

1 A bill to be entitled
2 An act relating to medical quality assurance; amending s.
3 395.0193, F.S.; requiring certain disciplinary actions to
4 be reported to the Division of Medical Quality Assurance
5 of the Department of Health instead of the Division of
6 Health Quality Assurance of the Agency for Health Care
7 Administration; amending s. 395.0197, F.S.; expanding the
8 list of health care practitioners to be reviewed by the
9 agency; requiring forwarding of incident reports to the
10 Division of Medical Quality Assurance of the Department of
11 Health for determination of need for disciplinary action
12 rather than the agency making such determination;
13 providing that certain annual reports are not required to
14 be forwarded to the department; amending s. 395.3025,
15 F.S.; transferring from the agency to the department
16 authority to access confidential patient records upon
17 issuance of a subpoena for the purpose of investigation,
18 prosecution, and appeal of disciplinary proceedings
19 relating to health care professionals; providing for a fee
20 for copies of records to be determined by rule of the
21 department; amending s. 400.147, F.S.; transferring from
22 the agency to the department certain duties relating to
23 disciplinary proceedings within the purview of the
24 department and appropriate regulatory boards; requiring a
25 copy of certain reports to be submitted to the Division of
26 Medical Quality Assurance of the department; amending ss.
27 458.309 and 459.005, F.S.; providing that the department
28 shall inspect a physician's office unless such office is

29 | accredited by a nationally recognized accrediting agency;
 30 | providing an effective date.

31 |

32 | Be It Enacted by the Legislature of the State of Florida:

33 |

34 | Section 1. Subsection (4) of section 395.0193, Florida
 35 | Statutes, is amended to read:

36 | 395.0193 Licensed facilities; peer review; disciplinary
 37 | powers; agency or partnership with physicians.--

38 | (4) Pursuant to ss. 458.337 and 459.016, any disciplinary
 39 | actions taken under subsection (3) shall be reported in writing
 40 | to the Division of Medical Health Quality Assurance of the
 41 | department ~~agency~~ within 30 working days after its initial
 42 | occurrence, regardless of the pendency of appeals to the
 43 | governing board of the hospital. The notification shall identify
 44 | the disciplined practitioner, the action taken, and the reason
 45 | for such action. All final disciplinary actions taken under
 46 | subsection (3), if different from those which were reported to
 47 | the division ~~agency~~ within 30 days after the initial occurrence,
 48 | shall be reported within 10 working days to the division ~~of~~
 49 | ~~Health Quality Assurance of the agency~~ in writing and shall
 50 | specify the disciplinary action taken and the specific grounds
 51 | therefor. The division shall review each report and determine
 52 | whether it potentially involved conduct by the licensee that is
 53 | subject to disciplinary action, in which case s. 456.073 shall
 54 | apply. The reports are not subject to inspection under s.
 55 | 119.07(1) even if the division's investigation results in a
 56 | finding of probable cause.

57 Section 2. Paragraphs (b) and (c) of subsection (6) and
58 subsections (7) and (13) of section 395.0197, Florida Statutes,
59 are amended to read:

60 395.0197 Internal risk management program.--

61 (6)

62 (b) The information reported to the agency pursuant to
63 paragraph (a) which relates to health care practitioners as
64 defined in s. 456.001(4) ~~persons licensed under chapter 458,~~
65 ~~chapter 459, chapter 461, or chapter 466~~ shall be reviewed by
66 the agency. The agency shall forward a copy of the report of
67 each incident to the Division of Medical Quality Assurance of
68 the department to determine whether it any of the incidents
69 potentially involved conduct by a health care professional who
70 is subject to disciplinary action, in which case the provisions
71 of s. 456.073 shall apply. The Agency for Health Care
72 Administration is not required to forward its annual reports to
73 the Department of Health.

74 (c) The report submitted to the agency shall also contain
75 the name and license number of the risk manager of the licensed
76 facility, a copy of its policy and procedures which govern the
77 measures taken by the facility and its risk manager to reduce
78 the risk of injuries and adverse incidents, and the results of
79 such measures. The annual report is confidential and is not
80 available to the public pursuant to s. 119.07(1) or any other
81 law providing access to public records. The annual report is not
82 discoverable or admissible in any civil or administrative
83 action, except in disciplinary proceedings by the agency or the
84 appropriate regulatory board. The annual report is not available

85 to the public as part of the record of investigation for and
 86 prosecution in disciplinary proceedings made available to the
 87 public by the agency or the appropriate regulatory board.

88 ~~However, the agency or the appropriate regulatory board shall~~
 89 ~~make available, upon written request by a health care~~
 90 ~~professional against whom probable cause has been found, any~~
 91 ~~such records which form the basis of the determination of~~
 92 ~~probable cause.~~

93 (7) Any of the following adverse incidents, whether
 94 occurring in the licensed facility or arising from health care
 95 prior to admission in the licensed facility, shall be reported
 96 by the facility to the agency within 15 calendar days after its
 97 occurrence:

- 98 (a) The death of a patient;
- 99 (b) Brain or spinal damage to a patient;
- 100 (c) The performance of a surgical procedure on the wrong
 101 patient;
- 102 (d) The performance of a wrong-site surgical procedure;
- 103 (e) The performance of a wrong surgical procedure;
- 104 (f) The performance of a surgical procedure that is
 105 medically unnecessary or otherwise unrelated to the patient's
 106 diagnosis or medical condition;
- 107 (g) The surgical repair of damage resulting to a patient
 108 from a planned surgical procedure, where the damage is not a
 109 recognized specific risk, as disclosed to the patient and
 110 documented through the informed-consent process; or
- 111 (h) The performance of procedures to remove unplanned
 112 foreign objects remaining from a surgical procedure.

113
114 The agency may grant extensions to this reporting requirement
115 for more than 15 days upon justification submitted in writing by
116 the facility administrator to the agency. The agency may require
117 an additional, final report. These reports shall not be
118 available to the public pursuant to s. 119.07(1) or any other
119 law providing access to public records, nor be discoverable or
120 admissible in any civil or administrative action, except in
121 disciplinary proceedings by the agency or the appropriate
122 regulatory board, nor shall they be available to the public as
123 part of the record of investigation for and prosecution in
124 disciplinary proceedings made available to the public by the
125 agency or the appropriate regulatory board. However, the agency
126 or the appropriate regulatory board shall make available, upon
127 written request by a health care professional against whom
128 probable cause has been found, any such records which form the
129 basis of the determination of probable cause. The agency may
130 investigate, as it deems appropriate, any such incident and
131 prescribe measures that must or may be taken in response to the
132 incident. The agency shall forward a copy of each incident
133 report to the Department of Health, which shall determine
134 whether it potentially involved conduct by a health care
135 professional who is subject to disciplinary action, in which
136 case the provisions of s. 456.073 shall apply. ~~The agency shall~~
137 ~~review each incident and determine whether it potentially~~
138 ~~involved conduct by the health care professional who is subject~~
139 ~~to disciplinary action, in which case the provisions of s.~~
140 ~~456.073 shall apply.~~

141 (13) The agency shall have access to all licensed facility
 142 records necessary to carry out the provisions of this section.
 143 The records obtained by the agency under subsection (6),
 144 subsection (7), or subsection (9) are not available to the
 145 public under s. 119.07(1), nor shall they be discoverable or
 146 admissible in any civil or administrative action, except in
 147 disciplinary proceedings by the agency or the appropriate
 148 regulatory board, nor shall records obtained pursuant to s.
 149 456.071 be available to the public as part of the record of
 150 investigation for and prosecution in disciplinary proceedings
 151 made available to the public by the agency or the appropriate
 152 regulatory board. ~~However, the agency or the appropriate~~
 153 ~~regulatory board shall make available, upon written request by a~~
 154 ~~health care professional against whom probable cause has been~~
 155 ~~found, any such records which form the basis of the~~
 156 ~~determination of probable cause, except that, with respect to~~
 157 ~~medical review committee records, s. 766.101 controls.~~

158 Section 3. Paragraph (e) of subsection (4) of section
 159 395.3025, Florida Statutes, is amended to read:

160 395.3025 Patient and personnel records; copies;
 161 examination.--

162 (4) Patient records are confidential and must not be
 163 disclosed without the consent of the person to whom they
 164 pertain, but appropriate disclosure may be made without such
 165 consent to:

166 (e) The department ~~agency~~ upon subpoena issued pursuant to
 167 s. 456.071, but the records obtained thereby must be used solely
 168 for the purpose of the department ~~agency~~ and the appropriate

169 professional board in its investigation, prosecution, and appeal
 170 of disciplinary proceedings. If the department ~~agency~~ requests
 171 copies of the records, the facility shall charge a reasonable
 172 fee as determined by rule of the department ~~no more than its~~
 173 ~~actual copying costs, including reasonable staff time.~~ The
 174 records must be sealed and must not be available to the public
 175 pursuant to s. 119.07(1) or any other statute providing access
 176 to records, nor may they be available to the public as part of
 177 the record of investigation for and prosecution in disciplinary
 178 proceedings made available to the public by the department
 179 ~~agency~~ or the appropriate regulatory board. However, the
 180 department ~~agency~~ must make available, upon written request by a
 181 practitioner against whom probable cause has been found, any
 182 such records that form the basis of the determination of
 183 probable cause.

184 Section 4. Subsection (7) and paragraph (b) of subsection
 185 (8) of section 400.147, Florida Statutes, are amended to read:

186 400.147 Internal risk management and quality assurance
 187 program.--

188 (7) The facility shall initiate an investigation and shall
 189 notify the agency within 1 business day after the risk manager
 190 or his or her designee has received a report pursuant to
 191 paragraph (1)(d). The notification must be made in writing and
 192 be provided electronically, by facsimile device or overnight
 193 mail delivery. The notification must include information
 194 regarding the identity of the affected resident, the type of
 195 adverse incident, the initiation of an investigation by the
 196 facility, and whether the events causing or resulting in the

197 | adverse incident represent a potential risk to any other
 198 | resident. The notification is confidential as provided by law
 199 | and is not discoverable or admissible in any civil or
 200 | administrative action, except in disciplinary proceedings by the
 201 | Department of Health agency or the appropriate regulatory board.
 202 | The agency may investigate, as it deems appropriate, any such
 203 | incident and prescribe measures that must or may be taken in
 204 | response to the incident. The Department of Health agency shall
 205 | review each incident and determine whether it potentially
 206 | involved conduct by the health care professional who is subject
 207 | to disciplinary action, in which case the provisions of s.
 208 | 456.073 shall apply.

209 | (8)

210 | (b) A copy of the report submitted ~~The information~~
 211 | ~~reported~~ to the agency pursuant to paragraph (a) which relates
 212 | to health care practitioners as defined in s. 456.001(4) persons
 213 | ~~licensed under chapter 458, chapter 459, chapter 461, or chapter~~
 214 | ~~466~~ shall be forwarded to the Division of Medical Quality
 215 | Assurance of the Department of Health for review ~~reviewed by the~~
 216 | ~~agency~~. The Department of Health agency shall determine whether
 217 | any of the incidents potentially involved conduct by a health
 218 | care professional who is subject to disciplinary action, in
 219 | which case the provisions of s. 456.073 shall apply.

220 | Section 5. Subsection (3) of section 458.309, Florida
 221 | Statutes, is amended to read:

222 | 458.309 Rulemaking authority.--

223 | (3) All physicians who perform level 2 procedures lasting
 224 | more than 5 minutes and all level 3 surgical procedures in an

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225 office setting must register the office with the department
226 unless that office is licensed as a facility pursuant to chapter
227 395. The department shall inspect the physician's office
228 annually unless the office is accredited by a nationally
229 recognized accrediting agency ~~or an accrediting organization~~
230 ~~subsequently approved by the Board of Medicine~~. The actual costs
231 for registration and inspection or accreditation shall be paid
232 by the person seeking to register and operate the office setting
233 in which office surgery is performed.

234 Section 6. Subsection (2) of section 459.005, Florida
235 Statutes, is amended to read:

236 459.005 Rulemaking authority.--

237 (2) All physicians who perform level 2 procedures lasting
238 more than 5 minutes and all level 3 surgical procedures in an
239 office setting must register the office with the department
240 unless that office is licensed as a facility pursuant to chapter
241 395. The department shall inspect the physician's office
242 annually unless the office is accredited by a nationally
243 recognized accrediting agency ~~or an accrediting organization~~
244 ~~subsequently approved by the Board of Osteopathic Medicine~~. The
245 actual costs for registration and inspection or accreditation
246 shall be paid by the person seeking to register and operate the
247 office setting in which office surgery is performed.

248 Section 7. This act shall take effect July 1, 2008.