

By Senator Posey

15-1595-02

1                                   A bill to be entitled  
2           An act relating to health care; stating  
3           legislative findings and intent; amending s.  
4           456.072, F.S.; providing that the failure to  
5           disclose a practitioner's training in health  
6           care advertisements constitutes grounds for  
7           discipline; providing penalties; creating s.  
8           458.328, F.S.; establishing criteria for the  
9           supervision of specialty medical care by  
10          allopathic physicians; creating s. 459.014,  
11          F.S.; establishing criteria for the supervision  
12          of specialty medical care by osteopathic  
13          physicians; providing an effective date.

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15 Be It Enacted by the Legislature of the State of Florida:

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17           Section 1. It is the finding and intent of the  
18 Legislature that there exists a compelling state interest that  
19 patients should be informed of the credentials of the health  
20 care providers that treat them and that the public should be  
21 protected from misleading health care advertising. The  
22 Legislature finds that the most direct and effective manner in  
23 which to protect patients from the identifiable harm is to  
24 ensure that each patient is accurately informed of the  
25 licensure and level of specialty training of his or her health  
26 care practitioner and that such practitioners provide services  
27 within the scope of their respective licensure.

28           Section 2. Section 456.072, Florida Statutes, is  
29 amended to read:

30           456.072 Grounds for discipline; penalties;  
31 enforcement.--

1           (1) The following acts shall constitute grounds for  
2 which the disciplinary actions specified in subsection (2) may  
3 be taken:

4           (a) Making misleading, deceptive, or fraudulent  
5 representations in or related to the practice of the  
6 licensee's profession.

7           (b) Intentionally violating any rule adopted by the  
8 board or the department, as appropriate.

9           (c) Being convicted or found guilty of, or entering a  
10 plea of guilty or nolo contendere to, regardless of  
11 adjudication, a crime in any jurisdiction which relates to the  
12 practice of, or the ability to practice, a licensee's  
13 profession.

14           (d) Using a Class III or a Class IV laser device or  
15 product, as defined by federal regulations, without having  
16 complied with the rules adopted pursuant to s. 501.122(2)  
17 governing the registration of such devices.

18           (e) Failing to comply with the educational course  
19 requirements for human immunodeficiency virus and acquired  
20 immune deficiency syndrome.

21           (f) Having a license or the authority to practice any  
22 regulated profession revoked, suspended, or otherwise acted  
23 against, including the denial of licensure, by the licensing  
24 authority of any jurisdiction, including its agencies or  
25 subdivisions, for a violation that would constitute a  
26 violation under Florida law. The licensing authority's  
27 acceptance of a relinquishment of licensure, stipulation,  
28 consent order, or other settlement, offered in response to or  
29 in anticipation of the filing of charges against the license,  
30 shall be construed as action against the license.

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1 (g) Having been found liable in a civil proceeding for  
2 knowingly filing a false report or complaint with the  
3 department against another licensee.

4 (h) Attempting to obtain, obtaining, or renewing a  
5 license to practice a profession by bribery, by fraudulent  
6 misrepresentation, or through an error of the department or  
7 the board.

8 (i) Except as provided in s. 465.016, failing to  
9 report to the department any person who the licensee knows is  
10 in violation of this chapter, the chapter regulating the  
11 alleged violator, or the rules of the department or the board.

12 (j) Aiding, assisting, procuring, employing, or  
13 advising any unlicensed person or entity to practice a  
14 profession contrary to this chapter, the chapter regulating  
15 the profession, or the rules of the department or the board.

16 (k) Failing to perform any statutory or legal  
17 obligation placed upon a licensee.

18 (l) Making or filing a report which the licensee knows  
19 to be false, intentionally or negligently failing to file a  
20 report or record required by state or federal law, or  
21 willfully impeding or obstructing another person to do so.  
22 Such reports or records shall include only those that are  
23 signed in the capacity of a licensee.

24 (m) Making deceptive, untrue, or fraudulent  
25 representations in or related to the practice of a profession  
26 or employing a trick or scheme in or related to the practice  
27 of a profession.

28 (n) Exercising influence on the patient or client for  
29 the purpose of financial gain of the licensee or a third  
30 party.

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1           (o) Practicing or offering to practice beyond the  
2 scope permitted by law or accepting and performing  
3 professional responsibilities the licensee knows, or has  
4 reason to know, the licensee is not competent to perform.

5           (p) Delegating or contracting for the performance of  
6 professional responsibilities by a person when the licensee  
7 delegating or contracting for performance of such  
8 responsibilities knows, or has reason to know, such person is  
9 not qualified by training, experience, and authorization when  
10 required to perform them.

11           (q) Violating a lawful order of the department or the  
12 board, or failing to comply with a lawfully issued subpoena of  
13 the department.

14           (r) Improperly interfering with an investigation or  
15 inspection authorized by statute, or with any disciplinary  
16 proceeding.

17           (s) Failing to comply with the educational course  
18 requirements for domestic violence.

19           (t) Failing to comply with the requirements of ss.  
20 381.026 and 381.0261 to provide patients with information  
21 about their patient rights and how to file a patient  
22 complaint.

23           (u) Engaging or attempting to engage in sexual  
24 misconduct as defined and prohibited in s. 456.063(1).

25           (v) Failing to comply with the requirements for  
26 profiling and credentialing, including, but not limited to,  
27 failing to provide initial information, failing to timely  
28 provide updated information, or making misleading, untrue,  
29 deceptive, or fraudulent representations on a profile,  
30 credentialing, or initial or renewal licensure application.

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1           (w) Failing to report to the board, or the department  
2 if there is no board, in writing within 30 days after the  
3 licensee has been convicted or found guilty of, or entered a  
4 plea of nolo contendere to, regardless of adjudication, a  
5 crime in any jurisdiction. Convictions, findings,  
6 adjudications, and pleas entered into prior to the enactment  
7 of this paragraph must be reported in writing to the board, or  
8 department if there is no board, on or before October 1, 1999.

9           (x) Using information about people involved in motor  
10 vehicle accidents which has been derived from accident reports  
11 made by law enforcement officers or persons involved in  
12 accidents pursuant to s. 316.066, or using information  
13 published in a newspaper or other news publication or through  
14 a radio or television broadcast that has used information  
15 gained from such reports, for the purposes of commercial or  
16 any other solicitation whatsoever of the people involved in  
17 such accidents.

18           (y) Being unable to practice with reasonable skill and  
19 safety to patients by reason of illness or use of alcohol,  
20 drugs, narcotics, chemicals, or any other type of material or  
21 as a result of any mental or physical condition. In enforcing  
22 this paragraph, the department shall have, upon a finding of  
23 the secretary or the secretary's designee that probable cause  
24 exists to believe that the licensee is unable to practice  
25 because of the reasons stated in this paragraph, the authority  
26 to issue an order to compel a licensee to submit to a mental  
27 or physical examination by physicians designated by the  
28 department. If the licensee refuses to comply with such order,  
29 the department's order directing such examination may be  
30 enforced by filing a petition for enforcement in the circuit  
31 court where the licensee resides or does business. The

1 department shall be entitled to the summary procedure provided  
2 in s. 51.011. A licensee or certificateholder affected under  
3 this paragraph shall at reasonable intervals be afforded an  
4 opportunity to demonstrate that he or she can resume the  
5 competent practice of his or her profession with reasonable  
6 skill and safety to patients.

7 (z) Testing positive for any drug, as defined in s.  
8 112.0455, on any confirmed preemployment or employer-ordered  
9 drug screening when the practitioner does not have a lawful  
10 prescription and legitimate medical reason for using such  
11 drug.

12 (aa) Performing or attempting to perform health care  
13 services on the wrong patient, a wrong-site procedure, a wrong  
14 procedure, or an unauthorized procedure or a procedure that is  
15 medically unnecessary or otherwise unrelated to the patient's  
16 diagnosis or medical condition. For the purposes of this  
17 paragraph, performing or attempting to perform health care  
18 services includes the preparation of the patient.

19 (bb) Leaving a foreign body in a patient, such as a  
20 sponge, clamp, forceps, surgical needle, or other  
21 paraphernalia commonly used in surgical, examination, or other  
22 diagnostic procedures. For the purposes of this paragraph, it  
23 shall be legally presumed that retention of a foreign body is  
24 not in the best interest of the patient and is not within the  
25 standard of care of the profession, regardless of the intent  
26 of the professional.

27 (cc) In any advertisement for health services, failing  
28 to provide, at a minimum, the type of license under which the  
29 practitioner is operating. Advertising of board certification  
30 must include the name of the certifying board. If the  
31 certifying board is not recognized by the American Board of

1 Medical Specialties, by the American Osteopathic Association,  
2 or by the appropriate licensing board, that fact must be  
3 disclosed in the same location and typeface as the  
4 advertisement's statement regarding board certification.

5 (dd)~~(cc)~~ Violating any provision of this chapter, the  
6 applicable practice act, or any rules adopted pursuant  
7 thereto.

8 (2) When the board, or the department when there is no  
9 board, finds any person guilty of the grounds set forth in  
10 subsection (1) or of any grounds set forth in the applicable  
11 practice act, including conduct constituting a substantial  
12 violation of subsection (1) or a violation of the applicable  
13 practice act which occurred prior to obtaining a license, it  
14 may enter an order imposing one or more of the following  
15 penalties:

16 (a) Refusal to certify, or to certify with  
17 restrictions, an application for a license.

18 (b) Suspension or permanent revocation of a license.

19 (c) Restriction of practice or license, including, but  
20 not limited to, restricting the licensee from practicing in  
21 certain settings, restricting the licensee to work only under  
22 designated conditions or in certain settings, restricting the  
23 licensee from performing or providing designated clinical and  
24 administrative services, restricting the licensee from  
25 practicing more than a designated number of hours, or any  
26 other restriction found to be necessary for the protection of  
27 the public health, safety, and welfare.

28 (d) Imposition of an administrative fine not to exceed  
29 \$10,000 for each count or separate offense. If the violation  
30 is for fraud or making a false or fraudulent representation,  
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1 the board, or the department if there is no board, must impose  
2 a fine of \$10,000 per count or offense.

3 (e) Issuance of a reprimand or letter of concern.

4 (f) Placement of the licensee on probation for a  
5 period of time and subject to such conditions as the board, or  
6 the department when there is no board, may specify. Those  
7 conditions may include, but are not limited to, requiring the  
8 licensee to undergo treatment, attend continuing education  
9 courses, submit to be reexamined, work under the supervision  
10 of another licensee, or satisfy any terms which are reasonably  
11 tailored to the violations found.

12 (g) Corrective action.

13 (h) Imposition of an administrative fine in accordance  
14 with s. 381.0261 for violations regarding patient rights.

15 (i) Refund of fees billed and collected from the  
16 patient or a third party on behalf of the patient.

17 (j) Requirement that the practitioner undergo remedial  
18 education.

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20 In determining what action is appropriate, the board, or  
21 department when there is no board, must first consider what  
22 sanctions are necessary to protect the public or to compensate  
23 the patient. Only after those sanctions have been imposed may  
24 the disciplining authority consider and include in the order  
25 requirements designed to rehabilitate the practitioner. All  
26 costs associated with compliance with orders issued under this  
27 subsection are the obligation of the practitioner.

28 (3)(a) Notwithstanding subsection (2), if the ground  
29 for disciplinary action is the first-time failure of the  
30 licensee to satisfy continuing education requirements  
31 established by the board, or by the department if there is no



1 board, the board or department, as applicable, shall issue a  
2 citation in accordance with s. 456.077 and assess a fine, as  
3 determined by the board or department by rule. In addition,  
4 for each hour of continuing education not completed or  
5 completed late, the board or department, as applicable, may  
6 require the licensee to take 1 additional hour of continuing  
7 education for each hour not completed or completed late.

8 (b) Notwithstanding subsection (2), if the ground for  
9 disciplinary action is the first-time violation of a practice  
10 act for unprofessional conduct, as used in ss. 464.018(1)(h),  
11 467.203(1)(f), 468.365(1)(f), and 478.52(1)(f), and no actual  
12 harm to the patient occurred, the board or department, as  
13 applicable, shall issue a citation in accordance with s.  
14 456.077 and assess a penalty as determined by rule of the  
15 board or department.

16 (4) In addition to any other discipline imposed  
17 through final order, or citation, entered on or after July 1,  
18 2001, pursuant to this section or discipline imposed through  
19 final order, or citation, entered on or after July 1, 2001,  
20 for a violation of any practice act, the board, or the  
21 department when there is no board, shall assess costs related  
22 to the investigation and prosecution of the case. In any case  
23 where the board or the department imposes a fine or assessment  
24 and the fine or assessment is not paid within a reasonable  
25 time, such reasonable time to be prescribed in the rules of  
26 the board, or the department when there is no board, or in the  
27 order assessing such fines or costs, the department or the  
28 Department of Legal Affairs may contract for the collection  
29 of, or bring a civil action to recover, the fine or  
30 assessment.

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1           (5) In addition to, or in lieu of, any other remedy or  
2 criminal prosecution, the department may file a proceeding in  
3 the name of the state seeking issuance of an injunction or a  
4 writ of mandamus against any person who violates any of the  
5 provisions of this chapter, or any provision of law with  
6 respect to professions regulated by the department, or any  
7 board therein, or the rules adopted pursuant thereto.

8           (6) In the event the board, or the department when  
9 there is no board, determines that revocation of a license is  
10 the appropriate penalty, the revocation shall be permanent.  
11 However, the board may establish by rule requirements for  
12 reapplication by applicants whose licenses have been  
13 permanently revoked. Such requirements may include, but shall  
14 not be limited to, satisfying current requirements for an  
15 initial license.

16           Section 3. Section 458.328, Florida Statutes, is  
17 created to read:

18           458.328 Duties of supervising physician.--Any  
19 physician delegating statutorily authorized medical care or  
20 services that are advertised or promoted as specialty services  
21 to a non-physician must directly supervise the initial  
22 non-emergency patient contact, any new non-emergency medical  
23 condition, and all surgical procedures other than minor  
24 surgical procedures for previously diagnosed conditions. This  
25 section does not apply to practitioners while they are  
26 providing services in facilities licensed under chapter 395 or  
27 chapter 400.

28           Section 4. Section 459.014, Florida Statutes, is  
29 created to read:

30           459.014 Duties of supervising physician.--Any  
31 physician delegating statutorily authorized medical care or

