

Bill No. SB 972

Barcode 643804

CHAMBER ACTION

Senate

House

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

Senate Amendment (with title amendment)

On page 2, line 15, through
page 21, line 28, delete those lines

and insert:

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

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

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1 to the physician as beneficiary upon presentment of a final
2 judgment indicating liability and awarding damages to be paid
3 by the physician or upon presentment of a settlement agreement
4 signed by all parties to such agreement when such final
5 judgment or settlement is a result of a claim arising out of
6 the rendering of, or the failure to render, medical care and
7 services. The required escrow amount set forth in this
8 paragraph may not be used for litigation costs or attorney's
9 fees for the defense of any medical malpractice claim. The
10 escrow account must be nonassignable and nontransferable.
11 Such escrow account must be made with and held by the trust
12 department of a bank or savings association organized and
13 existing under the laws of this state or a bank or savings
14 association organized under the laws of the United States
15 which has its principal place of business in this state or has
16 a branch office that is authorized under the laws of this
17 state or of the United States to receive deposits in this
18 state.

19 (b) Obtaining and maintaining professional liability
20 coverage in an amount not less than \$100,000 per claim, with a
21 minimum annual aggregate of not less than \$300,000, from an
22 authorized insurer as defined under s. 624.09, from a surplus
23 lines insurer as defined under s. 626.914(2), from a risk
24 retention group as defined under s. 627.942, from the Joint
25 Underwriting Association established under s. 627.351(4), or
26 through a plan of self-insurance as provided in s. 627.357.
27 The required coverage amount set forth in this paragraph may
28 not be used for litigation costs or attorney's fees for the
29 defense of any medical malpractice claim.

30 (c) Obtaining and maintaining an unexpired,
31 irrevocable letter of credit, established pursuant to chapter

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1 675, in an amount sufficient to meet the minimum annual
2 aggregate claim amount specified in paragraph (b) not less
3 than \$100,000 per claim, with a minimum aggregate availability
4 of credit of not less than \$300,000. The letter of credit must
5 be payable to the physician as beneficiary upon presentment of
6 a final judgment indicating liability and awarding damages to
7 be paid by the physician or upon presentment of a settlement
8 agreement signed by all parties to such agreement when such
9 final judgment or settlement is a result of a claim arising
10 out of the rendering of, or the failure to render, medical
11 care and services. The letter of credit may not be used for
12 litigation costs or attorney's fees for the defense of any
13 medical malpractice claim. The letter of credit must be
14 nonassignable and nontransferable. Such letter of credit must
15 be issued by any bank or savings association organized and
16 existing under the laws of this state or any bank or savings
17 association organized under the laws of the United States
18 which has its principal place of business in this state or has
19 a branch office that is authorized under the laws of this
20 state or of the United States to receive deposits in this
21 state.

22 (2) Physicians who perform surgery in an ambulatory
23 surgical center licensed under chapter 395 and, as a
24 continuing condition of hospital staff privileges, physicians
25 who have staff privileges must also establish financial
26 responsibility by one of the following methods:

27 (a) Establishing and maintaining an escrow account
28 consisting of cash or assets eligible for deposit in
29 accordance with s. 625.52 in an amount sufficient to meet the
30 minimum annual aggregate claim amount ~~the per claim amounts~~
31 specified in paragraph (b). The escrow account must be payable

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1 to the physician as beneficiary upon presentment of a final
2 judgment indicating liability and awarding damages to be paid
3 by the physician or upon presentment of a settlement agreement
4 signed by all parties to such agreement when such final
5 judgment or settlement is a result of a claim arising out of
6 the rendering of, or the failure to render, medical care and
7 services. The required escrow amount set forth in this
8 paragraph may not be used for litigation costs or attorney's
9 fees for the defense of any medical malpractice claim. The
10 escrow account must be nonassignable and nontransferable.
11 Such escrow account must be made with and held by the trust
12 department of a bank or savings association organized and
13 existing under the laws of this state or a bank or savings
14 association organized under the laws of the United States
15 which has its principal place of business in this state or has
16 a branch office that is authorized under the laws of this
17 state or of the United States to receive deposits in this
18 state.

19 (b) Obtaining and maintaining professional liability
20 coverage in an amount not less than \$250,000 per claim, with a
21 minimum annual aggregate of not less than \$750,000 from an
22 authorized insurer as defined under s. 624.09, from a surplus
23 lines insurer as defined under s. 626.914(2), from a risk
24 retention group as defined under s. 627.942, from the Joint
25 Underwriting Association established under s. 627.351(4),
26 through a plan of self-insurance as provided in s. 627.357, or
27 through a plan of self-insurance which meets the conditions
28 specified for satisfying financial responsibility in s.
29 766.110. The required coverage amount set forth in this
30 paragraph may not be used for litigation costs or attorney's
31 fees for the defense of any medical malpractice claim.

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1 (c) Obtaining and maintaining an unexpired irrevocable
2 letter of credit, established pursuant to chapter 675, in an
3 amount sufficient to meet the minimum annual aggregate claim
4 amount specified in paragraph (b) not less than \$250,000 per
5 claim, with a minimum aggregate availability of credit of not
6 less than \$750,000. The letter of credit must be payable to
7 the physician as beneficiary upon presentment of a final
8 judgment indicating liability and awarding damages to be paid
9 by the physician or upon presentment of a settlement agreement
10 signed by all parties to such agreement when such final
11 judgment or settlement is a result of a claim arising out of
12 the rendering of, or the failure to render, medical care and
13 services. The letter of credit may not be used for litigation
14 costs or attorney's fees for the defense of any medical
15 malpractice claim. The letter of credit must be nonassignable
16 and nontransferable. The letter of credit must be issued by
17 any bank or savings association organized and existing under
18 the laws of this state or any bank or savings association
19 organized under the laws of the United States which has its
20 principal place of business in this state or has a branch
21 office that is authorized under the laws of this state or of
22 the United States to receive deposits in this state.

23
24 This subsection shall be inclusive of the coverage in
25 subsection (1).

26 (3)(a) Meeting the financial responsibility
27 requirements of this section or the criteria for any exemption
28 from such requirements must be established at the time of
29 issuance or renewal of a license.

30 (b) Any person may, at any time, submit to the
31 department a request for an advisory opinion regarding such

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1 person's qualifications for exemption.

2 (4)(a) If financial responsibility requirements are
3 met by maintaining professional liability insurance as
4 provided for in this section, the physician shall, at the time
5 of applying for or renewing a license, and within 10 days
6 after any such insurance coverage is instituted, submit to the
7 department a sworn statement identifying the insurer and
8 certifying that the coverage meets the requirements of this
9 section. The statement must be accompanied by a copy of the
10 certificate of insurance which shall be deemed to be
11 incorporated in the statement. Each insurer, self-insurer,
12 risk retention group, or Joint Underwriting Association must
13 promptly notify the department of cancellation or nonrenewal
14 of insurance required by this section. Unless the physician
15 demonstrates that he or she is otherwise in compliance with
16 the requirements of this section, the department shall suspend
17 the license of the physician pursuant to ss. 120.569 and
18 120.57 and notify all health care facilities licensed under
19 chapter 395 of such action. Any suspension under this
20 subsection remains in effect until the physician demonstrates
21 compliance with the requirements of this section. If any
22 judgments or settlements are pending at the time of
23 suspension, those judgments or settlements must be paid in
24 accordance with this section unless otherwise mutually agreed
25 to in writing by the parties. This paragraph does not abrogate
26 a judgment debtor's obligation to satisfy the entire amount of
27 any judgment.

28 (b) 1. If financial responsibility requirements are
29 met by maintaining an escrow account as provided for in this
30 section, the physician shall, at the time of applying for or
31 renewing a license, and within 10 days after any such escrow

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1 account is opened, submit to the department a sworn statement
 2 identifying the assets held in escrow and their value;
 3 identifying the financial institution that is holding the
 4 escrow; affirming that the account is nonassignable,
 5 nontransferable, and not encumbered or pledged to a purpose
 6 other than meeting the financial responsibility requirements
 7 of this section; and granting such authorization as is
 8 necessary for the department to verify such information with
 9 the financial institution. A copy of the escrow agreement and
 10 a recent statement from the institution reflecting the value
 11 of the assets in the escrow account must accompany the
 12 statement and shall be deemed to be incorporated in the
 13 statement.

14 2. If financial responsibility requirements are met by
 15 maintaining a letter of credit as provided for in this
 16 section, the physician shall, at the time of applying for or
 17 renewing a license, and within 10 days after any such letter
 18 of credit is issued, submit to the department a sworn
 19 statement identifying the financial institution that issued
 20 the letter of credit; affirming that the letter of credit is
 21 nonassignable, nontransferable, otherwise meets the
 22 requirements of this section, and is not encumbered or pledged
 23 to a purpose other than meeting the financial responsibility
 24 requirements in this section; and granting such authorization
 25 as is necessary for the department to verify such information
 26 with the financial institution. A copy of the letter of
 27 credit must accompany the statement and shall be deemed to be
 28 incorporated in the statement.

29 3. If financial responsibility requirements are met by
 30 maintaining an escrow account or letter of credit as provided
 31 in this section, upon the entry of an adverse final judgment

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1 arising from a medical malpractice arbitration award, from a
 2 claim of medical malpractice either in contract or tort, or
 3 from noncompliance with the terms of a settlement agreement
 4 arising from a claim of medical malpractice either in contract
 5 or tort, the licensee shall pay the entire amount of the
 6 judgment together with all accrued interest, or the amount
 7 maintained in the escrow account or provided in the letter of
 8 credit as required by this section, whichever is less, within
 9 60 days after the date such judgment became final and subject
 10 to execution, unless otherwise mutually agreed to in writing
 11 by the parties. If timely payment is not made by the
 12 physician, the department shall suspend the license of the
 13 physician pursuant to procedures ~~set forth~~ in paragraphs
 14 (6)(c) and (d) subparagraphs (5)(g)3., 4., and 5. Nothing in
 15 This paragraph does not shall abrogate a judgment debtor's
 16 obligation to satisfy the entire amount of any judgment.

17 (c)1. Each insurer, self-insurer, risk retention
 18 group, or joint underwriting association must promptly notify
 19 the department of the cancellation or nonrenewal of insurance
 20 that is required by this section. Each bank or savings
 21 association must promptly notify the department of the closing
 22 or transfer of an escrow account, or the cancellation or
 23 expiration of a letter of credit, which account or letter is
 24 required by this section.

25 2. Within 10 days after the cancellation or nonrenewal
 26 of professional liability insurance, the closing or transfer
 27 of an escrow account, or the cancellation or expiration of a
 28 letter of credit being used by a physician to meet the
 29 financial responsibility requirements of this section, such
 30 physician shall notify the department of such cancellation or
 31 nonrenewal of the insurance coverage, closing or transfer of

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1 the escrow account, or cancellation or expiration of the
 2 letter of credit, and submit the sworn statement required by
 3 paragraph (a) or paragraph (b) reflecting the institution of
 4 professional liability insurance coverage, the opening of an
 5 escrow account, or the issuance of a letter of credit, as
 6 applicable, to otherwise meet the financial responsibility
 7 requirements of this section. The department shall suspend,
 8 pursuant to ss. 120.569 and 120.57, the license of a physician
 9 whose liability insurance is cancelled or not renewed, whose
 10 escrow account is closed or transferred, or whose letter of
 11 credit is cancelled or expires, and who does not notify the
 12 department of such action and submit the sworn statement
 13 required by this subsection demonstrating that he or she is
 14 otherwise in compliance with the requirements of this section.
 15 The department shall notify all health care facilities
 16 licensed under chapter 395 of such suspension action. A
 17 suspension under this subparagraph must remain in effect until
 18 the physician demonstrates compliance with the requirements of
 19 this section. If any judgments or settlements are pending at
 20 the time of suspension, those judgments or settlements must be
 21 paid in accordance with this section unless otherwise agreed
 22 in writing by the parties. This paragraph does not abrogate a
 23 judgment debtor's obligation to satisfy the entire amount of
 24 any judgment.

25 (d) The sworn statement required by paragraph (a) or
 26 paragraph (b) must include the following declaration: "Under
 27 penalties of perjury, I declare that I have read the foregoing
 28 statement and that the facts stated in it are true." The
 29 declaration must be printed or typed at the end of the
 30 statement and above the signature of the physician making the
 31 declaration. A physician who knowingly makes a false

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1 declaration under this paragraph, in addition to being subject
2 to discipline as otherwise authorized by this chapter, commits
3 the crime of perjury by false written declaration, a felony of
4 the third degree, punishable as provided in s. 775.082, s.
5 775.083, or s. 775.084.

6 (e) A physician who fails to timely file a statement
7 required by paragraph (a) or paragraph (b) or the notice
8 required by paragraph (c) commits a misdemeanor of the first
9 degree, punishable as provided in s. 775.082 or s. 775.083.

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

12 (a) Any person licensed under this chapter who
13 practices medicine exclusively as an officer, employee, or
14 agent of the Federal Government or of the state or its
15 agencies or its subdivisions. For the purposes of this
16 subsection, an agent of the state, its agencies, or its
17 subdivisions is a person who is eligible for coverage under
18 any self-insurance or insurance program authorized by the
19 provisions of s. 768.28(16).

20 (b) Any person whose license has become inactive under
21 this chapter and who is not practicing medicine in this state.
22 Any person applying for reactivation of a license must show
23 either that such licensee maintained tail insurance coverage
24 which provided liability coverage for incidents that occurred
25 on or after January 1, 1987, or the initial date of licensure
26 in this state, whichever is later, and incidents that occurred
27 before the date on which the license became inactive; or such
28 licensee must submit an affidavit stating that such licensee
29 has no unsatisfied medical malpractice judgments or
30 settlements at the time of application for reactivation.

31 (c) Any person holding a limited license pursuant to

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1 s. 458.317 and practicing under the scope of such limited
2 license.

3 (d) Any person licensed or certified under this
4 chapter who practices only in conjunction with his or her
5 teaching duties at an accredited medical school or in its main
6 teaching hospitals. Such person may engage in the practice of
7 medicine to the extent that such practice is incidental to and
8 a necessary part of duties in connection with the teaching
9 position in the medical school.

10 (e) Any person holding an active license under this
11 chapter who is not practicing medicine in this state. If such
12 person initiates or resumes any practice of medicine in this
13 state, he or she must notify the department of such activity
14 and fulfill the financial responsibility requirements of this
15 section before resuming the practice of medicine in this
16 state.

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

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

22 2. The licensee has either retired from the practice
23 of medicine or maintains a part-time practice of no more than
24 1,000 patient contact hours per year.

25 3. The licensee has had no more than two claims for
26 medical malpractice resulting in an indemnity exceeding
27 \$25,000 within the previous 5-year period.

28 4. The licensee has not been convicted of, or pled
29 guilty or nolo contendere to, any criminal violation specified
30 in this chapter or the medical practice act of any other
31 state.

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1 5. The licensee has not been subject within the last
2 10 years of practice to license revocation or suspension for
3 any period of time; probation for a period of 3 years or
4 longer; or a fine of \$500 or more for a violation of this
5 chapter or the medical practice act of another jurisdiction.
6 The regulatory agency's acceptance of a physician's
7 relinquishment of a license, stipulation, consent order, or
8 other settlement, offered in response to or in anticipation of
9 the filing of administrative charges against the physician's
10 license, constitutes action against the physician's license
11 for the purposes of this paragraph.

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

15 7. The licensee must submit biennially to the
16 department certification stating compliance with the
17 provisions of this paragraph. The licensee must, upon request,
18 demonstrate to the department information verifying compliance
19 with this paragraph.

20
21 A licensee who meets the requirements of this paragraph must
22 post notice in the form of a sign prominently displayed in the
23 reception area and clearly noticeable by all patients or
24 provide a written statement to any person to whom medical
25 services are being provided. The sign or statement must read
26 as follows: "Under Florida law, physicians are generally
27 required to carry medical malpractice insurance or otherwise
28 demonstrate financial responsibility to cover potential claims
29 for medical malpractice. However, certain part-time physicians
30 who meet state requirements are exempt from the financial
31 responsibility law. YOUR DOCTOR MEETS THESE REQUIREMENTS AND

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1 HAS DECIDED NOT TO CARRY MEDICAL MALPRACTICE INSURANCE. This
2 notice is provided pursuant to Florida law."

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

5 ~~(6)1.~~ Upon the entry of an adverse final judgment
6 arising from a medical malpractice arbitration award, from a
7 claim of medical malpractice either in contract or tort, or
8 from noncompliance with the terms of a settlement agreement
9 arising from a claim of medical malpractice either in contract
10 or tort, a licensee required to maintain financial
11 responsibility under this section ~~the licensee~~ shall pay the
12 judgment creditor the lesser of the entire amount of the
13 judgment with all accrued interest or either \$100,000, if the
14 physician is licensed pursuant to this chapter but does not
15 maintain hospital staff privileges, or \$250,000, if the
16 physician is licensed pursuant to this chapter and maintains
17 hospital staff privileges, within 60 days after the date such
18 judgment became final and subject to execution, unless
19 otherwise mutually agreed to in writing by the parties. Such
20 adverse final judgment shall include any cross-claim,
21 counterclaim, or claim for indemnity or contribution arising
22 from the claim of medical malpractice.

23 (a) Upon notification of the existence of an
24 unsatisfied judgment or payment pursuant to this subsection
25 ~~subparagraph~~, the department shall notify the licensee by
26 certified mail that he or she shall be subject to disciplinary
27 action unless, within 30 days from the date of mailing, he or
28 she either:

29 1.a. Shows proof that the unsatisfied judgment has
30 been paid in the amount specified in this subsection
31 ~~subparagraph~~; or

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

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

5 ~~b.(II)~~ An order from a court of competent jurisdiction
 6 staying execution on the final judgment pending disposition of
 7 the appeal.

8 ~~(b)2.~~ The Department of Health shall issue an
 9 emergency order suspending the license of any licensee who,
 10 after 30 days following receipt of a notice from the
 11 Department of Health, has failed to: satisfy a medical
 12 malpractice claim against him or her; furnish the Department
 13 of Health a copy of a timely filed notice of appeal; furnish
 14 the Department of Health a copy of a supersedeas bond properly
 15 posted in the amount required by law; or furnish the
 16 Department of Health an order from a court of competent
 17 jurisdiction staying execution on the final judgment pending
 18 disposition of the appeal.

19 ~~(c)3.~~ Upon the next meeting of the probable cause
 20 panel of the board following 30 days after the date of mailing
 21 the notice of disciplinary action to the licensee, the panel
 22 shall make a determination of whether probable cause exists to
 23 take disciplinary action against the licensee pursuant to
 24 paragraph (a) ~~subparagraph 1.~~

25 ~~(d)4.~~ If the board determines that the factual
 26 requirements of this subsection ~~subparagraph 1.~~ are met, it
 27 shall take disciplinary action as it deems appropriate against
 28 the licensee. Such disciplinary action shall include, at a
 29 minimum, probation of the license with the restriction that
 30 the licensee must make payments to the judgment creditor on a
 31 schedule determined by the board to be reasonable and within

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1 the financial capability of the physician. Notwithstanding any
2 other disciplinary penalty imposed, the disciplinary penalty
3 may include suspension of the license for a period not to
4 exceed 5 years. In the event that an agreement to satisfy a
5 judgment has been met, the board shall remove any restriction
6 on the license.

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

9

10 ~~A licensee who meets the requirements of this paragraph shall~~
11 ~~be required either to post notice in the form of a sign~~
12 ~~prominently displayed in the reception area and clearly~~
13 ~~noticeable by all patients or to provide a written statement~~
14 ~~to any person to whom medical services are being provided.~~

15 ~~Such sign or statement shall state: "Under Florida law,~~
16 ~~physicians are generally required to carry medical malpractice~~
17 ~~insurance or otherwise demonstrate financial responsibility to~~
18 ~~cover potential claims for medical malpractice. YOUR DOCTOR~~
19 ~~HAS DECIDED NOT TO CARRY MEDICAL MALPRACTICE INSURANCE. This~~
20 ~~is permitted under Florida law subject to certain conditions.~~

21 ~~Florida law imposes penalties against noninsured physicians~~
22 ~~who fail to satisfy adverse judgments arising from claims of~~
23 ~~medical malpractice. This notice is provided pursuant to~~
24 ~~Florida law."~~

25 ~~(7)(6)~~ Any deceptive, untrue, or fraudulent
26 representation by the licensee with respect to any provision
27 of this section shall result in permanent disqualification
28 from any exemption to mandated financial responsibility as
29 provided in this section and shall constitute grounds for
30 disciplinary action under s. 458.331.

31 ~~(8)(7)~~ Any licensee who relies on any exemption from

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1 the financial responsibility requirement shall notify the
2 department, in writing, of any change of circumstance
3 regarding his or her qualifications for such exemption and
4 shall demonstrate that he or she is in compliance with the
5 requirements of this section.

6 ~~(9)(8)~~ Notwithstanding any other provision of this
7 section, the department shall suspend the license of any
8 physician against whom has been entered a final judgment,
9 arbitration award, or other order or who has entered into a
10 settlement agreement to pay damages arising out of a claim for
11 medical malpractice, if all appellate remedies have been
12 exhausted and payment up to the amounts required by this
13 section has not been made within 30 days after the entering of
14 such judgment, award, or order or agreement, until proof of
15 payment is received by the department or a payment schedule
16 has been agreed upon by the physician and the claimant and
17 presented to the department. This subsection does not apply to
18 a physician who has met the financial responsibility
19 requirements in paragraphs (1)(b) and (2)(b).

20 (10) The department shall verify that the licensee has
21 the required financial responsibility in accordance with
22 subsections (1) and (2) before a license is granted or
23 renewed.

24 ~~(11)(9)~~ The board shall adopt rules to implement the
25 provisions of this section.

26 Section 2. Section 459.0085, Florida Statutes, is
27 amended to read:

28 459.0085 Financial responsibility.--

29 (1) As a condition of licensing and maintaining an
30 active license, and prior to the issuance or renewal of an
31 active license or reactivation of an inactive license for the

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1 practice of osteopathic medicine, an applicant must by one of
 2 the following methods demonstrate to the satisfaction of the
 3 board and the department financial responsibility to pay
 4 claims and costs ancillary thereto arising out of the
 5 rendering of, or the failure to render, medical care or
 6 services:

7 (a) Establishing and maintaining an escrow account
 8 consisting of cash or assets eligible for deposit in
 9 accordance with s. 625.52 in an amount sufficient to meet the
 10 minimum annual aggregate claim amount ~~the per claim amounts~~
 11 specified in paragraph (b). The escrow account must be payable
 12 to the osteopathic physician as beneficiary upon presentment
 13 of a final judgment indicating liability and awarding damages
 14 to be paid by the osteopathic physician or upon presentment of
 15 a settlement agreement signed by all parties to such agreement
 16 when such final judgment or settlement is a result of a claim
 17 arising out of the rendering of, or the failure to render,
 18 medical care and services. The required escrow amount set
 19 forth in this paragraph may not be used for litigation costs
 20 or attorney's fees for the defense of any medical malpractice
 21 claim. The escrow account must be nonassignable and
 22 nontransferable. Such escrow account must be made with and
 23 held by the trust department of a bank or savings association
 24 organized and existing under the laws of this state or a bank
 25 or savings association organized under the laws of the United
 26 States which has its principal place of business in this state
 27 or has a branch office that is authorized under the laws of
 28 this state or of the United States to receive deposits in this
 29 state.

30 (b) Obtaining and maintaining professional liability
 31 coverage in an amount not less than \$100,000 per claim, with a

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1 minimum annual aggregate of not less than \$300,000, from an
 2 authorized insurer as defined under s. 624.09, from a surplus
 3 lines insurer as defined under s. 626.914(2), from a risk
 4 retention group as defined under s. 627.942, from the Joint
 5 Underwriting Association established under s. 627.351(4), or
 6 through a plan of self-insurance as provided in s. 627.357.
 7 The required coverage amount set forth in this paragraph may
 8 not be used for litigation costs or attorney's fees for the
 9 defense of any medical malpractice claim.

10 (c) Obtaining and maintaining an unexpired,
 11 irrevocable letter of credit, established pursuant to chapter
 12 675, in an amount sufficient to meet the minimum annual
 13 aggregate claim amount specified in paragraph (b) not less
 14 than \$100,000 per claim, with a minimum aggregate availability
 15 of credit of not less than \$300,000. The letter of credit must
 16 be payable to the osteopathic physician as beneficiary upon
 17 presentment of a final judgment indicating liability and
 18 awarding damages to be paid by the osteopathic physician or
 19 upon presentment of a settlement agreement signed by all
 20 parties to such agreement when such final judgment or
 21 settlement is a result of a claim arising out of the rendering
 22 of, or the failure to render, medical care and services. The
 23 letter of credit may not be used for litigation costs or
 24 attorney's fees for the defense of any medical malpractice
 25 claim. The letter of credit must be nonassignable and
 26 nontransferable. Such letter of credit must be issued by any
 27 bank or savings association organized and existing under the
 28 laws of this state or any bank or savings association
 29 organized under the laws of the United States which has its
 30 principal place of business in this state or has a branch
 31 office that is authorized under the laws of this state or of

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1 the United States to receive deposits in this state.

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

8 (a) Establishing and maintaining an escrow account
9 consisting of cash or assets eligible for deposit in
10 accordance with s. 625.52 in an amount sufficient to meet the
11 minimum annual aggregate claim amount ~~the per-claim amounts~~
12 specified in paragraph (b). The escrow account must be payable
13 to the osteopathic physician as beneficiary upon presentment
14 of a final judgment indicating liability and awarding damages
15 to be paid by the osteopathic physician or upon presentment of
16 a settlement agreement signed by all parties to such agreement
17 when such final judgment or settlement is a result of a claim
18 arising out of the rendering of, or the failure to render,
19 medical care and services. The required escrow amount set
20 forth in this paragraph may not be used for litigation costs
21 or attorney's fees for the defense of any medical malpractice
22 claim. The escrow account must be nonassignable and
23 nontransferable. Such escrow account must be made with and
24 held by the trust department of a bank or savings association
25 organized and existing under the laws of this state or a bank
26 or savings association organized under the laws of the United
27 States which has its principal place of business in this state
28 or has a branch office that is authorized under the laws of
29 this state or of the United States to receive deposits in this
30 state.

31 (b) Obtaining and maintaining professional liability

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1 coverage in an amount not less than \$250,000 per claim, with a
 2 minimum annual aggregate of not less than \$750,000 from an
 3 authorized insurer as defined under s. 624.09, from a surplus
 4 lines insurer as defined under s. 626.914(2), from a risk
 5 retention group as defined under s. 627.942, from the Joint
 6 Underwriting Association established under s. 627.351(4),
 7 through a plan of self-insurance as provided in s. 627.357, or
 8 through a plan of self-insurance that meets the conditions
 9 specified for satisfying financial responsibility in s.
 10 766.110. The required coverage amount set forth in this
 11 paragraph may not be used for litigation costs or attorney's
 12 fees for the defense of any medical malpractice claim.

13 (c) Obtaining and maintaining an unexpired,
 14 irrevocable letter of credit, established pursuant to chapter
 15 675, in an amount sufficient to meet the minimum annual
 16 aggregate claim amount specified in paragraph (b) ~~not less~~
 17 than \$250,000 per claim, with a minimum aggregate availability
 18 of credit of not less than \$750,000. The letter of credit must
 19 be payable to the osteopathic physician as beneficiary upon
 20 presentment of a final judgment indicating liability and
 21 awarding damages to be paid by the osteopathic physician or
 22 upon presentment of a settlement agreement signed by all
 23 parties to such agreement when such final judgment or
 24 settlement is a result of a claim arising out of the rendering
 25 of, or the failure to render, medical care and services. The
 26 letter of credit may not be used for litigation costs or
 27 attorney's fees for the defense of any medical malpractice
 28 claim. The letter of credit must be nonassignable and
 29 nontransferable. The letter of credit must be issued by any
 30 bank or savings association organized and existing under the
 31 laws of this state or any bank or savings association

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1 organized under the laws of the United States which has its
 2 principal place of business in this state or has a branch
 3 office that is authorized under the laws of this state or of
 4 the United States to receive deposits in this state.

5
 6 This subsection shall be inclusive of the coverage in
 7 subsection (1).

8 (3)(a) Meeting the financial responsibility
 9 requirements of this section or the criteria for any exemption
 10 from such requirements must be established at the time of
 11 issuance or renewal of a license.

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

15 (4)(a) If financial responsibility requirements are
 16 met by maintaining professional liability insurance as
 17 provided for in this section, the osteopathic physician shall,
 18 at the time of applying for or renewing a license, and within
 19 10 days after any such insurance coverage is instituted,
 20 submit to the department a sworn statement identifying the
 21 insurer and certifying that the coverage meets the
 22 requirements of this section. The statement must be
 23 accompanied by a copy of the certificate of insurance which
 24 shall be deemed to be incorporated in the statement. Each
 25 insurer, self-insurer, risk retention group, or joint
 26 underwriting association must promptly notify the department
 27 of cancellation or nonrenewal of insurance required by this
 28 section. Unless the osteopathic physician demonstrates that he
 29 or she is otherwise in compliance with the requirements of
 30 this section, the department shall suspend the license of the
 31 osteopathic physician pursuant to ss. 120.569 and 120.57 and

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1 notify all health care facilities licensed under chapter 395,
 2 part IV of chapter 394, or part I of chapter 641 of such
 3 action. Any suspension under this subsection remains in effect
 4 until the osteopathic physician demonstrates compliance with
 5 the requirements of this section. If any judgments or
 6 settlements are pending at the time of suspension, those
 7 judgments or settlements must be paid in accordance with this
 8 section unless otherwise mutually agreed to in writing by the
 9 parties. This paragraph does not abrogate a judgment debtor's
 10 obligation to satisfy the entire amount of any judgment.

11 (b)1. If financial responsibility requirements are met
 12 by maintaining an escrow account as provided for in this
 13 section, the physician shall, at the time of applying for or
 14 renewing a license, and within 10 days after any such escrow
 15 account is opened, submit to the department a sworn statement
 16 identifying the assets held in escrow and their value;
 17 identifying the financial institution that is holding the
 18 escrow; affirming that the account is nonassignable,
 19 nontransferable, and not encumbered or pledged to a purpose
 20 other than meeting the financial responsibility requirements
 21 of this section; and granting such authorization as is
 22 necessary for the department to verify such information with
 23 the financial institution. A copy of the escrow agreement and
 24 a recent statement from the institution reflecting the value
 25 of the assets in the escrow account must accompany the
 26 statement and shall be deemed to be incorporated by reference
 27 therein.

28 2. If financial responsibility requirements are met by
 29 maintaining a letter of credit as provided for in this
 30 section, the physician shall, at the time of applying for or
 31 renewing a license, and within 10 days after any such letter

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1 of credit is issued, submit to the department a sworn
2 statement identifying the financial institution that issued
3 the letter of credit; affirming that the letter of credit is
4 nonassignable, nontransferable, otherwise meets the
5 requirements of this section, and is not encumbered or pledged
6 to a purpose other than meeting the financial responsibility
7 requirements in this section; and granting such authorization
8 as is necessary for the department to verify such information
9 with the financial institution. A copy of the letter of credit
10 must accompany the statement and shall be deemed to be
11 incorporated therein by reference.

12 3. If financial responsibility requirements are met by
13 maintaining an escrow account or letter of credit as provided
14 in this section, upon the entry of an adverse final judgment
15 arising from a medical malpractice arbitration award, from a
16 claim of medical malpractice either in contract or tort, or
17 from noncompliance with the terms of a settlement agreement
18 arising from a claim of medical malpractice either in contract
19 or tort, the licensee shall pay the entire amount of the
20 judgment together with all accrued interest or the amount
21 maintained in the escrow account or provided in the letter of
22 credit as required by this section, whichever is less, within
23 60 days after the date such judgment became final and subject
24 to execution, unless otherwise mutually agreed to in writing
25 by the parties. If timely payment is not made by the
26 osteopathic physician, the department shall suspend the
27 license of the osteopathic physician pursuant to procedures
28 set forth in paragraphs (6)(c) and (d) ~~subparagraphs (5)(g)3.,~~
29 4., and 5. Nothing in This paragraph does not shall abrogate a
30 judgment debtor's obligation to satisfy the entire amount of
31 any judgment.

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1 (c)1. Each insurer, self-insurer, risk retention
2 group, or joint underwriting association must promptly notify
3 the department of the cancellation or nonrenewal of insurance
4 that is required by this section. Each bank or savings
5 association must promptly notify the department of the closing
6 or transfer of an escrow account, or the cancellation or
7 expiration of a letter of credit, which account or letter is
8 required by this section.

9 2. Within 10 days after the cancellation or nonrenewal
10 of professional liability insurance, the closing or transfer
11 of an escrow account, or the cancellation or expiration of a
12 letter of credit being used by an osteopathic physician to
13 meet the financial responsibility requirements of this
14 section, such osteopathic physician shall notify the
15 department of such cancellation or nonrenewal of the insurance
16 coverage, closing or transfer of the escrow account, or
17 cancellation or expiration of the letter of credit, and submit
18 the sworn statement required by paragraph (a) or paragraph (b)
19 reflecting the institution of professional liability insurance
20 coverage, the opening of an escrow account, or the issuance of
21 a letter of credit, as applicable, to otherwise meet the
22 financial responsibility requirements of this section. The
23 department shall suspend, pursuant to ss. 120.569 and 120.57,
24 the license of an osteopathic physician whose liability
25 insurance is cancelled or not renewed, whose escrow account is
26 closed or transferred, or whose letter of credit is cancelled
27 or expires, and who does not notify the department of such
28 action and submit the sworn statement required by this
29 subsection demonstrating that he or she is otherwise in
30 compliance with the requirements of this section. The
31 department shall notify all health care facilities licensed

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1 under chapter 395 of such suspension action. A suspension
2 under this subparagraph must remain in effect until the
3 osteopathic physician demonstrates compliance with the
4 requirements of this section. If any judgements or settlements
5 are pending at the time of suspension, those judgments or
6 settlements must be paid in accordance with this section
7 unless otherwise agreed in writing by the parties. This
8 paragraph does not abrogate a judgment debtor's obligation to
9 satisfy the entire amount of any judgment.

10 (d) The sworn statement required by paragraph (a) or
11 paragraph (b) must include the following declaration: "Under
12 penalties of perjury, I declare that I have read the foregoing
13 statement and that the facts stated in it are true." The
14 declaration must be printed or typed at the end of the
15 statement and above the signature of the osteopathic physician
16 making the declaration. An osteopathic physician who knowingly
17 makes a false declaration under this paragraph, in addition to
18 being subject to discipline as otherwise authorized by this
19 chapter, commits the crime of perjury by false written
20 declaration, a felony of the third degree, punishable as
21 provided in s. 775.082, s. 775.083, or s. 775.084.

22 (e) An osteopathic physician who fails to timely file
23 a statement required by paragraph (a) or paragraph (b) or the
24 notice required by paragraph (c) commits a misdemeanor of the
25 first degree, punishable as provided in s. 775.082 or s.
26 775.083.

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

29 (a) Any person licensed under this chapter who
30 practices medicine exclusively as an officer, employee, or
31 agent of the Federal Government or of the state or its

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1 agencies or its subdivisions. For the purposes of this
2 subsection, an agent of the state, its agencies, or its
3 subdivisions is a person who is eligible for coverage under
4 any self-insurance or insurance program authorized by the
5 provisions of s. 768.28(16).

6 (b) Any person whose license has become inactive under
7 this chapter and who is not practicing medicine in this state.
8 Any person applying for reactivation of a license must show
9 either that such licensee maintained tail insurance coverage
10 that provided liability coverage for incidents that occurred
11 on or after January 1, 1987, or the initial date of licensure
12 in this state, whichever is later, and incidents that occurred
13 before the date on which the license became inactive; or such
14 licensee must submit an affidavit stating that such licensee
15 has no unsatisfied medical malpractice judgments or
16 settlements at the time of application for reactivation.

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

20 (d) Any person licensed or certified under this
21 chapter who practices only in conjunction with his or her
22 teaching duties at a college of osteopathic medicine. Such
23 person may engage in the practice of osteopathic medicine to
24 the extent that such practice is incidental to and a necessary
25 part of duties in connection with the teaching position in the
26 college of osteopathic medicine.

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

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1 responsibility requirements of this section before resuming
2 the practice of osteopathic medicine in this state.

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

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

8 2. The licensee has either retired from the practice
9 of osteopathic medicine or maintains a part-time practice of
10 osteopathic medicine of no more than 1,000 patient contact
11 hours per year.

12 3. The licensee has had no more than two claims for
13 medical malpractice resulting in an indemnity exceeding
14 \$25,000 within the previous 5-year period.

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

18 5. The licensee has not been subject within the last
19 10 years of practice to license revocation or suspension for
20 any period of time, probation for a period of 3 years or
21 longer, or a fine of \$500 or more for a violation of this
22 chapter or the medical practice act of another jurisdiction.
23 The regulatory agency's acceptance of an osteopathic
24 physician's relinquishment of a license, stipulation, consent
25 order, or other settlement, offered in response to or in
26 anticipation of the filing of administrative charges against
27 the osteopathic physician's license, constitutes action
28 against the physician's license for the purposes of this
29 paragraph.

30 6. The licensee has submitted a form supplying
31 necessary information as required by the department and an

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1 affidavit affirming compliance with this paragraph.

2 7. The licensee must submit biennially to the
3 department a certification stating compliance with this
4 paragraph. The licensee must, upon request, demonstrate to the
5 department information verifying compliance with this
6 paragraph.

7
8 A licensee who meets the requirements of this paragraph must
9 post notice in the form of a sign prominently displayed in the
10 reception area and clearly noticeable by all patients or
11 provide a written statement to any person to whom medical
12 services are being provided. The sign or statement must read
13 as follows: "Under Florida law, osteopathic physicians are
14 generally required to carry medical malpractice insurance or
15 otherwise demonstrate financial responsibility to cover
16 potential claims for medical malpractice. However, certain
17 part-time osteopathic physicians who meet state requirements
18 are exempt from the financial responsibility law. YOUR
19 OSTEOPATHIC PHYSICIAN MEETS THESE REQUIREMENTS AND HAS DECIDED
20 NOT TO CARRY MEDICAL MALPRACTICE INSURANCE. This notice is
21 provided pursuant to Florida law."

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

24 (6)1. Upon the entry of an adverse final judgment
25 arising from a medical malpractice arbitration award, from a
26 claim of medical malpractice either in contract or tort, or
27 from noncompliance with the terms of a settlement agreement
28 arising from a claim of medical malpractice either in contract
29 or tort, a licensee required to maintain financial
30 responsibility under this section ~~the licensee~~ shall pay the
31 judgment creditor the lesser of the entire amount of the

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1 judgment with all accrued interest or either \$100,000, if the
 2 osteopathic physician is licensed pursuant to this chapter but
 3 does not maintain hospital staff privileges, or \$250,000, if
 4 the osteopathic physician is licensed pursuant to this chapter
 5 and maintains hospital staff privileges, within 60 days after
 6 the date such judgment became final and subject to execution,
 7 unless otherwise mutually agreed to in writing by the parties.
 8 Such adverse final judgment shall include any cross-claim,
 9 counterclaim, or claim for indemnity or contribution arising
 10 from the claim of medical malpractice.

11
12

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

14 And the title is amended as follows:

15 On page 1, lines 5-16, delete those lines

16
17 and insert:

18 providing additional requirements, relating to
 19 licensure, for professional liability insurance
 20 coverage, an escrow account, and an irrevocable
 21 letter of credit; revising the amounts required
 22 through the escrow account or letter of credit;
 23 providing for submittal, to the Department of
 24 Health, by a physician or an osteopathic
 25 physician of a sworn statement and
 26 documentation relating to the liability
 27 insurance coverage, the escrow account, or the
 28 letter of credit; providing for notification of
 29 the department by a bank or savings association
 30 when the escrow account is closed or
 31 transferred or the letter of credit is

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1 cancelled or expires; removing provisions
2 governing license suspension following
3 cancellation or nonrenewal of professional
4 liability insurance; providing for notification
5 of the department and requiring a sworn
6 statement by the physician or osteopathic
7 physician when the professional liability
8 insurance is cancelled or not renewed, the
9 escrow account is closed or transferred, or the
10 letter of credit is cancelled or expires;
11 providing for license suspension following such
12 termination of insurance, escrow account, or
13 letter of credit; providing criminal penalties
14 for a physician or an osteopathic physician who
15 fails to submit a required notice or statement
16 or who knowingly makes a false declaration in
17 the sworn statement; removing provisions

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