

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1477 Impaired Health Care Practitioners  
**SPONSOR(S):** Ambler and others  
**TIED BILLS:** None. **IDEN./SIM. BILLS:** SB 2386 (i)

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Health Standards (Sub)		Mitchell	Collins
2) Health Care			
3) Appropriations			
4)			
5)			

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### SUMMARY ANALYSIS

The bill addresses problems faced by physicians who have been falsely accused of being impaired and had difficulties using existing procedures to clear themselves.

HB 1477 amends s. 456.076, F.S., to create new rights for licensed health care practitioners regulated under chapter 456 F.S., who have had a complaint involving impairment filed against them. Impairment includes misuse or abuse of alcohol and drugs, and mental or physical conditions which could affect the licensee's ability to practice with skill and safety.

Currently when the Department of Health receives a complaint alleging impairment only, the complaint is processed immediately to determine whether emergency action (in the form of the emergency suspension or restriction of the licensee) is necessary. Only the secretary of the department has the statutory authority to take emergency action against the license of health care practitioners. Under existing statutes, the department must institute formal disciplinary proceedings against the license of the health care practitioner affected by emergency action within twenty (20) days of the emergency action.

The bill requires that a legally sufficient complaint of impairment does not constitute grounds for discipline if no other complaint of impairment exists. The bill establishes the following rights and procedures:

- The department is required to provide a copy of the complaint and all evidence prior to a finding of probable cause, unless notification of the complaint would be detrimental to the investigation.
- Probable cause shall not be found when that practitioner has entered into treatment and monitoring, and withdrawn or limited their scope of practice.
- Prohibits limiting a licensee's practice during an investigation, unless the licensee waives their rights or the probable cause panel issues an emergency suspension order or conducts a hearing to determine the licensee's inability to practice with skill and safety.
- The licensee may contest a complaint in writing or request a hearing within 20 days of the complaint.
- The licensee is entitled to an emergency hearing in front of the probable cause panel within 72 hours of receipt of a summary emergency order, to present rebuttal evidence and cross-examine witnesses, with written decision within 24 hours.
- Prior to a final judgment of impairment, the licensee has the right to review all accusations and evidence, rebut accusations, depose witnesses, record meetings and be represented by competent counsel.

The effective date of the bill is July 1, 2003.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** h1477.hc.doc  
**DATE:** April 8, 2003

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |   |                             |   |
|--------------------------------------|---|-----------------------------|---|
| 1. Reduce government?                | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |
| 2. Lower taxes?                      | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families?                 | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

#### B. EFFECT OF PROPOSED CHANGES:

HB 1477 amends s. 456.076, F.S., to create new rights for licensed health care practitioners regulated under chapter 456 F.S., who have had a complaint involving impairment filed against them. Impairment includes misuse or abuse of alcohol and drugs, and mental or physical conditions which could affect the licensee's ability to practice with skill and safety.

The bill requires that a legally sufficient complaint of impairment against a licensee shall not constitute grounds for discipline if no other complaint of impairment exists.

The bill requires the department to provide a copy of the complaint and all evidence to the licensee prior to a finding of probable cause, unless the secretary of the department and the chair of the probable cause panel or chair of the licensing board determine that notification of the complaint would be detrimental to the investigation.

The bill provides that probable cause shall not be found against a health care practitioner when that practitioner has entered into treatment and monitoring and withdrawn or limited their scope of practice.

The bill prohibits the board, department or consultant from limiting a licensee's practice or suspending a licensee from practice during an investigation, unless the licensee waives their rights, the probable cause panel issues an emergency suspension order or the probable cause panel conducts a hearing to determine the licensee's inability to practice with skill and safety.

The bill allows the licensee to contest a complaint in writing, or request a hearing, within 20 days after receiving notification of the complaint.

The bill provides that the right to contest the complaint does not prohibit issuance of a summary emergency order. It requires the licensee to immediately stop practicing upon receipt of the order. The licensee is entitled to an emergency hearing in front of the probable cause panel within 72 hours of receipt of the order to present rebuttal evidence and cross-examine witnesses, and to have a written decision within 24 hours after the hearing.

The bill provides that prior to a final judgment of impairment the licensee has the right to review all accusations and evidence, rebut accusations in a hearing or in writing, depose under oath any person offering evidence, record all meetings with the licensee, and to be represented by competent counsel.

The effective date of the bill is July 1, 2003.

## CURRENT SITUATION

### **The Department of Health's Medical Quality Assurance Program**

The department's Medical Quality Assurance Program (MQA) regulates health care practitioners to ensure they meet the standards of their profession. Currently, the program supports licensure and disciplinary activities for 37 professions and 6 facilities, and works with 22 boards and 6 councils. In total, MQA regulates more than 750,000 health care practitioners and facilities. Practitioners must demonstrate their proficiency by meeting testing, licensing, credentialing and continuing education requirements. (MQA Annual Report 2001-2002.)

### **Professional Licensing Boards and Councils**

Most health care practitioners in Florida are governed by professional licensing boards or councils that are independent entities assigned to the Department of Health for administrative support purposes. MQA also directly regulates some practitioner groups that are not governed by an external board or council, as well as some health care facilities, such as pharmacies.

### **Current Enforcement Activities**

The Medical Quality Assurance program of the Department of Health is responsible for health care practitioner enforcement activities including impaired practitioners. Enforcement procedures include a consumer complaint call center, investigation of complaints and legal services in handling cases before licensing boards. The program investigates complaints and assesses probable cause for each case. Cases are then presented to licensing boards and councils for final action. If a board finds that an allegation is justified, it may take disciplinary action. If a practitioner contests a finding of probable cause, the case is heard by an administrative law judge. Disciplinary measures can range from a reprimand and fine to suspension or revocation of the practitioner's license. (MQA Annual Report 2001-2002.)

### **Department of Health Procedures for Handling Practitioner Impairment Cases**

When the Department of Health receives a complaint alleging impairment only, the complaint is processed immediately to determine whether emergency action (in the form of the emergency suspension or restriction of the licensee) is necessary. Only the secretary of the department has the statutory authority to take emergency action against the license of health care practitioners. Under existing statutes, the department must institute formal disciplinary proceedings against the license of the health care practitioner affected by emergency action within twenty (20) days of the emergency action.

Before the issuance of an emergency order, the licensee is served with a copy of the initial consumer complaint and is entitled under Florida law to respond to the allegations contained in the complaint. Additionally, the practitioner is entitled to request and receive a complete copy of the department's investigative file before the filing of formal disciplinary proceedings.

Currently, the department may not discipline the license of a health care practitioner for impairment, if impairment is the only allegation and the practitioner has entered into treatment and monitoring through a consultant approved by the department.

### **The Impaired Practitioner Program**

The Bureau of Operations of the Division of Medical Quality Assurance is responsible for licensure and examination functions. Its Profiling and Credentialing Services Unit provides primary staffing for the impaired practitioner's committee that oversees the program.

The department's Impaired Practitioners Program was established in the late 1970's. It is administered by the Physician's Recovery Network (PRN) and the Intervention Project for Nurses. Professionals licensed within the Division of Medical Quality Assurance who may be impaired or who may present a danger to the public are evaluated under the Impaired Practitioners Program. The Physician's Recovery Network is funded by charitable contributions and licensing fees of health-care workers.

According to the program, approximately 84% of all referrals to the PRN occur prior to any violation of the Medical Practice Act or any evidence of patient harm. Participation is confidential unless there is failure to progress in recovery.

The PRN program provides treatment, support, and referral for physicians in lieu of discipline, prior to discipline, or during discipline and post-discipline. The program handles, mental disorders, substance abuse, and chemical dependency.

Should other problems or patient harm occur, discipline may be imposed concurrently. The disciplinary process remains confidential unless the licensee waves confidentiality or probable cause is found. If a complaint concerns a matter of immediate and serious threat to the public, an emergency suspension may be requested by the director of the PRN. This power has been used successfully as a motivational factor to participants. Every case that does not progress becomes disciplinary, and the entire record of the impaired physician is open to review by the public and the press.

C. SECTION DIRECTORY:

**Section 1.** Amends s. 456.076, F.S., relating to treatment programs for impaired practitioners, to provide new procedures for handling impaired practitioner cases.

**Section 2.** Provides an effective date of July 1, 2003.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

According to the department, the bill will have a fiscal impact on the Medical Quality Assurance Trust Fund (MQATF) because of the requirement to hold hearings prior to probable cause panels being held. The bill requires hearings on request for impairment cases within 20 days of notification of a complaint. According to the department, the annual average number of impairment complaints received for the past three years is 392. The estimated fiscal impact is based on this number for year 1 and year 2.

Board member compensation is based on \$50 per day for 3 board members to attend 392 hearings of 1 day each. Board member travel is estimated at an average cost of \$200 for three board members to travel to a central location for 392 complaint hearings.

**Department of Health: Estimated Fiscal Impact:**

	Amount Year 1	Amount Year 2
Recurring and Annualized Continuation Effects:		
Salaries/Benefits:		
OPS:		
Board Member Compensation	\$58,800	\$58,800
EXPENSES:		
Board member travel	\$235,200	\$235,200
Copying costs	\$17,640	\$17,640
Postage	\$2,352	\$2,352
<b>Total Recurring Costs</b>	<b>\$313,992</b>	<b>\$313,992</b>

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenues.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

According to the department, the bill does not require promulgation of a new rule.

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

The department has identified several issues with the bill. Currently, an impairment complaint does not constitute discipline if the licensee has acknowledged the impairment, has voluntarily enrolled in treatment, or has withdrawn from practice if consultant requires. The bill drops these requirements and simply states that impairment is not a disciplinary violation. This provision conflicts with the remainder of the bill that outlines disciplinary proceedings for impairment issues.

The bill states that neither the board nor department nor the consultant may limit the licensee's practice. According to the department, this provision appears to be in conflict with current law that only the department has the authority to limit the licensee's practice through emergency orders.

The bill states that the board or department or the consultant may limit the licensee's practice if the licensee waives their right to contest a complaint, the probable cause panel issues an emergency order, or the probable cause panel finds the licensee is a clear and present danger. Currently, the

probable cause panel does not have authority in statute to impose an emergency order or hold evidentiary hearings.

The bill states that a licensee may contest a complaint by submitting a request for a hearing within 20 days of service of the complaint to the licensee. This is not consistent with rights under the current law, in that a hearing could be held under these provisions even though the complaint is unfounded.

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**