

1                                   A bill to be entitled  
2           An act relating to the regulation of health  
3           professionals; amending s. 458.348, F.S.;  
4           providing that a licensed advanced registered  
5           nurse practitioner, or physician assistant,  
6           practicing under a protocol with a physician  
7           licensed under ch. 458, F.S., or ch. 459, F.S.,  
8           need not be a licensed electrologist to perform  
9           certain hair removal procedures; amending s.  
10          458.307, F.S.; revising membership  
11          requirements; providing for expiration of terms  
12          of current members, appointment of new members  
13          to staggered terms, and appointment and terms  
14          of successors; providing for applicability;  
15          amending s. 458.311, F.S.; providing for an  
16          externship; amending ss. 458.331 and 459.015,  
17          F.S.; providing for membership on certain  
18          probable cause panels; providing that a  
19          practitioner licensed in ch. 458, F.S., may use  
20          as a defense that the practitioner relied in  
21          good faith on the representations made to the  
22          practitioner by a drug manufacturer and that  
23          the practitioner had no intent to violate the  
24          law; requiring the Department of Health to  
25          notify health care providers if the department  
26          learns that a drug that has not been approved  
27          by the United States Food and Drug  
28          Administration for human use has been sold to  
29          identified health care providers in this state;  
30          amending s. 465.003, F.S.; redefining the term  
31          "practice of the profession of pharmacy" to

1 include the administering of influenza virus  
2 immunizations to adults by a pharmacist within  
3 an established protocol and under a supervisory  
4 practitioner who is a licensed physician or by  
5 written agreement with a county health  
6 department; providing requirements for the  
7 protocol; requiring professional liability  
8 insurance, training and certification in  
9 immunization, and employer approval before  
10 entering into a protocol; requiring a  
11 pharmacist to maintain and make available  
12 patient records for a certain time period;  
13 providing requirements for the certification  
14 program; providing an effective date.

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

17  
18 Section 1. Subsections (2) and (3) of section 458.307,  
19 Florida Statutes, are amended to read:

20 458.307 Board of Medicine.--

21 (2) Twelve members of the board must be licensed  
22 physicians in good standing in this state who are residents of  
23 the state and who have been engaged in the active practice or  
24 teaching of medicine in this state with a full and  
25 unrestricted medical license for at least 5 4 years  
26 immediately preceding their appointment. One of the physicians  
27 must be on the full-time faculty of a medical school in this  
28 state, and one of the physicians must be in private practice  
29 and on the full-time staff of a statutory teaching hospital in  
30 this state as defined in s. 408.07. At least one of the  
31 physicians must be a graduate of a foreign medical school.

1 Four consumer members ~~The remaining three members~~ must be  
2 residents of the state who have lived in the state for at  
3 least 5 years immediately preceding their appointments, have  
4 never been licensed as a health care practitioner under  
5 chapter 456 or the applicable practice act, and do not have a  
6 substantial personal, business, professional, or pecuniary  
7 connection with a licensed health care practitioner or with a  
8 medical education or health care facility, except as patients  
9 or potential patients are not, and never have been, licensed  
10 ~~health care practitioners.~~ The final ~~One~~ member must be the  
11 chief operations officer of a hospital ~~a health care risk~~  
12 ~~manager~~ licensed under chapter 395 who has lived in the state  
13 and held this position for at least 5 years immediately  
14 preceding his or her appointment ~~s. 395.10974.~~ At least one  
15 member of the board must be 60 years of age or older. The  
16 requirements of this subsection shall be a continuing  
17 condition of membership on the board. Any member who ceases to  
18 meet the requirements of this subsection shall be removed from  
19 the board, and a qualified new member shall be appointed to  
20 fill the vacancy for the remainder of that member's term.

21 (3) As the terms of the members expire, the Governor  
22 shall appoint successors for terms of 4 years, and such  
23 members shall serve until their successors are appointed.

24 Section 2. The requirements of section 458.307,  
25 Florida Statutes, as amended by this act, shall not be  
26 construed to end the term of any member of the Board of  
27 Medicine holding that appointment on the effective date of  
28 this act, but the requirements of section 458.307, Florida  
29 Statutes, as amended by this act, shall apply to any  
30 appointment made after the effective date of this act to a  
31 term that expires on or after November 1, 2005.

1           Section 3. Present subsections (2) through (8) of  
2 section 458.311, Florida Statutes, are redesignated as  
3 subsections (3) through (9), respectively, present subsection  
4 (7) of that section is amended, and a new subsection (2) is  
5 added to that section, to read:

6           458.311 Licensure by examination; requirements;  
7 fees.--

8           (2) Notwithstanding sub-subparagraphs (1)(f)1.c.,  
9 2.c., and 3.c. and paragraph (3)(d), except for passing part  
10 II of the National Board of Medical Examiners examination or  
11 the Educational Commission for Foreign Medical Graduates  
12 examination equivalent as referred to in paragraph (3)(d), the  
13 board may develop procedures for an applicant for licensure as  
14 a physician pursuant to this chapter to meet postgraduate  
15 training requirements by completing a 2-year externship at a  
16 nonstatutory teaching hospital licensed in this state. The  
17 training provided in the externship must be substantially  
18 similar, as defined by board rule, to the training provided in  
19 an approved residency as described in sub-subparagraphs  
20 (1)(f)1.c., 2.c., or 3.c. In order for the externship to meet  
21 the requirements of this section, it must be approved by the  
22 board before the applicant enters into the externship. The  
23 applicant may not be licensed under this section unless the  
24 board finds that the applicant has successfully completed the  
25 externship. The board may adopt rules to administer this  
26 section, including the implementation of fees to cover costs.

27           Section 4. Subsection (2) of section 458.331, Florida  
28 Statutes, is amended, and subsections (11) and (12) are added  
29 to that section, to read:

30           458.331 Grounds for disciplinary action; action by the  
31 board and department.--

1           (2) The board may enter an order denying licensure or  
2 imposing any of the penalties in s. 456.072(2) against any  
3 applicant for licensure or licensee who is found guilty of  
4 violating any provision of subsection (1) of this section or  
5 who is found guilty of violating any provision of s.  
6 456.072(1). A probable cause panel considering disciplinary  
7 action against a physician assistant pursuant to s. 456.073  
8 shall include a licensed physician assistant designated by the  
9 Council on Physician Assistants unless a physician assistant  
10 is not available. In determining what action is appropriate,  
11 the board must first consider what sanctions are necessary to  
12 protect the public or to compensate the patient. Only after  
13 those sanctions have been imposed may the disciplining  
14 authority consider and include in the order requirements  
15 designed to rehabilitate the physician. All costs associated  
16 with compliance with orders issued under this subsection are  
17 the obligation of the physician.

18           (11) Notwithstanding any law to the contrary, a  
19 practitioner licensed under this chapter has as a defense to  
20 an alleged violation, by the preponderance of the evidence,  
21 that the practitioner relied in good faith on the  
22 representations made to the practitioner by a drug  
23 manufacturer or its representatives and that the practitioner  
24 had no intent to violate the law.

25           (12) If the department learns that a drug, as defined  
26 under s. 499.003(17), which has not been approved by the  
27 United States Food and Drug Administration for human use, has  
28 been sold to identified health care providers in this state  
29 and licensed under this chapter, the department shall  
30 immediately notify the providers by certified mail of the  
31 status of the drug as an unapproved product. The department

1 shall also post the information on its website to advise other  
2 providers and consumers of the unapproved status of the drug.

3 Section 5. Subsection (2) of section 459.015, Florida  
4 Statutes, is amended to read:

5 459.015 Grounds for disciplinary action; action by the  
6 board and department.--

7 (2) The board may enter an order denying licensure or  
8 imposing any of the penalties in s. 456.072(2) against any  
9 applicant for licensure or licensee who is found guilty of  
10 violating any provision of subsection (1) of this section or  
11 who is found guilty of violating any provision of s.  
12 456.072(1). A probable cause panel considering disciplinary  
13 action against a physician assistant pursuant to s. 456.073  
14 shall include a licensed physician assistant designated by the  
15 Council on Physician Assistants unless a physician assistant  
16 is not available. In determining what action is appropriate,  
17 the board must first consider what sanctions are necessary to  
18 protect the public or to compensate the patient. Only after  
19 those sanctions have been imposed may the disciplining  
20 authority consider and include in the order requirements  
21 designed to rehabilitate the physician. All costs associated  
22 with compliance with orders issued under this subsection are  
23 the obligation of the physician.

24 Section 6. Subsection (13) of section 465.003, Florida  
25 Statutes, is amended to read:

26 465.003 Definitions.--As used in this chapter, the  
27 term:

28 (13) "Practice of the profession of pharmacy" includes  
29 compounding, dispensing, and consulting concerning contents,  
30 therapeutic values, and uses of any medicinal drug; consulting  
31 concerning therapeutic values and interactions of patent or

1 proprietary preparations, whether pursuant to prescriptions or  
2 in the absence and entirely independent of such prescriptions  
3 or orders; and other pharmaceutical services. For purposes of  
4 this subsection, "other pharmaceutical services" means the  
5 monitoring of the patient's drug therapy and assisting the  
6 patient in the management of his or her drug therapy, and  
7 includes review of the patient's drug therapy and  
8 communication with the patient's prescribing health care  
9 provider as licensed under chapter 458, chapter 459, chapter  
10 461, or chapter 466, or similar statutory provision in another  
11 jurisdiction, or such provider's agent or such other persons  
12 as specifically authorized by the patient, regarding the drug  
13 therapy. However, nothing in this subsection may be  
14 interpreted to permit an alteration of a prescriber's  
15 directions, the diagnosis or treatment of any disease, the  
16 initiation of any drug therapy, the practice of medicine, or  
17 the practice of osteopathic medicine, unless otherwise  
18 permitted by law. "Practice of the profession of pharmacy"  
19 also includes any other act, service, operation, research, or  
20 transaction incidental to, or forming a part of, any of the  
21 foregoing acts, requiring, involving, or employing the science  
22 or art of any branch of the pharmaceutical profession, study,  
23 or training, and shall expressly permit a pharmacist to  
24 transmit information from persons authorized to prescribe  
25 medicinal drugs to their patients. "Practice of the profession  
26 of pharmacy" also includes the administering to adults of  
27 influenza virus immunizations by a pharmacist within the  
28 framework of an established protocol under a supervisory  
29 practitioner who is a physician licensed under chapter 458 or  
30 chapter 459 or by written agreement with a county health  
31 department. Each protocol must contain specific procedures to

1 address any unforeseen allergic reaction to an immunization. A  
2 pharmacist may not enter into a protocol unless he or she  
3 maintains at least \$200,000 of professional liability  
4 insurance and not until the pharmacist has completed training  
5 in immunizations as provided in this subsection. A pharmacist  
6 administering an influenza vaccine shall maintain and make  
7 available patient records using the same standards for  
8 confidentiality and maintenance of such records as those that  
9 are imposed on health care practitioners by s. 456.057. These  
10 records must be maintained for a minimum of 5 years. The  
11 decision by a supervisory practitioner to enter into such a  
12 protocol is a professional decision of the practitioner, and a  
13 person may not interfere with a supervisory practitioner's  
14 decision as to whether to enter into such a protocol. A  
15 pharmacist may not enter into a protocol that is to be  
16 performed while acting as an employee without the written  
17 approval of the owner of the pharmacy. Any pharmacist seeking  
18 to immunize patients under this subsection must be certified  
19 to administer immunizations pursuant to a certification  
20 program approved by the Board of Pharmacy upon consultation  
21 with the Board of Medicine. The certification program must, at  
22 a minimum, require that a pharmacist attend at least 20 hours  
23 of continuing education classes approved by the Board of  
24 Pharmacy. The program must have a curriculum of instruction  
25 concerning the safe and effective administration of  
26 immunizations, including, but not limited to, potential  
27 allergic reactions to immunizations. The certification to  
28 perform inactivated influenza vaccinations shall include, but  
29 need not be limited to, the following compliance criteria:

30

31



- 1       (a) Compliance with all provisions of s. 381.003  
2 relating to communicable disease and AIDS prevention and  
3 control;
- 4       (b) Compliance with all provisions of s. 381.0031  
5 relating to reporting of diseases of public health  
6 significance to the department;
- 7       (c) Compliance with all provisions of s. 381.0098  
8 relating to biomedical waste;
- 9       (d) Compliance with all Occupational Safety and Health  
10 Administration standards for management, handling, and  
11 disposal of sharps; and
- 12       (e) Completion of and compliance with the Centers for  
13 Disease Control Influenza Update for the year in which  
14 influenza vaccinations will be offered.

15  
16 The pharmacist's certification must be obtained prior to  
17 advertising to the public and administering inactivated  
18 influenza vaccinations. The pharmacist shall submit to the  
19 Board of Pharmacy a copy of the protocol or written agreement  
20 to administer inactivated influenza vaccine.

21       Section 7. Subsection (4) of section 456.041, Florida  
22 Statutes, is amended to read:

23       456.041 Practitioner profile; creation.--

24       (4) The Department of Health shall include, with  
25 respect to a practitioner licensed under chapter 458 or  
26 chapter 459, a statement of how the practitioner has elected  
27 to comply with the financial responsibility requirements of s.  
28 458.320 or s. 459.0085. The department shall include, with  
29 respect to practitioners subject to s. 456.048, a statement of  
30 how the practitioner has elected to comply with the financial  
31 responsibility requirements of that section. The department

1 shall include, with respect to practitioners licensed under  
2 chapter 461, information relating to liability actions which  
3 has been reported under s. 456.049 or s. 627.912 within the  
4 previous 10 years for any paid claim that exceeds \$5,000. The  
5 department shall include, with respect to practitioners  
6 licensed under chapter 458 or chapter 459, information  
7 relating to liability actions which has been reported under  
8 ss. 456.049 and 627.912 ~~within the previous 10 years~~ for any  
9 paid claim ~~that exceeds \$100,000~~. Such claims information  
10 shall be reported in the context of comparing an individual  
11 practitioner's claims to the experience of other practitioners  
12 within the same specialty, or profession if the practitioner  
13 is not a specialist. The department must provide a hyperlink  
14 in such practitioner's profile to all such comparison reports.  
15 If information relating to a liability action is included in a  
16 practitioner's practitioner profile, the profile must also  
17 include the following statement: "Settlement of a claim may  
18 occur for a variety of reasons that do not necessarily reflect  
19 negatively on the professional competence or conduct of the  
20 practitioner. A payment in settlement of a medical  
21 malpractice action or claim should not be construed as  
22 creating a presumption that medical malpractice has occurred."

23 Section 8. Paragraph (f) of subsection (5) of section  
24 458.320, Florida Statutes, is amended to read:

25 458.320 Financial responsibility.--

26 (5) The requirements of subsections (1), (2), and (3)  
27 do not apply to:

28 (f) Any person holding an active license under this  
29 chapter who meets all of the following criteria:

30  
31

1           1. The licensee has held an active license to practice  
2 in this state or another state or some combination thereof for  
3 more than 15 years.

4           2. The licensee has either retired from the practice  
5 of medicine or maintains a part-time practice of no more than  
6 1,000 patient contact hours per year.

7           3. The licensee has had no more than two claims for  
8 medical malpractice resulting in an indemnity exceeding  
9 \$25,000 within the previous 5-year period.

10          4. The licensee has not been convicted of, or pled  
11 guilty or nolo contendere to, any criminal violation specified  
12 in this chapter or the medical practice act of any other  
13 state.

14          5. The licensee has not been subject within the last  
15 10 years of practice to license revocation or suspension for  
16 any period of time; probation for a period of 3 years or  
17 longer; or a fine of \$500 or more for a violation of this  
18 chapter or the medical practice act of another jurisdiction.  
19 The regulatory agency's acceptance of a physician's  
20 relinquishment of a license, stipulation, consent order, or  
21 other settlement, offered in response to or in anticipation of  
22 the filing of administrative charges against the physician's  
23 license, constitutes action against the physician's license  
24 for the purposes of this paragraph.

25          6. The licensee has submitted a form supplying  
26 necessary information as required by the department and an  
27 affidavit affirming compliance with this paragraph.

28          7. The licensee must submit biennially to the  
29 department certification stating compliance with the  
30 provisions of this paragraph. The licensee must, upon request,  
31

1 demonstrate to the department information verifying compliance  
2 with this paragraph.

3  
4 A licensee who meets the requirements of this paragraph must  
5 post notice in the form of a sign prominently displayed in the  
6 reception area and clearly noticeable by all patients and on  
7 each visit ~~or~~ provide a written statement to any person to  
8 whom medical services are being provided. The sign or  
9 statement must read as follows: "Under Florida law, physicians  
10 are generally required to carry medical malpractice insurance  
11 or otherwise demonstrate financial responsibility to cover  
12 potential claims for medical malpractice. However, certain  
13 part-time physicians who meet state requirements are exempt  
14 from the financial responsibility law. YOUR DOCTOR MEETS THESE  
15 REQUIREMENTS AND HAS DECIDED NOT TO CARRY MEDICAL MALPRACTICE  
16 INSURANCE. This notice is provided pursuant to Florida law."

17 Section 9. Paragraph (f) of subsection (5) of section  
18 459.0085, Florida Statutes, is amended to read:

19 459.0085 Financial responsibility.--

20 (5) The requirements of subsections (1), (2), and (3)  
21 do not apply to:

22 (f) Any person holding an active license under this  
23 chapter who meets all of the following criteria:

24 1. The licensee has held an active license to practice  
25 in this state or another state or some combination thereof for  
26 more than 15 years.

27 2. The licensee has either retired from the practice  
28 of osteopathic medicine or maintains a part-time practice of  
29 osteopathic medicine of no more than 1,000 patient contact  
30 hours per year.

31

1           3. The licensee has had no more than two claims for  
2 medical malpractice resulting in an indemnity exceeding  
3 \$25,000 within the previous 5-year period.

4           4. The licensee has not been convicted of, or pled  
5 guilty or nolo contendere to, any criminal violation specified  
6 in this chapter or the practice act of any other state.

7           5. The licensee has not been subject within the last  
8 10 years of practice to license revocation or suspension for  
9 any period of time, probation for a period of 3 years or  
10 longer, or a fine of \$500 or more for a violation of this  
11 chapter or the medical practice act of another jurisdiction.  
12 The regulatory agency's acceptance of an osteopathic  
13 physician's relinquishment of a license, stipulation, consent  
14 order, or other settlement, offered in response to or in  
15 anticipation of the filing of administrative charges against  
16 the osteopathic physician's license, constitutes action  
17 against the physician's license for the purposes of this  
18 paragraph.

19           6. The licensee has submitted a form supplying  
20 necessary information as required by the department and an  
21 affidavit affirming compliance with this paragraph.

22           7. The licensee must submit biennially to the  
23 department a certification stating compliance with this  
24 paragraph. The licensee must, upon request, demonstrate to the  
25 department information verifying compliance with this  
26 paragraph.

27  
28 A licensee who meets the requirements of this paragraph must  
29 post notice in the form of a sign prominently displayed in the  
30 reception area and clearly noticeable by all patients and on  
31 each visit ~~or~~ provide a written statement to any person to

1 | whom medical services are being provided. The sign or  
2 | statement must read as follows: "Under Florida law,  
3 | osteopathic physicians are generally required to carry medical  
4 | malpractice insurance or otherwise demonstrate financial  
5 | responsibility to cover potential claims for medical  
6 | malpractice. However, certain part-time osteopathic physicians  
7 | who meet state requirements are exempt from the financial  
8 | responsibility law. YOUR OSTEOPATHIC PHYSICIAN MEETS THESE  
9 | REQUIREMENTS AND HAS DECIDED NOT TO CARRY MEDICAL MALPRACTICE  
10 | INSURANCE. This notice is provided pursuant to Florida law."

11 |       Section 10. Subsection (3) of section 458.348, Florida  
12 | Statutes, is amended to read:

13 |           458.348 Formal supervisory relationships, standing  
14 | orders, and established protocols; notice; standards.--

15 |           (3) PROTOCOLS REQUIRING DIRECT SUPERVISION.--All  
16 | protocols relating to electrolysis or electrology using laser  
17 | or light-based hair removal or reduction by persons other than  
18 | physicians licensed under this chapter or chapter 459 shall  
19 | require the person performing such service to be appropriately  
20 | trained and work only under the direct supervision and  
21 | responsibility of a physician licensed under this chapter or  
22 | chapter 459. A licensed advanced registered nurse practitioner  
23 | or physician assistant practicing under a protocol with a  
24 | physician licensed under chapter 458 or chapter 459 shall not  
25 | be required to obtain licensure as an electrologist in order  
26 | to perform laser or light-based hair removal procedures.

27 |       Section 11. This act shall take effect upon becoming a  
28 | law.

29 |  
30 |  
31 |