,000 patient contact hours
670 per year.

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

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

677 5. The licensee has not been subject within the last 10
678 years of practice to license revocation or suspension for any
679 period of time, probation for a period of 3 years or longer, or
680 a fine of \$500 or more for a violation of this chapter or the
681 medical practice act of another jurisdiction. The regulatory
682 agency's acceptance of an osteopathic physician's relinquishment
683 of a license, stipulation, consent order, or other settlement,
684 offered in response to or in anticipation of the filing of
685 administrative charges against the osteopathic physician's
686 license, constitutes action against the physician's license for
687 the purposes of this paragraph.

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688 6. The licensee has submitted a form supplying necessary
689 information as required by the department and an affidavit
690 affirming compliance with this paragraph.

691 7. The licensee must submit biennially to the department a
692 certification stating compliance with this paragraph. The
693 licensee must, upon request, demonstrate to the department
694 information verifying compliance with this paragraph.

695
696 A licensee who meets the requirements of this paragraph must
697 post notice in the form of a sign prominently displayed in the
698 reception area and clearly noticeable by all patients or provide
699 a written statement to any person to whom medical services are
700 being provided. The sign or statement must read as follows:

701 "Under Florida law, osteopathic physicians are generally
702 required to carry medical malpractice insurance or otherwise
703 demonstrate financial responsibility to cover potential claims
704 for medical malpractice. However, certain part-time osteopathic
705 physicians who meet state requirements are exempt from the
706 financial responsibility law. YOUR OSTEOPATHIC PHYSICIAN MEETS
707 THESE REQUIREMENTS AND HAS DECIDED NOT TO CARRY MEDICAL
708 MALPRACTICE INSURANCE. This notice is provided pursuant to
709 Florida law."

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

712 ~~1. Upon the entry of an adverse final judgment arising~~
713 ~~from a medical malpractice arbitration award, from a claim of~~
714 ~~medical malpractice either in contract or tort, or from~~
715 ~~noncompliance with the terms of a settlement agreement arising~~

716 ~~from a claim of medical malpractice either in contract or tort,~~
 717 ~~the licensee shall pay the judgment creditor the lesser of the~~
 718 ~~entire amount of the judgment with all accrued interest or~~
 719 ~~either \$100,000, if the osteopathic physician is licensed~~
 720 ~~pursuant to this chapter but does not maintain hospital staff~~
 721 ~~privileges, or \$250,000, if the osteopathic physician is~~
 722 ~~licensed pursuant to this chapter and maintains hospital staff~~
 723 ~~privileges, within 60 days after the date such judgment became~~
 724 ~~final and subject to execution, unless otherwise mutually agreed~~
 725 ~~to in writing by the parties. Such adverse final judgment shall~~
 726 ~~include any cross-claim, counterclaim, or claim for indemnity or~~
 727 ~~contribution arising from the claim of medical malpractice. Upon~~
 728 ~~notification of the existence of an unsatisfied judgment or~~
 729 ~~payment pursuant to this subparagraph, the department shall~~
 730 ~~notify the licensee by certified mail that he or she shall be~~
 731 ~~subject to disciplinary action unless, within 30 days from the~~
 732 ~~date of mailing, the licensee either:~~

733 ~~a. Shows proof that the unsatisfied judgment has been paid~~
 734 ~~in the amount specified in this subparagraph; or~~

735 ~~b. Furnishes the department with a copy of a timely filed~~
 736 ~~notice of appeal and either:~~

737 ~~(I) A copy of a supersedeas bond properly posted in the~~
 738 ~~amount required by law; or~~

739 ~~(II) An order from a court of competent jurisdiction~~
 740 ~~staying execution on the final judgment, pending disposition of~~
 741 ~~the appeal.~~

742 ~~2. The Department of Health shall issue an emergency order~~
 743 ~~suspending the license of any licensee who, after 30 days~~

744 ~~following receipt of a notice from the Department of Health, has~~
 745 ~~failed to: satisfy a medical malpractice claim against him or~~
 746 ~~her; furnish the Department of Health a copy of a timely filed~~
 747 ~~notice of appeal; furnish the Department of Health a copy of a~~
 748 ~~supersedeas bond properly posted in the amount required by law;~~
 749 ~~or furnish the Department of Health an order from a court of~~
 750 ~~competent jurisdiction staying execution on the final judgment~~
 751 ~~pending disposition of the appeal.~~

752 ~~3. Upon the next meeting of the probable cause panel of~~
 753 ~~the board following 30 days after the date of mailing the notice~~
 754 ~~of disciplinary action to the licensee, the panel shall make a~~
 755 ~~determination of whether probable cause exists to take~~
 756 ~~disciplinary action against the licensee pursuant to~~
 757 ~~subparagraph 1.~~

758 ~~4. If the board determines that the factual requirements~~
 759 ~~of subparagraph 1. are met, it shall take disciplinary action as~~
 760 ~~it deems appropriate against the licensee. Such disciplinary~~
 761 ~~action shall include, at a minimum, probation of the license~~
 762 ~~with the restriction that the licensee must make payments to the~~
 763 ~~judgment creditor on a schedule determined by the board to be~~
 764 ~~reasonable and within the financial capability of the~~
 765 ~~osteopathic physician. Notwithstanding any other disciplinary~~
 766 ~~penalty imposed, the disciplinary penalty may include suspension~~
 767 ~~of the license for a period not to exceed 5 years. In the event~~
 768 ~~that an agreement to satisfy a judgment has been met, the board~~
 769 ~~shall remove any restriction on the license.~~

770 ~~5. The licensee has completed a form supplying necessary~~
 771 ~~information as required by the department.~~

772
 773 ~~A licensee who meets the requirements of this paragraph shall be~~
 774 ~~required either to post notice in the form of a sign prominently~~
 775 ~~displayed in the reception area and clearly noticeable by all~~
 776 ~~patients or to provide a written statement to any person to whom~~
 777 ~~medical services are being provided. Such sign or statement~~
 778 ~~shall state: "Under Florida law, osteopathic physicians are~~
 779 ~~generally required to carry medical malpractice insurance or~~
 780 ~~otherwise demonstrate financial responsibility to cover~~
 781 ~~potential claims for medical malpractice. YOUR OSTEOPATHIC~~
 782 ~~PHYSICIAN HAS DECIDED NOT TO CARRY MEDICAL MALPRACTICE~~
 783 ~~INSURANCE. This is permitted under Florida law subject to~~
 784 ~~certain conditions. Florida law imposes strict penalties against~~
 785 ~~noninsured osteopathic physicians who fail to satisfy adverse~~
 786 ~~judgments arising from claims of medical malpractice. This~~
 787 ~~notice is provided pursuant to Florida law."~~

788 (6) Any deceptive, untrue, or fraudulent representation by
 789 the licensee with respect to any provision of this section shall
 790 result in permanent disqualification from any exemption to
 791 mandated financial responsibility as provided in this section
 792 and shall constitute grounds for disciplinary action under s.
 793 459.015.

794 (7) Any licensee who relies on any exemption from the
 795 financial responsibility requirement shall notify the department
 796 in writing of any change of circumstance regarding his or her
 797 qualifications for such exemption and shall demonstrate that he
 798 or she is in compliance with the requirements of this section.

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799 (8) If a physician is either a resident physician,
800 assistant resident physician, or intern in an approved
801 postgraduate training program, as defined by the board's rules,
802 and is supervised by a physician who is participating in the
803 Florida Birth-Related Neurological Injury Compensation Plan,
804 such resident physician, assistant resident physician, or intern
805 is deemed to be a participating physician without the payment of
806 the assessment set forth in s. 766.314(4).

807 (9) Notwithstanding any other provision of this section,
808 the department shall suspend the license of any osteopathic
809 physician against whom has been entered a final judgment,
810 arbitration award, or other order or who has entered into a
811 settlement agreement to pay damages arising out of a claim for
812 medical malpractice, if all appellate remedies have been
813 exhausted and payment up to the amounts required by this section
814 has not been made within 30 days after the entering of such
815 judgment, award, or order or agreement, until proof of payment
816 is received by the department or a payment schedule has been
817 agreed upon by the osteopathic physician and the claimant and
818 presented to the department. This subsection does not apply to
819 an osteopathic physician who has met the financial
820 responsibility requirements in paragraphs (1)(b) and (2)(b).

821 (10) The board shall adopt rules to implement the
822 provisions of this section.

823 Section 4. Subsection (2) of section 459.015, Florida
824 Statutes, is amended to read:

825 459.015 Grounds for disciplinary action; action by the
826 board and department.--

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827 (2) The board may enter an order denying licensure or
 828 imposing any of the penalties in s. 456.072(2) against any
 829 applicant for licensure or licensee who is found guilty of
 830 violating any provision of subsection (1) of this section or who
 831 is found guilty of violating any provision of s. 456.072(1). A
 832 probable cause panel considering disciplinary action against a
 833 physician assistant pursuant to s. 456.073 shall include a
 834 licensed physician assistant designated by the Council on
 835 Physician Assistants. In determining what action is appropriate,
 836 the board must first consider what sanctions are necessary to
 837 protect the public or to compensate the patient. Only after
 838 those sanctions have been imposed may the disciplining authority
 839 consider and include in the order requirements designed to
 840 rehabilitate the physician. All costs associated with compliance
 841 with orders issued under this subsection are the obligation of
 842 the physician.

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