

CHAMBER ACTION

1 The Committee on Health Care recommends the following:

2
3 **Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

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

17
18 Be It Enacted by the Legislature of the State of Florida:

19
20 Section 1. The Legislature finds that there exists a
21 compelling state interest in patients being informed of the
22 credentials of the health care practitioners who treat them and
23 in the public being protected from misleading health care

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24 | advertising. The Legislature further finds that the areas of
25 | health care practice licensure can be extremely confusing for
26 | patients and that health care practitioners can easily mislead
27 | patients into believing that the practitioner is better
28 | qualified than other health care practitioners simply by
29 | creating a sham practice designation. Therefore, the Legislature
30 | has determined that the most direct and effective manner in
31 | which to protect patients from this identifiable harm is to
32 | ensure that patients and the public be informed of the training
33 | of health care practitioners and intends by this act to require
34 | the provision of such information.

35 | Section 2. Section 456.072, Florida Statutes, is amended
36 | to read:

37 | 456.072 Grounds for discipline; penalties; enforcement.--

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

41 | (a) Making misleading, deceptive, or fraudulent
42 | representations in or related to the practice of the licensee's
43 | profession.

44 | (b) Intentionally violating any rule adopted by the board
45 | or the department, as appropriate.

46 | (c) Being convicted or found guilty of, or entering a plea
47 | of guilty or nolo contendere to, regardless of adjudication, a
48 | crime in any jurisdiction which relates to the practice of, or
49 | the ability to practice, a licensee's profession.

50 | (d) Using a Class III or a Class IV laser device or
51 | product, as defined by federal regulations, without having

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52 | complied with the rules adopted pursuant to s. 501.122(2)
53 | governing the registration of such devices.

54 | (e) Failing to comply with the educational course
55 | requirements for human immunodeficiency virus and acquired
56 | immune deficiency syndrome.

57 | (f) Having a license or the authority to practice any
58 | regulated profession revoked, suspended, or otherwise acted
59 | against, including the denial of licensure, by the licensing
60 | authority of any jurisdiction, including its agencies or
61 | subdivisions, for a violation that would constitute a violation
62 | under Florida law. The licensing authority's acceptance of a
63 | relinquishment of licensure, stipulation, consent order, or
64 | other settlement, offered in response to or in anticipation of
65 | the filing of charges against the license, shall be construed as
66 | action against the license.

67 | (g) Having been found liable in a civil proceeding for
68 | knowingly filing a false report or complaint with the department
69 | against another licensee.

70 | (h) Attempting to obtain, obtaining, or renewing a license
71 | to practice a profession by bribery, by fraudulent
72 | misrepresentation, or through an error of the department or the
73 | board.

74 | (i) Except as provided in s. 465.016, failing to report to
75 | the department any person who the licensee knows is in violation
76 | of this chapter, the chapter regulating the alleged violator, or
77 | the rules of the department or the board.

78 | (j) Aiding, assisting, procuring, employing, or advising
79 | any unlicensed person or entity to practice a profession

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80 | contrary to this chapter, the chapter regulating the profession,
81 | or the rules of the department or the board.

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

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

101 | (m) Making deceptive, untrue, or fraudulent
102 | representations in or related to the practice of a profession or
103 | employing a trick or scheme in or related to the practice of a
104 | profession.

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

107 (o) Practicing or offering to practice beyond the scope
 108 permitted by law or accepting and performing professional
 109 responsibilities the licensee knows, or has reason to know, the
 110 licensee is not competent to perform.

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

117 (q) Violating a lawful order of the department or the
 118 board, or failing to comply with a lawfully issued subpoena of
 119 the department.

120 (r) Improperly interfering with an investigation or
 121 inspection authorized by statute, or with any disciplinary
 122 proceeding.

123 (s) Failing to comply with the educational course
 124 requirements for domestic violence.

125 (t) In any advertisement for health care services, and
 126 also during the first in-person patient encounter, failing to
 127 disclose the type of license under which the practitioner is
 128 operating. This paragraph does not apply to a practitioner while
 129 the practitioner is providing services in a facility licensed
 130 under chapter 394, chapter 395, or chapter 400.

131 (u)~~(t)~~ Failing to comply with the requirements of ss.
 132 381.026 and 381.0261 to provide patients with information about
 133 their patient rights and how to file a patient complaint.

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

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

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

150 (y)~~(*)~~ Using information about people involved in motor
151 vehicle accidents which has been derived from accident reports
152 made by law enforcement officers or persons involved in
153 accidents pursuant to s. 316.066, or using information published
154 in a newspaper or other news publication or through a radio or
155 television broadcast that has used information gained from such
156 reports, for the purposes of commercial or any other
157 solicitation whatsoever of the people involved in such
158 accidents.

159 (z)~~(y)~~ Being unable to practice with reasonable skill and
160 safety to patients by reason of illness or use of alcohol,
161 drugs, narcotics, chemicals, or any other type of material or as

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

178 (aa)~~(z)~~ Testing positive for any drug, as defined in s.
 179 112.0455, on any confirmed preemployment or employer-ordered
 180 drug screening when the practitioner does not have a lawful
 181 prescription and legitimate medical reason for using such drug.

182 (bb)~~(aa)~~ Performing or attempting to perform health care
 183 services on the wrong patient, a wrong-site procedure, a wrong
 184 procedure, or an unauthorized procedure or a procedure that is
 185 medically unnecessary or otherwise unrelated to the patient's
 186 diagnosis or medical condition. For the purposes of this
 187 paragraph, performing or attempting to perform health care
 188 services includes the preparation of the patient.

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

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

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

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

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

214 (a) Refusal to certify, or to certify with restrictions,
 215 an application for a license.

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

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

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

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

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

240 (g) Corrective action.

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

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

245 (j) Requirement that the practitioner undergo remedial
246 education.

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

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

267 (b) Notwithstanding subsection (2), if the ground for
268 disciplinary action is the first-time violation of a practice
269 act for unprofessional conduct, as used in ss. 464.018(1)(h),
270 467.203(1)(f), 468.365(1)(f), and 478.52(1)(f), and no actual
271 harm to the patient occurred, the board or department, as
272 applicable, shall issue a citation in accordance with s. 456.077

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273 | and assess a penalty as determined by rule of the board or
274 | department.

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

297 | (5) In addition to, or in lieu of, any other remedy or
298 | criminal prosecution, the department may file a proceeding in
299 | the name of the state seeking issuance of an injunction or a
300 | writ of mandamus against any person who violates any of the

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301 provisions of this chapter, or any provision of law with respect
302 to professions regulated by the department, or any board
303 therein, or the rules adopted pursuant thereto.

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

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

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