

**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 172

INTRODUCER: Senators Burton and Passidomo

SUBJECT: Health Care Practitioner Specialty Titles and Designations

DATE: March 24, 2025

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Smith</u>	<u>Brown</u>	<u>HP</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>RC</u>	_____

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**I. Summary:**

SB 172 amends existing legislative intent under s. 456.003, F.S., relating to the regulation of health care professions and finds that the health, safety, and welfare of the public may be harmed or endangered by unlicensed practice or misleading representations by health care practitioners.

The bill amends ss. 458.3312 and 459.0152, F.S., to specify that only physicians who are board-certified may use a defined list of medical specialist titles and designations—such as “cardiologist,” “dermatologist,” or “orthopedic surgeon”—and authorizes the Board of Medicine (BOM) and the Board of Osteopathic Medicine (BOOM), respectively, to add other titles by rule.

The bill creates s. 456.65, F.S., to prohibit health care practitioners who are not allopathic or osteopathic physicians from using medical specialist titles within the lists of titles created by the bill for physician specialties in ss. 458.3312 and 459.0152, F.S., unless specifically authorized by law or in accordance with other specific exceptions. This section prohibits the use of misleading terms, titles, or designations that may misrepresent a practitioner’s qualifications or imply physician-level training where none exists. Practitioners specifically addressed with exceptions in this section include chiropractic physicians, podiatric physicians, dentists, and anesthesiologist assistants (AAs).

To enforce these requirements, the bill authorizes the Department of Health to pursue remedies under s. 456.065, F.S., relating to the unlicensed practice of a health care profession.

The bill provides an effective date of July 1, 2025.

## II. Present Situation:

### The Health, Safety, and Welfare of the Public

Chapter 456, F.S., is entitled “Health Professions and Occupations: General Provisions.” Section 456.003, F.S., in part, provides Legislative intent about the state’s regulation of health care professions, as follows:

- It is the intent of the Legislature that persons desiring to engage in any lawful profession regulated by the DOH are entitled to do so as a matter of right if otherwise qualified.
- Such professions will be regulated only for the preservation of the health, safety, and welfare of the public under the police powers of the state. Such professions will be regulated when:
  - Their unregulated practice can harm or endanger the health, safety, and welfare of the public, and when the potential for such harm is recognizable and clearly outweighs any anticompetitive impact which may result from regulation.
  - The public is not effectively protected by other means, including, but not limited to, other state statutes, local ordinances, or federal legislation.
  - Less restrictive means of regulation are not available.

### Licensure and Regulation of Health Care Practitioners

The Division of Medical Quality Assurance (MQA), within the DOH, has general regulatory authority over health care practitioners.<sup>1</sup> The MQA works in conjunction with 22 regulatory boards and four councils to license and regulate over 1.5 million health care practitioners.<sup>2</sup> Professions are generally regulated by individual practice acts and by ch. 456, F.S., which provides regulatory and licensure authority for the MQA. The MQA is statutorily responsible for the following boards and professions established within the division:<sup>3</sup>

- The Board of Acupuncture, created under ch. 457, F.S.;
- The Board of Medicine, created under ch. 458, F.S.;
- The Board of Osteopathic Medicine, created under ch. 459, F.S.;
- The Board of Chiropractic Medicine, created under ch. 460, F.S.;
- The Board of Podiatric Medicine, created under ch. 461, F.S.;
- Naturopathy, as provided under ch. 462, F.S.;
- The Board of Optometry, created under ch. 463, F.S.;
- The Board of Nursing, created under part I of ch. 464, F.S.;
- Nursing assistants, as provided under part II of ch. 464, F.S.;
- The Board of Pharmacy, created under ch. 465, F.S.;
- The Board of Dentistry, created under ch. 466, F.S.;

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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, dietitians, athletic trainers, orthotists, prosthetists, electrologists, massage therapists, clinical laboratory personnel, medical physicists, genic counselors, 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 2023-2024*, p. 7-8, <https://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/2024.10.28.FY23-24AR-FINAL.pdf> (last visited Mar. 24, 2025).

<sup>3</sup> Section 456.001(4), F.S.

- Midwifery, as provided under ch. 467, F.S.;
- The Board of Speech-Language Pathology and Audiology, created under part I of ch. 468, F.S.;
- The Board of Nursing Home Administrators, created under part II of ch. 468, F.S.;
- The Board of Occupational Therapy, created under part III of ch. 468, F.S.;
- Respiratory therapy, as provided under part V of ch. 468, F.S.;
- Dietetics and nutrition practice, as provided under part X of ch. 468, F.S.;
- The Board of Athletic Training, created under part XIII of ch. 468, F.S.;
- The Board of Orthotists and Prosthetists, created under part XIV of ch. 468, F.S.;
- Electrolysis, as provided under ch. 478, F.S.;
- The Board of Massage Therapy, created under ch. 480, F.S.;
- The Board of Clinical Laboratory Personnel, created under part I of ch. 483, F.S.;
- Medical physicists, as provided under part II of ch. 483, F.S.;
- Genetic Counselors as provided under part III of ch. 483, F.S.;
- The Board of Opticianry, created under part I of ch. 484, F.S.;
- The Board of Hearing Aid Specialists, created under part II of ch. 484, F.S.;
- The Board of Physical Therapy Practice, created under ch. 486, F.S.;
- The Board of Psychology, created under ch. 490, F.S.;
- School psychologists, as provided under ch. 490, F.S.;
- The Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling, created under ch. 491, F.S.; and
- Emergency medical technicians and paramedics, as provided under part III of ch. 401, F.S.

The DOH and the practitioner boards have different roles in the regulatory system. Boards establish practice standards by rule, pursuant to statutory authority and directives. The DOH receives and investigates complaints about practitioners and prosecutes cases for disciplinary action against practitioners.

The DOH, on behalf of the professional boards, investigates complaints against practitioners.<sup>4</sup> Once an investigation is complete, the DOH presents the investigatory findings to the boards. The DOH recommends a course of action to the appropriate board's probable cause panel, which may include:<sup>5</sup>

- Issuing an Emergency Order;
- Having the file reviewed by an expert;
- Issuing a closing order; or
- Filing an administrative complaint.

The boards determine the course of action and any disciplinary action to take against a practitioner under the respective practice act.<sup>6</sup> For professions for which there is no board, the DOH determines the action and discipline to take against a practitioner and issues the final

<sup>4</sup> Department of Health, *Investigative Services*, <http://www.floridahealth.gov/licensing-and-regulation/enforcement/admin-complaint-process/isu.html> (last visited Mar. 24, 2025).

<sup>5</sup> Department of Health, *Prosecution Services*, <http://www.floridahealth.gov/licensing-and-regulation/enforcement/admin-complaint-process/psu.html> (last visited Mar. 24, 2025).

<sup>6</sup> Section 456.072(2), F.S.

orders.<sup>7</sup> The DOH is responsible for ensuring that licensees comply with the terms and penalties imposed by the boards.<sup>8</sup> If a case is appealed, DOH attorneys defend the final actions of the boards before the appropriate appellate court.<sup>9</sup>

The DOH and board rules apply to all statutory grounds for discipline against a practitioner. Under current law, the DOH takes on the disciplinary functions of a board relating to violations of a practice act only for practitioner types that do not have a board. The DOH itself takes no final disciplinary action against practitioners for which there is a board.

### **The Unlicensed Activity Unit**

The Unlicensed Activity (ULA) Unit protects Florida residents and visitors from the potentially serious and dangerous consequences of receiving medical and health care services from an unlicensed person. The ULA unit investigates and refers for prosecution all unlicensed health care activity complaints and allegations.

The ULA unit works in conjunction with law enforcement and the state attorney's offices to prosecute individuals practicing without a license. In many instances, unlicensed activity is a felony level criminal offense. More importantly, receiving health care from unlicensed persons is dangerous and could result in further injury, disease or even death.<sup>10</sup>

### ***The Unlicensed Activity Investigation Process***

The DOH assigns all ULA complaints a computer-generated complaint number for tracking purposes. If the allegations are determined to be legally sufficient, the matter will be forwarded to a ULA investigator whose office is geographically closest to the location where the alleged unlicensed activity is occurring. In cases where the person making the allegation has provided their identifying information, a ULA investigator will contact him or her to verify the allegations. The investigator may also ask for more detailed information concerning certain aspects of the complaint. He or she may also ask to meet with the complainant in person for a formal interview. All ULA investigators are empowered to take sworn statements.

After discussing the allegations with the complainant, the ULA investigator will pursue all appropriate investigative steps (gather documents, conduct surveillance, question witnesses, etc.) in order to make a determination concerning the likelihood that the offense(s) took place in the manner described by the complainant. In the event that a licensed health care provider is alleged to be somehow involved with the unlicensed activity, the ULA investigator will also coordinate his or her investigation with the Investigative Services Unit (ISU) regulatory investigator assigned to investigate the licensee.

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<sup>7</sup> Professions which do not have a board include naturopathy, nursing assistants, midwifery, respiratory therapy, dietetics and nutrition, electrolysis, medical physicists, genetic counselors, and school psychologists.

<sup>8</sup> *Supra*, note 5.

<sup>9</sup> *Id.*

<sup>10</sup> The Department of Health, Licensing and Regulation, enforcement, Unlicensed Activity, *Reporting Unlicensed Activity*, available at <https://www.floridahealth.gov/licensing-and-regulation/enforcement/report-unlicensed-activity/index.html> (last visited Mar. 24, 2025).

If the complainant's allegations can be substantiated, the ULA investigation will conclude with one or more of the following outcomes:

- The subject(s) will be issued a Cease and Desist Agreement.
- The subject(s) will be issued a Uniform Unlicensed Activity Citation (fine).
- The subject(s) will be arrested by law enforcement.

If the investigation determines that the alleged acts either did not take place or if they did occur but all actions were lawful and proper, the investigation will be closed as unfounded. In the event that the allegation(s) cannot be clearly proved or disproved, the matter will be closed as unsubstantiated. In any case, a detailed investigative report will be prepared by the ULA investigator supporting the conclusions reached by the investigation.

Under s. 456.065, F.S., investigations involving the unlicensed practice of a health care profession are criminal investigations that require the development of sufficient evidence (probable cause) to present to law enforcement or file charges with the State Attorney's Office in the county of occurrence. While ULA investigators are non-sworn, many have law enforcement experience gained from prior careers as police officers and detectives. ULA investigators work cooperatively with many law enforcement agencies in joint investigations that are either initiated by the DOH or the agency concerned.<sup>11</sup>

### **Health Care Specialties and Florida Licensure**

The DOH does not license health care practitioners by specialty or subspecialty. A health care practitioner's specialty area of practice is acquired through the practitioner's additional education, training, or experience in a particular area of health care practice. Practitioners who have acquired additional education, training, or experience in a particular area may also elect to become board-certified in that specialty by private, national specialty boards, such as the American Board of Medical Specialties (ABMS), the Accreditation Board for Specialty Nursing Certification, and the American Board of Dental Specialties.<sup>12</sup> Board certification is not required to practice a medical or osteopathic specialty.

### **Title Prohibitions Under Current Florida Law**

Current law limits which health care practitioners may hold themselves out as board-certified specialists. Under s. 458.3312, F.S., 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

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<sup>11</sup> The Department of Health, Licensing and Regulation, enforcement, Unlicensed Activity, *Investigate Complaints*, available at <https://www.floridahealth.gov/licensing-and-regulation/enforcement/report-unlicensed-activity/investigate-complaints.html> (last visited Mar. 24, 2025).

<sup>12</sup> Examples of specialties include dermatology, emergency medicine, ophthalmology, pediatric medicine, certified registered nurse anesthetist, clinical nurse specialist, cardiac nurse, nurse practitioner, endodontics, orthodontics, and pediatric dentistry.

from a specialty board of the ABMS or other recognizing agency<sup>13</sup> approved by the BOM.<sup>14</sup> Similarly, under s. 459.0152, F.S., 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 American Osteopathic Association (AOA) or the Accreditation Council on Graduate Medical Education (ACGME) and is certified as a specialist by a certifying agency<sup>15</sup> approved by the BOOM.<sup>16</sup> In addition, 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 BOM.<sup>17</sup> However, a physician licensed under ch. 458 or 459 may indicate the services offered and may state that his or her practice is limited to one or more types of services when this accurately reflects the scope of practice of the physician.<sup>18</sup>

A podiatric physician also may not advertise that he or she is board certified unless the organization is approved by the Board of Podiatric Medicine (BPM) for the purposes of advertising only and the name of the organization is identified in full in the advertisement. In order for an organization to obtain the BPM approval it must be the American Podiatric Medical Association, the National Council of Competency Assurance, or an organization that must:

- Be composed of podiatric physicians interested in a special area of practice demonstrated through successful completion of examinations or case reports;
- Subscribe to a code of ethics;
- Have rules and procedures for maintaining a high level of professional conduct and discipline among its membership;
- Have an active membership of at least seventy-five (75);
- Sponsor annual meeting and courses in Board approved continuing education; and
- Be a national organization in scope and give a certification examination at least once a year before the podiatric physician can advertise possession of the certification.<sup>19</sup>

A dentist may not hold himself or herself out as a specialist, or advertise membership in or specialty recognition by an accrediting organization, unless the dentist has completed a specialty education program approved by the American Dental Association and the Commission on Dental Accreditation and the dentist is:<sup>20</sup>

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<sup>13</sup> The Board of Medicine has approved the specialty boards of the ABMS as recognizing agencies. Fla. Admin. Code R. 64B8-11.001(1)(f),(2025). The board has also approved the following recognizing agencies: American Board of Facial Plastic & Reconstructive Surgery, Inc., American Board of Pain Medicine, American Association of Physician Specialists, Inc./American Board of Physician Specialties, American Board of Interventional Pain Physicians, American Board of Vascular Medicine, United Council for Neurologic Subspecialties, and American Board of Electrodiagnostic Medicine. Fla.-Admin. Code R. 64B8-11.001(8),(2025).

<sup>14</sup> Section 458.3312, F.S.

<sup>15</sup> The Board of Osteopathic Medicine has approved the specialty boards of the ABMS and AOA as recognizing agencies. Fla. Admin. Code R. 64B15-14.001(2)(h),(2025). The osteopathic board has also approved the following recognizing agencies: American Association of Physician Specialists, Inc., and American Board of Interventional Pain Physicians. Fla.-Admin. Code R. 64B15-14.001(5),(2025).

<sup>16</sup> Section 459.0152, F.S.

<sup>17</sup> *Id.*

<sup>18</sup> Sections 458.3312 and 459.0152, F.S.

<sup>19</sup> Fla. Admin. Code R. 64B18-14.004 (2025).

<sup>20</sup> Section 466.0282, F.S. A dentist may also hold himself or herself out as a specialist if the dentist has continuously held himself or herself out as a specialist since December 31, 1964, in a specialty recognized by the American Dental Association.

- Eligible for examination by a national specialty board recognized by the American Dental Association; or
- Is a diplomate of a national specialty board recognized by the American Dental Association.

If a dentist announces or advertises a specialty practice for which there is not an approved accrediting organization, the dentist must clearly state that the specialty is not recognized or that the accrediting organization has not been approved by the American Dental Association or the Florida Board of Dentistry.<sup>21</sup>

The Board of Chiropractic Medicine (BCM) permits a chiropractor to advertise that he or she has attained diplomate status in a chiropractic specialty area recognized by the BCM. BCM specialties include those which are recognized by the Councils of the American Chiropractic Association, the International Chiropractic Association, the International Academy of Clinical Neurology, or the International Chiropractic Pediatric Association.<sup>22</sup>

### **Practitioner Discipline**

Section 456.072, F.S., authorizes a regulatory board, or the DOH if there is no board, to discipline a health care practitioner's licensure for a number of offenses, including, but not limited to:

- Making misleading, deceptive, or fraudulent representations in or related to the practice of the licensee's profession; or
- Failing to identify through writing or orally to a patient the type of license under which the practitioner is practicing.

If a board or the DOH finds that a licensee committed a violation of a statute or rule, the board or the DOH may:<sup>23</sup>

- Refuse to certify, or to certify with restrictions, an application for a license;
- Suspend or permanently revoke a license;
- Place a restriction on the licensee's practice or license;
- Impose an administrative fine not to exceed \$10,000 for each count or separate offense; if the violation is for fraud or making a false representation, a fine of \$10,000 must be imposed for each count or separate offense;
- Issue a reprimand or letter of concern;
- Place the licensee on probation;
- Require a corrective action plan;
- Refund fees billed and collected from the patient or third party on behalf of the patient; or
- Require the licensee to undergo remedial education.

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<sup>21</sup> Section 466.0282(3), F.S.

<sup>22</sup> Fla. Admin. Code R. 64B2-15.001(2)(e), (2025). Examples of chiropractic specialties include chiropractic acupuncture, chiropractic internist, chiropractic and clinical nutrition, radiology chiropractic, and pediatric chiropractors.

<sup>23</sup> Section 456.072(2), F.S.

## State Versus Federal Practitioner Licensure

The federal government does not license health care practitioners, nor does it regulate practitioner behavior in terms of scope of practice, standards of practice, or practitioner discipline. Instead, the federal government relies on state governments to fulfill those functions.

### *Conditions of Participation in Federal Health Care Programs*

In addition to state licensure requirements, Medicare, Medicaid, and other government reimbursement programs<sup>24</sup> rely on the power of the purse to manage practitioners and facilities in the provision of health care services to persons enrolled in such programs. These programs impose “conditions of participation” and “conditions of payment,” which essentially mandate compliance with specified standards. Certification under a federal health care program is a right to participate in government payment systems. It is distinct from licensure by a state government or accreditation by a nationally-recognized board.<sup>25</sup>

### *Examples of Federal Deference to State Regulatory Authority*

For example, under federal labor law found in 29 CFR s. 825.125, the definition of “health care provider” includes, in part, a doctor of medicine or osteopathy who is authorized to practice medicine or surgery *by the state in which the doctor practices*.

That section of federal law goes on to reference other practitioners, including podiatrists, dentists, clinical psychologists, optometrists, chiropractors, nurse practitioners, nurse midwives, clinical social workers, and physician assistants who are *authorized to practice in their state and performing within the scope of their practice as defined under state law*.

Another example is found in federal law creating a workers’ compensation program for longshoremen and harbor workers.<sup>26</sup> Under that federal program, for the purpose of establishing who may be paid for providing services to persons enrolled in the program, the term “physician” includes doctors of medicine, surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners *within the scope of their practice as defined by state law*.<sup>27</sup>

This federal workers’ compensation program that reimburses health care providers as described above will also reimburse for treatment based on prayer or spiritual means alone if provided by an accredited practitioner of a church or religious denomination that is recognized by the federal government in certain ways.<sup>28</sup>

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<sup>24</sup> Such as the federal workers’ compensation program for longshoremen and harbor workers found under 20 CFR Subchapter A, available at: <https://www.law.cornell.edu/cfr/text/20/chapter-VI/subchapter-A> (last visited Mar. 24, 2025).

<sup>25</sup> The Healthcare Law Review: USA, *Spotlight: The Regulation of Healthcare Providers and Professionals in the USA*, Sept. 7, 2020, available at: <https://www.lexology.com/library/detail.aspx?g=c3c193d0-753e-4244-914a-fd943e70ec8e> (last visited Mar. 24, 2025).

<sup>26</sup> *Supra* note 24.

<sup>27</sup> See 20 CFR s. 702.404.

<sup>28</sup> See 20 CFR s. 702.401(b).



### ***Federal Distinctions Between Physicians and Other Providers***

Other federal programs draw specific distinctions between “physicians” and non-physicians who are included in the “physician” payment provisions above. For example, federal Medicaid law requires that state Medicaid programs “must provide for payment of optometric services as physician services, whether furnished by *an optometrist or a physician*,” thereby differentiating between optometrists and physicians instead of classifying them jointly.<sup>29</sup>

These federal laws do not license or regulate such practitioners the way state laws do. They also do not define practitioner credentials, titles, or scopes of practice outside the provisions of state law and regulations that provide for such designations.

### **Florida Requirements for Billing Medicare Patients**

In 1992, the Legislature created s. 456.056, F.S., relating to how Florida-licensed practitioners may bill patients enrolled in Medicare. The sole purpose of this section of statute is to prohibit Florida-based practitioners who participate in Medicare from directly invoicing Medicare patients in excess of the amounts that patients owe, according to Medicare payment methodologies.

Section 456.056, F.S., provides that the term “physician” is defined in a manner consistent with federal law that governs Medicare billing. As the term is used in that section of the Florida Statutes, “physician” means:

- A *physician* licensed under ch. 458, F.S.,
- An osteopathic *physician* licensed under ch. 459, F.S.,
- A chiropractic *physician* licensed under ch. 460, F.S.,
- A podiatric *physician* licensed under ch. 461, F.S., or
- An optometrist licensed under ch. 463, F.S.<sup>30</sup>

This definition of “physician,” which was written to apply only to Medicare billing issues, is comparable to Medicare’s definition of “physician services” found in 42 CFR Part 414, which is entitled “Payment for Part B Medical and Other Health Services.” This portion of Medicare law<sup>31</sup> provides that, for payment purposes, “physician services” includes the following services, to the extent they are covered by Medicare: professional services of doctors of medicine and osteopathy, doctors of optometry, doctors of podiatry, doctors of dental surgery and dental medicine,<sup>32</sup> and chiropractors.

Section 456.056, F.S., goes on to provide that any attempt by a Florida-licensed “physician,” as defined above, to collect from a Medicare beneficiary any amount of charges in excess of an

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<sup>29</sup> See 42 CFR s. 441.30.

<sup>30</sup> See s. 456.056(1)(a), F.S.

<sup>31</sup> See 42 CFR s. 414.2.

<sup>32</sup> Dentistry is omitted from s. 456.056, F.S., since traditional Medicare does not cover most dental care apart from emergencies or dental services provided in a hospital setting. See: <https://www.medicare.gov/coverage/dental-services> (last visited Mar. 24, 2025).

unmet deductible or the 20 percent of charges that Medicare does not pay, is deemed null, void, and of no merit.<sup>33</sup>

As such, the only purpose of s. 456.056, F.S., is to regulate the dollar amounts that specified practitioners may attempt to collect from their patients as payment for Medicare services, consistent with Medicare's terminology for billing. This Florida statute does not provide authority for any health care practitioner to use certain titles.

### **“Nurse Anesthesiologist”**

On August 8, 2019, at the general Board of Nursing (BON) meeting, the BON considered requests for declaratory statements.<sup>34</sup> The second request for a declaratory statement was made by John P. McDonough, APRN,<sup>35</sup> CRNA,<sup>36</sup> license number 3344982.<sup>37</sup>

For the meeting, McDonough's Petition for Declaratory Statement acknowledged that the type of Florida nursing license he held was as an advanced practice registered nurse (APRN), and that he was a certified registered nurse anesthetist (CRNA), but requested that he be permitted to use the phrase “nurse anesthesiologist” as a descriptor for him or his practice, and that the BON not subject him to discipline under ss. 456.072 and 464.018, F.S.,<sup>38</sup> based on the following grounds:

- A New Hampshire Board of Nursing's Position Statement that the nomenclature, *Nurse Anesthesiologist* and *Certified Registered Nurse Anesthesiologist*, are not title changes or an expansion of scope of practice, but are optional, accurate descriptors;<sup>39</sup> and
- Florida law grants no title protection to the words *anesthesiologist* or *anesthetist*.<sup>40</sup>

The Florida Association of Nurse Anesthetists (FANA) and the Florida Medical Association, Inc. (FMA), Florida Society of Anesthesiologists, Inc. (FSA), and Florida Osteopathic Medical

<sup>33</sup> See s. 456.056(5), F.S.

<sup>34</sup> Section 120.565, F.S. Provides that, “[a]ny substantially affected person may seek a declaratory statement regarding an agency's opinion as to the applicability of a statutory provision as it applies to the petitioner's particular set of circumstances. The agency must give notice of the filing of a petition in the Florida Administrative Register, provide copies of the petition to the board, and issue a declaratory statement or deny the petition within 90 days after the filing. The declaratory statement or denial of the petition is then noticed in the next Florida Administrative Register, and disposition of a petition is a final agency action.”

<sup>35</sup> An APRN is an advanced practice registered nurse licensed under ch. 464, F.S.

<sup>36</sup> A CRNA is a certified registered nurse anesthetist, or an APRN who specializes in anesthesia.

<sup>37</sup> The Florida Board of Nursing, Meeting Minutes, Disciplinary Hearings & General Business, *Declaratory Statements*, No. 2, Aug. 8, 2019, available at <https://floridasnursing.gov/meetings/minutes/2019/08-august/08072019-minutes.pdf> p. 28 (last visited Mar. 24, 2025).

<sup>38</sup> *Petition for Declaratory Statement Before the Board of Nursing, In re: John P. McDonough, A.P.R.N., C.R.N.A., Ed.D.*, filed at the Department of Health, July 10, 2019 (on file with the Senate Committee on Health Policy).

<sup>39</sup> New Hampshire Board of Nursing, *Position Statement Regarding the use of Nurse Anesthesiologist as a communication tool and optional descriptor for Certified Registered Nurse Anesthetists (CRNAs)*, Nov. 20, 2018, available at <https://static1.squarespace.com/static/5bf069ef3e2d09d0f4e0a54f/t/5f6f8a708d2cb23bb10f50a0/1601145457231/NH+BON+NURSE+ANESTHESIOLOGIST.pdf> (last visited Mar. 24, 2025).

<sup>40</sup> *Id.*

Association, Inc. (FOMA), filed timely and legally sufficient<sup>41</sup> motions to intervene<sup>42</sup> pursuant to Florida Administrative Code Rule 28-106.205.<sup>43</sup> The FANA's petition<sup>44</sup> was in support of petitioner's Declaratory Statement while the motion filed jointly by the FMA, FSA, and FOMA was in opposition.

The FMA, FSA, and FOMA argued they were entitled to participate in the proceedings, on behalf of their members, as the substantial interests of their members – some 32,300 – could be adversely affected by the proceeding.<sup>45, 46</sup> Specifically, the FMA, FSA, and FOMA argued that the substantial interests of their respective members would be adversely affected by the issuance of a Declaratory Statement that a petitioner could use the term “nurse anesthesiologist,” without violating ss. 456.072 and 464.018, F.S., on the grounds that:

- A substantial number of their members use the term “anesthesiologist” with the intent and understanding that patients, and potential patients, would recognize the term to refer to them as physicians licensed under chs. 458 or 459, F.S., not “nurse anesthetists;”
- Sections 458.3475(1)(a) and 459.023(1)(a), F.S., both define the term “anesthesiologist” as a licensed allopathic or osteopathic physician and do not include in those definitions a “nurse anesthetist;”
- The Merriam-Webster Dictionary defines an “anesthesiologist” as a “physician specializing in anesthesiology,” not as a nurse specializing in anesthesia; and
- The Legislature clearly intended a distinction between the titles to be used by physicians practicing anesthesiology and nurses delivering anesthesia, to avoid confusion, as s. 464.015(6), F.S., specifically states that:
  - Only persons who hold valid certificates to practice as certified registered nurse anesthetists in this state may use the title “Certified Registered Nurse Anesthetist” and the abbreviations “C.R.N.A.” or “nurse anesthetist;” and
  - Petitioner is licensed as a “registered nurse anesthetist” under s. 464.012(1)(a), F.S., and the term “nurse anesthesiologist” is not found in statute.

<sup>41</sup> Fla. Adm. Code R. 28-105.0027(2) and 28.106.205(2) (2019), both of which state that to be legally sufficient, a motion to intervene in a proceeding on a petition for a declaratory statement must contain the following information: (a) The name, address, the e-mail address, and facsimile number, if any, of the intervenor; if the intervenor is not represented by an attorney or qualified representative; (b) The name, address, e-mail address, telephone number, and any facsimile number of the intervenor's attorney or qualified representative, if any; (c) Allegations sufficient to demonstrate that the intervenor is entitled to participate in the proceeding as a matter of constitutional or statutory right or pursuant to agency rule, or *that the substantial interests of the intervenor are subject to determination or will be affected by the declaratory statement*; (d) The signature of the intervenor or intervenor's attorney or qualified representative; and (e) The date.

<sup>42</sup> The Florida Medical Association, Inc., Florida Society of Anesthesiologists, Inc., and Florida Osteopathic Medical Association, Inc., *Motion to Intervene In Florida Board of Nursing's Consideration of the Petition for Declaratory Statement in Opposition of Petitioner John P. McDonough, A.P.R.N., C.R.N.A., Ed.D.*, filed at the Department of Health, Aug. 1, 2019, (on file with the Senate Health Policy Committee).

<sup>43</sup> Fla. Adm. Code. R. 28-106.205 (2019), in pertinent part, provides, “Persons other than the original parties to a pending proceeding whose substantial interest will be affected by the proceeding and who desire to become parties may move the presiding officer for leave to intervene.”

<sup>44</sup> *Florida Association of Nurse Anesthetists Motion to Intervene*, filed at the Department of Health, July 31, 2019, (on file with the Senate Committee on Health Policy).

<sup>45</sup> *Supra* note 43.

<sup>46</sup> See *Florida Home Builders Association, et al., Petitioners, v. Department of Labor And Employment Security, Respondent*, 412 S.2d 351 (Fla. 1982), holding that a trade association does have standing under s. 120.56(1), F.S., to challenge the validity of an agency ruling on behalf of its members when that association fairly represents members who have been substantially affected by the ruling.

At the hearing, the attorney for the BON advised the BON that, “[t]he first thing the Board need[ed] to do [was] determine whether or not the organizations that [had] filed petitions to intervene have standing in order to participate in the discussion of the Declaratory Statement”<sup>47</sup> and that:

“Basically in order to make a determination of whether an organization has standing, they have to show that the members of their organization would have an actual injury in fact, or suffer an immediate harm of some sort of immediacy were the Board to issue this particular Declaratory Statement, and then the Board also has to make a determination of whether the nature of the injury would be within the zone of interest that the statute is addressing.”<sup>48</sup>

However, the above special injury standard,<sup>49</sup> provided by board counsel to the BON to apply to determine the organizations’ standing to intervene, based on their members’ substantial interests being affected by the declaratory statement, was held inapplicable to trade associations in *Florida Home Builders Ass’n. v. Department of Labor and Employment Security*, 412 So 2d 351 (Fla. 1982). The Florida Supreme Court, in *Florida Home Builders, Ass’n.*, held that a trade or professional association is able to challenge an agency action on behalf of its members, even though each member could individually challenge the agency action, if the organization could demonstrate that:

- A substantial number of the association members, though not necessarily a majority, would be “substantially affected” by the challenged action;
- The subject matter of the challenged action is within the association’s scope of interest and activity; and
- The relief requested is appropriate for the association’s members.<sup>50</sup>

The FANA’s motion to intervene was granted, based on the application of an incorrect standard, without the BON making the findings required by *Florida Home Builders, Ass’n.* The motion to intervene filed by the FMA, FSA, and FOMA was denied, also based on the application of an incorrect standard, on the grounds that:

- Their members are regulated by the Board of Medicine, not the Board of Nursing;
- Nursing disciplinary guidelines were being discussed;
- Their members’ licenses and discipline would not be affected by an interpretation of nursing discipline;<sup>51</sup> and
- Their members are not regulated by the Nurse Practice Act.

A motion was made to approve McDonough’s Petition for Declaratory Statement, and it passed unanimously. According to the BON’s approval, McDonough may now use of the term “nurse anesthesiologist” as a descriptor, and such use is not grounds for discipline against his nursing license. However, while s. 120.565, F.S., provides that any person may seek a declaratory

<sup>47</sup> Record at p. 3, ll. 13-17. Declaratory Statement, Dr. John P. McDonough, Before the Board of Nurses, State of Florida, Department of Health, Sanibel Harbor Marriott. (on file with the Senate Committee on Health Policy).

<sup>48</sup> *Id.* p. 3-4, ll. 22- 25, 1-6.

<sup>49</sup> *United States Steel Corp. v. Save Sand Key, Inc.*, 303 So.2d 9 (Fla. 1974).

<sup>50</sup> *Florida Home Builders Ass’n. v. Department of Labor and Employment Security*, 412 So.2d 351 (Fla. 1982), pp. 353-354.

<sup>51</sup> Record at p. 7, ll. 1-13. Declaratory Statement, Dr. John P. McDonough, Before the Board of Nurses, State of Florida, Department of Health, Sanibel Harbor Marriott. (on file with the Senate Committee on Health Policy).

statement regarding the potential impact of a statute, rule or agency opinion on a petitioner's particular situation, approval or denial of the petition only applies to the petitioner. It is not a method of obtaining a policy statement from a board of general applicability.<sup>52</sup>

News media have reported that the BON's Declaratory Statement in favor of McDonough has created significant concern for patient safety and the potential for confusion in the use of the moniker "anesthesiologist" among Florida's medical professionals.<sup>53, 54</sup>

### III. Effect of Proposed Changes:

**Section 1** of the bill amends s. 456.003(2), F.S., regarding Legislative intent for the regulation of health care professions to provide a Legislative finding that the health, safety, and welfare of the public may be harmed or endangered under any of the following conditions:

- By the unlawful practice of a profession;
- By a misleading, deceptive, or fraudulent representation relating to a person's authority to practice a profession lawfully; or
- When patients are uninformed about the profession under which a practitioner is practicing before receiving professional consultation or services from the practitioner.

The bill provides that the Legislature's regulation of health care professions as provided under current law in s. 456.003(2), F.S., is a matter of great public importance.

**Section 2** of the bill creates s. 456.65, F.S., to prohibit a health care practitioner not licensed as a physician under ch. 458, F.S., or ch. 459, F.S., from holding himself or herself out to a patient or the general public as a specialist by describing himself or herself or his or her practice through the use of any medical specialist title or designation specifically listed under s. 458.3312(2), F.S., as created in section 3 of the bill, or under s. 459.0152(2), as created in section 4 of the bill, either alone or in combination, or in connection with other words, unless the practitioner is specifically authorized by law to use that medical specialist title or designation.

The bill creates ss. 458.3312(3) and 459.0152(3), F.S., to authorize the BOM and the BOOM to, by rule, create other specialist titles that are subject to the respective prohibitions on physicians licensed under those chapters of statute.

A violation of this prohibition would constitute the unlicensed practice of medicine or osteopathic medicine, as applicable, and DOH may pursue remedies under s. 456.065, F.S., which may include: issuing and delivering a notice to cease and desist (and pursuing an injunction or writ of mandamus if enforcement is needed), issuing an administrative penalty of

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<sup>52</sup> Florida Department of Health, Board of Nursing, *What is a Declaratory Statement?*, available at <https://floridasnursing.gov/help-center/what-is-a-declaratory-statement/> (last visited Mar. 24, 2025).

<sup>53</sup> Christine Sexton, The News Service of Florida, "Nursing Board Signs Off On 'Anesthesiologist' Title," August 16, 2019, The Gainesville Sun, available at: <https://www.gainesville.com/news/20190816/nursing-board-signs-off-on-anesthesiologist-title> (last visited Mar. 24, 2025).

<sup>54</sup> Christine Sexton, The News Service of Florida, "Florida Lawmaker Takes Aim At Health Care Titles," October 10, 2019, Health News Florida, available at <https://health.wusf.usf.edu/post/florida-lawmaker-takes-aim-health-care-titles> (last visited Mar. 24, 2025).

not less than \$500 and not more than \$5000 per incident, and seeking the imposition of a civil penalty through the circuit court.

### *Exceptions*

Notwithstanding the prohibition created in this section, the bill provides that a **licensed health care practitioner** may use the name or title of his or her profession that is authorized under his or her practice act, and any corresponding designations or initials so authorized, to describe himself or herself and his or her practice.

Additionally, the bill provides that a **licensed health care practitioner who has a specialty area of practice authorized under his or her practice act** may use the following format to identify himself or herself or describe his or her practice: “...(name or title of the practitioner’s profession)..., specializing in ...(name of the practitioner’s specialty)...”

A **chiropractic physician** licensed under ch. 460, F.S., is authorized to use the title “chiropractic radiologist” and other titles, abbreviations, or designations authorized under his or her practice act reflecting those chiropractic specialty areas in which the chiropractic physician has attained diplomate status as recognized by the American Chiropractic Association, the International Chiropractors Association, the International Academy of Clinical Neurology, or the International Chiropractic Pediatric Association.

A **podiatric physician** licensed under ch. 461, F.S., may use the following titles and abbreviations as applicable to his or her license, specialty, and certification: “podiatric surgeon,” “Fellow in the American College of Foot and Ankle Surgeons,” and any other titles or abbreviations authorized under his or her practice act.

A **dentist** licensed under ch. 466, F.S., may use the following titles and abbreviations as applicable to his or her license, specialty, and certification: “doctor of dental surgery,” “D.D.S.,” “oral surgeon,” “maxillofacial surgeon,” “oral and maxillofacial surgeon,” “O.M.S.,” “dental anesthesiologist,” “oral pathologist,” “oral radiologist,” and any other titles or abbreviations authorized under his or her practice act.

An **anesthesiologist assistant** licensed under ch. 458, F.S., or ch. 459, F.S., may use only the titles “anesthesiologist assistant” or “certified anesthesiologist assistant” and the abbreviation “C.A.A.”

The bill provides that s. 456.65, F.S., as created by the bill, may not be construed to prohibit or interfere with a licensed practitioner’s ability to lawfully bill the Medicare program or other federal health care program using definitions or terminology provided under applicable federal law or regulations for services rendered to a enrolled patients.

**Section 3** of the bill amends s. 458.3312, F.S., for allopathic physician specialties and **section 4** of the bill amends s. 459.0152, F.S., for osteopathic physician specialties.

Under current law, an allopathic 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 BOM.

Similarly, an osteopathic physician licensed under ch. 459, F.S., may not hold himself or herself out as a board-certified specialist under current law unless the osteopathic physician has:

- Successfully completed the requirements for certification by the American Osteopathic Association (AOA) or the Accreditation Council on Graduate Medical Education (ACGME); and
- Is certified as a specialist by a certifying agency approved by the BOOM.

In sections 3 and 4, the bill creates a list of medical specialist titles and designations that may be used only by physicians under ch. 458 or ch. 459, F.S., respectively, who have met the above requirements and become board-certified. The BOM and the BOOM are authorized to adopt additional specialist titles and designations by rule that would be reserved for use by board-certified physicians.

The bill reserves the use of the following medical specialist titles and designations for board-certified allopathic and osteopathic physicians:

- Surgeon.
- Neurosurgeon.
- General surgeon.
- Anesthesiologist.
- Cardiologist.
- Dermatologist.
- Endocrinologist.
- Gastroenterologist.
- Gynecologist.
- Hematologist.
- Hospitalist.
- Intensivist.
- Internist.
- Laryngologist.
- Nephrologist.
- Neurologist.
- Obstetrician.
- Oncologist.
- Ophthalmologist.
- Orthopedic surgeon.
- Orthopedist.
- Otologist.
- Otolaryngologist.
- Otorhinolaryngologist.
- Pathologist.
- Pediatrician.
- Proctologist.

- Psychiatrist.
- Radiologist.
- Rheumatologist.
- Rhinologist.
- Urologist.

In conjunction with changes made in section 2 of the bill, a health care practitioner who is not board-certified in those specialties by the BOM or the BOOM may not hold himself or herself out as a board-certified specialist using any of the above titles or designations.

**Section 5** of the bill provides an effective date of July 1, 2025.

#### **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:

To the extent persons violate the bill's provisions, the bill could have a potential workload increase and an increase in costs for the DOH's ULA Unit of an indeterminate amount.



**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 456.003, 458.3312, and 459.0152.

This bill creates section 456.65 of the Florida Statutes.

**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.