

By the Committee on Health Care; and Senator Peaden

587-1683C-05

1 A bill to be entitled
2 An act relating to repeated medical
3 malpractice; amending s. 456.041, F.S.;
4 requiring the Department of Health to verify
5 information submitted by a person who applies
6 for initial licensure, or renewal of licensure,
7 as a physician; creating s. 456.50, F.S.;
8 defining terms; prescribing acts that
9 constitute repeated medical malpractice;
10 providing for review of acts and determination
11 by the Board of Medicine and the Board of
12 Osteopathic Medicine; authorizing the Board of
13 Medicine and the Board of Osteopathic Medicine
14 to require licensees and applicants for
15 licensure to provide a copy of the record of
16 the trial of any medical malpractice judgment
17 involving an incident occurring on or after a
18 specified date; extending the 90-day
19 requirement for granting or denying a complete
20 allopathic or osteopathic licensure application
21 to 180 days; amending s. 458.331, F.S.;
22 redefining acts of medical malpractice, gross
23 medical malpractice, or repeated medical
24 malpractice which constitute grounds for
25 disciplinary action against a physician;
26 amending s. 459.015, F.S.; redefining acts of
27 medical malpractice, gross medical malpractice,
28 or repeated medical malpractice which
29 constitute grounds for disciplinary action
30 against an osteopathic physician; providing an
31 effective date.

1 Be It Enacted by the Legislature of the State of Florida:

2

3 Section 1. Subsection (1) of section 456.041, Florida
4 Statutes, is amended to read:

5 456.041 Practitioner profile; creation.--

6 (1)(a) The Department of Health shall compile the
7 information submitted pursuant to s. 456.039 into a
8 practitioner profile of the applicant submitting the
9 information, except that the Department of Health shall
10 develop a format to compile uniformly any information
11 submitted under s. 456.039(4)(b). Beginning July 1, 2001, the
12 Department of Health may compile the information submitted
13 pursuant to s. 456.0391 into a practitioner profile of the
14 applicant submitting the information.

15 (b) Beginning July 1, 2005, the department shall
16 verify the information submitted by the applicant under s.
17 456.039 concerning disciplinary history and medical
18 malpractice claims at the time of initial licensure and
19 license renewal using the National Practitioner Data Bank. The
20 physician profiles shall reflect the disciplinary action and
21 medical malpractice claims as reported by the National
22 Practitioner Data Bank.

23 (c)(b) Within 30 calendar days after receiving an
24 update of information required for the practitioner's profile,
25 the department shall update the practitioner's profile in
26 accordance with the requirements of subsection (7).

27 Section 2. Section 456.50, Florida Statutes, is
28 created to read:

29 456.50 Repeated medical malpractice.--
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1 (1) For purposes of s. 26, Art. X of the State
2 Constitution and ss. 458.331(1)(t), (4), and (5) and
3 459.015(1)(x), (4), and (5):

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

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

12 (c) "Found to have committed" means the malpractice
13 has been found in a final judgment of a court of law, final
14 administrative agency decision, or decision of binding
15 arbitration.

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

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

21 2. Multiple findings of medical malpractice arising
22 from the same wrongful act or series of wrongful acts
23 associated with the treatment of the same patient shall count
24 as only one incident.

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

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

30 (g) "Medical malpractice" means the failure to
31 practice medicine in accordance with the level of care, skill,

1 and treatment recognized in general law related to health care
2 licensure. Only for the purpose of finding repeated medical
3 malpractice pursuant to this section, any similar wrongful
4 act, neglect, or default committed in another state or country
5 which, if committed in this state, would have been considered
6 medical malpractice as defined in this paragraph, shall be
7 considered medical malpractice if the standard of care and
8 burden of proof applied in the other state or country equaled
9 or exceeded that used in this state.

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

15 (2) For purposes of implementing s. 26, Art. X of the
16 State Constitution, the board shall not license or continue to
17 license a medical doctor found to have committed repeated
18 medical malpractice, the finding of which was based upon clear
19 and convincing evidence. In order to rely on an incident of
20 medical malpractice to determine whether a license must be
21 denied or revoked under this section, if the facts supporting
22 the finding of the incident of medical malpractice were
23 determined on a standard less stringent than clear and
24 convincing evidence, the board shall review the record of the
25 case and determine whether the finding would be supported
26 under a standard of clear and convincing evidence. Section
27 456.073 applies. The board may verify on a biennial basis an
28 out-of-state licensee's medical malpractice history using
29 federal, state, or other databases. The board may require
30 licensees and applicants for licensure to provide a copy of
31 the record of the trial of any medical malpractice judgment,

1 which may be required to be in an electronic format, involving
2 an incident that occurred on or after November 2, 2004. For
3 purposes of implementing s. 26, Art. X of the State
4 Constitution, the 90-day requirement for granting or denying a
5 complete allopathic or osteopathic licensure application in s.
6 120.60(1) is extended to 180 days.

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

10 458.331 Grounds for disciplinary action; action by the
11 board and department.--

12 (1) The following acts constitute grounds for denial
13 of a license or disciplinary action, as specified in s.
14 456.072(2):

15 (t) Notwithstanding s. 456.072(2) but as specified in
16 s. 456.50(2):

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

1 ~~is recognized by a reasonably prudent similar physician as~~
2 ~~being acceptable under similar conditions and circumstances,"~~
3 shall not be construed ~~so as~~ to require more than one
4 instance, event, or act.

5 2. Committing gross medical malpractice.

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

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

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

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

6 (5) The board shall by rule establish guidelines for
7 the disposition of disciplinary cases involving specific types
8 of violations. Such guidelines may include minimum and maximum
9 fines, periods of supervision or probation, or conditions of
10 probation or reissuance of a license. "Gross medical
11 malpractice," "repeated medical malpractice," and "medical
12 malpractice," ~~"failure to practice medicine with that level of~~
13 ~~care, skill, and treatment which is recognized as being~~
14 ~~acceptable under similar circumstances"~~ under paragraph (1)(t)
15 ~~subsection (10)~~ shall each be considered distinct types of
16 violations requiring specific individual guidelines.

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

25 Section 4. Paragraph (x) of subsection (1) and
26 subsections (4) and (5) of section 459.015, Florida Statutes,
27 are amended to read:

28 459.015 Grounds for disciplinary action; action by the
29 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 (x) Notwithstanding s. 456.072(2) but as specified in
5 s. 456.50(2):

6 1. Committing medical ~~Gross or repeated~~ malpractice as
7 defined in s. 456.50 ~~or the failure to practice osteopathic~~
8 ~~medicine with that level of care, skill, and treatment which~~
9 ~~is recognized by a reasonably prudent similar osteopathic~~
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 osteopathic physician. As~~
19 ~~used in this paragraph, "gross malpractice" or "the failure to~~
20 ~~practice osteopathic medicine with that level of care, skill,~~
21 ~~and treatment which is recognized by a reasonably prudent~~
22 ~~similar osteopathic physician as being acceptable under~~
23 ~~similar conditions and circumstances"~~ shall not be construed
24 ~~so as~~ to require more than one 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
2 an osteopathic physician be incompetent to practice
3 osteopathic medicine in order to be disciplined pursuant to
4 this paragraph. A recommended order by an administrative law
5 judge or a final order of the board finding a violation under
6 this paragraph shall specify whether the licensee was found to
7 have committed "gross medical malpractice," "repeated medical
8 malpractice," or "medical malpractice," "~~failure to practice~~
9 ~~osteopathic medicine with that level of care, skill, and~~
10 ~~treatment which is recognized as being acceptable under~~
11 ~~similar conditions and circumstances~~," or any combination
12 thereof, and any publication by the board shall so specify.

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

27 (5) The board shall, by rule, establish comprehensive
28 guidelines for the disposition of disciplinary cases involving
29 specific types of violations. Such guidelines shall establish
30 offenses and circumstances for which revocation will be
31 presumed to be appropriate, as well as offenses and

1 | circumstances for which suspension for particular periods of
2 | time will be presumed to be appropriate. The guidelines shall
3 | also establish minimum and maximum fines, periods of
4 | supervision or probation, or conditions of probation and
5 | conditions for reissuance of a license with respect to
6 | particular circumstances and offenses. "Gross medical
7 | malpractice," "repeated medical malpractice," and "medical
8 | malpractice," "~~failure to practice osteopathic medicine with~~
9 | ~~that level of care, skill, and treatment which is recognized~~
10 | ~~as being acceptable under similar conditions and~~
11 | ~~circumstances~~" under paragraph (1)(x) shall each be considered
12 | distinct types of violations requiring specific individual
13 | guidelines.

14 | Section 5. This act shall take effect upon becoming a
15 | law.

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17 | STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
18 | COMMITTEE SUBSTITUTE FOR
19 | Senate Bill 940

20 | The Committee Substitute for Senate Bill 940 implements s. 26,
21 | Article X of the State Constitution, and applies this
22 | provision to allopathic and osteopathic physicians. Only
23 | incidents that occurred on or after November 2, 2004, may be
24 | considered for purposes of the prohibition on licensure for
25 | repeated medical malpractice. The Board of Medicine and the
26 | Board of Osteopathic Medicine, when revoking a license, or
27 | granting or denying a license must review the facts supporting
28 | an incident of medical malpractice using a clear and
29 | convincing standard of evidence. The time for the boards to
30 | review physician licensure applications is extended from 90 to
31 | 180 days. Acts of medical malpractice, gross medical
malpractice, or repeated malpractice, as grounds for which an
allopathic or osteopathic physician may be disciplined, are
redefined to implement s. 26, Art. X of the State
Constitution. Incidents is defined to include a single act of
medical malpractice, regardless of the number of claimants.
Multiple findings of medical malpractice arising from the same
act or acts associated with the treatment of the same patient
must count as only one incident. The Department of Health must
verify physicians' disciplinary history and medical
malpractice claims at initial licensure and licensure renewal
using the National Practitioner Data Bank.