

STORAGE NAME: h1659s1.grr

DATE: April 4, 2000

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
GOVERNMENTAL RULES & REGULATIONS
ANALYSIS**

BILL #: CS/HB 1659 (PCB HCL 00-03)

RELATING TO: General Regulatory Administration of the Health Care Professions

SPONSOR(S): Committee on Governmental Rules & Regulations, Committee on Health Care Licensing & Regulation and Representative Fasano

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) HEALTH CARE LICENSING & REGULATION YEAS 13 NAYS 0
 - (2) GOVERNMENTAL RULES & REGULATIONS YEAS 7 NAYS 0
 - (3) FINANCE & TAXATION
 - (4) HEALTH & HUMAN SERVICES APPROPRIATIONS
-

I. SUMMARY:

CS/HB 1659 amends several general administrative provisions relating to the regulation of the health care professions by the Department of Health.

This bill eliminates a "catch-22" for applicants without social security numbers, allows applicants the opportunity to address the regulatory board, or department when there is no board, prior to the denial of an application for licensure, and requires pending investigations and prosecutions to be complete and civil rights to be restored prior to the license being granted. This bill streamlines practitioners' application and renewal of licenses, and authorizes renewal through a secure on-line licensure system. The bill authorizes the department to profile the remaining health care practitioners over a 5-year period, including requiring criminal background screening. This bill repeals the obsolete Impaired Practitioner Committee and clarifies the process for handling complaints against impaired practitioners. This bill creates a new violation for the unlicensed practice of a health care profession, adds a statement of legislative intent that the protection of the public against unlicensed activity is a state priority, and increases criminal penalties for the unlicensed practice of a medical profession. This bill requires all advertisements for surgical procedures to include a statement regarding unintended risks and the need to consult a licensed practitioner before submitting to any surgery. It consolidates provisions relating to the prosecution of unlicensed activity into one section.

This bill has a fiscal impact on the state and the private sector. This bill appropriates \$230,000 from the Agency for Health Care Administration Tobacco Settlement Trust Fund to contract with the University of South Florida to conduct a review of laboratory test utilization, self-referral to clinical laboratories, financial arrangements among kidney dialysis centers and their medical directors or referring physicians, and the quality and effectiveness of kidney dialysis treatment in this state.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|--|------------------------------|
| 1. <u>Less Government</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |

For any principle that received a "no" above, please explain:

Individual Freedom

This bill will encourage local law enforcement and prosecutors to enforce the prohibition against the unlicensed and potentially deadly practice of a health care profession by a person not properly educated and trained to provide such health care service. Please see the "present situation" and "effect of proposed changes" sections.

B. PRESENT SITUATION:

Social Security Numbers:

Under s. 455.564(1), F.S., all applicants are required to provide their social security number at the time of initial application for license. This creates a "catch-22" for applicants who cannot obtain a work visa without a license, cannot obtain a license without a social security number, and cannot obtain a social security number without a work visa. This problem was discovered during 1999 and the Department of Health requested an Attorney General Opinion regarding the interpretation of this law. An opinion was issued which allowed the department to begin processing these applications but advised the department that legislative clarification was needed. According to the department, this issue is important due to the current shortage of nurses in this state. Nurses are being recruited from Canada to help alleviate this shortage.

Profiling/Background Screening:

Currently, allopathic, osteopathic, chiropractic, and podiatric physicians are required to be profiled and to submit other information, including fingerprints, necessary to conduct national and statewide criminal background checks as a condition of licensure or licensure renewal. The physician must pay the full cost of the background screening, which is \$43. If the physician is also a Medicaid provider, then the physician is required to undergo background screening as part of the Medicaid provider application process. Furthermore, if the physician practices in certain facilities or settings, such as a county health department or a nursing home, or is an employee of the Department of Children and Family Services or the Department of Juvenile Justice, the physician must also undergo background screening as part of the employment process. These redundant background checks create duplicative work for the Florida Department of Law Enforcement, are time-consuming and

expensive for the physician, and add little protection for the public when conducted in such short and overlapping time periods.

The Department of Health reports that during the first six months that practitioner profiles were available to the public on the Internet, approximately 304,451 searches were conducted. The average was over 50,000 searches per month. It is unknown how many of these licensure inquiries and verifications would have been conducted through written or telephone requests had the Internet site not been available.

Practitioner Misconduct Provisions:

Sexual Misconduct: Practitioners are currently prohibited from engaging in sexual activity with patients, clients, and immediate family members of the patient or client. However, there are also foster families and other legal guardianship relationships where the guardian or representative of the patient is equally vulnerable. Those legal guardians and representatives are not currently afforded equal protection from a practitioner who may use his or her position to engage or attempt to engage in sexual activity to the detriment of the patient.

Impairment or Use of Drugs: Any practitioner who tests positive for any drug, as defined in s. 112.0455, F.S., on any confirmed preemployment or employer-ordered drug screening when the practitioner does not have a lawful prescription and legitimate medical reason for using the drug, may be suspended by an emergency suspension order issued by the Secretary of Health. However, there is no corresponding ground for discipline. The Administrative Procedures Act, chapter 120, F.S., requires the Department of Health to initiate formal disciplinary proceedings following the issuance of an emergency suspension order. Since there is no corresponding ground for discipline at the present time for any profession other than nursing, the department must charge the licensee with being unable to practice with reasonable skill and safety or other related provision. However, a licensee may have used drugs and been a potential danger to patients at the time of the positive drug test but may not be using drugs during a subsequent hearing. At hearing on the ground for discipline for being unable to practice with reasonable skill and safety, the department must prove that the licensee used drugs at the time of the positive drug test and is still a danger to the public at the time of the hearing. Although this is very difficult to prove, the members of the regulatory boards have repeatedly stated that a licensee who uses drugs illegally has poor judgment and cannot be trusted to prescribe, administer, and dispense drugs to patients with reasonable skill and safety.

Additionally, under current law, if there is an allegation that a practitioner is using drugs, the department or the board may attempt to refer the practitioner into one of the two existing impaired practitioner programs for a mental and physical examination to determine if there is any merit to the allegation of impairment. Most practitioners assent to be evaluated to determine current fitness to practice. However, on occasion, a practitioner may refuse to be evaluated. When that occurs, and the practitioner is a physician or one of several other types of practitioners, the Secretary of Health may compel the practitioner to undergo an evaluation if the Secretary finds probable cause to exist that the practitioner is impaired. Not all of the health care practice acts contain this provision. Most notably, the pharmacy practice act is missing this procedure. Pharmacy has a high rate of impairment due to the easy access of pharmacists to controlled substances.

Penalties for Misconduct: One of the penalties that the boards and department may impose on a practitioner for misconduct is a restriction of practice. For instance, a practitioner may be restricted to practicing in certain settings or under certain conditions. Presently, pursuant to ch. 455, F.S., only the practice can be restricted, not the license.

In lieu of the full disciplinary process set forth in s. 455.621, F.S., the boards or department may issue a citation in accordance with s. 455.617, F.S. However, in order to issue a citation, the board or department must designate by rule which grounds for discipline have no substantial threat to the public health, safety, and welfare. Because the bulk of the grounds for discipline involve protecting the public health, safety, and welfare, very few grounds for discipline have been designated by the boards as suitable for citations. Those that have been designated as citation violations are very narrowly tailored and thus do not provide much relief to the overburdened regulatory system. Practitioners who have committed relatively minor offenses must go through the entire disciplinary process which can take several years and cost thousands of dollars.

Examination Costs:

The Department of Health currently purchases licensure examinations for eight health care professions. Of those eight examinations, three of them cost more to purchase, administer, and defend than the maximum examination fee set forth in statute. Therefore, every time those three exams are administered, the department incurs expenses not covered by the applicant. For some professions already in a deficit posture, this compounds the problem.

Each practice act that allows persons to become licensed by examination sets a maximum fee that the board or department can charge for that examination. The manner in which maximum fees are set forth in statute is not consistent among all of the professions regulated under the Department of Health. For instance, the Electrolysis Practice Act, ch. 478, F.S., sets a maximum fee of \$300 regardless of the actual cost to purchase, develop, administer, and defend the examination. Other practice acts, such as ch. 460, F.S., regulating chiropractic physicians, provide more flexibility to the department to ensure that all costs of the examination are paid for by the applicant regardless of inflation or other unforeseen circumstances at the time the practice act became law. Section 460.406, F.S., provides an examination fee "not to exceed \$500 plus the actual per applicant cost to the department" to purchase the exam.

Licensure Status Changes:

Sections 455.711, F.S., and 455.714, F.S., set forth the conditions and requirements for licensees to change their licensure status from active to inactive or from inactive to active. Under current law, the ability of the licensee to change status is limited. Also, with regard to the fees to be charged in certain circumstances, because the language is unclear, different boards have interpreted these provisions differently resulting in confusion and inconsistencies for the department in carrying out the ministerial functions relating to licensure status changes.

Requests for Exemption from Disqualification from Employment or Contracting:

Currently, the state agency with disciplinary jurisdiction over the licensee is the board, or department when there is no board, and the jurisdiction to grant exemptions from disqualification lies with the department even when there is a board. To complicate matters

further, while the department must handle all requests for exemption from certified nursing assistants regardless of practice location, the department only handles requests for exemption from other health care practitioners if the practitioner has applied to practice in certain settings. The remaining exemptions are handled by the Agency for Health Care Administration. This has led to much confusion in the health care industry and has resulted in discrepancies between the findings of the various jurisdictional bodies.

Kidney Dialysis Study:

In 1999, the Florida Legislature requested that the Agency for Health Care Administration investigate the relationship between dialysis centers, the centers' medical directors, and the laboratories that serve dialysis patients. The agency issued a report on February 1, 2000, on that investigation which concluded that additional review and resources were necessary to complete the study. The estimated cost to contract with a state university to complete the study is \$230,000.

Unlicensed Activity:

Florida law requires persons wishing to provide health care services to patients in Florida to prove that they have the requisite education, training, and knowledge to practice that profession. Florida law provides avenues for licensure by examination or by endorsement if the health care practitioner has already been licensed in another jurisdiction. The purpose of licensure and regulation is to protect the public health, safety, and welfare from unsafe and incompetent practitioners.

The Florida Legislature has recognized in passing laws setting forth practice parameters that the practice of medicine and other health care professions is potentially dangerous. The primary legislative purpose in enacting the medical and health care practice acts is to ensure that every health care practitioner who wishes to practice in Florida meets minimum requirements for safe practice.

The Legislature has set forth certain acts which constitute criminal violations. Among the prohibited acts is practicing medicine without a license, a felony of the third degree. If a person is found guilty of practicing medicine in Florida without a license, criminal penalties may be imposed, including incarceration. However, these cases are rarely prosecuted because the crimes are listed on the Offense Severity Ranking Chart in s. 921.0022(3), F.S., as level 1 crimes. Level 1 crimes are considered to be the least serious and if prosecuted at all, almost never result in a prison sentence. Other crimes listed in level 1 include molesting a crab trap, poaching an alligator, and tampering with an odometer.

During the past year, the Department of Health and the Office of the Attorney General have worked together to form the Office of Unlicensed Activity in Ft. Lauderdale. This special investigative unit consisting of 2 investigators, 1 attorney, and 1 support staff was created to focus attention on the ever-growing problem of unlicensed activity. This unit was set up as a pilot project to focus on the 4 South Florida counties in which most of the unlicensed activity in this state occurs. This unit investigates complaints of unlicensed activity and then presents the case to local law enforcement and the appropriate prosecutor in order to facilitate the criminal investigation and prosecution. This pilot project has been successful in getting more unlicensed persons arrested than in past years due to its narrow focus.

Recent newspaper articles have further focused attention on the rise in unlicensed activity and the great potential for harm to patients from unqualified practitioners practicing in unsanitary locations.

C. EFFECT OF PROPOSED CHANGES:

Social Security Numbers:

This bill eliminates the "catch-22" for applicants without social security numbers by allowing applications to be processed and temporary licenses to be granted for 30 days. Once the social security number is obtained and provided to the Department of Health, a regular license may be granted.

This change in process will allow active recruitment of nurses and other health care practitioners from foreign countries such as Canada to help alleviate the shortage of nurses and other health care practitioners in Florida. This bill is consistent with the policy of eliminating unnecessary barriers to licensure.

Profiling/Background Screening:

This bill establishes that once an allopathic, osteopathic, chiropractic, or podiatric physician, licensed under chapters 458, 459, 460, or 461, F.S., has submitted a set of fingerprints as a condition of initial licensure or licensure renewal, they need not submit another set of fingerprints to any other state agency as a condition of employment or licensure. Furthermore, it requires other state agencies to access the criminal history information via the Department of Health's limited access practitioner credentialing system known as CoreSTAT. The state agencies affected by this provision include the Department of Health, the Agency for Health Care Administration, the Department of Juvenile Justice, and the Department of Children and Family Services. The Florida Department of Law Enforcement is also affected since duplicate requests for criminal background checks will be eliminated.

Physicians benefit from this bill because redundant and burdensome fingerprinting requirements are eliminated. State agencies benefit from this bill because they will be able to access criminal history information for health care practitioners quickly and cost-effectively. By requiring other state agencies to rely upon the limited-access practitioner credentialing system of the Department of Health, there is minimal administrative burden placed upon the department to respond to requests for licensure information.

There may be some administrative cost savings to the affected state agencies; however, the exact amount is unknown. The Florida Department of Law Enforcement may experience some initial loss of revenue with the reduction in the number of duplicative criminal checks required of physicians. However, the initial reduction in revenue should be more than offset by the profiling law now being implemented which requires ongoing statewide criminal checks as a condition of licensure renewal.

This bill also permits the Department of Health to profile the remaining 410,000 health care practitioners over a 5-year period. It requires the practitioners to submit information and fingerprints to the department as a condition of renewal of licensure. The bill requires applicants for initial licensure to provide information and fingerprints necessary to profile and conduct criminal background screenings. This information, other than fingerprints, will be submitted electronically through a secure on-line licensure program. This requirement will have a fiscal impact to the state, for the purchase of the electronic licensure program, and to the practitioners, for electronic application and renewal. However, based on the numbers of inquiries to the practitioner profiling web site during the first six months of operation, there is a demonstrated benefit to the public in accessing this information free of

charge. Additional revenue will be generated from conducting background checks for those practitioners. The Department of Health anticipates breaking even after the third or fourth year of renewing existing licenses.

Practitioner Misconduct Provisions:

Sexual Misconduct: This bill adds legal guardians to the prohibition against sexual misconduct to close a loophole in the current law. It protects parents and children of non-traditional custodial and familial relationships, such as foster families. This bill recognizes that a practitioner could abuse the practitioner-patient relationship to influence a guardian or representative of this already vulnerable population in the same manner as traditional family members of the patient or client. It also conforms s. 455.624(1)(u), F.S., regarding discipline for sexual misconduct, to s. 455.567(1), F.S., the definition of sexual misconduct.

Impairment or Use of Drugs: This bill creates a ground for discipline in ch. 455, F.S., to conform to the provision passed in 1999 that allows the Secretary of Health to suspend a licensee on an emergency basis for testing positive for a drug on a confirmed drug screen when the licensee does not have a lawful prescription and legitimate medical reason for using such drug.

This bill allows the Secretary of Health, upon a finding of probable cause, to compel a health care practitioner to undergo a mental or physical examination to determine current fitness to practice. By placing this provision in ch. 455, F.S., it will be consistency will be created for all health care practitioners and enable the department to adequately assess any practitioner's ability to safely practice when an allegation has been made that they are a danger to the public. The provision will mainly impact impaired pharmacists, but will also impact impaired optometrists, midwives, dietitians and nutritionists, athletic trainers, orthotists, prothetists, and pedorthists, nursing assistants, opticians, and hearing aid specialists.

Penalties for Misconduct: This provision corrects terminology to allow the appropriate regulatory board, or the department when there is no board, to restrict a license instead of restricting the practice of a profession when the restriction is more a condition of licensure than a condition of practice. The bill also clarifies that a practitioner may be disciplined or denied licensure in Florida for any health care profession if that person has had any professional license disciplined in any jurisdiction. For example, if a physician has his or her license to practice medicine revoked or suspended, that action may be taken into consideration if the person applies for another type of health care license in Florida, such as a license to practice nursing or pharmacy. This will correct the glitch in the law that allows a dangerous practitioner to obtain a license to practice a different but related profession when they have their original license revoked, suspended, or otherwise disciplined.

This bill also provides that first-time violations of a practice act, which has an express ground for discipline, for unprofessional conduct shall be handled by citation. The four chapters that contain this particular ground for discipline are chapters 464, 467, 468, and 478, F.S. This is consistent with the requirement that passed in 1999 requiring all first-time violations of the continuing education requirements to be handled by citations. Citations can be issued quickly and reduce the expense of investigating and prosecuting a disciplinary case considerably. Citations benefit the practitioner because the matter is resolved quickly, allowing them to pay a fine or other penalty similar to a traffic citation issued to a licensed driver who violates the law. Citations are considered

disciplinary action and will remain on the licensee's permanent record, and therefore, the public is protected.

Examination Costs:

This bill authorizes the board or department to recoup all examination costs. It grants the board or department the ability to set the examination fee at the actual per applicant cost to purchase the examination plus a set fee to cover costs of administration and defense of the examination not to exceed the statutory maximum listed in the practice act as of October 1, 1999. This provision will allow the boards or department to recover all of the costs of purchasing, administering, and defending the exam.

Licensure Status Changes:

This bill provides flexibility to licensees by deleting language which prohibits a licensee who has elected active status licensure at the time of renewal from changing to inactive status during the biennium. Licensees will be affected positively by this change as additional costs involved with maintaining an active license for the remainder of the biennium will not be incurred. Such additional costs include maintaining malpractice insurance.

Other technical terminology is amended to create consistent interpretations among the boards and the department with regard to which fees apply in which circumstances. The term "status" is removed from "delinquent" licensees to clarify that delinquency is not a status, rather it is a label as to how the license became inactive instead of active. Delinquent licenses are those that have not been renewed on time.

Requests for Exemption from Disqualification from Employment or Contracting:

This bill eliminates dual and duplicative jurisdiction over health care practitioners wishing to practice in certain settings. Eliminating the duplicative jurisdiction will result in a streamlined and consistent procedure for health care practitioners. Potential conflicts of opinion between the Department of Health, the Agency for Health Care Administration, and the applicable regulatory board will be avoided. By requiring the board, or the department if there is no board, to make the decision regarding restrictions of practice settings for both licensure and employment purposes, the licensee will only have to undergo scrutiny one time. Both the licensee and the state will benefit from the coordination of these processes. There will not be any lengthening of the time to process these requests since the law already provides that all requests for exemption must be decided upon within 30 days.

Kidney Dialysis Study:

This bill appropriates \$230,000 from the Agency for Health Care Administration Tobacco Settlement Trust Fund to fund a contract with the University of South Florida to conduct a review of quality and effectiveness of kidney dialysis treatment as well as the utilization and business arrangements related to kidney dialysis centers.

Unlicensed Activity:

The bill focuses attention on the ever-increasing problem of unlicensed activity and gives new tools to prosecutors to enforce the law for the protection of the public. It emphasizes that vigorous enforcement of licensure regulation for all health care professions is a state priority and creates a new violation for the unlicensed practice of a health care profession.

Specifically, this bill sets minimum criminal penalties of a \$1,000 criminal fine and a minimum mandatory period of incarceration of 1 year for practicing without a license. It allows the state to impose administrative and civil fines to help stop the occurrence of unlicensed activity. It also clarifies that it is a violation to practice with an inactive or delinquent license and distinguishes the penalties for practicing with an inactive or delinquent license for a period up to 12 months and over 12 months. It further states that the Florida Legislature believes that persons convicted of practicing without a license who are not citizens of this country should be deported following incarceration to guarantee that they cannot continue to endanger Floridians.

If the unlicensed practice of a health care profession results in serious bodily injury, this bill upgrades that crime to a second degree felony. It defines "serious bodily injury" as death, brain or spinal damage, disfigurement, fracture or dislocation of bones or joints, any limitation of neurological, physical, or sensory function, or any other condition which was serious enough to require subsequent surgical repair.

This bill proactively protects patients from harm by prohibiting an unlicensed person from holding himself or herself out as able to practice a regulated profession unless that person holds a valid, active license to do so. This provision allows the state to protect the public before actual physical injury occurs.

Moreover, this bill will also educate potential patients on the inherent dangers of surgical procedures. It requires all advertisements for surgical procedures to include a specific warning about the possibility of unintended serious bodily harm and death. This statement prompts consumers to consult a licensed practitioner prior to submitting to surgery. This statement is not required on advertisements limited to listing the practitioner's credentials and location; only if the advertisement is for procedures, specifically, is the statement required.

Acupuncture:

This bill expands the definition of "acupuncture," and requires applicants for licensure to be at least 21 years old and be able to communicate in English. It updates the content areas of the licensure examination and reduces the fee cap for renewing a license from \$700 to \$500.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 455.564(1), F.S., to allow the Department of Health to process licensure applications for persons who are not citizens or residents of this country, and therefore, do not have social security numbers at the time of initial licensure application but are otherwise qualified for licensure. Provides for issuance of a temporary license for 30 days so that the applicant may obtain a social security number. Provides that temporary license expires automatically after 30 days unless a social security number is obtained and provided to the department in writing. Provides that upon receipt of the social security number, the department shall issue a regular license to the applicant.

This section also amends subsection (3) of s. 455.564, F.S., to toll the time period in which a licensure application must be granted or denied until 15 days after the receipt of the final results of an investigation or prosecution of the applicant in any jurisdiction. Further, this section allows the board, or department when there is no board, to require applicants with criminal histories to prove that the applicant's civil rights have been restored prior to

granting a license. Lastly, this section tolls for 30 days or for the next two regularly scheduled board meetings the time period in which a licensure application must be granted or denied to allow an applicant to personally appear before the board to explain why the license should be granted.

Section 2. Amends s. 455.565, F.S., to eliminate duplicate fingerprinting submissions by a health care practitioner to other state agencies for employment or licensure if the applicant has undergone a criminal history check as a condition of initial licensure or licensure renewal as a health care practitioner. Requires the Agency for Health Care Administration, the Department of Juvenile Justice, and the Department of Children and Family Services to obtain criminal history information for employment or licensure purposes from the Department of Health's health care practitioner credentialing system.

Section 3. Creates s. 455.56505, F.S., to require health care practitioners to submit, over a 5-year period, information electronically for profiling and to submit a set of fingerprints and information required for conducting a criminal history check if the licensee has not already done so for purposes of licensure.

Section 4. Amends s. 455.5651, F.S., to permit the Department of Health to profile the remaining health care practitioners, conforms cross-references and profession-specific terminology, and clarifies that sealed, expunged, or pardoned convictions cannot be published on the practitioner profile.

Section 5. Amends s. 455.5653, F.S., to delete obsolete provision requiring the department to provide a schedule for profiling the remaining professions and conforms cross-references and profession-specific terminology.

Section 6. Amends s. 455.5654, F.S., to add a cross-reference to newly-created s. 455.56505, F.S., and to allow the Department of Health to promulgate rules for profiling the remaining professions.

Section 7. Amends s. 455.567(1), F.S., to add patient guardians and patient representatives to the sexual misconduct prohibition law.

Section 8. Amends s. 455.574, F.S., to require the Department of Health or the appropriate regulatory board to set by rule examination fees not to exceed the actual per-applicant cost to purchase an examination plus the examination fee set forth in the applicable practice act as of October 1, 1999.

Section 9. Amends s. 455.624(1)(f), F.S., to clarify that discipline against any professional license may be considered at the time of application or may be grounds for discipline. Amends s. 455.624(1)(u), F.S., to delete unnecessary language and conform to s. 455.567(1), F.S.

Adds s. 455.624(1)(y), F.S., to provide grounds for discipline or denial of licensure for being unable to practice with reasonable skill and safety to patients by reason of impairment, and provides method to compel licensees to submit to a mental or physical examination when probable cause exists that the licensee is unable to practice with reasonable skill and safety to patients by reason of impairment. Provides for summary proceedings in circuit court to enforce order compelling mental or physical examination.

Adds s. 455.624(1)(z), F.S., to provide grounds for discipline or denial of licensure for testing positive for any drug, as defined in s. 112.0455, F.S., on any confirmed

preemployment or employer-ordered drug screening when the practitioner does not have a lawful prescription and legitimate medical reason for using such drug. This section provides that the board, or the department when there is no board, may restrict a license when the licensee is found guilty of violating any of the grounds for discipline found in s. 455.624(1), F.S. Lastly, this section requires the board, or department when there is no board, to issue citations for first-time violations of unprofessional conduct as set forth as grounds for discipline in ss. 464.018(1)(h), 467.203(1)(f), 468.365(1)(f), and 478.52(1)(f), F.S.

Section 10. Reenacts ss. 455.577, 455.631, 455.651, 455.712, 458.347, 459.022, 468.1755, 468.719, 468.811, and 484.056, F.S., with cross-references to s. 455.624, F.S.

Section 11. Repeals s. 455.704, F.S., to eliminate the obsolete Impaired Practitioners Committee.

Section 12. Amends s. 455.707, F.S., to correct terminology and delete references to the Impaired Practitioners Committee. Clarifies when impairment becomes a ground for discipline.

Section 13. Amends s. 310.102, F.S., to delete reference to the Impaired Practitioners Committee.

Section 14. Amends s. 455.711, F.S., to correct terminology relating to licensure status and to provide licensees with the ability to change licensure status at any time, notwithstanding any other provision. Clarifies which fees are supposed to be paid at the time of change of status and at the time of renewal. Provides specific rulemaking authority to the boards, or the department when there is no board, to adopt rules necessary to implement this section.

Section 15. Amends s. 455.587(3), F.S., to correct and conform terminology relating to licensure status.

Section 16. Amends s. 455.714, F.S., to correct and conform terminology relating to licensure status.

Section 17. Creates s. 455.719, F.S., to provide that only the appropriate regulatory board, or the Department of Health when there is no board, may grant an exemption from disqualification from employment or contracting as provided in s. 435.07, F.S., when the person applying for employment or contracting is a person under the licensing jurisdiction of the board or department, as applicable.

Section 18. Amends s. 943.0585, F.S., to allow the Department of Health to obtain expunged criminal history records for licensure and employment purposes in order to serve as a repository for other state agencies who presently receive expunged records directly from the Florida Department of Law Enforcement.

Section 19. Appropriates \$230,000 from the Agency for Health Care Administration Tobacco Settlement Trust Fund to fund a contract with the University of South Florida to conduct a review of quality and effectiveness of kidney dialysis treatment as well as the utilization and business arrangements related to kidney dialysis centers.

Section 20. Amends s. 455.637, F.S., to emphasize that vigorous enforcement of licensure regulation for all health care professions is a state priority in order to protect Florida

residents and visitors from the potentially serious and dangerous consequences of receiving medical and health care services from unlicensed persons whose professional education and training and other relevant qualifications have not been approved through the issuance of a license. Provides administrative, civil, and criminal penalties for practicing without a license. Establishes minimum and maximum penalties. Reenacts authority for the Department of Health to collect a special fee of \$5 per licensee to fund efforts to combat unlicensed activity.

Section 21. Clarifies that the amendments to s. 455.637, F.S., only apply to offenses committed on or after the effective date.

Section 22. Repeals s. 455.641, F.S., relating to unlicensed activities. The provisions of this section are relocated within s. 455.637, F.S., as set forth above.

Section 23. Reenacts ss. 455.574, 468.1295, 484.014, and 484.056, F.S., with cross-references to s. 455.637, F.S.

Section 24. Creates s. 455.665, F.S., which requires specific warning about the dangers of surgical procedures and advises potential patients to consult a licensed practitioner about risks prior to submitting to surgery in the text of any written advertisement for a surgical procedure.

Section 25. Amends s. 921.0022, F.S., to delete the crimes of unlicensed practice of medicine and unlicensed practice of dentistry or dental hygiene from level 1 and insert them in level 7 of the Offense Severity Ranking Chart along with the crimes created by this bill and other existing crimes of unlicensed practice of individual health care professions.

Sections 26-39 Republishes existing statutes.

Section 40. Amends s. 457.102, F.S., revising definition of “acupuncture.”

Section 41. Amends s. 457.105, F.S., revising licensure qualifications for acupuncturists.

Section 42. Amends s. 457.107, F.S., lowering fee cap for acupuncturist license renewal from \$700 to \$500.

Section 43. Provides an effective date of July 1, 2000.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Department of Health will be able to collect the full cost to purchase an examination. This will result in a \$26,000 positive fiscal impact on the department and the professions and will help offset current deficits and reduce future deficits for certain professions.

If 410,000 health care practitioners have to undergo background checks over the next 5 years, which require them to pay \$43 per licensee, the state will generate revenues of \$17.63 million over the next 5 years. This figure does not include certified nursing

assistants since they do not renew their certificates. The state will also collect the actual cost of profiling, which is estimated by the department to be less than \$50 per person, totaling approximately \$20.5 million

2. Expenditures:

By eliminating the Impaired Practitioners Committee, the department will not be required to expend funds to cover meeting costs and travel associated with holding such meetings.

Profiling of health care practitioners is estimated by the Department of Health to cost less than \$50 per practitioner profiled. The department has estimated that 410,000 licensees will renew their license during the next five years. This figure does not include certified nursing assistants because they do not currently renew their license. Therefore, the cost to profile all of the remaining practitioners at renewal would be less than \$20.5 million ($\$50 \times 410,000$).

In addition to the costs of profiling each practitioner, the cost of background screening will be incurred. The cost of conducting a criminal background check of each practitioner is \$39. Thus, for 410,000 licensees to undergo background checks, the cost would be \$15,990,000 ($\$39 \times 410,000$).

Therefore, the eventual fiscal impact of profiling and background screening all of the remaining health care practitioners, not including certified nursing assistants, at their next renewal would be a net gain of \$1,640,000 ($\$20,500,000 + \$17,630,000 - \$15,990,000 - \$20,500,000$).

In addition, this bill appropriates \$230,000 from the Agency for Health Care Administration Tobacco Settlement Trust Fund to study kidney dialysis center issues.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Health care practitioners will no longer have to pay duplicative fees to have multiple background screenings performed but they will have to pay to be fingerprinted and background screened for licensure purposes. Allopathic, osteopathic, podiatric, and chiropractic physicians were required to undergo background screening prior to renewal of their licenses recently and were required to pay the cost of the screening in an amount of \$43. Other health care practitioners will have to undergo background screening in the same manner and also pay \$43. However, once they pay this fee and are screened for licensure purposes, they will not have to be screened again and pay \$43 each time they apply for a position in a facility or program that requires background screening. Thus, while some practitioners will incur this cost for the first time, many practitioners will ultimately

benefit from not having to pay this \$43 multiple times for licensure or employment purposes. It is unknown how many of the approximately 55,000 physicians will save money by not having to pay duplicative criminal background screening fees.

Health care practitioners will also have to pay less than \$50 per person to cover the actual costs of profiling. The cost of profiling the four physician groups during 1999 was paid from the MQA Trust Fund. However, that fund cannot absorb the cost of profiling the remaining professions.

Health care practitioners can eliminate paying the costs to maintain medical malpractice insurance if they are not practicing and place their license on inactive status.

D. FISCAL COMMENTS:

See above. An unknown amount of savings may result to the Department of Health due to the number of licensure verification inquiries being conducted through the practitioner profile Internet web site. An average of 50,742 searches are now being conducted monthly over the Internet, some of which would have otherwise been conducted by telephone or written inquiry utilizing the resources of the Department of Health and Agency for Health Care Administration.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require counties or municipalities to expend funds or to take any action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of state tax shared with counties or municipalities.

IV. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

This bill provides specific rulemaking authority to the boards and department to promulgate rules necessary to implement the law.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

STORAGE NAME: h1659s1.grr

DATE: April 4, 2000

PAGE 15

On March 30, 2000, the Committee on Governmental Rules & Regulations adopted the following four amendments and reported the bill favorably as a committee substitute:

Amendment 1 - Replaces profiling language in the original bill with language worked out with the Department of Health.

Amendment 2 - Inserts language of HB 1625, the Patient Protection Act of 2000, relating to unlicensed practice of a health care profession. An addition was made to clarify which penalty is applicable for practicing with an inactive or delinquent license for less than 12 months.

Amendment 3 - Provides for cross-references to those practice acts which currently have an express ground for discipline for "unprofessional conduct.

Amendment 4 - Modified provisions relating to acupuncturists.

VII. SIGNATURES:

COMMITTEE ON HEALTH CARE LICENSING & REGULATION:

Prepared by:

Staff Director:

Wendy Smith Hansen

Lucretia Shaw Collins

AS REVISED BY THE COMMITTEE ON GOVERNMENTAL RULES & REGULATIONS:

Prepared by:

Staff Director:

Shari Z. Whittier

David M. Greenbaum