

Bill No. SB 416

Barcode 355618

CHAMBER ACTION

Senate

House

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The Committee on Health Care (Jones) recommended the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

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

Bill No. SB 416

Barcode 355618

1 act to require the provision of the information.

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

4 456.072 Grounds for discipline; penalties;
5 enforcement.--

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

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

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

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

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

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

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

Bill No. SB 416

Barcode 355618

1 acceptance of a relinquishment of licensure, stipulation,
 2 consent order, or other settlement, offered in response to or
 3 in anticipation of the filing of charges against the license,
 4 shall be construed as action against the license.

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

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

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

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

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

Bill No. SB 416

Barcode 355618

1 defaulted loan amount. Fines collected shall be deposited into
2 the Medical Quality Assurance Trust Fund.

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

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

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

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

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

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

29 (r) Improperly interfering with an investigation or
30 inspection authorized by statute, or with any disciplinary
31 proceeding.

Bill No. SB 416

Barcode 355618

1 (s) Failing to comply with the educational course
2 requirements for domestic violence.

3 (t) Failing to identify through written notice, which
4 may include the wearing of a name tag, or orally to a patient
5 the type of license under which the practitioner is
6 practicing. Any advertisement for health care services naming
7 the practitioner must identify the type of license the
8 practitioner holds. This paragraph does not apply to a
9 practitioner while the practitioner is providing services in a
10 facility licensed under chapter 394, chapter 395, or chapter
11 400. Each board, or the department where there is no board, is
12 authorized by rule to determine how its practitioners may
13 comply with this disclosure requirement.

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

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

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

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

Bill No. SB 416

Barcode 355618

1 enactment of this paragraph must be reported in writing to the
2 board, or department if there is no board, on or before
3 October 1, 1999.

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

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

Bill No. SB 416

Barcode 355618

1 skill and safety to patients.

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

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

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

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

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

29 ~~(ff)(cc)~~ With respect to making a personal injury
30 protection claim as required by s. 627.736, intentionally
31 submitting a claim, statement, or bill for payment of services

Bill No. SB 416

Barcode 355618

1 that were not rendered.

2 ~~(gg)(ff)~~ Engaging in a pattern of practice when
3 prescribing medicinal drugs or controlled substances which
4 demonstrates a lack of reasonable skill or safety to patients,
5 a violation of any provision of this chapter, a violation of
6 the applicable practice act, or a violation of any rules
7 adopted under ~~pursuant to~~ this chapter or the applicable
8 practice act of the prescribing practitioner. Notwithstanding
9 s. 456.073(13), the department may initiate an investigation
10 and establish such a pattern from billing records, data, or
11 any other information obtained by the department.

12 ~~(hh)(gg)~~ Being terminated from a treatment program for
13 impaired practitioners, which is overseen by an impaired
14 practitioner consultant as described in s. 456.076, for
15 failure to comply, without good cause, with the terms of the
16 monitoring or treatment contract entered into by the licensee,
17 or for not successfully completing any drug treatment or
18 alcohol treatment program.

19 (2) When the board, or the department when there is no
20 board, finds any person guilty of the grounds set forth in
21 subsection (1) or of any grounds set forth in the applicable
22 practice act, including conduct constituting a substantial
23 violation of subsection (1) or a violation of the applicable
24 practice act which occurred prior to obtaining a license, it
25 may enter an order imposing one or more of the following
26 penalties:

27 (a) Refusal to certify, or to certify with
28 restrictions, an application for a license.

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

30 (c) Restriction of practice or license, including, but
31 not limited to, restricting the licensee from practicing in

Bill No. SB 416

Barcode 355618

1 certain settings, restricting the licensee to work only under
 2 designated conditions or in certain settings, restricting the
 3 licensee from performing or providing designated clinical and
 4 administrative services, restricting the licensee from
 5 practicing more than a designated number of hours, or any
 6 other restriction found to be necessary for the protection of
 7 the public health, safety, and welfare.

8 (d) Imposition of an administrative fine not to exceed
 9 \$10,000 for each count or separate offense. If the violation
 10 is for fraud or making a false or fraudulent representation,
 11 the board, or the department if there is no board, must impose
 12 a fine of \$10,000 per count or offense.

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

14 (f) Placement of the licensee on probation for a
 15 period of time and subject to such conditions as the board, or
 16 the department when there is no board, may specify. Those
 17 conditions may include, but are not limited to, requiring the
 18 licensee to undergo treatment, attend continuing education
 19 courses, submit to be reexamined, work under the supervision
 20 of another licensee, or satisfy any terms which are reasonably
 21 tailored to the violations found.

22 (g) Corrective action.

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

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

27 (j) Requirement that the practitioner undergo remedial
 28 education.

29

30 In determining what action is appropriate, the board, or
 31 department when there is no board, must first consider what

Bill No. SB 416

Barcode 355618

1 sanctions are necessary to protect the public or to compensate
 2 the patient. Only after those sanctions have been imposed may
 3 the disciplining authority consider and include in the order
 4 requirements designed to rehabilitate the practitioner. All
 5 costs associated with compliance with orders issued under this
 6 subsection are the obligation of the practitioner.

7 (3)(a) Notwithstanding subsection (2), if the ground
 8 for disciplinary action is the first-time failure of the
 9 licensee to satisfy continuing education requirements
 10 established by the board, or by the department if there is no
 11 board, the board or department, as applicable, shall issue a
 12 citation in accordance with s. 456.077 and assess a fine, as
 13 determined by the board or department by rule. In addition,
 14 for each hour of continuing education not completed or
 15 completed late, the board or department, as applicable, may
 16 require the licensee to take 1 additional hour of continuing
 17 education for each hour not completed or completed late.

18 (b) Notwithstanding subsection (2), if the ground for
 19 disciplinary action is the first-time violation of a practice
 20 act for unprofessional conduct, as used in ss. 464.018(1)(h),
 21 467.203(1)(f), 468.365(1)(f), and 478.52(1)(f), and no actual
 22 harm to the patient occurred, the board or department, as
 23 applicable, shall issue a citation in accordance with s.
 24 456.077 and assess a penalty as determined by rule of the
 25 board or department.

26 (4) In addition to any other discipline imposed
 27 through final order, or citation, entered on or after July 1,
 28 2001, under ~~pursuant to~~ this section or discipline imposed
 29 through final order, or citation, entered on or after July 1,
 30 2001, for a violation of any practice act, the board, or the
 31 department when there is no board, shall assess costs related

Bill No. SB 416

Barcode 355618

1 to the investigation and prosecution of the case. ~~The Such~~
2 costs related to the investigation and prosecution include,
3 but are not limited to, salaries and benefits of personnel,
4 costs related to the time spent by the attorney and other
5 personnel working on the case, and any other expenses incurred
6 by the department for the case. The board, or the department
7 when there in no board, shall determine the amount of costs to
8 be assessed after its consideration of an affidavit of
9 itemized costs and any written objections thereto. In any case
10 where the board or the department imposes a fine or assessment
11 and the fine or assessment is not paid within a reasonable
12 time, ~~the such~~ reasonable time to be prescribed in the rules
13 of the board, or the department when there is no board, or in
14 the order assessing ~~the such~~ fines or costs, the department or
15 the Department of Legal Affairs may contract for the
16 collection of, or bring a civil action to recover, the fine or
17 assessment.

18 (5) In addition to, or in lieu of, any other remedy or
19 criminal prosecution, the department may file a proceeding in
20 the name of the state seeking issuance of an injunction or a
21 writ of mandamus against any person who violates any of the
22 provisions of this chapter, or any provision of law with
23 respect to professions regulated by the department, or any
24 board therein, or the rules adopted pursuant thereto.

25 (6) ~~If in the event~~ the board, or the department when
26 there is no board, determines that revocation of a license is
27 the appropriate penalty, the revocation shall be permanent.
28 However, the board may establish by rule requirements for
29 reapplication by applicants whose licenses have been
30 permanently revoked. ~~The Such~~ requirements may include, but
31 ~~are shall not be~~ limited to, satisfying current requirements

Bill No. SB 416

Barcode 355618

1 for an initial license.

2 (7) The purpose of this section is to facilitate
3 uniform discipline for those actions made punishable under
4 this section and, to this end, a reference to this section
5 constitutes a general reference under the doctrine of
6 incorporation by reference.

7 Section 3. This act shall take effect July 1, 2006.

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9

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

11 And the title is amended as follows:

12 Delete everything before the enacting clause

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14 and insert:

15

A bill to be entitled

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An act relating to health care practitioners;

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providing legislative findings and intent;

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amending s. 456.072, F.S., relating to grounds

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for discipline, penalties, and enforcement

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applicable to health care practitioners;

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providing that a practitioner's failure to

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identify the type of license under which he or

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she is practicing constitutes grounds for

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disciplinary action; providing exceptions;

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authorizing certain entities to determine

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compliance with a disclosure requirement;

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providing penalties; specifying that a

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reference to the section constitutes a general

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reference under the doctrine of incorporation

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by reference; providing an effective date.

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