

Bill No. CS for CS for SB 370

Amendment No. Barcode 444498

	CHAMBER ACTION	
<u>Senate</u>		<u>House</u>

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Senator Wise moved the following amendment:

Senate Amendment (with title amendment)

On page 12, lines 17-31, delete those lines

and insert:

Section 13. Section 456.026, Florida Statutes, is amended to read:

456.026 Annual report concerning finances, administrative complaints, disciplinary actions, and recommendations.--The department is directed to prepare and submit a report to the President of the Senate and the Speaker of the House of Representatives by November 1 of each year. In addition to finances and any other information the Legislature may require, the report shall include statistics and relevant information, profession by profession, detailing:

- (1) The revenues, expenditures, and cash balances for the prior year, and a review of the adequacy of existing fees.
- (2) The number of complaints received and investigated.
- (3) The number of findings of probable cause made.

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1 (4) The number of findings of no probable cause made.

2 (5) The number of administrative complaints filed.

3 (6) The disposition of all administrative complaints.

4 (7) A description of disciplinary actions taken.

5 (8) A description of any effort by the department to
6 reduce or otherwise close any investigation or disciplinary
7 proceeding not before the Division of Administrative Hearings
8 under chapter 120 or otherwise not completed within 1 year
9 after the initial filing of a complaint under this chapter.

10 (9) The status of the development and implementation
11 of rules providing for disciplinary guidelines pursuant to s.
12 456.079.

13 (10) Such recommendations for administrative and
14 statutory changes necessary to facilitate efficient and
15 cost-effective operation of the department and the various
16 boards.

17 (11) The performance measures for all bureaus, units,
18 boards, and contracted entities required by the department to
19 reflect the expected quality and quantity of services, and a
20 description of any effort to improve the performance of such
21 services.

22 Section 14. Subsection (4) is added to section
23 456.074, Florida Statutes, to read:

24 456.074 Certain health care practitioners; immediate
25 suspension of license.--

26 (4) Upon receipt of information that a
27 Florida-licensed health care practitioner has defaulted on a
28 student loan issued or guaranteed by the state or the Federal
29 Government, the department shall notify the licensee by
30 certified mail that he or she shall be subject to immediate
31 suspension of license unless, within 45 days after the date of

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1 mailing, the licensee provides proof that new payment terms
2 have been agreed upon by all parties to the loan. The
3 department shall issue an emergency order suspending the
4 license of any licensee who, after 45 days following the date
5 of mailing from the department, has failed to provide such
6 proof. Production of such proof shall not prohibit the
7 department from proceeding with disciplinary action against
8 the licensee pursuant to s. 456.073.

9 Section 15. Paragraph (k) of subsection (1) of section
10 456.072, Florida Statutes, is amended, and subsection (2) of
11 that section is reenacted, to read:

12 456.072 Grounds for discipline; penalties;
13 enforcement.--

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

17 (k) Failing to perform any statutory or legal
18 obligation placed upon a licensee. For purposes of this
19 section, failing to repay a student loan issued or guaranteed
20 by the state or the Federal Government in accordance with the
21 terms of the loan or failing to comply with service
22 scholarship obligations shall be considered a failure to
23 perform a statutory or legal obligation, and the minimum
24 disciplinary action imposed shall be a suspension of the
25 license until new payment terms are agreed upon or the
26 scholarship obligation is resumed, followed by probation for
27 the duration of the student loan or remaining scholarship
28 obligation period, and a fine equal to 10 percent of the
29 defaulted loan amount. Fines collected shall be deposited
30 into the Medical Quality Assurance Trust Fund.

31 (2) When the board, or the department when there is no

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1 board, finds any person guilty of the grounds set forth in
2 subsection (1) or of any grounds set forth in the applicable
3 practice act, including conduct constituting a substantial
4 violation of subsection (1) or a violation of the applicable
5 practice act which occurred prior to obtaining a license, it
6 may enter an order imposing one or more of the following
7 penalties:

8 (a) Refusal to certify, or to certify with
9 restrictions, an application for a license.

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

11 (c) Restriction of practice or license, including, but
12 not limited to, restricting the licensee from practicing in
13 certain settings, restricting the licensee to work only under
14 designated conditions or in certain settings, restricting the
15 licensee from performing or providing designated clinical and
16 administrative services, restricting the licensee from
17 practicing more than a designated number of hours, or any
18 other restriction found to be necessary for the protection of
19 the public health, safety, and welfare.

20 (d) Imposition of an administrative fine not to exceed
21 \$10,000 for each count or separate offense. If the violation
22 is for fraud or making a false or fraudulent representation,
23 the board, or the department if there is no board, must impose
24 a fine of \$10,000 per count or offense.

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

26 (f) Placement of the licensee on probation for a
27 period of time and subject to such conditions as the board, or
28 the department when there is no board, may specify. Those
29 conditions may include, but are not limited to, requiring the
30 licensee to undergo treatment, attend continuing education
31 courses, submit to be reexamined, work under the supervision

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1 of another licensee, or satisfy any terms which are reasonably
2 tailored to the violations found.

3 (g) Corrective action.

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

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

8 (j) Requirement that the practitioner undergo remedial
9 education.

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11 In determining what action is appropriate, the board, or
12 department when there is no board, must first consider what
13 sanctions are necessary to protect the public or to compensate
14 the patient. Only after those sanctions have been imposed may
15 the disciplining authority consider and include in the order
16 requirements designed to rehabilitate the practitioner. All
17 costs associated with compliance with orders issued under this
18 subsection are the obligation of the practitioner.

19 Section 16. The Department of Health shall obtain from
20 the United States Department of Health and Human Services
21 information necessary to investigate and prosecute health care
22 practitioners for failing to repay a student loan or comply
23 with scholarship service obligations pursuant to s.
24 456.072(1)(k), Florida Statutes. The department shall obtain
25 from the United States Department of Health and Human Services
26 a list of default health care practitioners each month, along
27 with the information necessary to investigate a complaint in
28 accordance with s. 456.073, Florida Statutes. The department
29 may obtain evidence to support the investigation and
30 prosecution from any financial institution or educational
31 institution involved in providing the loan or education to the

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1 practitioner. The department shall report to the Legislature
2 as part of the annual report required by s. 456.026, Florida
3 Statutes, the number of practitioners in default, along with
4 the results of the department's investigations and
5 prosecutions, and the amount of fines collected from
6 practitioners prosecuted for violating s. 456.072(1)(k),
7 Florida Statutes.

8 Section 17. Section 456.073, Florida Statutes, is
9 amended to read:

10 456.073 Disciplinary proceedings.--Disciplinary
11 proceedings for each board shall be within the jurisdiction of
12 the department.

13 (1) The department, for the boards under its
14 jurisdiction, shall cause to be investigated any complaint
15 that is filed before it if the complaint is in writing, signed
16 by the complainant, and legally sufficient. A complaint is
17 legally sufficient if it contains ultimate facts that show
18 that a violation of this chapter, of any of the practice acts
19 relating to the professions regulated by the department, or of
20 any rule adopted by the department or a regulatory board in
21 the department has occurred. In order to determine legal
22 sufficiency, the department may require supporting information
23 or documentation. The department may investigate, and the
24 department or the appropriate board may take appropriate final
25 action on, a complaint even though the original complainant
26 withdraws it or otherwise indicates a desire not to cause the
27 complaint to be investigated or prosecuted to completion. The
28 department may investigate an anonymous complaint if the
29 complaint is in writing and is legally sufficient, if the
30 alleged violation of law or rules is substantial, and if the
31 department has reason to believe, after preliminary inquiry,

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1 that the violations alleged in the complaint are true. The
2 department may investigate a complaint made by a confidential
3 informant if the complaint is legally sufficient, if the
4 alleged violation of law or rule is substantial, and if the
5 department has reason to believe, after preliminary inquiry,
6 that the allegations of the complainant are true. The
7 department may initiate an investigation if it has reasonable
8 cause to believe that a licensee or a group of licensees has
9 violated a Florida statute, a rule of the department, or a
10 rule of a board. Except as provided in ss. 458.331(9),
11 459.015(9), 460.413(5), and 461.013(6), when an investigation
12 of any subject is undertaken, the department shall promptly
13 furnish to the subject or the subject's attorney a copy of the
14 complaint or document that resulted in the initiation of the
15 investigation. The subject may submit a written response to
16 the information contained in such complaint or document within
17 20 days after service to the subject of the complaint or
18 document. The subject's written response shall be considered
19 by the probable cause panel. The right to respond does not
20 prohibit the issuance of a summary emergency order if
21 necessary to protect the public. However, if the secretary, or
22 the secretary's designee, and the chair of the respective
23 board or the chair of its probable cause panel agree in
24 writing that such notification would be detrimental to the
25 investigation, the department may withhold notification. The
26 department may conduct an investigation without notification
27 to any subject if the act under investigation is a criminal
28 offense.

29 (2) The department shall allocate sufficient and
30 adequately trained staff to expeditiously and thoroughly
31 determine legal sufficiency and investigate all legally

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1 sufficient complaints. For purposes of this section, it is the
2 intent of the Legislature that the term "expeditiously" means
3 that the department complete the report of its initial
4 investigative findings and recommendations concerning the
5 existence of probable cause within 6 months after its receipt
6 of the complaint. The failure of the department, for
7 disciplinary cases under its jurisdiction, to comply with the
8 time limits of this section while investigating a complaint
9 against a licensee constitutes harmless error in any
10 subsequent disciplinary action unless a court finds that
11 either the fairness of the proceeding or the correctness of
12 the action may have been impaired by a material error in
13 procedure or a failure to follow prescribed procedure. When
14 its investigation is complete and legally sufficient, the
15 department shall prepare and submit to the probable cause
16 panel of the appropriate regulatory board the investigative
17 report of the department. The report shall contain the
18 investigative findings and the recommendations of the
19 department concerning the existence of probable cause. The
20 department shall not recommend a letter of guidance in lieu of
21 finding probable cause if the subject has already been issued
22 a letter of guidance for a related offense. At any time after
23 legal sufficiency is found, the department may dismiss any
24 case, or any part thereof, if the department determines that
25 there is insufficient evidence to support the prosecution of
26 allegations contained therein. The department shall provide a
27 detailed report to the appropriate probable cause panel prior
28 to dismissal of any case or part thereof, and to the subject
29 of the complaint after dismissal of any case or part thereof,
30 under this section. For cases dismissed prior to a finding of
31 probable cause, such report is confidential and exempt from s.

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1 119.07(1). The probable cause panel shall have access, upon
2 request, to the investigative files pertaining to a case prior
3 to dismissal of such case. If the department dismisses a case,
4 the probable cause panel may retain independent legal counsel,
5 employ investigators, and continue the investigation and
6 prosecution of the case as it deems necessary.

7 (3) As an alternative to the provisions of subsections
8 (1) and (2), when a complaint is received, the department may
9 provide a licensee with a notice of noncompliance for an
10 initial offense of a minor violation. Each board, or the
11 department if there is no board, shall establish by rule those
12 minor violations under this provision which do not endanger
13 the public health, safety, and welfare and which do not
14 demonstrate a serious inability to practice the profession.
15 Failure of a licensee to take action in correcting the
16 violation within 15 days after notice may result in the
17 institution of regular disciplinary proceedings.

18 (4) The determination as to whether probable cause
19 exists shall be made by majority vote of a probable cause
20 panel of the board, or by the department, as appropriate. Each
21 regulatory board shall provide by rule that the determination
22 of probable cause shall be made by a panel of its members or
23 by the department. Each board may provide by rule for multiple
24 probable cause panels composed of at least two members. Each
25 board may provide by rule that one or more members of the
26 panel or panels may be a former board member. The length of
27 term or repetition of service of any such former board member
28 on a probable cause panel may vary according to the direction
29 of the board when authorized by board rule. Any probable cause
30 panel must include one of the board's former or present
31 consumer members, if one is available, is willing to serve,

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1 and is authorized to do so by the board chair. Any probable
2 cause panel must include a present board member. Any probable
3 cause panel must include a former or present professional
4 board member. However, any former professional board member
5 serving on the probable cause panel must hold an active valid
6 license for that profession. All proceedings of the panel are
7 exempt from s. 286.011 until 10 days after probable cause has
8 been found to exist by the panel or until the subject of the
9 investigation waives his or her privilege of confidentiality.
10 The probable cause panel may make a reasonable request, and
11 upon such request the department shall provide such additional
12 investigative information as is necessary to the determination
13 of probable cause. A request for additional investigative
14 information shall be made within 15 days from the date of
15 receipt by the probable cause panel of the investigative
16 report of the department or the agency. The probable cause
17 panel or the department, as may be appropriate, shall make its
18 determination of probable cause within 30 days after receipt
19 by it of the final investigative report of the department. The
20 secretary may grant extensions of the 15-day and the 30-day
21 time limits. In lieu of a finding of probable cause, the
22 probable cause panel, or the department if there is no board,
23 may issue a letter of guidance to the subject. If, within the
24 30-day time limit, as may be extended, the probable cause
25 panel does not make a determination regarding the existence of
26 probable cause or does not issue a letter of guidance in lieu
27 of a finding of probable cause, the department must make a
28 determination regarding the existence of probable cause within
29 10 days after the expiration of the time limit. If the
30 probable cause panel finds that probable cause exists, it
31 shall direct the department to file a formal complaint against

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1 the licensee. The department shall follow the directions of
2 the probable cause panel regarding the filing of a formal
3 complaint. If directed to do so, the department shall file a
4 formal complaint against the subject of the investigation and
5 prosecute that complaint pursuant to chapter 120. However, the
6 department may decide not to prosecute the complaint if it
7 finds that probable cause has been improvidently found by the
8 panel. In such cases, the department shall refer the matter to
9 the board. The board may then file a formal complaint and
10 prosecute the complaint pursuant to chapter 120. The
11 department shall also refer to the board any investigation or
12 disciplinary proceeding not before the Division of
13 Administrative Hearings pursuant to chapter 120 or otherwise
14 completed by the department within 1 year after the filing of
15 a complaint. The department, for disciplinary cases under its
16 jurisdiction, must establish a uniform reporting system to
17 quarterly refer to each board the status of any investigation
18 or disciplinary proceeding that is not before the Division of
19 Administrative Hearings or otherwise completed by the
20 department within 1 year after the filing of the complaint.
21 Annually, the department, in consultation with the applicable
22 probable cause panel, must establish a plan to expedite or
23 otherwise close any investigation or disciplinary proceeding
24 that is not before the Division of Administrative Hearings or
25 otherwise completed by the department within 1 year after the
26 filing of the complaint. A probable cause panel or a board
27 may retain independent legal counsel, employ investigators,
28 and continue the investigation as it deems necessary; all
29 costs thereof shall be paid from a trust fund used by the
30 department to implement this chapter. All proceedings of the
31 probable cause panel are exempt from s. 120.525.

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1 (5) A formal hearing before an administrative law
2 judge from the Division of Administrative Hearings shall be
3 held pursuant to chapter 120 if there are any disputed issues
4 of material fact. The administrative law judge shall issue a
5 recommended order pursuant to chapter 120. If any party raises
6 an issue of disputed fact during an informal hearing, the
7 hearing shall be terminated and a formal hearing pursuant to
8 chapter 120 shall be held.

9 (6) The appropriate board, with those members of the
10 panel, if any, who reviewed the investigation pursuant to
11 subsection (4) being excused, or the department when there is
12 no board, shall determine and issue the final order in each
13 disciplinary case. Such order shall constitute final agency
14 action. Any consent order or agreed-upon settlement shall be
15 subject to the approval of the department.

16 (7) The department shall have standing to seek
17 judicial review of any final order of the board, pursuant to
18 s. 120.68.

19 (8) Any proceeding for the purpose of summary
20 suspension of a license, or for the restriction of the
21 license, of a licensee pursuant to s. 120.60(6) shall be
22 conducted by the secretary of the Department of Health or his
23 or her designee, as appropriate, who shall issue the final
24 summary order.

25 (9)(a) The department shall periodically notify the
26 person who filed the complaint, as well as the patient or the
27 patient's legal representative, of the status of the
28 investigation, indicating whether probable cause has been
29 found and the status of any civil action or administrative
30 proceeding or appeal.

31 (b) In any disciplinary case for which probable cause

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1 has been found, the department shall provide to the person who
2 filed the complaint a copy of the administrative complaint
3 and:

4 1. A written explanation of how an administrative
5 complaint is resolved by the disciplinary process.

6 2. A written explanation of how and when the person
7 may participate in the disciplinary process.

8 3. A written notice of any hearing before the Division
9 of Administrative Hearings or the regulatory board at which
10 final agency action may be taken.

11 (c) In any disciplinary case for which probable cause
12 is not found, the department shall so inform the person who
13 filed the complaint and notify that person that he or she may,
14 within 60 days, provide any additional information to the
15 department which may be relevant to the decision. To
16 facilitate the provision of additional information, the person
17 who filed the complaint may receive, upon request, a copy of
18 the department's expert report that supported the
19 recommendation for closure, if such a report was relied upon
20 by the department. In no way does this require the department
21 to procure an expert opinion or report if none was used.
22 Additionally, the identity of the expert shall remain
23 confidential. In any administrative proceeding under s.
24 120.57, the person who filed the disciplinary complaint shall
25 have the right to present oral or written communication
26 relating to the alleged disciplinary violations or to the
27 appropriate penalty.

28 (10) The complaint and all information obtained
29 pursuant to the investigation by the department are
30 confidential and exempt from s. 119.07(1) until 10 days after
31 probable cause has been found to exist by the probable cause

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1 panel or by the department, or until the regulated
2 professional or subject of the investigation waives his or her
3 privilege of confidentiality, whichever occurs first. Upon
4 completion of the investigation and a recommendation by the
5 department to find probable cause, and pursuant to a written
6 request by the subject or the subject's attorney, the
7 department shall provide the subject an opportunity to inspect
8 the investigative file or, at the subject's expense, forward
9 to the subject a copy of the investigative file.
10 Notwithstanding s. 456.057, the subject may inspect or receive
11 a copy of any expert witness report or patient record
12 connected with the investigation if the subject agrees in
13 writing to maintain the confidentiality of any information
14 received under this subsection until 10 days after probable
15 cause is found and to maintain the confidentiality of patient
16 records pursuant to s. 456.057. The subject may file a written
17 response to the information contained in the investigative
18 file. Such response must be filed within 20 days of mailing by
19 the department, unless an extension of time has been granted
20 by the department. This subsection does not prohibit the
21 department from providing such information to any law
22 enforcement agency or to any other regulatory agency.

23 (11) A privilege against civil liability is hereby
24 granted to any complainant or any witness with regard to
25 information furnished with respect to any investigation or
26 proceeding pursuant to this section, unless the complainant or
27 witness acted in bad faith or with malice in providing such
28 information.

29 (12)(a) No person who reports in any capacity, whether
30 or not required by law, information to the department with
31 regard to the incompetence, impairment, or unprofessional

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1 conduct of any health care provider licensed under chapter
2 458, chapter 459, chapter 460, chapter 461, chapter 462,
3 chapter 463, chapter 464, chapter 465, or chapter 466 shall be
4 held liable in any civil action for reporting against such
5 health care provider if such person acts without intentional
6 fraud or malice.

7 (b) No facility licensed under chapter 395, health
8 maintenance organization certificated under part I of chapter
9 641, physician licensed under chapter 458, or osteopathic
10 physician licensed under chapter 459 shall discharge, threaten
11 to discharge, intimidate, or coerce any employee or staff
12 member by reason of such employee's or staff member's report
13 to the department about a physician licensed under chapter
14 458, chapter 459, chapter 460, chapter 461, or chapter 466 who
15 may be guilty of incompetence, impairment, or unprofessional
16 conduct so long as such report is given without intentional
17 fraud or malice.

18 (c) In any civil suit brought outside the protections
19 of paragraphs (a) and (b) in which intentional fraud or malice
20 is alleged, the person alleging intentional fraud or malice
21 shall be liable for all court costs and for the other party's
22 reasonable attorney's fees if intentional fraud or malice is
23 not proved.

24 (13) Notwithstanding any provision of law to the
25 contrary, an administrative complaint against a licensee shall
26 be filed within 6 years after the time of the incident or
27 occurrence giving rise to the complaint against the licensee.
28 If such incident or occurrence involved criminal actions,
29 diversion of controlled substances, sexual misconduct, or
30 impairment by the licensee, this subsection does not apply to
31 bar initiation of an investigation or filing of an

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1 administrative complaint beyond the 6-year timeframe. In those
2 cases covered by this subsection in which it can be shown that
3 fraud, concealment, or intentional misrepresentation of fact
4 prevented the discovery of the violation of law, the period of
5 limitations is extended forward, but in no event to exceed 12
6 years after the time of the incident or occurrence.

7 Section 18. Sections 13-17 of this act shall apply to
8 any loan or scholarship that is in default on or after the
9 effective date of this act.

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11 (Redesignate subsequent sections.)

12

13

14 ===== T I T L E A M E N D M E N T =====

15 And the title is amended as follows:

16 On page 2, line 1, following the first semicolon

17

18 insert:

19 amending s. 456.074, F.S.; providing for an
20 emergency order suspending the license of any
21 health care practitioner who has defaulted on a
22 student loan issued or guaranteed by the state
23 or the Federal Government; amending s. 456.072,
24 F.S., and reenacting subsection (2), relating
25 to disciplinary actions; clarifying the ground
26 for disciplinary action for failing to perform
27 a statutory or legal obligation to include
28 failing to repay a student loan issued or
29 guaranteed by the state or the Federal
30 Government in accordance with the terms of the
31 loan and for failing to comply with service

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1 scholarship obligations; providing penalties;
2 directing the Department of Health to obtain
3 certain information from the United States
4 Department of Health and Human Services on a
5 monthly basis and to include certain
6 information in its annual report to the
7 Legislature; amending s. 456.073, F.S.,
8 relating to disciplinary proceedings, to
9 conform; providing applicability;

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