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1 A bill to be entitled

2 An act relating to health care; providing legislative  
3 findings and intent; amending s. 456.072, F.S., relating  
4 to grounds for discipline, penalties, and enforcement  
5 applicable to health care practitioners; providing that a  
6 practitioner's failure to disclose his or her training in  
7 health care advertisements and in professional  
8 relationships with patients constitutes grounds for  
9 disciplinary action; providing exceptions; providing  
10 penalties; specifying that a reference to the section  
11 constitutes a general reference under the doctrine of  
12 incorporation by reference; providing an effective date.

13  
14 Be It Enacted by the Legislature of the State of Florida:

15  
16 Section 1. The Legislature finds that there exists a  
17 compelling state interest in patients being informed of the  
18 credentials of the health care practitioners who treat them and  
19 in the public being protected from misleading health care  
20 advertising. The Legislature further finds that the areas of  
21 health care practice licensure can be extremely confusing for  
22 patients and that health care practitioners can easily mislead  
23 patients into believing that the practitioner is better  
24 qualified than other health care practitioners simply by  
25 creating a sham practice designation. Therefore, the Legislature  
26 has determined that the most direct and effective manner in  
27 which to protect patients from this identifiable harm is to  
28 ensure that patients and the public be informed of the training  
29 of health care practitioners and intends by this act to require  
30 the provision of such information.

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31 Section 2. Section 456.072, Florida Statutes, is amended  
 32 to read:

33 456.072 Grounds for discipline; penalties; enforcement.--

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

37 (a) Making misleading, deceptive, or fraudulent  
 38 representations in or related to the practice of the licensee's  
 39 profession.

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

42 (c) Being convicted or found guilty of, or entering a plea  
 43 of guilty or nolo contendere to, regardless of adjudication, a  
 44 crime in any jurisdiction which relates to the practice of, or  
 45 the ability to practice, a licensee's profession.

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

50 (e) Failing to comply with the educational course  
 51 requirements for human immunodeficiency virus and acquired  
 52 immune deficiency syndrome.

53 (f) Having a license or the authority to practice any  
 54 regulated profession revoked, suspended, or otherwise acted  
 55 against, including the denial of licensure, by the licensing  
 56 authority of any jurisdiction, including its agencies or  
 57 subdivisions, for a violation that would constitute a violation  
 58 under Florida law. The licensing authority's acceptance of a  
 59 relinquishment of licensure, stipulation, consent order, or  
 60 other settlement, offered in response to or in anticipation of

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61 the filing of charges against the license, shall be construed as  
 62 action against the license.

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

66 (h) Attempting to obtain, obtaining, or renewing a license  
 67 to practice a profession by bribery, by fraudulent  
 68 misrepresentation, or through an error of the department or the  
 69 board.

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

74 (j) Aiding, assisting, procuring, employing, or advising  
 75 any unlicensed person or entity to practice a profession  
 76 contrary to this chapter, the chapter regulating the profession,  
 77 or the rules of the department or the board.

78 (k) Failing to perform any statutory or legal obligation  
 79 placed upon a licensee. For purposes of this section, failing to  
 80 repay a student loan issued or guaranteed by the state or the  
 81 Federal Government in accordance with the terms of the loan or  
 82 failing to comply with service scholarship obligations shall be  
 83 considered a failure to perform a statutory or legal obligation,  
 84 and the minimum disciplinary action imposed shall be a  
 85 suspension of the license until new payment terms are agreed  
 86 upon or the scholarship obligation is resumed, followed by  
 87 probation for the duration of the student loan or remaining  
 88 scholarship obligation period, and a fine equal to 10 percent of  
 89 the defaulted loan amount. Fines collected shall be deposited  
 90 into the Medical Quality Assurance Trust Fund.

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91 (l) Making or filing a report which the licensee knows to  
 92 be false, intentionally or negligently failing to file a report  
 93 or record required by state or federal law, or willfully  
 94 impeding or obstructing another person to do so. Such reports or  
 95 records shall include only those that are signed in the capacity  
 96 of a licensee.

97 (m) Making deceptive, untrue, or fraudulent  
 98 representations in or related to the practice of a profession or  
 99 employing a trick or scheme in or related to the practice of a  
 100 profession.

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

103 (o) Practicing or offering to practice beyond the scope  
 104 permitted by law or accepting and performing professional  
 105 responsibilities the licensee knows, or has reason to know, the  
 106 licensee is not competent to perform.

107 (p) Delegating or contracting for the performance of  
 108 professional responsibilities by a person when the licensee  
 109 delegating or contracting for performance of such  
 110 responsibilities knows, or has reason to know, such person is  
 111 not qualified by training, experience, and authorization when  
 112 required to perform them.

113 (q) Violating a lawful order of the department or the  
 114 board, or failing to comply with a lawfully issued subpoena of  
 115 the department.

116 (r) Improperly interfering with an investigation or  
 117 inspection authorized by statute, or with any disciplinary  
 118 proceeding.

119 (s) Failing to comply with the educational course  
 120 requirements for domestic violence.

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121 (t) In any advertisement for health care services, and no  
 122 later than at the time of the initiation of the professional  
 123 relationship with a patient, failing to provide the type of  
 124 license under which the practitioner is operating. This  
 125 paragraph does not apply to a practitioner while the  
 126 practitioner is providing services in a facility licensed under  
 127 chapter 395 or chapter 400.

128 (u)(t) Failing to comply with the requirements of ss.  
 129 381.026 and 381.0261 to provide patients with information about  
 130 their patient rights and how to file a patient complaint.

131 (v)(u) Engaging or attempting to engage in sexual  
 132 misconduct as defined and prohibited in s. 456.063(1).

133 (w)(v) Failing to comply with the requirements for  
 134 profiling and credentialing, including, but not limited to,  
 135 failing to provide initial information, failing to timely  
 136 provide updated information, or making misleading, untrue,  
 137 deceptive, or fraudulent representations on a profile,  
 138 credentialing, or initial or renewal licensure application.

139 (x)(w) Failing to report to the board, or the department  
 140 if there is no board, in writing within 30 days after the  
 141 licensee has been convicted or found guilty of, or entered a  
 142 plea of nolo contendere to, regardless of adjudication, a crime  
 143 in any jurisdiction. Convictions, findings, adjudications, and  
 144 pleas entered into prior to the enactment of this paragraph must  
 145 be reported in writing to the board, or department if there is  
 146 no board, on or before October 1, 1999.

147 (y)(\*) Using information about people involved in motor  
 148 vehicle accidents which has been derived from accident reports  
 149 made by law enforcement officers or persons involved in  
 150 accidents pursuant to s. 316.066, or using information published

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151 in a newspaper or other news publication or through a radio or  
 152 television broadcast that has used information gained from such  
 153 reports, for the purposes of commercial or any other  
 154 solicitation whatsoever of the people involved in such  
 155 accidents.

156 (z)~~(y)~~ Being unable to practice with reasonable skill and  
 157 safety to patients by reason of illness or use of alcohol,  
 158 drugs, narcotics, chemicals, or any other type of material or as  
 159 a result of any mental or physical condition. In enforcing this  
 160 paragraph, the department shall have, upon a finding of the  
 161 secretary or the secretary's designee that probable cause exists  
 162 to believe that the licensee is unable to practice because of  
 163 the reasons stated in this paragraph, the authority to issue an  
 164 order to compel a licensee to submit to a mental or physical  
 165 examination by physicians designated by the department. If the  
 166 licensee refuses to comply with such order, the department's  
 167 order directing such examination may be enforced by filing a  
 168 petition for enforcement in the circuit court where the licensee  
 169 resides or does business. The department shall be entitled to  
 170 the summary procedure provided in s. 51.011. A licensee or  
 171 certificateholder affected under this paragraph shall at  
 172 reasonable intervals be afforded an opportunity to demonstrate  
 173 that he or she can resume the competent practice of his or her  
 174 profession with reasonable skill and safety to patients.

175 (aa)~~(z)~~ Testing positive for any drug, as defined in s.  
 176 112.0455, on any confirmed preemployment or employer-ordered  
 177 drug screening when the practitioner does not have a lawful  
 178 prescription and legitimate medical reason for using such drug.

179 (bb)~~(aa)~~ Performing or attempting to perform health care  
 180 services on the wrong patient, a wrong-site procedure, a wrong

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181 procedure, or an unauthorized procedure or a procedure that is  
 182 medically unnecessary or otherwise unrelated to the patient's  
 183 diagnosis or medical condition. For the purposes of this  
 184 paragraph, performing or attempting to perform health care  
 185 services includes the preparation of the patient.

186 (cc)~~(bb)~~ Leaving a foreign body in a patient, such as a  
 187 sponge, clamp, forceps, surgical needle, or other paraphernalia  
 188 commonly used in surgical, examination, or other diagnostic  
 189 procedures. For the purposes of this paragraph, it shall be  
 190 legally presumed that retention of a foreign body is not in the  
 191 best interest of the patient and is not within the standard of  
 192 care of the profession, regardless of the intent of the  
 193 professional.

194 (dd)~~(ee)~~ Violating any provision of this chapter, the  
 195 applicable practice act, or any rules adopted pursuant thereto.

196 (ee)~~(dd)~~ With respect to making a personal injury  
 197 protection claim as required by s. 627.736, intentionally  
 198 submitting a claim, statement, or bill that has been "upcoded"  
 199 as defined in s. 627.732.

200 (ff)~~(ee)~~ With respect to making a personal injury  
 201 protection claim as required by s. 627.736, intentionally  
 202 submitting a claim, statement, or bill for payment of services  
 203 that were not rendered.

204 (2) When the board, or the department when there is no  
 205 board, finds any person guilty of the grounds set forth in  
 206 subsection (1) or of any grounds set forth in the applicable  
 207 practice act, including conduct constituting a substantial  
 208 violation of subsection (1) or a violation of the applicable  
 209 practice act which occurred prior to obtaining a license, it may  
 210 enter an order imposing one or more of the following penalties:

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211 (a) Refusal to certify, or to certify with restrictions,  
 212 an application for a license.

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

214 (c) Restriction of practice or license, including, but not  
 215 limited to, restricting the licensee from practicing in certain  
 216 settings, restricting the licensee to work only under designated  
 217 conditions or in certain settings, restricting the licensee from  
 218 performing or providing designated clinical and administrative  
 219 services, restricting the licensee from practicing more than a  
 220 designated number of hours, or any other restriction found to be  
 221 necessary for the protection of the public health, safety, and  
 222 welfare.

223 (d) Imposition of an administrative fine not to exceed  
 224 \$10,000 for each count or separate offense. If the violation is  
 225 for fraud or making a false or fraudulent representation, the  
 226 board, or the department if there is no board, must impose a  
 227 fine of \$10,000 per count or offense.

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

229 (f) Placement of the licensee on probation for a period of  
 230 time and subject to such conditions as the board, or the  
 231 department when there is no board, may specify. Those conditions  
 232 may include, but are not limited to, requiring the licensee to  
 233 undergo treatment, attend continuing education courses, submit  
 234 to be reexamined, work under the supervision of another  
 235 licensee, or satisfy any terms which are reasonably tailored to  
 236 the violations found.

237 (g) Corrective action.

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

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

242 (j) Requirement that the practitioner undergo remedial  
 243 education.

244

245 In determining what action is appropriate, the board, or  
 246 department when there is no board, must first consider what  
 247 sanctions are necessary to protect the public or to compensate  
 248 the patient. Only after those sanctions have been imposed may  
 249 the disciplining authority consider and include in the order  
 250 requirements designed to rehabilitate the practitioner. All  
 251 costs associated with compliance with orders issued under this  
 252 subsection are the obligation of the practitioner.

253 (3)(a) Notwithstanding subsection (2), if the ground for  
 254 disciplinary action is the first-time failure of the licensee to  
 255 satisfy continuing education requirements established by the  
 256 board, or by the department if there is no board, the board or  
 257 department, as applicable, shall issue a citation in accordance  
 258 with s. 456.077 and assess a fine, as determined by the board or  
 259 department by rule. In addition, for each hour of continuing  
 260 education not completed or completed late, the board or  
 261 department, as applicable, may require the licensee to take 1  
 262 additional hour of continuing education for each hour not  
 263 completed or completed late.

264 (b) Notwithstanding subsection (2), if the ground for  
 265 disciplinary action is the first-time violation of a practice  
 266 act for unprofessional conduct, as used in ss. 464.018(1)(h),  
 267 467.203(1)(f), 468.365(1)(f), and 478.52(1)(f), and no actual  
 268 harm to the patient occurred, the board or department, as  
 269 applicable, shall issue a citation in accordance with s. 456.077

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270 and assess a penalty as determined by rule of the board or  
 271 department.

272 (4) In addition to any other discipline imposed through  
 273 final order, or citation, entered on or after July 1, 2001,  
 274 pursuant to this section or discipline imposed through final  
 275 order, or citation, entered on or after July 1, 2001, for a  
 276 violation of any practice act, the board, or the department when  
 277 there is no board, shall assess costs related to the  
 278 investigation and prosecution of the case. Such costs related to  
 279 the investigation and prosecution include, but are not limited  
 280 to, salaries and benefits of personnel, costs related to the  
 281 time spent by the attorney and other personnel working on the  
 282 case, and any other expenses incurred by the department for the  
 283 case. The board, or the department when there in no board, shall  
 284 determine the amount of costs to be assessed after its  
 285 consideration of an affidavit of itemized costs and any written  
 286 objections thereto. In any case where the board or the  
 287 department imposes a fine or assessment and the fine or  
 288 assessment is not paid within a reasonable time, such reasonable  
 289 time to be prescribed in the rules of the board, or the  
 290 department when there is no board, or in the order assessing  
 291 such fines or costs, the department or the Department of Legal  
 292 Affairs may contract for the collection of, or bring a civil  
 293 action to recover, the fine or assessment.

294 (5) In addition to, or in lieu of, any other remedy or  
 295 criminal prosecution, the department may file a proceeding in  
 296 the name of the state seeking issuance of an injunction or a  
 297 writ of mandamus against any person who violates any of the  
 298 provisions of this chapter, or any provision of law with respect

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299 to professions regulated by the department, or any board  
300 therein, or the rules adopted pursuant thereto.

301 (6) In the event the board, or the department when there  
302 is no board, determines that revocation of a license is the  
303 appropriate penalty, the revocation shall be permanent. However,  
304 the board may establish by rule requirements for reapplication  
305 by applicants whose licenses have been permanently revoked. Such  
306 requirements may include, but shall not be limited to,  
307 satisfying current requirements for an initial license.

308 (7) The purpose of this section is to facilitate uniform  
309 discipline for those actions made punishable under this section  
310 and, to this end, a reference to this section constitutes a  
311 general reference under the doctrine of incorporation by  
312 reference.

313 Section 3. This act shall take effect July 1, 2004.

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