

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 309 Prohibited Acts by Health Care Practitioners

**SPONSOR(S):** Massullo

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Quality Subcommittee	12 Y, 2 N	Siples	McElroy
2) Health Care Appropriations Subcommittee	10 Y, 0 N	Mielke	Clark
3) Health & Human Services Committee			

### SUMMARY ANALYSIS

The Division of Medical Quality Assurance (MQA), within the Department of Health (DOH), has general regulatory authority over health care practitioners. The MQA works in conjunction with 22 boards and four councils to license and regulate seven types of health care facilities and more than 40 health care professions, including allopathic physicians, osteopathic physicians, and podiatric physicians.

DOH does not license a physician's specialty or sub-specialty based upon board certification, but does limit who can hold themselves out as board-certified specialists. An unlicensed individual may be subject to administrative action or criminal penalties if the individual states or otherwise implies that he or she is a licensed medical professional. This may include the use of certain terms or titles that the public generally associates with a specific medical profession.

HB 309 prohibits a health care practitioner from knowingly using certain names or titles if the health care practitioner is not authorized under the law as an allopathic physician, osteopathic physician, or podiatric physician. The bill authorizes DOH to impose administrative penalties on a health care practitioner who violates this provision.

The bill has an indeterminate, but likely insignificant, negative fiscal impact on DOH, which current resources are adequate to absorb. The bill has no fiscal impact on local governments.

The bill takes effect upon becoming law.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Present Situation

##### **Licensure and Regulation of Physicians**

The Division of Medical Quality Assurance (MQA), within the Department of Health (DOH), has general regulatory authority over health care practitioners.<sup>1</sup> The MQA works in conjunction with 22 boards and four councils to license and regulate seven types of health care facilities and more than 40 health care professions, including Medical Doctors (allopathic physicians), Doctors of Osteopathic Medicine (osteopathic physicians), and Doctors of Podiatric Medicine (podiatric physicians).<sup>2</sup> Each profession is regulated by an individual practice act and by ch. 456, F.S., which provides general regulatory and licensure authority for the MQA.

##### Allopathic Physician Licensure

Chapter 458, F.S., governs licensure and regulation of the practice of medicine by the Florida Board of Medicine (allopathic board) in conjunction with DOH. The chapter imposes requirements for licensure examination and licensure by endorsement.

##### *Allopathic Education and Training Requirements*

An individual seeking to be licensed by examination as an allopathic physician must, among other things:

- Complete 2 years of post-secondary education which includes, at a minimum, courses in fields such as anatomy, biology, and chemistry prior to entering medical school;
- Meet one of the following medical education and postgraduate training requirements:
  - Graduate from an allopathic medical school recognized and approved by an accrediting agency recognized by the U.S. Office of Education or recognized by an appropriate governmental body of a U.S. territorial jurisdiction, and have completed at least one year of approved residency training;
  - Graduate from an allopathic foreign medical school registered with the World Health Organization and certified pursuant to statute as meeting the standards required to accredit U.S. medical schools, and have completed at least one year of approved residency training; or
  - Graduate from an allopathic foreign medical school that has not been certified pursuant to statute; have an active, valid certificate issued by the Educational Commission for Foreign Medical Graduates (ECFMG),<sup>3</sup> have passed that commission's examination; and have completed an approved residency or fellowship of at least 2 years in one specialty area; and
- Obtain a passing score on:
  - The United States Medical Licensing Examination (USMLE);

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<sup>1</sup> Pursuant to s. 456.001(4), F.S., health care practitioners are defined to include acupuncturists, physicians, physician assistants, chiropractors, podiatrists, naturopaths, dentists, dental hygienists, optometrists, nurses, nursing assistants, pharmacists, midwives, speech language pathologists, nursing home administrators, occupational therapists, respiratory therapists, dieticians, athletic trainers, orthotists, prosthetists, electrologists, massage therapists, clinical laboratory personnel, medical physicists, dispensers of optical devices or hearing aids, physical therapists, psychologists, social workers, counselors, and psychotherapists, among others.

<sup>2</sup> Florida Department of Health, Division of Medical Quality Assurance, *Annual Report and Long-Range Plan, Fiscal Year 2018-2019*, 6, available at <http://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/documents/annual-report-1819.pdf> (last visited October 29, 2019).

<sup>3</sup> A graduate of a foreign medical school does not need to present an ECFMG certification or pass its exam if the graduate received his or bachelor's degree from an accredited U.S. college or university, studied at a medical school recognized by the World Health Organization, and has completed all but the internship or social service requirements, has passed parts I and II of the National Board Medical Examiners licensing examination or the ECFMG equivalent examination. Section 458.311, F.S.

- A combination of the USMLE, the examination of the Federation of State Medical Boards of the United States, Inc. (FLEX), or the examination of the National Board of Medical Examiners up to the year 2000; or
- The Special Purpose Examination of the Federation of State Medical Boards of the United States (SPEX), if the applicant was licensed on the basis of a state board examination, is currently licensed in at least one other jurisdiction of the United States or Canada, and has practiced for a period of at least 10 years.<sup>4</sup>

An individual who holds an active license to practice medicine in another jurisdiction may seek licensure by endorsement to practice medicine in Florida.<sup>5</sup> The applicant must meet the same requirements for licensure by examination. To qualify for licensure by endorsement, the applicant must also submit evidence of the licensed active practice of medicine in another jurisdiction for at least 2 of the preceding 4 years, or evidence of successful completion of either a board-approved postgraduate training program within 2 years preceding filing of an application or a board-approved clinical competency examination within the year preceding the filing of an application for licensure.

### Osteopathic Physician Licensure

Chapter 459, F.S., provides for the licensure and regulation of the practice of medicine by the Florida Board of Osteopathic Medicine (osteopathic board) in conjunction with DOH. The chapter imposes requirements for licensure by examination and licensure by endorsement.

#### *Osteopathic Education and Training Requirements*

An individual seeking to be licensed as an osteopathic physician must, among other things:<sup>6</sup>

- Graduate from a medical college recognized and approved by the American Osteopathic Association;
- Successfully complete a resident internship of at least 12 months in a hospital approved by the Board of Trustees of the American Osteopathic Association or any other internship approved by the osteopathic board; and
- Obtain a passing score, as established by rule of the osteopathic board, on the examination conducted by the National Board of Osteopathic Medical Examiners or other examination approved by the osteopathic board, no more than five years prior to applying for licensure.<sup>7</sup>

If an applicant for a license to practice osteopathic medicine is licensed in another state, the applicant must have actively practiced osteopathic medicine within the two years prior to applying for licensure in this state.

### Podiatric Physicians

Chapter 460, F.S., provides for the licensure and regulation of the practice of podiatric medicine by the Florida Board of Podiatric Medicine (podiatric board) in conjunction with DOH. The chapter imposes requirements for licensure by examination and licensure by endorsement.

#### *Podiatric Education and Training Requirements*

An individual seeking to be licensed as a podiatric physician must, among other things:

- Graduate from a school or college of podiatric medicine or chiropody recognized and approved by the Council on Podiatry Education of the American Podiatric Medical Association;

<sup>4</sup> Section 458.311(1), F.S.

<sup>5</sup> Section 458.313, F.S.

<sup>6</sup> Section 459.0055(1), F.S.

<sup>7</sup> However, if an applicant has been actively licensed in another state, the initial licensure in the other state must have occurred no more than five years after the applicant obtained the passing score on the licensure examination.

- Successfully complete a one-year residency program approved by the podiatric board or have continuously practiced for 10 years in another state; and
- Obtain a passing score on the three parts of the national examination conducted by the National Board of Podiatric Medical Examiners.<sup>8</sup>

## Unlicensed Practice of a Health Care Profession

### *Administrative Penalties*

Florida law prohibits an individual from practicing a regulated health care profession without a license. An individual must meet minimum education and training requirements to become licensed and practice a health care profession.<sup>9</sup> An unlicensed individual providing healthcare services is subject to administrative and criminal penalties. DOH may issue a cease and desist letter to such a person and impose, by citation, an administrative penalty of up to \$5,000 per offense.<sup>10</sup> DOH may also seek a civil penalty of up to \$5,000 for each offense through the circuit court, in addition to or in lieu of the administrative penalty.<sup>11</sup> An individual practicing, attempting to practice or offering to practice, a health care profession without an active, valid Florida license is subject to criminal penalties, in addition to any administrative and civil penalties incurred by the unlicensed individual.<sup>12</sup>

### *Criminal Penalties*

It is a third degree felony to practice medicine or attempt to practice medicine without a Florida license, and it is a first degree misdemeanor to lead the public to believe one is licensed to practice as a medical doctor or is engaged in the licensed practice of medicine, without holding a valid, active license.<sup>13</sup> It is a third degree felony to practice osteopathic medicine or attempt to practice osteopathic medicine without a Florida license.<sup>14</sup>

It is a third degree felony to practice podiatric medicine or attempt to practice medicine without a Florida license, and it is a first degree misdemeanor to use the title “podiatrist,” “doctor of podiatry,” “doctor of podiatric medicine,” “foot clinic,” “foot doctor,” “quiropedista,” or any other name, title, or phrase that would lead the public to believe that such person is practicing podiatric medicine, if the person does not hold a Florida license.<sup>15</sup>

## Board Certification and Florida Licensure

DOH does not license physicians by specialty or subspecialty; however, current law limits which physicians may hold themselves out as board-certified specialists. An allopathic physician may not hold himself or herself out as a board-certified specialist unless he or she has received formal recognition as a specialist from a specialty board of the American Board of Medical Specialties (ABMS) or other recognizing agency<sup>16</sup> approved by the allopathic board.<sup>17</sup> Additionally, an allopathic 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 allopathic board.<sup>18</sup> Similarly, an osteopathic physician may not hold himself or herself out as a board-certified specialist unless he or she has successfully completed the requirements for certification by the

<sup>8</sup> Rule 64B18-11.002, F.A.C.

<sup>9</sup> s. 456.065(1), F.S.

<sup>10</sup> s. 456.065, F.S. Each day that the unlicensed practice continues after issuance of a notice to cease and desist constitutes a separate offense.

<sup>11</sup> s. 456.065(2)(c), F.S.

<sup>12</sup> s. 456.065(2)(d), F.S.

<sup>13</sup> Section 458.327, F.S. A third degree felony is punishable by a term of imprisonment not exceeding five years and a fine not to exceed \$5,000. A first degree misdemeanor is punishable by a term of imprisonment not exceeding one year and a fine not to exceed \$1,000. Penalties may be enhanced under certain circumstances. See ss. 775.082, 775.083, and 775.084.

<sup>14</sup> Section 459.013, F.S.

<sup>15</sup> Section 461.012, F.S.

<sup>16</sup> The allopathic board has approved the specialty boards of the ABMS as recognizing agencies. Rule 64B8-11.001(1)(f), F.A.C.

<sup>17</sup> Section 458.3312, F.S.

<sup>18</sup> Id.

American Osteopathic Association (AOA) or the Accreditation Council on Graduate Medical Education (ACGME) and is certified as a specialist by a certifying agency<sup>19</sup> approved by the board.<sup>20</sup>

A podiatric physician may not hold himself or herself out as possessing a credential or certification from an organization unless the organization is approved by the podiatric board.<sup>21</sup> By rule, the American Podiatric Medical Association, the National Council of Competency Assurance, or any of their recognized component or affiliate organizations are approved.<sup>22</sup>

### **Effect of Proposed Legislation**

HB 309 prohibits a health care practitioner from using certain titles unless the health care practitioner is licensed and authorized to use such title as an allopathic physician under chapter 458, F.S., an osteopathic physician under chapter 459, F.S., or a podiatric physician under chapter 461. DOH may impose penalties against any health care practitioner who knowingly uses one of the following titles but is not authorized to do so:

Physician	Gynecologist	Ophthalmologist
Surgeon	Hematologist	Orthopedic Surgeon
Medical Doctor	Hospitalist	Orthopedist
Doctor of Osteopathy	Internist	Osteopath
M.D.	Interventional Pain	Otologist
Anesthesiologist <sup>23</sup>	Medicine Physician	Otolaryngologist
Cardiologist	Laryngologist	Otorhinolaryngologist
Dermatologist	Nephrologist	Pathologist
Endocrinologist	Neurologist	Pediatrician
Gastroenterologist	Obstetrician	Podiatrist
General Practitioner	Oncologist	Primary Care Physician
Proctologist	Radiologist	Rhinologist
Psychiatrist	Rheumatologist	Urologist

In addition to these titles, the bill prohibits an unauthorized person from using any other words, letters, abbreviations, or insignia that indicates or implies that he or she is authorized to practice as such.

If a board or DOH, if there is no board, finds that a health care practitioner has violated this provision, the bill authorizes the board or DOH to:<sup>24</sup>

- Refuse to certify or to certify with restrictions, an application for a license;
- Suspend or permanently revoke a license;
- Restrict the license;
- Impose an administrative fine, not to exceed \$10,000 for each count or separate offense;
- Issue a reprimand or letter of concern;
- Place the licensee on probation for a period of time and subject to the conditions of the board or DOH, if there is no board;
- Impose corrective action;

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<sup>19</sup> The osteopathic board has approved the specialty boards of the ABMS and AOA as recognizing agencies. Rule 64B15-14.001(h), F.A.C.

<sup>20</sup> Section 459.0152, F.S.

<sup>21</sup> Rule 64B18-14.004(i), F.A.C.

<sup>22</sup> Id.

<sup>23</sup> The bill defines an anesthesiologist as an allopathic or osteopathic physician who holds an active, unrestricted license; who has successfully completed an anesthesiology training program by the Accreditation Council on Graduate Medical Education or its equivalent, or the American Osteopathic Association; and who is certified by the American Board of Certification or the American Osteopathic Board of Anesthesiology, or is eligible to take the certification exam of either board, or is certified by the Board of Certification in Anesthesiology affiliated with the American Association of Physician Specialties. See ss. 458.3475(1) and 459.023(1), F.S.

<sup>24</sup> Section 426.072(2), F.S.

- Require the licensee to refund of fees billed and collected from the patient or a third party on behalf of the patient; or
- Require that the licensee undergo remedial education.

In determining which penalty to impose, the board or DOH, if there is no board, must consider what is necessary to protect the public or to compensate the patient.<sup>25</sup>

The bill takes effect upon becoming law.

**B. SECTION DIRECTORY:**

**Section 1:** Amends s. 456.072, F.S.; relating to grounds for discipline; penalties; enforcement.

**Section 2:** Provides an effective date of upon becoming law.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

DOH may experience an increase in revenue if health care practitioners are found to have violated the provisions of the bill and if DOH imposes an administrative fine. It is not known how many health care practitioners may violate the provisions of the bill.

2. Expenditures:

DOH may experience an indeterminate, but likely insignificant, negative fiscal impact due to an increase in investigation and enforcement actions. It is not known how many health care practitioners may violate the provisions of the bill but it is estimated current resources are adequate to absorb these costs.<sup>26</sup>

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Health care practitioners who are found to have violated the provisions of the bill may be required to pay an administrative fine or otherwise be disciplined.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

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

<sup>25</sup> Id.

<sup>26</sup> Department of Health, *Agency Legislative Analysis for HB 309*, on file with the Health Quality Subcommittee.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

Not applicable.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

The bill limits the use of the term “physician” to health care practitioners licensed under chs. 458, 459, and 461, F.S., which appears to conflict with several statutory provisions that describe the term “physician”:

- Sections 456.039 and 456.031, F.S., include those licensed under ch. 460, F.S., (chiropractic medicine) in the term;
- Section 456.056, F.S., provides that the term includes those licensed under ch. 460, F.S., and ch. 463, F.S. (optometry);
- Section 456.073(12)(b), F.S., provides that the term includes those licensed under ch. 460, F.S., and ch. 466, F.S. (dentistry); and
- Section 456.44, F.S., includes those licensed under ch. 466, F.S., in its description of a physician.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**