

1 A bill to be entitled
2 An act relating to controlled substances; creating s.
3 408.0513, F.S.; requiring the Agency for Health Care
4 Administration to contract with a multistate electronic
5 prescribing network to provide certain agencies with
6 access to certain controlled substance information;
7 requiring the Agency for Health Care Administration to
8 adopt rules and seek grants and donations; amending ss.
9 458.309 and 459.005, F.S.; revising requirements for the
10 registration of pain-management clinics; requiring the
11 Department of Health to refuse to register pain-management
12 clinics under certain circumstances; amending ss. 458.331
13 and 459.015, F.S.; specifying additional grounds for
14 disciplinary action against practitioners licensed under
15 ch. 458 or ch. 459, F.S.; amending s. 465.018, F.S.;
16 requiring community pharmacy permit applicants to
17 demonstrate the ability to participate in and transmit
18 dispensing information through a multistate electronic
19 prescribing network; requiring community pharmacy
20 permittees to transmit dispensing information through such
21 a network for prescriptions of certain controlled
22 substances; amending s. 465.023, F.S.; specifying an
23 additional ground for disciplinary action against
24 community pharmacy permittees; amending s. 465.0276, F.S.;
25 prohibiting registered dispensing practitioners from
26 dispensing more than a specified amount of certain
27 controlled substances; providing penalties; providing
28 exceptions; reenacting ss. 458.303, 458.311(1)(d) and (5),

29 458.313(6), 458.3135(2)(d), 458.3137(2)(e),
 30 458.3145(1)(g), and 458.345(1)(b) and (2), F.S., relating
 31 to provisions not applicable to certain practitioners,
 32 licensure of physicians by examination, licensure of
 33 physicians by endorsement, temporary certificates for
 34 visiting physicians practicing in approved cancer centers,
 35 temporary certificates for visiting physicians in
 36 conjunction with certain plastic surgery training programs
 37 and educational symposiums, medical faculty certificates,
 38 and registration of resident physicians, interns, and
 39 fellows, respectively, to incorporate the amendment made
 40 by this act to s. 458.331, F.S., in references thereto;
 41 reenacting s. 459.021(8), F.S., relating to the
 42 registration of resident osteopathic physicians, interns,
 43 and fellows, to incorporate the amendment made by this act
 44 to s. 459.015, F.S., in a reference thereto; providing an
 45 effective date.

46
 47 Be It Enacted by the Legislature of the State of Florida:

48
 49 Section 1. Section 408.0513, Florida Statutes, is created
 50 to read:

51 408.0513 Access to prescription drug medication history.-

52 (1) By December 1, 2010, the agency shall contract with an
 53 entity that operates a multistate electronic prescribing network
 54 to provide the following agencies with access to the controlled
 55 substance information available on such network for the
 56 controlled substances listed in Schedules II and III of s.

57 893.03:

58 (a) A criminal justice agency as defined in s. 119.011
 59 that enforces the laws of this state or the United States and
 60 that initiates an active investigation involving a specific
 61 violation of law.

62 (b) The Department of Health or the relevant health
 63 regulatory board responsible for the licensure, regulation, or
 64 discipline of practitioners, pharmacists, or other persons who
 65 are authorized to prescribe, administer, or dispense controlled
 66 substances and who are involved in a specific investigation
 67 involving a designated person.

68 (2) The agency shall adopt rules under ss. 120.536(1) and
 69 120.54 to administer this section, including the method and
 70 terms of access to the information provided under subsection
 71 (1).

72 (3) The agency shall seek federal grants and donations
 73 from private entities to implement this section.

74 Section 2. Subsection (4) of section 458.309, Florida
 75 Statutes, is amended to read:

76 458.309 Rulemaking authority.—

77 (4) All privately owned pain-management clinics,
 78 facilities, or offices, hereinafter referred to as "clinics,"
 79 primarily engaged in the treatment of pain by prescribing or
 80 dispensing controlled substances, which advertise in any medium
 81 for any type of pain-management services, ~~or employ a physician~~
 82 who is primarily engaged in the treatment of pain by prescribing
 83 or dispensing controlled substance medications, must register
 84 with the department by January 4, 2010, unless that clinic is

85 licensed as a facility pursuant to chapter 395. The department
86 shall refuse to register any clinic not wholly owned by a
87 physician or group of physicians; any clinic owned by or having
88 any contractual or employment relationship with a physician
89 whose federal Drug Enforcement Administration registration
90 number has ever been suspended or revoked or against whom the
91 board has taken final administrative action relating to the
92 physician's impairment due to the misuse or abuse of alcohol or
93 drugs; or any clinic the ownership or any controlling interest
94 of which is held by any person who has been convicted of, or has
95 entered a plea of guilty or nolo contendere to, regardless of
96 adjudication, a felony under chapter 893. A physician may not
97 practice medicine in a pain-management clinic that is required
98 to register but has not registered with the department. Each
99 clinic location shall be registered separately regardless of
100 whether the clinic is operated under the same business name or
101 management as another clinic. If the clinic is licensed as a
102 health care clinic under chapter 400, the medical director is
103 responsible for registering the facility with the department. If
104 the clinic is not registered pursuant to chapter 395 or chapter
105 400, the clinic shall, upon registration with the department,
106 designate a physician who is responsible for complying with all
107 requirements related to registration of the clinic. The
108 designated physician shall be licensed under this chapter or
109 chapter 459 and shall practice at the office location for which
110 the physician has assumed responsibility. The department shall
111 inspect the clinic annually to ensure that it complies with
112 rules of the Board of Medicine adopted pursuant to this

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113 subsection and subsection (5) unless the office is accredited by
114 a nationally recognized accrediting agency approved by the Board
115 of Medicine. The actual costs for registration and inspection or
116 accreditation shall be paid by the physician seeking to register
117 the clinic.

118 Section 3. Paragraph (nn) of subsection (1) of section
119 458.331, Florida Statutes, is redesignated as paragraph (pp),
120 and new paragraphs (nn) and (oo) are added to that subsection to
121 read:

122 458.331 Grounds for disciplinary action; action by the
123 board and department.—

124 (1) The following acts constitute grounds for denial of a
125 license or disciplinary action, as specified in s. 456.072(2):

126 (nn) Practicing medicine in a clinic that is required to
127 register but has not registered with the department pursuant to
128 s. 458.309.

129 (oo) Promoting or advertising through any communication
130 media the use, sale, or dispensing of any controlled substance
131 appearing on any schedule in chapter 893.

132 Section 4. Subsection (3) of section 459.005, Florida
133 Statutes, is amended to read:

134 459.005 Rulemaking authority.—

135 (3) All privately owned pain-management clinics,
136 facilities, or offices, hereinafter referred to as "clinics,"
137 primarily engaged in the treatment of pain by prescribing or
138 dispensing controlled substances, which advertise in any medium
139 for any type of pain-management services, or employ a physician
140 who is licensed under this chapter and who is primarily engaged

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141 in the treatment of pain by prescribing or dispensing controlled
142 substance medications, must register with the department by
143 January 4, 2010, unless that clinic is licensed as a facility
144 under chapter 395. The department shall refuse to register any
145 clinic not wholly owned by a physician or group of physicians;
146 any clinic owned by or having any contractual or employment
147 relationship with a physician whose federal Drug Enforcement
148 Administration registration number has ever been suspended or
149 revoked or against whom the board has taken final administrative
150 action relating to the physician's impairment due to the misuse
151 or abuse of alcohol or drugs; or any clinic the ownership or any
152 controlling interest of which is held by any person who has been
153 convicted of, or has entered a plea of guilty or nolo contendere
154 to, regardless of adjudication, a felony under chapter 893. A
155 physician may not practice osteopathic medicine in a pain-
156 management clinic that is required to register but has not
157 registered with the department. Each clinic location shall be
158 registered separately regardless of whether the clinic is
159 operated under the same business name or management as another
160 clinic. If the clinic is licensed as a health care clinic under
161 chapter 400, the medical director is responsible for registering
162 the facility with the department. If the clinic is not
163 registered under chapter 395 or chapter 400, the clinic shall,
164 upon registration with the department, designate a physician who
165 is responsible for complying with all requirements related to
166 registration of the clinic. The designated physician shall be
167 licensed under chapter 458 or this chapter and shall practice at
168 the office location for which the physician has assumed

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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169 responsibility. The department shall inspect the clinic annually
 170 to ensure that it complies with rules of the Board of
 171 Osteopathic Medicine adopted pursuant to this subsection and
 172 subsection (4) unless the office is accredited by a nationally
 173 recognized accrediting agency approved by the Board of
 174 Osteopathic Medicine. The actual costs for registration and
 175 inspection or accreditation shall be paid by the physician
 176 seeking to register the clinic.

177 Section 5. Paragraph (pp) of subsection (1) of section
 178 459.015, Florida Statutes, is redesignated as paragraph (rr),
 179 and new paragraphs (pp) and (qq) are added to that subsection to
 180 read:

181 459.015 Grounds for disciplinary action; action by the
 182 board and department.—

183 (1) The following acts constitute grounds for denial of a
 184 license or disciplinary action, as specified in s. 456.072(2):

185 (pp) Practicing osteopathic medicine in a clinic that is
 186 required to register but has not registered with the department
 187 pursuant to s. 459.005.

188 (qq) Promoting or advertising through any communication
 189 media the use, sale, or dispensing of any controlled substance
 190 appearing on any schedule in chapter 893.

191 Section 6. Section 465.018, Florida Statutes, is amended
 192 to read:

193 465.018 Community pharmacies; permits.—Any person desiring
 194 a permit to operate a community pharmacy shall apply to the
 195 department. If the board office certifies that the application
 196 complies with the laws of the state and the rules of the board

197 governing pharmacies, the department shall issue the permit. A
 198 ~~No~~ permit may not ~~shall~~ be issued unless a licensed pharmacist
 199 is designated as the prescription department manager responsible
 200 for maintaining all drug records, providing for the security of
 201 the prescription department, and following such other rules as
 202 relate to the practice of the profession of pharmacy. The
 203 permittee and the newly designated prescription department
 204 manager shall notify the department within 10 days of any change
 205 in prescription department manager. Effective July 1, 2012, a
 206 permit may not be issued unless the applicant demonstrates the
 207 ability to participate in and transmit dispensing information
 208 through a multistate electronic prescribing network. Effective
 209 January 1, 2013, a permittee must transmit dispensing
 210 information through a multistate electronic prescribing network
 211 for each prescription of a controlled substance listed in
 212 Schedule II or Schedule III of s. 893.03.

213 Section 7. Subsection (1) of section 465.023, Florida
 214 Statutes, is amended to read:

215 465.023 Pharmacy permittee; disciplinary action.—

216 (1) The department or the board may revoke or suspend the
 217 permit of any pharmacy permittee, and may fine, place on
 218 probation, or otherwise discipline any pharmacy permittee if the
 219 permittee, or any affiliated person, partner, officer, director,
 220 or agent of the permittee, including a person fingerprinted
 221 under s. 465.022(3), has:

222 (a) Obtained a permit by misrepresentation or fraud or
 223 through an error of the department or the board;

224 (b) Attempted to procure, or has procured, a permit for

225 any other person by making, or causing to be made, any false
 226 representation;

227 (c) Violated any of the requirements of this chapter or
 228 any of the rules of the Board of Pharmacy; of chapter 499, known
 229 as the "Florida Drug and Cosmetic Act"; of 21 U.S.C. ss. 301-
 230 392, known as the "Federal Food, Drug, and Cosmetic Act"; of 21
 231 U.S.C. ss. 821 et seq., known as the Comprehensive Drug Abuse
 232 Prevention and Control Act; or of chapter 893;

233 (d) Been convicted or found guilty, regardless of
 234 adjudication, of a felony or any other crime involving moral
 235 turpitude in any of the courts of this state, of any other
 236 state, or of the United States;

237 (e) Been convicted or disciplined by a regulatory agency
 238 of the Federal Government or a regulatory agency of another
 239 state for any offense that would constitute a violation of this
 240 chapter;

241 (f) Been convicted of, or entered a plea of guilty or nolo
 242 contendere to, regardless of adjudication, a crime in any
 243 jurisdiction which relates to the practice of, or the ability to
 244 practice, the profession of pharmacy;

245 (g) Been convicted of, or entered a plea of guilty or nolo
 246 contendere to, regardless of adjudication, a crime in any
 247 jurisdiction which relates to health care fraud; ~~or~~

248 (h) Dispensed any medicinal drug based upon a
 249 communication that purports to be a prescription as defined by
 250 s. 465.003(14) or s. 893.02 when the pharmacist knows or has
 251 reason to believe that the purported prescription is not based
 252 upon a valid practitioner-patient relationship that includes a

253 | documented patient evaluation, including history and a physical
 254 | examination adequate to establish the diagnosis for which any
 255 | drug is prescribed and any other requirement established by
 256 | board rule under chapter 458, chapter 459, chapter 461, chapter
 257 | 463, chapter 464, or chapter 466; or

258 | (i) Failed to transmit dispensing information through a
 259 | multistate electronic prescribing network pursuant to s. 465.018
 260 | for any prescription of a controlled substance listed in
 261 | Schedule II or Schedule III of s. 893.03.

262 | Section 8. Subsection (1) of section 465.0276, Florida
 263 | Statutes, is amended to read:

264 | 465.0276 Dispensing practitioner.—

265 | (1) (a) A person may not dispense medicinal drugs unless
 266 | licensed as a pharmacist or otherwise authorized under this
 267 | chapter to do so, except that a practitioner authorized by law
 268 | to prescribe drugs may dispense such drugs to her or his
 269 | patients in the regular course of her or his practice in
 270 | compliance with this section.

271 | (b) A practitioner registered under this section may not
 272 | dispense more than a 72-hour supply of a controlled substance
 273 | listed in Schedule II or Schedule III of s. 893.03. A
 274 | practitioner who violates this paragraph commits a felony of the
 275 | third degree, punishable as provided in s. 775.082, s. 775.083,
 276 | or s. 775.084. This paragraph does not apply to the dispensing
 277 | of complimentary packages of medicinal drugs to the
 278 | practitioner's own patients in the regular course of her or his
 279 | practice without the payment of a fee or remuneration of any
 280 | kind, whether direct or indirect, as provided in subsection (5).

281 This paragraph does not apply to a controlled substance
 282 dispensed in the health care system of the Department of
 283 Corrections.

284 Section 9. For the purpose of incorporating the amendment
 285 made by this act to section 458.331, Florida Statutes, in
 286 references thereto, section 458.303, Florida Statutes, is
 287 reenacted to read:

288 458.303 Provisions not applicable to other practitioners;
 289 exceptions, etc.—

290 (1) The provisions of ss. 458.301, 458.303, 458.305,
 291 458.307, 458.309, 458.311, 458.313, 458.315, 458.317, 458.319,
 292 458.321, 458.327, 458.329, 458.331, 458.337, 458.339, 458.341,
 293 458.343, 458.345, and 458.347 shall have no application to:

294 (a) Other duly licensed health care practitioners acting
 295 within their scope of practice authorized by statute.

296 (b) Any physician lawfully licensed in another state or
 297 territory or foreign country, when meeting duly licensed
 298 physicians of this state in consultation.

299 (c) Commissioned medical officers of the Armed Forces of
 300 the United States and of the Public Health Service of the United
 301 States while on active duty and while acting within the scope of
 302 their military or public health responsibilities.

303 (d) Any person while actually serving without salary or
 304 professional fees on the resident medical staff of a hospital in
 305 this state, subject to the provisions of s. 458.321.

306 (e) Any person furnishing medical assistance in case of an
 307 emergency.

308 (f) The domestic administration of recognized family

309 remedies.

310 (g) The practice of the religious tenets of any church in
311 this state.

312 (h) Any person or manufacturer who, without the use of
313 drugs or medicine, mechanically fits or sells lenses, artificial
314 eyes or limbs, or other apparatus or appliances or is engaged in
315 the mechanical examination of eyes for the purpose of
316 constructing or adjusting spectacles, eyeglasses, or lenses.

317 (2) Nothing in s. 458.301, s. 458.303, s. 458.305, s.
318 458.307, s. 458.309, s. 458.311, s. 458.313, s. 458.319, s.
319 458.321, s. 458.327, s. 458.329, s. 458.331, s. 458.337, s.
320 458.339, s. 458.341, s. 458.343, s. 458.345, or s. 458.347 shall
321 be construed to prohibit any service rendered by a registered
322 nurse or a licensed practical nurse, if such service is rendered
323 under the direct supervision and control of a licensed physician
324 who provides specific direction for any service to be performed
325 and gives final approval to all services performed. Further,
326 nothing in this or any other chapter shall be construed to
327 prohibit any service rendered by a medical assistant in
328 accordance with the provisions of s. 458.3485.

329 Section 10. For the purpose of incorporating the amendment
330 made by this act to section 458.331, Florida Statutes, in
331 references thereto, paragraph (d) of subsection (1) and
332 subsection (5) of section 458.311, Florida Statutes, are
333 reenacted to read:

334 458.311 Licensure by examination; requirements; fees.—

335 (1) Any person desiring to be licensed as a physician, who
336 does not hold a valid license in any state, shall apply to the

337 department on forms furnished by the department. The department
 338 shall license each applicant who the board certifies:

339 (d) Has not committed any act or offense in this or any
 340 other jurisdiction which would constitute the basis for
 341 disciplining a physician pursuant to s. 458.331.

342 (5) The board may not certify to the department for
 343 licensure any applicant who is under investigation in another
 344 jurisdiction for an offense which would constitute a violation
 345 of this chapter until such investigation is completed. Upon
 346 completion of the investigation, the provisions of s. 458.331
 347 shall apply. Furthermore, the department may not issue an
 348 unrestricted license to any individual who has committed any act
 349 or offense in any jurisdiction which would constitute the basis
 350 for disciplining a physician pursuant to s. 458.331. When the
 351 board finds that an individual has committed an act or offense
 352 in any jurisdiction which would constitute the basis for
 353 disciplining a physician pursuant to s. 458.331, then the board
 354 may enter an order imposing one or more of the terms set forth
 355 in subsection (8).

356 Section 11. For the purpose of incorporating the amendment
 357 made by this act to section 458.331, Florida Statutes, in
 358 references thereto, subsection (6) of section 458.313, Florida
 359 Statutes, is reenacted to read:

360 458.313 Licensure by endorsement; requirements; fees.—

361 (6) The department shall not issue a license by
 362 endorsement to any applicant who is under investigation in any
 363 jurisdiction for an act or offense which would constitute a
 364 violation of this chapter until such time as the investigation

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365 is complete, at which time the provisions of s. 458.331 shall
366 apply. Furthermore, the department may not issue an unrestricted
367 license to any individual who has committed any act or offense
368 in any jurisdiction which would constitute the basis for
369 disciplining a physician pursuant to s. 458.331. When the board
370 finds that an individual has committed an act or offense in any
371 jurisdiction which would constitute the basis for disciplining a
372 physician pursuant to s. 458.331, the board may enter an order
373 imposing one or more of the terms set forth in subsection (7).

374 Section 12. For the purpose of incorporating the amendment
375 made by this act to section 458.331, Florida Statutes, in a
376 reference thereto, paragraph (d) of subsection (2) of section
377 458.3135, Florida Statutes, is reenacted to read:

378 458.3135 Temporary certificate for visiting physicians to
379 practice in approved cancer centers.—

380 (2) A temporary certificate for practice in an approved
381 cancer center may be issued without examination to an individual
382 who:

383 (d) Has not committed any act in this or any other
384 jurisdiction which would constitute the basis for disciplining a
385 physician under s. 456.072 or s. 458.331;

386 Section 13. For the purpose of incorporating the amendment
387 made by this act to section 458.331, Florida Statutes, in a
388 reference thereto, paragraph (e) of subsection (2) of section
389 458.3137, Florida Statutes, is reenacted to read:

390 458.3137 Temporary certificate for visiting physicians to
391 obtain medical privileges for instructional purposes in
392 conjunction with certain plastic surgery training programs and

393 plastic surgery educational symposiums.—

394 (2) A temporary certificate to practice medicine for
 395 educational purposes to help teach plastic surgery residents of
 396 a medical school within this state in conjunction with a
 397 nationally sponsored educational symposium may be issued without
 398 examination, upon verification by the board that the individual
 399 meets all of the following requirements:

400 (e) Has not committed an act in this or any other
 401 jurisdiction that would constitute a basis for disciplining a
 402 physician under s. 456.072 or s. 458.331.

403 Section 14. For the purpose of incorporating the amendment
 404 made by this act to section 458.331, Florida Statutes, in a
 405 reference thereto, paragraph (g) of subsection (1) of section
 406 458.3145, Florida Statutes, is reenacted to read:

407 458.3145 Medical faculty certificate.—

408 (1) A medical faculty certificate may be issued without
 409 examination to an individual who:

410 (g) Has not committed any act in this or any other
 411 jurisdiction which would constitute the basis for disciplining a
 412 physician under s. 458.331;

413 Section 15. For the purpose of incorporating the amendment
 414 made by this act to section 458.331, Florida Statutes, in
 415 references thereto, paragraph (b) of subsection (1) and
 416 subsection (2) of section 458.345, Florida Statutes, are
 417 reenacted to read:

418 458.345 Registration of resident physicians, interns, and
 419 fellows; list of hospital employees; prescribing of medicinal
 420 drugs; penalty.—

421 (1) Any person desiring to practice as a resident
 422 physician, assistant resident physician, house physician,
 423 intern, or fellow in fellowship training which leads to
 424 subspecialty board certification in this state, or any person
 425 desiring to practice as a resident physician, assistant resident
 426 physician, house physician, intern, or fellow in fellowship
 427 training in a teaching hospital in this state as defined in s.
 428 408.07(45) or s. 395.805(2), who does not hold a valid, active
 429 license issued under this chapter shall apply to the department
 430 to be registered and shall remit a fee not to exceed \$300 as set
 431 by the board. The department shall register any applicant the
 432 board certifies has met the following requirements:

433 (b) Has not committed any act or offense within or without
 434 the state which would constitute the basis for refusal to
 435 certify an application for licensure pursuant to s. 458.331.

436 (2) The board shall not certify to the department for
 437 registration any applicant who is under investigation in any
 438 state or jurisdiction for an act which would constitute grounds
 439 for disciplinary action under s. 458.331 until such time as the
 440 investigation is completed, at which time the provisions of s.
 441 458.331 shall apply.

442 Section 16. For the purpose of incorporating the amendment
 443 made by this act to section 459.015, Florida Statutes, in a
 444 reference thereto, subsection (8) of section 459.021, Florida
 445 Statutes, is reenacted to read:

446 459.021 Registration of resident physicians, interns, and
 447 fellows; list of hospital employees; penalty.—

448 (8) Notwithstanding any provision of this section or s.

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449 | 120.52 to the contrary, any person who is registered under this
450 | section is subject to the provisions of s. 459.015.

451 | Section 17. This act shall take effect July 1, 2010.