

2005

Session Law 05-266

Florida Senate & House of Representatives

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House 1739: Relating to Repeated Medical Malpractice

H1739 GENERAL BILL by Judiciary (JC); Simmons; (CO-SPONSORS) Anderson; Carroll; Homan; Porth (CS by Health & Families Council) (Similar CS/S 0940)

Repeated Medical Malpractice; requires DOH to verify certain information submitted by person who applies for initial licensure, or renewal of licensure as physician; authorizes board to require certain persons to provide copy of trial records resulting in medical malpractice judgment involving certain incidents; prohibits Medicine Board or Osteopathic Medicine Board from licensing or reinstating license of medical doctors found to have committed repeated malpractice, etc. Amends FS. EFFECTIVE DATE: Upon becoming law.

03/17/05 HOUSE Filed; Introduced -HJ 00221

03/24/05 HOUSE Referred to Health Care Regulation (HFC); Health & Families Council -HJ 00265

04/04/05 HOUSE On Committee agenda-- Health Care Regulation (HFC), 04/06/05, 10:30 am, 212-K

04/06/05 HOUSE Favorable by Health Care Regulation (HFC); YEAS 10 NAYS 0 -HJ 00461

04/07/05 HOUSE Now in Health & Families Council -HJ 00461

04/11/05 HOUSE On Council agenda-- Health & Families Council, 04/13/05, 1:00 pm, Reed Hall

04/13/05 HOUSE Favorable with CS amendment by- Health & Families Council; YEAS 9 NAYS 0 -HJ 00532

04/14/05 HOUSE Pending review of CS -under Rule 6.3(b); Placed on Calendar -HJ 00532

04/21/05 HOUSE Placed on Special Order Calendar; Substituted CS/SB 940; Laid on Table, Link/Iden/Sim/Compare passed, refer to CS/SB 940 (Ch. 2005-266) -HJ 00603

1 20-05-03
RBF 5/10
19/3638 ✓

BF 1/14/3589
MF 1/19/3585

) *Am 0 5*

Bills

Version:	Posted:	Format:
H 1739	03/17/2005	Web Page PDF
H 1739C1	04/14/2005	Web Page PDF

Amendments

NO AMENDMENTS AVAILABLE

Bill Analyses

Analysis:	Sponsor	Posted:	Format:
h 1739	Judiciary (JC)	03/17/2005 ✓	PDF
h 1739a	Health Care Regulation (HFC)	04/04/2005 ✓	PDF
	Health Care		

h 1739b	Regulation (HFC)	04/ 07 /2005	PDF
h 1739c	Health & Families Council	04/12/2005 ✓	PDF
h 1739d	Health & Families Council	04/14/2005 ✓	PDF

Vote History

NO VOTE HISTORY AVAILABLE

Citations - Statute

0456.041
0456.50
0458 331
0459.015

Citations - Constitution

NO CONSTITUTION CITATIONS FOUND FOR HOUSE BILL 1739.

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HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL # PCB JU 05-03 Repeated Medical Malpractice
 SPONSOR(S) Judiciary Committee
 TIED BILLS. IDEN /SIM BILLS

19 ~~303~~
 3/10/05

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm. Judiciary Committee		Hogge	Hogge
1)			
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

On November 2, 2004, Florida voters approved Constitutional Amendment 8, relating to repeated medical malpractice. The bill combines the provisions of Constitutional Amendment 8 with supplemental statutory provisions relating to repeated medical malpractice. In so doing, it also conforms terminology and definitions in the disciplinary provisions of the practice act for medical doctors (i.e., allopathic and osteopathic physicians under the bill) with those of the new section of law implementing Constitutional Amendment 8. Among other changes, the bill

- Applies Constitutional Amendment 8 prospectively to incidents occurring on or after November 3, 2004, and defines "medical doctor" to include only physicians licensed under chapter 458 or 459, F.S.;
- In incorporating the definition of "medical malpractice" from Constitutional Amendment 8, applies the standard of care used in civil actions for medical malpractice to findings of medical malpractice under the disciplinary provisions of the medical doctor practice act and Constitutional Amendment 8,
- Labels the conduct proscribed in Constitutional Amendment 8—committing three or more incidents of medical malpractice—as "repeated medical malpractice." In so doing, the bill also defines the term "incident" and, as under current law, requires that the incidents occur within a five-year period and result in the payment of indemnities of more than \$50,000 per incident.
- For the Board of Medicine or the Board of Osteopathic Medicine, as applicable, to count a similar act committed in another state or country as medical malpractice for purposes of mandatory license denial or revocation under Constitutional Amendment 8, requires the other state or country to have applied a standard of care and burden of proof equal to or exceeding that used in Florida.
- Assigns responsibility to the Board of Medicine or the Board of Osteopathic Medicine, as applicable, to determine by clear and convincing evidence if a medical doctor has committed repeated medical malpractice. The bill requires a de novo review of the record in order for an incident from another jurisdiction to trigger the mandatory sanctions when the finding from the other jurisdiction was based on a less stringent standard.

The fiscal impact results principally from the requirements of Constitutional Amendment 8, rather than from this bill, in evaluating findings of medical malpractice from other jurisdictions. The Board of Medicine and the Board of Osteopathic Medicine are likely to experience increased costs resulting from any required de novo reviews of these findings. The number and extent of these reviews is indeterminate.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME pcb03 JU doc
 DATE 3/1/2005

FULL ANALYSIS

I SUBSTANTIVE ANALYSIS

A HOUSE PRINCIPLES ANALYSIS

To the extent the principles are invoked, it is due to the terms of Constitutional Amendment 8 and not to this implementing bill

B EFFECT OF PROPOSED CHANGES

General Background

On November 2, 2004, Florida voters approved Constitutional Amendment 8¹ relating to repeated medical malpractice. Constitutional Amendment 8 provides that "no person who has been found to have committed three or more incidents of medical malpractice shall be licensed or continue to be licensed. to provide health care services as a medical doctor."²

Since approved by the voters, the amendment has been the subject of several lawsuits seeking to have the amendment enjoined. At least one circuit court has issued an injunction against the implementation of the amendment in order to give the Legislature the opportunity to consider what the court considered to be numerous unanswered implementation questions.

"Because implementation of Amendment 8 may require significant changes to existing licensing statutes and rules, including changes to what is already a complex administrative process, the Court must conclude that the Amendment will require some statutory framework in order to be effective."³

Proposed Changes

The bill combines the provisions of Constitutional Amendment 8 with supplemental statutory provisions relating to repeated medical malpractice. In so doing, it also conforms terminology and definitions in the disciplinary provisions of the physician practice acts under chapters 458 and 459, F S , with those of the new section of law implementing Constitutional Amendment 8.

Applicability of the amendment

The bill defines "medical doctor," for purposes of applying Constitutional Amendment 8, as physicians licensed under chapter 458 or 459, F S . Chapter 458 physicians are allopathic physicians holding the degree of Medical Doctor, and chapter 459 physicians are osteopathic physicians.

[By its terms, Constitutional Amendment 8 applies to "medical doctors," but leaves that phrase undefined. "Medical doctor" is not defined in existing statutes relating to the health professions, medical practice, or physician licensing. It is defined in only one place, that being in an unrelated section of the Insurance Code dealing with contract construction for prepaid health clinics.⁴ Although "physician" and "medical doctor" appear to be used interchangeably in certain contexts in Florida Statutes, the only practitioners with the degree Doctor of Medicine are allopathic physicians licensed under chapter 458, F S .⁵]

¹ Art X, s 20, Fla Const

² *Id*

³ Florida Hospital Association v Florida Agency for Health Care Administration, Case No. 2004 CA 002483, Order granting Plaintiffs' Joint Motion for Temporary Injunction, at 8.

⁴ S 641.425(2), Fla Stat (2004)

⁵ In a brief filed on June 1, 2004, the Floridians for Patient Protection (amendment proponents) claimed Constitutional Amendment 8 applies only to medical doctors and not to dentists (ch. 466, F S), osteopaths (ch. 459, F S), or chiropractors (ch. 460, F S). (U)se of

The bill also gives Constitutional Amendment 8 prospective application by making it applicable only to incidents occurring on or after November 3, 2004

Malpractice defined

The bill incorporates the definition of "medical malpractice" found in Constitutional Amendment 8 into the new section of law pertaining to repeated medical malpractice and into disciplinary provisions of the practice acts under chapters 458 and 459, F.S. However, the bill makes that part of the definition treating similar acts committed in other states or countries as medical malpractice applicable only to findings of repeated medical malpractice triggering the mandatory sanctions under Constitutional Amendment 8

Furthermore, in the event the medical doctor has committed similar wrongful acts in other states or countries, the bill treats these acts as medical malpractice for purposes of finding repeated medical malpractice only if the other state or country applied a standard of care and burden of proof equal to or exceeding that used in Florida

*[Constitutional Amendment 8 defines "medical malpractice" to mean "the failure to practice medicine in Florida with that level of care, skill, and treatment recognized in general law related to health care providers' licensure." It also includes "any similar wrongful act, neglect, or default in other states or countries which, if committed in Florida, would have been considered medical malpractice."*⁶

In Florida, the standard of care for physicians for purposes of determining if grounds exist for disciplinary action is "that level of care, skill and treatment which is recognized by a reasonably prudent similar physician as being acceptable under similar conditions and circumstances."⁷ The burden of proof required to suspend or revoke a license is "clear and convincing evidence."⁸

The bill labels the conduct proscribed in Constitutional Amendment 8—committing three or more incidents of medical malpractice—as "repeated medical malpractice." In so doing, the bill also defines the term "incident" and incorporates timeframes and dollar thresholds from current disciplinary provisions of the practice act for allopathic and osteopathic physicians (i.e., incidents occurring within a 5-year period and resulting in indemnities being paid in excess of \$50,000 per incident)⁹ "Incident" is defined in the bill to mean the wrongful act or occurrence from which the medical malpractice arises, regardless of the number of claimants or findings

In determining whether or not a medical doctor has committed repeated medical malpractice, the bill requires the Board of Medicine or the Board of Osteopathic, as applicable, to base its finding on clear and convincing evidence. To rely on an incident of medical malpractice as a basis for triggering the mandatory sanctions under Constitutional Amendment 8, the finding must have been based on a clear and convincing standard. If based on a less stringent standard, such as preponderance of the evidence, then the Board must review the record of the case and find that the decision would be supported by such evidence.

the term "medical doctor" together with "licensed to practice medicine" prevents voters from mistakenly supposing that the proposed Public Protection amendments will apply to other professionals such as dentists, osteopaths or chiropractors. Answer Brief of Sponsor Floridians for Patient Protection in support of the Initiative, Re Request of the Attorney General for an Advisory Opinion as to the validity of an Initiative Petition, Supreme Court of Florida, Case No. SC04-778, June 1, 2004, at 18

⁶ Art. X, s. 20(b)(1), Fla. Const.

⁷ S. 458.331(1)(t), Fla. Stat. (2004) and s. 459.015(1)(x), Fla. Stat. (2004). The standard for osteopathic physicians is virtually identical. Note also that the standard of care applied in a civil action for medical malpractice varies somewhat from that required in a licensing context. See s. 766.102, Fla. Stat. (2004).

⁸ S. 458.331(3), Fla. Stat. (2004) and s. 459.015(3), Fla. Stat. (2004).

⁹ S. 458.331(1)(t), Fla. Stat. (2004) and s. 459.015(1)(x), Fla. Stat. (2004).

[In a disciplinary proceeding against a physician under current statutory provisions, the Division of Medical Quality Assurance (Division) within the Department of Health acts as the prosecutorial authority and has the burden of establishing the grounds for disciplinary action "by the greater weight of the evidence" ¹⁰ However, the Division must establish the grounds for suspension or revocation of a license by "clear and convincing evidence" ¹¹ In Florida, the Supreme Court has found the revocation of a professional license to be of "sufficient gravity and magnitude" to warrant a standard of proof that is clear and convincing, ¹² although the Court has declined to extend this standard to license application proceedings ¹³]

Standard of care

The bill makes the standard of care utilized in civil actions for medical malpractice the standard of care under Constitutional Amendment 8 by defining the phrase "level of care, skill, and treatment recognized in general law related to health care providers' licensure," as used in Constitutional Amendment 8, to mean "the standard of care specified in 766 02." The bill also conforms the standard of care in the disciplinary provisions of the practice acts in chapters 458 and 459, F S , to the standard used in civil actions. As a result, the standard of care will be the same whether a civil action for medical malpractice, a disciplinary proceeding for medical malpractice, or a finding of repeated medical malpractice under Constitutional Amendment 8.

[In Florida, the standard of care related to physician licensure is "that level of care, skill, and treatment which is recognized by a reasonably prudent similar physician as being acceptable under similar conditions and circumstances." This standard is essentially the same as that provided in civil actions for medical malpractice in s. 766 102, F S]

Disciplinary action

The bill retains board discretion in disciplining medical doctors (as defined in the act) found to have committed malpractice, but incorporates the provision of Constitutional Amendment 8 removing this discretion when the Board finds a medical doctor has committed repeated medical malpractice as defined in the bill. When that occurs, the applicable board must deny the license of an applicant or revoke the license of a medical doctor.

[Under existing statutory provisions the Board of Medicine and the Board of Osteopathic Medicine may discipline physicians for medical malpractice, including gross or repeated medical malpractice, but they are not required to deny, suspend, or revoke their license. The sanction to be imposed is left to the discretion of the applicable board ¹⁴ In making that determination, the applicable board must consider the response necessary to protect the public or compensate the patient. The constitutional amendment removes this discretion when the Board finds the medical doctor has committed repeated medical malpractice—that is, denial or revocation is mandatory.]

C SECTION DIRECTORY

Section 1. Creates s. 456 50 F S , implementing Article X, section 20, of the Florida Constitution relating to repeated medical malpractice.

Section 2. Amends s. 458 331, F.S , relating to the grounds for denial of a license or disciplinary action for allopathic physicians for reasons of malpractice.

¹⁰ S 458 331(3), Fla Stat (2004) and s 459 015(3), Fla Stat (2004)

¹¹ *Id*

¹² Ferris v Turlington, 510 So 2d 292, 294 (Fla 1987)

¹³ Department of Banking and Finance v Osborne Stern and Company, 670 So 2d 932, 933-34 (Fla 1996)

¹⁴ S 458 331(1) and (2), Fla Stat (2004) and s 459 015(2), Fla Stat (2004)

Section 3 Amends s 459 015, F S , relating to the grounds for denial of a license or disciplinary action for osteopathic physicians for reasons of malpractice

Section 4 Provides the bill shall take effect upon becoming a law

II FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A FISCAL IMPACT ON STATE GOVERNMENT

1 Revenues

See II D , FISCAL COMMENTS

2 Expenditures

See II D , FISCAL COMMENTS

B FISCAL IMPACT ON LOCAL GOVERNMENTS

1 Revenues:

See II D. FISCAL COMMENTS

2 Expenditures

See II D , FISCAL COMMENTS

C DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR

D FISCAL COMMENTS

The fiscal impact results principally from the requirements of Constitutional Amendment 8, rather than from this bill, in evaluating findings of medical malpractice from other jurisdictions. The Board of Medicine and the Board of Osteopathic Medicine are likely to experience increased costs resulting from any required de novo reviews of these findings. The number and extent of these reviews is indeterminate.

III COMMENTS

A CONSTITUTIONAL ISSUES

1 Applicability of Municipality/County Mandates Provision

Not applicable

2 Other

None

B. RULE-MAKING AUTHORITY

None

C DRAFTING ISSUES OR OTHER COMMENTS

None

IV AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

HB 1739

Amendments Filed by Rep Simmons To conform to Senate bill

1) **Between lines 19 and 20:** Requires Dept. of Health to verify disciplinary history and medical malpractice claims using the Nat'l Practitioner Data Base. Physician profiles must reflect this information.

2) **Lines 64 through 69:** Removes requirement that the medical malpractice have occurred within a 10-year period in order to be counted towards a finding repeated medical malpractice.

3) **Lines 82 through 94:** Revises the process the Board will use to make findings of repeated medical malpractice. Directs the Board to follow existing disciplinary process.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

Bill No. 1739

COUNCIL/COMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	<u> </u>	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Council/Committee hearing bill: Health & Families Council
 2 Representative(s) Simmons offered the following:

Amendment (with directory and title amendments)

Between line(s) 19 & 20, insert:

Section 1. Paragraphs (b) and (c) of subsection (1) of section 456.041, Florida Statutes, are amended to read:

456.041 Practitioner profile; creation.--

(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).

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

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

Remove line 2 and insert:

An act relating to 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.

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 2 (for drafter's use only)

Bill No. HB 1739

COUNCIL/COMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	___	

1 Council/Committee hearing bill: Health and Families Council
 2 Representative Simmons offered the following:

Amendment

Remove lines 64 through 69 and insert:

7 incidents of medical malpractice found to have been committed by
 8 a medical doctor. Only an incident occurring on or after
 9 November 2, 2004, shall be considered an incident for

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 3 (for drafter's use only)

Bill No. HB 1739

COUNCIL/COMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
<u>ADOPTED W/O OBJECTION</u>	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	___	

1 Council/Committee hearing bill: Health and Families Council
 2 Representative Simmons offered the following:

Amendment

Remove lines 82 through 94 and insert:

7 case and determine whether the finding would be supported under
 8 a standard of clear and convincing evidence. Section 456.073
 9 applies to these proceedings. The board may verify on a biennial
 10 basis an out-of-state licensee's medical malpractice history
 11 using federal, state, or other databases. The board may require
 12 licensees and applicants for licensure to provide a copy of the
 13 record of the trial of any medical malpractice judgment, which
 14 may be required to be in an electronic format, involving an
 15 incident that occurred on or after November 2, 2004. For
 16 purposes of implementing s. 26, Art. X of the State
 17 Constitution, the 90-day requirement for granting or denying a
 18 complete allopathic or osteopathic licensure application in s.
 19 120.60(1) is extended to 180 days.

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Select Year: 2005

Select Chamber: Senate

Jump Bill Text Amendments Staff Analysis Vote History Citations
 To: (3) (13) (3) (4)
 ◀ Previous Senate Bill Next Senate Bill ▶

Senate 0940: Relating to Repeated Medical Malpractice

S940 GENERAL BILL/CS by Health Care; Peaden; (CO-SPONSORS) Crst (Similar H 1739)

Repeated Medical Malpractice; requires DOH to verify information submitted by person who applies for initial licensure, or renewal of licensure as physician; prescribes acts that constitute repeated medical malpractice; provides for review of acts & determination by Board of Medicine & Osteopathic Medicine Board; extends 90-day requirement for granting or denying complete allopathic or osteopathic licensure application to 180 days, etc. Amends Chs. 456, 458, 459. EFFECTIVE DATE: 06/20/2005.

01/26/05 SENATE Filed

02/09/05 SENATE Referred to Health Care, Judiciary; Banking and Insurance; Health and Human Services Appropriations; Ways and Means; Rules and Calendar

03/08/05 SENATE Introduced, referred to Health Care; Judiciary; Banking and Insurance; Health and Human Services Appropriations; Ways and Means; Rules and Calendar -SJ 00059

03/10/05 SENATE Withdrawn from- Banking and Insurance; Health and Human Services Appropriations; Rules and Calendar -SJ 00124; On Committee agenda-- Health Care, 03/15/05, 12:00 noon, 412-K --Temporarily postponed

BF
18/2832
MF
18/2837

~~03/17/05~~ SENATE On Committee agenda-- Health Care, 03/22/05, 3:45 pm, 412-K --Temporarily postponed

03/24/05 SENATE On Committee agenda-- Health Care, 03/30/05, 2:00 pm, 412-K

03/30/05 SENATE CS by Health Care; YEAS 9 NAYS 1 -SJ 00325; CS read first time on 04/05/05 -SJ 00328

04/01/05 SENATE Now in Judiciary -SJ 00325; On Committee agenda-- Judiciary, 04/06/05, 2:00 pm, 401-S

18/2769

04/06/05 SENATE Favorable by- Judiciary; YEAS 7 NAYS 1 -SJ 00377; Withdrawn from- Ways and Means -SJ 00348

04/07/05 SENATE Placed on Calendar, on second reading -SJ 00377

04/13/05 SENATE Placed on Special Order Calendar -SJ 00418; Read second time -SJ 00408

04/14/05 SENATE Read third time -SJ 00448; CS passed; YEAS 35 NAYS 3 -SJ 00448

04/20/05 HOUSE In Messages; Received, referred to Calendar -HJ 00586

04/21/05 HOUSE Substituted for HB 1739 -HJ 00603; Read second time -HJ 00603

04/22/05 HOUSE Read third time -HJ 00627; CS passed; YEAS 113 NAYS 0 -HJ 00627

04/26/05 SENATE Ordered enrolled -SJ 00655

06/14/05 Signed by Officers and presented to Governor

06/20/05 Approved by Governor; Chapter No. 2005-266

Bills

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S 0940	01/26/2005	Web Page PDF
S 0940C1	04/01/2005	Web Page PDF
S 0940ER	04/26/2005	Web Page PDF

Proposed Committee Substitutes

Version:	Barcode:	Posted:	Committee Actions:	Format:
s 0940	941384	PLS	1/2	Web Page PDF

Committee Amendments

Version:	Amendment:	Published/Filed:	Committee Actions:	Format:
S 0940	170970	Filed 03/29/2005	No Senate Committee Action	Web Page PDF A → 27.11.05
S 0940	172452	Filed 03/30/2005	No Senate Committee Action	Web Page PDF SA → 170970
S 0940	221288	Filed 03/22/2005	No Senate Committee Action	Web Page PDF A → 27.11.05
S 0940	243786	Filed 03/22/2005	No Senate Committee Action	Web Page PDF SEAC
S 0940	262768	Filed 03/15/2005	No Senate Committee Action	Web Page PDF A → 27.11.05
S 0940	302670	Filed 03/31/2005	No Senate Committee Action	Web Page PDF A → 27.11.05
S 0940	350438	Filed 03/21/2005	No Senate Committee Action	Web Page PDF SEAC
S 0940	404856	Filed 03/23/2005	No Senate Committee Action	Web Page PDF
S 0940	453418	Filed 03/22/2005	No Senate Committee Action	Web Page PDF A → 27.11.05
S 0940	515212	Filed 03/19/2005	No Senate Committee Action	Web Page PDF
S 0940	731310	Filed 03/21/2005	No Senate Committee Action	Web Page PDF
S 0940	875406	Filed 03/29/2005	No Senate Committee Action	Web Page PDF A → 27.11.05
S 0940c1	625108	Filed 04/06/2005	No Senate Committee Action	Web Page PDF

Floor Amendments

NO FLOOR AMENDMENTS AVAILABLE

Staff Analyses

Analysis:	Committee:	Posted:	Format:
s 0940-pcs	Health Care	03/30/2005 3/11	PDF
s 0940	Health Care	04/03/2005 4/3	PDF
s 0940	Judiciary	04/12/2005 4/5	PDF

Vote History - Committee

Chamber:	Committee:	Format:
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Senate	Health Care	Web Page

Vote History - Floor

Chamber:	Roll Call:	Date:	Format:
HOUSE	0218	04/22/05	Web Page
SENATE	0011	04/14/05	Web Page

Sec. 2

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

Florida Supreme Court Case Docket

Case Number: SC04-778 - Closed

ADVISORY OPINION TO THE ATTORNEY GENERAL vs. RE: PUBLIC PROTECTION FROM REPEATED MEDICAL MALPRACTICE

10/01/2009 12 35

Date Docketed	Description	Filed By	Notes
05/11/2004	REQUEST-ADVISORY OPINION (ATTY GEN)	PR Advisory Opinion To The BY PR Hon Charles J. Crist, Jr	WITH DISKETTE
05/12/2004	No Fee Required		
05/12/2004	ORDER-OA&BRIEF SCHED (AG ADVISORY OPIN)		
05/12/2004	ORAL ARGUMENT CALENDAR		
05/17/2004	NOTICE-APPEARANCE	OP Florida Dental Association BY OP Harold R Mardenborough, Jr 947172	(DISKETTE REQUESTED) (5/21/2004, AMENDED NOTICE OF APPEARANCE OF COUNSEL FILED W/ DISKETTE)
05/19/2004	MOTION-COUNS PRO HAC VICE (FOREIGN COUNSEL)	Barnaby W Zall BY Barnaby W Zall	O&1 W/DISKETTE
05/19/2004	NOTICE-APPEARANCE	PR Floridians For Patient Protection BY PR Jon L Mills 148286	O&1 W/DISKETTE
✓ 05/24/2004	INITIAL BRIEF-MERITS	OP Florida Dental Association BY OP Harold R Mardenborough, Jr 947172	O&7 W/DISKETTE
✓ 05/24/2004	INITIAL BRIEF-MERITS	OP Florida Medical Association BY. OP Stephen H Grimes 32005	O&7 W/DISKETTE
✓ 05/24/2004	INITIAL BRIEF-MERITS	PR Floridians For Patient Protection BY PR Jon L Mills 148286	O&7 W/DISKETTE
05/24/2004	REQUEST-ORAL ARGUMENT	PR Floridians For Patient Protection BY PR Jon L Mills 148286	W/DISKETTE
05/26/2004	NOTICE-FILING	PR Floridians For Patient Protection BY PR Jon L Mills 148286	O&1 AMENDED CERTIFICATE OF SERVICE

05/26/2004	NOTICE-APPEARANCE	PR Advisory Opinion To The BY PT Louis F Hubener, III 140084	
06/01/2004	ANSWER BRIEF-MERITS	OP Florida Dental Association BY OP Harold R. Mardenborough, Jr 947172	O&7 W/DISKETTE
06/01/2004	ANSWER BRIEF-MERITS	PR Floridians For Patient Protection BY PR Jon L. Mills 148286	O&7 W/DISKETTE
06/01/2004	ANSWER BRIEF-MERITS	OP Florida Medical Association BY OP Stephen H. Grimes 32005	O&7 W/DISKETTE
06/03/2004	ORDER-COUNSEL PRO HAC VICE DY (FOREIGN COUNSEL)		The motion to appear pro hac vice filed in the above cause by Barnaby W. Zall, on behalf of Interested Party Floridians for Patient Protection, is hereby denied because, if the motion was granted, the number of appearances would exceed the presumptive limit set forth in Florida Rule of Judicial Administration 2.061
06/03/2004	MOTION-COUNS PRO HAC VICE (FOREIGN COUNSEL)	PR Floridians For Patient Protection BY PR Timothy McIendon 38067	FILED AS "SECOND, VERIFIED MOTION BY FLORIDIANS FOR PATIENT PROTECTION FOR ADMISSION PRO HAC VICE (ON BEHALF OF BARNABY W. ZALL) (FAX); 06/04/2004- ORIGINAL MOTION FILED (O&1 W/DISKETTE)
06/04/2004	ORDER-COUNSEL PRO HAC VICE DY (FOREIGN COUNSEL)		The Second, Verified Motion by Floridians for Patient Protection for Admission Pro Hac Vice, filed in the above cause on behalf of Barnaby W. Zall, is hereby denied
06/07/2004	ORAL ARGUMENT HELD		
06/07/2004	INITIAL AMD BRIEF-MERITS	PR Floridians For Patient Protection BY: PR Jon L. Mills 148286	ORIG W/DISKETTE (ATTY BARNABY W. ZALL'S NAME REMOVED FROM AMD BRIEF)
06/07/2004	ANSWER AMD BRIEF-MERITS	PR Floridians For Patient Protection BY PR Jon L. Mills 148286	ORIG W/DISKETTE (ATTY BARNABY W. ZALL'S NAME REMOVED FROM AMD BRIEF)
06/07/2004	ORDER-BRIEF STRICKEN		In light of the filing of Floridians for Patient Protection's amended initial brief on the merits and amended answer brief on the merits filed with this Court on June 7, 2004, it is ordered that Floridians for Patient Protection's initial brief on the merits filed with this Court on May 24, 2004, and answer brief on the merits filed with this Court on June 1, 2004, are hereby stricken
07/15/2004	DISP-APPROVED		We approve the placement of this proposed amendment on the ballot
11/29/2004	ARCHIVES		

- 1 SC04-778 Advisory Opinion to the Attorney General Re: Public Protection from Repeated Medical Malpractice - Initial Brief (Floridians for Patient Protection)
- filed 05/24/04 *Amended 6/7 41 pp.*
(Henderson)
- 2 SC04-778 Advisory Opinion to the Attorney General Re: Public Protection from Repeated Medical Malpractice - Initial Brief (Florida Dental Association) - filed 05/24/04
- 3 SC04-778 Advisory Opinion to the Attorney General Re: Public Protection from Repeated Medical Malpractice - Initial Brief (Florida Medical Association, Inc.)
- filed 05/24/04
- 4 SC04-778 Advisory Opinion to the Attorney General Re: Public Protection from Repeated Medical Malpractice - Answer Brief (Floridians for Patient Protection)
- filed 06/01/04 *Amended 6/7 35 pp.*
(Henderson)
- 5 SC04-778 Advisory Opinion to the Attorney General Re: Public Protection from Repeated Medical Malpractice - Answer Brief (Florida Dental Association) - filed 06/01/04
- 6 SC04-778 Advisory Opinion to the Attorney General Re: Public Protection from Repeated Medical Malpractice - Answer Brief (Florida Medical Association)
- filed 06/01/04 *OK*

Florida Department of State

Room 316 R.A. Gray Building
500 South Bronough Street
Tallahassee, FL 32399-0250
(850)245-6200

Division of Elections

Committee Tracking System

Floridians for Patient Protection

Type: Political Committee

Status: Active

Address: 218 S Monroe Street
Tallahassee, FL 32301

Phone: (850)877-0450

Chairperson: Scott Carruthers
218 South Monroe Street
Tallahassee, FL 323010000

Treasurer: Steven E Stewart
218 South Monroe street
Tallahassee, FL 323010000

Registered Agent: Scott Carruthers
218 South Monroe Street
Tallahassee, FL 323010000

Purpose.

Human Rights

Support Amend 7 (2004) - Patients' Right to Know
Support Amend 8 (2004) - Public Protection from

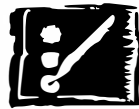
Legal

Affiliations:

Organization

Academy of Florida Trial Lawyers
Florida Lawyers Action Group

Campaign Finance Activity



Florida Department of State
Division of Elections

Public Protection from Repeated Medical Malpractice
03-12

Reference:

Article X, Section 20

Summary: [View Full Text \(pdf\)](#)

Current law allows medical doctors who have committed repeated malpractice to be licensed to practice medicine in Florida. This amendment prohibits medical doctors who have been found to have committed three or more incidents of medical malpractice from being licensed to practice medicine in Florida

Sponsor:

Floridians for Patient Protection
218 S Monroe Street
Tallahassee, FL 32301-
(850) 877-0450

Contact: Scott Carruthers, Chairperson
218 South Monroe Street
Tallahassee, FL 32301-0000

Signatures: **Verified Totals are UNOFFICIAL until the Initiative receives certification and a ballot number.

Required for review by Attorney General:	48,869
Required to have initiative on the ballot:	488,722
** Number currently valid:	531,705
(View By District by County)	

Status: *Passed*

Approval Date:	04/07/2003
Undue Burden:	
Made Review:	04/22/2004
Attorney General:	04/23/2004
Sent to Supreme Court:	05/11/2004
Supreme Court Ruling.	Constitutional
SC Ruling Date:	07/15/2004
Made Ballot:	07/29/2004
Ballot Number.	8
Election Date:	11/02/2004

SC04-778

Votes For:	5,121,841
Votes Against.	2,083,864



STATE OF FLORIDA

CHARLIE CRIST
ATTORNEY GENERAL

SC04-778

May 11, 2004

The Honorable Harry Lee Anstead
Chief Justice, and Justices of
The Supreme Court of Florida
The Supreme Court Building
Tallahassee, Florida 32399-1925

Dear Chief Justice Anstead and Justices:

In accordance with the provisions of Article IV, section 10, Florida Constitution, and section 16.061, Florida Statutes, it is the responsibility of the Attorney General to petition this Honorable Court for a written opinion as to the validity of an initiative petition circulated pursuant to Article XI, section 3, Florida Constitution.

On April 24, 2004, this office received from the Secretary of State an initiative petition seeking to amend the Florida Constitution to provide public protection from doctors who have committed repeated medical malpractice. The full text of the proposed amendment states:

- a) Statement and Purpose:
Under current law, a medical doctor who has repeatedly committed medical malpractice in Florida or while practicing in other states or countries may obtain or continue to hold a professional license to practice medicine in Florida. The purpose of this amendment is to prohibit such a doctor from obtaining or holding a license to practice medicine in Florida.
- b) Amendment of Florida Constitution:
Art. X, Fla. Const , is amended by inserting the following new section at the end thereof, to read:
"Section 20. Prohibition of Medical License After Repeated Medical Malpractice.
"a) No person who has been found to have committed three or more incidents of medical malpractice shall be licensed or continue to be

licensed by the State of Florida to provide health care services as a medical doctor

"b) For purposes of this section, the following terms have the following meanings:

"i) The phrase "medical malpractice" means both the failure to practice medicine in Florida with that level of care, skill, and treatment recognized in general law related to health care providers' licensure, and any similar wrongful act, neglect, or default in other states or countries which, if committed in Florida, would have been considered medical malpractice.

"ii) The phrase "found to have committed" means that the malpractice has been found in a final judgment of a court of law, final administrative agency decision, or decision of binding arbitration."

- c) **Effective Date and Severability:**
This amendment shall be effective on the date it is approved by the electorate. If any portion of this measure is held invalid for any reason, the remaining portion of this measure, to the fullest extent possible, shall be severed from the void portion and given the fullest possible force and application.

The ballot title for the proposed amendment is "Public Protection from Repeated Medical Malpractice." The summary for the proposed amendment states:

Current law allows medical doctors who have committed repeated malpractice to be licensed to practice medicine in Florida. This amendment prohibits medical doctors who have been found to have committed three or more incidents of medical malpractice from being licensed to practice medicine in Florida.

Article XI, section 3, Florida Constitution, provides in relevant part

The power to propose the revision or amendment of any portion or portions of this constitution by initiative is reserved to the people, provided that, any such revision or amendment, except for those limiting the power

of government to raise revenue, shall embrace but one subject and matter directly connected therewith.

The single-subject provision "is a rule of restraint designed to insulate Florida's organic law from precipitous and cataclysmic change." *Advisory Opinion to the Attorney General--Save Our Everglades*, 636 So. 2d 1336, 1339 (Fla. 1994), *Advisory Opinion to the Attorney General--Tax Limitation*, 644 So. 2d 486, 490 (Fla. 1994)

To comply with the single-subject requirement, an initiative must manifest a "logical and natural oneness of purpose." *Fine v. Firestone*, 448 So. 2d 984, 990 (Fla. 1984). This Court stated in *Advisory Opinion to the Attorney General--Restricts Laws Related to Discrimination*, 632 So. 2d 1018, 1020 (Fla. 1994), that "[t]o ascertain whether the necessary 'oneness of purpose' exists, we must consider whether the proposal affects separate functions of government and how the proposal affects other provisions of the constitution."

Section 101.161(1), Florida Statutes, provides in relevant part:

Whenever a constitutional amendment . . . is submitted to the vote of the people, the substance of such amendment . . . shall be printed in clear and unambiguous language on the ballot The wording of the substance of the amendment . . . shall be an explanatory statement, not exceeding 75 words in length, of the chief purpose of the measure. . . . The ballot title shall consist of a caption, not exceeding 15 words in length, by which the measure is commonly referred to or spoken of

This Court has stated "that the ballot [must] be fair and advise the voter sufficiently to enable him intelligently to cast his ballot." *Askew v. Firestone*, 421 So. 2d 151, 155 (Fla. 1982), *quoting, Hill v. Milander*, 72 So. 2d 796, 798 (Fla. 1954). While the ballot title and summary must state in clear and unambiguous language the chief purpose of the measure, they need not explain every detail or ramification of the proposed amendment. *Carroll v. Firestone*, 497 So. 2d 1204, 1206 (Fla. 1986). The ballot, however, must give the voter fair notice of the decision he must make. *Askew v. Firestone, supra* at 155. This Court has stated that the purpose of section 101.161, Florida Statutes, is to ensure that voters are advised of the amendment's true meaning.

Therefore, I respectfully request this Honorable Court's opinion as to whether the constitutional amendment, proposed by initiative petition, complies with Article XI,

The Honorable Harry Lee Anstead
Page Four

section 3, Florida Constitution, and whether the amendment's ballot title and summary comply with section 101.161, Florida Statutes

Sincerely,

A handwritten signature in black ink that reads "Charlie Crist". The signature is written in a cursive, flowing style.

Charlie Crist
Attorney General

CC/tgk

cc: Ms Glenda Hood
Secretary of State

The Honorable Jeb Bush
Governor, State of Florida

The Honorable James E. "Jim" King
President, Florida Senate

The Honorable Johnnie Byrd
Speaker, Florida House of Representatives

Mr. Scott Carruthers, Chair
Floridians for Patient Protection

CONSTITUTIONAL AMENDMENT PETITION FORM

104.185 – A person who knowingly signs a petition or petitions for a candidate, a minor political party, or an issue more than one time commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

TITLE: Public Protection from Repeated Medical Malpractice.

SUMMARY: Current law allows medical doctors who have committed repeated malpractice to be licensed to practice medicine in Florida. This amendment prohibits medical doctors who have been found to have committed three or more incidents of medical malpractice from being licensed to practice medicine in Florida.

I am a registered voter of Florida and hereby petition the Secretary of State to place the following amendment to the Florida Constitution on the ballot in the general election.

Is this a change of address for your voter registration? YES NO

Name _____
(Please print name as it appears on voter I.D. card)

Street Address _____

City _____ Zip _____

County _____

Voter Registration Number _____

- or -

Date of Birth ____/____/____

FULL TEXT OF PROPOSED AMENDMENT: BE IT ENACTED BY THE PEOPLE OF FLORIDA THAT:

- a) **Statement and Purpose**
Under current law, a medical doctor who has repeatedly committed medical malpractice in Florida or while practicing in other states or countries may obtain or continue to hold a professional license to practice medicine in Florida. The purpose of this amendment is to prohibit such a doctor from obtaining or holding a license to practice medicine in Florida.
- b) **Amendment of Florida Constitution**
Art. X, Fla. Const., is amended by inserting the following new section at the end thereof, to read:
"Section 20. Prohibition of Medical License After Repeated Medical Malpractice
"a) No person who has been found to have committed three or more incidents of medical malpractice shall be licensed or continue to be licensed by the State of Florida to provide health care services as a medical doctor.
"b) For purposes of this section, the following terms have the following meanings:
"i) The phrase "medical malpractice" means both the failure to practice medicine in Florida with that level of care, skill, and treatment recognized in general law related to health care providers' licensure, and any similar wrongful act, neglect, or default in other states or countries which, if committed in Florida, would have been considered medical malpractice.
"ii) The phrase "found to have committed" means that the malpractice has been found in a final judgment of a court of law, final administrative agency decision, or decision of binding arbitration."
- c) **Effective Date and Severability**
This amendment shall be effective on the date it is approved by the electorate. If any portion of this measure is held invalid for any reason, the remaining portion of this measure, to the fullest extent possible, shall be severed from the void portion and given the fullest possible force and application.

RETURN TO: Floridians for Patient Protection
218 South Monroe Street
Tallahassee, FL 32301

For Office Use Only:

Serial Number: 03-12

Date Approved: 4/7/03

✗ _____ Date _____
Signature of Registered Voter Date Signed

Pd. pol. adv. by Floridians for Patient Protection



STATE OF FLORIDA
DEPARTMENT OF STATE

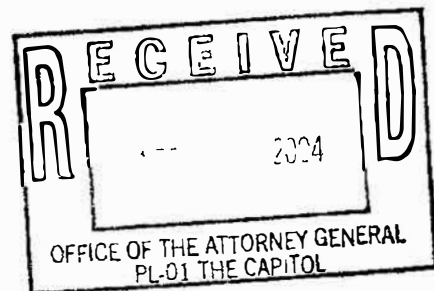
JEB BUSH
Governor

GLEND A. HOOD
Secretary of State

April 22, 2004

The Honorable Charlie Crist
Attorney General
State of Florida
PL 01, The Capitol
Tallahassee, Florida 32399-1050

Dear Attorney General Crist



Re: Public Protection from Repeated Medical Malpractice, Serial Number 03-12

Section 15 21, Florida Statutes, provides that the Secretary of State shall submit to the Attorney General an initiative petition when a political committee has obtained ten percent of the signatures in one fourth of the Congressional Districts as required by Article XI of the Florida Constitution.

Section 16 061, Florida Statutes, provides that the Attorney General must then petition the Supreme Court for an advisory opinion regarding the compliance of the text of the proposed amendments, ballot titles and substance of the amendments to the State Constitution

The political committee, Floridians For Patient Protection, has successfully met the signature requirements for this initiative petition; therefore, I am submitting its proposed constitutional amendment, ballot title and substance of the amendment

Sincerely,

A handwritten signature in cursive script that reads "Glenda E. Hood".

Glenda E Hood

cc. Scott Carruthers, Chairperson
Floridians For Patient Protection

Enclosures