

SUMMARY OF LEGISLATION IMPLEMENTING AMENDMENT 8

Below is a brief summary of CS for SB 940, which has passed both the House and the Senate.

Topic	Summary of CS for SB 940
Retroactivity	Applies only to incidents occurring on or after November 2, 2004.
Who is defined to be a “medical doctor”	Defines a “medical doctor” as both M.D.s and D.O.s.
How judgments from other states or countries are treated	Out-of-state and foreign judgments count as a “strike” only if the standard of care and the burden of proof applied in the out-of-state matter equaled or exceeded that used in Florida.
Standard of proof to determine whether a doctor committed medical malpractice	In order for an incident to constitute a “strike,” the facts supporting a finding of medical malpractice must be based on “clear and convincing evidence.” If the facts supporting the finding were found by a standard less stringent than “clear and convincing,” the board must review the case and determine that the finding would be supported under the “clear and convincing” standard.
Whether a single incident of medical malpractice could count as more than one “strike”	An “incident” of medical malpractice is defined as the wrongful act from which the medical malpractice arose, regardless of the number of claimants or findings. In other words, a single act of malpractice, regardless of the number of claimants, counts as one incident. Similarly, multiple findings of malpractice arising from the same wrongful act or series of wrongful acts associated with the treatment of the same patient, count as one incident.
Definition of “repeated malpractice”	Three or more incidents of medical malpractice found to have been committed by a medical doctor.
Who is responsible for implementing Amendment 8	The Board of Medicine and the Board of Osteopathic Medicine are assigned responsibility to implement Amendment 8 to determine by <i>clear and convincing evidence</i> if a medical doctor has committed repeated medical malpractice.