

Bill No. PCS for SB 940 (941384)

Barcode 243786

	CHAMBER ACTION	
<u>Senate</u>		<u>House</u>

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

·  
·  
·  
·  
·  
·

---

The Committee on Health Care (Saunders) recommended the following amendment:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause

and insert:

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

456.50 Repeated medical malpractice.--

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

(a) "Board" means the Board of Medicine, in the case of a physician licensed pursuant to chapter 458, or the Board of Osteopathic Medicine, in the case of an osteopathic physician licensed pursuant to chapter 459.

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

Bill No. PCS for SB 940 (941384)

Barcode 243786

1       (c) "Found to have committed" means the malpractice  
 2 has been found in a final judgment of a court of law, final  
 3 administrative agency decision, or decision of binding  
 4 arbitration.

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

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

10           2. Multiple findings of medical malpractice arising  
 11 from the same wrongful act or series of wrongful acts  
 12 associated with the treatment of the same patient shall count  
 13 as only one incident.

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

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

19       (g) "Medical malpractice" means the failure to  
 20 practice medicine in accordance with the level of care, skill,  
 21 and treatment recognized in general law related to health care  
 22 licensure. Only for the purpose of finding repeated medical  
 23 malpractice pursuant to this section, any similar wrongful  
 24 act, neglect, or default committed in another state or country  
 25 which, if committed in this state, would have been considered  
 26 medical malpractice as defined in this paragraph, shall be  
 27 considered medical malpractice if the standard of care and  
 28 burden of proof applied in the other state or country equaled  
 29 or exceeded that used in this state.

30       (h) "Repeated medical malpractice" means three or more  
 31 incidents of medical malpractice found to have been committed

Bill No. PCS for SB 940 (941384)

Barcode 243786

1 by a medical doctor. Only an incident occurring on or after  
2 November 2, 2004, shall be considered an incident for purposes  
3 of finding repeated medical malpractice under this section.

4 (2) For purposes of implementing s. 26, Art. X of the  
5 State Constitution, the board shall not license or continue to  
6 license a medical doctor found to have committed repeated  
7 medical malpractice, the finding of which was based upon clear  
8 and convincing evidence. In order to rely on an incident of  
9 medical malpractice to determine whether a license must be  
10 denied or revoked under this section, if the facts supporting  
11 the finding of the incident of medical malpractice were  
12 determined on a standard less stringent than clear and  
13 convincing evidence, the board shall review the record of the  
14 case and determine whether the finding would be supported  
15 under a standard of clear and convincing evidence. Section  
16 456.073 applies. The board may verify on a biennial basis an  
17 out-of-state licensee's medical malpractice history using  
18 federal, state, or other databases.

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

22 458.331 Grounds for disciplinary action; action by the  
23 board and department.--

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

26 456.072(2):

27 (t) Notwithstanding s. 456.072(2) but as specified in  
28 s. 456.50(2):

29 1. Committing medical malpractice as defined in s.  
30 456.50 ~~Gross or repeated malpractice or the failure to~~  
31 practice medicine with that level of care, skill, and

Bill No. PCS for SB 940 (941384)

Barcode 243786

1 ~~treatment which is recognized by a reasonably prudent similar~~  
2 ~~physician as being acceptable under similar conditions and~~  
3 ~~circumstances.~~ The board shall give great weight to the  
4 provisions of s. 766.102 when enforcing this paragraph. ~~As~~  
5 ~~used in this paragraph, "repeated malpractice" includes, but~~  
6 ~~is not limited to, three or more claims for Medical~~  
7 ~~malpractice within the previous 5-year period resulting in~~  
8 ~~indemnities being paid in excess of \$50,000 each to the~~  
9 ~~claimant in a judgment or settlement and which incidents~~  
10 ~~involved negligent conduct by the physician. As used in this~~  
11 ~~paragraph, "gross malpractice" or "the failure to practice~~  
12 ~~medicine with that level of care, skill, and treatment which~~  
13 ~~is recognized by a reasonably prudent similar physician as~~  
14 ~~being acceptable under similar conditions and circumstances,"~~  
15 shall not be construed ~~so as~~ to require more than one  
16 instance, event, or act.

17       2. Committing gross medical malpractice.

18       3. Committing repeated medical malpractice as defined  
19 in s. 456.50. A person found by the board to have committed  
20 repeated medical malpractice based on s. 456.50 may not be  
21 licensed or continue to be licensed by this state to provide  
22 health care services as a medical doctor in this state.

23  
24 Nothing in this paragraph shall be construed to require that a  
25 physician be incompetent to practice medicine in order to be  
26 disciplined pursuant to this paragraph. A recommended order by  
27 an administrative law judge or a final order of the board  
28 finding a violation under this paragraph shall specify whether  
29 the licensee was found to have committed "gross medical  
30 malpractice," "repeated medical malpractice," or "medical  
31 malpractice," ~~"failure to practice medicine with that level of~~

Bill No. PCS for SB 940 (941384)

Barcode 243786

1 ~~care, skill, and treatment which is recognized as being~~  
2 ~~acceptable under similar conditions and circumstances,"~~ or any  
3 combination thereof, and any publication by the board must so  
4 specify.

5 (4) The board shall not reinstate the license of a  
6 physician, or cause a license to be issued to a person it  
7 deems or has deemed unqualified, until such time as it is  
8 satisfied that he or she has complied with all the terms and  
9 conditions set forth in the final order and that such person  
10 is capable of safely engaging in the practice of medicine.  
11 However, the board may not issue a license to, or reinstate  
12 the license of, any medical doctor found by the board to have  
13 committed repeated medical malpractice based on s. 456.50,  
14 regardless of the extent to which the licensee or prospective  
15 licensee has complied with all terms and conditions set forth  
16 in the final order and is capable of safely engaging in the  
17 practice of medicine.

18 (5) The board shall by rule establish guidelines for  
19 the disposition of disciplinary cases involving specific types  
20 of violations. Such guidelines may include minimum and maximum  
21 fines, periods of supervision or probation, or conditions of  
22 probation or reissuance of a license. "Gross medical  
23 malpractice," "repeated medical malpractice," and "medical  
24 malpractice," "~~failure to practice medicine with that level of~~  
25 ~~care, skill, and treatment which is recognized as being~~  
26 ~~acceptable under similar circumstances"~~ under paragraph (1)(t)  
27 ~~subsection (10)~~ shall each be considered distinct types of  
28 violations requiring specific individual guidelines.

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

Bill No. PCS for SB 940 (941384)

Barcode 243786

1 ~~have committed "gross malpractice," "repeated malpractice," or~~  
 2 ~~"failure to practice medicine with that level of care, skill,~~  
 3 ~~and treatment which is recognized as being acceptable under~~  
 4 ~~similar conditions and circumstances" or any combination~~  
 5 ~~thereof, and any publication by the board shall so specify.~~

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

9 459.015 Grounds for disciplinary action; action by the  
 10 board and department.--

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

13 456.072(2):

14 (x) Notwithstanding s. 456.072(2) but as specified in  
 15 s. 456.50(2):

16 1. Committing medical ~~Gross or repeated malpractice as~~  
 17 ~~defined in s. 456.50 or the failure to practice osteopathic~~  
 18 ~~medicine with that level of care, skill, and treatment which~~  
 19 ~~is recognized by a reasonably prudent similar osteopathic~~  
 20 ~~physician as being acceptable under similar conditions and~~  
 21 ~~circumstances.~~ The board shall give great weight to the  
 22 provisions of s. 766.102 when enforcing this paragraph. As  
 23 used in this paragraph, "repeated malpractice" includes, but  
 24 is not limited to, three or more claims for Medical  
 25 ~~malpractice within the previous 5-year period resulting in~~  
 26 ~~indemnities being paid in excess of \$50,000 each to the~~  
 27 ~~claimant in a judgment or settlement and which incidents~~  
 28 ~~involved negligent conduct by the osteopathic physician. As~~  
 29 ~~used in this paragraph, "gross malpractice" or "the failure to~~  
 30 ~~practice osteopathic medicine with that level of care, skill,~~  
 31 ~~and treatment which is recognized by a reasonably prudent~~

Bill No. PCS for SB 940 (941384)

Barcode 243786

1 ~~similar osteopathic physician as being acceptable under~~  
2 ~~similar conditions and circumstances"~~ shall not be construed  
3 so as to require more than one instance, event, or act.

4 2. Committing gross medical malpractice.

5 3. Committing repeated medical malpractice as defined  
6 in s. 456.50. A person found by the board to have committed  
7 repeated medical malpractice based on s. 456.50 may not be  
8 licensed or continue to be licensed by this state to provide  
9 health care services as a medical doctor in this state.

10

11 Nothing in this paragraph shall be construed to require that  
12 an osteopathic physician be incompetent to practice  
13 osteopathic medicine in order to be disciplined pursuant to  
14 this paragraph. A recommended order by an administrative law  
15 judge or a final order of the board finding a violation under  
16 this paragraph shall specify whether the licensee was found to  
17 have committed "gross medical malpractice," "repeated medical  
18 malpractice," or "medical malpractice," ~~"failure to practice~~  
19 ~~osteopathic medicine with that level of care, skill, and~~  
20 ~~treatment which is recognized as being acceptable under~~  
21 ~~similar conditions and circumstances,"~~ or any combination  
22 thereof, and any publication by the board shall so specify.

23 (4) The board shall not reinstate the license or  
24 certificate of an osteopathic physician, or cause a license or  
25 certificate to be issued to a person it has deemed  
26 unqualified, until such time as it is satisfied that he or she  
27 has complied with all the terms and conditions set forth in  
28 the final order and that such person is capable of safely  
29 engaging in the practice of osteopathic medicine. However, the  
30 board may not issue a license to, or reinstate the license of,  
31 any medical doctor found by the board to have committed

Bill No. PCS for SB 940 (941384)

Barcode 243786

1 repeated medical malpractice based on s. 456.50, regardless of  
 2 the extent to which the licensee or prospective licensee has  
 3 complied with all terms and conditions set forth in the final  
 4 order and is capable of safely engaging in the practice of  
 5 osteopathic medicine.

6 (5) The board shall, by rule, establish comprehensive  
 7 guidelines for the disposition of disciplinary cases involving  
 8 specific types of violations. Such guidelines shall establish  
 9 offenses and circumstances for which revocation will be  
 10 presumed to be appropriate, as well as offenses and  
 11 circumstances for which suspension for particular periods of  
 12 time will be presumed to be appropriate. The guidelines shall  
 13 also establish minimum and maximum fines, periods of  
 14 supervision or probation, or conditions of probation and  
 15 conditions for reissuance of a license with respect to  
 16 particular circumstances and offenses. "Gross medical  
 17 malpractice," "repeated medical malpractice," and "medical  
 18 malpractice," ~~"failure to practice osteopathic medicine with~~  
 19 ~~that level of care, skill, and treatment which is recognized~~  
 20 ~~as being acceptable under similar conditions and~~  
 21 ~~circumstances"~~ under paragraph (1)(x) shall each be considered  
 22 distinct types of violations requiring specific individual  
 23 guidelines.

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

26  
 27

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

29 And the title is amended as follows:

30 Delete everything before the enacting clause

31



Bill No. PCS for SB 940 (941384)

Barcode 243786

1 and insert:

2                   A bill to be entitled

3           An act relating to repeated medical

4           malpractice; creating s. 456.50, F.S.; defining

5           terms; prescribing acts that constitute

6           repeated medical malpractice; providing for

7           review of acts and determination by the Board

8           of Medicine and the Board of Osteopathic

9           Medicine; amending s. 458.331, F.S.; redefining

10          acts of medical malpractice, gross medical

11          malpractice, or repeated medical malpractice

12          which constitute grounds for disciplinary

13          action against a physician; amending s.

14          459.015, F.S.; redefining acts of medical

15          malpractice, gross medical malpractice, or

16          repeated medical malpractice which constitute

17          grounds for disciplinary action against an

18          osteopathic physician; providing an effective

19          date.

20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31