

1 harm is to ensure that patients and the public be informed of
2 the training of health care practitioners and intends by this
3 act to require the provision of the information.

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

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

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

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

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

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

21 (d) Using a Class III or a Class IV laser device or
22 product, as defined by federal regulations, without having
23 complied with the rules adopted under ~~pursuant to~~ s.
24 501.122(2) governing the registration of the ~~such~~ devices.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 | (q) Violating a lawful order of the department or the
29 | board, or failing to comply with a lawfully issued subpoena of
30 | 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) Failing to identify through written notice, which
7 may include the wearing of a name tag, or orally to a patient
8 the type of license under which the practitioner is
9 practicing. Any advertisement for health care services naming
10 the practitioner must identify the type of license the
11 practitioner holds. This paragraph does not apply to a
12 practitioner while the practitioner is providing services in a
13 facility licensed under chapter 394, chapter 395, or chapter
14 400. Each board, or the department where there is no board, is
15 authorized by rule to determine how its practitioners may
16 comply with this disclosure requirement.

17 (u)~~(t)~~ Failing to comply with the requirements of ss.
18 381.026 and 381.0261 to provide patients with information
19 about their patient rights and how to file a patient
20 complaint.

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

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

29 (x)~~(w)~~ Failing to report to the board, or the
30 department if there is no board, in writing within 30 days
31 after the licensee has been convicted or found guilty of, or

1 entered a plea of nolo contendere to, regardless of
2 adjudication, a crime in any jurisdiction. Convictions,
3 findings, adjudications, and pleas entered into prior to the
4 enactment of this paragraph must be reported in writing to the
5 board, or department if there is no board, on or before
6 October 1, 1999.

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

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

1 | this paragraph shall at reasonable intervals be afforded an
2 | opportunity to demonstrate that he or she can resume the
3 | competent practice of his or her profession with reasonable
4 | skill and safety to patients.

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

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

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

25 | ~~(dd)(ee)~~ Violating any provision of this chapter, the
26 | applicable practice act, or any rules adopted pursuant
27 | thereto.

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

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

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

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

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

30 (a) Refusal to certify, or to certify with
31 restrictions, an application for a license.

- 1 (b) Suspension or permanent revocation of a license.
- 2 (c) Restriction of practice or license, including, but
3 not limited to, restricting the licensee from practicing in
4 certain settings, restricting the licensee to work only under
5 designated conditions or in certain settings, restricting the
6 licensee from performing or providing designated clinical and
7 administrative services, restricting the licensee from
8 practicing more than a designated number of hours, or any
9 other restriction found to be necessary for the protection of
10 the public health, safety, and welfare.
- 11 (d) Imposition of an administrative fine not to exceed
12 \$10,000 for each count or separate offense. If the violation
13 is for fraud or making a false or fraudulent representation,
14 the board, or the department if there is no board, must impose
15 a fine of \$10,000 per count or offense.
- 16 (e) Issuance of a reprimand or letter of concern.
- 17 (f) Placement of the licensee on probation for a
18 period of time and subject to such conditions as the board, or
19 the department when there is no board, may specify. Those
20 conditions may include, but are not limited to, requiring the
21 licensee to undergo treatment, attend continuing education
22 courses, submit to be reexamined, work under the supervision
23 of another licensee, or satisfy any terms which are reasonably
24 tailored to the violations found.
- 25 (g) Corrective action.
- 26 (h) Imposition of an administrative fine in accordance
27 with s. 381.0261 for violations regarding patient rights.
- 28 (i) Refund of fees billed and collected from the
29 patient or a third party on behalf of the patient.
- 30 (j) Requirement that the practitioner undergo remedial
31 education.

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2 In determining what action is appropriate, the board, or
3 department when there is no board, must first consider what
4 sanctions are necessary to protect the public or to compensate
5 the patient. Only after those sanctions have been imposed may
6 the disciplining authority consider and include in the order
7 requirements designed to rehabilitate the practitioner. All
8 costs associated with compliance with orders issued under this
9 subsection are the obligation of the practitioner.

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

21 (b) Notwithstanding subsection (2), if the ground for
22 disciplinary action is the first-time violation of a practice
23 act for unprofessional conduct, as used in ss. 464.018(1)(h),
24 467.203(1)(f), 468.365(1)(f), and 478.52(1)(f), and no actual
25 harm to the patient occurred, the board or department, as
26 applicable, shall issue a citation in accordance with s.
27 456.077 and assess a penalty as determined by rule of the
28 board or department.

29 (4) In addition to any other discipline imposed
30 through final order, or citation, entered on or after July 1,
31 2001, under ~~pursuant to~~ this section or discipline imposed

1 through final order, or citation, entered on or after July 1,
2 2001, for a violation of any practice act, the board, or the
3 department when there is no board, shall assess costs related
4 to the investigation and prosecution of the case. ~~The Such~~
5 costs related to the investigation and prosecution include,
6 but are not limited to, salaries and benefits of personnel,
7 costs related to the time spent by the attorney and other
8 personnel working on the case, and any other expenses incurred
9 by the department for the case. The board, or the department
10 when there in no board, shall determine the amount of costs to
11 be assessed after its consideration of an affidavit of
12 itemized costs and any written objections thereto. In any case
13 where the board or the department imposes a fine or assessment
14 and the fine or assessment is not paid within a reasonable
15 time, ~~the such~~ reasonable time to be prescribed in the rules
16 of the board, or the department when there is no board, or in
17 the order assessing ~~the such~~ fines or costs, the department or
18 the Department of Legal Affairs may contract for the
19 collection of, or bring a civil action to recover, the fine or
20 assessment.

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

28 (6) ~~If In the event~~ the board, or the department when
29 there is no board, determines that revocation of a license is
30 the appropriate penalty, the revocation shall be permanent.
31 However, the board may establish by rule requirements for

1 reapplication by applicants whose licenses have been
2 permanently revoked. ~~The~~ ~~Such~~ requirements may include, but
3 ~~are shall~~ not ~~be~~ limited to, satisfying current requirements
4 for an initial license.

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

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

11
12 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
13 COMMITTEE SUBSTITUTE FOR
14 Senate Bill 416

15 The committee substitute revises the requirements for health
16 care practitioners to provide their patients with the type of
17 license under which the practitioner is practicing. The
18 committee substitute expands the exception to this requirement
19 to include practitioners providing services in a mental health
20 facility licensed under chapter 394, F.S. Each board, or the
21 Department of Health where there is no board, may by rule
22 determine how its practitioners may comply with the disclosure
23 requirements under the bill.
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