

By Senator Bennett

21-605-04

See HB 121

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

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

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

1 the training of health care practitioners and intends by this  
2 act to require the provision of such information.

3 Section 2. Section 456.072, Florida Statutes, is  
4 amended to read:

5 456.072 Grounds for discipline; penalties;  
6 enforcement.--

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

10 (a) Making misleading, deceptive, or fraudulent  
11 representations in or related to the practice of the  
12 licensee's profession.

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

15 (c) Being convicted or found guilty of, or entering a  
16 plea of guilty or nolo contendere to, regardless of  
17 adjudication, a crime in any jurisdiction which relates to the  
18 practice of, or the ability to practice, a licensee's  
19 profession.

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

24 (e) Failing to comply with the educational course  
25 requirements for human immunodeficiency virus and acquired  
26 immune deficiency syndrome.

27 (f) Having a license or the authority to practice any  
28 regulated profession revoked, suspended, or otherwise acted  
29 against, including the denial of licensure, by the licensing  
30 authority of any jurisdiction, including its agencies or  
31 subdivisions, for a violation that would constitute a

1 violation under Florida law. The licensing authority's  
2 acceptance of a relinquishment of licensure, stipulation,  
3 consent order, or other settlement, offered in response to or  
4 in anticipation of the filing of charges against the license,  
5 shall be construed as action against the license.

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

9 (h) Attempting to obtain, obtaining, or renewing a  
10 license to practice a profession by bribery, by fraudulent  
11 misrepresentation, or through an error of the department or  
12 the board.

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

17 (j) Aiding, assisting, procuring, employing, or  
18 advising any unlicensed person or entity to practice a  
19 profession contrary to this chapter, the chapter regulating  
20 the profession, or the rules of the department or the board.

21 (k) Failing to perform any statutory or legal  
22 obligation placed upon a licensee. For purposes of this  
23 section, failing to repay a student loan issued or guaranteed  
24 by the state or the Federal Government in accordance with the  
25 terms of the loan or failing to comply with service  
26 scholarship obligations shall be considered a failure to  
27 perform a statutory or legal obligation, and the minimum  
28 disciplinary action imposed shall be a suspension of the  
29 license until new payment terms are agreed upon or the  
30 scholarship obligation is resumed, followed by probation for  
31 the duration of the student loan or remaining scholarship

1 obligation period, and a fine equal to 10 percent of the  
2 defaulted loan amount. Fines collected shall be deposited into  
3 the Medical Quality Assurance Trust Fund.

4 (l) Making or filing a report which the licensee knows  
5 to be false, intentionally or negligently failing to file a  
6 report or record required by state or federal law, or  
7 willfully impeding or obstructing another person to do so.  
8 Such reports or records shall include only those that are  
9 signed in the capacity of a licensee.

10 (m) Making deceptive, untrue, or fraudulent  
11 representations in or related to the practice of a profession  
12 or employing a trick or scheme in or related to the practice  
13 of a profession.

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

17 (o) Practicing or offering to practice beyond the  
18 scope permitted by law or accepting and performing  
19 professional responsibilities the licensee knows, or has  
20 reason to know, the licensee is not competent to perform.

21 (p) Delegating or contracting for the performance of  
22 professional responsibilities by a person when the licensee  
23 delegating or contracting for performance of such  
24 responsibilities knows, or has reason to know, such person is  
25 not qualified by training, experience, and authorization when  
26 required to perform them.

27 (q) Violating a lawful order of the department or the  
28 board, or failing to comply with a lawfully issued subpoena of  
29 the department.

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1           (r) Improperly interfering with an investigation or  
2 inspection authorized by statute, or with any disciplinary  
3 proceeding.

4           (s) Failing to comply with the educational course  
5 requirements for domestic violence.

6           (t) In any advertisement for health care services, and  
7 no later than at the time of the initiation of the  
8 professional relationship with a patient, failing to provide  
9 the type of license under which the practitioner is operating.  
10 This paragraph does not apply to a practitioner while the  
11 practitioner is providing services in a facility licensed  
12 under chapter 395 or chapter 400.

13           (u)~~(t)~~ Failing to comply with the requirements of ss.  
14 381.026 and 381.0261 to provide patients with information  
15 about their patient rights and how to file a patient  
16 complaint.

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

19           (w)~~(v)~~ Failing to comply with the requirements for  
20 profiling and credentialing, including, but not limited to,  
21 failing to provide initial information, failing to timely  
22 provide updated information, or making misleading, untrue,  
23 deceptive, or fraudulent representations on a profile,  
24 credentialing, or initial or renewal licensure application.

25           (x)~~(w)~~ Failing to report to the board, or the  
26 department if there is no board, in writing within 30 days  
27 after the licensee has been convicted or found guilty of, or  
28 entered a plea of nolo contendere to, regardless of  
29 adjudication, a crime in any jurisdiction. Convictions,  
30 findings, adjudications, and pleas entered into prior to the  
31 enactment of this paragraph must be reported in writing to the

1 board, or department if there is no board, on or before  
2 October 1, 1999.

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

12 (z)~~(y)~~ Being unable to practice with reasonable skill  
13 and safety to patients by reason of illness or use of alcohol,  
14 drugs, narcotics, chemicals, or any other type of material or  
15 as a result of any mental or physical condition. In enforcing  
16 this paragraph, the department shall have, upon a finding of  
17 the secretary or the secretary's designee that probable cause  
18 exists to believe that the licensee is unable to practice  
19 because of the reasons stated in this paragraph, the authority  
20 to issue an order to compel a licensee to submit to a mental  
21 or physical examination by physicians designated by the  
22 department. If the licensee refuses to comply with such order,  
23 the department's order directing such examination may be  
24 enforced by filing a petition for enforcement in the circuit  
25 court where the licensee resides or does business. The  
26 department shall be entitled to the summary procedure provided  
27 in s. 51.011. A licensee or certificateholder affected under  
28 this paragraph shall at reasonable intervals be afforded an  
29 opportunity to demonstrate that he or she can resume the  
30 competent practice of his or her profession with reasonable  
31 skill and safety to patients.

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

6           (bb)~~(aa)~~ Performing or attempting to perform health  
7 care services on the wrong patient, a wrong-site procedure, a  
8 wrong procedure, or an unauthorized procedure or a procedure  
9 that is medically unnecessary or otherwise unrelated to the  
10 patient's diagnosis or medical condition. For the purposes of  
11 this paragraph, performing or attempting to perform health  
12 care services includes the preparation of the patient.

13           (cc)~~(bb)~~ Leaving a foreign body in a patient, such as  
14 a sponge, clamp, forceps, surgical needle, or other  
15 paraphernalia commonly used in surgical, examination, or other  
16 diagnostic procedures. For the purposes of this paragraph, it  
17 shall be legally presumed that retention of a foreign body is  
18 not in the best interest of the patient and is not within the  
19 standard of care of the profession, regardless of the intent  
20 of the professional.

21           (dd)~~(cc)~~ Violating any provision of this chapter, the  
22 applicable practice act, or any rules adopted pursuant  
23 thereto.

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

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

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

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

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

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

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

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

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

1 courses, submit to be reexamined, work under the supervision  
2 of another licensee, or satisfy any terms which are reasonably  
3 tailored to the violations found.

4 (g) Corrective action.

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

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

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

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

20 (3)(a) Notwithstanding subsection (2), if the ground  
21 for disciplinary action is the first-time failure of the  
22 licensee to satisfy continuing education requirements  
23 established by the board, or by the department if there is no  
24 board, the board or department, as applicable, shall issue a  
25 citation in accordance with s. 456.077 and assess a fine, as  
26 determined by the board or department by rule. In addition,  
27 for each hour of continuing education not completed or  
28 completed late, the board or department, as applicable, may  
29 require the licensee to take 1 additional hour of continuing  
30 education for each hour not completed or completed late.

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1 (b) Notwithstanding subsection (2), if the ground for  
2 disciplinary action is the first-time violation of a practice  
3 act for unprofessional conduct, as used in ss. 464.018(1)(h),  
4 467.203(1)(f), 468.365(1)(f), and 478.52(1)(f), and no actual  
5 harm to the patient occurred, the board or department, as  
6 applicable, shall issue a citation in accordance with s.  
7 456.077 and assess a penalty as determined by rule of the  
8 board or department.

9 (4) In addition to any other discipline imposed  
10 through final order, or citation, entered on or after July 1,  
11 2001, pursuant to this section or discipline imposed through  
12 final order, or citation, entered on or after July 1, 2001,  
13 for a violation of any practice act, the board, or the  
14 department when there is no board, shall assess costs related  
15 to the investigation and prosecution of the case. Such costs  
16 related to the investigation and prosecution include, but are  
17 not limited to, salaries and benefits of personnel, costs  
18 related to the time spent by the attorney and other personnel  
19 working on the case, and any other expenses incurred by the  
20 department for the case. The board, or the department when  
21 there is no board, shall determine the amount of costs to be  
22 assessed after its consideration of an affidavit of itemized  
23 costs and any written objections thereto. In any case where  
24 the board or the department imposes a fine or assessment and  
25 the fine or assessment is not paid within a reasonable time,  
26 such reasonable time to be prescribed in the rules of the  
27 board, or the department when there is no board, or in the  
28 order assessing such fines or costs, the department or the  
29 Department of Legal Affairs may contract for the collection  
30 of, or bring a civil action to recover, the fine or  
31 assessment.

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           (7) The purpose of this section is to facilitate  
17 uniform discipline for those actions made punishable under  
18 this section and, to this end, a reference to this section  
19 constitutes a general reference under the doctrine of  
20 incorporation by reference.

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