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HB 587, Engrossed 1

2006 Legislature

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 identify the
7 type of license under which he or she is practicing
8 constitutes grounds for disciplinary action; providing
9 exceptions; authorizing certain entities to determine
10 compliance with a disclosure requirement; 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:

16
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

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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.

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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 to

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81 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,
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.

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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) Failing to identify through written notice, which may
123 include the wearing of a name tag, or orally to a patient the
124 type of license under which the practitioner is practicing. Any
125 advertisement for health care services naming the practitioner
126 must identify the type of license the practitioner holds. This
127 paragraph does not apply to a practitioner while the
128 practitioner is providing services in a facility licensed under
129 chapter 394, chapter 395, or chapter 400. Each board, or the
130 department where there is no board, is authorized by rule to
131 determine how its practitioners may comply with this disclosure
132 requirement.

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133 ~~(u)~~~~(t)~~ Failing to comply with the requirements of ss.
 134 381.026 and 381.0261 to provide patients with information about
 135 their patient rights and how to file a patient complaint.

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

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

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

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

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159 solicitation whatsoever of the people involved in the ~~such~~
 160 accidents.

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

180 (aa)~~(z)~~ Testing positive for any drug, as defined in s.
 181 112.0455, on any confirmed preemployment or employer-ordered
 182 drug screening when the practitioner does not have a lawful
 183 prescription and legitimate medical reason for using the ~~such~~
 184 drug.

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

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

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

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

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

210 (gg)~~(ff)~~ Engaging in a pattern of practice when
 211 prescribing medicinal drugs or controlled substances which

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212 demonstrates a lack of reasonable skill or safety to patients, a
213 violation of any provision of this chapter, a violation of the
214 applicable practice act, or a violation of any rules adopted
215 under ~~pursuant to~~ this chapter or the applicable practice act of
216 the prescribing practitioner. Notwithstanding s. 456.073(13),
217 the department may initiate an investigation and establish such
218 a pattern from billing records, data, or any other information
219 obtained by the department.

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

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

234 (a) Refusal to certify, or to certify with restrictions,
235 an application for a license.

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

237 (c) Restriction of practice or license, including, but not
238 limited to, restricting the licensee from practicing in certain

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239 settings, restricting the licensee to work only under designated
240 conditions or in certain settings, restricting the licensee from
241 performing or providing designated clinical and administrative
242 services, restricting the licensee from practicing more than a
243 designated number of hours, or any other restriction found to be
244 necessary for the protection of the public health, safety, and
245 welfare.

246 (d) Imposition of an administrative fine not to exceed
247 \$10,000 for each count or separate offense. If the violation is
248 for fraud or making a false or fraudulent representation, the
249 board, or the department if there is no board, must impose a
250 fine of \$10,000 per count or offense.

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

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

260 (g) Corrective action.

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

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

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265 (j) Requirement that the practitioner undergo remedial
266 education.

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

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

287 (b) Notwithstanding subsection (2), if the ground for
288 disciplinary action is the first-time violation of a practice
289 act for unprofessional conduct, as used in ss. 464.018(1)(h),
290 467.203(1)(f), 468.365(1)(f), and 478.52(1)(f), and no actual
291 harm to the patient occurred, the board or department, as

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292 applicable, shall issue a citation in accordance with s. 456.077
293 and assess a penalty as determined by rule of the board or
294 department.

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

317 (5) In addition to, or in lieu of, any other remedy or
318 criminal prosecution, the department may file a proceeding in

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319 | the name of the state seeking issuance of an injunction or a
320 | writ of mandamus against any person who violates any of the
321 | provisions of this chapter, or any provision of law with respect
322 | to professions regulated by the department, or any board
323 | therein, or the rules adopted pursuant thereto.

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

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

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