

CHAMBER ACTION

1 The Health Care Regulation Committee recommends the following:

2
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to health care practitioners; providing
7 legislative findings and intent; amending s. 456.072,
8 F.S., relating to grounds for discipline, penalties, and
9 enforcement applicable to health care practitioners;
10 providing that a practitioner's failure to identify the
11 type of license under which he or she is practicing
12 constitutes grounds for disciplinary action; providing
13 exceptions; authorizing certain entities to determine
14 compliance with a disclosure requirement; providing
15 penalties; specifying that a reference to the section
16 constitutes a general reference under the doctrine of
17 incorporation by reference; providing an effective date.

18
19 Be It Enacted by the Legislature of the State of Florida:

20
21 Section 1. The Legislature finds that there exists a
22 compelling state interest in patients being informed of the
23 credentials of the health care practitioners who treat them and

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24 | in the public being protected from misleading health care
25 | advertising. The Legislature further finds that the areas of
26 | licensure for the practice of health care can be extremely
27 | confusing for patients and that health care practitioners can
28 | easily mislead patients into believing that the practitioner is
29 | better qualified than other health care practitioners simply by
30 | creating a sham practice designation. Therefore, the Legislature
31 | has determined that the most direct and effective manner in
32 | which to protect patients from this identifiable harm is to
33 | ensure that patients and the public be informed of the training
34 | of health care practitioners and intends by this act to require
35 | the provision of the information.

36 | Section 2. Section 456.072, Florida Statutes, is amended
37 | to read:

38 | 456.072 Grounds for discipline; penalties; enforcement.--

39 | (1) The following acts shall constitute grounds for which
40 | the disciplinary actions specified in subsection (2) may be
41 | taken:

42 | (a) Making misleading, deceptive, or fraudulent
43 | representations in or related to the practice of the licensee's
44 | profession.

45 | (b) Intentionally violating any rule adopted by the board
46 | or the department, as appropriate.

47 | (c) Being convicted or found guilty of, or entering a plea
48 | of guilty or nolo contendere to, regardless of adjudication, a
49 | crime in any jurisdiction which relates to the practice of, or
50 | the ability to practice, a licensee's profession.

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

55 (e) Failing to comply with the educational course
56 requirements for human immunodeficiency virus and acquired
57 immune deficiency syndrome.

58 (f) Having a license or the authority to practice any
59 regulated profession revoked, suspended, or otherwise acted
60 against, including the denial of licensure, by the licensing
61 authority of any jurisdiction, including its agencies or
62 subdivisions, for a violation that would constitute a violation
63 under Florida law. The licensing authority's acceptance of a
64 relinquishment of licensure, stipulation, consent order, or
65 other settlement, offered in response to or in anticipation of
66 the filing of charges against the license, shall be construed as
67 action against the license.

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

71 (h) Attempting to obtain, obtaining, or renewing a license
72 to practice a profession by bribery, by fraudulent
73 misrepresentation, or through an error of the department or the
74 board.

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

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79 | (j) Aiding, assisting, procuring, employing, or advising
80 | any unlicensed person or entity to practice a profession
81 | contrary to this chapter, the chapter regulating the profession,
82 | or the rules of the department or the board.

83 | (k) Failing to perform any statutory or legal obligation
84 | placed upon a licensee. For purposes of this section, failing to
85 | repay a student loan issued or guaranteed by the state or the
86 | Federal Government in accordance with the terms of the loan or
87 | failing to comply with service scholarship obligations shall be
88 | considered a failure to perform a statutory or legal obligation,
89 | and the minimum disciplinary action imposed shall be a
90 | suspension of the license until new payment terms are agreed
91 | upon or the scholarship obligation is resumed, followed by
92 | probation for the duration of the student loan or remaining
93 | scholarship obligation period, and a fine equal to 10 percent of
94 | the defaulted loan amount. Fines collected shall be deposited
95 | into the Medical Quality Assurance Trust Fund.

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

102 | (m) Making deceptive, untrue, or fraudulent
103 | representations in or related to the practice of a profession or
104 | employing a trick or scheme in or related to the practice of a
105 | profession.

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

108 (o) Practicing or offering to practice beyond the scope
109 permitted by law or accepting and performing professional
110 responsibilities the licensee knows, or has reason to know, the
111 licensee is not competent to perform.

112 (p) Delegating or contracting for the performance of
113 professional responsibilities by a person when the licensee
114 delegating or contracting for performance of the ~~such~~
115 responsibilities knows, or has reason to know, the ~~such~~ person
116 is not qualified by training, experience, and authorization when
117 required to perform them.

118 (q) Violating a lawful order of the department or the
119 board, or failing to comply with a lawfully issued subpoena of
120 the department.

121 (r) Improperly interfering with an investigation or
122 inspection authorized by statute, or with any disciplinary
123 proceeding.

124 (s) Failing to comply with the educational course
125 requirements for domestic violence.

126 (t) Failing to identify through written notice, which may
127 include the wearing of a name tag, or orally to a patient the
128 type of license under which the practitioner is practicing. Any
129 advertisement for health care services must identify the type of
130 license the practitioner holds. This paragraph does not apply to
131 a practitioner while the practitioner is providing services in a
132 facility licensed under chapter 395 or chapter 400. Each board
133 or the department where there is no board is authorized by rule

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134 | to determine how its practitioners may comply with this
135 | disclosure requirement.

136 | (u)~~(t)~~ Failing to comply with the requirements of ss.
137 | 381.026 and 381.0261 to provide patients with information about
138 | their patient rights and how to file a patient complaint.

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

141 | (w)~~(v)~~ Failing to comply with the requirements for
142 | profiling and credentialing, including, but not limited to,
143 | failing to provide initial information, failing to timely
144 | provide updated information, or making misleading, untrue,
145 | deceptive, or fraudulent representations on a profile,
146 | credentialing, or initial or renewal licensure application.

147 | (x)~~(w)~~ Failing to report to the board, or the department
148 | if there is no board, in writing within 30 days after the
149 | licensee has been convicted or found guilty of, or entered a
150 | plea of nolo contendere to, regardless of adjudication, a crime
151 | in any jurisdiction. Convictions, findings, adjudications, and
152 | pleas entered into prior to the enactment of this paragraph must
153 | be reported in writing to the board, or department if there is
154 | no board, on or before October 1, 1999.

155 | (y)~~(x)~~ Using information about people involved in motor
156 | vehicle accidents which has been derived from accident reports
157 | made by law enforcement officers or persons involved in
158 | accidents under ~~pursuant to~~ s. 316.066, or using information
159 | published in a newspaper or other news publication or through a
160 | radio or television broadcast that has used information gained
161 | from such reports, for the purposes of commercial or any other

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162 solicitation whatsoever of the people involved in the ~~such~~
163 accidents.

164 (z)~~(y)~~ Being unable to practice with reasonable skill and
165 safety to patients by reason of illness or use of alcohol,
166 drugs, narcotics, chemicals, or any other type of material or as
167 a result of any mental or physical condition. In enforcing this
168 paragraph, the department shall have, upon a finding of the
169 secretary or the secretary's designee that probable cause exists
170 to believe that the licensee is unable to practice because of
171 the reasons stated in this paragraph, the authority to issue an
172 order to compel a licensee to submit to a mental or physical
173 examination by physicians designated by the department. If the
174 licensee refuses to comply with the ~~such~~ order, the department's
175 order directing the ~~such~~ examination may be enforced by filing a
176 petition for enforcement in the circuit court where the licensee
177 resides or does business. The department shall be entitled to
178 the summary procedure provided in s. 51.011. A licensee or
179 certificateholder affected under this paragraph shall at
180 reasonable intervals be afforded an opportunity to demonstrate
181 that he or she can resume the competent practice of his or her
182 profession with reasonable skill and safety to patients.

183 (aa)~~(z)~~ Testing positive for any drug, as defined in s.
184 112.0455, on any confirmed preemployment or employer-ordered
185 drug screening when the practitioner does not have a lawful
186 prescription and legitimate medical reason for using the ~~such~~
187 drug.

188 (bb)~~(aa)~~ Performing or attempting to perform health care
189 services on the wrong patient, a wrong-site procedure, a wrong

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190 procedure, or an unauthorized procedure or a procedure that is
191 medically unnecessary or otherwise unrelated to the patient's
192 diagnosis or medical condition. For the purposes of this
193 paragraph, performing or attempting to perform health care
194 services includes the preparation of the patient.

195 (cc)~~(bb)~~ Leaving a foreign body in a patient, such as a
196 sponge, clamp, forceps, surgical needle, or other paraphernalia
197 commonly used in surgical, examination, or other diagnostic
198 procedures. For the purposes of this paragraph, it shall be
199 legally presumed that retention of a foreign body is not in the
200 best interest of the patient and is not within the standard of
201 care of the profession, regardless of the intent of the
202 professional.

203 (dd)~~(ee)~~ Violating any provision of this chapter, the
204 applicable practice act, or any rules adopted pursuant thereto.

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

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

213 (gg)~~(ff)~~ Engaging in a pattern of practice when
214 prescribing medicinal drugs or controlled substances which
215 demonstrates a lack of reasonable skill or safety to patients, a
216 violation of any provision of this chapter, a violation of the
217 applicable practice act, or a violation of any rules adopted

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218 | under ~~pursuant to~~ this chapter or the applicable practice act of
219 | the prescribing practitioner. Notwithstanding s. 456.073(13),
220 | the department may initiate an investigation and establish such
221 | a pattern from billing records, data, or any other information
222 | obtained by the department.

223 | ~~(gg)~~ (hh) Being terminated from a treatment program for
224 | impaired practitioners, which is overseen by an impaired
225 | practitioner consultant as described in s. 456.076, for failure
226 | to comply, without good cause, with the terms of the monitoring
227 | or treatment contract entered into by the licensee, or for not
228 | successfully completing any drug treatment or alcohol treatment
229 | program.

230 | (2) When the board, or the department when there is no
231 | board, finds any person guilty of the grounds set forth in
232 | subsection (1) or of any grounds set forth in the applicable
233 | practice act, including conduct constituting a substantial
234 | violation of subsection (1) or a violation of the applicable
235 | practice act which occurred prior to obtaining a license, it may
236 | enter an order imposing one or more of the following penalties:

237 | (a) Refusal to certify, or to certify with restrictions,
238 | an application for a license.

239 | (b) Suspension or permanent revocation of a license.

240 | (c) Restriction of practice or license, including, but not
241 | limited to, restricting the licensee from practicing in certain
242 | settings, restricting the licensee to work only under designated
243 | conditions or in certain settings, restricting the licensee from
244 | performing or providing designated clinical and administrative
245 | services, restricting the licensee from practicing more than a

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246 designated number of hours, or any other restriction found to be
247 necessary for the protection of the public health, safety, and
248 welfare.

249 (d) Imposition of an administrative fine not to exceed
250 \$10,000 for each count or separate offense. If the violation is
251 for fraud or making a false or fraudulent representation, the
252 board, or the department if there is no board, must impose a
253 fine of \$10,000 per count or offense.

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

255 (f) Placement of the licensee on probation for a period of
256 time and subject to such conditions as the board, or the
257 department when there is no board, may specify. Those conditions
258 may include, but are not limited to, requiring the licensee to
259 undergo treatment, attend continuing education courses, submit
260 to be reexamined, work under the supervision of another
261 licensee, or satisfy any terms which are reasonably tailored to
262 the violations found.

263 (g) Corrective action.

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

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

268 (j) Requirement that the practitioner undergo remedial
269 education.

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271 In determining what action is appropriate, the board, or
272 department when there is no board, must first consider what
273 sanctions are necessary to protect the public or to compensate

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274 the patient. Only after those sanctions have been imposed may
275 the disciplining authority consider and include in the order
276 requirements designed to rehabilitate the practitioner. All
277 costs associated with compliance with orders issued under this
278 subsection are the obligation of the practitioner.

279 (3) (a) Notwithstanding subsection (2), if the ground for
280 disciplinary action is the first-time failure of the licensee to
281 satisfy continuing education requirements established by the
282 board, or by the department if there is no board, the board or
283 department, as applicable, shall issue a citation in accordance
284 with s. 456.077 and assess a fine, as determined by the board or
285 department by rule. In addition, for each hour of continuing
286 education not completed or completed late, the board or
287 department, as applicable, may require the licensee to take 1
288 additional hour of continuing education for each hour not
289 completed or completed late.

290 (b) Notwithstanding subsection (2), if the ground for
291 disciplinary action is the first-time violation of a practice
292 act for unprofessional conduct, as used in ss. 464.018(1)(h),
293 467.203(1)(f), 468.365(1)(f), and 478.52(1)(f), and no actual
294 harm to the patient occurred, the board or department, as
295 applicable, shall issue a citation in accordance with s. 456.077
296 and assess a penalty as determined by rule of the board or
297 department.

298 (4) In addition to any other discipline imposed through
299 final order, or citation, entered on or after July 1, 2001,
300 under ~~pursuant to~~ this section or discipline imposed through
301 final order, or citation, entered on or after July 1, 2001, for

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302 a violation of any practice act, the board, or the department
 303 when there is no board, shall assess costs related to the
 304 investigation and prosecution of the case. The ~~Such~~ costs
 305 related to the investigation and prosecution include, but are
 306 not limited to, salaries and benefits of personnel, costs
 307 related to the time spent by the attorney and other personnel
 308 working on the case, and any other expenses incurred by the
 309 department for the case. The board, or the department when there
 310 in no board, shall determine the amount of costs to be assessed
 311 after its consideration of an affidavit of itemized costs and
 312 any written objections thereto. In any case where the board or
 313 the department imposes a fine or assessment and the fine or
 314 assessment is not paid within a reasonable time, the ~~such~~
 315 reasonable time to be prescribed in the rules of the board, or
 316 the department when there is no board, or in the order assessing
 317 the ~~such~~ fines or costs, the department or the Department of
 318 Legal Affairs may contract for the collection of, or bring a
 319 civil action to recover, the fine or assessment.

320 (5) In addition to, or in lieu of, any other remedy or
 321 criminal prosecution, the department may file a proceeding in
 322 the name of the state seeking issuance of an injunction or a
 323 writ of mandamus against any person who violates any of the
 324 provisions of this chapter, or any provision of law with respect
 325 to professions regulated by the department, or any board
 326 therein, or the rules adopted pursuant thereto.

327 (6) If ~~In the event~~ the board, or the department when
 328 there is no board, determines that revocation of a license is
 329 the appropriate penalty, the revocation shall be permanent.

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330 | However, the board may establish by rule requirements for
331 | reapplication by applicants whose licenses have been permanently
332 | revoked. The ~~Such~~ requirements may include, but are ~~shall~~ not be
333 | limited to, satisfying current requirements for an initial
334 | license.

335 | (7) The purpose of this section is to facilitate uniform
336 | discipline for those actions made punishable under this section
337 | and, to this end, a reference to this section constitutes a
338 | general reference under the doctrine of incorporation by
339 | reference.

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