

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 171 Osteopathic Physicians

SPONSOR(S): Health & Human Services Quality Subcommittee; Trujillo

TIED BILLS: **IDEN./SIM. BILLS:** SB 414

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Quality Subcommittee	13 Y, 0 N, As CS	Holt	Calamas
2) Health & Human Services Committee	17 Y, 0 N	Holt	Gormley

SUMMARY ANALYSIS

Currently, the Board of Osteopathic Medicine (board) must deny a license by examination if a Doctor of Osteopathic Medicine has an interruption in their practice for at least two years and the board determines that the interruption adversely affects their "present ability and fitness to practice." The board currently does not have the authority to place any conditions on a license, it can either approve or deny. The bill allows the board to deny or place conditions on the license of any applicant who has a lapse in practice, if the board makes such a determination. The bill provides the board more flexibility; it will be able to approve licenses with conditions.

Additionally, the bill removes requirements that an applicant seeking a residency license successfully passes all parts of the national exam, and completes a 12-month residency program to be eligible for a license. A resident physician license is designed to enable a person who holds a degree of Doctor of Osteopathic Medicine to participate in a residency training program prior to seeking a full license to practice osteopathic medicine. Finally, the bill removes the outdated license types of "assistant resident physician" and "house physician" which are no longer available for the profession.

The bill has no fiscal impact on the state or local governments.

The bill provides an effective date of July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

All states have rules that govern the ability of health care practitioners to practice medicine. These laws were enacted under the police power reserved to the states by the U.S. Constitution to adopt laws to protect the health, safety and general welfare of their citizens.¹ This gives states the ability to effectively monitor the quality of persons wishing to practice medicine in a specific area. In addition, most state statutes delegate authority for enforcing licensure laws to state boards. Each state determines the tests and procedures for licensing its health care practitioners.

Medical Quality Assurance

The Department of Health (DOH), Division of Medical Quality Assurance (MQA) regulates health care practitioners to ensure the health, safety and welfare of the public. Currently, MQA supports licensure and disciplinary activities for 43 professions and 37 types of facilities/establishments, and works with 22 boards and 6 councils. Boards are responsible for approving or denying applications for licensure and are involved in disciplinary hearings. The range of disciplinary actions taken by boards includes citations, suspensions, reprimands, probations, and revocations. Licensed osteopathic physicians (DOs) are governed by rules adopted by the Board of Osteopathic Medicine.

Boards

A board is a statutorily created entity that is authorized to exercise regulatory or rulemaking functions within the MQA.² Boards are responsible for approving or denying applications for licensure and making disciplinary decisions on whether a practitioner practices within the authority of their practice act. Practice acts refer to the legal authority in state statute that grants a profession the authority to provide services to the public. The range of disciplinary actions taken by a board includes citations, suspensions, reprimands, probations, and revocations.

Osteopathic Physicians

Osteopathic physicians are licensed for the full practice of medicine and surgery in all 50 states.³ In Florida, DOs are governed by chapter 459, F.S., the osteopathic medicine practice act. Osteopathic medicine is defined as the diagnosis, treatment, or prescription for any human disease, pain, injury, deformity or other physical or mental condition, which practice is based upon the educational standards and requirements which emphasize the importance of the musculoskeletal structure and manipulative therapy in the maintenance and restoration of health⁴. Currently, there are 4,208 individuals who hold an active in-state license to practice as a DO in Florida.⁵

Board of Osteopathic Medicine

The Board of Osteopathic Medicine (board) is composed of seven members as follows:⁶

¹ U.S. CONST., Article X.

² S. 456.001, F.S.

³ American Medical Association, Physician Licensure: An Update of Trends. Available at: <http://www.ama-assn.org/ama/pub/about-ama/our-people/member-groups-sections/young-physicians-section/advocacy-resources/physician-licensure-an-update-trends.page> (last viewed November 28, 2011).

⁴ S. 459.003(3), F.S.

⁵ Florida Department of Health, Division of Medical Quality Assurance, 201-2011 MQA Annual Report, available at: <http://doh.state.fl.us/mqa/reports.htm> (last viewed October 27, 2011).

⁶ S. 459.004, F.S.

- Five members of the board must be licensed DOs in good standing in this state who are residents of this state and who have been engaged in the practice of osteopathic medicine for at least 4 years immediately prior to their appointment.
- Two members must be citizens of the state who are not, and have never been, licensed health care practitioners.
- At least one of the seven members must be 60 years of age or older.

All board members are appointed by the Governor and confirmed by the Senate. Members of the board are provided periodic training in the grounds for disciplinary action, actions the board and the DOH may take, changes in rules and statutes, relevant judicial and administrative decisions. Board members are appointed to probable cause panels and participate in disciplinary decisions.

As of June 30, 2010, there were 68 in-state delinquent licenses held by a DO.⁷ The board received 552 complaints of DOs practicing outside their scope practice from July 1, 2010 to June 30, 2011.⁸ Also during this timeframe, the DOH issue emergency suspension orders for seven licensed DOs immediately prohibiting them from practicing.⁹

Licensure

In Florida, a person desiring to be licensed as a DO must:¹⁰

- Complete an application and remit \$200 application fee;¹¹
- Be at least 21 years of age;
- Be of good moral character; and
- Have completed at least 3 years of pre-professional postsecondary education;
- Not be under investigation for any act that would violate the osteopathic medicine practice act unless the board determines that the act doesn't adversely affect the applicant's present ability and fitness to practice;
- Have not had an application for a license to practice osteopathic medicine denied, revoked, suspended, or acted against by any licensing authority unless the board determines that the act doesn't adversely affect the applicant's present ability and fitness to practice;
- Not have received less than satisfactory evaluation from an internship, residency, or fellowship training program, unless the board determines that the act doesn't adversely affect the applicant's present ability and fitness to practice;
- Submit a set of fingerprints and remit \$ 43.25 for the background screening fee;¹²
- Demonstrate they are a graduate of a medical college recognized and approved by the American Osteopathic Association;
- Demonstrate that they have completed a resident internship for at least 12 months in a hospital approved by the Board of Trustees of the American Osteopathic Association or a program approved by the board.

Licensure by examination is the process by which a physician, having met all other qualifications for licensure, qualifies for licensure by passing an examination offered by an approved body or accredited entity. In Florida, individuals seeking licensure as a DO must demonstrate that they have obtained passing scores on all parts of the exam offered by the National Board of Osteopathic Medical Examiners (NBOME) within 5 years of submitting an application.¹³

⁷ *Ibid.*

⁸ *Ibid.*

⁹ Florida Department of Health, Division of Medical Quality Assurance, 201-2011 MQA Annual Report, *available at:* <http://doh.state.fl.us/mqa/reports.htm> (last viewed November 28, 2011).

¹⁰ S. 459.0055, F.S.

¹¹ 64B15-10.002, F.A.C.

¹² Florida Department of Health, Division of Medical Quality Assurance, Background Screening Matrix: Osteopathic Physician, *available at:* <http://www.doh.state.fl.us/mqa/background.html> (last viewed November 28, 2011).

¹³ S. 459.0055(1)(m), F.S. and 64B15-12.003, F.A.C.

Licensure by endorsement is the process by which a physician licensed in one state seeks a license from a second state.¹⁴ If an individual holds a valid DO license from another state and wishes to practice medicine in Florida, he or she is required to submit evidence to the board that they possess an active license from another state or jurisdiction.¹⁵ The initial license from another jurisdiction must have occurred less than 5 years after of receiving a passing score on the examination administered by the NBOME or a similar examination recognized by the Florida Board of Osteopathic Medicine.¹⁶ Additionally, the DO must have practiced medicine recently. If the DO has not practiced for more than 2 years, then the board has the discretion to determine if the lapse in time has adversely affected the DOs present ability and fitness to practice osteopathic medicine.¹⁷ If the board determines that the lapse in time has adversely affected the DO's ability to practice medicine, than the board must deny the application for licensure to practice in Florida.¹⁸

National Board of Osteopathic Medical Examiners

The NBOME is a not-for-profit corporation dedicated to serving the public and state licensing agencies by administering examinations testing the medical knowledge of those who seek to serve the public as osteopathic physicians.¹⁹ The examination administered by the NBOME is called the "COMLEX-USA." This exam is designed to assess the osteopathic medical knowledge and clinical skills considered essential for osteopathic generalist physicians to practice medicine without supervision. COMLEX-USA is administered in three Levels:

- Level 1-emphasizes the scientific concepts and principles necessary for understanding the mechanisms of health, medical problems and disease processes.
- Level 2- emphasizes the medical concepts and principles necessary for making appropriate medical diagnoses through patient history and physical examination findings
- Level 3-emphasizes the medical concepts and principles required to make appropriate patient management

Resident Physician

Section 459.021, F.S., allows an individual who does not hold an active license to practice osteopathic medicine, but holds a degree of Doctor of Osteopathic Medicine from a college of osteopathic medicine recognized and approved by the American Osteopathic Association, to apply for a resident physician license. A resident physician license allows a DO to practice as a resident physician, assistant resident physician, house physician, intern, or fellow in a fellowship training program. The training program is available to individuals who are seek a subspecialty board certification or wish to participate in residency training. The training program must be conducted at a teaching hospital.²⁰ Individuals must meet all requirements for an active full license, to include passing all parts of the national exam and completing a 12-month residency, to be eligible for a resident physician license.²¹

¹⁴ American Medical Association, Physician Licensure: An Update of Trends. Available at: <http://www.ama-assn.org/ama/pub/about-ama/our-people/member-groups-sections/young-physicians-section/advocacy-resources/physician-licensure-an-update-trends.page> (last viewed November 28, 2011).

¹⁵ S. 459.0055(2), F.S.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ National Board of Osteopathic Medical Examiners, About. Available at: <http://www.nbome.org/about.asp?m=inf> (last viewed November 29, 2011).

²⁰ S. 459.021(1), F.S.

²¹ S. 459.021 (6), F.S.

Effect of the Proposed Changes

Currently, the board is allowed to deny a license by examination if the applicant has had an interruption in practice for at least two years and the board determines that the interruption adversely affects the “present ability and fitness to practice.” The bill allows the board to deny or place conditions on the license of any applicant if it makes such a determination. The bill will provide the board more flexibility; it will be able to approve licenses with conditions.

Additionally, the bill removes requirements that an applicant seeking a residency license successfully passes all parts of the national exam, and completes a 12-month residency program to be eligible for a license. A resident physician license is designed to enable a person who holds a degree of Doctor of Osteopathic Medicine to participate in a residency training program prior to seeking a full license to practice osteopathic medicine.

The bill removes the outdated license types of “assistant resident physician” and “house physician” which are no longer available for the profession.

B. SECTION DIRECTORY:

Section 1. Amends s. 459.0055, F.S., relating to general licensure requirements.

Section 2. Amends s. 459.021, F.S., relating to registration of resident physicians, interns, and fellows.

Section 3. Provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None identified

2. Expenditures:

None identified.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None identified.

2. Expenditures:

None identified.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None identified.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The department has sufficient rule-making authority to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On December 6, 2011, the Health & Human Services Quality Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Removes the bill's standard for determining whether to deny or impose conditions on a license to restore the simpler standard that is in current law; and
- Makes a conforming change to strike a second reference to the terms "assistant resident physician" and "house physician" that was overlooked in the original bill.

This analysis is drafted to the committee substitute.