

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Health Regulation Committee

BILL: SB 1184

INTRODUCER: Senator Saunders

SUBJECT: Emergency Medicine

DATE: March 7, 2008 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Wilson	HR	Pre-meeting
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill prohibits a medical physician who completes his or her board certification after January 1, 2009, from holding himself or herself out as a board-certified emergency physician unless the physician has received formal recognition as a specialist from the American Board of Medical Specialties or other recognizing agency approved by the Florida Board of Medicine and has completed an approved residency or fellowship training program in emergency medicine.

The bill prohibits an osteopathic physician who completes his or her board certification after January 1, 2009, from holding himself or herself out as a board-certified emergency osteopathic physician unless the osteopathic physician has received formal recognition as a specialist from a recognizing agency approved by the Florida Board of Osteopathic Medicine and has completed an approved residency training program in emergency medicine.

This bill amends sections 458.3312 and 459.0152, Florida Statutes.

II. Present Situation:

Advertising Restrictions on Physician Specialty (Medicine)

Chapter 458, Florida Statutes, governs the practice of medicine. Section 458.3312, F.S., prohibits a medical physician from holding himself or herself out as a board-certified specialist unless the physician has received formal recognition as a specialist from a specialty board of the American Board of Medical Specialties or other recognizing agency approved by the Florida Board of Medicine. This prohibition does not prevent a medical physician from indicating his or her

services or stating that his or her practice is limited to one or more types of services if this accurately reflects the scope of practice of the physician.

The American Board of Medical Specialties (ABMS), a not-for-profit organization comprising 24 medical specialty member boards, oversees the certification of physician specialists in the United States. The primary function of the ABMS is to assist its member boards in developing and implementing educational and professional standards to evaluate and certify physician specialists. The ABMS is a designated primary equivalent source of credential information.

In addition to the ABMS, the Florida Board of Medicine may approve other recognizing agencies, for purposes of physician specialty advertising. The Florida Board of Medicine has adopted administrative rules outlining requirements for physician specialty advertising.¹

For purposes of physician specialty advertising, on February 19, 2002, the Florida Board of Medicine approved the American Association of Physician Specialists (AAPS) as a physician specialty recognizing agency.² Florida-licensed physicians who hold certification from the AAPS's Board of Certification in Emergency Medicine may hold themselves out as board-certified specialists in emergency medicine. The Florida Chapter of the American College of Emergency Medicine opposed the Board of Medicine's recognition of the AAPS's certifying board in emergency medicine, because it does not require residency training in emergency medicine. The Board of Certification in Emergency Medicine, AAPS's member board, grants emergency medicine specialty credentials to physicians who must have "advanced training, significant experience, good moral character, and successful completion of a specialty examination."

Advertising Restrictions on Physician Specialty (Osteopathic Medicine)

Chapter 459, Florida Statutes, governs the practice of osteopathic medicine. Section 459.0152, F.S., prohibits a physician from holding himself or herself out as a board-certified specialist unless the osteopathic physician has successfully completed the requirements for certification by the American Osteopathic Association or the Accreditation Council on Graduate Medical Education and is certified as a specialist by a certifying agency approved by the Florida Board of Osteopathic Medicine. This prohibition does not prevent an osteopathic physician from indicating his or her services or stating that his or her practice is limited to one or more types of services if this accurately reflects the scope of practice of the physician. The Florida Board of Osteopathic Medicine has not adopted any rules to implement s. 459.0152, F.S. On June 8, 2002, the Florida Board of Osteopathic Medicine approved the American Association of Physician Specialists (AAPS) as a physician specialty certifying agency.

Florida Emergency Medicine Residency and Fellowship Training Programs

There are five emergency medicine residency programs located in Florida:

¹ See Rule 64B8-11.001(2)(f), Florida Administrative Code.

²The recognizing agencies currently approved by the Florida Board of Medicine include: the American Board of Facial Plastic & Reconstructive Surgery, Inc. (Approved February 1997); the American Board of Pain Medicine (Approved August 1999); and the American Association of Physician Specialists, Inc. (Approved February 2002).

- Jacksonville (University of Florida)
- Gainesville (University of Florida)
- Orlando (University of Florida)
- Tampa (University of South Florida)
- Miami (University of Miami)³

Two additional emergency medicine residency programs plan to start during 2008 at Orlando (University of Central Florida); and Palm Beach (Nova Southeastern).⁴

Emergency Medicine Physician Supply

Although there are no exact numbers available from a public source, such as the Department of Health, there are some good faith estimates of the total number of emergency room physicians who are actively practicing in Florida. According to officials at the Florida College of Emergency Room Physicians, there are approximately 1,400 emergency room physicians actively practicing in Florida.

III. Effect of Proposed Changes:

Section 1. Amends s. 458.3312, F.S., relating to medical physician specialty advertising, to prohibit a medical physician who completes his or her board certification after January 1, 2009, from holding himself or herself out as a board-certified emergency physician unless the physician has received formal recognition as a specialist from the ABMS or other recognizing agency approved by the Florida Board of Medicine. In addition any physician who wishes to hold himself or herself out as an emergency physician must complete a residency or fellowship training program in emergency medicine which is approved by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association.

Section 2. Amends s. 459.0152, F.S., relating to osteopathic physician specialty advertising, to prohibit an osteopathic physician who completes his or her board certification after January 1, 2009, from holding himself or herself out as a board-certified emergency physician unless the osteopathic physician has received formal recognition as a specialist from a recognizing agency approved by the Florida Board of Osteopathic Medicine and completed a residency training program in emergency medicine which is approved by the American Osteopathic Association or the American Council for Graduate Medical Education.

Section 3. Provides an effective date of July 1, 2008.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

³ Source: The Florida Chapter of the American College of Emergency Medicine.

⁴ Id.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

D. Other Constitutional Issues:

Applicable case law has held that, as long as commercial speech describes lawful activity and is truthful and not fraudulent or misleading, it is entitled to the protection of the First Amendment of the United States Constitution. To regulate or ban commercial speech, the government must have a substantial government interest which is directly advanced by the restriction, and must demonstrate that there is a reasonable fit between the legislature's ends and narrowly tailored means chosen to accomplish those ends. In enacting or enforcing a restriction on commercial speech, the government need not select the least restrictive means, but rather must tailor its restriction to meet the desired objective.⁵ Applicable case law describes various regulatory safeguards which the state may impose in place of the total ban on commercial speech, such as requiring a disclaimer to ensure that the consumer is not misled.⁶

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

On line 46, the reference to "American Council for Graduate Medical Education" should refer to the "Accreditation Council on Graduate Medical Education."

⁵ See *Central Hudson Gas & Electric Corp. v. Public Service Comm'n of New York*, 447 U.S. 557, 100 S.Ct. 2243, 65 L.Ed.2d 341 (1980).

⁶ See *Abramson v. Gonzalez*, 949 F.2d 1567 (11th Cir. 1992).

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
