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1 A bill to be entitled

2 An act relating to health care practitioners; providing
3 legislative findings and intent; amending s. 456.072,
4 F.S., relating to grounds for discipline, penalties, and
5 enforcement applicable to health care practitioners;
6 providing that a practitioner's failure to provide the
7 type of license under which he or she is operating in
8 health care advertisements and in professional
9 relationships with patients constitutes grounds for
10 disciplinary action; providing exceptions; providing
11 penalties; specifying that a reference to the section
12 constitutes a general reference under the doctrine of
13 incorporation by reference; providing an effective date.

14
15 Be It Enacted by the Legislature of the State of Florida:

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

29 ensure that patients and the public be informed of the training
 30 of health care practitioners and intends by this act to require
 31 the provision of the information.

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

34 456.072 Grounds for discipline; penalties; enforcement.--

35 (1) The following acts shall constitute grounds for which
 36 the disciplinary actions specified in subsection (2) may be
 37 taken:

38 (a) Making misleading, deceptive, or fraudulent
 39 representations in or related to the practice of the licensee's
 40 profession.

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

43 (c) Being convicted or found guilty of, or entering a plea
 44 of guilty or nolo contendere to, regardless of adjudication, a
 45 crime in any jurisdiction which relates to the practice of, or
 46 the ability to practice, a licensee's profession.

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

51 (e) Failing to comply with the educational course
 52 requirements for human immunodeficiency virus and acquired
 53 immune deficiency syndrome.

54 (f) Having a license or the authority to practice any
 55 regulated profession revoked, suspended, or otherwise acted
 56 against, including the denial of licensure, by the licensing

57 authority of any jurisdiction, including its agencies or
58 subdivisions, for a violation that would constitute a violation
59 under Florida law. The licensing authority's acceptance of a
60 relinquishment of licensure, stipulation, consent order, or
61 other settlement, offered in response to or in anticipation of
62 the filing of charges against the license, shall be construed as
63 action against the license.

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

67 (h) Attempting to obtain, obtaining, or renewing a license
68 to practice a profession by bribery, by fraudulent
69 misrepresentation, or through an error of the department or the
70 board.

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

75 (j) Aiding, assisting, procuring, employing, or advising
76 any unlicensed person or entity to practice a profession
77 contrary to this chapter, the chapter regulating the profession,
78 or the rules of the department or the board.

79 (k) Failing to perform any statutory or legal obligation
80 placed upon a licensee. For purposes of this section, failing
81 to repay a student loan issued or guaranteed by the state or the
82 Federal Government in accordance with the terms of the loan or
83 failing to comply with service scholarship obligations shall be
84 considered a failure to perform a statutory or legal obligation,

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85 and the minimum disciplinary action imposed shall be a
86 suspension of the license until new payment terms are agreed
87 upon or the scholarship obligation is resumed, followed by
88 probation for the duration of the student loan or remaining
89 scholarship obligation period, and a fine equal to 10 percent of
90 the defaulted loan amount. Fines collected shall be deposited
91 into the Medical Quality Assurance Trust Fund.

92 (l) Making or filing a report which the licensee knows to
93 be false, intentionally or negligently failing to file a report
94 or record required by state or federal law, or willfully
95 impeding or obstructing another person to do so. Such reports or
96 records shall include only those that are signed in the capacity
97 of a licensee.

98 (m) Making deceptive, untrue, or fraudulent
99 representations in or related to the practice of a profession or
100 employing a trick or scheme in or related to the practice of a
101 profession.

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

104 (o) Practicing or offering to practice beyond the scope
105 permitted by law or accepting and performing professional
106 responsibilities the licensee knows, or has reason to know, the
107 licensee is not competent to perform.

108 (p) Delegating or contracting for the performance of
109 professional responsibilities by a person when the licensee
110 delegating or contracting for performance of the ~~such~~
111 responsibilities knows, or has reason to know, the ~~such~~ person
112 is not qualified by training, experience, and authorization when

113 required to perform them.

114 (q) Violating a lawful order of the department or the
 115 board, or failing to comply with a lawfully issued subpoena of
 116 the department.

117 (r) Improperly interfering with an investigation or
 118 inspection authorized by statute, or with any disciplinary
 119 proceeding.

120 (s) Failing to comply with the educational course
 121 requirements for domestic violence.

122 (t) In any advertisement for health care services, and no
 123 later than at the time of the initiation of the professional
 124 relationship with a patient, failing to provide the type of
 125 license under which the practitioner is operating. This
 126 paragraph does not apply to a practitioner while the
 127 practitioner is providing services in a facility licensed under
 128 chapter 395 or chapter 400.

129 (u)~~(t)~~ Failing to comply with the requirements of ss.
 130 381.026 and 381.0261 to provide patients with information about
 131 their patient rights and how to file a patient complaint.

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

134 (w)~~(v)~~ Failing to comply with the requirements for
 135 profiling and credentialing, including, but not limited to,
 136 failing to provide initial information, failing to timely
 137 provide updated information, or making misleading, untrue,
 138 deceptive, or fraudulent representations on a profile,
 139 credentialing, or initial or renewal licensure application.

140 (x)~~(w)~~ Failing to report to the board, or the department

141 if there is no board, in writing within 30 days after the
 142 licensee has been convicted or found guilty of, or entered a
 143 plea of nolo contendere to, regardless of adjudication, a crime
 144 in any jurisdiction. Convictions, findings, adjudications, and
 145 pleas entered into prior to the enactment of this paragraph must
 146 be reported in writing to the board, or department if there is
 147 no board, on or before October 1, 1999.

148 (y)~~(x)~~ Using information about people involved in motor
 149 vehicle accidents which has been derived from accident reports
 150 made by law enforcement officers or persons involved in
 151 accidents under ~~pursuant to~~ s. 316.066, or using information
 152 published in a newspaper or other news publication or through a
 153 radio or television broadcast that has used information gained
 154 from such reports, for the purposes of commercial or any other
 155 solicitation whatsoever of the people involved in the ~~such~~
 156 accidents.

157 (z)~~(y)~~ Being unable to practice with reasonable skill and
 158 safety to patients by reason of illness or use of alcohol,
 159 drugs, narcotics, chemicals, or any other type of material or as
 160 a result of any mental or physical condition. In enforcing this
 161 paragraph, the department shall have, upon a finding of the
 162 secretary or the secretary's designee that probable cause exists
 163 to believe that the licensee is unable to practice because of
 164 the reasons stated in this paragraph, the authority to issue an
 165 order to compel a licensee to submit to a mental or physical
 166 examination by physicians designated by the department. If the
 167 licensee refuses to comply with the ~~such~~ order, the department's
 168 order directing the ~~such~~ examination may be enforced by filing a

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169 petition for enforcement in the circuit court where the licensee
170 resides or does business. The department shall be entitled to
171 the summary procedure provided in s. 51.011. A licensee or
172 certificateholder affected under this paragraph shall at
173 reasonable intervals be afforded an opportunity to demonstrate
174 that he or she can resume the competent practice of his or her
175 profession with reasonable skill and safety to patients.

176 (aa)~~(z)~~ Testing positive for any drug, as defined in s.
177 112.0455, on any confirmed preemployment or employer-ordered
178 drug screening when the practitioner does not have a lawful
179 prescription and legitimate medical reason for using the ~~such~~
180 drug.

181 (bb)~~(aa)~~ Performing or attempting to perform health care
182 services on the wrong patient, a wrong-site procedure, a wrong
183 procedure, or an unauthorized procedure or a procedure that is
184 medically unnecessary or otherwise unrelated to the patient's
185 diagnosis or medical condition. For the purposes of this
186 paragraph, performing or attempting to perform health care
187 services includes the preparation of the patient.

188 (cc)~~(bb)~~ Leaving a foreign body in a patient, such as a
189 sponge, clamp, forceps, surgical needle, or other paraphernalia
190 commonly used in surgical, examination, or other diagnostic
191 procedures. For the purposes of this paragraph, it shall be
192 legally presumed that retention of a foreign body is not in the
193 best interest of the patient and is not within the standard of
194 care of the profession, regardless of the intent of the
195 professional.

196 (dd)~~(ee)~~ Violating any provision of this chapter, the

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197 applicable practice act, or any rules adopted pursuant thereto.

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

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

206 (gg)~~(ff)~~ Engaging in a pattern of practice when
 207 prescribing medicinal drugs or controlled substances which
 208 demonstrates a lack of reasonable skill or safety to patients, a
 209 violation of any provision of this chapter, a violation of the
 210 applicable practice act, or a violation of any rules adopted
 211 under ~~pursuant to~~ this chapter or the applicable practice act of
 212 the prescribing practitioner. Notwithstanding s. 456.073(13),
 213 the department may initiate an investigation and establish such
 214 a pattern from billing records, data, or any other information
 215 obtained by the department.

216 (hh)~~(gg)~~ Being terminated from a treatment program for
 217 impaired practitioners, which is overseen by an impaired
 218 practitioner consultant as described in s. 456.076, for failure
 219 to comply, without good cause, with the terms of the monitoring
 220 or treatment contract entered into by the licensee, or for not
 221 successfully completing any drug treatment or alcohol treatment
 222 program.

223 (2) When the board, or the department when there is no
 224 board, finds any person guilty of the grounds set forth in

225 subsection (1) or of any grounds set forth in the applicable
 226 practice act, including conduct constituting a substantial
 227 violation of subsection (1) or a violation of the applicable
 228 practice act which occurred prior to obtaining a license, it may
 229 enter an order imposing one or more of the following penalties:

230 (a) Refusal to certify, or to certify with restrictions,
 231 an application for a license.

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

233 (c) Restriction of practice or license, including, but not
 234 limited to, restricting the licensee from practicing in certain
 235 settings, restricting the licensee to work only under designated
 236 conditions or in certain settings, restricting the licensee from
 237 performing or providing designated clinical and administrative
 238 services, restricting the licensee from practicing more than a
 239 designated number of hours, or any other restriction found to be
 240 necessary for the protection of the public health, safety, and
 241 welfare.

242 (d) Imposition of an administrative fine not to exceed
 243 \$10,000 for each count or separate offense. If the violation is
 244 for fraud or making a false or fraudulent representation, the
 245 board, or the department if there is no board, must impose a
 246 fine of \$10,000 per count or offense.

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

248 (f) Placement of the licensee on probation for a period of
 249 time and subject to such conditions as the board, or the
 250 department when there is no board, may specify. Those conditions
 251 may include, but are not limited to, requiring the licensee to
 252 undergo treatment, attend continuing education courses, submit

253 to be reexamined, work under the supervision of another
 254 licensee, or satisfy any terms which are reasonably tailored to
 255 the violations found.

256 (g) Corrective action.

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

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

261 (j) Requirement that the practitioner undergo remedial
 262 education.

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264 In determining what action is appropriate, the board, or
 265 department when there is no board, must first consider what
 266 sanctions are necessary to protect the public or to compensate
 267 the patient. Only after those sanctions have been imposed may
 268 the disciplining authority consider and include in the order
 269 requirements designed to rehabilitate the practitioner. All
 270 costs associated with compliance with orders issued under this
 271 subsection are the obligation of the practitioner.

272 (3) (a) Notwithstanding subsection (2), if the ground for
 273 disciplinary action is the first-time failure of the licensee to
 274 satisfy continuing education requirements established by the
 275 board, or by the department if there is no board, the board or
 276 department, as applicable, shall issue a citation in accordance
 277 with s. 456.077 and assess a fine, as determined by the board or
 278 department by rule. In addition, for each hour of continuing
 279 education not completed or completed late, the board or
 280 department, as applicable, may require the licensee to take 1

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281 additional hour of continuing education for each hour not
282 completed or completed late.

283 (b) Notwithstanding subsection (2), if the ground for
284 disciplinary action is the first-time violation of a practice
285 act for unprofessional conduct, as used in ss. 464.018(1)(h),
286 467.203(1)(f), 468.365(1)(f), and 478.52(1)(f), and no actual
287 harm to the patient occurred, the board or department, as
288 applicable, shall issue a citation in accordance with s. 456.077
289 and assess a penalty as determined by rule of the board or
290 department.

291 (4) In addition to any other discipline imposed through
292 final order, or citation, entered on or after July 1, 2001,
293 under ~~pursuant to~~ this section or discipline imposed through
294 final order, or citation, entered on or after July 1, 2001, for
295 a violation of any practice act, the board, or the department
296 when there is no board, shall assess costs related to the
297 investigation and prosecution of the case. The ~~Such~~ costs
298 related to the investigation and prosecution include, but are
299 not limited to, salaries and benefits of personnel, costs
300 related to the time spent by the attorney and other personnel
301 working on the case, and any other expenses incurred by the
302 department for the case. The board, or the department when there
303 in no board, shall determine the amount of costs to be assessed
304 after its consideration of an affidavit of itemized costs and
305 any written objections thereto. In any case where the board or
306 the department imposes a fine or assessment and the fine or
307 assessment is not paid within a reasonable time, the ~~such~~
308 reasonable time to be prescribed in the rules of the board, or

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309 the department when there is no board, or in the order assessing
310 the ~~such~~ fines or costs, the department or the Department of
311 Legal Affairs may contract for the collection of, or bring a
312 civil action to recover, the fine or assessment.

313 (5) In addition to, or in lieu of, any other remedy or
314 criminal prosecution, the department may file a proceeding in
315 the name of the state seeking issuance of an injunction or a
316 writ of mandamus against any person who violates any of the
317 provisions of this chapter, or any provision of law with respect
318 to professions regulated by the department, or any board
319 therein, or the rules adopted pursuant thereto.

320 (6) If ~~In the event~~ the board, or the department when
321 there is no board, determines that revocation of a license is
322 the appropriate penalty, the revocation shall be permanent.
323 However, the board may establish by rule requirements for
324 reapplication by applicants whose licenses have been permanently
325 revoked. The ~~Such~~ requirements may include, but are ~~shall~~ not be
326 limited to, satisfying current requirements for an initial
327 license.

328 (7) The purpose of this section is to facilitate uniform
329 discipline for those actions made punishable under this section
330 and, to this end, a reference to this section constitutes a
331 general reference under the doctrine of incorporation by
332 reference.

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