STORAGE NAME: h0553.hr.doc
DATE: March 14, 2001

HOUSE OF REPRESENTATIVES
COMMITTEE ON
HEALTH REGULATION COMMITTEE
ANALYSIS

BILL #: HB 553

RELATING TO: Medical Practice/Ocular Postoperative Care

SPONSOR(S): Representative Haridopolos and others

TIED BILL(S): None.

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

(1) HEALTH REGULATION COMMITTEE
(2) FISCAL POLICY & RESOURCES
(3) COUNCIL FOR HEALTHY COMMUNITIES
(4)
(5)

I. SUMMARY:

HB 553 prohibits the delegation of ocular postoperative care to anyone other than a licensed physician, licensed osteopathic physician, or licensed physician assistant. Violation of this prohibition constitutes grounds for disciplinary action of a licensee under Chapter 458 or Chapter 459, F.S., and the licensee would be subject to current statutory administrative penalties.

Ocular surgery is the practice of medicine, and as such may only be performed by licensed physicians. Although Florida's licensure laws do not license physicians by specialty training, the laws do hold physicians accountable for practicing beyond the scope permitted by law or which the licensee knows he or she is not competent to perform. Ophthalmologists are physicians trained in the specialty of ocular medicine.

There is no direct fiscal impact on the Department of Health. According to the department, complaints regarding violation of this prohibition can be expected. The volume of complaints is indeterminate. Complaint investigations and prosecutions are handled by the Agency for Health Care Administration, under contract with the Department of Health. Licensure fees support the costs of complaint investigations, and penalties for disciplinary cases including payment of costs of the investigation and prosecution, and may include an additional fine. The Medical Quality Assurance Trust Fund funds the agency's costs.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1.	Less Government	Yes []	No []	N/A [X]
2.	Lower Taxes	Yes []	No []	N/A [X]
3.	Individual Freedom	Yes []	No []	N/A [X]
4.	Personal Responsibility	Yes []	No []	N/A [X]
5.	Family Empowerment	Yes []	No []	N/A [X]

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

B. PRESENT SITUATION:

Chapter 458, F.S., the Medical Practice Act, governs the licensure of medical doctors and physician assistants. Chapter 459, F.S., the Osteopathic Practice Act governs the licensure of osteopathic physicians and physician assistants. Physician assistants may be delegated responsibility for medical acts under the supervision of the physician.

Chapter 458, F.S., and Chapter 459, F.S., do not speak directly to post-operative care. As grounds for disciplinary action, ss. 458.331(1)(w) and 459.015(1)(aa), F.S., do hold licensed physicians accountable for delegating professional responsibilities to a person when the licensee knows or has reason to know that such person is not qualified by training, experience, or licensure to perform the delegated tasks.

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Chapter 463, F.S., governs the licensure of optometrists. Optometrists are authorized under this law to diagnose conditions of the human eye and its appendages and to prescribe lenses, prisms, frames, mountings, contact lenses, orthoptic exercises, light frequencies, and any other means or methods, including topical ocular pharmaceutical agents, for the correction, remedy, or relief of any insufficiencies or abnormal conditions of the human eyes and their appendages. Section 463.014(4), F.S., identifies certain acts that are prohibited by an optometrist including performing surgery of any kind, including the use of lasers. However, this section of law does not prohibit an optometrist from performing postoperative care.

Under s. 463.016(1)(s), F.S., an optometrist can be penalized if found guilty of "practicing or offering to practice beyond the scope permitted by law or accepting and performing professional responsibilities which the licensed practitioner knows or has reason to know she or he is not competent to perform."

Pursuant to the Board of Medicine Rule 64B8-9.007, Florida Administrative Code, Standards of Practice, the ultimate responsibility for diagnosing medical and surgical problems is that of the

licensed doctor of medicine or osteopathy who is to perform the surgery. The rule provides that management of postsurgical care is the responsibility of the operating surgeon. Subsection (3) of the rule limits the ability of the surgeon to delegate that responsibility as follows:

> (3) The operating surgeon can delegate discretionary postoperative activities to equivalently trained licensed doctors of medicine or osteopathy or to physicians practicing within Board approved postgraduate training programs. Delegation to any health care practitioner is permitted only if the other practitioner is *supervised* by the operating surgeon or an equivalently trained licensed doctor of medicine or osteopathy or a physician practicing within a Board approved postgraduate training program.

The level of supervision is not defined by rule or statutes, thereby leaving this to the operating surgeon's judgment. An Administrative Law Judge's (ALJ) findings and decision in DOAH Case No. 91-0543RX which was upheld by the First District Court of Appeal in the case of *Florida Board of Optometry, et al v. Florida Board of Medicine, et al,* 616 So.2d 581 (Fla. 1st DCA 1993) found that "supervision" means to "critically watch or direct" as well as to "oversee, inspect, examine" the actions of another health care practitioner. The ALJ acknowledged the difficulties the parties had in attempting to define "supervision." The variations in attempts to define the term are indicative that there are various degrees of supervision which may be necessary for any given patient depending on a variety of factors which the operating surgeon and the health care practitioners who assist him or her must take into account.

The laws and rules noted above allow for the delegation by the operating surgeon of post-surgical ocular care to be performed by an optometrist, physician assistant, or nurse.

The Health Care Financing Administration (HCFA) [Federal Medicare] and state Medicaid reimbursement policies support "co-management" of ocular postoperative care between ophthalmologists and optometrists, by providing reimbursement of optometrists who provide post-surgical care.

Information provided by the Department of Health indicates that optometry training programs, such as Florida's Nova Southeastern University, include co-management of ocular post-surgical care between ophthalmologists and optometrists in the clinical training of optometrists.

The Department of Health has no data to reflect the prevalence of co-management of ocular post-surgical care in Florida. Nor does the department have data suggesting any patterns or trends in quality of care issues related to co-management of ocular postsurgical care.

The Agency for Health Care Administration indicated that they had received "few if any complaints concerning ocular post surgical care by optometrists or by ophthalmologists."

C. EFFECT OF PROPOSED CHANGES:

The bill provides that the operating physician is accountable for the surgical procedure and postoperative care, by prohibiting the physician from delegating this responsibility to a person not licensed under Chapter 458 or 459, F.S. Physicians would not be permitted to delegate ocular postoperative responsibilities to other health care practitioners, e.g., nurses, optometrists, and opticians or other unlicensed personnel. Physicians and physician assistants would be legally obligated to comply with the practice acts.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 458.331(1)(nn), F.S., to create a new disciplinary basis in the Medical Practice Act for delegating ocular postoperative responsibilities to a person not licensed under chapter 458 (medical physician) or 459 (osteopathic physician).

Section 2. Amends s. 459.015(1)(pp), F.S., to create a new disciplinary basis in the Osteopathic Medical Practice Act for delegating ocular postoperative responsibilities to a person not licensed under chapter 458 (medical physician) or 459 (osteopathic physician).

Section 3. Provides an effective date of upon becoming law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments section.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The Department of Health indicated that it does not have information or data to suggest what the fiscal impact on patient costs or insurance reimbursement policy might be.

D. FISCAL COMMENTS:

According to the Department of Health, complaints regarding violation of this prohibition can be expected. The volume of complaints is indeterminate. Complaint investigations and prosecutions are handled by the Agency for Health Care Administration, under contract with the Department of Health. Licensure fees support the costs of complaint investigations, and penalties for disciplinary cases including payment of costs of the investigation and prosecution, and may include an additional fine. The Medical Quality Assurance Trust Fund funds the agency's costs.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

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

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This 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 a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

The Board of Medicine and Board of Osteopathic Medicine have the authority under ss. 458.331(5) and 459.015((5), F.S., respectively, to adopt rules to establish comprehensive guidelines for the disposition of disciplinary cases involving different types of violations.

C. OTHER COMMENTS:

The Florida Medical Association along with he American Medical Association, American College of Surgeons, American Society of Cataract and Refractive Surgery, American Academy of Ophthalmology, Florida Society of Ophthalmology, and the Florida College of Emergency Physicians contend that ocular post-operative care is inappropriate by non-MDs. They state that "…optometrists have been allowed to perform post-operative care for economic considerations. The American Academy of Ophthalmology has stated that it is unethical and wrong for MDs to share post-operative care for economic reasons especially as an inducement for surgical referrals or the result of coercion by the referring practitioner…Optometrists are not MDs or DOs and do not have the education or training to identify possible complications after delicate surgeries."

The Florida Optometric Association states that, "Optometrists have been providing post-operative care for decades without harm to their patients. The bill permits MDs and DOs to provide ocular post-op care irrespective of their specialty or training. This means that MDs and DOs who have very little training and experience in eye health care could provide post-operative care while optometrists who have extensive and specialized education, training, and experience could not provide eye health care merely because they are ODs and not licensed under Chapters 458 or 459."

A representative of Aetna US Healthcare, CIGNA, and Humana, Inc., provided a statement indicating that, "Ophthalmologists frequently use physician assistants, nurses and optometrists under their supervision to assist with post ocular surgery care which is permitted by the Board of Medicine rules governing the practice of medicine. My health plans have no evidence or complaints

from their insureds that the utilization of these practitioners has resulted in quality of care problems. The utilization of only medical doctors for post ocular care will obviously substantially increase the cost of surgery without evidence that such will result in a corresponding improvement in the quality of care."

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON HEALTH REGULATION COMMITTEE:

Prepared by:	Staff Director:
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