

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 587 CS

Health Care Practitioners

**SPONSOR(S):** Galvano

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 416

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Health Care Regulation Committee</u>	<u>9 Y, 0 N, w/CS</u>	<u>Hamrick</u>	<u>Mitchell</u>
2) <u>Business Regulation Committee</u>	<u>17 Y, 0 N</u>	<u>Livingston</u>	<u>Liepshutz</u>
3) <u>Health Care Appropriations Committee</u>	<u>13 Y, 0 N, w/CS</u>	<u>Money</u>	<u>Massengale</u>
4) <u>Health &amp; Families Council</u>	<u></u>	<u>Hamrick</u>	<u>Moore</u>
5) <u></u>	<u></u>	<u></u>	<u></u>

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### SUMMARY ANALYSIS

House Bill 587 CS specifies that it is grounds for disciplinary action if a health care practitioner fails to identify to a patient the type of license under which he or she is practicing. The practitioner must also disclose the type of license they hold in any advertisements for health care services. The bill provides an exemption to this provision for practitioners operating in facilities licensed under chapters 394, 395 or 400, Florida Statutes, which include hospitals, ambulatory surgical centers, nursing homes, long-term care facilities, and mental health facilities.

Currently, each health profession regulated by the Department of Health is subject to the grounds for discipline listed in individual practice acts, as well as the general provisions in chapter 456, Florida Statutes. The bill amends chapter 456, Florida Statutes to apply uniformly to health care professions regulated by the Department of Health.

The bill provides rulemaking authority to each practitioner board or the department to adopt rules to determine how practitioners may comply with the disclosure requirement. The bill stipulates that the provisions of the bill are incorporated into all statutes that make a reference to section 456.072, Florida Statutes. This is designed to eliminate the need to re-enact specific penalty provisions in each practice act.

The bill does not appear to have a fiscal impact on state or local governments, but may have a fiscal impact on health care providers who have to alter their advertisements, notices, and procedures. The Department of Health suggests that disciplinary investigations and prosecutions may increase.

The bill takes effect on July 1, 2006.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Promote personal responsibility**—The bill requires a physician and other health care providers such as nurses, physician assistants, mental health counselors, and opticians to disclose additional information about their credentials in advertisements and increases the enforcement responsibility of the Department of Health.

#### B. EFFECT OF PROPOSED CHANGES:

##### Present situation

##### **The Department of Health's Division of Medical Quality Assurance**

Health care practitioners in Florida are governed by professional licensing boards or councils that are independent entities that are overseen by the Department of Health's Division of Medical Quality Assurance (MQA). MQA regulates health care practitioners to ensure the health, safety and welfare of the public. Currently, MQA supports licensure and disciplinary activities for 37 professions and 6 facilities, and works with 28 boards and councils. In total, MQA regulates more than 850,000 health care practitioners and facilities.

Currently, each health profession regulated by the Department of Health is subject to the grounds for discipline listed in individual practice acts as well as the general provisions in chapter 456, Florida Statutes. Many of the regulatory boards already have rules regarding what constitutes misleading advertising.

##### Effect of proposed changes

The findings of the bill state that health care licensure can be extremely confusing to patients. Patients can be misled into believing that the practitioner is better qualified than other health care practitioners because of misleading practice designations.

The bill specifies that if a health care practitioner fails to identify to a patient the type of license under which he or she is practicing, it is grounds for disciplinary action. The practitioner must also disclose the type of license they hold in any advertisements for health care services. The bill provides an exemption to this provision for practitioners operating in facilities licensed under chapters 394, 395 or 400, Florida Statutes, which includes hospitals, ambulatory surgical centers, nursing homes, long-term care facilities, and mental health facilities.

The bill provides rulemaking authority to each practitioner board or the department to adopt rules to determine how practitioners may comply with the disclosure requirement. The bill stipulates that the provisions of the bill are incorporated into all statutes that make a reference to section 456.072, Florida Statutes. This eliminates the need to re-enact specific penalty provisions in each practice act.

The bill amends chapter 456, Florida Statutes to apply uniformly to health care professions regulated by the Department of Health. The bill states that patients need to be informed of the credentials of the health care practitioners who treat them, and that the public needs to be protected from misleading health care advertising.

## Affected Practice Acts

The provisions of this bill will impact approximately 20 practice acts and 103 cross-references to sections 456.072, 456.072(1) and 456.072(2), Florida Statutes.

The chapters that are affected:

456	General Provisions for Health Professions	466	Dentistry, Dental Hygiene, and Dental Laboratories
457	Acupuncture	467	Midwifery
458	Medical Practice	468	Miscellaneous Professions
459	Osteopathic Medicine	478	Electrolysis
460	Chiropractic Medicine	480	Massage Practice
461	Podiatric Medicine	483	Health Testing Services
462	Naturopathy	484	Dispensing of Optical Devices and Hearing Aids
463	Optometry	486	Physical Therapy Practice
464	Nursing	490	Psychological Services
465	Pharmacy	491	Clinical, Counseling and Psychotherapy Services

## Facilities Licensed in Chapters 394, 395 and 400, Florida Statutes

The bill specifies that failing to disclose the type of license a provider is operating under is grounds for disciplinary action unless the practitioner is operating in a facility licensed in chapters 394, 395 and 400, Florida Statutes.

Chapter 394, Florida Statutes, regulates the following entities:

- Mental Health Receiving Facility
- Mental Health Treatment Facility
- Private Mental Health Facilities

Chapter 395, Florida Statutes, regulates the following entities:

- Hospitals
- Ambulatory Surgical Centers
- Trauma Centers
- Rural Hospitals
- Family Practice Teaching Hospitals

Chapter 400, Florida Statutes, regulates the following entities:

- Long-term care facilities
- Nursing homes
- Assisted living facilities
- Adult day care
- Hospices
- Intermediate care and transitional facilities for developmentally disabled persons
- Prescribed pediatric extended care facilities
- Home medical equipment providers
- Health care services pools
- Health care clinics

The bill will impact practitioners in private individual and group practices.

## Prohibitions on Making Misleading Advertisements

Currently, section 456.072(1)(a), Florida Statutes, prohibits making misleading, deceptive, or fraudulent representations in or related to the practice of the licensee's profession. In addition, grounds for discipline in each of the individual practice acts include a prohibition on false and misleading advertising. Many of the regulatory boards already have rules regarding what constitutes misleading advertising.

The bill states, "The purpose of this section is to facilitate uniform discipline for those actions made punishable under this section [s.456.072, F.S.]..." The bill further states, "a reference to this section [s.456.072, F.S.] constitutes a general reference under the doctrine of incorporation by reference." This language is designed to eliminate the need to reenact specific penalty provisions in each practice act.

### C. SECTION DIRECTORY:

**Section 1.** Provides findings and intent of the Legislature.

**Section 2.** Amends s. 456.072, F. S., specifying that a practitioner's failure to disclose the type of license under which he or she is practicing is grounds for disciplinary action; the practitioner must also disclose the type of license they hold in advertisements for health care services if the practitioner is named, unless the practitioner is operating in a facility licensed under chapters 394, 395 or 400, Florida Statutes.

**Section 3.** Provides that the bill will take effect on July 1, 2006.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See D. Fiscal Comments.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Health care providers may have to change their advertisements, notices, and office procedures to comply with the provisions of this bill.

### D. FISCAL COMMENTS:

According to the Department of Health, an increase in the number of complaints of health care providers failing to fully disclose licensure information would increase the amount of disciplinary investigations and prosecutions.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

The bill provides rulemaking authority to each practitioner board, or the department when there is no board, to adopt rules to determine how practitioners may comply with the disclosure requirement.

#### DRAFTING ISSUES OR OTHER COMMENTS:

According to the Department of Health, the bill will help make clear to patients whether the person providing care is a physician, a physician assistant, an advanced registered nurse practitioner, other licensed professional, or an unlicensed assistant.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On February 22, 2006, the Health Care Regulation Committee adopted one amendment sponsored by Representative Galvano. The amendment removes the requirement that disclosure occurs at the initiation of the professional relationship and clarifies how a practitioner may identify himself or herself, such as by wearing of a name tag. The amendment also provides the Department of Health with rule-making authority to outline how a licensee will disclose the type of license under which he or she is practicing.

The bill, as amended, was reported favorably as a committee substitute.

On March 22, 2006, the Health Care Appropriations Committee adopted one amendment that specifies that any advertisement for health care services "naming the practitioner" must identify the type of license the practitioner holds. The amendment also adds mental health facilities licensed under chapter 394, Florida Statutes, to the exemptions for practitioners.

The bill, as amended, was reported favorably as a committee substitute. This analysis is drafted to the committee substitute.