

**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.)

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Prepared By: The Professional Staff of the Committee on Health Policy

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BILL: SB 188

INTRODUCER: Senator Harrell

SUBJECT: Department of Health

DATE: February 8, 2019

REVISED: \_\_\_\_\_

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	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Van Winkle	Brown	Health Policy	<b>Pre-meeting</b>

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**I. Summary:**

SB 188 updates numerous provisions relating to health care practitioners and facilities regulated by the Department of Health (DOH), Division of Medical Quality Assurance. The bill:

- Authorizes DOH rulemaking for responsibilities relating to maximizing the use of existing programs and coordinating stakeholders and resources to develop a state strategic plan, including the process of selecting physicians under the Conrad 30 Waiver Program;
- Requires the applicant's date of birth on health care professional licensure applications;
- Repeals the requirement that the Board of Medicine (BOM) conduct a review of organizations that board-certify physicians in dermatology;
- Defines a "contact classroom hour" for chiropractic continuing education (CE) and authorizes 10 hours of online general credit CE;
- Deregulates registered chiropractic assistants;
- Grants rulemaking authority to the Board of Nursing (BON) to establish standards of practice, including discipline and standards of practice for certified nursing assistants (CNA);
- Recognizes CNA certification in a United States territory or the District of Columbia for certification in Florida and eliminates the element of intent for violations of the practice act for CNAs;
- Repeals the requirement for Florida dentists and dental hygienists to grade dental and dental hygienist licensure examinations;
- Requires dentists and dental hygienists to report adverse incidents to the Board of Dentistry (BOD);
- Expands the definition of dental laboratory to include any person, firm or corporation that provides onsite consultation during dental procedures to furnish, supply, construct, reproduce or repair artificial substitutes for natural teeth; and requires the DOH to biennially inspect dental laboratories;
- Requires an athletic trainer to work within his or her scope of practice as defined by the Board of Athletic Trainers (BOAT) and revises the educational and internship requirements for licensure;

- Requires the DOH to issue a single prosthetist-orthotist license to qualified applicants and establishes the educational requirements for dual registration;
- Limits massage therapy apprenticeships to those in colonic irrigations and authorizes the Board of Massage Therapy (BMT) to take action against a massage therapy establishment and individuals providing services therein, under certain circumstances;
- Updates the name of the accreditation body for psychology programs and revises the requirements for psychology licensure;
- Limits the Board of Clinical Social Work, Marriage and Family Therapists, and Mental Health Counseling to the issuance of only one additional internship registration;
- Revises the licensure requirements for Marriage and Family Therapists and Licensed Mental Health Counselors; and
- Deletes obsolete language and makes technical and conforming changes.

The bill is effective July 1, 2019.

## II. Present Situation:

### The Conrad 30 Program

The Conrad 30 Program, authorized by the U.S. Department of State and the U.S. Citizenship and Immigration Services, addresses the shortage of qualified doctors in medically underserved areas. The program allow a medical doctor holding a J-1 Visa to apply for a waiver of the two-year residence requirement upon completion of the J-1 Visa exchange visitor program under s. 214(1) of the Immigration and Nationality Act.

State public health agencies are authorized to sponsor up to 30 physicians annually to serve in a designated U.S. Department of Health and Human Services (HHS) Health Professional Shortage Area (HPSA), Medically Underserved Area (MUA), or Medically Underserved Population (MUP). The program requires a medical doctor holding a J-1 Visa who wishes to participate in a Conrad 30 Program to:

- Agree to be employed full-time in H-1B nonimmigrant status at a health care facility located in an area designated by the HHS as a HPSA, MUA, or MUP;
- Obtain a contract from the health care facility located in an area designated by HHS as an HPSA, MUA, or MUP;
- Obtain a “no objection” letter from his or her home country if the home government funded his or her exchange program; and
- Agree to begin employment at the health care facility within 90 days of receipt of the waiver, not the date his or her J-1 visa expires.

The DOH has administered Florida’s Conrad 30 Waiver Program since 1994. In recent years, the number of applicants has exceeded the maximum number of 30 slots allowed by the program. The DOH does not have explicit rulemaking authority to establish additional criteria for selecting Conrad 30 applicants for sponsorship, thereby limiting the DOH’s ability to place qualified foreign physicians in areas of highest need.<sup>1</sup>

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<sup>1</sup> Florida Department of Health, *House Bill 1047 Analysis* (Dec. 19, 2017) (on file with the Senate Committee on Health Policy).

## **The Department of Health's General Health Care Professional Licensing Authority**

The DOH's general licensing provisions, authorized under s. 456.013, F.S., require every applicant for licensure to apply to the DOH before sitting for a licensure examination. This requirement was initially imposed when the DOH developed and administered its own examinations. A strict statutory interpretation of this section requires an applicant, even one who has already passed the licensure examination before applying for a license, to take the examination after applying to the DOH for licensure.

Section 456.017, F.S., was amended in 2005 to provide that neither a board nor the DOH could administer a state-developed written examination if a national examination was certified by the DOH. National examinations have been certified, and the requirement for applying to the DOH to take the state examination has become obsolete.<sup>2</sup>

Section 456.013, F.S., requires all applications for licensure to be submitted to DOH on a form that may be submitted electronically. The provision requires the applicant's social security number (SSN). There is no statutory requirement that an applicant provide a date of birth, although a birth date is a requirement to fulfill other statutory licensure requirements under ss. 456.039 and 456.0135, F.S, for fingerprinting and fingerprint retention by the Agency for Health Care Administration (AHCA) and the Care Provider Background Screening Clearinghouse.

According to the DOH, the Joint Administrative Procedures Committee (JAPC) has objected to applications for licensure that contained a data field for the applicant's date of birth. The JAPC indicates that the DOH has no statutory authority to ask for a date of birth. To ensure accurate matches through the Florida Department of Law Enforcement, the Federal Bureau of Investigation, and the Sex Offender Registry, the DOH must have available three identifiers: the name, social security number, and date of birth.<sup>3</sup>

## **Medical Specialists**

A physician licensed under ch. 458, F.S., may not hold 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 that has been approved by the board. A physician may not hold himself or herself out as a board-certified specialist in dermatology unless the recognizing agency, whether authorized in statute or by rule, is triennially reviewed and reauthorized by the Board of Medicine (BOM).

## **Physician Assistants**

### ***Regulation of Physician Assistants - The Boards and the Council***

- Chapter 458, F.S., sets forth the provisions for the regulation of the practice of allopathic medicine by the BOM. Chapter 459, F.S., sets forth the provisions for the regulation of the

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<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

practice of osteopathic medicine by the Board of Osteopathic Medicine (BOOM). Physician assistants (PAs) are regulated by either the BOM or the BOOM, as applicable. Licensure of PAs is overseen jointly by the boards through the PA council. Two physicians appointed to the council must supervise PAs in their practice.<sup>4</sup> The council currently consists of:

- Three physicians who are members of the BOM and appointed by that chair;
- One physician who is a member of the BOOM and appointed by that chair; and
- One PA appointed by the State Surgeon General.

### *Supervision of PAs*

PAs are required by statute to be trained by and work under the supervision and control of allopathic physicians or osteopathic physicians.<sup>5</sup> The BOM and the BOOM have adopted rules that set out the general principles a supervising physician must use in developing the scope of practice of the PA under both direct<sup>6</sup> and indirect<sup>7</sup> supervision. These principles are required to recognize the diversity of both specialty and practice settings in which PAs are used.<sup>8</sup>

PAs may perform services delegated by a supervising physician in accordance with the PA's education and training unless expressly prohibited under ch. 458, F.S., ch. 459, F.S., or by rules adopted under either chapter.<sup>9</sup> A supervising physician's decision to permit a PA to perform a task or procedure under direct or indirect supervision must be based on reasonable medical judgment regarding the probability of morbidity and mortality to the patient. The supervising physician must be certain that the PA is knowledgeable and skilled in performing the tasks and procedures assigned.<sup>10</sup> Each physician, or group of physicians, supervising a licensed PA must be qualified in the medical areas in which the PA is to practice and must be individually and collectively responsible and liable for the acts and omissions of the PA.<sup>11</sup>

Current law allows a supervising physician to delegate to a licensed PA the authority to prescribe or dispense any medication, including controlled substances, used in the physician's practice unless such medication is listed in a negative formulary.<sup>12</sup>

Licensure as a PA requires that the licensee:

- Is at least 18 years of age;
- Has passed a proficiency examination with an acceptable score established by the National Commission on Certification of Physician Assistants (NCCPA);<sup>13</sup>

<sup>4</sup> See s. 458.347(9) and s. 459.022(9), F.S.

<sup>5</sup> Sections 458.347(4) and 459.022(4), F.S.

<sup>6</sup> "Direct supervision" requires the physician to be on the premises and immediately available. (See Rules 64B8-30.001(4) and 64B15-6.001(4), F.A.C.).

<sup>7</sup> "Indirect supervision" refers to the easy availability of the supervising physician to the PA, which includes the ability to communicate by telecommunications, and requires the physician to be within reasonable physical proximity. (See Rules 64B8-30.001(5) and 64B15-6.001(5), F.A.C.)

<sup>8</sup> Sections 458.347(4)(a) and 459.002(4)(a), F.S.

<sup>9</sup> Section 458.347(4)(h) and 459.022(4)(g), F.S.

<sup>10</sup> Rules 64B8-30.012(2) and 64B15-6.010(2), F.A.C.

<sup>11</sup> Sections 458.347(3) and 459.022(3), F.S.

<sup>12</sup> Section 458.347(4)(e) and (f)1., F.S., and s. 459.022(4)(e), F.S.

<sup>13</sup> If an applicant does not hold a current certificate issued by the NCCPA, and has not actively practiced within the immediately preceding four years, the applicant must retake and successfully complete the entry-level examination of the NCCPA to be eligible for licensure.

- Has completed the DOH application form, remitted an application fee, and included the following:
  - A certificate of completion of a BOM or BOOM approved PA program;
  - Acknowledgment of any prior felony convictions;
  - Acknowledgement of any revocations or denials of licensure in any state; and
  - A copy of PA training course descriptions and transcripts in pharmacotherapy, if prescribing privileges are desired.<sup>14</sup>

Renewal of a PA's license is biennial and contingent upon completion of a certain type and quantity of continuing medical education requirements. A PA with delegated prescribing authority must submit a signed affidavit that he or she has completed a minimum of ten continuing medical education hours in the specialty practice in which the PA has prescriptive privileges.<sup>15</sup>

A PA, upon employment, or after any subsequent change of his or her supervising physician, must report to the DOH within 30 days the name, Florida license number, specialty, and address of the supervising physician.<sup>16</sup>

Board rules<sup>17</sup> define a primary supervising physician as a physician licensed pursuant to ch. 458, F.S., or ch. 459, F.S., who assumes responsibility and legal liability for the services rendered by the PA at all times while the PA is not under the supervision and control of an alternate supervising physician. An alternate supervising physician is defined as a physician licensed pursuant to ch. 458, F.S., or ch. 459, F.S., who assumes responsibility and legal liability for the services rendered by the PA while the PA is under his or her supervision and control. A physician may not supervise more than four licensed physician assistants at any one time.<sup>18</sup>

### **Osteopathic Physicians**

There are two types of physicians fully licensed to practice medicine in Florida. Those holding the M.D. degree – doctor of allopathic medicine – licensed under ch. 458, F.S., and those holding the D.O. degree – doctor of osteopathic medicine – licensed under ch. 459, F.S. Both types of physicians are licensed in Florida to perform surgery and prescribe medicine in hospitals, clinics, and private practices, as well as throughout the U.S. Osteopathic physicians offer all the services as M.D.s.

Osteopathic physicians can specialize in every recognized area of medicine, from neonatology to neurosurgery, but more than half of all osteopathic physicians practice in primary care areas, such as pediatrics, general practice, obstetrics/gynecology, and internal medicine. Additionally, many osteopathic physicians fill a critical need for family doctors by practicing in small towns and rural areas.<sup>19</sup>

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<sup>14</sup> Section 458.347(7)(a), F.S. and s. 459.022(7)(a), F.S.

<sup>15</sup> Section 458.347(4)(e)3., F.S., and s. 459.022(4)(e)3., F.S.

<sup>16</sup> *Supra* note 11.

<sup>17</sup> Rule 64B8-30.001(1), F.A.C., and Rule 64B15-6.001(1), F.A.C.

<sup>18</sup> Section 458.347(3), F.S., and s. 459.022(3), F.S.

<sup>19</sup> Florida Osteopathic Medical Association, *Osteopathic Medicine*, available at <http://www.foma.org/osteopathic-medicine.html> (last visited Feb. 1, 2019).

### ***Osteopathic Residencies and Florida Licensure***

After acquiring a four-year undergraduate college degree with requisite science classes, students are accepted into one of the nation's 21 osteopathic medical schools accredited by the Bureau of Professional Education of the American Osteopathic Association. Following graduation, Osteopathic physicians complete an approved 12-month internship. Interns rotate through hospital departments, including internal medicine, family practice, and surgery. They may then choose to complete a residency program in a specialty area, which requires two to six years of additional training.<sup>20</sup>

Any person desiring to be licensed, or certified, as an osteopathic physician in Florida must:

- Submit an application with a fee;
- Be at least 21 years of age;
- Be of good moral character;
- Have completed at least three years of pre-professional postsecondary education;
- Have not previously committed any act that would constitute a violation of ch. 459, F.S.;
- Not be under investigation anywhere for an act that would constitute a violation of ch. 459, F.S.
- Have not been denied a license to practice osteopathic medicine, or had his or her osteopathic medicine license revoked, suspended, or otherwise acted against by any jurisdiction
- Have met the criteria for:
  - A limited license under s. 459.0075, F.S.;
  - An osteopathic faculty certificate under s. 459.0077, F.S., or
  - A resident physician, intern or fellow under s. 459.021, F.S.
- Demonstrate that he or she is a graduate of a medical college recognized and approved by the American Osteopathic Association;
- Demonstrate that she or he has successfully completed a resident internship of not less than 12 months in a hospital approved of by the Board of Trustees of the American Osteopathic Association or any other internship program approved by the board upon a showing of good cause; and
- Demonstrate that she or he has achieved a passing score, established by rule of the board, on all parts of the examination conducted by the National Board of Osteopathic Medical Examiners or other examination approved by the board no more than five years before making application.<sup>21</sup>

### ***The Accreditation Council for Graduate Medical Education (ACGME)***

The Accreditation Council for Graduate Medical Education (ACGME) is a non-profit corporation whose mission is to improve health care and population health by assessing and advancing the quality of resident physicians' education through accreditation. In the academic year 2017-2018, there were approximately 830 ACGME-accredited institutions sponsoring approximately 11,200 residency and fellowship programs in 180 specialties and subspecialties. Accreditation is achieved through a voluntary process of evaluation and review based on

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<sup>20</sup> Florida Osteopathic Medical Association, *Osteopathic Education*, available at: <http://www.foma.org/osteopathic-education.html> (last visited Feb. 1, 2019).

<sup>21</sup> Section 459.0055, F.S.

published accreditation standards. ACGME accreditation provides assurance that a sponsoring institution or program meets the quality standards (institutional and program requirements) of the specialty or subspecialty practice(s) for which it prepares its graduates. ACGME accreditation is overseen by a review committee made up of volunteer specialty experts from the field that set accreditation standards and provide peer evaluation of sponsoring institutions and specialty and subspecialty residency and fellowship programs.<sup>22</sup>

The ACGME was established by five medical organizations in 1981<sup>23</sup> and, in 2014, was joined by the American Osteopathic Association and the American Association of Colleges of Osteopathic Medicine. A primary responsibility of each of the organizations is to nominate individuals to be considered for membership on the ACGME Board of Directors. The ACGME board currently includes 24 members nominated by member organizations, two resident members, three public directors, four at-large directors, the chair of the Council of Review Committee Chairs, and two non-voting federal representatives.

The ACGME is an independent entity which sets standards for graduate medical education (GME), and renders accreditation decisions based on compliance with those standards. The member organizations are corporately separate from the ACGME and do not participate in accreditation, pay dues, or make any other monetary contribution to the ACGME.<sup>24</sup>

### ***The National Resident Matching Program (NRMP)***

The NRMP is a private, not-for-profit corporation established in 1952 to optimize the rank-ordered choices of applicants and program directors for residencies and fellowships. The NRMP is not an application processing service. Instead, it provides an impartial venue for matching applicants' and programs' preferences for each other using an internationally recognized mathematical algorithm.

The first Main Residency Match® (“Match”) was conducted in 1952 when 10,400 internship positions were available for 6,000 graduating U.S. medical school seniors. By 1973, there were 19,000 positions for just over 10,000 graduating U.S. seniors. Following the demise of internships in 1975, the number of first-year post-graduate (PGY-1) positions declined to 15,700. The number of PGY-1 positions gradually increased through 1994 and then began to decline slowly until 1998. In 2018, an all-time high of 30,232 PGY-1 positions were offered.<sup>25</sup>

Beginning in 2014, osteopathic medical school graduates could participate in the Match, which opened up additional residency programs available to osteopathic medical graduates. In 2018, 4,617 PGY-1 osteopathic graduates applied to the Match and 3,771 matched – an 81 percent

<sup>22</sup> American Council of Graduate Medical Education, *What We Do*, available at: <https://www.acgme.org/What-We-Do/Overview> (last visited Feb. 4, 2019).

<sup>23</sup> American Council of Graduate Medical Education, *Member Organizations*, The five organization are: The American Board of Medical Specialists, The American Hospital Association, The American Medical Association, The Association of American Medical Colleges, and Council of Medical Specialty Societies. Available at: <https://www.acgme.org/About-Us/Member-Organizations> (last visited Feb. 4, 2019).

<sup>24</sup> *Id.*

<sup>25</sup> The Match, National Resident Matching Program, Results and Data 2018 Main Residency Match *About the NRMP*, pg. 7 available at: <https://mk0nrmpcikgb8jxyd19h.kinstacdn.com/wp-content/uploads/2018/04/Main-Match-Result-and-Data-2018.pdf> (last visited Feb. 4, 2019).

match rate. By June, 2020, osteopathic residency programs will need to be accredited by ACGME to participate in the Main Residency Match.<sup>26</sup>

### **Chiropractic Continuing Education**

The practice of chiropractic medicine is “a non-combative principle and practice consisting of the science, philosophy, and art of the adjustment, manipulation, and treatment of the human body in which vertebral subluxations and other mal-positioned articulations and structures that are interfering with the normal generation, transmission, and expression of nerve impulse between the brain, organs, and tissue cells of the body ... are adjusted, manipulated, or treated, thus restoring the normal flow of nerve impulse which produces normal function and consequent health ... using specific chiropractic adjustment or manipulation techniques taught in chiropractic colleges accredited by the Council on Chiropractic Education.”<sup>27</sup>

Florida chiropractic licenses are renewable every two years. The Board of Chiropractic Medicine requires 40 in-person CE hours every biennial license renewal, and those hours must include: 27 general hours, six hours of documentation & coding, two hours for medical errors, two hours of ethics, two hours of Florida laws and rules, and one hour of risk management.

### **Registered Chiropractic Assistants**

Registered Chiropractic Assistants (RCAs) perform duties not directly related to chiropractic patient care under the direct supervision of a chiropractic physician or chiropractic physician’s assistant. There are no regulatory provisions associated with the work of an RCA. The registration is voluntary and not required for an individual to assist with patient care management activities, execute administrative and clinical procedures, or perform managerial and supervisory functions in an office.<sup>28</sup> According to the DOH, in Fiscal Year 2016-2017, there were 3,800 active in-state RCAs.<sup>29</sup>

### **Board of Nursing Rulemaking Authority to Establish Standards of Practice**

The Legislature has granted the Board of Nursing (BON) rulemaking authority to:

- Establish guidelines for remedial courses for those nurses who fail the nursing examination three times;<sup>30</sup>
- Administer the certification of clinical nurse specialists;<sup>31</sup>
- Administer the certification of advanced registered nurse practitioners, including the appropriate requirements for advanced registered nurse practitioners in the categories of certified registered nurse anesthetists, certified nurse midwives, and nurse practitioners;<sup>32</sup>

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<sup>26</sup> The National Residency Match Program, *Residency Program Eligibility* available at: <http://www.nrmp.org/residency-program-eligibility/> (last visited Feb. 4, 2019).

<sup>27</sup> Section 460.403(9), F.S.

<sup>28</sup> Section 460.4166, F.S.

<sup>29</sup> *Supra* note 1.

<sup>30</sup> Section 464.008, F.S.

<sup>31</sup> Section 464.0115, F.S.

<sup>32</sup> Section 464.012, F.S.



- Establish a procedure for the biennial renewal of licenses and to prescribe continuing education requirements for renewal of licenses;<sup>33</sup>
- Provide application procedures for inactive status, the biennial renewal of inactive licenses, and the reactivation of licenses, including applicable fees;<sup>34</sup>
- Establish the testing procedures for use in certifying nursing assistants, regulating the practice of certified nursing assistants, specifying the scope of practice, and the level of supervision required for the practice of certified nursing assistants;<sup>35</sup> and
- Establish disciplinary guidelines.<sup>36</sup>

The Legislature did not expressly grant rulemaking authority to the BON to promulgate nursing standards of practice.<sup>37</sup> The authority to define the scope of practice for nurses is noticeably absent from ss. 464.018 and 456.003(6), F.S., which expressly limits the ability of the DOH boards to modify or contravene the lawful scope of practice of a regulated profession.

From 2003 through 2012, the BON proposed various rules on nursing standards of practice for conscious sedation and unprofessional conduct, which were ultimately withdrawn after the JAPC asserted objections. In 2012, the BON proposed another rule establishing professional guidelines for the administration of conscious sedation and to update the instances of unprofessional conduct. The 2012 rule was met with rule challenges from various associations, and JAPC objected to the rule as lacking statutory rulemaking authority. The rule was ultimately challenged at DOAH in case number 121545RP. That decision found that the BON lacked the statutory authority to define nursing “scope of practice” in the Nurse Practice Act. The decision was affirmed by the First District Court of Appeal in case numbers 1D12-5656, 1D12-5671, and 1D12-5739 (all related to DOAH 12-1545RP).

The Legislature has granted statutory authority to set standards of practice for professions that are authorized to practice independently, including: allopathic and osteopathic physicians,<sup>38</sup> podiatric physicians,<sup>39</sup> pharmacists,<sup>40</sup> psychotherapists,<sup>41</sup> clinical social workers,<sup>42</sup> dentists,<sup>43</sup> optometrists,<sup>44</sup> and opticians.<sup>45</sup>

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<sup>33</sup> Section 464.013, F.S.

<sup>34</sup> Section 464.014, F.S.

<sup>35</sup> Section 464.202, F.S.

<sup>36</sup> Section 464.018(5), F.S.

<sup>37</sup> See *Florida Medical Association, Inc., Florida Osteopathic Medical Association, and Florida Podiatric Medical Association vs. Department Of Health, Board Of Nursing*, DOAH Case No. 12-001545 RP, *Summary Final Order*, Nov. 2, 2012; *affirmed per curiam, Department of Health, Board of Nursing, Florida Association of Nurse Anesthetists And Florida Nurses Association, v. Florida Medical Association, Inc., Florida Osteopathic Medical Association, Inc., And Florida Podiatric Medical Association*, Case Nos. 1D12-5656, 1D12-5671, 1D12-5739 (Fla. 1<sup>st</sup> DCA, Feb. 12, 2014).

<sup>38</sup> Sections 458.331(1)(v) and 459.015(1)(z), F.S.

<sup>39</sup> Section 461.003, F.S.

<sup>40</sup> Sections 465.003(13) and 465.0155, F.S.

<sup>41</sup> Section 490.003((4), F.S.

<sup>42</sup> Section 491.003, F.S.

<sup>43</sup> Section 466.003(3), F.S.

<sup>44</sup> Section 463.005(1)(a), F.S.

<sup>45</sup> Section 463.002(7), F.S.

## Certified Nursing Assistants

Section 464.201(5), F.S., defines the practice of a certified nursing assistant as providing care and assisting persons with tasks relating to the activities of daily living. Activities of daily living include tasks associated with: personal care, maintaining mobility, nutrition and hydration, toileting and elimination, assistive devices, safety and cleanliness, data gathering, reporting abnormal signs and symptoms, postmortem care, patient socialization and reality orientation, end-of-life care, cardiopulmonary resuscitation and emergency care, patients' rights, documentation of nursing-assistant services, and other tasks that a CNA may perform after training.<sup>46</sup>

The BON issues certificates to practice as a certified nursing assistant to any person who demonstrates a minimum competency to read and write, successfully passes the required background screening, and demonstrates:

- Successfully completing an approved training program and achieving a minimum score;
- Achieving a minimum score on the nursing assistant competency examination, and:
  - Having a high school diploma, or its equivalent; or
  - Being at least 18 years of age;
- Being currently certified in another state and having not been found to have committed abuse, neglect, or exploitation in that state; and
- Having completed the curriculum developed under the Enterprise Florida Jobs and Education Partnership Grant and achieving a minimum score.<sup>47</sup>

Section 464.204, F.S., relating to the denial, suspension, or revocation of a CNA certification, sets forth the grounds for the BON to discipline a CNA. Two actions constitute grounds for which the BON may impose disciplinary sanctions:

- Obtaining or attempting to obtain certification or an exemption, or possessing or attempting to possess certification or a letter of exemption, by bribery, misrepresentation, deceit, or through an error of the BON; and
- Intentionally violating any provision of ch. 464, F.S., ch. 456, F.S., or the rules adopted by the BON.

When pursuing discipline against a CNA, the DOH must be prepared to prove that the CNA “intentionally” violated the law or rule, which is a difficult standard to meet.

The BON can only approve applications for licensure by endorsement from currently licensed CNAs in other states. If a CNA from the District of Columbia or a U.S. territory wishes to be licensed in Florida, he or she must apply for licensure by examination instead of endorsement.<sup>48</sup>

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<sup>46</sup> Section 464.201, F.S.

<sup>47</sup> Section 464.203, F.S.

<sup>48</sup> *Id.*

## **Dentistry, Dental Hygiene, and Dental Laboratories**

### ***Licensure Examinations for Dentists and Dental Hygienists***

Section 466.004, F.S., establishes the Board of Dentistry (BOD) within the DOH to regulate the practice of dentistry and dental hygiene. The requirements for Dental licensure by examination are found in s. 466.006, F.S. The Legislature authorized the BOD to use the American Dental Licensing Examination (ADLEX), developed by the American Board of Dental Examiners, Inc., in lieu of an independent state-developed practical or clinical examination. Section 466.007, F.S., requires a dental hygiene applicant to pass the American Dental Hygiene Licensing Examination (ADHEX) developed by the American Board of Dental Examiners, Inc.

Sections 466.006(4)(b) and 466.007(4)(b), F.S., require that the ADLEX examination for dentists, and the ADHEX examination for hygienists, be graded by Florida licensed dentists, and dentists and hygienists, respectively. Such practitioners must be employed by the DOH for this purpose. This provision refers to requirements that were necessary when the ADLEX and ADHEX examinations were purchased and administered by the DOH. This requirement is now obsolete since the BOD has certified national examinations for both dentists and hygienists.

According to the DOH, by limiting the grading to Florida-only licensed dentists and hygienists, it created a shortage of dentists and hygienists available to grade the examinations, thus jeopardizing the administration of the ADLEX and the ADHEX.<sup>49</sup>

### ***Adverse Incident Reporting in the Practice of Dentistry***

There is no statutory requirement for dentists or dental hygienists to report adverse incidents or occurrences in office practice settings. In contrast, the BOM and BOOM have specific statutory authority to require licensees to report adverse incidents in office practice settings.<sup>50</sup>

The BOD, by rule, defines an “adverse occurrence” and specifies reporting requirements. The rule specifies that an adverse occurrence in a dental office must be reported to the BOD within 48 hours followed by a more specific written report within 30 days. These reports are forwarded to the chairman of the Probable Cause Panel to determine if further investigation is necessary. If further investigation is warranted, the report and recommendation are forwarded to the MQA Consumer Services Unit (CSU) for further investigation. All reported mortalities occurring in a dental office are forwarded to the CSU for investigation.

The rule does not provide a penalty for failure to report an adverse occurrence.<sup>51</sup> According to the DOH, this lack of penalty for failure to report an adverse occurrence may result in the under-reporting of incidents in the dental office practice setting.<sup>52</sup>

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<sup>49</sup> *Supra* note 1.

<sup>50</sup> Sections 458.351 and 459.026, F.S.

<sup>51</sup> Rule 64B5-14.006, F.A.C.,

<sup>52</sup> *Supra* note 1.

### ***Dental Laboratories***

Section 466.031, F.S., defines a “dental laboratory” to include any person, firm, or corporation who, for a fee or gratuitously, manufactures artificial substitutes for natural teeth, or who furnishes, supplies, constructs, reproduces, or repairs any prosthetic denture, bridge, or appliance to be worn in the human mouth, or who holds itself out as a dental laboratory. The definition specifically excludes a dental laboratory technician who constructs or repairs dental prosthetic appliances in the office of a licensed dentist, for that dentist only, and under his or her supervision and work order.

Section 466.032, F.S., sets forth the registration and biennial registration renewal for a dental laboratory. It directs the DOH to issue a certificate upon payment of a fee, which entitles the registrant to operate a dental laboratory for a period of two years. Section 466.032, F.S., sets forth the requirements for a periodic inspection of dental laboratories for required equipment and supplies, mandates 18 hours biennially of continuing education for the dental laboratory owner or at least one employee who must be in programs of learning that contribute directly to the education of the dental technician, and establishes disciplinary guidelines for violations.

According to the DOH, there were 954 dental laboratories as of June 30, 2017.<sup>53</sup> Since 2012, there have been six administrative complaints filed in Florida against dental laboratories, four of which resulted in disciplinary cases. In one case, the laboratory refused an inspection. The other three were either unsanitary conditions, failure to take continuing education for certificate renewal, or record keeping violations. In that same time period, four citations were issued for minor violations.<sup>54</sup>

### **Athletic Trainers**

Section 468.073, F.S., establishes the Board of Athletic Trainers (BOAT) within the DOH to license and regulate the practice of athletic trainers in Florida. Applicants for licensure as an athletic trainer are required to:

- Submit to a background screening;
- Have a baccalaureate or higher degree from a college or university in professional athletic training, accredited by the Commission on Accreditation of Athletic Training Education, and have passed the national examination to be certified by the Board of Certification (BOC)<sup>55</sup> for athletic trainers;
- Have a current certification from the BOC, if they graduated before 2004;<sup>56</sup> and

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<sup>53</sup> *Supra* note 1.

<sup>54</sup> *Id.*

<sup>55</sup> The Board of Certification, Inc. (BOC) was incorporated in 1989 as a not-for-profit credentialing agency to provide a certification program for the entry level athletic training profession. The BOC establishes both the standards for the practice of athletic training and the continuing education requirements for BOC Certified Athletic Trainers (ATs). The BOC also works with state regulatory agencies to provide credential information, professional conduct guidelines and regulatory standards on certification issues. The BOC also has the only accredited certification program for ATs in the United States and has mutual recognition agreements with Canada and Ireland. *See* Board of Certification for the Athletic Trainer, *Who is the BOC?* available at <http://www.bocatc.org/about-us#what-is-the-boc> (last visited Jan. 25, 2019).

<sup>56</sup> Prior to 2004, and the inception of athletic training programs, athletic trainers obtained training through a Board of Certification (BOC) internship program to obtain licensure in Florida. Current law does not allow athletic trainers who obtained training through the BOC internship program to become licensed in Florida.

- Have current certifications in cardiopulmonary resuscitation (CPR) and the use of an automated external defibrillator (AED).

An athletic trainer must practice under the direction of a physician licensed under chs. 458, 459, or 460, F.S., or otherwise authorized by Florida law to practice medicine. The physician must communicate his or her direction through oral or written prescriptions or protocols for the provision of services and care by the athletic trainer, and the athletic trainer must provide service or care as dictated by the physician.<sup>57</sup>

The BOAT is authorized to adopt rules to implement the provisions of part XIII, ch. 468, F.S. Such rules must include, but are not limited to:

- The allowable scope of practice regarding the use of equipment, procedures, and medication;
- Mandatory requirements and guidelines for communication between the athletic trainer and a physician, including the reporting to the physician of new or recurring injuries or conditions;
- Licensure requirements;
- Licensure examination;
- Continuing education requirements;
- Fees;
- Records and reports to be filed by licensees;
- Protocols; and
- Any other requirements necessary to regulate the practice of athletic training.<sup>58</sup>

At renewal, licensed athletic trainers must demonstrate a current BOC certification; however, there is no requirement for that certification to be held without lapse and in good standing.<sup>59</sup>

### **Orthotics, Prosthetics, and Pedorthics**

Section 468.801, F.S., establishes the Board of Orthotists and Prosthetists within the DOH to license and regulate the practice of Prosthetist-Orthotist, Prosthetist,<sup>60</sup> Orthotist,<sup>61</sup> Pedorthist,<sup>62</sup> Orthotic Fitter, and Orthotic Fitter Assistant in Florida. Applicants for licensure under part XIV, ch. 468, F.S., must:

- Submit an application and fee, not to exceed \$500;
- Submit fingerprints for background screening;
- Submit the cost of the state and national criminal background checks;
- Be of good moral character;

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<sup>57</sup> Section 468.713, F.S.

<sup>58</sup> Section 468.705, F.S.

<sup>59</sup> Section 468.711, F.S.

<sup>60</sup> Section 468.80(15), F.S., defines “prosthetics” as the practice of evaluating, treatment formulating, measuring, designing, fabricating, assembling, fitting, adjusting, servicing, or providing the initial training necessary to accomplish the fitting of a prosthesis.

<sup>61</sup> Section 468.80(9), F.S., defines “orthotics” as the practice of evaluating, treatment formulating, measuring, designing, fabricating, assembling, fitting, adjusting, servicing, or providing the initial training necessary to accomplish the fitting of an orthosis or pedorthic device.

<sup>62</sup> Section 468.80(12), F.S., defines “pedorthics” as the practice of evaluating, treatment formulating, measuring, designing, fabricating, assembling, fitting, adjusting, servicing, or providing the initial training necessary to accomplish the fitting of a pedorthic device.

- Be 18 years of age or older; and
- Have completed the appropriate educational preparation requirements.<sup>63</sup>

Licenses must be granted independently in orthotics, prosthetics, or pedorthics, but a person may be licensed in more than one discipline. A prosthetist-orthotist license may be granted to persons meeting the requirements for both a prosthetist and an orthotist license. Persons seeking to obtain the required orthotics or prosthetics experience in the state must be approved by the board and registered as a resident by the DOH. A registration may be held in both practice fields, but the board may not approve a second registration until at least one year after the issuance of the first registration.<sup>64</sup> Currently, a dual registration is not authorized.

### **Massage Therapy and Massage Establishments**

Section 480.035, F.S., establishes the Board of Massage Therapy (BMT) within the DOH to license and regulate the practice of massage therapy in Florida. Individuals seeking an initial massage therapy license in Florida have two options for meeting the educational requirements:

- They may attend an approved program at a massage therapy school, completing 500 hours of classroom training; or
- They can become an apprentice under a licensed massage therapist for a period of one year. During that year, the sponsor of the massage apprentice is required to file quarterly reports and the apprentice must complete the following course of study: 300 hours of physiology, 300 hours of anatomy, 20 hours of theory and history of massage, 50 hours of theory and practice of hydro-therapy, five hours of hygiene, 25 hours of statutes and rules of massage practice, 50 hours of introduction to allied modalities, 700 hours of practical massage, and three hours of board-approved HIV/AIDS instruction.<sup>65</sup>

Any person may obtain a license to practice as a massage therapist if he or she:

- Submits an application and fee;
- Is at least 18 years of age;
- Has received a high school diploma or high school equivalency diploma;
- Submits to background screening;
- Has completed a course of study at a board-approved massage school or has completed an apprenticeship program that meets standards adopted by the board; and
- Has received a passing grade on an examination, testing general areas of competency specified by the board<sup>66</sup> and administered by the DOH.<sup>67</sup>

Rule 64B7-25.001(2), F.A.C., lists five national exams that are approved by the board. The exam currently taken by applicants is the National Examination for State Licensure administered by the National Certification Board for Therapeutic Massage and Bodywork. The DOH does not offer or administer a specific state licensure exam.<sup>68</sup> According to the DOH, there are 172

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<sup>63</sup> Section 468.803, F.S.

<sup>64</sup> *Id.*

<sup>65</sup> Rule 64B7-29.003, F.A.C.

<sup>66</sup> Section 480.042, F.S.

<sup>67</sup> Section 480.041, F.S.

<sup>68</sup> *Id.*

licensed massage schools in Florida, which train 2,076 new licensees by examination, licensed in the 2016-2017 fiscal year. Of those, only 15 came through the Florida apprenticeship program.

The term massage is defined as the manipulation of the soft tissues of the human body with the hand, foot, arm, or elbow, whether or not the manipulation is aided by hydrotherapy, including colonic irrigation, or thermal therapy; any electrical or mechanical device; or the application to the human body of a chemical or herbal preparation.<sup>69</sup>

The BMT also licenses apprentices in colonic hydrotherapy.<sup>70</sup> These individuals are either attending a massage therapy school that does not offer colonic training or are licensed massage therapists who are seeking to add colonic hydrotherapy to their practice. Since there are few schools in the state that offer a colonic hydrotherapy program, apprenticeships are the primary method of training for this service.<sup>71</sup> According to the DOH, there are currently 87 licensed massage apprentices apprenticing for a colonic hydrotherapy upgrade to their license.<sup>72</sup>

The BMT also licenses massage establishments under s. 480.046(3), F.S. The board has the power to revoke or suspend the license of an establishment upon proof that the license was obtained through fraud or misrepresentation, or upon proof of fraud, deceit, gross negligence, incompetency, or misconduct in the operation of the establishment. The board may deny the subsequent licensure of such an establishment if the license holder reapplies using the same business name. However, the board is not authorized to deny the same owner a license under a new name or as a different business entity type, even if it is opened at the same location with the same employees. Additionally, the board has no specific authority to act against a massage establishment's license even if the owner and employees, while onsite, have been convicted of prostitution and related offenses.

## **Psychology**

Section 490.004, F.S., creates the Board of Psychology (BOP) within the DOH to license and regulate the practice of psychologists in Florida. The practice of psychology is defined as the observation, description, evaluation, interpretation, and modification of human behavior, by the use of scientific and applied psychological principles, methods, and procedures, for the purpose of describing, preventing, alleviating, or eliminating symptomatic, maladaptive, or undesired behavior and of enhancing interpersonal behavioral health and mental or psychological health.<sup>73</sup>

Licensure as a psychologist under ch. 490, F.S., requires a doctoral degree in psychology from an educational institution which, at the time the applicant was enrolled and graduated, held institutional accreditation from an approved agency and programmatic accreditation from the American Psychological Association (APA).

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<sup>69</sup> Section 480.033, F.S.

<sup>70</sup> *Colonic hydrotherapy* is a method of colon irrigation used to cleanse the colon with the aid of a mechanical device and water. See s. 480.033(6), F.S.

<sup>71</sup> Rule 64B7-29.007, F.A.C.

<sup>72</sup> *Supra* note 1.

<sup>73</sup> Section 490.003(4), F.S.

Section 490.003(3)(a), F.S., refers to educational requirements in effect prior to July 1, 1999, and are no longer applicable. The outdated language could create confusion among applicants as to the current educational requirements, which are correctly defined in s. 490.003(3)(b), F.S. Section 490.003(3)(b), F.S., generically refers to programs approved and recognized by the U.S. Department of Education. The only accrediting agency recognized by the U.S. Department of Education to provide programmatic accreditation for doctoral psychology programs is the American Psychological Association (APA).

Section 490.005, F.S., also refers to requirements in effect prior to July 1, 1999, which are no longer applicable to augment a deficient education or show comparability to the current educational requirements. This section also includes an outdated reference to the APA accrediting programs in Canada. Currently, the APA no longer accredits Canadian doctoral programs.<sup>74</sup>

Section 490.005(2)(b)1., F.S., refers to school psychology applicants graduating from a college or university accredited and approved by the Commission on Recognition of Postsecondary Accreditation; however, the correct reference is to the Council for Higher Education Accreditation.

Section 490.006, F.S., relating to licensure of a psychologist or school psychologist by endorsement, requires:

- An application to the DOH and payment of a fee;
- Proof of a valid license or certificate in another jurisdiction, provided that when the applicant secured such license or certificate, the requirements were substantially equivalent to or more stringent than those set forth in ch. 490, F.S., but,
  - If no Florida law existed at that time the applicant received his or her license or certificate, then the requirements in the other state must have been substantially equivalent to or more stringent than those set forth in ch. 490, F.S., at the present time.
- Proof of good standing as a diplomat with the American Board of Psychology; or
- Proof of a doctoral degree in psychology as described in s. 490.003, F.S. and at least 20 years of experience as a licensed psychologist in any jurisdiction or territory of the United States within the 25 years preceding the date of application.

Obtaining licensure under the current endorsement standards may be difficult as it requires a law-to-law comparison and applicants who otherwise might qualify for licensure may be denied, or have licensure delayed until they select a different application method.

### **Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling**

Section 491.004, F.S., creates the Board of Clinical Social Work, Marriage and Family Therapy and Mental Health Counseling within the DOH to ensure that every clinical social worker, marriage and family therapist, and mental health counselor practicing in this state meets minimum requirements for safe practice. The Florida Board of Clinical Social Work, Marriage and Family Therapy and Mental Health Counseling is responsible for licensing, monitoring,

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<sup>74</sup> *Supra* note 1.



disciplining, and educating clinical social workers, marriage and family therapists, and mental health counselors to assure competency and safety to practice in Florida.

Section 491.005, F.S., sets out the educational and examination requirements for a clinical social worker, marriage and family therapist, and mental health counselor to obtain a license by examination in Florida. An individual applying for licensure by examination, who has satisfied the clinical experience requirements of s. 491.005, F.S., or an individual applying for licensure by endorsement pursuant to s. 491.006, F.S., intending to provide clinical social work, marriage and family therapy, or mental health counseling services in Florida, while satisfying coursework or examination requirements for licensure, must obtain a provisional license in the profession for which he or she is seeking licensure prior to beginning practice.<sup>75</sup>

An individual who has not satisfied the postgraduate or post-master's level of experience requirements under s. 491.005, F.S., must register as an intern in the profession for which he or she is seeking licensure before commencing the post-master's experience requirement. An individual who intends to satisfy part of the required graduate-level practicum, internship, or field experience, outside the academic arena for any profession, must register as an intern in the profession for which he or she is seeking licensure before commencing the practicum, internship, or field experience.<sup>76</sup>

Section 491.0045(6), F.S., specifies the length of time an intern registration for clinical social work, marriage and family therapy, and mental health counseling is valid. A footnote to this section points out that, through multiple amendatory acts to s. 491.0045(6), F.S., during the same legislative session, two irreconcilable versions of the section were created, and the editors were thus required to publish both versions of the amended provision.

Section 491.0045(6), F.S., states, “[a]n intern registration issued on or before March 31, 2017, expires March 31, 2022, and may not be renewed or reissued. A registration issued after March 31, 2017, expires 60 months after the date of issuance. No subsequent intern registration may be issued unless the candidate has passed the theory and practice examination described in s. 491.005(1)(d), (3)(d), and (4)(d).” The footnote refers to an April 1, 2017, date, rather than the March 31, 2017 in the statute.

Section 491.005(3)(b), F.S., relating to licensure by examination for marriage and family therapists requires:

- A master's degree with major emphasis in marriage and family therapy, or a closely related field;
- Specific coursework in 12 content areas; and
- A practicum, internship, or field experience of 180 hours providing direct client contact hours of marriage and family services under the supervision of a licensed marriage and family therapist with at least five years of experience.

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<sup>75</sup> Section 491.0046, F.S.

<sup>76</sup> Section 491.0045, F.S.

According to the DOH, the specific course work requirement must be an exact match. Lack of an exact match may significantly delay an applicant's licensure.<sup>77</sup>

Section 491.005(3)(c), F.S., is inconsistent as it requires both two years, and three years, of clinical experience for a marriage and family therapy licensure applicant. According to the DOH, the three years of clinical experience was a technical error and is inconsistent with other statutory requirements. Only two years of clinical experience for a marriage and family therapy applicant is required.<sup>78</sup>

Section 491.005(4), F.S., relating to licensure by examination for mental health counselors, names the Professional Examination Service for the National Academy of Certified Clinical Mental Health Counselors as the required examination for a mental health counselor. The correct name of the examination required for licensure as a mental health counselor is the National Clinical Mental Health Counseling Examination. The examination was developed by and is administered by the National Board for Certified Counselors.

Section 491.005(4), F.S., contains a 300-hour difference between the hours of practicum, internship, or field experience required for graduates from a Council for Accreditation of Counseling and Related Educational Programs (CACREP) and non-CACREP graduates. A mental health counselor applicant who graduated from a program not accredited by CACREP is required to complete 1,000 hours of practicum, internship, or field experience. An MHC applicant who graduated from a CACREP accredited program is required to meet the CACREP standards to complete 700 hours of practicum or internship.<sup>79</sup>

Section 491.006, F.S., relating to licensure or certification by endorsement, requires an applicant for licensure by endorsement in the practice of clinical social work, marriage and family therapy, or mental health counseling to demonstrate to the board that he or she:

- Has knowledge of the laws and rules governing the practice of clinical social work, marriage and family therapy, and mental health counseling;
- Holds an active valid license to practice, and has actively practiced the profession in another state, for three of the last five years immediately preceding licensure;
- Meets the education requirements of ch. 491, F.S., for the profession for which the applicant seeks licensure;
- Has passed a substantially equivalent licensure examination in another state, or has passed the licensure examination in this state in the profession for which the applicant seeks licensure;
- Holds a license in good standing; and
- Is not under investigation for, or been found to have committed, an act that would constitute a violation of ch. 491, F.S.

To satisfy the education requirements of s. 491.005, F.S., specific particular course work, rather than a degree from an accredited school or college, or proof of licensure in another state, is

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<sup>77</sup> *Supra* note 1.

<sup>78</sup> *Id.*

<sup>79</sup> Council for Accreditation of Counseling & Related Educational Programs, *2016 CACREP Standards*, available at <http://www.cacrep.org/wp-content/uploads/2018/05/2016-Standards-with-Glossary-5.3.2018.pdf> (last visited Feb. 1, 2019).

required for an applicant for licensure by endorsement under ch. 491, F.S. The endorsement applicant must show proof that he or she completed certain statutorily-specified courses which may not have been available at the time he or she graduated. Current law places barriers on licensure by endorsement by requiring many applicants to complete additional courses, often difficult to obtain when the applicant is not a full-time graduate student.

Section 491.007(3), F.S., provides for the renewal of a license, registration, or certificate for clinical social workers, marriage and family therapists, and mental health counselors, and gives the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling rulemaking authority to prescribe the requirements for renewal of an intern registration. Section 491.0045(6), F.S., now addresses renewal of an intern registration; therefore, rulemaking authority is no longer necessary.

Section 491.009, F.S., sets out what acts by a clinical social worker, marriage and family therapist, or mental health counselor constitute grounds for discipline, or denial of licensure. However, s. 491.009(2), F.S., incorrectly references psychologists, who are not licensed under ch. 491, F.S., and does not include the certified master social worker profession regulated by the DOH.

### **III. Effect of Proposed Changes:**

#### **Section 1: The Conrad 30 Program**

The bill amends s. 381.4018, F.S., to authorize the DOH to adopt rules to implement that subsection, which includes the implementation of the Conrad 30 Program to encourage qualified physicians to relocate to Florida and practice in underserved areas.

#### **Section 2: The DOH General Health Care Professional Licensing Provisions**

The bill amends s. 456.013, F.S., to eliminate obsolete language regarding applying to the DOH to take an examination. It also adds the date of birth as a required element on the application, which provides an increased likelihood of a confirmation of a criminal background check for the DOH.

#### **Section 3: Medical Specialists**

The bill amends section 458.3312, F.S., relating to holding oneself out as a medical specialist, to repeal the requirement that the BOM conduct a review of organizations that board-certify physicians in dermatology every three years in order for a physician to hold himself or herself out as board-certified in dermatology.

#### **Sections 4 and 6: Designated Supervising Physician**

The bill creates a new type of supervising physician for PAs. Under the bill, the new “designated supervising physician” supervises a PA practicing in a group practice or facility where the PA is subject to the suspension of the designated supervising physician and more than one other supervising physician. The bill permits the PA to choose whether to provide the DOH with specific information about his or her actual supervising physicians, or to provide information

only on his or her designated supervising physician at the group practice or facility. The bill does not require the PA to disclose to the DOH the specific information on all physicians the PA is actually being supervised by in the group practice or at a facility.

The bill defines the designated supervising physician as the primary contact designated by the facility or the physician practice group that employs a PA where the PA may be supervised by more than one physician. The designated supervising physician is to maintain a current list of all approved supervising physicians at the facility, or physician group practice, which includes the name of each supervising physician and his or her area of practice. The designated supervising physician is to provide the list to the DOH, or BOM or MOOM, upon written request. The bill does not delineate any other duties or responsibilities for the designated supervising physician.

Current law limits the number of PAs a physician may supervise at any one time to four.<sup>80</sup> The bill's creation of the designated supervising physician could create situations where a PA may be practicing under not only the supervision of the designated supervising physician, but also more than four other supervising physicians at the facility or group practice. The addition of the designated supervising physician for PAs, who can be the designated supervising physician for all the PAs in the group practice at a facility, might hinder the DOH's current ability to readily identify physician and PA supervisory relationships, at a particular facility or group practice, on any given date and time, and might run afoul of the limit on physicians of supervising no more than four PAs at one time.

Under the bill, the designated supervising physician's required list also does not contain information on which supervising physicians are supervising which PAs on which dates or during which patient office visits or surgical procedures. There are also no sanctions in the bill for failing to maintain the list, not keeping it up to date, or not providing it to the DOH in a timely manner.

### **Section 5: Osteopathic Internships and Residencies**

The bill recognizes the agreement between the American Osteopathic Association (AOA) and ACGME. Both organizations committed to improving the patient care delivered by resident and fellow physicians today, and in their future independent practice, and to do so in clinical learning environments characterized by excellence in care, safety, and professionalism, thereby creating a single path for graduate medical education (GME). This single path for GME allows osteopathic and allopathic medical school graduates to seek residencies and fellowship programs accreditation by ACGME. This will enable osteopathic medical school graduates, residents, and fellows to apply to the National Resident Match Program and participate in the Main Residency Match for internships, residencies, and fellowships, thereby creating more residency opportunities for osteopathic residents.

However, if an osteopathic residency program does not to achieve ACGME accreditation by June 2020, and a resident of the program still has training ahead, the resident will be able to complete the AOA-accredited training and advance to AOA board eligibility. That is due to an agreement between the AOA, the ACGME, and the American Association of Colleges of

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<sup>80</sup> Sections 458.347(3) and 459.022(3), F.S.

Osteopathic Medicine (AACOM) that gives the AOA restricted authority to extend the AOA accreditation date to allow any remaining residents to finish training in an accredited program. In some cases, residents whose programs do not achieve ACGME accreditation by June 2020 may be able to transfer to another accredited program.<sup>81</sup>

All residents who have completed an AOA- or ACGME-accredited residency program are eligible for AOA board certification. AOA board certification is an important quality marker for patients that highlights your commitment to the uniquely osteopathic approach to patient care and allows you to engage in continuous professional development throughout your career. For osteopathic medical physicians pursuing certification through the American Board of Medical Specialties (ABMS), their requirements are slightly different. The ABMS requires candidates' residency programs to have been ACGME-accredited for specified amount of time, such as three years. Requirements vary by specialty.<sup>82</sup>

### **Section 7: Chiropractic Continuing Education**

The bill amends section 460.408, F.S., to define a “contact classroom hour” as a presentation in which the persons presenting, and the persons attending, the course are present onsite. The bill also authorizes chiropractic physicians to take up to 10 general hours of CE online, if the online courses are competency based, and use the Sharable Content Objective Reference Model standard, or more stringent standards, as determined by the board.

### **Section 8: Registered Chiropractic Assistants**

Section 460.4166, F.S., is repealed, thus deregulating the profession of Registered Chiropractic Assistants, as the duties performed are not directly related to patient safety and the registration is voluntary.

### **Sections 9, 10 and 11: BON Rulemaking Authority and Certified Nursing Assistants**

The bill amends ss. 464.202, 464.203 and 464.204, F.S., relating to rulemaking, duties, and powers of the BON, to authorize the BON to create rules detailing standards of practice for its licensees, which include: ARNPs, clinical nurse specialists, RNs, LPNs, and CNAs.

The bill authorizes the BON to grant licenses by endorsement for CNA applicants with certifications in U.S. territories or Washington, D.C. This will expedite licensure as a CNA because the applicant would no longer have to apply for licensure by examination.

The bill amends s. 464.204, F.S., to eliminate the element of intent to violate the laws or rules relating to CNAs, which will align CNA prosecution with the law for disciplining registered nurses and licensed practical nurses.

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<sup>81</sup> American Osteopathic Association, *What does a single GME mean for DO residents?* available at <https://osteopathic.org/residents/resident-resources/residents-single-gme/> (last visited Feb. 4, 2019).

<sup>82</sup> *Id.*

**Sections 12, 13, 14, 15 and 16: Dentistry, Dental Hygiene, and Dental Laboratories**

The bill amends ss. 466.006 and 466.007, F.S., to eliminate obsolete requirements.

The bill amends s. 466.017, F.S., to require dentists and dental hygienists to report adverse incidents to the DOH, which is now required only by board rule. This new section requires the reporting of deaths, or any incident that results in the temporary or permanent physical or mental injury, that requires hospitalization or emergency room treatment of a dental patient that occurred during or as a result of the use of anesthesia or sedation, and creates grounds for discipline for the failure to report an adverse incident.

The bill amends the definition of “dental laboratory” in s. 466.031, F.S., to include a person who provides onsite consultation during dental procedures.

The bill amends s. 466.036, F.S., to require a dental laboratory be inspected at least biennially.

**Sections 17, 18, 19, 20, and 21: Athletic Trainers**

The bill amends s. 468.701, F.S., to include within the definition of athletic trainer that he or she must work within the scope of practice as established within rules established by the board. This requirement limits the potential that an athletic trainer will attend opportunities that are not approved by the board for safe practice and will incorporate those practices into his or her practice.

The bill amends the licensure requirements for an athletic trainer to create a new licensure pathway for applicants who hold a bachelor’s degree, have completed the BOC internship program, and hold a current certification from the BOC to become licensed in Florida.

The bill amends s. 468.711, F.S., relating to licensure renewal requirements to require an athletic trainer to maintain his or her BOC certification in good standing without lapse. Licensees will have to demonstrate continuous good standing of his or her BOC certification at the time of renewal.

The bill gives the BOAT rulemaking authority to further define the supervision between an athletic training student and a licensed athletic trainer, rather than relying on compliance with standards set by an external entity.

**Section 22: Orthotics, Prosthetics, and Pedorthics**

The bill amends s. 468.803, F.S., to authorize the DOH to issue a joint registration in orthotics and prosthetics as a dual registration rather than requiring separate registrations, and to recognize the dual residency program and educational requirements for dual registration.

**Sections 23, 24, 25, and 26: Massage Therapy and Massage Establishments**

The bill amends the definition of “apprentice” in s. 480.033(5), F.S., to eliminate the statutory authority for massage therapy apprenticeships, except for apprentices studying colonic

hydrotherapy. The bill allows apprentices licensed before July 1, 2018, to maintain their apprentice license until its expiration date, but no later than July 1, 2021, and to qualify for licensure based on that apprenticeship.

The bill amends s. 480.041, F.S., to specify that the licensure examination is a national examination designated by the BMT, not an examination administered by the board. The bill repeals s. 480.042, F.S., relating to a massage therapy examination by the board, which is obsolete.

The bill amends s. 480.046(3), F.S., to strengthen the grounds for disciplinary action by the board against a licensed massage establishment to include actions by an owner or a repeat offender. The bill adds:

- That an establishment license may also be suspended or revoked, or a subsequent license application denied, if the owner or therapists at the massage establishment have cumulatively committed three or more crimes in any jurisdiction related to prostitution, as defined in s. 796.07, F.S.;
- That an establishment disciplined under s. 480.046(3), F.S., cannot apply for re-licensure unless there is a change of ownership; and
- That the board may deny the license of an establishment if its owner has previously had a license revoked under s. 480.046(3), F.S.

The DOH may not issue a license to an establishment disciplined under this provision unless there is change of ownership.

### **Sections 27, 28, and 29: Psychology**

The bill amends s. 490.003, F.S., to eliminate outdated language in s. 490.003(3)(a), F.S.

The bill amends, and renumbers, s. 490.003(3)(b), F.S., to delete the generic reference to programs accredited by an agency recognized and approved by the U.S. Department of Education, and inserts a specific reference to the American Psychological Association (APA), which is the only accrediting agency recognized by the U.S. Department of Education to provide programmatic accreditation for doctoral psychology programs. A specific reference to the APA clarifies current education requirements but does not impose any new requirements.

The bill amends s. 490.005, F.S., relating to licensure by examination for psychologists. The bill eliminates the specific reference to Canada, which will allow applicants who obtained their education outside the U.S. to demonstrate they have an education comparable to an APA program.

The bill removes outdated language referencing an augmented or comparable doctoral education pathway. The ability of applicants who obtained their degree in the United States, to augment an insufficient degree or show comparability to an APA accredited program, is no longer available.

The bill eliminates an outdated reference to the school psychology educational accrediting agency, the Commission on Recognition of Postsecondary Accreditation, and updates the reference with the successor agency, the Council for Higher Education Accreditation.

The bill amends s. 490.006, F.S., relating to a psychologist licensure by endorsement, to eliminate the requirement that the licensing provisions of the other state must have been substantially equivalent to, or more stringent than, those of either the law in Florida at the time the applicant obtained an out-of-state license, or the current Florida law. The bill reduces from 20 years of licensed psychology experience to 10 years of experience, within the 25 years preceding the date of application. Licensure of qualified applicants will be expedited by amending these provisions.

**Sections 30, 31, 32, 33, 34, and 35: Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling**

The bill amends s. 491.0045, F.S., to clarify conflicting language passed in the same legislative session to permit the board to make a one-time exception for an additional intern registration. For an intern seeking a second registration after March 31, 2022, the board may grant an additional intern registration in emergency or hardship cases, as defined by board rule, if the candidate has passed the theory and practice examination described in ss. 491.055(1)(d), (3)(d), and (4)(d), F.S.

The bill amends s 491.005(3), F.S., relating to licensure by examination for marriage and family therapists, to require:

- A master's degree with major emphasis in marriage and family therapy from a program accredited by the Commission of Accreditation for Marriage and Family Therapy Education; or
- A master's degree with major emphasis in marriage and family therapy from a Florida university program accredited by the Counseling and Related Education Program.

The bill eliminates the requirement for marriage and family therapists to complete 12 specific content areas, and 180 practicum hours. This change will simplify the education review process, eliminate the course requirement review, and expedite licensure.

The bill amends s. 491.005(3)(c), F.S., to correct a technical discrepancy in the number of years of clinical experience required for a marriage and family therapist applicant, from three years to two years.

The bill amends s. 491.005(4), F.S., relating to mental health counseling applicants, to update the name of the examination to be taken by a mental health counselor applicant. The bill amends s. 491.005(4)(b)1.c., F.S., to reduce the number of practicum, internship, or field experience hours for those applicants who graduated from a non-CACREP accredited program from 1,000 hours to 700 hours, bringing them in line with graduates from CACREP accredited programs. Amending this provision promotes regulatory efficiency and makes licensure requirements more balanced between the two programs.

The bill amends s. 491.006, F.S., relating to licensure, or certification by endorsement, for applicants for licensure in clinical social work, marriage and family therapy, or mental health counseling. The bill removes the requirement for endorsement applicants to meet the same educational requirements required of new applicants, provided the applicant for endorsement meets the requirement to have an active, valid license and has actively practiced the profession in



another state for three of the last five years. Amending this provision will increase licensure portability for applicants applying by endorsement for licensure as marriage and family therapists in Florida.

The bill amends s. 491.007, F.S., relating to renewal of a license, registration, or certificate, to delete obsolete rulemaking authority regarding intern registration renewal.

The bill amends s. 491.009(2), F.S., to delete an inaccurate reference to psychologists, who are licensed under ch. 490, F.S., and to add the profession of certified master social worker that is licensed under ch. 491, F.S. The bill corrects reference to whether it is the board or the DOH with authority to take disciplinary action for certain violations. By adding certified master social worker to this provision, it gives the DOH authority to enter an order denying licensure to a certified master social worker or imposing discipline against any certified master social worker who is found guilty of violating any provision in ch. 491, F.S.

The bill makes additional technical amendments to ss. 491.0046 and 945.42, F.S., to conform cross-references.

**Section 36** amends 945.42, F.S.

The bill makes a technical change to s. 945.42, F.S., to conform the definition of psychological professional in cross-references.

**Section 37** provides that the bill takes effect July 1, 2019.

#### **IV. Constitutional Issues:**

**A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

None.

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

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 381.4018, 456.013, 458.3312, 458.347, 459.0055, 459.022, 460.408, 464.202, 464.203, 464.204, 466.006, 466.007, 466.017, 466.031, 466.036, 468.701, 468.707, 468.711, 468.713, 468.723, 468.803, 480.033, 480.041, 480.046, 490.003, 490.005, 490.006, 491.0045, 491.005, 491.006, 491.007, 491.009, 491.0046, and 945.42.

This bill repeals the following sections of the Florida Statutes: 460.4166, 480.042.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

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

None.

**B. Amendments:**

None.