Final Order No. DOH-05-1085-OS-MQA
FILED DATE - 6-24-05
Department of Health
By: Heather Coleman
Deputy Agency Clerk

STATE OF FLORIDA
BOARD OF MEDICINE

IN RE: PETITION FOR DECLARATORY STATEMENT OF RADIOLOGY ASSOCIATES OF SOUTH FLORIDA P.A., *et. al.*

_____/

FINAL ORDER

This matter came before the Board of Medicine (hereinafter the "Board") on April 2, 2005, in Tampa, Florida, for consideration of the referenced Petition for Declaratory Statement (attached hereto as exhibit A). The Notice of Petition for Declaratory Statement was published on March 25, 2005, in the Vol. 31, No. 12, in the Florida Administrative Weekly.

The petition filed by RADIOLOGY ASSOCIATES OF SOUTH FLORIDA, P.A. and its 57 member physicians (hereinafter the "Petitioners") inquired as to whether they met the Minimum Financial Responsibility Requirements of Section 458.320, Florida Statutes (2004) and Rule 64B8-12.005, Florida Administrative Code.

FINDINGS OF FACTS

1. Each of the 57 Petitioners are currently licensed as allopathic physicians by the Board and are subject to the minimum financial responsibility requirements of Section 458.320, Florida Statutes (2004), and Rule 64B8-12.005, Florida Administrative Code.

2. The Petitioners each have hospital staff privileges and have elected to fulfill his or her minimum financial responsibility requirements by obtaining medical malpractice insurance in accordance with Section 458.320(2)(b), Florida Statutes.

3. Effective February 1, 2005, each of the individual Petitioners has obtained medical malpractice insurance coverage on a group basis under a claims-made physicians and surgeons professional liability policy (the "Policy") issued by Continental Casualty Company, an insurer

authorized to issue medical malpractice insurance policies in Florida in accordance with Section 624.09, Florida Statutes. The Policy itself has been issued on forms which have been approved by the Florida Office of Insurance Regulation in accordance with Chapter 627, Florida Statutes.

4. Under the Policy, Radiology Associates of South Florida, P.A., is the "First Named Insured," which is not afforded insurance coverage but is only named to be responsible for certain administrative functions arising under the Policy. Each of the individual Petitioners is included as an individual "Named Insured." Additional physicians may obtain coverage under the Policy through an endorsement which lists them as Named Insureds.

5. Each of the individual Petitioners, as Named Insureds, have limits of $250,000 per medical incident, with an annual aggregate limit per Named Insured of $750,000. In addition to the per medical incident and annual aggregate limits of liability per Named Insured, the limits of the Policy are further subject to a shared policy aggregate limit of $10,000,000 that is inclusive of defense expenses and any additional benefits afforded under the Policy (the "Shared Aggregate Limit").

6. The Shared Aggregate Limit, if triggered during the Policy period, further limits coverage to the Petitioners so that each Named Insured, who had not already met or exceeded the $750,000 annual aggregate limit under the Policy, will no longer have coverage which meets the $250,000/$750,000 financial responsibility requirements of Section 458.320(2)(b), Florida Statutes. [1]

CONCLUSIONS OF LAW

[1] If, for example, 40 of the individual Petitioners incurred single claims of $250,000 in a 12-month period, the Shared Aggregate Limit would be triggered and the remaining 17 physicians would be left with no coverage at all.

5. The Board of Medicine has authority to issue this Final Order pursuant to Section 120.565, Florida Statutes, and Rule 28-105, Florida Administrative Code.

6. The Petition filed in this cause is in substantial compliance with the provisions of 120.565, Florida Statutes, and Rule 28-105.002, Florida Administrative Code.

7. For purposes of determining standing in this matter, the individual Petitioners, allopathic physicians licensed pursuant to Chapter 458, Florida Statutes, are substantially affected persons because failure to comply with the minimum financial responsibility requirements of Section 458.320(2)(b), Florida Statutes (2004), and Rule 64B8-12.005, Florida Administrative Code, may result in disciplinary actions against their physician licenses issued by the Board.

8. Section 458.320(2)(b), Florida Statutes, reads as follows:

458.320 Financial responsibility.--

* * *

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

* * *

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

* * *

9. Under Section 458.320(2), each physician who chooses to demonstrate financial responsibility through subsection (b) must each demonstrate that he or she has obtained and maintained professional liability coverage in an amount not less than $250,000 per claim, with a minimum annual aggregate of not less than $750,000. Section 458.320(2)(b) does not provide for any further minimum aggregate limits for either individual physicians or physicians practicing within a group setting.

10. The Board is of the opinion that under the facts presented above, the Petitioners have not demonstrated financial responsibility under Section 458.320(2)(b) because the Policy's Shared Aggregate Limit, if triggered during the policy period, leaves individual Petitioners/Named Insureds without the mandated $250,000/$750,000 coverage. The Board recognizes that the likelihood of the Shared Aggregate Limit being triggered during the 12-month period of the Policy is remote, but nevertheless, as long as the possibility exists, the Board is of the opinion that all 57 Petitioners cannot demonstrate that they each possess the $250,000/$750,000 coverage required under Section 458.320(2)(b), Florida Statutes.

This Final Order shall become effective upon filing with the Clerk of the Department of Health.

DONE AND ORDERED this 23 day of June, 2005.

BOARD OF MEDICINE

Larry McPherson, Jr., Executive Director
for Laurie K. Davies, M.D., Chair

NOTICE OF APPEAL RIGHTS

Pursuant to Section 120.569, Florida Statutes, Respondents are hereby notified that they may appeal this Final Order by filing one copy of a notice of appeal with the Clerk of the Department of Health and the filing fee and one copy of a notice of appeal with the District Court of Appeal within 30 days of the date this Final Order is filed.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U. S. Mail to: Marshall R. Burack, Esdquire, Akerman Senterfitt, One Southeast 3rd Avenue, 28th Floor, Miami, Florida 33131-1715; Wes Strickland, Esquire, Foley & Lardner, LLP, 106 East College Avenue, Suite 900, Tallahassee, Florida 32301; and by interoffice mail to Edward A. Tellechea, Senior Assistant Attorney General, PL-01 The Capitol, Tallahassee, Florida 3239-1050; and Timothy Cerio, General Counsel, Department of Health, 4052 Bald Cypress Way, BIN A02,

Tallahassee, Florida 32399-1703, on this 24th day of June, 2005.

Heather Coleman
Deputy Agency Clerk

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STATE OF FLORIDA
DEPARTMENT OF HEALTH
BOARD OF MEDICINE

In the Matter of:
A Petition for Declaratory Statement by
Radiology Associates of South Florida, P.A., *et al.*,
Before the State of Florida, Department of Health,
Board of Medicine

Case No. _____

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PETITION FOR DECLARATORY STATEMENT REGARDING COMPLIANCE WITH THE MINIMUM FINANCIAL RESPONSIBILITY REQUIREMENTS OF SECTION 458.320, FLORIDA STATUTES (2004) AND RULE 64B8-12.005, FLORIDA ADMINISTRATIVE CODE

The Petitioners, RADIOLOGY ASSOCIATES OF SOUTH FLORIDA, P.A., including each of the individual licensed physicians named in the list attached hereto as Exhibit A, through undersigned counsel and pursuant to Section 120.565, *Florida Statutes* (2004), and Rule Chapter 28-105, *Florida Administrative Code*, hereby submit this Petition for Declaratory Statement Regarding Compliance with the Minimum Financial Responsibility Requirements of Section 458.320, *Florida Statutes* (2004) and Rule 64B8-12.005, *Florida Administrative Code* (the "Petition"), to the STATE OF FLORIDA, DEPARTMENT OF HEALTH (the "Department"), BOARD OF MEDICINE (the "Board"), and state the following:

1. The address and telephone number of the Petitioners are as follows:

   Radiology Associates of South Florida, P.A.
   c/o Jack Ziffer
   8900 North Kendall Drive
   Miami, Florida 33176-2118
   305-598-5917

2. The name, address, telephone and facsimile numbers of the Petitioners for purposes of this matter shall be that of undersigned counsel as follows:

Marshall R. Burack, Esq.
Akerman Senterfitt & Eidson, P.A.
One Southeast Third Avenue, 28th Floor
Miami, Florida 33131
Telephone: 305-374-5600 Facsimile: 305-374-5095

3. Each of the individual Petitioners is currently licensed as a physician by the Board and is subject to the minimum financial responsibility requirements of Section 458.320, *Florida Statutes* (2004), and Rule 64B8-12.005, *Florida Administrative Code*. This Petition seeks a declaratory statement from the Board regarding whether the individual Petitioners have obtained medical malpractice insurance which satisfies the minimum financial responsibility requirements of Section 458.320 and Rule 64B8-12.005. For purposes of determining standing in this matter, the individual Petitioners are substantially affected persons because failure to comply with the minimum financial responsibility requirements of Section 458.320 and Rule 64B8-12.005 may result in disciplinary actions against their physician licenses issued by the Board.

4. Pursuant to the requirements of Section 458.320 and Rule 64B8-12.005, the Board requires licensed physicians to complete a form entitled "Financial Responsibility," a sample of which is attached hereto as Exhibit B (the "Election Form"). Each of the individual Petitioners has hospital staff privileges and has elected to fulfill his or her minimum financial responsibility requirements by obtaining medical malpractice insurance in accordance with Section 458.320(2)(b), which provides in pertinent part as follows:

> 458.320 Financial responsibility.–
>
> * * *
>
> (2) Physicians who perform surgery in an ambulatory surgical center licensed under chapter 395 and, as a continuing condition of hospital staff privileges, physicians who have staff privileges must also establish financial responsibility by one of the following methods:
>
> * * *

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

5. Effective February 1, 2005, each of the individual Petitioners has obtained medical malpractice insurance coverage on a group basis under a claims-made physicians and surgeons professional liability policy (the "Policy") issued by Continental Casualty Company, an insurer authorized to issue medical malpractice insurance policies in Florida in accordance with Section 624.09, *Florida Statutes*. The Policy itself has been issued on forms which have been approved by the Florida Office of Insurance Regulation in accordance with Chapter 627, *Florida Statutes*.

6. Under the Policy, Radiology Associates of South Florida, P.A., is the "First Named Insured," which is not afforded insurance coverage but is only named to be responsible for certain administrative functions arising under the Policy. Each of the individual Petitioners is included as an individual "Named Insured." Additional physicians may obtain coverage under the Policy through an endorsement which lists them as Named Insureds.

7. Each of the individual Petitioners, as Named Insureds, have limits of $250,000 per medical incident, with an annual aggregate limit per Named Insured of $750,000. In addition to the per medical incident and annual aggregate limits of liability per Named Insured, the limits of the Policy are further subject to a shared policy aggregate limit of $10,000,000 that is inclusive of defense expenses and any additional benefits afforded under the Policy (the "Shared Aggregate Limit").

8. The Petitioners believe that the Policy currently complies and will continue to comply with Subsection 458.320(2)(b). Each of the Petitioners, as Named Insureds, currently has

annual coverage under the Policy of $250,000 per medical incident with a $750,000 annual aggregate limit per Named Insured. Milliman, an independent actuarial firm, has conducted an actuarial study in connection with the proposed Policy in which it calculated the expected losses and expenses for first year coverage, based upon coverage being provided for up to 160 physicians, a substantially greater number of physicians than the 57 Petitioners, who are covered by the Policy initially. Assuming coverage for up to 160 physicians of various specialties located in Miami-Dade County, Milliman's best estimate of the expected ultimate loss and allocated loss adjustment expenses for the first coverage year under the Policy is only $5,290,056, or approximately 53 percent of the Shared Aggregate Limit. With only 57 physicians currently covered by the Policy, expected losses (and loss adjustment expense) are less than $2,000,000, only 20 percent of the Shared Aggregate Limit. Nevertheless, because there is a possibility, however remote, that the Shared Aggregate Limit may be triggered during the Policy period, which would limit coverage to the Petitioners under the Policy, the Petitioners are in doubt as to whether the Policy satisfies the requirements of Subsection 458.320(2)(b), which requires $250,000/$750,000 limits for physicians with staff privileges.

9. The Petitioners believe that the Shared Aggregate Limit included in the Policy should be considered the same as any other limitation or condition which may later cut off coverage under an insurance policy. In that respect, the Petitioners believe that the triggering of the Shared Aggregate Limit should be treated in the same manner as when an individual Named Insured reaches or exceeds the $750,000 annual aggregate limit under the Policy. Upon triggering the $750,000 annual aggregate limit under the Policy, an individual Named Insured would no longer have coverage under the Policy. The mere possibility that a Named Insured may incur three claims equaling or exceeding $250,000 in a 12-month period, resulting in the triggering of the annual aggregate limit of $750,000, does not negate the Policy's compliance with Section 458.320.

Similarly, the mere possibility that the group of individual Petitioners may incur 40 claims exceeding $250,000 in a 12-month period, resulting in the triggering of the Shared Aggregate Limit, does not negate the Policy's compliance with Section 458.320.

10. Furthermore, even with the Shared Aggregate Limit, the Policy provides greater protection to Florida patients than a medical malpractice insurance policy that is obtained from a minimally capitalized insurer or risk retention group. For example, if the individual Petitioners were to procure coverage without the Shared Aggregate Limit under separate medical malpractice insurance policies issued by a risk retention group or insurer that only maintains the minimum capital and surplus of $5,000,000 required for authorization to transact insurance under the Florida Insurance Code, such a policy would comply with Subsection 458.320(2)(b) as long as the policy provides the $250,000/$750,000 limits, even though that risk retention group or insurer would probably become insolvent well before the individual Petitioners experienced the same 40 claims equal to or exceeding $250,000 that it would take to trigger the Shared Aggregate Limit under the Policy. In fact, it would only take 20 maximum payout claims at $250,000 to use the capital and surplus of a minimally capitalized insurer or risk retention group. By contrast, the Policy has been issued by a financially strong insurance company, Continental Casualty Company, an affiliate of CNA, which has an AM Best rating of "A." Moreover, the reasonableness of the Shared Aggregate Limit has been evaluated by the independent actuarial firm of Milliman USA. Based on the Milliman report, the likelihood of the Shared Aggregate Limit being triggered during the 12-month period of the Policy is remote. Accordingly, the level and quality of coverage provided to the Petitioners under the Policy are, at the very least, adequate to satisfy the minimum financial responsibility requirements of Section 458.320 and Rule 64B8-12.005.

WHEREFORE, the Petitioners respectfully request the Board to grant this Petition and issue a declaratory statement that:

> With respect to each of the individual Petitioners, the Policy as described in the Petition complies with the minimum financial responsibility requirements of Section 458.320, *Florida Statutes*, and Rule 64B8-12.005, *Florida Administrative Code*.

Respectfully submitted this 14th day of March 2005.

MARSHALL R. BURACK, ESQ.
AKERMAN SENTERFITT & EIDSON, P.A.
One Southeast Third Avenue, 28th Floor
Miami, Florida 33131
Telephone: 305-374-5600
Facsimile: 305-374-5095

ATTORNEY FOR THE PETITIONERS

Exhibit A

Exhibit A

Radiology Associates of South Florida, P.A.

Abrams, Kevin	M.D.
Adler, Leon	M.D.
Aguiar, Aimee	M.D.
Alonso, Manuel	M.D.
Balkissoon, Avinash	M.D.
Baquero, Julio	M.D.
Baner, Bruce	M.D.
Beibel, Bejamin	M.D.
Benenati, James	M.D.
Braun, Ira	M.D.
Cantor-Thorpe, Amy	M.D.
Carbot-Flores, Elsy	M.D.
Chan, Danny	M.D.
Chaneles, Margaret	M.D.
Connors, John	M.D.
Convers, Alberto	M.D.
Diez, Juan Carlos	M.D.
Elgarresta, Lawrence	M.D.
Fernandez, Pedro	M.D.
Fields, Jonathan	M.D.
Gordon, Robert	M.D.
Greenhouse, Randey	M.D.
Greve, James	M.D.
Hames, Ronald	M.D.
Inampudi, Prasuna	M.D.
Iparraguirre, Maria	M.D.
Janowitz, Warren	M.D.
Katzen, Barry	M.D.
Kaul, Stephen	M.D.
Keedy, Jennifer	M.D.
Koenigsberg, Paul	M.D.
Luedemann, Kristen	M.D.
Malave-Vidal, Ivan	M.D.
Martinez, Maria Pilar	M.D.
McAndless, Megan	M.D.
Messinger, Jonathan	M.D.
Messinger, Neil	M.D.
Meyer, Ryan	M.D.
Moses, Michael	M.D.
Nadel, Lyn	M.D.

Name	ED
Parilla, Victor	M.D.
Podrasky, Ann	M.D.
Powell, Alex	M.D.
Quickert, Timo	M.D.
Quiros-Mesa, Anamary	M.D.
Rabassa, Antonio	M.D.
Roszler, Myer	M.D.
Rubin, Jonathan	M.D.
Samuels, Shaun	M.D.
Silberman, Michael	M.D.
Stamler, Cliff	M.D.
Stokes, Norman	M.D.
Tizol-Blanco, Dolores	M.D.
Vuong, Hao	M.D.
Whitley, Amy	M.D.
Zemel, Gerald	M.D.
Ziffer, Jack	M.D.

Exhibit B

FINANCIAL RESPONSIBILITY

NAME: LICENSE NUMBER:

Financial Responsibility options are divided into two categories, coverage and exemptions. Choose only one option of the ten provided pursuant to s.458.320, Florida Statutes.

OPTION I: FINANCIAL RESPONSIBILITY COVERAGE

☐1. I do not have hospital staff privileges and I have established an irrevocable letter of credit or an escrow account in an amount of $100,000/$300,000, in accordance with Chapter 675, F. S., for a letter of credit and s. 625.52, F. S., for an escrow account.

☐2. I have hospital staff privileges and I have established an irrevocable letter of credit or escrow account in an amount of $250,000/$750,000, in accordance with Chapter 675, F. S., for a letter of credit and s. 625.52, F. S., for an escrow account.

☐3. I do not have hospital staff privileges and I have obtained and maintain professional liability coverage in an amount not less than $100,000 per claim, with a minimum annual aggregate of not less than $300,000 from an authorized insurer as defined under s. 624.09, F. S., from a surplus lines insurer as defined under s. 626.914(2), F.S., from a risk retention group as defined under s. 627.942, F.S., from the Joint Underwriting Association established under s. 627.351(4), F. S., or through a plan of self-insurance as provided in s. 627.357, F.S.

☐4. I have hospital staff privileges and I have professional liability coverage in an amount not less than $250,000 per claim, with a minimum annual aggregate of not less than $750,000 from an authorized insurer as defined under s. 624.09, F. S., from a surplus lines insurer as defined under s. 626.914(2), F. S., from a risk retention group as defined under s. 627.942, F.S., from the Joint Underwriting Association established under s. 627.351(4), F. S., or through a plan of self insurance as provided in s.627.357, F.S.

☐5 I have elected not to carry medical malpractice insurance, however, I agree to satisfy any adverse judgements up to the minimum amounts pursuant to s. 458.320(5)(g) 1 or 459.0085(5)(g)1, F. S. I understand that I must either post notice in the form of a "sign" prominently displayed in the reception area or provide a written statement to any person to whom medical services are being provided that I have decided not to carry medical malpractice insurance. I understand that such a sign or notice must contain the wording specified in s. 458.320(5)(g) or 459.0085(5)(g), F. S.

OPTION II: FINANCIAL RESPONSIBILITY EXEMPTIONS

☐1. I practice medicine exclusively as an officer, employee, or agent of the federal government, or of the state or its agencies or subdivisions.

☐2. I hold a limited license issued pursuant to s. 458.317 or 459.0075, F. S., and practice only under the scope of the limited license.

☐3. I practice only in conjunction with my teaching duties at an accredited medical school or its teaching hospitals. (Interns and residents do not qualify for this exemption).

☐4. I do not practice medicine in the State of Florida.

☐5. I meet all of the following criteria:

(a) I have held an active license to practice in this state or another state or some combination thereof for more than 15 years.
(b) I am retired or maintain part time practice of no more than 1000 patient contact hours per year.
(c) I have had no more than two claims resulting in an indemnity exceeding $25,000 within the previous five-year period.
(d) I have not been convicted of or pled guilty or nolo contendere to any criminal violation specified in s.458 or s.459, F. S.
(e) I have not been subject, within the past ten years of practice, to license revocation or suspension, probation for a period of three years or longer, or a fine of $500 or more for a violation of Chapter 458 or 459, F.S., or the medical practice act of another jurisdiction. A regulatory agency's acceptance of a relinquishment of license stipulation, consent order or other settlement offered in response to or in anticipation of filing of administrative charges against a license shall be construed as action against a license. I understand if I am claiming an exception under this section that I must either post notice in the form of a sign, prominently displayed in the reception area or provide a written statement to any person to whom medical services are being provided, that "I have decided not to carry medical malpractice insurance". I understand such a sign or notice must contain the wording specified in s. 458.320(5)(f)7 or 459.0085(5)(f)7, F. S.

CHAPTER 64B8-12 FINANCIAL RESPONSIBILITY

64B8-12.001 Applicability.
Pursuant to Section 458.320, F.S., as amended by Section 47, Chapter 86-160, Laws of Florida, every person who seeks the issuance, renewal, or reactivation of an active license to practice medicine shall demonstrate financial responsibility to pay claims and costs ancillary thereto arising our of the rendering of, or the failure to render, medical care or services. Any person who claims to be exempt from the financial responsibility requirements of a said statute, shall have the burden of proving that he meets the criteria for the claimed exemption.

Specific Authority 458.309, 458.320 FS. Law Implemented 458.320 FS. History–New 3-15-87, Formerly 21M-40.001, 61F6-40.001, 59R-12.001.

64B8-12.003 Definitions.
The term "patient contact hours," as used in Section 458.320(5)(f)2., F.S., as amended by Section 47, Chapter 86-160, Laws of Florida, means the number of hours during which the physician is involved in direct patient care or is performing patient care activities, including, but not limited to, completing patient records and reviewing laboratory reports.

Specific Authority 458.309, 458.320 FS. Law Implemented 458.320 FS. History–New 3-15-87, Formerly 21M-40.003, 61F6-40.003, 59R-12.003.

64B8-12.005 Procedures.
(1)(a) At the time a person seeks initial licensure or reactivation of an inactive license that person must show compliance with the requirements of Section 458.320, F.S., as amended by Chapter 86-160, Laws of Florida, before a license, or an active license, respectively, shall be issued.

(b) During the license renewal period of each biennium, an application for renewal will be mailed to each licensee at the last address provided to the Board. Failure to receive any notification during this period does not relieve the licensee of the responsibility of meeting the financial responsibility or license renewal requirements.

(2)(a) The application for initial licensure, renewal, or reactivation shall include a form on which the licensee shall make a notarized written statement asserting that he or she is in compliance with the financial responsibility law and identifying the form of compliance (escrow account, insurance, or letter of credit) or asserting that he or she is exempt from the requirements of financial responsibility and identifying the claimed exemption (government employee, inactive licensee not practicing in Florida, holder of limited license, license or certificate holder practicing only in conjunction with teaching duties, active licensee not practicing in Florida, retiree or part-time practitioner, licensee who agrees to pay adverse judgment). The short-phrase terms used in the preceding sentence are only for purposes of identification; each licensee is responsible for reviewing the full and exact requirements for each method of compliance or delineation of exemption and for determining his compliance or eligibility based on the complete statutory language.

(b) The licensee must retain such written documentation as may be necessary to prove his or her compliance with or exemption from the financial responsibility requirements for a period of not less than 7 years and must provide such documentation to the Board or its agent upon request. The Board will audit at random a number of licensees as necessary to assure that the financial responsibility requirements are met.

(3) EACH LICENSEE MUST NOTIFY THE BOARD IN WRITING OF ANY CHANGE OF STATUS RELATING TO FINANCIAL RESPONSIBILITY COMPLIANCE OR EXEMPTION AT LEAST 10 CALENDAR DAYS PRIOR TO THE CHANGE.

(4) The failure to document compliance with or exemption from the financial responsibility law upon request, the furnishing of false or misleading information, or the failure to timely notify the Board of a change in status shall be grounds for disciplinary action up to and including license revocation.

Specific Authority 458.309, 458.320 FS. Law Implemented 458.320 FS. History–New 3-15-87, Formerly 21M-40.005, 61F6-40.005, 59R-12.005.

64B8-12.007 Exemptions for Persons Not Practicing in Florida; Change of Status.
Persons who are not practicing medicine in Florida may be exempt from compliance with the financial responsibility requirements pursuant to Section 458.320(5)(b), (licensees with inactive licenses) or 458.320(5)(e), F.S. (licensees with active licenses)

(1) A licensee who has claimed an exemption based on the fact that the license is inactive and the licensee is not practicing medicine in Florida and who applies for reactivation of the medical license must, in addition to the other requirements for reactivation, submit an affidavit stating that he or she has no unsatisfied medical malpractice judgments or settlements at the time of application for reactivation.

Select Year: 2004 Go

The 2004 Florida Statutes

Title XXXII	Chapter 458	View Entire
REGULATION OF PROFESSIONS AND OCCUPATIONS	MEDICAL PRACTICE	Chapter

458.320 *Financial responsibility.*--

(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 the per claim amounts specified in paragraph (b). The required escrow amount set forth in this paragraph may not be used for litigation costs or attorney's fees for the defense of any medical malpractice claim.

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

(c) Obtaining and maintaining an unexpired, irrevocable letter of credit, established pursuant to chapter 675, in an amount not less than $100,000 per claim, with a minimum aggregate availability of credit of not less than $300,000. The letter of credit must be payable to the physician as beneficiary upon presentment of a final judgment indicating liability and awarding damages to be paid by the physician or upon presentment of a settlement agreement signed by all parties to such agreement when such final judgment or settlement is a result of a claim arising out of the rendering of, or the failure to render, medical care and services. The letter of credit may not be used for litigation costs or attorney's fees for the defense of any medical malpractice claim. The letter of credit must be nonassignable and nontransferable. Such letter of credit must be issued by any bank or savings association organized and existing under the laws of this state or any bank or savings association organized under the laws of the United States which has its principal place of business in this state or has a branch office that is authorized under the laws of this state or of the United States to receive deposits in this state.

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

(a) Establishing and maintaining an escrow account consisting of cash or assets eligible for deposit in accordance with s. 625.52 in the per claim amounts specified in paragraph (b). The required escrow amount set forth in this paragraph may not be used for litigation costs or attorney's fees for the defense of any medical malpractice claim.

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

(c) Obtaining and maintaining an unexpired irrevocable letter of credit, established pursuant to chapter 675, in an amount not less than $250,000 per claim, with a minimum aggregate availability of credit of not less than $750,000. The letter of credit must be payable to the physician as beneficiary upon presentment of a final judgment indicating liability and awarding damages to be paid by the physician or upon presentment of a settlement agreement signed by all parties to such agreement when such final judgment or settlement is a result of a claim arising out of the rendering of, or the failure to render, medical care and services. The letter of credit may not be used for litigation costs or attorney's fees for the defense of any medical malpractice claim. The letter of credit must be nonassignable and nontransferable. The letter of credit must be issued by any bank or savings association organized and existing under the laws of this state or any bank or savings association organized under the laws of the United States which has its principal place of business in this state or has a branch office that is authorized under the laws of this state or of the United States to receive deposits in this state.

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

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

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

(4)(a) Each insurer, self-insurer, risk retention group, or Joint Underwriting Association must promptly notify the department of cancellation or nonrenewal of insurance required by this section. Unless the physician demonstrates that he or she is otherwise in compliance with the requirements of this section, the department shall suspend the license of the physician pursuant to ss. 120.569 and 120.57 and notify all health care facilities licensed under chapter 395 of such action. Any suspension under this subsection

remains in effect until the physician demonstrates compliance with the requirements of this section. If any judgments or settlements are pending at the time of suspension, those judgments or settlements must be paid in accordance with this section unless otherwise mutually agreed to in writing by the parties. This paragraph does not abrogate a judgment debtor's obligation to satisfy the entire amount of any judgment.

(b) If financial responsibility requirements are met by maintaining an escrow account or letter of credit as provided in this section, upon the entry of an adverse final judgment arising from a medical malpractice arbitration award, from a claim of medical malpractice either in contract or tort, or from noncompliance with the terms of a settlement agreement arising from a claim of medical malpractice either in contract or tort, the licensee shall pay the entire amount of the judgment together with all accrued interest, or the amount maintained in the escrow account or provided in the letter of credit as required by this section, whichever is less, within 60 days after the date such judgment became final and subject to execution, unless otherwise mutually agreed to in writing by the parties. If timely payment is not made by the physician, the department shall suspend the license of the physician pursuant to procedures set forth in subparagraphs (5)(g)3., 4., and 5. Nothing in this paragraph shall abrogate a judgment debtor's obligation to satisfy the entire amount of any judgment.

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

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

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

(c) Any person holding a limited license pursuant to s. 458.317 and practicing under the scope of such limited license.

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

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

resuming the practice of medicine in this state.

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

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

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

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

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

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

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

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

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

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

1. Upon the entry of an adverse final judgment arising from a medical malpractice arbitration award, from a claim of medical malpractice either in contract or tort, or from noncompliance with the terms of

a settlement agreement arising from a claim of medical malpractice either in contract or tort, the licensee shall pay the judgment creditor the lesser of the entire amount of the judgment with all accrued interest or either $100,000, if the physician is licensed pursuant to this chapter but does not maintain hospital staff privileges, or $250,000, if the physician is licensed pursuant to this chapter and maintains hospital staff privileges, within 60 days after the date such judgment became final and subject to execution, unless otherwise mutually agreed to in writing by the parties. Such adverse final judgment shall include any cross-claim, counterclaim, or claim for indemnity or contribution arising from the claim of medical malpractice. Upon notification of the existence of an unsatisfied judgment or payment pursuant to this subparagraph, the department shall notify the licensee by certified mail that he or she shall be subject to disciplinary action unless, within 30 days from the date of mailing, he or she either:

a. Shows proof that the unsatisfied judgment has been paid in the amount specified in this subparagraph; or

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

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

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

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

3. Upon the next meeting of the probable cause panel of the board following 30 days after the date of mailing the notice of disciplinary action to the licensee, the panel shall make a determination of whether probable cause exists to take disciplinary action against the licensee pursuant to subparagraph 1.

4. If the board determines that the factual requirements of subparagraph 1. are met, it shall take disciplinary action as it deems appropriate against the licensee. Such disciplinary action shall include, at a minimum, probation of the license with the restriction that the licensee must make payments to the judgment creditor on a schedule determined by the board to be reasonable and within the financial capability of the physician. Notwithstanding any other disciplinary penalty imposed, the disciplinary penalty may include suspension of the license for a period not to exceed 5 years. In the event that an agreement to satisfy a judgment has been met, the board shall remove any restriction on the license.

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

A licensee who meets the requirements of this paragraph shall be required either to post notice in the form of a sign prominently displayed in the reception area and clearly noticeable by all patients or to provide a written statement to any person to whom medical services are being provided. Such sign or statement shall state: "Under Florida law, physicians are generally required to carry medical malpractice insurance or otherwise demonstrate financial responsibility to cover potential claims for medical malpractice. YOUR DOCTOR HAS DECIDED NOT TO CARRY MEDICAL MALPRACTICE INSURANCE. This is permitted under Florida law subject to certain conditions. Florida law imposes penalties against noninsured physicians who fail to satisfy adverse judgments arising from claims of medical malpractice. This notice is provided pursuant to Florida law."

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

(7) Any licensee who relies on any exemption from the financial responsibility requirement shall notify the department, in writing, of any change of circumstance regarding his or her qualifications for such exemption and shall demonstrate that he or she is in compliance with the requirements of this section.

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

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

History.--ss. 27, 50, ch. 85-175; ss. 47, 67, ch. 86-160; s. 26, ch. 86-245; s. 22, ch. 88-1; s. 2, ch. 90-158; s. 184, ch. 91-108; s. 59, ch. 91-220; s. 4, ch. 91-429; s. 106, ch. 94-218; s. 217, ch. 96-410; s. 1089, ch. 97-103; s. 144, ch. 97-237; s. 104, ch. 97-261; s. 22, ch. 97-264; s. 20, ch. 97-273; s. 9, ch. 98-166; s. 116, ch. 2000-153; s. 20, ch. 2001-277; s. 23, ch. 2003-416; s. 75, ch. 2004-5.