

CHAMBER ACTION

1 The Health Care Appropriations Committee recommends the  
2 following:

3  
4 **Council/Committee Substitute**

5 Remove the entire bill and insert:

6 A bill to be entitled

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

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

21  
22 Section 1. The Legislature finds that there exists a  
23 compelling state interest in patients being informed of the

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

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

39 | 456.072 Grounds for discipline; penalties; enforcement.--

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

127 (t) Failing to identify through written notice, which may  
128 include the wearing of a name tag, or orally to a patient the  
129 type of license under which the practitioner is practicing. Any  
130 advertisement for health care services naming the practitioner  
131 must identify the type of license the practitioner holds. This  
132 paragraph does not apply to a practitioner while the  
133 practitioner is providing services in a facility licensed under  
134 chapter 394, chapter 395, or chapter 400. Each board, or the

135 | department where there is no board, is authorized by rule to  
 136 | determine how its practitioners may comply with this disclosure  
 137 | requirement.

138 |       (u)~~(t)~~ Failing to comply with the requirements of ss.  
 139 | 381.026 and 381.0261 to provide patients with information about  
 140 | their patient rights and how to file a patient complaint.

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

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

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

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

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163 from such reports, for the purposes of commercial or any other  
164 solicitation whatsoever of the people involved in the ~~such~~  
165 accidents.

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

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

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190        (bb) ~~(aa)~~ Performing or attempting to perform health care  
191 services on the wrong patient, a wrong-site procedure, a wrong  
192 procedure, or an unauthorized procedure or a procedure that is  
193 medically unnecessary or otherwise unrelated to the patient's  
194 diagnosis or medical condition. For the purposes of this  
195 paragraph, performing or attempting to perform health care  
196 services includes the preparation of the patient.

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

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

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

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

215        (gg) ~~(ff)~~ Engaging in a pattern of practice when  
216 prescribing medicinal drugs or controlled substances which  
217 demonstrates a lack of reasonable skill or safety to patients, a



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

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

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

239 (a) Refusal to certify, or to certify with restrictions,  
240 an application for a license.

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

242 (c) Restriction of practice or license, including, but not  
243 limited to, restricting the licensee from practicing in certain  
244 settings, restricting the licensee to work only under designated  
245 conditions or in certain settings, restricting the licensee from

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246 performing or providing designated clinical and administrative  
247 services, restricting the licensee from practicing more than a  
248 designated number of hours, or any other restriction found to be  
249 necessary for the protection of the public health, safety, and  
250 welfare.

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

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

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

265 (g) Corrective action.

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

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

270 (j) Requirement that the practitioner undergo remedial  
271 education.

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273 In determining what action is appropriate, the board, or  
274 department when there is no board, must first consider what  
275 sanctions are necessary to protect the public or to compensate  
276 the patient. Only after those sanctions have been imposed may  
277 the disciplining authority consider and include in the order  
278 requirements designed to rehabilitate the practitioner. All  
279 costs associated with compliance with orders issued under this  
280 subsection are the obligation of the practitioner.

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

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

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300 (4) In addition to any other discipline imposed through  
301 final order, or citation, entered on or after July 1, 2001,  
302 under ~~pursuant to~~ this section or discipline imposed through  
303 final order, or citation, entered on or after July 1, 2001, for  
304 a violation of any practice act, the board, or the department  
305 when there is no board, shall assess costs related to the  
306 investigation and prosecution of the case. The ~~such~~ costs  
307 related to the investigation and prosecution include, but are  
308 not limited to, salaries and benefits of personnel, costs  
309 related to the time spent by the attorney and other personnel  
310 working on the case, and any other expenses incurred by the  
311 department for the case. The board, or the department when there  
312 in no board, shall determine the amount of costs to be assessed  
313 after its consideration of an affidavit of itemized costs and  
314 any written objections thereto. In any case where the board or  
315 the department imposes a fine or assessment and the fine or  
316 assessment is not paid within a reasonable time, the ~~such~~  
317 reasonable time to be prescribed in the rules of the board, or  
318 the department when there is no board, or in the order assessing  
319 the ~~such~~ fines or costs, the department or the Department of  
320 Legal Affairs may contract for the collection of, or bring a  
321 civil action to recover, the fine or assessment.

322 (5) In addition to, or in lieu of, any other remedy or  
323 criminal prosecution, the department may file a proceeding in  
324 the name of the state seeking issuance of an injunction or a  
325 writ of mandamus against any person who violates any of the  
326 provisions of this chapter, or any provision of law with respect

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327 | to professions regulated by the department, or any board  
328 | therein, or the rules adopted pursuant thereto.

329 |       (6) If ~~In the event~~ the board, or the department when  
330 | there is no board, determines that revocation of a license is  
331 | the appropriate penalty, the revocation shall be permanent.  
332 | However, the board may establish by rule requirements for  
333 | reapplication by applicants whose licenses have been permanently  
334 | revoked. The ~~Such~~ requirements may include, but are ~~shall~~ not be  
335 | limited to, satisfying current requirements for an initial  
336 | license.

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

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