

Bill No. PCS for SB 940 (941384)

Barcode 350438

CHAMBER ACTION

Senate

House

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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).

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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

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1 by a medical doctor. Only an incident occurring on or after
2 November 3, 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 that the finding would be supported under
15 the standard. The board shall establish procedures by rule for
16 conducting a review of the record and determining whether or
17 not the finding of repeated medical malpractice is supported
18 under the standard of clear and convincing evidence. These
19 procedures shall not require a de novo hearing or trial but
20 may permit the submission of briefs and oral arguments. In
21 addition, the rule shall provide for review by a panel of
22 physicians licensed pursuant to this chapter, establish
23 qualifications for physicians serving on the panel, and set
24 forth the timeframe for completing the review. The board may
25 verify on a biennial basis an out-of-state licensee's medical
26 malpractice history using federal, state, or other databases.

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

30 458.331 Grounds for disciplinary action; action by the
31 board and department.--

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1 (1) The following acts constitute grounds for denial
2 of a license or disciplinary action, as specified in s.
3 456.072(2):

4 (t) Notwithstanding s. 456.072(2) but as specified in
5 s. 456.50(2):

6 1. Committing medical malpractice as defined in s.
7 456.50 ~~Gross or repeated malpractice or the failure to~~
8 ~~practice medicine with that level of care, skill, and~~
9 ~~treatment which is recognized by a reasonably prudent similar~~
10 ~~physician as being acceptable under similar conditions and~~
11 ~~circumstances.~~ The board shall give great weight to the
12 provisions of s. 766.102 when enforcing this paragraph. ~~As~~
13 ~~used in this paragraph, "repeated malpractice" includes, but~~
14 ~~is not limited to, three or more claims for Medical~~
15 ~~malpractice within the previous 5-year period resulting in~~
16 ~~indemnities being paid in excess of \$50,000 each to the~~
17 ~~claimant in a judgment or settlement and which incidents~~
18 ~~involved negligent conduct by the physician. As used in this~~
19 ~~paragraph, "gross malpractice" or "the failure to practice~~
20 ~~medicine with that level of care, skill, and treatment which~~
21 ~~is recognized by a reasonably prudent similar physician as~~
22 ~~being acceptable under similar conditions and circumstances,"~~
23 shall not be construed ~~so as~~ to require more than one
24 instance, event, or act.

25 2. Committing gross medical malpractice.

26 3. Committing repeated medical malpractice as defined
27 in s. 456.50. A person found by the board to have committed
28 repeated medical malpractice based on s. 456.50 may not be
29 licensed or continue to be licensed by this state to provide
30 health care services as a medical doctor in this state.

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1 Nothing in this paragraph shall be construed to require that a
 2 physician be incompetent to practice medicine in order to be
 3 disciplined pursuant to this paragraph. A recommended order by
 4 an administrative law judge or a final order of the board
 5 finding a violation under this paragraph shall specify whether
 6 the licensee was found to have committed "gross medical
 7 malpractice," "repeated medical malpractice," or "medical
 8 malpractice," ~~"failure to practice medicine with that level of~~
 9 ~~care, skill, and treatment which is recognized as being~~
 10 ~~acceptable under similar conditions and circumstances,"~~ or any
 11 combination thereof, and any publication by the board must so
 12 specify.

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

26 (5) The board shall by rule establish guidelines for
 27 the disposition of disciplinary cases involving specific types
 28 of violations. Such guidelines may include minimum and maximum
 29 fines, periods of supervision or probation, or conditions of
 30 probation or reissuance of a license. "Gross medical
 31 malpractice," "repeated medical malpractice," and "medical

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1 ~~malpractice, "failure to practice medicine with that level of~~
 2 ~~care, skill, and treatment which is recognized as being~~
 3 ~~acceptable under similar circumstances" under paragraph (1)(t)~~
 4 ~~subsection (10)~~ shall each be considered distinct types of
 5 violations requiring specific individual guidelines.

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

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

17 459.015 Grounds for disciplinary action; action by the
 18 board and department.--

19 (1) The following acts constitute grounds for denial
 20 of a license or disciplinary action, as specified in s.
 21 456.072(2):

22 (x) Notwithstanding s. 456.072(2) but as specified in
 23 s. 456.50(2):

24 1. Committing medical ~~Gross or repeated malpractice as~~
 25 defined in s. 456.50 ~~or the failure to practice osteopathic~~
 26 ~~medicine with that level of care, skill, and treatment which~~
 27 ~~is recognized by a reasonably prudent similar osteopathic~~
 28 ~~physician as being acceptable under similar conditions and~~
 29 ~~circumstances.~~ The board shall give great weight to the
 30 provisions of s. 766.102 when enforcing this paragraph. As
 31 used in this paragraph, "repeated malpractice" includes, but

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

12 2. Committing gross medical malpractice.

13 3. Committing repeated medical malpractice as defined
14 in s. 456.50. A person found by the board to have committed
15 repeated medical malpractice based on s. 456.50 may not be
16 licensed or continue to be licensed by this state to provide
17 health care services as a medical doctor in this state.

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

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

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

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

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

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

6 And the title is amended as follows:

7 Delete everything before the enacting clause

8

9 and insert:

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A bill to be entitled

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An act relating to repeated medical

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

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terms; prescribing acts that constitute

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repeated medical malpractice; providing for

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review of acts and determination by the Board

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of Medicine and the Board of Osteopathic

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

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acts of medical malpractice, gross medical

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malpractice, or repeated medical malpractice

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which constitute grounds for disciplinary

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action against a physician; amending s.

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459.015, F.S.; redefining acts of medical

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malpractice, gross medical malpractice, or

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repeated medical malpractice which constitute

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grounds for disciplinary action against an

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osteopathic physician; providing an effective

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date.

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