

## Committee Substitute for Senate Bill No. 940

An act relating to repeated medical malpractice; amending s. 456.041, F.S.; requiring the Department of Health to verify information submitted by a person who applies for initial licensure, or renewal of licensure, as a physician; creating s. 456.50, F.S.; defining terms; prescribing acts that constitute repeated medical malpractice; providing for review of acts and determination by the Board of Medicine and the Board of Osteopathic Medicine; authorizing the Board of Medicine and the Board of Osteopathic Medicine to require licensees and applicants for licensure to provide a copy of the record of the trial of any medical malpractice judgment involving an incident occurring on or after a specified date; extending the 90-day requirement for granting or denying a complete allopathic or osteopathic licensure application to 180 days; amending s. 458.331, F.S.; redefining acts of medical malpractice, gross medical malpractice, or repeated medical malpractice which constitute grounds for disciplinary action against a physician; amending s. 459.015, F.S.; redefining acts of medical malpractice, gross medical malpractice, or repeated medical malpractice which constitute grounds for disciplinary action against an osteopathic physician; providing an effective date.

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

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

456.041 Practitioner profile; creation.—

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

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

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

Section 2. 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).

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

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

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

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

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

(f) “Medical doctor” means a physician licensed pursuant to chapter 458 or chapter 459.

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

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

(2) For purposes of implementing s. 26, Art. X of the State Constitution, the board shall not license or continue to license a medical doctor found to have committed repeated medical malpractice, the finding of which was

based upon clear and convincing evidence. In order to rely on an incident of medical malpractice to determine whether a license must be denied or revoked under this section, if the facts supporting the finding of the incident of medical malpractice were determined on a standard less stringent than clear and convincing evidence, the board shall review the record of the case and determine whether the finding would be supported under a standard of clear and convincing evidence. Section 456.073 applies. The board may verify on a biennial basis an out-of-state licensee's medical malpractice history using federal, state, or other databases. The board may require licensees and applicants for licensure to provide a copy of the record of the trial of any medical malpractice judgment, which may be required to be in an electronic format, involving an incident that occurred on or after November 2, 2004. For purposes of implementing s. 26, Art. X of the State Constitution, the 90-day requirement for granting or denying a complete allopathic or osteopathic licensure application in s. 120.60(1) is extended to 180 days.

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

458.331 Grounds for disciplinary action; action by the board and department.—

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

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

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

2. Committing gross medical malpractice.

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

Nothing in this paragraph shall be construed to require that a physician be incompetent to practice medicine in order to be disciplined pursuant to this

paragraph. A recommended order by an administrative law judge or a final order of the board finding a violation under this paragraph shall specify whether the licensee was found to have committed “gross medical malpractice,” “repeated medical malpractice,” or “medical malpractice,” ~~“failure to practice medicine with that level of care, skill, and treatment which is recognized as being acceptable under similar conditions and circumstances,”~~ or any combination thereof, and any publication by the board must so specify.

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

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

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

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

459.015 Grounds for disciplinary action; action by the board and department.—

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

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

1. Committing medical Gross or repeated malpractice as defined in s. 456.50 or the failure to practice osteopathic medicine with that level of care, skill, and treatment which is recognized by a reasonably prudent similar

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

2. Committing gross medical malpractice.

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

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

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

(5) The board shall, by rule, establish comprehensive guidelines for the disposition of disciplinary cases involving specific types of violations. Such guidelines shall establish offenses and circumstances for which revocation will be presumed to be appropriate, as well as offenses and circumstances for which suspension for particular periods of time will be presumed to be appropriate. The guidelines shall also establish minimum and maximum fines, periods of supervision or probation, or conditions of probation and conditions for reissuance of a license with respect to particular circumstances and offenses. "Gross medical malpractice," "repeated medical mal-

practice,” and “medical malpractice,” ~~“failure to practice osteopathic medicine with that level of care, skill, and treatment which is recognized as being acceptable under similar conditions and circumstances”~~ under paragraph (1)(x) shall each be considered distinct types of violations requiring specific individual guidelines.

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

Approved by the Governor June 20, 2005.

Filed in Office Secretary of State June 20, 2005.