

By Senator Gardiner

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1                   A bill to be entitled  
2           An act relating to controlled substances; amending ss.  
3           458.309 and 459.005, F.S.; requiring the Department of  
4           Health to deny registration to any clinic that is not  
5           fully owned by a physician or group of physicians;  
6           requiring the department to deny registration to any  
7           clinic that is owned by or under any contractual or  
8           employment relationship with a physician whose Drug  
9           Enforcement Administration number has ever been  
10          suspended or revoked, or against whom the Board of  
11          Medicine or the Board of Osteopathic Medicine has  
12          taken final administrative action related to the  
13          physician's impairment due to the misuse or abuse of  
14          alcohol or drugs; requiring the department to deny  
15          registration to any clinic in which the ownership or  
16          any controlling interest is held by a person who has  
17          been convicted of, or has entered a plea of guilty or  
18          nolo contendere to, regardless of adjudication, a  
19          felony; requiring the department to deny registration  
20          to any clinic that has a medical director who is not  
21          board-certified in pain medicine; amending ss. 458.331  
22          and 459.015, F.S.; providing that the practice of  
23          medicine or osteopathic medicine in an unregistered  
24          pain-management clinic is grounds for denial of  
25          licensure or disciplinary action; providing that the  
26          advertisement of the use, sale, or dispensing of  
27          controlled substances is grounds for denial of  
28          licensure or disciplinary action; amending s. 465.018,  
29          F.S.; prohibiting the department from issuing a permit

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30 to operate a community pharmacy unless the applicant  
31 demonstrates the ability to participate in a  
32 multistate electronic prescribing network; amending  
33 465.023, F.S.; authorizing the department to  
34 discipline a pharmacy permittee for failing to  
35 participate in a multistate electronic prescribing  
36 network; amending s. 465.0276, F.S.; prohibiting  
37 registered dispensing practitioners from dispensing  
38 more than a specified amount of certain controlled  
39 substances; providing an exception; providing an  
40 effective date.

41  
42 Be It Enacted by the Legislature of the State of Florida:

43  
44 Section 1. Subsection (4) of section 458.309, Florida  
45 Statutes, is amended to read:

46 458.309 Rulemaking authority.—

47 (4) All privately owned pain-management clinics,  
48 facilities, or offices, hereinafter referred to as "clinics,"  
49 which advertise in any medium for any type of pain-management  
50 services, or employ a physician who is primarily engaged in the  
51 treatment of pain by prescribing or dispensing controlled  
52 substance medications, must register with the department by  
53 January 4, 2010, unless that clinic is licensed as a facility  
54 pursuant to chapter 395. The department shall deny registration  
55 to any clinic that is not fully owned by a physician or group of  
56 physicians. The department shall deny registration to any clinic  
57 owned by or under any contractual or employment relationship  
58 with a physician whose Drug Enforcement Administration number

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59 has ever been suspended or revoked, or against whom the board  
60 has taken final administrative action related to the physician's  
61 impairment due to the misuse or abuse of alcohol or drugs. The  
62 department shall deny registration to any clinic in which the  
63 ownership or any controlling interest is held by a person who  
64 has been convicted of, or has entered a plea of guilty or nolo  
65 contendere to, regardless of adjudication, a felony under  
66 chapter 893. The department shall deny registration to any  
67 clinic that has a medical director who is not board-certified in  
68 pain medicine. A physician may not practice medicine in a pain-  
69 management clinic that is required to but has not registered  
70 with the department. Each clinic location shall be registered  
71 separately regardless of whether the clinic is operated under  
72 the same business name or management as another clinic. If the  
73 clinic is licensed as a health care clinic under chapter 400,  
74 the medical director is responsible for registering the facility  
75 with the department. If the clinic is not registered pursuant to  
76 chapter 395 or chapter 400, the clinic shall, upon registration  
77 with the department, designate a physician who is responsible  
78 for complying with all requirements related to registration of  
79 the clinic. The designated physician shall be licensed under  
80 this chapter or chapter 459 and shall practice at the office  
81 location for which the physician has assumed responsibility. The  
82 department shall inspect the clinic annually to ensure that it  
83 complies with rules of the Board of Medicine adopted pursuant to  
84 this subsection and subsection (5) unless the office is  
85 accredited by a nationally recognized accrediting agency  
86 approved by the Board of Medicine. The actual costs for  
87 registration and inspection or accreditation shall be paid by

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88 the physician seeking to register the clinic.

89 Section 2. Subsection (3) of section 459.005, Florida  
90 Statutes, is amended to read:

91 459.005 Rulemaking authority.—

92 (3) All privately owned pain-management clinics,  
93 facilities, or offices, hereinafter referred to as "clinics,"  
94 which advertise in any medium for any type of pain-management  
95 services, or employ a physician who is licensed under this  
96 chapter and who is primarily engaged in the treatment of pain by  
97 prescribing or dispensing controlled substance medications, must  
98 register with the department by January 4, 2010, unless that  
99 clinic is licensed as a facility under chapter 395. The  
100 department shall deny registration to any clinic that is not  
101 fully owned by a physician or group of physicians. The  
102 department shall deny registration to any clinic owned by or  
103 under any contractual or employment relationship with a  
104 physician whose Drug Enforcement Administration number has ever  
105 been suspended or revoked, or against whom the board has taken  
106 final administrative action related to the physician's  
107 impairment due to the misuse or abuse of alcohol or drugs. The  
108 department shall deny registration to any clinic in which the  
109 ownership or any controlling interest is held by a person who  
110 has been convicted of, or has entered a plea of guilty or nolo  
111 contendere to, regardless of adjudication, a felony under  
112 chapter 893. The department shall deny registration to any  
113 clinic that has a medical director who is not board-certified in  
114 pain medicine. A physician may not practice osteopathic medicine  
115 in a pain-management clinic that is required to but has not  
116 registered with the department. Each clinic location shall be

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117 registered separately regardless of whether the clinic is  
118 operated under the same business name or management as another  
119 clinic. If the clinic is licensed as a health care clinic under  
120 chapter 400, the medical director is responsible for registering  
121 the facility with the department. If the clinic is not  
122 registered under chapter 395 or chapter 400, the clinic shall,  
123 upon registration with the department, designate a physician who  
124 is responsible for complying with all requirements related to  
125 registration of the clinic. The designated physician shall be  
126 licensed under chapter 458 or this chapter and shall practice at  
127 the office location for which the physician has assumed  
128 responsibility. The department shall inspect the clinic annually  
129 to ensure that it complies with rules of the Board of  
130 Osteopathic Medicine adopted pursuant to this subsection and  
131 subsection (4) unless the office is accredited by a nationally  
132 recognized accrediting agency approved by the Board of  
133 Osteopathic Medicine. The actual costs for registration and  
134 inspection or accreditation shall be paid by the physician  
135 seeking to register the clinic.

136 Section 3. Present paragraph (nn) of subsection (1) of  
137 section 458.331, Florida Statutes, is redesignated as paragraph  
138 (pp), and new paragraphs (nn) and (oo) are added to that  
139 subsection, to read:

140 458.331 Grounds for disciplinary action; action by the  
141 board and department.—

142 (1) The following acts constitute grounds for denial of a  
143 license or disciplinary action, as specified in s. 456.072(2):

144 (nn) Practicing medicine in a pain-management clinic that  
145 is required to register, but that has not registered, with the

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146 department pursuant to s. 458.309.

147 (oo) Using any communication media to promote or advertise  
148 the use, sale, or dispensing of any controlled substance  
149 appearing in any schedule in chapter 893.

150 Section 4. Present paragraph (pp) of subsection (1) of  
151 section 459.015, Florida Statutes, is redesignated as paragraph  
152 (rr), and new paragraphs (pp) and (qq) are added to that  
153 subsection, to read:

154 459.015 Grounds for disciplinary action; action by the  
155 board and department.—

156 (1) The following acts constitute grounds for denial of a  
157 license or disciplinary action, as specified in s. 456.072(2):

158 (pp) Practicing osteopathic medicine in a pain-management  
159 clinic that is required to register, but that has not  
160 registered, with the department pursuant to s. 459.005.

161 (qq) Using any communication media to promote or advertise  
162 the use, sale, or dispensing of any controlled substance  
163 appearing in any schedule in chapter 893.

164 Section 5. Section 465.018, Florida Statutes, is amended to  
165 read:

166 465.018 Community pharmacies; permits.—Any person desiring  
167 a permit to operate a community pharmacy shall apply to the  
168 department. If the board office certifies that the application  
169 complies with the laws of the state and the rules of the board  
170 governing pharmacies, the department shall issue the permit. The  
171 department may not issue the permit ~~No permit shall be issued~~  
172 unless a licensed pharmacist is designated as the prescription  
173 department manager responsible for maintaining all drug records,  
174 providing for the security of the prescription department, and

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175 following such other rules as relate to the practice of the  
176 profession of pharmacy. The permittee and the newly designated  
177 prescription department manager shall notify the department  
178 within 10 days of any change in prescription department manager.  
179 The department may not issue the permit unless the applicant  
180 demonstrates the ability to participate in a multistate  
181 electronic prescribing network.

182 Section 6. Subsection (1) of section 465.023, Florida  
183 Statutes, is amended to read:

184 465.023 Pharmacy permittee; disciplinary action.—

185 (1) The department or the board may revoke or suspend the  
186 permit of any pharmacy permittee, and may fine, place on  
187 probation, or otherwise discipline any pharmacy permittee if the  
188 permittee, or any affiliated person, partner, officer, director,  
189 or agent of the permittee, including a person fingerprinted  
190 under s. 465.022(3), has:

191 (a) Obtained a permit by misrepresentation or fraud or  
192 through an error of the department or the board;

193 (b) Attempted to procure, or has procured, a permit for any  
194 other person by making, or causing to be made, any false  
195 representation;

196 (c) Violated any of the requirements of this chapter or any  
197 of the rules of the Board of Pharmacy; of chapter 499, known as  
198 the "Florida Drug and Cosmetic Act"; of 21 U.S.C. ss. 301-392,  
199 known as the "Federal Food, Drug, and Cosmetic Act"; of 21  
200 U.S.C. ss. 821 et seq., known as the Comprehensive Drug Abuse  
201 Prevention and Control Act; or of chapter 893;

202 (d) Been convicted or found guilty, regardless of  
203 adjudication, of a felony or any other crime involving moral

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204 turpitude in any of the courts of this state, of any other  
205 state, or of the United States;

206 (e) Been convicted or disciplined by a regulatory agency of  
207 the Federal Government or a regulatory agency of another state  
208 for any offense that would constitute a violation of this  
209 chapter;

210 (f) Been convicted of, or entered a plea of guilty or nolo  
211 contendere to, regardless of adjudication, a crime in any  
212 jurisdiction which relates to the practice of, or the ability to  
213 practice, the profession of pharmacy;

214 (g) Been convicted of, or entered a plea of guilty or nolo  
215 contendere to, regardless of adjudication, a crime in any  
216 jurisdiction which relates to health care fraud; ~~or~~

217 (h) Dispensed any medicinal drug based upon a communication  
218 that purports to be a prescription as defined by s. 465.003(14)  
219 or s. 893.02 when the pharmacist knows or has reason to believe  
220 that the purported prescription is not based upon a valid  
221 practitioner-patient relationship that includes a documented  
222 patient evaluation, including history and a physical examination  
223 adequate to establish the diagnosis for which any drug is  
224 prescribed and any other requirement established by board rule  
225 under chapter 458, chapter 459, chapter 461, chapter 463,  
226 chapter 464, or chapter 466; or

227 (i) Failed to participate in a multistate electronic  
228 prescribing network.

229 Section 7. Subsection (1) of section 465.0276, Florida  
230 Statutes, is amended to read:

231 465.0276 Dispensing practitioner.—

232 (1) (a) A person may not dispense medicinal drugs unless



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233 licensed as a pharmacist or otherwise authorized under this  
234 chapter to do so, except that a practitioner authorized by law  
235 to prescribe drugs may dispense such drugs to her or his  
236 patients in the regular course of her or his practice in  
237 compliance with this section.

238 (b) A practitioner registered under this section may not  
239 dispense more than a 72-hour supply of a controlled substance  
240 listed in Schedule II, Schedule III, or Schedule IV as provided  
241 in s. 893.03. This paragraph does not apply to controlled  
242 substances dispensed in the health care system of the Department  
243 of Corrections.

244 Section 8. This act shall take effect July 1, 2010.