

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/HB 583 Health Care Practitioner Titles and Abbreviations

SPONSOR(S): Healthcare Regulation Subcommittee, Massullo and others

TIED BILLS: IDEN./SIM. **BILLS:** CS/CS/SB 230

FINAL HOUSE FLOOR ACTION:

111 Y's
3 N's

GOVERNOR'S ACTION: Vetoed

SUMMARY ANALYSIS

CS/HB 583 passed the House on May 3, 2023, as CS/CS/SB 230 as amended. The Senate refused to concur on the House amendment on May 4, 2023, and returned the bill to the House. The House receded and passed the Senate bill on May 4, 2023.

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

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

Current law authorizes DOH and the applicable boards to discipline health care practitioners for violations related to how they represent their professional identities, including:

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

The bill further regulates the way in which health care practitioners may represent their professions and educational background. The bill specifies the titles and abbreviations that health care practitioners may use in advertisements, communications, and personal identification. Any unauthorized use of a title, abbreviation, or educational degree qualifies as a misleading, deceptive, or fraudulent representation by the health care practitioner and constitutes grounds for discipline.

The bill requires any advertisement for health care services naming a practitioner to identify the practitioner's profession and educational degree. The bill also requires health care practitioners to wear name tags meeting certain requirements, with exceptions. The bill directs each professional board, or DOH if there is no applicable board, to establish rules determining how practitioners must comply with this requirement.

The bill authorizes DOH or the professional boards, as applicable, to discipline any health care practitioner who violates the provisions of the bill.

The bill has an insignificant, negative fiscal impact on DOH, and no fiscal impact on local governments.

The effective date of this bill was July 1, 2023, however, this bill was vetoed by the Governor on June 2, 2023.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Present Situation

Health Care Practitioners Licensure and Regulation

The Division of Medical Quality Assurance (MQA), within the Department of Health (DOH), has general regulatory authority over health care practitioners.¹ The MQA works in conjunction with 22 professional boards and four councils to license and regulate seven types of health care facilities and more than 40 health care professions.² Each profession is regulated by an individual practice act and by ch. 456, F.S., which provides general regulatory and licensure authority for the MQA. The MQA is statutorily responsible for the following boards and professions established within the division.³

- 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 authorized 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 authorized 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.;
- Midwifery, as authorized 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 authorized under part V of ch. 468, F.S.;
- Dietetics and nutrition practice, as authorized 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 authorized 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 III of ch. 483, F.S.;
- Medical physicists, as authorized under part IV 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 authorized 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

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

² Florida Department of Health, Division of Medical Quality Assurance, *Annual Report and Long-Range Plan, Fiscal Year 2021-2022*, p. 5. Available at https://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/_documents/annual-report-2122.pdf (last visited May 10, 2023).

³ S. 456.001(4), F.S.; *Id.*

- Emergency medical technicians and paramedics, as authorized under part III of ch. 401, F.S.

DOH and the professional boards have different roles in the regulatory system. Boards act as the governing body of a specified profession; they establish practice standards by rule, pursuant to statutory authority and directives, and determine disciplinary action against practitioners who have violated the practice standards.

DOH receives and investigates complaints against practitioners and facilitates the legal response when necessary. DOH, on behalf of the boards, investigates legally sufficient complaints against practitioners.⁴ Once an investigation is complete, DOH presents the investigatory findings to the boards. DOH recommends a course of action to the appropriate board's probable cause panel⁵ which may include having the file reviewed by an expert, issuing a closing order, or filing an administrative complaint.⁶

The boards determine the course of action and any disciplinary action to take against a practitioner.⁷ For professions that have no board, DOH determines the action and discipline to take against a practitioner and issues the final orders.⁸ DOH is responsible for ensuring that licensees comply with the terms and penalties imposed by the boards.⁹ If a case is appealed, DOH defends the board's (or DOH's) final actions before the appropriate appellate court.¹⁰

Specialist Board Certification and Florida Licensure

DOH licenses health care practitioners by profession according to the requirements established in statute and rule. DOH does not directly license health care practitioners by specialty or subspecialty; alternatively, current law recognizes the authority of private national specialty boards for granting board certification to practitioners.¹¹ While DOH does not directly license practitioners by specialty, current law limits which health care practitioners may hold themselves out as board-certified specialists by imposing requirements for specialty designations in individual profession's practice acts.

An allopathic physician (M.D.) may not hold himself or herself out as a board-certified specialist unless he or she has received formal recognition as a specialist from a specialty board of the ABMS or other recognizing agency¹² approved by the Board of Medicine.¹³ Similarly, an osteopathic physician (D.O.) 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 agency¹⁴ approved by the Board of Osteopathic Medicine.¹⁵

⁴ Department of Health, *Investigative Services*. Available at <http://www.floridahealth.gov/licensing-and-regulation/enforcement/admin-complaint-process/isu.html> (last visited May 10, 2023).

⁵ See also, Department of Health, *A Quick Guide to the MQA Disciplinary Process: Probable Cause Panels*. Available at https://www.floridahealth.gov/licensing-and-regulation/enforcement/admin-complaint-process/_documents/a-quick-guide-to-the-mqa-disciplinary-process.pdf

⁶ Department of Health, *Prosecution Services*. Available at <http://www.floridahealth.gov/licensing-and-regulation/enforcement/admin-complaint-process/psu.html> (last visited May 10, 2023).

⁷ S. 456.072(2), F.S.

⁸ *Id.* Professions which do not have a board include naturopathy, nursing assistants, midwifery, respiratory therapy, dietetics and nutrition, electrolysis, medical physicists, and school psychologists.

⁹ *Supra*, note 6.

¹⁰ *Id.*

¹¹ 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. Examples of national specialty boards include The American Board of Medical Specialties and The Accreditation Board for Specialty Nursing Certification.

¹² The Board of Medicine has approved the specialty boards of the ABMS as recognizing agencies. See, Rule 64B8-11.001(1)(f), F.A.C.

¹³ S. 458.3312, F.S.

¹⁴ The Board of Osteopathic Medicine has approved the specialty boards of the ABMS and AOA as recognizing agencies. See, Rule 64B15-14.001(h), F.A.C.

¹⁵ S. 459.0152, F.S.

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:¹⁶

- Eligible for examination by a national specialty board recognized by the American Dental Association; or
- 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.¹⁷

By rule, the Board of Chiropractic Medicine (BCM) prohibits chiropractors from using deceptive, fraudulent, and misleading advertising. The BCM permits chiropractors to advertise that they have attained Diplomate status in a chiropractic specialty area recognized by the BCM. BCM-recognized 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.¹⁸

Additionally, an advanced practice registered nurse may not advertise or hold himself or herself out as a specialist for which he or she has not received certification.¹⁹

Professional Identity Representation

Section 456.072, F.S., authorizes a professional board or 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; and
- Failing to identify to a patient the type of license under which the practitioner is practicing.

Physicians are expressly subject to discipline for advertising a board-certified specialty for which they are not qualified. Using a term designating a medical specialty for which a *non-physician* practitioner has not completed a residency or fellowship program accredited or recognized by the ACGME or the AOA in such specialty is not expressly grounds for discipline under current law.²⁰

If the board or DOH finds that a licensee committed a violation, the board or DOH may:²¹

- 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;

¹⁶ S. 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.

¹⁷ S. 466.0282(3), F.S.

¹⁸ Rule 64B-15.001(2)(e), F.A.C. Examples of chiropractic specialties include chiropractic acupuncture, chiropractic internist, chiropractic and clinical nutrition, radiology chiropractic, and pediatric chiropractors.

¹⁹ S. 464.018(1)(s), F.S.

²⁰ Ss. 458.331(1)(II) and 459.015(1)(nn), F.S.

²¹ S. 456.073(1), F.S.

- 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.

Effect of the Bill

Professional Identity Representation

The bill further regulates the way in which health care practitioners represent their professions.

Professional Designations

The bill specifies the titles and abbreviations that may be used by allopathic and osteopathic physicians, chiropractic physicians, podiatric physicians, dentists, and anesthesiologist assistants. Under the bill, health care practitioners, regardless of whether they are specified in the bill, may only identify themselves by the titles and abbreviations authorized by the bill or the practitioner's respective practice act.

Advertisements

Current law authorizes licensure discipline for "deceptive or misleading terms or false representation." The bill expressly makes misrepresentation of a practitioner's educational degree a qualifying offense under this provision.

The bill requires any advertisement for health care services naming a practitioner to identify the practitioner's profession and educational degree as related to the services featured in the advertisement. The advertisement must also include the specific license under which the practitioner is authorized to provide services. These requirements apply to any printed, electronic, or oral statement that:

- Is communicated or disseminated to the general public;
- Is intended to encourage a person to use a practitioner's services or to promote those services or the practitioner in general;
- For commercial purposes, names a practitioner in connection with the practice, profession, or institution in which the practitioner is employed, volunteers, or provides health care services; or
- Is prepared, communicated, or disseminated by the practitioner or with their consent.

The bill requires practitioners advertise with only the specific titles and abbreviations they are authorized to use under the bill. The bill permits only allopathic or osteopathic physicians to use the medical titles, abbreviations, and medical specialties specified in the bill, such as "dermatologist," "oncologist," and "urologist," in advertisements. Non-physician practitioners may identify themselves according to specialties expressly named in their respective practice acts, but only in conjunction with the title of the profession which they are licensed to practice.

License Display

The bill requires health care practitioners to wear a name tag displaying their name and profession when treating or consulting a patient. The practitioner's profession must be identified on the name tag consistent with the naming conventions specified in the bill. This requirement does not apply to a

practitioner providing services in his or her own office if the practitioner prominently displays a copy of his or her license in a conspicuous area of the practice so that it is easily visible to patients.

Discipline

Failure to adhere to the provisions of the bill constitute grounds for discipline. The bill authorizes DOH or the boards, as applicable, to discipline any health care practitioner who violates the preceding requirements. The bill directs each board, or DOH if there is no board, to develop rules determining how practitioners must comply with the requirements of the bill.

The bill provides an effective date of July 1, 2023.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

DOH may experience a non-recurring increase in workload associated with rulemaking, which can be absorbed within current resources. DOH may also experience an increase in workload and costs associated with the enforcement of the provisions of this bill, which can be absorbed within current resources.²²

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To comply with the provisions of the bill, health care practitioners currently practicing under titles that are not expressly authorized by the bill will need to transition to approved titles. Such practitioners will incur the costs associated with rebranding. The practitioners most likely to be impacted by these requirements are optometrists,²³ commonly identified as optometric physicians, and acupuncturists,²⁴ commonly referred to as acupuncture physicians and Doctors of Oriental Medicine; such titles are not expressly authorized under the bill, or in the respective practice acts.

D. FISCAL COMMENTS:

²² Department of Health, Agency Analysis of House Bill 583 (2023), p. 6 (February 7, 2023). On file with the Health Care Regulation Subcommittee.

²³ See, Ch. 463, F.S., for the Optometry Practice Act.

²⁴ See, Ch. 457, F.S., for the statute regulating acupuncture.

None.