Florida Board of Medicine
June 6, 2014
Full Board Addendum

Additional Information:

Angel M. Garcia, M.D. –
Refer to original tab 10

Florida HEALTH

Rick Scott
Governor

John H. Armstrong, MD, FACS
Surgeon General & Secretary

Mission:
To protect, promote & improve the health of all people in Florida through integrated state, county & community efforts.

Vision: To be the Healthiest State in the Nation

MEMORANDUM

TO: Allison M. Dudley, J.D., Executive Director, Board of Medicine
FROM: Yolonda Green, Assistant General Counsel
RE: **Settlement Agreement**
SUBJECT: DOH v. Angel Marty Garcia, M.D.
DOH Case Numbers: 2011-02938 & 2007-28234
DATE: March 14, 2014

Enclosed you will find materials in the above-referenced case to be placed on the agenda for final agency action for the **June 6-7, 2014**, meeting of the board. The following information is provided in this regard.

Subject: Angel Marty Garcia, M.D.
Subject's Address of Record: 7040 W. Palmetto Park Rd.
4-254
Boca Raton, FL 33433
(954) 889-2322 Telephone

Enforcement Address: 7040 W. Palmetto Park Rd.
4-254
Boca Raton, FL 33433

Subject's License No: 42709 **Rank:** ME
Licensure File No: 34585
Initial Licensure Date: 8/26/1983
Board Certification: None
Required to Appear: Yes
Current IPN/PRN Contract: None
Allegation(s): 458.331(1)(b), Florida Statutes(2010)
458.331(1)(kk), Florida Statutes(2007)
458.331(1)(g), Florida Statutes(2006)
Prior Discipline: Yes

Florida Department of Health
Office of the General Counsel • Prosecution Services Unit
4052 Bald Cypress Way, Bin C-65 • Tallahassee, FL 32399-1701
Express mail address: 2585 Merchants Row - Suite 105
PHONE: 850/245-4444 • FAX 850/245-4684

Probable Cause Panel: August 26, 2011
El-Bahri, Nuss & Mullins
Amended Administrative Complaint
August 26, 2011
El-Bahri, Nuss & Mullins

Subject's Attorney: William Furlow, Esquire
1408 N. Piedmont Way
Tallahassee, FL 32308

Complainant/Address: Department Of Health/Board Action Alert/Louisiana

Materials Submitted:
Memorandum to the Board
Amended Administrative Complaint, Case No. 2011-02938
Administrative Complaint, Case No. 2011-02938
Amended Administrative Complaint, Case No. 2007-28234
Administrative Complaint, Case No. 2007-28234
Settlement Agreement
Department's Expert Opinion dated 5/8/2008
Curriculum Vitae of Department's Expert
Supplemental Investigative Report with Exhibits S1-1 dated 3/5/2008
Supplemental Investigative Report with Exhibits S2-1 and S2-2, Dated 8/7/2008
Final Investigative Report with Exhibits 1-4
Final Investigative Report with Exhibits 1-12
Cost Summary
Prior Discipline (Final Order)

YG/clc

Disciplinary Guidelines:

458.331(1)(b), Florida Statutes(2010), provides from imposition of discipline comparable to the discipline which would have been imposed if the substantive violation had occurred in Florida to suspension or denial of the license until the license is unencumbered in the jurisdiction in which disciplinary action was originally taken, and an administrative fine ranging from $1,000.00 to $5,000.00.
458.331(1)(kk), Florida Statutes(2007), provides from an administrative fine of $2,000.00 to a fine of $5,000.00 and a reprimand to denial or revocation of license with ability to reapply upon payment of $1,000.00 fine to denial or revocation of license without ability to reapply.
458.331(1)(g), Florida Statutes(2006), provides from any offense not specifically listed herein, based upon the severity of the offense and the potential for patient harm, from a letter of concern to revocation or denial and an administrative fine from $1,000.00 to $10,000.00, unless otherwise provided bylaw.

Facts:
Case Number 2007-28234: The two count Amended Administrative Complaint alleges that Respondent engaged in the practice of telemedicine prescribing when he prescribed controlled substances to Patient K.H. It is alleged that Respondent failed to maintain medical records to justify the treatment for Patient K.H. and fell below the standard of care in his telemedicine prescribing practices.
Case Number: 2011-02938: The three count Amended Administrative Complaint alleges that Respondent had his license to practice medicine disciplined by Louisiana. It is also alleged Respondent failed to report the action within 30 days.

Settlement Agreement Terms:
1. Reprimand
2. Fine of $15,000
3. Laws and Rules course
4. Drug Course
5. Records Course
6. Respondent shall not engage in the practice of telemedicine so long as he is licensed to practice medicine in the state of Florida.
7. Costs capped at $10,000

Mitigating and Aggravating Factors:

1. The reprimand addresses the fact that Respondent has prior discipline and the settlement agreement is the resolution of two cases.
2. There is no evidence of patient harm.
3. The Drug, Laws and Rules and Records courses address the deficiencies in Respondent's practice of medicine.
4. The restriction against practicing telemedicine addresses the deficiency with practicing telemedicine appropriately.
5. Respondent prescribed to Patient K.H. only on three occasions.
6. Patient K.H. had symptoms to support prescription of pain medication.
7.The costs were capped at $10,000 for several reasons. First, one case was initiated in 2007. Second, the case was referred to DOAH and it was later discovered that the Department did not have clear and convincing evidence to support three of the charges in case number: 2007-28234. Finally, multiple attorneys handled the case to reach the final resolution.

Abdon Borges, M.D. –
Refer to original tab 18

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Scroll down to see the available pages or advance to the next document if all pages have been removed.

SOME OR ALL PAGES IN THIS DOCUMENT ARE PATIENT RECORDS AND/OR DOCUMENTS THAT IDENTIFY THE PATIENT BY NAME AND ARE EXEMPT FROM PUBLIC RECORDS LAWS.

456.057 - Ownership and control of patient records; report or copies of records to be furnished.—

10)(a)All patient records obtained by the department and any other documents maintained by the department which identify the patient by name are confidential and exempt from s. 119.07(1) and shall be used solely for the purpose of the department and the appropriate regulatory board in its investigation, prosecution, and appeal of disciplinary proceedings. The records shall not be available to the public as part of the record of investigation for and prosecution in disciplinary proceedings made available to the public by the department or the appropriate board.

Mohammed Naji, M.D. –
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From: Sanford, Crystal
To: "glennstern@sternatlaw.com"
Subject: Mohammed Naji, M.D.
Date: Thursday, May 22, 2014 12:58:00 PM

Dear Mr. Stern

Our records indicate that you are counsel for Dr. Naji for his upcoming disciplinary hearing in Florida. Will you be coming to Florida to appear with him? If so, I need you to submit a Request to be found as a qualified representative for Dr. Naji. I will need that paperwork as soon as possible so I can get it to the Board Members. Below is Florida Administrative Code regarding qualified representatives. Please let me know if you have any questions. Thank you.

28-106.106 Who May Appear; Criteria for Qualified Representatives.

(1) Any party who appears in any agency proceeding has the right, at his or her own expense, to be represented by counsel or by a qualified representative. Counsel means a member of The Florida Bar or a law student certified pursuant to Chapter 11 of the Rules Regulating The Florida Bar. An attorney disbarred in any state shall not be authorized to serve as a qualified representative.

(2)(a) A party seeking representation by a qualified representative shall file a written request with the presiding officer as soon as practicable, but no later than any pleading filed by the person seeking to appear on behalf of the party. The request shall identify the name, address, e-mail adress, and telephone number of the representative and shall state that the party is aware of the services which the representative can provide, and is aware that the party can be represented by counsel at the party's own expense and has chosen otherwise.

(b) The presiding officer shall consider whether the representative is qualified to appear in the administrative proceeding and capable of representing the rights and interests of the party. The presiding officer may consider a representative's sworn affidavit setting forth the representative's qualifications.

(c) The presiding officer shall determine the qualifications of the representative within a reasonable time after the request required by paragraph (a) is filed.

(3) The presiding officer shall authorize the representative to appear if the presiding officer is satisfied that the representative has the necessary qualifications to responsibly represent the party's interests in a manner which will not impair the fairness of the proceeding or the correctness of the action to be taken.

(4) The presiding officer shall make a determination of the qualifications of the representative in light of the nature of the proceedings and the applicable law. The presiding officer shall consider:

(a) The representative's knowledge of jurisdiction;

(b) The representative's knowledge of the Florida Rules of Civil Procedure relating to discovery in an administrative proceeding;

(c) The representative's knowledge regarding the rules of evidence, including the concept of hearsay in an administrative proceeding;

(d) The representative's knowledge regarding the factual and legal issues involved in the proceedings; and

(e) The representative's knowledge of and compliance with the Standards of Conduct for Qualified Representatives, Rule 28-106.107, F.A.C.

(5) If the presiding officer determines a representative is not qualified, the reasons for the decision shall be in writing and included in the record.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History–New 4-1-97, Amended 1-15-07, 2-5-13.

Crystal A. Sanford, CPM
Program Operations Administrator
Department of Health (DOH) | Division of Medical Quality Assurance (MQA)
Board of Medicine
Phone: 850-245-4132 | Fax: 850-412-1261
4052 Bald Cypress Way, # C03 | Tallahassee, FL. 32399-3256
New Website: www.flboardofmedicine.gov
Twitter: www.twitter.com/FLBoardofMed
There have been changes to the license renewal process. Please visit www.CEAtRenewal.com to learn more.

Mission: To protect, promote and improve the health of all people in Florida through integrated state, county, and community efforts.

Vision: To be the **Healthiest State** in the Nation.
Purpose: To protect the public through health care licensure, enforcement and information.
Focus: To be the nation's leader in quality health care regulation.
Values: I.C.A.R.E. (Innovation, Collaboration, Accountability, Responsiveness, Excellence)
PLEASE NOTE: Florida has a very broad public records law. Most written communications to or from State officials regarding State business are public records available to the public and media upon request. Your email communications may therefore be subject to public disclosure.

Juan Pittaluga, M.D. –
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METZGER & ASSOCIATES LLC
Health, Energy and Professional Regulatory Law

KENNETH J. METZGER, ESQUIRE
AV® PREEMINENT™ PEER REVIEW RATED
FLORIDA BAR BOARD CERTIFIED IN STATE & FEDERAL GOVERNMENT & ADMINISTRATIVE PRACTICE
LESLIE J. PAUGH, ESQUIRE ■ MICHAEL M. PARRISH, ESQUIRE "OF COUNSEL"

May 20, 2014

VIA *Electronic Mail*
Allison M. Dudley, Exec. Director
Board of Medicine /Department of Health
4052 Bald Cypress Way, Bin C-03
Tallahassee, FL 32399-3253

Re: DOH vs. Juan Manuel Pittaluga, M.D., Case # 2013-12878

NOTICE OF APPEARANCE

NOTICE is hereby provided that the undersigned counsel and law firm have been retained to represent the interests of Juan Manuel Pittaluga, M.D. in the above referenced case matter currently scheduled (*Agenda # 25*) to heard by the Board on June 6, 2014 in Tampa Florida . Consistent with this appearance, we request all future communication and correspondence be directed to the undersigned counsel at the contact information listed below.

Meanwhile should you require anything further please contact our offices.

Respectfully Submitted,

Kenneth J. Metzger
Florida Bar No. 0341215
Metzger & Associates, LLC
1637 Metropolitan Blvd., Suite C-2
Tallahassee, Florida 32308
T: (850)329-7500 / F: (850)329-7501
kmetzger@metzgerandassociates.com

cc: Diane Kiesling, Esquire
Juan M. Pittaluga, M.D.

Paul Wand, M.D. –
Refer to original tab 32

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MEMORANDUM

TO: Allison M. Dudley, J.D., Executive Director, Board of Medicine
FROM: John Fricke, Jr., Assistant General Counsel
RE: Settlement Agreement
SUBJECT: DOH v. Paul Henry Wand, M.D.
DOH Case Number: 2009-23424
DATE: May 22, 2014

Enclosed you will find materials in the above-referenced case to be placed on the agenda for final agency action for the **June 6-7, 2014**, meeting of the board. The following information is provided in this regard.

Subject:	Paul Henry Wand, M.D.
Subject's Address of Record:	2232 N. University Drive, Suite A Coral Springs, FL 33071 (954) 344 9772 Telephone
Enforcement Address:	2855 N. University Drive Suite 210 Coral Springs, FL 33065
Subject's License No:	41117 **Rank:** ME
Licensure File No:	33063
Initial Licensure Date:	10/28/1982
Board Certification:	None
Required to Appear:	Yes
Current PRN Contract:	None
Allegation(s):	Section 458.331(1)(t), Florida Statutes (2006-2008) Section 458.331(1)(q), Florida Statutes (2006-2008)
Prior Discipline:	Yes

Probable Cause Panel: September 28, 2012
Dr. Thomas, Dr. Winchester and Mr. Levine
July 19, 2013
Dr. El-Bahri, Dr. Stringer, & Mr. Levine

Subject's Attorney: Jon M. Pellett, Esquire
Barr, Murman & Tonelli, P.A.
201 East Kennedy Blvd.
Suite 1700
Tampa, FL 33602
(813) 223-3951 Telephone

Complainant/Address: Agency for Health Care Administration
2727 Mahan Drive, # 46
Tallahassee, FL 32308

Materials Submitted: Memorandum to the Board
Administrative Complaint
Correspondence from Respondent's Attorney, dated June 13, 2013
Settlement Agreement
Expert Opinion, dated 3/25/2013
Expert Opinion, dated 11/4/2011
Curriculum Vitae
Final Investigative Report with Exhibits 1-35
Cost Summary Report

Disciplinary Guidelines:

Section 458.331(1)(t), Florida Statutes (2006-2008): From one (1) year probation to revocation or denial and an administrative fine from $1,000.00 to $10,000.00.

Section 458.331(1)(q), Florida Statutes (2006-2008): From one (1) year probation to revocation or denial and an administrative fine from $1,000.00 to $10,000.00.

PRELIMINARY CASE REMARKS: SETTLEMENT AGREEMENT

This is the proposed settlement of a twelve count administrative complaint alleging that the Respondent committed medical malpractice and prescribed legend drugs, including controlled substances, not in the best interest of six patients. The Respondent failed to practice medicine with that level of care, skill, and treatment which is recognized as acceptable by reasonably prudent physicians by inappropriately prescribing controlled substances or prescribing excessive and inappropriate amounts or combinations of controlled substances to the patients without medical justification. Further, the Respondent failed to obtain drug screens and employ diligent efforts to prevent diversion or misuse of the controlled substances prescribed, recommend other treatment modalities, and develop appropriate treatment plans.

Terms of Settlement Agreement:

- Reprimand
- Fine of $30,000.00
- Costs not to exceed $17,065.32
- Laws and Rules Course
- Permanent restriction on owning or working in a Pain Management Clinic
- Restriction from prescribing any controlled substance until Respondent completes an evaluation by CARES or other Board-approved evaluator, personally appears before the Probation Committee with the evaluator's report and recommendations, and shows documented compliance with the recommendations.
- The Board's Probation Committee shall determine terms and conditions on Respondent's practice to be set at the time of Respondent's appearance with the evaluator's report and recommendations.

Considerations:

- Permanent restriction on owning or working in a Pain Management Clinic serves to protect the public.
- Evaluation and compliance with recommendations of the evaluator ensures the Respondent possesses sufficient knowledge and skills to practice medicine in Florida.
- The Probation Committee's reservation of jurisdiction to impose additional terms and conditions of practice ensures that the Respondent is aware of and practices within requirements for the practice of medicine in Florida.

JBF/sr

James Michael Desantis, M.D.–
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georgia.gov

Georgia Composite Medical Board

Look Up a Licensed Provider

Search Results

NOTE: Licenses renewed online within the past three business days may not be reflected here. Physician Profiles are available for physicians only.

Public Board Orders Disclaimer: Public Board order means that there is a public document concerning the License. The existence of a Board order does not necessarily mean the License was sanctioned by the Medical Board or that the License, if sanctioned, is currently under any type of disciplinary action.

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1 Result found for "desantis, Physician".

License Status	Name Address Issue / Expiration Dates	Specialty	Public Board Orders	Phys Prc
030595 Active	DESANTIS, JAMES MICHAEL, MD 3950 AUSTELL RD | AUSTELL , GA Issue Date: 04/07/1988 Expiration Date: 10/31/2014	Emergency Medicine	View (PDF)	

1 Result found for "desantis, Physician".

Back to Top

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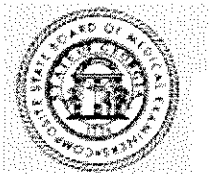

Composite State Board of Medical Examiners

PHYSICIAN PROFILE SEARCH RESULT

Physician's Name: James Michael DeSantis License 30595

Disclaimer: This information has been provided by the physician and has not been verified by the board. The Patient Right to Know Act requires physicians licensed to practice in the State of Georgia to provide certain information to the Board that is to be made available to the public. The Board relies upon information provided by physicians to be true and correct, as required by statute. It is an act of unprofessional conduct for a licensee to provide erroneous information to the Board. The Board makes no warranty or guarantee concerning the accuracy or completeness of physician profiles.

I. Physician Data

License and Reciprocity Information:

License Number:	30595	**Designation:**	MD
Licensure Date (MM/DD/YYYY):	04/07/1988		
Issued in another State:	North Carolina	**Licensure Date in another state (MM/DD/YYYY):**	06/01/1984

Address:

3950 austell rd AUSTELL, GA US

Practice Location History (Maximum = 5):

City	State	Country	From MM/DD/YYYY	To MM/DD/YYYY
marietta	Georgia	United States	02/01/1989	04/02/2003

Does this physician currently accept Medicaid patients?

Yes

II. Medical Education and Training

Medical School (Maximum = 1):

School Name	From Date MM/DD/YYYY	To Date MM/DD/YYYY	Graduation Date MM/DD/YYYY
University of South Florida	07/01/1978	05/30/1981	05/30/1981

Other Medical Schools (Maximum = 3):

This physician has not reported any other medical school information.

Training (Maximum = 5):

Graduate Medical Education	Location of Training				
	City	State	Country	From MM/DD/YYYY	To MM/DD/YYYY
Family Practice	Harrisburg	PA	US	07/01/1981	06/30/1984

III. Specialty Board Certifications

Disclaimer: Please note that many valid certifiying specialty boards do not participate in the Amercican Board of Medical Specialties (1-866-ASK-ABMS or www.abms.org) and actual verification of a physician's board certification is best accomplished by contacting the individual certifying specialty board.

List of applicable specialty board certifications. (Maximum = 3)

CERTIFYING BOARD	SPECIALTY/SUBSPECIALTY
American Board of Emergency Medicine	Emergency Medicine
American Board of Emergency Medicine	Emergency Medicine

IV. Current Hospital Staff Privileges

List of hospitals where physician currently holds staff privileges. (Maximum = 7)

Hospital Name
Wellstar Cobb Hospital
Wellstar Kennestone Hospital

V. Final Disciplinary Action

List of final disciplinary actions taken by licensing boards against this physician on or after April 11, 2001.

This physician has indicated that he/she has NOT had any final public disciplinary action or second subsequent final private reprimand taken against him/her by a licensing board regulating his/her medical or any other license in this state or any other state.

List of privilege revocation or disciplinary actions taken against this physician on or after April 11, 2001.

This physician has indicated that he/she has NOT had any hospital privileges revoked involuntarily or by agreement, or restricted for reason(s) related to competence or character.

VI. Criminal Offenses

Below is a list of the physician's criminal offenses.

This physician has indicated that he/she has NOT been convicted of a felony, irrespective of the pendancy or availability of an appeal, or pled guilty or nolo contendere to a felony in any jurisdiction.

VII. Medical Malpractice Judgment Arbitration Awards

List of medical malpractice court judgment and/or arbitration awards against this physician entered on or after April 11, 2001 that was in excess of $100,000 limited to the most recent 10 years.

This physician has indicated that he/she has NO medical malpractice court judgment(s) and/or arbitration award(s) against his/her license.

Disclaimer: Settlement of a claim may occur for a variety of reasons which do not necessarily reflect negatively on the professional competence or conduct of the physician. A payment in settlement of a medical malpractice action or claim should not be construed as creating a presumption that medical malpractice has occurred.

VIII. Medical Malpractice Settlement Amounts

List of settlements required to be reported on the profile and against the physician entered on or after April 11, 2001 and limited to the most recent 10 years .

A. **Minimum 4 settlements (regardless of amount).**
B. **3 settlements with at least one settlement over $100,000.00.**
C. **1 or 2 settlements of which one has a value of over $300,000.00.**

This physician has indicated that he/she has NO medical settlements against his/her license.

Disclaimer: Settlement of a claim may occur for a variety of reasons which do not necessarily reflect negatively on the professional competence or conduct of the physician. A payment in settlement of a medical malpractice action or claim should not be construed as creating a presumption that medical malpractice has occurred.

IX. Optional Information.

List of physician's articles, journals, or publications limited to the most recent ten years. (Maximum = 4)

This physician has not provided any information on articles, journals or publications that he/she authored within the last ten years.

List of professional organizations, community service organization memberships or activities. (Maximum = 5)

This physician has not provided any information on professional organizations, community service organization memberships or activities.

List of awards. (Maximum = 5)

This physician has not reported if he/she has any awards.

List of all languages excluding Engish used the by physician to communicate with patients and/or translation services available to their patients at the primary place of practice. (Maximum = 6)

This physician has not indicated that any languages other than English are used to communicate with patients, or that any translation service is available for patients, at his/her primary place of practice.

List of Appointments to Medical School Faculties. (Not hospital affiliations or privileges) (Maximum = 6)

This physician has not reported any appointments to medical school faculties.

X. Physician Comments

The physician has not submitted any comments.

BEFORE THE GEORGIA COMPOSITE MEDICAL BOARD

STATE OF GEORGIA

GEORGIA COMPOSITE MEDICAL BOARD

OCT 10 2013

DOCKET NUMBER

10130025

IN THE MATTER OF:	*
	*
JAMES MICHAEL DESANTIS, M.D.,	*
License No. 30595,	*
Applicant.	*

PUBLIC CONSENT ORDER REINSTATING LICENSE

By agreement of the Georgia Composite Medical Board ("Board") and James Michael DeSantis, M.D.("Applicant") the following disposition of this matter is entered pursuant to the provisions of O.C.G.A. §§43-34-8 and 43-1-19.

FINDINGS OF FACT

1.

Applicant was initially licensed to practice medicine in the State of Georgia on or about April 7, 1988 and was issued license no. 30595.

2.

On or about April 18, 2013, Applicant's license was summarily suspended based on information that Applicant was unsafe to practice medicine due to impairment. On or about May 2, 2013, the Board accepted an application for inactive status submitted by the Applicant.

3.

On or about June 17, 2013, Applicant submitted an application for reinstatement. In support of his application, Applicant submitted to the Board a report of a psychiatric evaluation performed in May 2013; a letter from a licensed professional counselor; and a

report from a licensed psychologist, all of whom supported Applicant's return to practice subject to monitoring.

4.

On or about September 12, 2013, Applicant met with the Board's Wellness Committee and was accompanied by his treating psychiatrist. The treating psychiatrist supports Applicant's return to the practice of medicine under a monitoring program.

5.

Applicant admits the above findings of fact and waives any further findings of fact regarding the above-referenced matter.

CONCLUSIONS OF LAW

The Applicant's condition and the above findings of fact constitute sufficient grounds for the imposition of conditions upon Applicant's license to practice medicine in the State of Georgia pursuant to O.C.G.A. §43-34-8 and §43-1-19. Applicant waives any further conclusions of law with respect to the above-styled matter.

ORDER

The Georgia Composite Medical Board, having considered all the particular facts and circumstances of this case, hereby orders, and the Applicant hereby agrees, that Applicant's license to practice medicine in the State of Georgia shall be reinstated subject to the following terms and conditions:

1.

Beginning on the effective date of the Consent Order, Applicant's licensure shall be subject to a period of monitoring until terminated by a written order of the Board, subject to the following terms and conditions:

(a) Treatment. Applicant shall participate in treatment with a Board approved psychiatrist ("treating psychiatrist"). Applicant's treatment shall include, but not be limited to:

(i) Individual, in person therapy no less than once every two (2) weeks;

(ii) Random witnessed drug and alcohol screening on dates that do not coincide with office visits and that are conducted on at least a monthly basis; and

(iii) Daily use of Antabuse which use shall be witnessed by a licensed pharmacist or physician selected and approved by Applicant's treating psychiatrist. In addition, Applicant shall maintain a daily log of his use of Antabuse signed by the witness. Applicant shall follow all treatment recommendations of Applicant's Board-approved psychiatrist provided that none of said treatment recommendations conflicts with (i) through (iii) above.
Any changes in Applicant's treatment or treating psychiatrist shall require prior Board approval.

Applicant shall provide a copy of this Order to the treating psychiatrist. Applicant shall submit or cause to be submitted a statement from the treating psychiatrist to the Board within ten (10) days of the effective date of this Order as evidence of having read and understood the same and having agreed to serve as Applicant's treating psychiatrist.

(b) Monitoring Program. Prior to returning to the practice of medicine, Applicant shall enroll in a structured, established monitoring program acceptable to the Board and

submit documented proof such enrollment, including a monitoring contract, to the Board. Applicant shall provide the Board with evidence of his enrollment in the monitoring program and a copy of his monitoring contract within 10 days of the effective date of this Order. If Applicant is practicing medicine outside the State of Georgia, Applicant's monitoring program shall also monitor Applicant's daily use of Antabuse in conjunction with Applicant's treating psychiatrist. Applicant shall comply with the terms of his monitoring contract. Any changes to the monitoring contract shall be reported to the Board in writing within 10 days of such change.

(c) Quarterly Reports. Applicant shall submit or cause to be submitted quarterly reports from his treating psychiatrist and the monitoring program regarding his mental/physical condition and/or performance by March 31, June 30, September 30 and December 31 of each calendar year, including a report on any medication being prescribed to Applicant. Each report by both the treating psychiatrist and the monitoring program shall contain the results of at least three (3) drug and alcohol screens. Failure to submit or have such reports submitted in a timely manner shall be considered a violation of the Consent Order. It is expected that the treating psychiatrist and the monitoring program will be in regular contact with each other and will immediately report any change in Applicant's condition. By executing the Consent Order, Applicant specifically consents for such treating psychiatrist and the monitoring program or any other facility where Applicant obtains medical treatment to report on Applicant's condition, notwithstanding any privilege provided by state or federal law.

(d) Abstain from Mood Altering Substances. Applicant shall completely abstain from the consumption of alcohol and mood altering substances, except as prescribed by a

duly licensed practitioner for a legitimate medical purpose. If such treatment entails the use of narcotics or other potentially addictive substances, Applicant shall have his treating physician obtain a consultation with the Board approved treating psychiatrist, who shall notify the Board's Medical Director within ten (10) calendar days of the prescription.

(e) Participation in Support Group. If recommended by Applicant's treating psychiatrist, Applicant shall regularly participate in meetings of Alcoholics Anonymous, Narcotics Anonymous, Caduceus Club or similar support group(s) acceptable to the Board.

(f) Drug/Alcohol Screens. The Board or its representative or Applicant's treating psychiatrist or the monitoring program shall have the authority at any time to order Applicant to undergo witnessed and immediate drug/alcohol urine, biological fluid, hair sample, or blood screen analysis at Applicant's expense. Applicant further agrees that all drug/alcohol screens submitted to the Board pursuant to this paragraph shall be admissible in any administrative hearing concerning the Applicant without the necessity of establishing chain of custody or other testimony to authenticate the test results. Refusal to undergo a properly requested drug/alcohol, biological fluid or hair or blood screen analysis shall be considered a violation of this Consent Order and shall be grounds for revocation of Applicant's license to practice medicine in the State of Georgia.

(g) Further Evaluation. At any time during the period of monitoring, the Board shall have the authority to order Applicant to undergo a physical or mental evaluation by physicians or at a facility designated by the Board. Applicant shall execute such releases as may be required for the Board to obtain the results of such evaluations.

(h) Requests to Modify/Lift Terms. Any request by the Applicant to modify or lift any term or condition contained within this Order shall be made to the Board in writing and

shall be supported by letters from the treating psychiatrist and monitoring program. In no case will a denial of any petition or request for modification or lifting of terms be considered a contested case as defined by O.C.G.A. Title 50, the Georgia Administrative Procedure Act.

(i) Periods of Residency Outside Georgia or Periods When Not Actively Practicing Medicine. In the event Applicant should leave Georgia to reside or practice outside of Georgia for periods longer than thirty (30) consecutive days, Applicant shall notify the Board in writing of the dates of departure and return. Periods of residency or practice outside of Georgia as well as periods when Applicant is not actively engaged in practicing medicine will not count towards the monitoring period, except as authorized by the Board.

(j) Employment/ Residency. Applicant shall inform the Board in writing of his place of employment and the identity of his employer upon his return to practice. Applicant shall also advise the Board of any change in address of record or employment status within ten (10) days of the change.

(k) Abide By Laws, Rules and Terms. Applicant shall abide by all State and Federal laws regulating his practice of medicine or relating to drugs, the Rules and Regulations of the Georgia Composite Medical Board and the terms of the Consent Order and monitoring. If Applicant shall fail to abide by such laws, rules or terms, or if it should appear from probation or other reports submitted to the Board that Applicant is otherwise unable to practice with reasonable skill and safety to patients Applicant's license may be subjected to sanctions, including revocation. Applicant further agrees that any violation of the Consent Order shall be deemed to be sufficient to authorize the Board to order summary suspension of Applicant's license, pending further proceedings, pursuant to the provisions of the Georgia Administrative Procedure Act, O.C.G.A. § 50-13-18(c)(1), or any other statute authorizing

emergency action, but Applicant understands that Applicant shall be entitled to an expedited hearing to substantiate such violation(s), if the Board exercises such right.

(l) Termination of Monitoring. Applicant shall not be eligible to petition for termination of monitoring until three (3) years have passed from the effective date of this Consent Order. At such time, Applicant may petition for termination by certifying under oath before a notary public that he has complied with all conditions of monitoring and by providing documentation supporting discharge from monitoring, including, but not limited to, written statements of support from Applicant's treating psychiatrist and the monitoring company. The Georgia Composite Medical Board shall review and evaluate Applicant's compliance with this Order prior to terminating the monitoring period. If the Board denies the Applicant's petition, Applicant may petition for termination of monitoring on an annual basis thereafter. In any event, the Consent Order shall remain in effect pending a final determination by the Board and notification to Applicant that the monitoring period has terminated. In no case, however, will a denial of such petition be considered a contested case as defined by O.C.G.A. Title 50, the Georgia Administrative Procedure Act.

2.

This Consent Order and its dissemination shall constitute a public order of the Board.

3.

Applicant acknowledges that he is represented by counsel and that he has read this Consent Order and understands its contents. Applicant understands that he has the right to an appearance before the Board in this matter, and Applicant freely, knowingly and voluntarily waives his right to an appearance and to file any civil action or action for equitable or injunctive relief against the Board by entering into this Consent Order. Applicant understands that this

Consent Order will not become effective until approved by the Georgia Composite Medical Board and docketed by the Executive Director of the Board. Applicant further understands and agrees that a representative of the State Department of Law may be present during the presentation of this Consent Order and that the Board shall have the authority to review the investigative file and all relevant evidence in considering this Consent Order. Applicant further understands that this Consent Order, once approved, shall constitute a public record of the Board. If this Consent Order is not approved, it shall not constitute an admission against interest in this proceeding, or prejudice the ability of the Board to adjudicate this matter. Applicant consents to the terms and conditions contained herein.

Approved, this 10th day of October, 2013.

GEORGIA COMPOSITE MEDICAL BOARD

BY: Richard Weil, MD
RICHARD WEIL, MD
Chairperson

ATTEST: LaSharn Hughes
LASHARN HUGHES
Executive Director

(BOARD SEAL)

CONSENTED TO:

JAMES MICHAEL DESANTIS, M.D.
Applicant

[As to Applicant's signature:]
Sworn to and subscribed before me
This 7 day of Oct, 2013.
Joann K. Bristow
NOTARY PUBLIC
My commission expires: 10/4/16

Melvin Goldstein
MELVIN GOLDSTEIN, ESQ.
Attorney for Applicant

BEFORE THE GEORGIA COMPOSITE MEDICAL BOARD

STATE OF GEORGIA

GEORGIA COMPOSITE MEDICAL BOARD
MAY 02 2013
DOCKET NUMBER
10130025

IN THE MATTER OF:	*	
	*	
JAMES MICHAEL DESANTIS, M.D.	*	
License No. 30595,	*	
Respondent.	*	

BOARD ORDER

WHEREAS, on or about April 18, 2013, the Georgia Composite Medical Board ("Board") issued an Order of Summary Suspension of Respondent's license, Docket No. 10130025, based on information that James Michael DeSantis, M.D. ("Respondent") was unsafe to practice medicine with reasonable skill and safety due to chemical dependency and has not entered treatment.

WHEREAS, following the Order of Summary Suspension, Respondent submitted an application to place his medical license on inactive status. The Board considered Respondent's application for inactive status at its May 2-3, 2013 meeting and voted to accept the application as a final settlement of the pending disciplinary matter.

NOW, THEREFORE, the Board hereby orders that License No. 30595 be placed on inactive status and that Docket No. 10130025 reflect this final settlement in this matter.

SO ORDERED, this 2nd day of May, 2013.

GEORGIA COMPOSITE MEDICAL BOARD

BY: _____
WILLIAM J. BUTLER, M.D.
Chairperson

(BOARD SEAL)

ATTEST: _____
LASHARN HUGHES
Executive Director

BEFORE THE GEORGIA COMPOSITE MEDICAL BOARD

STATE OF GEORGIA

GEORGIA COMPOSITE MEDICAL BOARD

APR 18 2013

DOCKET NUMBER

1013 0025

IN THE MATTER OF:	)
	)
JAMES MICHAEL DESANTIS, M.D.	)
License No. 30595,	)
Respondent.	)

ORDER OF SUMMARY SUSPENSION

1.

WHEREAS, James Michael DeSantis, M.D. ("Respondent") was licensed by the Georgia Composite Medical Board ("Board") to practice as a physician in the State of Georgia on or about April 7, 1998 and his license expires October 31, 2013.

2.

WHEREAS, the Board received reliable information that on or about September 28, 2012 when he was scheduled to work an emergency room shift at Meadows Medical Center in Vidalia, GA, Respondent was found unresponsive in a hotel room, with a serum alcohol level of 437 and a Glasgow coma score of 4 to 6, and was hospitalized. Respondent was discharged on or about October 1, 2012. The Board further received reliable information that on or about October 2, 2012 Respondent requested to have his privileges withdrawn at Meadows Regional Medical Center, effective October 2, 2012.

3.

WHEREAS, the Board received reliable information that Respondent admitted that he drank alcohol and took Ambien to assist with shift work that is associated with being an emergency room physician. Respondent indicated that he was receiving counseling.

4.

WHEREAS, on or about January 24, 2013, the Board required Respondent to obtain a mental/physical examination and provide the results to the Board. The Board received reliable information that Respondent was examined from on or about February 4, 2013 through February 7, 2013 at Talbott Recovery Campus, Atlanta, GA. The Board received reliable information that the results of the examination indicated that Respondent cannot practice medicine with safety in regard to chemical dependence; that Respondent is a candidate for and should attend treatment for chemical dependency at the residential level; and that Respondent should abstain from any mind altering drugs of abuse, including alcohol and Ambien, but should continue to take all medications as prescribed.

5.

WHEREAS, the Board deferred action with the understanding that Respondent would comply with treatment recommendations. The Board has received reliable information that Respondent has not entered treatment for chemical dependency to date.

NOW THEREFORE, the Board finds that summary suspension of Respondent's license to practice as a physician in the State of Georgia is warranted under O.C.G.A. § 50-13-18(c)(1), and hereby ORDERS that Respondent's license to practice as a physician in the State of Georgia be and is hereby SUMMARILY SUSPENDED pending further proceedings on behalf of the Board.

If the Respondent wishes to have an expedited hearing, Respondent shall execute and file with the Georgia Composite Medical Board the original and one copy of the attached REQUEST FOR EXPEDITED HEARING no later than fourteen (14) days from the day of

service or receipt of this Order. Respondent also shall serve a copy of such REQUEST upon counsel for the Board as identified in the REQUEST.

This Order is signed and attested by the Executive Director on behalf of the Georgia Composite Medical Board.

This 18th day of April, 2013.

GEORGIA COMPOSITE MEDICAL BOARD

WILLIAM J. BUTLER, M.D.
Chairman

(BOARD SEAL)

LASHARN HUGHES
Executive Director

PLEASE DIRECT ALL CORRESPONDENCE TO:
Janet Bolt Wray
Senior Assistant Attorney General
Department of Law
40 Capitol Square, S.W.
Atlanta, Georgia 30334

BEFORE THE GEORGIA COMPOSITE MEDICAL BOARD
STATE OF GEORGIA

IN THE MATTER OF:	)
	)
JAMES MICHAEL DESANTIS, M.D.	)
License No. 30595,	)
	)
Respondent.	)

REQUEST FOR EXPEDITED HEARING

I, JAMES MICHAEL DESANTIS, M.D., having been served with the Order of Summary Suspension by the Georgia Composite Medical Board ("Board"), do hereby request an expedited hearing. I reserve the right to file a response to a Notice of Hearing in this matter.

This _____ day of _____, 2013.

_____
JAMES MICHAEL DESANTIS, M.D.
Respondent

( ) I am/will be represented by counsel
Name of counsel if known at this time:

_____

THIS REQUEST MUST BE FILED WITH THE GEORGIA COMPOSITE MEDICAL BOARD, 2 PEACHTREE STREET, N.W., 36TH FLOOR, ATLANTA, GEORGIA 30303-3465.

A COPY OF THIS REQUEST MUST BE SERVED ON THE OFFICE OF THE ATTORNEY GENERAL, ATTN: JANET BOLT WRAY, SENIOR ASSISTANT ATTORNEY GENERAL, 40 CAPITOL SQUARE, ATLANTA, GEORGIA 30334.

Peter Choy, M.D. –
Refer to original tab 35

STATE OF FLORIDA
DEPARTMENT OF HEALTH

DEPARTMENT OF HEALTH,
BOARD OF MEDICINE,

Petitioner,

vs. DOAH Case No. 13-4280PL
DOH Case No. 2011-11189

PETER CHOY, M.D.,

Respondent.
_____/

EXCEPTIONS TO RECOMMENDED ORDER

Pursuant to Rule 28-106.217, Florida Administrative Code, Respondent, Peter Choy, M.D., ("Dr. Choy") files the following exceptions to the Recommended Order, entered on April 15, 2014.[1]

1. Respondent takes exception to the findings of fact in paragraph 9 that the identity of the caller from Dr. Choy's office to TG on June 19, 2008 "is immaterial" and the speculation that the call was "most likely, to schedule an appointment for T.G., so that Dr. Choy could go over the recent blood work and CT scan with T.G. in person." These findings are not supported by competent substantial evidence, and should therefore be stricken.

The only record evidence is that Dr. Choy specifically recalled making the phone call to TG; and that Dr. Choy's practice was to call patients himself if a test result showed something significantly wrong. (Tr. V. I at 138, ll. 16-23; Tr. V. III at 410, ll. 10-21.) Dr. Choy also testified that he was following up on the 2008 CT scan results, with no mention of a need to follow up on recent blood work. (*Id.*) Further, the ALJ's later finding—that Dr. Choy must have overlooked

[1] References to the transcript of the hearing held on January 14 and 15, 2014, are denoted by (Tr. V.__ at ___, ll. ___.) representing the referenced page number and lines; references to exhibits are denoted by Joint ("Jt."), Petitioner ("Pet.") or Respondent ("Resp.") (Ex. ___ at ___, ll. ___.) representing the cited exhibit number, then the page and line number (if applicable); references to the Pleadings are denoted by the pleading title and page number.

the portion of the 2008 CT scan discussing the pancreatic mass—is undermined by the fact that Dr. Choy made the call to TG on June 19th because of his practice to make personal calls in these situations. (Tr. V. I at 138, ll. 16-23.)

2. Respondent takes exception to the finding of fact in paragraph 10 that "there is no reliable contemporaneous record of what Dr. Choy communicated to T.G., if anything, about the finding of a tumor in her pancreas." This finding is not supported by competent substantial evidence, and therefore should be stricken. First and foremost, Respondent asserts that the standard in this proceeding is not whether Dr. Choy presented "reliable contemporaneous evidence" of communicating the results of the 2008 CT scan to TG; instead it is whether the Department established through the presentation of clear and convincing, competent substantial evidence that Dr. Choy failed to inform TG of the 2008 scan results and failed to refer her to an appropriate specialist. *See Dep't of Banking & Fin., Div. of Sec. & Investor Prot. v. Osborne Stern & Co.*, 670 So. 2d 932, 933-34 (Fla. 1996) (citing *Ferris v. Turlington*, 510 So. 2d 292, 294-95 (Fla. 1987)) (Petitioner is required to affirmatively present competent substantial evidence to establish a violation by the "clear and convincing" evidence standard.). Therefore, to the extent this finding implies that Dr. Choy, instead of the Department, bears the burden of persuasion in this proceeding, it should be stricken on that basis as well.

Additionally, this proposed finding is factually insupportable given Dr. Choy's testimony that he had the hardcopy of TG's chart with him at the June 30, 2008 visit. Dr. Choy testified that he considers the hardcopy patient file to be just as much a part of the patient's records as the electronic record and that he treats it as such. (Tr. V. III at 406, ll. 23-25; 407, ll. 1-3.) He wrote on the copy of the 2008 CT scan contained within TG's hardcopy file "possible malignant tm. tail of pa" (possible malignant tumor tail of pancreas) just after speaking with her regarding the

positive CT scan results and the need for TG to follow up with a specialist. (Tr. V. III at 414, ll. 23-25; 415, ll. 1, 15-20; Jt. Ex. 2 at 2.) This constitutes "reliable contemporaneous evidence" that Dr. Choy communicated to TG regarding the mass in her pancreas. Dr. Choy's testimony was further corroborated by Cristina Garcia, Dr. Choy's office manager (who also served as records custodian), that Dr. Choy had TG's hardcopy file with him at TG's visit on June 30, 2008 and that he regularly makes notes to hardcopy versions of reports. (Tr. V. I at 135, ll. 2-15.) Specifically, Ms. Garcia testified that Dr. Choy's regular practice was to write notes on lab reports, including those that had already been scanned and were placed in the patient's hardcopy file; and that it seemed completely normal Dr. Choy would have made the notes at issue on the 2008 CT scan. (Tr. V. I at 136, ll. 20-25; 137, ll. 1-15.) There is further no expert or fact witness testimony that any late changes were made to TG's hardcopy records.[2]

The Department also failed to allege in its Second Amended Administrative Complaint that Dr. Choy made late changes to any records other than TG's electronic medical records. (2d Am. Compl. at ¶¶ 15-19.) While the Department alleges it compared versions of TG's electronic medical records and found discrepancies, there is no allegation that records in the hardcopy file were later changed. (*Id.*) Therefore, the issue of whether Dr. Choy made changes to TG's hardcopy file is not properly at issue in this proceeding. *See Trevisani v. Dep't of Health*, 908 So. 2d 1108, 1109 (Fla. 1st DCA 2005) (explaining that administrative complaints are required to contain specific factual allegations to provide the licensee with notice of the alleged acts or omissions the agency contends constitute a violation of the applicable statute).

Notwithstanding that the Department did not charge Dr. Choy with improperly making late entries to his hardcopy medical records for TG, there is absolutely no record evidence to

[2] Department expert witness, Robert Moody, only reviewed versions of Dr. Choy's electronic medical records for discrepancies. *See* Jt. Ex. 11 at 43, ll. 3-6.

support a finding that Dr. Choy made the aforementioned note on any other date than June 30, 2008. Unlike the electronic medical records, to which Dr. Choy freely admitted he made late changes, and for which there is expert computer forensic analysis showing exactly which changes were made, there is no testimony from any fact or expert witness opining that Dr. Choy made late changes to his handwritten notes on the 2008 CT scan. (Jt. Ex. 11 at 43, ll. 3-6.) Instead, the record evidence is that Dr. Choy only made late changes to the electronic patient records, as he has admitted, and not to any hard copy records. (Tr. V. III at 417, ll. 8-13, 20-24.)

3. Respondent takes exception to the finding of fact in paragraph 11 that the electronic office note "made at or around the time of the June 30, 2008, visit, is silent about the potentially malignant tumor that had recently been seen in T.G.'s pancreas." This finding is not supported by competent substantial evidence, and should therefore be stricken. Specifically, the June 30, 2008 electronic office note states "we will refer pt to GI evaluation." (*See* R.O. at ¶11.) Dr. Choy testified that he typed this note after discussing the positive CT scan results with T.G. and advising her to follow up with a GI specialist. (Tr. V. III at 418, ll. 8-11; 419, ll. 20-25; 420, ll. 1-2.) Thus, the electronic record in combination with Dr. Choy's handwritten note on the 2008 CT scan adequately reflect that Dr. Choy was aware of the pancreatic mass, discussed it with T.G., and referred her to follow up with a GI specialist.

4. Respondent takes exception to the finding of fact in paragraph 13 that, "[t]he reference to the pancreatic tumor looks out of place, moreover, in the section of the report discussing the pelvic scan, which did not find the mass, atop the previous notes relating to diverticulosis, which the pelvic scan did reveal." This finding is not supported by competent substantial evidence, and therefore should be stricken. Specifically, there was no testimony supporting a finding that Dr. Choy's manner of making notes on the 2008 CT scan was in any

way irregular. Further, the presumption in the Recommended Order, that the reference to the pancreatic tumor looks out of place, failed to take into consideration: 1) the fact that Dr. Choy would not have placed a note for staff to communicate with TG regarding a pancreatic mass, whereas staff recommending TG take Metamucil for diverticulosis would have been an appropriate communication; (Tr. V. I at 138, ll. 16-23.); and 2) the fact that this page was ordered as the first page in the report. (Jt. Ex. 2 at 2.)

Further, this finding is unsupported since page 2 does mention a "Large malignant tumor mass tail of the pancreas as described" and all notes regarding findings in the report are made at the end of the report, and not in the "section of the report discussing the pelvic scan." (Jt. Ex. 2 at 2.) It is wholly reasonable that all notes would be combined together at the end of the combined diagnostic report.

5. Respondent takes exception to the finding of fact in paragraph 14 that, "Dr. Choy recorded T.G.'s various diagnoses in the electronic patient chart, making no mention of the pancreatic mass." This finding is not supported by competent substantial evidence, and therefore should be stricken. Specifically, since TG had failed to follow up with a GI specialist, there was no diagnosis regarding the pancreatic mass which should have been included in Dr. Choy's medical records. (Tr. V. III at 435, ll. 17-25; 436, ll. 1-14.)

6. Respondent takes exception to the finding of fact in paragraph 15, which refers to the finding in paragraph 14 challenged above and states "[t]his pattern was repeated during the several visits which followed . . ." This finding is not supported by competent substantial evidence, and therefore should be stricken. Specifically, as explained in paragraph 5 above, TG's diagnoses automatically carried over from one visit to the next, and since TG had failed to follow up with a GI specialist there was no diagnosis that had been made with regard to the pancreatic

mass, which should have been included in Dr. Choy's records. (Tr. V. III at 435, ll. 17-25; 436, ll. 1-14.)

7. Respondent takes exception to the finding of fact in paragraph 19, that during TG's July 7, 2010 visit "Dr. Choy noted Dr. Villa's recommendation and recorded (for the first time) a differential diagnosis of "potential malignancy." This finding is not supported by competent substantial evidence, and therefore should be stricken. Specifically, Respondent incorporates and restates the entirety of Exception #2 in support of this Exception. Further, the note for TG's July 7, 2010 visit reads "possible malignancy," and not "potential malignancy." (Jt. Ex. 1 at 726.) This note regarding "possible malignancy" is also not a diagnosis, but instead is listed under "Assessment & Plan." (*Id.*) Diagnoses for TG were listed under the "Histories & Habits" portion of the note. (Jt. Ex. 1 at 725.)

8. Respondent takes exception to the finding of fact in paragraph 27, that there was a "remarkable absence of any notes in the medical records pertaining to the possibility that T.G. might have pancreatic cancer as stated in the radiologist's report interpreting the June 2008 CT scan." This finding is not supported by competent substantial evidence, and therefore should be stricken. Specifically, Respondent incorporates and restates the entirety of Exception #2 in support of this Exception.

9. Respondent takes exception to the finding of fact in paragraph 27, that: "The inevitable inference is that Dr. Choy knew the original records would be persuasive, if not conclusive, evidence of his failure to inform T.G. of her potentially fatal condition, in violation of the standard of care, so he secretly (or so he thought) doctored the records to turn them into evidence that he had *satisfied* the standard of care." This finding is not supported by competent substantial evidence, and therefore should be stricken.

Specifically, an "inference" is insufficient to satisfy the strict evidentiary requirement in a disciplinary proceeding—there must be some actual competent substantial evidence constituting proof of the alleged violation. *See State v. Norris*, 168 So. 2d 541, 543 (Fla. 1964) (stating that "mere suspicion is insufficient. The proof should be clear and convincing."); *Tenbroeck v. Castor*, 640 So. 2d 164, 167 (Fla. 1st DCA 1994) (holding that while the facts may raise a suspicion of wrongdoing, speculation, surmise and suspicion cannot form the basis of disciplinary action against a professional's license); *Dep't of Bus. & Prof'l Reg., Div. of Pari-Mutuel Wagering v. Charles J. Ashmore, III*, 2008 WL 572814, *5, DOAH Case No. 07-4772PL (Rec. Order Fla. Div. of Admin. Hrg's Feb. 29, 2008) (citations omitted) (determining that suspicious behavior cannot serve as a substitute for the clear and convincing evidence of an actual violation, which is required when taking disciplinary action against a licensee). There is no legal authority under which an inference can be substituted for record evidence that itself clearly and convincingly establishes the Department's allegation against a licensee.

10. Respondent takes exception to the finding of fact in paragraph 29, that: "The alterations are clear and convincing proof of the material fact that Dr. Choy did *not* tell T.G. that the June 19, 2008, CT scan report stated she had a '[l]arge malignant tumor mass' in her pancreas, for a simple reason: he was unaware that a tumor mass was described in the report." This finding is not supported by competent substantial evidence, and should therefore be stricken.

Specifically, the alterations in and of themselves cannot constitute proof of medical malpractice. *See Barr v. Dep't of Health, Bd. of Dentistry*, 954 So. 2d 668, 669 (Fla. 1st DCA 2007) (holding that a finding of improper recordkeeping cannot rise to a standard of care

violation). While the alterations can go to support a recordkeeping violation, there must be some additional separate proof to establish the distinct claim of medical malpractice. *Id.*

Again, this finding is impermissibly based on an "inference" of further wrongdoing by virtue of Dr. Choy's admission that he made late entries to TG's records. The Recommended Order references no independent clear and convincing evidence to establish the reason for Dr. Choy's late entries was for any other reason than as testified by Dr. Choy—to make the records more complete for review by the attorney for TG's family. Nowhere on the record is there evidence that Dr. Choy made false entries to TG's records. Dr. Choy has consistently testified that the entries, as revised, represent his best recollection of TG's treatment and that other unchanged observations in the records—such as TG's weight loss, lab reports and other symptoms are consistent with his updates to these records. (Tr. V. II at 340, ll. 11-18; 341, ll. 13-17; Tr. V. III at 459, ll. 1-22.)

This finding is further undermined by the fact that while the ALJ concluded that TG was informed of the diverticulosis revealed by the 2008 scan (Rec. Order at ¶ 9), there is no discussion of diverticulosis in Dr. Choy's original electronic records. Should the conclusion then be that TG was not informed of either condition since there is no specific notation in the electronic office notes regarding diverticulosis? This quandary, however, is easily resolved by Dr. Choy's testimony that he considers the hardcopy test results—such as the copy of TG's 2008 CT scan containing his handwritten notes—to be a part of the medical record. (Tr. V. III at 406, ll. 23-25; 407, ll. 1-3.) Dr. Choy documented both the diverticulosis and possible pancreatic cancer in the hardcopy file. (Jt. Ex. 2 at 2.) There is no logical reason to believe Dr. Choy only saw the diverticulosis and overlooked the very serious findings of a pancreatic mass in the same report. The more logical conclusion is that Dr. Choy did not initially handwrite his observation

of the pancreatic mass on the 2008 CT scan to prevent any confusion regarding whether staff processing the scan should communicate these results to TG. As Dr. Choy testified, he would not have wanted such serious information communicated over the phone to TG given her depressed mental state. (Tr. V. III at 411, ll. 5-17.)

The ALJ's decision to discredit Dr. Choy's testimony is no substitute for the affirmative evidence the Department was required present in proving a claim of medical malpractice. In sum, inference is insufficient to support a finding of fact in a disciplinary proceeding—there must be some actual competent substantial evidence constituting proof of the alleged violation. *See State v. Norris,* 168 So. 2d 541, 543 (Fla. 1964) (stating that "mere suspicion is insufficient. The proof should be clear and convincing."); *Tenbroeck v. Castor,* 640 So. 2d 164, 167 (Fla. 1st DCA 1994) (holding that while the facts may raise a suspicion of wrongdoing, speculation, surmise and suspicion cannot form the basis of disciplinary action against a professional's license); *Dep't of Bus. & Prof'l Reg., Div. of Pari-Mutuel Wagering v. Charles J. Ashmore, III,* 2008 WL 572814, *5, DOAH Case No. 07-4772PL (Rec. Order Fla. Div. of Admin. Hrg's Feb. 29, 2008) (citations omitted) (determining that suspicious behavior cannot serve as a substitute for the clear and convincing evidence of an actual violation, which is required when taking disciplinary action against a licensee).

11. Respondent takes exception to the last four sentences in paragraph 29 as not constituting findings of fact, but instead they are non-factual commentary regarding the ALJ's speculation as to why Dr. Choy amended certain of TG's records in August of 2010. For this reason, these statements should be stricken. Should this commentary be treated as findings of fact, however, Respondent states that they are not supported by competent substantial evidence, and should be stricken for this reason. Specifically, the ALJ's speculation that Dr. Choy did not

know about the mass in TG's pancreas until sometime around August 2010 is simply not supported by any facts in the record. Dr. Choy has consistently testified that he reviewed the 2008 CT scan showing the mass in TG's pancreas and communicated with TG regarding the mass and the need to follow up with a specialist shortly after receiving the scan in June of 2008. (Tr. V. III at 418, ll. 1-11.) When TG took an extended leave of absence from Dr. Choy's office over the course of approximately thirteen months, Dr. Choy forgot about the 2008 CT scan results until he again viewed them at Mercy Hospital in July of 2010. (Tr. V. III at 448, ll. 6-22.) While the ALJ may choose to discredit this testimony, there still must be actual competent substantial evidence proffered by the Department to support a finding that Dr. Choy did not know about the existence of a mass in TG's pancreas until sometime in 2010. *See State v. Norris*, 168 So. 2d 541, 543 (Fla. 1964) (stating that "mere suspicion is insufficient. The proof should be clear and convincing."); *Tenbroeck v. Castor*, 640 So. 2d 164, 167 (Fla. 1st DCA 1994) (holding that while the facts may raise a suspicion of wrongdoing, speculation, surmise and suspicion cannot form the basis of disciplinary action against a professional's license); *Dep't of Bus. & Prof'l Reg., Div. of Pari-Mutuel Wagering v. Charles J. Ashmore, III*, 2008 WL 572814, *5, DOAH Case No. 07-4772PL (Rec. Order Fla. Div. of Admin. Hrg's Feb. 29, 2008) (citations omitted) (determining that suspicious behavior cannot serve as a substitute for the clear and convincing evidence of an actual violation, which is required when taking disciplinary action against a licensee).

12. Respondent takes exception to the finding of fact in paragraph 31, that: " . . . T.G.'s medical records looked fine to Dr. Choy when he originally wrote them because, when he originally wrote them, he was unaware that the 2008 CT scan report described a tumor mass in T.G.'s pancreas." This finding is not supported by competent substantial evidence, and therefore

should be stricken. Specifically, Respondent incorporates and restates the entirety of Exception #2 in support of this Exception. Further, there is absolutely no record evidence to support a finding that Dr. Choy did not know about the tumor mass described in the 2008 CT scan report. In fact, all record evidence is to the contrary—that Dr. Choy saw the mass; advised TG of the positive findings; and referred her to a G.I. specialist.

13. Respondent takes exception to the finding of fact in paragraph 31, that: "Only later, after learning the full contents of the 2008 CT scan report, did the incriminating nature of the contemporaneous medical records become clear to Dr. Choy, who then, in his panic, made the costly mistake of tampering with the evidence." This finding is not supported by competent substantial evidence, and therefore should be stricken. Specifically, Respondent incorporates and restates the entirety of Exception #2 in support of this Exception. Further, there is absolutely no record evidence to support a finding that Dr. Choy did not know about the tumor mass described in the 2008 CT scan report. In fact, all record evidence is to the contrary—that Dr. Choy saw the mass; advised TG of the positive findings; and referred her to a G.I. specialist.

14. Respondent takes exception to the findings of fact in paragraph 32 that Dr. Choy failed to take notice of the critical finding regarding TG's pancreas in the 2008 CT scan report; and that he "did not tell T.G. about the pancreatic mass because he did not know of its existence." This finding is not supported by competent substantial evidence, and therefore should be stricken. Specifically, Respondent incorporates and restates the entirety of Exception #2 in support of this Exception. Further, there is absolutely no record evidence to support a finding that Dr. Choy did not know about the tumor mass described in the 2008 CT scan report. In fact, all record evidence is to the contrary—that Dr. Choy saw the mass; advised TG of the positive findings; and referred her to a G.I. specialist.

15. Respondent takes exception to the findings of fact in paragraph 33 that: "Being unaware of the finding regarding a pancreatic mass, Dr. Choy did neither [notify TG of the 2008 CT scan results or refer her to an appropriate specialist for evaluation and treatment of the pancreatic mass]." These findings are not supported by competent substantial evidence, and therefore should be stricken. Specifically, Respondent incorporates and restates the entirety of Exception #2 in support of this Exception. Further, there is absolutely no record evidence to support a finding that Dr. Choy did not know about the tumor mass described in the 2008 CT scan report. In fact, all record evidence is to the contrary—that Dr. Choy saw the mass; advised TG of the positive findings; and referred her to a G.I. specialist.

16. Respondent takes exception to the finding of fact in paragraph 37 that Dr. Choy provided "fabricated" versions of TG's electronic medical records to the Department in August 2011. This finding is not supported by competent substantial evidence, and therefore should be stricken. Specifically, while Dr. Choy did make changes to TG's records in August of 2010, the changes were not "fabrications" or false, but instead were changes based upon Dr. Choy's best recollection and observations he made earlier in TG's records. (Tr. V. II at 340, ll. 11-18; 341, ll. 13-17; Tr. V. III at 459, ll. 1-22.)

17. Respondent takes exception to the finding of fact in paragraph 39 that: "The Department has established by clear and convincing evidence that Dr. Choy made deceptive, untrue, or fraudulent representations in the practice of medicine[; and that] Dr. Choy is therefore guilty of the offense defined in section 458.331(1)(k), Florida Statutes." This finding is not supported by competent substantial evidence, and therefore should be stricken. Specifically, other than proving Dr. Choy improperly made late changes to TG's electronic medical records without properly documenting the changes—a fact which Dr. Choy has consistently conceded—

the Department offered no evidence that Dr. Choy made any deceptive, untrue, or fraudulent representations in the practice of medicine. The only evidence is that while Dr. Choy failed to comply with the technical requirements for making late amendments to patient records, all of the changes he made were consistent with his existing records and best recollection. (Tr. V. II at 340, ll. 11-18; 341, ll. 13-17; Tr. V. III at 459, ll. 1-22.)

18. Respondent takes exception to the finding of fact in paragraph 39 that: "[Dr. Choy] deliberately alter[ed] T.G.'s medical records with the intention of fabricating evidence to support his claim that he had timely informed T.G. about the mass in her pancreas, when in fact the authentic, contemporaneous records make no mention of the pancreatic mass." This finding is not supported by competent substantial evidence, and therefore should be stricken.

Specifically, Respondent incorporates and restates the entirety of Exception #2 in support of this Exception. Further, there is no record evidence to support a finding that Dr. Choy "fabricated" evidence. As discussed above, the fact that Dr. Choy may be guilty of a records violation does not and of itself serve as proof that the changes he made to TG's records were false. *See Dep't of Bus. & Prof'l Reg., Div. of Pari-Mutuel Wagering v. Charles J. Ashmore, III,* 2008 WL 572814, *5, DOAH Case No. 07-4772PL (Rec. Order Fla. Div. of Admin. Hrg's Feb. 29, 2008) (citations omitted) (determining that suspicious behavior cannot serve as a substitute for the clear and convincing evidence of an actual violation, which is required when taking disciplinary action against a licensee). Therefore, there is no record evidence to support a finding that Dr. Choy failed to inform TG about the mass in her pancreas.

19. Respondent takes exception to the finding of fact in paragraph 41 that: "The Department has established by clear and convincing evidence that Dr. Choy committed medical malpractice in his treatment of T.G., by failing to timely inform her of the pancreatic mass seen

in the CT scan in June 2008, and by failing to timely refer T.G. to a specialist for further investigation of the mass[; therefore] Dr. Choy is guilty of the offense defined in section 458.331(1)(t)1." This finding is not supported by competent substantial evidence, and therefore should be stricken.

Specifically, there is competent substantial evidence that Dr. Choy did timely inform TG of the pancreatic mass shown on the 2008 CT scan and that he timely referred her to a specialist for further investigation of the mass as documented in Dr. Choy's notes on the hardcopy of TG's patient file. Respondent incorporates and restates the entirety of Exception #2 in support of this Exception. Conversely, there is no testimony or other documentary evidence to support the Department's theory that Dr. Choy committed medical malpractice. *See State v. Norris*, 168 So. 2d 541, 543 (Fla. 1964) (stating that "mere suspicion is insufficient. The proof should be clear and convincing."); *Tenbroeck v. Castor*, 640 So. 2d 164, 167 (Fla. 1st DCA 1994) (holding that while the facts may raise a suspicion of wrongdoing, speculation, surmise and suspicion cannot form the basis of disciplinary action against a professional's license); *Dep't of Bus. & Prof'l Reg., Div. of Pari-Mutuel Wagering v. Charles J. Ashmore, III*, 2008 WL 572814, *5, DOAH Case No. 07-4772PL (Rec. Order Fla. Div. of Admin. Hrg's Feb. 29, 2008) (citations omitted) (determining that suspicious behavior cannot serve as a substitute for the clear and convincing evidence of an actual violation, which is required when taking disciplinary action against a licensee).

20. Respondent takes exception to the finding of fact in paragraph 42 that: "Dr. Choy knowingly produced T.G.'s revised medical records to the Department in August 2011 without disclosing that the records were not what they purported to be[; and therefore] Dr. Choy is guilty

of the offense defined in section 458.331(1)(gg)." This finding is not supported by competent substantial evidence, and therefore it should be stricken.

Specifically, Investigator Radin testified that Dr. Choy explained he had made changes to TG's record at the earliest possible opportunity when he met with him on August 23, 2011. (Tr. V. I at 96, ll. 20-25; 97, ll. 1-2, 12-16.) Thus, Dr. Choy did not fail to disclose the fact that he had made late changes to TG's records. This finding should also be stricken to the extent that it is based upon a presumption that Dr. Choy's updated records for TG were in some way inaccurate or false. Respondent restates and fully incorporates Exceptions 2 and 10 in support of this Exception to establish that Dr. Choy did not provide false or misleading information in his updated records for TG.

21. Respondent takes exception to the finding of fact in paragraph 43 that: "Dr. Choy was reasonably cooperative throughout the investigation, during the course of which, however, he committed the additional offense of concealing a material fact from the Department . . ." This finding is not supported by competent substantial evidence, and therefore should be stricken.

Specifically, there is no record evidence that Dr. Choy knowingly concealed any material fact from the Department during the course of its investigation. For the Department to prove that Dr. Choy committed a violation of section 458.331(1)(k), Florida Statutes, it "must be shown that the Respondent <u>intentionally</u> testified to a falsehood." *Agency for Health Care Admin., Bd. of Medicine v. Joseph Ovadia, M.D.*, 1996 WL 1059850, *3, DOAH Case No. 95-0322 (Fla. Div. Admin. Hrgs. Rec. Order, June 10. 1996) (emphasis added); *cf. Gentry v. Dep't of Prof'l & Occupational Reg., State Bd. of Medical Examiners*, 293 So. 2d 95 (Fla. 1st DCA 1974) (holding that to prove a violation of "[m]aking misleading, deceptive and untrue representations in the

practice of medicine[;]" there must be evidence that the subject representations were willfully made).

When Investigator Radin first interviewed Dr. Choy in August of 2011, Dr. Choy explained that he did not know how many notes in TG's chart he had changed. (Tr. V. I at 99, ll. 14-19.) During the course of discovery in this proceeding, the Department asked Dr. Choy whether he had made other changes to TG's records aside from those initially identified by Mr. Radin. Dr. Choy, having no independent recollection of the specific changes, reviewed the printouts of TG's records from 2010, which only covered office visits from January 19, 2009 forward with those printouts from 2011, and was with the assistance of counsel was unable to identify any additional changes. (Tr. V. III at 461, ll. 3-23; Jt. Ex. 14 at 218, ll. 19-25; 219, ll. 1-23.) Since neither the Department nor Dr. Choy could access a copy of TG's electronic records for office visits prior to January 19, 2009, in the form they existed prior to Dr. Choy making changes to the records in August of 2010, the Department enlisted forensic computer expert, Robert Moody. (Jt. Ex. 12.) In August 2013, Mr. Moody provided the Department with a third set of TG's electronic medical records obtained by extracting a back-up of documents done in April 2010. (Jt. Pre-Hrg. Stip.; Jt. Ex. 12; Jt. Ex. 11 at 15, ll. 10-14.)

Once the parties were able to compare the full set of TG's records as they existed on April 2010, additional changes were identified for office visit records on June 30, 2008 and September 3, 2008. (Jt. Pre-Hrg. Stip.) Dr. Choy did not dispute that these were additional changes he had made to TG's medical records in August of 2010, but like the Department, he was unable to identify the changes until Mr. Moody provided the parties with the archived records from April 2010. (Tr. V. III at 461, ll. 3-23; 462, ll. 1-2; Jt. Ex. 14 at 218, ll. 19-25; 219, ll. 1-23.) Therefore, there is no evidence that Dr. Choy knowingly or intentionally concealed a

material fact from the Department since he had no way of knowing the exact changes made to TG's records over three years earlier.

22. Respondent takes exception to the conclusion of law in paragraph 50, which states that, "the Department established Dr. Choy's guilt by clear and convincing evidence as to all of the charges except the allegation that he interfered with an investigation or disciplinary proceeding." This conclusion of law is legally insufficient, in conflict with applicable decisional law, and not based upon competent substantial evidence in the record.

Specifically, as detailed in the Exceptions above, there is no competent substantial evidence to support a conclusion that Dr. Choy is guilty of any violation other than a failure to properly date and time late changes he made to TG's electronic medical records under section 458.331(1)(m), Florida Statutes, and rule 64B8-9.003, Florida Administrative Code. Respondent further incorporates and restates Exceptions 2, 10 and 21 in their entireties in support of this Exception.

23. Respondent takes exception to the conclusion of law in paragraph 51, which states that Dr. Choy "knowingly furnished these false records to the Department without disclosing that he had tampered with them so as to take advantage of the contemporaneous character which gives such documents evidentiary value . . ." This conclusion of law is legally insufficient and not based upon competent substantial evidence in the record.

Specifically, Investigator Radin testified that Dr. Choy explained he had made changes to TG's record at the earliest possible opportunity when he met with on August 23, 2011. (Tr. V. I at 96, ll. 20-25; 97, ll. 1-2, 12-16.) Further, there is no evidence that the records Dr. Choy produced to the Department were "false."

24. Respondent takes exception to the conclusion of law in paragraph 51, which states:

> when a party is found to have knowingly altered or fabricated documents to create a false basis for his legal position, the inevitable conclusion is that he has something to hide and is conscious of guilt. Tramel v. Bass, 672 So. 2d 78, 85 n. 7 (Fla. 1st DCA 1996), rev. denied, 680 So. 2d 426 (Fla. 1996) (citing Warner Barnes & Co. v. Kokosai Kisen Kabushiki Kaisha, 102 F. 2d 450, 453 (2d Cir.), modified, 103 F. 2d 430 (2d Cir. 1939)); see also Knight Ridder v. Dade Aviation Consultants, 808 So. 2d 1268, 1270 (Fla. 3d DCA 2002) (attempts to create false basis for legal position provide affirmative evidence of actual criminal responsibility); Walker v. State, 495 So. 2d 1240, 1241 (Fla. 5th DCA 1986) (false exculpatory statements are admissible as substantive evidence tending to affirmatively show consciousness of guilt).

This conclusion of law is legally insufficient, and inconsistent with decisional law requiring the Petitioner to affirmatively present competent substantial evidence to establish a violation by the "clear and convincing" evidence standard. *See Dep't of Banking & Fin., Div. of Sec. & Investor Prot. v. Osborne Stern & Co.,* 670 So. 2d 932, 933-34 (Fla. 1996) (citing *Ferris v. Turlington,* 510 So. 2d 292, 294-95 (Fla. 1987)).

First, in all of the cases cited in paragraph 51, there was clear proof that the defending party had fabricated evidence or presented a false basis to support its defense. Those facts were not in question. To the contrary, here, Dr. Choy has clearly and consistently denied that he made false changes to TG's medical records, and there has been no competent substantial evidence presented by the Department to establish the falsity of the changed records. To give weight to this line of cases would impermissibly base a presumption upon a presumption to establish a material fact. Further, it is the actual treatment of a patient which must be analyzed, and not merely the Respondent's failure to properly document the actions he took on the patient's chart, in determining whether there is a malpractice violation. *See Barr v. Dep't of Health, Bd. of Dentistry,* 954 So. 2d 668, 669 (Fla. 1st DCA 2007) (holding that "particularly egregious record

keeping violations" cannot rise to the level of a "standard of care" violation because to equate the two would render the subsection establishing a separate standard of care violation meaningless).

There is simply no sound legal or factual foundation upon which the presumption of malpractice can be inferred from a records violation in a disciplinary proceeding, particularly where the physician's license is at stake. *See State v. Norris*, 168 So. 2d 541, 543 (Fla. 1964) (stating that "mere suspicion is insufficient. The proof should be clear and convincing."); *Tenbroeck v. Castor*, 640 So. 2d 164, 167 (Fla. 1st DCA 1994) (holding that while the facts may raise a suspicion of wrongdoing, speculation, surmise and suspicion cannot form the basis of disciplinary action against a professional's license); *Dep't of Bus. & Prof'l Reg., Div. of Pari-Mutuel Wagering v. Charles J. Ashmore, III*, 2008 WL 572814, *5, DOAH Case No. 07-4772PL (Rec. Order Fla. Div. of Admin. Hrg's Feb. 29, 2008) (citations omitted) (determining that suspicious behavior cannot serve as a substitute for the clear and convincing evidence of an actual violation, which is required when taking disciplinary action against a licensee).

Further, the cases cited in paragraph 51, in support of the conclusion that malpractice can be presumed based on a finding of false information in medical records, are inapplicable to a license disciplinary proceeding under Chapter 120, Florida Statutes, and in fact none of the cases deal with license discipline. For a petitioner to prove a license violation, which would potentially result in suspension or revocation of the respondent's license, the petitioner must put on affirmative evidence establishing each of the elements of an alleged violation and is not entitled to rely upon any automatic presumptions of guilt. Simply because the ALJ did not credit Dr. Choy's testimony that the changes he made to TG's records were accurate, this alone cannot substitute for the Department's required burden to independently prove the changes were false. *See Bowling v. Dep't of Ins.*, 394 So. 2d 165, 174-75 (Fla. 1st DCA 1981) ("A witness who is

found to be untruthful gives the trier of facts an additional reason to believe substantial evidence to the contrary, but in our heritage the accused's unbelievable denial of an essential element in the accusation does not prove the accusation."). The conclusion of law is not supported by competent substantial evidence in the record since there is no evidence that the changes Dr. Choy made to TG's medical records are false. The only evidence adduced at hearing is that Dr. Choy made changes to TG's records based upon his prior observations and recollection of her treatment. (Tr. V. II at 340, ll. 11-18; 341, ll. 13-17; Tr. V. III at 459, ll. 1-22.)

25. Respondent takes exception to the conclusion of law in paragraph 57, which states: "The undersigned does not find cause to deviate from the guidelines and therefore recommends that the Board of Medicine impose a penalty that falls within the recommended ranges." This conclusion of law is legally insufficient and contrary to rule 64B8-8.001(3), which states that the "Board shall consider" evidence of mitigating factors in formulating an appropriate penalty. Specifically, the proposed penalty against Dr. Choy of revocation and a $4,000 fine should be mitigated for the following reasons as required under rule 64B8-8.001(3), and as established by the record evidence: Dr. Choy's failure to properly date, time and designate late entries as such did not expose TG to injury; Dr. Choy was not practicing under any legal restraints; Dr. Choy only made changes to TG's records on a single occasion; Dr. Choy has never committed a similar offense; Dr. Choy has been in practice nearly forty years and has never been disciplined relating to the practice of medicine; and Dr. Choy did not realize any pecuniary benefit or gain in connection with the offense.

26. Respondent takes exception to the conclusion of law in paragraph 58, which states: "revocation is appropriate under the facts and circumstances of this case . . ." This conclusion of law should be rejected as lacking in competent substantial evidence based upon the

foregoing exceptions and that there is insufficient evidence to substantiate any of the Department's allegations with the exception of a records violation under section 458.331(m), Florida Statutes, and rule 64B8-9.003, Florida Administrative Code. The Board should therefore reduce the recommended penalty commensurate with modifications to the Recommended Order.

WHEREFORE, Respondent respectfully requests that the foregoing Exceptions to the Recommended Order be granted and that modifications to the Findings of Fact, Conclusions of Law, and Recommended Penalty of the Administrative Law Judge be made in accordance with the arguments herein.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic delivery this 30th day of April, 2014 to:

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STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF HEALTH,
Petitioner,

v.

DOAH CASE NO. 13-4280PL
DOH CASE NO. 2011-11189

PETER V. CHOY, M.D.,
Respondent.
_____/

PETITIONER'S RESPONSES TO RESPONDENT'S EXCEPTIONS TO RECOMMENDED ORDER

Pursuant to Rule 28-106.217, Florida Administrative Code, Petitioner hereby responds to Respondent's Exceptions to the Recommended Order:

1. As his first exception, Respondent argues the Administrative Law Judge's ("ALJ") findings of fact contained in paragraph 9 of the Recommended Order ("RO") are not supported by competent substantial evidence. Paragraph 9 of the RO states:

> 9. On June 19, 2008, someone from Dr. Choy's office called T.G. at 3:34 p.m. and spoke with her (or someone in her home) for nearly five minutes. Dr. Choy testified that he personally placed this call, a claim the Department disputes. The identity of the caller is immaterial, however, because the main purpose of the call was, most likely, to schedule an appointment for T.G., so that Dr. Choy could go over the recent blood work and CT scan with T.G. in person. T.G. was not told during this phone call about the tumor that had been observed in her pancreas, but she was probably given Dr. Choy's recommendations for managing diverticulosis, as indicated by a handwritten note at the top of page 2 of the CT scan report, which says, "6/19/08 Done."

Respondent's exception should be denied because there is, in fact, competent substantial evidence to support each of the findings of fact contained in this paragraph.

Respondent's testimony that he called Patient TG ("TG") for the purpose of scheduling her for a follow-up visit is not consistent with the testimony of Respondent's office manager, who indicated Respondent's staff would have contacted TG to schedule a follow-up appointment. (Tr. at p. 128, l. 15-21)[1] While Respondent's office manager testified Respondent's staff did call TG on June 19, 2008, she indicated the staff called TG to provide TG the information that was contained on the face of the June 2008 CT report on June 19, 2008, which, at the time, included information about TG's diverticulosis, but did not include Respondent's note regarding the pancreatic mass. (Tr. at p. 150-151; Tr. at p. 135, l. 16-23; Tr. at p. 115-116; Jt. Ex. 15 at p. 14, l. 19-23 and p. 30, l. 1-10)

Respondent's testimony that he called TG on June 19, 2008, is contradicted by the record of telephone calls made from Respondent's office to TG's home on June 19, 2008, which reflects that only one call was made. (Jt. Ex. 19 at p. 20, line 23; Post-Hearing Stipulation as to Telephone Records) While there is substantial competent evidence Respondent's staff called TG on June 19, 2008, as noted in TG's medical record (Jt. Ex. 1 at p. 1483) and as testified to by Respondent's office manager and office staff (Tr. at p. 122, l. 17-25 through p. 123, l. 1-2; Tr. at p. 150, l. 11-25 through p. 151, l. 1; Jt. Ex. 15 at p. 9, l. 9-25 through p. 10, l. 1-4; Jt. Ex. 15 at p. 29, l. 21-25 through p. 30, l. 1-10), there is no evidence, other than Respondent's own self-serving testimony that Respondent placed a call to TG on June 19, 2008. There is *no* evidence that *anyone* from Respondent's office contacted TG by telephone on June 19, 2008, to

[1] References to the record are by "Tr." for the final hearing transcript, "J. Ex." for Joint Exhibits, "Resp. Ex." for Respondent's Exhibits and "J. Stip." for Joint Pre-hearing Stipulation.

notify her of the pancreatic mass or refer her to a specialist for evaluation or treatment of the pancreatic mass during the call. (Jt. Ex. 14 at p. 60, l. 4-15).

Because the testimony referenced above, along with the telephone records, were received into evidence at the final hearing and constituted competent substantial evidence, Respondent's exception should be rejected. Moreover, because the findings of fact made by the ALJ here were based on the ALJ's determination of the credibility of witnesses who testified at the final hearing, those findings should not be disturbed. *Wash & Dry Vending Co. v. State, Dept. of Business Regulation, Div. of Alcoholic Beverages and Tobacco*, 429 So.2d 790 (Fla. 3rd DCA 1983). *See also Bill Salter Advertising, Inc. v. Department of Transp.*, 974 So.2d 548 (Fla. 1st DCA 2008)(In reviewing the ALJ's recommendation, the Board may not re-weigh the evidence presented, judge the credibility of the witnesses, or otherwise interpret the evidence to fit a desired ultimate conclusion).

2. As his second exception, Respondent argues a finding of fact contained in paragraph 10 of the RO is not supported by competent substantial evidence. The finding in dispute states, in relevant part, as follows:

> T.G. returned to Dr. Choy's office on June 30, 2008. Unfortunately, there is no reliable contemporaneous record of what Dr. Choy communicated to T.G., if anything, about the finding of a tumor in the pancreas.

Contrary to Respondent's argument, the ALJ does not attempt through this finding to shift the burden of proof from Petitioner to Respondent. Nor does the ALJ make a finding that Respondent improperly altered the June 2008 CT report. Rather,

the ALJ simply finds that Respondent failed to document what he communicated to the patient in his notes for the June 30, 2008, visit.

This finding is supported by competent substantial evidence. According to Respondent's record for this visit and the testimony of Respondent's own expert, there is no evidence on the face of Respondent's note for the June 30, 2008, visit that Respondent notified TG of the results of the June 2008 CT scan, that Respondent documented a treatment plan for the pancreatic mass or that Respondent was even aware of the pancreatic mass. (Jt. Ex. 1 at p. 1451-1454; Jt. Ex. 7 at p. 35-36)

Respondent points to his handwritten note on the face of the June 2008 CT report as evidence he communicated to TG that she had a possible malignant tumor in the tail of her pancreas. Two versions of the June 2008 CT report were produced at the final hearing. The first version was offered into evidence by Petitioner and the second version by Respondent. On the first version of the June 2008 CT report, there appear no handwritten notes by Respondent concerning the tumor mass in the tail of TG's pancreas. (Jt. Ex. 1 at p. 1481-1485) On the second version of the June 2008 CT report, there appears a handwritten note by Respondent on the second page of the CT report that does make reference to the tumor mass. (Resp. Ex. 1 at p. 1077) *Neither* version of the June 2008 CT report contains *any* indication Respondent notified TG of the pancreatic mass or that he referred TG to a specialist for evaluation or treatment of the pancreatic mass. (Jt. Ex. 1 at p. 1481-1485; Resp. Ex. 1) Because Respondent's own record for this visit and the June 2008 CT scan report constitute competent substantial evidence and support the ALJ's finding, Respondent's exception should be

rejected. In addition, the findings of fact made by the ALJ here were based on the ALJ's determination of the credibility of witnesses who testified at the final hearing, and thus, should not be disturbed. *See Wash & Dry Vending Co., supra,* and *Bill Salter Advertising, Inc., supra.*

3. As his third exception, Respondent argues a finding of fact contained in paragraph 11 of the RO is not supported by competent substantial evidence. The finding in dispute states, in relevant part, as follows:

> For example, at the time of T.G.'s June 30, 2008, visit, Dr. Choy wrote that the patient did not have "[a]bdomenal [sic] pain," and he typed the following notes regarding his impressions and diagnoses:
>
> > ZZ-Dr Peter V Choy; Z-VP EKG; Anemia Iron Deficiency – 2809 repeat Test if no Improvement we will refer pt to GI evaluation; Diabetes w/ unspecified complication-250.90;Hyperlipidemia-2724; Hypertension-4019; Hypertensive Heart Disease without HF 402.90; Hypothryoidism-2449; Declining Function-7993; Depression-311; Vertigo-7804
>
> This record, made at or around the time of the June 30, 2008, visit, is silent about the potentially malignant tumor that had recently been seen in T.G.'s pancreas.

On its face, Respondent's note, which was admitted into evidence, clearly makes no reference to T.G.'s potentially malignant tumor. Therefore, the finding of fact is supported by competent substantial evidence and Respondent's exception should be rejected.

4. Respondent next takes exception to the ALJ's finding of fact contained in paragraph 13 of the RO that states "[t]he reference to the pancreatic tumor looks out

of place, moreover, in the section of the report discussing the pelvic scan, which did not find the mass, atop the previous notes relating to diverticulosis, which the pelvic scan did reveal." Respondent argues this finding was not supported by competent substantial evidence, notwithstanding the fact that the evidence the ALJ relied upon for this finding is the June 2008 CT scan report itself, which was admitted into evidence. Because the June 2008 CT scan report constitutes competent substantial evidence, Respondent's exception should be rejected. The finding of fact made by the ALJ here was based on the ALJ's determination of the credibility of witnesses who testified at the final hearing, and thus, should not be disturbed. *See Wash & Dry Vending Co., supra* and *Bill Salter Advertising, Inc., supra.*

5. As his fifth exception, Respondent argues a finding of fact contained in paragraph 14 of the RO is not supported by competent substantial evidence. The finding in dispute states, in relevant part, as follows:

> The next time T.G. saw Dr. Choy was September 3, 2008. The entries that he made in the patient's electronic medical record for this visit were, originally, silent about the possibility that T.G. might have cancer of the pancreas. He noted that T.G. was "[d]oing well with no change in clinical status" although she reported "[a]domenal [sic] [p]ain," which she had not complained about on June 30, 2008. Dr. Choy recorded T.G.'s various diagnoses in the electronic patient chart, making no mention of the pancreatic mass.

Clearly, the evidence upon which the ALJ relied for this finding is Respondent's own note for the September 3, 2008, visit. Because the visit note was admitted into evidence and constitutes competent substantial evidence, Respondent's exception should be rejected.

6. As his sixth exception, Respondent argues a finding of fact contained in paragraph 15 of the RO is not supported by competent substantial evidence. The finding in dispute states, in relevant part, as follows:

> This pattern was repeated during the several visits which followed, on January 19, 2009; February 11, 2010; and March 31, 2010. Dr. Choy's contemporaneous records of these visits say nothing about T.G.'s pancreatic tumor or his efforts, if any, to follow the condition.

The "pattern" to which the ALJ makes reference in this finding is Respondent's failure to make mention of the pancreatic mass in his January, February or March visit notes. The evidence upon which the ALJ relies for this finding is Respondent's own notes for these visits, which were admitted into evidence and constitute competent substantial evidence. Accordingly, Respondent's exception should be rejected.

7. Respondent next takes exception to the findings of fact contained in paragraph 19 of the RO, which states:

> On July 7, 2010, T.G. returned to Dr. Choy's office for a follow-up visit. During this visit, Dr. Choy noted Dr. Villa's recommendation and recorded (for the first time) a differential diagnosis of "potential malignancy," to be ruled out. Dr. Choy ordered more tests, including an abdominal CT scan.

Respondent appears to take issue, primarily, with the ALJ's finding that this was the first time Respondent diagnosed the patient with a possible malignancy. Respondent argues this finding of fact is not supported by competent substantial evidence because Respondent's handwritten note on the face of the June 2008 CT scan report makes reference to the possible malignancy. The ALJ addresses the issue of whether or not Respondent contemporaneously inserted the handwritten note on the

June 2008 CT scan report in paragraphs 12 and 13 of the RO. There, the ALJ finds Respondent's testimony that he inserted the handwritten note about the possible malignancy on June 30, 2008, to be not credible. The ALJ's findings in paragraphs 12, 13 and 19 are supported by Respondent's own notes for the corresponding visits and by the testimony referenced in those findings of fact, all of which constitute competent substantial evidence. Moreover, the findings of fact made by the ALJ here were based on the ALJ's determination of the credibility of witnesses who testified at the final hearing, and thus, should not be disturbed. *See Wash & Dry Vending Co., supra* and *Bill Salter Advertising, Inc., supra.*

8. As his eighth exception, Respondent argues a finding of fact contained in paragraph 27 of the RO is not supported by competent substantial evidence. The finding in dispute states, in relevant part, as follows:

> As a comparison of the original text to the revised text clearly reveals, Dr. Choy's self-confessed concern was obviously owing to the remarkable absence of any notes in the medical records pertaining to the possibility that T.G. might have pancreatic cancer as stated in the radiologist's report interpreting the June 2008 CT scan.

Respondent appears to repeat his argument here that because Respondent's handwritten note on the face of the June 2008 CT scan report makes reference to the possible malignancy, the ALJ's finding of an "absence of any notes" is not supported by competent substantial evidence. As discussed above, however, the ALJ addresses the issue of whether or not Respondent contemporaneously inserted the handwritten language on the June 2008 CT scan report in paragraphs 12 and 13 of the RO. There, the ALJ finds Respondent's testimony that he inserted the handwritten reference to the

possible malignancy on June 30, 2008, to be not credible. The ALJ's findings in paragraphs 12, 13 and 19 are supported by Respondent's own notes for the corresponding visits and by the testimony referenced in those findings of fact, all of which constitute competent substantial evidence. In addition, the findings of fact made by the ALJ here were based on the ALJ's determination of the credibility of witnesses who testified at the final hearing, and thus, should not be disturbed. *See Wash & Dry Vending Co., supra,* and *Bill Salter Advertising, Inc., supra.*

9. In his ninth exception, Respondent argues that in paragraph 27 of the RO, the ALJ inappropriately *inferred* that "Dr. Choy knew the original records would be persuasive, if not conclusive, evidence of his failure to inform T.G. of her potentially fatal condition, in violation of the standard of care, so he secretly (or so he thought) doctored the records to turn them into evidence that he had satisfied the standard of care." Contrary to Respondent's argument, an ALJ may draw inferences from the evidence presented during a case. *See Heifetz v. Dep't of Bus. Reg.*, 475 So.2d 1277, 1281 (Fla. 1st DCA 1985)("It is the hearing officer's function to consider all the evidence presented, resolve conflicts, judge credibility of witnesses, <u>draw permissible inferences from the evidence</u>, and reach ultimate findings of fact based on competent, substantial evidence.")(underscoring added); *Bridlewood Group Home v. Agency for Persons with Disabilities*, 2013 WL 6691154 (Fla. 2nd DCA 2013)(An agency may not reject the ALJ's findings unless there is no <u>competent, substantial evidence from which the finding could reasonably be inferred</u>)(underscoring added). In his exception, Respondent argues that an inference cannot rise to the level of competent substantial evidence. What the ALJ

did in paragraph 27 of the RO was draw an inference from competent substantial evidence (Respondent's own testimony and Respondent's original patient records) to reach a finding of fact. This is permissible. *Id.* The cases upon which Respondent relies for the proposition that an ALJ cannot make an inference are distinguishable for one simple reason: each of the cases to which Respondent cites addresses impermissible reliance upon "mere suspicion" rather than an ALJ's ability to draw "inferences" from evidence presented at a final hearing. In the instant case, the ALJ did not rely upon mere suspicion, but instead drew permissible inferences from competent substantial evidence. As such, Respondent's exception should be rejected. In addition, the findings of fact made by the ALJ here were based on the ALJ's determination of the credibility of witnesses who testified at the final hearing, and thus, should not be disturbed. *See Wash & Dry Vending Co., supra,* and *Bill Salter Advertising, Inc., supra.*

10. Respondent next takes exception to the finding of fact in paragraph 29 that "[t]he alterations are clear and convincing proof of the material fact that Dr. Choy did not tell T.G. that the June 19, 2008, CT scan report stated she had a '[l]arge malignant tumor mass' in her pancreas, for a simple reason: he was unaware that a tumor mass was described in the report." This finding is supported by Respondent's original medical records for TG, Respondent's alterations to the patient's medical records and by Respondent's own admission to having altered the medical records, all of which constitute competent substantial evidence.

Respondent's relies upon the decision in *Barr v. Dep't of Health, Bd. of Dentistry*, 954 So.2d 668 (Fla. 1st DCA 2007), for the proposition that a finding of improper recordkeeping cannot rise to a standard of care violation. *Barr* is distinguishable from the instant case. In *Barr,* the Department sought to discipline a dentist for "failing to meet the minimum standards of performance in diagnosis and treatment." The Department charged Respondent with a standard of care violation under section 466.028(1)(x). The ALJ found that Respondent properly diagnosed and treated the patient's condition, but that Respondent failed to properly record the diagnosis and treatment. Consequently, the ALJ found that Respondent *had* violated section 466.028(1)(x) by failing to properly keep records. The district court of appeal reversed, finding that such a ruling would render a record keeping charge under section 466.028(1)(m) irrelevant. The court held that "[w]e believe there is a significant difference between improperly diagnosing a patient, which constitutes a subsection (x) violation, and properly diagnosing a patient, yet failing to properly document the actions taken on the patient's chart, which constitutes a subsection (m) violation. *Id.* at 669.

In the instant case, Respondent contends that *Barr* stands for the proposition that "alterations [to medical records] in and of themselves cannot constitute proof of medical malpractice." Respondent misunderstands *Barr*. In *Barr*, the Department sought to bring what really was a record keeping violation under a charge for a standard of care violation. In the instant case, the Department has charged the Respondent with *both* a standard of care violation *and* a record keeping violation.

Nothing in *Barr* prohibits an ALJ from considering evidence of records alteration in determining whether or not a standard of care violation has also occurred. *Barr* merely prohibits the Department from charging a Respondent under one subsection, when it more properly should have charged the Respondent under a different subsection. Such is not the case in the instant action.

Under this same exception, Respondent, again, argues it was improper for the ALJ to infer wrongdoing by Respondent from Respondent's admission to making late entries. For the reasons already mentioned above concerning the propriety of drawing inferences from competent substantial evidence in the record, Respondent's argument in this regard should be rejected.

In addition, Respondent makes the statement that "[n]owhere on the record is there evidence that Dr. Choy made false entries to TG's records." This statement is simply not true. Evidence of Respondent's false entries to TG's medical records abound. As a first example, Respondent's alterations to the June 30, 2008, visit note do not accurately reflect the events of that visit. TG did not complain of abdominal pain during this visit (Tr. at p. 321, l. 25 and p. 322, l. 1-2), but Respondent's alterations indicate she did complain of abdominal pain. Respondent also deleted the term "repeat test" in his alteration of this note, which is inconsistent with Respondent's actions of actually repeating the CBC test to which he was referring. (Jt. Ex. 1 at p. 690) As a second example, Respondent's alterations of the September 3, 2008, visit note do not accurately reflect the events of that visit. Specifically, at the time the September 3, 2008, visit occurred, Respondent had no memory of the pancreatic mass or of the CT

scan results. (Jt. Ex. 14 at p. 211, l. 10-21) Despite this fact, in August 2010, Respondent altered the note for this visit to indicate he spoke with TG during the visit regarding the pancreatic mass and regarding the need for her to see a GI specialist. At the time of TG's visit to Respondent on September 3, 2008, Respondent determined TG was medically stable. (Jt. Ex. 14 at p. 90-91; Tr. at p. 343-344). Nevertheless, Respondent deleted the term "medically stable" from the note for this visit when he altered TG's medical records two years later. As a third example, Respondent's alterations to the January 19, 2009, visit note do not accurately reflect the events of that visit. Specifically, at the time the January 19, 2009, visit occurred, Respondent had no memory of the pancreatic mass or of the CT scan results. (Jt. Ex. 14 at pp. 102-104 and at p. 211, l. 10-21). Despite this fact, in August 2010, Respondent altered the note for this visit to indicate he was aware of the pancreatic mass. TG's apparent congestive heart failure was, in fact, associated with Respondent's treatment of the patient with Actos (Jt. Ex. 14 at p. 100, l. 14-18), but Respondent deleted this reference from the note. TG did not complain about having abdominal pain during this visit (Jt. Ex. 14, p. 102, l. 8-19; Tr. at p. 369, l. 11-14), but Respondent altered the visit note to indicate she did complain of abdominal pain. As yet another example, Respondent's alterations of the March 31, 2010, visit note do not accurately reflect the events of that visit. Particularly, at the time the March 31, 2010, visit occurred, Respondent had no memory of the pancreatic mass or of the CT scan results. (Tr. at p. 439, l. 7-11; Jt. Ex. 14 at p. 110, l. 7-22 and p. 113, l. 8-13). Despite this fact, in August 2010, Respondent altered the note for this visit to indicate he spoke with TG during the visit regarding the

pancreatic mass. At the time of TG's visit to Respondent on March 31, 2010, TG was medically stable. (Jt. Ex. 14 at p. 110, l. 14-19; Tr. at p. 372, l. 4-9). Nevertheless, Respondent deleted the term "medically stable" from the note for this visit when he altered TG's medical records five months later. Respondent also added the term "weight loss abnormal" to this note in August 2010, which was contrary to his observations of the patient during the March 31, 2010, visit. (Jt. Ex. 14 at p. 109, l. 13-18).

The findings of fact made by the ALJ here were based on the ALJ's determination of the credibility of witnesses who testified at the final hearing, and thus, should not be disturbed. *See Wash & Dry Vending Co., supra,* and *Bill Salter Advertising, Inc., supra.*

11. Respondent next takes exception to the last four sentences in paragraph 29 on the basis that the contents of those sentences do not constitute findings of fact. Respondent's conclusion in this regard is incorrect. The findings made by the ALJ here are inferences drawn from competent substantial evidence in the record, including Respondent's unaltered medical records for TG, Respondent's alterations of the medical records and Respondent's own testimony. In addition, the findings of fact made by the ALJ here were based on the ALJ's determination of the credibility of witnesses who testified at the final hearing, and thus, should not be disturbed. *See Wash & Dry Vending Co.*

12. Respondent next takes exception to the finding of fact in paragraph 31 that "T.G.'s medical records looked fine to Dr. Choy when he original wrote them because, when he originally wrote them, he was unaware that the 2008 CT scan report

described a tumor mass in T.G.'s pancreas." This finding constitutes a permissible inference made by the ALJ based upon his review of competent substantial evidence admitted into the record, including Respondents original and altered medical records and Respondent's own testimony. In addition, the findings of fact made by the ALJ here were based on the ALJ's determination of the credibility of witnesses who testified at the final hearing, and thus, should not be disturbed. *See Wash & Dry Vending Co., supra,* and *Bill Salter Advertising, Inc., supra.*

13. Respondent next takes exception to the inference drawn by the ALJ in paragraph 31 of the RO. For the reasons discussed above, the ALJ's inference here was permissible, and the inference was based upon competent substantial evidence, including Respondents original and altered medical records and Respondent's own testimony. In addition, the findings of fact made by the ALJ here were based on the ALJ's determination of the credibility of witnesses who testified at the final hearing, and thus, should not be disturbed. *See Wash & Dry Vending Co., supra,* and *Bill Salter Advertising, Inc., supra.*

14. Respondent next takes exception to the inference drawn by the ALJ in paragraph 32 of the RO. For the reasons discussed above, the ALJ's inference here was permissible, and the inference was based upon competent substantial evidence, including Respondents original and altered medical records and Respondent's own testimony. In addition, the findings of fact made by the ALJ here were based on the ALJ's determination of the credibility of witnesses who testified at the final hearing, and

thus, should not be disturbed. *See Wash & Dry Vending Co., supra,* and *Bill Salter Advertising, Inc., supra.*

15. Respondent next takes exception to the inference drawn by the ALJ in paragraph 33 of the RO. For the reasons discussed above, the ALJ's inference here was permissible, and the inference was based upon competent substantial evidence, including Respondents original and altered medical records and Respondent's own testimony. In addition, the findings of fact made by the ALJ here were based on the ALJ's determination of the credibility of witnesses who testified at the final hearing, and thus, should not be disturbed. *See Wash & Dry Vending Co.*

16. Respondent takes exception to the ALJ's finding in paragraph 37 that Respondent provided fabricated medical records to the Department. As explained in detail in Response 10 above, the alterations made by Respondent to the patient's medical records do not accurately reflect the events of the corresponding visits. Consequently, there is competent substantial evidence to support the ALJ's finding that Respondent did fabricate portions of the medical record, and Respondent's exception should be rejected. In addition, the findings of fact made by the ALJ here were based on the ALJ's determination of the credibility of witnesses who testified at the final hearing, and thus, should not be disturbed. *See Wash & Dry Vending Co., supra,* and *Bill Salter Advertising, Inc., supra.*

17. Respondent next takes exception to the ALJ's finding of fact in paragraph 39 that Respondent made deceptive, untrue or fraudulent representations in the practice of medicine and thereby violated section 458.331(1)(k). The ALJ's finding here

is supported by competent substantial evidence, to include Respondent's original and altered medical record for T.G. and Respondent's testimony. As indicated in Response 10 above, Respondent's alterations to his visit notes do not accurately reflect the events of those visits. For example, Respondent's alterations reflect that he discussed the results of TG's June 2008 CT scan during the course of several visits by TG that occurred after June 2008. Respondent has conceded that he would have had no memory of the June 2008 CT scan results during those visits, however. When confronted by a Department of Health investigator in August 2011 regarding one alteration Respondent made to TG's medical record, Respondent initially indicated he did not know how the alteration to the medical record came to be, but he later acknowledged altering the record. Respondent failed to disclose the remaining alterations to the Department of Health, however. The remaining alterations were uncovered in 2013 by a forensic computer expert retained by Petitioner.

Additionally, during an interview with a Department investigator, Respondent told the investigator that on June 24, 2010, he referred TG to a hematologist/oncologist for the purpose of instigating TG to seek help for her pancreatic mass. (Tr. at p. 379, l. 16-25 and p. 380, l. 1; Resp. Ex. 4 at p. 13, 3rd bullet point) According to Respondent's own testimony, at the time of the June 24, 2010, visit, he did not recall TG had a pancreatic mass or that she had undergone a CT scan in 2008. (Tr. at p. 376, l. 2-5; Jt. Ex. 14 at p. 125, l. 1 and p. 130, l. 17-22) The alterations referenced in Response 10 above and Respondent's testimony are competent substantial evidence of deceptive, untrue or fraudulent representations made by Respondent in the practice of

medicine. As such, Respondent's exception should be rejected. In addition, the findings of fact made by the ALJ here were based on the ALJ's determination of the credibility of witnesses who testified at the final hearing, and thus, should not be disturbed. *See Wash & Dry Vending Co., supra,* and *Bill Salter Advertising, Inc., supra.*

18. Similarly, Respondent takes exception to the finding of fact in paragraph 39 that Respondent "deliberately alter[ed] T.G.'s medical records with the intention of fabricating evidence to support his claim that he had timely informed T.G. about the mass in her pancreas, when in fact the authentic, contemporaneous records make no mention of the pancreatic mass." The ALJ's inference here is supported by competent substantial evidence in the form of Respondent's testimony and Respondent's original and altered medical records for T.G., to include the alterations referenced above in Response 10. Accordingly, Respondent's exception should be rejected. Because the findings of fact made by the ALJ here were based on the ALJ's determination of the credibility of witnesses who testified at the final hearing, and they should not be disturbed. *See Wash & Dry Vending Co., supra,* and *Bill Salter Advertising, Inc., supra.*

19. Respondent's exception to the finding of fact in paragraph 41 that Respondent committed medical malpractice in violation of section 458.331(1)(t)1 by failing to timely inform T.G. of the pancreatic mass and by failing to timely refer T.G. to a specialist for further investigation of the mass should be rejected because this finding is supported by competent substantial evidence. In particular, neither version of the June 2008 CT report contains any indication Respondent notified TG of the pancreatic

mass or that he referred TG to a specialist for evaluation or treatment of the pancreatic mass. (Jt. Ex. 1 at p. 1481-1485; Resp. Ex. 1)

Respondent testified that he verbally disclosed the results of the June 2008 CT scan to TG during the course of TG's June 30, 2008, visit. According to Respondent, during this visit, he did not advise TG she had a mass. (Tr. at p. 418, l. 3-7) Instead, Respondent believes he may have advised TG she had a "spot," but he could not be certain of this. (Tr. at p. 418, l. 3-7) Respondent testified he also told TG he "did not know what it was, but it could be bad" and that she should see a GI specialist. (Tr. at p. 418, l. 8-11) Respondent also testified he was unsure that he emphasized the gravity of the CT scan results to TG. (Tr. at p. 419, l. 13-18) According to Respondent, it is his custom to downplay the gravity of a serious illness when discussing it with a patient, even when the standard of care requires full disclosure of the illness. (Tr. at p. 426, l. 2-6)

Even assuming Respondent's testimony about his conversation with TG were credible, which the ALJ determined was not the case, it would reflect Respondent *failed* to notify TG that she had a mass on her pancreas. Given the limited information Respondent purportedly provided to TG regarding the June 2008 CT report and the fact that the CT report reflected the results of both a cervical *and* an abdominal CT scan, TG might have made several incorrect assumptions about the nature and location of the "bad" thing or "spot" Respondent purportedly disclosed and about the gravity of her condition. For example, TG might have assumed Respondent was referring to the diverticulosis Respondent's staff had previously disclosed to TG, which also appeared on

the June 2008 CT report and also required the attention of a GI specialist (Jt. Ex. 14 at p. 39, l. 2-20) but was not life-threatening.

Respondent's testimony that on June 30, 2008, he notified TG the June CT report reflected something "bad" and that he *may* have notified her she had a "spot" for which she needed to see a GI specialist is also inconsistent with TG's actions following the June 30, 2008, visit. During the 2008-2010 time period, TG spoke with her family members on a daily basis and discussed her health care problems and concerns with them openly, particularly when the health care problems were serious in nature. (Tr. at p. 234-235 and p. 241, l. 4-8) For example, in 2010, when Respondent advised TG that she had a problem with her blood platelet count, which TG understood to mean she might have leukemia, TG immediately disclosed this to her family and insisted that Respondent refer her to a specialist for further evaluation. (Tr. at p. 176-178) Respondent testified he had no intention of referring TG to a specialist, but only did so when TG insisted upon the referral. (Tr. at p. 376, l. 12-24) Likewise, in 2010, when Respondent notified TG of the need for her to undergo a biopsy, TG immediately notified her family members of this and was transported to the hospital for the biopsy by her family members. (Tr. at p. 253-255) When TG learned the results of the biopsy indicated the mass to her pancreas was cancerous and had spread to her liver, TG at once notified her family members of this and actively pursued available treatment options for the cancer. (Tr. at p. 178, l. 18-24 and p. 259-260) Contrary to her custom of sharing information about her health care with her family, TG did not disclose the

results of the 2008 CT scan to her family or seek further evaluation of her condition by a specialist in 2008. (Tr. at p. 178-180 and p. 253, l. 14-19)

Respondent's testimony that he notified TG that the 2008 CT report reflected TG had something "bad" and that he *may have* advised her she had a "spot," which was something for which she needed to see a specialist is not credible for several other reasons. According to Respondent's own testimony, it was not his custom to tell a patient the reason for which he was referring the patient to a specialist. (Tr. at p. 318, l. 15-24) Respondent's testimony was also not corroborated by his own original medical records or by the testimony of any witness. To the contrary, the only witness Respondent identified as having overheard his conversation with TG regarding the need for her to see a GI specialist credibly testified that the conversation never occurred. (Tr. at p. 182, l. 16-25 and p. 183, l. 1-4) Moreover, Respondent made no entry to the original June 30, 2008, visit note reflecting that he notified TG of the pancreatic mass or that he referred her to a specialist for evaluation or treatment of the mass. The only entries Respondent made to TG's visit notes regarding the June 2008 CT report were made in August 2010 after TG's death and after Respondent learned he might be sued by TG's family for medical malpractice. Each of Respondent's alterations to TG's medical records in 2010 was self-serving and designed to bolster his defense of the possible malpractice lawsuit.

Because the ALJ's finding of fact here is supported by competent substantial evidence, Respondent's exception should be rejected. In addition, the findings of fact made by the ALJ here were based on the ALJ's determination of the credibility of

witnesses who testified at the final hearing, and thus, should not be disturbed. *See Wash & Dry Vending Co., supra,* and *Bill Salter Advertising, Inc., supra.*

20. Respondent next takes exception to the ALJ's finding of fact in paragraph 42 that Respondent violated section 458.331(1)(gg) by concealing the material fact that he had altered the original, contemporaneous records of TG's care and treatment when he knowingly produced TG's altered records to the Department in August 2011 without disclosing the alterations. There is competent substantial evidence to support this finding of fact. Respondent misrepresented material facts during the course of Petitioner's investigation of Respondent in this matter. Respondent altered TG's medical record sometime after August 19, 2010. Respondent failed to disclose these alterations to the Department during the course of the Department's investigation of this matter. The alterations Respondent made to TG's medical record were material. Specifically, Respondent's alterations indicated he reminded TG of the results of the June 2008 CT scan and encouraged TG to consult with a GI specialist regarding the CT scan results during the course of patient visits that occurred after June 2008. At the final hearing Respondent conceded he would have forgotten about the June 2008 CT scan approximately one month after the June 2008 visit. Consequently, he would neither have reminded TG about the results of the June 2008 CT scan or encouraged TG to see a GI specialist during those visits. As discussed in Response 10 above, these facts constitute competent substantial evidence and establish Respondent misrepresented or concealed a material fact to the Department by failing to disclose the alterations to the Department. The findings of fact made by the ALJ here were based

on the ALJ's determination of the credibility of witnesses who testified at the final hearing, and thus, should not be disturbed. *See Wash & Dry Vending Co.* As such, Respondent's exception should be rejected.

21. In his exception to paragraph 43, Respondent reiterates that he did not conceal any material fact from the Department. As discussed in Response 20 above, there is competent substantial evidence to support the ALJ's finding that Respondent did conceal material facts from the Department. Accordingly, this exception should be rejected.

22. Respondent next takes exception to the ALJ's conclusion of law in paragraph 50 that the Department established Respondent's guilt by clear and convincing evidence as to all charges except the allegation that Respondent interfered with an investigation or disciplinary proceeding. As discussed above, the findings of fact underlying this conclusion are all supported by competent substantial evidence in the record.

23. In his next exception, Respondent challenges the ALJ's conclusion of law in paragraph 51 of the RO that Respondent "knowingly furnished these false records to the Department without disclosing that he had tampered with them so as to take advantage of the contemporaneous character which gives such documents evidentiary value." This conclusion of law is reasonable in light of the findings of fact detailed above. Those findings of fact are, in turn, each based upon competent substantial evidence. Accordingly, Respondent's exception should be rejected.

24. Respondent next takes exception to the ALJ's conclusion of law contained in paragraph 51, which states:

> In determining the weight to be given to the undisputed fact that Dr. Choy deliberately altered T.G.'s medical records in his ill-advised attempt to manufacture exculpatory evidence when faced with the threat of a malpractice lawsuit, and that he knowingly furnished these false records to the Department without disclosing that he had tampered with them so as to take advantage of the contemporaneous character which gives such documents evidentiary value, the undersigned took account of the rule that when a party is found to have knowingly altered or fabricated documents to create a false basis for his legal position, the inevitable conclusion is that he has something to hide and is conscious of guilt.

The ALJ's conclusion of law here is based upon the findings of fact he made after weighing the competent substantial evidence presented at the final hearing. This evidence included Respondent's testimony (which the ALJ determined lacked credibility), Respondent's deliberate alteration of TG's patient records (which included the fabrication of events and information), and Respondent's failure to disclose those alterations to the Department. Because the ALJ's underlying findings of fact were based on his determination of the credibility of testimony received in evidence at the final hearing, his interpretation of the evidence presented at the hearing and permissible inferences he drew from the evidence presented at the hearing, this conclusion of law should not be disturbed. *See Wash & Dry Vending Co., supra,* and *Bill Salter Advertising, Inc., supra.*

25. Respondent takes exception to the conclusion of law in paragraph 57 in which the ALJ determines deviation from the penalty guidelines is not warranted. The

mitigating factors recited by Respondent in its exception were all accepted into evidence and considered by the ALJ. Nevertheless, the ALJ determined the penalties outlined in the guidelines are appropriate and should not be deviated from. Consequently, this exception should be rejected.

26. Respondent's final exception concerns the ALJ's recommended penalty of revocation. This penalty is within the penalty guidelines that correspond to the violations for which Respondent was found guilty. The ALJ arrived at the conclusion that this penalty was appropriate after review of competent substantial evidence of mitigating and aggravating factors received at the final hearing. As such, Respondent's exception should be rejected.

WHEREFORE, Petitioner Department of Health respectfully requests that Respondent's Exceptions to the Recommended Order be rejected.

Respectfully submitted this 12th day of May, 2014.

Daniel Hernandez
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished via electronic mail to: Amy W. Schrader, Esquire, amy.schrader@gray-robinson.com, Jay Ziskind, Esquire, jaz@ziskindlaw.com and Tim Cerio, Esquire, tim.cerio@gray-robinson.com, on this 12th day of May, 2014.

Daniel Hernandez
Deputy General Counsel

STATE OF FLORIDA
DEPARTMENT OF HEALTH
BOARD OF MEDICINE

Department of Health,

Petitioner,

vs. Case No. 2011-11189

Peter V. Choy, M.D.

Respondent.
_____/

MOTION FOR CONTINUANCE

Respondent, Peter V. Choy, M.D., by and through undersigned counsel, hereby moves for a continuance of the disciplinary hearing currently scheduled for Friday, June 6, 2014, before the Florida Board of Medicine in Tampa, Florida. Counsel for Respondent is unavailable on June 6, 2014 due to a previously scheduled hearing in Tallahassee, Florida.

WHEREFORE, Respondent hereby requests a continuance of the final hearing until the next scheduled Florida Board of Medicine Board Meeting.

Respectfully submitted this 14th day of May, 2014.

Amy W. Schrader (Fla. Bar. No: 621358)
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Counsel for Respondent, Peter V. Choy, M.D.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic delivery this 14th day of May, 2014 to:

Crystal A. Sanford, C.P.M.
Program Operations Administrator
Board of Medicine
4052 Bald Cypress Way, Bin C03
Tallahassee, FL 32399
Crystal.Sanford@Flhealth.gov

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R. Shaffer Claridge, Assistant General Counsel
Office of the General Counsel, Prosecution Services Unit
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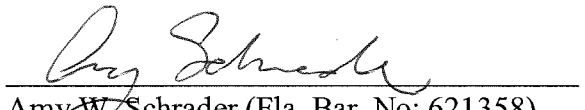

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Counsel for Respondent, Peter V. Choy, M.D.

STATE OF FLORIDA
DEPARTMENT OF HEALTH
BOARD OF MEDICINE

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK: Angel Sanders
DATE: MAY 15 2014

DEPARTMENT OF HEALTH,
Petitioner,

v.

DOH CASE NO. 2011-11189

PETER V. CHOY, M.D.,
Respondent.
_____/

PETITIONER'S RESPONSE TO RESPONDENT'S MOTION FOR CONTINUANCE

Petitioner opposes Respondent's Motion for Continuance and states:

1. As the sole ground for his motion to continue the previously scheduled hearing of this matter before the Board of Medicine, Respondent states that his attorney, Ms. Schrader, will be unavailable to attend the Board's hearing on June 6, 2014.

2. In addition to Ms. Schrader, Respondent is represented by two other attorneys in this matter, each of whom has prior experience appearing before regulatory boards and is highly-regarded as a litigator and advocate.

3. As least one of Respondent's other attorneys has indicated he is available to attend the hearing on June 6, 2014. The other attorney has not indicated he cannot be available on the day of the hearing and, therefore, presumably is also available to attend.

4. Additionally, Respondent has not indicated he cannot be available to attend the June 6, 2014.

5. Because Respondent is available to attend the June 6, 2014, hearing and will be adequately represented at the hearing by at least one of his three attorneys, Respondent's Motion should be denied.

WHEREFORE, Petitioner Department of Health respectfully requests that Respondent's Motion for Continuance be denied.

Respectfully submitted this 15th day of May, 2014.

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E-Mail: Daniel.hernandez@flhealth.gov

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished via electronic mail to: Crystal A. Sanford, crystal.sanford@flhealth.gov; Amy W. Schrader, Esquire, amy.schrader@gray-robinson.com; Jay Ziskind, Esquire, jaz@ziskindlaw.com; and Tim Cerio, Esquire, tim.cerio@gray-robinson.com, on this 15th day of May, 2014.

Daniel Hernandez
Deputy General Counsel

From: Dudley, Allison M
Sent: Thursday, May 15, 2014 4:45 PM
To: Amy Wilmot Schrader (aschrader@gray-robinson.com)
Cc: Sanford, Crystal; Hernandez, Daniel
Subject: Motion for Continuance of Peter Choy, M.D.

Ms. Schrader,

We have consulted with our lawyer, Ed Tellechea and he has advised that the Recommended Order should be placed as the last case on the agenda. If you are not present at the time the case is called, the Board will address your Motion for Continuance at that time.

Sincerely,

Allison M. Dudley, J.D.
Executive Director | Florida Board of Medicine
Department of Health | Division of Medical Quality Assurance
4052 Bald Cypress Way, Bin 03 | Tallahassee, Florida 32399
Phone: (850) 245-4130 | Fax: (850) 412-1260
New Website: www.flboardofmedicine.gov
Twitter: www.twitter.com/FLBoardofMed

Attention Health Care Practitioners: There have been changes to the license renewal process. To learn more visit www.flhealthsource.com. For questions, contact the Florida Department of Health toll-free at (855) 410-3344 or email us at MQAReportCE@flhealth.gov

Mission: To protect, promote and improve the health of all people in Florida through integrated state, county, and community efforts.
Vision: To be the Healthiest State in the Nation.
Purpose: To protect the public through health care licensure, enforcement and information.
Focus: To be the nation's leader in quality health care regulation.
Values: I.C.A.R.E. (Innovation, Collaboration, Accountability, Responsiveness, Excellence)
PLEASE NOTE: Florida has a very broad public records law. Most written communications to or from State officials regarding State business are public records available to the public and media upon request. Your email communications may therefore be subject to public disclosure.

Richard B. Karsh, M.D. –
Refer to original tab 38

Richard B. Karsh M.D.
Diplomate, American Board of Radiology
Diplomate, American Board of Pediatrics
Diplomate, Sub-Board of Pediatric Cardiology

1460 Mesa Rd
Colorado Springs, CO 80904
719-313-9798
719-339-0958 cell
Email: docrbk@hotmail.com

May 15, 2014

Crystal A. Sanford, C.P.M.
Program Operations Administrator
Board of Medicine
4052 Bald Cypress Way, Bin C03
Tallahassee, FL 32399

Re: Notice of Hearing, case 201312120

Dear Ms. Sanford,

I can only assume that your note was written prior to our discussion and my faxing correspondence to you. As I noted, I am in no position to travel to Tampa (much as I used to visit when I lived in Bradenton). Indeed, since my previous correspondence, my wife has been through her (longtime) stepfather's death and the need to retrieve her mother (who as of yesterday is now in hospice care at my wife's house for senile dementia/Alzheimer's), further encroaching upon any time I might have had as well as significant expense.

In any event, my prior information remains the same...never any complaints from Florida (or other than indirectly any state besides Colorado, with whose interpretation of my actions in Montana I disagree), confusion as to notifying DOH in view of multiple, near-simultaneous letters that appeared to refer to the same thing, as well as my no longer being in active practice.

Yours truly,

Richard B Karsh MD

PS - I could be available per phone, if need be -

Kwame Asante-Nkansa, M.D. –
Refer to original tab 39

Kwame Asante-Nkansa, MD
9009 University Parkway, #204
Pensacola, FL 32514

To Crystal Samford
Florida Department of Health
Board of Medicine
Tallahassee , Florida 32399

Dear Madam,
Hearing on Determination of Waiver of Trial.
Case number. 201314005
I write acknowledge receipt of your letter dated May 7,2014 and regret to not attend this hearing for the following reasons.

1 I have not been able to schedule a timely renal replacement therapy in Tampa before hearing date as I cannot risk coming there without a treatment.
2 Not having been employed as a result of my "indefinite suspension of my license and surviving only on my social security benefits, I could not afford to book an expensive flight and hotel accommodation to attend a hearing which had previously reported me to the National Physician Database for indefinite suspension for not being able to pay a fine for forgetting to self report an Agreed order within 30 days of it's occurrence.
3. The fact that no account of the money paid for fine imposed on me at the last hearing was accounted for in your subsequent correspondences as the administrative fee of $3,000 was that which was not paid for as the instruction did not allow for payment in trunches. If $3000 was a problem for me how could one expect $10,000 from me which is a quandery for me.
In conclusion, I wonder how a misunderstanding in a military hospital could have a disastrous
ascading effect on my carrier when a board clears me of any sexual harassment and yet finds me guilty of not reporting a previously Malad judicious hearing and yet fines a hefty preposterous amount of $10,000.
I wish the board a fruitful deliberation and wish they would consider the above narrative in coming to a final decision on this long case lasting 5years from it's, inception. A resolution is long overdue to let me move on.
Thank you.
Best regards,
Kwame Asante-Nkansa md

Society for Clinical and Medical Hair Removal, Inc. –
Refer to original tab 43

Petition for Declaratory StatementRequest for Variance - SCMHR - Refer to tab 43
From: Jon Pellett <JPellett@barrmurman.com>
Sent: Monday, May 12, 2014 8:43 AM
To: Dudley, Allison M; Hall, Allen; Sanford, Crystal; King, Anna; Ed.Tellechea@myfloridalegal.com; 'Marlene Stern'
Cc: Pat Cunningham
Subject: Supporting information - Petition for Declaratory Statement/Request for Variance - SCMHR - June 6, 2014 meeting
Signed By: jpellett@barrmurman.com

Below is additional supporting information to be considered with the request for variance and request for declaratory statement. If possible, please include with the materials being considered at the June 6, 2014 Board of Medicine meeting.

Basic statement about the Society for Clinical and Medical Hair Removal, Inc. (SCMHR):

Mission Statement:

The mission of the Society for Clinical and Medical Hair Removal, Inc. (SCMHR) is to benefit consumers of our services by:

* Promoting professional integrity and confidence
* Ensuring theoretical and technical competency
* Maintaining ongoing effectiveness
* Encouraging cohesiveness through uniform educational standards
* Investigating and integrating new technology

SCMHR Offers:

Continuing Education (Available to members and non-members)

* Live Webinars -- get your live continuing education from the comfort of your home or office
* Home Study Library -- Over 50 web-based and paper titles
* Professional Hair Removal Conference -- Ongoing sponsor of this event, geared toward electrologists and laser hair removal professionals

Certification Opportunities for electrologists and other professionals providing hair removal or reduction services:

* Certified Clinical Electrologist (CCE) (Electrology certification)
* Certified Medical Electrologist (CME) (Electrology certification regarding use of laser and light based devices)(CCE is a prerequisite to CME)

Pass/Fail rates for certification examination (CCE/CME):

* CME:
* Jan., 2011 through Oct., 2013
* N = 541 Pass = 472 (87.2%) Fail = 69 (12.8%)

* CCE:
* Dec., 2010 through Oct., 2013
* N = 610 Pass = 514 (84.3%) Fail = 96 (15.7%)

Additional certifications available from SCMHR

* Certified Laser Hair Removal Professional®
* Certified Pulsed Light Hair Removal Professional

Membership Benefits (Separate from certification)

* Member Discounts on Webinars and Home Studies

Petition for Declaratory StatementRequest for Variance - SCMHR - Refer to tab 43

* Member Discounts on Certification Exams
* A free copy of "Infection Control and Sterilization for Electrology and Laser Hair Removal"
* Members-Only Section of the SCMHR Website
* CEU tracking for Recertification Requirements

/s/Jon M. Pellett, Of Counsel
Barr, Murman, & Tonelli, P.A.
201 East Kennedy Blvd. Suite 1700
Tampa, Florida 33602
Tele: (813) 223-3951 Fax: (813) 229-2254;
Email: jpellett@barrmurman.com
Email2: pcunningham@barrmurman.com
Website: www.barrmurman.com
NOTICE: This e-mail message and any attachment to this e-mail message contains confidential information that may be legally privileged. If you are not the intended recipient, pursuant to the Electronic Communications Privacy Act (ECPA), you must not review, retransmit, convert to hard copy, copy, use or disseminate this e-mail or any attachments to it. If you have received this e-mail in error, please notify us immediately by return e-mail or by telephone at 813-223-3951 and delete this message. Please note that if this e-mail message contains a forwarded message or is a reply to a prior message, some or all of the contents of this message or any attachments may not have been produced by Barr, Murman, Tonelli, et. al.

Please be advised that e-mail messages cannot be guaranteed to be secure or error-free as transmitted information can be intercepted, corrupted, lost, destroyed, arrive late or incomplete, or contain viruses. Barr, Murman, Tonelli, et. al. therefore does not accept liability for any error or omissions in the contents of this message which arise as a result of e-mail transmission.

IRS "Circular 230" Disclosure: Please note that the views expressed herein or in any attachments hereto are not intended to constitute a "reliance opinion" under applicable Treasury Regulations, and accordingly are not intended or written to be used, and may not be used or relied upon, for the purpose of (i) avoiding tax-related penalties that may be imposed by the Internal Revenue Service, or (ii) promoting, marketing or recommending to another party any tax-related matters addressed herein. Consultation with a qualified tax representative is recommended.

Robert D. Maresh, M.D. –
Refer to original tab 59

One or more pages have been removed from this document for security reasons

Scroll down to see the available pages or advance to the next document if all pages have been removed.

SOME OR ALL PAGES IN THIS DOCUMENT ARE PATIENT RECORDS AND/OR DOCUMENTS THAT IDENTIFY THE PATIENT BY NAME AND ARE EXEMPT FROM PUBLIC RECORDS LAWS.

456.057 - Ownership and control of patient records; report or copies of records to be furnished.—

10)(a)All patient records obtained by the department and any other documents maintained by the department which identify the patient by name are confidential and exempt from s. 119.07(1) and shall be used solely for the purpose of the department and the appropriate regulatory board in its investigation, prosecution, and appeal of disciplinary proceedings. The records shall not be available to the public as part of the record of investigation for and prosecution in disciplinary proceedings made available to the public by the department or the appropriate board.

Minutes
Florida Board of Medicine
Credentials Committee Meeting
Hyatt Regency Jacksonville Riverfront
225 East Coastline Drive
Jacksonville, FL 32202
904-360-8656
April 12, 2012
9:00 a.m.

EXCERPT OF MEETING MINUTES

Tab 11 Robert David Maresh, M.D. – Endorsement
Positive responses to questions on the licensure application.

Represented by Allen Grossman, Esq.
Judy Rivenbark, M.D., Medical Director, Professionals Resource Network

The applicant was present and sworn in by the court reporter. After discussion, a motion was made and seconded to approve the application for licensure, which carried 5/0.

Action Taken: The Committee voted to approve the application for licensure.

Parveen Malik, M.D. –
Refer to original tab 61

Parveen Malik, MD
Tab 61

GUNSTER
FLORIDA'S LAW FIRM FOR BUSINESS

Bruce D. Lamb, Esquire
(813) 222-6605
blamb@gunster.com

May 15, 2014

Via Electronic Mail and by Regular U.S. Mail

Crystal Sanford, Program Operations Administrator
Florida Board of Medicine
4052 Bald Cypress Way
Bin C-03
Tallahassee, FL 32399

Re: DOH v. Malik
DOH Case No. 2011-06361
Our File No. 00034283.00001

Dear Crystal:

I recently received copies of Notices regarding Dr. Malik's Petition being presented at the June 6, 2014, Board meeting. This firm no longer represents Dr. Malik in regard to this matter. Therefore, please remove my name from your copy list.

Thank you for your attention to this matter.

Very truly yours,

Bruce D. Lamb

BDL/keb

MEDICINE BOARD
14 MAY 19 PM12:08

401 East Jackson Street, Suite 2500 Tampa, FL 33602 p 813-228-9080 f 813-228-6739 GUNSTER.COM
Fort Lauderdale | Jacksonville | Miami | Orlando | Palm Beach | Stuart | Tallahassee | Tampa | The Florida Keys | Vero Beach | West Palm Beach

Reza Ehsan, M.D. –
Refer to original tab 66

WEST LA URGENT CARE

Superior Multi-Specialty Medical Clinic
Reza Ray Ehsan, MD

Letter of Appeal

May 7, 2014

Florida Board of Medicine

4052 Bald Cypress Way
Tallahassee, Florida 32399-3250

Re: Florida Medical License # ME61254 (Reza Ray Ehsan)

Dear Sir / Madam,

I would like to request reconsideration in regards to the violation imposed upon my license in the state of Florida. As you may have been made aware by Ms. Stanford, the CME requirements for the years 2004 and 2005 have recently been located and previously all copies were provided to Ms. Sanford. As the records indicate, I previously paid a fine regarding this matter and I voluntarily surrendered my license to practice in the state of Florida. However, due to the fact that there were never any violations committed on my part I request a fair conclusion as to the outcome of this case. I understand that once this issue is resolved with the Florida Board of Medicine, other Medical Boards will also have updated records. I apologize for any inconvenience and hope you understand the circumstances.

I would like to take the opportunity to thank Ms. Sanford for her dedication and assistance in this matter as well. If you have any questions, please do not hesitate to contact me at my office.

Regards,

Reza Ray Ehsan M.D.

Ehsan/MD

11600 Venice Blvd., Los Angeles, CA 90066
www.superiormedclinic.com
Ph1: 310-390-9551 Ph2: 310-390-9541 Fax: 310-390-9296

Final Order Compliance Issues:

John Jeffrey, M.D. –
Request to Voluntarily Relinquish

10031 Kendale Road

Potomac, MD 20854

May 1, 2014

Ms. Shaila Washington

Compliance Officer

FL Dept. of Health, MQA Division

4052 Bald Cypress Way, Bin C-76

Tallahassee, FL 32399-3276

Dear Ms. Washington,

At the April 2012 disciplinary hearing, the Florida Board of Medicine entered a Final Order pertaining to Case Reference Number 201012358 which imposed three specific obligations. I complied with payment of the fine and costs in May 2012 and completed the 5.00 hour Risk Management CME in August 2012 as well. In addition, I planned to attend the QMRK course and submitted the appropriate fee. However, I learned when I received the program materials that I needed to send six sets of records prior to the course date for review. Unfortunately, I have not been employed as a physician since the Final Order. I contacted Ms. Nancy Wisham at the FMA to explain my situation and was told that submitting records before and after the on-site instruction was required to document improvement in the record keeping. There were no records for me to supply. At this time, I was preparing to relocate to Maryland and was not planning to renew my Florida medical license in January 2014. I spoke with Ms. Sondra Allen of the DOH-MQA/Compliance Management Unit on October 17, 2013 and was informed that by electing to voluntarily relinquish my license, my compliance case would be closed internally if the Board of Medicine accepted my voluntary relinquishment. If I were to reapply in the future, I might have to enroll in the QMRK course. I fully endorse this possible condition.

I telephoned you in February 2014 after obtaining notification that the documentation for the completion of the QMRK course had not been submitted. I explained the above and believed that my case would be presented at the next Board meeting. Two weeks later, I received correspondence from Ms. Cherise Davis, Regulatory Specialist, stating that a voluntary relinquishment would not be allowed because I did not fulfill all obligations of the Final Order. I

again contacted you in March 2014 and you suggested that I send an explanation in writing which you would present at the subsequent Board meeting. I am now following that earlier recommendation.

Since I am seeking employment opportunities outside clinical medicine at this juncture, there is no timetable for when I will be eligible to attend the QMRK course. I am solely continuing to pursue this issue so I will not have a disciplinary action filed against my inactive Florida medical license. I believe that I attempted to fulfill my obligations to the best of my ability. I hope for a resolution of this matter in the near future.

Sincerely,

John Edward Jeffrey Jr. MD

John Edward Jeffrey, Jr., M.D.

MEMORANDUM

To: Board of Medicine
From: Shaila Washington, Compliance Officer
Respondent: **John E. Jeffrey, Jr., M.D. – ME83430**
DOH Case Number 201012358
RE: Request to Voluntary Relinquish

Current Issues:

Enclosed you will find a request to voluntarily relinquish his license in lieu of comply with the remaining terms of the final order.

Requirements:

- **Letter of Concern**
- **Fine:** $2,500.00 due by May 23, 2012 **Paid in Full**
- **Costs:** $5,000.00 due by May 23, 2012 **Paid in Full**
- **Continuing Education Requirement:**
  - Five (5) hours in Risk Management due by April 23, 2013 **Complete**
  - FMA Records course due by February 12, 2014

Outstanding Requirements:

- **Continuing Education Requirement:**
  - FMA Records course due by February 12, 2014

Division of Medical Quality Assurance

MQA

COMPAS DataMart Reporting System
CMU Board Summary/Case File 201012358 Report
May 13, 2014

Processed: 2:04:33PM

Current Issue:

In Compliance

Profession: 1501 : Medical Doctor

Licensee: John Edward Jeffrey JR

License Nbr: 83430 **File Nbr:** 80296

License Status: Delinquent/Active

Mailing Address: 10031 Kendale Road
Potomac, MD 20854

Primary Location: Not Practicing In Florida
P O Box 6320
Tallahassee, FL 32314-6320

Phone: (301) 365-1310

Attorney: Brian Newman **Address:** 215 Monroe Street, 2nd Floor
Tallahassee, FL 32302

Phone: 850-222-3533

Monitor: None on Record

Supervisor: None on Record

Respondent: John Edward Jeffrey JR **Appeal:** N

Address: 5333 Sw 75th St #112
Gainesville, FL 32608

File Date: 4/23/2012 **Info Package Mailed Date:** 4/23/2012

Disposition: Obligations Imposed

Violation: Fail to keep adeq prof records

Summary: Possible violation of F.S. 458.331(1)(t): Malpractice/Violation of Standard of Care Civil court complaint alleges negligent care and treatment of pt. by failing to provide the minimum standard of care. Alleges pt. presented to Memorial Hospital of Tampa on 09/24/2008 for pre-scheduled surgery and with a history of blood in urine, low platelet counts, known hematuria and diagnosis of Immune Thrombocytopenia Purpura. Alleges that during surgery pt. suffered significant blood loss. Alleges pt. blood type was unknown and she was given type O-blood and transferred to ICU where she remained hypotensive and EKG was suggestive of AMI. Alleges 15 minutes after transfer to ICU pt. coded and a second surgery was initiated for attempted hemostatsis. Alleges that as a result of the negligent care received, pt. died approximately 3 hours after transfer to ICU. Analyzed by: Sharon Johnson, ha125

Discipline Imposed:	Start Date	End Date	Comments
Letter of Concern	04/23/2012		
Obligations and Conditions	04/23/2012		

Compliance:

Record	Due Date	Cmpl Date	Amt Imposed	Amt Paid
Appearances		04/13/2012		
Costs	05/23/2012	05/23/2012	5,000.00	5,000.00
Fine	05/23/2012	05/23/2012	2,500.00	2,500.00

Continuing Education:

Subject Area	Due Dte	Req Hrs	Credit Hrs	Crdt Dte	Credit Desc
Risk Management	04/23/2013	5.00	5.00	08/03/2012	Risk Management (Attended August 2012 Full Board Meeting)
Quality Medical Record Keeping For Health Care Professionals	**02/12/2014**	**1.00**			

01/31/14 - Warning letter mailed
8/12/13 - Board approved an extension until February 2014.

Activities:

Activity Date	Actv Code	Activity Description
04/23/2012	901	Info pack mailed
05/25/2012	915	Mail Received in CMU
05/30/2012	923	Mail Processed/Reviewed
08/30/2012	961	CO Contacted Board
08/12/2013	985	Extension Approved
10/17/2013	931	Respondent Contacted CO
10/17/2013	932	CO Contacted Respondent
01/31/2014	906	Warning Letter
02/11/2014	931	Respondent Contacted CO
03/25/2014	931	Respondent Contacted CO

Contact History:

Contact Date	Letter Code	Letter Description
04/23/2012	NN157	CMU WELCOME LETTER
04/23/2012	NN157	CMU WELCOME LETTER
04/23/2012	NN179	INVOICE
05/30/2012	NN152	CMU RECEIPT LETTER
08/21/2012	NN150A	CMU CE STATUS LETTER APPROVED
01/31/2014	NN101	WARNING LETTER

Attachments:

Final Order No. DOH-12-0685-S -MQA
FILED DATE APR 23 2012
Department of Health
By: [illegible]
Deputy Agency Clerk

STATE OF FLORIDA
BOARD OF MEDICINE

DEPARTMENT OF HEALTH,

Petitioner,

vs.

DOH CASE NO.: 2010-12358
LICENSE NO.: ME0083430

JOHN EDWARD JEFFREY, JR., M.D.,

Respondent.
_____/

FINAL ORDER

THIS CAUSE came before the BOARD OF MEDICINE (Board) pursuant to Sections 120.569 and 120.57(4), Florida Statutes, on April 14, 2012, in Jacksonville, Florida, for the purpose of considering a Settlement Agreement (attached hereto as Exhibit A) entered into between the parties in this cause. Upon consideration of the Settlement Agreement, the documents submitted in support thereof, the arguments of the parties, and being otherwise fully advised in the premises,

IT IS HEREBY ORDERED AND ADJUDGED that the Settlement Agreement as submitted be and is hereby approved and adopted in toto and incorporated herein by reference with the following clarification:

The costs set forth in Paragraph 3 of the Stipulated Disposition shall be set at $5,000.00.

Accordingly, the parties shall adhere to and abide by all the terms and conditions of the Settlement Agreement as clarified above.

This Final Order shall take effect upon being filed with the Clerk of the Department of Health.

DONE AND ORDERED this 20th day of April, 2012.

BOARD OF MEDICINE

Joy A. Tootle, Executive Director
For Jason J. Rosenberg, M.D., Chair

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been provided by U.S. Mail to JOHN EDWARD JEFFREY, JR., M.D., 5333 South West 75th, Suite #112, Gainesville, Florida 32608; to Brian Newman, Esquire, Pennington, Moore, et al., 215 South Monroe Street, 2nd Floor, Tallahassee, Florida 32302; and by interoffice delivery to Veronica Donnelly, Department of Health, 4052 Bald Cypress Way, Bin #C-65, Tallahassee, Florida 32399-3253 this 23 day of April, 2012.

Deputy Agency Clerk

Rick Scott
Governor

Steven L. Harris, M.D., M.Sc.
Interim State Surgeon General

INTEROFFICE MEMORANDUM

DATE: April 19, 2012

TO: Cassandra Pasley, BSN, J.D., Bureau Chief
Health Care Practitioner Regulation

FROM: Joy A. Tootle, Executive Director
Board of Medicine

SUBJECT: Delegation of Authority

This is to advise you that I will be out of the office on Friday, April 20th, 2012 and I will return back in the office on Monday, April 23rd, 2012. Crystal Sanford is delegated to serve as acting Executive Director for the Board of Medicine. Ms. Sanford can be reached at (850) 245-4132.

Mission Statement: To protect and promote the health of all residents and visitors in the state through organized state and community efforts, including cooperative agreements with counties.

Division of Medical Quality Assurance • Board of Medicine
4052 Bald Cypress Way, Bin C03 • Tallahassee, Florida 32399-3253
Phone: (850) 245-4131 • Fax: (850) 488-0596 • http://www.doh.state.fl.us/mqa/medical/index.html

STATE OF FLORIDA
DEPARTMENT OF HEALTH

PRACTITIONER REGULATION
LEGAL
12 FEB 14 PM 2:11

DEPARTMENT OF HEALTH,

Petitioner,

v. **DOH Case No. 2010-12358**

JOHN E. JEFFREY, JR., M.D.,

Respondent.
_____/

SETTLEMENT AGREEMENT

John E. Jeffrey, Jr., M.D., referred to as the "Respondent," and the Department of Health, referred to as "Department" stipulate and agree to the following Agreement and to the entry of a Final Order of the Board of Medicine, referred to as "Board," incorporating the Stipulated Facts and Stipulated Disposition in this matter.

Petitioner is the state agency charged with regulating the practice of medicine pursuant to Section 20.43, Florida Statutes, and Chapter 456, Florida Statutes, and Chapter 458, Florida Statutes.

STIPULATED FACTS

1. At all times material hereto, Respondent was a licensed physician in the State of Florida having been issued license number ME 83430.

14173

2. The Department charged Respondent with an Administrative Complaint that was filed and properly served upon Respondent with violations of Chapter 458, Florida Statutes, and the rules adopted pursuant thereto. A true and correct copy of the Administrative Complaint is attached hereto as Exhibit A.

3. Respondent neither admits nor denies the allegations of fact contained in the Administrative Complaint for purposes of these proceedings only.

STIPULATED CONCLUSIONS OF LAW

1. Respondent admits that, in his capacity as a licensed physician, he is subject to the provisions of Chapters 456 and 458, Florida Statutes, and the jurisdiction of the Department and the Board.

2. Respondent admits that the facts alleged in the Administrative Complaint, if proven, would constitute violations of Chapter 458, Florida Statutes, as alleged in the Administrative Complaint.

3. Respondent agrees that the Stipulated Disposition in this case is fair, appropriate and acceptable to Respondent.

STIPULATED DISPOSITION

1. **Letter Of Concern** - Respondent shall receive a Letter of Concern from the Board of Medicine.

2. **Fine** - The Board of Medicine shall impose an administrative fine of ***two thousand five hundred dollars and zero cents ($2,500.00)*** against the license of Respondent, to be paid by Respondent to Payments, Department of Health, Compliance Management Unit, Bin C-76, P. O. Box 6320, Tallahassee, FL 32314-6320, within thirty-days (30) from the date of filing of the Final Order accepting this Agreement. **All fines shall be paid by cashiers check or money order.** The Board office does not have the authority to change the terms of payment of any fine imposed by the Board.

RESPONDENT ACKNOWLEDGES THAT THE TIMELY PAYMENT OF THE FINE IS HIS/HER LEGAL OBLIGATION AND RESPONSIBILITY AND RESPONDENT AGREES TO CEASE PRACTICING IF THE FINE IS NOT PAID AS AGREED TO IN THIS SETTLEMENT AGREEMENT, SPECIFICALLY: IF WITHIN 45 DAYS OF THE DATE OF FILING OF THE FINAL ORDER, RESPONDENT HAS NOT RECEIVED WRITTEN CONFIRMATION THAT THE FULL AMOUNT OF THE FINE HAS BEEN RECEIVED BY THE BOARD OFFICE, RESPONDENT AGREES TO CEASE PRACTICE UNTIL SUCH WRITTEN CONFIRMATION IS RECEIVED BY RESPONDENT FROM THE BOARD.

3. **Reimbursement Of Costs** - Pursuant to Section 456.072, Florida Statutes, Respondent agrees to pay the Department for any costs incurred in the investigation and prosecution of this case. Such costs exclude the costs of obtaining supervision or monitoring of the practice, the cost of quality assurance reviews, and the Board's administrative cost directly associated with Respondent's probation, if any. The agreed upon amount of Department costs to be paid in this

case is currently ***four thousand three hundred and thirty dollars and forty-nine cents ($4,330.49)***, but shall not exceed ***five thousand dollars and zero cents ($5,000.00).*** *Respondent will pay costs to Payments, Department of Health, Compliance* Management Unit, Bin C-76, P. O. Box 6320, Tallahassee, FL 32314-6320, within thirty-days (30) from the date of filing of the Final Order in this cause. **All costs shall be paid by cashiers check or money order.** Any post-Board costs, such as the costs associated with probation, are not included in this agreement.

RESPONDENT ACKNOWLEDGES THAT THE TIMELY PAYMENT OF THE COSTS IS HIS/HER LEGAL OBLIGATION AND RESPONSIBILITY AND RESPONDENT AGREES TO CEASE PRACTICING IF THE COSTS ARE NOT PAID AS AGREED TO IN THIS SETTLEMENT AGREEMENT, SPECIFICALLY: IF WITHIN 45 DAYS OF THE DATE OF FILING OF THE FINAL ORDER, RESPONDENT HAS NOT RECEIVED WRITTEN CONFIRMATION THAT THE FULL AMOUNT OF THE COSTS NOTED ABOVE HAS BEEN RECEIVED BY THE BOARD OFFICE, RESPONDENT AGREES TO CEASE PRACTICE UNTIL SUCH WRITTEN CONFIRMATION IS RECEIVED BY RESPONDENT FROM THE BOARD.

4. **Records Course** - Respondent shall complete the course, "Quality Medical Record Keeping for Health Care Professionals," sponsored by the Florida Medical Association, or a Board-approved equivalent, within one year of the date of filing of the Final Order in this cause.

5. **Continuing Medical Education – "Risk Management"** - Respondent shall complete five (5) hours of Continuing Medical Education in "Risk Management" within one (1) year of the date of filing of the Final Order.

Respondent shall first submit a written request to the Probation Committee for approval prior to performance of said continuing medical education course(s). However, the Board has approved five (5) hours of risk management continuing education for attending the first day of a full Board of Medicine meeting.

STANDARD PROVISIONS

1. **Appearance** - Respondent is required to appear before the Board at the meeting of the Board where this Agreement is considered.

2. **No force or effect until final order** - It is expressly understood that this Agreement is subject to the approval of the Board and the Department. In this regard, the foregoing paragraphs (and only the foregoing paragraphs) shall have no force and effect unless the Board enters a Final Order incorporating the terms of this Agreement.

3. **Continuing Medical Education** - Unless otherwise provided in this written agreement Respondent shall first submit a written request to the Probation Committee for approval prior to performance of said continuing medical education course(s). Respondent shall submit documentation in the form of certified copies of the receipts, vouchers, certificates, or other papers, such as physician's recognition awards, documenting completion of this medical course within one (1) year of the date of filing of the Final Order in this matter. All such documentation shall be sent to the Board of Medicine, regardless of whether some or any of such documentation was provided previously during the course of any audit or

discussion with counsel for the Department. These hours shall be in addition to those hours required for renewal of licensure. Unless otherwise approved by the Board, said continuing medical education course(s) shall consist of a formal, live lecture format.

4. **Addresses** - Respondent must keep current residence and practice addresses on file with the Board. Respondent shall notify the Board within ten (10) days of any changes of said addresses.

5. **Future Conduct** - In the future, Respondent shall not violate Chapter 456, 458 or 893, Florida Statutes, or the rules promulgated pursuant thereto, or any other state or federal law, rule, or regulation relating to the practice or the ability to practice medicine. Prior to signing this agreement, the Respondent shall read Chapters 456, 458 and 893 and the Rules of the Board of Medicine, at Chapter 64B8, Florida Administrative Code.

6. **Violation of terms considered** - It is expressly understood that a violation of the terms of this Agreement shall be considered a violation of a Final Order of the Board, for which disciplinary action may be initiated pursuant to Chapters 456 and 458, Florida Statutes.

7. **Purpose of Agreement** - Respondent, for the purpose of avoiding further administrative action with respect to this cause, executes this Agreement. In this regard, Respondent authorizes the Board to review and examine all investigative file materials concerning Respondent prior to or in conjunction with consideration of the Agreement. Respondent agrees to support this Agreement at

the time it is presented to the Board and shall offer no evidence, testimony or argument that disputes or contravenes any stipulated fact or conclusion of law. Furthermore, should this Agreement not be accepted by the Board, it is agreed that presentation to and consideration of this Agreement and other documents and matters by the Board shall not unfairly or illegally prejudice the Board or any of its members from further participation, consideration or resolution of these proceedings.

8. **No preclusion of additional proceedings** - Respondent and the Department fully understand that this Agreement and subsequent Final Order incorporating same will in no way preclude additional proceedings by the Board and/or the Department against Respondent for acts or omissions not specifically set forth in the Administrative Complaint attached as Exhibit A.

9. **Waiver of attorney's fees and costs** - Upon the Board's adoption of this Agreement, the parties hereby agree that with the exception of costs noted above, the parties will bear their own attorney's fees and costs resulting from prosecution or defense of this matter. Respondent waives the right to seek any attorney's fees or costs from the Department and the Board in connection with this matter.

10. **Waiver of further procedural steps** - Upon the Board's adoption of this Agreement, Respondent expressly waives all further procedural steps and expressly waives all rights to seek judicial review of or to otherwise challenge or

contest the validity of the Agreement and the Final Order of the Board incorporating said Agreement.

SIGNED this 10 day of February, 2012.

John E. Jeffrey, Jr., M.D.

STATE OF Florida
COUNTY OF Alachua

BEFORE ME, personally appeared JOHN E. JEFFREY, JR., whose identity is known to me or by FL Driver's License (type of identification) and who, under oath, acknowledges that his signature appears above.

SWORN to and subscribed before me this 10 day of Feb., 2012.

LESLIE SIROTA
Notary Public, State of Florida
Commission# DD973427
My comm. expires April 13, 2014

NOTARY PUBLIC

My Commission Expires: 4-13-2014

APPROVED this 14th day of February, 2012.

H. Frank Farmer, Jr., MD, PhD, FACP
State Surgeon General
Department of Health

By: Laura L. Glenn
Assistant General Counsel
Department of Health

A-10

STATE OF FLORIDA
DEPARTMENT OF HEALTH

DEPARTMENT OF HEALTH,

PETITIONER,

v. **CASE NO.: 2010-12358**

JOHN EDWARD JEFFREY, JR., M.D.,

RESPONDENT.
_____/

ADMINISTRATIVE COMPLAINT

COMES NOW, Petitioner, Department of Health, by and through its undersigned counsel, and files this Administrative Complaint before the Board of Medicine against the Respondent, John Edward Jeffrey, Jr., M.D., and in support thereof alleges:

1. Petitioner is the state department charged with regulating the practice of medicine pursuant to Section 20.43, Florida Statutes; Chapter 456, Florida Statutes; and Chapter 458, Florida Statutes.

2. At all times material to this Complaint, Respondent was a licensed physician within the State of Florida, having been issued license number ME 83430.

3. Respondent's address of record is 5333 S.W. 75th Street, Suite # 112, Gainesville, Florida 32608.

4. At all times material to this Complaint, Respondent was certified by the American Board of Anesthesiology.

5. On or about September 25, 2008, Patient J.P. presented to Memorial Hospital of Tampa ("MHT") for a prescheduled surgery for removal of a pelvic mass ("surgery"). The surgery was performed by Dr. D.P.

6. During Patient J.P.'s surgery, she suffered significant and unexpected bleeding and on-going deterioration of blood pressure.

7. Ultimately, Patient J.P.'s bleeding could not be stopped and the surgery was concluded with her abdomen "packed closed." She was then transferred to I.C.U. where her blood pressure remained low and she suffered a cardiac arrest.

8. The written anesthesiology record for the surgery erroneously indicates that Dr. J.H. was the attending anesthesiologist and was present for induction and emergence.

9. In fact, Respondent was the attending anesthesiologist for J.P.'s surgery. However, Respondent did not document that he was the attending anesthesiologist for J.P.'s surgery.

10. Respondent did not document that he was personally present in the operating room for induction or emergence of J.P.'s anesthesia.

11. Respondent not document that he was personally present in the operating room at any time during J.P.'s surgery.

12. During J.P.'s surgery Respondent signed several blood bank orders (blood transfusion slips) ordering un-crossmatched blood for J.P.

13. Respondent's anesthesiology assistant for J.P.'s surgery was Certified Registered Nurse Anesthetist ("CRNA") A.M.

14. CRNA A.M. provided intraoperative anesthesiology care during J.P.'s surgery.

15. During J.P.'s surgery, CRNA A.M. administered multiple and continuous non-routine, emergent diagnostic procedures and emergent treatments for J.P.

16. A CRNA must be supervised by a physician. CRNA A.M.'s supervising physician during J.P.'s surgery was Respondent.

17. Respondent failed to document in the anesthesiology record that he adequately monitored and assessed Patient J.P.'s condition.

18. Respondent failed to document in the anesthesiology record that he developed an appropriate treatment plan for Patient J.P.

19. Respondent failed to document in the anesthesiology record that he was the attending Anesthesiologist.

20. Respondent failed to document in the anesthesiology record that he was personally present in the operating room for induction and emergence of J.P.'s anesthesiology.

21. Respondent failed to document in the anesthesiology record that he was personally present in the operating room for the administration of any non-routine, emergent diagnostic procedures and emergent treatments.

22. Respondent failed to document in the anesthesiology record his justification for any non-routine, emergent diagnostic procedures and emergent treatments.

23. Respondent failed to document in the anesthesiology record that he supervised CRNA A.M. during J.P.'s surgery.

24. Section 458.331(1)(m), Florida Statutes (2008), provides that Failing to keep legible, as defined by department rule in consultation with the board, medical records that identify the licensed physician or the physician extender and supervising physician by name and professional title who is or are responsible for rendering, ordering, supervising, or billing for each diagnostic or treatment procedure and that justify the course of treatment of the patient, including, but not limited to, patient histories; examination results; test results; records of drugs prescribed, dispensed, or administered; and reports of consultations and hospitalizations, is grounds for discipline by the Board of Medicine.

25. Rule 64B8-9.003(3), Florida Administrative Code (2008), provides that the medical record shall contain sufficient information to identify the patient, support the diagnosis, justify the treatment and document the course and results of treatment accurately, by including, at a minimum, patient histories; examination results; test results; records of drugs prescribed, dispensed, or administered; reports of consultations and hospitalizations; and copies of records or reports or other documentation obtained from other health care practitioners at the request of the

physician and relied upon by the physician in determining the appropriate treatment of the patient.

26. Respondent failed to keep legible medical records that justified the course and results of treatment accurately, with regard to Patient J.P., in one or more of the following ways:

(a) By failing to document his monitoring and assessment of Patient J.P.'s condition; and/or

(b) By failing to document his development of an appropriate treatment plan for Patient J.P.; and/or

(c) By failing to document that he was the attending Anesthesiologist; and/or

(d) By failing to document that he was personally present in the operating room for induction and emergence of J.P.'s anesthesiology; and/or

(e) By failing to document that he was personally present in the operating room for the administration of any non-routine, emergent diagnostic procedures and emergent treatments during J.P.'s surgery; and/or

(f) By failing to document his justification for any non-routine, emergent diagnostic procedures and emergent treatments; and/or

(g) By failing to document his supervision of the CRNA.

27. Based on the foregoing, Respondent has violated Section 458.331(1)(m), Florida Statutes (2008), by failing to keep legible medical records that justified the course and results of treatment accurately, with regard to Patient J.P.

WHEREFORE, the Petitioner respectfully requests that the Board of Medicine enter an order imposing one or more of the following penalties: permanent revocation or suspension of Respondent's license, restriction of practice, imposition of an administrative fine, issuance of a reprimand, placement of the Respondent on probation, corrective action, refund of fees billed or collected, remedial education and/or any other relief that the Board deems appropriate.

SIGNED this 13th day of January, 2012.

H. Frank Farmer, Jr., M.D., Ph.D., FACP
State Surgeon General

Laura L. Glenn
Assistant General Counsel
DOH Prosecution Services Unit
4052 Bald Cypress Way, Bin C-65
Tallahassee, FL 32399-3265
Florida Bar # 0861413
(850) 245-4640
(850) 245-4681 FAX

PCP Date: January 13, 2012
PCP Members: Ashkar, Bearison

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK:
DATE 1-17-12

DOH vs. John Edward Jeffrey, Jr., M.D. Case No.: 2010-12358

NOTICE OF RIGHTS

Respondent has the right to request a hearing to be conducted in accordance with Section 120.569 and 120.57, Florida Statutes, to be represented by counsel or other qualified representative, to present evidence and argument, to call and cross-examine witnesses and to have subpoena and subpoena duces tecum issued on his or her behalf if a hearing is requested.

NOTICE REGARDING ASSESSMENT OF COSTS

Respondent is placed on notice that Petitioner has incurred costs related to the investigation and prosecution of this matter. Pursuant to Section 456.072(4), Florida Statutes, the Board shall assess costs related to the investigation and prosecution of a disciplinary matter, which may include attorney hours and costs, on the Respondent in addition any other discipline imposed.

14189

STATE OF FLORIDA
DEPARTMENT OF HEALTH

DEPARTMENT OF HEALTH,

PETITIONER,

v. CASE NO. 2011-08740

RONALD JOHN LEWIS, M.D.,

RESPONDENT.
_____/

ADMINISTRATIVE COMPLAINT

Petitioner, Department of Health, by and through its undersigned counsel, hereby files this Administrative Complaint before the Board of Medicine against Respondent, Ronald John Lewis, M.D., and in support thereof alleges:

1. Petitioner is the state department charged with regulating the practice of medicine pursuant to Section 20.43, Florida Statutes; Chapter 456, Florida Statutes; and Chapter 458, Florida Statutes.

2. At all times material to this Complaint, Respondent was a licensed physician within the state of Florida, having been issued license number ME 46177.

34396

3. Respondent's address of record is 98 Ocean Drive, St. Augustine, Florida 32080.

4. At all times material to this Complaint, Respondent was certified by the American Board of Radiology, with a certification in Diagnostic Radiology.

5. The State of Colorado, Department of Regulatory Agencies (Colorado Board), is the licensing authority regulating the practice of medicine in the State of Colorado.

6. On or about April 14, 2011, the Colorado Board issued a Letter of Admonition (Case Number 2011-002268-A) which admonished Respondent's license and assessed an administrative fine of $287.50.

7. The April 14, 2011, disciplinary action taken by Colorado Board against Respondent was based on allegations that Respondent made an affirmative answer to a 2009 Colorado license renewal question regarding payments paid on his medical malpractice insurance and failed to answer the Colorado Board's inquiry regarding the affirmative answer.

8. Respondent failed to notify the Florida Board of Medicine, in writing, within 30 days of the April 14, 2011, disciplinary action of the Colorado Board.

9. As of November 29, 2011, Respondent has failed to update his Florida Practitioner Profile to disclose the April 14, 2011, disciplinary action of the Colorado Board.

COUNT I

10. Petitioner re-alleges and incorporates by reference Paragraphs 1 through 6, as if fully set forth herein.

11. Section 458.331(1)(b), Florida Statutes (2010), sets forth the grounds for disciplinary action by the Board of Medicine and provides that having a license or the authority to practice medicine revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of another jurisdiction constitutes grounds for discipline.

12. The Colorado Board acted against Respondent's Colorado medical license on or about April 14, 2011, by entering the above-referenced order.

13. Based on the foregoing, Respondent has violated Section 458.331(1)(b), Florida Statutes (2010), by having his license acted against by the licensing authority of Colorado.

COUNT II

14. Petitioner re-alleges and incorporates by reference Paragraphs 1 through 6 and Paragraph 8, as if fully set forth herein.

34398

15. Section 458.331(1)(kk), Florida Statutes (2010), provides that failing to report to the Board of Medicine, in writing, within 30 days when action, as defined in Section 458.331(1)(b), Florida Statutes, is taken against one's license to practice as a physician in another state, territory or country, constitutes grounds for discipline by the Florida Board of Medicine.

16. Respondent failed to report the April 14, 2011, disciplinary action taken against his license by the Colorado Board, in writing, to the Florida Board of Medicine within 30 days of such action.

17. Based on the foregoing, Respondent has violated Section 458.331(1)(kk), Florida Statutes (2010), by failing to timely report the April 14, 2011, Colorado disciplinary action to the Florida Board of Medicine, in writing, within 30 days of such action.

WHEREFORE, the Petitioner respectfully requests that the Board of Medicine enter an order imposing one or more of the following penalties: permanent revocation or suspension of Respondent's license, restriction of practice, imposition of an administrative fine, issuance of a reprimand, placement of the Respondent on probation, corrective action, refund of fees billed or collected, remedial education and/or any other relief that the Board deems appropriate.

SIGNED this 13th day of January, 2012.

H. Frank Farmer, Jr., M.D., Ph.D., FACP
State Surgeon General

Laura L. Glenn
Assistant General Counsel
DOH, Prosecution Services Unit
4052 Bald Cypress Way, Bin C-65
Tallahassee, Florida 32399-3265
Florida Bar No. 0861413
Telephone: (850) 245-4640
Facsimile: (850) 245-4681

PCP: January 13, 2012
PCP Members: Ashkar & Bearison

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK:
DATE 1-17-12

DOH VS. LEWIS, M.D., CASE NO. 2011-08740

34400

NOTICE OF RIGHTS

Respondent has the right to request a hearing to be conducted in accordance with Section 120.569 and 120.57, Florida Statutes, to be represented by counsel or other qualified representative, to present evidence and argument, to call and cross-examine witnesses and to have subpoena and subpoena duces tecum issued on his or her behalf if a hearing is requested.

NOTICE REGARDING ASSESSMENT OF COSTS

Respondent is placed on notice that Petitioner has incurred costs related to the investigation and prosecution of this matter. Pursuant to Section 456.072(4), Florida Statutes, the Board shall assess costs related to the investigation and prosecution of a disciplinary matter, which may include attorney hours and costs, on the Respondent in addition to any other discipline imposed.

John D. Campbell, M.D. –
Request for Modification of Final Order

MEDICINE BOARD
14 MAY -7 PM 3:57

John D. Campbell M.D. FLME0034315
POB 2034
Winter Haven, Florida 33883
863 207 4243
Jcampbellmd47@gmail.com

May 7, 2014

Florida Board of Medicine
4057 Bald Cypress Way Bin C-03
Tallahassee, Florida

Dear Board,

I am writing this letter to petition the Board for certain alterations in my stipulated requirement to practice medicine...*my passion*. I would like to be on the June "Docket" if possible. The changes I am requesting are:

1. Decreasing the total time of supervision to six months.
2. Changing the supervision from direct to indirect.
3. Eliminating the 0-20 hour part time work week.

I have been at Florida Hospital doing Family Medicine and Emergency Medicine observiorships for the past seven weeks starting at 7:00 AM to 7:00 PM. Letters on behalf are to be sent to you to give to each Board Member. I included Dr. Bruno's letter of recommendation to insure that at least his evaluation letter arrives. The others are in process purportedly!
Thank you for all your help that has been given me by you.

Sincerely,

M.D. 5/7/14 Circa 2PM

John D. Campbell M.D.

PS Note, please use my new address, telephone numbers, etc. when contacting me... preferably by email in that I am 80 miles from the POB.

14 MAY 13 AM 8:37
OSTEOPATHIC

Patricio G. Bruno, DO, FAAFP, FHM
Director of Osteopathic Medical Education
***Program Director,* Family Medicine Residency**

Associate Professor of Family Medicine
University of Central Florida
College of Medicine

Lieutenant Colonel, Medical Corps
United States Air Force Reserve

Florida Hospital *East Orlando*
7975 Lake Underhill Road, Suite 210
Orlando, Florida, 32828
(407) 303-8683 Fax: (407) 303-8659
patricio.bruno.do@flhosp.org

May 6, 2014

To Whom It May Concern:

I am happy to provide this letter of support for Dr. John D. Campbell, MD. Dr. Campbell has been serving as a volunteer at Florida Hospital in the capacity of medical observer/assistant. Briefly, Dr. Campbell suffered an accident with a traumatic brain injury which left cognitive and speech deficiencies. He is under evaluation by the Florida Board of Medicine for sufficient recovery to return to practice with an unrestricted license.

During the time Dr. Campbell has spent with us, he has demonstrated intelligence, a profound understanding of complex medical concepts, has imparted logical anecdotes of past experiences from his medical career and has offered meaningful discourse and contributions to the medical teams.

He has participated in nearly all didactic activities with not just our Family Medicine residency, but with the Emergency Medicine Residency as well. He has participated in clinical rounds in the ED, on the medical wards, including the ICU and has assisted in clinic. He has been able to effectively interview patients and develop sound differential diagnoses and treatment plans commensurate with his experience as a general practitioner of many years. He has additionally demonstrated an avid and contagious commitment to continued learning and has shown evidence of being able to learn new concepts and apply them in a clinical setting.

On a personal note, Dr. Campbell is a pleasure and wonderful human being. He is always respectful, professional, and pleasant and has a truly positive attitude that is both, educational and inspirational to us all. His goal is to return to practice and provide service in the Native American Indian Health Service Corps. The tribal health system would benefit greatly from his experience, clinical ability and example of the ability to overcome.

I offer a strong recommendation, without reservation. Please contact me with questions as needed.

Respectfully submitted,

Patricio Bruno, DO

14 MAY 13 AM 8:37

John D. Campbell M.D.
POB 2034
Winter Haven, Fl 33883
863 207 4243
JCampbellmd47@gmail.com

May 16, '14

Fl Board
Crystal Sanford

Lic# 34315

Dear Crystal:

I'm sending a copy of a character reference from one of Florida Hospital EM Program Dr Acevedo M.D. He sent to me by US mail yesterday. I assume again that he didn't address to the Board specifically. He in addition to Dr Riverbank MD and Dr Nazario M.D. probably did likewise. They aren't available for me to contact them until next week. Thanks as always.

Sincerely,

M.D. circa 1:50pm 5/16/14

John D. Campbell M.D.

500 WINDERLEY PLACE, SUITE 115
MAITLAND, FL 32751
PHONE: (407) 875-0555
FAX : (407) 875-0244

May 9, 2014

Ref: Dr. John Campbell

To whom it may concern:

I have known Dr. John Campbell for the last 5 months as he attends our didactic conferences at Florida Hospital East Orlando Emergency Department Residency Program. Also he has shadowed some of my shifts at the Florida Hospital East Orlando Emergency Department. Ours is a 90,000 visits Emergency Department covering the whole spectrum of pathology.

Dr. Campbell participates in our Morning Reports with insightful questions and comments about the care provided by our Residents. Dr. Campbell is a complete professional, with excellent bedside manners, sound interpersonal skills, and a human touch that is so necessary while dealing with so many patients in desperate need.

Please feel free to contact me if I can be of any assistance. My office number is 407-875-0555.

Sincerely yours,

Miguel A. Acevedo, MD, FACEP
Senior Partner,
Florida Emergency Physicians
Assistant Clinical Professor,
University of Central Florida College of Medicine

MEMORANDUM

To: Board of Medicine
From: Shaila Washington, Compliance Officer
Respondent: **John D. Campbell, M.D. – ME 34315**
RE: Modification Request

Current Issues:

Enclosed you will find a request for modification of the probationary requirements. Dr. Campbell is specifically requesting the Board's consideration in the following areas:

- Decrease the total time of supervision to six months
- Changing the supervision from direct to indirect
- Elimination of the 0-20 hour part time work week

CARES Recommendations:

1. Additional 40 hours of CME in family medicine-preferably a Board Review Course
2. Reestablishment of a contract with PRN in order to insure continued psychiatric follow up for Bipolar disorder and reinitiating psychotherapy and/or cognitive behavioral therapy as recommended by an appropriate psychiatrist/therapist
3. Completion of a physical examination refresher course-self-directed or CME providing if available.
4. Restriction of practice to part-time for 6-12 months with direct supervision to assure successful re-initiation back into practice.
5. Period of probation and additional supervision to be determined by the Board.

Requirements:

- **Costs:** $32,701.57 due within one year of the reinstatement of license to practice
- **Suspension:** Suspended until such time as he personally appears before the Board and demonstrates the ability to practice medicine with reasonable skill and safety.
- **Neuropsychological Costs -** The costs associated with the neuropsychological assessment must be paid with one year from the date the Final Order is filed.
- **Reinstatement Appearance:** Respondent must personally appear before the Board and demonstrate the ability to practice with reasonable skill and safety.

Order Granting Reinstatement filed December 23, 2013:

- **Probation:** Respondent shall be placed on probation for as long as he holds an active license to practice medicine in the State of Florida
  - First Appearance
  - Direct Supervision
  - Triannual Monitor Reports
    - Review 100% of respondent's patient records at least once every month
  - Triannual Appearances
  - Last Appearance

    - Tolling
    - After 2 years of practice under the direct supervision as outlined above, and PRN's approval, Respondent may petition the Board to change his supervision level from direct to in direct supervision.
    - Respondent must limit his practice of medicine to less than 20 hours per week. After 12 months, Respondent may petition the Probation Committee to lift this practice restriction provided the Professionals Resource Network (PRN) agrees that it is appropriate to do so.
- PRN shall provide monthly reports to the Board's Probation Committee with regard to Respondent's continued ability to practice medicine with reasonable skill and safety.

Outstanding Requirements:

- **Costs:** $32,701.57 due within one year of the reinstatement of license to practice
- **Suspension:** Suspended until such time as he personally appears before the Board and demonstrates the ability to practice medicine with reasonable skill and safety.
- **Neuropsychological Costs -** The costs associated with the neuropsychological assessment must be paid with one year from the date the Final Order is filed.
- **Reinstatement Appearance:** Respondent must personally appear before the Board and demonstrate the ability to practice with reasonable skill and safety.

Order Granting Reinstatement filed December 23, 2013:

- **Probation:** Respondent shall be placed on probation for as long as he holds an active license to practice medicine in the State of Florida
    - First Appearance
    - Direct Supervision
    - Triannual Monitor Reports
        - Review 100% of respondent’s patient records at least once every month
    - Triannual Appearances
    - Last Appearance
    - Tolling
    - After 2 years of practice under the direct supervision as outlined above, and PRN's approval, Respondent may petition the Board to change his supervision level from direct to in direct supervision.
    - Respondent must limit his practice of medicine to less than 20 hours per week. After 12 months, Respondent may petition the Probation Committee to lift this practice restriction provided the Professionals Resource Network (PRN) agrees that it is appropriate to do so.
- PRN shall provide monthly reports to the Board's Probation Committee with regard to Respondent's continued ability to practice medicine with reasonable skill and safety.

COMPAS DataMart Reporting System
CMU Board Summary/Case File Report 200908871
May 15, 2014

Current Issue:

In Compliance

Profession: 1501: Medical Doctor

Licensee: John D. Campbell

License Nbr: 34315

File Nbr: 26766

License Status: Probation/Active

Mailing Address: PO Box 2034
Winter Haven, FL 33883

Primary Location: Not Practicing In Florida
P O Box 6320
Tallahassee, FL 32314-6320

Phone: (863) 968-3429

Attorney: None on Record

Monitor: None on Record

Supervisor: None on Record

Respondent: John D. Campbell

Appeal: no

Address: 529 Berkley Rd
Auburndale, FL 33823

File Date: 10/13/2010

Info Package Mailed Date: 10/22/2010

Disposition: Suspension

Violation: Impaired from alc/drugs/other

Summary: Possible violation of F.S. 458.331(1)(s). Complainant alleges subject was responding to an election of proceedings after being declared/told he was mentally unfit by AHCA. Subject complaint history shows possible PRN involvement. After preliminary investigation, it was determined through an interview with an AHCA program administrator staff was quite concerned about subject's managment of office. It was stated by this administrator that subject spoke at times incoherently by discussing patient's sexual habits. AHCA decided to terminate subject's participation in various programs. During this interview, the administrator noted having numerous phone conversations with subject, and that it was her understanding that the subject suffered a brain injury and that subject admitted to "stealing his medication" from patients. Documentation includes communication between subject and representatives from AHCA. An on-site visit was conducted on 12/04/2006 which noted subject could not remain focused in a conversation, his emotional state, discussion of unusual sexual practices of patients, and the physical state of his office. Analyzed by: Ronnie Shipp

Discipline Imposed:	Start Date	End Date	Comments
Emergency Suspension	02/26/2010	10/12/2010	
Suspension	10/13/2010	12/22/2013	Respondent's license to practice medicine in the State of Florida is suspended until such time as he personally appears before the Board and demonstrates the ability to practice medicine with reasonable skill and safety.
Probation	12/23/2013		Respondent must limit his practice of medicine to less than 20 hours per week. After 12 months, Respondent may petition the Probation Committee to lift this practice restriction provided the Professionals Resource Network (PRN) agrees that it is appropriate to do so. Respondent shall be placed on probation for as long as he holds an active license to practice medicine in the State of Florida.

Compliance:	Record	Due Date	Cmpl Date	Amt Imposed	Amt Paid
	Reinstatement Appearance		12/06/2013		

Personally appear and demonstrate the ability to practice medicine with reasonable skill and safety.

08/18/11 - Order filed denying reinstatement. Dr. Campbell has not demonstrated the ability to practice medicine with reasonable skill and safety.

04/11/11 ¿ Order filed denying reinstatement. Dr. Campbell has not demonstrated that he is capable of practicing medicine with reasonable skill and safety

NO	**Miscellaneous**	**10/13/2011**			

The costs associated with the neuropsychological assessment must be paid with one year from the date the Final Order is filed.

Costs	12/23/2014		32,701.57	0.00

The remaining costs shall be paid within one year of reinstatement of Respondent's license to practice medicine.

Reinstatement Denied		04/11/2011

Order Denying Reinstatement - Respondent has not demonstrated that he is capable of practicing medicine with reasonable skill and safety.

Reinstatement Denied		08/18/2011

Order Denying Reinstatement - Respondent has not demonstrated the ability to practice medicine with reasonable skill and safety.

Reinstatement Denied		08/13/2013

Order Denying Reinstatement - Respondent has not demonstrated that he is complied with the recommendations made by Florida CARES.

Reinstatement with Conditions		12/23/2013

The Board GRANTED Respondent's request for reinstatement subject to the following terms and conditions:
1. Respondent shall be placed on probation for as long as he holds an active license to practice medicine in the State of Florida.

PRN Status Reports	01/23/2014	02/19/2014

02/19/14 - There have been no changes in his condition, which have come to the attention of PRN, that would indicate he is not safe to practice.
02/17/14 - Dr. John Campbell remains in compliance with his PRN monitoring contract.

PRN shall provide monthly reports to the
Board's Probation Committee with regard to Respondent's continued ability to practice medicine with reasonable skill and safety.

PRN Status Reports	02/23/2014	02/19/2014

02/19/14 - There have been no changes in his condition, which have come to the attention of PRN, that would indicate he is not safe to practice.
02/17/14 - Dr. John Campbell remains in compliance with his PRN monitoring contract.
PRN shall provide monthly reports to the Board's Probation Committee with regard to Respondent's continued ability to practice medicine with reasonable skill and safety.

PRN Status Reports	03/23/2014	03/21/2014

03/21/14 - Email received from N. Tomaszewski with PRN - Good morning, this is the required monthly compliance report for John Campbell, M. D. Dr. Campbell remains in compliance with his PRN monitoring contract and is safe to practice with reasonable skill and safety in accordance with his final order from the Board of Medicine.

PRN shall provide monthly reports to the Board's Probation Committee with regard to Respondent's continued ability to practice medicine with reasonable skill and safety.

PRN Status Reports 04/23/2014 04/21/2014

Email received from N. Tomaszewski with PRN - Good Afternoon, this is the required monthly compliance report for John Campbell, M. D. Dr. Campbell remains in compliance with his PRN monitoring contract and is safe to practice with reasonable skill and safety in accordance with his final order from the Board of Medicine. Thank you.

PRN shall provide monthly reports to the
Board's Probation Committee with regard to Respondent's continued ability to practice medicine with reasonable skill and safety.

PRN Status Reports 05/23/2014

PRN shall provide monthly reports to the Board's Probation Committee with regard to Respondent's continued ability to practice medicine with reasonable skill and safety.

PRN Status Reports 06/23/2014

PRN shall provide monthly reports to the Board's Probation Committee with regard to Respondent's continued ability to practice medicine with reasonable skill and safety.

PRN Status Reports 07/23/2014

PRN shall provide monthly reports to the Board's Probation Committee with regard to Respondent's continued ability to practice medicine with reasonable skill and safety.

PRN Status Reports 08/23/2014

PRN shall provide monthly reports to the Board's Probation Committee with regard to Respondent's continued ability to practice medicine with reasonable skill and safety.

PRN Status Reports 09/23/2014

PRN shall provide monthly reports to the Board's Probation Committee with regard to Respondent's continued ability to practice medicine with reasonable skill and safety.

PRN Status Reports 10/23/2014

PRN shall provide monthly reports to the Board's Probation Committee with regard to Respondent's continued ability to practice medicine with reasonable skill and safety.

PRN Status Reports 11/23/2014

PRN shall provide monthly reports to the Board's Probation Committee with regard to Respondent's continued ability to practice medicine with reasonable skill and safety.

PRN Status Reports 12/23/2014

PRN shall provide monthly reports to the Board's Probation Committee with regard to Respondent's continued ability to practice medicine with reasonable skill and safety.

PRN Status Reports 01/23/2015

PRN shall provide monthly reports to the Board's Probation Committee with regard to Respondent's continued ability to practice medicine with reasonable skill and safety.

PRN Status Reports 02/23/2015

PRN shall provide monthly reports to the Board's Probation Committee with regard to Respondent's continued ability to practice medicine with reasonable skill and safety.

PRN Status Reports 03/23/2015

PRN shall provide monthly reports to the Board's Probation Committee with regard to Respondent's continued ability to practice medicine with reasonable skill and safety.

PRN Status Reports 04/23/2015

PRN shall provide monthly reports to the Board's Probation Committee with regard to Respondent's continued ability to practice medicine with reasonable skill and safety.

PRN Status Reports 05/23/2015

PRN shall provide monthly reports to the Board's Probation Committee with regard to Respondent's continued ability to practice medicine with reasonable skill and safety.

PRN Status Reports 06/23/2015

PRN shall provide monthly reports to the Board's Probation Committee with regard to Respondent's continued ability to practice medicine with reasonable skill and safety.

PRN Status Reports 07/23/2015

PRN shall provide monthly reports to the Board's Probation Committee with regard to Respondent's continued ability to practice medicine with reasonable skill and safety.

PRN Status Reports 08/23/2015

PRN shall provide monthly reports to the Board's Probation Committee with regard to Respondent's continued ability to practice medicine with reasonable skill and safety.

PRN Status Reports 09/23/2015

PRN shall provide monthly reports to the Board's Probation Committee with regard to Respondent's continued ability to practice medicine with reasonable skill and safety.

PRN Status Reports 10/23/2015

PRN shall provide monthly reports to the Board's Probation Committee with regard to Respondent's continued ability to practice medicine with reasonable skill and safety.

PRN Status Reports 11/23/2015

PRN shall provide monthly reports to the Board's Probation Committee with regard to Respondent's continued ability to practice medicine with reasonable skill and safety.

PRN Status Reports 12/23/2015

PRN shall provide monthly reports to the Board's Probation Committee with regard to Respondent's continued ability to practice medicine with reasonable skill and safety.

PRN Status Reports 01/23/2016

PRN shall provide monthly reports to the Board's Probation Committee with regard to Respondent's continued ability to practice medicine with reasonable skill and safety.

PRN Status Reports 02/23/2016

PRN shall provide monthly reports to the Board's Probation Committee with regard to Respondent's continued ability to practice medicine with reasonable skill and safety.

PRN Status Reports 03/23/2016

PRN shall provide monthly reports to the Board's Probation Committee with regard to Respondent's continued ability to practice medicine with reasonable skill and safety.

PRN Status Reports 04/23/2016

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PRN Status Reports 05/23/2016

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PRN Status Reports 12/23/2016

PRN shall provide monthly reports to the Board's Probation Committee with regard to Respondent's continued ability to practice medicine with reasonable skill and safety.

NO **Subsequent Order**

The Board GRANTED Respondent's request for reinstatement subject to the following terms and conditions:
1. Respondent shall be placed on probation for as long as he holds an active license to practice medicine in the State of Florida.

NO **First Appearance**

Respondent shall appear before the Board's Probation Committee at the first meeting after said probation commences.

NO **Last Appearance**

NO **Triannual Appearance**

NO **Pre-approval of Supervisor/Monitor**

NO **Triannual Monitor Report**

Submit triannual reports, in affidavit form, which shall include:
(1) Brief statement of why physician is on probation.
(2) Description of probationer's practice.
(3) Brief statement of probationer's compliance with terms of probation.
(4) Brief description of probationer's relationship with supervising physician.
(5) Detail any problems which may have arisen with probationer.
b. Review 100% of Respondent's patient records at least once every month.
c. Report to the Board any violation by the probationer of Chapter 456 and 458, Florida Statutes, and the rules promulgated pursuant thereto.

NO **Tolling**

NO **Direct Supervision**

Respondent shall not practice except under the direct supervision of a BOARD CERTIFIED physician fully licensed under Chapter 458 who has been approved by the Probation Committee.

After 2 years of practice under the direct supervision as outlined above, and PRN's approval, Respondent may petition the Board to change his supervision level from direct to indirect supervision.

Activities:	Activity Date	Actv Code	Activity Description
	04/21/2010	923	Mail Processed/Reviewed
	10/22/2010	901	Info pack mailed
	01/07/2011	931	Respondent Contacted CO
	01/11/2011	915	Mail Received in CMU
	03/10/2011	931	Respondent Contacted CO
	03/11/2011	916	Fax Received
	03/15/2011	915	Mail Received in CMU
	03/22/2011	923	Mail Processed/Reviewed
	04/11/2011	997	Reinstatement Denied
	08/18/2011	997	Reinstatement Denied
	09/15/2011	915	Mail Received in CMU
	10/17/2011	931	Respondent Contacted CO
	10/17/2011	932	CO Contacted Respondent
	10/17/2011	923	Mail Processed/Reviewed
	10/24/2011	932	CO Contacted Respondent
	03/15/2012	956	CO Contacted PSU
	03/16/2012	915	Mail Received in CMU
	03/23/2012	932	CO Contacted Respondent
	08/08/2012	932	CO Contacted Respondent
	10/04/2012	932	CO Contacted Respondent
	10/04/2012	937	CO File Sent to Warehouse
	08/13/2013	997	Reinstatement Denied
	08/28/2013	923	Mail Processed/Reviewed
	11/25/2013	915	Mail Received in CMU
	01/07/2014	962	Board Contacted CO
	01/07/2014	961	CO Contacted Board
	02/14/2014	941	Contact with IPN/PRN
	02/19/2014	941	Contact with IPN/PRN
	02/19/2014	941	Contact with IPN/PRN
	02/19/2014	941	Contact with IPN/PRN
	03/21/2014	941	Contact with IPN/PRN
	03/21/2014	941	Contact with IPN/PRN
	03/21/2014	923	Mail Processed/Reviewed
	04/24/2014	941	Contact with IPN/PRN
	04/24/2014	941	Contact with IPN/PRN
	04/24/2014	932	CO Contacted Respondent

Contact History:	Contact Date	Letter Code	Letter Description
	10/22/2010	NN179	INVOICE
	10/22/2010	NN156	CMU SUSPENDED LETTER W/ OBLIGATIONS
	02/14/2014	NN101	WARNING LETTER

Attachments:

One or more pages have been removed from this document for security reasons

Scroll down to see the available pages or advance to the next document if all pages have been removed.

SOME OR ALL PAGES IN THIS DOCUMENT ARE PATIENT RECORDS AND/OR DOCUMENTS THAT IDENTIFY THE PATIENT BY NAME AND ARE EXEMPT FROM PUBLIC RECORDS LAWS.

456.057 - Ownership and control of patient records; report or copies of records to be furnished.—

10)(a)All patient records obtained by the department and any other documents maintained by the department which identify the patient by name are confidential and exempt from s. 119.07(1) and shall be used solely for the purpose of the department and the appropriate regulatory board in its investigation, prosecution, and appeal of disciplinary proceedings. The records shall not be available to the public as part of the record of investigation for and prosecution in disciplinary proceedings made available to the public by the department or the appropriate board.

File # 26766

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK Angel Sanders
DATE 12-23-13

STATE OF FLORIDA
BOARD OF MEDICINE

DEPARTMENT OF HEALTH,

Petitioner,

vs.

DOH CASE NO.: 2009-08871
DOAH CASE NO.: 10-1678PL
LICENSE NO.: ME0034315

JOHN D. CAMPBELL, M.D.,

Respondent.
_____/

ORDER GRANTING REINSTATEMENT

THIS CAUSE came before the BOARD OF MEDICINE (Board), on December 6, 2013, in Orlando, Florida, for the purpose of considering Respondent's request for reinstatement of his license to practice medicine. The Respondent's license was suspended by Final Order filed in this matter on October 13, 2010. Upon review of the documents submitted, and the argument of the parties, the Board GRANTED Respondent's request for reinstatement subject to the following terms and conditions:

1. Respondent shall be placed on probation for as long as he holds an active license to practice medicine in the State of Florida subject to the following terms and conditions:

2. Respondent shall appear before the Board's Probation Committee at the first meeting after said probation commences, triannually, and at such other times requested by the Committee. Respondent shall be noticed by Board staff of the date, time and place of the Board's Probation Committee whereat Respondent's appearance is required. Failure of the Respondent to appear as requested or directed shall be considered a violation of the terms of probation, and shall subject the Respondent to disciplinary action.

3. Respondent shall not practice except under the **direct supervision** of a **BOARD CERTIFIED** physician fully licensed under Chapter 458 who has been approved by the Probation Committee. The supervisory physician shall work in the same office with the Respondent. Absent provision for and compliance with the terms regarding temporary approval of a supervising physician set forth below, Respondent shall cease practice and not practice until the Probation Committee approves a supervising physician. Respondent shall have the supervising physician appear at the first probation appearance before the Probation Committee. Prior to approval of the supervising physician by the Committee, the Respondent shall provide

to the supervising physician a copy of the Administrative Complaint and Final Order filed in this case. A failure of the Respondent or the supervising physician to appear at the scheduled probation meeting shall constitute a violation of the Board's Final Order. Prior to the approval of the supervising physician by the committee, Respondent shall submit to the committee a current curriculum vitae and description of the current practice of the proposed supervising physician. Said materials shall be received in the Board office no later than fourteen days before the Respondent's first scheduled probation appearance. The attached definition of a supervising physician is incorporated herein. The responsibilities of a supervising physician shall include:

a. Submit triannual reports, in affidavit form, which shall include:

(1) Brief statement of why physician is on probation.

(2) Description of probationer's practice.

(3) Brief statement of probationer's compliance with terms of probation.

(4) Brief description of probationer's relationship with supervising physician.

(5) Detail any problems which may have arisen with probationer.

b. Review **100%** of Respondent's patient records at least once every month.

c. Report to the Board any violation by the probationer of Chapter 456 and 458, Florida Statutes, and the rules promulgated pursuant thereto.

4. ALTERNATE MONITOR. In view of the need for ongoing and continuous monitoring or supervision, Respondent shall also submit the curriculum vitae and name of an alternate supervising/monitoring physician who shall be approved by Probation Committee. Such physician shall be licensed pursuant to Chapter 458, Florida Statutes, and shall have the same duties and responsibilities as specified for Respondent's monitoring/supervising physician during those periods of time which Respondent's monitoring/supervising physician is temporarily unable to provide supervision. Prior to practicing under the indirect supervision of the alternate monitoring physician or the direct supervision of the alternate supervising physician, Respondent shall so advise the Board in writing. Respondent shall further advise the Board in writing of the period of time during which

Respondent shall practice under the supervision of the alternate monitoring/supervising physician. Respondent shall not practice unless Respondent is under the supervision of either the approved supervising/monitoring physician or the approved alternate.

5. CONTINUITY OF PRACTICE.

a. TOLLING PROVISIONS. In the event the Respondent leaves the State of Florida for a period of 30 days or more or otherwise does not or may not engage in the active practice of medicine in the State of Florida, then certain provisions of the requirements in the Final Order shall be tolled and shall remain in a tolled status until Respondent returns to the active practice of medicine in the State of Florida. **Respondent shall notify the Compliance Officer 10 days prior to his/her return to practice in the State of Florida.** Unless otherwise set forth in the Final Order, **the following requirements and only the following requirements** shall be tolled until the Respondent returns to active practice:

(1) The time period of probation shall be tolled.

(2) The provisions regarding supervision whether direct or indirect by the monitor/supervisor, and

required reports from the monitor/supervisor shall be tolled.

b. ACTIVE PRACTICE. In the event that Respondent leaves the active practice of medicine for a period of one year or more, the Respondent may be required to appear before the Board and demonstrate the ability to practice medicine with reasonable skill and safety to patients prior to resuming the practice of medicine in the State of Florida.

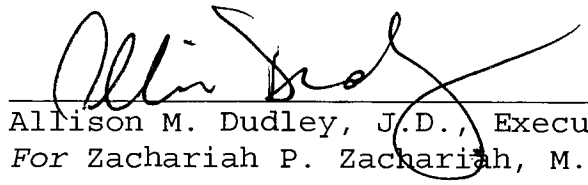
6. After 2 years of practice under the direct supervision as outlined above, and PRN's approval, Respondent may petition the Board to change his supervision level from direct to indirect supervision.

7. Respondent must limit his practice of medicine to less than 20 hours per week. After 12 months, Respondent may petition the Probation Committee to lift this practice restriction provided the Professionals Resource Network (PRN) agrees that it is appropriate to do so.

8. PRN shall provide monthly reports to the Board's Probation Committee with regard to Respondent's continued ability to practice medicine with reasonable skill and safety.

DONE AND ORDERED this 20th day of December, 2013.

BOARD OF MEDICINE



Allison M. Dudley, J.D., Executive Director
For Zachariah P. Zachariah, M.D., Chair

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been provided by U.S. Mail to JOHN D. CAMPBELL, M.D., 529 Berkley Road, Auburndale, Florida 33823; and 5805 Spirit Lake Road, Winter Haven, Florida 33880; to Allen R. Grossman, Esquire, Grossman, Furlow & Bayo, 2022-2 Raymond Diehl Road, Tallahassee, Florida 32308; and by interoffice delivery to Doug Sunshine, Department of Health, 4052 Bald Cypress Way, Bin #C-65, Tallahassee, Florida 32399-3253 this 23 day of December, 2013.

Deputy Agency Clerk

Final Order No. DOH-10-2344-FOF-MQA
FILED DATE - 10-13-10
Department of Health
By: Brande May
Deputy Agency Clerk

STATE OF FLORIDA
BOARD OF MEDICINE

DEPARTMENT OF HEALTH,

Petitioner,

vs.

DOH CASE NO.: 2009-08871
DOAH CASE NO.: 10-1678PL
LICENSE NO.: ME0034315

JOHN D. CAMPBELL, M.D.,

Respondent.
_____/

FINAL ORDER

THIS CAUSE came before the BOARD OF MEDICINE (Board) pursuant to Sections 120.569 and 120.57(1), Florida Statutes, on October 1, 2010, in Orlando, Florida, for the purpose of considering the Administrative Law Judge's Recommended Order(a copy of which is attached hereto as Exhibit A) in the above-styled cause. Petitioner was represented by Diane Kiesling, Assistant General Counsel. Respondent appeared pro se.

Upon review of the Recommended Order, the argument of the parties, and after a review of the complete record in this case, the Board makes the following findings and conclusions.

RULINGS ON EXCEPTIONS

1. The Board reviewed and considered the Respondent's filing of a letter dated August 11, 2010, which appear to be exceptions to Paragraph 10 of the findings of fact in the

Recommended Order and denied the exception for the reasons set forth by the Petitioner on the record.

2. The Board reviewed and considered the Respondent's filing of a letter dated August 10, 2010, which appears to be exceptions to the recommended penalty set forth in the Recommended Order and denied the exception for the reasons set forth by the Petitioner on the record.

Ruling on Department's Motion to Strike

The Board considered the Department's Motion to Strike the Respondent's materials which were submitted beyond the deadline provided for filing exceptions. The Board granted the Department's Motion to Strike because the filings were not timely and attempted to add factual information to the record that was not presented or considered by the ALJ below.

FINDINGS OF FACT

1. The findings of fact set forth in the Recommended Order are approved and adopted and incorporated herein by reference.

2. There is competent substantial evidence to support the findings of fact.

CONCLUSIONS OF LAW

1. The Board has jurisdiction of this matter pursuant to Section 120.57(1), Florida Statutes, and Chapter 458, Florida Statutes.

2. The conclusions of law set forth in the Recommended Order are approved and adopted and incorporated herein by reference.

PENALTY

Upon a complete review of the record in this case, the penalty recommended by the Administrative Law Judge is ACCEPTED. WHEREFORE, IT IS HEREBY ORDERED AND ADJUDGED:

Respondent's license to practice medicine in the State of Florida is hereby SUSPENDED until such time as he personally appears before the Board and demonstrates the ability to practice medicine with reasonable skill and safety. The Board reserves jurisdiction in this matter to impose a period and terms of probation at the time, if any, that Respondent's license is reinstated.

RULING ON MOTION TO ASSESS COSTS

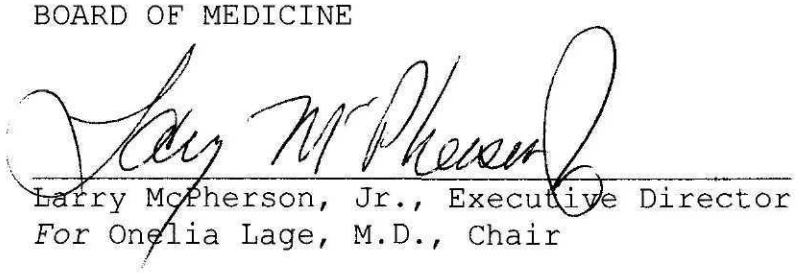
The Board reviewed the Petitioner's Motion to Assess Costs and imposes the costs associated with this case in the amount of $32,701.57. The costs associated with the neuropsychological assessment must be paid within one year from the date this Final Order is filed. The remaining costs shall be paid within one year of reinstatement of Respondent's license to practice medicine.

(NOTE: SEE RULE 64B8-8.0011, FLORIDA ADMINISTRATIVE CODE. UNLESS OTHERWISE SPECIFIED BY FINAL ORDER, THE RULE SETS FORTH THE

REQUIREMENTS FOR PERFORMANCE OF ALL PENALTIES CONTAINED IN THIS FINAL ORDER.)

DONE AND ORDERED this 12 day of OCTOBER, 2010.

BOARD OF MEDICINE



Larry McPherson, Jr., Executive Director
For Onelia Lage, M.D., Chair

NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE DEPARTMENT OF HEALTH AND A SECOND COPY, ACCOMPANIED BY FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, OR WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been provided by U.S. Mail to JOHN D. CAMPBELL, M.D., 529 Berkley Road, Auburndale, Florida 33823; and 5805 Spirit Lake Road, Winter Haven, Florida 33880; to Susan B. Harrell, Administrative Law Judge, Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060; and by interoffice delivery to Veronica Donnelly, Department of Health, 4052 Bald Cypress Way, Bin #C-65, Tallahassee, Florida 32399-3253 this 13 day of October, 2010.

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Deputy Agency Clerk

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STATE OF FLORIDA
DEPARTMENT OF HEALTH

DEPARTMENT OF HEALTH,

PETITIONER,

v. CASE NO. 2009-08871

JOHN D. CAMPBELL, M.D.,

RESPONDENT.

ADMINISTRATIVE COMPLAINT

COMES NOW, Petitioner, Department of Health, by and through its undersigned counsel, and files this Administrative Complaint before the Board of Medicine against Respondent, John D. Campbell, M.D., and in support thereof alleges:

1. Petitioner is the state department charged with regulating the practice of medicine pursuant to Section 20.43, Florida Statutes; Chapter 456, Florida Statutes; and Chapter 458, Florida Statutes.

2. At all times material to this Complaint, Respondent was a licensed physician within the state of Florida, having been issued license number ME 34315.

3. Respondent's address of record is 529 Berkley Road, Auburndale, Florida 33823.

4. In or around January of 2005, Respondent self reported to Professional Resource Network (PRN), secondary to self-acknowledged cognitive deficit resulting from a traumatic brain injury in 1999. PRN is the impaired practitioners program for the Board of Medicine pursuant to Section 456.076, Florida Statutes. PRN is a treatment program that monitors the evaluation, care, and treatment of impaired healthcare

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professionals. PRN oversees random drug screens and provides for the exchange of information between treatment providers and the Department for the protection of the public.

5. In or around November 2005, it was concluded that Respondent's current cognitive abilities were sufficient to practice medicine safely, based on completing the Special Purpose Examination (SPEX) in 2004 and a thorough neuropsychological examination. The SPEX is a computerized, multiple-choice examination of current knowledge used by state medical boards to re-examine a licensed or previously licensed physician's ongoing level of basic medical knowledge.

6. In or around April of 2006, Respondent entered into a licensure long PRN contract which included the involvement of a psychiatrist and psychotherapist.

7. Respondent progressed well in PRN until December of 2006.

8. In or around December of 2006, the Agency for Healthcare Administration (AHCA) performed a site visit regarding Respondent's participation in the LLC MediPass and Florida NetPASS programs. MediPass- (Medicaid Provider Access System), is a primary care case management program for Medicaid beneficiaries developed and administered by Florida Medicaid. Florida NetPASS, LLC provides clinical, pharmaceutical, diagnostic, and financial information of patients to their physicians. It also provides service network services, plan administrative, utilization management, credentialing, member, data analysis and reporting, and preferred drug list education services.

9. On or about December 5, 2006, Respondent was served a formal notification of the immediate termination of his Primary Care Services Agreement with

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Health Network One (HS1) Medical Management. The notice advised there were concerns regarding Respondent's mental competency to practice medicine.

10. In or around July 2009, PRN requested updates from Respondent's psychiatrist and requested Respondent to schedule an updated neuropsychological examination.

11. In or around October 2009, it was determined that Respondent was unable/unwilling to obtain the requested neuropsychological evaluation due to his financial circumstances. PRN provided the Department with names of evaluators that could provide the required evaluation of Respondent.

12. On or about December 7, 9, and 16, 2009, Respondent was evaluated pursuant to an Order to Compel Examination issued by the Department.

13. On or about December 21, 2009, a Compulsory Neuropsychological Evaluation was forwarded to the Department at the request of the Department. Respondent was interviewed alone on two occasions and Respondent underwent a formal mental status examination during the second diagnostic interview on December 16, 2009. Respondent was also administered a battery of neuropsychological tests and psychological emotional, personality, and behavioral tests, with impressions that indicate Respondent demonstrated cognitive, visual-motor, motor difficulties, having neuropathological and psychological etiologies.

14. The evaluator opined, based on his findings coupled with the information provided in the available records, Respondent is not safe to practice his profession as a physician.

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15. PRN is also unable to say that Respondent is able to practice with reasonable skill and safety.

16. Section 458.331(1)(s), Florida Statutes (2009), provides that being unable to practice medicine with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition, constitutes grounds for disciplinary action by the Board of Medicine.

17. Respondent is unable to practice medicine with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition based on one or more of the following reasons: Results of the Compulsory Neuropsychological Evaluation performed on Respondent or about December 7, 9, and 16, 2009; PRN's determination that they are unable to say that Respondent is able to practice with reasonable skill and safety.

18. Based on the foregoing, Respondent has violated Section 458.331(1)(s), Florida Statutes (2009), by being unable to practice medicine with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition.

WHEREFORE, the Petitioner respectfully requests that the Board of Medicine enter an order imposing one or more of the following penalties: permanent revocation or suspension of Respondent's license, restriction of practice, imposition of an administrative fine, issuance of a reprimand, placement of the Respondent on

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Mar 26 2010 16:14
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probation, corrective action, refund of fees billed or collected, remedial education and/or any other relief that the Board deems appropriate.

SIGNED this 12 **day of** March, **2010.**

Ana M. Viamonte Ros, M.D., M.P.H.
Secretary, Department of Health

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK: Angela Barton
DATE 3/16/2010

Ephraim D. Livingston
Assistant General Counsel
DOH Prosecution Services Unit
4052 Bald Cypress Way, Bin C-65
Tallahassee, FL 32399-3265
Florida Bar # 0121347
(850) 245-4640 – p.
(850) 245-4681 – f.

PCP: March 12, 2010
PCP Members: Ashkar, Rosenberg + Levine

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Mar 26 2010 16:14
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STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF HEALTH, BOARD OF MEDICINE,	)	
Petitioner,	)	
vs.	)	Case No. 10-1678PL
JOHN D. CAMPBELL, M.D.,	)	
Respondent.	)	

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case by video teleconference on April 22 and 29, 2010, in Lakeland and Tallahassee, Florida, before Susan B. Harrell, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Robert Anthonie Milne, Esquire
Ephraim Livingston, Esquire
Department of Health
Prosecution Services Unit
4052 Bald Cypress Way, Bin C-65
Tallahassee, Florida 32399

For Respondent: John D. Campbell, M.D., pro se
5805 Spirit Lake Road
Winter Haven, Florida 33880

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STATEMENT OF THE ISSUES

The issues in this case are whether Respondent violated Subsection 458.331(1)(s), Florida Statutes (2009),[1] and, if so, what discipline should be imposed.

PRELIMINARY STATEMENT

On March 16, 2010, the Department of Health (Department), filed an Administrative Complaint before the Board of Medicine (Board), alleging that Respondent, John D. Campbell, M.D. (Dr. Campbell), had violated Subsection 458.331(1)(s), Florida Statutes, "by being unable to practice medicine with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition." At the time the Administrative Complaint was issued, Dr. Campbell was under an Emergency Suspension Order. Dr. Campbell requested an administrative hearing, and the case was forwarded to the Division of Administrative Hearings for assignment to an Administrative Law Judge.

The final hearing was commenced on April 22, 2010, by video teleconference. During the hearing, the undersigned sua sponte continued the final hearing to allow Dr. Campbell to complete his discovery and to allow Petitioner to depose Dr. Campbell's previously undisclosed witnesses. The final hearing was recommenced on April 29, 2010.

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At the final hearing, the Department called James K. Hampton as its witness. Petitioner's Exhibits A through I; the depositions of Dano A. Leli, M.D., Ann Tyson, M.D., and Dr. Campbell; and exhibits to the depositions were admitted in evidence. Dr. Campbell testified in his own behalf and called Jerome Gropper, M.D., and James K. Hampton as his witnesses. Respondent's Exhibits 8, 8A, 10, 15, 15B, and 16 were admitted in evidence. Respondent's Exhibit 17 was not admitted in evidence. Joint Exhibits 1[2] and 2 were admitted in evidence.

The two-volume Transcript of the final hearing was filed on May 18, 2010. At the final hearing, the parties agreed to file their proposed recommended orders within 20 days of the filing of the Transcripts. On June 7, 2010, Petitioner filed a motion to extend the time for filing proposed recommended orders for an additional day. The motion was granted, and the time for filing proposed recommended orders was extended to June 8, 2010. Both parties filed proposed recommended orders, which have been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. The Department is the state agency charged with regulating the practice of medicine in Florida pursuant to Chapters 456 and 458 and Section 20.43, Florida Statutes.

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2. At all times material to this Administrative Complaint, Dr. Campbell was a licensed physician in the State of Florida, having been issued license number ME 34315.

3. Dr. Campbell has suffered two motor vehicle accidents which resulted in closed-head injuries and has sustained damage to his brain resulting from hypoxia from cervical spine surgery. He has some residual effects from his injuries such as some word-finding problems, a tendency to cry easily, trouble with his dexterity, and taking longer than normal to make a point. He takes medications for his brain injuries, including Exelon and Muvigil.

4. In or around January of 2005, Dr. Campbell self-contacted Professional Resource Network (PRN), which is the impaired practitioner's program for the Board of Medicine pursuant to Section 456.076, Florida Statutes. PRN is a program that monitors the evaluation, care, and treatment of impaired healthcare professionals. PRN oversees random drug screens and provides for the exchange of information between treatment providers and the Department for the protection of the public.

5. In or around November 2005, it was concluded that Dr. Campbell's then-current cognitive abilities were sufficient to practice medicine safely based on completing the Special Purpose Examination (SPEX). The SPEX is a computerized, multiple-choice examination of current knowledge used by state

medical boards to re-examine a licensed or previously-licensed physician's ongoing level of basic medical knowledge.

6. In or around April of 2006, Dr. Campbell entered into a licensure-long PRN contract, which included the involvement of a psychiatrist.

7. In or around December of 2006, the Agency for Health Care Administration (AHCA) performed a site visit regarding Dr. Campbell's participation in the LLC Medipass Program. Medipass (Medicaid Provider Access System) is a primary care case management program for Medicaid beneficiaries developed and administered by Florida Medicaid. Florida NetPass LLC provides clinical, pharmaceutical, diagnostic, and financial information for patients to their physicians. It also provides service network services, plan administration, utilization management, credentialing of members, data analysis and reporting, and preferred drug list education services.

8. By letter dated December 5, 2006, Dr. Campbell was advised by Health Network One, Inc. (HN1), of the immediate termination of his Primary Care Services Agreement with HS1 Medical Management, Inc. The basis for the termination of the contract was the site review conducted in December 2006, which led clinical staff to conclude that Dr. Campbell was not mentally competent to practice medicine at that time and that the continuation of the agreement would have a negative effect

on the patients' care. The termination of the contract meant that Dr. Campbell could not provide services to Florida NetPass, MediPass beneficiaries.

9. On April 10, 2007, AHCA advised Dr. Campbell that it was terminating his Medicaid Provider Agreement.

10. In July 2009, PRN sent Dr. Campbell a letter requesting that he provide an update from his psychiatrist, Ann Tyson, M.D. (Dr. Tyson). An update was provided in October 2009 by Dr. Tyson, who concluded that Dr. Campbell's diagnosis and/or medication at that time did not affect his ability to practice medicine.

11. In October 2009, PRN notified Dr. Campbell that it was necessary for him to get new neuropsychological testing done. Dr. Campbell did not have the funds to get the testing done at that time.

12. In December 2009, Dr. Campbell saw Dano A. Leli, Ph.D. (Dr. Leli), for a neuropsychological evaluation. Dr. Leli credibly concluded as follows:

> Based on all of the findings contained in this neuropsychological evaluation coupled with the information provided in the available records, Dr. [Campbell] does not appear to be safe to practice his profession as a physician. This conclusion is based on his above-described neuro-cognitive and motor deficits; poor impulse control, emotional lability, lack of respect for interpersonal boundaries, poor stress tolerance, impaired interpersonal reasoning,

> judgment, planning, and problem-solving skills; lack of insight to how his various disorders are affecting his professional behavior; and his seeming difficulty in receiving any type of constructive feedback designed to help him alter his behavior in a more adaptive fashion.

In his deposition, Dr. Leli credibly testified that it was his opinion that Dr. Campbell was not safe to practice medicine at this time.

13. Dr. Campbell has difficulty with interpersonal space. For example, he continued to unintentionally kick the test examiner under the table during his evaluation testing. He also rested his hands unusually close to the examiner's hands to the extent that it made the examiner uncomfortable. Dr. Campbell did not recognize that he needed to keep boundaries between them. A physician needs to be able to maintain personal boundaries with his patients. Dr. Campbell's inability to maintain appropriate personal boundaries adversely affects his ability to practice medicine.

14. Dr. Campbell demonstrated poor impulse control and poor stress tolerance during his neuropsychological evaluation. He swore frequently during the testing and had loud verbal temper outbursts. A physician needs to be able to keep his emotions in check when he is seeing patients; otherwise, a physician cannot effectively respond to his patients.

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15. During the evaluation, Dr. Campbell told Dr. Leli that he was impulsive and that he cares for his patients too much. Dr. Campbell told Dr. Leli that if he had a patient who was experiencing a heart attack that he would take the patient to the hospital in his personal car rather than call 911 for an ambulance and paramedics. When Dr. Leli asked Dr. Campbell whether Dr. Campbell understood the liability of doing that or the danger to the patient, Dr. Campbell replied that he would still take the patient to the hospital himself. Dr. Campbell's poor impulse control and poor judgment adversely affect his ability to practice medicine.

16. Dr. Campbell has difficulty in judgment, planning, and problem solving. During the evaluation process, Dr. Campbell kept excusing himself to go to a nearby vending machine to get soft drinks. He went so many times, that the evaluator finally told him to go to a convenience store and purchase as many soft drinks as he needed so that they could finish the testing without the interruptions. Additionally, Dr. Campbell had difficulty in using the vending machine. He tried to put a dollar bill in the machine, but the machine would not take the bill. Dr. Campbell went back to the evaluator, got change, and went back to the vending machine. Dr. Campbell did not seem to know what to do with the coins. Finally, the evaluator told him to put the coins in the machine. A physician needs to be able

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to plan and problem solve in dealing with patients. Dr. Campbell's difficulties in these areas adversely affect his ability to practice medicine.

17. Dr. Campbell demonstrated difficulty with motor skills during the evaluation. He was given a test in which he was to tap a key similar to a telegraph key with his finger. He was unable to tap the key with his finger; instead, he placed his whole hand on the key. Dr. Campbell told Dr. Leli that he was having difficulties with his fine motor skills, particularly with his left upper extremity. Dr. Campbell also relayed that he was having tremors in both upper extremities. A physician needs to have fine motor skills in order to touch his patients and make evaluations as well as to use mechanical devices. Dr. Campbell's difficulties with motor skills adversely affect his ability to practice medicine.

18. Dr. Campbell does not understand how his behavior is affecting other people. During the evaluation, Dr. Campbell began to explain to the examiner a diagnosis of diabetes. After he explained the process, which included the drawing of diagrams, Dr. Campbell asked the examiner to reiterate to him what he had just explained, as if he were trying to educate the examiner. The explanation of diabetes was inappropriate in the context of an evaluation setting, and Dr. Campbell did not appear to know that it was inappropriate.

19. The test results of the evaluation demonstrated that Dr. Campbell's visual-motor intellectual abilities were significantly declined when compared to functioning on at least a high average level prior to his injuries. He showed a significant decline on tests of visual concentration and attention. He also had difficulties with auditory processing.

20. Dr. Campbell was given a verbal memory test of stories. He would read a story and then would immediately relate the contents of the story. Thirty minutes after reading the story, he would be asked to relate the contents of the story again. Dr. Campbell was average on immediate retrieval, but was borderline impaired on delayed retrieval. This memory problem would adversely affect his care of patients if he cannot recall what the patient has told him within 30 minutes of the conversation with the patient.

21. Dr. Campbell demonstrated difficulties in paying attention to fine visual detail. This impairment adversely relates to the practice of medicine because a physician has to examine a patient's body and pay attention to fine detail in order to properly evaluate the patient.

22. Dr. Campbell demonstrated some persecutory thinking during his evaluation, where he perceives that people, who are not out to get him, are trying to hurt him. Such thinking can adversely affect his ability to practice medicine because he

could easily misperceive an interaction between him and a patient causing him to lose his clinical demeanor and clinical efficacy.

23. In January 2010, Dr. Campbell advised Jerome Gropper, M.D., who was Dr. Campbell's case manager at PRN, that he had had neuropsychological testing done in December 2009. This was the first time that Dr. Gropper had heard that Dr. Campbell had been tested. Dr. Gropper asked Dr. Campbell to send him a copy of the test results.

24. During January 2010, Dr. Campbell also advised Dr. Gropper that on the way to the testing in December 2009 that he had fallen, had hurt his back, and had taken some Lyrica. The effects of the Lyrica caused him not to be able to finish the test, and he had to come back later to finish the test. On the way home from the first testing he banged up his car. Another time he had taken Lyrica and had made a left hand turn on a red light and had stopped at a green light.

25. Dr. Campbell was required to keep PRN apprised of all the medications that he was taking, and he had failed to do so before taking the Lyrica. Dr. Gropper asked Dr. Campbell if he had a prescription for Lyrica, Dr. Campbell said that he did. When questioned about the prescription, Dr. Campbell became upset and started yelling.

26. Dr. Campbell also told Dr. Gropper that the reason that he had been upset during the site visit in December 2006 was because he had taken Neurontin for back pain, and he had an adverse reaction to the drug.

27. Dr. Gropper asked Dr. Campbell to send a copy of the prescription for Lyrica to PRN. When PRN received a copy of the prescription, it was learned that the medication had been prescribed in 2006. Dr. Gropper considered the taking of a three-year-old prescription to be self-medicating.

28. By letter dated February 12, 2010, Judy S. Rivenbark, M.D., the acting medical director of PRN, notified Dr. Campbell that his monitoring contract with PRN was terminated and that his case would be referred to the Department for further action. By letter dated February 16, 2010, Dr. Rivenbark advised the Department that Dr. Campbell had failed to progress in the PRN program and that PRN was unable to say whether Dr. Campbell was able to practice with reasonable skill and safety.

29. Dr. Tyson has been Dr. Campbell's psychiatrist since 2007. When asked on deposition whether Dr. Campbell was competent to practice medicine, she replied:

> I don't know that. I think there are problems that have been magnified by this process, and I think that, given [Dr. Campbell's] strengths, that [he] should be given a chance to practice medicine. And I think the only way that will happen is if

> [he] practice [sic] under the supervision of someone.

When asked if it was her opinion that Dr. Campbell could practice safely without the supervision of another physician, Dr. Tyson replied, "I don't think that I should assume, at this point, that he could practice safely without supervision, no."

CONCLUSIONS OF LAW

30. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding. §§ 120.569 and 120.57, Fla. Stat.

31. Petitioner has the burden to establish the allegations in the Administrative Complaint by clear and convincing evidence. Department of Banking and Finance v. Osborne Stern and Company, 670 So. 2d 932 (Fla. 1996).

32. Petitioner has alleged that Dr. Campbell violated Subsection 459.331(1)(s), Florida Statutes, which provides that discipline may be imposed if a physician is determined to be "unable to practice medicine with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition."

33. Petitioner has established by clear and convincing evidence that Dr. Campbell is unable to practice medicine with reasonable skill and safety to patients by reason of illness and

mental and physical conditions as set forth in paragraphs 12 through 22 above.

34. The disciplinary guidelines of the Board are found in Florida Administrative Code Rule 64B8-8.001. The disciplinary guidelines for a violation of Subsection 458.331(1)(s), Florida Statutes, ranges from probation to denial or indefinite suspension until the licensee is able to demonstrate the ability to practice with reasonable skill and safety followed by probation and an administrative fine from $1,000 to $5,000.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that a final order be entering finding that Dr. Campbell has violated Subsection 458.331(1)(s), Florida Statutes, and suspending his license indefinitely until Dr. Campbell is able to demonstrate the ability to practice with reasonable skill and safety, followed by probation.

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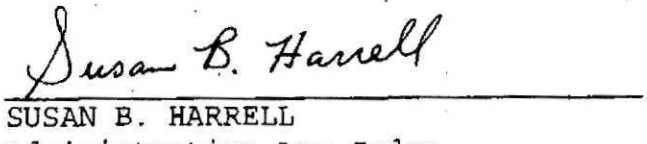
DONE AND ENTERED this 28th day of July, 2010, in Tallahassee, Leon County, Florida.



SUSAN B. HARRELL
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 28th day of July, 2010.

ENDNOTES

[1/] Unless otherwise indicated, all references to the Florida Statutes are to the 2009 version.

[2/] The parties stipulated to certain portions and revisions to paragraphs 1 through 6 and 8 of the Administrative Complaint. The parties did not agree to the remaining paragraphs of the Administrative complaint.

COPIES FURNISHED:

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Ephraim Livingston, Esquire
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13264

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Board of Medicine
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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.

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FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK Angel Sanders
DATE AUG 1 1 2010

STATE OF FLORIDA
DEPARTMENT OF HEALTH

DEPARTMENT OF HEALTH,
Petitioner,

CASE NO. 2009-08871
DOAH CASE NO. 10-01678PL

JOHN D. CAMPBELL, M.D.,
Respondent.

_____/

MOTION TO ASSESS COSTS
IN ACCORDANCE WITH SECTION 456.072(4)

COMES NOW the Department of Health, by and through undersigned counsel, and moves the Board of Medicine for the entry of a Final Order assessing costs against the Respondent for the investigation and prosecution of this case in accordance with Section 456.072(4), Florida Statutes (2003). As grounds therefore, the Petitioner states the following:

1. At its next regularly scheduled meeting, the Board of Medicine will take up for consideration the above-styled disciplinary action and will enter a Final Order therein.

2. Section 456.072(4), Florida Statutes (2003),[1] states as follows:

> In addition to any other discipline imposed through final order, or citation, entered on or after July 1, 2001, pursuant to this section or discipline imposed through

[1] Ch. 2003-416, § 19, Laws of Fla., effective September 15, 2003, amended Section 456.072(4), Florida Statutes (2003), to include the underlined language.

> final order, or citation, entered on or after July 1, 2001, for a violation of any practice act, the board, or the department when there is not board, shall assess costs related to the investigation and prosecution of the case. Such costs related to the investigation and prosecution include, but are not limited to, salaries and benefits of personnel, costs related to the time spent by the attorney and other personnel working on the case, and any other expenses incurred by the department for the case. The board, or the department when there is no board, shall determine the amount of costs to be assessed after its consideration of an affidavit of itemized costs and any written objections thereto. . . . (emphasis added)

3. The investigation and prosecution of this case has resulted in costs in the total amount of $32,701.57, based on the following itemized statement of costs:

a. Total costs for Complaints $247.13
b. Total costs for Investigations $1,431.50
c. Total costs for Legal $17,583.12
d. Total costs for expenses $13,433.82

Therefore, the Petitioner seeks an assessment of costs against the Respondent in the amount of $32,701.57, as evidenced in the attached affidavit. (Exhibit A).

4. Should the Respondent file written objections to the assessment of costs, within ten (10) days of the date of this motion, specifying the grounds for the objections and the specific elements of the costs to which the objections are made, the Petitioner requests that the

Board determine the amount of costs to be assessed based upon its consideration of the affidavit attached as Exhibit A and any timely-filed written objections.

5. Petitioner requests that the Board grant this motion and assess costs in the amount of $32,701.57, as supported by competent, substantial evidence. This assessment of costs is in addition to any other discipline imposed by the Board and is in accordance with Section 456.072(4), Florida Statutes (2003).

WHEREFORE, the Department of Health requests that the Board of Medicine enter a Final Order assessing costs against the Respondent in the amount of $32,701.57.

DATED this 11th day of August, 2010.

Respectfully submitted,

Robert A. Milne
Assistant General Counsel
DOH Prosecution Services Unit
4052 Bald Cypress Way, Bin C-65
Tallahassee, FL 32399-3265
Florida Bar # 622338
(850) 245-4640
(850) 245-4681 FAX

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Amended Motion to Assess Costs has been provided to Craig Brand, Esquire, Brand Law Firm, P.A., 2816 East Robinson Street, Second Floor, Orlando, Florida 32802, by, ☐ postage-paid U.S., ☐ Facsimile Transmission and/or ☐ E-mail, ☐ Hand-Delivery,☐ via Certified Mail, ☐ Over-Night Mail, this 11th day of August, 2010.

Robert A. Milne
Assistant General Counsel

AFFIDAVIT OF FEES AND COSTS EXPENDED

STATE OF FLORIDA
COUNTY OF LEON:

BEFORE ME, the undersigned authority, personally appeared **JULIE M. WEEKS** who was sworn and states as follows:

1) My name is Julie M. Weeks.

2) I am over the age of 18, competent to testify, and make this affidavit upon my own personal knowledge and after review of the records at the Florida Department of Health (DOH).

3) I am the Operations and Management Consultant Manager (OMCM) for the Consumer Services and Compliance Management Unit for DOH. The Consumer Services Unit is where all complaints against Florida health care licensees (e.g., medical doctors, dentists, nurses, respiratory therapists) are officially filed. I have been in my current job position for more than one year. My business address is 4052 Bald Cypress Way, Bin C-75 Tallahassee, Florida 32399-3275.

4) As OMCM of the Consumer Services and Compliance Management Unit, my job duties include reviewing data in the Time Tracking System and verifying that the amounts correspond. The Time Tracking System is a computer program which records and tracks DOH's costs regarding the investigation and prosecution of cases against Florida health care licensees.

5) As of today, DOH's total costs for investigating and prosecuting DOH case number(s) **2009-08871** (Department of Health v. **John D. Campbell, M.D.**) are **THIRTY-TWO THOUSAND SEVEN HUNDRED ONE DOLLARS AND FIFTY-SEVEN CENTS ($32,701.57)**.

6) The costs for DOH case numbers **2009-08871** (Department of Health v. **John D. Campbell, M.D.**) are summarized in Exhibit 1 (Cost Summary Report), which is attached to this document.

7) The itemized costs and expenses for DOH case numbers **2009-08871** (Department of Health v. **John D. Campbell, M.D.**) are detailed in Exhibit 2 (Itemized Cost Report and Itemized Expense Report and receipts), which is attached to this document.

8) The itemized costs as reflected in Exhibit 2 are determined by the following method: DOH employees who work on cases daily are to keep track of their time in six-minute increments (e.g., investigators

and lawyers). A designated DOH employee in the Consumer Services Unit, Legal Department, and in each area office, inputs the time worked and expenses spent into the Time Tracking System. Time and expenses are charged against a state health care Board (e.g., Florida Board of Medicine, Florida Board of Dentistry, Florida Board of Osteopathic Medicine), and/or a case. If no Board or case can be charged, then the time and expenses are charged as administrative time. The hourly rate of each employee is calculated by formulas established by the Department. (See the Itemized Cost Report)

9) Julie M. Weeks, first being duly sworn, states that she has read the foregoing Affidavit and its attachments and the statements contained therein are true and correct to the best of her knowledge and belief.

FURTHER AFFIANT SAYETH NOT.

Julie M. Weeks

Julie M. Weeks, Affiant

State of Florida
County of Leon

Sworn to and subscribed before me this 9 day of August, 2010, by Julie M. Weeks, who is personally known to me.

Chelisa Y. Kirkland

Notary Signature

Chelisa Y. Kirkland

Name of Notary Printed

CHELISA Y. KIRKLAND
MY COMMISSION EXPIRES
June 20, 2014
NOTARY PUBLIC, STATE OF FLORIDA

Stamp Commissioned Name of Notary Public:

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Complaint Cost Summary

Complaint Number: 200908871

Complainant's Name: DEPARTMENT OF HEALTH/INVESTIGATIVE SERVI

Subject's Name: CAMPBELL, JOHN D

	***** Cost to Date *****	
	Hours	**Costs**
Complaint:	3.80	$247.13
Investigation:	22.40	$1,431.50
Legal:	156.80	$17,583.12
Compliance:	0.00	$6.00
	**********	**********
Sub Total:	183.00	$19,267.75
Expenses to Date:		$13,433.82
Prior Amount:		$0.00
Total Costs to Date:		$32,701.57

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Division of Medical Quality Assurance

MQA

Report Date 08/09/2010

*** CONFIDENTIAL ***

Time Tracking System
Itemized Cost by Complaint

Complaint 200908871

Staff Code	Activity Hours	Staff Rate	Cost	Activity Date	Activity Code	Activity Description
COMPLIANCE MANAGEMENT UNIT						
HC17	0.20	$29.93	$5.99	02/26/2010	116	ROUTINE COMPLIANCE MONITORING
Sub Total	**0.20**		**$5.99**			
CONSUMER SERVICES UNIT						
HA123	1.00	$73.69	$73.69	09/10/2009	78	INITIAL REVIEW AND ANALYSIS OF COMPLAINT
HA123	0.20	$73.69	$14.74	09/21/2009	35	TELEPHONE CALLS
HA50	0.30	$61.04	$18.31	12/15/2009	35	TELEPHONE CALLS
HA123	0.50	$61.04	$30.52	01/13/2010	35	TELEPHONE CALLS
HA123	0.50	$61.04	$30.52	01/20/2010	35	TELEPHONE CALLS
HA123	1.30	$61.04	$79.35	04/22/2010	14	TRAINING
Sub Total	**3.80**		**$247.13**			
INVESTIGATIVE SERVICES UNIT						
TI120	1.20	$63.04	$75.65	06/17/2009	7	PRELIMINARY INVESTIGATION
TI120	0.40	$63.04	$25.22	06/22/2009	7	PRELIMINARY INVESTIGATION
TI120	0.40	$63.04	$25.22	07/14/2009	7	PRELIMINARY INVESTIGATION
TI120	1.20	$63.04	$75.65	07/16/2009	7	PRELIMINARY INVESTIGATION
TI120	1.60	$63.04	$100.86	07/28/2009	7	PRELIMINARY INVESTIGATION
TI120	0.60	$63.04	$37.82	08/27/2009	7	PRELIMINARY INVESTIGATION
TI120	0.40	$63.04	$25.22	08/31/2009	7	PRELIMINARY INVESTIGATION
TI115	0.50	$69.44	$34.72	09/18/2009	4	ROUTINE INVESTIGATIVE WORK
TI120	1.00	$63.04	$63.04	09/22/2009	4	ROUTINE INVESTIGATIVE WORK
TI120	1.30	$63.04	$81.95	09/28/2009	4	ROUTINE INVESTIGATIVE WORK
TI120	1.30	$63.04	$81.95	09/28/2009	76	REPORT PREPARATION
TI120	1.60	$63.04	$100.86	09/30/2009	4	ROUTINE INVESTIGATIVE WORK
TI120	1.30	$63.04	$81.95	09/30/2009	76	REPORT PREPARATION

Division of Medical Quality Assurance

MQA

*** CONFIDENTIAL ***

Time Tracking System
Itemized Cost by Complaint

Complaint 200908871

Report Date 08/09/2010

Staff Code	Activity Hours	Staff Rate	Cost	Activity Date	Activity Code	Activity Description
TI120	0.50	$63.04	$31.52	10/07/2009	4	ROUTINE INVESTIGATIVE WORK
TI120	1.70	$63.04	$107.17	10/15/2009	76	REPORT PREPARATION
TI120	0.60	$65.23	$39.14	10/20/2009	6	SUPPLEMENTAL INVESTIGATION
TI120	3.80	$65.23	$247.87	03/03/2010	100	SERVICE OF ADMINISTRATIVE COMPLAINTS, SUBPOENAS, NOTICE TO CEASE
TI122	3.00	$65.23	$195.69	03/03/2010	100	SERVICE OF ADMINISTRATIVE COMPLAINTS, SUBPOENAS, NOTICE TO CEASE
Sub Total	**22.40**		**$1,431.50**			
PROSECUTION SERVICES UNIT						
HLL73A	3.40	$112.43	$382.26	10/19/2009	78	INITIAL REVIEW AND ANALYSIS OF COMPLAINT
HLL73A	0.20	$112.43	$22.49	10/19/2009	64	LEGAL ADVICE/DISCUSSION - BOARD OFFICE,DEPT STAFF OR ATTY GEN OFF.
HLL73A	0.30	$112.43	$33.73	10/19/2009	35	TELEPHONE CALLS
HLL73A	0.30	$112.43	$33.73	10/19/2009	25	REVIEW CASE FILE
HLL73A	2.60	$112.43	$292.32	10/20/2009	25	REVIEW CASE FILE
HLL73A	0.60	$112.43	$67.46	10/20/2009	35	TELEPHONE CALLS
HLL73A	1.20	$112.43	$134.92	10/20/2009	79	STIPULATION
HLL73A	0.80	$112.43	$89.94	10/20/2009	26	PREPARE OR REVISE MEMORANDUM
HLL73A	0.50	$112.43	$56.22	10/27/2009	74	MEETINGS WITH DEPARTMENT STAFF
HLL73A	0.40	$112.43	$44.97	11/10/2009	64	LEGAL ADVICE/DISCUSSION - BOARD OFFICE,DEPT STAFF OR ATTY GEN OFF.
HLL73A	0.60	$112.43	$67.46	11/19/2009	35	TELEPHONE CALLS
HLL73A	0.70	$112.43	$78.70	11/30/2009	35	TELEPHONE CALLS
HLL73A	0.50	$112.43	$56.22	12/02/2009	25	REVIEW CASE FILE
HLL73A	1.20	$112.43	$134.92	12/07/2009	25	REVIEW CASE FILE
HLL73A	0.50	$112.43	$56.22	12/15/2009	64	LEGAL ADVICE/DISCUSSION - BOARD OFFICE,DEPT STAFF OR ATTY GEN OFF.
HLL73A	0.40	$112.43	$44.97	12/15/2009	35	TELEPHONE CALLS
HLL73A	0.70	$112.43	$78.70	12/15/2009	35	TELEPHONE CALLS
HLL73A	0.70	$112.43	$78.70	12/16/2009	25	REVIEW CASE FILE
HLL47A	0.70	$112.43	$78.70	01/11/2010	102	REVIEW EXPERT WITNESS REPORT
HL70A	2.30	$112.43	$258.59	01/13/2010	25	REVIEW CASE FILE
HL70A	1.10	$112.43	$123.67	01/14/2010	25	REVIEW CASE FILE
HL70A	6.00	$112.43	$674.58	01/15/2010	81	ESO/ERO
HLL56A	1.00	$112.43	$112.43	01/19/2010	81	ESO/ERO

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Division of Medical Quality Assurance

MQA

CONFIDENTIAL

Time Tracking System
Itemized Cost by Complaint

Complaint 200908871

Report Date 08/09/2010

Staff Code	Activity Hours	Staff Rate	Cost	Activity Date	Activity Code	Activity Description
HL70A	0.30	$112.43	$33.73	01/20/2010	113	CONTACT WITH WITNESSES
HLL56A	0.30	$112.43	$33.73	01/26/2010	35	TELEPHONE CALLS
HLL56A	0.40	$112.43	$44.97	01/26/2010	81	ESO/ERO
HL70A	1.30	$112.43	$146.16	01/27/2010	81	ESO/ERO
HL70A	0.30	$112.43	$33.73	01/28/2010	35	TELEPHONE CALLS
HL70A	1.80	$112.43	$202.37	02/22/2010	81	ESO/ERO
HL70A	0.80	$112.43	$89.94	02/23/2010	28	PREPARE OR REVISE ADMINISTRATIVE COMPLAINT
HLL56A	0.30	$112.43	$33.73	02/25/2010	60	MISCELLANEOUS
HLL56A	0.40	$112.43	$44.97	02/25/2010	81	ESO/ERO
HLL56A	0.20	$112.43	$22.49	02/26/2010	35	TELEPHONE CALLS
HLL56A	0.40	$112.43	$44.97	02/26/2010	81	ESO/ERO
HL70A	0.20	$112.43	$22.49	02/26/2010	113	CONTACT WITH WITNESSES
HL70A	0.40	$112.43	$44.97	02/26/2010	81	ESO/ERO
HLL4B	0.30	$112.43	$33.73	03/01/2010	81	ESO/ERO
HL70A	0.40	$112.43	$44.97	03/01/2010	28	PREPARE OR REVISE ADMINISTRATIVE COMPLAINT
HL70A	0.40	$112.43	$44.97	03/02/2010	25	REVIEW CASE FILE
HL70A	0.50	$112.43	$56.22	03/12/2010	89	PROBABLE CAUSE PREPARATION
HL70A	0.20	$112.43	$22.49	03/14/2010	89	PROBABLE CAUSE PREPARATION
HL70A	0.20	$112.43	$22.49	03/18/2010	88	PROOFING AND SIGNING LETTERS
HLL56A	0.20	$112.43	$22.49	03/29/2010	64	LEGAL ADVICE/DISCUSSION - BOARD OFFICE,DEPT STAFF OR ATTY GEN OFF.
HLL56A	0.10	$112.43	$11.24	03/29/2010	60	MISCELLANEOUS
HLL56A	0.40	$112.43	$44.97	03/29/2010	78	INITIAL REVIEW AND ANALYSIS OF COMPLAINT
HLL56A	0.90	$112.43	$101.19	03/29/2010	40	PREPARATION OF OR REVISION OF A PLEADING
HLL56A	0.50	$112.43	$56.22	03/30/2010	60	MISCELLANEOUS
HLL56A	1.30	$112.43	$146.16	03/30/2010	40	PREPARATION OF OR REVISION OF A PLEADING
HLL56A	0.10	$112.43	$11.24	03/30/2010	60	MISCELLANEOUS
HLL56A	0.10	$112.43	$11.24	03/30/2010	35	TELEPHONE CALLS
HLL56A	0.10	$112.43	$11.24	03/31/2010	64	LEGAL ADVICE/DISCUSSION - BOARD OFFICE,DEPT STAFF OR ATTY GEN OFF.
HLL56A	4.60	$112.43	$517.18	03/31/2010	40	PREPARATION OF OR REVISION OF A PLEADING
HLL56A	0.20	$112.43	$22.49	03/31/2010	35	TELEPHONE CALLS
HLL56B	1.30	$112.43	$146.16	03/31/2010	41	REVIEW PLEADING
HLL56B	0.40	$112.43	$44.97	03/31/2010	64	LEGAL ADVICE/DISCUSSION - BOARD OFFICE,DEPT STAFF OR ATTY GEN OFF.
HLL57B	0.50	$112.43	$56.22	04/02/2010	38	REVIEW DISCOVERY REQUESTS/RESPONSES

13307

Division of Medical Quality Assurance

MQA

Report Date 08/09/2010

*** CONFIDENTIAL ***

Time Tracking System
Itemized Cost by Complaint

Complaint 200908871

Staff Code	Activity Hours	Staff Rate	Cost	Activity Date	Activity Code	Activity Description
HLL56A	0.20	$112.43	$22.49	04/08/2010	74	MEETINGS WITH DEPARTMENT STAFF
HLL56A	0.10	$112.43	$11.24	04/08/2010	36	PREPARATION OR REVISION OF LETTER
HLL56A	0.10	$112.43	$11.24	04/13/2010	60	MISCELLANEOUS
HLL56A	0.80	$112.43	$89.94	04/14/2010	46	LEGAL RESEARCH
HLL56A	0.10	$112.43	$11.24	04/14/2010	35	TELEPHONE CALLS
HLL56A	0.10	$112.43	$11.24	04/14/2010	60	MISCELLANEOUS
HLL56A	0.40	$112.43	$44.97	04/14/2010	64	LEGAL ADVICE/DISCUSSION - BOARD OFFICE,DEPT STAFF OR ATTY GEN OFF.
HL12A	1.00	$100.00	$100.00	04/14/2010	25	REVIEW CASE FILE
HL12A	2.70	$100.00	$270.00	04/14/2010	70	CONFERENCES WITH LAWYERS
HLL62B	1.50	$112.43	$168.65	04/15/2010	70	CONFERENCES WITH LAWYERS
HLL62B	2.00	$112.43	$224.86	04/16/2010	102	REVIEW EXPERT WITNESS REPORT
HLL62B	2.00	$112.43	$224.86	04/16/2010	70	CONFERENCES WITH LAWYERS
HLL62B	1.00	$112.43	$112.43	04/16/2010	35	TELEPHONE CALLS
HLL62B	1.00	$112.43	$112.43	04/16/2010	46	LEGAL RESEARCH
HLL62B	0.20	$112.43	$22.49	04/16/2010	40	PREPARATION OF OR REVISION OF A PLEADING
HLL62B	0.10	$112.43	$11.24	04/16/2010	25	REVIEW CASE FILE
HLL62B	0.10	$112.43	$11.24	04/16/2010	25	REVIEW CASE FILE
HLL62B	0.50	$112.43	$56.22	04/19/2010	70	CONFERENCES WITH LAWYERS
HLL56A	0.10	$112.43	$11.24	04/19/2010	60	MISCELLANEOUS
HLL62B	4.00	$112.43	$449.72	04/19/2010	47	TRIAL PREPARATION
HLL62B	1.50	$112.43	$168.65	04/20/2010	47	TRIAL PREPARATION
HLL62B	0.50	$112.43	$56.22	04/20/2010	41	REVIEW PLEADING
HLL56A	0.10	$112.43	$11.24	04/21/2010	25	REVIEW CASE FILE
HL70A	4.50	$112.43	$505.94	04/21/2010	58	TRAVEL TIME
HL70A	6.50	$112.43	$730.80	04/21/2010	47	TRIAL PREPARATION
HLL62B	3.00	$112.43	$337.29	04/21/2010	58	TRAVEL TIME
HLL62B	1.00	$112.43	$112.43	04/21/2010	47	TRIAL PREPARATION
HLL62B	3.00	$112.43	$337.29	04/22/2010	48	FORMAL HEARING
HLL62B	0.50	$112.43	$56.22	04/22/2010	14	TRAINING
~~HLL62B~~	~~1.50~~	~~$112.43~~	~~$168.65~~	~~04/22/2010~~	~~44~~	~~DEPOSITIONS~~
HLL62B	0.20	$112.43	$22.49	04/22/2010	44	DEPOSITIONS
HLL62B	1.00	$112.43	$112.43	04/22/2010	44	DEPOSITIONS
HLL62B	1.00	$112.43	$112.43	04/22/2010	70	CONFERENCES WITH LAWYERS

13308

Division of Medical Quality Assurance

MQA

Report Date 08/09/2010

*** CONFIDENTIAL ***

Time Tracking System
Itemized Cost by Complaint

Complaint 200908871

Staff Code	Activity Hours	Staff Rate	Cost	Activity Date	Activity Code	Activity Description
HLL62B	0.50	$112.43	$56.22	04/23/2010	60	MISCELLANEOUS
HLL62B	0.70	$112.43	$78.70	04/27/2010	58	TRAVEL TIME
HLL62B	8.00	$112.43	$899.44	04/28/2010	47	TRIAL PREPARATION
HLL62B	0.40	$112.43	$44.97	04/29/2010	58	TRAVEL TIME
HLL62B	6.40	$112.43	$719.55	04/29/2010	48	FORMAL HEARING
HLL62B	4.00	$112.43	$449.72	04/29/2010	58	TRAVEL TIME
HLL62B	0.40	$112.43	$44.97	04/30/2010	49	REVIEW TRANSCRIPTS AND PREPARE RECOMMENDED ORDER
HLL62B	3.00	$112.43	$337.29	04/30/2010	49	REVIEW TRANSCRIPTS AND PREPARE RECOMMENDED ORDER
HLL62B	0.10	$112.43	$11.24	05/05/2010	40	PREPARATION OF OR REVISION OF A PLEADING
HLL56A	0.20	$112.43	$22.49	05/06/2010	35	TELEPHONE CALLS
HLL62B	6.00	$112.43	$674.58	05/06/2010	49	REVIEW TRANSCRIPTS AND PREPARE RECOMMENDED ORDER
HLL62B	3.00	$112.43	$337.29	05/06/2010	35	TELEPHONE CALLS
HLL62B	0.20	$112.43	$22.49	05/19/2010	60	MISCELLANEOUS
HLL62B	0.50	$112.43	$56.22	06/03/2010	35	TELEPHONE CALLS
HLL62B	2.00	$112.43	$224.86	06/03/2010	49	REVIEW TRANSCRIPTS AND PREPARE RECOMMENDED ORDER
HLL62B	1.20	$112.43	$134.92	06/05/2010	49	REVIEW TRANSCRIPTS AND PREPARE RECOMMENDED ORDER
HLL62B	1.20	$112.43	$134.92	06/05/2010	49	REVIEW TRANSCRIPTS AND PREPARE RECOMMENDED ORDER
HLL62B	1.20	$112.43	$134.92	06/05/2010	49	REVIEW TRANSCRIPTS AND PREPARE RECOMMENDED ORDER
HLL62B	5.00	$112.43	$562.15	06/05/2010	49	REVIEW TRANSCRIPTS AND PREPARE RECOMMENDED ORDER
HLL62B	1.20	$112.43	$134.92	06/06/2010	49	REVIEW TRANSCRIPTS AND PREPARE RECOMMENDED ORDER
HLL62B	1.20	$112.43	$134.92	06/06/2010	49	REVIEW TRANSCRIPTS AND PREPARE RECOMMENDED ORDER
HLL62B	1.20	$112.43	$134.92	06/06/2010	49	REVIEW TRANSCRIPTS AND PREPARE RECOMMENDED ORDER
HLL62B	1.40	$112.43	$157.40	06/06/2010	49	REVIEW TRANSCRIPTS AND PREPARE RECOMMENDED ORDER
HLL62B	3.00	$112.43	$337.29	06/07/2010	49	REVIEW TRANSCRIPTS AND PREPARE RECOMMENDED ORDER
HLL62B	3.00	$112.43	$337.29	06/07/2010	49	REVIEW TRANSCRIPTS AND PREPARE RECOMMENDED ORDER
HLL62B	3.00	$112.43	$337.29	06/07/2010	49	REVIEW TRANSCRIPTS AND PREPARE RECOMMENDED ORDER
HLL62B	3.00	$112.43	$337.29	06/07/2010	49	REVIEW TRANSCRIPTS AND PREPARE RECOMMENDED ORDER
HLL62B	7.00	$112.43	$787.01	06/08/2010	49	REVIEW TRANSCRIPTS AND PREPARE RECOMMENDED ORDER
Sub Total	**156.80**		**$17,583.12**			

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Division of
Medical Quality Assurance

MQA

Report Date 08/09/2010

*** CONFIDENTIAL ***

Time Tracking System
Itemized Cost by Complaint

Complaint 200908871

Staff Code	Activity Hours	Staff Rate	Cost	Activity Date	Activity Code	Activity Description
Total Cost			$19,267.74			

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Division of
Medical Quality Assurance

MQA

*** CONFIDENTIAL ***

Time Tracking System
Itemized Expense by Complaint
Complaint 200908871

Report Date: 08/09/2010

Staff Code	Expense Date	Expense Amount	Expense Code	Expense Code Description
PROSECUTION SERVICES UNIT				
HL70A	04/29/2010	$1,233.75	131400	COURT REPORTING
HL70A	04/22/2010	$210.00	131400	COURT REPORTING
HL70A	05/17/2010	$1,191.35	131400	COURT REPORTING
HL70A	05/17/2010	$109.25	131400	COURT REPORTING
HL70A	03/25/2010	$150.00	131747	PHYSICIAN SERVICES (OPS)
HL70A	04/22/2010	$9,400.00	131747	PHYSICIAN SERVICES (OPS)
HL70A	04/22/2010	$570.45	261010	TRAVEL - EMOLOYEE - IN FLA
HLL62B	04/29/2010	$272.06	261010	TRAVEL - EMOLOYEE - IN FLA
HLL62B	04/22/2010	$296.96	261010	TRAVEL - EMOLOYEE - IN FLA
	SubTotal	$13,433.82		
	Total Expenses	$13,433.82		

Division of
Medical Quality Assurance

MQA

*** CONFIDENTIAL ***

Time Tracking System
Itemized Expense by Complaint
Complaint 200908871

Report Date: 08/04/2010

Staff Code	Expense Date	Expense Amount	Expense Code	Expense Code Description
PROSECUTION SERVICES UNIT				
HL70A	04/29/2010	$1,233.75	131400	COURT REPORTING
HL70A	04/22/2010	$210.00	131400	COURT REPORTING
HL70A	05/17/2010	$1,191.35	131400	COURT REPORTING
HL70A	05/17/2010	$109.25	131400	COURT REPORTING
HL70A	03/25/2010	$150.00	131747	PHYSICIAN SERVICES (OPS)
HL70A	04/22/2010	$9,400.00	131747	PHYSICIAN SERVICES (OPS)
HL70A	04/22/2010	$570.45	261010	TRAVEL - EMOLOYEE - IN FLA
HLL62B	04/29/2010	$272.06	261010	TRAVEL - EMOLOYEE - IN FLA
HLL62B	04/22/2010	$296.96	261010	TRAVEL - EMOLOYEE - IN FLA
	SubTotal	$13,433.82		
	Total Expenses	$13,433.82		

13311

Bay Park Reporting
4010 W. State Street
Tampa, FL 33609
Phone: 813-490-0003
Fax: 813-831-1599

PRACTITIONER REGULATION LEGAL
2010 MAY -6 AM 9:40

PRACTITIONER REGULATION OPERATIONAL UNIT
2010 MAY -7 AM 11:44

Ephraim D Livingston, Esq
Department of Health- C-65
4052 Bald Cypress Way, Bin C-65
Tallahassee, FL 32399-3265

Invoice #32840

Date	Terms
05/03/2010	Net 30

Job	Number	Reporter	Order Shipped	Shipped Via
04/22/2010	2593	Patricia K Gough		US Mail

Contract Number	Case
off	DOH vs. John D Campbell MD hrg LAKELAND 09-08871

Description	Price	Qty	Amount
Original Transcript of Dr Campbell			
Appearance - First Hour - Deposition	$ 65.00	1.00	$ 65.00
Original and one copy of transcript (49 Pages)	$ 4.75	1.00	$ 232.75
			$ 297.75
Original Transcript of Dr Lell			
Appearance - Additional Hours - Deposition (3 Hours)	$ 35.50	1.00	$ 106.50
Original and one copy of transcript (138 Pages)	$ 4.75	1.00	$ 655.50
			$ 762.00
Original Transcript of Dr Tyson			
Appearance - Additional Hours - Deposition (2 Hours)	$ 35.50	1.00	$ 71.00
Original and one copy of transcript (7 Pages)	$ 4.75	1.00	$ 33.25
			$ 104.25
Other			
Exhibits (93 Pages)	$ 0.75	1.00	$ 69.75
			$ 69.75

Amount Due: $ 1,233.75
Paid: $ 0.00

Balance Due:	$ 1,233.75
Payment Due:	06/02/2010

FEIN NO: 80-0021322
Thank you for letting us serve you.

Dana S. Brown 5/11/10

AED 5/7/10

13312

Bay Park Reporting
4010 W. State Street
Tampa, FL 33609
Phone: 813-490-0003
Fax: 813-831-1599

PRACTITIONER REGULATION LEGAL
2010 MAY -6 AM 9:40

PRACTITIONER REGULATION OPERATIONAL UNIT
2010 MAY -7 AM 11:44

Ephraim D. Livingston, Esq
Department of Health- C-65
4052 Bald Cypress Way, Bin C-65
Tallahassee, FL 32399-3265

Invoice #32839

Date	Terms
05/03/2010	Net 30

Job	Number	Reporter	Order Shipped	Shipped Via
04/22/2010	2593	Patricia K Gough		US Mail

Contract Number	Case
off	DOH vs. John D Campbell MD hrg LAKELAND

Description	Price	Qty	Amount
Other			
Appearance Fee - Half Day	$ 210.00	1.00	$ 210.00
			$ 210.00

Amount Due: $ 210.00
Paid: $ 0.00

Balance Due:	$ 210.00
Payment Due:	06/02/2010

FEIN NO: 80-0021322
Thank you for letting us serve you.

Donna S. Brown
5/11/10

RD 5/7/10

13313

Bay Park Reporting
4010 W. State Street
Tampa, FL 33609
Phone: 813-490-0003
Fax: 813-831-1599

PRACTITIONER REGULATION
LEGAL
2010 MAY 17 AM 11:37

PRACTITIONER REGULATION
OPERATIONAL UNIT
2010 MAY 19 PM 3:46

Ephraim D. Livingston, Esq
Department of Health- C-65
4052 Bald Cypress Way, Bin C-65
Tallahassee, FL 32399-3265

Invoice #32871

Date	Terms
05/13/2010	Net 30

Job	Number	Reporter	Order Shipped	Shipped Via
04/29/2010	2630	Patricia K Gough		US Mail

Contract Number	Case
off	DOH vs. John D Campbell MD hrg LAKELAND

Description	Price	Qty	Amount
Original Transcript of Other			
Appearance Fee - Half Day	$ 210.00	1.00	$ 210.00
Exhibits (123 Pages)	$ 0.75	1.00	$ 92.25
Original and one copy of transcript (184 Pages)	$ 4.75	1.00	$ 874.00
			$ 1,176.25
Delivery			$ 15.10
			$ 15.10

Amount Due: $ 1,191.35
Paid: $ 0.00

Balance Due:	$ 1,191.35
Payment Due:	06/12/2010

FEIN NO: 60-0021322
Thank you for letting us serve you.

Donna S. Brown
5/24/10

ED
5/24/10

13314

Bay Park Reporting
4010 W. State Street
Tampa, FL 33609
Phone: 813-490-0003
Fax: 813-831-1569

PRACTITIONER REGULATION
LEGAL
2010 MAY 17 AM 11:35

PRACTITIONER REGULATION
OPERATIONAL UNIT
2010 MAY 19 PM 3:46

Ephraim D. Livingston, Esq
Department of Health- C-65
4052 Bald Cypress Way, Bin C-65
Tallahassee, FL 32399-3265

Invoice #32872

Date	Terms
05/14/2010	Net 30

Job	Number	Reporter	Order Shipped	Shipped Via
04/22/2010	2503	Patricia K Gough		US Mail

Contract Number	Case
off	DOH vs. John D Campbell MD hrg LAKELAND

Description	Price	Qty	Amount
Original Transcript of Other			
Original and one copy of transcript (23 Pages)	$ 4.75	1.00	$ 109.25
			$ 109.25

Amount Due: $ 109.25
Paid: $ 0.00

Balance Due:	$ 109.25
Payment Due:	06/13/2010

FEIN NO: 80-0021322
Thank you for letting us serve you.

Donna S. Brown
5/24/10

PAID 5/24/10

13315

MAITLAND PSYCHOLOGY, P.A.

Clinical Psychology
Clinical Neuropsychology

PRACTITIONER REGULATION OPERATIONAL UNIT

2010 MAR 32 AM 8: 21

DANO A. LELI, PH.D.
Licensed Psychologist PY 3914
Diplomate in Clinical Psychology
American Board of Professional Psychology
Diplomate in Clinical Neuropsychology
American Board of Clinical Neuropsychology
American Board of Professional Psychology

PRACTITIONER REGULATION OPERATIONAL UNIT
2010 APR -1 AM 8: 23

March 31, 2010

Melba Apellaniz, Administrative Assistant I
Florida Department of Health
Prosecution Services Unit
4052 Bald Cypress Way, Bin C-65
Tallahassee, FL 32399-3265

Re: DOH v. John D. Campbell, MD
Complaint No 2009-08871

Dear Mr. Livingston:

Please allow this letter to serve as an invoice for the 30 minute phone conference with Attorney Ephraim Livingston on 03/25/10.0

30 minute conference call at $300/hour	$150
Total Invoice	$150

If you have any questions, please do not hesitate to contact me directly.

Sincerely,

Teresa Jacques
Office Manager
Maitland Psychology PA
Tax ID# 52-237-6647

Done 9/2/10

235 S. Maitland Avenue, Suite 100 Maitland, FL 32751
Phone: (407) 628-5354 Fax: (407) 628-0254

13316

Maitland Psychology PA

Dano A. Leli, Ph.D.

235 S. Maitland Ave, Suite 100
Maitland, FL 32751
Phone #: (407) 628-5354
Tax ID# 52-2376647

STATEMENT

Patient: J . C
Statement Date: 4/23/2010
Payment Due: $ 9,400.00

PRACTITIONER REGULATION
OPERATIONAL UNIT
2010 APR 28 AM 8: 14

Addressee:	Please Remit To:
Department of Health MQA Prosecution Services Unit 4052 Bald Cypress Way, Bin C65 Tallahassee, FL 32399-3265	MAITLAND PSYCHOLOGY PA 235 South Maitland Ave, Suite 100 Maitland, FL 32751

09-08871
HL 70A

Date	Description	Hours	Contracted Rate	Amount Due
04/10 - 04/22	Case preparation (research, record review, etc)	14	$300.00	$ 4,200.00
4/16/2010	Attorney Conference	1	$300.00	$ 300.00
4/20/2010	Attorney Conference	2	$300.00	$ 600.00
4/21/2010	Attorney Conference	0.5	$300.00	$ 150.00
4/22/2010	Attorney Conference	0.5	$300.00	$ 150.00
4/22/2010	Travel time (158.25 miles)	3	$500.00	$ 1,500.00
4/22/2010	Court deposition	5	$500.00	$ 2,500.00
			Total Due	$ 9,400.00

Reminder: Please include the patient's name on your check.

Terms: Balance due upon receipt.

PSU

DO: A214D9

INVOICE RECEIVED 4/28/10
GOODS OR SVCS. REC'D 4/22/10
GOODS OR SVCS. APPROVED 5/6/10
PAYMENT APPROVED BY Kathy Price
KATHRYN PRICE
FOR FINANCE & ACCOUNTING
OBJECT CODE 13747
DIVISION CODE 04-22-05-01-015

EO: PA
CCA: MGAPS

8/4/10 PE

TOTAL P.002

13317

STATE OF FLORIDA
VOUCHER FOR REIMBURSEMENT
OF TRAVEL EXPENSES

TRAVELER Ephraim Livingston HCOA
Address 4052 Bald Cypress Way Bin-C65
CHECK ONE: X OFFICER/EMPLOYEE ___ NONEMPLOYEE IND. CONTRACTOR ___ OPS

Social Security No.
HEADQUARTERS Tallahassee DOH / PSU / Legal
RESIDENCE (CITY) Tallahassee, FL

DATE	Travel Performed From Point of Origin To Destination	Purpose or Reason (Name of Conference) (Purchasing Card Description)	Hour of Departure And Hour of Return	Meals for Class A & B Travel	Per Diem or Actual Lodging Expenses	Map Mileage Claimed	Vicinity Mileage Claimed	Other Expenses Amount	Other Expenses Type	PCARD Charges
4/21/2010	Tallahassee FL to Tampa, Florida	Traveling	11:30 A M	$ 30.00					Hotel	87.00
			M						AVIS	25.75
4/21/2010	Tampa, FL to Lakeland, FL	Attended partial hearing/deposition	M						Airfare	241.70
			M						baggage fee	25.00
4/22/2010	Lakeland, FL to Tallahassee, FL	Returning	11:30 P M	36.00	80.00				parking	20.00
		09-08871	M						travel agent fee	25.00
			M							
			M							
*	traveler carpooled on return trip		M							
		261100	M							
			M							
			M							
		570.45	M							
			M							
			M							
			M							
			M							
			M							
			M							
			M							
			M							
			M							
			M							
			M							
			M							
			M							

Statement of Benefits to the State: (Conference or Convention)
[redacted]

	Column Total	Column Total	Mi.	Column Total		Summary Total
	$ 66.00	$ 80.00	0.445 Mi.			$ 146.00

TR___ SEL___
ORG 84220501015
EO PA VR___ CF___ OCA MOAPS
INVOICE #___ TRAN DATE___

OBJECT	AMOUNT	OBJECT	AMOUNT
261100 Per Diem	80.00	261005 Rental Car	25.75
261200 Meals	66.00	261004 Airfare	241.75
261300 Mileage		261008 Lodging	87.00
261003 Incidental	45.00	261200	

LESS ADVANCE RECEIVED	($)
LESS NON-REIMBURSABLE ITEMS INCLUDED ON PCARD	$ (424.45)
NET AMOUNT DUE TRAVELER	$ 146.00
NET AMOUNT DUE THE STATE	$

I hereby certify or affirm and declare that this claim for reimbursement is true and correct in every material matter; that the travel expenses were actually incurred by me as necessary in the performance of official duties; that per diem claimed has been appropriately reduced by any meals or lodging included in the convention or conference registration fees claimed by me, and that this voucher conforms in every respect with the requirements of Section 112.061, Florida Statutes.

TRAVELER'S SIGNATURE: [signature]
SIGNATURE DATE: 4-27-10 TITLE: Assistant General Counsel

Pursuant to Section 112.061 (5) (a), Florida Statutes, I hereby certify or affirm that to the best of my knowledge the travel was on official business of the State of Florida and was for the purpose(s) stated above.

SUPERVISOR'S SIGNATURE: Katherine de Treese
SUPERVISOR'S TITLE: Deputy General Counsel Chief Legal Counsel
SIGNATURE DATE: 4/28/10

FOR AGENCY USE:

Preparer's Name Tawanna Hackley
Preparer's Phone No. 245-4640 Ext. 8115
Date Prepared 4/27/2010

Invoice no.___ Voucher/SWD No. ___ RF Ck./Warrant No.___ RF Ck./Warrant Date___

DH 576 01/02

13318

STATE OF FLORIDA
VOUCHER FOR REIMBURSEMENT
OF IN-STATE TRAVEL EXPENSES

TRAVELER: Robert A. Milne HCC628

Address: 4052 Bald Cypress Way, Bin C-65

CHECK ONE: __ OFFICER/EMPLOYEE X NONEMPLOYEE IND. CONTRACTOR __ OPS

Social Security No. ________

HEADQUARTERS: Tallahassee-PSU

RESIDENCE (CITY): Tallahassee

DATE	Travel Performed From Point of Origin To Destination	Purpose or Reason (Name of Conference) (Purchasing Card Description)	Hour of Departure And Hour of Return	Meals for Class A & B Travel	Per Diem or Actual Lodging Expenses	Map Mileage Claimed	Vicinity Mileage Claimed	Other Expenses Amount	Other Expenses Type	PCARD Charges
4/27/2010	Tallahassee to Altamonte Springs	Deposition of Jaime Carrizosa, M.D.	8:00A AM	$30.00		545			Hotel	$ 64.80
		DOH v. Michael Zappa, MD	M							
		Case No. 2007-09087	M							
		DOAH Case no. 09-5338 PL	PM							
			M							
4/28/2010	Altamonte Springs to Lakeland	DOH v. John Carlsbell, MD	AM	36.00						
		DOH Case No. 2009-0687	PM						Hotel	89.00
		DOAH Case No. 10-1878PL	M							
		Trial preparation	M							
4/29/2010	Lakeland to Tallahassee	return	10:30 M		80.00					
			M							
	*drove personal vehicle whole trip		M							
			M							
			M							
			M							
			M							
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			M							
			M							
			M							
			M							
			M							
			M							
Statement of Benefits to the State: (Conference or Convention) Critical to Carrying out the Mission of the Department of Health.				Column Total $ 86.00	Column Total $ 80.00	545 Mi. 0.445 Mi. $ 242.52		Column Total $		Summary Total $ 388.52

261010
544.12 ÷ 2 = 272.06

TR____ SEL____

ORG __64220501015

EO__PA__ VR__ CF__ OCA__MQAPS____

INVOICE #________ TRAN DATE________

OBJECT	AMOUNT	OBJECT	AMOUNT
261100 Per Diem		261500 Air	
261200 Meals		261003 Incidental	
261300 Mileage		261905 Rnt Car	
261400 Lodging		261	

LESS ADVANCE RECEIVED	($)
LESS NON-REIMBURSABLE ITEMS INCLUDED ON PCARD	($)
NET AMOUNT DUE TRAVELER	$ 388.52
NET AMOUNT DUE THE STATE	

I hereby certify or affirm and declare that this claim for reimbursement is true and correct in every material matter; that the travel expenses were actually incurred by me as necessary in the performance of official duties; that per diem claimed has been appropriately reduced by any meals or lodging included in the convention or conference registration fees claimed by me, and that this voucher conforms in every respect with the requirements of Section 112.061, Florida Statutes.

TRAVELER'S SIGNATURE: [signature]

SIGNATURE DATE: 05/06/10

TITLE: Assistant General Counsel

Pursuant to Section 112.061 (3) (a), Florida Statutes, I hereby certify or affirm that to the best of my knowledge the travel was on official business of the State of Florida and was for the purpose(s) stated above.

SUPERVISOR'S SIGNATURE: [signature]

SUPERVISOR'S TITLE: Chief Legal Counsel

SIGNATURE DATE: May 8, 2010

AGENCY USE

Invoice No. ________

Voucher/SWD No. ________

RF Ck./Warrant No. ________

RF Ck./Warrant Date ________

Advance ________

Warrant No. ________

Warrant Date ________

Statewide Doc. No. ________

Agency Voucher No. ________

Preparer's Name ____ Carol B. Klein

Preparer's Phone No. ____ 245-4640 ext 8116

Date Prepared ________

DH 678A 09/06

13319

HEU623

STATE OF FLORIDA
VOUCHER FOR REIMBURSEMENT
OF IN-STATE TRAVEL EXPENSES

TRAVELER: Robert A. Milne
Address: 4052 Bald Cypress Way, Bin C-65
CHECK ONE: ___ OFFICER/EMPLOYEE X NONEMPLOYEE IND. CONTRACTOR ___ OPS

Social Security No.
HEADQUARTERS: Tallahassee-PSU
RESIDENCE (CITY): Tallahassee

DATE	Travel Performed From Point of Origin To Destination	Purpose or Reason (Name of Conference) (Purchasing Card Description)	Hour of Departure And Hour of Return	Meals for Class A & B Travel	Per Diem or Actual Lodging Expenses	Map Mileage Claimed	Vicinity Mileage Claimed	Other Expense Amount	Other Expense Type	PCARD Charges
4/21/2010	Tallahassee to West Palm Beach	Travel for deposition	8:10 AM	$30.00						
	Depositions	DOH v. M. Zappa, MD	M						Airfare	248.70
		Case No. 2007-09087	M						Airport Parking	10.00
		DOAH Case No. 09-5338PL	PM						Avis	26.41
		Deposition of M. Zappa, MD	M						gas	22.38
4/22/2010	Final Hearing in Lakeland	DOH v. John Campbell, MD	AM		80.00				Hotel	89.00
		DOH Case No. 2009-06871	PM						Airport Parking	10.00
		DOAH Case No. 10-1678PL	M						Avis	27.42
			M						gas	43.00
4/22/2010	Lakeland to Tallahassee	return	11:30 P M					7.00	Tolls	
			M							
			M							
			M							
			M							
			M							
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			M							
			M							

261010
593.91 ÷ 2 =
296.96
296.96

Statement of Benefits to the State: (Conference or Convention)
Critical to Carrying out the Mission of the Department of Health.

Column Total	Column Total		Column Total	Summary Total
$ 30.00	$ 80.00	0 MI. 0.445 MI. $ (0.00)	$ 7.00	$ 117.00

TR___ SEL___
ORG 64220501018
EO__PA__ VR__ CF__ OCA__MQAPS__
INVOICE #___ TRAN DATE___

OBJECT	AMOUNT	OBJECT	AMOUNT
261100 Per Diem		261500 Air	
261200 Meals		261003 Incidental	
261300 Mileage		261005 Rnt Car	
261400 Lodging		261	

LESS ADVANCE RECEIVED	($)
LESS NON-REIMBURSABLE ITEMS INCLUDED ON PCARD	($)
NET AMOUNT DUE TRAVELER	$ 117.00
NET AMOUNT DUE THE STATE	

I hereby certify or affirm and declare that this claim for reimbursement is true and correct in every material matter; that the travel expenses were actually incurred by me as necessary in the performance of official duties; that per diem claimed has been appropriately reduced by any meals or lodging included in the convention or conference registration fees claimed by me, and that this voucher conforms in every respect with the requirements of Section 112.061, Florida Statutes.

TRAVELER'S SIGNATURE: [signature]
SIGNATURE DATE: 4/28/10 TITLE: Assistant General Counsel

Pursuant to Section 112.061 (3) (a), Florida Statutes, I hereby certify or affirm that to the best of my knowledge the travel was on official business of the State of Florida and was for the purpose(s) stated above.

SUPERVISOR'S SIGNATURE: [signature]
SUPERVISOR'S TITLE: Chief Legal Counsel
SIGNATURE DATE: 4/28/10

Invoice No. ___
Voucher/SWD No. ___
RF Ck./Warrant No. ___
RF Ck./Warrant Date ___

Advance ___
Warrant No. ___
Warrant Date ___
Statewide Doc. No. ___
Agency Voucher No. ___

Preparer's Name: Carol B. Klein
Preparer's Phone No.: 245-4640 ext. 8116
Date Prepared ___

DH 878A 09/06

13320

Licensure Recommended Order:

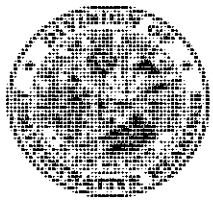
Leon Rawner, M.D. –
Refer to original tab 41

State of Florida
Division of Administrative Hearings

Rick Scott
Governor

Robert S. Cohen
Director and Chief Judge

Claudia Lladó
Clerk of the Division



David M. Maloney
Deputy Chief
Administrative Law Judge

David W. Langham
Deputy Chief Judge
Judges of Compensation Claims

April 28, 2014

Allison M. Dudley, Executive Director
Board of Medicine
Department of Health
Division of Medical Quality Assurance
Boards/Councils/Commissions
4052 Bald Cypress Way
Tallahassee, Florida 32399

Re: LEON RAWNER, M.D. vs. BOARD OF MEDICINE,
DOAH Case No. 13-4651

Dear Ms. Dudley:

Enclosed is my Recommended Order in the referenced case. Also enclosed are Joint Exhibits 1-6. Copies of this letter will serve to notify the parties that my Recommended Order and the hearing record have been transmitted this date.

As required by section 120.57(1)(m), Florida Statutes, you are requested to furnish the Division of Administrative Hearings with a copy of the Final Order within 15 days of its rendition. Any exceptions to the Recommended Order filed with the agency shall be forwarded to the Division of Administrative Hearings with the Final Order.

Sincerely,

Lisa Shearer Nelson

LISA SHEARER NELSON
Administrative Law Judge

LSN/mp
Enclosures
cc: Donna C. McNulty, Esquire
Amy W. Schrader, Esquire
Jennifer A. Tschetter, General Counsel
Edward A. Tellechea, Esquire

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

LEON RAWNER, M.D.,

Petitioner,

vs. Case No. 13-4651

BOARD OF MEDICINE,

Respondent.
_____/

RECOMMENDED ORDER

This case is before Administrative Law Judge Lisa Shearer Nelson of the Division of Administrative Hearings pursuant to the parties' Joint Motion to Cancel Hearing and Set Date to File Proposed Recommended Orders. Consistent with the joint motion of the parties, the case was submitted for decision based upon a stipulated record.

APPEARANCES

For Petitioner: Amy W. Schrader, Esquire
GrayRobinson, P.A.
301 South Bronough Street
Post Office Box 11189
Tallahassee, Florida 32302

For Respondent: Donna C. McNulty, Esquire
Michael T. Flury, Esquire
Office of the Attorney General
The Capitol, Plaza Level One
Tallahassee, Florida 32399

STATEMENT OF THE ISSUES

The issues to be determined are whether Petitioner meets the requirements for licensure by endorsement pursuant to section 458.313, Florida Statutes (2013), and whether the Board's interpretation of section 458.311(3), Florida Statutes, is an unadopted rule in violation of section 120.54(1), Florida Statutes (2013).

PRELIMINARY STATEMENT

On October 22, 2013, the Respondent, Florida Board of Medicine (the Board), entered an Amended Notice of Intent to Deny Licensure to Petitioner, Leon Rawner, M.D. (Dr. Rawner), based on the Board's determination that Dr. Rawner failed to meet the requirements for licensure. Petitioner filed a Petition for Administrative Hearing on November 15, 2013, and on November 27, 2013, the case was referred to the Division of Administrative Hearings for the assignment of an administrative law judge.

The case was originally noticed for hearing to commence on January 27, 2014. On January 21, 2014, the parties filed a Joint Motion to Cancel Hearing and Set Date to File Proposed Recommended Orders or in the Alternative to Continue Hearing. In the motion, the parties indicated that they believed there are no disputed issues of material fact, and requested that the parties be permitted to submit proposed recommended orders or motions as directed by the administrative law judge. In the event that the

motion was denied, the parties requested that the hearing be continued.

The hearing was canceled by Order Canceling Hearing and Setting Schedule entered on January 22, 2014. Consistent with the January 21, 2014, motion, the Order canceled the hearing and directed the parties to file a Joint Stipulation no later than February 10, and proposed recommended orders no later than February 17, 2014. The Joint Stipulation and the Proposed Recommended Orders were timely filed and have been carefully considered in the preparation of this Recommended Order and the stipulated facts, where relevant, have been included in the findings of fact below. Joint Exhibits 1-6 were also filed with the Division on February 17, 2014. Joint Exhibit 6, comprising over 1,000 pages of legislative materials, was the subject of a Motion for Official Recognition filed January 16, 2014. Given the parties' designation of these same materials as Joint Exhibit 6, the Motion for Official Recognition is denied as moot.

FINDINGS OF FACT

Based upon the stipulations of the parties and the documentary evidence presented, the following facts are found:

1. Petitioner, Leon Rawner, M.D., is a licensed medical doctor in the state of Wisconsin and an applicant for licensure as a medical doctor by endorsement in Florida.

2. The Florida Board of Medicine is the agency charged with the licensing and regulation of allopathic medical doctors pursuant to section 20.43 and chapters 456 and 458, Florida Statutes. Applicants for licensure by endorsement must meet the requirements specified in section 458.313. Those requirements include meeting the qualifications identified in section 458.311(1)(b)-(g) (alternative one) or section 458.311(1)(b)-(e), (g), and (3) (alternative two).

3. Petitioner is over 21 years of age, and has submitted a set of fingerprints on a form and under procedures specified by the Department of Health, along with a payment in an amount equal to the costs incurred by the Department of Health. Petitioner has successfully passed the required criminal background screening.

4. Petitioner's application for licensure by endorsement demonstrates that he is licensed to practice medicine in another jurisdiction, the state of Wisconsin, and that he has been active in the practice of medicine for at least two of the four years immediately preceding the application.

5. Petitioner has a clean record in his current medical practice in Wisconsin and is not under any investigation in any jurisdiction for an act or offense which would constitute a violation under section 458.331, and has not committed any act or

offense in any jurisdiction which would constitute the basis for disciplining a physician pursuant to section 458.331.

6. Petitioner has completed the equivalent of two academic years of pre-professional, postsecondary education, as determined by rule of the Board, which included, at a minimum, courses in anatomy, biology, and chemistry prior to entering medical school.

7. Petitioner received a bachelor's degree from Brandeis University, an accredited United States university.

8. Petitioner has passed the appropriate medical licensure examinations, the United States Medical Licensing Examination, Step-1, Step-2, and Step-3.

9. Petitioner holds an active, valid certificate issued by the Educational Commission for Foreign Medical Graduates (ECFMG) and has passed the examination used by the Commission.

10. In 2006, Petitioner graduated with a degree of Doctor of Medicine from American University of the Caribbean School of Medicine.

11. Petitioner graduated from an allopathic foreign medical school (American University of the Caribbean School of Medicine) which is recognized by the World Health Organization.

12. Petitioner completed all of the formal requirements for graduation from American University of the Caribbean School of Medicine.

13. Petitioner's application for licensure demonstrates that he has completed the academic year of supervised medical training prior to graduation as required under section 458.311(3)(d).

14. Petitioner did not graduate from an allopathic medical school or allopathic college recognized and approved by an accrediting agency recognized by the United States Office of Education.

15. Petitioner did not graduate from an allopathic medical school or allopathic college within a territorial jurisdiction of the United States recognized by the accrediting agency of the governmental body of that jurisdiction.

16. Petitioner is not a graduate of an allopathic foreign medical school registered with the World Health Organization and certified pursuant to section 458.314, Florida Statutes, as having met the standards required to accredit medical schools in the United States or reasonably comparable standards.

17. Petitioner has not completed an approved residency or fellowship of at least two years in one specialty area.

18. Petitioner's application for licensure demonstrates that he does not meet the postgraduate training requirements under section 458.311(1)(f)3.

19. Petitioner completed one year of residency training in the Internal Medicine Program at Mt. Sinai-Elmhurst Hospital Center, Queens, New York.

20. Besides the residency training program at Mt. Sinai-Elmhurst Hospital Center, Queens, New York, Petitioner has not completed any other residency or fellowship training.

21. Petitioner does not have two years of any residency or fellowship training which can be counted toward regular or subspecialty certification by a board recognized and certified by the American Board of Medical Specialties.

22. Since January 24, 2011, Dr. Rawner has been practicing medicine in Wausau, Wisconsin, as a staff physician with Knee Pain Solutions Center. Accordingly, he has been in the active practice of medicine for the two years preceding his Florida application.

23. Dr. Rawner submitted his application for licensure by endorsement on March 13, 2013.

24. Supplemental documentation was filed with the Board by letter dated March 18, 2013. In that letter, Dr. Rawner expressly stated that he was relying on the second alternative for establishing licensure by endorsement, which does not include the requirements identified in subsection 458.311(1)(f).

25. On April 3, 2013, the Board requested additional information, and in response, Dr. Rawner provided a copy of his

undergraduate degree and information related to his one year of supervised medical training.

26. Other information requested in the April 3, 2013, letter was sent directly to the Board office by the appropriate agencies, including an official United States medical examination transcript, indicating that Dr. Rawner passed USMLE Steps I, II, and III; a letter from the residency program director, indicating that Dr. Rawner completed one year of residency training; confirmation from the Wisconsin Medical Board confirming his current, valid medical license in the state of Wisconsin; an American Medical Association (AMA) profile letter; and Dr. Rawner's fingerprints and clear background check.

27. Program Operations Administrator Chandra Prine notified Dr. Rawner by letter dated June 26, 2013, that he was required to appear before the Credentials Committee of the Board. The purpose of the appearance was to discuss:

- Failure to meet the training requirement pursuant to section 458.313(1)(a), 458.311(1)(f)3.c., Florida Statutes.
- Failure to complete an academic year of supervised clinical training pursuant to section 458.311(3)(d), Florida Statutes.

28. Dr. Rawner appeared before the credentials committee of the Board of Medicine on August 1, 2013. The committee recommended that his license be denied.

29. On August 22, 2013, the Board of Medicine issued a Notice of Intent to Deny Licensure, stating that it intended to deny Dr. Rawner's application because Dr. Rawner did not meet the requirements of section 458.313(1), which requires an applicant to meet the qualifications outlined in either section 458.311(1)(b)-(g) (alternative one), or in section 458.311(1)(b)-(e), (g) and (3) (alternative two). The notice stated that with respect to alternative one, Dr. Rawner did not meet the requirements of section 458.311(1)(f)3., because he had not completed an approved residency or fellowship of at least two years in one specialty area. With respect to alternative two, the Board determined that Dr. Rawner did not meet the requirements of section 458.311(3)(c) because, in the Board's view, the section was inapplicable to Dr. Rawner because he had completed all requirements of the foreign medical school, with none outstanding, and did not meet the requirement of (3)(d) because he had not completed an academic year of supervised clinical training in a hospital affiliated with a medical school approved by the Council on Medical Education of the American Medical Association.

30. Dr. Rawner filed a Petition for Administrative Hearing with respect to the Notice of Intent to Deny, and the matter was reconsidered at the credentials committee's meeting on October 3,

2013. The credentials committee voted to reconsider the application based on the issues presented in the Petition.

31. On October 22, 2013, the Board issued an Amended Notice of Intent to Deny Licensure. With respect to alternative two, in the Amended Notice, the Board stated:

> [t]he application file reveals that Dr. Rawner fails to meet subsection (3) for the reasons set forth below. Subsection (3) provides:
>
> > Notwithstanding the provisions of subparagraph (1)(f)3., a graduate of a foreign medical school need not present the certificate issued by the Educational Commission for Foreign Medical Graduates or pass the examination utilized by that commission if the graduate:
> > (a) Has received a bachelor's degree from an accredited United States college or university.
> > (b) Has studied at a medical school which is recognized by the World Health Organization.
> > (c) Has completed all of the formal requirements of the foreign medical school, except the internship or social science requirements, and has passed part I of the National Board of Medical Examiners examination or the Educations Commission for Foreign Medical Graduates examination equivalent.
> > (d) Has completed an academic year of supervised clinical training in a hospital affiliated with a medical school approved by the Council on Medical Education of the American Medical Association and upon completion has passed part II of the National

> Board of Medical Examiners examination or the Educational Commission for Foreign Medical Graduates examination equivalent.
>
> Subpart (3)(c) provides in relevant part all of the formal requirements of the foreign medical school, except the internship or social service requirements, and has passed certain examinations. A plain reading of this subpart is that the foreign medical school has an internship or social service requirement and that the internship or social service requirement has not been completed. The application file demonstrates that Dr. Rawner graduated in June, 2006, with a degree of Doctor of Medicine from the American University of the Caribbean School of Medicine. Thus, subpart (3)(c) is inapplicable to Dr. Rawner, because the application file reveals that he completed *all of the formal requirements* of the foreign medical school and there are no outstanding or pending internship or social service requirements.
>
> Based on the foregoing, the Board finds that the Applicant has not demonstrated that he meets the requirements for licensure by endorsement set forth in Section 458.313(1)(a), Florida Statutes.

The Amended Notice no longer listed failure to complete an academic year of supervised clinical training as a basis for the denial of Dr. Rawner's application.

32. There is no persuasive evidence presented that Respondent's interpretation of the requirements of section 458.311, Florida Statutes, as it applies to this case, is a statement of general applicability.

CONCLUSIONS OF LAW

33. The Division has jurisdiction over the parties and the subject matter of this proceeding pursuant to sections 120.569, 120.57(1), and 120.60, Florida Statutes.

34. Dr. Rawner is applying for licensure as a medical doctor in the State of Florida. As an applicant, he has the burden of proving that he meets the requirements of licensure by a preponderance of the evidence. Dep't of Banking & Fin. v. Osborne Stern & Co., 670 So. 2d 932 (Fla. 1996); Espinoza v. Dep't of Bus. & Prof'l Reg., 739 So. 2d 1250 (Fla. 3d DCA 1999); § 120.57(1)(k), Fla. Stat.

35. Dr. Rawner is applying for licensure by endorsement pursuant to section 458.313. This section states in pertinent part:

> (1) The department shall issue a license by endorsement to any applicant who, upon applying to the department on forms furnished by the department and remitting a fee set by the board not to exceed $500, the board certifies:
>
> (a) Has met the qualifications for licensure in s. 458.311(1)(b)-(g) or in s. 458.311(1)(b)-(e) and (g) and (3);
>
> (b) Prior to January 1, 2000, has obtained a passing score, as established by rule of the board, on the licensure examination of the Federation of State Medical Boards of the United States, Inc. (FLEX), on the United States Medical Licensing Examination (USMLE), or on the examination of the National Board of Medical Examiners, or on a

> combination thereof, and on or after January 1, 2000, has obtained a passing score on the United States Medical Licensing Examination (USMLE); and
>
> (c) Has submitted evidence of the active licensed practice of medicine in another jurisdiction, for at least two of the immediately preceding 4 years, or evidence of successful completion of either a board-approved postgraduate training program within 2 years preceding filing of an application or a board-approved clinical competency examination within the year preceding the filing of an application for licensure. For purposes of this paragraph, "active licensed practice of medicine" means that practice of medicine by physicians, including those employed by any governmental entity in community or public health, as defined by this chapter, medical directors under s. 641.495(11) who are practicing medicine, and those on the active teaching faculty of an accredited medical school. (Emphasis added.)

36. Section 458.311, referenced in section 458.313(1)(a), identifies the qualifications for a person applying to become licensed as a medical doctor by examination. It provides in pertinent part:

> (1) Any person desiring to be licensed as a physician, who does not hold a valid license in any state, shall apply to the department on forms furnished by the department. The department shall license each applicant who the board certifies:
>
> (a) Has completed the application form and remitted a nonrefundable application fee not to exceed $500.
>
> (b) Is at least 21 years of age.

(c) Is of good moral character.

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

(e) For any applicant who has graduated from medical school after October 1, 1992, has completed the equivalent of 2 academic years of preprofessional, postsecondary education, as determined by rule of the board, which shall include, at a minimum, courses in such fields as anatomy, biology, and chemistry prior to entering medical school.

(f) Meets one of the following medical education and postgraduate training requirements:
1.a. Is a graduate of an allopathic medical school or allopathic college recognized and approved by an accrediting agency recognized by the United States Office of Education or is a graduate of an allopathic medical school or allopathic college within a territorial jurisdiction of the United States recognized by the accrediting agency of the governmental body of that jurisdiction;
b. If the language of instruction of the medical school is other than English, has demonstrated competency in English through presentation of a satisfactory grade on the Test of Spoken English of the Educational Testing Service or a similar test approved by rule of the board; and
c. Has completed an approved residency of at least 1 year.
2.a. Is a graduate of an allopathic foreign medical school registered with the World Health Organization and certified pursuant to s. 458.314 as having met the standards required to accredit medical schools in the United States or reasonably comparable standards;

b. If the language of instruction of the foreign medical school is other than English, has demonstrated competency in English through presentation of the Educational Commission for Foreign Medical Graduates English proficiency certificate or by a satisfactory grade on the Test of Spoken English of the Educational Testing Service or a similar test approved by rule of the board; and

c. Has completed an approved residency of at least 1 year.

3.a. Is a graduate of an allopathic foreign medical school which has not been certified pursuant to s. 458.314;

b. Has had his or her medical credentials evaluated by the Educational Commission for Foreign Medical Graduates, holds an active, valid certificate issued by that commission, and has passed the examination utilized by that commission; and

c. Has completed an approved residency of at least 1 year; however, after October 1, 1992, the applicant shall have completed an approved residency or fellowship of at least 2 years in one specialty area. However, to be acceptable, the fellowship experience and training must be counted toward regular or subspecialty certification by a board recognized and certified by the American Board of Medical Specialties.

(g) Has submitted to the department a set of fingerprints on a form and under procedures specified by the department, along with a payment in an amount equal to the costs incurred by the Department of Health for the criminal background check of the applicant.

* * *

(3) Notwithstanding the provisions of subparagraph (1)(f)3., a graduate of a foreign medical school need not present the certificate issued by the Educational Commission for Foreign Medical Graduates or

> pass the examination utilized by that commission if the graduate:
>
> (a) Has received a bachelor's degree from an accredited United States college or university.
>
> (b) Has studied at a medical school which is recognized by the World Health Organization.
>
> (c) Has completed all of the formal requirements of the foreign medical school, except the internship or social service requirements, and has passed part I of the National Board of Medical Examiners examination or the Educational Commission for Foreign Medical Graduates examination equivalent.
>
> (d) Has completed an academic year of supervised clinical training in a hospital affiliated with a medical school approved by the Council on Medical Education of the American Medical Association and upon completion has passed part II of the National Board of Medical Examiners examination or the Educational Commission for Foreign Medical Graduates examination equivalent. (Emphasis added.)

37. The parties have stipulated that Dr. Rawner does not meet the qualifications for licensure under alternative one, i.e., the requirements identified in section 458.311(1)(b)-(g), because he does not meet the postgraduate training requirements in subsection (f). Dr. Rawner has stated consistently that he was seeking licensure under alternative two, however, which requires meeting the qualifications in subsection 458.311(3), instead of those listed in subsection 458.311(1)(f).

38. Dr. Rawner has received a bachelor's degree from Brandeis University, an accredited United States college or university. Dr. Rawner has met the qualification specified in subsection 458.311(3)(a).

39. Dr. Rawner has studied at American University of the Caribbean Medical School, a medical school recognized by the World Health Organization. Dr. Rawner has met the qualification specified in subsection 458.311(3)(b).

40. Dr. Rawner completed all of the formal requirements of American University of the Caribbean Medical School and graduated. He has also passed the appropriate examination. Therefore, he has met the qualification specified in subsection 458.311(3)(c).

41. Dr. Rawner has completed an academic year of supervised clinical training at an appropriate hospital. He has met the qualification specified in subsection 458.311(3)(d).

42. The Amended Notice of Intent to Deny states that section 458.311(3) is inapplicable to Dr. Rawner because he graduated from medical school in 2006, thus completing all of the formal requirements of the medical school. This reading of the statute ignores the fact that section 458.311(3) specifically speaks in terms of the <u>graduate of a foreign medical school</u>. The statute clearly contemplates that all applicants using this avenue for licensure must graduate in order to qualify.

43. Moreover, section 458.313(1)(a) requires that applicants for licensure by endorsement satisfy all "qualifications" for licensure. "Qualification" means "the possession of qualities or properties (such as fitness or capacity) inherently or legally necessary to make one eligible for a position or office, or to perform a public duty or function." Blacks Law Dictionary (9th edition). The fact that a particular applicant may exceed the specific requirements identified does not nullify the fact that he or she meets those requirements.

44. The Board takes the position that the school must have internship or social service requirements in order for a graduate to be considered for licensure. Section 458.311(3) simply does not include that requirement. Section 458.311(3)(b) requires that the graduate have studied "at a medical school which is recognized by the World Health Organization." To add the requirement that the school have internship and residency requirements, as advocated by the Board, means adding a requirement for the medical school that the Legislature has not included. Gaudet v. Fla. Bd. of Prof'l Eng'rs, 900 So. 2d 574, 581 (Fla. 1st DCA 2005); Indiaan v. Dep't of Prof'l Reg., Bd. of Chiropractic, 695 So. 2d 709 (Fla. 1st DCA 1995); Dep't of Prof'l Reg. v. Sherman College of Straight Chiropractic, 682 So. 2d 559 (Fla. 1st DCA 1995).

45. In Gaudet, the Board of Professional Engineers considered a licensure application from an engineer trained and

licensed in Pennsylvania. The Board determined that the applicant was not eligible for licensure because he did not receive a degree from a board-approved engineering program, and that because at the time of his Pennsylvania licensure, Pennsylvania did not require accreditation from the Board of Engineering and Technology (ABET), Pennsylvania's engineering licensure requirements were not substantially the same as Florida's. Section 471.015(3)(b) provided that an applicant could be licensed as an engineer when the applicant, in addition to other qualifications, "holds a valid license to practice engineering issued in another state or territory of the United States, if the criteria for issuance of the license were substantially the same as the licensure criteria that existed in this state at the time the license was issued." The Board of Professional Engineers adopted a rule that essentially limited "board approved engineering programs" to those accredited by ABET.

46. The First District reversed the Board's denial of Gaudet's application and stated,

> This court is not at liberty to re-write the legislative enactment by adding the words "in lieu of" that are simply not there . . . . Therefore, this court holds that section 471.013(1)(a) requires that the Board promulgate rules to review schools and courses of study and that the adoption of rules providing for the acceptance of the approval and accreditation of schools and courses of study by a nationally accepted accreditation organization does not relieve

> the Board of the duty to adopt the required rules.
>
> If the Board is of the opinion that the interests of the citizens of this state would best be served by allowing only graduates of ABET accredited schools to become engineers, it can seek a legislative amendment that creates such a requirement . . . . However, the legislature did not include such a requirement in the statute in question, and therefore, the Board's creation of such a requirement exceeds the legislature's statutory delegation of authority. See Dep't of Prof'l Regulation v. Sherman Coll. of Straight Chiropractic, 682 So. 2d 559, 561 (Fla. 1st DCA 1995).

Gaudet, 900 So. 3d at 580-581.

47. The same can be said here. Had the legislature intended that graduates of foreign medical schools could only be eligible if the school had internship or social services requirements, it could have provided that the graduate "has studied at a medical school which is recognized by the World Health Organization and that requires internships or social service for graduation." It did not do so.

48. The Board urges that the "plain meaning" of subsection (3)(c) is that the foreign medical school must have requirements for internships or social service. Actually, the plain meaning of the provision is that an applicant need complete all of the formal requirements of the school except internship and social service requirements. It is a limitation on the requirements of the school that the applicant must meet, not an expansion of the

programs that the medical school must require. To say that an applicant is ineligible because his or her medical school did not require a program or course that he or she was not required to complete for licensure is illogical at best.

49. The parties submitted as a Joint Exhibit the legislative history related to section 458.311. While the undersigned has reviewed all of the lengthy material submitted, nothing in the legislative history sheds light on the choice of the specific language actually contained in section 458.311(3)(b) or (c).

50. The Notice of Intent to Deny also states that the second alternative is unavailable to Petitioner because he actually has a certificate from the ECFMG. Section 458.313 gives applicants two alternatives. It does not limit the applicability of the second alternative to those applicants who have no ECFMG certificate. Further, it must be noted that subsection 458.311(3) is part of the statute governing licensure by examination, and is cross-referenced in section 458.313. The ECFMG certificate is a requirement under section 458.311(1)(f)3.b. for applicants for licensure by examination, and examination applicants are not given the choice of the two alternatives afforded applicants for licensure by endorsement. Given the Legislature's express direction in section 458.313 that an applicant for endorsement may meet the requirements in section 458.311(1)(b)-(g) <u>or</u> section 458.311(1)(b)-(e), (g) and (3), there is nothing in section

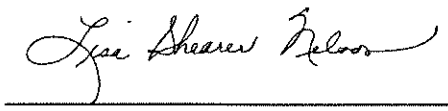
458.311 or section 458.313 to indicate that holding the ECFMG certification referenced in alternative one would render an applicant ineligible for alternative two.

51. Petitioner also contends that the Board's interpretation of section 458.311(3) is an unadopted rule. A rule is an "agency statement of general applicability that implements, interprets, or prescribes law or policy." § 120.52(16), Fla. Stat. Here, there is insufficient evidence to show that the interpretation meets the definition of a rule, as there is little, if anything, to demonstrate that the Board's interpretation is one of general applicability. Petitioner requests that both a recommended order and a final order be issued in order to address this issue. However, Dr. Rawner's Petition for Administrative Hearing does not reference section 120.56(4). It makes reference only to section 120.57(1)(e) and alleges that the Board is attempting to make "new non-rule policy preventing graduates of certain foreign medical schools from qualifying for licensure by endorsement, contrary to section 120.57(1)(e)." No agency action recommended in this Recommend Order relies on an unadopted rule. Given that Dr. Rawner has not filed a petition seeking relief pursuant to section 120.56(4), and has not asked for the remedies provided in section 120.56(4)(c)-(e), the undersigned has concluded that no final order is appropriate.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Florida Board of Medicine enter a Final Order approving Leon Rawner, M.D.'s application for licensure by endorsement.

DONE AND ENTERED this 28th day of April, 2014, in Tallahassee, Leon County, Florida.



LISA SHEARER NELSON
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 28th day of April, 2014.

COPIES FURNISHED:

Donna C. McNulty, Esquire
Office of the Attorney General
The Capitol, Plaza Level 01
Tallahassee, Florida 32399

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Tallahassee, Florida 32302

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Department of Health
Division of Medical Quality Assurance
Boards/Councils/Commissions
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Tallahassee, Florida 32399

Edward A. Tellechea, Esquire
Office of the Attorney General
The Capitol, Plaza Level 01
Tallahassee, Florida 32399

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.

Exhibit 6 - List of Documents

LAWS OF FLORIDA	ASSOCIATED LEGISLATIVE SUMMARY, STAFF ANALYSIS, OR OTHER
1. Chapter 75-154, Section 1	1.a. Senate Standing Committee on Health and Rehabilitative Services, Staff Evaluation, HB 435 by Representative Kutun, Relating to: Medical Practice Act Fifth Pathway, (Florida Archives, Series 18, Carton 261) 1.b. "Some Criticism on this Program..." (Florida Archives, Series 18, Carton 262). 1.c. Senate Standing Committee on Health and Rehabilitative Services, Staff Evaluation (Imhof), SB 414-Senator Gordon, J. Lane, Relating to Medical Practices Act Fifth Pathway). (Florida Archives, Series 18, Carton 260).
2. Chapter 79-302, Section 1	2.a. House Summary HB 1814 (Florida Archives, Series 19, Carton 541). 2.b. PB Medical Practice Act, Regulatory Reform Committee HB 1814 (Florida Archives, Series 18, Carton 965).
3. Chapter 85-344, Section 1	3.a. Senate Staff Analysis and Economic Impact Statement, Subject: Foreign Medical School Graduates, CS/SB 783 by the HRS Committee and Senator Fox (Florida Archives, Series 18, Carton 1409). 3.b. Senate Staff Analysis and Economic Impact Statement, Subject: Foreign Medical School Graduates, CS for SB 0783 by HRS Committee and Senator Fox. (Florida Archives, Series 18, Carton 1480).
4. Chapter 86-245, Section 6	4.a. Senate Staff Analysis and Economic Impact Statement, Subject: Medical Practice Act (Sunset), CS/CS/SB 1090 by Appropriations, HRS Committee and Senator Fox, (Florida Archives, Series 18, Carton 1598). 4b. Senate Staff Analysis and Economic Impact Statement, Subject: Medical Practice Act (Sunset), Senate Bill 5-B, Senators Fox and Myers (Florida Archives, Series 19, Carton 1562). 4.c. House of Representatives, Health Care and Insurance Committee, PCB 86-18, (Florida Archives, Series 19, Carton 1529).
5. Chapter 89-374, Section 5	5.a. House of Representatives Committee on Regulatory Reform, Staff Analysis and Economic Impact Statement, Bill No. 1427, Relating to Medical Practice, Companion Bill SB 1150 (Florida Archives, Series 19, Carton 2034).
6. Chapter 89-374, Section 42	None.
7. Chapter 92-149, Section 77	7.a. House of Representatives as further Revised by the Committee on Appropriations: Bill Analysis and

	Economic Impact Statement, Bill No. CS/HB 2249, Relating to: Regulation of Professions (Florida Archives, Series 19, Carton 2239). 7.b. Sectional Analysis by Department of Professional Regulation on HB 2249 requested by House Appropriations Committee (Florida Archives, Series 19, Carton 2246). 7.c. House of Representatives Committee on Regulatory Reform Final Bill Analysis & Economic Impact Statement, CS/HB 2249 (PCB RR 92-17), Relating to Regulation of Professions, (Florida Archives, Series 19, Carton 2334). 7.d. House of Representatives as Revised by the Committee on Finance & Taxation, Bill Analysis & Economic Impact Statement, HB 2249 (PCB RR 92-17) (Florida Archives, Series 19, Carton 2469). 7.e. Senate Staff Analysis and Economic Impact Statement, Bill No. CS/SB 1706, Subject: Department of Professional Regulation (Florida Archives, Series 18, Carton 1928).
8. Chapter 97-103, Section 1086	None.
9. Chapter 97-264, Section 18	9.a. Senate Staff Analysis and Economic Impact Statement, Health Care Committee and Senator Jones, Bill: CS/SB 1814, Subject: Regulation of Health Care Professions (Florida Archives, Series 18, Carton 2227). 9.b. Senate Staff Analysis and Economic Impact Statement, Bill CS/CS/SB 1814, Subject: Regulation of Health Care Professions (Florida Archives, Series 18, Carton 2279). 9.c. House of Representatives Committee on Health Care Standards & Regulatory Reform Final Bill Research & Economic Impact Statement, Bill HB 2013 (Formerly PCB HCR 97-02), Relating to Regulation of Health Care Professions/Medical Quality Assurance (Florida Archives, Series 19, Carton 2938). 9.d. Senate Staff Analysis and Economic Impact Statement, Bill PCS/SB 1814, Subject: Regulation of Health Care Professions (Florida Archives, Series 18, Carton 2267).

10. Chapter 99-397, Section 95	10.a. House of Representatives as Revised by the Committee on Governmental Operations Analysis, HB 2125 (PCB HCS 99-05), Relating to Department of Health (Florida Archives, Series 19, Carton 3070). 10.b. Senate Staff Analysis and Economic Impact Statement, CS/SB 2220, Subject: Department of Health, March 23, 1999, (Florida Archives, Series 18, Carton 2432). 10c. Senate Staff Analysis and Economic Impact Statement, CS/SB 2220, Subject: Department of Health, April 16, 1999, (Florida Archives, Series 18, Carton 2351) 10.d. Senate Staff Analysis and Economic Impact Statement, CS/SB 2220, Subject: Department of Health, April 21, 1999, (Florida Archives, Series 18, Carton 2397) 10.e. House of Representatives as Revised by the Committee on Health Care Services Final Analysis, HB 2125 (PCS HCS 99-05), Relating to Department of Health, (Florida Archives, Series 19, Carton 3139).

LEON RAWNER, M.D.,

Petitioner,

vs. DOAH Case No.: 13-4651

BOARD OF MEDICINE,

Respondent

JOINT EXHIBIT 2

Petitioner's complete licensure file kept by the Florida Board of Medicine.

CERTIFICATION

This is to certify that attached document is a photocopy of Leon Rawner, M.D, March 13, 2013 Florida medical licensure application file. Confidential documents have been redacted.

Chandra Prine

Chandra Prine
Program Operations Administrator
Department of Health/MQA
Florida Board of Medicine

County of Leon

On January 15, 2014 Chandra Prine, Program Operations Administrator personally appeared before me, and who is personally known to me to be the signer of the above instrument, and she acknowledged that she signed it.

REBECCA P HEWETT
Commission # EE 869113
Expires February 2, 2017
Bonded Thru Troy Fain Insurance 800-385-7019

Rebecca P Hewett
Notary Public

My commission expires 2/2/17

1501
File # 115677
PM

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK Angel Sanders
DATE OCT 22 2013

STATE OF FLORIDA
BOARD OF MEDICINE

IN RE: THE APPLICATION FOR
LICENSURE OF

LEON RAWNER, M.D.

_____/

AMENDED NOTICE OF INTENT TO DENY LICENSURE

This matter originally came before the Credentials Committee of the Florida Board of Medicine at a duly-noticed public meeting on August 1, 2013, in Deerfield Beach, Florida, and the full Board of Medicine (Board) on August 2, 2013, in Deerfield Beach, Florida. The Applicant, Leon Rawner M.D., was present at that Credentials Committee meeting and was represented by Amy W. Schrader, Esquire.

On August 22, 2013, a Notice of Intent to Deny Licensure was filed in this matter. Dr. Rawner timely filed a Petition for Administrative Hearing (Petition). Upon review of the Petition and consideration of the issues discussed therein, this matter was presented for reconsideration to the Credentials Committee at a duly-noticed public meeting on October 3, 2013, in Orlando, Florida, and the full Board of Medicine on October 4, 2013, in Orlando, Florida. Dr. Rawner was represented by Amy W. Schrader, Esquire, at the Credentials Committee meeting. The Credentials Committee voted to reconsider this matter based on the issues presented in the Petition.

Based on the Petition, Dr. Rawner's application file, the applicable statutes, and discussion of the matter and otherwise being advised in the premises, the Board issues this Amended Notice of Intent to Deny as follows.

The application file reveals that the Applicant does not qualify for licensure by endorsement because Dr. Rawner does not meet the requirements of Section 458.313(1)(a), Florida Statutes, which provides that each applicant meet the qualifications for licensure in Section 458.311(1)(b)-(g) or in Section 458.311(1)(b)-(e) and (g) and (3), Florida Statutes.

With respect to whether the Applicant meets Section 458.311(1)(b)-(g), Florida Statutes, the application file reveals that Dr. Rawner fails to meet the postgraduate training requirements of Section 458.311(1)(f)3.c., Florida Statutes. Regarding subsection 458.311(1)(f)3., Dr. Rawner has met the requirements of subpart (1)(f)3.a. because he is a graduate of an allopathic foreign medical school which has not been certified pursuant to Section 458.314, Florida Statutes, and he has met the requirements of subpart (1)(f)3.b. because he has had his medical credentials evaluated by the Educational Commission for Foreign Medical Graduates (ECFMG), holds an active, valid certificate issued by the ECFMG, and has passed the ECFMG examination. Dr. Rawner, however, fails to meet subpart (1)(f)3.c., because he has not completed an approved residency or fellowship of at least two years in one specialty area. This statutory provision requires that to be acceptable, the fellowship experience and training must be counted toward regular or subspecialty certification by a board recognized and certified by the American Board of Specialties.

With respect to whether the Applicant meets Section 458.311(1)(b)-(e) and (g) and (3), Florida Statutes, the application file reveals that Dr. Rawner fails to meet subsection (3) for the reasons set forth below. Subsection (3) provides:

> Notwithstanding the provisions of subparagraph (1)(f)3., a graduate of a foreign medical school need not present the certificate issued by the Educational Commission for Foreign Medical Graduates or pass the examination utilized by that commission if the graduate:
> (a) Has received a bachelor's degree from an accredited United States college or university.

(b) Has studied at a medical school which is recognized by the World Health Organization.
(c) Has completed all of the formal requirements of the foreign medical school, except the internship or social service requirements, and has passed part I of the National Board of Medical Examiners examination or the Educational Commission for Foreign Medical Graduates examination equivalent.
(d) Has completed an academic year of supervised clinical training in a hospital affiliated with a medical school approved by the Council on Medical Education of the American Medical Association and upon completion has passed part II of the National Board of Medical Examiners examination or the Educational Commission for Foreign Medical Graduates examination equivalent.

Subpart (3)(c) provides in relevant part that the applicant "has completed all of the formal requirements of the foreign medical school, *except the internship or social service requirements*, and passed certain examinations. A plain reading of this subpart is that the foreign medical school has an internship or social service requirement and that the internship or social service requirement has not been completed. The application file demonstrates that Dr. Rawner graduated in June, 2006, with a degree of Doctor of Medicine from the American University of the Caribbean School of Medicine. Thus, subpart (3)(c) is inapplicable to Dr. Rawner, because the application file reveals that he completed *all of the formal requirements* of the foreign medical school and there are no outstanding or pending internship or social service requirements.

Based on the foregoing, the Board finds that the Applicant has not demonstrated that he meets the requirements for licensure by endorsement set forth in Section 458.313(1)(a), Florida Statutes.

It is therefore **ORDERED** that the application for licensure be **DENIED.**

The Board will allow the Applicant **fourteen (14)** days from the filing date of this Notice of Intent to Deny to withdraw his application for licensure by endorsement. If the Applicant wishes to withdraw his application, written notification of the withdrawal of the application should be sent to Allison Dudley, J.D., Executive Director, Board of Medicine, 4052 Bald

Cypress Way, Bin C-03, Tallahassee, FL 32399-3253 or by email to Allison_Dudley@doh.state.fl.us.

This Order shall become effective upon filing with the Clerk of the Department of Health.

DONE AND ORDERED this 21st day of October, 2013.

BOARD OF MEDICINE

Allison M. Dudley, J.D., Executive Director
For Zachariah P. Zachariah, M.D., Chair

NOTICE OF RIGHT TO HEARING

This notice constitutes final agency action if no request for a hearing is received by the Board on or before the twenty-first day after the applicant's receipt of the notice. The applicant may request a hearing by filing an appropriate petition with the Executive Director of the Board at 4052 Bald Cypress Way, Bin #C-03, Tallahassee, Florida 32399-3253. The applicant may petition for a hearing involving disputed issues of material fact before an administrative law judge pursuant to Section 120.57 (1), Florida Statutes, or for a hearing not involving disputed issues of material fact pursuant to Section 120.57 (2), Florida Statutes.

A petition for a hearing involving disputed issues of material fact must contain information required by Rule 28-106.201, Florida Administrative Code, ***including a statement of all disputed issues of material fact.*** The Board may refer a petition to the Division of Administrative Hearings for assignment of an administrative law judge only if the petition is in substantial compliance with the rule requirements. A petition for a proceeding not involving disputed issues of material fact must contain information required by Rule 28.106.301, Florida Administrative Code, including a concise statement of the ultimate facts alleged, as well as the rules and statutes which entitle petitioner to relief.

In accordance with Section 120.573, Florida Statutes, mediation is not available.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by **Certified U.S. Mail** to **Leon Rawner, M.D.**, 615 S. 68TH Ave., Apt. #3, Wausau, WI 54401, and **Amy W. Schrader, Esq.**, Gray Robinson, 301 S. Bronough St., Ste. 600, Tallahassee, FL 32301-1724; and by interoffice mail to **Donna C. McNulty**, Senior Assistant Attorney General, Office of the Attorney General, PL-01, The Capitol, Tallahassee, Florida 32399-1050; this 22nd day of October, 2013.

Angel Sanders

Deputy Agency Clerk

Leon Rawner, M.D.

7012 3050 0002 3881 0600

Amy W. Schrader, Esq.

7012 3050 0002 3881 0617

Action Taken: The Committee voted to approve the application for licensure.

Tab 26 – Florence Cabot, M.D. - Medical Faculty Certificate
Issue(s): Petition for Waiver of Rule 64B8-1.007 and 64B8-4.009, Florida Administrative Code and to determine if training is equivalent to the 1-year residency requirement pursuant to section 458.3145(1)(d), Florida Statutes.

The applicant was not present. After discussion, a motion was made and seconded to grant the petition for waiver and to approve the application for licensure, which carried 5/0.

Action Taken: The Committee voted to grant the petition for waiver and to approve the application for licensure.

Tab 27 - Stewart Drew Warren, M.D. – Examination
Issue(s): Petition for Waiver of Rule 64B8-4.018, Florida Administrative Code.

The applicant was not present. After discussion, a motion was made and seconded to grant the petition for waiver and to approve the application for licensure, which carried 5/0.

Action Taken: The Committee voted to grant the petition for waiver and to approve the application for licensure.

Tab 28 – Evelina L. Weinstein, M.D. – Endorsement
Issue(s): Petition for Waiver of Rule 64B8-4.009(2), Florida Administrative Code.

The applicant was not present. After discussion, a motion was made and seconded to grant the petition for waiver and to approve the application for licensure, which carried 5/0.

Action Taken: The Committee voted to grant the petition for waiver and to approve the application for licensure.

Tab 28A - Leon Rawner, M.D. - Endorsement
Issue(s): Reconsideration

Represented by Amy Schrader, Esq.

The applicant was not present. After discussion, a motion was made and seconded to reconsider the Notice of Intent to Deny and amend with respect to the second avenue of licensure by endorsement under 458.313, Florida Statutes, to state that the applicant does not meet the requirements of section 458.311 (3), Florida Statutes, because subpart (3)(c) is inapplicable, and not to contest the original language regarding section (3) and subpart (3)(d).

Action Taken: The Committee voted to reconsider and amend the Notice of Intent to Deny.

Tab 29 – Ratification of Applicants Approved Supervisor, Practice Plan and Area of Practice

A motion was made and seconded to ratify the applicants approved supervisor, practice plan and area of practice, which carried 5/0.

NEW BUSINESS

Tab 30 – Rules Discussion

- 64B8-3.002, Florida Adminstrative Code, Application, Certification, Registration, and Licensure Fees.
- 64B8-1.007 & 64B8-4.009, Florida Administrative Code
- Temporary Certificate for Visiting Physicians 458.3137, Florida Statutes

After discussion, a motion was made, seconded, and carried unanimously to approve the rule changes as amended and set the initial application fee to $200.00.

1501
File #115677
PM

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK *Angel Sanders*
DATE 8/22/2013

STATE OF FLORIDA
BOARD OF MEDICINE

IN RE: THE APPLICATION FOR
LICENSURE OF

LEON RAWNER, M.D.

_____/

NOTICE OF INTENT TO DENY LICENSURE

This matter came before the Credentials Committee of the Florida Board of Medicine at a duly-noticed public meeting on August 1, 2013, in Deerfield Beach, Florida, and the full Board of Medicine on August 2, 2013, in Deerfield Beach, Florida. The Applicant, Leon Rawner M.D., was present at the Credentials Committee meeting and was represented by Amy W. Shrader, Esquire.

The application file reveals that the Applicant does not qualify for licensure by endorsement because Dr. Rawner does not meet the requirements of Section 458.313(1)(a), Florida Statutes, which provides that each applicant meet the qualifications for licensure in Section 458.311(1)(b)-(g) or in Section 458.311(1)(b)-(e) and (g) and (3), Florida Statutes.

With respect to whether the Applicant meets Section 458.311(1)(b)-(g), Florida Statutes, the application file reveals that Dr. Rawner fails to meet the postgraduate training requirements of Section 458.311(1)(f)3.c., Florida Statutes. Regarding subsection 458.311(1)(f)3., Dr. Rawner has met the requirements of subpart (1)(f)3.a. because he is a graduate of an allopathic foreign medical school which has not been certified pursuant to Section 458.314, Florida Statutes, and he has met the requirements of subpart (1)(f)3.b. because he has had his medical credentials evaluated by the Educational Commission for Foreign Medical Graduates (ECFMG), holds an active, valid certificate issued by the ECFMG, and has passed the ECFMG examination. Dr.

Exhibit "F"

F-1

Rawner, however, fails to meet subpart (1)(f)3.c., because he has not completed an approved residency or fellowship of at least two years in one specialty area. This statutory provision requires that to be acceptable, the fellowship experience and training must be counted toward regular or subspecialty certification by a board recognized and certified by the American Board of Specialties.

With respect to whether the Applicant meets Section 458.311(1)(b)-(e) and (g) and (3), Florida Statutes, the application file reveals that Dr. Rawner fails to meet subsection (3) for the reasons set forth below. Subsection (3) provides:

> Notwithstanding the provisions of subparagraph (1)(f)3., a graduate of a foreign medical school need not present the certificate issued by the Educational Commission for Foreign Medical Graduates or pass the examination utilized by that commission if the graduate:
> (a) Has received a bachelor's degree from an accredited United States college or university.
> (b) Has studied at a medical school which is recognized by the World Health Organization.
> (c) Has completed all of the formal requirements of the foreign medical school, except the internship or social service requirements, and has passed part I of the National Board of Medical Examiners examination or the Educational Commission for Foreign Medical Graduates examination equivalent.
> (d) Has completed an academic year of supervised clinical training in a hospital affiliated with a medical school approved by the Council on Medical Education of the American Medical Association and upon completion has passed part II of the National Board of Medical Examiners examination or the Educational Commission for Foreign Medical Graduates examination equivalent.

First, Subsection (3) does not pertain to Dr. Rawner, because he *has* obtained a certificate issued the Educational Commission for Foreign Medical Graduates (ECFMG). Second, subpart (3)(c) provides in relevant part that the applicant "has completed all of the formal requirements of the foreign medical school, *except the internship or social service requirements*, and passed certain examinations. Subpart (3)(c) is inapplicable to Dr. Rawner, because the application file reveals that he completed *all requirements* of the foreign medical school and there are no outstanding or

F-2

pending internship or social service requirements. The application file demonstrates that Dr. Rawner graduated in June, 2006, with a degree as a Doctor of Medicine from the American University of the Caribbean School of Medicine. Third, Dr. Rawner has not demonstrated that he meets the requirements of subpart (3)(d) that he complete an academic year of supervised clinical training in a hospital affiliated with a medical school approved by the Council on Medical Education of the American Medical Association.

Based on the foregoing, the Board finds that the Applicant has not demonstrated that he meets the requirements for licensure by endorsement set forth in Section 458.313(1)(a), Florida Statutes.

It is therefore **ORDERED** that the application for licensure be **DENIED**.

The Board will allow the Applicant fourteen (14) days from the filing date of this Notice of Intent to Deny to withdraw his application for licensure by endorsement. If the Applicant wishes to withdraw his application, written notification of the withdrawal of the application should be sent to Allison Dudley, J.D., Executive Director, Board of Medicine, 4052 Bald Cypress Way, Bin C-03, Tallahassee, FL 32399-3253 or by email to Allison_Dudley@doh.state.fl.us.

This Order shall become effective upon filing with the Clerk of the Department of Health.

DONE AND ORDERED this 21st day of May, 2013.

BOARD OF MEDICINE

Allison M. Dudley, J.D., Executive Director
For Zachariah P. Zachariah, M.D., Chair

P-3

NOTICE OF RIGHT TO HEARING

This notice constitutes final agency action if no request for a hearing is received by the Board on or before the twenty-first day after the applicant's receipt of the notice. The applicant may request a hearing by filing an appropriate petition with the Executive Director of the Board at 4052 Bald Cypress Way, Bin #C-03, Tallahassee, Florida 32399-3253. The applicant may petition for a hearing involving disputed issues of material fact before an administrative law judge pursuant to Section 120.57 (1), Florida Statutes, or for a hearing not involving disputed issues of material fact pursuant to Section 120.57 (2), Florida Statutes.

A petition for a hearing involving disputed issues of material fact must contain information required by Rule 28-106.201, Florida Administrative Code, ***including a statement of all disputed issues of material fact.*** The Board may refer a petition to the Division of Administrative Hearings for assignment of an administrative law judge only if the petition is in substantial compliance with the rule requirements. A petition for a proceeding not involving disputed issues of material fact must contain information required by Rule 28.106.301, Florida Administrative Code, including a concise statement of the ultimate facts alleged, as well as the rules and statutes which entitle petitioner to relief.

In accordance with Section 120.573, Florida Statutes, mediation is not available.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by **Certified U.S. Mail** to **Leon Rawner, M.D.**, 615 S. 68TH Ave., Apt. #3, Wausau, WI 54401, and **Amy W. Shrader, Esq.**, Gray Robinson, 301 S. Bronough St., Ste. 600, Tallahassee, FL 32301-1724; and by interoffice mail to **Donna C. McNulty**, Senior Assistant Attorney General, Office of the Attorney General, PL-01, The Capitol, Tallahassee, Florida 32399-1050; this 22nd day of August, 2013.

Angel Sanchez

Deputy Agency Clerk

Leon Rawner, M.D.
7012 3050 0002 3881 1591

Amy W. Shrader, Esq.
7012 3050 0002 3881 1607

F-4

010

McKissick, Patrice

From: McKissick, Patrice
Sent: Tuesday, October 22, 2013 10:26 AM
To: 'leonrawner@googlemail.com'
Subject: Order from October 4, 2013 meeting

Attachments: Leon Rawner.PDF

Good Morning:

This email is in regards to your Endorsement application.

At the October 4, 2013 Full Board meeting, the Board accepted the recommendation of its Credential Committee to reconsider and amend the Notice of Intent to Deny.

Please see attached a copy of your Order outlining the action of the Board.

If you have any questions or concerns, please feel free to contact me at the number below or email me at patrice.mckissick@flhealth.gov or you can contact Wendy Alls at 850-245-4131 ext. 3581 or you can email her at wendy.alls@flhealth.gov.

Thank You,

Leon Rawner.PDF
(58 KB)

Patrice McKissick
Administrative Assistant II
Department of Health (DOH) | Division of Medical Quality Assurance(MQA)
Board Office
Phone: 850-245-4131 ext. 3527 | Fax: 850-412-1276
4052 Bald Cypress, Way, # C03 | Tallahassee, FL 32399-3256
New website: www.flboardofmedicine.gov
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Vision: To be the Healthiest State in the Nation.
Purpose: To protect the public through health care licensure, enforcement and information.
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DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK Angel Sanders
DATE NOV 1 4 2013

STATE OF FLORIDA
BOARD OF MEDICINE

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Agency for Health Care Administration
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DEPARTMENT OF HEALTH
2013 NOV 12 PM 3:37

IN RE: THE APPLICATION FOR

LICENSURE OF

LEON RAWNER, M.D.

_____/

PETITION FOR ADMINISTRATIVE HEARING

COMES NOW, Leon Rawner, M.D., ("Dr. Rawner") by and through the undersigned counsel, and pursuant to sections 120.569, 120.57, and 120.60, Florida Statutes, hereby timely submits this Petition for Administrative Hearing Florida challenging the Board of Medicine's ("Board") Amended Notice of Intent to Deny Licensure, dated October 22, 2013, and in support states as follows:

I. STATEMENT OF ULTIMATE FACTS ALLEGED

A. PARTIES AND BACKGROUND

1. The name and address of the affected agency is: State of Florida, Department of Health, Board of Medicine, 4052 Bald Cypress Way, Bin #C-03, Tallahassee, Florida 32399-3253. The Board of Medicine regulates the practice of medicine in the State of Florida, including the issuance of medical licenses under the provisions of chapter 458, Florida Statutes.

2. Petitioner's address is: Leon Rawner, M.D., 615 S. 68th Avenue, Apt. #3, Wausau, WI 54401. For purposes of this proceeding, Petitioner may be contacted through his counsel, Amy W. Schrader, GrayRobinson, P.A., Post Office Box 11189, Tallahassee, Florida 32302-3189; telephone 850-577-9090. Dr. Rawner is a licensed physician in the State of Wisconsin seeking licensure by endorsement as a Medical Doctor in the State of Florida.

3. Dr. Rawner submitted his application for licensure as a Medical Doctor, Initial Licensure by Endorsement ("Application") on March 13, 2013. A copy of Dr. Rawner's Application is attached as Exhibit "A."

4. Dr. Rawner is a graduate of a foreign medical school. By letter dated, March 18, 2013, Dr. Rawner filed supplemental documentation with the Board in response to information requested on the Application to support his request for licensure by endorsement. A copy of Dr. Rawner's letter, including transcripts from Brandeis University, information regarding his clinical clerkships and results from the National Practitioner Data Bank Self-Query, is attached as Exhibit "B."

5. On April 3, 2013, the Board sent Dr. Rawner a letter requesting additional information. A copy of Tehelia Mcglockton's letter is attached as Exhibit "C." Dr. Rawner responded by letter dated May 21, 2013, providing a copy of his undergraduate degree and information relating to his one year of supervised medical clinical training. A copy of Dr. Rawner's letter, including his undergraduate degree is attached as Exhibit "D."

6. All other information requested in the Board's April 3rd letter was sent directly to the Board by the appropriate agencies, and included: 1) Official U.S. Medical Licensing Exam Transcript, indicating Dr. Rawner passed USMLE Step I, II, III; 2) Letter from Residency Program Director, indicating Dr. Rawner completed one year of residency training; 3) Confirmation from Wisconsin Medical Board confirming Dr. Rawner's current, valid medical license; 4) American Medical Association (AMA) Profile Letter; and 5) Dr. Rawner's fingerprints and background check.

7. By letter dated June 26, 2013, the Board's Program Operations Administrator, Chandra Prine, notified Dr. Rawner that he must make a personal appearance before the Credentials Committee of the Board on August 1, 2013 to discuss:

- Failure to meet the training requirement pursuant to section 458.313(1)(a), 458.311(f)3.c., Florida Statutes.
- Failure to complete an academic year of supervised clinical training pursuant to section 458.313(1)(a), 458.311(3)(d), Florida Statutes.

A copy of the Board's letter is attached as Exhibit "E."

8. On August 1, 2013, Dr. Rawner appeared before the Credentials Committee of the Board, and the Committee recommended that his license application be denied.

9. On August 26, 2013, Dr. Rawner received the Board's Notice of Intent to Deny Licensure via certified mail. A copy of the Notice is attached as Exhibit "F." Specifically, the Board denied Dr. Rawner's application based on its determination: 1) that he failed to meet the postgraduate training requirements under section 458.311(1)(f)3.c., Florida Statutes; 2) that section 458.311(3), Florida Statutes, was inapplicable to someone who has obtained a certificate issued by the Educational Commission for Foreign Medical Graduates (ECFMG) and completed all requirements of the foreign medical school; and 3) that Dr. Rawner has not demonstrated that he completed "an academic year of supervised clinical training in a hospital affiliated with a medical school approved by the Council on Medical Education of the American Medical Association." *Id.*

10. On September 13, 2013, Dr. Rawner filed a Petition for Administrative Hearing challenging the Board's Notice of Intent to Deny Licensure.

11. Upon review of the initial Petition, the Credentials Committee voted to reconsider its intended action based upon the issues presented in the Petition. Per the Committee's request,

undersigned counsel appeared before the Credentials Committee on behalf of Dr. Rawner for such reconsideration on October 3, 2013.

12. On October 22, 2013, the Board issued its Amended Notice of Intent to Deny Licensure. A copy of the Amended Notice is attached as Exhibit "G." Based upon its reconsideration of Dr. Rawner's application, the Board determined that he failed to meet the requirement in subsection 458.311(3)(c), Florida Statutes, in that the subsection allows licensure by endorsement for an applicant who "[h]as completed all of the formal requirements of the foreign medical school, except the internship or social service requirements . . . " and Dr. Rawner has in fact "completed *all of the formal requirements* of the foreign medical school and there are no outstanding or pending internship or social service requirements." *Id.* at 3 (emphasis in original).

13. Dr. Rawner is substantially affected by the Board's denial of his Application for Licensure as a Medical Doctor, resulting in his inability to work in his profession within the State of Florida.

B. Requirements for Licensure by Endorsement

14. Under Florida law, applicants for licensure as a medical doctor may qualify either through applying for licensure by examination pursuant to section 458.311, Florida Statutes, or through the process for obtaining licensure by endorsement pursuant to section 458.313, Florida Statutes. Generally, physicians who have been licensed in another jurisdiction may apply for licensure by endorsement while those medical school graduates who do not yet hold a valid license in another state must apply for licensure by examination.

15. Section 458.313, Florida Statutes, sets forth the requirements for obtaining a medical license by endorsement and in subsection (a) provides two methods by which an applicant can satisfy qualifications for licensure. This section states in pertinent part:

> (1) The department shall issue a license by endorsement to any applicant who, upon applying to the department on forms furnished by the department and remitting a fee set by the board not to exceed $500, the board certifies:
>
> (a) Has met the qualifications for licensure in s. 458.311(1)(b)-(g) or in s. 458.311(1)(b)-(e) and (g) and (3);
>
> (b) Prior to January 1, 2000, has obtained a passing score, as established by rule of the board, on the licensure examination of the Federation of State Medical Boards of the United States, Inc. (FLEX), on the United States Medical Licensing Examination (USMLE), or on the examination of the National Board of Medical Examiners, or on a combination thereof, and on or after January 1, 2000, has obtained a passing score on the United States Medical Licensing Examination (USMLE); and
>
> (c) Has submitted evidence of the active licensed practice of medicine in another jurisdiction, for at least 2 of the immediately preceding 4 years, or evidence of successful completion of either a board-approved postgraduate training program within 2 years preceding filing of an application or a board-approved clinical competency examination within the year preceding the filing of an application for licensure. For purposes of this paragraph, "active licensed practice of medicine" means that practice of medicine by physicians, including those employed by any governmental entity in community or public health, as defined by this chapter, medical directors under s. 641.495(11) who are practicing medicine, and those on the active teaching faculty of an accredited medical school.

(Emphasis added.)

16. Sections 458.311(1)(b)-(e) and (g) and (3), Florida Statutes, as incorporated in section 458.313(1)(a), provide:

> (1) Any person desiring to be licensed as a physician, who does not hold a valid license in any state, shall apply to the department on forms furnished by the department. The department shall license each applicant who the board certifies:
>
> * * *
>
> (b) Is at least 21 years of age.

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(c) Is of good moral character.

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

(e) For any applicant who has graduated from medical school after October 1, 1992, has completed the equivalent of 2 academic years of preprofessional, postsecondary education, as determined by rule of the board, which shall include, at a minimum, courses in such fields as anatomy, biology, and chemistry prior to entering medical school.

* * *

(g) Has submitted to the department a set of fingerprints on a form and under procedures specified by the department, along with a payment in an amount equal to the costs incurred by the Department of Health for the criminal background check of the applicant.

* * *

(3) Notwithstanding the provisions of subparagraph (1)(f)3., a graduate of a foreign medical school need not present the certificate issued by the Educational Commission for Foreign Medical Graduates or pass the examination utilized by that commission if the graduate:

(a) Has received a bachelor's degree from an accredited United States college or university.

(b) Has studied at a medical school which is recognized by the World Health Organization.

(c) Has completed all of the formal requirements of the foreign medical school, except the internship or social service requirements, and has passed part I of the National Board of Medical Examiners examination or the Educational Commission for Foreign Medical Graduates examination equivalent.

(d) Has completed an academic year of supervised clinical training in a hospital affiliated with a medical school approved by the Council on Medical Education of the American Medical Association and upon completion has passed part II of the National Board of Medical Examiners examination or the Educational Commission for Foreign Medical Graduates examination equivalent.

(Emphasis added.)

17. If an applicant for licensure by endorsement meets the requirements in sections 458.311(1)(b)-(e) and (g) and (3), Florida Statutes, above, they need not comply with section

458.311(1)(f), Florida Statutes, which requires the applicant to have completed "an approved residency or fellowship of at least 2 years in one specialty area." *See* §458.313(1)(a), Fla. Stat. (2013).

C. Dr. Rawner Meets All Requirements for Licensure

18. Contrary to assertions in the Board's Amended Notice of Intent to Deny Licensure, Dr. Rawner meets all requirements for licensure by endorsement under sections 458.313 and 458.311(1)(b)-(e) and (g) and (3), Florida Statutes, and, thus should be granted a license to practice medicine in the State of Florida.

19. Dr. Rawner is a Foreign Medical Graduate who is currently licensed and has been practicing medicine in Wisconsin for over two years (licensure date May 12, 2010). He received his undergraduate degree from Brandeis University in 2001 and his medical degree from American University of the Caribbean School of Medicine in 2006. *See* Ex. A.

20. While enrolled at American University of the Caribbean School of Medicine, Dr. Rawner completed an academic year of supervised clinical training with hospitals affiliated with approved medical schools, including: Wyckoff Heights Medical Center (affiliated with Medical College of Cornell University); Lutheran Medical Center (affiliated with State University of New York Health Science Center College of Medicine); and Elmhurst Hospital Center (affiliated with Mt. Sinai School of Medicine). He completed rotations in Cardiology, Nephrology, Family Medicine, Emergency Medicine, Neurology, and Anesthesiology. Dr. Rawner's Clinical Clerkship Evaluation Reports evidencing his academic year of supervised clinical training are attached as Composite Exhibit "H."

21. Subsequent to graduation from medical school, Dr. Rawner received his Educational Commission for Foreign Medical Graduates (ECFMG) certificate in June 2006. He

completed a one-year residency in Internal Medicine at Mt. Sinai—Elmhurst Hospital Center in June 2007. A copy of the residency certificate is attached as a part of Exhibit "A."

22. Since January 24, 2011, Dr. Rawner has been active in the licensed practice of medicine in Wausau, Wisconsin, as a staff physician with Knee Pain Solutions Center. A copy of Dr. Rawner's Curriculum Vitae evidencing his education and work experience is attached as Exhibit "I."

23. Despite the fact that Dr. Rawner provided ample evidence of his credentials and qualifications to be licensed via endorsement in the State of Florida both through his application and appearance at the Board's Credentials Committee, the Board has noticed its intent to deny his license application. The Board's intended decision to deny Dr. Rawner's application for license by endorsement should be reversed for the reasons set forth below.

24. The Amended Notice states that Dr. Rawner's application is being denied because he completed all requirements of the foreign medical school he attended instead of only "complet[ing] all of the formal requirements of the foreign medical school, except the internship or social service requirements . . ." §458.311(3)(c), Fla. Stat. (2013).

25. The plain reading of section 458.311(3)(c), Florida Statutes, is that an applicant must meet the formal requirements of his medical school, but does not need to meet any internship or social service requirements. The provision is structured as a general rule followed by an allowed exception. Having met all the requirements for graduation should not be a bar to a statute that requires a specific item (completed all formal requirements) and allows for certain included requirements to be circumscribed (the internship or social services requirement). This reading is especially appropriate here where it is only beneficial if in an applicant has completed the additional requirements.

26. Furthermore, section 458.313(1)(a), Florida Statutes, only requires that applicants for licensure by endorsement satisfy all "qualifications for licensure" set forth in section 458.311(3). (emphasis added). A provision excusing an applicant from completing internship or social service requirements does not amount to a "qualification for licensure," and thus, Dr. Rawner's application cannot be denied simply because he completed all of the requirements of his medical school.[1]

27. According to Black's Law Dictionary (9th ed. 2009), a "qualification" is defined as: "The possession of qualities or properties (such as fitness or capacity) inherently or legally necessary to make one eligible for a position or office, or to perform a public duty or function." Thus, a qualification for medical licensure must be the applicant's possession of some affirmative quality that makes him more capable of performing as a medical doctor. Certainly, the failure to complete internship or social service requirements in order to graduate from medical school could not be considered such a "qualification" as the lack of internship or social service experience could only detract, and not add to the competency or skills of an applicant. Thus, Dr. Rawner has completed all statutory "qualifications" required for licensure by endorsement, and is therefore entitled to issuance of a license.

28. Finally, the Board improperly applied an unadopted rule in denying Dr. Rawner's application on the basis that he attended a foreign medical school that does not have "internship or social service requirements." Specifically, the Amended Notice states that in considering applicants for licensure by endorsement, the Board presumes "that the foreign medical school has an internship or social service requirement and that the internship or social service requirement has not been completed." *Id.* at 3.

[1] The American University of the Caribbean School of Medicine does not have "internship or social service requirements," so that the program of study is considered complete without these additional measures.

29. Nowhere in the applicable statutes, however, does it state that only graduates of foreign medical schools with "internship or social service requirements" are eligible for licensure by endorsement. On the contrary, the requirements related to medical school eligibility are explicitly listed in the preceding clause, section 458.311(3)(b), which requires that the medical school be recognized by the World Health Organization. The Board, therefore, is impermissibly attempting to make new non-rule policy preventing graduates of certain foreign medical schools from qualifying for licensure by endorsement, contrary to section 120.57(1)(e), Florida Statutes (prohibiting an agency from basing agency action which determines the substantial interests of a party on an unadopted rule). *See Dep't of Prof'l Reg., Bd. of Chiropractic v. Sherman College of Straight Chiropractic*, 682 So. 2d 559 (Fla. 1st DCA 1996) (holding that an agency cannot by rule, let alone by an unadopted rule, add an accreditation requirement that is not found in a statute); *see also Gaudet v. Fla. Bd. of Prof'l Engineers*, 900 So. 2d 574 (Fla. 4th DCA 2004).

30. Therefore, Dr. Rawner should be granted licensure by endorsement as he meets all of the statutory qualifications and the Board is prohibited from applying an unadopted rule to serve as the basis for its intended denial.

II. DISPUTED ISSUES OF MATERIAL FACT

31. Disputed issues of fact include:

(a) Whether the Board acted contrary to its own rules and governing statutes in denying Petitioner's application.

(b) Whether Petitioner's application demonstrates the required experience and training for licensure by endorsement as a medical doctor.

(c) Whether the Board is impermissibly applying an unadopted rule in denying Petitioner's application.

(d) Whether Petitioner is entitled to issuance of a medical doctor's license.

(e) Petitioner reserves the right to add additional disputed issues of material fact as revealed through discovery.

III. APPLICABLE LAW THAT REQUIRES MODIFICATION OF THE BOARD'S PROPOSED ACTION

32. Sections 458.313 and 458.311, Florida Statutes, setting forth the applicable requirements for licensure by endorsement.

33. Petitioner reserves the right to amend this Petition upon discovery of additional facts and circumstances yet to be discovered. Petitioner is entitled to relief pursuant to the provisions of sections 120.57(1), 120.569, 120.60 and chapter 458, Florida Statutes, the Board's administrative rules, together with established decisional law of Florida courts and administrative agencies.

IV. RELIEF REQUESTED

WHEREFORE, Petitioner requests:

(a) That the Board approve Petitioner's application for a licensure as a medical doctor.

(b) That if the parties cannot mutually resolve issues preventing the Board from issuing a medical doctor's license to Petitioner, that this petition be forwarded to the Division of Administrative Hearings and that a formal hearing be conducted before an Administrative Law Judge pursuant to sections 120.569 and 120.57(1), Florida Statutes.

(c) That recommended and final orders be entered determining that:

1. Petitioner's application contains evidence of the requisite training and experience for entitlement to a medical doctor's license.

2. The Board's decision not to issue a medical doctor's license to Petitioner is arbitrary and capricious.

3. That Petitioner's application for a medical licensure be approved.

4. Awarding such supplemental relief to Petitioner as may be just and legally authorized.

CERTIFICATE OF SERVICE

I hereby certify that the original of the foregoing has been filed by Hand Delivery with the Agency Clerk, Florida Department of Health, Board of Medicine, 2585 Merchants Row Blvd., Prather Building Suite 110, Tallahassee, Florida 32399-3251, and a copy has been furnished by U.S. Mail this 12th day of November, 2013, to:

Donna C. McNulty
Senior Assistant Attorney General
Office of the Attorney General
PL-01, The Capitol
Tallahassee, FL 32309-1050

/s/ Amy W. Schrader

Amy W. Schrader (Fla. Bar No. 621358)
GrayRobinson, P.A.
301 South Bronough Street, Suite 600
Post Office Box 11189 (32302)
Tallahassee, Florida 32301
Telephone (850) 577-9090
Facsimile (850) 577-3311
Email: aschrader@gray-robinson.com
Counsel for Leon Rawner, M.D.

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George Thomas, MD
Bradenton, Florida

Sarvam TerKonda, MD
Jacksonville, Florida

Bernardo Fernandez, MD
Davie, Florida

Executive Director
Allison M. Dudley, J.D.

June 26, 2013

Leon Rawner, M.D.
615 S. 68th Ave., Apt. #3
Wausau, WI 54401

Dear Dr. Rawner:

This is in further reference to your Endorsement application.

Please be advised that you are required to make a personal appearance before the Credentials Committee of the Board of Medicine to discuss:

- **Failure to meet the training requirement pursuant to section 458.313(1)(a), 458.311(f)3.c., Florida Statutes.**
- **Failure to complete an academic year of supervised clinical training pursuant to section 458.313(1)(a), 458.311(3)(d), Florida Statutes.**

In addition, the Committee may inquire into any other issues relating to your application and eligibility for licensure.

Date:	Thursday, August 1, 2013
Time:	8:00 a.m.
Location:	Hilton Deerfield Beach/Boca Raton, 100 Fairway Drive, Deerfield Beach, Florida 33441 (954) 427-7700

The meeting room will be posted in the lobby of the Hotel. (FYI- Subject to availability, a block of rooms is available for the public attending the Dept. of Health – Florida Board of Medicine's meeting. The rate is $99.00 a night; Cutoff date is July 10, 2013)

Additionally, the Committee's recommendation on your application for licensure will be presented to the full Board of Medicine, August 2-3, 2013 for final action. You are not required to attend the full board meeting.

Thank you for your continued cooperation. Should you have any questions regarding this matter, please feel free to contact me. This is your first scheduled appearance.

Sincerely,

Chandra Prine

Chandra Prine
Program Operations Administrator

*** 456.013(3)(c) In considering applications for licensure, the board, or the department when there is no board, may require a personal appearance of the applicant. If the applicant is required to appear, the time period in which a licensure application must be granted or denied shall be tolled until such time as the applicant appears. However, if the applicant fails to appear before the board at either of the next two regularly scheduled board meetings, or fails to appear before the department within 30 days if there is no board, the application for licensure shall be denied.**

4052 Bald Cypress Way, Bin C03
Tallahassee, Florida 32399-3253
Phone: (850) 245-4131 • Fax: (850) 488-0596
http://www.FLBoardofMedicine.gov

Division of Medical Quality Assurance
MQA
Florida HEALTH

From: Leon Rawner [mailto:leonrawner@gmail.com]
Sent: Wednesday, July 10, 2013 9:13 PM
To: Prine, Chandra
Subject: Re: Florida medical License

Hi Ms. Prine,

Thank you again for taking the time on Tuesday to discuss with me my application for licensure through endorsement (ID 115677). I am including more supporting documents and information for my application confirming that I completed an academic year of supervised clinical training in hospitals "affiliated with a medical school approved by the Council on Medical Education of the American Medical Association." Please add these supplemental documents to my file to be reviewed by the credentials committee and the board of medicine.

Thank you for all your help.

Sincerely,
Leon Rawner, MD
(646) 812-2728

On Thu, Jun 27, 2013 at 10:14 AM, <Chandra_Prine@doh.state.fl.us> wrote:

<<Rawner- PA>>
Thanks,
Chandra Prine
Program Operations Administrator
Department of Health (DOH) | Division of Medical Quality Assurance (MQA)|
Board of Medicine
Phone: 850-245-4135| Fax: 850-412-4135
4052 Bald Cypress Way, Bin C03, Tallahassee, FL 32399-3253
Website: www.flboardofmedicine.gov
Twitter: www.twitter.com/FLBoardofMed
There have been changes to the license renewal process. Please visit www.CEAtRenewal.com to learn more.

Mission: To protect, promote and improve the health of all people in Florida through integrated state, county, and community efforts.

Vision: To be the **Healthiest State** in the Nation.
Purpose: To protect the public through health care licensure, enforcement and information.
Focus: To be the nation's leader in quality health care regulation.
Values: I.C.A.R.E. (Innovation, Collaboration, Accountability, Responsiveness, Excellence)
PLEASE NOTE: Florida has a very broad public records law. Most written

communications to or from State officials regarding State business are public records available to the public and media upon request. Your email communications may therefore be subject to public disclosure.

I. Academic year of supervised clinical training

A. Overview: I completed an academic year of supervised clinical training with hospitals affiliated with medical schools approved by the Council on Medical Education of the American Medical Association (CME-AMA).[1] The supervised clinical training I completed is also a requirement in order to graduate from my medical school and completion of the required rotations and the grades I received for each rotation is listed on my medical school transcript provided to the Board. Below please find complete information on each of the three hospitals where I performed the one year of supervised clinical rotations. Included with the information for each hospital is the medical school affiliation that was approved by the CME-AMA. Below that please find a description of each rotation I completed, including the hospital where I performed the rotation. The rotations I completed are standard rotations completed by medical students of U.S. medical schools, and in fact I rotated alongside such medical students.

B. Hospitals:

"Wyckoff" - Wyckoff Heights Medical Center
Academic affiliate of Weill Medical College of Cornell University
374 Stockholm Street, Brooklyn, NY 11237; Tel: (718) 963-7272

"Lutheran" - Lutheran Medical Center
Academic affiliate of the State University of New York Health Science Center College of Medicine
150 55th St., Brooklyn, NY 11220; Tel: (718) 630-7000

"Elmhurst" - Elmhurst Hospital Center
Academic Affiliate of Mt. Sinai School of Medicine
79-01 Broadway, Elmhurst, NY 11373; Tel: (718) 334-4000

C. Rotations:

1. **EMERGENCY MEDICINE:** *July 2005 (4 weeks) at Wyckoff*
Worked with Emergency Medicine faculty and residents and acted as the primary physician for Emergency Department (ED) patients, including initial assessment, performance of minor procedures, interpretation of lab and x-ray, and preparation for admission to inpatient services. Did observe critical resuscitations. Was exposed to a wide variety of acute medical and surgical problems and was taught how to evaluate and treat these problems.

Developed skills in:

- Acquiring first-hand experience in dealing with emergency problems.
- Demonstrated the ability to competently evaluate, treat, and manage common problems that occur in patients who come to emergency departments such as chest pain, abdominal pain, trauma, shock and shortness of breath.
- Gained experience with common emergency department procedures such as IV access, Foley catheterization and wound management.

[1] Please note: This one year of CME-AMA approved training is separate from the one year of residency training I completed in the U.S. (the residency was approved by the Accreditation Council for Graduate Medical Education (ACGME)).

- Gained insight into pre-hospital care.

Evaluated by Emergency Medicine Attending.

2. **NEUROLOGY:** *August 2005 (4 weeks) at Wyckoff*
Developed clinical skills in diagnosing and treating neurologic illnesses. Became familiar with common neurological disorders including dementia, Parkinson's disease, neuromuscular, and other neurologic diseases. Completed daily rounding with the attending in an inpatient setting.

Developed skills in:

- Proficiency at acquiring history and performing examinations on neurological patients and was able to localize and describe the clinical profiles of common neurological disorders.
- Describing and discussing the value, limitations, indications, and contraindications of common diagnostic procedures including LP, EEG, EMG, and neuroimaging techniques.
- Correlating data obtained from the history, general physical examination, neurological examination, laboratory, and specialized diagnostic procedures to develop a clinical diagnosis, differential diagnosis, and management plan. This was presented orally and in written form.
- Identifying, characterizing, assessing, and (especially for chronic problems) planning an integrated long-term management for the following common neurologic presentations: spine or limb pain, stroke syndromes, seizures, Parkinsonism and movement disorders, weakness, headaches, abnormalities of mental behavior, and dizziness.
- Identifying, assessing, and formulating management plans for neurological emergencies such as coma, status epilepticus, meningitis, neuromuscular respiratory failure, spinal cord compression, and increased intracranial pressure.
- Recognizing situations appropriate for neurologic consultation, to determine the urgency of the consultation, and to define the role of the consultant.

Evaluation by Board Certified Neurologist.

3. **NEPHROLOGY / RENAL:** *September 2005 (4 Weeks) at Elmhurst*
Performed histories and physical exams (work up) and participated in the evaluation and management of patients with acute and chronic renal, fluid, and electrolyte disorders. Was provided with a wide exposure to both inpatient and outpatient dialysis. Developed skills in the management of both inpatients and outpatients with hypertension. Participated in daily rounds with the Nephrology Fellows and Attendings, and assisted with clinics and journal club. In addition, did attend didactic lectures and departmental teaching conferences, including the renal pathology and clinical nephrology conferences. Worked closely with the medicine residents and fellows and presented cases on patients, including clinical and lab data, and assessment of problems to the attending physician on rounds and in the clinic.

Developed skills in:

- diagnostic studies used in the evaluation of renal disease; and

- management of common problems (acute renal failure, chronic renal failure, acid-base imbalance, fluid and electrolyte disorders, hypertension, nephrotic syndrome, etc.).

Evaluation by Board Certified Nephrologist.

4. **CARDIOLOGY:** *October 2005 (4 Weeks) at Elmhurst*
Performed histories and physical exams (work up) and participated in the evaluation and management of acute and chronic cardiovascular disease problems as they occur in both the inpatient consultation service and the outpatient setting. Attended cardiovascular clinical conferences as well as informal didactic teaching conferences on topics in cardiology. Worked closely with the cardiology Fellow and was exposed to echocardiography, electrocardiography, exercise testing, coronary angiography, and hemodynamic assessment of various cardiac diseases.

Developed skills in:

- physical diagnosis of the cardiovascular system;
- interpretation of electrocardiograms;
- use of the laboratory in cardiovascular diagnosis; and
- clinical management of cardiovascular disease

Evaluated by Board Certified Cardiologist.

5. **INTERNAL MEDICINE (SUB-I):** *November/December 2005 (4 Weeks) at Lutheran*
Gained experience in the initial assessment and evaluation of patients with internal medicine problems. Performed history and physical examinations on inpatients. Worked on an Internal Medicine team reporting to the attending and was evaluated on history taking, physical examination, clinical sources, academic sources, diagnosis, treatment program, verbal reports, following patient's progress, work habits, doctor-patient relationship and professionalism. Attended daily morning reports and afternoon didactic teaching sessions.

Developed skills in:

- communicating with patients, families, and health care personnel;
- performing medical histories and physical exams;
- identifying and prioritizing patient problems;
- developing a reasoned differential diagnosis based on history and physical;
- using the laboratory appropriately and responsibly to evaluate diagnostic possibilities;
- developing an appropriate diagnostic plan and understanding the therapeutic management plan;
- presenting the patient's case story; and
- monitoring and reporting on the patient's progress.

Evaluated by Board Certified Internist.

6. **ANESTHESIOLOGY:** *February 2006 (4 weeks) at Wyckoff*

Worked with anesthesiology faculty physicians on the anesthesia care of perioperative patients. The perioperative care experience included procedures involving all surgeries including, critically ill patients, and children with congenital anomalies and hereditary disorders. Attended daily student/staff seminars covering introduction to general anesthesia, skills lab, perioperative cardiovascular physiology/hemodynamics, clinicalular blocking agents, pulmonary ventilation, and physiology, physiology and treatment of pain, and care of patients in the Post Anesthesia Care Unit (PACU).

Developed skills in:

- Medical care of the unconscious patient.
- General understanding of the specialty of anesthesiology.
- Participation in the preoperative assessment and preparation of the surgical patient.
- Medical care in post-operative care unit, SICU, and pain clinic.
- Management of acute respiratory and cardiovascular problems in the unconscious or semiconscious patient with hypnotic opioid and other sedatives.
- Training in basic skills of intubation, airway management, and intravenous therapy.

Evaluation by Board Certified Anesthesiologist.

7. **FAMILY MEDICINE, SUB-I:** *March 2006 (4 weeks) at Wyckoff*
Worked with family medicine faculty physicians and family medicine residents in all the facets of family medicine care including: office, inpatient hospital service, labor and delivery, overnight call, procedures, and nursing home rounds. Performed histories and physical exams on patients and reported to the residents and attending on my findings and treatment plan. Did attend daily didactic lectures.

Developed skills in

- communicating with patients, families, and health care personnel;
- performing medical histories and physical exams;
- identifying and prioritizing patient problems;
- developing a reasoned differential diagnosis based on history and physical;
- using the laboratory appropriately and responsibly to evaluate diagnostic possibilities;
- developing an appropriate diagnostic plan and understanding the therapeutic management plan;
- presenting the patient's case story; and
- monitoring and reporting on the patient's progress.

Evaluated By Board Certified Family Medicine Physician.

FLORIDA | Board of Medicine

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John H. Armstrong, MD, FACS
Surgeon General & Secretary

May 09, 2013

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Executive Director
Allison M. Dudley, J.D.

MEMORANDUM

TO: Chandra Prine
Program Administrator

FROM: Karrell D. Goldwire
Regulatory Specialist II

SUBJECT: Application for Leon Rawner, MD

Attached is documentation concerning Leon Rawner, MD's application for licensure by Endorsement.

Applicant is a foreign graduate with ONLY one year of training. Please review this issue and advise if this applicant requires: and does not have 1 year of Supervised Clinical Training Sponsored by the AMA

a) Personal Appearance Per Dr. Nuss C. Prine May 9, 2013

Enclosed is the applicant's supporting documentation /s regarding this issue.

[NOTE: Determination is being made solely on the issues submitted; should other issues arise, resubmit for new determination. In addition, the Credentials Committee may inquire into any other issues concerning eligibility for licensure.]

File is Complete

4052 Bald Cypress Way, Bin C03
Tallahassee, Florida 32399-3253
Phone: (850) 245-4131 • Fax: (850) 488-0596
http://www.FLBoardofMedicine.gov

Division of Medical Quality Assurance
MQA FLORIDA HEALTH

458.313(1)(a) Has met the qualifications for licensure in s. 458.311(1)(b)-(g) or in s. 458.311(1)(b)-(e) and (g) and (3);

458.311(1)
(b) Is at least 21 years of age.
(c) Is of good moral character.
(d) Has not committed any act or offense in this or any other jurisdiction which would constitute the basis for disciplining a physician pursuant to s. 458.331.
(e) For any applicant who has graduated from medical school after October 1, 1992, has completed the equivalent of 2 academic years of preprofessional, postsecondary education, as determined by rule of the board, which shall include, at a minimum, courses in such fields as anatomy, biology, and chemistry prior to entering medical school.
(f) Meets one of the following medical education and postgraduate training requirements:
1.a. Is a graduate of an allopathic medical school or allopathic college recognized and approved by an accrediting agency recognized by the United States Office of Education or is a graduate of an allopathic medical school or allopathic college within a territorial jurisdiction of the United States recognized by the accrediting agency of the governmental body of that jurisdiction;
b. If the language of instruction of the medical school is other than English, has demonstrated competency in English through presentation of a satisfactory grade on the Test of Spoken English of the Educational Testing Service or a similar test approved by rule of the board; and
c. Has completed an approved residency of at least 1 year.
2.a. Is a graduate of an allopathic foreign medical school registered with the World Health Organization and certified pursuant to s. 458.314 as having met the standards required to accredit medical schools in the United States or reasonably comparable standards;
b. If the language of instruction of the foreign medical school is other than English, has demonstrated competency in English through presentation of the Educational Commission for Foreign Medical Graduates English proficiency certificate or by a satisfactory grade on the Test of Spoken English of the Educational Testing Service or a similar test approved by rule of the board; and
c. Has completed an approved residency of at least 1 year.
3.a. Is a graduate of an allopathic foreign medical school which has not been certified pursuant to s. 458.314;
b. Has had his or her medical credentials evaluated by the Educational Commission for Foreign Medical Graduates, holds an active, valid certificate issued by that commission, and has passed the examination utilized by that commission; and
c. Has completed an approved residency of at least 1 year; however, after October 1, 1992, the applicant shall have completed an approved residency or fellowship of at least 2 years in one specialty area. However, to be acceptable, the fellowship experience and training must be counted toward regular or subspecialty certification by a board recognized and certified by the American Board of Medical Specialties.
(g) Has submitted to the department a set of fingerprints on a form and under procedures specified by the department, along with a payment in an amount equal to the costs incurred by the Department of Health for the criminal background check of the applicant.

458.311(1)(b)

(b) Is at least 21 years of age.
(c) Is of good moral character.
(d) Has not committed any act or offense in this or any other jurisdiction which would constitute the basis for disciplining a physician pursuant to s. 458.331.
(e) For any applicant who has graduated from medical school after October 1, 1992, has completed the equivalent of 2 academic years of preprofessional, postsecondary education, as determined by rule of the board, which shall include, at a minimum, courses in such fields as anatomy, biology, and chemistry prior to entering medical school.

g) Has submitted to the department a set of fingerprints on a form and under procedures specified by the department, along with a payment in an amount equal to the costs incurred by the Department of Health for the criminal background check of the applicant.

(3) **Notwithstanding** the provisions of subparagraph 1)(f)3(., **a graduate of a foreign medical school need not present the certificate issued by the Educational Commission for Foreign Medical Graduates or pass the examination utilized by that commission if the graduate:**
(a) Has received a bachelor's degree from an accredited United States college or university.
(b) Has studied at a medical school which is recognized by the World Health Organization.
(c) **Has completed all of the formal requirements of the foreign medical school, except the internship or social service requirements**, and has passed part I of the National Board of Medical Examiners examination or the Educational Commission for Foreign Medical Graduates examination equivalent.
(d) **Has completed an academic year of supervised clinical training in a hospital affiliated with a medical school approved by the Council on Medical Education of the American Medical Association** and upon completion has passed part II of the National Board of Medical Examiners examination or the Educational Commission for Foreign Medical Graduates examination equivalent.

His med school does not req. Int/Soc. Ser. to rec. the degree.

From: McGlockton, Tehelia
Sent: Tuesday, May 21, 2013 4:39 PM
To: 'LEONRAWNER@GOOGLEMAIL.COM'

Attachments: Def Ltr Update.doc

Dr. Rawner,

Please see that attached update regarding your Florida Licensure Application requirements/deficiencies.

Thank you.

Tehelia McGlockton
Regulatory Specialist I
Department of Health (DOH) | Division of Medical Quality Assurance (MQA)
Board Office
Phone: 850-245-4131, ext. 3515 | Fax: 850-412-1298
4052 Bald Cypress Way, # C03 | Tallahassee, FL 32399-3256
New Website: www.flboardofmedicine.gov
Twitter: www.twitter.com/FLBoardofMed

There have been changes to the license renewal process. Please visit www.CEAtRenewal.com to learn more.

Mission: To protect, promote and improve the health of all people in Florida through integrated state, county, and community efforts.
Vision: To be the Healthiest State in the Nation.
Purpose: To protect the public through health care licensure, enforcement and information.
Focus: To be the nation's leader in quality health care regulation.
Values: I.C.A.R.E. (Innovation, Collaboration, Accountability, Responsiveness, Excellence)

PLEASE NOTE: Florida has a very broad public records law. Most written communications to or from State officials regarding State business are public records available to the public and media upon request. Your email communications may therefore be subject to public disclosure.

McGlockton, Tehelia

From: Leon Rawner [leonrawner@gmail.com]
Sent: Tuesday, May 21, 2013 11:42 PM
To: McGlockton, Tehelia
Subject: Re:
Attachments: Leon Rawner Response response letter 5.21.13.pdf

Hi Tehelia, thank you for the email. I sent a fax with my response and I am including a .pdf copy of the fax in this email (please see the .pdf attachment). I believe this should cover everything you need. Please confirm that the fax (or .pdf) was received and put into my record.

Thank You,
Dr. Rawner
---------- Forwarded message ----------
From: <Tehelia_McGlockton@doh.state.fl.us>
Date: Tue, May 21, 2013 at 3:39 PM
Subject:
To: LEONRAWNER@googlemail.com

Dr. Rawner,

Please see that attached update regarding your Florida Licensure Application requirements/deficiencies.

Thank you.

Tehelia McGlockton
Regulatory Specialist I
Department of Health (DOH) | Division of Medical Quality Assurance (MQA)
Board Office
Phone: 850-245-4131, ext. 3515 | Fax: 850-412-1298
4052 Bald Cypress Way, # C03 | Tallahassee, FL 32399-3256
New Website: www.flboardofmedicine.gov
Twitter: www.twitter.com/FLBoardofMed

There have been changes to the license renewal process. Please visit www.CEAtRenewal.com to learn more.

Mission: To protect, promote and improve the health of all people in Florida through integrated state, county, and community efforts.
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5/22/2013

Tehelia McGlockton
Regulatory Specialist I
Department of Health (DOH) | Division of Medical Quality Assurance (MQA)
Fax: 850-412-1298, Number of Pages: 2

May 21st, 2013

RE: Application Number 115677 [Please save or print this email/fax to go into my record]

Hi Tehelia,

I received your email today. In response to your request regarding deficiencies in my application, please keep this response for your records.

1. **Please submit a copy of your undergraduate degree.**

   I am including a copy of my undergraduate diploma in this correspondence. Please note that my undergraduate degree is also evidenced by the transcript I submitted as part of my application as requested previously.

2. **Please submit a copy of the certificate of completion of an academic year of supervised clinical training that was affiliated with a medical school approved by the Council on Medical Education of the American Medical Association. Please note that this is not the same as a residency that is approved by the ACGME (Accreditation Council on Graduate Medical Education).**

   My medical school does not issue certificates for completion of supervised clinical training, however, as evidenced by the FCVS materials I submitted as part of my application as requested previously, I did complete an academic year of supervised clinical training with hospitals affiliated with medical schools approved by the Council on Medical Education of the American Medical Association. This is separate from my one year of ACGME approved residency. The supervised clinical training I completed is also a requirement in order to graduate from my medical school and completion of the required rotations and the grades I received for each rotation is listed on my medical school transcript. I have taken the liberty of restating below each hospital where I performed the one year of supervised clinical rotations and in brackets I have included the medical school affiliation that was approved by the Council on Medical Education of the American Medical Association.

US-Clerkship are not approved by AMA

- **Wyckoff Heights Medical Center**
  [Academic Affiliate of Weill Medical College of Cornell University]
  374 Stockholm Street
  Brooklyn, NY 11237
  Tel: (718) 963-7272
  Completed Supervised Clinical Training in: EMERGENCY MEDICINE, NEUROLOGY, ANESTHESIOLOGY, and FAMILY MEDICINE.

- **Lutheran Medical Center**
  [Academic Affiliate of the State University of New York Health Science Center College of Medicine]
  150 55th St.
  Brooklyn, NY 11220
  Tel: (718) 630-7000
  Completed Supervised Clinical Training in: INTERNAL MEDICINE (SUB-I).

- **Elmhurst Hospital Center**
  [Academic Affiliate of Mt. Sinai School of Medicine]
  79-01 Broadway Elmhurst, NY 11373
  Tel: (718) 334-4000
  Completed Supervised Clinical Training in: NEPHROLOGY, CARDIOLOGY.

This is not a clerkship

Conclerkship were done in England

Sincerely,
Leon Rawner, M.D.
Phone: 646-812-2728 / Fax: 866-624-2513

PubMed

Display Settings: Abstract

Acad Med. 1992 Feb;67(2):85-7.

Origin of the LCME, the AAMC-AMA partnership for accreditation.

Kassebaum DG.

Association of American Medical Colleges, Washington, D.C. 20037.

Abstract

The accrediting agency for U.S. and Canadian medical education programs, the Liaison Committee on Medical Education (LCME), was founded 50 years ago at a 1942 meeting of leaders of the Association of American Medical Colleges (AAMC) and the American Medical Association. The author, using sources from the AAMC archives and elsewhere, describes the background, content, and outcomes of this meeting, which was called to devise ways for the two organizations to avoid duplication of effort during the emergency conditions brought about by World War II. The participants met for several specific reasons: to create a united front to protect medical students from the wartime draft, to find economies in carrying out the profession's duties to assure the quality of medical education, and to survey medical schools that were being affected by pressure for continuous sessions and accelerated medical training. At this meeting a joint board for medical school surveys was created; eventually this liaison board became known as the LCME. The author closes with a quote from the 1942 meeting concerning the social responsibility of medical education and notes the continuing importance to translate this and other imperatives into standards for accreditation that protect educational quality and foster its improvement.

PMID:1547000[PubMed - indexed for MEDLINE]

Publication Types, MeSH Terms

LinkOut - more resources

LIAISON COMMITTEE ON
MEDICAL EDUCATION

Frequently Asked Questions

Who accredits medical schools? What standards are used to accredit schools?

In the United States, the accreditation status of programs leading to the M.D. degree is determined solely by the Liaison Committee on Medical Education (LCME). In cooperation with the Committee on Accreditation of Canadian Medical Schools (CACMS), the LCME also accredits M.D. programs in Canada. To be accredited, programs must meet the national standards described in the document, Functions and Structure of a Medical School.

For further information, refer to the Overview and Accreditation Procedures sections of this site.

Why are there two LCME offices? Which one should I contact?

The LCME is jointly sponsored by the Association of American Medical Colleges (AAMC) and the Council on Medical Education of the American Medical Association (AMA). The AAMC and the AMA each appoint an LCME Co-Secretary (known jointly as the Secretariat) and maintain accreditation offices in Washington, D.C. and Chicago, respectively. For more information on the LCME Secretariat please visit the Contacts page.

Is a list of LCME-accredited schools available to the public?

Yes, a current listing of LCME-accredited programs in the U.S. and LCME/CACMS-accredited programs in Canada is found on this web site in the Directory of Accredited Medical Education Programs. Additionally, lists of accredited schools in the U.S. and Canada are published each fall in the Medical Education issue of the *Journal of the American Medical Association* (JAMA).

Where can I find information about LCME requirements for new or proposed medical schools?

The document, LCME Accreditation Guidelines for New and Developing Medical Schools describes the minimum requirements for consideration by the LCME in order to meet the five steps of accreditation leading to full accreditation. Details on those five steps, as well as a listing of new medical schools currently in the application process, can be viewed here. Interested parties are strongly encouraged to contact the LCME Secretariat for more detailed information.

Why is accreditation important?

Accreditation signifies that national standards for structure, function, and performance are met by a medical school's education program leading to the M.D. degree. LCME accreditation establishes eligibility for selected federal grants and programs, including Title VII funding administered by the Public Health Service. Students and graduates of LCME-accredited medical schools are eligible to take the United States Medical Licensing Examination (USMLE). These graduates also have eligibility to enter residencies approved by the Accreditation Council for Graduate Medical Education (ACGME). Graduating from an LCME-accredited U.S. school and passing the national licensing examinations are accepted as prerequisites for medical licensure in most states.

Does the LCME accredit international medical schools? If not, who does?

The LCME's scope is limited to the accreditation of complete and independent medical education programs where students are geographically located in the United States or Canada for their education and that are operated by universities or medical schools that are chartered in the United States or Canada. There is no single authority accrediting medical education programs internationally. Some countries have their own processes for educational quality assurance or accreditation, including the United Kingdom, Australia, Mexico, and others.

Does the LCME accredit osteopathic medical schools?

No. Osteopathic medical schools are accredited by the American Osteopathic Association, Chicago, Illinois, 312-280-5842.

Does the LCME rank medical schools according to quality?

Medical schools are not ranked by the LCME, which evaluates educational programs according to standards for organization, function, and performance, but does not attempt to stratify institutions according to their characteristics. Medical schools differ greatly: whether they are private or state-supported, free-standing, or part of a parent university. They differ in their dependence on state appropriations, tuition, and income from clinical services and research; their relative emphasis on teaching, research, and medical practice; the size of their faculties and enrollments; the scope of their research and production of future scientists and teachers; and their emphasis on primary care and the training of future community physicians. While the quality of education is partly determined by the organization of programs and adequacy of resources, it also depends on the dedication of the faculty to teaching and to creating an environment conducive to learning. These and other important attributes may be obscured by efforts to rank schools by such variables as their size and the reputation of the faculty, level of research funding, or clinical facilities.

How can I register a complaint about a medical school to the LCME?

Please see the Complaints and Third-party comment section of the Contacts page.

What does accreditation cost? How is the LCME funded?
The LCME does not collect dues or charge fees for accreditation services, except for schools requesting initial provisional accreditation. The operating funds for the LCME are allocated by the AAMC and AMA sponsors from their dues and other income. Costs related to accreditation are equally split between the AAMC and AMA Secretariats of the LCME.

Questions Addressing LCME Pre-survey Preparation

When is my medical school due for its next full LCME accreditation survey?
Refer to the Directory of Accredited Medical Education Programs which lists the academic year of the next survey for each U.S. and Canadian medical school. Schedules for full LCME surveys in the current and past years are available online or contact either LCME office.

When will our school receive materials and instructions for preparing the medical education database and conducting the institutional self-study in preparation for our next LCME accreditation survey?
Pre-survey materials, database materials and instructions for completion, copies of LCME standards and rules of procedure, and guidebooks about the self-study, the role of students, and preparation of the survey report are shipped to medical school deans approximately 18 months prior to the scheduled date of the next full accreditation survey.

Approximately two years before the scheduled survey visit, the LCME will send a letter to the Dean requesting the name of the senior administrator or lead faculty member who has been designated as a Faculty Fellow.

What is a Faculty Fellow?
The goal of the Faculty Fellow program is to provide schools preparing for an upcoming survey visit with first-hand insight into the accreditation process by allowing a lead faculty member to serve as a fully-participating team member on a different institution's full survey visit. Faculty Fellows are typically assistant or associate deans, department chairs, or senior faculty members who will take a lead role in their program's upcoming survey visit. Deans typically nominate the individual designated as the self-study coordinator.

Faculty Fellow nominees should be experienced medical school administrators or faculty members who have not previously participated in an LCME accreditation survey.

Faculty Fellows receive training at the LCME-hosted surveyor workshop typically held during the AAMC Annual Meeting in November. In addition, Fellows are mentored by other members of their assigned survey team during the survey visit. After participating on their first survey visit, Fellows are eligible to serve on future survey teams.

The medical school nominating the Faculty Fellow is responsible for the travel and lodging expenses associated with the survey visit. The Faculty Fellow program is limited to schools with upcoming accreditation surveys and schools may nominate only one Fellow.

Now that our school's on-site visit date has been set, when will we receive information about developing the visit schedule, hotel arrangements, and visit logistics? Who will serve on the survey team visiting my school?
The principal LCME Secretary will send the dean a package of information approximately three months prior to the survey visit. This mailing will reference the *Guidelines for the Conduct of an Accreditation Survey*, which describes the dean's responsibilities and includes a suggested schedule for the visit. A complete list of team members will be provided at that time.

Whom can I contact with questions about completing the medical education database?

Questions regarding the submission of accreditation materials should be directed to LCME administrative staff via email at lcmeadmin@aamc.org.

Questions regarding the completion of the Medical Education Database should be directed to the LCME Secretariat via email at lcmesecretariat@aamc.org.

For help with word processing, layout, or compatibility problems, please contact Marina Ramos, Program Manager, AMA (312-464-4662 or marina.ramos@ama-assn.org).

Related Sites

What are some sources for further information on the following subjects:

Residency programs/graduate medical education:
Accreditation Council for Graduate Medical Education (ACGME)
515 North State Street
Chicago, IL 60610
Telephone: 312-755-5000

Certification of foreign medical graduates:
Educational Commission for Foreign Medical Graduates (ECFMG)
3624 Market Street
Philadelphia, PA 19104-2685
Telephone: 215-386-5900

Medical licensure for each state:
Federation of State Medical Boards (FSMB)
400 Fuller Wiser Road, Suite 300
Euless, TX 76039
Telephone: 817-868-4000

Administration of USMLE Steps 1, 2, and 3:
National Board of Medical Examiners (NBME)
3750 Market Street
Philadelphia, PA 19104-3190
Telephone: 215-590-9500

International medical schools (outside U.S. and Canada):
World Health Organization (WHO)
525 23rd Street, N.W.
Washington, DC 20037
Telephone: 202-974-3000

Back to LCME Home Page

AMERICAN STUDENTS IN FOREIGN MEDICAL SCHOOLS*
The "Fifth Pathway" Statement

1. A pathway for entrance to approved programs of graduate medical education, other than those existing under previous policies, became available as of July 1, 1971 for students who have fulfilled the following conditions:
   a. Have completed, in an accredited American college or university, undergraduate premedical work of the quality acceptable for matriculation in an accredited United States medical school, evaluated by measures such as college grade point average and scores on the Medical College Admission Test.
   b. Have studied medicine at a medical school located outside the U.S., including Puerto Rico, and Canada that is listed in the *International Medical Education Directory (IMED)*, published by the Foundation for Advancement of International Medical Education and Research.
   c. **Have completed all of the formal requirements for a diploma of the foreign medical school except internship and/or social service. Those who have completed all of the formal graduation requirements, including internship and/or social service, and are, consequently, eligible to apply for ECFMG certification, are not eligible for the Fifth Pathway.**

2. **Students who have completed the academic curriculum at a foreign medical school and who have fulfilled the above conditions may be offered the opportunity to substitute an academic year of supervised clinical training for the internship/social service required by the foreign medical school. The supervised training should consist of the clinical education provided in the third year of a U.S. medical school or in appropriate clinical subinternships. The supervised clinical training must be provided by faculty of a program in medical education accredited by the Liaison Committee on Medical Education and should be conducted in its affiliated hospitals, so as to assure that individuals who complete Fifth Pathway programs are reasonably comparable to the school's regularly-graduated students. The medical school should insure that resources are adequate for the conduct of the Fifth Pathway program, without jeopardizing its other academic programs. Fifth Pathway education should be provided only with the written approval of the dean or other appropriate official of the medical school.**

3. Students must pass Step 1 of the United States Medical Licensing Examination (USMLE) in order to be eligible for admission to a Fifth Pathway program.

4. Students must successfully complete clinical training, on the judgment of the medical school's faculty based on a final evaluation comparable to that used to judge regularly-enrolled students. With the approval of the faculty, and upon passing Step 2 of the USMLE, Fifth Pathway students are eligible to enter the first year of approved graduate medical education, without completing the social service and/or internship required by the foreign country and without obtaining ECFMG certification.

5. **Fifth Pathway certificates must be provided only with the approval of the dean or other medical school official and must be recorded with the registrar. The medical school must notify the American Medical Association that a student has successfully completed the Fifth Pathway program.**

6. **The Council on Medical Education recommends that all state medical licensing boards consider for licensure all candidates who have successfully completed a Fifth Pathway program on the same basis as they consider candidates who have received ECFMG certification.**

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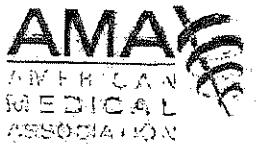
* Policy statement of the American Medical Association Council on Medical Education

Adopted June 12, 1971 and modified May 23, 1973; March 22, 1975; September 7, 1979; June 11, 1981; March 2, 2001; November 30, 2001; and June 17, 2005



Press the print button on your browser.
Click here to return to the previous page.

The Fifth Pathway Program

Note: As of June 30, 2009, through action of the AMA Council on Medical Education (CME Report 1-I-07), the Fifth Pathway will be discontinued. The Council will no longer support the Fifth Pathway as a mechanism for eligibility to enter the first year of ACGME-accredited graduate medical education programs. The AMA will continue to maintain record of former graduates of Fifth Pathway programs, but will cease to add records of individuals completing a year of supervised clinical education at an LCME-accredited medical school in the US after July 1, 2009. The last Fifth Pathway Program class to be supported is the January 2009 entering class, which ends December 2009.

Please contact the schools providing the Fifth Pathway Program directly if you have any questions or concerns.

What is a Pathway?

A pathway is an approved avenue to residency training at a U.S. hospital, which completes a medical student's education. Before 1971, there were four pathways:

1. Graduation from a U.S. medical school
2. Certification by the Educational Commission for Foreign Medical Graduates (ECFMG)
3. Full and unrestricted licensure by a U.S. licensing jurisdiction
4. Passing the Spanish language licensing examination in Puerto Rico.

But in 1971, a new pathway was created – the Fifth Pathway.

What is the Fifth Pathway?

An avenue by which students who have attended four years at a foreign medical school may complete their supervised clinical work at a U.S. medical school, become eligible for entry to U.S. residency training, and ultimately obtain a license to practice in the U.S.

Who can qualify for a Fifth Pathway?

Only students who:

1. Graduated from an accredited American college or university;
2. Studied medicine at a medical school located outside the United States that is listed in World Health Organization's World Directory of Medical Schools and which requires a year or more of internship/social service (beyond the four years of medical school) before receiving a medical degree;
3. Completed all formal requirements of their foreign medical school except the final year(s) of clinical work/social service.

4. Students must be a citizen, resident alien, or Canadian Citizen with a student visa.

How are Fifth Pathway students different from International Medical Graduates?

1. Fifth Pathway students do not graduate from a foreign medical school. They leave early, and complete a final year of medical training in the U.S.
2. Fifth Pathway students receive no medical diploma from the U.S. medical school sponsoring their Fifth Pathway year of clinical education. They receive a 'Certificate of Completion,' which is accepted in lieu of a diploma in virtually all U.S. licensing jurisdictions.
3. The Fifth Pathway certificate is the Fifth Pathway physician's medical credential.

How can I verify a physician's Fifth Pathway credentials?

The Fifth Pathway is a relatively rare credential. In the past thirty years, only about seven thousand have been awarded, so approximately 1 percent of practicing physicians in the U.S. hold the credential.

To obtain an AMA Physician Profile to verify a physician's Fifth Pathway credentials, please call (800) 665-2882 or visit the Web site . Verification can also be achieved by contacting the physician's foreign medical school and the U.S. school that sponsored the physician's Fifth Pathway year.

Current programs

The eligibility requirements to enter a Fifth Pathway program are set by the individual programs. Interested applicants should contact the programs directly for complete information. Currently, the LCME Accredited Medical School Programs that sponsor the 5th Pathway program are:

New York Medical College
Munger Pavilion, Suite 173
Valhalla, NY 10595
(914) 594-3651

Ponce School of Medicine
Fifth Pathway Program
PO Box 7004
Ponce, PR 00732

New York Medical College, which has successfully administered its Fifth Pathway Program for thirty years, and Ponce School of Medicine, have a service agreement with the American Medical Association which includes automatic AMA student membership.

Mount Sinai SOM, Fifth Pathway, NY (718) 334-3268

Contact the above programs for additional information regarding the Fifth Pathway Program.

Last updated: Feb 06, 2008
Content provided by: Medical Education Group

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Foreign Medical Study - Fifth Pathway Opportunities

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Students who have completed all of the formal requirements of the foreign medical school except internship and/or social service may substitute a year of supervised clinical training for the required foreign internship (that is, clinical clerkship or junior internship) under the direction of an AMA-approved medical school. Upon successful completion, students may enter the first year of an approved residency program without having to complete the social service requirement of the foreign country. Before beginning the supervised clinical training, students must have their academic records reviewed and approved by the school supervising the clinical training and must pass a screening examination acceptable to the Council on Medical Education. The ECFMG examination and/or Step 1 of the USMLE are used for this purpose.

Currently only mainland U.S. medical schools offer Fifth Pathway clerkships. This option applies primarily to students in Mexican medical schools and is open only to physicians who have completed their undergraduate premedical studies in an acceptable manner at an accredited American college or university. The Fifth Pathway program allows U.S. students who have completed the requirements for a medical degree in Mexico to be eligible for a continuous academic year of supervised clinical training under the direction of a medical school approved by the Liaison Committee on Medical Education. The students who complete this supervised clinical training are then able to enter an AMA-approved graduate training program without completing the Mexican-required internship or social science obligation. This program facilitates graduates of Mexican medical schools to pass into graduate medical programs in this country. The following schools are associated with this Fifth Pathway program. They give preference to state residents. Inquiries should be addressed to the directors of these programs.

University of Arizona
College of Medicine
Tucson, AZ 85724
(Arizona residents only)

University of California, Irvine
California College of Medicine
Irvine, CA 92717
(Preference for California Residents)

Loma Linda University
School of Medicine
Loma Linda, CA 92354
(Out of state residents discouraged)

University of Colorado
School of Medicine
Denver, CO 80262
(Colorado residents only)

University of Illinois
College of Medicine
1737 West Polk, Room 204

Chicago, IL 60612
(Preference for Illinois residents)

Albert Einstein College of Medicine
The Bronx Lebanon Hospital Center
Fulton Avenue at 169th Street
Bronx, NY 10456

New York University
School of Medicine
Booth Memorial Medical Center
56-45 Main Street
Flushing, NY 11355
(New York residents only)

State University of New York
Downstate Medical Center
College of Medicine
The Brooklyn Hospital
121 Dekalb Avenue
Brooklyn, NY 11201

Mount Sinai School of Medicine
Fifth Ave. & 100 St.
New York, NY 10029

New York Medical College
Valhalla, NY 10595

Brown University
Division of Biology and Medicine
Providence, RI 02912

It should be noted that additional hospitals in California, Illinois, New Jersey, and Texas may also offer Fifth Pathway opportunities, and additional information can be obtained from the Council on Medical Education of the American Medical Association. Securing a Fifth Pathway appointment presents a significant challenge, because their numbers are very limited and competition is intense.

Citing this material

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Highlight the text below, right-click, and select "copy". Paste the link into your website, email, or any other HTML document.

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<a href="http://careers.stateuniversity.com/pages/100000646/Foreign-Medical-Study-FIFTH-PATHWAY-
OPPORTUNITIES.html">Foreign Medical Study - Fifth Pathway Opportunities</a>
```

User Comments

Cary Valera

Foreign Medical Study - Fifth Pathway Opportunities

over 2 years ago

I would the contact information for the Univesity of California, Irvine.

Aman

almost 2 years ago

to continuosly expend their indiscremination toward FMG'S AMA must not close Fifth Pathway Programs.

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NEW YORK MEDICAL COLLEGE

OFFICE OF THE PRE-INTERNSHIP PROGRAM · OFFICE OF THE FIFTH PATHWAY PROGRAM
MUNGER PAVILION, SUITE 173, VALHALLA, NY 10595
TEL 914-594-3651 FAX 914-594-4325

SAVERIO S. BENTIVEGNA, M.D.
SENIOR ASSOCIATE DEAN

Example
Board
Medical
Clinical

MEDICINE BOARD
13 MAY 29 PM 2:07

May 28, 2013

Florida Board of Medicine
4052 Bald Cypress Way, BIN C03
Tallahassee, FL 32399-3253

[redacted]

To Whom It May Concern:

The above named student has applied for licensure in the State of Florida.

[redacted] entered the Fifth Pathway Program, sponsored by New York Medical College on June 28, 2004 after being accepted into the program. [redacted] was assigned to Pascack Valley Medical Center, Westwood, Nj where HE completed one year of supervised clinical training.

[redacted] entered our program on June 28, 2004 after having been selected by the Faculty Admissions Committee on the basis of having completed the formal requirements of the Universidad Autonoma de Guadalajara, Mexico, except internship and social service requirements. [redacted] was also accepted by a review of his undergraduate and medical school transcripts and letters in his behalf from physicians who were in a supervisory capacity as well as a passing grade on the USMLE Step 1 examination, which is a requirement for entry into the program.

Dr. [redacted] completed the following rotations while in the Fifth Pathway Program.

- Medicine 8/16/04-9/10/04, 2/21/05-4/1/05; 10 weeks
- Surgery 10/25/04-12/10/04, 5/2/05-6/10/05; 13 weeks
- OB/GYN 7/5/04-8/12/04; 6 weeks
- Pediatrics 9/13/04-10/23/04; 6 weeks
- Psychiatry 12/13/04-1/14/05; 5 weeks
- Elective in Internal Medicine 1/24/05-2/20/05; 4 weeks @ San Juan VA Medical Center, San Juan, PR
- Elective in Psychiatry 4/4/05-5/1/05; 4 weeks @ San Juan VA Medical Center, San Juan, PR

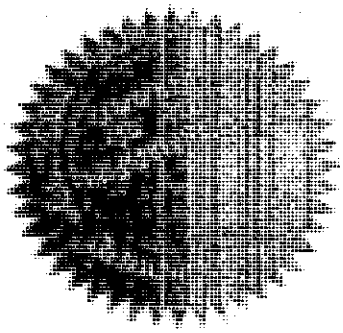
Dr. [redacted] received his Certificate of Completion from the Fifth Pathway Program on June 10, 2005. Enclosed please find notarized copies of his Fifth Pathway Program Certificate of Completion as well as his dean's letter, diploma/translation, transcript/translation from the Universidad Autonoma de Guadalajara, Mexico. These documents were sent directly to the Fifth Pathway Program as a requirement for entrance.

If there is any further information you require, please do not hesitate to contact me.

Sincerely,

Saverio S. Bentivegna, M.D.
Senior Associate Dean
Fifth Pathway Program

SSB:rd
Enclosure



REPORT OF THE COUNCIL ON MEDICAL EDUCATION

CME Report 1 - 1-07

Subject: Report on the Fifth Pathway

Presented by: Richard J.D. Pan, MD, MPH, Chair

This informational report reviews the history of the creation of the Fifth Pathway by the American Medical Association Council on Medical Education as an alternative mechanism for the admission of foreign medical students into graduate medical education in the United States and describes the rationale for the elimination of the program as of June 30, 2009.

Background

During the 1960s the number of applicants to U.S. medical schools increased 73%, from 14,397 for the entering class in 1960 to 24,987 for the entering class of 1970. During the same period, the number of first-year places increased only 38%, from 8,069 in 1960 to 11,169 in 1970. As a result, many U.S. citizens chose to study medicine outside the United States. In the mid-1970s, it was estimated that between 4,000 and 6,000 U.S. citizens were studying medicine in other countries, with the majority of them in Mexico. There were at that time fewer alternatives for U.S. medical students, because most medical schools in the Caribbean had not yet been founded.

Medical students who had completed the four years of medical training in Mexico were required to do a fifth year of internship/community service before the medical degree was awarded and were therefore not eligible for certification by the Educational Council for Foreign Medical Graduates (precursor to the Educational Commission for Foreign Medical Graduates) until completing the fifth year. These students and their supporters were looking for a new pathway to return to the U.S. that would allow them to avoid Mexico's fifth-year requirement. The initial action by the Council on Medical Education to establish the Fifth Pathway was reported to the AMA House of Delegates at its Annual Meeting in June 1971 and followed up with an informational report at the subsequent meeting in November 28-December 1, 1971. The policy was announced in a memorandum dated July 7, 1971, which was sent from the Council on Medical Education to all hospitals with approved graduate training programs, program directors of approved graduate training programs, deans of medical schools, state boards of medical examiners, medical specialty boards, residency review committees, and state medical societies. Additional copies of the memorandum were distributed upon request to large numbers of individuals and organizations. The guidelines for the conduct of the Fifth Pathway and the eligibility requirements are recorded in "The Fifth Pathway Statement." The statement has been revised by the Council on Medical Education seven times to adjust for changes in screening examinations, accreditation bodies, and directories of foreign medical schools.

The Fifth Pathway was directed at U.S. citizens who had completed their college education in the U.S., had studied medicine at a medical school outside of the U.S., Puerto Rico, and Canada; and had completed all the formal requirements of the foreign medical school except for internship and/or community service. Such students could substitute an academic year of supervised clinical education at an LCME-accredited medical school for the foreign internship. Entry into a Fifth

Pathway program was further based on passing a screening examination, such as Part I of the National Board of Medical Examiners (NBME), the Educational Commission for Foreign Medical Graduates (ECFMG) examination, or the Federation Licensing Examination (FLEX). Students who successfully completed a Fifth Pathway program were eligible to enter the first year of an AMA-approved graduate medical education program. During this period, the AMA was responsible for accreditation of residency training programs, so it could set such eligibility criteria. Fifth Pathway graduates later became eligible to enter graduate medical education programs accredited by the Accreditation Council for Graduate Medical Education ACGME) if they met the requirements specified in the Fifth Pathway Statement.

The Fifth Pathway program does not result in the awarding of an MD degree. Rather, it allows eligible students from foreign medical schools to enter graduate medical education programs accredited by the ACGME and to seek state licensure. All 50 states recognize graduates of this pathway as eligible for licensure. Only Guam and the U.S. Virgin Islands do not accept these graduates.

At the time of the inauguration of the Fifth Pathway, the Council on Medical Education agreed to monitor the program carefully and to make periodic reports to the House of Delegates at appropriate intervals. The most recent report was presented at the Interim Meeting in 2001.

Currently, the Fifth Pathway Statement does not include any mechanism for oversight of individual programs offered by LCME-accredited medical schools nor does it provide for the evaluation of the quality or content of programs. The AMA has maintained the records of all of the entrants and graduates of the programs. More than 7,500 individuals have completed the Fifth Pathway in the 35 years since the program began.

Through the AMA MasterFile, data have been collected which demonstrate that Fifth Pathway graduates are primarily based in large states such as California and New York and are in office-based practice. Thirty percent of the graduates selected primary care specialties, such as internal medicine, pediatrics, and family medicine though approximately 46% of the internists and 11% of the pediatricians sub-specialized. Fifty-four percent are board certified by American Board of Medical Specialties (ABMS) member boards. Disciplinary actions are at approximately the same rate as for the general population of physicians.

Discussion

Since its inception, 75 LCME-accredited medical schools have offered Fifth Pathway programs. The maximum number of graduates was 558 in 1979-1980. The number of Fifth Pathway programs dwindled during the latter part of the 1980s and 1990s so that only four programs were sponsored in 1991-1992. At the present time there are only three active programs with approximately 100 graduates per year.

The decline in the interest in the Fifth Pathway program was related to the development of other options for U.S. citizens choosing to study medicine outside of the U.S. and Canada. A number of medical schools opened in the Caribbean that granted the MD degree after four years of study. Students could then seek certification by the Educational Commission for Foreign Medical Graduates (ECFMG), which would confer eligibility to apply for ACGME-accredited graduate medical education. For ECFMG certification, individuals must pass Steps 1, 2-CK, and 2-CS of the United States Medical Licensing Examination (USMLE) before they can enter the National

Resident Matching Program (NRMP). Completion of the credentials verification process for the ECFMG provides additional oversight of international medical graduates. Individuals must have graduated from a foreign medical school that is listed in the International Medical Education Directory and provide a diploma and transcript from that school that is primary source verified by the medical school. In the case of Fifth Pathway graduates, the verification of medical education and examination requirements for applicants is at the discretion of the individual program. Programs are required to report entrants and graduates to the American Medical Association, but there is no mechanism at the AMA to assure the validity of individual student credentials.

There is a great deal of uncertainty regarding the eligibility requirements for Fifth Pathway programs among program directors and various licensing jurisdictions. In addition, follow-up by Fifth Pathway programs to identify individuals who have participated in Fifth Pathway programs but who did not meet Fifth Pathway eligibility requirements is inconsistent. Examples of ineligible individuals include students from countries where the MD degree is awarded after four years, who are eligible for ECFMG certification but not for the Fifth Pathway. As a result, a small number of international medical graduates who were not eligible for Fifth Pathway programs have completed the year of supervised clinical education and entered into ACGME-accredited graduate medical education and been granted unrestricted licenses to practice medicine. Neither the Council on Medical Education nor the AMA is in a position to undertake responsibility to ensure that only eligible individuals are allowed to enter graduate medical education through the Fifth Pathway.

In addition, recent correspondence from the NBME and the Federation of State Medical Boards (FSMB) identified a number of problems with the Fifth Pathway programs as currently implemented and urged the AMA to discontinue the program. These were the specific problems identified:

- The eligibility criteria are vague and probably not possible to enforce.
- The program lacks supervision or quality control of the admission process.
- The educational program is not accountable to any external entity.
- There are no clearly defined standards for successful completion of the programs.
- There is no consistent primary source verification of the educational credentials for Fifth Pathway participants.

After consideration of various options, review of the above correspondence and thorough discussion, the AMA Council on Medical Education voted unanimously that as of July 1, 2009, the Council will no longer support the Fifth Pathway as a mechanism for eligibility to enter the first year of ACGME-accredited graduate medical education. Graduates of all foreign medical schools must seek certification by the ECFMG. The AMA will continue to maintain records of former graduates of Fifth Pathway programs, but will cease to add records of individuals completing a year of supervised clinical education at an LCME-accredited medical school in the U.S. after July 1, 2009.

This decision provides adequate notice to U.S. students enrolled in foreign medical schools who would consider applying for a position in a Fifth Pathway program to modify their plans for entry into ACGME-accredited residency training. Attendance at a foreign medical school in a country that requires a fifth year of internship/community service before awarding the medical degree did not guarantee acceptance into a Fifth Pathway program. Those individuals who did not gain admission were required to complete the fifth year and then seek certification by the ECFMG.

Discontinuing the Fifth Pathway program would require that all students complete the fifth year and be awarded the MD degree or transfer to a medical school that awards the MD degree after four years of training. This more common pathway does not add any additional time to training for these individuals and affords the opportunity for the verification of the credentials of these graduates by the ECFMG prior to their beginning graduate medical education in the U.S. Once the AMA eliminates the Fifth Pathway program on June 30, 2009, it is likely that the ACGME will modify its Institutional Requirements to eliminate the provision that "graduates of medical schools outside of the United States who have completed a Fifth Pathway program provided by an LCME-accredited medical school" are eligible for appointment to ACGME-accredited programs. The eligibility criteria will likely remain in force if the Fifth Pathway program was completed prior to July 1, 2009.

The Council on Medical Education has corresponded with the ACGME regarding the AMA's option of eliminating the Fifth Pathway program and a presentation was made to the Institutional Review Committee of the ACGME. The timing of the action by the Council will provide the ACGME with the necessary time to make a change and to provide appropriate notice to residency program directors and to designated institutional officials.

Once this eligibility for entry into ACGME-accredited programs is eliminated, the eligibility for licensure becomes moot. All physicians must complete at least one year of ACGME-accredited residency training to be eligible for licensure. By agreeing to maintain the records of all physicians who have completed a Fifth Pathway program through June 30, 2009, the AMA has assured that individuals who have completed bona fide Fifth Pathway programs will continue to be eligible for licensure and credentialing. However, primary verification of Fifth Pathway credentials will remain the responsibility of the individual programs. Thus, this plan will not require any changes in regulations or statutes related to licensure.

The consequences of this action on the three remaining Fifth Pathway programs must also be considered. Each program director has been notified of the Council's decision. While the number of individuals seeking a year of supervised clinical education will most certainly decrease, the programs can still be offered to graduates of foreign medical schools who wish to enhance their medical education and potentially improve their standing as a candidate for a residency training position through ECFMG certification.

File# 115677

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18 March 2013

MEDICINE BOARD
13 MAR 25 PM 4:03

Leon Rawner, M.D.
615 S. 68th Ave., Apt #3
Wausau, WI 54401
(646) 812-2728

ORIGINAL

Florida Board of Medicine
4052 Bald Cypress Way,
BIN C-03
Tallahassee, Florida 32399-3253

Dear Sir/Ma'am,

I am writing to supplement my application for medical licensure and respond to information provided on the application. My Online Initial Application ID is 319809.

Under the "Education" section of the online application it states: "International Medical Graduates: Must have completed at least two full progressive years of accredited training in the U.S., Canada or Puerto Rico." However, I understand that I am eligible for licensure by endorsement given my two years of active clinical medical practice in Wisconsin and having met the specific alternative requirements to the two year residency requirement that are set out in the Florida statutes.

Specifically, subsection (1)(a) of Fla. Stat. §458.313 ("Licensure by endorsement; requirements; fees.") states two alternative sets of requirements to obtain a license by endorsement:

> "Has met the qualifications for licensure in s. 458.311(1)(b)-(g) or in s. 458.311(1)(b)-(e) and (g) and (3);"

The quoted language intentionally omits section 311(1)(f) in the second alternative set of requirements. This section 311(1)(f) is the source of the residency rules requiring two years of residency for Foreign Medical Graduates. Instead, the second alternative refers to section 311(3) and the related qualifications therein.

The qualifications in section 311(3) consist of: (i) having a bachelor's degree from an accredited U.S. college, (ii) having studied at a medical school recognized by the WHO, (iii) having completed all of the relevant formal requirements of my foreign medical school, and (iv) having completed an academic year of supervised clinical training in a hospital affiliated with an approved medical school and having passed the U.S. national licensing exams (now the USMLE Step 1, Step 2 and Step 3).

No AMA Approved Clinical

As I meet these requirements, I believe I qualify for licensure by endorsement.

Sincerely,

Leon Rawner

Leon Rawner, M.D.

FLORIDA DEPARTMENT OF HEALTH

Initial Application for Licensure
Florida Board of Medicine

Division of Medical Quality Assurance
MQA

Basic Data

Profession:	MEDICAL DOCTOR
Application Type:	INITAL LICENSURE ENDORSEMENT
Name:	DR. LEON RAWNER
Date of Birth:	[redacted]
Place of Birth:	BROOKLYN, NY
Citizenship:	UNITED STATES
Email Address:	LEONRAWNER@GOOGLEMAIL.COM
Modifiers:	I plan to dispense medicinal drugs in the State of Florida for a fee or other remuneration and hereby register as required by Section 465.0276,F.S. I understand that the fee for the Dispensing Practitioner is $100.00 over and above the required initial license fee and will submit it along with the license fee.
Modifiers:	NICA Non-Participating

Mailing Address

615 S. 68TH AVE.
APT #3
WAUSAU, WI 54401

Physical Location or Address of Employment

615 S. 68TH AVE.
APT #3
WAUSAU, WI 54401

Phone Numbers

Primary:	646-812-2728
Alternate:	646-812-2728

Equal Opportunity Data

Gender:	MALE
Race:	WHITE

Education History

Will you be using FCVS to assist you in the licensure process? Your answer: YES

School Name: OTHER School Name: BRANDEIS UNIVERSITY School Address: 415 SOUTH ST WALTHAM, MA 02453 Degree: Bachelor Degree Date Attended From: 09/01/1996 Date Attended To: 12/15/2000 Graduation Date: 05/12/2001	School Name: AMERICAN UNIVERSITY OF THE CARIBBEAN SCHOOL OF MEDICINE School Address: #1 UNIVERSITY DRIVE AT JORDAN ROAD ST. MAARTEN, NETHERLANDS ANTILLES Degree: Masters Degree Date Attended From: 09/02/2002 Date Attended To: 04/23/2004 Graduation Date: 04/23/2004
School Name: AMERICAN UNIVERSITY OF THE CARIBBEAN SCHOOL OF MEDICINE School Address: #1 UNIVERSITY DRIVE AT JORDAN ROAD ST. MAARTEN, NETHERLANDS ANTILLES Degree: MD Date Attended From: 09/02/2002 Date Attended To: 06/03/2006 Graduation Date: 06/03/2006	School Name: School Address: Degree: Date Attended From: Date Attended To: Graduation Date:

Have you ever defaulted on any health education loan or scholarship obligation? Your answer: NO

If you are an international medical graduate, did you perform your core clerkships in the United States?

Your answer: NO

Postgraduate Training

Program Name:	MT. SINAI ELMHURST	Program Name:	
Program City:	ELMHURST	Program City:	
Program State or Country:	NEW YORK	Program State or Country:	
Program Type:	INTERNSHIP	Program Type:	
Specialty Area:	IM - INTERNAL MEDICINE	Specialty Area:	
Date From:	07/01/2006	Date From:	
Date To:	06/30/2007	Date To:	
Did you receive credit?	Yes	Did you receive credit?	

Have you ever been dropped, suspended, placed on probation, asked to resign or expelled from any postgraduate training program?

Your answer: NO

Was attendance in a postgraduate training program for a period other than the established timeframe or were you required to repeat any of your postgraduate training including classes, test/exams, lectures or any other part of the curriculum?

Your answer: NO

Did you take any type of break or leave of absence for any reason during your postgraduate training?

Your answer: NO

Other Name History

Have you ever changed your name through marriage, naturalization or action of a court or have you been known by any other names?

Your answer: NO

Other State Licenses

License Number:	54488-020	License Number:	
License Type:	MEDICAL DOCTOR	License Type:	
Original Date Issued:	05/12/2010	Original Date Issued:	
Date of Expiration:	10/31/2013	Date of Expiration:	
Country:	UNITED STATES	Country:	
State:	WISCONSIN	State:	

Year Began Practice

2011

Practice Employment

Employment Type:	Employment	Employment Type:	Employment
Employer Name:	MT. SINAI ELMHURST HOSPITA	Employer Name:	OUTCOMES HEALTH INFORMATION SOLUTIONS
Address Line 1:	79-01 BROADWAY	Address Line 1:	166 FRONTIER BOULEVARD
Address Line 2:		Address Line 2:	
City:	ELMHURST	City:	STANFORD
State:	NY	State:	KY
Title of Position:	PGY-1 INTERNAL MEDICINE RESIDENT	Title of Position:	MEDICAL FIELD REVIEWER - TRI-STATE
Practice Begin Date:	07/01/2006	Practice Begin Date:	08/01/2007
Practice End Date:	07/01/2007	Practice End Date:	01/15/2009

Employment Type:	Employment	Employment Type:	Employment
Employer Name:	KINGS COUNTY HOSPITAL CEN	Employer Name:	KNEE PAIN SOLUTIONS CENTER
Address Line 1:	451 CLARKSON AVENUE	Address Line 1:	3508 STEWART AVENUE
Address Line 2:		Address Line 2:	
City:	BROOKLYN	City:	WAUSAU
State:	NY	State:	WI
Title of Position:	CLINICAL DOCUMENTATION SPECIALIST	Title of Position:	GENERAL PRACTICE PHYSICIAN
Practice Begin Date:	02/01/2009	Practice Begin Date:	01/24/2011
Practice End Date:	01/01/2011	Practice End Date:	

Have you ever had employment terminated for cause?

Your answer: NO

Faculty Appointment

Do you currently hold a faculty appointment at a medical school?

Your answer: NO

Graduate Medical Education

Have you had responsibility for graduate medical education within the last 10 years?

Your answer: NO

Staff Privileges

Do you currently hold staff privileges in any hospital, health institution, clinic or medical facility?

Your answer: NO

Specialty Board Certification

Are you certified by any specialty board recognized by the American Board of Medical Specialties or specialty board approved by the Florida Board of Medicine?

Your answer: NO

Drug Enforcement Administration Questions

Have you ever been warned or called before the United States Drug Enforcement Administration (DEA)?

Your answer: NO

Have you ever been made an offer to compromise or entered into any arrangement plea, or agreement instead of a federal prosecution for a drug violation regulated by DEA?

Your answer: NO

Have you ever been denied or surrendered a DEA registration?

Your answer: NO

Mandatory Continuing Medical Education (CME)

I hereby certify that since June 1, 2002, I have completed a minimum of two (2) hours of Prevention of Medical Errors continuing medical education as defined by s. 456.013(7), Florida Statutes.

Electronic Fingerprinting

The Florida Care Provider Background Screening Clearinghouse is unavailable at this time.

Acknowledgement Statement

I have been provided and read the statement from the Florida Department of Law Enforcement regarding the sharing, retention, privacy, and right to challenge incorrect criminal history records and the "Privacy Statement" document from the Federal Bureau of Investigation.

Your answer: YES

Criminal History

Have you ever been convicted of, or entered a plea of guilty, nolo contendere, or no contest to, a crime in any jurisdiction other than a minor traffic offense?

Your answer: NO

Specialty Board Discipline History

Have you ever had any final disciplinary action taken against you by a specialty board or similar national organization?

Your answer: NO

Discipline History

Have you ever had any professional license or license to practice medicine revoked, suspended, placed on probation, received a citation, or other disciplinary action taken in any state, territory or country?

Your answer: NO

Have you ever had any staff privileges denied, suspended, revoked, modified, restricted, or placed on probation, or have you been asked to resign or take a temporary leave of absence or otherwise acted against by any facility?

Your answer: NO

Have you ever been asked, or allowed to resign from any facility instead of disciplinary action or during any pending investigations into your practice?

Your answer: NO

Have you ever had any staff privileges restricted or not renewed by any facility instead of disciplinary action?

Your answer: NO

Have you had any application for a medical license or professional license denied by any state board or other governmental agency of any state, territory, or country?

Your answer: NO

Have you ever been allowed to withdraw an application for medical licensure for any reason or during a pending investigation in any jurisdiction in lieu of your license being denied?

Your answer: NO

Have you ever been notified, invited or required to appear before any licensing agency for a hearing on a complaint of any nature including, but not limited to, a charge or violation of the Medical Practice Act, involving unprofessional or unethical conduct?

Your answer: NO

Have you ever been denied or been excluded from Medicare and/or state health care programs?

Your answer: NO

Are you currently under investigation in any jurisdiction for an act or offense that would constitute a violation of Section 458.331, Florida Statutes?

Your answer: NO

United States Military and/or Public Health Service

Have you ever been in the United States Military and/or Public Health Service?

Your answer: NO

Questions related to Section 456.0635(2), Florida Statutes

Have you been convicted of, or entered a plea of guilty or nolo contendere to, regardless of adjudication, a felony under Chapter 409, F.S. (relating to social and economic assistance), Chapter 817, F.S. (relating to fraudulent practices), Chapter 893, F.S. (relating to drug abuse prevention and control) or a similar felony offense(s) in another state or jurisdiction?	Your answer: NO
For the felonies of the first or second degree, has it been more than 15 years from the date of the plea, sentence and completion of any subsequent probation?	Your answer: N/A
For the felonies of the third degree, has it been more than 10 years from the date of the plea, sentence and completion of any subsequent probation? (This question does not apply to felonies of the third degree under Section 893.13(6)(a), Florida Statutes).	Your answer: N/A
For the felonies of the third degree under Section 893.13(6)(a), Florida Statutes, has it been more than 5 years from the date of the plea, sentence and completion of any subsequent probation?	Your answer: N/A
Have you successfully completed a drug court program that resulted in the plea for the felony offense being withdrawn or the charges dismissed?	Your answer: N/A
Have you been convicted of, or entered a plea of guilty or nolo contendere to, regardless of adjudication, a felony under 21 U.S.C. ss. 801-970 (relating to controlled substances) or 42 U.S.C. ss. 1395-1396 (relating to public health, welfare, Medicare and Medicaid issues)?	Your answer: NO
Has it been more than 15 years before the date of application since the sentence and any subsequent period of probation for such conviction or plea ended?	Your answer: N/A
Have you ever been terminated for cause from the Florida Medicaid Program pursuant to Section 409.913, Florida Statutes?	Your answer: NO
If you have been terminated but reinstated, have you been in good standing with the Florida Medicaid Program for the most recent five years?	Your answer: N/A
Have you ever been terminated for cause, pursuant to the appeals procedures established by the state, from any other state Medicaid program?	Your answer: NO
Have you been in good standing with a state Medicaid program for the most recent five years?	Your answer: N/A
Did the termination occur at least 20 years before the date of this application?	Your answer: N/A
Are you currently listed on the United States Department of Health and Human Services Office of Inspector General's List of Excluded Individuals and Entities?	Your answer: NO
On or before July 1, 2009, were you enrolled in an educational or training program in the profession in which you are seeking licensure that was recognized by this profession's licensing board or the Department of Health?	Your answer: N/A

Additional Information

Availability for disaster

As a Florida licensed physician, are you willing to provide health care services in special need shelters or to work with disaster medical teams during times of emergency or major disasters?

Your answer: YES

Financial Responsibility

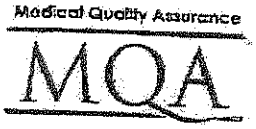
I do not practice medicine in the State of Florida.

Liability Claims

Within the last 10 years have you had any liability claim(s) or action(s) for damages for personal injury settled or finally adjudicated in an amount that exceeds $100,000.00?	Your answer: NO
Have you ever had a judgment entered against you for medical malpractice where the incident(s) of malpractice occurred after November 2, 2004?	Your answer: NO

Initial Application for Licensure
Florida Board of Medicine

Division of Medical Quality Assurance



Confidential Information

Name: DR. LEON RAWNER
Social Security Number: XXX-XX-[redacted]

This information is exempt from public records disclosure. The Department of Health is required and authorized to collect Social Security Numbers relating to applications for professional licensure pursuant to Title 42 USCS § 666 (a)(13). For all professions regulated under chapter 456, Florida Statutes, the collection of Social Security Numbers is required by section 456.013 (1)(a), Florida Statutes.

Examination History

Exam:	USMLE III	Exam:	
Exam Date:	09/01/2007	Exam Date:	

This information is exempt from public records disclosure because it contains exam grades as described by section 456.014 (1), Florida Statutes.

Health History

In the last five years, have you been enrolled in, required to enter into, or participated in any drug or alcohol recovery program or impaired practitioner program for treatment of drug or alcohol abuse that occurred within the past five years?

Your answer: [redacted]

In the last five years, have you been admitted or referred to a hospital, facility or impaired practitioner program for treatment of a diagnosed mental disorder or impairment?

Your answer: [redacted]

In the last five years, have you been treated for or had a recurrence of a diagnosed mental disorder that has impaired your ability to practice medicine within the last five years?

Your answer: [redacted]

In the last five years, have you been treated for or had a recurrence of a diagnosed physical disorder that has impaired your ability to practice medicine?

Your answer: [redacted]

In the last five years, were you admitted or directed into a program for the treatment of a diagnosed substance-related (alcohol/drug) disorder, or if you were previously in such a program, did you suffer a relapse within the last five years?

Your answer: [redacted]

During the last five years, have you been treated for or had a recurrence of a diagnosed substance-related (alcohol/drug) disorder that has impaired your ability to practice medicine within the past five years?

Your answer: [redacted]

This information is exempt from public records disclosure because it contains medical information as described by Section 456.014 (1), Florida Statutes.

Application Statement

☒ I state that these statements are true and correct. I recognize that providing false information may result in denial of licensure, disciplinary action against my license, or criminal penalties pursuant to Sections 456.067, 775.083, and 775.084, Florida Statutes. I state that I have read Chapters 456, 458 and 766.301-.316, Florida Statutes and Chapter 64B8, Florida Administrative Code.

I hereby authorize all hospitals, institutions or organizations, my references, personal physicians, employers (past and present), and all governmental agencies and instrumentalities (local, state, federal, or foreign) to release to the Florida Board of Medicine information which is material to my application for licensure.

I have carefully read the questions in the foregoing application and have answered them completely, without reservations of any kind. I state that my answers and all statements made by me herein are true and correct. Should I furnish any false information in this application, I hereby agree that such act constitutes cause for denial, suspension, or revocation of my license to practice Medicine in the State of Florida. If there are any changes to my status or any change that would affect any of my answers to this application I must notify the Board within 30 days. I understand that my records are protected under federal and state regulations governing Confidentiality of Mental Health Patient Records and cannot be disclosed without my written consent unless otherwise provided in the regulations. I understand that my records are protected under federal and state regulations governing Confidentiality of Alcohol and Drug Abuse Patient Records, 42CFR Part 2, and cannot be disclosed without my written consent unless otherwise provided in the regulations. I also understand that I may revoke this consent at any time except to the extent that action has been taken in reliance upon it.

1745769

Confirmation of Receipt

Name: Leon Rawner File # (if known) 115677

Profession: M.D. Date of Birth: [redacted] (MM/DD/YYYY)

Other last names: N/A

I have been provided and read the statement from the Florida Department of Law Enforcement regarding the sharing, retention, privacy and right to challenge incorrect criminal history records and the "Privacy Statement" document from the Federal Bureau of Investigation.

☒ Yes ☐ No

Signature: Leon Rawner Date: 04/12/2013 (MM/DD/YYYY)

Please send this form with your application and fees to:

Department of Health/HMQAM
P.O. Box 6330
Tallahassee, FL 32314-6330

If you send this form separate from your application please mail it to:

Department of Health
Medical Quality Assurance/Board of Medicine
4052 Bald Cypress Way
Bin # C03
Tallahassee, FL 32399-3253

Please remember if you have not sent in your application you may reduce the application fee by **$43.00**

MEDICINE BOARD
13 APR 22 PM 3:41

1746801

FCVS FEDERATION CREDENTIALS VERIFICATION SERVICE

BOARD OF MEDICINE

2013 APR 26 AM 9:02

F-115677
#9

Medical Professional Information Profile

This report provides credentialing information for

Name: Leon Rawner

Social Security Number: [redacted]

Date of Birth: [redacted]

FID#: [redacted]

Recipient: FL - Florida Board of Medicine

Federation of STATE MEDICAL BOARDS

ABOUT THIS PROFILE

The Federation Credentials Verification Service (FCVS) was retained by the above referenced medical professional to verify his/her medical credentials for submission to your agency/organization. Unless noted otherwise, all documents contained in this report were received directly from the issuing institution per written request made by FCVS.

NOTICE: All documents bearing an original Official FCVS seal are certified to be an exact reproduction of the original. Where required, original documents are provided according to the agreements with the institution issuing such document. FCVS maintains all original documents (excluding third-party examination transcripts) in the physician's source file.

This FCVS medical professional Information Profile ("Profile") is compiled and provided by the Federation of State Medical Boards of the United States, Inc. (Federation) as a reference source for, and only for, its member boards and other entities authorized by the Federation. The Profile embodies and contains confidential business information because the information, and the format and presentation of that information, comprise trade secrets of the Federation and because the Profile's disclosure would harm the Federation by providing others with an unfair business advantage in competing with the Federation's FCVS services. Further, the form of the Profile and the contents of this Profile, including the compilation of information in this Profile, are the Federation's copyrighted works and proprietary, confidential information and are subject to the protections of United States laws governing copyright, trademark and trade secrets, as well as various state laws protecting the Federation's trade secrets and other intellectual property rights. This Profile and its contents may not be (1) copied, reformatted, modified, published or displayed publicly or (2) used, disclosed, distributed, shared or sold, in whole or part, for any purpose, including use to establish any database or files as a compendium or otherwise, all of which is strictly prohibited without the express written consent of the Federation's CEO.

(40)

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FCVS FEDERATION CREDENTIALS VERIFICATION SERVICE

Credentials Analysis Summary Report

Federation of STATE MEDICAL BOARDS

Note: *Your board may wish to review the unresolved items below marked by an "X"*
Please review the Credentials Analysis report for further details on the unresolved items

Medical Professional Name: Leon Rawner
Date of Birth: [redacted]
Social Security Number:
FID:

I. FCVS Reports

II. FSMB and Other Reports

III. Identity

A. Valid Original Passport

IV. Medical Education

A. Pre-medical Schools

B. Medical Schools

American University Of The Caribbean
X 1. Medical Education Form
2. Medical Education Transcript
3. Medical Education Diploma

C. Fifth Pathway Program

D. ECFMG Certification

1. ECFMG Status Report

V. Graduate Medical Education

Mount Sinai School of Medicine (Elmhurst)
1. GME Form
2. GME Completion Certificate

VI. Licensure Examination History

A. FSMB Exams

End of report for: Leon Rawner

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FCVS FEDERATION CREDENTIALS VERIFICATION SERVICE

Medical Professional Profile

Federation of STATE MEDICAL BOARDS

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A. Physician Information Report
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C. Chronology of Activities

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B. American Board of Medical Specialty Verification

III. Identity

A. Affidavit
B. Certified Birth Certificate or Original Passport
C. Documentation to Support Name Variation

IV. Medical Education

A. Verification of Medical Education
B. Clinical Clerkships (if applicable)
C. Verification of Fifth Pathway (if applicable
D. ECFMG Certification (if applicable)

V. Graduate Medical Education

A. Verification of Graduate Medical Education

VI. Licensure Examination History (State Licensing Authorities Only)

A. LMCC Transcript
B. State Medical Board Transcript
C. NCCPA Transcript
D. NBME Transcript
E. NBOME Transcript
F. LMCC Transcript
G. FSMB Transcript

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Section I

FCVS Reports

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FCVS FEDERATION CREDENTIALS VERIFICATION SERVICE

Medical Professional Information Report

Federation of STATE MEDICAL BOARDS

Identity

Medical Professional Name: Leon Rawner

Documentation: Valid Original Passport

Gender: Male

Date of Birth: [redacted]

Place of Birth: NY, UNITED STATES

Social Security Number: XXX-XX[redacted]

PID: [redacted]

Physical Description: Height: 5 ft. 10 in.

Weight: 185 lbs.

Eye Color: Blue

Hair Color: Bald

Contact Information

Mailing Address: 615 S. 68th Ave.
Wausau, WI 54401
UNITED STATES

Permanent Address: 615 S. 68th Ave.
Wausau, WI 54401
UNITED STATES

Telephone Numbers: Primary: (646) 812-2728
Secondary: N/A
Fax: N/A
Other: N/A

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Premedical Education

(Provided by Applicant. Not verified with the primary source.)

Institution: **Brandeis University**
Address: Waltham, MA 02154
UNITED STATES
Dates of Attendance: 08/--/1996 To 12/--/2000
Degree Conferred/Issued: Bachelor of Science

ECFMG

ECFMG Number: 06636351
Issue Date: 06/09/2006

Medical Education

Medical School: **American University Of The Caribbean**
Address: #1 university drive at Jordan Road
Cupecoy, 00000
SAINT MAARTEN

Dates of Attendance: 09/02/2002 to 06/03/2006
Date Certificate Issued: 06/03/2006
Degree Conferred/Issued: Doctor of Medicine

Unusual Circumstances
Leave of Absence/Extension: No
Probation: No
Disciplined: No
Negative Reports: No
Limitations: No

Fifth Pathway

There are none identified or not applicable.

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Graduate Medical Education

Institution:	Elmhurst Hospital Center
Address:	79-01 Broadway, Suite A1-16
	Elmhurst, NY 11373
	UNITED STATES
Training Level:	1
Program Type:	Internship
Specialty:	Internal Medicine
Dates of Attendance:	07/01/2006 To 06/30/2007
Completed Successfully:	Yes
Accreditation:	ACGME

Unusual Circumstances

Leave of Absence/Extension:	No
Probation:	No
Disciplined:	No
Negative Reports:	No
Limitations:	No

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Credentials Analysis Report

Federation of STATE MEDICAL BOARDS

The Credentials Analysis Report is a comparative report of a medical professional's credentials as reported to FCVS by the applicant and the primary source (Medical School, PGT program, etc.). It will also list particular missing documentation, if any, as outlined in the FCVS Policies and Procedures.

Medical Professional Identification

Medical Professional Name: Leon Rawmer

Date of Birth: [redacted]

Social Security Number: XXX-XX-[redacted]

FID: [redacted]

Omissions

There are no omissions identified.

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Discrepancies

There are no discrepancies identified.

Miscellaneous Information

There is no miscellaneous information identified.

End of report for: Leon Rawner

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FCVS FEDERATION CREDENTIALS VERIFICATION SERVICE

Chronology of Activities

Federation of STATE MEDICAL BOARDS

The Chronology of Activities is a comprehensive report of a medical professional's activities as reported to FCVS by the medical professional applicant.

Medical Professional Name: Leon Rawner
Date of Birth: [redacted]
Social Security Number: XXX-[redacted]
FID#: [redacted]

Start Date	End Date	Activity	Location	Overlap Explanation	Program Length Explanation
8/2002	06/2006	Medical Education Record	American University Of The Caribbean,#1 university drive at Jordan Road Cupecoy, 00000 SAINT MAARTEN		
7/2006	06/2007	GME Record	Elmhurst Hospital Center,79 01 Broadway, Suite A1-16 Elmhurst, NY 11373 UNITED STATES		

End of report for Leon Rawner

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Section II

FSMB and Other Reports

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FPDC | FEDERATION PHYSICIAN DATA CENTER

Board Action Clearance Report

April 22, 2013

Attn: Tracy Bevers
FCVS
400 Fuller Wiser Rd., #209
Euless, TX 76039

Re: Board Action Query Dated: April 22, 2013
FSMB Batch Number: BQ2242585

The following is a report of the search results from the Board Action Data Bank as of April 22, 2013 for practitioners submitted as part of the above-referenced batch for which NO board actions were identified.

Provider cleared with No Actions as of April 22, 2013

Name	DOB	School	Yr/Grad	Provider ID
Leon Rawner	03/27/1978	654010	2006	116358

License History

Licensing Entity
WISCONSIN

PLEASE NOTE: The licensure history information contained in these reports is not considered licensure verification but rather an indicator of known states of historical licensure for these individuals. Use of this information should be limited to cross-reference purposes.

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Section III

Identity

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Section IV

Medical Education

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ECFMG

Educational Commission for Foreign Medical Graduates (ECFMG®)

VERIFICATION OF MEDICAL EDUCATION

(This form must be completed by the medical school)

INSTRUCTIONS TO THE DEAN

This individual identified on the attached *Medical School Release Request or Certification Statement* from an ECFMG Application has authorized your medical school to provide to the Educational Commission for Foreign Medical Graduates (ECFMG) any and all information pertaining to his/her education at your institution. Please complete this VERIFICATION OF MEDICAL EDUCATION form and return it to ECFMG with the accompanying medical diploma and final medical school transcript in the enclosed, addressed envelope.

VERIFICATION OF MEDICAL EDUCATION

RE: Leon Rawner
0-663-635-1

AMERICAN UNIVERSITY OF THE CARIBBEAN SCHOOL OF MEDICINE
1 UNIVERSITY DRIVE AT JORDAN ROAD
CUPECOY, NETHERLANDS ANTILLES

RECEIVED
JUN 8 2006
CREDENTIALS

If name of institution was different when this individual attended, please note the name below:

Premedical Education:

Years of education required for admission to your medical school: 4 years college

Credential/degree presented by the applicant for admission to your medical school: BS

Enrollment and Participation: Our records indicate that Leon Rawner attended our medical school for total of 144 weeks of medical education on the following dates:

From 02/09/02 (dd/mm/yy) To 03/06/06 (dd/mm/yy)

This individual (please check one):

(✓) was conferred/issued the degree of Doctor of Medicine on 03/06/06 (dd/mm/yy)

( ) was NOT awarded a degree (please attach an explanation)

Please check one:

(✓) I hereby certify that the attached medical diploma for the individual noted above is authentic and correct and that I am authorized to certify this on behalf of this institution.

OR

( ) I cannot certify that the medical diploma for the individual noted above is authentic and correct because:

(attach additional sheets if necessary)

Certification: By my signature, I, Mellie King (type/print name) certify that the above information is an accurate account of the above named individual's official records maintained in this medical school and is true and correct to my knowledge.

Affix Institutional Seal Here. SEAL VERIFIED

Signature: Mellie King

Title: Graduate Coordinator

Date of Signature: 01/06/06

Phone: ( ) 305 446 0600 Fax: ( ) 305 446 7981

Email: gradcoord@aucmed.edu

Form 327-A ENGLISH USMLE ID: 0-663-635-1 Medical School Code: 857010 Print Date: 05/05/2006 Page 1 of 1

ECFMG

Educational Commission for Foreign Medical Graduates (ECFMG®)
VERIFICATION OF MEDICAL EDUCATION
(continued)

VERIFICATION OF MEDICAL EDUCATION

Unusual Circumstances: The following questions apply to unusual circumstances that occurred during any part of the individual's medical education. Please check the appropriate response and provide dates and requested information. "Yes" responses to any of these questions require a copy of explanatory records or a written explanation (attach additional pages as necessary).

1. Does this individual's official records reflect (an) interruption(s) or extension(s) in his/her medical education? YES ( ) NO ✓

If YES, please select the reason(s) for, indicate the dates of the interruption(s) or extension(s) and check whether the interruption/extension was approved or unapproved.

	From Mo/Yr	To Mo/Yr	Approved	Unapproved
Personal/Family			( )	( )
Academic remediation			( )	( )
Health			( )	( )
Financial			( )	( )
Participation in joint degree Program (e.g., MD/PhD)			( )	( )
Participation in non-research special study (e.g., fellowship, international experience)			( )	( )
Participation in non-degree research			( )	( )
Other			( )	( )

Please Specify: _____

2. Does this individual's official records reflect that he/she was ever placed on academic or disciplinary probation during his/her medical education? YES ( ) NO ✓

If YES, please select the reason(s) for the probation, indicate the date(s) of placement on and removal from probation and attach additional documentation to this report.

	From Mo/Yr	To Mo/Yr
Academic Probation		
Probation for unprofessional conduct/behavioral		
Probation for other reason		

Please specify reason: _____

3. Does this individual's official records reflect that he/she was ever disciplined for unprofessional conduct/behavioral reasons by the medical school or parent university? YES ( ) NO ✓

If YES, please provide detailed documentation/information about the circumstances and outcome(s):

_____

4. Does this individual's official records reflect that he/she was ever the subject of negative reports or an investigation by the medical school or

ECFMG

Educational Commission for Foreign Medical Graduates (ECFMG®)
VERIFICATION OF MEDICAL EDUCATION
(continued)

parent university? YES ( ) NO ✓

If YES, please provide detailed documentation/information about the circumstances and outcome(s).

5. Does this individual's official records reflect that there were any limitations or special requirements imposed on the individual because of questions of academic incompetence, disciplinary problems, or any other reason? YES ( ) NO ✓

If YES, please provide detailed documentation/information about the nature of the limitations or special requirements.

FCVS FEDERATION CREDENTIALS VERIFICATION SERVICE

Applicant Reported Unusual Circumstances

Federation of STATE MEDICAL BOARDS

Medical School

Medical Professional Name: Leon Rawner
American University Of The Caribbean

Unusual Circumstances

Did you have any interruption(s) or extension(s) in your medical education?	Yes	No
Were you ever placed on probation?	Yes	No
Were you ever disciplined or placed under investigation?	Yes	No
Were any negative reports for behavioral reasons ever filed by instructors?	Yes	No
Were any limitations or special requirements imposed on you because of academic performance, incompetence, disciplinary problems or for any other reason?	Yes	No

End of report for Leon Rawner

PROVIDED BY APPLICANT

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(1)

CLINICAL CLERKSHIP

Complete this section if you did not graduate from a school accredited by the Liaison Committee on Medical Education or the American Osteopathic Association and if your clinical clerkship (training) was completed in a country other than where your medical school is located. List all clerkships attended. Please copy and use additional page(s) if required.

UNIVERSITY OF LONDON

Complete name of affiliated university or college where clerkship was performed (Do not abbreviate)

EALING HOSPITAL - NHS TRUST

Complete name of hospital, institution or individual where clerkship was performed (Do not abbreviate)

UXBRIDGE ROAD

Address line 1

SOUTHALL

Address line 2

MIDDLESEX

City

State/Province

ENGLAND

Country

UB2-3HW

ZIP/Postal Code

From: 07 (Month) 2004 (Year) To: 07 (Month) 2004 (Year) PRIMARY CARE

Clinical Clerkship Area

UNIVERSITY OF LONDON

Complete name of affiliated university or college where clerkship was performed (Do not abbreviate)

EALING HOSPITAL - NHS TRUST

Complete name of hospital, institution or individual where clerkship was performed (Do not abbreviate)

UXBRIDGE ROAD

Address line 1

SOUTHALL

Address line 2

MIDDLESEX

City

State/Province

Core

ENGLAND

Country

UB2-3HW

ZIP/Postal Code

From: 07 (Month) 2004 (Year) To: 09 (Month) 2004 (Year) INTERNAL MED.

Clinical Clerkship Area

(2)

CLINICAL CLERKSHIP

Complete this section if you did not graduate from a school accredited by the Liaison Committee on Medical Education or the American Osteopathic Association and if your clinical clerkship (training) was completed in a country other than where your medical school is located. List all clerkships attended. Please copy and use additional page(s) if required.

UNIVERSITY OF LONDON

Complete name of affiliated university or college where clerkship was performed (Do not abbreviate)

EALING HOSPITAL - NHS TRUST

Complete name of hospital, institution or individual where clerkship was performed(Do not abbreviate)

UXBRIDGE ROAD

Address line 1

SOUTHALL

Address line 2

MIDDLESEX

City

State/Province

core

ENGLAND

Country

UB1-3HW

ZIP/Postal Code

From: 10 2004 To: 12 2004

Month Year Month Year

SURGERY

Clinical Clerkship Area

UNIVERSITY OF LONDON

Complete name of affiliated university or college where clerkship was performed (Do not abbreviate)

EALING HOSPITAL - NHS TRUST

Complete name of hospital, institution or individual where clerkship was performed(Do not abbreviate)

UXBRIDGE ROAD

Address line 1

core

SOUTHALL

Address line 2

MIDDLESEX

City

State/Province

ENGLAND

Country

UB1-3HW

ZIP/Postal Code

From: 01 2005 To: 02 2005

Month Year Month Year

OB-GYN

Clinical Clerkship Area

(3)

CLINICAL CLERKSHIP

Complete this section if you did not graduate from a school accredited by the Liaison Committee on Medical Education or the American Osteopathic Association and if your clinical clerkship (training) was completed in a country other than where your medical school is located. List all clerkships attended. Please copy and use additional page(s) if required.

UNIVERSITY OF LONDON

Complete name of affiliated university or college where clerkship was performed (Do not abbreviate)

EALING HOSPITAL - NHS TRUST

Complete name of hospital, institution or individual where clerkship was performed(Do not abbreviate)

UXBRIDGE ROAD

Address line 1

SOUTHALL

Address line 2

MIDDLESEX

City

State/Province

ENGLAND

Country

UB1-3HW

ZIP/Postal Code

From: 02 2005 To: 03 2005

Month Year Month Year

PEDIATRICS

Clinical Clerkship Area

UNIVERSITY OF LONDON

Complete name of affiliated university or college where clerkship was performed (Do not abbreviate)

EALING HOSPITAL - NHS TRUST

Complete name of hospital, institution or individual where clerkship was performed(Do not abbreviate)

UXBRIDGE ROAD

Address line 1

SOUTHALL

Address line 2

MIDDLESEX

City

State/Province

ENGLAND

Country

UB1-3HW

ZIP/Postal Code

From: 03 2005 To: 05 2005

Month Year Month Year

PSYCHIATRY

Clinical Clerkship Area

(4)

CLINICAL CLERKSHIP

Complete this section if you did not graduate from a school accredited by the Liaison Committee on Medical Education or the American Osteopathic Association and if your clinical clerkship (training) was completed in a country other than where your medical school is located. List all clerkships attended. Please copy and use additional page(s) if required.

AMERICAN UNIVERSITY OF THE CARIBBEAN SCHOOL OF MEDICINE

Complete name of affiliated university or college where clerkship was performed (Do not abbreviate)

WYCKOFF HEIGHTS HOSPITAL

Complete name of hospital, institution or individual where clerkship was performed (Do not abbreviate)

374 STOCKHOLM STREET

Address line 1

Address line 2

BROOKLYN

City

NY

State/Province

USA

Country

11237-

ZIP/Postal Code

From: 07 2005 To: 07 2005

Month Year Month Year

EMERGENCY MED.

Clinical Clerkship Area

this is not a core rotation

AMERICAN UNIVERSITY OF THE CARIBBEAN SCHOOL OF MEDICINE

Complete name of affiliated university or college where clerkship was performed (Do not abbreviate)

WYCKOFF HEIGHTS HOSPITAL

Complete name of hospital, institution or individual where clerkship was performed (Do not abbreviate)

374 STOCKHOLM STREET

Address line 1

Address line 2

BROOKLYN

City

NY

State/Province

USA

Country

11237-

ZIP/Postal Code

From: 08 2005 To: 08 2005

Month Year Month Year

NEUROLOGY

Clinical Clerkship Area

this is not a core rotation

(5)

CLINICAL CLERKSHIP

Complete this section if you did not graduate from a school accredited by the Liaison Committee on Medical Education or the American Osteopathic Association and if your clinical clerkship (training) was completed in a country other than where your medical school is located. List all clerkships attended. Please copy and use additional page(s) if required.

MOUNT SINAI SCHOOL OF MEDICINE

Complete name of affiliated university or college where clerkship was performed (Do not abbreviate)

ELMHURST HOSPITAL CENTER

Complete name of hospital, institution or individual where clerkship was performed(Do not abbreviate)

79-01 BROADWAY

Address line 1

Address line 2

ELMHURST

City

NY

State/Province

USA

Country

11373-

ZIP/Postal Code

From: 09 Month 2005 Year To: 09 Month 2005 Year

NEPHROLOGY

Clinical Clerkship Area

Not a Core Rotation

MOUNT SINAI SCHOOL OF MEDICINE

Complete name of affiliated university or college where clerkship was performed (Do not abbreviate)

ELMHURST HOSPITAL CENTER

Complete name of hospital, institution or individual where clerkship was performed(Do not abbreviate)

79-01 BROADWAY

Address line 1

Address line 2

ELMHURST

City

NY

State/Province

USA

Country

11373-

ZIP/Postal Code

From: 10 Month 2005 Year To: 10 Month 2005 Year

CARDIOLOGY

Clinical Clerkship Area

1 mo, Not core

(6)

CLINICAL CLERKSHIP

Complete this section if you did not graduate from a school accredited by the Liaison Committee on Medical Education or the American Osteopathic Association and if your clinical clerkship (training) was completed in a country other than where your medical school is located. List all clerkships attended. Please copy and use additional page(s) if required.

AMERICAN UNIVERSITY OF THE CARIBBEAN SCHOOL OF MEDICINE

Complete name of affiliated university or college where clerkship was performed (Do not abbreviate)

LUTHERAN MEDICAL CENTER

Complete name of hospital, institution or individual where clerkship was performed (Do not abbreviate)

150 55TH STREET

Address line 1

Address line 2

BROOKLYN

City

NY

State/Province

USA

Country

11220-

ZIP/Postal Code

From: 11 2005 To: 12 2005

Month Year Month Year

INT. MED SUB-I

Clinical Clerkship Area

no rotation

AMERICAN UNIVERSITY OF THE CARIBBEAN SCHOOL OF MEDICINE

Complete name of affiliated university or college where clerkship was performed (Do not abbreviate)

WYCKOFF HEIGHTS HOSPITAL

Complete name of hospital, institution or individual where clerkship was performed (Do not abbreviate)

374 STOCKHOLM STREET

Address line 1

Address line 2

BROOKLYN

City

NY

State/Province

USA

Country

11237-

ZIP/Postal Code

From: 02 2006 To: 02 2006

Month Year Month Year

ANESTHESIOLOGY

Clinical Clerkship Area

not core rotation

(7)

CLINICAL CLERKSHIP

Complete this section if you did not graduate from a school accredited by the Liaison Committee on Medical Education or the American Osteopathic Association and if your clinical clerkship (training) was completed in a country other than where your medical school is located. List all clerkships attended. Please copy and use additional page(s) if required.

AMERICAN UNIVERSITY OF THE CARIBBEAN SCHOOL OF MEDICINE

Complete name of affiliated university or college where clerkship was performed (Do not abbreviate)

WYCKOFF HEIGHTS HOSPITAL

Complete name of hospital, institution or individual where clerkship was performed(Do not abbreviate)

374 STOCKHOLM STREET

Address line 1

Address line 2

BROOKLYN

City

NY

State/Province

USA

Country

11237-

ZIP/Postal Code

From: 02 Month 2005 Year To: 03 Month 2005 Year

FAM. MED SUB-I

Clinical Clerkship Area

Flex Core Rotation

Complete name of affiliated university or college where clerkship was performed (Do not abbreviate)

Complete name of hospital, institution or individual where clerkship was performed(Do not abbreviate)

Address line 1

Address line 2

City

State/Province

Country

ZIP/Postal Code

From: Month Year To: Month Year

Clinical Clerkship Area

0-663-635-1

American University of the Caribbean
School of Medicine

by the authority granted to it by the governments of
Montserrat and the Netherlands Antilles,
and on recommendation of the Faculty, hereby confers upon

Leon Rawner

the degree of

Doctor of Medicine

with all the Rights, Honors and Privileges thereunto appertaining.
Dated this 3rd day of June, 2006
at St. Maarten, Netherlands Antilles

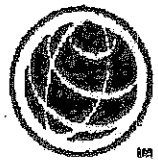
Operator

Chief Academic Officer

SEAL VERIFIED

06/05/2006 3:17PM (GMT-04:00)

Educational Commission for Foreign Medical Graduates



The ECFMG® certifies that

Leon Rawner

has successfully passed the required examinations, satisfied all the requirements of the Commission, and has been awarded this Certificate.

Certificate Number	0-663-635-1
Medical Science	
USMLE Step 1	June 18, 2004
USMLE Step 2 CK	November 18, 2005
Clinical Skills	
USMLE Step 2 CS	October 1, 2005

Chair, Board of Trustees

President & Chief Executive Officer

Date Issued June 9, 2006

Section V

Graduate Medical Education

400 FULLER WISER ROAD | SUITE 300 | EULESS, TX 76039 | TEL(817)868-5000 | FAX(817)868-5099

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Federation of STATE MEDICAL BOARDS

Federation Credentials Verification Service (FCVS)

400 Fuller Wiser Road, Suite 300, Euless, TX 76039
Tel: (817) 868-5000 Fax: (817) 868-5098

Verification of Graduate Medical Education

Institution: Elmhurst Hospital Center

Address: Internal Medicine
Elmhurst, NY

Attention: **Program Director**

Affiliated University: Icahn SOM at Mount Sinai

Verification For:

Name: Leon Rawner

DOB: 03/27/1978

Individual's Name on Record (if different from above): _____

RECEIVED
APR 15 2013

Program Participation:

Important: Report incomplete Training Levels (years) separate from those that were successfully completed.

If the training level (year) is currently in progress report the expected completion date in the "To" field.

Report Internships, Residencies and Fellowships separately.

Use one section per Department/Specialty. If the Department/Specialty is rotating or transitional, please provide a schedule of rotations.

Training Level: 1 (e.g., 1, 2, 3, etc.)
☒ Internship ☐ Residency ☐ Chief Residency ☐ Fellowship ☐ Research

Specialty/Subspecialty: Preliminary Internal Medicine
From: 07/01/2006 To: 06/30/2007
Successfully Completed?: ☒ Yes ☐ No ☐ In Progress
Accredited by: ☒ ACGME ☐ AOA ☐ LCGME ☐ RSC ☐ CFPC ☐ RCPSC ☐ APPAP ☐ None of these

Training Level: _____ (e.g., 1, 2, 3, etc.)
☐ Internship ☐ Residency ☐ Chief Residency ☐ Fellowship ☐ Research

Specialty/Subspecialty: _____
From: / / To: / /
Successfully Completed?: ☐ Yes ☐ No ☐ In Progress
Accredited by: ☐ ACGME ☐ AOA ☐ LCGME ☐ RSC ☐ CFPC ☐ RCPSC ☐ APPAP ☐ None of these

Training Level: _____ (e.g., 1, 2, 3, etc.)
☐ Internship ☐ Residency ☐ Chief Residency ☐ Fellowship ☐ Research

Specialty/Subspecialty: _____
From: / / To: / /
Successfully Completed?: ☐ Yes ☐ No ☐ In Progress
Accredited by: ☐ ACGME ☐ AOA ☐ LCGME ☐ RSC ☐ CFPC ☐ RCPSC ☐ APPAP ☐ None of these

Unusual Circumstances:

Check the correct response. Omitted responses require written explanation.

If necessary, you may continue your explanation on a separate sheet of paper.

1. Did this individual ever take a leave of absence or break from his/her training? ☐ Yes ☒ No
2. Was this individual ever placed on probation? ☐ Yes ☒ No
3. Was this individual ever disciplined or placed under investigation? ☐ Yes ☒ No
4. Were any negative reports for behavioral reasons ever filed by instructors? ☐ Yes ☒ No
5. Were any limitations or special requirements placed upon this individual because of questions of academic incompetence, disciplinary problems or any other reason? ☐ Yes ☒ No

Please explain any "Yes" response from above:

SEAL VERIFIED

Certification:

Completion of the following is certification that the information above is an accurate account of this individual's records and is true and correct. The signature line must contain the original signature, or the electronic typed signature, of the program director (M.D./D.O. only).

Affix your institutional seal in this space if a seal is available. If you must have this form notarized

Name: Lawrence M. Reich, M.D. Signature: [signature]

Title of Signatory: Program Director Date of Signature: 4/9/13

Tel: (718) 334-2490 Fax: (718) 334-5845 E-Mail: _____

Rev. 08/07/05 FCVS ID: 116358 116358 Sin: 203026471 FEE CODE [103446] 103446

FCVS FEDERATION CREDENTIALS VERIFICATION SERVICE

Applicant Reported Unusual Circumstances

Federation of STATE MEDICAL BOARDS

Graduate Medical Education

Medical Professional Name: Leon Rawner
Elmhurst Hospital Center
Internal Medicine

Unusual Circumstances

Did you have any interruption(s) or extension(s) in your medical education?	Yes	No
Were you ever placed on probation?	Yes	No
Were you ever disciplined or placed under investigation?	Yes	No
Were any negative reports for behavioral reasons ever filed by instructors?	Yes	No
Were any limitations or special requirements imposed on you because of academic performance, incompetence, disciplinary problems or for any other reason?	Yes	No

End of report for Leon Rawner

PROVIDED BY APPLICANT

400 FULLER WISER ROAD | SUITE 300 | EULESS, TX 76039 TEL(817)868-5000 FAX(817)868-5099

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Mount Sinai School of Medicine

of

New York University

in affiliation with

Elmhurst Hospital Center

This is to certify that

Leon Rawner, M.D.

has served in the capacity of

Resident in Internal Medicine

July 1, 2006 ~ June 30, 2007

and that the duties of the position have been faithfully and satisfactorily performed

New York, New York

July 1, 2007

Dean,
Mount Sinai School of Medicine

Chairman,
Mount Sinai School of Medicine

MOUNT SINAI SCHOOL OF MEDICINE

President,
Medical Executive Committee, EHC

Director of Service, EHC

Section VI

Licensure Examination History

(State Licensing Authorities Only)

400 FULLER WISER ROAD | SUITE 300 | EULESS, TX 76039 | TEL(817)868-5000 | FAX(817)868-5099

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Leon Rawner, M.D. Date April 3, 2013

REMINDER: Chapter 456.013(1)(a), Florida Statutes, provides that an incomplete application shall expire one year after initial filing with the department.

YOUR APPLICATION'S EXPIRATION DATE IS March 12, 2014

APPLICATION SUBMITTED REMAINS DEFICIENT FOR LACK OF THE FOLLOWING:

1. We await the background check results from the fingerprinting process. (FDLE/FBI processes this information). Please see the attached instructions regarding our new fingerprinting
2. Please submit a copy of your medical school diploma.
3. If applicable, please submit an acceptable translation of your medical school transcripts and medical school diploma, prepared according to the Board's criteria.
4. The inquiry you mailed to your medical school has not been received.
5. Please submit a copy of your ECFMG certificate.
6. Your ECFMG status report, directly from the ECFMG, has not been received.
7. We await your **FLEX/USMLE/SPEX/National Board** exam scores, direct from the Federation of State Medical Boards, which must be requested by the applicant.
8. We await your postgraduate evaluation form direct from Mt. Sinai Elmhurst; this is regarding your training. This form needs to be completed and signed by the current Program Director and returned to our office.
9. We are in receipt of your correspondence regarding the licensure eligibility; however the Florida Statute that you are referring to pertains to Fifth Pathway applicants; which also have to provide proof of completion of 2 years of ACGME approved postgraduate training. **Please provide proof of 2 years of postgraduate training. Please have your Program Director submit a letter addressed to the Florida Board of Medicine, stating that you have successfully completed 2 years of postgraduate training and list the dates of training.**
10. Please submit both, the National Practitioner Data Bank (NPDB) report and the Healthcare Integrity Protection Data Bank (HIPDB) report to our office. You may contact the NPDB at 1-800-767-6732 to obtain this information.
11. We await the completion and receipt of your FCVS packet direct from the Federation.

If I can be of any assistance, please contact me at (850) 245-4131 ext. 3515, fax me at (850) 412-1298 or email me at tehelia_mcglockton@doh.state.fl.us. The Florida Board of Medicine has assigned **115677** as your **tracking number**. Please indicate this number if you leave a message, and try to ensure that other sources include it on their communications to us as well.

From: Goldwire, Karrell
Sent: Tuesday, May 14, 2013 3:44 PM
To: 'leonrawner@googlemail.com'
Subject: Appl for Licensure, Dr. Leon Rawner (115677)

Good Afternoon Dr. Rawner

It has been determined that you will be required to make a Personal Appearance before the next available Credentials Committee for consideration of your licensure application to discuss your *one year of postgraduate training*. In addition, the Committee may inquire into any other issues relating to your application and eligibility for licensure. Upon completion of your application, you will be notified in writing of a specific date, time and location of your appearance. Please be advised that failure to complete the application process may result in your incomplete application being submitted before the Committee for final action.

If you have any questions / concerns, please let me know.

Thanks

Karrell D. Goldwire
Regulatory Specialist II
Department of Health (DOH) / Division of Medical Quality Assurance (MQA)
Board of Medicine
4052 Bald Cypress Way, # C03 / Tallahassee, Fl 32399-3256
Phone: (850) 245-4131 ext 3513 / Fax: (850) 412-1279
www.flboardofmedicine.gov
www.twitter.com/FLBoardofMed

Department's Mission: To protect, promote and improve the health of all people in Florida through integrated state, county and community efforts.
Department's Vision: Healthiest State in the nation.
Department's Purpose: To protect the public through health care licensure, enforcement and information.
Department's Focus: To be the nation's leader in quality health care regulation.
Department's Values: (ICARE)
I nnovation: We search for creative solutions and manage resources wisely.
C ollaboration: We use teamwork to achieve common goals and solve problems.
A ccountability: We perform with integrity and respect.
R esponsiveness: We achieve our mission by serving our customers and engaging our partners.
E xcellence: We promote quality outcomes through learning and continuous performance improvement.

Florida has a very broad public records law. Most written communications to or from state officials regarding state business are public records available to the public and media upon request. Your e-mail communications may therefore be subject to public disclosure.

To join the Board of Medicine's Interested Parties List (Mailman System) to receive periodic updates and important information from the Board, go to http://www.doh.state.fl.us/mqa/medical/me_mailman.html and sign up.

There have been changes to the license renewal process. Please visit www.CEAtRenewal.com to learn more.

Leon Rawner, M.D. Date: May 21, 2013 (Update)

REMINDER: Chapter 456.013(1)(a), Florida Statutes, provides that an incomplete application shall expire one year after initial filing with the department.

YOUR APPLICATION'S EXPIRATION DATE IS March 12, 2014

APPLICATION SUBMITTED REMAINS DEFICIENT FOR LACK OF THE FOLLOWING:

1. Please submit a copy of your undergraduate degree.

2. Please submit a copy of the certificate of completion of an academic year of supervised clinical training that was affiliated with a medical school approved by the Council on Medical Education of the American Medical Association. Please note that this is not the same as a residency that is approved by the ACGME (Accreditation Council on Graduate Medical Education).

If I can be of any assistance, please contact me at (850) 245-4131 ext. 3515, fax me at (850) 412-1298 or email me at tehelia_mcglockton@doh.state.fl.us. The Florida Board of Medicine has assigned **115677** as your **tracking number**. Please indicate this number if you leave a message, and try to ensure that other sources include it on their communications to us as well.

Leon Rawner
S.S. #084-66-8850

File # 115677
#9

Mount Sinai School of Medicine

of

New York University

in affiliation with

Elmhurst Hospital Center

This is to certify that

Leon Rawner, M.D.

has served in the capacity of

Resident in Internal Medicine

July 1, 2006 ~ June 30, 2007

and that the duties of the position have been faithfully and satisfactorily performed

New York, New York

July 1, 2007

Dean,
Mount Sinai School of Medicine

Chairman,
Mount Sinai School of Medicine

MSSM

MOUNT SINAI SCHOOL OF MEDICINE

President,
Medical Executive Committee, EHC

Director of Service, EHC

AMES & ROLLINSON, NY

171792 3

097

Leon Rawner
S.S. #084-66-8850

File # 115677
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MOUNT SINAI SCHOOL OF MEDICINE

President,
Medical Executive Committee, EHC

Director of Service, EHC

AMES & ROLLINSON, NY

171983

098

9. Chapter 97-264, Section 18

FLORIDA DEPARTMENT of STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

This is to certify that this is a true copy made from:

Laws of Florida Chapter 97-264, Section 18

Located in the Florida Public Documents collection of the State Library of Florida and is available for inspection at the State Library of Florida. Certified this10th day of January, 2014.

By: _____ (Cheri Ellison)
(Signature)

Acquisitions Librarian
(Title)

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VIVA FLORIDA 500.

VIVA FLORIDA 500.

shall not apply to the physicians required by s. 458.307(2)~~(a)~~ to be on the faculty of a medical school in this state or on the full-time staff of a teaching hospital in this state.

Section 18. Paragraph (f) of subsection (1) and subsection (2) of section 458.311, Florida Statutes, 1996 Supplement, are amended, and subsection (10) is added to said section, to read:

458.311 Licensure by examination; requirements; fees.—

(1) Any person desiring to be licensed as a physician shall apply to the department to take the licensure examination. The department shall examine each applicant whom the board certifies:

(f) Meets one of the following medical education and postgraduate training requirements:

1.a. Is a graduate of an allopathic medical school or allopathic college recognized and approved by an accrediting agency recognized by the United States Office of Education <u>or is a graduate of an allopathic medical school or allopathic college within a territorial jurisdiction of the United States recognized by the accrediting agency of the governmental body of that jurisdiction</u>;

b. If the language of instruction of the medical school is other than English, has demonstrated competency in English through presentation of a satisfactory grade on the Test of Spoken English of the Educational Testing Service or a similar test approved by rule of the board; and

c. Has completed an approved residency of at least 1 year.

2.a. Is a graduate of a foreign medical school registered with the World Health Organization and certified pursuant to s. 458.314 as having met the standards required to accredit medical schools in the United States or reasonably comparable standards;

b. If the language of instruction of the foreign medical school is other than English, has demonstrated competency in English through presentation of the Educational Commission <u>for</u> ~~on~~ Foreign Medical Graduates English proficiency certificate or by a satisfactory grade on the Test of Spoken English of the Educational Testing Service or a similar test approved by rule of the board; and

c. Has completed an approved residency of at least 1 year.

3.a. Is a graduate of a foreign medical school which has not been certified pursuant to s. 458.314;

b. Has had his medical credentials evaluated by the <u>Educational</u> ~~Education~~ Commission <u>for</u> ~~on~~ Foreign Medical Graduates, holds an active, valid certificate issued by that commission, and has passed the examination utilized by that commission; and

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FLORIDA DEPARTMENT OF STATE
JAN 10 2014

c. Has completed an approved residency of at least 1 year; however, after October 1, 1992, the applicant shall have completed an approved residency or fellowship of at least 2 ~~3~~ years in one specialty area. However, to be acceptable, the fellowship experience and training must be counted toward regular or subspecialty certification by a board recognized and certified by the American Board of Medical Specialties.

(2) As prescribed by board rule, the board may require an applicant who does not pass the licensing examination after five attempts to complete additional remedial education or training. The board shall prescribe the additional requirements in a manner that permits the applicant to complete the requirements and be reexamined within 2 years after the date the applicant petitions the board to retake the examination a sixth or subsequent time. ~~Every applicant who is otherwise qualified may take the licensing examination five times after October 1, 1986, notwithstanding the number of times the examination has been previously failed. If an applicant fails the examination taken after October 1, 1986, five times, he shall no longer be eligible for licensure.~~

(10) Notwithstanding any other provision of this section, the department shall examine any person who meets the criteria set forth in sub-subparagraph (1)(f)1.a., sub-subparagraphs (1)(f)3.a. and b., or subsection (3), if the person:

(a) Submits proof of successful completion of Steps I and II of the United States Medical Licensing Examination or the equivalent, as defined by rule of the board;

(b) Is participating in an allocated slot in an allopathic training program in this state on a full-time basis at the time of examination;

(c) Makes a written request to the department that he or she be administered the examination without applying for a license as a physician in this state; and

(d) Remits a nonrefundable administration fee not to exceed $50 and an examination fee not to exceed $300 plus the actual cost per person to the department for the purchase of the examination from the Federation of State Medical Boards of the United States or a similar national organization. The examination fee is refundable if the person is found to be ineligible to take the examination.

Section 19. Section 458.313, Florida Statutes, 1996 Supplement, is amended to read:

458.313 Licensure by endorsement; requirements; fees.—

(1) The department shall issue a license by endorsement to any applicant who, upon applying to the department and remitting a fee not to exceed $500 set by the board, ~~demonstrates to~~ the board certifies ~~that he~~:

(a) Has met the qualifications for licensure in s. 458.311(1)(b)-(f);

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9.a. Senate Staff Analysis and Economic Impact Statement, Health Care Committee and Senator Jones, Bill: CS/SB 1814, Subject: Regulation of Health Care Professions (Florida Archives, Series 18, Carton 2227).

FLORIDA DEPARTMENT *of* STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

I, Judith Ring, Division Director, Division of Library and Information Services, Florida Department of State, hereby certify the records of the Florida Legislature were transferred to the custody of the Florida State Archives pursuant to the provisions of Chapter 257, Florida Statutes, and that I am, by the terms of that transfer, the official custodian of the records.

I further certify that the attached is a true and correct copy of the record in the State Archives of Florida, the original of which may be found in Series 18, carton 2227.

***WITNESS MY SIGNATURE**, this 13th Day of January, 2014.*

***JUDITH RING**, Director*
Division of Library and Information Services

BY: _____
State Archives of Florida

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Series 18 Carton 2227
File Folder

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: April 2, 1997 Revised: _____ _____ _____ _____

Subject: Regulation of Health Care Professions

	Analyst	Staff Director	Reference	Action
1.	Munroe	Wilson	HC	Favorable/CS
2.			GO	
3.			WM	
4.				
5.				

I. Summary:

Committee Substitute for Senate Bill 1814 makes changes in the practice acts of the following health care professions: acupuncture, health care service pools, medicine, osteopathic medicine, chiropractic, podiatry, optometry, nursing, pharmacy, dentistry, speech-language pathology and audiology, nursing home administrators, occupational therapy, respiratory therapy, electrolysis, clinical laboratory personnel, physical therapy, massage therapy, and hearing aid specialists.

The bill amends the following sections of the Florida Statutes: 402.48 (1996 Supp.), 455.225 (1996 Supp.), 455.2285, 457.102, 457.103, 457.105, 457.107, 457.108, 457.1085, 457.109, 457.116, 458.303, 458.305, 458.307, 455.206, 458.311 (1996 Supp.), 458.313 (1996 Supp.), 458.317, 458.319, 458.320 (1996 Supp.), 458.331 (1996 Supp.), 458.345, 458.346, 458.347 (1996 Supp.), 458.3485, 459.003, 459.021, 459.0075, 459.0085 (1996 Supp.), 459.015 (1996 Supp.), 459.022 (1996 Supp.), 240.4067, 390.011, 395.0191, 408.035, 409.905 (1996 Supp.), 415.102, 415.1034, 415.504 (1996 Supp.), 440.106, 440.13 (1996 Supp.), 440.134, 440.15 (1996 Supp.), 456.31, 459.006, 462.01, 468.301, 468.302 (1996 Supp.), 476.044, 477.0135, 483.291, 621.03, 627.351 (1996 Supp.), 627.357, 627.6482, 725.01, 766.101 (1996 Supp.), 766.103, 766.105 (1996 Supp.), 766.110, 817.234, 945.047, 460.403 (1996 Supp.), 460.413 (1996 Supp.), 320.0848(9), 455.236(4)(g), 766.111(2), 460.4165, 461.003, 461.013, 461.018 (1996 Supp.), 464.003 (1996 Supp.), 464.004 (1996 Supp.), 464.008 (1996 Supp.), 464.009 (1996 Supp.), 464.012 (1996 Supp.), 464.013 (1996 Supp.), 464.014 (1996 Supp.), 464.018 (1996 Supp.), 464.019 (1996 Supp.), 464.022, 465.003, 465.004, 465.014, 465.0156, 465.016, 465.035, 466.003, 466.006, 466.017, 466.028, 468.1115, 468.1125, 468.1155, 468.1185, 468.1195, 468.1215, 468.1245, 468.1295, 468.1655, 468.1695, 468.203, 468.205, 468.209, 468.211, 468.213, 468.225, 468.351, 468.352, 468.354, 468.355, 468.356, 468.357, 468.358, 468.359, 468.36, 468.361, 468.363, 468.364, 468.365, 468.366, 468.368, 478.42, 478.45, 478.46, 478.47,

478.52, 480.033, 480.034, 480.035, 480.041, 480.0415, 480.042, 480.043, 480.044, 480.047, 20.43 (1996 Supp.), 381.81, 483.800, 483.801, 483.803, 483.809, 483.813, 483.823, 483.825, 483.901, 484.041, 484.042, 484.051, 486.021, 486.023, 486.031, 486.041, 486.051, 486.081, 486.102, 486.103, 486.104, 486.125 and 641.495.

The bill creates the following sections of the Florida Statutes: 458.3312, 459.0152, 464.0205, 468.1201, 468.1296, 480.0485, 483.812, 483.828 and 486.123.

The bill repeals ss. 460.413(1)(bb) and (cc)(1996 Supp.), 460.413(1)(cc) (1996 Supp.), 468.362 and 480.0425, Florida Statutes.

II. Present Situation:

GENERAL REGULATORY PROVISIONS

Chapter 455, F.S., provides for the general powers and duties of the Department of Business and Professional Regulation (DBPR) and the Agency for Health Care Administration (AHCA or agency) to implement and enforce professional regulation. Section 455.225, F.S., provides procedures for disciplinary proceedings against professions under the department's and agency's regulatory jurisdiction. Section 455.225, F.S., requires the Agency for Health Care Administration or the Department of Business and Professional Regulation to refer to each regulatory board any disciplinary cases involving practitioners over which the board has regulatory jurisdiction that have not yet been referred to the Division of Administrative Hearings or otherwise completed within one year after the complaint was filed. These cases are referred to as 'year-old' cases. On July 1, 1994, the health care professions in the Division of Medical Quality Assurance within DBPR were transferred to the Division of Health Quality Assurance within AHCA. In addition to the general regulatory provisions in chapter 455, F.S., each profession has its own practice act setting forth provisions applicable to the practice standards and requirements for that profession.

Chapter 96-403, L.O.F., transfers the regulation of various health care professions from the Agency for Health Care Administration to the Department of Health by a type two transfer, effective July 1, 1997. Section 20.06, F.S., defines a type two transfer to include all of the statutory powers, duties, functions, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds. Chapter 96-403, L.O.F., imposes limitations on the transfer of specified regulatory functions. The law expressly transfers to the Department of Health specific regulatory functions relating to the health professions including all licensing, examination, publication, administrative, and management information services, but requires the Department of Health to contract with the Agency for Health Care Administration for the provision of consumer complaint, investigative, and prosecutorial services, which are not transferred. Section 12, chapter 96-403, L.O.F., transfers by a type two transfer the regulation of athletic trainers, the Board of Massage, and the Board of Hearing Aid Specialists from the Department of Business and Professional Regulation to the newly created Department of Health, effective July 1, 1997.

Effective July 1, 1997, the professions regulated within the Division of Medical Quality Assurance within the Department of Health will include: nursing assistants; health care service pools; acupuncture; medicine; osteopathic medicine; chiropractic; podiatric medicine; naturopathy; optometry; nursing; pharmacy; dentistry; midwifery; speech-language pathology and audiology; nursing home administration; occupational therapy; respiratory therapy; dietetics and nutrition; athletic trainers; electrolysis; massage; clinical laboratory personnel; medical physicists; opticianry; hearing aid specialists; physical therapy; psychology; clinical social work; marriage and family therapy; and mental health counseling.

HEALTH CARE SERVICES POOLS

Section 402.48, F.S., requires health care services pools to register with the Department of Business and Professional Regulation each year. Health care services pools are any person or business engaged for hire in the business of providing temporary employment in health care facilities for licensed health care personnel.

ACUPUNCTURE

Chapter 457, F.S., provides for the regulation of the practice of acupuncture by the Board of Acupuncture. The board is composed of 5 members which include 3 licensed acupuncturists and 2 laypersons who are not and who have never been acupuncturists or members of any closely related profession. The chapter provides three basic ways to become an acupuncturist. There is a two-year tutorial program, a formal two-year course of study process, and a five-year experience program. A person may become certified to practice acupuncture if he is at least 18 years old and meets one of the following criteria: is a citizen of the United States; is a permanent resident of the United States; or is a legal alien who has resided in the United States for 6 months before qualifying for examination. The chapter authorizes the board to require up to 30 hours of continuing education as a condition of license renewal every 2 years. The board may establish a continuing education provider fee no greater than $100 for each acupuncture continuing education provider.

BOARD OF MEDICINE

Chapter 458, F.S., provides for the regulation of the practice of medicine. Section 458.303, F.S., provides an exemption for a physician's trained assistant, a registered nurse or a licensed practical nurse who performs services under the direct supervision and control of a licensed medical physician. Section 458.307, F.S., establishes the Board of Medicine and requires the board to establish probable cause panels. The Board of Medicine is limited to not more than two probable cause panels.

Section 458.311(2), F. S., provides that after October 1, 1986, an applicant who fails the medical exam 5 times, is no longer eligible to take the exam. Chapter 458, F. S., requires foreign-trained applicants to be certified by the Educational Commission on Foreign Medical Graduates (ECFMG), and to pass a national medical exam. As of 1994, the United States Medical Licensing

Examination (USMLE), a national examination, has been used by all 50 states to license physicians. Foreign-trained applicants must have completed an approved residency of at least 3 years in one specialty field to fulfill the licensing requirements of chapter 458, F.S.

Doctors applying for licensure by endorsement must have passed the FLEX or a similar national medical exam within the last 10 years. If passage of a national exam was in excess of 10 years ago, the board by rule, requires the applicant to pass the SPEX examination. The SPEX examination is a national examination developed for this specific purpose.

Medical schools located within the United States or its territories must be accredited by an agency recognized by the U.S. Office of Education. For renewal of a license, the licensee must have actively practiced medicine within the previous 4 years.

Section 458.320, F.S., specifies financial responsibility requirements for licensed physicians and provides a number of exemptions to the financial responsibility requirements, including physicians who practice medicine exclusively as an officer, employee, or agent of the Federal Government or of the state or its agencies or its subdivisions. An agent of the state is a person who is eligible for coverage under any self-insurance or insurance program authorized under s. 768.28, F.S. If a physician chooses not to carry financial responsibility coverage, he is required to either post a sign stating this fact, or provide a written notice of this fact to each patient.

Limited medical licenses are issued pursuant to s. 458.317, F.S. To receive a limited license without supervision, the applicant must be retired, or planning to retire, and have actively practiced medicine within the prior three years. The recipient of a limited license must work only in certain public institutions or nonprofit organizations as defined in this section. If a physician with a limited license is working for free, the fees provided for in this section are waived.

The medical practice act specifies grounds for which the Board of Medicine may discipline a physician which, among other things, include: failure to keep written medical records justifying the course of treatment; prescribing certain Schedule II drugs for any person other than children in the treatment of behavioral syndrome; and advertising or holding oneself out as a board-certified specialist in violation of the chapter. If a physician is found guilty of a violation, the board may set a number of penalties, including an administrative fine of up to $5,000 per count, and require the physician to refund any fees billed to and collected from the patient.

Section 458.345, F.S., requires hospitals to submit a list of resident physicians, assistant resident physicians, house physicians, interns, or fellows employed by the facility to the Department of Health on January 1st and July 1st of each year. Section 458.3485, F.S., recognizes medical assistants and specifies duties that a medical assistant may perform under the supervision of a licensed physician.

OSTEOPATHIC MEDICINE

Chapter 459, F.S., provides for the regulation of osteopathic medicine. Limited medical licenses are issued pursuant to s. 459.0075, F.S. To receive a limited license without supervision, the applicant must be retired and have actively practiced medicine within the previous three years. The recipient of a limited license must work only in certain public institutions or nonprofit organizations as defined in this section. If a physician with a limited license is working for free, the fees provided for in this section are waived.

The osteopathic medical practice act specifies grounds for which the Board of Osteopathic Medicine may discipline a physician which, among other things, include: failure to keep written medical records justifying the course of treatment; prescribing certain Schedule II drugs for any person other than children in the treatment of behavioral syndrome; and advertising or holding oneself out as a board-certified specialist in violation of this chapter. If a physician is found guilty of a violation, the board may set a number of penalties, including an administrative fine of up to $5,000 per count, and require the physician to refund any fees billed to and collected from the patient.

PHYSICIAN ASSISTANTS

Sections 458.347 and 459.022, F.S., provide for the regulation of physician assistants. The Board of Medicine and the Board of Osteopathic Medicine approve physician assistant training programs which hold accreditation from the Commission on Accreditation of Allied Health Programs. The Council on Physician Assistants may develop rules and make recommendations regarding all matters relating to physician assistants to both boards.

CONTROLLED SUBSTANCES

Chapter 893, F.S., sets forth the Florida Comprehensive Drug Abuse Prevention and Control Act. The chapter classifies controlled substances into five schedules in order to regulate the manufacture, distribution, preparation, and dispensing of the substances. The chapter defines practitioners to include licensed medical physicians, dentists, veterinarians, osteopathic physicians, naturopathic physicians, and podiatric physicians who may hold a valid federal controlled substance registry number to prescribe controlled substances.

CHIROPRACTIC

Chapter 460, F.S., provides for the regulation of the practice of chiropractic. The chapter provides requirements for chiropractic physicians to supervise chiropractic physician assistants and provides grounds for which a licensed chiropractic physician may be subject to discipline.

PODIATRY

Chapter 461, F.S., provides for the regulation of podiatric medicine. Section 461.018, F.S., allows certain persons who have practiced as "quiropedistas" under a Board of Podiatry-approved protocol to obtain a license to practice without supervision in specially designated areas of need within a limited scope of practice that includes nonsurgical treatment of corns, calluses, and ingrown toenails.

NURSES

Chapter 464, F.S., provides for the regulation of the practice of nursing. Section 464.019, F.S., requires institutions desiring to conduct approved nursing programs to apply with the agency and submit evidence that the program complies with the nursing practice act and any applicable rules adopted by the Board of Nursing for such programs. The chapter provides exemptions to nursing licensing requirements.

PHARMACY

Chapter 465, F.S., provides for the regulation of the practice of pharmacy. The chapter requires non-resident pharmacies to submit a roster of all employed pharmacists at the facility within 30 days of any change of office location, corporate officer, or pharmacist. The chapter requires annual disclosure of the location, names, and titles of all principal corporate officers and all pharmacists who are dispensing medicinal drugs to residents of the state. Under current law, a pharmacist may not dispense controlled substances based upon receipt of a facsimile of the original prescription. Other medicinal drugs may be dispensed under certain conditions. A pharmacist may delegate certain duties, tasks and functions to nonlicensed pharmacy technicians.

DENTISTRY

Chapter 466, F.S., provides for the regulation of the practice of dentistry and dental hygiene. The chapter authorizes dentists to use anesthesia after meeting certain requirements.

SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY

Part I, chapter 468, F.S., contains regulations for speech-language pathology and audiology, and provides exemptions from licensure requirements. The licensing exemption in the chapter for teachers does not specify that teachers certified under chapter 231, F.S., must be certified in speech-language impairment or hearing impairment in order to supervise non-certified or non-licensed persons who conduct hearing screening in the school setting. The current licensing requirements require an applicant to obtain two master's degrees in communication disorders, duplicating much of the same course work, in order to become dually licensed in speech-language pathology and audiology.

NURSING HOME ADMINISTRATORS

Part II, chapter 468, F.S., provides for the regulation of nursing home administrators. The part provides licensing requirements which include successful passage of a licensing examination. The part requires the Board of Nursing Home Administrators to give the examination at least 4 times per year.

OCCUPATIONAL THERAPY

Part III, chapter 468, F.S., regulates the practice of occupational therapy. The part allows three occupational therapists to comprise the Occupational Therapy Council, with no consumer members or occupational therapy assistants being represented. The part's definition of "occupational therapy" does not conform to the definition as provided by the American Occupational Therapy Association (AOTA). Occupational therapy programs are currently accredited by the American Medical Association (AMA) in collaboration with the American Occupational Therapy Association.

RESPIRATORY THERAPY

Part V, chapter 468, F.S., provides for the regulation of respiratory therapy under the Board of Medicine. The part requires respiratory care personnel performing blood gas analysis and specimen collection to be directly supervised by either a respiratory therapist, licensed technologist, supervisor or director, or a respiratory care practitioner who has at least three years experience in this modality pursuant to chapter 483, F.S. The part utilizes the terms "certified" and "registered" with regard to respiratory therapists. The part provides a grandfather clause that allows the licensure examination to be conducted a minimum of three times annually in geographical locations advantageous to applicants that were licensed prior to 1988.

ELECTROLYSIS

Chapter 478, F.S., regulates the practice of electrolysis by the Board of Medicine. Currently, a licensure applicant must be a high school graduate, a resident of Florida, complete a program of study not to exceed 120 hours, and pass a written exam for licensure. License by endorsement candidates are only required to meet the provisions of section 478.45(1), F.S., which does not require passage of a written examination. The chapter has a glitch because endorsement candidates may be licensed if they hold an active license in a jurisdiction whose requirements are equivalent to those of this state, and requires the board to certify the candidates for such licensure. The statutory reference for a temporary permit is section 478.45, F. S., when it should be section 478.47, F.S. An electrolysis facility is required to be licensed.

CLINICAL LABORATORY PERSONNEL

Clinical Laboratory Personnel are regulated by the Board of Clinical Laboratory Personnel under Part IV, chapter 483, F.S. The chapter allows AHCA to issue temporary licenses to candidates

for clinical laboratory personnel licensure. The temporary license is for six months and does not allow early exam applicants to work through the entire examination cycle. Due to the length of time necessary to score exams, issue reports, and issue licenses to passing candidates, the cycle does not end until December for the Fall exam and June for the Spring exam. The six month temporary license expires before final scoring and issuance of licenses is complete.

PHYSICAL THERAPY

Chapter 486, F. S., provides for the regulation of the practice of physical therapy. A person wishing to practice physical therapy or as a physical therapist assistant before becoming licensed through examination or through endorsement must apply to the Board of Physical Therapy for a temporary permit. The permit is valid for one year and may not be renewed. The permit automatically expires if the applicant fails the examination.

III. Effect of Proposed Changes:

Section 1. Amends s. 402.48, F.S.(1996 Supp.), relating to health care services pools, to require health care services pools to renew their registration biennially. Health care services pools currently are subject to an annual registration. Effective July 1, 1997, pursuant to ch. 96-403, L.O.F, the department having regulatory authority over health care services pools is changed from the Department of Business and Professional Regulation to the Department of Health.

Section 2. Amends s. 455.225, F.S., relating to disciplinary proceedings, to establish a legislative intent for purposes of s. 455.225, F.S., that the term, "expeditiously" means that the Agency for Health Care Administration, for disciplinary cases under its jurisdiction, complete the report of its initial investigative findings and recommendations concerning the existence of probable cause for a disciplinary complaint within 6 months of its receipt of the complaint. The Agency for Health Care Administration, for disciplinary cases under its jurisdiction, is required to establish a uniform reporting mechanism for "year-old disciplinary cases" that have not yet been referred to the Division of Administrative Hearings or otherwise completed within one year after the disciplinary complaint was filed, to be reported to each regulatory board on a quarterly basis during each year. The Agency for Health Care Administration, for any disciplinary case under its jurisdiction for which probable cause has been found, is required to provide to the person who filed the complaint a copy of the administrative complaint and: a written explanation of how an administrative complaint is resolved by the disciplinary process; and a written explanation of how and when the person may participate in the disciplinary process; a written notice of any hearing before the Division of Administrative Hearings or the regulatory board for which final agency action is taken. In any case for which probable cause has not been found, the agency must so inform the person who filed the complaint and notify that person that he or she may, within 60 days, provide any additional information to the probable cause panel which may be relevant to the decision. In any administrative proceeding, the person who filed the disciplinary complaint must have the right to present oral or written communication relating to the alleged disciplinary violations or to the appropriate penalty.

Section 3. Amends s. 455.2285, F.S., relating to a requirement for the Department of Business and Professional Regulation and the Agency for Health Care Administration to prepare and submit an annual report detailing relevant information on the enforcement of professional regulation to the Legislature, to require the agency, for disciplinary cases under its jurisdiction, to describe in the required annual report any effort to reduce or otherwise close any disciplinary cases that have not yet been referred to the Division of Administrative Hearings or otherwise completed within one year after the disciplinary complaint was filed.

Sections 4 - 5. Amends s. 457.102 and 457.103, F.S., relating to acupuncture to make minor technical and conforming changes.

Section 6. Amends s. 457.105, F.S., relating to acupuncture, to revise the licensing requirements for persons to practice acupuncture to delete the two year tutorial program, or formal two year course of study process, as viable means to become a licensed acupuncturist, or the five- year experience requirement. In lieu of the current licensing requirements, applicants must be at least 21 years of age and must complete a 3 year course of study that meets standards established by the board by rule. After July 31, 2001, the course of study for licensure must be at least 4 years in duration. Requires passage of a board-approved national examination. Revises licensing statutory fee caps: for examination, from $1,000 to $500; for application, from $750 to $300; for reexamination, from $1,000 to $500; for initial biennial licensure, from $2,000 to 400, if licensed during the first half of the biennium and $200, if licensed during the second half of the biennium.

Section 7. Amends s. 457.107, F.S., to revise the acupuncture license renewal fee statutory cap from $1,000 to $700.

Section 8. Amends s. 457.108, F.S., relating to acupuncture, to make minor technical and conforming changes.

Section 9. Amends s. 457.1085, F.S., relating to acupuncture, to require beginning October 1, 1997, that acupuncture needles that are used in the practice of acupuncture must be sterile and disposable, and provides that each needle may only be used once.

Section 10. Amends s. 457.109, F.S., relating to acupuncture, to revise references to the operation of a tutorial program to conform with changes in the bill deleting the two year tutorial program as viable means of becoming a licensed acupuncturist.

Section 11. Amends s. 457.116, F.S., relating to acupuncture, to make minor technical and conforming changes.

Section 12. Amends s. 458.303, F.S., to delete the exemption from medical licensing requirements for the "physician trained assistant", an unlicensed person, who may work under the direct supervision and control of a physician who provides specific direction and final approval for any services performed. Physicians will no longer be permitted to employ and use such

persons to provide medical services to patients. Medical assistants regulated under s. 458.3485, F.S., are exempted from medical licensing requirements.

Section 13. Amends s. 458.305, F.S., to correct the definition of "department" within which the Board of Medicine is administratively placed.

Section 14. Amends s. 458.307, F.S., to delete the requirement that the Board of Medicine may not establish more than two probable cause panels composed of three members, one of whom may be a lay member. This is covered in chapter 455, F.S., for all boards under the Agency for Health Care Administration or Department of Business Professional Regulation.

Section 15. Amends s. 455.206, F.S., relating to requirements imposed on board members, to correct a statutory cross-reference.

Section 16. Amends s. 458.311, F.S. (1996 Supp.), relating to medical licensing requirements, to reduce the number of years of residency training that foreign trained physicians must have from three years to two years. Fellowship training can be used to meet this requirement, provided that the training can be counted toward regular or subspecialty certification by a board recognized and certified by the American Board of Medical Specialties. Authorizes the board, as prescribed by board rule, to require an applicant who does not pass the licensure examination after five attempts to complete additional remedial education training within two years and then take the examination. Residents who are training on a full-time basis in a residency program in Florida may apply to take the medical licensing examination in Florida without applying for licensure to practice in the state after meeting specified requirements.

Section 17. Amends s. 458.313, F.S. (1996 Supp.), relating to the medical licensure by endorsement requirements, to no longer require individuals applying for licensure by endorsement to take the medical licensing examination over, if it has been more than ten years since the applicant took it. Allows the board to require endorsement applicants to take and pass the appropriate licensure examination prior to certifying the applicant as eligible for licensure. Eliminates an option for physicians who have not actively practiced medicine in the immediate four years prior to application, to work for one year under a licensed physician's supervision as part of their licensing requirements. In lieu of meeting the requirement of 1 year of supervised work, physicians applying for a license who have not practiced two out of the past four years must take a board-approved clinical competency examination, or show completion of board-approved postgraduate training. Defines the "active practice of medicine" and deletes the requirement that the Board of Medicine may require applicants to take an oral exam when applying for a license. Allows the board to require applicants by endorsement who do not pass the licensure examination after five attempts to complete up to two years of remedial education and training before taking it again. Certain physicians having null and void licenses due to failure to practice in Florida for one year within the first three years after licensure may reactivate the license under specified conditions.

Section 18. Amends s. 458.317, F.S., to delete the requirement that persons applying for a limited license must be retired. Provides that physicians who practice under a limited license who are not fully retired in all jurisdictions may only use the limited license for noncompensated practice. Requires any person who receives a waiver of fees for a limited license to pay such fees if he later receives compensation for his services.

Section 19. Amends s. 458.319, F.S., relating to medical license renewal, to require physicians who apply to renew their licenses to have practiced two out of the past four years or pass a board approved clinical competency examination.

Section 20. Amends s. 458.320, F.S. (1996 Supp.), relating to financial responsibility requirements for medical physicians, to require physicians who go "bare" to notify their patients to that effect by both posting a sign in the reception area and giving each patient a statement to sign and place in the patient's file.

Section 21. Amends s. 458.331, F.S., relating to medical physicians, to require physicians to keep legible written records as defined by department rule, in consultation with the board, that identifies the physician and/or the physician extender and supervising physician by name and credentials who is responsible for the records. Revises a ground for which a physician is subject to discipline to permit physicians to prescribe certain Schedule II drugs for the treatment of narcolepsy, hyperkinesis, and behavioral syndrome in adults as well as children. It requires physician assistants as well as physicians to report licensees under chapters 458 and 459, F.S., who are in violation of the law. Subjects a physician to discipline for advertising or holding himself out as a board-certified specialist unless he complies with applicable requirements under the medical practice act.

Section 22. Creates s. 458.3312, F.S., to prohibit a medical physician from holding himself out as a board-certified specialist unless the practitioner has received formal recognition from the American Board of Medical Specialties or a recognizing agency approved by the Board of Medicine.

Section 23. Amends s. 458.345, F.S., relating to the registration requirements for resident physicians, to require the chief executive officer of each hospital to inform the Executive Director of the Board of Medicine of the name, title, and address of the person who is responsible for submitting such reports. It allows a hospital resident physician, assistant resident physician, intern, or fellow to prescribe medicinal drugs described in schedules set out in chapter 893, F.S., if the person is authorized by the hospital, is engaged in an accredited training program, prescribes only in the normal course of employment, holds a Federal Drug Enforcement Administration prescriber number issued by the hospital and the prescription involved has that number printed thereon, and use of the institutional identification number and individual physician suffixes conforms to the requirements of the Federal Drug Enforcement Administration. Resident physicians, interns, and fellows are made explicitly subject to s. 458.331, F.S., relating to grounds for disciplinary action.

Section 24. Amends s. 458.346, F.S., relating to the Public Sector Physician Advisory Committee under the Board of Medicine, to require the committee to meet at least once a year, or upon the call of the chair, instead of quarterly.

Section 25. Amends s. 458.347, F.S. (1996 Supp.), relating to physician assistants, to allow the Council on Physician Assistants to recommend only those physician assistant programs that hold full accreditation or provisional accreditation from the Commission on Accreditation of Allied Health Programs. Requires an applicant who does not hold a current certificate issued by the National Commission on Certification of Physician Assistants (NCCPA) and has not practiced within the preceding four years to retake and pass the NCCPA examination to be eligible for certification.

Section 26. Amends s. 458.3485, F.S., relating to medical assistants, to require medical assistants to be directly supervised by a licensed physician to the extent they perform duties requiring medical licensure.

Section 27. Amends s. 459.003, F.S., to correct references to the Department of Health as the department having administrative jurisdiction over the Board of Osteopathic Medicine and to specify that "Doctor of Osteopathy" and "Doctor of Osteopathic Medicine" are equivalent and equal degrees.

Section 28. Amends s. 459.021, F.S., relating to the registration requirements for osteopathic medical residents, to require the hospital chief executive officer to provide the Board of Osteopathic Medicine's executive director with the name, title, and address of the person responsible for submitting the information required in this section. Resident physicians, interns, and fellows are made explicitly subject to s. 459.015, F.S., relating to grounds for disciplinary action.

Section 29. Amends s. 459.0075, F.S., relating to osteopathic limited licenses, to delete the requirement that osteopathic physicians applying for a limited license must be retired. Provides that osteopathic physicians who practice under a limited license who are not fully retired in all jurisdictions may only use the limited license for noncompensated practice. Requires any person who receives a waiver of fees for a limited license to pay such fees if he later receives compensation for his services.

Section 30. Amends s. 459.0085, F.S. (1996 Supp.), to require those physicians who go "bare" to notify their patients to that effect by posting a sign in the reception area and giving each patient a statement to sign and place in his file.

Section 31. Amends s. 459.015, F.S. (1996 Supp.), to require osteopathic physicians to keep legible written records as defined by department rule, in consultation with the Board of Osteopathic Medicine, that identifies the physician and/or the physician extender and supervising physician by name and credentials who is responsible for the records. Revises a ground for which a osteopathic physician is subject to discipline to permit physicians to prescribe certain Schedule

II drugs for the treatment of narcolepsy, hyperkinesis, and behavioral syndrome in adults as well as children. It requires physician assistants as well as physicians to report licensees under chapters 458 and 459, F.S., who are in violation of the law. Makes it grounds for disciplinary action for an osteopathic physician to advertise or hold oneself out as a board-certified specialist in violation of this chapter.

Section 32. Creates s. 459.0152, F.S., to prohibit an osteopathic physician from holding himself out as a board-certified specialist unless the practitioner has completed certain requirements.

Section 33. Amend ss. 459.022, F.S. (1996 Supp.), relating to physician assistants, to allow the Council on Physician Assistants to recommend physician assistant programs that hold full or provisional accreditation from the Commission on Accreditation of Allied Health Programs or its successor organization. Requires that an applicant who does not hold a current certificate issued by the National Commission on Certification of Physician Assistants (NCCPA) and has not practiced within the preceding four years must retake and pass the NCCPA examination to be eligible for certification.

Sections 34 -64. Amend ss. 240.4067, 390.011, 395.0191, 408.035, 409.905 (1996 Supp.), 415.102, 415.1034, 415.504 (1996 Supp.), 440.106, 440.13 (1996 Supp.), 440.134, 440.15 (1996 Supp.), 456.31, 459.006, 462.01, 468.301, 468.302(1996 Supp.), 476.044, 477.0135, 483.291, 621.03, 627.351 (1996 Supp.), 627.357, 627.6482, 725.01, 766.101 (1996 Supp.), 766.103, 766.105 (1996 Supp.), 766.110, 817.234, and 945.047, F.S., to change references to "osteopathy" to "osteopathic medicine" and "doctor of osteopathy" or "osteopath" to "osteopathic physician" .

Section 65. Amends s. 460.403, F.S. (1996 Supp.), to correct references to the Department of Health as the department having administrative jurisdiction over the Board of Chiropractic.

Section 66. Repeals s. 460.413(1)(bb), F.S. (1996 Supp.), relating to a ground for which a chiropractor may be disciplined for reducing or offering to reduce, discounting or offering to discount to an insured any payment to the chiropractor by the third-party payor of the insured for services rendered under the insured's policy and s. 460.413(1)(cc), F.S. (1996 Supp.), relating to a ground for which a chiropractor may be disciplined for submitting to any third-party payor a claim for a service or treatment at a greater or inflated fee or charge than the usual fee the licensee charges for that service or treatment when rendered without third-party reimbursement. Amends s. 460.413, F.S. (1996 Supp.), to provide the Board of Chiropractic and the Department of Health with the authority to compel a chiropractic physician to undergo a mental or physical examination when there is probable cause to believe that a practitioner cannot safely practice chiropractic. Allows the Board of Chiropractic to impose additional conditions of discipline, including the imposition of the costs of the investigation and prosecution, requiring the chiropractor to undergo remedial education, issuance of a letter of concern, requiring corrective action, or requiring a refund of fees billed to and collected from the patient or a third party. Authorizes the department to seek an injunction from the circuit court to stop a chiropractor from practicing, if he is unable to practice with reasonable skill and safety and is a danger to patients.

Sections 67 - 69. Reenact ss. 320.0848, 455.236, and 766.111, F.S., for the purpose of incorporating the amendment to s. 460.413, F.S., 1996 Supp.

Section 70. Amends s. 460.4165, F.S., relating to chiropractic physician assistants, to require chiropractic physicians to submit an initial application for the supervision of chiropractic physician assistants rather than an annual application, accompanied by a fee of $100.

Section 71. Amends s. 461.003, F.S., relating to podiatry, to correct references to the Department of Health as the department having jurisdiction over the Board of Podiatric Medicine.

Section 72. Amends s. 461.013, F.S., relating to podiatry, to make minor technical changes.

Section 73. Amends s. 461.018, F.S. (1996 Supp.), relating to podiatry, to allow persons who meet certain other requirements to become licensed to practice podiatry without supervision under a limited scope of practice.

Section 74. Amends s. 464.003, F.S. (1996 Supp.), relating to nursing to correct references to the Department of Health as the department having administrative jurisdiction over the Board of Nursing.

Sections 75 - 80. Amend ss. 464.004 (1996 Supp.), 464.008 (1996 Supp.), 464.009 (1996 Supp.), 464.012 (1996 Supp.), 464.013 (1996 Supp.), 464.014 (1996 Supp.), F.S., relating to nursing, to make minor technical changes to reflect the transfer of the Board of Nursing from the Agency for Health Care Administration to the Department of Health. Changes references to "agency" to "department" wherever the term appears in chapter 464, F.S.

Section 81. Amends s. 464.018, F.S. (1996 Supp.), relating to nursing, to provide that being convicted of or entering a plea of nolo contendere, regardless of adjudication, to a crime in any jurisdiction which directly relates to the practice of nursing is grounds for disciplinary action

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Section 82. Amends s. 464.019, F.S. (1996 Supp.), to authorize the Board of Nursing to set a program review fee no greater than $1,000 to cover expenses related to reviewing nursing school programs.

Section 83. Creates s. 464.0205, F.S., to establish provisions for a retired practical or registered nurse certificate. Allows retired nurses to volunteer their services in public agencies or institutions or in nonprofit agencies or institutions in areas of critical nursing need or underserved areas. Establishes procedures for the submission and approval or denial of the application, practice settings, and practice parameters. Requires the retired nurse to submit a $25 application fee.

Section 84. Amends s. 464.022, F.S., to create an exception to allow qualified nurses from another state whose employment requires them to accompany an out-of-state patient to Florida to

perform nursing services for that patient for up to 30 consecutive days. Establishes requirements for pre-travel notification to the Board of Nursing and pre-travel arrangements should the patient require placement in an in-patient setting.

Section 85. Amends s. 465.003, F.S., to correct references to the Department of Health as the department having administrative jurisdiction over the Board of Pharmacy.

Section 86. Amends s. 465.004, F.S., relating to pharmacy, to increase the Board of Pharmacy from seven to nine members by adding two additional licensed pharmacists; specifying that to the extent practicable, board membership should represent the various pharmacy settings. Revises appointment requirements so that two board members must be pharmacists from either a Class II institutional pharmacy or a Modified Class II institutional pharmacy.

Section 87. Amends s. 465.014, F.S., to permit a pharmacist to supervise up to three pharmacy technicians under guidelines established by the Board of Pharmacy.

Section 88. Amends s. 465.0156, F.S., to change certain reporting requirements (changes in ownership, management, location, and staffing) for non-resident pharmacies to more closely parallel requirements for in-state community pharmacies.

Section 89. Amends s. 465.016, F.S., relating to pharmacy, to make minor technical changes.

Section 90. Amends s. 465.035, F.S., relating to pharmacy, to allow a pharmacy to dispense controlled substances listed in Schedule II, to the extent allowed by 21 C.F.R. s. 1306.11, based on receipt of a facsimile of a prescription if certain conditions are met.

Section 91. Amends s. 466.003, F.S., relating to dentistry, to correct references the Department of Health as the department having jurisdiction over the Board of Dentistry.

Section 92. Amends s. 466.006, F.S., to delete provisions relating to a licensure route for graduates of foreign dental schools to become licensed as dentists after completion of a manual skills examination. The exam was discontinued December 31, 1991.

Section 93. Amends s. 466.017, F.S., to delete obsolete provisions that predate 1980 that allowed certain dentists to not meet the training requirements for administration of anesthesia required in subsection (3) of this section.

Section 94. Amends s. 466.028, F.S., relating to dentistry, to revise existing grounds for which a dentist may be subject to discipline for prescribing a schedule II drug, to expressly allow dentists to prescribe some schedule II drugs without the current limitations imposed on dentists to have prior Board of Dentistry approval for the use of such drugs pursuant to a clinical investigative protocol. Makes other minor technical changes.

Section 95. Amends s. 468.1115, F.S., relating to speech-language pathology and audiology, to allow persons licensed under this chapter and teachers certified in speech-language impairment or hearing impairment under chapter 231, F.S., to supervise unlicensed persons performing hearing screening in a school setting, and to allow a person licensed in another state to provide services for a limited period of time while under direct supervision of a licensee. Non-licensed persons working in a hospital setting who provide newborn infant hearing screenings are exempt if training, interpretation of screenings, and protocols are provided by a licensed audiologist.

Section 96. Amends s. 468.1125, F.S., to correct references to the Department of Health as the department having administrative jurisdiction over the Board of Speech-Language Pathology and Audiology.

Section 97. Amends s. 468.1155, F.S., relating to speech-language pathology and audiology license requirements, to specify who must obtain a provisional license and when it should be obtained. Required fees must be submitted before the department issues a provisional license. Establishes additional course work and clinical clock hour requirements for individuals licensed in speech-language pathology seeking licensure in audiology or vice-versa.

Section 98. Amends s. 468.1185, F.S., relating to speech-language pathology and audiology license requirements, to allow endorsement candidates who hold a valid license from a territory of the United States to apply for licensure.

Section 99. Amends s. 468.1195, F.S., relating to speech-language pathology and audiology continuing education, to require the board to establish by rule standards for the approval of continuing education activities and providers. Exempts individuals licensed or certified six months or less before the end of the biennial licensure cycle from continuing education requirements for the first renewal.

Section 100. Creates s. 468.1201, F.S., relating to speech-language pathology and audiology, to require HIV/AIDS instruction as a condition of initial licensure or certification as a speech-language pathologist, audiologist, or assistant. Provides applicants a six-month grace period to complete the requirement.

Section 101. Amends s. 468.1215, F.S., to require remittance of required fees as a condition of certification for speech-language pathology and audiology assistants. Authorizes the board to establish on-the-job training and supervision requirements for assistants. Makes other conforming and technical changes.

Section 102. Amends s. 468.1245, F.S., relating to hearing aid consumer protections, to require consumer protection disclosures on the hearing aid receipt rather than the contract for hearing aid sales.

Section 103. Amends s. 468.1295, F.S., relating to disciplinary proceedings for speech-language pathology and audiology, to add additional grounds for which a licensee may be disciplined to:

prohibit practicing beyond the scope permitted by law, aiding unlicensed persons to practice, and committing sexual misconduct when practicing. Allows the board to require an impaired licensee to submit to a mental or physical examination.

Section 104. Creates s. 468.1296, F.S., prohibiting sexual misconduct by persons licensed or certified under chapter 468, F.S. Requires the board, by rule, to define sexual misconduct.

Section 105. Amends s. 468.1655, F.S., to correct references to the Department of Health as the department having administrative jurisdiction over the Board of Nursing Home Administrators.

Section 106. Amends s. 468.1695, F.S., relating to nursing home administrator licensing requirements, to require that a minimum of two nursing home administrator examinations be given annually, instead of four.

Section 107. Amends s. 468.203, F.S., to conform the definition of occupational therapy with the definition as provided by the American Occupational Therapy Association (AOTA). Requires aides to be under direct supervision by either a therapist or assistant at all times.

Section 108. Amends s. 468.205, F.S., to create a seven-member Board of Occupational Therapy, four members of the board must be licensed occupational therapists and one member must be a licensed occupational therapy assistant all of whom must be Florida residents for at least four years prior to their appointment, and two members must be consumers who are residents of the state who are not connected with the practice of occupational therapy. Provides for staggered appointments to the board.

Section 109. Amends s. 468.209 F.S., relating to occupational therapy licensing requirements, to revise a statutory reference to programs for occupational therapists being accredited by the Amercian Medical Association in collaboration with the American Occupational Therapy Association to provide that the new accrediting entity is the American Occupational Therapy Association's Accreditation Council for Occupational Therapy Education, or its successor. To conform, deletes a statutory reference to programs for occupational therapy assistants being accredited by the American Occupational Therapy Association (AOTA). Revises the licensure requirements for occupational therapy assistants so that they must have completed a specialized AOTA program before 1988, which includes completion of a 6 months supervised occupational therapist level fieldwork experience and passage of an examination, to be certified as an occupational therapist without meeting the educational requirements for occupational therapists. Revises the requirements for the issuance of temporary permits to practice occupational therapy so that only one temporary permit may be obtained by candidates for licensure by examination or licensure by endorsement. Provides an exception for students enrolled in a full-time master's program for occupational therapy if all other licensure requirements have been met, who then may have a 6-month extension of the temporary permit. Requires occupational therapy applicants who have not actively practiced for 5 years immediately preceding their application to document their compliance with continuing education requirements as prescribed by board rule.

Section 110. Amends s. 468.211, F.S., relating to occupational therapy license examination requirements, to require an applicant to take additional education or training courses before attempting a fourth examination. Limits applicants to five examination attempts.

Section 111. Amends s. 468.213, F.S., relating to occupational therapy, to revise licensure by endorsement requirements to allow the Board of Medicine to consider applicants from any U.S. jurisdiction or foreign national jurisdiction requiring equivalent standards. Lists the National Board for Certification in Occupational Therapy (NBCOT) rather than the American Occupational Therapy Association as the national certifying body for licensure by endorsement candidates.

Section 112. Amends s. 468.225, F.S., relating to occupational therapy, to delete the exemption for persons to work as occupational therapy aides under the direct supervision or employment of an occupational therapist. Allows a physician assistant, speech-language pathologist, or audiologist to use occupational therapy as a part of or incidental to their profession when practicing under the laws applicable to their profession.

Section 113. Amends s. 468.351, F.S., relating to respiratory therapy, to clarify the use of the terms "certification" and "registration" for respiratory care personnel. "Certification refers to national credentials of practitioners by a private entity and "licensure" refers to the state's credentials. Makes minor technical changes, including a reference to the Department of Health and Rehabilitative Services (HRS) to AHCA as the appropriate regulatory agency for blood gas laboratories. Addresses supervision of respiratory care practitioners who perform blood gas analysis and specimen collection according to chapter 468, part V, F.S.

Sections 114-115. Amend ss. 468.352 and 468.354, F.S., relating to respiratory therapy, to clarify that "certification" and "registration" refers to national credentials of practitioners by a private entity and "licensure" refers to the state's credentials and to make technical and conforming changes.

Section 116. Amends s. 468.355, F.S., relating to respiratory therapy, to correct references to the Commission on Accreditation of Allied Health Education Programs as the accrediting entity for respiratory care training programs and to eliminate references to Accreditation of the American Medical Association.

Section 117. Amends s. 468.356, F.S., relating to respiratory therapy, to conform the name of the accrediting entity and allow programs to be approved by other accrediting agencies recognized by the U.S. Office of Education.

Section 118. Amends s. 468.357, F.S., relating to respiratory therapy, to eliminate a provision for licensees who were initially grandfathered and practicing since 1988 who have had to complete 20 hours of continuing education each year rather than complete 24 hours of continuing education as required of the other licensees.

Sections 119-120. Amend ss. 468.358 and 468.359, F.S., relating to respiratory therapy, to make technical and conforming changes.

Section 121. Amends s. 468.36, F.S., relating to respiratory therapy, to require licensees to notify the Department of Health of their current residence address.

Section 122. Repeals s. 468.362, F.S., relating to respiratory therapy continuing education requirements and amends s. 468.361, F.S., to conform language specifying continuing education hours required for licensure and to specify that the Board of Medicine is the approving authority for continuing education courses as well as the approving authority for providers of such courses.

Sections 123-124. Amend s. 468.363 and 468.364, F.S., relating to respiratory therapy, to make technical and conforming changes.

Section 125. Amends s. 468.365, F.S., relating to respiratory therapy, to revise existing disciplinary provisions to allow the Board of Medicine to take disciplinary action against a respiratory therapist if a plea of nolo contendere is entered, regardless of adjudication by the practitioner, which relates to the practice of the respiratory therapist and to make technical and conforming changes.

Sections 126-127. Amend ss. 468.366 and 468.368, F.S., relating to respiratory therapy, to make technical and conforming changes.

Section 128. Amends s. 478.42, F.S., relating to electrology, to correct references to the Department of Health as the department having administrative jurisdiction over the Electrolysis Council.

Section 129. Amends s. 478.45, F.S., relating to electrology, to revise the qualifications for licensure. Eliminates the Florida residency requirement for licensure, the grandfather provision for certain applicants, and deletes specific reference to a particular national examination. Makes other technical changes.

Section 130. Amends s. 478.46, F.S., relating to electrology, to correct a statutory cross-reference.

Section 131. Amends. s. 478.47, F.S., relating to electrology, to revise licensure by endorsement provisions so that the Board of Medicine does not have to certify applicants for licensure. The applicants must hold an active license in a jurisdiction whose requirements are equivalent to those of this state to be licensed.

Section 132. Amends s. 478.52, F.S., to expand the grounds for which an electrologist may be disciplined by the Board of Medicine to include operating an electrolysis facility without a permit.

Section 133. Amends s. 480.033, F.S., to change the name of the Board of Massage to the Board of Massage Therapy and to correct references to the Department of Health as the department with administrative jurisdiction over the Board of Massage Therapy.

Section 134. Amends s. 480.034, F.S., relating to massage, to eliminate an exemption to the massage practice act for persons who perform treatments for the purpose of cleansing and beautifying the skin or in conjunction with a weight loss program, which include herbal wraps, body scrubs, paraffin wax treatments, and seaweed wraps.

Section 135. Amends s. 480.035, F.S., to change the name of the Board of Massage to the Board of Massage Therapy.

Section 136. Amends s. 480.041, F.S., relating to massage licensing requirements, to eliminate the provisional license which was granted to applicants who otherwise met the requirements so they could practice under supervision while waiting to sit for the state licensure examination. The board now requires a national licensure examination.

Section 137. Amends s. 480.0415, F.S., relating to massage, to increase continuing education requirements from 12 up to 25 classroom hours of continuing education in massage that the Board of Massage Therapy may require every 2 years as a condition of license renewal.

Section 138. Amends s. 480.042, F.S., relating to massage licensing requirements, to eliminate a state law and rules examination for licensure.

Section 139. Repeals s. 480.0425, F.S., relating to inactive status provisions for massage licensees. The requirements for inactive licensure are addressed in chapter 455, F.S., for all boards.

Section 140. Amends s. 480.043, F.S., relating to massage, to specify that a license for a massage establishment may not be transferred from one owner to another unless the new owner submits to another inspection, obtains approval by the board, and the pays a fee no greater than $125. A license may be transferred from one business name to another upon approval of the board and the payment of an application fee no greater than $25.

Section 141. Amends s. 480.044, F.S., relating to massage, to delete the fee for the application and provisional license.

Section 142. Amends s. 480.047, F.S., relating to massage, to clarify that a person may not practice massage unless duly licensed or unless specifically exempted from licensure under the massage practice act.

Section 143. Creates s. 480.0485, F.S., relating to massage, to define and prohibit sexual misconduct in the practice of massage.

Section 144. Amends s. 20.43, F.S. (1996 Supp.), relating to the organization of the Department of Health, to make minor technical changes.

Section 145. Amends s. 381.81, F.S., relating to the Minority Health Improvement Act, to include hearing aid specialists in the definition of health care professional for purposes of the act and correct a statutory cross-reference.

Section 146. Amends s. 483.800, F.S., relating to clinical laboratory personnel, to revise the legislative intent relating to the regulation to specify that hospital-based training for laboratory and nonlaboratory personnel for testing is beneficial in hospital and commercial laboratories. Eliminates alternate sites from this intent language.

Section 147. Amends s. 483.801, F.S., relating to clinical laboratory personnel exemptions, to exempt advanced registered nurse practitioners performing provider-performed microscopy procedures from licensure under chapter 483, Part IV.

Section 148. Amends s. 483.803, F.S., relating to the definitions under the clinical laboratory personnel regulation, to provide definitions for a clinical laboratory examination and public health scientist.

Section 149. Amends s. 483.809, F.S., relating to clinical laboratory personnel licensing requirements, to provide that the Board of Clinical Laboratory Personnel may certify to the department those applicants who are eligible for licensure. Makes conforming changes relating to the board's authority to specify by rule clinical laboratory personnel licensure qualifications.

Section 150. Creates s. 483.812, F.S., relating to clinical laboratory personnel, to establish a licensure avenue for individuals working in public health laboratories.

Section 151. Amends s. 483.813, F.S., relating to clinical laboratory personnel, to authorize the Department of Health to issue temporary permits to clinical lab personnel exam candidates for up to one year to practice rather than 6 months. Creates a conditional license which may be used for a period up to 3 years by persons applying under the newly-created licensure category for clinical laboratory personnel working as a technician in a public health setting.

Section 152. Amends s. 483.823, F.S., to authorize the Board of Clinical Laboratory Personnel to adopt by rule personnel qualifications to require appropriate education, training, or experience, or the passing of an appropriate examination for clinical laboratory personnel under their regulatory jurisdiction. Provides that practitioners of the healing arts are not required to obtain licensure under this part or pay associated fees, except those required for a clinical laboratory license.

Section 153. Amends s. 483.825, F.S., relating to clinical laboratory personnel, to include applicants and registrants with licensees as persons eligible to be disciplined or denied licensure by the board. Expands the grounds for which a licensee, applicant, or registrant may be

disciplined by the board to include: being unable to perform or report a clinical laboratory examination with reasonable skill and safety; delegating responsibilities to unqualified persons; and failing to report action taken against a license in another state, territory, or country. Allows the board to require an impaired licensee to submit to a mental or physical examination. Creates a public records and meetings law exemption for the identification of the licensee in a related summary proceeding.

Section 154. Creates s. 483.828, F.S., to create various prohibited acts relating to the practice of clinical laboratory personnel, that subjects any violator to a third degree felony punishable by the imposition of imprisonment for up to 5 years and a fine up to $5,000.

Section 155. Amends s. 483.901, F.S., to make technical and substantive corrections to the practice act for medical physicists. Revises the role of the council as advisory to the Department of Health. Increases the council from seven to nine members by adding two consumer members to the council and changes the appointment term from three to four years. Provides that continuing education hours are to be completed biennially and allows the department, with the advice of the council, to set requirements by rule for continuing education for persons who hold more than one specialty license. Revises the requirements for licensure for applicants until October 1, 1997 and after October 1, 1997. Creates grounds for which licensed medical physicists may be subject to disciplinary action and the penalties that may be assessed and the criminal sanctions for unlicensed activity. Eliminates an exception from licensure for those medical physicists who have been practicing for five or more years as of July 1, 1995.

Sections 156 - 157. Amend ss. 484.041 and 484.042, F.S., to correct references to the Department of Health as the department having administrative jurisdiction over the Board of Hearing Aid Specialists.

Section 158. Amends s. 484.051, F.S., relating to hearing aid specialists, to require persons fitting and selling hearing aids to provide the purchaser with a receipt, rather than a contract, containing the seller's signature, address of regular practice, license number, and other identifying information and designates the Department of Health as the entity with which to file a complaint.

Section 159. Amends s. 486.021, F.S.,to correct references to the Department of Health as the department having administrative jurisdiction over the Board of Physical Therapy.

Section 160. Amends s. 486.023, F.S., to increase the Board of Physical Therapy from seven to nine members. One new member is a licensed physical therapist assistant and the other is a consumer member.

Section 161. Amends s. 486.031, F.S., to allow the Board of Physical Therapy to waive the examination for licensure of physical therapists who took the American Registry Examination prior to 1971. Facilitates computer based testing by eliminating the requirement that exams be administered by the department.

Section 162. Amends s. 486.041, F.S., relating to physical therapy licensure application procedures, to facilitate computer-based testing by allowing the applicant to bypass the department when applying to take the required exam.

Section 163. Amends s. 486.051, F.S., relating to physical therapy examination requirements, to revise the procedures for examinations to facilitate computer-based testing by eliminating language requiring the department to purchase exams.

Section 164. Amends s. 486.081, F.S., to allow the board to waive the examination for physical therapists applying by endorsement who took the American Registry Examination prior to 1971.

Section 165. Amends s. 486.102, F.S., relating to physical therapy, to delete the requirement that accrediting bodies be approved by the Council on Postsecondary Accreditation, since this organization is no longer in existence. Makes other minor technical and conforming changes.

Sections 166-167. Amend ss. 486.103 and 486.104, F.S., relating to physical therapy, to make technical and conforming changes to facilitate computer-based testing for physical therapist assistants by eliminating language requiring the department to purchase exams.

Section 168. Creates s. 486.123, F.S., to provide that sexual misconduct in the practice of physical therapy is prohibited.

Section 169. Amends s. 486.125, F.S., relating to physical therapy, to allow the Board of Physical Therapy to recover investigative and prosecution costs.

Section 170. Amends s. 641.495, F.S., relating to health maintenance organizations, to require health maintenance organizations to designate a medical director who is a medical physician or osteopathic physician who is licensed to practice in this state.

Section 171. Provides an effective date of July 1, 1997.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

Section 24 of Article I of the Florida Constitution governs the creation and expansion of exemptions, to provide, in effect, that any legislation that creates a new exemption or that substantially amends an existing exemption must also contain a statement of the public necessity that justifies the exemption. Article I, s. 24, Fla. Const. provides that any bill that

contains an exemption may not contain other substantive provisions, although it may contain multiple exemptions.

The bill expressly creates public records and meetings law exemptions for the identification of chiropractors, speech-language pathologists and audiologists, and clinical laboratory personnel in summary procedures relating to the Department of Health's enforcement to compel an impaired licensee to submit to a physical or mental examination. The bill creates by implication, public records and meetings exemptions to the extent existing exemptions for disciplinary actions in chapter 455, F.S., and specific practice acts apply, for specialized certification in nursing.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Section 19(f) of the Florida Constitution.

D. Other Constitutional Issues:

To the extent the bill authorizes the Board of Acupuncture to establish licensure standards by rule, which are part of a 3 or 4 year course of study, it raises the question whether this provides adequate limitations and safeguards so that the Legislature's delegation to the board is not a violation of Article II, Section 3 of the Florida Constitution. The bill does not appear to expressly provide a sufficient limitation on the board's authority to establish requirements on who should be granted a license to practice acupuncture.

The Florida Supreme Court struck down a former section of law respecting the power of the Board of Psychological Examiners to grant certificates with the title "psychologist" and to determine the qualifications of applicants as unconstitutional in that it failed sufficiently to fix the standards to be applied and in effect delegated the application of the statute without sufficient limitations on the board's discretion. Husband v. Cassel, 130 So.2d 69 (1961).

Article II, Section 3 of the Florida Constitution provides that the powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein. The Florida Supreme Court has acknowledged that "Where the Legislature makes the fundamental policy decision and delegates to some other body the task of implementing that policy under adequate safeguards, there is no violation of the [Delegation of Powers] doctrine." Askew v. Cross Key Waterways, 372 So.2d 913 at 921 (Fla.1978).

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

Medical residents applying to sit for the medical licensing examination in Florida without applying for licensure to practice in this state will be subject to a nonrefundable administration fee no greater than $50, an examination fee no greater than $300, plus the actual cost per person to the Department of Health for the medical licensing examination.

Persons who hold limited licenses to practice medicine or osteopathy must pay any application or licensing fees currently waived if they receive compensation.

New nursing program applicants will be subject to a program review fee no greater than $1,000 .

Applicants for a retired volunteer nurse certificate are subject to an application and processing fee of $25.

Owners of massage establishments that are transferring ownership are subject to an application and inspection fee no greater than $125.

Owners of massage establishments that are changing the business name are subject to an application fee no greater than $25.

B. Private Sector Impact:

Medical residents who are training in Florida on a full-time basis who wish to practice in other states will benefit to the extent the bill allows the residents to sit for the medical licensing examination in Florida while training as a resident without having to apply for licensure to practice in this state.

Any physician who practices medicine exclusively as an officer, employee, or agent of the federal government or the state who is currently paying any costs to meet all financial responsibility requirements for staff privileges at any hospital, ambulatory surgical center or other licensed facility will benefit to the extent the bill provides that such physicians have met all financial responsibility when the physician is acting within the scope of his or her employment or agency.

C. Government Sector Impact:

To the extent the bill requires the Agency for Health Care Administration to improve the efficiency of its investigation and referral of disciplinary cases filed against health care professionals under its jurisdiction, to the appropriate probable cause panel and to provide additional information regarding the disciplinary process and notices to complainants, the

agency estimates that it will require for fiscal year 1997-98: non-recurring costs of $465,198; salaries and benefits of $2,500,422 for 89 FTEs; expenses of $2,654,080 totaling $5,619,700. For fiscal year 1998-99 the estimates are: salaries and benefits of $3,333,896; expenses of $3,538,773 totaling $6,872,669. The agency estimates that it will incur expenses equal to $12,492,369 for the biennial period 1997-99 and its figures are based on a projection of 18,000 health care practitioner complaints being filed in 1997.

The Department of Health estimates that it will have a reduction of $33,000 in revenue relating to the shift from an annual to a biennial registration of health care service pools.

The Department of Health indicates that there are 569 first year post-graduate training slots out of a total of 2,694 post-graduate training slots allocated in the various residency programs throughout the state. If ten percent of the persons in available first year residency training slots took the examination without applying for medical licensure each year, the department estimates a loss of revenue of approximately $23,370 (57 applicants @ $410 application fee).

The Department of Health estimates that during the biennial period 1997-1999 it will review approximately 14 new nursing programs and assess each program $1,000 and collect a total of $14,000 to recover its review costs.

The Department of Health estimates that it will receive 25 retired volunteer nurse applications during the biennial period 1997-1999 and collect a total of $625.

To the extent the bill increases the Board of Pharmacy from 7 to 9 members the Department of Health estimates the costs will be approximately $32,000 for additional travel and mailing expenses over the biennial period 1997-1999.

To the extent the bill increases the Board of Physical Therapy from 7 to 9 members the Department of Health estimates the costs will be approximately $9,200 for additional travel and mailing expenses over the biennial period 1997-1999.

To the extent the bill increases the Council of Occupational Therapy from 3 to 5 members the Department of Health estimates the costs will be approximately $1,000 for additional travel and mailing expenses over the biennial period 1997-1999.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 154 of the bill creates a felony offense for any person to commit various prohibited acts relating to the practice of clinical laboratory personnel, the violation of which subjects the person

to a third degree felony punishable by the imposition of imprisonment for up to 5 years and a fine up to $5,000. Section 155 of the bill creates a felony offense for any person to commit various prohibited acts relating to the practice of medical physicists, the violation of which subjects the person to a third degree felony punishable by the imposition of imprisonment for up to 5 years and a fine up to $5,000. Section 921.001, F.S., provides that any legislation that creates a felony offense, enhances a misdemeanor offense to a felony or reclassifies an existing felony offense to a greater felony classification result in a net zero sum impact in the overall prison population as determined by the Criminal Justice Estimating Conference, unless the legislation contains a sufficient funding source to accommodate the change, or the Legislature abrogates the application of s. 921.001, F.S. To the extent the bill creates a felony offense for certain acts relating to the practice of clinical laboratory personnel and the practice of medical physicists, it may have a fiscal impact based on its impact on the overall prison population as determined by the Criminal Justice Estimating Conference under procedures established in s. 216.136(5), F.S.

VIII. Amendments:

None.

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: April 11, 1997 Revised: 04/14/97

Subject: Regulation of Health Care Professions

	Analyst	Staff Director	Reference	Action
1.	Munroe	Wilson	HC	Favorable/CS
2.	Wilson	Wilson	GO	Fav/5 amendments
3.			WM	
4.				
5.				

I. Summary:

Committee Substitute for Senate Bill 1814 makes changes in the practice acts of the following health care professions: acupuncture, health care service pools, medicine, osteopathic medicine, chiropractic, podiatry, optometry, nursing, pharmacy, dentistry, speech-language pathology and audiology, nursing home administrators, occupational therapy, respiratory therapy, electrolysis, clinical laboratory personnel, physical therapy, massage therapy, and hearing aid specialists.

The bill amends the following sections of the Florida Statutes: 402.48 (1996 Supp.), 455.225 (1996 Supp.), 455.2285, 457.102, 457.103, 457.105, 457.107, 457.108, 457.1085, 457.109, 457.116, 458.303, 458.305, 458.307, 455.206, 458.311 (1996 Supp.), 458.313 (1996 Supp.), 458.317, 458.319, 458.320 (1996 Supp.), 458.331 (1996 Supp.), 458.345, 458.346, 458.347 (1996 Supp.), 458.3485, 459.003, 459.021, 459.0075, 459.0085 (1996 Supp.), 459.015 (1996 Supp.), 459.022 (1996 Supp.), 240.4067, 390.011, 395.0191, 408.035, 409.905 (1996 Supp.), 415.102, 415.1034, 415.504 (1996 Supp.), 440.106, 440.13 (1996 Supp.), 440.134, 440.15 (1996 Supp.), 456.31, 459.006, 462.01, 468.301, 468.302 (1996 Supp.), 476.044, 477.0135, 483.291, 621.03, 627.351 (1996 Supp.), 627.357, 627.6482, 725.01, 766.101 (1996 Supp.), 766.103, 766.105 (1996 Supp.), 766.110, 817.234, 945.047, 460.403 (1996 Supp.), 460.413 (1996 Supp.), 320.0848(9), 455.236(4)(g), 766.111(2), 460.4165, 461.003, 461.013, 461.018 (1996 Supp.), 464.003 (1996 Supp.), 464.004 (1996 Supp.), 464.008 (1996 Supp.), 464.009 (1996 Supp.), 464.012 (1996 Supp.), 464.013 (1996 Supp.), 464.014 (1996 Supp.), 464.018 (1996 Supp.), 464.019 (1996 Supp.), 464.022, 465.003, 465.004, 465.014, 465.0156, 465.016, 465.035, 466.003, 466.006, 466.017, 466.028, 468.1115, 468.1125, 468.1155, 468.1185, 468.1195, 468.1215, 468.1245, 468.1295, 468.1655, 468.1695, 468.203, 468.205, 468.209, 468.211, 468.213, 468.225, 468.351, 468.352, 468.354, 468.355, 468.356, 468.357, 468.358, 468.359, 468.36, 468.361, 468.363, 468.364, 468.365, 468.366, 468.368, 478.42, 478.45, 478.46, 478.47,

478.52, 480.033, 480.034, 480.035, 480.041, 480.0415, 480.042, 480.043, 480.044, 480.047, 20.43 (1996 Supp.), 381.81, 483.800, 483.801, 483.803, 483.809, 483.813, 483.823, 483.825, 483.901, 484.041, 484.042, 484.051, 486.021, 486.023, 486.031, 486.041, 486.051, 486.081, 486.102, 486.103, 486.104, 486.125 and 641.495.

The bill creates the following sections of the Florida Statutes: 458.3312, 459.0152, 464.0205, 468.1201, 468.1296, 480.0485, 483.812, 483.828 and 486.123.

The bill repeals ss. 460.413(1)(bb) and (cc)(1996 Supp.), 460.413(1)(cc) (1996 Supp.), 468.362 and 480.0425, Florida Statutes.

II. Present Situation:

GENERAL REGULATORY PROVISIONS

Chapter 455, F.S., provides for the general powers and duties of the Department of Business and Professional Regulation (DBPR) and the Agency for Health Care Administration (AHCA or agency) to implement and enforce professional regulation. Section 455.225, F.S., provides procedures for disciplinary proceedings against professions under the department's and agency's regulatory jurisdiction. Section 455.225, F.S., requires the Agency for Health Care Administration or the Department of Business and Professional Regulation to refer to each regulatory board any disciplinary cases involving practitioners over which the board has regulatory jurisdiction that have not yet been referred to the Division of Administrative Hearings or otherwise completed within one year after the complaint was filed. These cases are referred to as 'year-old' cases. On July 1, 1994, the health care professions in the Division of Medical Quality Assurance within DBPR were transferred to the Division of Health Quality Assurance within AHCA. In addition to the general regulatory provisions in chapter 455, F.S., each profession has its own practice act setting forth provisions applicable to the practice standards and requirements for that profession.

Chapter 96-403, L.O.F., transfers the regulation of various health care professions from the Agency for Health Care Administration to the Department of Health by a type two transfer, effective July 1, 1997. Section 20.06, F.S., defines a type two transfer to include all of the statutory powers, duties, functions, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds. Chapter 96-403, L.O.F., imposes limitations on the transfer of specified regulatory functions. The law expressly transfers to the Department of Health specific regulatory functions relating to the health professions including all licensing, examination, publication, administrative, and management information services, but requires the Department of Health to contract with the Agency for Health Care Administration for the provision of consumer complaint, investigative, and prosecutorial services, which are not transferred. Section 12, chapter 96-403, L.O.F., transfers by a type two transfer the regulation of athletic trainers, the Board of Massage, and the Board of Hearing Aid Specialists from the Department of Business and Professional Regulation to the newly created Department of Health, effective July 1, 1997.

Effective July 1, 1997, the professions regulated within the Division of Medical Quality Assurance within the Department of Health will include: nursing assistants; health care service pools; acupuncture; medicine; osteopathic medicine; chiropractic; podiatric medicine; naturopathy; optometry; nursing; pharmacy; dentistry; midwifery; speech-language pathology and audiology; nursing home administration; occupational therapy; respiratory therapy; dietetics and nutrition; athletic trainers; electrolysis; massage; clinical laboratory personnel; medical physicists; opticianry; hearing aid specialists; physical therapy; psychology; clinical social work; marriage and family therapy; and mental health counseling.

HEALTH CARE SERVICES POOLS

Section 402.48, F.S., requires health care services pools to register with the Department of Business and Professional Regulation each year. Health care services pools are any person or business engaged for hire in the business of providing temporary employment in health care facilities for licensed health care personnel.

ACUPUNCTURE

Chapter 457, F.S., provides for the regulation of the practice of acupuncture by the Board of Acupuncture. The board is composed of 5 members which include 3 licensed acupuncturists and 2 laypersons who are not and who have never been acupuncturists or members of any closely related profession. The chapter provides three basic ways to become an acupuncturist. There is a two-year tutorial program, a formal two-year course of study process, and a five-year experience program. A person may become certified to practice acupuncture if he is at least 18 years old and meets one of the following criteria: is a citizen of the United States; is a permanent resident of the United States; or is a legal alien who has resided in the United States for 6 months before qualifying for examination. The chapter authorizes the board to require up to 30 hours of continuing education as a condition of license renewal every 2 years. The board may establish a continuing education provider fee no greater than $100 for each acupuncture continuing education provider.

BOARD OF MEDICINE

Chapter 458, F.S., provides for the regulation of the practice of medicine. Section 458.303, F.S., provides an exemption for a physician's trained assistant, a registered nurse or a licensed practical nurse who performs services under the direct supervision and control of a licensed medical physician. Section 458.307, F.S., establishes the Board of Medicine and requires the board to establish probable cause panels. The Board of Medicine is limited to not more than two probable cause panels.

Section 458.311(2), F. S., provides that after October 1, 1986, an applicant who fails the medical exam 5 times, is no longer eligible to take the exam. Chapter 458, F. S., requires foreign-trained applicants to be certified by the Educational Commission on Foreign Medical Graduates (ECFMG), and to pass a national medical exam. As of 1994, the United States Medical Licensing

Examination (USMLE), a national examination, has been used by all 50 states to license physicians. Foreign-trained applicants must have completed an approved residency of at least 3 years in one specialty field to fulfill the licensing requirements of chapter 458, F.S.

Doctors applying for licensure by endorsement must have passed the FLEX or a similar national medical exam within the last 10 years. If passage of a national exam was in excess of 10 years ago, the board by rule, requires the applicant to pass the SPEX examination. The SPEX examination is a national examination developed for this specific purpose.

Medical schools located within the United States or its territories must be accredited by an agency recognized by the U.S. Office of Education. For renewal of a license, the licensee must have actively practiced medicine within the previous 4 years.

Section 458.320, F.S., specifies financial responsibility requirements for licensed physicians and provides a number of exemptions to the financial responsibility requirements, including physicians who practice medicine exclusively as an officer, employee, or agent of the Federal Government or of the state or its agencies or its subdivisions. An agent of the state is a person who is eligible for coverage under any self-insurance or insurance program authorized under s. 768.28, F.S. If a physician chooses not to carry financial responsibility coverage, he is required to either post a sign stating this fact, or provide a written notice of this fact to each patient.

Limited medical licenses are issued pursuant to s. 458.317, F.S. To receive a limited license without supervision, the applicant must be retired, or planning to retire, and have actively practiced medicine within the prior three years. The recipient of a limited license must work only in certain public institutions or nonprofit organizations as defined in this section. If a physician with a limited license is working for free, the fees provided for in this section are waived.

The medical practice act specifies grounds for which the Board of Medicine may discipline a physician which, among other things, include: failure to keep written medical records justifying the course of treatment; prescribing certain Schedule II drugs for any person other than children in the treatment of behavioral syndrome; and advertising or holding oneself out as a board-certified specialist in violation of the chapter. If a physician is found guilty of a violation, the board may set a number of penalties, including an administrative fine of up to $5,000 per count, and require the physician to refund any fees billed to and collected from the patient.

Section 458.345, F.S., requires hospitals to submit a list of resident physicians, assistant resident physicians, house physicians, interns, or fellows employed by the facility to the Department of Health on January 1st and July 1st of each year. Section 458.3485, F.S., recognizes medical assistants and specifies duties that a medical assistant may perform under the supervision of a licensed physician.

OSTEOPATHIC MEDICINE

Chapter 459, F.S., provides for the regulation of osteopathic medicine. Limited medical licenses are issued pursuant to s. 459.0075, F.S. To receive a limited license without supervision, the applicant must be retired and have actively practiced medicine within the previous three years. The recipient of a limited license must work only in certain public institutions or nonprofit organizations as defined in this section. If a physician with a limited license is working for free, the fees provided for in this section are waived.

The osteopathic medical practice act specifies grounds for which the Board of Osteopathic Medicine may discipline a physician which, among other things, include: failure to keep written medical records justifying the course of treatment; prescribing certain Schedule II drugs for any person other than children in the treatment of behavioral syndrome; and advertising or holding oneself out as a board-certified specialist in violation of this chapter. If a physician is found guilty of a violation, the board may set a number of penalties, including an administrative fine of up to $5,000 per count, and require the physician to refund any fees billed to and collected from the patient.

PHYSICIAN ASSISTANTS

Sections 458.347 and 459.022, F.S., provide for the regulation of physician assistants. The Board of Medicine and the Board of Osteopathic Medicine approve physician assistant training programs which hold accreditation from the Commission on Accreditation of Allied Health Programs. The Council on Physician Assistants may develop rules and make recommendations regarding all matters relating to physician assistants to both boards.

CONTROLLED SUBSTANCES

Chapter 893, F.S., sets forth the Florida Comprehensive Drug Abuse Prevention and Control Act. The chapter classifies controlled substances into five schedules in order to regulate the manufacture, distribution, preparation, and dispensing of the substances. The chapter defines practitioners to include licensed medical physicians, dentists, veterinarians, osteopathic physicians, naturopathic physicians, and podiatric physicians who may hold a valid federal controlled substance registry number to prescribe controlled substances.

CHIROPRACTIC

Chapter 460, F.S., provides for the regulation of the practice of chiropractic. The chapter provides requirements for chiropractic physicians to supervise chiropractic physician assistants and provides grounds for which a licensed chiropractic physician may be subject to discipline.

PODIATRY

Chapter 461, F.S., provides for the regulation of podiatric medicine. Section 461.018, F.S., allows certain persons who have practiced as "quiropedistas" under a Board of Podiatry-approved protocol to obtain a license to practice without supervision in specially designated areas of need within a limited scope of practice that includes nonsurgical treatment of corns, calluses, and ingrown toenails.

NURSES

Chapter 464, F.S., provides for the regulation of the practice of nursing. Section 464.019, F.S., requires institutions desiring to conduct approved nursing programs to apply with the agency and submit evidence that the program complies with the nursing practice act and any applicable rules adopted by the Board of Nursing for such programs. The chapter provides exemptions to nursing licensing requirements.

PHARMACY

Chapter 465, F.S., provides for the regulation of the practice of pharmacy. The chapter requires non-resident pharmacies to submit a roster of all employed pharmacists at the facility within 30 days of any change of office location, corporate officer, or pharmacist. The chapter requires annual disclosure of the location, names, and titles of all principal corporate officers and all pharmacists who are dispensing medicinal drugs to residents of the state. Under current law, a pharmacist may not dispense controlled substances based upon receipt of a facsimile of the original prescription. Other medicinal drugs may be dispensed under certain conditions. A pharmacist may delegate certain duties, tasks and functions to nonlicensed pharmacy technicians.

DENTISTRY

Chapter 466, F.S., provides for the regulation of the practice of dentistry and dental hygiene. The chapter authorizes dentists to use anesthesia after meeting certain requirements.

SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY

Part I, chapter 468, F.S., contains regulations for speech-language pathology and audiology, and provides exemptions from licensure requirements. The licensing exemption in the chapter for teachers does not specify that teachers certified under chapter 231, F.S., must be certified in speech-language impairment or hearing impairment in order to supervise non-certified or non-licensed persons who conduct hearing screening in the school setting. The current licensing requirements require an applicant to obtain two master's degrees in communication disorders, duplicating much of the same course work, in order to become dually licensed in speech-language pathology and audiology.

NURSING HOME ADMINISTRATORS

Part II, chapter 468, F.S., provides for the regulation of nursing home administrators. The part provides licensing requirements which include successful passage of a licensing examination. The part requires the Board of Nursing Home Administrators to give the examination at least 4 times per year.

OCCUPATIONAL THERAPY

Part III, chapter 468, F.S., regulates the practice of occupational therapy. The part allows three occupational therapists to comprise the Occupational Therapy Council, with no consumer members or occupational therapy assistants being represented. The part's definition of "occupational therapy" does not conform to the definition as provided by the American Occupational Therapy Association (AOTA). Occupational therapy programs are currently accredited by the American Medical Association (AMA) in collaboration with the American Occupational Therapy Association.

RESPIRATORY THERAPY

Part V, chapter 468, F.S., provides for the regulation of respiratory therapy under the Board of Medicine. The part requires respiratory care personnel performing blood gas analysis and specimen collection to be directly supervised by either a respiratory therapist, licensed technologist, supervisor or director, or a respiratory care practitioner who has at least three years experience in this modality pursuant to chapter 483, F.S. The part utilizes the terms "certified" and "registered" with regard to respiratory therapists. The part provides a grandfather clause that allows the licensure examination to be conducted a minimum of three times annually in geographical locations advantageous to applicants that were licensed prior to 1988.

ELECTROLYSIS

Chapter 478, F.S., regulates the practice of electrolysis by the Board of Medicine. Currently, a licensure applicant must be a high school graduate, a resident of Florida, complete a program of study not to exceed 120 hours, and pass a written exam for licensure. License by endorsement candidates are only required to meet the provisions of section 478.45(1), F.S., which does not require passage of a written examination. The chapter has a glitch because endorsement candidates may be licensed if they hold an active license in a jurisdiction whose requirements are equivalent to those of this state, and requires the board to certify the candidates for such licensure. The statutory reference for a temporary permit is section 478.45, F. S., when it should be section 478.47, F.S. An electrolysis facility is required to be licensed.

CLINICAL LABORATORY PERSONNEL

Clinical Laboratory Personnel are regulated by the Board of Clinical Laboratory Personnel under Part IV, chapter 483, F.S. The chapter allows AHCA to issue temporary licenses to candidates

for clinical laboratory personnel licensure. The temporary license is for six months and does not allow early exam applicants to work through the entire examination cycle. Due to the length of time necessary to score exams, issue reports, and issue licenses to passing candidates, the cycle does not end until December for the Fall exam and June for the Spring exam. The six month temporary license expires before final scoring and issuance of licenses is complete.

PHYSICAL THERAPY

Chapter 486, F. S., provides for the regulation of the practice of physical therapy. A person wishing to practice physical therapy or as a physical therapist assistant before becoming licensed through examination or through endorsement must apply to the Board of Physical Therapy for a temporary permit. The permit is valid for one year and may not be renewed. The permit automatically expires if the applicant fails the examination.

III. Effect of Proposed Changes:

Section 1. Amends s. 402.48, F.S.(1996 Supp.), relating to health care services pools, to require health care services pools to renew their registration biennially. Health care services pools currently are subject to an annual registration. Effective July 1, 1997, pursuant to ch. 96-403, L.O.F, the department having regulatory authority over health care services pools is changed from the Department of Business and Professional Regulation to the Department of Health.

Section 2. Amends s. 455.225, F.S., relating to disciplinary proceedings, to establish a legislative intent for purposes of s. 455.225, F.S., that the term, "expeditiously" means that the Agency for Health Care Administration, for disciplinary cases under its jurisdiction, complete the report of its initial investigative findings and recommendations concerning the existence of probable cause for a disciplinary complaint within 6 months of its receipt of the complaint. The Agency for Health Care Administration, for disciplinary cases under its jurisdiction, is required to establish a uniform reporting mechanism for "year-old disciplinary cases" that have not yet been referred to the Division of Administrative Hearings or otherwise completed within one year after the disciplinary complaint was filed, to be reported to each regulatory board on a quarterly basis during each year. The Agency for Health Care Administration, for any disciplinary case under its jurisdiction for which probable cause has been found, is required to provide to the person who filed the complaint a copy of the administrative complaint and: a written explanation of how an administrative complaint is resolved by the disciplinary process; and a written explanation of how and when the person may participate in the disciplinary process; a written notice of any hearing before the Division of Administrative Hearings or the regulatory board for which final agency action is taken. In any case for which probable cause has not been found, the agency must so inform the person who filed the complaint and notify that person that he or she may, within 60 days, provide any additional information to the probable cause panel which may be relevant to the decision. In any administrative proceeding, the person who filed the disciplinary complaint must have the right to present oral or written communication relating to the alleged disciplinary violations or to the appropriate penalty.

Section 3. Amends s. 455.2285, F.S., relating to a requirement for the Department of Business and Professional Regulation and the Agency for Health Care Administration to prepare and submit an annual report detailing relevant information on the enforcement of professional regulation to the Legislature, to require the agency, for disciplinary cases under its jurisdiction, to describe in the required annual report any effort to reduce or otherwise close any disciplinary cases that have not yet been referred to the Division of Administrative Hearings or otherwise completed within one year after the disciplinary complaint was filed.

Sections 4 - 5. Amends s. 457.102 and 457.103, F.S., relating to acupuncture to make minor technical and conforming changes.

Section 6. Amends s. 457.105, F.S., relating to acupuncture, to revise the licensing requirements for persons to practice acupuncture to delete the two year tutorial program, or formal two year course of study process, as viable means to become a licensed acupuncturist, or the five- year experience requirement. In lieu of the current licensing requirements, applicants must be at least 21 years of age and must complete a 3 year course of study that meets standards established by the board by rule. After July 31, 2001, the course of study for licensure must be at least 4 years in duration. Requires passage of a board-approved national examination. Revises licensing statutory fee caps: for examination, from $1,000 to $500; for application, from $750 to $300; for reexamination, from $1,000 to $500; for initial biennial licensure, from $2,000 to 400, if licensed during the first half of the biennium and $200, if licensed during the second half of the biennium.

Section 7. Amends s. 457.107, F.S., to revise the acupuncture license renewal fee statutory cap from $1,000 to $700.

Section 8. Amends s. 457.108, F.S., relating to acupuncture, to make minor technical and conforming changes.

Section 9. Amends s. 457.1085, F.S., relating to acupuncture, to require beginning October 1, 1997, that acupuncture needles that are used in the practice of acupuncture must be sterile and disposable, and provides that each needle may only be used once.

Section 10. Amends s. 457.109, F.S., relating to acupuncture, to revise references to the operation of a tutorial program to conform with changes in the bill deleting the two year tutorial program as viable means of becoming a licensed acupuncturist.

Section 11. Amends s. 457.116, F.S., relating to acupuncture, to make minor technical and conforming changes.

Section 12. Amends s. 458.303, F.S., to delete the exemption from medical licensing requirements for the "physician trained assistant", an unlicensed person, who may work under the direct supervision and control of a physician who provides specific direction and final approval for any services performed. Physicians will no longer be permitted to employ and use such

persons to provide medical services to patients. Medical assistants regulated under s. 458.3485, F.S., are exempted from medical licensing requirements.

Section 13. Amends s. 458.305, F.S., to correct the definition of "department" within which the Board of Medicine is administratively placed.

Section 14. Amends s. 458.307, F.S., to delete the requirement that the Board of Medicine may not establish more than two probable cause panels composed of three members, one of whom may be a lay member. This is covered in chapter 455, F.S., for all boards under the Agency for Health Care Administration or Department of Business Professional Regulation.

Section 15. Amends s. 455.206, F.S., relating to requirements imposed on board members, to correct a statutory cross-reference.

Section 16. Amends s. 458.311, F.S. (1996 Supp.), relating to medical licensing requirements, to reduce the number of years of residency training that foreign trained physicians must have from three years to two years. Fellowship training can be used to meet this requirement, provided that the training can be counted toward regular or subspecialty certification by a board recognized and certified by the American Board of Medical Specialties. Authorizes the board, as prescribed by board rule, to require an applicant who does not pass the licensure examination after five attempts to complete additional remedial education training within two years and then take the examination. Residents who are training on a full-time basis in a residency program in Florida may apply to take the medical licensing examination in Florida without applying for licensure to practice in the state after meeting specified requirements.

Section 17. Amends s. 458.313, F.S. (1996 Supp.), relating to the medical licensure by endorsement requirements, to no longer require individuals applying for licensure by endorsement to take the medical licensing examination over, if it has been more than ten years since the applicant took it. Allows the board to require endorsement applicants to take and pass the appropriate licensure examination prior to certifying the applicant as eligible for licensure. Eliminates an option for physicians who have not actively practiced medicine in the immediate four years prior to application, to work for one year under a licensed physician's supervision as part of their licensing requirements. In lieu of meeting the requirement of 1 year of supervised work, physicians applying for a license who have not practiced two out of the past four years must take a board-approved clinical competency examination, or show completion of board-approved postgraduate training. Defines the "active practice of medicine" and deletes the requirement that the Board of Medicine may require applicants to take an oral exam when applying for a license. Allows the board to require applicants by endorsement who do not pass the licensure examination after five attempts to complete up to two years of remedial education and training before taking it again. Certain physicians having null and void licenses due to failure to practice in Florida for one year within the first three years after licensure may reactivate the license under specified conditions.

Section 18. Amends s. 458.317, F.S., to delete the requirement that persons applying for a limited license must be retired. Provides that physicians who practice under a limited license who are not fully retired in all jurisdictions may only use the limited license for noncompensated practice. Requires any person who receives a waiver of fees for a limited license to pay such fees if he later receives compensation for his services.

Section 19. Amends s. 458.319, F.S., relating to medical license renewal, to require physicians who apply to renew their licenses to have practiced two out of the past four years or pass a board approved clinical competency examination.

Section 20. Amends s. 458.320, F.S. (1996 Supp.), relating to financial responsibility requirements for medical physicians, to require physicians who go "bare" to notify their patients to that effect by both posting a sign in the reception area and giving each patient a statement to sign and place in the patient's file.

Section 21. Amends s. 458.331, F.S., relating to medical physicians, to require physicians to keep legible written records as defined by department rule, in consultation with the board, that identifies the physician and/or the physician extender and supervising physician by name and credentials who is responsible for the records. Revises a ground for which a physician is subject to discipline to permit physicians to prescribe certain Schedule II drugs for the treatment of narcolepsy, hyperkinesis, and behavioral syndrome in adults as well as children. It requires physician assistants as well as physicians to report licensees under chapters 458 and 459, F.S., who are in violation of the law. Subjects a physician to discipline for advertising or holding himself out as a board-certified specialist unless he complies with applicable requirements under the medical practice act.

Section 22. Creates s. 458.3312, F.S., to prohibit a medical physician from holding himself out as a board-certified specialist unless the practitioner has received formal recognition from the American Board of Medical Specialties or a recognizing agency approved by the Board of Medicine.

Section 23. Amends s. 458.345, F.S., relating to the registration requirements for resident physicians, to require the chief executive officer of each hospital to inform the Executive Director of the Board of Medicine of the name, title, and address of the person who is responsible for submitting such reports. It allows a hospital resident physician, assistant resident physician, intern, or fellow to prescribe medicinal drugs described in schedules set out in chapter 893, F.S., if the person is authorized by the hospital, is engaged in an accredited training program, prescribes only in the normal course of employment, holds a Federal Drug Enforcement Administration prescriber number issued by the hospital and the prescription involved has that number printed thereon, and use of the institutional identification number and individual physician suffixes conforms to the requirements of the Federal Drug Enforcement Administration. Resident physicians, interns, and fellows are made explicitly subject to s. 458.331, F.S., relating to grounds for disciplinary action.

Section 24. Amends s. 458.346, F.S., relating to the Public Sector Physician Advisory Committee under the Board of Medicine, to require the committee to meet at least once a year, or upon the call of the chair, instead of quarterly.

Section 25. Amends s. 458.347, F.S. (1996 Supp.), relating to physician assistants, to allow the Council on Physician Assistants to recommend only those physician assistant programs that hold full accreditation or provisional accreditation from the Commission on Accreditation of Allied Health Programs. Requires an applicant who does not hold a current certificate issued by the National Commission on Certification of Physician Assistants (NCCPA) and has not practiced within the preceding four years to retake and pass the NCCPA examination to be eligible for certification.

Section 26. Amends s. 458.3485, F.S., relating to medical assistants, to require medical assistants to be directly supervised by a licensed physician to the extent they perform duties requiring medical licensure.

Section 27. Amends s. 459.003, F.S., to correct references to the Department of Health as the department having administrative jurisdiction over the Board of Osteopathic Medicine and to specify that "Doctor of Osteopathy" and "Doctor of Osteopathic Medicine" are equivalent and equal degrees.

Section 28. Amends s. 459.021, F.S., relating to the registration requirements for osteopathic medical residents, to require the hospital chief executive officer to provide the Board of Osteopathic Medicine's executive director with the name, title, and address of the person responsible for submitting the information required in this section. Resident physicians, interns, and fellows are made explicitly subject to s. 459.015, F.S., relating to grounds for disciplinary action.

Section 29. Amends s. 459.0075, F.S., relating to osteopathic limited licenses, to delete the requirement that osteopathic physicians applying for a limited license must be retired. Provides that osteopathic physicians who practice under a limited license who are not fully retired in all jurisdictions may only use the limited license for noncompensated practice. Requires any person who receives a waiver of fees for a limited license to pay such fees if he later receives compensation for his services.

Section 30. Amends s. 459.0085, F.S. (1996 Supp.), to require those physicians who go "bare" to notify their patients to that effect by posting a sign in the reception area and giving each patient a statement to sign and place in his file.

Section 31. Amends s. 459.015, F.S. (1996 Supp.), to require osteopathic physicians to keep legible written records as defined by department rule, in consultation with the Board of Osteopathic Medicine, that identifies the physician and/or the physician extender and supervising physician by name and credentials who is responsible for the records. Revises a ground for which a osteopathic physician is subject to discipline to permit physicians to prescribe certain Schedule

II drugs for the treatment of narcolepsy, hyperkinesis, and behavioral syndrome in adults as well as children. It requires physician assistants as well as physicians to report licensees under chapters 458 and 459, F.S., who are in violation of the law. Makes it grounds for disciplinary action for an osteopathic physician to advertise or hold oneself out as a board-certified specialist in violation of this chapter.

Section 32. Creates s. 459.0152, F.S., to prohibit an osteopathic physician from holding himself out as a board-certified specialist unless the practitioner has completed certain requirements.

Section 33. Amend ss. 459.022, F.S. (1996 Supp.), relating to physician assistants, to allow the Council on Physician Assistants to recommend physician assistant programs that hold full or provisional accreditation from the Commission on Accreditation of Allied Health Programs or its successor organization. Requires that an applicant who does not hold a current certificate issued by the National Commission on Certification of Physician Assistants (NCCPA) and has not practiced within the preceding four years must retake and pass the NCCPA examination to be eligible for certification.

Sections 34 -64. Amend ss. 240.4067, 390.011, 395.0191, 408.035, 409.905 (1996 Supp.), 415.102, 415.1034, 415.504 (1996 Supp.), 440.106, 440.13 (1996 Supp.), 440.134, 440.15 (1996 Supp.), 456.31, 459.006, 462.01, 468.301, 468.302(1996 Supp.), 476.044, 477.0135, 483.291, 621.03, 627.351 (1996 Supp.), 627.357, 627.6482, 725.01, 766.101 (1996 Supp.), 766.103, 766.105 (1996 Supp.), 766.110, 817.234, and 945.047, F.S., to change references to "osteopathy" to "osteopathic medicine" and "doctor of osteopathy" or "osteopath" to "osteopathic physician" .

Section 65. Amends s. 460.403, F.S. (1996 Supp.), to correct references to the Department of Health as the department having administrative jurisdiction over the Board of Chiropractic.

Section 66. Repeals s. 460.413(1)(bb), F.S. (1996 Supp.), relating to a ground for which a chiropractor may be disciplined for reducing or offering to reduce, discounting or offering to discount to an insured any payment to the chiropractor by the third-party payor of the insured for services rendered under the insured's policy and s. 460.413(1)(cc), F.S. (1996 Supp.), relating to a ground for which a chiropractor may be disciplined for submitting to any third-party payor a claim for a service or treatment at a greater or inflated fee or charge than the usual fee the licensee charges for that service or treatment when rendered without third-party reimbursement. Amends s. 460.413, F.S. (1996 Supp.), to provide the Board of Chiropractic and the Department of Health with the authority to compel a chiropractic physician to undergo a mental or physical examination when there is probable cause to believe that a practitioner cannot safely practice chiropractic. Allows the Board of Chiropractic to impose additional conditions of discipline, including the imposition of the costs of the investigation and prosecution, requiring the chiropractor to undergo remedial education, issuance of a letter of concern, requiring corrective action, or requiring a refund of fees billed to and collected from the patient or a third party. Authorizes the department to seek an injunction from the circuit court to stop a chiropractor from practicing, if he is unable to practice with reasonable skill and safety and is a danger to patients.

Sections 67 - 69. Reenact ss. 320.0848, 455.236, and 766.111, F.S., for the purpose of incorporating the amendment to s. 460.413, F.S., 1996 Supp.

Section 70. Amends s. 460.4165, F.S., relating to chiropractic physician assistants, to require chiropractic physicians to submit an initial application for the supervision of chiropractic physician assistants rather than an annual application, accompanied by a fee of $100.

Section 71. Amends s. 461.003, F.S., relating to podiatry, to correct references to the Department of Health as the department having jurisdiction over the Board of Podiatric Medicine.

Section 72. Amends s. 461.013, F.S., relating to podiatry, to make minor technical changes.

Section 73. Amends s. 461.018, F.S. (1996 Supp.), relating to podiatry, to allow persons who meet certain other requirements to become licensed to practice podiatry without supervision under a limited scope of practice.

Section 74. Amends s. 464.003, F.S. (1996 Supp.), relating to nursing to correct references to the Department of Health as the department having administrative jurisdiction over the Board of Nursing.

Sections 75 - 80. Amend ss. 464.004 (1996 Supp.), 464.008 (1996 Supp.), 464.009 (1996 Supp.), 464.012 (1996 Supp.), 464.013 (1996 Supp.), 464.014 (1996 Supp.), F.S., relating to nursing, to make minor technical changes to reflect the transfer of the Board of Nursing from the Agency for Health Care Administration to the Department of Health. Changes references to "agency" to "department" wherever the term appears in chapter 464, F.S.

Section 81. Amends s. 464.018, F.S. (1996 Supp.), relating to nursing, to provide that being convicted of or entering a plea of nolo contendere, regardless of adjudication, to a crime in any jurisdiction which directly relates to the practice of nursing is grounds for disciplinary action

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Section 82. Amends s. 464.019, F.S. (1996 Supp.), to authorize the Board of Nursing to set a program review fee no greater than $1,000 to cover expenses related to reviewing nursing school programs.

Section 83. Creates s. 464.0205, F.S., to establish provisions for a retired practical or registered nurse certificate. Allows retired nurses to volunteer their services in public agencies or institutions or in nonprofit agencies or institutions in areas of critical nursing need or underserved areas. Establishes procedures for the submission and approval or denial of the application, practice settings, and practice parameters. Requires the retired nurse to submit a $25 application fee.

Section 84. Amends s. 464.022, F.S., to create an exception to allow qualified nurses from another state whose employment requires them to accompany an out-of-state patient to Florida to

perform nursing services for that patient for up to 30 consecutive days. Establishes requirements for pre-travel notification to the Board of Nursing and pre-travel arrangements should the patient require placement in an in-patient setting.

Section 85. Amends s. 465.003, F.S., to correct references to the Department of Health as the department having administrative jurisdiction over the Board of Pharmacy.

Section 86. Amends s. 465.004, F.S., relating to pharmacy, to increase the Board of Pharmacy from seven to nine members by adding two additional licensed pharmacists; specifying that to the extent practicable, board membership should represent the various pharmacy settings. Revises appointment requirements so that two board members must be pharmacists from either a Class II institutional pharmacy or a Modified Class II institutional pharmacy.

Section 87. Amends s. 465.014, F.S., to permit a pharmacist to supervise up to three pharmacy technicians under guidelines established by the Board of Pharmacy.

Section 88. Amends s. 465.0156, F.S., to change certain reporting requirements (changes in ownership, management, location, and staffing) for non-resident pharmacies to more closely parallel requirements for in-state community pharmacies.

Section 89. Amends s. 465.016, F.S., relating to pharmacy, to make minor technical changes.

Section 90. Amends s. 465.035, F.S., relating to pharmacy, to allow a pharmacy to dispense controlled substances listed in Schedule II, to the extent allowed by 21 C.F.R. s. 1306.11, based on receipt of a facsimile of a prescription if certain conditions are met.

Section 91. Amends s. 466.003, F.S., relating to dentistry, to correct references the Department of Health as the department having jurisdiction over the Board of Dentistry.

Section 92. Amends s. 466.006, F.S., to delete provisions relating to a licensure route for graduates of foreign dental schools to become licensed as dentists after completion of a manual skills examination. The exam was discontinued December 31, 1991.

Section 93. Amends s. 466.017, F.S., to delete obsolete provisions that predate 1980 that allowed certain dentists to not meet the training requirements for administration of anesthesia required in subsection (3) of this section.

Section 94. Amends s. 466.028, F.S., relating to dentistry, to revise existing grounds for which a dentist may be subject to discipline for prescribing a schedule II drug, to expressly allow dentists to prescribe some schedule II drugs without the current limitations imposed on dentists to have prior Board of Dentistry approval for the use of such drugs pursuant to a clinical investigative protocol. Makes other minor technical changes.

Section 95. Amends s. 468.1115, F.S., relating to speech-language pathology and audiology, to allow persons licensed under this chapter and teachers certified in speech-language impairment or hearing impairment under chapter 231, F.S., to supervise unlicensed persons performing hearing screening in a school setting, and to allow a person licensed in another state to provide services for a limited period of time while under direct supervision of a licensee. Non-licensed persons working in a hospital setting who provide newborn infant hearing screenings are exempt if training, interpretation of screenings, and protocols are provided by a licensed audiologist.

Section 96. Amends s. 468.1125, F.S., to correct references to the Department of Health as the department having administrative jurisdiction over the Board of Speech-Language Pathology and Audiology.

Section 97. Amends s. 468.1155, F.S., relating to speech-language pathology and audiology license requirements, to specify who must obtain a provisional license and when it should be obtained. Required fees must be submitted before the department issues a provisional license. Establishes additional course work and clinical clock hour requirements for individuals licensed in speech-language pathology seeking licensure in audiology or vice-versa.

Section 98. Amends s. 468.1185, F.S., relating to speech-language pathology and audiology license requirements, to allow endorsement candidates who hold a valid license from a territory of the United States to apply for licensure.

Section 99. Amends s. 468.1195, F.S., relating to speech-language pathology and audiology continuing education, to require the board to establish by rule standards for the approval of continuing education activities and providers. Exempts individuals licensed or certified six months or less before the end of the biennial licensure cycle from continuing education requirements for the first renewal.

Section 100. Creates s. 468.1201, F.S., relating to speech-language pathology and audiology, to require HIV/AIDS instruction as a condition of initial licensure or certification as a speech-language pathologist, audiologist, or assistant. Provides applicants a six-month grace period to complete the requirement.

Section 101. Amends s. 468.1215, F.S., to require remittance of required fees as a condition of certification for speech-language pathology and audiology assistants. Authorizes the board to establish on-the-job training and supervision requirements for assistants. Makes other conforming and technical changes.

Section 102. Amends s. 468.1245, F.S., relating to hearing aid consumer protections, to require consumer protection disclosures on the hearing aid receipt rather than the contract for hearing aid sales.

Section 103. Amends s. 468.1295, F.S., relating to disciplinary proceedings for speech-language pathology and audiology, to add additional grounds for which a licensee may be disciplined to:

prohibit practicing beyond the scope permitted by law, aiding unlicensed persons to practice, and committing sexual misconduct when practicing. Allows the board to require an impaired licensee to submit to a mental or physical examination.

Section 104. Creates s. 468.1296, F.S., prohibiting sexual misconduct by persons licensed or certified under chapter 468, F.S. Requires the board, by rule, to define sexual misconduct.

Section 105. Amends s. 468.1655, F.S., to correct references to the Department of Health as the department having administrative jurisdiction over the Board of Nursing Home Administrators.

Section 106. Amends s. 468.1695, F.S., relating to nursing home administrator licensing requirements, to require that a minimum of two nursing home administrator examinations be given annually, instead of four.

Section 107. Amends s. 468.203, F.S., to conform the definition of occupational therapy with the definition as provided by the American Occupational Therapy Association (AOTA). Requires aides to be under direct supervision by either a therapist or assistant at all times.

Section 108. Amends s. 468.205, F.S., to create a seven-member Board of Occupational Therapy, four members of the board must be licensed occupational therapists and one member must be a licensed occupational therapy assistant all of whom must be Florida residents for at least four years prior to their appointment, and two members must be consumers who are residents of the state who are not connected with the practice of occupational therapy. Provides for staggered appointments to the board.

Section 109. Amends s. 468.209 F.S., relating to occupational therapy licensing requirements, to revise a statutory reference to programs for occupational therapists being accredited by the Amercian Medical Association in collaboration with the American Occupational Therapy Association to provide that the new accrediting entity is the American Occupational Therapy Association's Accreditation Council for Occupational Therapy Education, or its successor. To conform, deletes a statutory reference to programs for occupational therapy assistants being accredited by the American Occupational Therapy Association (AOTA). Revises the licensure requirements for occupational therapy assistants so that they must have completed a specialized AOTA program before 1988, which includes completion of a 6 months supervised occupational therapist level fieldwork experience and passage of an examination, to be certified as an occupational therapist without meeting the educational requirements for occupational therapists. Revises the requirements for the issuance of temporary permits to practice occupational therapy so that only one temporary permit may be obtained by candidates for licensure by examination or licensure by endorsement. Provides an exception for students enrolled in a full-time master's program for occupational therapy if all other licensure requirements have been met, who then may have a 6-month extension of the temporary permit. Requires occupational therapy applicants who have not actively practiced for 5 years immediately preceding their application to document their compliance with continuing education requirements as prescribed by board rule.

Section 110. Amends s. 468.211, F.S., relating to occupational therapy license examination requirements, to require an applicant to take additional education or training courses before attempting a fourth examination. Limits applicants to five examination attempts.

Section 111. Amends s. 468.213, F.S., relating to occupational therapy, to revise licensure by endorsement requirements to allow the Board of Medicine to consider applicants from any U.S. jurisdiction or foreign national jurisdiction requiring equivalent standards. Lists the National Board for Certification in Occupational Therapy (NBCOT) rather than the American Occupational Therapy Association as the national certifying body for licensure by endorsement candidates.

Section 112. Amends s. 468.225, F.S., relating to occupational therapy, to delete the exemption for persons to work as occupational therapy aides under the direct supervision or employment of an occupational therapist. Allows a physician assistant, speech-language pathologist, or audiologist to use occupational therapy as a part of or incidental to their profession when practicing under the laws applicable to their profession.

Section 113. Amends s. 468.351, F.S., relating to respiratory therapy, to clarify the use of the terms "certification" and "registration" for respiratory care personnel. "Certification refers to national credentials of practitioners by a private entity and "licensure" refers to the state's credentials. Makes minor technical changes, including a reference to the Department of Health and Rehabilitative Services (HRS) to AHCA as the appropriate regulatory agency for blood gas laboratories. Addresses supervision of respiratory care practitioners who perform blood gas analysis and specimen collection according to chapter 468, part V, F.S.

Sections 114-115. Amend ss. 468.352 and 468.354, F.S., relating to respiratory therapy, to clarify that "certification" and "registration" refers to national credentials of practitioners by a private entity and "licensure" refers to the state's credentials and to make technical and conforming changes.

Section 116. Amends s. 468.355, F.S., relating to respiratory therapy, to correct references to the Commission on Accreditation of Allied Health Education Programs as the accrediting entity for respiratory care training programs and to eliminate references to Accreditation of the American Medical Association.

Section 117. Amends s. 468.356, F.S., relating to respiratory therapy, to conform the name of the accrediting entity and allow programs to be approved by other accrediting agencies recognized by the U.S. Office of Education.

Section 118. Amends s. 468.357, F.S., relating to respiratory therapy, to eliminate a provision for licensees who were initially grandfathered and practicing since 1988 who have had to complete 20 hours of continuing education each year rather than complete 24 hours of continuing education as required of the other licensees.

Sections 119-120. Amend ss. 468.358 and 468.359, F.S., relating to respiratory therapy, to make technical and conforming changes.

Section 121. Amends s. 468.36, F.S., relating to respiratory therapy, to require licensees to notify the Department of Health of their current residence address.

Section 122. Repeals s. 468.362, F.S., relating to respiratory therapy continuing education requirements and amends s. 468.361, F.S., to conform language specifying continuing education hours required for licensure and to specify that the Board of Medicine is the approving authority for continuing education courses as well as the approving authority for providers of such courses.

Sections 123-124. Amend s. 468.363 and 468.364, F.S., relating to respiratory therapy, to make technical and conforming changes.

Section 125. Amends s. 468.365, F.S., relating to respiratory therapy, to revise existing disciplinary provisions to allow the Board of Medicine to take disciplinary action against a respiratory therapist if a plea of nolo contendere is entered, regardless of adjudication by the practitioner, which relates to the practice of the respiratory therapist and to make technical and conforming changes.

Sections 126-127. Amend ss. 468.366 and 468.368, F.S., relating to respiratory therapy, to make technical and conforming changes.

Section 128. Amends s. 478.42, F.S., relating to electrology, to correct references to the Department of Health as the department having administrative jurisdiction over the Electrolysis Council.

Section 129. Amends s. 478.45, F.S., relating to electrology, to revise the qualifications for licensure. Eliminates the Florida residency requirement for licensure, the grandfather provision for certain applicants, and deletes specific reference to a particular national examination. Makes other technical changes.

Section 130. Amends s. 478.46, F.S., relating to electrology, to correct a statutory cross-reference.

Section 131. Amends. s. 478.47, F.S., relating to electrology, to revise licensure by endorsement provisions so that the Board of Medicine does not have to certify applicants for licensure. The applicants must hold an active license in a jurisdiction whose requirements are equivalent to those of this state to be licensed.

Section 132. Amends s. 478.52, F.S., to expand the grounds for which an electrologist may be disciplined by the Board of Medicine to include operating an electrolysis facility without a permit.

Section 133. Amends s. 480.033, F.S., to change the name of the Board of Massage to the Board of Massage Therapy and to correct references to the Department of Health as the department with administrative jurisdiction over the Board of Massage Therapy.

Section 134. Amends s. 480.034, F.S., relating to massage, to eliminate an exemption to the massage practice act for persons who perform treatments for the purpose of cleansing and beautifying the skin or in conjunction with a weight loss program, which include herbal wraps, body scrubs, paraffin wax treatments, and seaweed wraps.

Section 135. Amends s. 480.035, F.S., to change the name of the Board of Massage to the Board of Massage Therapy.

Section 136. Amends s. 480.041, F.S., relating to massage licensing requirements, to eliminate the provisional license which was granted to applicants who otherwise met the requirements so they could practice under supervision while waiting to sit for the state licensure examination. The board now requires a national licensure examination.

Section 137. Amends s. 480.0415, F.S., relating to massage, to increase continuing education requirements from 12 up to 25 classroom hours of continuing education in massage that the Board of Massage Therapy may require every 2 years as a condition of license renewal.

Section 138. Amends s. 480.042, F.S., relating to massage licensing requirements, to eliminate a state law and rules examination for licensure.

Section 139. Repeals s. 480.0425, F.S., relating to inactive status provisions for massage licensees. The requirements for inactive licensure are addressed in chapter 455, F.S., for all boards.

Section 140. Amends s. 480.043, F.S., relating to massage, to specify that a license for a massage establishment may not be transferred from one owner to another unless the new owner submits to another inspection, obtains approval by the board, and the pays a fee no greater than $125. A license may be transferred from one business name to another upon approval of the board and the payment of an application fee no greater than $25.

Section 141. Amends s. 480.044, F.S., relating to massage, to delete the fee for the application and provisional license.

Section 142. Amends s. 480.047, F.S., relating to massage, to clarify that a person may not practice massage unless duly licensed or unless specifically exempted from licensure under the massage practice act.

Section 143. Creates s. 480.0485, F.S., relating to massage, to define and prohibit sexual misconduct in the practice of massage.

Section 144. Amends s. 20.43, F.S. (1996 Supp.), relating to the organization of the Department of Health, to make minor technical changes.

Section 145. Amends s. 381.81, F.S., relating to the Minority Health Improvement Act, to include hearing aid specialists in the definition of health care professional for purposes of the act and correct a statutory cross-reference.

Section 146. Amends s. 483.800, F.S., relating to clinical laboratory personnel, to revise the legislative intent relating to the regulation to specify that hospital-based training for laboratory and nonlaboratory personnel for testing is beneficial in hospital and commercial laboratories. Eliminates alternate sites from this intent language.

Section 147. Amends s. 483.801, F.S., relating to clinical laboratory personnel exemptions, to exempt advanced registered nurse practitioners performing provider-performed microscopy procedures from licensure under chapter 483, Part IV.

Section 148. Amends s. 483.803, F.S., relating to the definitions under the clinical laboratory personnel regulation, to provide definitions for a clinical laboratory examination and public health scientist.

Section 149. Amends s. 483.809, F.S., relating to clinical laboratory personnel licensing requirements, to provide that the Board of Clinical Laboratory Personnel may certify to the department those applicants who are eligible for licensure. Makes conforming changes relating to the board's authority to specify by rule clinical laboratory personnel licensure qualifications.

Section 150. Creates s. 483.812, F.S., relating to clinical laboratory personnel, to establish a licensure avenue for individuals working in public health laboratories.

Section 151. Amends s. 483.813, F.S., relating to clinical laboratory personnel, to authorize the Department of Health to issue temporary permits to clinical lab personnel exam candidates for up to one year to practice rather than 6 months. Creates a conditional license which may be used for a period up to 3 years by persons applying under the newly-created licensure category for clinical laboratory personnel working as a technician in a public health setting.

Section 152. Amends s. 483.823, F.S., to authorize the Board of Clinical Laboratory Personnel to adopt by rule personnel qualifications to require appropriate education, training, or experience, or the passing of an appropriate examination for clinical laboratory personnel under their regulatory jurisdiction. Provides that practitioners of the healing arts are not required to obtain licensure under this part or pay associated fees, except those required for a clinical laboratory license.

Section 153. Amends s. 483.825, F.S., relating to clinical laboratory personnel, to include applicants and registrants with licensees as persons eligible to be disciplined or denied licensure by the board. Expands the grounds for which a licensee, applicant, or registrant may be

disciplined by the board to include: being unable to perform or report a clinical laboratory examination with reasonable skill and safety; delegating responsibilities to unqualified persons; and failing to report action taken against a license in another state, territory, or country. Allows the board to require an impaired licensee to submit to a mental or physical examination. Creates a public records and meetings law exemption for the identification of the licensee in a related summary proceeding.

Section 154. Creates s. 483.828, F.S., to create various prohibited acts relating to the practice of clinical laboratory personnel, that subjects any violator to a third degree felony punishable by the imposition of imprisonment for up to 5 years and a fine up to $5,000.

Section 155. Amends s. 483.901, F.S., to make technical and substantive corrections to the practice act for medical physicists. Revises the role of the council as advisory to the Department of Health. Increases the council from seven to nine members by adding two consumer members to the council and changes the appointment term from three to four years. Provides that continuing education hours are to be completed biennially and allows the department, with the advice of the council, to set requirements by rule for continuing education for persons who hold more than one specialty license. Revises the requirements for licensure for applicants until October 1, 1997 and after October 1, 1997. Creates grounds for which licensed medical physicists may be subject to disciplinary action and the penalties that may be assessed and the criminal sanctions for unlicensed activity. Eliminates an exception from licensure for those medical physicists who have been practicing for five or more years as of July 1, 1995.

Sections 156 - 157. Amend ss. 484.041 and 484.042, F.S., to correct references to the Department of Health as the department having administrative jurisdiction over the Board of Hearing Aid Specialists.

Section 158. Amends s. 484.051, F.S., relating to hearing aid specialists, to require persons fitting and selling hearing aids to provide the purchaser with a receipt, rather than a contract, containing the seller's signature, address of regular practice, license number, and other identifying information and designates the Department of Health as the entity with which to file a complaint.

Section 159. Amends s. 486.021, F.S.,to correct references to the Department of Health as the department having administrative jurisdiction over the Board of Physical Therapy.

Section 160. Amends s. 486.023, F.S., to increase the Board of Physical Therapy from seven to nine members. One new member is a licensed physical therapist assistant and the other is a consumer member.

Section 161. Amends s. 486.031, F.S., to allow the Board of Physical Therapy to waive the examination for licensure of physical therapists who took the American Registry Examination prior to 1971. Facilitates computer based testing by eliminating the requirement that exams be administered by the department.

Section 162. Amends s. 486.041, F.S., relating to physical therapy licensure application procedures, to facilitate computer-based testing by allowing the applicant to bypass the department when applying to take the required exam.

Section 163. Amends s. 486.051, F.S., relating to physical therapy examination requirements, to revise the procedures for examinations to facilitate computer-based testing by eliminating language requiring the department to purchase exams.

Section 164. Amends s. 486.081, F.S., to allow the board to waive the examination for physical therapists applying by endorsement who took the American Registry Examination prior to 1971.

Section 165. Amends s. 486.102, F.S., relating to physical therapy, to delete the requirement that accrediting bodies be approved by the Council on Postsecondary Accreditation, since this organization is no longer in existence. Makes other minor technical and conforming changes.

Sections 166-167. Amend ss. 486.103 and 486.104, F.S., relating to physical therapy, to make technical and conforming changes to facilitate computer-based testing for physical therapist assistants by eliminating language requiring the department to purchase exams.

Section 168. Creates s. 486.123, F.S., to provide that sexual misconduct in the practice of physical therapy is prohibited.

Section 169. Amends s. 486.125, F.S., relating to physical therapy, to allow the Board of Physical Therapy to recover investigative and prosecution costs.

Section 170. Amends s. 641.495, F.S., relating to health maintenance organizations, to require health maintenance organizations to designate a medical director who is a medical physician or osteopathic physician who is licensed to practice in this state.

Section 171. Provides an effective date of July 1, 1997.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

Section 24 of Article I of the Florida Constitution governs the creation and expansion of exemptions, to provide, in effect, that any legislation that creates a new exemption or that substantially amends an existing exemption must also contain a statement of the public necessity that justifies the exemption. Article I, s. 24, Fla. Const. provides that any bill that

contains an exemption may not contain other substantive provisions, although it may contain multiple exemptions.

The bill expressly creates public records and meetings law exemptions for the identification of chiropractors, speech-language pathologists and audiologists, and clinical laboratory personnel in summary procedures relating to the Department of Health's enforcement to compel an impaired licensee to submit to a physical or mental examination. The bill creates by implication, public records and meetings exemptions to the extent existing exemptions for disciplinary actions in chapter 455, F.S., and specific practice acts apply, for specialized certification in nursing.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Section 19(f) of the Florida Constitution.

D. Other Constitutional Issues:

To the extent the bill authorizes the Board of Acupuncture to establish licensure standards by rule, which are part of a 3 or 4 year course of study, it raises the question whether this provides adequate limitations and safeguards so that the Legislature's delegation to the board is not a violation of Article II, Section 3 of the Florida Constitution. The bill does not appear to expressly provide a sufficient limitation on the board's authority to establish requirements on who should be granted a license to practice acupuncture.

The Florida Supreme Court struck down a former section of law respecting the power of the Board of Psychological Examiners to grant certificates with the title "psychologist" and to determine the qualifications of applicants as unconstitutional in that it failed sufficiently to fix the standards to be applied and in effect delegated the application of the statute without sufficient limitations on the board's discretion. Husband v. Cassel, 130 So.2d 69 (1961).

Article II, Section 3 of the Florida Constitution provides that the powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein. The Florida Supreme Court has acknowledged that "Where the Legislature makes the fundamental policy decision and delegates to some other body the task of implementing that policy under adequate safeguards, there is no violation of the [Delegation of Powers] doctrine." Askew v. Cross Key Waterways, 372 So.2d 913 at 921 (Fla.1978).

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

Medical residents applying to sit for the medical licensing examination in Florida without applying for licensure to practice in this state will be subject to a nonrefundable administration fee no greater than $50, an examination fee no greater than $300, plus the actual cost per person to the Department of Health for the medical licensing examination.

Persons who hold limited licenses to practice medicine or osteopathy must pay any application or licensing fees currently waived if they receive compensation.

New nursing program applicants will be subject to a program review fee no greater than $1,000.

Applicants for a retired volunteer nurse certificate are subject to an application and processing fee of $25.

Owners of massage establishments that are transferring ownership are subject to an application and inspection fee no greater than $125.

Owners of massage establishments that are changing the business name are subject to an application fee no greater than $25.

B. Private Sector Impact:

Medical residents who are training in Florida on a full-time basis who wish to practice in other states will benefit to the extent the bill allows the residents to sit for the medical licensing examination in Florida while training as a resident without having to apply for licensure to practice in this state.

Any physician who practices medicine exclusively as an officer, employee, or agent of the federal government or the state who is currently paying any costs to meet all financial responsibility requirements for staff privileges at any hospital, ambulatory surgical center or other licensed facility will benefit to the extent the bill provides that such physicians have met all financial responsibility when the physician is acting within the scope of his or her employment or agency.

C. Government Sector Impact:

To the extent the bill requires the Agency for Health Care Administration to improve the efficiency of its investigation and referral of disciplinary cases filed against health care professionals under its jurisdiction, to the appropriate probable cause panel and to provide additional information regarding the disciplinary process and notices to complainants, the

agency estimates that it will require for fiscal year 1997-98: non-recurring costs of $465,198; salaries and benefits of $2,500,422 for 89 FTEs; expenses of $2,654,080 totaling $5,619,700. For fiscal year 1998-99 the estimates are: salaries and benefits of $3,333,896; expenses of $3,538,773 totaling $6,872,669. The agency estimates that it will incur expenses equal to $12,492,369 for the biennial period 1997-99 and its figures are based on a projection of 18,000 health care practitioner complaints being filed in 1997.

The Department of Health estimates that it will have a reduction of $33,000 in revenue relating to the shift from an annual to a biennial registration of health care service pools.

The Department of Health indicates that there are 569 first year post-graduate training slots out of a total of 2,694 post-graduate training slots allocated in the various residency programs throughout the state. If ten percent of the persons in available first year residency training slots took the examination without applying for medical licensure each year, the department estimates a loss of revenue of approximately $23,370 (57 applicants @ $410 application fee).

The Department of Health estimates that during the biennial period 1997-1999 it will review approximately 14 new nursing programs and assess each program $1,000 and collect a total of $14,000 to recover its review costs.

The Department of Health estimates that it will receive 25 retired volunteer nurse applications during the biennial period 1997-1999 and collect a total of $625.

To the extent the bill increases the Board of Pharmacy from 7 to 9 members the Department of Health estimates the costs will be approximately $20,000 for additional travel and mailing expenses over the biennial period 1997-1999.

To the extent the bill increases the Board of Physical Therapy from 7 to 9 members the Department of Health estimates the costs will be approximately $9,200 for additional travel and mailing expenses over the biennial period 1997-1999.

To the extent the bill increases the Council of Occupational Therapy from 3 to 5 members the Department of Health estimates the costs will be approximately $1,000 for additional travel and mailing expenses over the biennial period 1997-1999.

VI. Technical Deficiencies:

Section 103 of the bill provides a cross reference to Section 104 which delegates to the speech pathology and audiology board the determination by rule of what constitutes prohibited sexual misconduct. This provision is unlike similar ones in the bill which clearly delineate the nature of the proscribed acts and distinguish them from sexual battery. A conforming amendment is suggested.

In three locations [ss. 65, 103, and 152] the bill provides a public records exemption for a circuit court petition filed by the department alleging the inability of a chiropractor, speech-language pathologist or audiologist, or clinical laboratory personnel to perform their duties with a reasonable degree of skill and safety. The self-executing provisions of Article I, Section 24(c), State Constitution, provide that legislation closing public records must deal only with exemptions with subsections (a) and (b) of Art. 1, s. 24, and embrace one subject. To comply with this constitutional provision these three sections of the bill must be removed.

VII. Related Issues:

Section 154 of the bill creates a felony offense for any person to commit various prohibited acts relating to the practice of clinical laboratory personnel, the violation of which subjects the person to a third degree felony punishable by the imposition of imprisonment for up to 5 years and a fine up to $5,000. Section 155 of the bill creates a felony offense for any person to commit various prohibited acts relating to the practice of medical physicists, the violation of which subjects the person to a third degree felony punishable by the imposition of imprisonment for up to 5 years and a fine up to $5,000. Section 921.001, F.S., provides that any legislation that creates a felony offense, enhances a misdemeanor offense to a felony or reclassifies an existing felony offense to a greater felony classification result in a net zero sum impact in the overall prison population as determined by the Criminal Justice Estimating Conference, unless the legislation contains a sufficient funding source to accommodate the change, or the Legislature abrogates the application of s. 921.001, F.S. To the extent the bill creates a felony offense for certain acts relating to the practice of clinical laboratory personnel and the practice of medical physicists, it may have a fiscal impact based on its impact on the overall prison population as determined by the Criminal Justice Estimating Conference under procedures established in s. 216.136(5), F.S.

VIII. Amendments:

#1 by Governmental Reform and Oversight:
Includes Doctors of Osteopathic Medicine within provisions of the bill affecting Medical Doctors which deal with registration, disciplinary proceedings, and authorization for prescription of medicinal drugs. (WITH TITLE AMENDMENT)

#2 by Governmental Reform and Oversight:
Eliminates a provision relating to the practice of chiropractic which closes meetings or records to the public, a violation of Art. I, S. 24(c), State Constitution.

#3 by Governmental Reform and Oversight:
Eliminates a provision relating to the practice of speech-language pathology or audiology which closes meetings or records to the public, a violation of Art. I, s 24(c), State Constitution.

#4 by Governmental Reform and Oversight:
Provides a conforming amendment to align the definition of sexual misconduct in Chapter 486 with similar language located in other parts of the bill affecting other professions.

#5 by Governmental Reform and Oversight:
Eliminates a provision in the bill relating to clinical laboratory personnel which closes meetings or records, a violation of Art. I, s 24(c), State Constitution.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
Senate Bill 1814

The committee substitute revises the regulatory provisions relating to various health professions:

1. Revises the disciplinary procedures used by the Agency for Health Care Administration for health care professionals under its jurisdiction in order to speed up the resolution of complaints and to assist complainants to participate in the process.

2. No longer requires any person who interprets a health maintenance organization's policy relating to medical necessity or medical appropriateness to be a licensed medical or osteopathic physician.

3. Eliminates the requirement for medical or osteopathic physicians to file incident reports with the appropriate regulatory board.

4. No longer authorizes a pharmacy technician who works under the supervision of a licensed pharmacist to initiate communications with a practitioner, on behalf of a patient, regarding refill authorization requests.

5. No longer revises the financial responsibility requirements for medical or osteopathic physicians who practice exclusively as employees or agents of the federal or state government to exempt such physicians from financial responsibilities for staff privileges at a licensed hospital or other facility when such physicians are acting within the scope of their employment or agency.

6. Authorizes dentists to prescribe certain schedule II controlled substances.

7. No longer permits the Department of Health to issue subpoenas to obtain names and addresses of some or all of a chiropractor's patients when pursuing an investigation of the chiropractor for alleged professional misconduct.

8. Eliminates grounds for which a chiropractor may be subject to discipline that prevent a chiropractor from having or offering discounted fees for his services or submitting insurance claims for fees greater than the usual fee the chiropractor charges for the service when provided without third-party reimbursement.

9. Revises the acupuncture licensing requirements.

10. Creates a seven-member Board of Occupational Therapy and revises occupational therapy licensing requirements.

11. Revises the massage therapy licensing requirements.

Committee on Health Care

Staff Director John Wilson

(FILE TWO COPIES WITH THE SECRETARY OF THE SENATE)

9.b. Senate Staff Analysis and Economic Impact Statement, Bill CS/CS/SB 1814, Subject: Regulation of Health Care Professions (Florida Archives, Series 18, Carton 2279).

FLORIDA DEPARTMENT *of* STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

I, Judith Ring, Division Director, Division of Library and Information Services, Florida Department of State, hereby certify the records of the Florida Legislature were transferred to the custody of the Florida State Archives pursuant to the provisions of Chapter 257, Florida Statutes, and that I am, by the terms of that transfer, the official custodian of the records.

I further certify that the attached is a true and correct copy of the record in the State Archives of Florida, the original of which may be found in Series 18, carton 2279.

***WITNESS MY SIGNATURE**, this 13th Day of January, 2014.*

***JUDITH RING**, Director*
Division of Library and Information Services

BY: _____
State Archives of Florida

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SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: April 25, 1997 Revised: _____ _____ _____ _____

Subject: Regulation of Health Care Professions

	Analyst	Staff Director	Reference	Action
1.	Munroe	Wilson	HC	Favorable/CS
2.	Wilson	Wilson	GO	Fav/5 amendments
3.	Munroe	Smith	WM	Favorable/CS
4.				
5.				

I. Summary:

Committee Substitute for Committee Substitute for Senate Bill 1814 makes changes in the practice acts of the following health care professions: acupuncture, health care service pools, medicine, osteopathic medicine, chiropractic, podiatry, optometry, nursing, pharmacy, dentistry, speech-language pathology and audiology, nursing home administrators, occupational therapy, respiratory therapy, electrolysis, clinical laboratory personnel, physical therapy, massage therapy, and hearing aid specialists.

The bill amends the following sections of the Florida Statutes: 402.48 (1996 Supp.), 455.225 (1996 Supp.), 455.2285, 457.102, 457.103, 457.105, 457.107, 457.108, 457.1085, 457.109, 457.116, 458.303, 458.305, 458.307, 455.206, 458.311 (1996 Supp.), 458.313 (1996 Supp.), 458.317, 458.319, 458.320 (1996 Supp.), 458.331 (1996 Supp.), 458.345, 458.346, 458.347 (1996 Supp.), 458.3485, 459.003, 459.021, 459.0075, 459.0085 (1996 Supp.), 459.015 (1996 Supp.), 459.022 (1996 Supp.), 240.4067, 390.011, 395.0191, 408.035, 409.905 (1996 Supp.), 415.102, 415.1034, 415.504 (1996 Supp.), 440.106, 440.13 (1996 Supp.), 440.134, 440.15 (1996 Supp.), 456.31, 459.006, 462.01, 468.301, 468.302 (1996 Supp.), 476.044, 477.0135, 483.291, 621.03, 627.351 (1996 Supp.), 627.357, 627.6482, 725.01, 766.101 (1996 Supp.), 766.103, 766.105 (1996 Supp.), 766.110, 817.234, 945.047, 460.403 (1996 Supp.), 460.413 (1996 Supp.), 320.0848(9), 455.236(4)(g), 766.111(2), 460.4165, 461.003, 461.013, 461.018 (1996 Supp.), 464.003 (1996 Supp.), 464.004 (1996 Supp.), 464.008 (1996 Supp.), 464.009 (1996 Supp.), 464.012 (1996 Supp.), 464.013 (1996 Supp.), 464.014 (1996 Supp.), 464.018 (1996 Supp.), 464.019 (1996 Supp.), 464.022, 465.003, 465.004, 465.0125, 465.014, 465.0156, 465.016, 465.0196, 465.026, 465.035, 465.186, 893.03 (1996 Supp), 466.003, 466.006, 466.017, 466.028, 468.1115, 468.1125, 468.1155, 468.1185, 468.1195, 468.1215, 468.1245, 468.1295, 468.1655, 468.1695, 468.203, 468.205, 468.209, 468.211, 468.213, 468.225, 468.351, 468.352, 468.354,

468.355, 468.356, 468.357, 468.358, 468.359, 468.36, 468.361, 468.363, 468.364, 468.365, 468.366, 468.368, 478.42, 478.45, 478.46, 478.47, 478.52, 480.033, 480.034, 480.035, 480.041, 480.0415, 480.042, 480.043, 480.044, 480.047, 20.43 (1996 Supp.), 381.81, 483.800, 483.801, 483.803, 483.809, 483.813, 483.823, 483.825, 483.901, 484.041, 484.042, 484.051, 486.021, 486.023, 486.031, 486.041, 486.051, 486.081, 486.102, 486.103, 486.104, 486.125, 641.495, and 468.1645.

The bill creates the following sections of the Florida Statutes: 458.3312, 459.0152, 464.0205, 468.1201, 468.1296, 480.0485, 483.812, 483.828 and 486.123.

The bill repeals ss. 460.413(1)(bb) and (cc)(1996 Supp.), 460.413(1)(cc) (1996 Supp.), 468.362 and 480.0425, Florida Statutes.

The bill reenacts the following sections of the Florida Statutes: 316.193(5) (1996 Supp.), 327.35 (5) (1996 Supp.), 440.102 (11)(b) (1996 Supp.), 458.326 (3), 817.563 (1), 831.31, 856.015(1)(d), 893.02(4), 893.08(1)(b), and 893.13(1)(a), (c), (d), (2)(a), (4)(b), (5)(b) (1996 Supp) to incorporate amendments made by the bill to s. 893.03, Florida Statutes, 1996 Supplement.

II. Present Situation:

GENERAL REGULATORY PROVISIONS

Chapter 455, F.S., provides for the general powers and duties of the Department of Business and Professional Regulation (DBPR) and the Agency for Health Care Administration (AHCA or agency) to implement and enforce professional regulation. Section 455.225, F.S., provides procedures for disciplinary proceedings against professions under the department's and agency's regulatory jurisdiction. Section 455.225, F.S., requires the Agency for Health Care Administration or the Department of Business and Professional Regulation to refer to each regulatory board any disciplinary cases involving practitioners over which the board has regulatory jurisdiction that have not yet been referred to the Division of Administrative Hearings or otherwise completed within one year after the complaint was filed. These cases are referred to as 'year-old' cases. On July 1, 1994, the health care professions in the Division of Medical Quality Assurance within DBPR were transferred to the Division of Health Quality Assurance within AHCA. In addition to the general regulatory provisions in chapter 455, F.S., each profession has its own practice act setting forth provisions applicable to the practice standards and requirements for that profession.

Chapter 96-403, L.O.F., transfers the regulation of various health care professions from the Agency for Health Care Administration to the Department of Health by a type two transfer, effective July 1, 1997. Section 20.06, F.S., defines a type two transfer to include all of the statutory powers, duties, functions, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds. Chapter 96-403, L.O.F., imposes limitations on the transfer of specified regulatory functions. The law expressly transfers to the Department of Health specific regulatory functions relating to the health professions including all licensing,

examination, publication, administrative, and management information services, but requires the Department of Health to contract with the Agency for Health Care Administration for the provision of consumer complaint, investigative, and prosecutorial services, which are not transferred. Section 12, chapter 96-403, L.O.F., transfers by a type two transfer the regulation of athletic trainers, the Board of Massage, and the Board of Hearing Aid Specialists from the Department of Business and Professional Regulation to the newly created Department of Health, effective July 1, 1997.

Effective July 1, 1997, the professions regulated within the Division of Medical Quality Assurance within the Department of Health will include: nursing assistants; health care service pools; acupuncture; medicine; osteopathic medicine; chiropractic; podiatric medicine; naturopathy; optometry; nursing; pharmacy; dentistry; midwifery; speech-language pathology and audiology; nursing home administration; occupational therapy; respiratory therapy; dietetics and nutrition; athletic trainers; electrolysis; massage; clinical laboratory personnel; medical physicists; opticianry; hearing aid specialists; physical therapy; psychology; clinical social work; marriage and family therapy; and mental health counseling.

HEALTH CARE SERVICES POOLS

Section 402.48, F.S., requires health care services pools to register with the Department of Business and Professional Regulation each year. Health care services pools are any person or business engaged for hire in the business of providing temporary employment in health care facilities for licensed health care personnel.

ACUPUNCTURE

Chapter 457, F.S., provides for the regulation of the practice of acupuncture by the Board of Acupuncture. The board is composed of 5 members which include 3 licensed acupuncturists and 2 laypersons who are not and who have never been acupuncturists or members of any closely related profession. The chapter provides three basic ways to become an acupuncturist. There is a two-year tutorial program, a formal two-year course of study process, and a five-year experience program. A person may become certified to practice acupuncture if he is at least 18 years old and meets one of the following criteria: is a citizen of the United States; is a permanent resident of the United States; or is a legal alien who has resided in the United States for 6 months before qualifying for examination. The chapter authorizes the board to require up to 30 hours of continuing education as a condition of license renewal every 2 years. The board may establish a continuing education provider fee no greater than $100 for each acupuncture continuing education provider.

BOARD OF MEDICINE

Chapter 458, F.S., provides for the regulation of the practice of medicine. Section 458.303, F.S., provides an exemption for a physician's trained assistant, a registered nurse or a licensed practical nurse who performs services under the direct supervision and control of a licensed

medical physician. Section 458.307, F.S., establishes the Board of Medicine and requires the board to establish probable cause panels. The Board of Medicine is limited to not more than two probable cause panels.

Section 458.311(2), F. S., provides that after October 1, 1986, an applicant who fails the medical exam 5 times, is no longer eligible to take the exam. Chapter 458, F. S., requires foreign-trained applicants to be certified by the Educational Commission on Foreign Medical Graduates (ECFMG), and to pass a national medical exam. As of 1994, the United States Medical Licensing Examination (USMLE), a national examination, has been used by all 50 states to license physicians. Foreign-trained applicants must have completed an approved residency of at least 3 years in one specialty field to fulfill the licensing requirements of chapter 458, F.S.

Doctors applying for licensure by endorsement must have passed the FLEX or a similar national medical exam within the last 10 years. If passage of a national exam was in excess of 10 years ago, the board by rule, requires the applicant to pass the SPEX examination. The SPEX examination is a national examination developed for this specific purpose.

Medical schools located within the United States or its territories must be accredited by an agency recognized by the U.S. Office of Education. For renewal of a license, the licensee must have actively practiced medicine within the previous 4 years.

Section 458.320, F.S., specifies financial responsibility requirements for licensed physicians and provides a number of exemptions to the financial responsibility requirements, including physicians who practice medicine exclusively as an officer, employee, or agent of the Federal Government or of the state or its agencies or its subdivisions. An agent of the state is a person who is eligible for coverage under any self-insurance or insurance program authorized under s. 768.28, F.S. If a physician chooses not to carry financial responsibility coverage, he is required to either post a sign stating this fact, or provide a written notice of this fact to each patient.

Limited medical licenses are issued pursuant to s. 458.317, F.S. To receive a limited license without supervision, the applicant must be retired, or planning to retire, and have actively practiced medicine within the prior three years. The recipient of a limited license must work only in certain public institutions or nonprofit organizations as defined in this section. If a physician with a limited license is working for free, the fees provided for in this section are waived.

The medical practice act specifies grounds for which the Board of Medicine may discipline a physician which, among other things, include: failure to keep written medical records justifying the course of treatment; prescribing certain Schedule II drugs for any person other than children in the treatment of behavioral syndrome; and advertising or holding oneself out as a board-certified specialist in violation of the chapter. If a physician is found guilty of a violation, the board may set a number of penalties, including an administrative fine of up to $5,000 per count, and require the physician to refund any fees billed to and collected from the patient.

Section 458.345, F.S., requires hospitals to submit a list of resident physicians, assistant resident physicians, house physicians, interns, or fellows employed by the facility to the Department of Health on January 1st and July 1st of each year. Section 458.3485, F.S., recognizes medical assistants and specifies duties that a medical assistant may perform under the supervision of a licensed physician.

OSTEOPATHIC MEDICINE

Chapter 459, F.S., provides for the regulation of osteopathic medicine. Limited medical licenses are issued pursuant to s. 459.0075, F.S. To receive a limited license without supervision, the applicant must be retired and have actively practiced medicine within the previous three years. The recipient of a limited license must work only in certain public institutions or nonprofit organizations as defined in this section. If a physician with a limited license is working for free, the fees provided for in this section are waived.

The osteopathic medical practice act specifies grounds for which the Board of Osteopathic Medicine may discipline a physician which, among other things, include: failure to keep written medical records justifying the course of treatment; prescribing certain Schedule II drugs for any person other than children in the treatment of behavioral syndrome; and advertising or holding oneself out as a board-certified specialist in violation of this chapter. If a physician is found guilty of a violation, the board may set a number of penalties, including an administrative fine of up to $5,000 per count, and require the physician to refund any fees billed to and collected from the patient.

PHYSICIAN ASSISTANTS

Sections 458.347 and 459.022, F.S., provide for the regulation of physician assistants. The Board of Medicine and the Board of Osteopathic Medicine approve physician assistant training programs which hold accreditation from the Commission on Accreditation of Allied Health Programs. The Council on Physician Assistants may develop rules and make recommendations regarding all matters relating to physician assistants to both boards.

CONTROLLED SUBSTANCES

Chapter 893, F.S., sets forth the Florida Comprehensive Drug Abuse Prevention and Control Act. The chapter classifies controlled substances into five schedules in order to regulate the manufacture, distribution, preparation, and dispensing of the substances. The chapter defines practitioners to include licensed medical physicians, dentists, veterinarians, osteopathic physicians, naturopathic physicians, and podiatric physicians who may hold a valid federal controlled substance registry number to prescribe controlled substances.

CHIROPRACTIC

Chapter 460, F.S., provides for the regulation of the practice of chiropractic. The chapter provides requirements for chiropractic physicians to supervise chiropractic physician assistants and provides grounds for which a licensed chiropractic physician may be subject to discipline.

PODIATRY

Chapter 461, F.S., provides for the regulation of podiatric medicine. Section 461.018, F.S., allows certain persons who have practiced as "quiropedistas" under a Board of Podiatry-approved protocol to obtain a license to practice without supervision in specially designated areas of need within a limited scope of practice that includes nonsurgical treatment of corns, calluses, and ingrown toenails.

NURSES

Chapter 464, F.S., provides for the regulation of the practice of nursing. Section 464.019, F.S., requires institutions desiring to conduct approved nursing programs to apply with the agency and submit evidence that the program complies with the nursing practice act and any applicable rules adopted by the Board of Nursing for such programs. The chapter provides exemptions to nursing licensing requirements.

PHARMACY

Chapter 465, F.S., provides for the regulation of the practice of pharmacy. The chapter requires non-resident pharmacies to submit a roster of all employed pharmacists at the facility within 30 days of any change of office location, corporate officer, or pharmacist. The chapter requires annual disclosure of the location, names, and titles of all principal corporate officers and all pharmacists who are dispensing medicinal drugs to residents of the state. Under current law, a pharmacist may not dispense controlled substances based upon receipt of a facsimile of the original prescription. Other medicinal drugs may be dispensed under certain conditions. A pharmacist may delegate certain duties, tasks and functions to nonlicensed pharmacy technicians.

DENTISTRY

Chapter 466, F.S., provides for the regulation of the practice of dentistry and dental hygiene. The chapter authorizes dentists to use anesthesia after meeting certain requirements.

SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY

Part I, chapter 468, F.S., contains regulations for speech-language pathology and audiology, and provides exemptions from licensure requirements. The licensing exemption in the chapter for teachers does not specify that teachers certified under chapter 231, F.S., must be certified in speech-language impairment or hearing impairment in order to supervise non-certified or non-

licensed persons who conduct hearing screening in the school setting. The current licensing requirements require an applicant to obtain two master's degrees in communication disorders, duplicating much of the same course work, in order to become dually licensed in speech-language pathology and audiology.

NURSING HOME ADMINISTRATORS

Part II, chapter 468, F.S., provides for the regulation of nursing home administrators. The part provides licensing requirements which include successful passage of a licensing examination. The part requires the Board of Nursing Home Administrators to give the examination at least 4 times per year.

OCCUPATIONAL THERAPY

Part III, chapter 468, F.S., regulates the practice of occupational therapy. The part allows three occupational therapists to comprise the Occupational Therapy Council, with no consumer members or occupational therapy assistants being represented. The part's definition of "occupational therapy" does not conform to the definition as provided by the American Occupational Therapy Association (AOTA). Occupational therapy programs are currently accredited by the American Medical Association (AMA) in collaboration with the American Occupational Therapy Association.

RESPIRATORY THERAPY

Part V, chapter 468, F.S., provides for the regulation of respiratory therapy under the Board of Medicine. The part requires respiratory care personnel performing blood gas analysis and specimen collection to be directly supervised by either a respiratory therapist, licensed technologist, supervisor or director, or a respiratory care practitioner who has at least three years experience in this modality pursuant to chapter 483, F.S. The part utilizes the terms "certified" and "registered" with regard to respiratory therapists. The part provides a grandfather clause that allows the licensure examination to be conducted a minimum of three times annually in geographical locations advantageous to applicants that were licensed prior to 1988.

ELECTROLYSIS

Chapter 478, F.S., regulates the practice of electrolysis by the Board of Medicine. Currently, a licensure applicant must be a high school graduate, a resident of Florida, complete a program of study not to exceed 120 hours, and pass a written exam for licensure. License by endorsement candidates are only required to meet the provisions of section 478.45(1), F.S., which does not require passage of a written examination. The chapter has a glitch because endorsement candidates may be licensed if they hold an active license in a jurisdiction whose requirements are equivalent to those of this state, and requires the board to certify the candidates for such licensure. The statutory reference for a temporary permit is section 478.45, F. S., when it should be section 478.47, F.S. An electrolysis facility is required to be licensed.

CLINICAL LABORATORY PERSONNEL

Clinical Laboratory Personnel are regulated by the Board of Clinical Laboratory Personnel under Part IV, chapter 483, F.S. The chapter allows AHCA to issue temporary licenses to candidates for clinical laboratory personnel licensure. The temporary license is for six months and does not allow early exam applicants to work through the entire examination cycle. Due to the length of time necessary to score exams, issue reports, and issue licenses to passing candidates, the cycle does not end until December for the Fall exam and June for the Spring exam. The six month temporary license expires before final scoring and issuance of licenses is complete.

PHYSICAL THERAPY

Chapter 486, F. S., provides for the regulation of the practice of physical therapy. A person wishing to practice physical therapy or as a physical therapist assistant before becoming licensed through examination or through endorsement must apply to the Board of Physical Therapy for a temporary permit. The permit is valid for one year and may not be renewed. The permit automatically expires if the applicant fails the examination.

III. Effect of Proposed Changes:

Section 1. Amends s. 402.48, F.S.(1996 Supp.), relating to health care services pools, to require health care services pools to renew their registration biennially. Health care services pools currently are subject to an annual registration. Effective July 1, 1997, pursuant to ch. 96-403, L.O.F, the department having regulatory authority over health care services pools is changed from the Department of Business and Professional Regulation to the Department of Health.

Section 2. Amends s. 455.225, F.S., relating to disciplinary proceedings, to establish a legislative intent for purposes of s. 455.225, F.S., that the term, "expeditiously" means that the Agency for Health Care Administration, for disciplinary cases under its jurisdiction, complete the report of its initial investigative findings and recommendations concerning the existence of probable cause for a disciplinary complaint within 6 months of its receipt of the complaint. The Agency for Health Care Administration, for disciplinary cases under its jurisdiction, is required to establish a uniform reporting mechanism for "year-old disciplinary cases" that have not yet been referred to the Division of Administrative Hearings or otherwise completed within one year after the disciplinary complaint was filed, to be reported to each regulatory board on a quarterly basis during each year. The Agency for Health Care Administration, for any disciplinary case under its jurisdiction for which probable cause has been found, is required to provide to the person who filed the complaint a copy of the administrative complaint and: a written explanation of how an administrative complaint is resolved by the disciplinary process; and a written explanation of how and when the person may participate in the disciplinary process; a written notice of any hearing before the Division of Administrative Hearings or the regulatory board for which final agency action is taken. In any case for which probable cause has not been found, the agency must so inform the person who filed the complaint and notify that person that he or she may, within 60 days, provide any additional information to the probable cause panel which may

be relevant to the decision. In any administrative proceeding, the person who filed the disciplinary complaint must have the right to present oral or written communication relating to the alleged disciplinary violations or to the appropriate penalty.

Section 3. Amends s. 455.2285, F.S., relating to a requirement for the Department of Business and Professional Regulation and the Agency for Health Care Administration to prepare and submit an annual report detailing relevant information on the enforcement of professional regulation to the Legislature, to require the agency, for disciplinary cases under its jurisdiction, to describe in the required annual report any effort to reduce or otherwise close any disciplinary cases that have not yet been referred to the Division of Administrative Hearings or otherwise completed within one year after the disciplinary complaint was filed.

Sections 4 - 5. Amends s. 457.102 and 457.103, F.S., relating to acupuncture to make minor technical and conforming changes.

Section 6. Amends s. 457.105, F.S., relating to acupuncture, to revise the licensing requirements for persons to practice acupuncture to delete the two year tutorial program, or formal two year course of study process, as viable means to become a licensed acupuncturist, or the five- year experience requirement. In lieu of the current licensing requirements, applicants must be at least 21 years of age and must complete a 3 year course of study that meets standards established by the board by rule. After July 31, 2001, the course of study for licensure must be at least 4 years in duration. Requires passage of a board-approved national examination. Revises licensing statutory fee caps: for examination, from $1,000 to $500; for application, from $750 to $300; for reexamination, from $1,000 to $500; for initial biennial licensure, from $2,000 to 400, if licensed during the first half of the biennium and $200, if licensed during the second half of the biennium.

Section 7. Amends s. 457.107, F.S., to revise the acupuncture license renewal fee statutory cap from $1,000 to $700.

Section 8. Amends s. 457.108, F.S., relating to acupuncture, to make minor technical and conforming changes.

Section 9. Amends s. 457.1085, F.S., relating to acupuncture, to require beginning October 1, 1997, that acupuncture needles that are used in the practice of acupuncture must be sterile and disposable, and provides that each needle may only be used once.

Section 10. Amends s. 457.109, F.S., relating to acupuncture, to revise references to the operation of a tutorial program to conform with changes in the bill deleting the two year tutorial program as viable means of becoming a licensed acupuncturist.

Section 11. Amends s. 457.116, F.S., relating to acupuncture, to make minor technical and conforming changes.

Section 12. Amends s. 458.303, F.S., to delete the exemption from medical licensing requirements for the "physician trained assistant", an unlicensed person, who may work under the direct supervision and control of a physician who provides specific direction and final approval for any services performed. Physicians will no longer be permitted to employ and use such persons to provide medical services to patients. Medical assistants regulated under s. 458.3485, F.S., are exempted from medical licensing requirements.

Section 13. Amends s. 458.305, F.S., to correct the definition of "department" within which the Board of Medicine is administratively placed.

Section 14. Amends s. 458.307, F.S., to delete the requirement that the Board of Medicine may not establish more than two probable cause panels composed of three members, one of whom may be a lay member. This is covered in chapter 455, F.S., for all boards under the Agency for Health Care Administration or Department of Business Professional Regulation.

Section 15. Amends s. 455.206, F.S., relating to requirements imposed on board members, to correct a statutory cross-reference.

Section 16. Amends s. 458.311, F.S. (1996 Supp.), relating to medical licensing requirements, to reduce the number of years of residency training that foreign trained physicians must have from three years to two years. Fellowship training can be used to meet this requirement, provided that the training can be counted toward regular or subspecialty certification by a board recognized and certified by the American Board of Medical Specialties. Authorizes the board, as prescribed by board rule, to require an applicant who does not pass the licensure examination after five attempts to complete additional remedial education training within two years and then take the examination. Residents who are training on a full-time basis in a residency program in Florida may apply to take the medical licensing examination in Florida without applying for licensure to practice in the state after meeting specified requirements.

Section 17. Amends s. 458.313, F.S. (1996 Supp.), relating to the medical licensure by endorsement requirements, to no longer require individuals applying for licensure by endorsement to take the medical licensing examination over, if it has been more than ten years since the applicant took it. Allows the board to require endorsement applicants to take and pass the appropriate licensure examination prior to certifying the applicant as eligible for licensure. Eliminates an option for physicians who have not actively practiced medicine in the immediate four years prior to application, to work for one year under a licensed physician's supervision as part of their licensing requirements. In lieu of meeting the requirement of 1 year of supervised work, physicians applying for a license who have not practiced two out of the past four years must take a board-approved clinical competency examination, or show completion of board-approved postgraduate training. Defines the "active practice of medicine" and deletes the requirement that the Board of Medicine may require applicants to take an oral exam when applying for a license. Allows the board to require applicants by endorsement who do not pass the licensure examination after five attempts to complete up to two years of remedial education and training before taking it again. Certain physicians having null and void licenses due to failure

to practice in Florida for one year within the first three years after licensure may reactivate the license under specified conditions.

Section 18. Amends s. 458.317, F.S., to delete the requirement that persons applying for a limited license must be retired. Provides that physicians who practice under a limited license who are not fully retired in all jurisdictions may only use the limited license for noncompensated practice. Requires any person who receives a waiver of fees for a limited license to pay such fees if he later receives compensation for his services.

Section 19. Amends s. 458.319, F.S., relating to medical license renewal, to require physicians who apply to renew their licenses to have practiced two out of the past four years or pass a board approved clinical competency examination.

Section 20. Amends s. 458.320, F.S. (1996 Supp.), relating to financial responsibility requirements for medical physicians, to require physicians who go "bare" to notify their patients to that effect by both posting a sign in the reception area and giving each patient a statement to sign and place in the patient's file.

Section 21. Amends s. 458.331, F.S., relating to medical physicians, to require physicians to keep legible written records as defined by department rule, in consultation with the board, that identifies the physician and/or the physician extender and supervising physician by name and credentials who is responsible for the records. Revises a ground for which a physician is subject to discipline to permit physicians to prescribe certain Schedule II drugs for the treatment of narcolepsy, hyperkinesis, and behavioral syndrome in adults as well as children. It requires physician assistants as well as physicians to report licensees under chapters 458 and 459, F.S., who are in violation of the law. Subjects a physician to discipline for advertising or holding himself out as a board-certified specialist unless he complies with applicable requirements under the medical practice act.

Section 22. Creates s. 458.3312, F.S., to prohibit a medical physician from holding himself out as a board-certified specialist unless the practitioner has received formal recognition from the American Board of Medical Specialties or a recognizing agency approved by the Board of Medicine.

Section 23. Amends s. 458.345, F.S., relating to the registration requirements for resident physicians, to require the chief executive officer of each hospital to inform the Executive Director of the Board of Medicine of the name, title, and address of the person who is responsible for submitting such reports. It allows a hospital resident physician to prescribe medicinal drugs described in schedules set out in chapter 893, F.S., if the person is authorized by the hospital, is engaged in an accredited training program, prescribes only in the normal course of employment, holds a Federal Drug Enforcement Administration prescriber number issued by the hospital and the prescription involved has that number printed thereon, and use of the institutional identification number and individual physician suffixes conforms to the requirements of the

Federal Drug Enforcement Administration. Resident physicians, interns, and fellows are made explicitly subject to s. 458.331, F.S., relating to grounds for disciplinary action.

Section 24. Amends s. 458.346, F.S., relating to the Public Sector Physician Advisory Committee under the Board of Medicine, to require the committee to meet at least once a year, or upon the call of the chair, instead of quarterly.

Section 25. Amends s. 458.347, F.S. (1996 Supp.), relating to physician assistants, to allow the Council on Physician Assistants to recommend only those physician assistant programs that hold full accreditation or provisional accreditation from the Commission on Accreditation of Allied Health Programs. Requires an applicant who does not hold a current certificate issued by the National Commission on Certification of Physician Assistants (NCCPA) and has not practiced within the preceding four years to retake and pass the NCCPA examination to be eligible for certification.

Section 26. Amends s. 458.3485, F.S., relating to medical assistants, to require medical assistants to be directly supervised by a licensed physician to the extent they perform duties requiring medical licensure.

Section 27. Amends s. 459.003, F.S., to correct references to the Department of Health as the department having administrative jurisdiction over the Board of Osteopathic Medicine and to specify that "Doctor of Osteopathy" and "Doctor of Osteopathic Medicine" are equivalent and equal degrees.

Section 28. Amends s. 459.021, F.S., relating to the registration requirements for osteopathic medical residents, to require the hospital chief executive officer to provide the Board of Osteopathic Medicine's executive director with the name, title, and address of the person responsible for submitting the information required in this section. It allows a hospital resident physician to prescribe medicinal drugs described in schedules set out in chapter 893, F.S., if the person is authorized by the hospital, is engaged in an accredited training program, prescribes only in the normal course of employment, holds a Federal Drug Enforcement Administration prescriber number issued by the hospital and the prescription involved has that number printed thereon, and use of the institutional identification number and individual physician suffixes conforms to the requirements of the Federal Drug Enforcement Administration. Resident physicians, interns, and fellows are made explicitly subject to s. 459.015, F.S., relating to grounds for disciplinary action.

Section 29. Amends s. 459.0075, F.S., relating to osteopathic limited licenses, to delete the requirement that osteopathic physicians applying for a limited license must be retired. Provides that osteopathic physicians who practice under a limited license who are not fully retired in all jurisdictions may only use the limited license for noncompensated practice. Requires any person who receives a waiver of fees for a limited license to pay such fees if he later receives compensation for his services.

Section 30. Amends s. 459.0085, F.S. (1996 Supp.), to require those physicians who go "bare" to notify their patients to that effect by posting a sign in the reception area and giving each patient a statement to sign and place in his file.

Section 31. Amends s. 459.015, F.S. (1996 Supp.), to require osteopathic physicians to keep legible written records as defined by department rule, in consultation with the Board of Osteopathic Medicine, that identifies the physician and/or the physician extender and supervising physician by name and credentials who is responsible for the records. Revises a ground for which a osteopathic physician is subject to discipline to permit physicians to prescribe certain Schedule II drugs for the treatment of narcolepsy, hyperkinesis, and behavioral syndrome in adults as well as children. It requires physician assistants as well as physicians to report licensees under chapters 458 and 459, F.S., who are in violation of the law. Makes it grounds for disciplinary action for an osteopathic physician to advertise or hold oneself out as a board-certified specialist in violation of this chapter.

Section 32. Creates s. 459.0152, F.S., to prohibit an osteopathic physician from holding himself out as a board-certified specialist unless the practitioner has completed certain requirements.

Section 33. Amend ss. 459.022, F.S. (1996 Supp.), relating to physician assistants, to allow the Council on Physician Assistants to recommend physician assistant programs that hold full or provisional accreditation from the Commission on Accreditation of Allied Health Programs or its successor organization. Requires that an applicant who does not hold a current certificate issued by the National Commission on Certification of Physician Assistants (NCCPA) and has not practiced within the preceding four years must retake and pass the NCCPA examination to be eligible for certification.

Sections 34 -64. Amend ss. 240.4067, 390.011, 395.0191, 408.035, 409.905 (1996 Supp.), 415.102, 415.1034, 415.504 (1996 Supp.), 440.106, 440.13 (1996 Supp.), 440.134, 440.15 (1996 Supp.), 456.31, 459.006, 462.01, 468.301, 468.302(1996 Supp.), 476.044, 477.0135, 483.291, 621.03, 627.351 (1996 Supp.), 627.357, 627.6482, 725.01, 766.101 (1996 Supp.), 766.103, 766.105 (1996 Supp.), 766.110, 817.234, and 945.047, F.S., to change references to "osteopathy" to "osteopathic medicine" and "doctor of osteopathy" or "osteopath" to "osteopathic physician" .

Section 65. Amends s. 460.403, F.S. (1996 Supp.), to correct references to the Department of Health as the department having administrative jurisdiction over the Board of Chiropractic.

Section 66. Repeals s. 460.413(1)(bb), F.S. (1996 Supp.), relating to a ground for which a chiropractor may be disciplined for reducing or offering to reduce, discounting or offering to discount to an insured any payment to the chiropractor by the third-party payor of the insured for services rendered under the insured's policy and s. 460.413(1)(cc), F.S. (1996 Supp.), relating to a ground for which a chiropractor may be disciplined for submitting to any third-party payor a claim for a service or treatment at a greater or inflated fee or charge than the usual fee the licensee charges for that service or treatment when rendered without third-party reimbursement.

Amends s. 460.413, F.S. (1996 Supp.), to provide the Board of Chiropractic and the Department of Health with the authority to compel a chiropractic physician to undergo a mental or physical examination when there is probable cause to believe that a practitioner cannot safely practice chiropractic. Allows the Board of Chiropractic to impose additional conditions of discipline, including the imposition of the costs of the investigation and prosecution, requiring the chiropractor to undergo remedial education, issuance of a letter of concern, requiring corrective action, or requiring a refund of fees billed to and collected from the patient or a third party. Authorizes the department to seek an injunction from the circuit court to stop a chiropractor from practicing, if he is unable to practice with reasonable skill and safety and is a danger to patients.

Sections 67 - 69. Reenact ss. 320.0848, 455.236, and 766.111, F.S., for the purpose of incorporating the amendment to s. 460.413, F.S., 1996 Supp.

Section 70. Amends s. 460.4165, F.S., relating to chiropractic physician assistants, to require chiropractic physicians to submit an initial application for the supervision of chiropractic physician assistants rather than an annual application, accompanied by a fee of $100.

Section 71. Amends s. 461.003, F.S., relating to podiatry, to correct references to the Department of Health as the department having jurisdiction over the Board of Podiatric Medicine.

Section 72. Amends s. 461.013, F.S., relating to podiatry, to make minor technical changes.

Section 73. Amends s. 461.018, F.S. (1996 Supp.), relating to podiatry, to allow persons who meet certain other requirements to become licensed to practice podiatry without supervision under a limited scope of practice.

Section 74. Amends s. 464.003, F.S. (1996 Supp.), relating to nursing to correct references to the Department of Health as the department having administrative jurisdiction over the Board of Nursing.

Sections 75 - 80. Amend ss. 464.004 (1996 Supp.), 464.008 (1996 Supp.), 464.009 (1996 Supp.), 464.012 (1996 Supp.), 464.013 (1996 Supp.), 464.014 (1996 Supp.), F.S., relating to nursing, to make minor technical changes to reflect the transfer of the Board of Nursing from the Agency for Health Care Administration to the Department of Health. Changes references to "agency" to "department" wherever the term appears in chapter 464, F.S.

Section 81. Amends s. 464.018, F.S. (1996 Supp.), relating to nursing, to provide that being convicted of or entering a plea of nolo contendere, regardless of adjudication, to a crime in any jurisdiction which directly relates to the practice of nursing is grounds for disciplinary action

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Section 82. Amends s. 464.019, F.S. (1996 Supp.), to authorize the Board of Nursing to set a program review fee no greater than $1,000 to cover expenses related to reviewing nursing school programs.

Section 83. Creates s. 464.0205, F.S., to establish provisions for a retired practical or registered nurse certificate. Allows retired nurses to volunteer their services in public agencies or institutions or in nonprofit agencies or institutions in areas of critical nursing need or underserved areas. Establishes procedures for the submission and approval or denial of the application, practice settings, and practice parameters. Requires the retired nurse to submit a $25 application fee.

Section 84. Amends s. 464.022, F.S., to create an exception to allow qualified nurses from another state whose employment requires them to accompany an out-of-state patient to Florida to perform nursing services for that patient for up to 30 consecutive days. Establishes requirements for pre-travel notification to the Board of Nursing and pre-travel arrangements should the patient require placement in an in-patient setting.

Section 85. Amends s. 465.003, F.S., to correct references to the Department of Health as the department having administrative jurisdiction over the Board of Pharmacy. Provides that a pharmacy is considered closed whenever a licensed pharmacist is not present and on duty, but does not prevent a pharmacist from exiting the prescription department for the purposes of consulting or responding to inquiries or providing assistance to patients or customers, attending to personal hygiene needs, or performing other duties consistent with the provision of pharmacy services.

Section 86. Amends s. 465.004, F.S., relating to pharmacy, to increase the Board of Pharmacy from seven to nine members by adding two additional licensed pharmacists; specifying that to the extent practicable, board membership should represent the various pharmacy settings. Revises appointment requirements so that two board members must be pharmacists from either a Class II institutional pharmacy or a Modified Class II institutional pharmacy.

Section 87. Amends s. 465.0125, F.S., relating to pharmacy, to authorize a consultant pharmacist to order and evaluate any laboratory or clinical test for persons under the care of a licensed home health agency. To do so the pharmacist must receive at least 3 hours of board-approved continuing education relating to laboratory and clinical testing.

Section 88. Amends s. 465.014, F.S., to permit a pharmacist to supervise up to three pharmacy technicians under guidelines established by the Board of Pharmacy.

Section 89. Amends s. 465.0156, F.S., to change certain reporting requirements (changes in ownership, management, location, and staffing) for non-resident pharmacies to more closely parallel requirements for in-state community pharmacies.

Section 90. Amends s. 465.016, F.S., relating to pharmacy, to make minor technical changes.

Section 91. Amends s. 465.0196, F.S., relating to special pharmacy permits, to make technical changes, revising statutory cross-references.

Section 92. Amends s. 465.026, F.S., relating to pharmacy, to authorize pharmacists to transfer prescriptions between pharmacies through electronic means. Eliminates the limitation imposed on pharmacies that the transfer of a prescription for controlled substances may only be refilled on a one time basis.

Section 93. Amends s. 465.035, F.S., relating to pharmacy, to allow a pharmacy to dispense controlled substances listed in Schedule II, to the extent allowed by 21 C.F.R. s. 1306.11, based on receipt of a facsimile of a prescription if certain conditions are met.

Section 94. Amends s. 465.186, F.S., relating to pharmacy, to allow the formulary committee to designate, for a pharmacist's order, any over-the-counter proprietary drug under federal law approved for reimbursement by the Florida Medicaid program or topical anti-infectives.

Section 95. Amends s. 893.03, F.S.(1996), F.S., relating to controlled substances, to add Butorphanol tartrate (pain medication) to the controlled substances listed in Schedule IV of chapter 893, F.S.

Sections 96-105. Reenacts ss 316.193(5) (1996 Supp.), 327.35 (5) (1996 Supp.), 440.102 (11)(b) (1996 Supp.), 458.326 (3), 817.563 (1), 831.31, 856.015(1)(d), 893.02(4), 893.08(1)(b), and 893.13(1)(a), (c), (d), (2)(a), (4)(b), (5)(b) (1996 Supp.) to incorporate the amendments to s. 893.03, F.S., 1996 Supplement.

Section 106. Amends s. 466.003, F.S., relating to dentistry, to correct references the Department of Health as the department having jurisdiction over the Board of Dentistry.

Section 107. Amends s. 466.006, F.S., to delete provisions relating to a licensure route for graduates of foreign dental schools to become licensed as dentists after completion of a manual skills examination. The exam was discontinued December 31, 1991.

Section 108. Amends s. 466.017, F.S., to delete obsolete provisions that predate 1980 that allowed certain dentists to not meet the training requirements for administration of anesthesia required in subsection (3) of this section.

Section 109. Amends s. 466.028, F.S., relating to dentistry, to revise existing grounds for which a dentist may be subject to discipline for prescribing a schedule II drug, to expressly allow dentists to prescribe some schedule II drugs without the current limitations imposed on dentists to have prior Board of Dentistry approval for the use of such drugs pursuant to a clinical investigative protocol. Makes other minor technical changes.

Section 110. Amends s. 468.1115, F.S., relating to speech-language pathology and audiology, to allow persons licensed under this chapter and teachers certified in speech-language impairment or hearing impairment under chapter 231, F.S., to supervise unlicensed persons performing hearing screening in a school setting, and to allow a person licensed in another state to provide services for a limited period of time while under direct supervision of a licensee. Non-licensed

persons working in a hospital setting who provide newborn infant hearing screenings are exempt if training, interpretation of screenings, and protocols are provided by a licensed audiologist.

Section 111. Amends s. 468.1125, F.S., to correct references to the Department of Health as the department having administrative jurisdiction over the Board of Speech-Language Pathology and Audiology.

Section 112. Amends s. 468.1155, F.S., relating to speech-language pathology and audiology license requirements, to specify who must obtain a provisional license and when it should be obtained. Required fees must be submitted before the department issues a provisional license. Establishes additional course work and clinical clock hour requirements for individuals licensed in speech-language pathology seeking licensure in audiology or vice-versa.

Section 113. Amends s. 468.1185, F.S., relating to speech-language pathology and audiology license requirements, to allow endorsement candidates who hold a valid license from a territory of the United States to apply for licensure.

Section 114. Amends s. 468.1195, F.S., relating to speech-language pathology and audiology continuing education, to require the board to establish by rule standards for the approval of continuing education activities and providers. Exempts individuals licensed or certified six months or less before the end of the biennial licensure cycle from continuing education requirements for the first renewal.

Section 115. Creates s. 468.1201, F.S., relating to speech-language pathology and audiology, to require HIV/AIDS instruction as a condition of initial licensure or certification as a speech-language pathologist, audiologist, or assistant. Provides applicants a six-month grace period to complete the requirement.

Section 116. Amends s. 468.1215, F.S., to require remittance of required fees as a condition of certification for speech-language pathology and audiology assistants. Authorizes the board to establish on-the-job training and supervision requirements for assistants. Makes other conforming and technical changes.

Section 117. Amends s. 468.1245, F.S., relating to hearing aid consumer protections, to require consumer protection disclosures on the hearing aid receipt rather than the contract for hearing aid sales.

Section 118. Amends s. 468.1295, F.S., relating to disciplinary proceedings for speech-language pathology and audiology, to add additional grounds for which a licensee may be disciplined to: prohibit practicing beyond the scope permitted by law, aiding unlicensed persons to practice, and committing sexual misconduct when practicing. Allows the board to require an impaired licensee to submit to a mental or physical examination.

Section 119. Creates s. 468.1296, F.S., prohibiting sexual misconduct by persons licensed or certified under chapter 468, F.S.

Section 120. Amends s. 468.1655, F.S., to correct references to the Department of Health as the department having administrative jurisdiction over the Board of Nursing Home Administrators.

Section 121. Amends s. 468.1695, F.S., relating to nursing home administrator licensing requirements, to require that a minimum of two nursing home administrator examinations be given annually, instead of four.

Section 122. Amends s. 468.203, F.S., to conform the definition of occupational therapy with the definition as provided by the American Occupational Therapy Association (AOTA). Requires aides to be under direct supervision by either a therapist or assistant at all times.

Section 123. Amends s. 468.205, F.S., to create a seven-member Board of Occupational Therapy, four members of the board must be licensed occupational therapists and one member must be a licensed occupational therapy assistant all of whom must be Florida residents for at least four years prior to their appointment, and two members must be consumers who are residents of the state who are not connected with the practice of occupational therapy. Provides for staggered appointments to the board.

Section 124. Amends s. 468.209 F.S., relating to occupational therapy licensing requirements, to revise a statutory reference to programs for occupational therapists being accredited by the Amercian Medical Association in collaboration with the American Occupational Therapy Association to provide that the new accrediting entity is the American Occupational Therapy Association's Accreditation Council for Occupational Therapy Education, or its successor. To conform, deletes a statutory reference to programs for occupational therapy assistants being accredited by the American Occupational Therapy Association (AOTA). Revises the licensure requirements for occupational therapy assistants so that they must have completed a specialized AOTA program before 1988, which includes completion of a 6 months supervised occupational therapist level fieldwork experience and passage of an examination, to be certified as an occupational therapist without meeting the educational requirements for occupational therapists. Revises the requirements for the issuance of temporary permits to practice occupational therapy so that only one temporary permit may be obtained by candidates for licensure by examination or licensure by endorsement. Provides an exception for students enrolled in a full-time master's program for occupational therapy if all other licensure requirements have been met, who then may have a 6-month extension of the temporary permit. Requires occupational therapy applicants who have not actively practiced for 5 years immediately preceding their application to document their compliance with continuing education requirements as prescribed by board rule.

Section 125. Amends s. 468.211, F.S., relating to occupational therapy license examination requirements, to require an applicant to take additional education or training courses before attempting a fourth examination. Limits applicants to five examination attempts.

Section 126. Amends s. 468.213, F.S., relating to occupational therapy, to revise licensure by endorsement requirements to allow the Board of Medicine to consider applicants from any U.S. jurisdiction or foreign national jurisdiction requiring equivalent standards. Lists the National Board for Certification in Occupational Therapy (NBCOT) rather than the American Occupational Therapy Association as the national certifying body for licensure by endorsement candidates.

Section 127. Amends s. 468.225, F.S., relating to occupational therapy, to delete the exemption for persons to work as occupational therapy aides under the direct supervision or employment of an occupational therapist. Allows a physician assistant, speech-language pathologist, or audiologist to use occupational therapy as a part of or incidental to their profession when practicing under the laws applicable to their profession.

Section 128. Amends s. 468.351, F.S., relating to respiratory therapy, to clarify the use of the terms "certification" and "registration" for respiratory care personnel. "Certification refers to national credentials of practitioners by a private entity and "licensure" refers to the state's credentials. Makes minor technical changes, including a reference to the Department of Health and Rehabilitative Services (HRS) to AHCA as the appropriate regulatory agency for blood gas laboratories. Addresses supervision of respiratory care practitioners who perform blood gas analysis and specimen collection according to chapter 468, part V, F.S.

Sections 129-130. Amend ss. 468.352 and 468.354, F.S., relating to respiratory therapy, to clarify that "certification" and "registration" refers to national credentials of practitioners by a private entity and "licensure" refers to the state's credentials and to make technical and conforming changes.

Section 131. Amends s. 468.355, F.S., relating to respiratory therapy, to correct references to the Commission on Accreditation of Allied Health Education Programs as the accrediting entity for respiratory care training programs and to eliminate references to Accreditation of the American Medical Association.

Section 132. Amends s. 468.356, F.S., relating to respiratory therapy, to conform the name of the accrediting entity and allow programs to be approved by other accrediting agencies recognized by the U.S. Office of Education.

Section 133. Amends s. 468.357, F.S., relating to respiratory therapy, to eliminate a provision for licensees who were initially grandfathered and practicing since 1988 who have had to complete 20 hours of continuing education each year rather than complete 24 hours of continuing education as required of the other licensees.

Sections 134-135. Amend ss. 468.358 and 468.359, F.S., relating to respiratory therapy, to make technical and conforming changes.

Section 136. Amends s. 468.36, F.S., relating to respiratory therapy, to require licensees to notify the Department of Health of their current residence address.

Section 137. Repeals s. 468.362, F.S., relating to respiratory therapy continuing education requirements and amends s. 468.361, F.S., to conform language specifying continuing education hours required for licensure and to specify that the Board of Medicine is the approving authority for continuing education courses as well as the approving authority for providers of such courses.

Sections 138-139. Amend s. 468.363 and 468.364, F.S., relating to respiratory therapy, to make technical and conforming changes.

Section 140. Amends s. 468.365, F.S., relating to respiratory therapy, to revise existing disciplinary provisions to allow the Board of Medicine to take disciplinary action against a respiratory therapist if a plea of nolo contendere is entered, regardless of adjudication by the practitioner, which relates to the practice of the respiratory therapist and to make technical and conforming changes.

Sections 141-142. Amend ss. 468.366 and 468.368, F.S., relating to respiratory therapy, to make technical and conforming changes.

Section 143. Amends s. 478.42, F.S., relating to electrology, to correct references to the Department of Health as the department having administrative jurisdiction over the Electrolysis Council.

Section 144. Amends s. 478.45, F.S., relating to electrology, to revise the qualifications for licensure. Eliminates the Florida residency requirement for licensure, the grandfather provision for certain applicants, and deletes specific reference to a particular national examination. Makes other technical changes.

Section 145. Amends s. 478.46, F.S., relating to electrology, to correct a statutory cross-reference.

Section 146. Amends. s. 478.47, F.S., relating to electrology, to revise licensure by endorsement provisions so that the Board of Medicine does not have to certify applicants for licensure. The applicants must hold an active license in a jurisdiction whose requirements are equivalent to those of this state to be licensed.

Section 147. Amends s. 478.52, F.S., to expand the grounds for which an electrologist may be disciplined by the Board of Medicine to include operating an electrolysis facility without a permit.

Section 148. Amends s. 480.033, F.S., to change the name of the Board of Massage to the Board of Massage Therapy and to correct references to the Department of Health as the department with administrative jurisdiction over the Board of Massage Therapy.

Section 149. Amends s. 480.034, F.S., relating to massage, to eliminate an exemption to the massage practice act for persons who perform treatments for the purpose of cleansing and beautifying the skin or in conjunction with a weight loss program, which include herbal wraps, body scrubs, paraffin wax treatments, and seaweed wraps.

Section 150. Amends s. 480.035, F.S., to change the name of the Board of Massage to the Board of Massage Therapy.

Section 151. Amends s. 480.041, F.S., relating to massage licensing requirements, to eliminate the provisional license which was granted to applicants who otherwise met the requirements so they could practice under supervision while waiting to sit for the state licensure examination. The board now requires a national licensure examination.

Section 152. Amends s. 480.0415, F.S., relating to massage, to increase continuing education requirements from 12 up to 25 classroom hours of continuing education in massage that the Board of Massage Therapy may require every 2 years as a condition of license renewal.

Section 153. Amends s. 480.042, F.S., relating to massage licensing requirements, to eliminate a state law and rules examination for licensure.

Section 154. Repeals s. 480.0425, F.S., relating to inactive status provisions for massage licensees. The requirements for inactive licensure are addressed in chapter 455, F.S., for all boards.

Section 155. Amends s. 480.043, F.S., relating to massage, to specify that a license for a massage establishment may not be transferred from one owner to another unless the new owner submits to another inspection, obtains approval by the board, and the pays a fee no greater than $125. A license may be transferred from one business name to another upon approval of the board and the payment of an application fee no greater than $25.

Section 156. Amends s. 480.044, F.S., relating to massage, to delete the fee for the application and provisional license.

Section 157. Amends s. 480.047, F.S., relating to massage, to clarify that a person may not practice massage unless duly licensed or unless specifically exempted from licensure under the massage practice act.

Section 158. Creates s. 480.0485, F.S., relating to massage, to define and prohibit sexual misconduct in the practice of massage.

Section 159. Amends s. 20.43, F.S. (1996 Supp.), relating to the organization of the Department of Health, to make minor technical changes.

Section 160. Amends s. 381.81, F.S., relating to the Minority Health Improvement Act, to include hearing aid specialists in the definition of health care professional for purposes of the act and correct a statutory cross-reference.

Section 161. Amends s. 483.800, F.S., relating to clinical laboratory personnel, to revise the legislative intent relating to the regulation to specify that hospital-based training for laboratory and nonlaboratory personnel for testing is beneficial in hospital and commercial laboratories. Eliminates alternate sites from this intent language.

Section 162. Amends s. 483.801, F.S., relating to clinical laboratory personnel exemptions, to exempt advanced registered nurse practitioners performing provider-performed microscopy procedures from licensure under chapter 483, Part IV.

Section 163. Amends s. 483.803, F.S., relating to the definitions under the clinical laboratory personnel regulation, to provide definitions for a clinical laboratory examination and public health scientist.

Section 164. Amends s. 483.809, F.S., relating to clinical laboratory personnel licensing requirements, to provide that the Board of Clinical Laboratory Personnel may certify to the department those applicants who are eligible for licensure. Makes conforming changes relating to the board's authority to specify by rule clinical laboratory personnel licensure qualifications.

Section 165. Creates s. 483.812, F.S., relating to clinical laboratory personnel, to establish a licensure avenue for individuals working in public health laboratories.

Section 166. Amends s. 483.813, F.S., relating to clinical laboratory personnel, to authorize the Department of Health to issue temporary permits to clinical lab personnel exam candidates for up to one year to practice rather than 6 months. Creates a conditional license which may be used for a period up to 3 years by persons applying under the newly-created licensure category for clinical laboratory personnel working as a technician in a public health setting.

Section 167. Amends s. 483.823, F.S., to authorize the Board of Clinical Laboratory Personnel to adopt by rule personnel qualifications to require appropriate education, training, or experience, or the passing of an appropriate examination for clinical laboratory personnel under their regulatory jurisdiction. Provides that practitioners of the healing arts are not required to obtain licensure under this part or pay associated fees, except those required for a clinical laboratory license.

Section 168. Amends s. 483.825, F.S., relating to clinical laboratory personnel, to include applicants and registrants with licensees as persons eligible to be disciplined or denied licensure by the board. Expands the grounds for which a licensee, applicant, or registrant may be disciplined by the board to include: being unable to perform or report a clinical laboratory examination with reasonable skill and safety; delegating responsibilities to unqualified persons; and failing to report action taken against a license in another state, territory, or country. Allows

the board to require an impaired licensee to submit to a mental or physical examination. Creates a public records and meetings law exemption for the identification of the licensee in a related summary proceeding.

Section 169. Creates s. 483.828, F.S., to create various prohibited acts relating to the practice of clinical laboratory personnel, that subjects any violator to a third degree felony punishable by the imposition of imprisonment for up to 5 years and a fine up to $5,000.

Section 170. Amends s. 483.901, F.S., to make technical and substantive corrections to the practice act for medical physicists. Revises the role of the council as advisory to the Department of Health. Increases the council from seven to nine members by adding two consumer members to the council and changes the appointment term from three to four years. Provides that continuing education hours are to be completed biennially and allows the department, with the advice of the council, to set requirements by rule for continuing education for persons who hold more than one specialty license. Revises the requirements for licensure for applicants until October 1, 1997 and after October 1, 1997. Creates grounds for which licensed medical physicists may be subject to disciplinary action and the penalties that may be assessed and the criminal sanctions for unlicensed activity. Eliminates an exception from licensure for those medical physicists who have been practicing for five or more years as of July 1, 1995.

Sections 171 - 172. Amend ss. 484.041 and 484.042, F.S., to correct references to the Department of Health as the department having administrative jurisdiction over the Board of Hearing Aid Specialists.

Section 173. Amends s. 484.051, F.S., relating to hearing aid specialists, to require persons fitting and selling hearing aids to provide the purchaser with a receipt, rather than a contract, containing the seller's signature, address of regular practice, license number, and other identifying information and designates the Department of Health as the entity with which to file a complaint.

Section 174. Amends s. 486.021, F.S.,to correct references to the Department of Health as the department having administrative jurisdiction over the Board of Physical Therapy.

Section 175. Amends s. 486.023, F.S., relating to the Board of Physical Therapy, to replace the physician member of the board with a consumer member. Eliminates the requirement that the board members be recommended to the Governor by the Florida Physical Therapy Association.

Section 176. Amends s. 486.031, F.S., to allow the Board of Physical Therapy to waive the examination for licensure of physical therapists who took the American Registry Examination prior to 1971. Facilitates computer based testing by eliminating the requirement that exams be administered by the department.

Section 177. Amends s. 486.041, F.S., relating to physical therapy licensure application procedures, to facilitate computer-based testing by allowing the applicant to bypass the department when applying to take the required exam.

Section 178. Amends s. 486.051, F.S., relating to physical therapy examination requirements, to revise the procedures for examinations to facilitate computer-based testing by eliminating language requiring the department to purchase exams.

Section 179. Amends s. 486.081, F.S., to allow the board to waive the examination for physical therapists applying by endorsement who took the American Registry Examination prior to 1971.

Section 180. Amends s. 486.102, F.S., relating to physical therapy, to delete the requirement that accrediting bodies be approved by the Council on Postsecondary Accreditation, since this organization is no longer in existence. Makes other minor technical and conforming changes.

Sections 181-182. Amend ss. 486.103 and 486.104, F.S., relating to physical therapy, to make technical and conforming changes to facilitate computer-based testing for physical therapist assistants by eliminating language requiring the department to purchase exams.

Section 183. Creates s. 486.123, F.S., to provide that sexual misconduct in the practice of physical therapy is prohibited.

Section 184. Amends s. 486.125, F.S., relating to physical therapy, to allow the Board of Physical Therapy to recover investigative and prosecution costs.

Section 185. Amends s. 641.495, F.S., relating to health maintenance organizations, to require health maintenance organizations to designate a medical director who is a medical physician or osteopathic physician who is licensed to practice in this state.

Section 186. Amends s. 468.1645, F.S., relating to nursing home administrators, to revise an exemption to the nursing home administrator licensing requirements for administrators of facilities operated by a recognized church or religious denomination for persons who rely exclusively upon treatment by spiritual means through prayer, to delete references to the operation or accreditation of the facility by the church or religious denomination. The revised exemption to the nursing home administrator licensing requirements, applies to any person who administers a facility that is operated by and for persons who rely exclusively upon treatment by spiritual means through prayer in accordance with the creed or tenets of any organized church or religious denomination. The exemption of persons from nursing home administrator licensure does not extend to the employment of such persons in any other facility that does not rely exclusively on treatment by spiritual means through prayer.

Section 187. Provides an effective date of July 1, 1997.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

Section 24 of Article I of the Florida Constitution governs the creation and expansion of exemptions, to provide, in effect, that any legislation that creates a new exemption or that substantially amends an existing exemption must also contain a statement of the public necessity that justifies the exemption. Article I, s. 24, Fla. Const. provides that any bill that contains an exemption may not contain other substantive provisions, although it may contain multiple exemptions.

The bill creates by implication, public records and meetings exemptions to the extent existing exemptions for disciplinary actions in chapter 455, F.S., and specific practice acts apply, for specialized certification in nursing.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Section 19(f) of the Florida Constitution.

D. Other Constitutional Issues:

To the extent the bill authorizes the Board of Acupuncture to establish licensure standards by rule, which are part of a 3 or 4 year course of study, it raises the question whether this provides adequate limitations and safeguards so that the Legislature's delegation to the board is not a violation of Article II, Section 3 of the Florida Constitution. The bill does not appear to expressly provide a sufficient limitation on the board's authority to establish requirements on who should be granted a license to practice acupuncture.

The Florida Supreme Court struck down a former section of law respecting the power of the Board of Psychological Examiners to grant certificates with the title "psychologist" and to determine the qualifications of applicants as unconstitutional in that it failed sufficiently to fix the standards to be applied and in effect delegated the application of the statute without sufficient limitations on the board's discretion. Husband v. Cassel, 130 So.2d 69 (1961).

Article II, Section 3 of the Florida Constitution provides that the powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein. The Florida Supreme Court has acknowledged

that "Where the Legislature makes the fundamental policy decision and delegates to some other body the task of implementing that policy under adequate safeguards, there is no violation of the [Delegation of Powers] doctrine." Askew v. Cross Key Waterways, 372 So.2d 913 at 921 (Fla.1978).

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

Medical residents applying to sit for the medical licensing examination in Florida without applying for licensure to practice in this state will be subject to a nonrefundable administration fee no greater than $50, an examination fee no greater than $300, plus the actual cost per person to the Department of Health for the medical licensing examination.

Persons who hold limited licenses to practice medicine or osteopathy must pay any application or licensing fees currently waived if they receive compensation.

New nursing program applicants will be subject to a program review fee no greater than $1,000.

Applicants for a retired volunteer nurse certificate are subject to an application and processing fee of $25.

Owners of massage establishments that are transferring ownership are subject to an application and inspection fee no greater than $125.

Owners of massage establishments that are changing the business name are subject to an application fee no greater than $25.

B. Private Sector Impact:

Medical residents who are training in Florida on a full-time basis who wish to practice in other states will benefit to the extent the bill allows the residents to sit for the medical licensing examination in Florida while training as a resident without having to apply for licensure to practice in this state.

Any physician who practices medicine exclusively as an officer, employee, or agent of the federal government or the state who is currently paying any costs to meet all financial responsibility requirements for staff privileges at any hospital, ambulatory surgical center or other licensed facility will benefit to the extent the bill provides that such physicians have met all financial responsibility when the physician is acting within the scope of his or her employment or agency.

Consumers of pharmacy services may benefit to the extent the bill allows pharmacies to dispense additional controlled substances based on the receipt of an electronic facsimile of the original prescription.

C. Government Sector Impact:

To the extent the bill requires the Agency for Health Care Administration to improve the efficiency of its investigation and referral of disciplinary cases filed against health care professionals under its jurisdiction, to the appropriate probable cause panel and to provide additional information regarding the disciplinary process and notices to complainants, the agency estimates that it will require for fiscal year 1997-98: non-recurring costs of $465,198; salaries and benefits of $2,500,422 for 89 FTEs; expenses of $2,654,080 totaling $5,619,700. For fiscal year 1998-99 the estimates are: salaries and benefits of $3,333,896; expenses of $3,538,773 totaling $6,872,669. The agency estimates that it will incur expenses equal to $12,492,369 for the biennial period 1997-99 and its figures are based on a projection of 18,000 health care practitioner complaints being filed in 1997.

The Department of Health estimates that it will have a reduction of $33,000 in revenue relating to the shift from an annual to a biennial registration of health care service pools.

The Department of Health indicates that there are 569 first year post-graduate training slots out of a total of 2,694 post-graduate training slots allocated in the various residency programs throughout the state. If ten percent of the persons in available first year residency training slots took the examination without applying for medical licensure each year, the department estimates a loss of revenue of approximately $23,370 (57 applicants @ $410 application fee).

The Department of Health estimates that during the biennial period 1997-1999 it will review approximately 14 new nursing programs and assess each program $1,000 and collect a total of $14,000 to recover its review costs.

The Department of Health estimates that it will receive 25 retired volunteer nurse applications during the biennial period 1997-1999 and collect a total of $625.

To the extent the bill increases the Board of Pharmacy from 7 to 9 members the Department of Health estimates the costs will be approximately $20,000 for additional travel and mailing expenses over the biennial period 1997-1999.

To the extent the bill increases the Council of Occupational Therapy from 3 to 5 members the Department of Health estimates the costs will be approximately $1,000 for additional travel and mailing expenses over the biennial period 1997-1999.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 154 of the bill creates a felony offense for any person to commit various prohibited acts relating to the practice of clinical laboratory personnel, the violation of which subjects the person to a third degree felony punishable by the imposition of imprisonment for up to 5 years and a fine up to $5,000. Section 155 of the bill creates a felony offense for any person to commit various prohibited acts relating to the practice of medical physicists, the violation of which subjects the person to a third degree felony punishable by the imposition of imprisonment for up to 5 years and a fine up to $5,000. Section 921.001, F.S., provides that any legislation that creates a felony offense, enhances a misdemeanor offense to a felony or reclassifies an existing felony offense to a greater felony classification result in a net zero sum impact in the overall prison population as determined by the Criminal Justice Estimating Conference, unless the legislation contains a sufficient funding source to accommodate the change, or the Legislature abrogates the application of s. 921.001, F.S. To the extent the bill creates a felony offense for certain acts relating to the practice of clinical laboratory personnel and the practice of medical physicists, it may have a fiscal impact based on its impact on the overall prison population as determined by the Criminal Justice Estimating Conference under procedures established in s. 216.136(5), F.S.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
SB/CS 1814

The Committee substitute revises the regulatory provisions relating to various health professions:

1. Authorizes osteopathic resident physicians to prescribe controlled substances under specified conditions in the normal course of their employment within a hospital.

2. Revises the responsibilities of pharmacy consultants and supervisory requirements for pharmacy technicians; authorizes the formulary committee to include in the formulary of drugs used by pharmacists, when they order and dispense drugs to the public, any over-the-counter proprietary drug under federal law that has been approved for reimbursement by the Florida Medicaid Program and topical anti-infectives. The bill authorizes pharmacies to transfer prescriptions electronically and adds Butorphanol tartrate to the list of controlled substances in Schedule IV of chapter 893, Florida Statutes.

3. Revises an exemption to the licensing requirements for nursing home administrators for administrators of facilities operated by and for persons who rely exclusively upon spiritual means through prayer, to delete references to the operation of the facility by the church or religious denomination.

4. Revises the conditions of appointment to the Board of Physical Therapy and no longer increases the number of board members.

5. Deletes provisions creating a public records exemption for a circuit court petition filed by the department alleging the inability of a chiropractor, speech-language pathologist or audiologist, or clinical laboratory personnel to perform their duties with a reasonable degree of skill and safety.

Committee on Ways and Means

Staff Director _____

(FILE TWO COPIES WITH THE SECRETARY OF THE SENATE)

9.c. House of Representatives Committee on Health Care Standards & Regulatory Reform Final Bill Research & Economic Impact Statement, Bill HB 2013 (Formerly PCB HCR 97-02), Relating to Regulation of Health Care Professions/Medical Quality Assurance (Florida Archives, Series 19, Carton 2938).

FLORIDA DEPARTMENT of STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

I, Judith Ring, Division Director, Division of Library and Information Services, Florida Department of State, hereby certify the records of the State Legislature were transferred to the custody of the Florida State Archives pursuant to the provisions of Chapter 257, Florida Statutes, and that I am, by the terms of that transfer, the official custodian of the records.

I further certify that the attached is a true and correct copy of the record in the State Archives of Florida, the original of which may be found in Series 19, carton 2938

***WITNESS MY SIGNATURE**, this 13th Day of January, 2014.*

***JUDITH RING**, Director*
Division of Library and Information Services

BY: _____
State Archives of Florida

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STORAGE NAME: h2013z.l
DATE: June 30, 1997

AS PASSED BY THE LEGISLATURE
CHAPTER #: 97-264, Laws of Florida

HOUSE OF REPRESENTATIVES
COMMITTEE ON
HEALTH CARE STANDARDS & REGULATORY REFORM
FINAL BILL RESEARCH & ECONOMIC IMPACT STATEMENT

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BILL #: HB 2013 (Formerly PCB HCR 97-02)

RELATING TO: Regulation of Health Care Professions/Medical Quality Assurance

SPONSOR(S): Committee on Health Care Standards & Regulatory Reform and Representatives Jones, Lippman, Maygarden, Minton, Saunders, Wasserman Schultz, and Diaz de la Portilla

STATUTE(S) AFFECTED: Sections 20.43, 232.02, 240.4067, 316.193, 320.0848, 327.35, 381.81, 390.011, 394.455, 395.0191, 402.48, 408.035, 409.905, 409.9122, 415.102, 415.1034, 415.504, 440.102, 440.106, 440.13, 440.134, 440.15, 455.206, 455.225, 445.2285, 455.236, 456.31, 456.32, 457.102, 457.105, 457.107, 457.108, 457.1085, 457.109, 457.116, 458.303, 458.305, 458.307, 458.311, 458.3115, 458.3124, 458.313, 458.317, 458.319, 458.320, 458.326, 458.331, 458.3312, 458.345, 458.346, 458.347, 458.3485, 458.351, 459.003, 459.006,459.0075, 459.0085, 459.015, 459.021, 459.022, 459.025, 460.403, 460.413, 460.4165, 461.003, 461.013, 461.018, 462.01, 464.003, 464.004, 464.008, 464.009, 464.012, 464.014, 464.018, 464.019, 464.0205, 464.022, 465.003, 465.004, 465.0125, 465.014, 465.0156, 465.016, 465.0196, 465.026, 465.186, 465.035, 466.003, 466.006, 466.017, 466.028, 468.1115, 468.1125, 468.1155, 465.1185, 468.1195, 468.1201, 468.1215, 468.1245, 468.1295, 468.1296, 468.1695, 468.203, 468.205, 468.209, 468.211, 468.213, 468.225, 468.301, 468.302, 468.351, 468.352, 468.354, 468.355, 468.356, 468.357, 468.358, 468.359, 468.36, 468.361, 468.362, 468.363, 468.364, 468.365, 468.366, 468.368, 468.505, 476.044, 477.0135, 478.42, 478.45, 478.46, 478.47, 478.52, 480.033, 480.034, 480.035, 480.041, 480.0415, 480.042, 480.0425, 480.043, 480.044, 480.047, 480.0485, 483.291, 483.800, 483.801, 483.803, 483.809, 483.812, 483.813, 483.823, 483.825, 483.828, 483.901, 484.041, 484.042, 484.051, 486.021, 486.023, 486.031, 486.041, 486.051, 486.081, 486.102, 486.103, 486.104, 486.123, and 486.125, 490.003, 490.005, 490.0051, 490.008, 490.009, 490.012, 490.014, 491.003, 491.0045, 491.0046, 491.005, 491.057, 491.007, 491.009, 491.012, 491.014, 491.0149, 499.012, 621.03, 627.351, 627.357, 627.6482, 641.495, 725.01, 766.01, 766.101, 766.103, 766.105, 766.110, 766.111, 817.563, 831.31, 856.015, 893.02, 893.03, 893.08, 893.13, 945.047, F.S.

COMPANION BILL(S): CS/CS/SB 1814(s), HB 53(c), CS/CS/HBs 297 & 325(c), CS/HB 329(c), CS/HB 605(c), HB 609(c), CS/HB 1047(c), HB 1229(c), HB 1357(c), CS/HB 1387(c), CS/HB 1445(c), HB 1463(c), HB 1527(c), CS/HB 1593(c), HB 1681(c), HB 1925(c), HB 1993(c), SB 100(c), SB 144(c), CS/SB 490(c), CS/SB 508(c), CS/SB 598(c), SB 660(c), CS/SB 948(c),SB 1358(c), SB 1372(c), SB 1524(c), SB 1590(c), SB 1784(c), CS/SB 1792(c), SB 1998(c), CS/SB 2066(c), CS/CS/SB 2142(c), SB 2204(c), SB 2448(c)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) HEALTH CARE STANDARDS & REGULATORY REFORM YEAS 8 NAYS 0
(2) SENATE HEALTH CARE (W/D)
(3) SENATE GOVERNMENTAL REFORM & OVERSIGHT (W/D)
(4) SENATE WAYS & MEANS (W/D)

I. SUMMARY:

The bill amends various sections of law relating to health care practitioner licensure and discipline. It has a fiscal impact on the state, and none on local government. Substantial costs will be borne by the licensees.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Section 20.165, F.S. created the Department of Business and Professional Regulation (DBPR) and its divisions, including the Division of Medical Quality Assurance, with the various medical boards and professions. Chapter 92-33, Laws of Florida, transferred certain medical boards and professions from DBPR to the Agency for Health Care Administration (AHCA), Division of Health Quality Assurance, effective July 1, 1993. The July 1, 1993 date was delayed by the 1993 Legislature for one year until July 1, 1994. The actual transfer of most functions did not take place until October 1, 1995. Some of the functions, such as testing and license renewals, have still not been transferred.

Section 20.42, F.S., created the Agency for Health Care Administration (AHCA) and its divisions. The Division of Health Quality Assurance is responsible for health facility licensure and inspection and the medical boards and professions listed in s. 20.42(2), F.S. Naturopathy and medical physicists are not included. Medical physicists (chapter 483, part V) were originally regulated by the Legislature in 1995, and naturopathy was not included due to an oversight, as chapter 462, F.S. does not permit the state to license additional licensees under this chapter. Presently, there are approximately 13 active licensees.

In 1996, CS/HB 555 (ch. 96-403, Laws of Florida), created the Department of Health and transferred a number of functions to the new agency. Among those functions transferred were the medical boards in the Division of Medical Quality Assurance of AHCA and four professions from the DBPR (massage therapy, athletic trainers, hearing aid specialists, and health care service pools). A type two transfer of these four professions becomes effective July 1, 1997. Effective that date, there will be 36 professions in the Division of Medical Quality Assurance of the Department of Health (DOH). The law transferring the medical boards from AHCA provided that DOH would contract with AHCA to perform the function of receiving complaints and conducting investigations and prosecutions.

No provision was made in chapter 455, F.S., for the administration of the various boards by DOH. Chapter 455, F.S., provides administrative authority to either DBPR or AHCA for most functions; however it will be necessary to amend chapter 455, F.S., to clarify and grant the necessary authority to DOH.

Section 381.81(2), F.S., of the Minority Health Improvement Act provides the definition of "health profession". Each of the medical professions is included in the definition, with the exception of naturopathy and medical physicist.

"Health care practitioner" is defined in s. 455.01(4), F.S. Each of the medical professions is included in the definition, with the exception of health care service pools (ch. 402), midwifery (ch. 467, F.S.), nursing home administrator (ch. 468, part II, F.S.), athletic trainer (ch. 468, part XIV), massage therapy (ch. 480), clinical laboratory personnel (ch. 483, part I and IV, F.S.), and medical physicist (ch. 483, part V, F.S.).

<u>GENERAL DBPR/AHCA/DOH ADMINISTRATION</u> - Chapter 455, Florida Statutes

Section 455.02, F.S., provides for licensees that are spouses of members of the armed forces in good standing with the boards listed in s. 20.165, F.S., to be exempt from licensure renewal. Presently, only non-medical boards are listed. Due to the transfer, all

medical boards are listed in s. 20.42, F.S. All committees appointed by any board must be comprised of serving board members except as otherwise provided in this chapter (s. 455.207, F.S.) or the applicable practice act.

Section 455.214, F.S., provides that the recipient of a limited license may practice only in the employ of public institutions or agencies which meet the requirements of s. 501(c)(3) of the Internal Revenue Code and which provides professional liability coverage for acts of omission of the limited licensee. The services are to be provided to the indigent, underserved, or critical need populations of the state. To receive a limited license, an applicant must be retired from the applicable profession.

It is not clear that ss. 455.219 and 455.2281, F.S., relating to finances, long-range planning, disposition of funds and unlicensed activity fees, applies to both medical and non-medical boards.

The department and each appropriate board within the Division of Medical Quality Assurance have the authority to establish procedures to handle, counsel, and provide other services to licensees with hepatitis B or AIDS within their respective boards (s. 455.2224, F.S.). There is no specific recommendation to be followed by the boards in developing such procedures.

Section 455.24, F.S., provides guidelines for the advertisement by a health care provider of free or discounted services. It allows the public 72 hours to request a refund or refuse payment for any additional services provided as a result of accepting free or discounted services. It lists the covered health care providers but does not list all of the professions. It applies to written advertisements and does not cover audio or video advertisements.

Section 455.25, F.S., provides for disclosure of a financial interest by a health care provider prior to referral of a patient to such entity. Prior to referral, a health care provider must furnish the patient a written disclosure form providing certain information. An entity may not provide services to a referred patient unless it obtains the signature of the patient on a written disclosure form providing specified information.

Section 456.32, F.S., lists the definitions of "healing arts" and "practitioner of the healing arts" as the practice of, or a person licensed to practice a number of the health care professions, respectively. Not all of the medical professions are presently included.

NOTE: For the majority of the professions discussed in this research form, the Department of Business and Professional Regulation is referenced as the department having administrative jurisdiction over the professions.

HEALTH CARE SERVICE POOLS - Chapter 402, Florida Statutes
(Section 3)

Section 402.48, F.S. requires Health Care Service Pools to register with the state annually.

ACUPUNCTURE - Chapter 457, Florida Statutes
(Sections 6-13)

Section 457.103, F.S., establishes the Board of Acupuncture and prescribes membership appointment and terms.

Qualifications are specified for acupuncture licensure, as well as associated administrative fees. Continuing education requirements for licensure renewal are specified. Procedures are outlined for activating an inactive license.

The board is required to adopt rules relating to the prevention of infection and sterilization of needles and other equipment or materials used by acupuncturists that are capable of transmitting infection.

BOARD OF MEDICINE - Chapter 458, Florida Statutes
(Sections 14-28, Section 188, and Section 214)

Physicians are permitted to employ physician's trained assistants as long as they function under the direct supervision and control of the physician. Also included are services performed by a registered nurse or a licensed practical nurse.

The Board of Medicine is permitted to establish up to two probable cause panels consisting of two physicians and one lay member. One of the physicians may be a past board member who is not currently appointed to the board.

Foreign trained physicians are required to complete three years of residency training in one specialty area. Fellowship training cannot currently be used to meet this requirement. Physicians who have failed the licensure examination five times after October 1, 1986 are no longer eligible for licensure in Florida.

Section 458.3115, F.S., allows a certain group of foreign-licensed physicians who received prior approval by the board to take the USMLE examination or a state-developed examination in order to obtain a license, if otherwise qualified.

Physicians licensed in another state who apply for a license in Florida are required to take and pass the licensure examination again if it has been ten years or more since the exam was taken. "Active practice of medicine" is not currently defined by statute. A physician applying for licensure by endorsement must document having "actively" practiced medicine in another jurisdiction two out of the past four years, or show completion of board-approved postgraduate training within the year they apply for a licensure.

Section 458.317, F.S., requires physicians applying for a "limited license" to be retired. Those physicians applying for a limited license who receive no monetary compensation for their services do not have to pay any fees to obtain their limited license.

Physicians renewing their licenses are required to show that they have actively practiced medicine or have been on the teaching faculty of an accredited medical school within the past four years.

Physicians practicing exclusively with the Federal or state government are exempted from financial responsibility requirements. Physicians who do not carry malpractice insurance are required to post a sign in their reception area to that effect or provide a written statement to each patient.

Section 458.331, F.S., makes it a violation if a physician fails to keep written records justifying the course of treatment for a patient. It does not require the physician to list their name in the records, nor does it speak to the legibility of written records.

Subsection 458.331(cc), F.S., authorizes the use of a Schedule II Amphetamine or a Schedule II Sympathomimetic Amine drug or any compound therof for the treatment of narcolepsy, hyperkinesis, or behavioral syndrome in children, but not adults. Subsection 458.331(ii), F.S., makes it a violation for a physician or an osteopathic physician not to report a person licensed under chapter 458 and 459, F.S., whom they know has violated the grounds for disciplinary action set out in law.

Confusion currently exists regarding who can hold themself out as a board-certified medical specialist, and under what circumstances.

Hospitals are required to submit a list of resident physicians, assistant resident physicians, house physicians, interns, or fellows employed by the facility to the department on January 1 and July 1 of each year. The law is silent as to who is responsible for submitting such lists.

The Public Sector Physician Advisory Committee to the Board of Medicine is required to meet on a quarterly basis.

All applicants seeking physician assistant certification are required to pass an examination given by the National Commission on Certification of Physician Assistants.

Section 458.3485, F.S., specifies the duties a medical assistant may perform under the supervision of a licensed physician.

There is no specific statutory authority for the Board of Medicine to establish practice guidelines for physicians to safely prescribe drugs to treat obesity.

Many foreign-trained physicians, because of their age, are having difficulty being accepted into post-graduate or residency training programs. The number of post-graduate training positions are limited and generally go to younger and more recent graduates of medical schools.

OSTEOPATHIC MEDICINE - Chapter 459, Florida Statutes
(Sections 29-34 and Section 189)

The law requires hospitals to submit a list of resident osteopathic physicians, assistant osteopathic resident physicians, house osteopathic physicians, interns, or fellows employed by the facility to the department on January 1 and July 1 of each year, although the law is silent as to who is responsible for submitting these lists.

Current law requires osteopathic physicians applying for a limited license to be retired. Those licensees applying for a limited license who receive no monetary compensation for their services do not have to pay any fees to obtain the limited license.

Current statute refer to an osteopathic physician as a doctor of osteopathy. Section 459.0085, F.S., exempts osteopathic physicians practicing exclusively with the Federal or state government from financial responsibility requirements. It requires osteopathic physicians who do not carry malpractice insurance to post a sign in the reception area or provide a written statement to each patient.

Presently, it is a violation if the physician fails to keep written medical records justifying the course of treatment for the patient. The law does not require the licensee to list their name in the records, nor does it speak to the legibility of the written records. It authorizes the use of a Schedule II Amphetamine or a Schedule Sympathomimetic Amine drug or any compound therof for the treatment of narcolepsy, hyperkinesis, and behavioral syndrome in children, but not adults. It makes it a violation for an osteopathic physician not to report a person licensed under chapter 458 or 459, F.S., whom they know has violated the grounds for disciplinary action set out in the law.

Additionally, there is confusion about who can hold himself out as a board-certified specialist, and under what circumstances.

Section 459.022, F.S., address physician assistants. It sets performance standards for both the supervising physician and the physician assistant. It creates a Council on Physician Assistants within the Agency for Health Care Administration.

There is no specific statutory authority for the Board of Osteopathic Medicine to establish practice guidelines for physicians to safely prescribe drugs used to treat obesity.

CHIROPRACTIC - Chapter 460, F.S.
(Sections 60-72 and Section 190)

Section 460.413(1)(bb), F.S., specifies that a chiropractor may be disciplined for reducing or offering to reduce, or discounting or offering to discount to an insured, any payment to the chiropractor by the third- party payer of the insured for services or treatment at a greater or inflated fee or charge greater than the usual fee the licensee charges for that service or treatment when rendered without third-party reimbursement.

Section 460.413, F.S., currently does not compel a licensed chiropractor to submit to a mental or physical examination if they, or the probable cause panel of the board, have probable cause to believe that the licensee is unable to practice competently due to physical or mental impairment or substance abuse. The board has a limited set of disciplinary options set forth in statute. The board may currently design a rehabilitation plan for a disciplined licensee with no regard to sanctions which would protect the public or compensate the patient. It is unclear in the law what burden of proof the department must carry when revoking or suspending a license as opposed to other penalties. The department presently does not have the authority to enjoin in circuit court a chiropractor who is unable to practice with reasonable skill and safety.

Section 460.4165, F.S., requires chiropractic physician assistants to pay $100 annually to be authorized to practice under a licensee's supervision. A certified assistant may be supervised by a single physician or by a group of physicians.

Thee are no provisions in s. 409.9122, F.S., for chiropractors to be reimbursed for treatments rendered to MediPass recipients without the authorization of their primary care provider.

PODIATRIC MEDICINE - Chapter 461, Florida Statutes
(Sections 73-75 and Section 190)

Section 461.018, F.S., addresses limited scope of practice for certain podiatrists. Confusion exists as to whether or not these individuals should be called podiatrists.

There are no provisions in s. 409.9122, F.S., for podiatrists to be reimbursed for treatments rendered to MediPass recipients without the authorization of their primary care provider.

NURSES - Chapter 464, Florida Statutes
(Sections 76-86)

Currently, there are specified actions for which disciplinary action can be taken by the board. The law does not designate a conviction or a nolo contendere plea as grounds for discipline.

Section 464.019, F.S., requires institutions desiring to conduct approved professional or practical nursing programs to comply with applicable Board of Nursing rules. No fee is charged for program reviews.

No provision exists for retired nurses who wish to volunteer their services in underserved areas or to critical need populations.

Certain conditions exist under which individuals providing nursing services in Florida are exempted from licensure requirements. There is currently no provision for out-of-state nurses to accompany and care for patients temporarily residing in the state for periods of 30 days or less.

PHARMACY - Chapter 465, Florida Statutes
(Sections 87-95 and Section 192)

The Board of Pharmacy consists of seven members appointed by the Governor and confirmed by the Senate. Five of the members must be licensed pharmacists who have been engaged in the practice for at least 4 years, and the remaining two must be residents of the state who have never been licensed as pharmacists and are in no way connected to the practice of pharmacy.

Chapter 465, F.S., does not have a definition for the term "not present and on duty" as it pertains to the practice of pharmacy.

A consultant pharmacist or a pharmacist who holds the Pharm.D. degree are not authorized to order and evaluate laboratory or clinical tests for persons under the care of a licensed home health agency.

Certain reporting requirements for nonresident pharmacies are not consistent with reporting requirements for other pharmacies licensed by the Florida Board of Pharmacy.

Section 465.016, F. S., sets forth disciplinary provisions for the practice of pharmacy, including conditions that the board may impose on pharmacists under probation.

Section 465.026, F.S., specifies the circumstances under which prescriptions may be transferred from one pharmacy to another.

The dispensing of a Schedule II controlled substance pursuant to the transmission of a facsimile of the original prescription is prohibited.

A formulary committee is authorized which has the responsibility of approving medicinal drugs that a pharmacist may order and dispense to the public. Categories of drugs are set forth which the committee may include.

Section 465.014, F.S., limits to two the maximum number of pharmacy technicians that a pharmacist may supervise. A pharmacy technician is not presently authorized to receive refill authorizations from a doctor.

DENTISTRY - Chapter 466, Florida Statutes
(Sections 107-110)

Section 466.006, F.S., contains language specifying application procedures for foreign trained dentists to sit for a manual skills exam and, upon passage, to sit for the state examination. The exam is no longer administered as of December 31, 1991. Current language specifies that a licensed dentist who has been utilizing general anesthesia on a regular and routine basis in a competent and effective manner for a ten-year period preceding January 1, 1980, shall be deemed to have fulfilled the training requirements required for general anesthesia. A licensed dentist who has been utilizing parenteral conscious sedation on an outpatient basis regularly and routinely in a competent and effective manner for the three-year period preceding January 1, 1980, shall be deemed to have fulfilled the training requirements necessary for parenteral conscious sedation.

SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY - Chapter 468, Florida Statutes (Part I) (Sections 111-120)

Section 468.1115, F.S., which specifies those individuals who are exempt from licensure requirements, does not specify that a licensed speech-language pathologist or audiologist may supervise non-licensed persons to perform hearing screens in the school setting. It also does not specify that persons certified under chapter 231, F.S., must be certified in speech-language impairment or hearing impairment to be permitted to supervise non-certified or non-licensed persons to conduct hearing screens in the school setting. As a result, licensees are reluctant to train non-licensed persons (primarily volunteers) to provide hearing screens in schools, and persons who are certified only as teachers (e.g., coaches) are training non-licensed persons to conduct screens. No exemption exists to allow non-licensed personnel in hospitals to conduct infant hearing screens. The topic of infant hearing screening has long been a topic of interest in Florida. Children's Medical Service (CMS) has sponsored a "high-risk" program for over a decade by providing funding for programs in conjunction with Early Intervention Programs. More recently, interest has grown in establishing standards of infant screening for well babies. The performance of infant hearing screens by non-licensed personnel requires training on how to establish a relatively controlled acoustic environment to be sure responses are reliable and how to place the probe in an infant's ear canal when facing the variety of problems which can be encountered in the newborn ear canal. Section 468.1115, F.S., does not contain an exemption from licensure for individuals who are licensed as speech-language pathologists or audiologists in other states and who meet certain other requirements to practice under limited circumstances in this state.

The chapter does not contain language clearly stating who must obtain a provisional license and at which point an individual must obtain the license. Current language specifies that to be certified as eligible for provisional licensure the applicant must submit the application form and application fee. Current statute also contains inconsistent

language referring to supervised clinical practice and clock hours. There are no provisions allowing an individual licensed in one of the two professions to become licensed in the other. Current requirements are that the individual obtain two masters degrees in communication disorders, duplicating much of the same course work. Current language also contains the term "clinical practice", which is not consistent with language containing the term "clinical clock hour" referred to in other sections of the statute.

Current licensure by endorsement provisions recognize only valid licenses or certificates held in another state. There is no recognition of licenses or certificates held in a territory of the United States.

At this time, the Board of Speech-Language Pathology/Audiology is not granted the authority to establish standards for continuing education activities and providers. Authority is limited to establishment of requirements for the number of hours for licensure renewal. No licensee is exempt from continuing education requirements for licensure renewal unless the board grants a hardship case. Newly licensed practitioners are required to meet the same continuing education requirements as all other licensees unless they request a hardship consideration.

Current law does not require that all appropriate fees for certification be remitted before the board can certify an applicant. Additionally, the statute does not specifically grant authority to the board to establish on-the-job training and supervision requirements for certification of assistants.

Licensees who fit or sell hearing aids are required to provide the purchasee with a contract.

NURSING HOME ADMINISTRATOR - Chapter 468, Florida Statutes (Part II)
(Sections 1, 121, and 122)

Currently, the agency must give the nursing home administrator examination at least four times per year.

OCCUPATIONAL THERAPY - Chapter 468, Florida Statutes (Part III)
(Sections 123-128)

The current definition of "occupational therapy" does not conform to the definition as provided by the American Occupational Therapy Association (AOTA). The definition of "occupational therapy aide" has no provision for supervision by an occupational therapy assistant. The current regulatory model for the provision of occupational therapy is the council model rather than the board model.

The Occupational Therapy Council, under the Board of Medicine, is comprised of three members, all of which are occupational therapists.

Occupational therapy programs are currently accredited by the AMA in collaboration with the American Occupational Therapy Association. The law does not presently coincide with the national deadline date or requirements which allow an occupational therapy assistant to become an occupational therapist without having met the educational requirements.

Currently, the law only allows for one temporary permit per applicant for both avenues of licensure. Additionally, there is nothing specified in the law to allow a temporary permit for applicants enrolled in a full-time advanced master's occupational therapy education program. At this time, if an applicant seeks reentry into the profession of occupational therapy, they are not required to show any hours of continuing education in their profession.

There is no limitation on the number of times a person can take the occupational therapist/assistant examination.

Present law lists the American Occupational Therapy Association as the national certifying body. If an applicant applies by endorsement, the statute currently requires proof of current licensure in another state, the District of Columbia, or a territory of the United States.

Current exemptions allow for the exemption from licensure of persons when working under the direct supervision of an occupational therapist. The law does not clarify that a physician, speech-language pathologist, or audiologist is not prohibited from using occupational therapy as a part of or as incidental to their profession.

RESPIRATORY THERAPY - Chapter 468, F.S. (Part V)
(Sections 129-143)

The terms "certification", "registration", and "licensure" are used interchangeably. Respiratory care personnel are required to be supervised by either respiratory therapists, licensed technologists, supervisors, or directors, or a respiratory care practitioner who has at least three years of experience in this modality.

The listed accrediting entity is the Committee on Allied Health Education and Accreditation of the American Medical Association. The law specifies that approval of educational programs is conducted through the Committee on Allied Health Education.

Provisions are not made for collecting fees up front. Section 468.357(3), F.S., requires grandfathered licensees who were licensed pursuant to s. 468.357(3)(a), F.S., to complete at least 20 contact hours of continuing education each year of the biennium. Other licensees in the profession are required to complete at least 20 contact hours of continuing education each year of the biennium. Section 468.357(3)(b), F.S., allows an avenue for licensure until December 31, 1988 for persons who were working in the State of Florida on or after the effective date of this act and prior to October 1, 1987.

Continuing education hours are not to exceed 24 hours biennially.

The disciplinary section does not specify grounds for disciplinary action if a licensee enters a plea of nolo contendere regardless of adjudication to a crime in any jurisdiction which relates to respiratory care services.

DIETETICS/NUTRITION PRACTICE (Chapter 468, Part X)
(Section 191)

There has been no study authorized by the Legislature of the need for exemptions from licensure under s. 468.505(1) (k), F.S., relating to the provision of dietetic and nutrition services.

ELECTROLYSIS - Chapter 478, Florida Statutes
(Sections 144-148)

Currently, an applicant must be a high school graduate, a resident of Florida, complete a program of study not to exceed 120 hours, and pass a written exam for licensure. Persons applying under a "grandfather provision" have until August 15, 1995, to become licensed. The national examination designated in statute is the Electrology Association examination.

The board executive director is authorized to determine if an applicant is qualified for licensure and to issue a temporary permit. An applicant is allowed to become licensed by endorsement without taking the exam. There are no provisions for operating an unlicensed facility.

BOARD OF MASSAGE - Chapter 480, Florida Statutes
(Sections 149-159)

Section 480.034, F.S., exempts from licensure requirements individuals who provide treatments for the purpose of cleansing and beautifying the skin or in conjunction with a weight loss program, including herbal wraps, body scrubs, paraffin wax treatments, and seaweed wraps.

The term "Board of Massage" is used as the regulatory body for the profession.

Provisions are made for provisional licensure and the conditions under which they may be issued.

As a condition of licensure renewal, completion of 12 continuing educaiton classroom hours must be completed.

Presently, a massage establishment license may be transferred from one person, corporation name, or location to another without any requirements.

Section 480.0485, F.S. prohibits an individual from holding themself out as a massage therapist unless duly licensed.

CLINICAL LABORATORY PERSONNEL/CLINICAL LABORATORIES - Chapter 483, Florida Statutes (Part I and IV) (Sections 162-170)

Section 483.800, F.S., contains legislative intent language recognizing the benefits of hospital-based training of personnel in the laboratory and at alternate sites.

Certain laboratory and clinical laboratory personnel are exempted from licensure. There is no exemption for advanced registered nurse practitioners to perform provider performed microscopy procedures. In a recent change, Federal legislation, CLIA '88

provides for an exemption for advanced registered nurse practitioners to perform PPM procedures.

There is currently no definition for a clinical laboratory examination or a public health laboratory scientist. Also, there are no specific qualifications for public health scientists.

Section 483.813, F.S., provides for a six-month temporary license, but does not provide for a conditional license.

The board is allowed to prescribe minimal qualifications for clinical laboratory personnel and requires a license to be issued to anyone meeting those qualifications.

Section 483.825, F.S., specifies grounds for disciplinary action for clinical laboratory personnel.

MEDICAL PHYSICIST - Chapter 483, Florida Statutes (Part V)
(Section 171)

Section 483.901, F.S., creates the Florida Medical Physicists Act. It provides for an advisory council and defines relevant terms. Licensure criteria are established and penalties for practice act violations are specified. A licensure exception is established.

HEARING AID SPECIALIST - Chapter 484, Florida Statutes
(Sections 172-174)

Persons fitting and selling hearing aids are required to provide the purchaser with a receipt containing the seller's signature, address of regular practice, license number, and other identifying identification. Itemization of prices is also required. The DBPR is designated as the entity with which to file a complaint.

PHYSICAL THERAPY - Chapter 486, Florida Statutes
(Sections 175-185)

Currently, physical therapy graduates' educational preparation must be approved by the appropriate accrediting agency recognized by the Council on Postsecondary Accreditation or the U.S. Department of Education at the time of graduation, graduates musthave passed an examination administered by the department. Applicants can only be endorsed for licensure if they have taken and passed the national PES examination.

The Board is composed of seven members: five licensed physical therapists (one licensed physical therapist may be a teaching physical therapist at an educational institution in this state), one who may be a consumer member, and one may be a health care practitioner licensed under chapter 458 or 459, F.S., and have been engaged in practice for four years.

Currently, all examinations are administered by the department. Licensure applicants are required to apply to the board rather than the department. Applicants can only be endorsed for licensure if they have taken and passed the national PES examination. Persons who took and passed the registry examination prior to 1971 are not eligible for licensure by endorsement.

Current statute limits the administrative fine to $1,000.

PSYCHOLOGY AND SCHOOL PSYCHOLOGY - Chapter 490, F.S.
(Sections 193-200 and Sections 212-213)

Chapter 490, F.S., provides for the regulation of psychologists and school psychologists by the Board of Psychology within the Agency for Health Care Administration (AHCA). The chapter provides definitions for the practice of psychology and school psychology. Any person who wishes to become a licensed psychologist must complete a doctoral-level program in a psychology program accredited by a programmatic agency recognized and approved by the United States Department of Education, complete an equivalent doctoral-level program from a school outside the United States which is officially recognized by the government of the country in which it is located, or, prior to July 1, 1999, receive certification of an augmented doctoral-level psychological education from the program director of a doctoral-level psychology program recognized and approved by a programmatic agency recognized and approved by the United States Department of Education. Psychology licensure applicants must complete a post-doctoral supervised psychological residency. The chapter authorizes the board to approve continuing education courses and providers. It specifies grounds for which a licensed psychologist or school psychologist may be subject to discipline for professional misconduct. It specifies violations for which persons are subject to criminal penalties and provides exemptions to certain persons from the psychology licensing requirements. The chapter provides that communications between a licensed psychologist or school psychologist and his or her patient or client are confidential and that confidentiality may be waived under certain circumstances.

Chapter 456, F.S., allows the practice of hypnosis for therapeutic purposes by certain licensed practitioners of the healing arts. Section 456.32, F.S., defines practitioners of the healing arts to include any person licensed to practice medicine, surgery, psychiatry, dentistry, osteopathic medicine, chiropractic, naturopathy, podiatry, chiropody, or optometry.

CLINICAL SOCIAL WORK, MARRIAGE AND FAMILY THERAPY, AND MENTAL HEALTH COUNSELING - Chapter 491, F.S.
(Sections 201-211)

Chapter 491, F.S., provides for the regulation and definitions of practice of psychotherapists by the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling within AHCA. It provides grounds for which a licensed psychotherapist may be subject to discipline for professional misconduct. The chapter specifies violations for which persons are subject to criminal penalties and provides exemptions to certain persons from the licensing requirements for psychotherapists. It provides that communications between a licensed psychotherapist and his or her patient or client are confidential and that confidentiality may be waived under certain circumstances.

Chapter 491, F.S., specifies educational requirements for the licensure of psychotherapists. The chapter requires persons to complete a post-master's or postgraduate supervised clinical experience for licensure. Marriage and family therapy or mental health counseling licensure applicants must have a master's degree in the field and must complete all course work requirements before commencing the post-masters clinical experience. The Council for the Accreditation of Counseling and Related Educational Programs (CACREP), an accrediting body, has established educational and competency standards for educational institutions offering counseling-related programs.

The board has the authority to determine, by adopting an administrative rule, the examinations required for licensure.

Chapter 456, F.S., allows the practice of hypnosis for therapeutic purposes by certain licensed practitioners of the healing arts. Section 456.32, F.S., defines practitioners of the healing arts to include any person licensed to practice medicine, surgery, psychiatry, dentistry, osteopathic medicine, chiropractic, naturopathy, podiatry, chiropody, or optometry.

DRUG, COSMETIC, AND HOUSEHOLD PRODUCTS - Chapter 499, F.S.

Section 499.012, F.S., sets forth the requirements that must be met by wholesale distributors of prescription drugs in order to be permitted. No exemptions are specified for exemption from the required permit.

B. EFFECT OF PROPOSED CHANGES:

The bill:

- Conforms those practice acts not currently in compliance with NAFTA residency requirements;
- Clarifies that Florida's endorsement licensure provisions are available to individuals holding valid, active status licenses in U.S. Territories, not just areas within the U.S.;
- Makes a number of revisions to the Acupuncture Practice Act:
- Allows non-board members to serve on medical committees;
- Allows physicians who have taken the national exam more than ten years ago to become licensed by endorsement without re-examination, with specific board approval;
- Permits postgraduate physicians who do not plan to seek licensure in Florida to take the licensure exam without having to apply for a Florida license;
- Reduces postgraduate medical training requirements for foreign-trained physicians from three to two years;
- Requires physicians to maintain legible medical records;
- Requires physicians to report, within 30 working days from the date they become aware, serious adverse incidents which occur in their offices;
- Allows hospital resident physicians, assistant resident physicians, house physicians, interns, or fellows to prescribe medicinal drugs, with approval;
- Requires HMO's to designate Florida licensed medical directors;
- Requires physician assistants to report practice act violations;

- Provides for the use of retired volunteer nurses in emergency situations;
- Allows nurses to accompany and attend to patients temporarily residing in Florida without having to obtain a Florida license;
- Imposes the same reporting requirements on out-of-state pharmacies as those imposed on in-state pharmacies;
- Allows controlled substance prescriptions to be faxed;
- Makes the Occupational Therapy Council an independent board, and increases its membership from 5 to 7;
- Makes a number of technical revisions to the Massage Therapy Practice Act;
- Establishes a "public health laboratory scientist" category of licensure under the Board of Clinical Laboratory Personnel;
- Makes a number of technical revisions to the Medical Physicists Practice Act;
- Strengthens boards' ability to discipline impaired practitioners who are unable to practice with reasonable skill and competence due to mental or physical conditions, illness, drunkenness, use of drugs, narcotics, and chemicals;
- Facilitates computer based testing;
- Strengthens boards' ability to discipline practitioners who violate practice act provisions; and
- Makes several technical changes to clarify that the Department of Health has administrative jurisdiction over the Medical Quality Assurance boards, councils, and professions.

C. APPLICATION OF PRINCIPLES:

1. <u>Less Government:</u>

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

The bill streamlines various regulatory procedures, makes a number of changes to strengthen the boards' ability to discipline practice act violators, reduces/eliminates unnecessary regulation, and makes several technical revisions to correct statutory references and eliminate unnecessary licensure requirements.

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

N/A

b. Does the bill require or authorize an increase in any fees?

N/A

c. Does the bill reduce total taxes, both rates and revenues?

N/A

d. Does the bill reduce total fees, both rates and revenues?

N/A

e. Does the bill authorize any fee or tax increase by any local government?

N/A

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

N/A

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 468.1645(2), F.S., to clarify an exemption from licensure for nursing home administrators who operate facilities that rely exclusively upon treatment by spiritual means through prayer. Specifies that such treatment must be in accordance with the creed or tenets of any organized church or religious denomination.

Section 2. Amends s. 458.3115(1) (c), F.S., to allow foreign-licensed physicians who can document they took and successfully completed the Stanley H. Kaplan refresher course in 1992 that was approved by the board and supervised by the University of Miami to sit for the USMLE or the state developed examination. (Previously, only those foreign-licensed physicians who had been prior approved by the board to take the course were included in the provisions of this section). Adds 132 foreign-trained physicians to the number that can take the state-developed examination patterned by the previously used FLEX examination.

Section 3. Amends s. 402.48(1) (a), (4), and (8) (g) , F.S., to require bi-annual rather than annual registration for health care service pools.

Section 4. Amends s. 455.225(2), (4), and (9), F.S., 1996 Supplement, to revise various disciplinary procedures relating to health care regulation to speed up the resolution of complaints and increase opportunities for complainants to participate in the disciplinary process.

Section 5. Amends s. 455.2285(8) and (9), F.S., and redesignates them as s. 455.2285(9) and (10), F.S., and creates s. 455.2285(8), F.S., to require that the annual report relating to health care practitioner discipline to describe efforts to

reduce or otherwise close any disciplinary cases that have not been referred to the Division of Administrative Hearings or otherwise completed within one year after the disciplinary complaint was filed.

Section 6. Amends s. 457.102, F.S., to change the term "certified" for acupuncturists to "licensed".

Section 7. Amends s. 457.103(1), F.S., changing "certified" to "licensed".

Section 8. Amends s. 457.105, F.S., changing "certified" to "licensed" and requiring applicants to have completed 60 college credits from an accredited postsecondary institution prior to enrolling in a required three-year acupuncture course of study up until July 31, 2001. After that time, the course of study increases to a four-year course. Specifies courses to be taken. Eliminates a two-year tutorial program. Reduces fee caps for examination from $1,000 to $500. Reduces the application fee cap from $750 to $300. Reduces the re-examination fee cap from $1,000 to $500. Reduces the initial biennial licensure fee cap from $2,000 to $400 if licensed in the first half of the biennium and further reduces the cap to $200 if licensed in the second half of the biennium.

Section 9. Amends s. 457.107, F.S., to delete references to "certificate" and replace with "license". Reduces the renewal fee cap from $1,000 to $700.

Section 10. Amends s. 457.108, F.S., to delete references to "certificate" and replace with "license".

Section 11. Amends s. 457.1085, F.S., requiring, beginning October 1, 1997, acupuncture needles to be sterile and disposable, and to clarify that the disposable needles can be used once. Eliminates existing requirement that acupuncture needles can be used more than once, provided they are thoroughly cleansed with an antiseptic solution and hot water prior to sterilization by autoclave. Eliminates the option to use disposable needles.

Section 12. Amends s. 457.109, F.S. to eliminate reference to the tutorial program.

Section 13. Amends s. 457.116, F.S., to reference "licenses" and eliminate "certificates". Clarifies that obtaining a license by fraudulent means is unlawful, and to clarify that licensees who violate provisions of the practice act are considered to have committed a misdemeanor of the second degree.

Section 14. Amends s. 458.303(2), F.S., to remove "physician trained assistants" from licensure exemptions. Physicians will no longer be permitted to employ and use such persons to provide medical services to patients.

Section 15. (Technical) Amends s. 458.305(2), F.S., to reference the Department of Health as the department having administrative jurisdiction over the Board of Medicine.

Section 16. Amends s. 458.307(2) and (5), F.S., to delete the language relating to probable cause panels from chapter 458, F.S. New language is proposed to address this issue in chapter 455, F.S., that will apply to all boards.

Section 17. (Technical) Amends s. 455.206, F.S., to correct a statutory reference.

Section 18. Amends s. 458.311(1)(f) and (2), F.S., 1996 Supplement, to reduce the number of years of residency training that foreign trained physicians must have from three years to two years. Fellowship training can be used to meet this requirement, provided that the training can be counted toward regular or subspecialty certification by a board recognized and certified by the ABMS. Permits the board, as prescribed by board rule, to require an applicant who does not pass the licensure examination after five attempts to complete additional remedial education training within two years and then take the examination. Post-graduate students who are participating in an allocated slot may apply to take Step III of the USMLE without applying for licensure under certain conditions.

Section 19. Amends s. 458.313, F.S., 1996 Supplement, to delete the requirement that individuals applying for licensure by endorsement must take the exam over if it has been more than ten years since they took it. Physicians licensed in Florida are not required to take the exam over after ten years provided they keep renewing their licenses. Permits physicians applying for a license who have not practiced two years out of the past four to take a board approved clinical competency examination, or show completion of board approved postgraduate training. Defines the "active practice of medicine". Deletes the requirement that the board may require applicants to take an oral exam when applying for a license. Allows the board to require applicants by endorsement who do not pass the licensure examination after five attempts to complete up to two years of remedial education and training before taking it again. Certain physicians having null and void licenses due to failure to practice in Florida for one year within the first three years after licensure may reactivate under certain conditions.

Section 20. Amends s. 458.317(1)(a) and (b), F.S., to delete the requirement that persons applying for a limited license must be retired. Requires any person who receives a waiver of fees for a limited license to pay such fees if they later receive compensation for their services.

Section 21. Amends s. 458.319(1), F.S., to require physicians who apply to renew their licenses to have practiced two out of the past four years or pass a board approved clinical competency examination.

Section 22. Amends s. 458.320(5)(a) and (g), F.S., 1996 Supplement, to clarify that physicians who practice exclusively with the Federal or state government are exempt from certain financial responsibility requirements. It requires physicians who go "bare" to notify their patients to that effect by posting a sign in the reception area and give each patient a statement to sign and place in their file.

Section 23. Amends s. 458.331(1)(m), (cc), and (ii), F.S., 1996 Supplement, to require physicians to keep legible written records as defined by department rule, in conjunction with the boards, that identifies the physician and/or the physician extender and supervising physician by name and credentials who is responsible for the records. It permits the use of a Schedule II Amphetamine or a Schedule II Sympathomimetic Amine drug or any compound for the treatment of narcolepsy, hyperkinesis, and behavioral syndrome in adults as well as children. It requires physician assistants to report licensees under chapters 458 and 459, F.S., who are in violation of the law.

Section 24. Creates s. 458.3312, F.S., to clarify who may hold themself out as a board certified medical specialist. They must receive formal recognition as a specialist from a specialty board of the American Board of Medical Specialties.

Section 25. Amends s. 458.345, F.S., to require the chief executive officer of each hospital to inform the Executive Director of the Board of Medicine of the name, title, and address of the person who is responsible for submitting such reports. It allows a hospital resident physician, assistant resident physician, intern, or fellow to prescribe medicinal drugs, provided the person is so authorized by the hospital, is engaged in an accredited training program, prescribes only in the normal course of employment, holds a prescriber number issued by the hospital and the prescription involved has that number printed theron, has adequate internal control code numbers, and provided third-party procedures can accommodate the required numbering system.

Section 26. Amends s. 458.346(2), F.S., to allow the Public Sector Advisory Committee to meet at least once a year or upon the call of the committee chair.

Section 27. Amends s. 458.347, F.S., 1996 Supplement, to allow the council to recommend those P.A. programs that hold full accreditation or provisional accreditation from the Commission on Accreditation of Allied Health Programs. Requires an applicant who does not hold a current certificate issued by the National Commission on Certification of Physician Assistants (NCCPA) and has not practiced within the preceding fours to retake and pass the NCCPA examination to be eligible for certification.

Section 28. Amends s. 458.3485(1) and (2), F.S., to clarify that medical assistants are required to be directly supervised by licensed physicians.

Section 29. (Technical) Amends s. 459.003(2) and (5), F.S., to reference the Department of Health as the department with administrative jurisdiction over the Board of Osteopathic Medicine.

Section 30. Amends s. 459.021(1), (3), and (5)(b) and adds s. 459.021(8) and (9), F.S., to require the hospital chief executive officer to provide the board executive director with the name, title, and address of the person responsible for submitting the information required in this section.

Section 31. Amends s. 459.0075(1), F.S., to delete the requirement that osteopathic physicians applying for a limited license must be retired. Requires any person who receives a waiver of fees for a limited license to pay such fees if they receive compensation for their services.

Section 32. Amends s. 459.0085(5)(a) and (g), F.S., 1996 Supplement, to clarify that osteopathic physicians who practice exclusively with Federal or state government are exempt from certain financial responsibility requirements. It requires those physicians who go "bare" to notify their patients to that effect by posting a sign in the reception area and give each patient a statement to sign and place in their file.

Section 33. Amends s. 459.015(1)(o), (gg), and (11), F.S., 1996 Supplement, to require osteopathic physicians to keep legible written records as defined by department rule, in conjunction with the board, that identifies the physician and/or the physician extender and supervising physician by name and credentials who is

responsible for the records. It permits the use of a Schedule II amphetamine or a Schedule II sympathomimetic amine drug or any compound thereof for the treatment of narcolepsy, hyperkinesis and behavioral syndrome in adults as well as children. It requires physician assistants to report licensees under chapters 458 and 459, F.S., who are in violation of the law. Makes it grounds for disciplinary action to advertise or hold oneself out as a board-certified specialist in violation of this chapter.

Section 34. Creates s. 459.0152, F.S.,to clarify that osteopathic physicians who hold themselves out as specialists must have successfully completed certification requirements, rather than postdoctoral training.

Section 35. Amends s. 459.022, F.S., 1996 Supplement, to allow the council to recommend P.A. programs that hold full or provisional accreditation from the Commission on Accreditation of Allied Health Programs or its successor organization. Requires that an applicant who does not hold a current certificate issued by the National Commission on Certification of Physician Assistants (NCCPA) and has not practiced within the preceding four years must retake and pass the NCCPA examination to be eligible for certification.

Sections 36-66. Amends ss. 240.4067, 390.011, 408.035, 409.905, 415.1034, 415.504, 440.106, 440.13, 440.134, 440.15, 456.31, 459.006, 462.01, 468.301, 468.302, 476.044, 477.0135, 483.291, 621.03, 627.351, 627.357, 627.6482, 725.01, 766.101, 766.103, 766.105, 766.110, 817.234, and 945.047, F.S., to change references to "osteopathy", "osteopathic medicine", "doctor of osteopathy", or "osteopath" to "osteopathic physician".

Section 67. Amends s. 460.403(1), F.S., to reference the Department of Health as the department having administrative jurisdiction over the Board of Chiropractic.

Section 68. Repeals s. 460.413(1) (bb) and (cc), F.S., 1996 Supplement, relating to a ground for which a chiropractor may be disciplined for reducing or offering to reduce, discounting or offering to discount an insured any payment to the chiropractor by the third-party payer of the insured for services rendered under the insured's policy; also relating to a ground for which a chiropractor may be disciplined for submitting to any third-party payer a claim for a service or treatment at a greater or inflated fee or charge greater than the usual fee the licensee charges for that service or treatment when rendered without third-party reimbursement. Amends s. 460.413(1) (q) and (gg), and adds subsections (6) and (7), F.S., to provide the Board of Chiropractic and the department with the authority to compel a chiropractic physician to undergo a mental or physical examination when there is probable cause to believe that a practitioner cannot safely practice chiropractic. Currently, if the department receives a complaint that a chiropractor is unable to safely practice, it can only obtain extrinsic evidence of the problem, primarily interviews with witnesses. Because of confidentiality constraints, the department is often without the authority to obtain the evidence (patient records from drug abuse treatment or psychological records) necessary to establish by clear and convincing evidence that a practitioner cannot safely practice. Amends s. 460.413(2)(g-k), F.S., to add additional disciplinary penalties. The board does not have the authority to impose these additional conditions of discipline, such as imposition of the costs of the investigation and prosecution, requiring the chiropractor to undergo remedial education, issuance of a letter of concern, requiring corrective action, or requiring a refund of fees billed to and collected from the patient or a third party. This limits the

flexibility of the board to resolve cases brought for disciplinary action and to craft a penalty which suits the violation. This language also clarifies that the board must first consider the protection of the public or compensation to the patient before it considers requirements to rehabilitate the chiropractor. It clarifies that the disciplined chiropractor must bear the expenses of meeting the obligation of a disciplinary order. Many judges at the Division of Administrative Hearings believe that the department must establish all violations by clear and convincing evidence. Generally, the higher the burden of proof, the more lengthy and complex the prosecution, almost always resulting in higher costs. This measure would require a burden of proof by the greater weight of evidence in those cases for which revocation or suspension is not being sought. This will help hold down costs in less serious cases. This language provides the department with authority to enjoin licensees from engaging in unsafe practice. This would be an adjunct to the department's power to enforce an emergency suspension order or final order. Without this authority, the department has no recourse for licensees who refuse to obey the board's orders. All the proposed language in s. 460.413, F.S., and 460.4138, F.S., has for years been in other practice acts (medical doctors, osteopaths, nurses). The language has proven to be valuable for those professions in protecting the public from impaired and malpracticing practitioners. It will allow the board to tailor more specifically the penalty so that it fits the violation. The department will be able to enjoin in circuit court any person who refuses to obey an order of the board to cease practicing.

Sections 69-71. (Technical) For the purpose of incorporating the amendment to s. 460.413, F.S., 1996 Supplement, s. 320.0848, 455.236, and 766.11, F.S., is reenacted.

Section 72. Amends s. 460.4165(8) (a), F.S., to require an initial rather than an annual application, accompanied by a fee of $100. Thereafter, the chiropractor does not have to renew and may hire a new or different assistant (duly licensed) without paying an additional fee. This supervisory right will be granted to an individual chiropractor only, not to a group practice.

Section 73. Amends s. 461.003(1), F.S., to reference the Department of Health as the department having jurisdiction over the Board of Podiatric Medicine.

Section 74. (Technical) Amends s. 461.013, F.S., 1996 Supplement, relating to podiatry-correct statutory references.

Section 75. Amends s. 461.018, F.S., 1996 Supplement, to clarify that individuals licensed pursuant to this section are licensed podiatrists with certain restrictions.

Section 76. Amends s. 464.003(1) (c) and (3), F.S., 1996 Supplement, to reference the Department of Health as the department having administrative jurisdiction over the Board of Nursing.

Sections 77-82. Are technical and change "agency" to "department" wherever such term appears in chapter 464, F.S.

Section 83. Amends s. 464.018(1)(a), (c), (j), (k), (l), and (m) and (2)(a), F.S., 1996 Supplement, to specify that being convicted or entering a plea of nolo contendere, regardless of adjudication, to a crime in any jurisdiction which directly relates to the practice of nursing is grounds for disciplinary action.

Section 84. Amends s. 464.019(1), (3), and (4), F.S., 1996 Supplement, to authorize the board to set a $1,000 fee cap to cover expenses related to reviewing nursing school programs.

Section 85. Creates s. 464.0205, F.S., to establish provisions for a retired practical or registered nurse certificate. Applicants would be retired nurses intending to volunteer their services in public agencies or institutions or in nonprofit agencies or institutions in areas of critical nursing need or underserved areas. Establishes procedures for the submission and approval or denial of the application. Establishes practice settings. Establishes practice parameters. Requires a $25 application fee to cover the cost of administering the program.

Section 86. Amends s. 464.022(12), F.S., to create an exception to allow qualified nurses from another state whose employment requires they accompany an out-of-state patient to Florida to perform nursing services for that patient. The nurse can practice for a maximum of 30 consecutive days. It establishes requirements for pre-travel notification and pre-travel arrangements should the patient require placement into an in-patient setting.

Section 87. (Technical) Amends s. 465.003(4) and (10), F.S., to reference the Department of Health as the department having administrative jurisdiction over the Board of Pharmacy.

Provides that a pharmacy is considered closed whenever a licensed pharmacist is not present and on duty, but does not prevent a pharmacist from exiting the prescription department for the purposes of consulting or responding to inquiries or providing assistance to patients or customers, attending to personal hygiene needs, or performing other duties consistent with the provisions of pharmacy services.

Section 88. Amends s. 465.004(1) and (2), F.S., to increase board membership from five to seven; specifying that to the extent practicable, board membership should represent the various pharmacy settings. A previous requirement that one member be on the full-time faculty of a pharmacy school in this state was deleted and now provides that the member may be a pharmacist licensed in Florida, irrespective of practice setting.

Section 89. Amends s. 465.0125, F.S., to authorize a consultant pharmacist or a pharmacist who holds the Pharm.D. degree to order and evaluate any laboratory or clinical test for persons under the care of a licensed home health agency. The pharmacist must complete at least 3 hours of board-approved continuing education relating to laboratory and clinical testing in order to perform these functions. The board is granted rulemaking authority to implement this section.

Section 90. Amends s. 465.0156(1), F.S., to parallel reporting requirements (changes in ownership, management, location, and staffing) for nonresident pharmacies (out-of-state) to the reporting requirements for community pharmacies (in-state).

Section 91. Amends s. 465.016(1) (o) and (2) (e), F.S., to correct statutory references.

Adds the phrase "but not limited to" to the conditions listed that the board may impose on a pharmacist's probation. Broadens the board's options regarding probationary conditions.

Section 92. (Technical) Amends s. 465.0196, F.S., to make technical numbering changes to conform to changes in s. 465.003(10).

Section 93. Amends s. 465.026, F.S., to clearly allow for the transfer of prescriptions from one pharmacy to another by electronic means. Prescription transfer allows a patient to move their prescriptions to a different pharmacy.

Section 94. Amends s. 465.035, F.S., to conform the statute to the Federal controlled substance code, providing for the facsimile transmission of certain Schedule II prescriptions (intravenous analgesics and prescriptions for Long Term Care Facility residents).

Section 95. Amends s. 465.186(1), F.S., to add two categories to the types of medications available for pharmacist prescribing. The formulary selection committee could consider over-the-counter drugs eligible for Medicaid reimbursement and topical anti-invectives not for the ear or eye.

Section 96. Amends s. 893.03(4), F.S., to add paragraph (iii), to include Butorphanol Tartarate as a controlled substance within Schedule IV.

Sections 97-106 (Technical) For the purpose of incorporating the amendment to s. 893.03, F.S., 1996 Supplement: ss. 316.193, 327.35, 440.102, 458.326, 817.563, 831.31, 856.015, 893.08, and 893.13, F.S., are reenacted in part.

Section 107. (Technical) Amends s. 466.003(7), F.S., to reference the Department of Health as the department having jurisdiction over the Board of Dentistry.

Section 108. Amends s. 466.006(3), F.S., to strike language that directs foreign trained dentists to apply for the manual skills exam. The last administration of this examination was December 31, 1991. To leave this language in the statutes confuses the foreign trained dentists when they are considering their options for licensure in Florida. Also, the bill strikes language allowing the grandfathering of a dentist who has utilized general anesthesia in a competent and effective manner for the ten year period preceding January 1, 1980, and a dentist utilizing parenteral conscious sedation for the three-year period preceding January 1, 1980. No one has utilized this pathway to obtain a permit in the last three years. Strikes language that specifies application requirements for foreign trained dentists for an examination that is no longer administered (December 31, 1991). Clarifies application procedures.

Section 109. Amends s. 466.017, F.S., to strike the grandfather clause language allowing licensed dentists who have utilized both general anesthesia and parenteral conscious sedation prior to a certain date to receive a permit to administer.

Section 110. Amends s. 466.028(1) (r) and (hh), F.S., to clarify that prescribing, procuring, ordering, dispensing, administering, supplying, selling, or giving a Schedule II amphetamine or a Schedule II sympathomimetic amine drug, or any compound thereof, is grounds for disciplinary action.

Section 111. Amends s. 468.1115(2), F.S., to exempt persons certified in the areas of speech-language impairment or hearing impairment under chapter 231, F.S., or any person under their direct supervision or under the supervision of a person licensed under this chapter when performing screenings in a school setting for pre-kindergarten through grade 12. Also exempted are persons licensed in another state as speech-language pathologists or audiologists who provide services within the applicable scope of practice for no more than 5 calendar days per month or 15 calendar days per year under direct supervision of a Florida licensee. Persons from a state that does not license speech-language pathologists or audiologists may also qualify for this exemption if they hold a certificate of clinical competence from the American Speech-Language and Hearing Association and meet all other requirements. Non-licensed persons working in a hospital setting who provide newborn infant hearing screenings are exempt if training, interpretation of screenings, and protocols are provided by a licensed audiologist. It is anticipated that the number of licensed speech-language pathologists and audiologists who will properly train volunteers to conduct school hearing screenings will increase. Furthermore, the number of screenings performed improperly and the number of school children who are not properly diagnosed with hearing impairments will decrease. It is also anticipated that the proposed change to allow persons licensed as speech-language pathologists or audiologists in other states to practice under certain limited situations in the State of Florida will provide consumers with additional resources when they are seeking specialized services that may not be available among the current licensed population.

Section 112. (Technical) Amends s. 468.1125(5), F.S., to reference the Department of Health as the department having administrative jurisdiction over the Board of Speech-Language Pathology and Audiology.

Section 113. Amends s. 468.1155, F.S., to eliminate confusion about who must obtain provisional licensure and at what point it must be obtained. The proposed legislation should result in a significant increase in the numbers of individuals within the state who hold licensure in both the professions of speech-language pathology and audiology.

Section 114. Amends s. 468.1185(2) (a) and (3), F.S., to allow endorsement candidates who hold a valid license from a territory of the United States to apply for licensure. This might result in the licensure by endorsement avenue being available to qualified individuals who have been licensed or certified to practice one of the professions regulated by this practice act in a territory of the United States.

Section 115. Amends s. 468.1195, F.S., to allow the board to establish minimum standards with which continuing education providers and the programs offered to licensees must comply. The proposal to exempt newly licensed practitioners from meeting continuing education requirements for their first license renewal will remove a hardship for the licensee and will remove from the board the necessity to grant hardships on a case-by-case basis. It should reduce the amount of time and paperwork currently required for an individual to demonstrate hardship. Biennial continuing education hours are limited to 60 hours.

Section 116. Creates s. 468.1201, F.S., to require all applicants for licensure or certification as speech-language pathologists, audiologists, or assistants to complete an education course on acquired immune deficiency syndrome and human

immunodeficiency virus. It is anticipated that the education which will be required may be obtained from currently approved continuing education providers and that the education will focus on risk factors and preventive measures specifically associated with the types of invasive procedures used in these practices. Although it creates an additional requirement for licensure, the provisions of a grace period in which to complete the requirement should minimize the hardship an individual may face in finding the appropriate course. It is not anticipated that there will be a shortage of available approved courses.

Section 117. Amends s. 468.1215(2), (3), and (4), F.S., to clarify that all fees must be remitted before an applicant for certification can be certified by the board. The proposal would also grant the board clear authority to establish requirements for on-the-job training and supervision of assistants, to insure all assistants are receiving consistent training and supervision.

Section 118. Amends s. 468.1245(2), F.S., to require licensees who fit or sell hearing aids to provide the purchaser with a receipt, rather than a contract.

Section 119. Amends s. 468.1295, F.S., to enable the board to more diligently protect the public's health, safety and welfare by adding additional categories of violations for which disciplinary action can be taken by the board.

Section 120. Creates s. 468.1296, F.S., to prohibit sexual misconduct by a licensee or certificateholder upon a patient or client. This will provide additional consumer protection by facilitating prosecution of violators.

Defines the phrase "sexual misconduct".

Section 121. (Technical) Amends s. 468.1655(2), F.S., to reference the Department of Health as the department having administrative jurisdiction over the Board of Nursing Home Administrators.

Section 122. Amends s. 468.1695(1), F.S., to give the department the flexibility to administer less than four, but at least two examinations per year, based upon an analysis of need.

Section 123. Amends s. 468.203(2), (4), and (5), F.S., to conform the definition of occupational therapy with the definition as provided by the American Occupational Therapy Association (AOTA). Requires aides to be under direct supervision by either a therapist or assistant at all times. Provides for more employment opportunities for OT aides. Creates a Board of Occupational Therapy.

Section 124. Amends s. 468.205, F.S., to establish the Board of Occupational Therapy and specify that it will comprise of 7 members with staggered terms.

Section 125. Amends s. 468.209 F.S., to clarify that the accrediting organization is the American Occupational Therapy Association's Accreditation Council on Occupational Therapy Education, or its successor.

Section 126. Amends s. 468.211(6), F.S., to require additional education or training courses before taking the exam on the fourth attempt.

Section 127. Amends s. 468.213, F.S., to list the National Board for Certification in Occupational Therapy (NBCOT) as the national certifying body, and corrects an error in the statute. Provides another avenue for licensure by endorsement.

Section 128. Amends s. 468.225, F.S., basically technical since this section is being addressed elsewhere in the legislative package under definitions, s. 468.203(6), which also clarifies the role of the occupational therapy aide. Amends s. 468.225(2), F.S., adding a physician assistant, speech-language pathologist or audiologist to the exemptions section. The revision is necessary because their scope of practice and required areas of expertise overlap. The national terms were being confused with the term of licensure and the appropriate changes clarify these terms. Eliminates the requirement that licensees be supervised by licensed clinical laboratory personnel while performing blood gas analysis and specimen collection. The original language was initially placed in the practice due to the grandfathering of individuals for licensure. The grandfathering provision ended on December 31, 1988, therefore, this provision is no longer necessary. Additionally, the definition of "respiratory care services" in the practice act includes this modality and provides that it can be performed by either respiratory therapists or respiratory care practitioners. There is a technical change to amend the name of the accrediting entity of respiratory care training programs. Conforms the name of the accrediting entity and allows for programs to be approved by other accrediting agencies recognized by the U.S. Office of Education. The council can collect all fees up front, allowing applicants to be licensed in a more expedient manner. Strikes obsolete language regarding number of times an examination should be given for grandfathered applicants, as the examination is currently given three times a year. Strikes the provision that grandfathered licensees must complete 20 hours of continuing education each year. Since they have been licensed and practicing since 1988, they should only be required to complete 24 hours of continuing education biannually as required of the other licensees. Obsolete language is stricken since the time frame has expired for "on-the-job" training applicants for licensure in Florida. Changing the requirement from the place of employment to their home address allows efficiency in tracking licensees since employment addresses change more frequently. The effect of the change in chapter 468.361, F.S. clarifies continuing education requirements, and with the repeal of chapter 468.362, F.S., language regarding continuing education is conformed into one statutory cite. The effect of amending language in the disciplinary section will be to specify that entering a plea of nolo contendere to, regardless of adjudication, a crime relating to respiratory care services constitutes grounds for disciplinary action.

Section 129. Amends s. 468.351, F.S., to clarify licensure terminology. The national terms are being confused with state terminology. The grandfathering provision ended on December 31, 1988; therefore, this provision is no longer necessary. Additionally, the definition of "respiratory care service" in the practice act includes performing blood gas analysis and specimen collection and provides that it can be performed by either respiratory therapists or respiratory care practitioners. Rules promulgated under chapter 483, F.S. which governs clinical laboratory personnel, are no longer applicable to licensees under this chapter.

Section 130. Amends s. 468.352(2), (8), and (9), F.S., to conform terminology.

Section 131. Amends s. 468.354(5) (a), F.S., to conform terminology and delete obsolete language.

Section 132. Amends s. 468.355, F.S., to change the name of the accrediting entity for respiratory care training programs and to conform terminology.

Section 133. Amends s. 468.356(1), F.S., to conform the name of the accrediting entity and to allow for programs to be approved by other accrediting agencies recognized by the U.S. Office of Education.

Section 134. Amends s. 468.357, F.S., to strike the provision that grandfathered licensees must complete 20 hours of continuing education each year. Since they have been licensed and practicing since 1988, they should only be required to complete 24 hours of continuing education biennally as required of the other licensees.

Section 135. (Technical) Amends s. 468.358, F.S., to conform terminology.

Section 136. (Technical) Amends s. 468.359(1), (2), and (5), F.S., to conform terminology.

Section 137. Amends s. 468.36, F.S., to allow for efficiency in tracking licensees at a home address in lieu of place of employment since employment can change more frequently.

Section 138. Amends s. 468.361, F.S., to clarify continuing educational requirements. With the repeal of 468.362., F.S., language regarding continuing education is conformed into one statute cite.

Section 139. (Technical) Amends s. 468.363, F.S., to conform terminology.

Section 140. (Technical) Amends s. 468.364(1), F.S., to delete redundant language and to conform terminology.

Section 141. Amends s. 468.365, F.S., to conform terminology. Amends language in the disciplinary section to specify that entering a plea of nolo contendere to, regardless of adjudication, a crime relating to respiratory services, constitutes grounds for disciplinary action.

Section 142. (Technical) Amends s. 468.366(1), F.S., to conform terminology.

Section 143. (Technical) Amends s. 468.368(8), F.S., to conform terminology.

Section 144. (Technical) Amends s. 478.42(3), F.S., to reference the Department of Health as the department having administrative jurisdiction over the Electrolysis Council.

Section 145. Amends s. 478.45, F.S., to delete the Florida residency requirement for licensure. Requiring residency in Florida for eligibility for licensure has proven to be unconstitutional pursuant to Mercer v. Hemmings, 194 So.2d 579 (Fla. 1966). Repeals the grandfather provision. Deletes specific reference to a particular national examination. This change is technical and will still allow the Board of Medicine to approve either a written exam developed by the department or a national examination. Amends s. 478.45(f), F.S., to clarify the number of times an examination may be given.

Section 146. Amends s. 478.46(1), F.S., to correct a statutory cite for applicants requesting a temporary permit if applying by endorsement, and adds the correct term "electrolysis".

Section 147. Amends. s.478.47, F.S., deleting contradictory language for the licensure by endorsement avenue and clarifies endorsement provisions for licensure.

Section 148. Amends s. 478.52(2) (d), and adds (1) (u), F.S.; since section 478.51, F.S., requires licensure of electrolysis facilities, operating any unlicensed facility can now be used as grounds for disciplinary action.

Section 149. Amends s. 480.033(1) and (2), F.S., to change the name of the Board of Massage to the Board of Massage Therapy. References the Department of Health as the department with administrative jurisdiction over the Board.

Section 150. Amends s. 480.034, F.S., to eliminate an existing exemption, which excludes from massage licensure individuals who provide treatments for the purpose of cleansing and beautifying the skin or in conjunction with a weight loss program, including herbal wraps, body scrubs, paraffin wax treatments, and seaweed wraps.

Section 151. Amends s. 480.035(1), F.S., to change the name of the Board of Massage to the Board of Massage Therapy.

Section 152. Amends s. 480.041, F.S., to delete the provisional license. This license was granted to applicants who otherwise met the requirements so they could practice under supervision while waiting to sit for the state licensure examination. The board now requires a national licensure examination.

Section 153. Amends s. 480.0415, F.S., to increase the cap for the number of continuing education classroom hours required for licensure renewal per biennium from 12 to 25.

Section 154. Amends s. 480.042(1), F.S. This language is deleted because the board no longer requires a laws and rules examination; it now requires a national licensure examination.

Section 155. (Technical) Repeals s. 480.0425, F.S., as the requirements involving inactive licensure are addressed in chapter 455, F.S., for all boards.

Section 156. Amends s. 480.043(7), F.S., to clarify that a license for a massage establishment may not be transferred from one owner to another. A license may be transferred from one location to another upon inspection and approval by the board and the payment of a fee not to exceed $125. A license may be transferred from one business name to another upon approval of the board and the payment of an application fee not to exceed $25.

Section 157. (Technical) Amends s. 480.044(1), F.S., to delete the fee for the application and provisional license.

Section 158. Amends s. 480.047(1) (a), F.S., to clarify that a person may not practice massage unless duly licensed or unless specifically exempted from licensure under this chapter.

Section 159. Creates s. 480.0485, F.S., to define and prohibit sexual misconduct in the practice of massage. This language will aid in disciplining violators.

Section 160. (Technical) Amends s. 20.43(3) (f), F.S., to delete obsolete language and make technical name and number changes.

Section 161. (Technical) Amends s. 381.81(2) (b), F.S., to correct a technical error.

Section 162. Amends s. 483.800, F.S., to specify that hospital-based training for laboratory and nonlaboratory personnel for testing is beneficial in hospital and commercial laboratories. Alternate sites are removed from this setting.

Section 163. Amends s. 483.801(3), F.S., to exempt Advanced Registered Nurse Practitioners performing PPMP (provider performed microscopy procedures) from licensure under chapter 483, Part IV. This would bring the statute in line with provisions found in federal legislation.

Section 164. Amends s. 483.803, F.S., to define a clinical laboratory examination. This term needs to be defined because when chapter 483, F.S., was divided in 1992, the definition of a clinical laboratory, which also defined the parameters of testing, remained with Part I. This definition helps to clearly define a laboratory. The definition of public health scientist delineates the parameters and the site of practice of individuals practicing in public health laboratories.

Section 165. (Technical) Amends s. 483.809(1) and (2), F.S., to clarify that the board certifies to the department those applicants who are eligible for licensure. Qualification language has been moved to s. 483.823, F.S.

Section 166. Amends s. 483.812, F.S., to establish an avenue for a site-specific license for individuals working in public health laboratories. Since certification examinations are required rather than state examinations, there should be little cost impact on implementation.

Section 167. Amends s. 483.813, F.S., to provide for the extension of the temporary license to one year. This would allow examination candidates to work through an examination cycle, which would relieve an economic burden carried by some applicants who apply early in an examination cycle. The conditional license is new to this statute and applies only to public health technicians.

Section 168. Amends s. 483.823, F.S., to specify that personnel qualifications may require appropriate education, training, or experience, or the passing of an appropriate examination. Clarifies that practitioners of the healing arts are not required to obtain licensure under this part or pay associated fees, except those required for clinical laboratory license.

Section 169. Amends s. 483.825, F.S., to require that disciplinary provisions apply to applicants, registrants and licensees. This is in keeping with other practice acts and corresponds to the types of individuals covered in this practice act. This establishes as grounds for discipline being unable to perform or report a clinical laboratory examination with reasonable skill and safety, delegating responsibilities to unqualified persons, and failing to report action taken against a license in another state, territory, or country.

Section 170. Creates s. 483.828, F.S., to provide for penalties.

Section 171. Amends s. 483.901, F.S., to make technical and substantive corrections to the practice act for medical physicists. Clarifies that the role of the council is advisory, not regulatory. Adds two consumer members to the board and changes the appointment term from three to four years. Clarifies that continuing education (CE) hours are to be completed biennially and allows the department, with the advice of the council, to set requirements by rule for CE for persons who hold more than one specialty license. Sets forth the requirements for licensure for applicants until October 1, 1997 and after October 1, 1997. Sets forth the grounds for disciplinary action and the penalties that may be assessed and the criminal sanctions for unlicensed activity. Deletes the exception from licensure for those medical physicists who have been practicing for five or more years as of July 1, 1995, which will have the effect of requiring all persons who practice medical physics to be licensed.

Section 172. (Technical) Amends s. 484.041(2), F.S., to reference the Department of Health as the department having administrative jurisdiction over the Board of Hearing Aid Specialists.

Section 173. (Technical) Amends s. 484.042(1) to correct statutory references.

Section 174. Amends s. 484.051(2), F.S., to require persons fitting and selling hearing aids to provide the purchaser with a receipt, rather than a contract, containing the seller's signature, address of regular practice, license number, and other identifying information. Designates the Department of Health as the entity with which to file a complaint.

Section 175. (Technical) Amends s. 486.021(2), F.S., to correct statutory references.

Section 176. Amends s. 486.023, F.S., to specify that the Physical Therapy Board be comprised of 5 licensed physical therapists who have been in practice at least 4 years prior to appointment. The two remaining members shall be residents of the state and never have been practitioners.

Section 177. Amends s. 486.031, F.S., to clarify the name of the accrediting authority. Adds passage of the American Registry Exam prior to 1971 which allows an avenue for licensure by endorsement for persons who are currently ineligible. Facilitates computer based testing by eliminating the requirement that exams be administered by the department.

Section 178. Amends s. 486.041, F.S., to clarify the name of the accrediting authority. Adds passage of the American Registry Exam prior to 1971, which allows an avenue for licensure by endorsement for persons who are currently ineligible. Facilitates computer based testing by eliminating the requirement that exams be administered by the department.

Section 179. Amends s. 486.051, F.S., to facilitate computer based testing by allowing the applicant to bypass the department when applying to take the required exam. Additionally, unnecessary applicant costs (related to direct application to the department) will be eliminated.

Section 180. Amends s. 486.081, F.S., to add passage of the American Registry Exam prior to 1971, which allows an avenue of licensure by endorsement for persons who are currently ineligible.

Section 181. Amends s. 486.102, F.S., to delete the requirement that accrediting bodies be approved by the Council on Postsecondary Accreditation, since this organization is no longer in existence. Facilitates computer based testing by eliminating the requirement that exams be administered by the department.

Section 182. Amends s. 486.103, F.S., to facilitate computer based testing for physical therapist assistants by eliminating language requiring the department to purchase exams.

Section 183. Amends s. 486.104, F.S., to facilitate computer based testing for physical therapist assistants by eliminating language requiring the department to provide for exams.

Section 184. Creates s. 486.123, F.S., to strengthen the board's ability to discipline individuals involved in sexual misconduct by specifying that such activities are violations of the practice act.

Section 185. Amends s. 486.125(2)(g), F.S., to allow the board to recover investigative and prosecution costs.

Section 186. Amends s. 641.495(11), F.S., 1996 Supplement, to require HMO's to designate a chapter 458, F.S., or chapter 459, F.S., licensed physician as a medical director as a condition of certification.

Section 187. Amends s. 499.012(3), F.S., to exempt persons engaging in the wholesale distribution of prescription drugs from having to possess a wholesale distributors permit under certain circumstances.

Section 188. Specifies that the Board of Medicine shall adopt rules to establish practice guidelines for physicians to safely prescribe phentemine, fenfluramine, and other drugs used to treat obesity.

Section 189. Specifies that the Board of Osteopathic Medicine shall adopt rules to establish practice guidelines for osteopathic physicians to safely prescribe phentermine, fenfluramine, and other drugs used to treat obesity.

Section 190. Redesignates s. 409.9122(6) through (11), F.S., 1996 Supplement, as s. 409.9122(7) through (12) and adds a new (6), F.S., to allow Medipass enrolled recipients to receive up to 10 visits of reimbursable services by participating Medicaid chiropractors and up to 4 visits of reimbursable services by participating Medicaid podiatrists. Any further visits must be by prior authorization by the MediPass primary care provider. Clarifies that the total number of visits or the total amount of dollars per year per enrollee cannot exceed current Medicaid rules unless specifically provided for in the General Appropriations Act.

Section 191. Amends s. 468.505(1) (k), F.S., to create a Task Force on Exemptions from Licensure to assess the need and make recommendations for retaining the

exemptions for licensure of dietitians and nutritionists. The Task Force is also to review the quality of dietetic and nutrition services provided in hospitals, nursing homes, and assisted livng facilities.

Sections 192. Amends s. 465.014, F.S., to increase the maximum number of pharmacy technicians that a pharmacist can supervise from two to three. The allowable duties of a pharmacy technician are expanded to allow a pharmacy technician to receive refill authorizations from a doctor.

Section 193. Amends s. 456.32(3), F.S., relating to the practice of hypnosis, to add psychology, clinical social work, marriage and family therapy, and mental health counseling to the definition of "practitioner of the healing arts," thus permitting these practitioners to use hypnosis for therapeutic purposes.

Section 194. Amends s. 490.003, F.S., relating to psychology, to provide a definition for a "provisional psychologist licensee" to mean a person provisionally licensed under the psychology practice act who may provide psychological services under supervision. Makes other minor technical and conforming changes.

Section 195. Amends s. 490.005(1)(b), F.S., to conform cross-references.

Section 196. Creates s. 490.0051, F. S., to authorize the Board of Psychology to issue a provisional license to any person who pays an application fee no greater than $250, has earned a doctoral degree from an accredited psychology program, and has met any other additional requirements that the board may specify by rule. A provisional licensee must work under the supervision of a licensed psychologist. The provisional license expires 24 months after issuance and may not be renewed or reissued.

Section 197. Repeals s. 490.008, F.S., 1996 Supplement, relating to inactive status, reactivation of license, and fees.

Section 198. Amends s. 490.009, F.S., 1996 Supplement, relating to psychology, to revise grounds for disciplinary action to include provisional licensee.

Section 199. Amends s. 490.012, F.S., relating to violations and penalties, to require a psychologist to publicly display his or her license and to eliminate a requirement for a licensed psychologist to use his or her license number in all professional advertisements. Provisional licensees must also display their licenses and must use the words "provisional psychologist licensee" on all promotional materials. Violations of the license display and advertising requirements are made subject to disciplinary action rather than being designated as misdemeanors of the first degree. Makes other minor technical changes.

Section 200. Amends s. 490.014, F.S., to clarify the applicability of exemption provisions. Exemptions do not apply to any person licensed under this chapter whose license has been suspended or revoked by the board or another jurisdiction. Also deletes an obsolete licensing exemption that required registration of certain trainees or interns.

Section 201. Amends s. 491.003, F.S., to provide more comprehensive definitions for the practice of clinical social work, marriage and family therapy, and mental health counseling.

Section 202. Creates s. 491.0045, F.S., to establish requirements for intern registration, effective January 1, 1998. At that time, any individual intending to practice in Florida to satisfy the postgraduate experience requirements must register as an intern in the profession for which he or she is seeking licensure prior to commencing the experience requirement.

Section 203. Creates s. 491.0046, F.S., to allow for a provisional licensee to practice clinical social work, marriage and family therapy, or mental health counseling under supervision while completing coursework or examination requirements.

Section 204. Amends s. 491.005, F.S., to outline additional coursework requirements for the applicant's graduate program.

Section 205. Effective January 1, 2001, amends s. 491.005(3) (b) and (4) (b) and (c), F.S., to provide that examination requirements for marriage and family therapy and mental health counseling by expanding the educational requirements for licensure shall conform to the requirements for counseling-related programs that are accredited by the Council for the Accreditation of Counseling and Related Educational Programs (CACREP).

Section 206. Creates s. 491.0057, F.S., to allow for dual licensure as a marriage and family therapist. The department will allow a licensed psychologist, clinical social worker, or mental health counselor who has held a valid, active license for at least three years to be eligible to be licensed as a marriage and family therapist if he or she has passed the examination.

Section 207. Amends s. 491.007(3), F.S., to provide for the biennial renewal of an intern registration.

Section 208. Amends s. 491.009, F.S., to add provisions for disciplinary actions to include provisional licensees and registered interns.

Section 209. Amends s. 491.012, F.S., to establish violations and penalties for the use of certain titles unless an individual holds a valid license or registration issued by the state.

Section 210. Amends s. 491.014, F.S., to delineate exemptions from licensure for individuals practicing within certain organizations, agencies, institutions, and programs, and who are licensed under various practice acts.

Section 211. Amends s. 491.0149, F.S., to require that an intern registered under this chapter conspicuously display the valid registration issued by the department at each location where he or she is completing the experience requirements.

Section 212. Amends s. 232.02(4) (b), F.S., to conform cross-references.

Section 213. Amends. S. 394.455(2), F.S., 1996 Supplement, to conform cross-references.

Section 214. Creates s. 458.3124, F.S., to establish circumstances under which certain experienced foreign-trained physicians can receive a restricted license and obtain the required residency experience. The first year of licensure must be under the direct supervision of a licensee approved by the board. The second year of licensure must be under indirect supervision, and must be in community service organizations that serve indigent populations, such as section 501(c)(3) agencies, public health units, prisons, or other organizations approved by the board. Limited licensees who successfully complete this residency and pass Step III of the USMLE are eligible for full licensure as a physician.

Section 215. Provides an effective date of July 1, 1997.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

   See Total Revenues and Expenditures

2. Recurring Effects:

   See Total Revenues and Expenditures

3. Long Run Effects Other Than Normal Growth:

   None.

4. Total Revenues and Expenditures:

Total Revenues and Expenditures:	Year 1	Year 2
Revenue:	$25,625	$7,375
Expenditures:	17,200	17,200
Nursing 464.019 New Nursing Program Review Fee 7 applications x $1,000	7,000	7,000
Nursing 464.0205 Certification of Retired Volunteer Nurses 25 applications x $25	625	625
Health Care Services Pool 402.48 Registration Extended to two years Reduction in Revenue for FY 1997-99 110 registrations x $400	33,000	
Expenditures:		
Occupational Therapy 468.205 Increase Board Members (3 to 5) OPS (2 Board Members)	1,000	1,000
Travel & Communication Exp.	8,000	8,000

Pharmacy 465.004 Increase Board Members (7 to 9)		
OPS (2 Board Members)	2,000	2,000
Travel and Communication Expenses	8,000	8,000

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A

D. FISCAL COMMENTS:

The Department of Health indicates that "the revisions to s. 455.225, F.S., will have a significant fiscal impact on the Agency for Health Care Administration, which will, by contract, provide consumer complaint, investigative, and prosecutorial services for the health care practitioner regulation program. The Agency's fiscal note was requested, but is not finalized as of this writing."

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

Bill History:

HB 2013

04/11/97 H Filed
04/14/97 H Introduced -HJ 00555
04/18/97 H Placed on Government Services Council Calendar -HJ 00662
04/23/97 H Read second time -HJ 00674; Amendment(s) adopted -HJ 00676
04/28/97 H Read third time -HJ 01083; Amendment(s) adopted -HJ 01085; Passed as amended; YEAS 112 NAYS 0 -HJ 01085
04/28/97 S In Messages
04/29/97 S Received, referred to Health Care; Governmental Reform and Oversight; Ways and Means -SJ 00953; Immediately withdrawn from Health Care; Governmental Reform and Oversight; Ways and Means -SJ 00831; Substituted for CS/CS/SB 1814 -SJ 00832; Read second time -SJ 00832; Amendment(s) adopted -SJ 00832, -SJ 00891
04/30/97 S Read third time -SJ 01029; Amendment adopted as further amended -SJ 01031; Passed as amended; YEAS 33 NAYS 0 -SJ 01031
04/30/97 H In returning messages
05/01/97 H Was taken up -HJ 01502; Amendment(s) to Senate amendment(s) adopted -HJ 01631; Concurred in Senate amendment(s) as amended -HJ 01631; Passed as amended; YEAS 114 NAYS 0 -HJ 01631
05/01/97 S In returning messages
05/02/97 S Was taken up -SJ 01515; Concurred -SJ 01580; Passed as amended; YEAS 35 NAYS 1 -SJ 01580
05/02/97 H Ordered engrossed, then enrolled -HJ 02189
05/14/97 Signed by Officers and presented to Governor
05/30/97 Became Law without Governor's Signature; Chapter No. 97-264; See also HB 53 (Ch. 97-3), CS/CS/HB 297 (Ch. 97-159), CS/HB 329 (Ch. 97-198), CS/HB 605 (Ch. 97-209)

SB 1814

03/04/97 S Filed
03/12/97 S Introduced, referred to Health Care; Governmental Reform and Oversight; Ways and Means -SJ 00183
03/28/97 S On Committee agenda-- Health Care, 04/01/97, 2:30 pm, Room-EL
04/01/97 S Comm. Action: CS by Health Care -SJ 00363; CS read first time on 04/03/97 -SJ 00378
04/03/97 S Now in Governmental Reform and Oversight -SJ 00363

04/10/97 S On Committee agenda-- Governmental Reform and Oversight, 04/14/97, 1:00 pm, Room-1C(309)
04/14/97 S Comm. Action: Favorable with 5 amendment(s) by Governmental Reform and Oversight -SJ 00500
04/15/97 S Now in Ways and Means -SJ 00500
04/18/97 S On Committee agenda-- Ways and Means, 04/23/97, 2:00 pm, Room-EL
04/23/97 S Comm. Action:-CS/CS by Ways and Means -SJ 00651; CS read first time on 04/25/97 -SJ 00654
04/25/97 S Placed on Calendar -SJ 00651
04/28/97 S Placed on Special Order Calendar -SJ 00709
04/29/97 S Placed on Special Order Calendar -SJ 00709, -SJ 00938; Read second time -SJ 00809; Amendment(s) adopted -SJ 00810, -SJ 00831; House Bill substituted -SJ 00832; Laid on Table, Iden./Sim./Compare Bill(s) passed, refer to HB 2013 (Ch. 97-264); See also HB 53 (Ch. 97-3), CS/CS/HB 297 (Ch. 97-159)

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The differences between the original PCB HCR 97-02 and HB 2013 are as follows:

Several sections of chapter 457, F.S., were amended to conform the Acupuncture Practice Act to North American Free Trade Alliance (NAFTA) residency requirements by eliminating the requirements that a person must be a U.S. citizen, a permanent resident of the U.S., or a legal alien who has resided in the U.S. for six months prior to qualifying to sit for the Acupuncture exam. Applicants are required to have completed 60 college credits from an accredited postsecondary institution prior to enrolling in a required three-year acupuncture course of study up until July 31, 2001. After July 31, 2002, the required three-year acupuncture course of study increases to a four-year course. Successful completion of courses in western anatomy, western physiology, western pathology, and western biomedical terminology is required. Individuals enrolled in an authorized course of study before August 1, 1997 are only required to complete a two-year course of study, and are not required to complete the 60-hour college credits prerequisite. The two-year tutorial program avenue for acupuncture licensure is eliminated, as well as the five-year experience avenue for licensure. Fee caps for examinations are reduced from $1,000 to $500, Application fee caps are reduced from $750 to $300, and re-examination fee caps are reduced from $1,000 to $500. The initial biennial licensure fee caps are reduced from $2,000 to $400 if licensed in the first half of the biennium and further reduces the cap to $200 if licensed in the second half of the biennium.

References to "certificate" were deleted and replaced with references to "license". The renewal fee cap was reduced from $1,000 to $700.

Beginning October 1, 1997, acupuncture needles will be required to be sterile and disposable, and can only be used once. The existing requirement that acupuncture needles can be used more than once, provided they are thoroughly cleansed with an antiseptic solution and hot water prior to sterilization by autoclave, was eliminated. The option to use disposable needles was eliminated.

A reference to the tutorial program was eliminated.

New references were created to reflect "licenses" and to eliminate references to "certificates"; to clarify that obtaining a license by fraudulent means is unlawful, and to clarify

that licensees who violate provisions of the practice act are considered to have committed a misdemeanor of the second degree.

Section 458.313, F.S., was amended to expand the definition of "active licensed practice of medicine" to include HMO medical directors who are practicing medicine.

Section 458.351, F.S., was amended to clarify that the only incidents which happen in their offices that physicians are required to report are: the death of a patient; severe brain or spinal damage to a patient; a surgical procedure being performed on the wrong patient; or a surgical procedure unrelated to the patient's diagnosis or medical needs

Section 458.353, F.S., which requires HMO's to designate a medical director licensed under chapters 458 or 459, F.S., was deleted.

The only incidents which happen in their offices that osteopathic physicians are required to report are: the death of a patient; severe brain or spinal damage to a patient; a surgical procedure being performed on the wrong patient; or a surgical procedure unrelated to the patient's diagnosis or medical needs.

Section 466.028, F.S., was amended to clarify that prescribing, procuring, ordering, dispensing, administering, supplying, selling, or giving a Schedule II amphetamine or a Schedule II sympathomimetic amine drug, or any compound therof, is grounds for disciplinary action.

Section 468.205, F.S., was amended to make the Occupational Therapy Council an independent board, and increasing its membership to seven. Membership and terms are specified.

The Board of Physical Therapy is to be comprised of 5 licensed physical therapists who have been in practice at least 4 years prior to appointment. The two remaining members shall be residents of the state and never have been practitioners.

Persons engaging in the wholesale distribution of prescription drugs are exempt from having to possess a wholesale distributors permit under certain conditions.

The Board of Medicine and The Board of Osteopathic Medicine shall adopt rules to establish practice guidelines for physicians and osteopathic physicians to safely prescribe phentermine, fenfluramine, and other drugs used to treat obesity.

MediPass enrolled recipients are allowed to receive up to 10 visits of reimbursable services by participating Medicaid chiropractors and up to 4 visits of reimbursable services by participating Medicaid podiatrists. Any further visits must be by prior authorization by the MediPass primary care provider. The total number of visits or the total amount of dollars per year per enrollee cannot exceed current Medicaid rules unless specifically provided for in the General Appropriations Act.

A Task Force on Exemptions from Licensure is created (amends s. 468.505(5) (k)) to assess the need and make recommendations for retaining the exemptions from licensure of dietitians and nutritionists. The Task Force is also to review the quality of dietetic and nutrition services provided in hospitals, nursing homes, and assisted living facilities.

The maximum number of pharmacy technicians that a pharmacist can supervise is increased from two to three. The allowable duties of a pharmacy technician are expanded to allow a pharmacy technician to receive refill authorizations from a doctor.

An exemption from licensure is provided (s. 468.1645, F.S.) for nursing home administrators who operate facilities that rely exclusively upon treatment by spiritual means through prayer. Such treatment must be in accordance with the creed or tenets of any organized church or religious denomination.

Language from was inserted which includes specified mental health professionals within the definition of "practitioner of the healing arts" for purposes of practicing therapeutic hypnosis. Provisional licensure requirements are established for psychologists licensed under chapter 490, F.S., and psychotherapists licensed under chapter 491, F.S.

Clinical social work, marriage and family therapy, and mental health counseling interns are required to register with the Department of Health. The requirements are established for certain licensed mental health practitioners to obtain licensure as a marriage and family therapist. Educational requirements are revised for licensure by examination for marriage and family therapy and mental health counseling to conform to the accreditation standards of the Council for the Accreditation of Counseling and Related Educational Programs, effective January 1, 2001. Provisional licensure and registration fees are established for practitioners.

Requirements are revised for marriage and family therapy and mental health counseling licensure applicants to allow any person who has completed a master's degree in the appropriate mental health field to start the clinical experience requirements while completing any additional course work required for licensure. The ability is provided for dual licensure as a marriage and family therapist.

A state-developed examination is required to be made available no later than Septembr 1, 1998, to foreign-licensed physicians qualifying for licensure under s. 458.3115, F.S.

Additional persons are authorized to take the department-developed examination authorized by s. 458.3115, F.S., if such persons can document that they took and successfully completed the Stanley H. Kaplan course that was supervised by the University of Miami. At a minimum, the documentation must include class attendance records and the test score on the final course examination.

Section 458.3124, F.S., is created to provide a substitute for the two-year residency program. Certain foreign-licensed physicians who legally practiced medicine for at least 5 years in a foreign country, and who have passed Steps I and II of the USMLE examination and meet certain other requirements, are authorized to apply to take Step III of the examination. The restricted licensee must practice under the direct supervision of a licensee approved by the Board of Medicine for the first year; for the second year, under indirect supervision in community service, including public health units, prisons, organizations that serve indigent populations, or other organizations approved by the Board. Upon passage of Step III of the USMLE examination and completion of the two years of supervised service, the restricted licensee is eligible for full licensure as a physician.

VII. SIGNATURES:

COMMITTEE ON HEALTH CARE STANDARDS & REGULATORY REFORM:

Prepared by:	Legislative Research Director:
Terri L. Paddon	Robert W. Coggins

FINAL RESEARCH PREPARED BY COMMITTEE ON HEALTH CARE STANDARDS & REGULATORY REFORM:

Prepared by:	Legislative Research Director:
Terri L. Paddon	Robert W. Coggins

Bob Cogeyan

May 16, 1997

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RECEIVED

MAY 19 1997

Health Care Standards & Regulatory Reform

DEPARTMENT OF HEALTH
BILL ANALYSIS, ECONOMIC &STATEMENT & FISCAL NOTE

BILL NO.: HB 2013 -- FINAL BILL ANALYSIS

RELATING TO: Regulation of Health Professions

SPONSOR(S): House Health Care Standards & Regulatory Reform

COORDINATED WITH: Board Office Executive Directors
Bureau Chiefs

STATUTE(S) AFFECTED: SS. 20.43, 232.02, 240.4067, 316.193, 320.0848, 327.35, 381.81, 390.011, 394.455, 395.0191, 402,48, 408.035, 409.905, 409.9122, 415.102, 415.1034, 415.504, 440.102, 440.106, 440.13, 440.134, 440.15, 455.206, 455.225, 455.2285, 455.236, 456.31, 456.32, 457.102, 457.103, 457.105, 457.107, 457.108, 457.1085, 457.109, 457.116, 458.303, 458.305, 458.307, 458.311, 458.3115, 458.3124, 458.313, 458.317, 458.319, 458.320, 458.326, 458.331, 458.3312, 458.345, 458.346, 458.347, 458.3485, 458.351, **[458.353]**, 459.003, 459.006, **[459.007]**, 459.0075, 459.0085, 459.015, 459.0152, 459.021, 459.022, 459.025, 460.403, 460.413, **[460.4138]**, 460.4165, 461.003, 461.013, 461.018, 462.01, 464.003, 464.004, 464.008, 464.009, 464.012, <u>464.013</u> 464.014, 464.018, 464.019, 464.0205, 464.022, 465.003, 465.004, 465.0125, 465.014, 465.0156, 465.016, 465.0196, 465.026, 465.186, 465.035, 466.003, 466.006, 466.017, 466.028, 468.1115, 468.1125, 468.1155, 468.1185, 468.1195, 468.1201, 468.1215, 468.1245, 468.1295, 468.1296, 468.1645, 468.1655, 468.1695, 468.203, 468.205, 468.209, 468.211, 468.213, 468.225, 468.301, 468.302, 468.351, 468.352, 468.354, 468.355, 468.356, 468.357, 468.358, 468.359, 468.36, 468.361, 468.362, 468.363, 468.364, 468.365, 468.366, 468.368, 468.505, 476.044, 477.0135, 478.42, 478.45, 478.46, 478.47, 478.52, 480.033, 480.034, 480.035, 480.041, 480.0415, 480.042, 480.0425, 480.043, 480.044, 480.047, 480.0485, 483.291, 483,800, 483.801, 483.803, 483,809, 483.812, 483.813, 483.823, 483.825, 483.828, 483.901, 484.041, 484.042, 484.051, 486.021, 486.023, 486.031, 486.041, 486.051, 486.081, 486.102, 486.103, 486.104, 486.123, 486.125, 490.003, 490.005, 490.0051, 490.008, 490.009, 490.012, 490.014, 491.003, 491.0045, 491.0046, 491.005, 491.0057, 491.007, 491.009, 491.012, 491.014, 491.0149, 499.012, and 621.03, 627.351, 627.357, 627.6482, 641.495, 725.01, 766.101, 766.103, 766.105, 766.110, <u>766.111</u>, 817.234, 817.563, 831.31, 856.015, 893.02, 893.03, 893.08, 893.13, 945.047, F.S.

(Cites in brackets have been deleted; those underlined have been added.)

COMPANION BILL(S): CS/CS/SB 1814
SPONSOR(S): Jones

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Legislative Planning
5/19/97

May 16, 1997

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I. SUMMARY:

HB 2013 amends various sections of law relating to health care practitioner licensure and discipline. It streamlines several regulatory procedures, provides for more effective prosecution of practice act violators, clarifies licensure requirements, and removes unnecessary barriers to licensure for a number of professions. The bill: (1) conforms those practice acts not currently in compliance with NAFTA residency requirements, (2) clarifies that Florida's endorsement licensure provisions are available to individuals who hold valid, active status licenses in U.S. Territories, not just areas within the U.S., (3) makes a number of revisions to the Acupuncture Practice Act, (4) allows non-board members to serve on medical committees, (5) allows physicians who have taken the national exam more than ten years ago to become licensed by endorsement without re-examination, with specific board approval, (6) permits postgraduate physicians who do not plan to seek licensure in Florida to take the licensure exam without having to apply for a Florida license, (7) reduces postgraduate medical training requirements for foreign trained physicians from three to two years, (8) requires physicians to maintain legible medical records, (9) requires physicians to report, within 30 working days from the date they become aware, serious adverse incidents which occur in their offices, (10) allows hospital resident physicians, assistant resident physicians, house physicians, interns, or fellows to prescribe medicinal drugs, with approval, (11) requires HMO's to designate Florida licensed medical directors, (12) requires physician assistants to report practice act violations, (13) provides for the use of retired volunteer nurses in emergency situations, (14) allows nurses to accompany and attend to patients temporarily residing in Florida without having to obtain a Florida license, (15) imposes the same reporting requirements on out-of-state pharmacies as those imposed on in-state pharmacies, (16) allows controlled substance prescriptions to be faxed, (17) makes the Occupational Therapy Council an independent board, and increases its membership from 5 to 7, (18) makes a number of technical revisions to the Massage Therapy Practice Act, (19) establishes a "public health laboratory scientist" category of licensure under the Board of Clinical Laboratory personnel, (20) makes a number of technical revisions to the Medical Physicists Practice Act, (21) strengthens boards' ability to discipline impaired practitioners who are unable to practice with reasonable skill and competence due to mental or physical conditions, illness, drunkenness, use of drugs, narcotics, chemicals, etc., (22) facilitates computer based testing, (23) strengthens boards' ability to discipline practitioners who violate practice act provisions, and (24) makes several technical changes to clarify that the Department of Health has administrative jurisdiction over the Medical Quality Assurance boards, councils, and professions. This bill has a fiscal impact.

II. PRESENT SITUATION:

Section 1. Section 468,1645, F.S., exempts from licensure those nursing home administrators who operate facilities that rely exclusively upon treatment by spiritual means through prayer.

Section 2. Section 458.3115, F.S., allows a certain group of foreign-licensed physicians who received prior approval by the board to take an approved refresher course to take the USMLE examination or a state-developed examination in order to obtain a license, if otherwise qualified.

Section 3. Section 402.48, F. S., requires Health Care Service Pools to register with the state annually. Additionally, it references the Department of Business and Professional Regulation as the department having administrative jurisdiction over health care services pools.

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Section 4. Section 455.225, F.S., specifies disciplinary proceedings for health care practitioner boards.

Section 5. Section 455.2285, requires the submission of an MQA annual report concerning finances, complaints, disciplinary actions, and recommendations relating to health care practitioner regulation.

Section 6. Section 457.102, F.S., defines terms relevant to the Acupuncture profession.

Section 7. Section 457.103, F.S., establishes the Board of Acupuncture and prescribes membership appointment and terms.

Section 8. Section 457.105, F.S., specifies qualifications for acupuncture licensure as well as associated administrative fees.

Section 9. Section 457.107, F.S., specifies continuing education requirements for licensure renewal.

Section 10. Section 457.108, F.S., outlines procedures for activating an inactive license.

Section 11. Section 457.1085, F.S., requires the board to adopt rules relating to the prevention of infection and sterilization of needles and other equipment or material used by acupuncturists that is capable of transmitting infection.

Section 12. Section 457.109, F.S., specifies actions considered grounds for disciplinary action.

Section 13. Section 457.116, F.S., specifies prohibited actions and establishes penalties for a licensee engaging in such prohibited activities.

Section 14. Section 458.303, F.S., permits physicians to employ physician's trained assistants so long as they function under the direct supervision and control of the physician.

Section 15. Section 458.305, F.S., references the Department of Business and Professional Regulation as the department having administrative jurisdiction over the Board of Medicine.

Section 16. Section 458.307, F.S., permits the Board of Medicine to establish up to two probable cause panels consisting of two physicians and one lay member. One of the physicians may be a past board member who is not currently appointed to the board.

Section 17. Section 455.206, F.S., allows individuals connected with medical, dental, or community colleges to be appointed to any health care practitioner regulatory board, so long it is not the individual's principal source of income.

Section 18. Section 458.311, F.S., does not consider applicants who graduated from schools that are not accredited by an agency recognized by the United States Office of Education eligible for licensure. This section requires foreign trained physicians to complete three years of residency training in one specialty area. Fellowship training cannot currently be used to meet this requirement. Physicians who have failed the

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licensure examination five times after October 1, 1986, are no longer eligible for licensure in Florida. Post-graduate students must apply for licensure in order to sit for Step III of the USMLE.

Section 19. Section 458.313, F.S., requires physicians licensed in another state who apply for licensure in Florida to re-take and pass the licensure examination if it has been ten years or more since they took it. "Active practice of medicine" is not currently defined in the statutes. A physician applying for licensure by endorsement must document that he has "actively" practiced medicine in another jurisdiction two out of the past four years, or show completion of board-approved postgraduate training within the year preceding the filing of an application. Physicians who have failed the licensure examination five times after October 1, 1986, are no longer eligible for licensure in Florida. Certain physicians have had licenses declared null and void because they did not practice medicine for one year out of the first three years after they were granted a Florida license.

Section 20. Section 458.317, F.S., requires physicians applying for a "limited license" to be retired. Those physicians applying for a limited license who receive no monetary compensation for their services do not have to pay any fees to obtain their limited license.

Section 21. Section 458.319, F.S., requires physicians who are renewing their licenses to show that they have actively practiced medicine or are on the teaching faculty of an accredited medical school within the past four years.

Section 22. Section 458.320, F.S., exempts physicians who practice exclusively with the Federal or state government from certain financial responsibility requirements. It requires physicians who do not carry malpractice insurance to post a sign in their reception area to that effect or provide a written statement to each patient.

Section 23. Section 458.331, F.S., makes it a violation if the physician fails to keep written medical records justifying the course of treatment for the patient. It does not require the physician to list his name in the records, nor does it speak to the legibility of the written records. This section authorizes the use of a Schedule II Amphetamine or a Schedule II Sympathomimetic Amine drug or any compound thereof for the treatment of narcolepsy; hyperkinesis; behavioral syndrome in children, but not adults. It makes it a violation for a physician or an osteopathic physician not to report a person licensed under Chapter 458 and 459 F.S., whom he knows has violated the specified practice acts.

Section 24. Section 458.3312, F.S. There currently is confusion about who can hold himself out as a board-certified medical specialist, and under what circumstances.

Section 25. Section 458.345, F.S., requires hospitals to submit a list of resident physicians, assistant resident physicians, house physicians, interns, or fellows employed by the facility to the department on January 1, and July 1, of each year. The law is silent on who is responsible for submitting these lists. Currently resident physicians may not prescribe controlled substances.

Section 26. Section 458.346, F.S., requires the Public Sector Physician Advisory Committee of the Board of Medicine to meet on a quarterly basis.

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Section 18. Amends s. 458.311, F.S., to reduce the number of years of residency training that foreign trained physicians must have from three years to two years. Fellowship training can be used to meet this requirement provided that the training can be counted toward regular or subspecialty certification by a board recognized and certified by the American Board of Medical Specialties. Permits the board, as prescribed by board rule, to require an applicant who does not pass the licensure examination after five attempts to complete additional remedial education or training within two years and then take the examination. Post-graduate students who are participating in an allocated slot may apply to take Step III of the USMLE without applying for licensure under certain conditions.

Section 19. Amends s. 458.313, F.S., to delete the requirement that individuals applying for licensure by endorsement must re-take the exam if it has been more then ten years since they took it. Physicians licensed in Florida are not required to retake the exam if it has been more than ten years since they took it, provided they keep renewing their licenses. Permits physicians applying for a license who have not practiced two years out of the past four years to take a board approved clinical competency examination, or show completion of board approved postgraduate training. Defines the "active proactive of medicine." Deletes language specifying that the board may require applicants to take an oral exam when applying for a license. Allows the board to require applicants by endorsement who do not pass the licensure examination after five attempts to complete up to two years of remedial education and training before they can take it again. Certain physicians who have null and void licenses because of failure to practice in Florida for 1 year within the first three years after licensure may reactivate under certain conditions.

Section 20. Amends s. 458.317, F.S., to delete the requirement that persons applying for a limited license must be retired. Requires any person who receives a waiver of fees for a limited license to pay such fees if he later receives compensation for his services.

Section 21. Amends s. 458.319, F.S., to require physicians who apply to renew their licenses to have practiced two out of the past four years or pass a board approved clinical competency examination.

Section 22. Amends s. 458.320 F.S., to require physicians who go "bare" to notify their patients to that effect by posting a sign in the reception area <u>and</u> giving each patient a statement to sign, and placing the signed statement in the patient's file.

Section 23. Amends s. 458.331, F.S., requires the physician to keep <u>legible</u> written records as defined by department rule, in conjunction with the boards, that identifies the physician and/or the physician extender and supervising physician by name and credentials who is responsible for the records. It permits the use of a Schedule II Amphetamine or a Schedule II Sympathomimetic Amine drug or any compound thereof for the treatment of narcolepsy; hyperkinesis and behavioral syndrome in adults as well as children. It requires physician assistants to report licensees under Chapters 458 and 459, F.S., who are in violation of the law.

Section 24. Creates s. 458.3312, F.S., to clarify who may hold himself out as a board certified medical specialist. He must receive formal recognition as a specialist from a specialty board of the American Board of Medical Specialties.

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has been determined by the Board of Nursing as a specialist in psychiatric mental health. The clarifying language would eliminate confusion about whom, among licensed nurses, may use any of the protected titles.

Section 210. Amends subparagraph (1) of s. 491.014, F.S., relating to exemptions to add provisional license and registration to the list of titles which may not be used by an individual who is otherwise exempt from licensure. The proposal will provide additional consumer protection by preventing non-licensed persons from using titles indicating some type of state licensure or certification. Amends section (c) of subparagraph (4) regarding students, to include new language which spells out the kind of services the student may perform and to include all the associated activities which constitute part of the supervised course of study; and deletes reference to graduates accumulating the experience required for licensure or certification. The amendments would clarify for students the activities in which they may engage without a license and would delete language which is unnecessary if a proposal to establish registered intern is adopted. Deletes subparagraph (7). This is a technical change because the section expired on October 1, 1995. Renumbers subsequent paragraphs to reflect deletion of subparagraph (7).

Section 211. Creates subparagraph (2) under s. 491.0149, F.S., relating to the display of license, use of professional title on promotional materials, to require of registered interns and provisional licensees that they conspicuously display their registration or license and that their titles appear on all promotional materials. This measure is required of all licenses under Ch. 491, F.S., as a means of readily identifying for the public, the licensure status of the practitioner providing psychotherapeutic services and this proposal would serve to extend the same responsibility to newly proposed classes of licensees.

Section 212. (Technical). Amends s. 232.02, F.S., to correct statutory references.

Section 213. (Technical). Amends s. 394.455, F.S., to correct statutory references.

Section 214. Creates s. 458.3124, F.S., to establish circumstances under which certain experienced foreign trained physicians can receive a restricted license and obtain the required residency experience. The first year of licensure must be under the direct supervision of a licensee approved by the board. The second year of licensure must be under indirect supervision, and must be in community service organizations that serve indigent populations, such as section 501(c)(3) agencies, public health units, prisons, or other organizations approved by the board. Limited licensees who successfully complete this residency and pass Step III of the USMLE are eligible for full licensure as a physician.

Section 215. Enacting Clause. Makes this bill effective July 1, 1997.

IV. APPLICATION OF PRINCIPLES:

1. Less Government:
    a. Does the bill create, increase or reduce, either directly or indirectly:

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(1) any authority to make rules or adjudicate disputes?
(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?
(3) any entitlement to a government service benefit?

b. If an agency or program is eliminated or reduced:
(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?
(2) what is the cost of such responsibility at the new level/agency?
(3) how is the new agency accountable to the people governed?

c. Other comments. **This bill streamlines various regulatory procedures, makes a number of changes to strengthen the boards' ability to discipline practice act violators, reduces/eliminates unnecessary regulation, and makes several technical revisions to correct statutory references and eliminate unnecessary licensure requirements.**

2. Lower Taxes: N/A
a. Does the bill increase anyone's taxes?
b. Does the bill require or authorize an increase in any fees?
c. Does the bill reduce total taxes, both rates and revenues?
d. Does the bill reduce total fees, both rates and revenues?
e. Does the bill authorize any fee or tax increase by any local government?
f. Other comments.

3. Personal Responsibility: N/A
a. Does the bill reduce or eliminate an entitlement to government services or subsidy?
b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?
c. Other comments.

4. Individual Freedom: N/A
a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?
b. Does the bill prohibit, or create new government interference with, any presently lawful activity?
c. Other comments.

5. Family Empowerment: N/A
a. If the bill purports to provide services to families or children:
(1) Who evaluates the family's needs?
(2) Who makes the decisions?
(3) Are private alternatives permitted?
(4) Are families required to participate in a program?
(5) Are families penalized for not participating in a program?
b. Does the bill directly affect the legal rights and obligations between family members?

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c. If the bill creates or changes a program providing services to families or children, in which of the following
does the bill vest control of the program, either through direct participation or appointment authority:
(1) parents and guardians?
(2) service providers?
(3) government employees/agencies?

d. Other comments.

WILL THIS BILL REQUIRE A DECREASE OR INCREASE IN THE RESOURCES OR BUDGET FOR ANY PART OF THE DEPARTMENT?

__X__ YES ____ NO

V. ECONOMIC IMPACT AND FISCAL NOTE:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

	Amount Year 1	Amount Year 2
1. Non-Recurring or First-Year Start-Up Effects:	$	$
2. Recurring or Annualized Continuation Effects:	$	$
3. Long-Run Effects Other Than Normal Growth:	$	$
4. Total Revenues and Expenditures:	$	$
Revenue:	25,625	7,375
Expenditures:	17,200	17,200

Revenue:

Nursing 464.019 New Nursing Program Review Fee 7 applications X $1,000	7,000	7,000
Nursing 464.0205 Certification of Retired Volunteer Nurses. 25 applications X $25	625	625

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Health Care Services Pool 402.48 Registration Extended to Two Years. Reduction in Revenue for FY 1998-99.
110 registrations X $300 33,000

Chiropractic Physician's Assistants 460.4165 Initial rather than annual application required.
Reduction in revenue for 150 supervisors @ $100 (15,000) (15,000)

Expenditures:

Occupational Therapy 468.205 Increase Board Members (3 to 5).
OPS (2 Board Members) 1,000 1,000
Travel and Communication Expenses 6,200 6,200

Pharmacy 465.004 Increase Board Members (7 to 9)
OPS (2 Board Members) 2,000 2,000
Travel and Communication Expenses 8,000 8,000

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

	Amount Year 1	Amount Year 2
1. Non-Recurring or First-Year Start-Up Effects:	$f	$
2. Recurring or Annualized Continuation Effects:	$	$
3. Long-Run Effects Other Than Normal Growth:	$	$

C. DIRECT FISCAL IMPACT ON PRIVATE SECTOR:

1. Direct Public Sector Costs:

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2. Direct Private Sector Costs

3. Effects on Competition, Private Enterprise and Employment Markets:

D. FISCAL COMMENTS:

The revisions to s. 455.225, F.S., will have a significant fiscal impact on the Agency for Health Care Administration, which will, by contract, provide consumer complaint, investigative, and prosecutorial services for the health care practitioner regulation program. The Agency's fiscal note was requested, but is not finalized as of this writing.

VI. WERE COUNTY HEALTH DEPARTMENTS OR CMS CLINICS CONTACTED?

YES _____ NO __X____

VII. COMMENTS:

VIII. PROPOSED AMENDMENTS

_____None Required ____Must Have to Support ____Would Like to Have
____Technical

May 16, 1997

POSITION: 3 A

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PRIORITY	DESCRIPTION
1	Substantial changes recommended
2	Minor changes recommended
3	No changes recommended
A	Support recommended
B	Neutral
C	Defeat recommended

STORAGE NAME: h2013.hcr
DATE: April 11, 1997

HOUSE OF REPRESENTATIVES
COMMITTEE ON
HEALTH CARE STANDARDS & REGULATORY REFORM
BILL RESEARCH & ECONOMIC IMPACT STATEMENT

BILL #: HB 2013 (PCB HCR 97-02)

RELATING TO: Regulation of Health Care Professions/Medical Quality Assurance

SPONSOR(S): Committee on Health Care Standards & Regulatory Reform and Representatives Jones, Lippman, Maygarden, Minton, Saunders, Wasserman Schultz, and Diaz de la Portilla

STATUTE(S) AFFECTED: Sections 402.48, 455.206, 458.303, 458.305, 458.307, 458.311, 458.313, 458.317, 458.319, 458.320, 458.331, 458.3312, 458.345, 458.346, 458.347, 458.3485, 458.351, 458.353, 459.003, 459.006, 459.021, 459.022, 459.025, 460.403, 460.413, 460.4138, 460.4165, 461.003, 461.013, 461.018, 464.003, 464.018, 464.019, 464.0205, 464.022, 465.003, 465.004, 465.014, 465.0156, 465.016, 465.035, 466.003, 466.006, 466.017, 466.028, 468.1115, 468.1125, 468.1155, 465.1185, 468.1195, 468.1201, 468.203, 468.205, 468.209, 468.211, 468.213, 468.225, 468.351, 468.352, 468.354, 468.355, 468.356, 468.357, 468.358, 468.359, 468.36, 468.361, 468.363, 468.364, 468.365, 468.366, 468.368, 478.42, 478.45, 478.46, 478.47, 478.52, 483.800, 483.801, 483.803, 483.809, 483.812, 483.813, 483.823, 483.825, 483.828, 483.901, 484.041, 484.042, 484.051, 486.021, 486.023, 486.031, 486.041, 486.051, 486.081, 486.102, 486.103, 486.104, 486.123, and 486.125, F.S.

COMPANION BILL(S): SB 1814(s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) HEALTH CARE STANDARDS & REGULATORY REFORM YEAS 8 NAYS 0
(2)
(3)
(4)
(5)

I. SUMMARY:

The bill amends various sections of law relating to health care practitioner licensure and discipline. It streamlines several regulatory procedures, provides for more effective prosecution of practice act violators, clarifies licensure requirements, and removes various barriers to licensure for a number of professions.

This bill has a minimal fiscal impact on the state, none on local government or the private sector.

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Reproduced by
FLORIDA STATE ARCHIVES
DEPARTMENT OF STATE
R.A. GRAY BUILDING
Tallahassee, Florida 32399-0250
Date 19 Order 2938

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Section 20.165, F.S. created the Department of Business and Professional Regulation (DBPR) and its divisions, including the Division of Medical Quality Assurance, with the various medical boards and professions. Chapter 92-33, Laws of Florida, transferred certain medical boards and professions from DBPR to the Agency for Health Care Administration (AHCA), Division of Health Quality Assurance, effective July 1, 1993. The July 1, 1993 date was delayed by the 1993 Legislature for one year until July 1, 1994. The actual transfer of most functions did not take place until October 1, 1995. Some of the functions, such as testing and license renewals have still not been transferred.

Section 20.42, F.S., created the Agency for Health Care Administration (AHCA) and its divisions. The Division of Health Quality Assurance is responsible for health facility licensure and inspection and the medical boards and professions listed in s. 20.42(2), F.S. Naturopathy and medical physicists are not included. Medical physicists (chapter 483, part V) were originally regulated by the Legislature in 1995, and naturopathy was not included due to an oversight, as chapter 462, F.S. does not permit the state to license additional licensees under this chapter. Presently, there are approximately 13 active licensees.

In 1996, CS/HB 555 (ch. 96-403, Laws of Florida), created the Department of Health and transferred a number of functions to the new agency. Among those functions transferred were the medical boards in the Division of Medical Quality Assurance of AHCA and four professions from the DBPR (massage therapy, athletic trainers, hearing aid specialists, and health care service pools). A type two transfer of these four professions becomes effective July 1, 1997. Effective that date, there will be 36 professions in the Division of Medical Quality Assurance of the Department of Health (DOH). The law transferring the medical boards from AHCA provided that DOH would contract with AHCA to perform the function of receiving complaints and conducting investigations and prosecutions.

No provision was made in chapter 455, F.S., for the administration of the various boards by DOH. Chapter 455, F.S., provides administrative authority to either DBPR or AHCA for most functions; however it will be necessary to amend chapter 455, F.S., to clarify and grant the necessary authority to DOH.

Section 381.81(2), F.S., of the Minority Health Improvement Act provides the definition of "health profession". Each of the medical professions is included in the definition, with the exception of naturopathy and medical physicist.

"Health care practitioner" is defined in s. 455.01(4), F.S. Each of the medical professions is included in the definition, with the exception of health care service pools (ch. 402), midwifery (ch. 467, F.S.), nursing home administrator (ch. 468, part II, F.S.), athletic trainer (ch. 468, part XIV), massage therapy (ch. 480), clinical laboratory personnel (ch. 483, part I and IV, F.S.), and medical physicist (ch. 483, part V, F.S.).

<u>GENERAL DBPR/AHCA/DOH ADMINISTRATION</u> - Chapter 455, Florida Statutes

Section 455.02, F.S., provides for licensees that are spouses of members of the armed forces in good standing with the boards listed in s. 20.165, F.S., to be exempt from licensure renewal. Presently, only non-medical boards are listed. Due to the transfer, all

medical boards are listed in s. 20.42, F.S. All committees appointed by any board must be composed of serving board members except as otherwise provided in this chapter (s. 455.207, F.S.) or the applicable practice act.

Section 455.214, F.S., provides that the recipient of a limited license may practice only in the employ of public institutions or agencies which meet the requirements of s. 501(c)(3) of the Internal Revenue Code and which provides professional liability coverage for acts of omission of the limited licensee. The services are to be provided to the indigent, underserved, or critical need populations of the state. To receive a limited license, an applicant must be retired from the applicable profession.

It is not clear that ss. 455.219 and 455.2281, F.S., relating to finances, long-range planning, disposition of funds and unlicensed activity fees, applies to both medical and non-medical boards.

The department and each appropriate board within the Division of Medical Quality Assurance (agency) have the authority to establish procedures to handle, counsel, and provide other services to licensees with hepatitis B or AIDS within their respective boards (s. 455.2224, F.S.). There is no specific recommendation to be followed by the boards in developing such procedures.

Section 455.24, F.S., provides guidelines for the advertisement by a health care provider of free or discounted services. It allows the public 72 hours to request a refund or refuse payment for any additional services provided as a result of accepting free or discounted services. It lists the covered health care providers but does not list all of the professions. It applies to written advertisements and does not cover audio or video advertisements.

Section 455.25, F.S., provides for disclosure of a financial interest by a health care provider prior to referral of a patient to such entity. Prior to referral, a health care provider must furnish the patient a written disclosure form providing certain information. An entity may not provide services to a referred patient unless it obtains the signature of the patient on a written disclosure form providing specified information.

Section 456.32, F.S., lists the definitions of "healing arts" and "practitioner of the healing arts" as the practice of, or a person licensed to practice a number of the health care professions, respectively. Not all of the medical professions are presently included.

<u>HEALTH CARE SERVICE POOLS</u> - Chapter 402, Florida Statutes
(Section 1)

Section 402.48, F.S. requires Health Care Service Pools to register with the state annually.

BOARD OF MEDICINE - Chapter 458, Florida Statutes
(Sections 2-18)

Physicians are permitted to employ physician's trained assistants as long as they function under the direct supervision and control of the physician. Also included are services performed by a registered nurse or a licensed practical nurse.

The Board of Medicine is permitted to establish up to two probable cause panels consisting of two physicians and one lay member. One of the physicians may be a past board member who is not currently appointed to the board.

Foreign trained physicians are required to complete three years of residency training in one specialty area. Fellowship training cannot currently be used to meet this requirement. Physicians who have failed the licensure examination five times after October 1, 1986 are no longer eligible for licensure in Florida.

Physicians licensed in another state who apply for a license in Florida are required to take and pass the licensure examination over if it has been ten years or more since the exam was taken. "Active practice of medicine" is not currently defined by statute. A physician applying for licensure by endorsement must document having "actively" practiced medicine in another jurisdiction two out of the past four years, or show completion of board-approved postgraduate training within the year he applies for a license.

Section 458.317, F.S., requires physicians applying for a "limited license" to be retired. Those physicians applying for a limited license who receive no monetary compensation for their services do not have to pay any fees to obtain their limited license.

Physicians who are renewing their licenses are required to show that they have actively practiced medicine or have been on the teaching faculty of an accredited medical school within the past four years.

Physicians who practice exclusively with the Federal or state government are exempted from financial responsibility requirements. Physicians who do not carry malpractice insurance are required to post a sign in their reception area to that effect or provide a written statement to each patient.

Section 458.331, F.S., makes it a violation if a physician fails to keep written records justifying the course of treatment for a patient. It does not require the physician to list his name in the records, nor does it speak to the legibility of the written records. Subsection 458.331(cc), F.S., authorizes the use of a Schedule II Amphetamine or a Schedule II Sympathomimetic Amine drug or any compound therof for the treatment of narcolepsy, hyperkinesis, or behavioral syndrome in children, but not adults. Subsection 458.331(ii), F.S., makes it a violation for a physician or an osteopathic physician not to report a person licensed under chapter 458 and 459, F.S., whom he knows has violated the grounds for disciplinary action set out in law.

Confusion currently exists regarding who can hold themself out as a board-certified medical specialist, and under what circumstances.

Hospitals are required to submit a list of resident physicians, assistant resident physicians, house physicians, interns, or fellows employed by the facility to the

department on January 1 and July 1 of each year. The law is silent on who is responsible for submitting such lists.

The Public Sector Physician Advisory Committee to the Board of Medicine is required to meet on a quarterly basis.

All applicants seeking physician assistant certification are required to pass an examination given by the National Commission on Certification of Physician Assistants.

Section 458.3485, F.S., specifies the duties a medical assistant may perform under the supervision of a licensed physician.

Currently, physicians are required to report incidents of patient harm that occur in hospitals, but not in outpatient settings.

At this time, medical directors for health maintenance organizations are not required to be Florida licensed.

OSTEOPATHIC MEDICINE - Chapter 459, Florida Statutes
(Sections 19-29)

At this time, the law requires hospitals to submit a list of resident osteopathic physicians, assistant osteopathic resident physicians, house osteopathic physicians, interns, or fellows employed by the facility to the department on January 1 and July 1 of each year, although the law is silent on who is responsible for submitting these lists.

Current law requires osteopathic physicians applying for a limited license to be retired. These licensees applying for a limited license who receive no monetary compensation for their services do not have to pay any fees to obtain the limited license.

Current statutes refer to an osteopathic physician as a doctor of osteopathy. Section 459.0085, F.S., exempts osteopathic physicians who practice exclusively with the Federal or state government from financial responsibility requirements. It requires osteopathic physicians who do not carry malpractice insurance to post a sign in the reception area or provide a written statement to each patient.

Presently, it is a violation if the physician fails to keep written medical records justifying the course of treatment for the patient. The law does not require the licensee to list his name in the records, nor does it speak to the legibility of the written records. It authorizes the use of a Schedule II Amphetamine or a Schedule Sympathomimetic Amine drug or any compound therof for the treatment of narcolepsy, hyperkinesis, and behavioral syndrome in children, but not adults. It makes it a violation for an osteopathic physician not to report a person licensed under chapter 458 or 459, F.S., whom he knows has violated the grounds for disciplinary action set out in the law.

Osteopathic physicians are currently not required to report adverse incidents that occur in hospitals. Additionally, there is confusion about who can hold himself out as a board-certified specialist, and under what circumstances.

CHIROPRACTIC - Chapter 460, F.S.
(Sections 30-34)

Section 460.413, F.S., currently does not compel a licensed chiropractor to submit to a mental or physical examination if it, or the probable cause panel of the board, has probable cause to believe that the licensee is unable to practice competently because of physical or mental impairment or substance abuse. The board has a limited set of disciplinary options set forth in statute. The Board may currently design a rehabilitation plan for a disciplined licensee with no regard to sanctions which would protect the public or compensate the patient. It is unclear in the law what burden of proof the department must carry when revoking or suspending a license as opposed to other penalties. The department presently does not have the authority to enjoin in circuit court a chiropractor who is unable to practice with reasonable skill and safety.

The department does not have the authority to subpoena the names and addresses of patients of a chiropractor when such information is necessary to conduct an investigation.

Section 460.4165, F.S., requires chiropractic physician assistants to pay $100 annually to be authorized to practice under a licensee's supervision. A certified assistant may be supervised by a single physician or by a group of physicians.

PODIATRIC MEDICINE - Chapter 461, Florida Statutes
(Sections 36-37)

Section 461.018, F.S., addresses limited scope of practice for certain podiatrists. Confusion exists as to whether or not these individuals should be called podiatrists.

NURSES - Chapter 464, Florida Statutes
(Sections 38-43)

Currently, there are specified actions for which disciplinary action can be taken by the board. The law does not designate a conviction or a nolo contendere plea as grounds for discipline.

Section 464.019, F.S., requires institutions desiring to conduct approved professional or practical nursing programs to comply with applicable Board of Nursing rules. No fee is charged for program reviews.

No provision exists for retired nurses who wish to volunteer their services in underserved areas or to critical need populations.

Certain conditions exist under which individuals providing nursing services in Florida are exempted from licensure requirements. There is currently no provision for nurses from out-of-state to accompany and care for patients temporarily residing in the state for periods of 30 days or less.

PHARMACY - Chapter 465, Florida Statutes
(Sections 44-49)

The Board of Pharmacy consists of seven members who are appointed by the Governor and confirmed by the Senate. Five of the members must be licensed pharmacists who have been engaged in the practice for at least 4 years, and the remaining two must be residents of the state who have never been licensed as pharmacists and are in no way connected to the practice of pharmacy.

Pharmacists are authorized to delegate certain responsibilities to pharmacy technicians, provided the pharmacist is in direct supervision.

Section 465.035, F.S., prohibits the dispensing of a Schedule II controlled substance pursuant to the transmission of a facsimile of the original prescription.

DENTISTRY - Chapter 466, Florida Statutes
(Sections 50-53)

Section 466.006, F.S., contains language specifying application procedures for foreign trained dentists to sit for a manual skills exam and, upon passage, to sit for the state examination. The exam is no longer administered as of December 31, 1991. Current language specifies that a licensed dentist who has been utilizing general anesthesia on a regular and routine basis in a competent and effective manner for a ten-year period preceding January 1, 1980, shall be deemed to have fulfilled the training requirements required for general anesthesia. A licensed dentist who has been utilizing parenteral conscious sedation on an outpatient basis regularly and routinely in a competent and effective manner for the three-year period preceding January 1, 1980, shall be deemed to have fulfilled the training requirements necessary for parenteral conscious sedation.

SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY - Chapter 468, Florida Statutes (Part I) (Sections 54-63)

Section 468.1115, F.S., which specifies those individuals who are exempt from licensure requirements, does not specify that a licensed speech-language pathologist or audiologist may supervise non-licensed persons to perform hearing screens in the school setting. It also does not specify that persons certified under chapter 231, F.S., must be certified in speech-language impairment or hearing impairment to be permitted to supervise non-certified or non-licensed persons to conduct hearing screens in the school setting. As a result, licensees are reluctant to train non-licensed persons (primarily volunteers) to provide hearing screens in schools, and persons who are certified only as teachers (e.g., coaches) are training non-licensed persons to conduct screens. No exemption exists to allow non-licensed personnel in hospitals to conduct infant hearing screens. The topic of infant hearing screening has long been a topic of interest in Florida. Children's Medical Service (CMS) has sponsored a "high-risk" program for over a decade by providing funding for programs in conjunction with Early Intervention Programs. More recently, interest has grown in establishing standards of infant screening for well babies. The performance of infant hearing screens by non-licensed personnel requires training on how to establish a relatively controlled acoustic environment to be sure responses are reliable and how to place the probe in an infant's ear canal when facing the variety of problems which can be encountered in the newborn ear canal. Section 468.1115, F.S., does not contain an exemption from licensure for individuals who are licensed as speech-language pathologists or audiologists in other

states and who meet certain other requirements to practice under limited circumstances in this state.

The chapter does not contain language clearly stating who must obtain a provisional license and at which point an individual must obtain the license. Current language specifies that to be certified as eligible for provisional licensure the applicant must submit the application form and application fee. Current statute also contains inconsistent language referring to supervised clinical practice and clock hours. There are no provisions allowing an individual licensed in one of the two professions to become licensed in the other. Current requirements are that the individual obtain two masters degrees in communication disorders, duplicating much of the same course work. Current language also contains the term "clinical practice", which is not consistent with language containing the term "clinical clock hour" referred to in other sections of the statute.

Current licensure by endorsement provisions recognize only valid licenses or certificates held in another state. There is no recognition of licenses or certificates held in a territory of the United States.

At this time, the Board of Speech-Language Pathology/Audiology is not granted the authority to establish standards for continuing education activities and providers. Authority is limited to establishment of requirements for the number of hours for licensure renewal. No licensee is exempt from continuing education requirements for licensure renewal unless the board grants a hardship case. Newly licensed practitioners are required to meet the same continuing education requirements as all other licensees unless they request a hardship consideration.

Current law does not require that all appropriate fees for certification be remitted before the board can certify an applicant. Additionally, the statute does not specifically grant authority to the board to establish on-the-job training and supervision requirements for certification of assistants.

Licensees who fit or sell hearing aids are required to provide the purchasee with a contract.

NURSING HOME ADMINISTRATOR - Chapter 468, Florida Statutes (Part II) (Sections 64-65)

Currently, the agency must give the nursing home administrator examination at least four times per year.

OCCUPATIONAL THERAPY - Chapter 468, Florida Statutes (Part III) (Sections 66-71)

The current definition of "occupational therapy" does not conform to the definition as provided by the American Occupational Therapy Association (AOTA). The current definition of "occupational therapy aide" has no provision for supervision by an occupational therapy assistant.

The Occupational Therapy Council, under the Board of Medicine, is comprised of three members, all of which are occupational therapists.

Occupational therapy programs are currently accredited by the AMA in collaboration with the American Occupational Therapy Association. The law does not presently coincide with the national deadline date or requirements which all an occupational therapy assistant to become an occupational therapist without having met the educational requirements.

Currently, the law only allows for one temporary permit per applicant for both avenues of licensure. Additionally, there is nothing specified in the law to allow a temporary permit for applicants enrolled in a full-time advanced master's occupational therapy education program. At this time, if an applicant seeks reentry into the profession of occupational therapy, they are not required to show any hours of continuing education in their profession.

There is no limitation on the number of times a person can take the occupational therapist/assistant examination.

Present law lists the American Occupational Therapy Association as the national certifying body. If an applicant applies by endorsement, the statute currently requires proof of current licensure in another state, the District of Columbia, or a territory of the United States.

Current exemptions allow for the exemption from licensure of persons when working under the direct supervision of an occupational therapist. The law does not clarify that a physician, speech-language pathologist or audiologist is not prohibited from using occupational therapy as a part of or as incidental to their profession.

Section 468.209, F.S. specifies licensure requirements for occupational therapists/assistants. Occupational therapy programs are accredited by the AMA in collaboration with the American Occupational Therapy Association.

RESPIRATORY THERAPY - Chapter 468, F.S. (Part V)
(Sections 72-86)

The terms "certification", "registration", and "licensure" are used interchangeably. Respiratory care personnel are required to be supervised by either respiratory therapists, licensed technologists, supervisors or directors, or a respiratory care practitioner who has at least three years of experience in this modality.

The listed accrediting entity is the Committee on Allied Health Education and Accreditation of the American Medical Association. The law specifies that approval of educational programs is conducted through the Committee on Allied Health Education.

Provisions are not made for collecting fees up front. Section 468.357(3), F.S., requires grandfathered licensees who were licensed pursuant to s. 468.357(3)(a), F.S., to complete at least 20 contact hours of continuing education each year of the biennium. Other licensees in the profession are required to complete at least 20 contact hours of continuing education each year of the biennium. Section 468.357(3)(b), F.S., allows persons until December 31, 1988, an avenue for licensure who were working in the State of Florida on or after the effective date of this act and prior to October 1, 1987.

Continuing education hours are not to exceed 24 hours biennially.

The disciplinary section does not specify grounds for disciplinary action if a licensee enters a plea of nolo contendere regardless of adjudication to a crime in any jurisdiction which relates to respiratory care services.

ELECTROLYSIS - Chapter 478, Florida Statutes
(Sections 87-91)

Currently, an applicant must be a high school graduate, a resident of Florida, complete a program of study not to exceed 120 hours, and pass a written exam for licensure. Persons applying under a "grandfather provision" have until August 15, 1995, to become licensed. The national examination designated in statute is the Electrology Association examination.

The board executive director is authorized to determine if an applicant is qualified for licensure and to issue a temporary permit. An applicant is allowed to become licensed by endorsement without taking the exam. There are no provisions for operating an unlicensed facility.

BOARD OF MASSAGE - Chapter 480, Florida Statutes
(Sections 92-100)

Section 480.033, F.S., references the DBPR as the department having administrative jurisdiction over the Board of Massage. The term "Board of Massage" is used as the regulatory body for the profession.

Provisions are made for provisional licensure and the conditions under which they may be issued.

Presently, a massage establishment license may be transferred from one person, corporation name, or location to another without any requirements.

Section 480.0485, F.S. prohibits an individual from holding himself out as a massage therapist unless duly licensed.

CLINICAL LABORATORY PERSONNEL/CLINICAL LABORATORIES - Chapter 483, Florida Statutes (Part I and IV) (Sections 103-111)

Section 483.800, F.S., contains legislative intent language that recognizes the benefits of hospital-based training of personnel in the laboratory and at alternate sites.

Certain laboratory and clinical laboratory personnel are exempted from licensure. There is no exemption for advanced registered nurse practitioners to perform provider performed microscopy procedures. In a recent change, Federal legislation, CLIA '88 provides for an exemption for advanced registered nurse practitioners to perform PPM procedures.

There is currently no definition for a clinical laboratory examination or a public health laboratory scientist. Also, there are no specific qualifications for public health scientists.

Section 483.813, F.S., provides for a six-month temporary license, but does not provide for a conditional license.

The board is allowed to prescribe minimal qualifications for clinical laboratory personnel and requires a license to be issued to anyone meeting those qualifications.

Section 483.825, F.S., specifies grounds for disciplinary action for clinical laboratory personnel.

MEDICAL PHYSICIST - Chapter 483, Florida Statutes (Part V)
(Section 112)

Section 483.901, F.S., creates the Florida Medical Physicists Act. It provides for an advisory council and defines relevant terms. Licensure criteria are established and penalties for practice act violations are specified. A licensure exception is established.

HEARING AID SPECIALIST - Chapter 484, Florida Statutes
(Sections 113-115)

The Board of Hearing Aid Specialists is under the DBPR. Persons fitting and selling hearing aids are required to provide the purchaser with a receipt containing the seller's signature, address of regular practice, license number, and other identifying identification. Itemization of prices is also required. The DBPR is designated as the entity with which to file a complaint.

PHYSICAL THERAPY - Chapter 486, Florida Statutes
(Sections 116-126)

Currently, physical therapy graduates' educational preparation must be approved by the appropriate accrediting agency recognized by the Council on Postsecondary Accreditation or the U.S. Department of Education at the time of graduation and have passed an examination administered by the department. Applicants can only be endorsed for licensure if they have taken and passed the national PES examination.

The Board is composed of seven members: five licensed physical therapists (one licensed physical therapist may be a teaching physical therapist at an educational institution in this state), one who may be a consumer member and one may be a health care practitioner licensed under chapter 458 or 459, F.S., and have been engaged in practice for four years.

Currently, all examinations are administered by the department. Licensure applicants are required to apply to the board rather than the department. Applicants can only be endorsed for licensure if they have taken and passed the national PES examination. Persons who took and passed the registry examination prior to 1971 are not eligible for licensure by endorsement.

Current statute limits the administrative fine to $1,000.

B. EFFECT OF PROPOSED CHANGES:

The bill:

- Conforms those practice acts not currently in compliance with NAFTA residency requirements;
- Clarifies that Florida's endorsement licensure provisions are available to individuals holding valid, active status licenses in U.S. Territories, not just areas within the U.S.;
- Allows non-board members to serve on medical committees;
- Allows physicians who have taken the national exam more than ten years ago to become licensed by endorsement without re-examination, with specific board approval;
- Permits postgraduate physicians who do not plan to seek licensure in Florida to take the licensure exam without having to apply for a Florida license;
- Reduces postgraduate medical training requirements for foreign trained physicians from three to two years;
- Requires physicians to maintain legible medical records;
- Requires physicians to report, within 30 working days from the date they become aware, serious adverse incidents which occur in their offices;
- Allows hospital resident physicians, assistant resident physicians, house physicians, interns, or fellows to prescribe medicinal drugs, with approval;
- Requires HMO medical directors to be Florida licensed;
- Requires physician assistants to report practice act violations;
- Provides for the use of retired volunteer nurses in emergency situations;
- Allows nurses to accompany and attend to patients temporarily residing in Florida without having to obtain a Florida license;
- Imposes the same reporting requirements on out-of-state pharmacies as those imposed on in-state pharmacies;
- Allows controlled substance prescriptions to be faxed;
- Allows pharmacy technicians to initiate communications with a practitioner on behalf of a patient regarding refill authorization requests, provided the technician is directly supervised by a pharmacist;
- Makes a number of technical revisions to the Massage Therapy Practice Act;
- Establishes a "public health laboratory scientist" category of licensure under the Board of Clinical Laboratory Personnel;

- Makes a number of technical revisions to the Medical Physicists Practice Act;
- Strengthens boards' ability to discipline impaired practitioners who are unable to practice with reasonable skill and competence due to mental or physical conditions, illness, drunkenness, use of drugs, narcotics, and chemicals;
- Facilitates computer based testing;
- Strengthens boards' ability to discipline practitioners who violate practice act provisions;
- Makes several technical changes to clarify that the Department of Health has administrative jurisdiction over the Medical Quality Assurance boards, councils, and professions.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

A number of changes are made to strengthen the boards' ability to discipline practice act violators.

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

N/A

b. Does the bill require or authorize an increase in any fees?

N/A

c. Does the bill reduce total taxes, both rates and revenues?

N/A

d. Does the bill reduce total fees, both rates and revenues?

N/A

e. Does the bill authorize any fee or tax increase by any local government?

N/A

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

N/A

(1) parents and guardians?

N/A

(2) service providers?

N/A

Section 19. Amends s. 458.331(1)(m), (cc), and (ii), F.S., 1996 Supplement, to require physicians to keep legible written records as defined by department rule, in conjunction with the boards, that identifies the physician and/or the physician extender and supervising physician by name and credentials who is responsible for the records. It permits the use of a Schedule II Amphetamine or a Schedule II Sympathomimetic Amine drug or any compound for the treatment of narcolepsy, hyperkinesis, and behavioral syndrome in adults as well as children. It requires physician assistants to report licensees under chapters 458 and 459, F.S., who are in violation of the law.

Section 20. Creates s. 458.3312, F.S., to clarify who may hold himself out as a board certified medical specialist. He must receive formal recognition as a specialist from a specialty board of the American Board of Medical Specialties.

Section 21. Amends s. 458.345, F.S., to require the chief executive officer of each hospital to inform the Executive Director of the Board of Medicine of the name, title, and address of the person who is responsible for submitting such reports. It allows a hospital resident physician, assistant resident physician, intern, or fellow to prescribe medicinal drugs, provided the person is so authorized by the hospital, is engaged in an accredited training program, prescribes only in the normal course of employment, holds a prescriber number issued by the hospital and the prescription involved has that number printed theron, has adequate internal control code numbers, and provided third-party procedures can accommodate the required numbering system.

Section 22. Amends s. 458.346(2), F.S., to allow the Public Sector Advisory Committee to meet at least once a year or upon the call of the committee chair.

Section 23. Amends s. 458.347, F.S., 1996 Supplement, to allow the council to recommend those P.A. programs that hold full accreditation or provisional accreditation from the Commission on Accreditation of Allied Health Programs. Requires an applicant who does not hold a current certificate issued by the National Commission on Certification of Physician Assistants (NCCPA) and has not practiced within the preceding fours to retake and pass the NCCPA examination to be eligible for certification.

Section 24. Amends s. 458.3485(1) and (2), F.S., to clarify that medical assistants are required to be directly supervised by licensed physicians.

Section 25. Creates s. 458.351, F.S., to require physicians to report incidents of patient harm that occur in outpatient facilities as well as hospitals.

Section 26. **(Technical)** Amends s. 459.003, F.S., to reference the Department of Health as the department with administrative jurisdiction over the Board of Osteopathic Medicine.

Section 27. Amends s. 459.021(1), (3), and (5)(b) and adds s. 459.021(8), F.S., to require the hospital chief executive officer to provide the board executive director with the name, title, and address of the person responsible for submitting the information required in this section.

Section 28. Amends s. 459.0075(1), F.S., to delete the requirement that osteopathic physicians applying for a limited license must be retired. Requires any person who receives a waiver of fees for a limited license to pay such fees if he later receives compensation for his services.

Section 29. Amends s. 459.0085(5)(a) and (g), F.S., 1996 Supplement, to clarify that osteopathic physicians who practice exclusively with Federal or state government are exempt from certain financial responsibility requirements. It require those physicians who go "bare" to notify their patient to that effect by posting a sign in the reception area and give each patient a statement to sign and place in his file.

Section 30. Amends s. 459.015(1)(o), (gg), and (11), F.S., 1996 Supplement, to require osteopathic physicians to keep legible written records as defined by department rule, in conjunction with the board, that identifies the physician and/or the physician extender and supervising physician by name and credentials who is responsible for the records. It permits the use of a Schedule II amphetamine or a Schedule II sympathomimetic amine drug or any compound thereof for the treatment of narcolepsy, hyperkinesis and behavioral syndrome in adults as well as children. It requires physician assistants to report licensees under chapters 458 and 459, F.S., who are in violation of the law. Makes it grounds for disciplinary action to advertise or hold oneself out as a board-certified specialist in violation of this chapter.

Section 31. Creates s. 459.0152, F.S.,to clarify that osteopathic physicians who hold themselves out as specialists must have successfully completed certification requirements, rather than postdoctoral training.

Section 32. Amends s. 459.022, F.S., 1996 Supplement, to allow the council to recommend P.A. programs that hold full or provisional accreditation from the Commission on Accreditation of Allied Health Programs or its successor organization. Requires that an applicant who does not hold a current certificate issued by the National Commission on Certification of Physician Assistants (NCCPA) and has not practiced within the preceding four years must retake and pass the NCCPA examination to be eligible for certification.

Section 33. Creates s. 459.025, F.S., to clarify that the only incidents which happen their offices that osteopathic physicians are required to report are: the death of a patient; severe brain or spinal damage to a patient; a surgical procedure being performed on the wrong patient; or a surgical procedure unrelated to the patient's diagnosis or medical needs.

Section 34. Amends s. 240.4067(1), F.S., to change "doctors of osteopathy" to doctors of "osteopathic medicine".

Sections 35-64 Amend various sections to change "osteopathy" to "osteopathic medicine".

Section 65. Amends s. 460.403(1), F.S., to reference the Department of Health as the department having administrative jurisdiction over the Board of Chiropractic.

Section 66. Amends s. 460.413(1) (q) and (gg) and (2), F.S., 1996 Supplement, and adds subsections (6) and (7) to provide the Board of Chiropractic and the department with the authority to compel a chiropractic physician to undergo a mental

or physical examination when there is probable cause to believe that a practitioner cannot safely practice chiropractic. Currently, if the department receives a complaint that a chiropractor is unable to safely practice, it can only obtain extrinsic evidence of the problem, primarily interviews with witnesses. Because of confidentiality constraints, the department is often without the authority to obtain the evidence (patient records from drug abuse treatment or psychological records) necessary to establish by clear and convincing evidence that a practitioner cannot safely practice. Amends s. 460.413(2)(g-k), F.S., to add additional disciplinary penalties. The board does not have the authority to impose these additional conditions of discipline, such as imposition of the costs of the investigation and prosecution, requiring the chiropractor to undergo remedial education, issuance of a letter of concern, requiring corrective action, or requiring a refund of fees billed to and collected from the patient or a third party. This limits the flexibility of the board to resolve cases brought for disciplinary action and to craft a penalty which suits the violation. This language also clarifies that the board must first consider the protection of the public or compensation to the patient before it considers requirements to rehabilitate the chiropractor. It clarifies that the disciplined chiropractor must bear the expenses of meeting the obligation of a disciplinary order. Many judges at the Division of Administrative Hearings believe that the department must establish all violations by clear and convincing evidence. Generally, the higher the burden of proof, the more lengthy and complex the prosecution, almost always resulting in higher costs. This measure would require a burden of proof by the greater weight of evidence in those cases for which revocation or suspension is not being sought. This will help hold down costs in less serious cases. This language provides the department with authority to enjoin licensees from engaging in unsafe practice. This would be an adjunct to the department's power to enforce an emergency suspension order or final order. Without this authority, the department has no recourse for licensees who refuse to obey the board's orders. All the proposed language in s. 460.413, F.S., and 460.4138, F.S., has for years been in other practice acts (medical doctors, osteopaths, nurses). The language has proven to be valuable for those professions in protecting the public from impaired and malpracticing practitioners. It will allow the board to tailor more specifically the penalty so that it fits the violation. The department will be able to enjoin in circuit court any person who refuses to obey an order of the board to cease practicing.

Section 67. **(TECHNICAL)** For the purpose of incorporating the amendment to s. 460.413, F.S., 1996 Supplement, s. 320.0848, F.S., is reenacted.

Section 68. Amends s. 460.4165(8) (a), F.S., to require an initial rather than an annual application, accompanied by a fee of $100. Thereafter, the chiropractor does not have to renew and may hire a new or different assistant (duly licensed) without paying an additional fee. This supervisory right will be granted to an individual chiropractor only, not to a group practice.

Section 69. Amends s. 461.003(1), F.S., to reference the Department of Health as the department having jurisdiction over the Board of Podiatric Medicine.

Section 70. **(TECHNICAL)** Corrects statutory references.

Section 71. Amends s. 461.018, F.S., 1996 Supplement, to clarify that individuals licensed pursuant to this section are licensed podiatrists with certain restrictions.

Section 72. Amends s. 464.003(1) (c) and (3), F.S., 1996 Supplement, to reference the Department of Health as the department having administrative jurisdiction over the Board of Nursing.

Sections 73-78. Are technical and change "agency" to "department" wherever such term appears in chapter 464, F.S.

Section 79. Amends s. 464.018(1)(a), (c), (j), (k), (l), and (m) and (2)(a), F.S., to specify that being convicted or entering a plea of nolo contendere, regardless of adjudication, to a crime in any jurisdiction which directly relates to the practice of nursing is grounds for disciplinary action.

Section 80. Amends s. 464.019(1), (3), and (4), F.S., 1996 Supplement, to authorize the board to set a $1,000 fee cap to cover expenses related to reviewing nursing school programs.

Section 81. Creates s. 464.0205, F.S., to establish provisions for a retired practical or registered nurse certificate. Applicants would be retired nurses intending to volunteer their services in public agencies or institutions or in nonprofit agencies or institutions in areas of critical nursing need or underserved areas. Establishes procedures for the submission and approval or denial of the application. Establishes practice settings. Establishes practice parameters. Requires a $25 application fee to cover the cost of administering the program.

Section 82. Amends s. 464.022(12), F.S., to create an exception to allow qualified nurses from another state whose employment requires they accompany an out-of-state patient to Florida to perform nursing services for that patient. The nurse can practice for a maximum of 30 consecutive days. It establishes requirements for pre-travel notification and pre-travel arrangements should the patient require placement into an in-patient setting.

Section 83. **(TECHNICAL)** Amends s. 465.003(4), F.S., to reference the Department of Health as the department having administrative jurisdiction over the Board of Pharmacy.

Section 84. Amends s. 465.004(1) and (2), F.S., to increase board membership from five to seven; specifying that to the extent practicable, board membership should represent the various pharmacy settings.

Section 85. Amends s. 465.014, F.S., to authorize a pharmacy technician to initiate communications with a practitioner, on behalf of a patient, regarding refill authorization requests. Such communications must be under the direct supervision of a pharmacist.

Section 86. Amends s. 465.0156(1), F.S., to parallel reporting requirements (changes in ownership, management, location, and staffing) for nonresident pharmacies (out-of-state) to the reporting requirements for community pharmacies (in-state).

Section 87. **(TECHNICAL)** Corrects statutory references.

Section 88. Amends s. 465.035, F.S., to conform the statute to the Federal controlled substance code, providing for the facsimile transmission of certain Schedule II prescriptions (intravenous analgesics and prescriptions for Long Term Care Facility residents).

Section 89. **(TECHNICAL)** Amends s. 466.003(7), F.S., to reference the Department of Health as the department having jurisdiction over the Board of Dentistry.

Section 90. Amends s. 466.006(3), F.S., to strike language that directs foreign trained dentists to apply for the manual skills exam. The last administration of this examination was December 31, 1991. To leave this language in the statutes confuses the foreign trained dentists when they are considering their options for licensure in Florida. Also, the bill strikes language allowing the grandfathering of a dentist who has utilized general anesthesia in a competent and effective manner for the ten year period preceding January 1, 1980, and a dentist utilizing parenteral conscious sedation for the three-year period preceding January 1, 1980. No one has utilized this pathway to obtain a permit in the last three years. Strikes language that specifies application requirements for foreign trained dentists for an examination that is no longer administered (December 31, 1991). Clarifies application procedures.

Section 91. Amends s. 466.017, F.S., to strike the grandfather clause language allowing licensed dentists who have utilized both general anesthesia and parenteral conscious sedation prior to a certain date to receive a permit to administer.

Section 92. Amends s. 466.028(1) (r) and (hh), F.S., to clarify that prescribing, procuring, ordering, dispensing, administering, supplying, selling, or giving a Schedule II amphetamine or a Schedule II sympathomimetic amine drug, or any compound thereof, is grounds for disciplinary action.

Section 93. Amends s. 468.1115(2), F.S., to exempt persons certified in the areas of speech-language impairment or hearing impairment under chapter 231 or any person under their direct supervision or under the supervision of a person licensed under this chapter when performing screenings in a school setting for pre-kindergarten through grade 12. Also exempted are persons licensed in another state as speech-language pathologists or audiologists who provide services within the applicable scope of practice for no more than 5 calendar days per month or 15 calendar days per year under direct supervision of a Florida licensee. Persons from a state that does not license speech-language pathologists or audiologists may also qualify for this exemption if they hold a certificate of clinical competence from the American Speech-Language and Hearing Association and meet all other requirements. Non-licensed persons working in a hospital setting who provide newborn infant hearing screenings are exempt if training, interpretation of screenings, and protocols are provided by a licensed audiologist. It is anticipated that the number of licensed speech-language pathologists and audiologists who will properly train volunteers to conduct school hearing screenings will increase. Furthermore, the number of screenings performed improperly and the number of school children who are not properly diagnosed with hearing impairments will decrease. It is also anticipated that the proposed change to allow persons licensed as speech-language pathologists or audiologists in other states to practice under certain limited situations in the State of Florida will provide consumers with additional

resources when they are seeking specialized services that may not be available among the current licensed population.

Section 94. **(TECHNICAL)** Amends s. 468.1125(5), F.S., to reference the Department of Health as the department having administrative jurisdiction over the Board of Speech-Language Pathology and Audiology.

Section 95. Amends s. 468.1155, F.S., to eliminate confusion about who must obtain provisional licensure and at what point it must be obtained. The proposed legislation should result in a significant increase in the numbers of individuals within the state who hold licensure in both the professions of speech-language pathology and audiology.

Section 96. Amends s. 468.1185(2) (a) and (3) (a), F.S., to allow endorsement candidates who hold a valid license from a territory of the United States to apply for licensure. This might result in the licensure by endorsement avenue being available to qualified individuals who have been licensed or certified to practice one of the professions regulated by this practice act in a territory of the United States.

Section 97. Amends s. 468.1195, F.S., to allow the board to establish minimum standards with which continuing education providers and the programs offered to licensees must comply. The proposal to exempt newly licensed practitioners from meeting continuing education requirements for their first license renewal will remove a hardship for the licensee and will remove from the board the necessity to grant hardships on a case-by-case basis. It should reduce the amount of time and paperwork currently required for an individual to demonstrate hardship. Biennial continuing education hours are limited to 60 hours.

Section 98. Creates s. 468.1201, F.S., to require all applicants for licensure or certification as speech-language pathologists, audiologists, or assistants to complete an education course on acquired immune deficiency syndrome and human immunodeficiency virus. It is anticipated that the education which will be required may be obtained from currently approved continuing education providers and that the education will focus on risk factors and preventive measures specifically associated with the types of invasive procedures used in these practices. Although it creates an additional requirement for licensure, the provisions of a grace period in which to complete the requirement should minimize the hardship an individual may face in finding the appropriate course. It is not anticipated that there will be a shortage of available approved courses.

Section 99. Amends s. 468.1215(2), (3), and (4), F.S., to clarify that all fees must be remitted before an applicant for certification can be certified by the board. The proposal would also grant the board clear authority to establish requirements for on-the-job training and supervision of assistants, to insure all assistants are receiving consistent training and supervision.

Section 100. Amends s. 468.1245(2), F.S., to require licensees who fit or sell hearing aids to provide the purchaser with a receipt, rather than a contract.

Section 101. Amends s. 468.1295, F.S., to enable the board to more diligently protect the public's health, safety and welfare by adding additional categories of violations for which disciplinary action can be taken by the board.

Section 102. Creates s. 468.1296, F.S., to prohibit sexual misconduct by a licensee or certificateholder upon a patient or client. This will provide additional consumer protection by facilitating prosecution of violators.

Section 103. **(TECHNICAL)** Amends s. 468.1655(2), F.S., to reference the Department of Health as the department having administrative jurisdiction over the Board of Nursing Home Administrators.

Section 104. Amends s. 468.1695(1), F.S., to give the department the flexibility to administer less than four, but at least two examinations per year, based upon an analysis of need.

Section 105. Amends s. 468.203(2), (4), and (5), F.S., to conform the definition of occupational therapy with the definition as provided by the American Occupational Therapy Association (AOTA). Requires aides to be under direct supervision by either a therapist or assistant at all times. Provides for more employment opportunities for OT aides.

Section 106. Amends s. 468.205, F.S., to make the Occupational Therapy Council and independent board, and to increase the membership to seven. Specifies membership and terms.

Section 107. Amends s. 468.209 F.S., to clarify the accrediting organization. As a result of restructuring of programs being accredited by the Commission on Allied Health Education Agency of the American Medical Association, OT programs are now accredited by the American Occupational Therapy Association's Accreditation Council for Occupational Therapy Education (ACOTE). Therefore, the reference to programs being accredited by particular accrediting organizations is changed. Clarifies that one temporary permit may be obtained by examination and one temporary permit under licensure by endorsement. Further, it allows an extension of six months in temporary permit status for individuals in the full-time advanced master's program for occupational therapy. This helps to ensure professional competency of the persons who reenter their profession by requiring continuing education.

Section 108. Amends s. 468.211(6), F.S., to require additional education or training courses before taking the exam on the fourth attempt.

Section 109. Amends s. 468.213, F.S., to list the National Board for Certification in Occupational Therapy (NBCOT) as the national certifying body, and corrects an error in the statute. Provides another avenue for licensure by endorsement.

Section 110. Amends s. 468.225, F.S., basically technical since this section is being addressed elsewhere in the legislative package under definitions, s. 468.203(6), which also clarifies the role of the occupational therapy aide. Amends s. 468.225(2), F.S., adding a physician assistant, speech-language pathologist or audiologist to the exemptions section. The revision is necessary because their scope of practice and required areas of expertise overlap. The national terms were being confused with the term of licensure and the appropriate changes clarify these terms. Eliminates the requirement that licensees be supervised by licensed clinical laboratory personnel while performing blood gas analysis and specimen collection. The original language was initially placed in the practice due to the grandfathering of individuals for

licensure. The grandfathering provision ended on December 31, 1988, therefore, this provision is no longer necessary. Additionally, the definition of "respiratory care services" in the practice act includes this modality and provides that it can be performed by either respiratory therapists or respiratory care practitioners. There is a technical change to amend the name of the accrediting entity of respiratory care training programs. Conforms the name of the accrediting entity and allows for programs to be approved by other accrediting agencies recognized by the U.S. Office of Education. The council can collect all fees up front, allowing applicants to be licensed in a more expedient manner. Strikes obsolete language regarding number of times an examination should be given for grandfathered applicants, as the examination is currently given three times a year. Strikes the provision that grandfathered licensees must complete 20 hours of continuing education each year. Since they have been licensed and practicing since 1988, they should only be required to complete 24 hours of continuing education biannually as required of the other licensees. Obsolete language is stricken since the time frame has expired for "on-the-job" training applicants for licensure in Florida. Changing the requirement from the place of employment to their home address allows efficiency in tracking licensees since employment addresses change more frequently. The effect of the change in chapter 468.361, F.S. clarifies continuing education requirements, and with the repeal of chapter 468.362, F.S., language regarding continuing education is conformed into one statutory cite. The effect of amending language in the disciplinary section will be to specify that entering a plea of nolo contendere to, regardless of adjudication, a crime relating to respiratory care services constitutes grounds for disciplinary action.

Section 111. Amends s. 468.351, F.S., to clarify licensure terminology. The national terms are being confused with state terminology. The grandfathering provision ended on December 31, 1988; therefore, this provision is no longer necessary. Additionally, the definition of "respiratory care service" in the practice act includes performing blood gas analysis and specimen collection and provides that it can be performed by either respiratory therapists or respiratory care practitioners. Rules promulgated under chapter 483, F.S. which governs clinical laboratory personnel, are no longer applicable to licensees under this chapter.

Section 112. Amends s. 468.352(2), (8), and (9), F.S., to conform terminology.

Section 113. Amends s. 468.354(5) (a), F.S., to conform terminology and delete obsolete language.

Section 114. Amends s. 468.355, F.S., to change the name of the accrediting entity for respiratory care training programs and to conform terminology.

Section 115. Amends s. 468.356(1), F.S., to conform the name of the accrediting entity and to allow for programs to be approved by other accrediting agencies recognized by the U.S. Office of Education.

Section 116. Amends s. 468.357, F.S., to provide for the up front collection of fees. By doing so, applicants can be licensed in a more expedient manner. Strikes the provision that grandfathered licensees must complete 20 hours of continuing education each year. Since they have been licensed and practicing since 1988, they should only be required to complete 24 hours of continuing education as required of the other licensees.

Section 117. (TECHNICAL) Amends s. 468.358, F.S., to conform terminology.

Section 118. (TECHNICAL) Amends s. 468.359(1), (2), and (5), F.S., to conform terminology.

Section 119. Amends s. 468.36, F.S., to allow for efficiency in tracking licensees at a home address in lieu of place of employment since employment can change more frequently.

Section 120. Amends s. 468.361, F.S., to clarify continuing educational requirements. With the repeal of 468.362., F.S., language regarding continuing education is conformed into one statute cite.

Section 121. (TECHNICAL) Amends s. 468.363, F.S., to conform terminology.

Section 122. (TECHNICAL) Amends s. 468.364, F.S., to delete redundant language and to conform terminology.

Section 123. Amends s. 468.365, F.S., to conform terminology. Amends language in the disciplinary section to specify that entering a plea of nolo contendere to, regardless of adjudication, a crime relating to respiratory services, constitutes grounds for disciplinary action.

Section 124. (TECHNICAL) Amends s. 468.366(1), F.S., to conform terminology.

Section 125. (TECHNICAL) Amends s. 468.368(8), F.S., to conform terminology.

Section 126. (TECHNICAL) Amends s. 478.42(3), F.S., to reference the Department of Health as the department having administrative jurisdiction over the Electrolysis Council.

Section 127. Amends s. 478.45, F.S., to delete the Florida residency requirement for licensure. Requiring residency in Florida for eligibility for licensure has proven to be unconstitutional pursuant to Mercer v. Hemmings, 194 So.2d 579 (Fla. 1966). Repeals the grandfather provision. Deletes specific reference to a particular national examination. This particular change is technical and will still allow the Board of Medicine to approve either a written exam developed by the department or a national examination. Amends s. 478.45(f), F.S., to clarify the number of times an examination may be given.

Section 128. Amends s. 478.46(1), F.S., to correct a statutory cite for applicants requesting a temporary permit if applying by endorsement, and adds the correct term "electrolysis".

Section 129. Amends. s.478.47, F.S., deleting contradictory language for the licensure by endorsement avenue and clarifies endorsement provisions for licensure.

Section 130. Amends s. 478.52(2) (d), and adds (1) (u), F.S.; since section 478.51, F.S., requires licensure of electrolysis facilities, operating any unlicensed facility can now be used as grounds for disciplinary action.

Section 131. Amends s. 480.033(1) and (2), F.S., to change the name of the Board of Massage to the Board of Massage Therapy. References the Department of Health as the department with administrative jurisdiction over the Board.

Section 132. Amends s. 480.034, F.S., to eliminate an existing exemption, which excludes from massage licensure individuals who provide treatments for the purpose of cleansing and beautifying the skin or in conjunction with a weight loss program, including herbal wraps, body scrubs, paraffin wax treatments, and seaweed wraps.

Section 133. Amends s. 480.035(1), F.S., to change the name of the Board of Massage to the Board of Massage Therapy.

Section 134. Amends s. 480.041, F.S., to delete the provisional license. This license was granted to applicants who otherwise met the requirements so they could practice under supervision while waiting to sit for the state licensure examination. The board now requires a national licensure examination.

Section 135. Amends s. 480.0415, F.S., to increase the cap for the number of continuing education classroom hours required for licensure renewal per biennium from 12 to 25.

Section 136. Amends s. 480.042(1), F.S. This language is deleted because the board no longer requires a laws and rules examination; it now requires a national licensure examination.

Section 137. **(TECHNICAL)** Repeals s. 480.0425, F.S., as the requirements involving inactive licensure are addressed in chapter 455, F.S., for all boards.

Section 138. Amends s. 480.043(7), F.S., to clarify that a license for a massage establishment may not be transferred from one owner to another. A license may be transferred from one location to another upon inspection and approval by the board and the payment of a fee not to exceed $125. A license may be transferred from one business name to another upon approval of the board and the payment of an application fee not to exceed $25.

Section 139. **(TECHNICAL)** Amends s. 480.044(1)`, F.S., to delete the fee for the application and provisional license.

Section 140. Amends s. 480.047(1) (a), F.S., to clarify that a person may not practice massage unless duly licensed or unless specifically exempted from licensure under this chapter.

Section 141. Creates s. 480.0485, F.S., to define and prohibit sexual misconduct in the practice of massage. This language will aid in disciplining violators.

Section 142. **(TECHNICAL)** Amends s. 20.43(3) (f), F.S., to delete obsolete language and make technical name and number changes.

Section 143. **(TECHNICAL)** Amends s. 381.81(2) (b), F.S., to correct a technical error.

Section 144. Amends s. 483.800, F.S., to specify that hospital-based training for laboratory and nonlaboratory personnel for testing is beneficial in hospital and commercial laboratories. Alternate sites are removed from this setting.

Section 145. Amends s. 483.801(3), F.S., to exempt Advanced Registered Nurse Practitioners performing PPMP (provider performed microscopy procedures) from licensure under chapter 483, Part IV. This would bring the statute in line with provisions found in federal legislation.

Section 146. Amends s. 483.803, F.S., to define a clinical laboratory examination. This term needs to be defined because when chapter 483, F.S., was split in 1992, the definition of a clinical laboratory, which also defined the parameters of testing, remained with Part I. This definition helps to clearly define what a laboratory examination is. The definition of public health scientist delineates the parameters and the site of practice of individuals practicing in public health laboratories.

Section 147. **(TECHNICAL)** Amends s. 483.809(1) and (2), F.S., to clarify that the board certifies to the department those applicants who are eligible for licensure. Qualification language has been moved to s. 483.823, F.S.

Section 148. Amends s. 483.812, F.S., to establish an avenue for a site-specific license for individuals working in public health laboratories. Since certification examinations are required rather than state examinations, there should be little cost impact on implementation.

Section 149. Amends s. 483.813, F.S., to provide for the extension of the temporary license to one year. This would allow examination candidates to work through an examination cycle, which would relieve an economic burden carried by some applicants who apply early in an examination cycle. The conditional license is new to this statute and applies only to public health technicians.

Section 150. Amends s. 483.823, F.S., to specify that personnel qualifications may require appropriate education, training, or experience, or the passing of an appropriate examination. Clarifies that practitioners of the healing arts are not required to obtain licensure under this part or pay associated fees, except those required for clinical laboratory license.

Section 151. Amends s. 483.825, F.S., to require that disciplinary provisions apply to applicants, registrants and licensees. This is in keeping with other practice acts and corresponds to the types of individuals covered in this practice act. This establishes as grounds for discipline being unable to perform or report a clinical laboratory examination with reasonable skill and safety, delegating responsibilities to unqualified persons, and failing to report action taken against a license in another state, territory, or country.

Section 152. Creates s. 483.828, F.S., to provide for penalties.

Section 153. Amends s. 483.901, F.S., to make technical and substantive corrections to the practice act for medical physicists. Clarifies that the role of the council is advisory, not regulatory. Adds two consumer members to the board and changes the appointment term from three to four years. Clarifies that continuing education (CE) hours are to be completed biennially and allows the department, with

the advice of the council, to set requirements by rule for CE for persons who hold more than one specialty license. Sets forth the requirements for licensure for applicants until October 1, 1997 and after October 1, 1997. Sets forth the grounds for disciplinary action and the penalties that may be assessed and the criminal sanctions for unlicensed activity. Deletes the exception from licensure for those medical physicists who have been practicing for five or more years as of July 1, 1995, which will have the effect of requiring all persons who practice medical physics to be licensed.

Section 154. **(TECHNICAL)** Amends s. 484.041(2), F.S., to reference the Department of Health as the department having administrative jurisdiction over the Board of Hearing Aid Specialists.

Section 155. **(TECHNICAL)** Amends s. 484.042(1) to correct statutory references.

Section 156. Amends s. 484.051(2), F.S., to require persons fitting and selling hearing aids to provide the purchaser with a receipt, rather than a contract, containing the seller's signature, address of regular practice, license number, and other identifying information. Designates the Department of Health as the entity with which to file a complaint.

Section 157. **(TECHNICAL)** Amends s. 486.021(2), F.S., to correct statutory references.

Section 158. Amends s. 486.023, F.S., to increase the membership of the board and to amend the composition of the board to add a physical therapy assistant.

Section 159. Amends s. 486.031, F.S., to clarify the name of the accrediting authority. Adds passage of the American Registry Exam prior to 1971, which allows an avenue for licensure by endorsement for persons who are currently ineligible. Facilitates computer based testing by eliminating the requirement that exams be administered by the department.

Section 160. Amends s. 486.041, F.S., to facilitate computer based testing by allowing the applicant to bypass the department when applying to take the required exam. Additionally, unnecessary applicant costs, related to direct application to the department, will be eliminated.

Section 161. Amends s. 486.051, F.S., to facilitate computer based testing by eliminating language requiring the department to purchase exams.

Section 162. Amends s. 486.081, F.S., to add passage of the American Registry Exam prior to 1971, which allows an avenue of licensure by endorsement for persons who are currently ineligible.

Section 163. Amends s. 486.102, F.S., to delete requirement that accrediting bodies be approved by the Council on Postsecondary Accreditation, since this organization is no longer in existence. Facilitates computer based testing by eliminating the requirement that exams be administered by the department.

Section 164. Amends s. 486.103, F.S., to facilitate computer based testing for physical therapist assistants by eliminating language requiring the department to purchase exams.

Section 165. Amends s. 486.104, F.S., to facilitate computer based testing for physical therapist assistants by eliminating language requiring the department to provide for exams.

Section 166. Creates s. 486.123, F.S., to strengthen the board's ability to discipline individuals involved in sexual misconduct by specifying that such activities are violations of the practice act.

Section 167. Amends s. 486.125(2)(g), F.S., to allow the board to recover investigative and prosecution costs.

Section 168. Amends s. 641.495(11), F.S., 1996 Supplement, to require HMO's to designate a chapter 458, F.S., or chapter 459, F.S., licensed physician as a medical director as a condition of certification.

Section 169. Provides an effective date of July 1, 1997.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

   See Total Revenues and Expenditures

2. Recurring Effects:

   See Total Revenues and Expenditures

3. Long Run Effects Other Than Normal Growth:

   None.

4. Total Revenues and Expenditures:

Total Revenues and Expenditures:	$	$
Revenue:	40,625	7,625
Expenditures:	18,200	18,200
Nursing 464.019 New Nursing Program Review Fee 7 applications x $1,000	7,000	7,000
Nursing 464.0205 Certification of Retired Volunteer Nurses 25 applications x $25	625	625

Health Care Services Pool 402.48 Registration Extended to two years Reduction in Revenue for FY 1997-99 110 registrations x $400	33,000	

Expenditures:

Occupational Therapy 468.205 Increase Board Members (3 to 5) OPS (2 Board Members)	500	500
Pharmacy 465.004 Increase Board Members (7 to 9) OPS (2 Board Members)	2,000	2,000
Travel and Communication Expenses	8,000	8,000
Physical Therapy 486.023 Increase Board (7 to 9) OPS (2 Board Members)	800	800
Travel and Communication Expenses	3,800	3,800

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The bill passed with fifteen amendments, which include the following:

Amendment 1 Amends various sections of chapter 457, F.S. It conforms the Acupuncture Practice Act to North American Free Trade Alliance (NAFTA) residency requirements by eliminating the requirements that a person must be a U.S. citizen, a permanent resident of the U.S., or a legal alien who has resided in the U.S. for six months prior to qualifying to sit for the Acupuncture exam. It requires applicants to have completed 60 college credits from an accredited postsecondary institution prior to enrolling in a required three-year acupuncture course of study up until July 31, 2001. After July 31, 2002, the required three-year acupuncture course of study increases to a four-year course. It requires successful completion of courses in western anatomy, western physiology, western pathology, and western biomedical terminology. It specifies that individuals enrolled in an authorized course of study before August 1, 1997 are only required to complete a two-year course of study, and are not required to complete the 60-hour college credits prerequisite. It eliminates the two-year tutorial program avenue for acupuncture licensure. It eliminates the five-year experience avenue for licensure. It reduces fee caps for examinations from $1,000 to $500, reduces the application fee cap from $750 to $300, and reduces the re-examination fee cap from $1,000 to $500. It reduces the initial biennial licensure fee cap from $2,000 to $400 if licensed in the first half of the biennium and further reduces the cap to $200 if licensed in the second half of the biennium.

References to "certificate" were deleted and replaced with references to "license". The renewal fee cap was reduced from $1,000 to $700.

Beginning October 1, 1997, acupuncture needles will be required to be sterile and disposable, and can only be used once. The existing requirement that acupuncture needles can be used more than once, provided they are thoroughly cleansed with an antiseptic solution and hot water prior to sterilization by autoclave was eliminated. The option to use disposable needles was eliminated.

A reference to the tutorial program was eliminated.

New references were created to reflect "licenses" and to eliminate references to "certificates"; to clarify that obtaining a license by fraudulent means is unlawful, and to clarify that licensees who violate provisions of the practice act are considered to have committed a misdemeanor of the second degree.

Amendment 2 Amends s. 458.313, F.S., to expand the definition of "active licensed practice of medicine" to include HMO medical directors who are practicing medicine.

Amendment 3 Amends s. 458.351, F.S., to clarify that the only incidents which happen in their offices that physicians are required to report are: the death of a patient; severe brain or spinal damage to a patient; a surgical procedure being performed on the wrong patient; or a surgical procedure unrelated to the patient's diagnosis or medical needs

Amendment 4 Deletes s. 458.353, F.S., which requires HMO's to designate a medical director licensed under chapters 458 or 459, F.S.

Amendment 5 Technical. Amends s. 459.0152, F.S., to clarify that osteopathic physicians who hold themselves out as specialists must have successfully completed certification requirements, rather than postdoctoral training.

Amendment 6 Amends s. 459.025, F.S., to clarify that the only incidents which happen in their offices that osteopathic physicians are required to report are: the death of a patient; severe brain or spinal damage to a patient; a surgical procedure being performed on the wrong patient; or a surgical procedure unrelated to the patient's diagnosis or medical needs.

Amendment 7 Deletes s. 459.027, F.S., which required HMO's to designate a medical director licensed under chapters 458 or 459, F.S.

(Amendment 8 was withdrawn)

Amendment 9 Deletes s. 465.014, F.S., which allowed a pharmacy technician to initiate communications with a health care practitioner regarding prescription refills.

Amendment 10 Amends s. 641.495, F.S., to require HMO's to designate a chapter 458 or 459, F.S., licensed physician as a medical director as a condition of certification.

Amendment 11 Amends s. 466.028, F.S., to clarify that prescribing, procuring, ordering, dispensing, administering, supplying, selling, or giving a Schedule II amphetamine or a Schedule II sympathomimetic amine drug, or any compound therof, is grounds for disciplinary action.

Amendment 12 Amends s. 468.205, F.S., making the Occupational Therapy Council an independent board, and increasing its membership to seven. Specifies membership and terms.

Amendment 13 Amends s. 480.034, F.S., to eliminate an existing exemption, which excludes from massage licensure individuals who provide treatments for the purpose of cleansing and beautifying the skin or in conjunction with a weight loss program, including herbal wraps, body scrubs, paraffin wax treatments, and seaweed wraps.

Amendment 14 Amends s. 480.0415, F.S., increasing the cap for the number of continuing education classroom hours required for licensure renewal per biennium from 12 to 25.

Amendment 15 Technical. Amends s. 381.81, F.S., to eliminate the word "and", which appears before "the Board of Opticianry, created under part I of chapter 484, F.S.", which is the last phrase in paragraph (2) which defines "health profession", for purposes of the Minority Health Improvement Act.

VII. SIGNATURES:

COMMITTEE ON HEALTH CARE STANDARDS & REGULATORY REFORM:

Prepared by:

Terri L. Paddon

Legislative Research Director:

Robert W. Coggins

STORAGE NAME: pcb2a.hcr
DATE: April 10, 1997

HOUSE OF REPRESENTATIVES
COMMITTEE ON
HEALTH CARE STANDARDS & REGULATORY REFORM
BILL RESEARCH & ECONOMIC IMPACT STATEMENT

BILL #: PCB HCR 97-02

RELATING TO: Regulation of Health Care Professions/Medical Quality Assurance

SPONSOR(S): Committee on Health Care Standards & Regulatory Reform and Representatives Jones, Lippman, Maygarden, Minton, Saunders, Wasserman Schultz, and Diaz de la Portilla

STATUTE(S) AFFECTED: Sections 402.48, 455.206, 458.303, 458.305, 458.307, 458.311, 458.313, 458.317, 458.319, 458.320, 458.331, 458.3312, 458.345, 458.346, 458.347, 458.3485, 458.351, 458.353, 459.003, 459.006, 459.021, 459.022, 459.025, 460.403, 460.413, 460.4138, 460.4165, 461.003, 461.013, 461.018, 464.003, 464.018, 464.019, 464.0205, 464.022, 465.003, 465.004, 465.014, 465.0156, 465.016, 465.035, 466.003, 466.006, 466.017, 466.028, 468.1115, 468.1125, 468.1155, 465.1185, 468.1195, 468.1201, 468.203, 468.205, 468.209, 468.211, 468.213, 468.225, 468.351, 468.352, 468.354, 468.355, 468.356, 468.357, 468.358, 468.359, 468.36, 468.361, 468.363, 468.364, 468.365, 468.366, 468.368, 478.42, 478.45, 478.46, 478.47, 478.52, 483.800, 483.801, 483.803, 483.809, 483.812, 483.813, 483.823, 483.825, 483.828, 483.901, 484.041, 484.042, 484.051, 486.021, 486.023, 486.031, 486.041, 486.051, 486.081, 486.102, 486.103, 486.104, 486.123, and 486.125, F.S.

COMPANION BILL(S): SB 1814(s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) HEALTH CARE STANDARDS & REGULATORY REFORM YEAS 8 NAYS 0
(2)
(3)
(4)
(5)

I. SUMMARY:

The bill amends various sections of law relating to health care practitioner licensure and discipline. It streamlines several regulatory procedures, provides for more effective prosecution of practice act violators, clarifies licensure requirements, and removes various barriers to licensure for a number of professions.

This bill has a minimal fiscal impact on the state, none on local government or the private sector.

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II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Section 20.165, F.S. created the Department of Business and Professional Regulation (DBPR) and its divisions, including the Division of Medical Quality Assurance, with the various medical boards and professions. Chapter 92-33, Laws of Florida, transferred certain medical boards and professions from DBPR to the Agency for Health Care Administration (AHCA), Division of Health Quality Assurance, effective July 1, 1993. The July 1, 1993 date was delayed by the 1993 Legislature for one year until July 1, 1994. The actual transfer of most functions did not take place until October 1, 1995. Some of the functions, such as testing and license renewals have still not been transferred.

Section 20.42, F.S., created the Agency for Health Care Administration (AHCA) and its divisions. The Division of Health Quality Assurance is responsible for health facility licensure and inspection and the medical boards and professions listed in s. 20.42(2), F.S. Naturopathy and medical physicists are not included. Medical physicists (chapter 483, part V) were originally regulated by the Legislature in 1995, and naturopathy was not included due to an oversight, as chapter 462, F.S. does not permit the state to license additional licensees under this chapter. Presently, there are approximately 13 active licensees.

In 1996, CS/HB 555 (ch. 96-403, Laws of Florida), created the Department of Health and transferred a number of functions to the new agency. Among those functions transferred were the medical boards in the Division of Medical Quality Assurance of AHCA and four professions from the DBPR (massage therapy, athletic trainers, hearing aid specialists, and health care service pools). A type two transfer of these four professions becomes effective July 1, 1997. Effective that date, there will be 36 professions in the Division of Medical Quality Assurance of the Department of Health (DOH). The law transferring the medical boards from AHCA provided that DOH would contract with AHCA to perform the function of receiving complaints and conducting investigations and prosecutions.

No provision was made in chapter 455, F.S., for the administration of the various boards by DOH. Chapter 455, F.S., provides administrative authority to either DBPR or AHCA for most functions; however it will be necessary to amend chapter 455, F.S., to clarify and grant the necessary authority to DOH.

Section 381.81(2), F.S., of the Minority Health Improvement Act provides the definition of "health profession". Each of the medical professions is included in the definition, with the exception of naturopathy and medical physicist.

"Health care practitioner" is defined in s. 455.01(4), F.S. Each of the medical professions is included in the definition, with the exception of health care service pools (ch. 402), midwifery (ch. 467, F.S.), nursing home administrator (ch. 468, part II, F.S.), athletic trainer (ch. 468, part XIV), massage therapy (ch. 480), clinical laboratory personnel (ch. 483, part I and IV, F.S.), and medical physicist (ch. 483, part V, F.S.).

GENERAL DBPR/AHCA/DOH ADMINISTRATION - Chapter 455, Florida Statutes

Section 455.02, F.S., provides for licensees that are spouses of members of the armed forces in good standing with the boards listed in s. 20.165, F.S., to be exempt from licensure renewal. Presently, only non-medical boards are listed. Due to the transfer, all

medical boards are listed in s. 20.42, F.S. All committees appointed by any board must be composed of serving board members except as otherwise provided in this chapter (s. 455.207, F.S.) or the applicable practice act.

Section 455.214, F.S., provides that the recipient of a limited license may practice only in the employ of public institutions or agencies which meet the requirements of s. 501(c)(3) of the Internal Revenue Code and which provides professional liability coverage for acts of omission of the limited licensee. The services are to be provided to the indigent, underserved, or critical need populations of the state. To receive a limited license, an applicant must be retired from the applicable profession.

It is not clear that ss. 455.219 and 455.2281, F.S., relating to finances, long-range planning, disposition of funds and unlicensed activity fees, applies to both medical and non-medical boards.

The department and each appropriate board within the Division of Medical Quality Assurance (agency) have the authority to establish procedures to handle, counsel, and provide other services to licensees with hepatitis B or AIDS within their respective boards (s. 455.2224, F.S.). There is no specific recommendation to be followed by the boards in developing such procedures.

Section 455.24, F.S., provides guidelines for the advertisement by a health care provider of free or discounted services. It allows the public 72 hours to request a refund or refuse payment for any additional services provided as a result of accepting free or discounted services. It lists the covered health care providers but does not list all of the professions. It applies to written advertisements and does not cover audio or video advertisements.

Section 455.25, F.S., provides for disclosure of a financial interest by a health care provider prior to referral of a patient to such entity. Prior to referral, a health care provider must furnish the patient a written disclosure form providing certain information. An entity may not provide services to a referred patient unless it obtains the signature of the patient on a written disclosure form providing specified information.

Section 456.32, F.S., lists the definitions of "healing arts" and "practitioner of the healing arts" as the practice of, or a person licensed to practice a number of the health care professions, respectively. Not all of the medical professions are presently included.

<u>HEALTH CARE SERVICE POOLS</u> - Chapter 402, Florida Statutes
(Section 1)

Section 402.48, F.S. requires Health Care Service Pools to register with the state annually.

BOARD OF MEDICINE - Chapter 458, Florida Statutes
(Sections 2-18)

Physicians are permitted to employ physician's trained assistants as long as they function under the direct supervision and control of the physician. Also included are services performed by a registered nurse or a licensed practical nurse.

The Board of Medicine is permitted to establish up to two probable cause panels consisting of two physicians and one lay member. One of the physicians may be a past board member who is not currently appointed to the board.

Foreign trained physicians are required to complete three years of residency training in one specialty area. Fellowship training cannot currently be used to meet this requirement. Physicians who have failed the licensure examination five times after October 1, 1986 are no longer eligible for licensure in Florida.

Physicians licensed in another state who apply for a license in Florida are required to take and pass the licensure examination over if it has been ten years or more since the exam was taken. "Active practice of medicine" is not currently defined by statute. A physician applying for licensure by endorsement must document having "actively" practiced medicine in another jurisdiction two out of the past four years, or show completion of board-approved postgraduate training within the year he applies for a license.

Section 458.317, F.S., requires physicians applying for a "limited license" to be retired. Those physicians applying for a limited license who receive no monetary compensation for their services do not have to pay any fees to obtain their limited license.

Physicians who are renewing their licenses are required to show that they have actively practiced medicine or have been on the teaching faculty of an accredited medical school within the past four years.

Physicians who practice exclusively with the Federal or state government are exempted from financial responsibility requirements. Physicians who do not carry malpractice insurance are required to post a sign in their reception area to that effect or provide a written statement to each patient.

Section 458.331, F.S., makes it a violation if a physician fails to keep written records justifying the course of treatment for a patient. It does not require the physician to list his name in the records, nor does it speak to the legibility of the written records. Subsection 458.331(cc), F.S., authorizes the use of a Schedule II Amphetamine or a Schedule II Sympathomimetic Amine drug or any compound therof for the treatment of narcolepsy, hyperkinesis, or behavioral syndrome in children, but not adults. Subsection 458.331(ii), F.S., makes it a violation for a physician or an osteopathic physician not to report a person licensed under chapter 458 and 459, F.S., whom he knows has violated the grounds for disciplinary action set out in law.

Confusion currently exists regarding who can hold themself out as a board-certified medical specialist, and under what circumstances.

Hospitals are required to submit a list of resident physicians, assistant resident physicians, house physicians, interns, or fellows employed by the facility to the

department on January 1 and July 1 of each year. The law is silent on who is responsible for submitting such lists.

The Public Sector Physician Advisory Committee to the Board of Medicine is required to meet on a quarterly basis.

All applicants seeking physician assistant certification are required to pass an examination given by the National Commission on Certification of Physician Assistants.

Section 458.3485, F.S., specifies the duties a medical assistant may perform under the supervision of a licensed physician.

Currently, physicians are required to report incidents of patient harm that occur in hospitals, but not in outpatient settings.

At this time, medical directors for health maintenance organizations are not required to be Florida licensed.

<u>OSTEOPATHIC MEDICINE</u> - Chapter 459, Florida Statutes
(Sections 19-29)

At this time, the law requires hospitals to submit a list of resident osteopathic physicians, assistant osteopathic resident physicians, house osteopathic physicians, interns, or fellows employed by the facility to the department on January 1 and July 1 of each year, although the law is silent on who is responsible for submitting these lists.

Current law requires osteopathic physicians applying for a limited license to be retired. These licensees applying for a limited license who receive no monetary compensation for their services do not have to pay any fees to obtain the limited license.

Current statutes refer to an osteopathic physician as a doctor of osteopathy. Section 459.0085, F.S., exempts osteopathic physicians who practice exclusively with the Federal or state government from financial responsibility requirements. It requires osteopathic physicians who do not carry malpractice insurance to post a sign in the reception area or provide a written statement to each patient.

Presently, it is a violation if the physician fails to keep written medical records justifying the course of treatment for the patient. The law does not require the licensee to list his name in the records, nor does it speak to the legibility of the written records. It authorizes the use of a Schedule II Amphetamine or a Schedule Sympathomimetic Amine drug or any compound therof for the treatment of narcolepsy, hyperkinesis, and behavioral syndrome in children, but not adults. It makes it a violation for an osteopathic physician not to report a person licensed under chapter 458 or 459, F.S., whom he knows has violated the grounds for disciplinary action set out in the law.

Osteopathic physicians are currently not required to report adverse incidents that occur in hospitals. Additionally, there is confusion about who can hold himself out as a board-certified specialist, and under what circumstances.

CHIROPRACTIC - Chapter 460, F.S.
(Sections 30-34)

Section 460.413, F.S., currently does not compel a licensed chiropractor to submit to a mental or physical examination if it, or the probable cause panel of the board, has probable cause to believe that the licensee is unable to practice competently because of physical or mental impairment or substance abuse. The board has a limited set of disciplinary options set forth in statute. The Board may currently design a rehabilitation plan for a disciplined licensee with no regard to sanctions which would protect the public or compensate the patient. It is unclear in the law what burden of proof the department must carry when revoking or suspending a license as opposed to other penalties. The department presently does not have the authority to enjoin in circuit court a chiropractor who is unable to practice with reasonable skill and safety.

The department does not have the authority to subpoena the names and addresses of patients of a chiropractor when such information is necessary to conduct an investigation.

Section 460.4165, F.S., requires chiropractic physician assistants to pay $100 annually to be authorized to practice under a licensee's supervision. A certified assistant may be supervised by a single physician or by a group of physicians.

PODIATRIC MEDICINE - Chapter 461, Florida Statutes
(Sections 36-37)

Section 461.018, F.S., addresses limited scope of practice for certain podiatrists. Confusion exists as to whether or not these individuals should be called podiatrists.

NURSES - Chapter 464, Florida Statutes
(Sections 38-43)

Currently, there are specified actions for which disciplinary action can be taken by the board. The law does not designate a conviction or a nolo contendere plea as grounds for discipline.

Section 464.019, F.S., requires institutions desiring to conduct approved professional or practical nursing programs to comply with applicable Board of Nursing rules. No fee is charged for program reviews.

No provision exists for retired nurses who wish to volunteer their services in underserved areas or to critical need populations.

Certain conditions exist under which individuals providing nursing services in Florida are exempted from licensure requirements. There is currently no provision for nurses from out-of-state to accompany and care for patients temporarily residing in the state for periods of 30 days or less.

PHARMACY - Chapter 465, Florida Statutes
(Sections 44-49)

The Board of Pharmacy consists of seven members who are appointed by the Governor and confirmed by the Senate. Five of the members must be licensed pharmacists who have been engaged in the practice for at least 4 years, and the remaining two must be residents of the state who have never been licensed as pharmacists and are in no way connected to the practice of pharmacy.

Pharmacists are authorized to delegate certain responsibilities to pharmacy technicians, provided the pharmacist is in direct supervision.

Section 465.035, F.S., prohibits the dispensing of a Schedule II controlled substance pursuant to the transmission of a facsimile of the original prescription.

DENTISTRY - Chapter 466, Florida Statutes
(Sections 50-53)

Section 466.006, F.S., contains language specifying application procedures for foreign trained dentists to sit for a manual skills exam and, upon passage, to sit for the state examination. The exam is no longer administered as of December 31, 1991. Current language specifies that a licensed dentist who has been utilizing general anesthesia on a regular and routine basis in a competent and effective manner for a ten-year period preceding January 1, 1980, shall be deemed to have fulfilled the training requirements required for general anesthesia. A licensed dentist who has been utilizing parenteral conscious sedation on an outpatient basis regularly and routinely in a competent and effective manner for the three-year period preceding January 1, 1980, shall be deemed to have fulfilled the training requirements necessary for parenteral conscious sedation.

SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY - Chapter 468, Florida Statutes (Part I) (Sections 54-63)

Section 468.1115, F.S., which specifies those individuals who are exempt from licensure requirements, does not specify that a licensed speech-language pathologist or audiologist may supervise non-licensed persons to perform hearing screens in the school setting. It also does not specify that persons certified under chapter 231, F.S., must be certified in speech-language impairment or hearing impairment to be permitted to supervise non-certified or non-licensed persons to conduct hearing screens in the school setting. As a result, licensees are reluctant to train non-licensed persons (primarily volunteers) to provide hearing screens in schools, and persons who are certified only as teachers (e.g., coaches) are training non-licensed persons to conduct screens. No exemption exists to allow non-licensed personnel in hospitals to conduct infant hearing screens. The topic of infant hearing screening has long been a topic of interest in Florida. Children's Medical Service (CMS) has sponsored a "high-risk" program for over a decade by providing funding for programs in conjunction with Early Intervention Programs. More recently, interest has grown in establishing standards of infant screening for well babies. The performance of infant hearing screens by non-licensed personnel requires training on how to establish a relatively controlled acoustic environment to be sure responses are reliable and how to place the probe in an infant's ear canal when facing the variety of problems which can be encountered in the newborn ear canal. Section 468.1115, F.S., does not contain an exemption from licensure for individuals who are licensed as speech-language pathologists or audiologists in other

states and who meet certain other requirements to practice under limited circumstances in this state.

The chapter does not contain language clearly stating who must obtain a provisional license and at which point an individual must obtain the license. Current language specifies that to be certified as eligible for provisional licensure the applicant must submit the application form and application fee. Current statute also contains inconsistent language referring to supervised clinical practice and clock hours. There are no provisions allowing an individual licensed in one of the two professions to become licensed in the other. Current requirements are that the individual obtain two masters degrees in communication disorders, duplicating much of the same course work. Current language also contains the term "clinical practice", which is not consistent with language containing the term "clinical clock hour" referred to in other sections of the statute.

Current licensure by endorsement provisions recognize only valid licenses or certificates held in another state. There is no recognition of licenses or certificates held in a territory of the United States.

At this time, the Board of Speech-Language Pathology/Audiology is not granted the authority to establish standards for continuing education activities and providers. Authority is limited to establishment of requirements for the number of hours for licensure renewal. No licensee is exempt from continuing education requirements for licensure renewal unless the board grants a hardship case. Newly licensed practitioners are required to meet the same continuing education requirements as all other licensees unless they request a hardship consideration.

Current law does not require that all appropriate fees for certification be remitted before the board can certify an applicant. Additionally, the statute does not specifically grant authority to the board to establish on-the-job training and supervision requirements for certification of assistants.

Licensees who fit or sell hearing aids are required to provide the purchasee with a contract.

<u>NURSING HOME ADMINISTRATOR</u> - Chapter 468, Florida Statutes (Part II) (Sections 64-65)

Currently, the agency must give the nursing home administrator examination at least four times per year.

<u>OCCUPATIONAL THERAPY</u> - Chapter 468, Florida Statutes (Part III) (Sections 66-71)

The current definition of "occupational therapy" does not conform to the definition as provided by the American Occupational Therapy Association (AOTA). The current definition of "occupational therapy aide" has no provision for supervision by an occupational therapy assistant.

The Occupational Therapy Council, under the Board of Medicine, is comprised of three members, all of which are occupational therapists.

Occupational therapy programs are currently accredited by the AMA in collaboration with the American Occupational Therapy Association. The law does not presently coincide with the national deadline date or requirements which all an occupational therapy assistant to become an occupational therapist without having met the educational requirements.

Currently, the law only allows for one temporary permit per applicant for both avenues of licensure. Additionally, there is nothing specified in the law to allow a temporary permit for applicants enrolled in a full-time advanced master's occupational therapy education program. At this time, if an applicant seeks reentry into the profession of occupational therapy, they are not required to show any hours of continuing education in their profession.

There is no limitation on the number of times a person can take the occupational therapist/assistant examination.

Present law lists the American Occupational Therapy Association as the national certifying body. If an applicant applies by endorsement, the statute currently requires proof of current licensure in another state, the District of Columbia, or a territory of the United States.

Current exemptions allow for the exemption from licensure of persons when working under the direct supervision of an occupational therapist. The law does not clarify that a physician, speech-language pathologist or audiologist is not prohibited from using occupational therapy as a part of or as incidental to their profession.

Section 468.209, F.S. specifies licensure requirements for occupational therapists/assistants. Occupational therapy programs are accredited by the AMA in collaboration with the American Occupational Therapy Association.

RESPIRATORY THERAPY - Chapter 468, F.S. (Part V)
(Sections 72-86)

The terms "certification", "registration", and "licensure" are used interchangeably. Respiratory care personnel are required to be supervised by either respiratory therapists, licensed technologists, supervisors or directors, or a respiratory care practitioner who has at least three years of experience in this modality.

The listed accrediting entity is the Committee on Allied Health Education and Accreditation of the American Medical Association. The law specifies that approval of educational programs is conducted through the Committee on Allied Health Education.

Provisions are not made for collecting fees up front. Section 468.357(3), F.S., requires grandfathered licensees who were licensed pursuant to s. 468.357(3)(a), F.S., to complete at least 20 contact hours of continuing education each year of the biennium. Other licensees in the profession are required to complete at least 20 contact hours of continuing education each year of the biennium. Section 468.357(3)(b), F.S., allows persons until December 31, 1988, an avenue for licensure who were working in the State of Florida on or after the effective date of this act and prior to October 1, 1987.

Continuing education hours are not to exceed 24 hours biennially.

The disciplinary section does not specify grounds for disciplinary action if a licensee enters a plea of nolo contendere regardless of adjudication to a crime in any jurisdiction which relates to respiratory care services.

ELECTROLYSIS - Chapter 478, Florida Statutes
(Sections 87-91)

Currently, an applicant must be a high school graduate, a resident of Florida, complete a program of study not to exceed 120 hours, and pass a written exam for licensure. Persons applying under a "grandfather provision" have until August 15, 1995, to become licensed. The national examination designated in statute is the Electrology Association examination.

The board executive director is authorized to determine if an applicant is qualified for licensure and to issue a temporary permit. An applicant is allowed to become licensed by endorsement without taking the exam. There are no provisions for operating an unlicensed facility.

BOARD OF MASSAGE - Chapter 480, Florida Statutes
(Sections 92-100)

Section 480.033, F.S., references the DBPR as the department having administrative jurisdiction over the Board of Massage. The term "Board of Massage" is used as the regulatory body for the profession.

Provisions are made for provisional licensure and the conditions under which they may be issued.

Presently, a massage establishment license may be transferred from one person, corporation name, or location to another without any requirements.

Section 480.0485, F.S. prohibits an individual from holding himself out as a massage therapist unless duly licensed.

CLINICAL LABORATORY PERSONNEL/CLINICAL LABORATORIES - Chapter 483, Florida Statutes (Part I and IV) (Sections 103-111)

Section 483.800, F.S., contains legislative intent language that recognizes the benefits of hospital-based training of personnel in the laboratory and at alternate sites.

Certain laboratory and clinical laboratory personnel are exempted from licensure. There is no exemption for advanced registered nurse practitioners to perform provider performed microscopy procedures. In a recent change, Federal legislation, CLIA '88 provides for an exemption for advanced registered nurse practitioners to perform PPM procedures.

There is currently no definition for a clinical laboratory examination or a public health laboratory scientist. Also, there are no specific qualifications for public health scientists.

Section 483.813, F.S., provides for a six-month temporary license, but does not provide for a conditional license.

The board is allowed to prescribe minimal qualifications for clinical laboratory personnel and requires a license to be issued to anyone meeting those qualifications.

Section 483.825, F.S., specifies grounds for disciplinary action for clinical laboratory personnel.

MEDICAL PHYSICIST - Chapter 483, Florida Statutes (Part V)
(Section 112)

Section 483.901, F.S., creates the Florida Medical Physicists Act. It provides for an advisory council and defines relevant terms. Licensure criteria are established and penalties for practice act violations are specified. A licensure exception is established.

HEARING AID SPECIALIST - Chapter 484, Florida Statutes
(Sections 113-115)

The Board of Hearing Aid Specialists is under the DBPR. Persons fitting and selling hearing aids are required to provide the purchaser with a receipt containing the seller's signature, address of regular practice, license number, and other identifying identification. Itemization of prices is also required. The DBPR is designated as the entity with which to file a complaint.

PHYSICAL THERAPY - Chapter 486, Florida Statutes
(Sections 116-126)

Currently, physical therapy graduates' educational preparation must be approved by the appropriate accrediting agency recognized by the Council on Postsecondary Accreditation or the U.S. Department of Education at the time of graduation and have passed an examination administered by the department. Applicants can only be endorsed for licensure if they have taken and passed the national PES examination.

The Board is composed of seven members: five licensed physical therapists (one licensed physical therapist may be a teaching physical therapist at an educational institution in this state), one who may be a consumer member and one may be a health care practitioner licensed under chapter 458 or 459, F.S., and have been engaged in practice for four years.

Currently, all examinations are administered by the department. Licensure applicants are required to apply to the board rather than the department. Applicants can only be endorsed for licensure if they have taken and passed the national PES examination. Persons who took and passed the registry examination prior to 1971 are not eligible for licensure by endorsement.

Current statute limits the administrative fine to $1,000.

B. EFFECT OF PROPOSED CHANGES:

The bill:

- Conforms those practice acts not currently in compliance with NAFTA residency requirements;
- Clarifies that Florida's endorsement licensure provisions are available to individuals holding valid, active status licenses in U.S. Territories, not just areas within the U.S.;
- Allows non-board members to serve on medical committees;
- Allows physicians who have taken the national exam more than ten years ago to become licensed by endorsement without re-examination, with specific board approval;
- Permits postgraduate physicians who do not plan to seek licensure in Florida to take the licensure exam without having to apply for a Florida license;
- Reduces postgraduate medical training requirements for foreign trained physicians from three to two years;
- Requires physicians to maintain legible medical records;
- Requires physicians to report, within 30 working days from the date they become aware, serious adverse incidents which occur in their offices;
- Allows hospital resident physicians, assistant resident physicians, house physicians, interns, or fellows to prescribe medicinal drugs, with approval;
- Requires HMO medical directors to be Florida licensed;
- Requires physician assistants to report practice act violations;
- Provides for the use of retired volunteer nurses in emergency situations;
- Allows nurses to accompany and attend to patients temporarily residing in Florida without having to obtain a Florida license;
- Imposes the same reporting requirements on out-of-state pharmacies as those imposed on in-state pharmacies;
- Allows controlled substance prescriptions to be faxed;
- Allows pharmacy technicians to initiate communications with a practitioner on behalf of a patient regarding refill authorization requests, provided the technician is directly supervised by a pharmacist;
- Makes a number of technical revisions to the Massage Therapy Practice Act;
- Establishes a "public health laboratory scientist" category of licensure under the Board of Clinical Laboratory Personnel;

- Makes a number of technical revisions to the Medical Physicists Practice Act;
- Strengthens boards' ability to discipline impaired practitioners who are unable to practice with reasonable skill and competence due to mental or physical conditions, illness, drunkenness, use of drugs, narcotics, and chemicals;
- Facilitates computer based testing;
- Strengthens boards' ability to discipline practitioners who violate practice act provisions;
- Makes several technical changes to clarify that the Department of Health has administrative jurisdiction over the Medical Quality Assurance boards, councils, and professions.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

A number of changes are made to strengthen the boards' ability to discipline practice act violators.

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

N/A

b. Does the bill require or authorize an increase in any fees?

N/A

c. Does the bill reduce total taxes, both rates and revenues?

N/A

d. Does the bill reduce total fees, both rates and revenues?

N/A

e. Does the bill authorize any fee or tax increase by any local government?

N/A

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

N/A

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 402.48(1)(a), (4), and (8)(g), F.S., to require bi-annual rather than annual registration for health care service pools

Section 2. Amends s. 457.102, F.S., to change the term "certified" for acupuncturists to "licensed".

Section 3. Amends s. 457.103(1), F.S., changing "certified" to "licensed".

Section 4. Amends s. 457.105, F.S., changing "certified" to "licensed" and requiring applicants to have completed 60 college credits from an accredited postsecondary institution prior to enrolling in a required three-year acupuncture course of study up until July 31, 2001. After that time, the course of study increases to a four-year course. Specifies courses to be taken. Eliminates a two-year tutorial program. Reduces fee caps for examination from $1,000 to $500. Reduces the application fee cap from $750 to $300. Reduces the re-examination fee cap from $1,000 to $500. Reduces the initial biennial licensure fee cap from $2,000 to $400 if licensed in the first half of the biennium and further reduces the cap to $200 if licensed in the second half of the biennium.

Section 5. Amends s. 457.107, F.S., to delete references to "certificate" and replace with "license". Reduces the renewal fee cap from $1,000 to $700.

Section 6. Amends s. 457.108, F.S., to delete references to "certificate" and replace with "license".

Section 7. Amends s. 457.1085, F.S., require, beginning October 1, 1997, acupuncture needles to be sterile and disposable, and to clarify that the disposable needles can be used once. Eliminates existing requirement that acupuncture needles can be used more than once, provided they are thoroughly cleansed with an antiseptic solution and hot water prior to sterilization by autoclave. Eliminates the option to use disposable needles.

Section 8. Amends s. 457.109, F.S. to eliminate reference to the tutorial program.

Section 9. Amends s. 457.116, F.S., to reference "licenses" and eliminate "certificates". Clarifies that obtaining a license by fraudulent means is unlawful, and to clarify that licensees who violate provisions of the practice act are considered to have committed a misdemeanor of the second degree.

Section 10. Amends s. 458.303(2), F.S., to remove "physician trained assistants" from licensure exemptions. Physicians will no longer be permitted to employ and use such persons to provide medical services to patients.

Section 11. **(Technical)** Amends s. 458.305(2), F.S., to reference the Department of Health as the department having administrative jurisdiction over the Board of Medicine.

Section 12. Amends s. 458.307(2) and (5), F.S., to delete the language relating to probable cause panels from chapter 458, F.S. New language is proposed to address this issue in chapter 455, F.S., that will apply to all boards.

Section 13. **(Technical)** Amends s. 455.206, F.S., to correct a statutory reference.

Section 14. Amends s. 458.311(1)(f) and (2), F.S., to reduce the number of years of residency training that foreign trained physicians must have from three years to two years. Fellowship training can be used to meet this requirement, provided that the training can be counted toward regular or subspecialty certification by a board recognized and certified by the ABMS. Permits the board, as prescribed by board rule, to require an applicant who does not pass the licensure examination after five attempts to complete additional remedial education training within two years and then take the examination. Post-graduate students who are participating in an allocated slot may apply to take Step III of the USMLE without applying for licensure under certain conditions.

Section 15. Amends s. 458.313, F.S., 1996 Supplement, to delete the requirement that individuals applying for licensure by endorsement must take the exam over if it has been more than ten years since they took it. Physicians licensed in Florida are not required to take the exam over after ten years provided they keep renewing their licenses. Permits physicians applying for a license who have not practiced two years out of the past four to take a board approved clinical competency examination, or show completion of board approved postgraduate training. Defines the "active practice of medicine". Deletes the requirement that the board may require applicants to take an oral exam when applying for a license. Allows the board to require applicants by endorsement who do not pass the licensure examination after five attempts to complete up to two years of remedial education and training before taking it again. Certain physicians having null and void licenses due to failure to practice in Florida for one year within the first three years after licensure may reactivate under certain conditions.

Section 16. Amends s. 458.317(1)(a) and (b), F.S., to delete the requirement that persons applying for a limited license must be retired. Requires any person who receives a waiver of fees for a limited license to pay such fees if he later receives compensation for his services.

Section 17. Amends s. 458.319(1), F.S., to require physicians who apply to renew their licenses to have practiced two out of the past four years or pass a board approved clinical competency examination.

Section 18. Amends s. 458.320((5)(a) and (g), F.S., 1996 Supplement, to clarify that physicians who practice exclusively with the Federal or state government are exempt from certain financial responsibility requirements. It requires physicians who go "bare" to notify their patients to that effect by posting a sign in the reception area and give each patient a statement to sign and place in his file.

Section 19. Amends s. 458.331(1)(m), (cc), and (ii), F.S., 1996 Supplement, to require physicians to keep legible written records as defined by department rule, in conjunction with the boards, that identifies the physician and/or the physician extender and supervising physician by name and credentials who is responsible for the records. It permits the use of a Schedule II Amphetamine or a Schedule II Sympathomimetic Amine drug or any compound for the treatment of narcolepsy, hyperkinesis, and behavioral syndrome in adults as well as children. It requires physician assistants to report licensees under chapters 458 and 459, F.S., who are in violation of the law.

Section 20. Creates s. 458.3312, F.S., to clarify who may hold himself out as a board certified medical specialist. He must receive formal recognition as a specialist from a specialty board of the American Board of Medical Specialties.

Section 21. Amends s. 458.345, F.S., to require the chief executive officer of each hospital to inform the Executive Director of the Board of Medicine of the name, title, and address of the person who is responsible for submitting such reports. It allows a hospital resident physician, assistant resident physician, intern, or fellow to prescribe medicinal drugs, provided the person is so authorized by the hospital, is engaged in an accredited training program, prescribes only in the normal course of employment, holds a prescriber number issued by the hospital and the prescription involved has that number printed theron, has adequate internal control code numbers, and provided third-party procedures can accommodate the required numbering system.

Section 22. Amends s. 458.346(2), F.S., to allow the Public Sector Advisory Committee to meet at least once a year or upon the call of the committee chair.

Section 23. Amends s. 458.347, F.S., 1996 Supplement, to allow the council to recommend those P.A. programs that hold full accreditation or provisional accreditation from the Commission on Accreditation of Allied Health Programs. Requires an applicant who does not hold a current certificate issued by the National Commission on Certification of Physician Assistants (NCCPA) and has not practiced within the preceding fours to retake and pass the NCCPA examination to be eligible for certification.

Section 24. Amends s. 458.3485(1) and (2), F.S., to clarify that medical assistants are required to be directly supervised by licensed physicians.

Section 25. Creates s. 458.351, F.S., to require physicians to report incidents of patient harm that occur in outpatient facilities as well as hospitals.

Section 26. **(Technical)** Amends s. 459.003, F.S., to reference the Department of Health as the department with administrative jurisdiction over the Board of Osteopathic Medicine.

Section 27. Amends s. 459.021(1), (3), and (5)(b) and adds s. 459.021(8), F.S., to require the hospital chief executive officer to provide the board executive director with the name, title, and address of the person responsible for submitting the information required in this section.

Section 28. Amends s. 459.0075(1), F.S., to delete the requirement that osteopathic physicians applying for a limited license must be retired. Requires any person who receives a waiver of fees for a limited license to pay such fees if he later receives compensation for his services.

Section 29. Amends s. 459.0085(5)(a) and (g), F.S., 1996 Supplement, to clarify that osteopathic physicians who practice exclusively with Federal or state government are exempt from certain financial responsibility requirements. It require those physicians who go "bare" to notify their patient to that effect by posting a sign in the reception area and give each patient a statement to sign and place in his file.

Section 30. Amends s. 459.015(1)(o), (gg), and (11), F.S., 1996 Supplement, to require osteopathic physicians to keep legible written records as defined by department rule, in conjunction with the board, that identifies the physician and/or the physician extender and supervising physician by name and credentials who is responsible for the records. It permits the use of a Schedule II amphetamine or a Schedule II sympathomimetic amine drug or any compound thereof for the treatment of narcolepsy, hyperkinesis and behavioral syndrome in adults as well as children. It requires physician assistants to report licensees under chapters 458 and 459, F.S., who are in violation of the law. Makes it grounds for disciplinary action to advertise or hold oneself out as a board-certified specialist in violation of this chapter.

Section 31. Creates s. 459.0152, F.S.,to clarify that osteopathic physicians who hold themselves out as specialists must have successfully completed certification requirements, rather than postdoctoral training.

Section 32. Amends s. 459.022, F.S., 1996 Supplement, to allow the council to recommend P.A. programs that hold full or provisional accreditation from the Commission on Accreditation of Allied Health Programs or its successor organization. Requires that an applicant who does not hold a current certificate issued by the National Commission on Certification of Physician Assistants (NCCPA) and has not practiced within the preceding four years must retake and pass the NCCPA examination to be eligible for certification.

Section 33. Creates s. 459.025, F.S., to clarify that the only incidents which happen their offices that osteopathic physicians are required to report are: the death of a patient; severe brain or spinal damage to a patient; a surgical procedure being performed on the wrong patient; or a surgical procedure unrelated to the patient's diagnosis or medical needs.

Section 34. Amends s. 240.4067(1), F.S., to change "doctors of osteopathy" to doctors of "osteopathic medicine".

Sections 35-64 Amend various sections to change "osteopathy" to "osteopathic medicine".

Section 65. Amends s. 460.403(1), F.S., to reference the Department of Health as the department having administrative jurisdiction over the Board of Chiropractic.

Section 66. Amends s. 460.413(1) (q) and (gg) and (2), F.S., 1996 Supplement, and adds subsections (6) and (7) to provide the Board of Chiropractic and the department with the authority to compel a chiropractic physician to undergo a mental

or physical examination when there is probable cause to believe that a practitioner cannot safely practice chiropractic. Currently, if the department receives a complaint that a chiropractor is unable to safely practice, it can only obtain extrinsic evidence of the problem, primarily interviews with witnesses. Because of confidentiality constraints, the department is often without the authority to obtain the evidence (patient records from drug abuse treatment or psychological records) necessary to establish by clear and convincing evidence that a practitioner cannot safely practice. Amends s. 460.413(2)(g-k), F.S., to add additional disciplinary penalties. The board does not have the authority to impose these additional conditions of discipline, such as imposition of the costs of the investigation and prosecution, requiring the chiropractor to undergo remedial education, issuance of a letter of concern, requiring corrective action, or requiring a refund of fees billed to and collected from the patient or a third party. This limits the flexibility of the board to resolve cases brought for disciplinary action and to craft a penalty which suits the violation. This language also clarifies that the board must first consider the protection of the public or compensation to the patient before it considers requirements to rehabilitate the chiropractor. It clarifies that the disciplined chiropractor must bear the expenses of meeting the obligation of a disciplinary order. Many judges at the Division of Administrative Hearings believe that the department must establish all violations by clear and convincing evidence. Generally, the higher the burden of proof, the more lengthy and complex the prosecution, almost always resulting in higher costs. This measure would require a burden of proof by the greater weight of evidence in those cases for which revocation or suspension is not being sought. This will help hold down costs in less serious cases. This language provides the department with authority to enjoin licensees from engaging in unsafe practice. This would be an adjunct to the department's power to enforce an emergency suspension order or final order. Without this authority, the department has no recourse for licensees who refuse to obey the board's orders. All the proposed language in s. 460.413, F.S., and 460.4138, F.S., has for years been in other practice acts (medical doctors, osteopaths, nurses). The language has proven to be valuable for those professions in protecting the public from impaired and malpracticing practitioners. It will allow the board to tailor more specifically the penalty so that it fits the violation. The department will be able to enjoin in circuit court any person who refuses to obey an order of the board to cease practicing.

Section 67. **(TECHNICAL)** For the purpose of incorporating the amendment to s. 460.413, F.S., 1996 Supplement, s. 320.0848, F.S., is reenacted.

Section 68. Amends s. 460.4165(8) (a), F.S., to require an initial rather than an annual application, accompanied by a fee of $100. Thereafter, the chiropractor does not have to renew and may hire a new or different assistant (duly licensed) without paying an additional fee. This supervisory right will be granted to an individual chiropractor only, not to a group practice.

Section 69. Amends s. 461.003(1), F.S., to reference the Department of Health as the department having jurisdiction over the Board of Podiatric Medicine.

Section 70. **(TECHNICAL)** Corrects statutory references.

Section 71. Amends s. 461.018, F.S., 1996 Supplement, to clarify that individuals licensed pursuant to this section are licensed podiatrists with certain restrictions.

Section 72. Amends s. 464.003(1) (c) and (3), F.S., 1996 Supplement, to reference the Department of Health as the department having administrative jurisdiction over the Board of Nursing.

Sections 73-78. Are technical and change "agency" to "department" wherever such term appears in chapter 464, F.S.

Section 79. Amends s. 464.018(1)(a), (c), (j), (k), (l), and (m) and (2)(a), F.S., to specify that being convicted or entering a plea of nolo contendere, regardless of adjudication, to a crime in any jurisdiction which directly relates to the practice of nursing is grounds for disciplinary action.

Section 80. Amends s. 464.019(1), (3), and (4), F.S., 1996 Supplement, to authorize the board to set a $1,000 fee cap to cover expenses related to reviewing nursing school programs.

Section 81. Creates s. 464.0205, F.S., to establish provisions for a retired practical or registered nurse certificate. Applicants would be retired nurses intending to volunteer their services in public agencies or institutions or in nonprofit agencies or institutions in areas of critical nursing need or underserved areas. Establishes procedures for the submission and approval or denial of the application. Establishes practice settings. Establishes practice parameters. Requires a $25 application fee to cover the cost of administering the program.

Section 82. Amends s. 464.022(12), F.S., to create an exception to allow qualified nurses from another state whose employment requires they accompany an out-of-state patient to Florida to perform nursing services for that patient. The nurse can practice for a maximum of 30 consecutive days. It establishes requirements for pre-travel notification and pre-travel arrangements should the patient require placement into an in-patient setting.

Section 83. **(TECHNICAL)** Amends s. 465.003(4), F.S., to reference the Department of Health as the department having administrative jurisdiction over the Board of Pharmacy.

Section 84. Amends s. 465.004(1) and (2), F.S., to increase board membership from five to seven; specifying that to the extent practicable, board membership should represent the various pharmacy settings.

Section 85. Amends s. 465.014, F.S., to authorize a pharmacy technician to initiate communications with a practitioner, on behalf of a patient, regarding refill authorization requests. Such communications must be under the direct supervision of a pharmacist.

Section 86. Amends s. 465.0156(1), F.S., to parallel reporting requirements (changes in ownership, management, location, and staffing) for nonresident pharmacies (out-of-state) to the reporting requirements for community pharmacies (in-state).

Section 87. **(TECHNICAL)** Corrects statutory references.

Section 88. Amends s. 465.035, F.S., to conform the statute to the Federal controlled substance code, providing for the facsimile transmission of certain Schedule II prescriptions (intravenous analgesics and prescriptions for Long Term Care Facility residents).

Section 89. (TECHNICAL) Amends s. 466.003(7), F.S., to reference the Department of Health as the department having jurisdiction over the Board of Dentistry.

Section 90. Amends s. 466.006(3), F.S., to strike language that directs foreign trained dentists to apply for the manual skills exam. The last administration of this examination was December 31, 1991. To leave this language in the statutes confuses the foreign trained dentists when they are considering their options for licensure in Florida. Also, the bill strikes language allowing the grandfathering of a dentist who has utilized general anesthesia in a competent and effective manner for the ten year period preceding January 1, 1980, and a dentist utilizing parenteral conscious sedation for the three-year period preceding January 1, 1980. No one has utilized this pathway to obtain a permit in the last three years. Strikes language that specifies application requirements for foreign trained dentists for an examination that is no longer administered (December 31, 1991). Clarifies application procedures.

Section 91. Amends s. 466.017, F.S., to strike the grandfather clause language allowing licensed dentists who have utilized both general anesthesia and parenteral conscious sedation prior to a certain date to receive a permit to administer.

Section 92. Amends s. 466.028(1) (r) and (hh), F.S., to clarify that prescribing, procuring, ordering, dispensing, administering, supplying, selling, or giving a Schedule II amphetamine or a Schedule II sympathomimetic amine drug, or any compound thereof, is grounds for disciplinary action.

Section 93. Amends s. 468.1115(2), F.S., to exempt persons certified in the areas of speech-language impairment or hearing impairment under chapter 231 or any person under their direct supervision or under the supervision of a person licensed under this chapter when performing screenings in a school setting for pre-kindergarten through grade 12. Also exempted are persons licensed in another state as speech-language pathologists or audiologists who provide services within the applicable scope of practice for no more than 5 calendar days per month or 15 calendar days per year under direct supervision of a Florida licensee. Persons from a state that does not license speech-language pathologists or audiologists may also qualify for this exemption if they hold a certificate of clinical competence from the American Speech-Language and Hearing Association and meet all other requirements. Non-licensed persons working in a hospital setting who provide newborn infant hearing screenings are exempt if training, interpretation of screenings, and protocols are provided by a licensed audiologist. It is anticipated that the number of licensed speech-language pathologists and audiologists who will properly train volunteers to conduct school hearing screenings will increase. Furthermore, the number of screenings performed improperly and the number of school children who are not properly diagnosed with hearing impairments will decrease. It is also anticipated that the proposed change to allow persons licensed as speech-language pathologists or audiologists in other states to practice under certain limited situations in the State of Florida will provide consumers with additional

resources when they are seeking specialized services that may not be available among the current licensed population.

Section 94. **(TECHNICAL)** Amends s. 468.1125(5), F.S., to reference the Department of Health as the department having administrative jurisdiction over the Board of Speech-Language Pathology and Audiology.

Section 95. Amends s. 468.1155, F.S., to eliminate confusion about who must obtain provisional licensure and at what point it must be obtained. The proposed legislation should result in a significant increase in the numbers of individuals within the state who hold licensure in both the professions of speech-language pathology and audiology.

Section 96. Amends s. 468.1185(2) (a) and (3) (a), F.S., to allow endorsement candidates who hold a valid license from a territory of the United States to apply for licensure. This might result in the licensure by endorsement avenue being available to qualified individuals who have been licensed or certified to practice one of the professions regulated by this practice act in a territory of the United States.

Section 97. Amends s. 468.1195, F.S., to allow the board to establish minimum standards with which continuing education providers and the programs offered to licensees must comply. The proposal to exempt newly licensed practitioners from meeting continuing education requirements for their first license renewal will remove a hardship for the licensee and will remove from the board the necessity to grant hardships on a case-by-case basis. It should reduce the amount of time and paperwork currently required for an individual to demonstrate hardship. Biennial continuing education hours are limited to 60 hours.

Section 98. Creates s. 468.1201, F.S., to require all applicants for licensure or certification as speech-language pathologists, audiologists, or assistants to complete an education course on acquired immune deficiency syndrome and human immunodeficiency virus. It is anticipated that the education which will be required may be obtained from currently approved continuing education providers and that the education will focus on risk factors and preventive measures specifically associated with the types of invasive procedures used in these practices. Although it creates an additional requirement for licensure, the provisions of a grace period in which to complete the requirement should minimize the hardship an individual may face in finding the appropriate course. It is not anticipated that there will be a shortage of available approved courses.

Section 99. Amends s. 468.1215(2), (3), and (4), F.S., to clarify that all fees must be remitted before an applicant for certification can be certified by the board. The proposal would also grant the board clear authority to establish requirements for on-the-job training and supervision of assistants, to insure all assistants are receiving consistent training and supervision.

Section 100. Amends s. 468.1245(2), F.S., to require licensees who fit or sell hearing aids to provide the purchaser with a receipt, rather than a contract.

Section 101. Amends s. 468.1295, F.S., to enable the board to more diligently protect the public's health, safety and welfare by adding additional categories of violations for which disciplinary action can be taken by the board.

Section 102. Creates s. 468.1296, F.S., to prohibit sexual misconduct by a licensee or certificateholder upon a patient or client. This will provide additional consumer protection by facilitating prosecution of violators.

Section 103. (TECHNICAL) Amends s. 468.1655(2), F.S., to reference the Department of Health as the department having administrative jurisdiction over the Board of Nursing Home Administrators.

Section 104. Amends s. 468.1695(1), F.S., to give the department the flexibility to administer less than four, but at least two examinations per year, based upon an analysis of need.

Section 105. Amends s. 468.203(2), (4), and (5), F.S., to conform the definition of occupational therapy with the definition as provided by the American Occupational Therapy Association (AOTA). Requires aides to be under direct supervision by either a therapist or assistant at all times. Provides for more employment opportunities for OT aides.

Section 106. Amends s. 468.205, F.S., to make the Occupational Therapy Council and independent board, and to increase the membership to seven. Specifies membership and terms.

Section 107. Amends s. 468.209 F.S., to clarify the accrediting organization. As a result of restructuring of programs being accredited by the Commission on Allied Health Education Agency of the American Medical Association, OT programs are now accredited by the American Occupational Therapy Association's Accreditation Council for Occupational Therapy Education (ACOTE). Therefore, the reference to programs being accredited by particular accrediting organizations is changed. Clarifies that one temporary permit may be obtained by examination and one temporary permit under licensure by endorsement. Further, it allows an extension of six months in temporary permit status for individuals in the full-time advanced master's program for occupational therapy. This helps to ensure professional competency of the persons who reenter their profession by requiring continuing education.

Section 108. Amends s. 468.211(6), F.S., to require additional education or training courses before taking the exam on the fourth attempt.

Section 109. Amends s. 468.213, F.S., to list the National Board for Certification in Occupational Therapy (NBCOT) as the national certifying body, and corrects an error in the statute. Provides another avenue for licensure by endorsement.

Section 110. Amends s. 468.225, F.S., basically technical since this section is being addressed elsewhere in the legislative package under definitions, s. 468.203(6), which also clarifies the role of the occupational therapy aide. Amends s. 468.225(2), F.S., adding a physician assistant, speech-language pathologist or audiologist to the exemptions section. The revision is necessary because their scope of practice and required areas of expertise overlap. The national terms were being confused with the term of licensure and the appropriate changes clarify these terms. Eliminates the requirement that licensees be supervised by licensed clinical laboratory personnel while performing blood gas analysis and specimen collection. The original language was initially placed in the practice due to the grandfathering of individuals for

licensure. The grandfathering provision ended on December 31, 1988, therefore, this provision is no longer necessary. Additionally, the definition of "respiratory care services" in the practice act includes this modality and provides that it can be performed by either respiratory therapists or respiratory care practitioners. There is a technical change to amend the name of the accrediting entity of respiratory care training programs. Conforms the name of the accrediting entity and allows for programs to be approved by other accrediting agencies recognized by the U.S. Office of Education. The council can collect all fees up front, allowing applicants to be licensed in a more expedient manner. Strikes obsolete language regarding number of times an examination should be given for grandfathered applicants, as the examination is currently given three times a year. Strikes the provision that grandfathered licensees must complete 20 hours of continuing education each year. Since they have been licensed and practicing since 1988, they should only be required to complete 24 hours of continuing education biannually as required of the other licensees. Obsolete language is stricken since the time frame has expired for "on-the-job" training applicants for licensure in Florida. Changing the requirement from the place of employment to their home address allows efficiency in tracking licensees since employment addresses change more frequently. The effect of the change in chapter 468.361, F.S. clarifies continuing education requirements, and with the repeal of chapter 468.362, F.S., language regarding continuing education is conformed into one statutory cite. The effect of amending language in the disciplinary section will be to specify that entering a plea of nolo contendere to, regardless of adjudication, a crime relating to respiratory care services constitutes grounds for disciplinary action.

Section 111. Amends s. 468.351, F.S., to clarify licensure terminology. The national terms are being confused with state terminology. The grandfathering provision ended on December 31, 1988; therefore, this provision is no longer necessary. Additionally, the definition of "respiratory care service" in the practice act includes performing blood gas analysis and specimen collection and provides that it can be performed by either respiratory therapists or respiratory care practitioners. Rules promulgated under chapter 483, F.S. which governs clinical laboratory personnel, are no longer applicable to licensees under this chapter.

Section 112. Amends s. 468.352(2), (8), and (9), F.S., to conform terminology.

Section 113. Amends s. 468.354(5) (a), F.S., to conform terminology and delete obsolete language.

Section 114. Amends s. 468.355, F.S., to change the name of the accrediting entity for respiratory care training programs and to conform terminology.

Section 115. Amends s. 468.356(1), F.S., to conform the name of the accrediting entity and to allow for programs to be approved by other accrediting agencies recognized by the U.S. Office of Education.

Section 116. Amends s. 468.357, F.S., to provide for the up front collection of fees. By doing so, applicants can be licensed in a more expedient manner. Strikes the provision that grandfathered licensees must complete 20 hours of continuing education each year. Since they have been licensed and practicing since 1988, they should only be required to complete 24 hours of continuing education as required of the other licensees.

Section 117. (TECHNICAL) Amends s. 468.358, F.S., to conform terminology.

Section 118. (TECHNICAL) Amends s. 468.359(1), (2), and (5), F.S., to conform terminology.

Section 119. Amends s. 468.36, F.S., to allow for efficiency in tracking licensees at a home address in lieu of place of employment since employment can change more frequently.

Section 120. Amends s. 468.361, F.S., to clarify continuing educational requirements. With the repeal of 468.362., F.S., language regarding continuing education is conformed into one statute cite.

Section 121. (TECHNICAL) Amends s. 468.363, F.S., to conform terminology.

Section 122. (TECHNICAL) Amends s. 468.364, F.S., to delete redundant language and to conform terminology.

Section 123. Amends s. 468.365, F.S., to conform terminology. Amends language in the disciplinary section to specify that entering a plea of nolo contendere to, regardless of adjudication, a crime relating to respiratory services, constitutes grounds for disciplinary action.

Section 124. (TECHNICAL) Amends s. 468.366(1), F.S., to conform terminology.

Section 125. (TECHNICAL) Amends s. 468.368(8), F.S., to conform terminology.

Section 126. (TECHNICAL) Amends s. 478.42(3), F.S., to reference the Department of Health as the department having administrative jurisdiction over the Electrolysis Council.

Section 127. Amends s. 478.45, F.S., to delete the Florida residency requirement for licensure. Requiring residency in Florida for eligibility for licensure has proven to be unconstitutional pursuant to Mercer v. Hemmings, 194 So.2d 579 (Fla. 1966). Repeals the grandfather provision. Deletes specific reference to a particular national examination. This particular change is technical and will still allow the Board of Medicine to approve either a written exam developed by the department or a national examination. Amends s. 478.45(f), F.S., to clarify the number of times an examination may be given.

Section 128. Amends s. 478.46(1), F.S., to correct a statutory cite for applicants requesting a temporary permit if applying by endorsement, and adds the correct term "electrolysis".

Section 129. Amends. s.478.47, F.S., deleting contradictory language for the licensure by endorsement avenue and clarifies endorsement provisions for licensure.

Section 130. Amends s. 478.52(2) (d), and adds (1) (u), F.S.; since section 478.51, F.S., requires licensure of electrolysis facilities, operating any unlicensed facility can now be used as grounds for disciplinary action.

Health Care Services Pool 402.48 Registration Extended to two years Reduction in Revenue for FY 1997-99 110 registrations x $400	33,000	
Expenditures:		
Occupational Therapy 468.205 Increase Board Members (3 to 5) OPS (2 Board Members)	500	500
Pharmacy 465.004 Increase Board Members (7 to 9) OPS (2 Board Members)	2,000	2,000
Travel and Communication Expenses	8,000	8,000
Physical Therapy 486.023 Increase Board (7 to 9) OPS (2 Board Members)	800	800
Travel and Communication Expenses	3,800	3,800

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The bill passed with fifteen amendments, which include the following:

Amendment 1 Amends various sections of chapter 457, F.S. It conforms the Acupuncture Practice Act to North American Free Trade Alliance (NAFTA) residency requirements by eliminating the requirements that a person must be a U.S. citizen, a permanent resident of the U.S., or a legal alien who has resided in the U.S. for six months prior to qualifying to sit for the Acupuncture exam. It requires applicants to have completed 60 college credits from an accredited postsecondary institution prior to enrolling in a required three-year acupuncture course of study up until July 31, 2001. After July 31, 2002, the required three-year acupuncture course of study increases to a four-year course. It requires successful completion of courses in western anatomy, western physiology, western pathology, and western biomedical terminology. It specifies that individuals enrolled in an authorized course of study before August 1, 1997 are only required to complete a two-year course of study, and are not required to complete the 60-hour college credits prerequisite. It eliminates the two-year tutorial program avenue for acupuncture licensure. It eliminates the five-year experience avenue for licensure. It reduces fee caps for examinations from $1,000 to $500, reduces the application fee cap from $750 to $300, and reduces the re-examination fee cap from $1,000 to $500. It reduces the initial biennial licensure fee cap from $2,000 to $400 if licensed in the first half of the biennium and further reduces the cap to $200 if licensed in the second half of the biennium.

References to "certificate" were deleted and replaced with references to "license". The renewal fee cap was reduced from $1,000 to $700.

Beginning October 1, 1997, acupuncture needles will be required to be sterile and disposable, and can only be used once. The existing requirement that acupuncture needles can be used more than once, provided they are thoroughly cleansed with an antiseptic solution and hot water prior to sterilization by autoclave was eliminated. The option to use disposable needles was eliminated.

A reference to the tutorial program was eliminated.

New references were created to reflect "licenses" and to eliminate references to "certificates"; to clarify that obtaining a license by fraudulent means is unlawful, and to clarify that licensees who violate provisions of the practice act are considered to have committed a misdemeanor of the second degree.

Amendment 2 Amends s. 458.313, F.S., to expand the definition of "active licensed practice of medicine" to include HMO medical directors who are practicing medicine.

Amendment 3 Amends s. 458.351, F.S., to clarify that the only incidents which happen in their offices that physicians are required to report are: the death of a patient; severe brain or spinal damage to a patient; a surgical procedure being performed on the wrong patient; or a surgical procedure unrelated to the patient's diagnosis or medical needs

Amendment 4 Deletes s. 458.353, F.S., which requires HMO's to designate a medical director licensed under chapters 458 or 459, F.S.

Amendment 5 Technical. Amends s. 459.0152, F.S., to clarify that osteopathic physicians who hold themselves out as specialists must have successfully completed certification requirements, rather than postdoctoral training.

Amendment 6 Amends s. 459.025, F.S., to clarify that the only incidents which happen in their offices that osteopathic physicians are required to report are: the death of a patient; severe brain or spinal damage to a patient; a surgical procedure being performed on the wrong patient; or a surgical procedure unrelated to the patient's diagnosis or medical needs.

Amendment 7 Deletes s. 459.027, F.S., which required HMO's to designate a medical director licensed under chapters 458 or 459, F.S.

(Amendment 8 was withdrawn)

Amendment 9 Deletes s. 465.014, F.S., which allowed a pharmacy technician to initiate communications with a health care practitioner regarding prescription refills.

Amendment 10 Amends s. 641.495, F.S., to require HMO's to designate a chapter 458 or 459, F.S., licensed physician as a medical director as a condition of certification.

Amendment 11 Amends s. 466.028, F.S., to clarify that prescribing, procuring, ordering, dispensing, administering, supplying, selling, or giving a Schedule II amphetamine or a Schedule II sympathomimetic amine drug, or any compound therof, is grounds for disciplinary action.

Amendment 12 Amends s. 468.205, F.S., making the Occupational Therapy Council an independent board, and increasing its membership to seven. Specifies membership and terms.

Amendment 13 Amends s. 480.034, F.S., to eliminate an existing exemption, which excludes from massage licensure individuals who provide treatments for the purpose of cleansing and beautifying the skin or in conjunction with a weight loss program, including herbal wraps, body scrubs, paraffin wax treatments, and seaweed wraps.

Amendment 14 Amends s. 480.0415, F.S., increasing the cap for the number of continuing education classroom hours required for licensure renewal per biennium from 12 to 25.

Amendment 15 Technical. Amends s. 381.81, F.S., to eliminate the word "and", which appears before "the Board of Opticianry, created under part I of chapter 484, F.S.", which is the last phrase in paragraph (2) which defines "health profession", for purposes of the Minority Health Improvement Act.

VII. SIGNATURES:

COMMITTEE ON HEALTH CARE STANDARDS & REGULATORY REFORM:

Prepared by:

Terri L. Paddon

Legislative Research Director:

Robert W. Coggins

STORAGE NAME: pcb2.hcr
DATE: March 17, 1997

HOUSE OF REPRESENTATIVES
COMMITTEE ON
HEALTH CARE STANDARDS & REGULATORY REFORM
BILL RESEARCH & ECONOMIC IMPACT STATEMENT

BILL #: PCB HCR 97-02

RELATING TO: Regulation of Health Care Professions/Medical Quality Assurance

SPONSOR(S): Committee on Health Care Standards & Regulatory Reform

STATUTE(S) AFFECTED: Sections 402.48, 455.206, 458.303, 458.305, 458.307, 458.311, 458.313, 458.317, 458.319, 458.320, 458.331, 458.3312, 458.345, 458.346, 458.347, 458.3485, 458.351, 458.353, 459.003, 459.006, 459.021, 459.022, 459.025, 460.403, 460.413, 460.4138, 460.4165, 461.003, 461.013, 461.018, 464.003, 464.018, 464.019, 464.0205, 464.022, 465.003, 465.004, 465.014, 465.0156, 465.016, 465.035, 466.003, 466.006, 466.017, 466.028, 468.1115, 468.1125, 468.1155, 465.1185, 468.1195, 468.1201, 468.203, 468.205, 468.209, 468.211, 468.213, 468.225, 468.351, 468.352, 468.354, 468.355, 468.356, 468.357, 468.358, 468.359, 468.36, 468.361, 468.363, 468.364, 468.365, 468.366, 468.368, 478.42, 478.45, 478.46, 478.47, 478.52, 483.800, 483.801, 483.803, 483.809, 483.812, 483.813, 483.823, 483.825, 483.828, 483.901, 484.041, 484.042, 484.051, 486.021, 486.023, 486.031, 486.041, 486.051, 486.081, 486.102, 486.103, 486.104, 486.123, and 486.125, F.S.

COMPANION BILL(S): N/A

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) HEALTH CARE STANDARDS & REGULATORY REFORM
(2)
(3)
(4)
(5)

I. SUMMARY:

PCB 97-02 amends various sections of law relating to health care practitioner licensure and discipline. It streamlines several regulatory procedures, provides for more effective prosecution of practice act violators, clarifies licensure requirements, and removes various barriers to licensure for a number of professions.

This bill has a fiscal impact on the state, none on local government or the private sector, in general.

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II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Section 20.165, F.S. created the Department of Business and Professional Regulation (DBPR) and its divisions, including the Division of Medical Quality Assurance, with the various medical boards and professions. Chapter 92-33, Laws of Florida, transferred certain medical boards and professions from DBPR to the Agency for Health Care Administration (AHCA), Division of Health Quality Assurance, effective July 1, 1993. The July 1, 1993 date was delayed by the 1993 Legislature for one year until July 1, 1994. The actual transfer of most functions did not take place until October 1, 1995. Some of the functions, such as testing and license renewals have still not been transferred.

Section 20.42, F.S., created the Agency for Health Care Administration (AHCA) and its divisions. The Division of Health Quality Assurance is responsible for health facility licensure and inspection and the medical boards and professions listed in s. 20.42(2), F.S. Naturopathy and medical physicists are not included. Medical physicists (chapter 483, part V) were originally regulated by the Legislature in 1995, and naturopathy was not included due to an oversight, as chapter 462, F.S. does not permit the state to license additional licensees under this chapter. Presently, there are approximately 13 active licensees.

In 1996, CS/HB 555 (ch. 96-403, Laws of Florida), created the Department of Health and transferred a number of functions to the new agency. Among those functions transferred were the medical boards in the Division of Medical Quality Assurance of AHCA and four professions from the DBPR (massage therapy, athletic trainers, hearing aid specialists, and health care service pools). A type two transfer of these four professions becomes effective July 1, 1997. Effective that date, there will be 36 professions in the Division of Medical Quality Assurance of the Department of Health (DOH). The law transferring the medical boards from AHCA provided that DOH would contract with AHCA to perform the function of receiving complaints and conducting investigations and prosecutions.

No provision was made in chapter 455, F.S., for the administration of the various boards by DOH. Chapter 455, F.S., provides administrative authority to either DBPR or AHCA for most functions; however it will be necessary to amend chapter 455, F.S., to clarify and grant the necessary authority to DOH.

Section 381.81(2), F.S., of the Minority Health Improvement Act provides the definition of "health profession". Each of the medical professions is included in the definition, with the exception of naturopathy and medical physicist.

"Health care practitioner" is defined in s. 455.01(4), F.S. Each of the medical professions is included in the definition, with the exception of health care service pools (ch. 402), midwifery (ch. 467, F.S.), nursing home administrator (ch. 468, part II, F.S.), athletic trainer (ch. 468, part XIV), massage therapy (ch. 480), clinical laboratory personnel (ch. 483, part I and IV, F.S.), and medical physicist (ch. 483, part V, F.S.).

GENERAL DBPR/AHCA/DOH ADMINISTRATION - Chapter 455, Florida Statutes

Section 455.02, F.S., provides for licensees that are spouses of members of the armed forces in good standing with the boards listed in s. 20.165, F.S., to be exempt from licensure renewal. Presently, only non-medical boards are listed. Due to the transfer, all

medical boards are listed in s. 20.42, F.S. All committees appointed by any board must be composed of serving board members except as otherwise provided in this chapter (s. 455.207, F.S.) or the applicable practice act.

Section 455.214, F.S., provides that the recipient of a limited license may practice only in the employ of public institutions or agencies which meet the requirements of s. 501(c)(3) of the Internal Revenue Code and which provides professional liability coverage for acts of omission of the limited licensee. The services are to be provided to the indigent, underserved, or critical need populations of the state. To receive a limited license, an applicant must be retired from the applicable profession.

It is not clear that ss. 455.219 and 455.2281, F.S., relating to finances, long-range planning, disposition of funds and unlicensed activity fees, applies to both medical and non-medical boards.

The department and each appropriate board within the Division of Medical Quality Assurance (agency) have the authority to establish procedures to handle, counsel, and provide other services to licensees with hepatitis B or AIDS within their respective boards (s. 455.2224, F.S.). There is no specific recommendation to be followed by the boards in developing such procedures.

Section 455.24, F.S., provides guidelines for the advertisement by a health care provider of free or discounted services. It allows the public 72 hours to request a refund or refuse payment for any additional services provided as a result of accepting free or discounted services. It lists the covered health care providers but does not list all of the professions. It applies to written advertisements and does not cover audio or video advertisements.

Section 455.25, F.S., provides for disclosure of a financial interest by a health care provider prior to referral of a patient to such entity. Prior to referral, a health care provider must furnish the patient a written disclosure form providing certain information. An entity may not provide services to a referred patient unless it obtains the signature of the patient on a written disclosure form providing specified information.

Section 456.32, F.S., lists the definitions of "healing arts" and "practitioner of the healing arts" as the practice of, or a person licensed to practice a number of the health care professions, respectively. Not all of the medical professions are presently included.

<u>HEALTH CARE SERVICE POOLS</u> - Chapter 402, Florida Statutes
(Section 1)

Section 402.48, F.S. requires Health Care Service Pools to register with the state annually.

BOARD OF MEDICINE - Chapter 458, Florida Statutes
(Sections 2-18)

Physicians are permitted to employ physician's trained assistants as long as they function under the direct supervision and control of the physician. Also included are services performed by a registered nurse or a licensed practical nurse.

The Board of Medicine is permitted to establish up to two probable cause panels consisting of two physicians and one lay member. One of the physicians may be a past board member who is not currently appointed to the board.

Foreign trained physicians are required to complete three years of residency training in one specialty area. Fellowship training cannot currently be used to meet this requirement. Physicians who have failed the licensure examination five times after October 1, 1986 are no longer eligible for licensure in Florida.

Physicians licensed in another state who apply for a license in Florida are required to take and pass the licensure examination over if it has been ten years or more since the exam was taken. "Active practice of medicine" is not currently defined by statute. A physician applying for licensure by endorsement must document having "actively" practiced medicine in another jurisdiction two out of the past four years, or show completion of board-approved postgraduate training within the year he applies for a license.

Section 458.317, F.S., requires physicians applying for a "limited license" to be retired. Those physicians applying for a limited license who receive no monetary compensation for their services do not have to pay any fees to obtain their limited license.

Physicians who are renewing their licenses are required to show that they have actively practiced medicine or have been on the teaching faculty of an accredited medical school within the past four years.

Physicians who practice exclusively with the Federal or state government are exempted from financial responsibility requirements. Physicians who do not carry malpractice insurance are required to post a sign in their reception area to that effect or provide a written statement to each patient.

Section 458.331, F.S., makes it a violation if a physician fails to keep written records justifying the course of treatment for a patient. It does not require the physician to list his name in the records, nor does it speak to the legibility of the written records. Subsection 458.331(cc), F.S., authorizes the use of a Schedule II Amphetamine or a Schedule II Sympathomimetic Amine drug or any compound therof for the treatment of narcolepsy, hyperkinesis, or behavioral syndrome in children, but not adults. Subsection 458.331(ii), F.S., makes it a violation for a physician or an osteopathic physician not to report a person licensed under chapter 458 and 459, F.S., whom he knows has violated the grounds for disciplinary action set out in law.

Confusion currently exists regarding who can hold themself out as a board-certified medical specialist, and under what circumstances.

Hospitals are required to submit a list of resident physicians, assistant resident physicians, house physicians, interns, or fellows employed by the facility to the

department on January 1 and July 1 of each year. The law is silent on who is responsible for submitting such lists.

The Public Sector Physician Advisory Committee to the Board of Medicine is required to meet on a quarterly basis.

All applicants seeking physician assistant certification are required to pass an examination given by the National Commission on Certification of Physician Assistants.

Section 458.3485, F.S., specifies the duties a medical assistant may perform under the supervision of a licensed physician.

Currently, physicians are required to report incidents of patient harm that occur in hospitals, but not in outpatient settings.

At this time, medical directors for health maintenance organizations are not required to be Florida licensed.

OSTEOPATHIC MEDICINE - Chapter 459, Florida Statutes
(Sections 19-29)

At this time, the law requires hospitals to submit a list of resident osteopathic physicians, assistant osteopathic resident physicians, house osteopathic physicians, interns, or fellows employed by the facility to the department on January 1 and July 1 of each year, although the law is silent on who is responsible for submitting these lists.

Current law requires osteopathic physicians applying for a limited license to be retired. These licensees applying for a limited license who receive no monetary compensation for their services do not have to pay any fees to obtain the limited license.

Current statutes refer to an osteopathic physician as a doctor of osteopathy. Section 459.0085, F.S., exempts osteopathic physicians who practice exclusively with the Federal or state government from financial responsibility requirements. It requires osteopathic physicians who do not carry malpractice insurance to post a sign in the reception area or provide a written statement to each patient.

Presently, it is a violation if the physician fails to keep written medical records justifying the course of treatment for the patient. The law does not require the licensee to list his name in the records, nor does it speak to the legibility of the written records. It authorizes the use of a Schedule II Amphetamine or a Schedule Sympathomimetic Amine drug or any compound therof for the treatment of narcolepsy, hyperkinesis, and behavioral syndrome in children, but not adults. It makes it a violation for an osteopathic physician not to report a person licensed under chapter 458 or 459, F.S., whom he knows has violated the grounds for disciplinary action set out in the law.

Osteopathic physicians are currently not required to report adverse incidents that occur in hospitals. Additionally, there is confusion about who can hold himself out as a board-certified specialist, and under what circumstances.

CHIROPRACTIC - Chapter 460, F.S.
(Sections 30-34)

Section 460.413, F.S., currently does not compel a licensed chiropractor to submit to a mental or physical examination if it, or the probable cause panel of the board, has probable cause to believe that the licensee is unable to practice competently because of physical or mental impairment or substance abuse. The board has a limited set of disciplinary options set forth in statute. The Board may currently design a rehabilitation plan for a disciplined licensee with no regard to sanctions which would protect the public or compensate the patient. It is unclear in the law what burden of proof the department must carry when revoking or suspending a license as opposed to other penalties. The department presently does not have the authority to enjoin in circuit court a chiropractor who is unable to practice with reasonable skill and safety.

The department does not have the authority to subpoena the names and addresses of patients of a chiropractor when such information is necessary to conduct an investigation.

Section 460.4165, F.S., requires chiropractic physician assistants to pay $100 annually to be authorized to practice under a licensee's supervision. A certified assistant may be supervised by a single physician or by a group of physicians.

PODIATRIC MEDICINE - Chapter 461, Florida Statutes
(Sections 36-37)

Section 461.018, F.S., addresses limited scope of practice for certain podiatrists. Confusion exists as to whether or not these individuals should be called podiatrists.

NURSES - Chapter 464, Florida Statutes
(Sections 38-43)

Currently, there are specified actions for which disciplinary action can be taken by the board. The law does not designate a conviction or a nolo contendere plea as grounds for discipline.

Section 464.019, F.S., requires institutions desiring to conduct approved professional or practical nursing programs to comply with applicable Board of Nursing rules. No fee is charged for program reviews.

No provision exists for retired nurses who wish to volunteer their services in underserved areas or to critical need populations.

Certain conditions exist under which individuals providing nursing services in Florida are exempted from licensure requirements. There is currently no provision for nurses from out-of-state to accompany and care for patients temporarily residing in the state for periods of 30 days or less.

states and who meet certain other requirements to practice under limited circumstances in this state.

The chapter does not contain language clearly stating who must obtain a provisional license and at which point an individual must obtain the license. Current language specifies that to be certified as eligible for provisional licensure the applicant must submit the application form and application fee. Current statute also contains inconsistent language referring to supervised clinical practice and clock hours. There are no provisions allowing an individual licensed in one of the two professions to become licensed in the other. Current requirements are that the individual obtain two masters degrees in communication disorders, duplicating much of the same coursework. Current language also contains the term "clinical practice", which is not consistent with language containing the term "clinical clock hour" referred to in other sections of the statute.

Current licensure by endorsement provisions recognize only valid licenses or certificates held in another state. There is no recognition of licenses or certificates held in a territory of the United States.

At this time, the Board of Speech-Language Pathology/Audiology is not granted the authority to establish standards for continuing education activities and providers. Authority is limited to establishment of requirements for the number of hours for licensure renewal. No licensee is exempt from continuing education requirements for licensure renewal unless the board grants a hardship case. Newly licensed practitioners are required to meet the same continuing education requirements as all other licensees unless they request a hardship consideration.

Current law does not require that all appropriate fees for certification be remitted before the board can certify an applicant. Additionally, the statute does not specifically grant authority to the board to establish on-the-job training and supervision requirements for certification of assistants.

Licensees who fit or sell hearing aids are required to provide the purchasee with a contract.

<u>NURSING HOME ADMINISTRATOR</u> - Chapter 468, Florida Statutes (Part II) (Sections 64-65)

Currently, the agency must give the nursing home administrator examination at least four times per year.

<u>OCCUPATIONAL THERAPY</u> - Chapter 468, Florida Statutes (Part III) (Sections 66-71)

The current definition of "occupational therapy" does not conform to the definition as provided by the American Occupational Therapy Association (AOTA). The current definition of "occupational therapy aide" has no provision for supervision by an occupational therapy assistant.

The Occupational Therapy Council, under the Board of Medicine, is comprised of three members, all of which are occupational therapists.

Occupational therapy programs are currently accredited by the AMA in collaboration with the American Occupational Therapy Association. The law does not presently coincide with the national deadline date or requirements which all an occupational therapy assistant to become an occupational therapist without having met the educational requirements.

Currently, the law only allows for one temporary permit per applicant for both avenues of licensure. Additionally, there is nothing specified in the law to allow a temporary permit for applicants enrolled in a full-time advanced master's occupational therapy education program. At this time, if an applicant seeks reentry into the profession of occupational therapy, they are not required to show any hours of continuing education in their profession.

There is no limitation on the number of times a person can take the occupational therapist/assistant examination.

Present law lists the American Occupational Therapy Association as the national certifying body. If an applicant applies by endorsement, the statute currently requires proof of current licensure in another state, the District of Columbia, or a territory of the United States.

Current exemptions allow for the exemption from licensure of persons when working under the direct supervision of an occupational therapist. The law does not clarify that a physician, speech-language pathologist or audiologist is not prohibited from using occupational therapy as a part of or as incidental to their profession.

Section 468.209, F.S. specifies licensure requirements for occupational therapists/assistants. Occupational therapy programs are accredited by the AMA in collaboration with the American Occupational Therapy Association.

RESPIRATORY THERAPY - Chapter 468, F.S. (Part V)
(Sections 72-86)

The terms "certification", "registration", and "licensure" are used interchangeably. Respiratory care personnel are required to be supervised by either respiratory therapists, licensed technologists, supervisors or directors, or a respiratory care practitioner who has at least three years of experience in this modality.

The listed accrediting entity is the Committee on Allied Health Education and Accreditation of the American Medical Association. The law specifies that approval of educational programs is conducted through the Committee on Allied Health Education.

Provisions are not made for collecting fees up front. Section 468.357(3), F.S., requires grandfathered licensees who were licensed pursuant to s. 468.357(3)(a), F.S., to complete at least 20 contact hours of continuing education each year of the biennium. Other licensees in the profession are required to complete at least 20 contact hours of continuing education each year of the biennium. Section 468.357(3)(b), F.S., allows persons until December 31, 1988, an avenue for licensure who were working in the State of Florida on or after the effective date of this act and prior to October 1, 1987.

Continuing education hours are not to exceed 24 hours biennially.

The disciplinary section does not specify grounds for disciplinary action if a licensee enters a plea of nolo contendere regardless of adjudication to a crime in any jurisdiction which relates to respiratory care services.

ELECTROLYSIS - Chapter 478, Florida Statutes
(Sections 87-91)

Currently, an applicant must be a high school graduate, a resident of Florida, complete a program of study not to exceed 120 hours, and pass a written exam for licensure. Persons applying under a "grandfather provision" have until August 15, 1995, to become licensed. The national examination designated in statute is the Electrology Association examination.

The board executive director is authorized to determine if an applicant is qualified for licensure and to issue a temporary permit. An applicant is allowed to become licensed by endorsement without taking the exam. There are no provisions for operating an unlicensed facility.

BOARD OF MASSAGE - Chapter 480, Florida Statutes
(Sections 92-100)

Section 480.033, F.S., references the DBPR as the department having administrative jurisdiction over the Board of Massage. The term "Board of Massage" is used as the regulatory body for the profession.

Provisions are made for provisional licensure and the conditions under which they may be issued.

Presently, a massage establishment license may be transferred from one person, corporation name, or location to another without any requirements.

Section 480.0485, F.S. prohibits an individual from holding himself out as a massage therapist unless duly licensed.

CLINICAL LABORATORY PERSONNEL/CLINICAL LABORATORIES - Chapter 483, Florida Statutes (Part I and IV) (Sections 103-111)

Section 483.800, F.S., contains legislative intent language that recognizes the benefits of hospital-based training of personnel in the laboratory and at alternate sites.

Certain laboratory and clinical laboratory personnel are exempted from licensure. There is no exemption for advanced registered nurse practitioners to perform provider performed microscopy procedures. In a recent change, Federal legislation, CLIA '88 provides for an exemption for advanced registered nurse practitioners to perform PPM procedures.

There is currently no definition for a clinical laboratory examination or a public health laboratory scientist. Also, there are no specific qualifications for public health scientists.

Section 483.813, F.S., provides for a six-month temporary license, but does not provide for a conditional license.

The board is allowed to prescribe minimal qualifications for clinical laboratory personnel and requires a license to be issued to anyone meeting those qualifications.

Section 483.825, F.S., specifies grounds for disciplinary action for clinical laboratory personnel.

MEDICAL PHYSICIST - Chapter 483, Florida Statutes (Part V)
(Section 112)

Section 483.901, F.S., creates the Florida Medical Physicists Act. It provides for an advisory council and defines relevant terms. Licensure criteria are established and penalties for practice act violations are specified. A licensure exception is established.

HEARING AID SPECIALIST - Chapter 484, Florida Statutes
(Sections 113-115)

The Board of Hearing Aid Specialists is under the DBPR. Persons fitting and selling hearing aids are required to provide the purchaser with a receipt containing the seller's signature, address of regular practice, license number, and other identifying identification. Itemization of prices is also required. The DBPR is designated as the entity with which to file a complaint.

PHYSICAL THERAPY - Chapter 486, Florida Statutes
(Sections 116-126)

Currently, physical therapy graduates' educational preparation must be approved by the appropriate accrediting agency recognized by the Council on Postsecondary Accreditation or the U.S. Department of Education at the time of graduation and have passed an examination administered by the department. Applicants can only be endorsed for licensure if they have taken and passed the national PES examination.

The Board is composed of seven members: five licensed physical therapists (one licensed physical therapist may be a teaching physical therapist at an educational institution in this state), one who may be a consumer member and one may be a health care practitioner licensed under chapter 458 or 459, F.S., and have been engaged in practice for four years.

Currently, all examinations are administered by the department. Licensure applicants are required to apply to the board rather than the department. Applicants can only be endorsed for licensure if they have taken and passed the national PES examination. Persons who took and passed the registry examination prior to 1971 are not eligible for licensure by endorsement.

Current statute limits the administrative fine to $1,000.

B. EFFECT OF PROPOSED CHANGES:

The bill:

- Conforms those practice acts not currently in compliance with NAFTA residency requirements;
- Clarifies that Florida's endorsement licensure provisions are available to individuals holding valid, active status licenses in U.S. Territories, not just areas within the U.S.;
- Allows non-board members to serve on medical committees;
- Allows physicians who have taken the national exam more than ten years ago to become licensed by endorsement without re-examination, with specific board approval;
- Permits postgraduate physicians who do not plan to seek licensure in Florida to take the licensure exam without having to apply for a Florida license;
- Reduces postgraduate medical training requirements for foreign trained physicians from three to two years;
- Requires physicians to maintain legible medical records;
- Requires physicians to report, within 30 working days from the date they become aware, serious adverse incidents which occur in their offices;
- Allows hospital resident physicians, assistant resident physicians, house physicians, interns, or fellows to prescribe medicinal drugs, with approval;
- Requires HMO medical directors to be Florida licensed;
- Requires physician assistants to report practice act violations;
- Provides for the use of retired volunteer nurses in emergency situations;
- Allows nurses to accompany and attend to patients temporarily residing in Florida without having to obtain a Florida license;
- Imposes the same reporting requirements on out-of-state pharmacies as those imposed on in-state pharmacies;
- Allows controlled substance prescriptions to be faxed;
- Allows pharmacy technicians to initiate communications with a practitioner on behalf of a patient regarding refill authorization requests, provided the technician is directly supervised by a pharmacist;
- Makes a number of technical revisions to the Massage Therapy Practice Act;
- Establishes a "public health laboratory scientist" category of licensure under the Board of Clinical Laboratory Personnel;

- Makes a number of technical revisions to the Medical Physicists Practice Act;
- Strengthens boards' ability to discipline impaired practitioners who are unable to practice with reasonable skill and competence due to mental or physical conditions, illness, drunkenness, use of drugs, narcotics, and chemicals;
- Facilitates computer based testing;
- Strengthens boards' ability to discipline practitioners who violate practice act provisions;
- Makes several technical changes to clarify that the Department of Health has administrative jurisdiction over the Medical Quality Assurance boards, councils, and professions.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

A number of changes are made to strengthen the boards' ability to discipline practice act violators.

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

N/A

b. Does the bill require or authorize an increase in any fees?

N/A

c. Does the bill reduce total taxes, both rates and revenues?

N/A

d. Does the bill reduce total fees, both rates and revenues?

N/A

e. Does the bill authorize any fee or tax increase by any local government?

N/A

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

N/A

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 402.48, F.S., to require bi-annual rather than annual registration.

Section 2. Amends s. 458.303 to remove "physician trained assistants" from licensure exemptions. Physicians will no longer be permitted to employ and use such persons to provide medical services to patients.

Section 3. **(Technical)** Amends s. 458.305, F.S., to reference the Department of Health as the department having administrative jurisdiction over the Board of Medicine.

Section 4. Amends s. 458.307, F.S., to delete the language relating to probable cause panels from chapter 458, F.S. New language is proposed to address this issue in chapter 455, F.S., that will apply to all boards.

Section 5. **(Technical)** Amends s. 455.206, F.S., to correct a statutory reference.

Section 6. Amends s. 458.311, F.S., to reduce the number of years of residency training that foreign trained physicians must have from three years to two years. Fellowship training can be used to meet this requirement, provided that the training can be counted toward regular or subspecialty certification by a board recognized and certified by the ABMS. Permits the board, as prescribed by board rule, to require an applicant who does not pass the licensure examination after five attempts to complete additional remedial education training within two years and then take the examination. Post-graduate students who are participating in an allocated slot may apply to take Step III of the USMLE without applying for licensure under certain conditions.

Section 7. Amends s. 458.313, F.S., to delete the requirement that individuals applying for licensure by endorsement must take the exam over if it has been more than ten years since they took it. Physicians licensed in Florida are not required to take the exam over after ten years provided they keep renewing their licenses. Permits physicians applying for a license who have not practiced two years out of the past four to take a board approved clinical competency examination, or show completion of board approved postgraduate training. Defines the "active practice of medicine". Deletes the requirement that the board may require applicants to take an oral exam when applying for a license. Allows the board to require applicants by endorsement who do not pass the licensure examination after five attempts to complete up to two years of remedial education and training before taking it again. Certain physicians having null and void licenses due to failure to practice in Florida for one year within the first three years after licensure may reactivate under certain conditions.

Section 8. Amends s. 458.317, F.S., to delete the requirement that persons applying for a limited license must be retired. Requires any person who receives a waiver of

fees for a limited license to pay such fees if he later receives compensation for his services.

Section 9. Amends s. 458.319, F.S., to require physicians who apply to renew their licenses to have practiced two out of the past four years or pass a board approved clinical competency examination.

Section 10. Amends s. 458.320, F.S., to clarify that physicians who practice exclusively with the Federal or state government are exempt from certain financial responsibility requirements. It requires physicians who go "bare" to notify their patients to that effect by posting a sign in the reception area and give each patient a statement to sign and place in his file.

Section 11. Amends s. 458.331, F.S., to require physicians to keep legible written records as defined by department rule, in conjunction with the boards, that identifies the physician and/or the physician extender and supervising physician by name and credentials who is responsible for the records. It permits the use of a Schedule II Amphetamine or a Schedule II Sympathomimetic Amine drug or any compound for the treatment of narcolepsy, hyperkinesis, and behavioral syndrome in adults as well as children. It requires physician assistants to report licensees under chapters 458 and 459, F.S., who are in violation of the law.

Section 12. Creates s. 458.3312, F.S., to clarify who may hold himself out as a board certified medical specialist. He must receive formal recognition as a specialist from a specialty board of the American Board of Medical Specialties.

Section 13. Amends s. 458.345, F.S., to require the chief executive officer of each hospital to inform the Executive Director of the Board of Medicine of the name, title, and address of the person who is responsible for submitting such reports. It allows a hospital resident physician, assistant resident physician, intern, or fellow to prescribe medicinal drugs, provided the person is so authorized by the hospital, is engaged in an accredited training program, prescribes only in the normal course of employment, holds a prescriber number issued by the hospital and the prescription involved has that number printed theron, has adequate internal control code numbers, and provided third-party procedures can accommodate the required numbering system.

Section 14. Amends s. 458.346, F.S., to allow the Public Sector Advisory Committee to meet at least once a year or upon the call of the committee chair.

Section 15. Amends s. 458.347, F.S., to allow the council to recommend those P.A. programs that hold full accreditation or provisional accreditation from the Commission on Accreditation of Allied Health Programs. Requires an applicant who does not hold a current certificate issued by the National Commission on Certification of Physician Assistants (NCCPA) and has not practiced within the preceding fours to retake and pass the NCCPA examination to be eligible for certification.

Section 16. Amends s. 458.3485, F.S., to clarify that medical assistants are required to be directly supervised by licensed physicians.

Section 17. Creates s. 458.351, F.S., to require physicians to report incidents of patient harm that occur in outpatient facilities as well as hospitals.

Section 18. Creates s. 458.353, F.S., to require Health Maintenance Organizations to designate a medical director licensed under chapter 458 or 459, F.S.

Section 19. **(Technical)** Amends s. 459.003, F.S., to reference the Department of Health as the department with administrative jurisdiction over the Board of Osteopathic Medicine.

Section 20. **(Technical)** Amends s. 459.006, F.S., to refer to the profession as osteopathic medicine rather than osteopathy.

Section 21. Amends s. 459.021, F.S., to require the hospital chief executive officer to provide the board executive director with the name, title, and address of the person responsible for submitting the information required in this section.

Section 22. Authorizes Statutory Revision to change "osteopathy" to "osteopathic medicine" and "doctor of osteopathy" or "osteopath" to "osteopathic physician" wherever such terms appear in chapter 459,, F.S.

Section 23. Amends s. 459.0075, F.S., to delete the requirement that osteopathic physicians applying for a limited license must be retired. Requires any person who receives a waiver of fees for a limited license to pay such fees if he later receives compensation for his services.

Section 24. Amends s. 459.0085, F.S., to clarify that osteopathic physicians who practice exclusively with Federal or state government are exempt from certain financial responsibility requirements. It require those physicians who go "bare" to notify their patient to that effect by posting a sign in the reception area and give each patient a statement to sign and place in his file.

Section 25. Amends s. 459.015, F.S., to require osteopathic physicians to keep legible written records as defined by department rule, in conjunction with the board, that identifies the physician and/or the physician extender and supervising physician by name and credentials who is responsible for the records. It permits the use of a Schedule II amphetamine or a Schedule II sympathomimetic amine drug or any compound thereof for the treatment of narcolepsy, hyperkinesis and behavioral syndrome in adults as well as children. It requires physician assistants to report licensees under chapters 458 and 459, F.S., who are in violation of the law. Makes it grounds for disciplinary action to advertise or hold oneself out as a board-certified specialist in violation of this chapter.

Section 26. Creates s. 459.0152, F.S., to clarify who may hold oneself out as a board certified medical specialist. The licensee must receive formal recognition as a specialist from a specialty board of the American Osteopathic Association or the Accreditation Council on Graduate Medical Education.

Section 27. Amends s. 459.022, F.S., to allow the council to recommend P.A. programs that hold full or provisional accreditation from the Commission on Accreditation of Allied Health Programs or its successor organization. Requires that an applicant who does not hold a current certificate issued by the National Commission on Certification of Physician Assistants (NCCPA) and has not practiced within the preceding four years must retake and pass the NCCPA examination to be eligible for certification.

Section 28. Creates s. 459.025, F.S., to require osteopathic physicians to report adverse incidents which occur in their offices within 30 days after the incident. This proposal will allow the board and department to strengthen their ability to discipline incompetent and unsafe practitioners.

Section 29. Creates s. 459.027, F.S., to require organizations defined in s. 641.47(7) (HMOs) to designate a medical director who is licensed under chapter 458 or 459, F.S.

Section 30. Amends s. 460.403, F.S., to reference the Department of Health as the department having administrative jurisdiction over the Board of Chiropractic.

Section 31. Amends s. 460.413, F.S., to provide the Board of Chiropractic and the department with the authority to compel a chiropractic physician to undergo a mental or physical examination when there is probable cause to believe that a practitioner cannot safely practice chiropractic. Currently, if the department receives a complaint that a chiropractor is unable to safely practice, it can only obtain extrinsic evidence of the problem, primarily interviews with witnesses. Because of confidentiality constraints, the department is often without the authority to obtain the evidence (patient records from drug abuse treatment or psychological records) necessary to establish by clear and convincing evidence that a practitioner cannot safely practice. Amends s. 460.413(2)(g-k), F.S., to add additional disciplinary penalties. The board does not have the authority to impose these additional conditions of discipline, such as imposition of the costs of the investigation and prosecution, requiring the chiropractor to undergo remedial education, issuance of a letter of concern, requiring corrective action, or requiring a refund of fees billed to and collected from the patient or a third party. This limits the flexibility of the board to resolve cases brought for disciplinary action and to craft a penalty which suits the violation. This language also clarifies that the board must first consider the protection of the public or compensation to the patient before it considers requirements to rehabilitate the chiropractor. It clarifies that the disciplined chiropractor must bear the expenses of meeting the obligation of a disciplinary order. Many judges at the Division of Administrative Hearings believe that the department must establish all violations by clear and convincing evidence. Generally, the higher the burden of proof, the more lengthy and complex the prosecution, almost always resulting in higher costs. This measure would require a burden of proof by the greater weight of evidence in those cases for which revocation or suspension is not being sought. This will help hold down costs in less serious cases. This language provides the department with authority to enjoin licensees from engaging in unsafe practice. This would be an adjunct to the department's power to enforce an emergency suspension order or final order. Without this authority, the department has no recourse for licensees who refuse to obey the board's orders. All the proposed language in s. 460.413, F.S., and 460.4138, F.S., has for years been in other practice acts (medical doctors, osteopaths, nurses). The language has proven to be valuable for those professions in protecting the public from impaired and malpracticing practitioners. It will allow the board to tailor more specifically the penalty so that it fits the violation. The department will be able to enjoin in circuit court any person who refuses to obey an order of the board to cease practicing.

Section 32. **(TECHNICAL)** For the purpose of incorporating the amendment to s. 460.413, F.S., 1996 Supplement, s. 320.0848, F.S., is reenacted.

Section 33. Amends s. 460.4138, F.S., to permit the department to conduct adequate investigations, especially in cases of sexual misconduct or in multi-disciplinary practices where a practitioner might fail to identify himself in a patient records. Obtaining the names of patients who were seen at a facility during the same time period as the misconduct took place often serves to either refute or corroborate the practitioner's defense of an allegation.

Section 34. Amends s. 460.4165, F.S., to require an initial rather than an annual application, accompanied by a fee of $100. Thereafter, the chiropractor does not have to renew and may hire a new or different assistant (duly licensed) without paying an additional fee. This supervisory right will be granted to an individual chiropractor only, not to a group practice.

Section 35. Amends s. 461.003, F.S., to reference the Department of Health as the department having jurisdiction over the Board of Podiatric Medicine.

Section 36. **(TECHNICAL)** Corrects statutory references.

Section 37. Amends s. 461.018, F.S., to clarify that individuals licensed pursuant to this section are licensed podiatrists with certain restrictions.

Section 38. Amends s. 464.003, F.S., to reference the Department of Health as the department having administrative jurisdiction over the Board of Nursing.

Section 39. **(TECHNICAL)** Authorizes Statutory Revision to change "agency" to "department" wherever such term appears in chapter 464, F.S.

Section 40. Amends s. 464.018, F.S., to specify that being convicted or entering a plea of nolo contendere, regardless of adjudication, to a crime in any jurisdiction which directly relates to the practice of nursing is grounds for disciplinary action.

Section 41. Amends s. 464.019, F.S., 1996 Supplement, to authorize the board to set a $1,000 fee cap to cover expenses related to reviewing nursing school programs.

Section 42. Creates s. 464.0205, F.S., to establish provisions for a retired practical or registered nurse certificate. Applicants would be retired nurses intending to volunteer their services in public agencies or institutions or in nonprofit agencies or institutions in areas of critical nursing need or underserved areas. Establishes procedures for the submission and approval or denial of the application. Establishes practice settings. Establishes practice parameters. Requires a $25 application fee to cover the cost of administering the program.

Section 43. Amends s. 464.022, F.S., to create an exception to allow qualified nurses from another state whose employment requires they accompany an out-of-state patient to Florida to perform nursing services for that patient. The nurse can practice for a maximum of 30 consecutive days. It establishes requirements for pre-travel notification and pre-travel arrangements should the patient require placement into an in-patient setting.

Section 44. **(TECHNICAL)** amends s. 465.003, F.S., to reference the Department of Health as the department having administrative jurisdiction over the Board of Pharmacy.

Section 45. Amends s. 465.004, F.S., to increase board membership from five to seven; specifying that to the extent practicable, board membership should represent the various pharmacy settings.

Section 46. Amends s. 465.014, F.S., to authorize a pharmacy technician to initiate communications with a practitioner, on behalf of a patient, regarding refill authorization requests. Such communications must be under the direct supervision of a pharmacist.

Section 47. Amends s. 465.0156, F.S., to parallel reporting requirements (changes in ownership, management, location, and staffing) for nonresident pharmacies (out-of-state) to the reporting requirements for community pharmacies (in-state).

Section 48. **(TECHNICAL)** Corrects statutory references.

Section 49. Amends s. 465.035, F.S., to conform the statute to the Federal controlled substance code, providing for the facsimile transmission of certain Schedule II prescriptions (intravenous analgesics and prescriptions for Long Term Care Facility residents).

Section 50. **(TECHNICAL)** Amends s. 466.003, F.S., to reference the Department of Health as the department having jurisdiction over the Board of Dentistry.

Section 51. Amends s. 466.006, F.S., to strike language that directs foreign trained dentists to apply for the manual skills exam. The last administration of this examination was December 31, 1991. To leave this language in the statutes confuses the foreign trained dentists when they are considering their options for licensure in Florida. Also, the bill strikes language allowing the grandfathering of a dentist who has utilized general anesthesia in a competent and effective manner for the ten year period preceding January 1, 1980, and a dentist utilizing parenteral conscious sedation for the three-year period preceding January 1, 1980. No one has utilized this pathway to obtain a permit in the last three years. Strikes language that specifies application requirements for foreign trained dentists for an examination that is no longer administered (December 31, 1991). Clarifies application procedures.

Section 52. Amends s. 466.017, F.S., to strike the grandfather clause language allowing licensed dentists who have utilized both general anesthesia and parenteral conscious sedation prior to a certain date to receive a permit to administer.

Section 53. **(TECHNICAL)** Corrects statutory references.

Section 54. Amends s. 468.1115, F.S., to exempt persons certified in the areas of speech-language impairment or hearing impairment under chapter 231 or any person under their direct supervision or under the supervision of a person licensed under this chapter when performing screenings in a school setting for pre-kindergarten through grade 12. Also exempted are persons licensed in another state as speech-language pathologists or audiologists who provide services within

the applicable scope of practice for no more than 5 calendar days per month or 15 calendar days per year under direct supervision of a Florida licensee. Persons from a state that does not license speech-language pathologists or audiologists may also qualify for this exemption if they hold a certificate of clinical competence from the American Speech-Language and Hearing Association and meet all other requirements. Non-licensed persons working in a hospital setting who provide newborn infant hearing screenings are exempt if training, interpretation of screenings, and protocols are provided by a licensed audiologist. It is anticipated that the number of licensed speech-language pathologists and audiologists who will properly train volunteers to conduct school hearing screenings will increase. Furthermore, the number of screenings performed improperly and the number of school children who are not properly diagnosed with hearing impairments will decrease. It is also anticipated that the proposed change to allow persons licensed as speech-language pathologists or audiologists in other states to practice under certain limited situations in the State of Florida will provide consumers with additional resources when they are seeking specialized services that may not be available among the current licensed population.

Section 55. **(TECHNICAL)** Amends s. 468.1125, F.S., to reference the Department of Health as the department having administrative jurisdiction over the Board of Speech-Language Pathology and Audiology.

Section 56. Amends s. 468.1155, F.S., to eliminate confusion about who must obtain provisional licensure and at what point it must be obtained. The proposed legislation should result in a significant increase in the numbers of individuals within the state who hold licensure in both the professions of speech-language pathology and audiology.

Section 57. Amends s. 468.1185, F.S., to allow endorsement candidates who hold a valid license from a territory of the United States to apply for licensure. This might result in the licensure by endorsement avenue being available to qualified individuals who have been licensed or certified to practice one of the professions regulated by this practice act in a territory of the United States.

Section 58. Amends s. 468.1195, F.S., to allow the board to establish minimum standards with which continuing education providers and the programs offered to licensees must comply. The proposal to exempt newly licensed practitioners from meeting continuing education requirements for their first license renewal will remove a hardship for the licensee and will remove from the board the necessity to grant hardships on a case-by-case basis. It should reduce the amount of time and paperwork currently required for an individual to demonstrate hardship. Biennial continuing education hours are limited to 60 hours.

Section 59. Creates s. 468.1201, F.S., to require all applicants for licensure or certification as speech-language pathologists, audiologists, or assistants to complete an education course on acquired immune deficiency syndrome and human immunodeficiency virus. It is anticipated that the education which will be required may be obtained from currently approved continuing education providers and that the education will focus on risk factors and preventive measures specifically associated with the types of invasive procedures used in these practices. Although it creates an additional requirement for licensure, the provisions of a grace period in which to complete the requirement should minimize the hardship an individual may

face in finding the appropriate course. It is not anticipated that there will be a shortage of available approved courses.

Section 60. Amends s. 468.1215, F.S., to clarify that all fees must be remitted before an applicant for certification can be certified by the board. The proposal would also grant the board clear authority to establish requirements for on-the-job training and supervision of assistants, to insure all assistants are receiving consistent training and supervision.

Section 61. Amends s. 468.1245, F.S., to require licensees who fit or sell hearing aids to provide the purchaser with a receipt, rather than a contract.

Section 62. Amends s. 468.1295, F.S., to enable the board to more diligently protect the public's health, safety and welfare by adding additional categories of violations for which disciplinary action can be taken by the board.

Section 63. Creates s. 468.1296, F.S., to prohibit sexual misconduct by a licensee or certificateholder upon a patient or client. This will provide additional consumer protection by facilitating prosecution of violators.

Section 64. **(TECHNICAL)** Amends s. 468.1655, F.S., to reference the Department of Health as the department having administrative jurisdiction over the Board of Nursing Home Administrators.

Section 65. Amends s. 468.1695, F.S., to give the department the flexibility to administer less than four, but at least two examinations per year, based upon an analysis of need.

Section 66. Amends s. 468.203, F.S., to conform the definition of occupational therapy with the definition as provided by the American Occupational Therapy Association (AOTA). Requires aides to be under direct supervision by either a therapist or assistant at all times. Provides for more employment opportunities for OT aides.

Section 67. Amends s. 468.205, F.S., to add an occupational therapy assistant and a consumer to the council. This allows for better representation of the profession.

Section 68. Amends s. 468.209 F.S., to clarify the accrediting organization. As a result of restructuring of programs being accredited by the Commission on Allied Health Education Agency of the American Medical Association, OT programs are now accredited by the American Occupational Therapy Association's Accreditation Council for Occupational Therapy Education (ACOTE). Therefore, the reference to programs being accredited by particular accrediting organizations is changed. Clarifies that one temporary permit may be obtained by examination and one temporary permit under licensure by endorsement. Further, it allows an extension of six months in temporary permit status for individuals in the full-time advanced master's program for occupational therapy. This helps to ensure professional competency of the persons who reenter their profession by requiring continuing education.

Section 69. Amends s. 468.211, F.S., to require additional education or training courses before taking the exam on the fourth attempt.

Section 70. Amends s. 468.213, F.S., to list the National Board for Certification in Occupational Therapy (NBCOT) as the national certifying body, and corrects an error in the statute. Provides another avenue for licensure by endorsement.

Section 71. Amends s. 468.225, F.S., basically technical since this section is being addressed elsewhere in the legislative package under definitions, s. 468.203(6), which also clarifies the role of the occupational therapy aide. Amends s. 468.225(2), F.S., adding a physician assistant, speech-language pathologist or audiologist to the exemptions section. The revision is necessary because their scope of practice and required areas of expertise overlap. The national terms were being confused with the term of licensure and the appropriate changes clarify these terms. Eliminates the requirement that licensees be supervised by licensed clinical laboratory personnel while performing blood gas analysis and specimen collection. The original language was initially placed in the practice due to the grandfathering of individuals for licensure. The grandfathering provision ended on December 31, 1988, therefore, this provision is no longer necessary. Additionally, the definition of "respiratory care services" in the practice act includes this modality and provides that it can be performed by either respiratory therapists or respiratory care practitioners. There is a technical change to amend the name of the accrediting entity of respiratory care training programs. Conforms the name of the accrediting entity and allows for programs to be approved by other accrediting agencies recognized by the U.S. Office of Education. The council can collect all fees up front, allowing applicants to be licensed in a more expedient manner. Strikes obsolete language regarding number of times an examination should be given for grandfathered applicants, as the examination is currently given three times a year. Strikes the provision that grandfathered licensees must complete 20 hours of continuing education each year. Since they have been licensed and practicing since 1988, they should only be required to complete 24 hours of continuing education biannually as required of the other licensees. Obsolete language is stricken since the time frame has expired for "on-the-job" training applicants for licensure in Florida. Changing the requirement from the place of employment to their home address allows efficiency in tracking licensees since employment addresses change more frequently. The effect of the change in chapter 468.361, F.S. clarifies continuing education requirements, and with the repeal of chapter 468.362, F.S., language regarding continuing education is conformed into one statutory cite. The effect of amending language in the disciplinary section will be to specify that entering a plea of nolo contendere to, regardless of adjudication, a crime relating to respiratory care services constitutes grounds for disciplinary action.

Section 72. Amends s. 468.351, F.S., to clarify licensure terminology. The national terms are being confused with state terminology. The grandfathering provision ended on December 31, 1988; therefore, this provision is no longer necessary. Additionally, the definition of "respiratory care service" in the practice act includes performing blood gas analysis and specimen collection and provides that it can be performed by either respiratory therapists or respiratory care practitioners. Rules promulgated under chapter 483, F.S. which governs clinical laboratory personnel, are no longer applicable to licensees under this chapter.

Section 73. Amends s. 468.352, F.S., to conform terminology.

Section 74. Amends s. 468.354, F.S., to conform terminology and delete obsolete language.

Section 75. Amends s. 468.355, F.S., to change the name of the accrediting entity for respiratory care training programs and to conform terminology.

Section 76. Amends s. 468.356(1), F.S., to conform the name of the accrediting entity and to allow for programs to be approved by other accrediting agencies recognized by the U.S. Office of Education.

Section 77. Amends s. 468.357, F.S., to provide for the up front collection of fees. By doing so, applicants can be licensed in a more expedient manner. Strikes the provision that grandfathered licensees must complete 20 hours of continuing education each year. Since they have been licensed and practicing since 1988, they should only be required to complete 24 hours of continuing education as required of the other licensees.

Section 78. **(TECHNICAL)** Amends s. 468.358, F.S., to conform terminology.

Section 79. **(TECHNICAL)** Amends s. 468.359, F.S., to conform terminology.

Section 80. Amends s. 468.36, F.S., to allow for efficiency in tracking licensees at a home address in lieu of place of employment since employment can change more frequently.

Section 81. Amends s. 468.361, F.S., to clarify continuing educational requirements. With the repeal of 468.362., F.S., language regarding continuing education is conformed into one statute cite.

Section 82. **(TECHNICAL)** Amends s. 468.363, F.S., to conform terminology.

Section 83. **(TECHNICAL)** Amends s. 468.364, F.S., to delete redundant language and to conform terminology.

Section 84. Amends s. 468.365, F.S., to conform terminology. Amends language in the disciplinary section to specify that entering a plea of nolo contendere to, regardless of adjudication, a crime relating to respiratory services, constitutes grounds for disciplinary action.

Section 85. **(TECHNICAL)** Amends s. 468.366, F.S., to conform terminology.

Section 86. **(TECHNICAL)** Amends s. 468.368, F.S., to conform terminology.

Section 87. **(TECHNICAL)** Amends s. 478.42, F.S., to reference the Department of Health as the department having administrative jurisdiction over the Electrolysis Council.

Section 88. Amends s. 478.45, F.S., to delete the Florida residency requirement for licensure. Requiring residency in Florida for eligibility for licensure has proven to be unconstitutional pursuant to Mercer v. Hemmings, 194 So.2d 579 (Fla. 1966). Repeals the grandfather provision. Deletes specific reference to a particular national examination. This particular change is technical and will still allow the Board of Medicine to approve either a written exam developed by the department or a national examination. Amends s. 478.45(f), F.S., to clarify the number of times an examination may be given.

Section 89. Amends s. 478.46, F.S., to correct a statutory cite for applicants requesting a temporary permit if applying by endorsement, and adds the correct term "electrolysis".

Section 90. Amends. s.478.47, F.S., deleting contradictory language for the licensure by endorsement avenue and clarifies endorsement provisions for licensure.

Section 91. Amends s. 478.52, F.S.; since section 478.51, F.S., requires licensure of electrolysis facilities, operating any unlicensed facility can now be used as grounds for disciplinary action.

Section 92. Amends s. 480.033, F.S., to change the name of the Board of Massage to the Board of Massage Therapy. References the Department of Health as the department with administrative jurisdiction over the Board.

Section 93. Amends s. 480.035, F.S., to change the name of the Board of Massage to the Board of Massage Therapy.

Section 94. Amends s. 480.0041, F.S., to delete the provisional license. This license was granted to applicants who otherwise met the requirements so they could practice under supervision while waiting to sit for the state licensure examination. The board now requires a national licensure examination.

Section 95. Amends s. 480.042, F.S. This language is deleted because the board no longer requires a laws and rules examination; it now requires a national licensure examination.

Section 96. **(TECHNICAL)** Repeals s. 480.0425, F.S., as the requirements involving inactive licensure are addressed in chapter 455, F.S., for all boards.

Section 97. Amends s. 480.043, F.S., to clarify that a license for a massage establishment may not be transferred from one owner to another. A license may be transferred from one location to another upon inspection and approval by the board and the payment of a fee not to exceed $125. A license may be transferred from one business name to another upon approval of the board and the payment of an application fee not to exceed $25.

Section 98. **(TECHNICAL)** Amends s. 480.044, F.S., to delete the fee for the application and provisional license.

Section 99. Amends s. 480.047, F.S., to clarify that a person may not practice massage unless duly licensed or unless specifically exempted from licensure under this chapter.

Section 100. Creates s. 480.0485, F.S., to define and prohibit sexual misconduct in the practice of massage. This language will aid in disciplining violators.

Section 101. **(TECHNICAL)** Amends s. 20.43, F.S., to delete obsolete language and make technical name and number changes.

Section 102. **(TECHNICAL)** Amends s. 381.81, F.S., to correct a technical error.

Section 103. Amends s. 483.800, F.S., to specify that hospital-based training for laboratory and nonlaboratory personnel for testing is beneficial in hospital and commercial laboratories. Alternate sites are removed from this setting.

Section 104. Amends s. 483.801, F.S., to exempt Advanced Registered Nurse Practitioners performing PPMP (provider performed microscopy procedures) from licensure under chapter 483, Part IV. This would bring the statute in line with provisions found in federal legislation.

Section 105. Amends s. 483.803, F.S., to define a clinical laboratory examination. This term needs to be defined because when chapter 483, F.S., was split in 1992, the definition of a clinical laboratory, which also defined the parameters of testing, remained with Part I. This definition helps to clearly define what a laboratory examination is. The definition of public health scientist delineates the parameters and the site of practice of individuals practicing in public health laboratories.

Section 106. **(TECHNICAL)** Amends s. 483.809, F.S., to clarify that the board certifies to the department those applicants who are eligible for licensure. Qualification language has been moved to s. 483.823, F.S.

Section 107. Amends s. 483.812, F.S., to establish an avenue for a site-specific license for individuals working in public health laboratories. Since certification examinations are required rather than state examinations, there should be little cost impact on implementation.

Section 108. Amends s. 483.813, F.S., to provide for the extension of the temporary license to one year. This would allow examination candidates to work through an examination cycle, which would relieve an economic burden carried by some applicants who apply early in an examination cycle. The conditional license is new to this statute and applies only to public health technicians.

Section 109. Amends s. 483.823, F.S., to specify that personnel qualifications may require appropriate education, training, or experience, or the passing of an appropriate examination. Clarifies that practitioners of the healing arts are not required to obtain licensure under this part or pay associated fees, except those required for clinical laboratory license.

Section 110. Amends s. 483.825, F.S., to require that disciplinary provisions apply to applicants, registrants and licensees. This is in keeping with other practice acts and corresponds to the types of individuals covered in this practice act. This establishes as grounds for discipline being unable to perform or report a clinical laboratory examination with reasonable skill and safety, delegating responsibilities to unqualified persons, and failing to report action taken against a license in another state, territory, or country.

Section 111. Creates s. 483.828, F.S., to provide for penalties.

Section 112. Amends s. 483.901, F.S., to make technical and substantive corrections to the practice act for medical physicists. Clarifies that the role of the council is advisory, not regulatory. Adds two consumer members to the board and changes the appointment term from three to four years. Clarifies that continuing education (CE) hours are to be completed biennially and allows the department, with

the advice of the council, to set requirements by rule for CE for persons who hold more than one specialty license. Sets forth the requirements for licensure for applicants until October 1, 1997 and after October 1, 1997. Sets forth the grounds for disciplinary action and the penalties that may be assessed and the criminal sanctions for unlicensed activity. Deletes the exception from licensure for those medical physicists who have been practicing for five or more years as of July 1, 1995, which will have the effect of requiring all persons who practice medical physics to be licensed.

Section 113. **(TECHNICAL)** Amends s. 484.041, F.S., to reference the Department of Health as the department having administrative jurisdiction over the Board of Hearing Aid Specialists.

Section 114. **(TECHNICAL)** Corrects statutory references.

Section 115. Amends s. 484.051, F.S., to require persons fitting and selling hearing aids to provide the purchaser with a receipt, rather than a contract, containing the seller's signature, address of regular practice, license number, and other identifying information. Designates the Department of Health as the entity with which to file a complaint.

Section 116. **(TECHNICAL)** Corrects statutory references.

Section 117. Amends s. 486.023, F.S., to increase the membership of the board and to amend the composition of the board to add a physical therapy assistant.

Section 118. Amends s. 486.031, F.S., to clarify the name of the accrediting authority. Adds passage of the American Registry Exam prior to 1971, which allows an avenue for licensure by endorsement for persons who are currently ineligible. Facilitates computer based testing by eliminating the requirement that exams be administered by the department.

Section 119. Amends s. 486.041, F.S., to facilitate computer based testing by allowing the applicant to bypass the department when applying to take the required exam. Additionally, unnecessary applicant costs, related to direct application to the department, will be eliminated.

Section 120. Amends s. 486.051, F.S., to facilitate computer based testing by eliminating language requiring the department to purchase exams.

Section 121. Amends s. 486.081, F.S., to add passage of the American Registry Exam prior to 1971, which allows an avenue of licensure by endorsement for persons who are currently ineligible.

Section 122. Amends s. 486.102, F.S., to delete requirement that accrediting bodies be approved by the Council on Postsecondary Accreditation, since this organization is no longer in existence. Facilitates computer based testing by eliminating the requirement that exams be administered by the department.

Section 123. Amends s. 486.103, F.S., to facilitate computer based testing for physical therapist assistants by eliminating language requiring the department to purchase exams.

Section 124. Amends s. 486.104, F.S., to facilitate computer based testing for physical therapist assistants by eliminating language requiring the department to provide for exams.

Section 125. Creates s. 486.123, F.S., to strengthen the board's ability to discipline individuals involved in sexual misconduct by specifying that such activities are violations of the practice act.

Section 126. Amends s. 486.125, F.S., to allow the board to recover investigative and prosecution costs.

Section 127. Provides an effective date of July 1, 1997.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

   See Total Revenues and Expenditures

2. Recurring Effects:

   See Total Revenues and Expenditures

3. Long Run Effects Other Than Normal Growth:

   None.

4. Total Revenues and Expenditures:

Total Revenues and Expenditures:	$	$
Revenue:	40,625	7,625
Expenditures:	18,200	18,200
Nursing 464.019 New Nursing Program Review Fee 7 applications x $1,000	7,000	7,000
Nursing 464.0205 Certification of Retired Volunteer Nurses 25 applications x $25	625	625
Health Care Services Pool 402.48 Registration Extended to two years Reduction in Revenue for FY 1997-99 110 registrations x $400	33,000	

Expenditures:

Occupational Therapy 468.205 Increase

Board Members (3 to 5)		
OPS (2 Board Members)	500	500
Pharmacy 465.004 Increase Board Members (7 to 9)		
OPS (2 Board Members)	2,000	2,000
Travel and Communication Expenses	8,000	8,000
Physical Therapy 486.023 Increase Board (7 to 9)		
OPS (2 Board Members)	800	800
Travel and Communication Expenses	3,800	3,800

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON HEALTH CARE STANDARDS & REGULATORY REFORM:

Prepared by:	Legislative Research Director:
Terri L. Paddon	Robert W. Coggins

SUMMARY OF 1997 MQA LEGISLATIVE PROPOSALS
Substantive & Technical Revisions to Board/Council Practice Acts
Statutory Reference / Explanation

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CHAPTER 457, F.S. -- BOARD OF ACUPUNCTURE	
Section 1	**Amends Section 457.103(1), F.S.** Increases board membership from 5 to 7, adding one professional and one consumer member. Board composition would be 4 professional and 3 consumer members.
Section 2	**Amends Section 457.105(2) and Creates Section 457.105(3), F.S.** Deletes U.S. citizenship, permanent U.S. residency, and legal alien who has resided in the U.S. for 6 months immediately prior to qualifying for examination status as prerequisites for licensure. **NOTE:** Conforms to NAFTA requirements. Drops reference to a specific national exam vendor, thereby permitting any national exam company, via contract, to provide testing services. Raises the academic requirements for students enrolling in an acupuncture school from a 2-year course of study to a 3-year course of study, thereby conforming to national standards for educational programs. Raises the term for the tutorial pathway into the profession from 2 years to 3 years. Deletes the "experience only" pathway as an alternative for licensure. Grandfathers in current licensees who entered the profession via the "experience only" pathway.
Section 3	**Amends Section 457.109(1), F.S.** Clarifies confusing language relating to false advertising. Allows board to discipline licensees who fail to pay court ordered child support.
CHAPTER 458, F.S. -- BOARD OF MEDICINE	
Section 4	**Amends Section 458.303, F.S.** Deletes statutory reference to "physician's trained assistant". Removes "physician's trained assistant" from exemption from licensure language.
Section 5	**TECHNICAL. Amends Section 458.307, F.S.** Eliminates language referencing probable cause panels. **NOTE:** Issue addressed in Chapter 455.
Section 6	**Amends Section 458.311, F.S.** Reduces the number of years, from 3 to 2, of postgraduate education a foreign trained physician must have to be eligible for licensure. Allows fellowship experience to count toward eligibility for licensure, in addition to residency. Allows board to require applicants to complete additional remedial education/training after failure to pass the licensure exam after 5 or more attempts.
Section 7	**Amends Section 458.313, F.S.** Deletes requirement that exam must have been taken and passed within the 10-year period immediately preceding application as a prerequisite to licensure by endorsement. Defines the "active practice of medicine". Allows board to require applicants to complete additional remedial education/training after failing to pass the licensure exam after 5 or more attempts.

SUMMARY OF 1997 MQA LEGISLATIVE PROPOSALS
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Section 8	**Amends Section 458.317, F.S.** Requires any person who receives a waiver of fees for a limited license to pay such fees if they receive payment for the practice of medicine.
Section 9	**Amends 458.391(1), F.S.** Requires applicant to prove he has actively practiced medicine for at least 2 of the previous 4 years.
Section 10	**Amends 458.320, F.S.** Requires physicians who do not carry malpractice insurance to post a sign to that effect and to provide a written statement so specifying to all patients.
Section 11	**Amends 458.331, F.S.** Requires patient records to be legible and identify the treatment provider and the treatment provided. Clarifies physicians' authority to use Ritalin in the treatment of hyperkinetic (Attention Deficit Disorders) adults as well as children. Requires PA's to report practice act violations.
Section 12	**Amends Section 458.3312, F.S.** Specifies that physicians cannot advertise board certification in a medical specialty unless they have received formal recognition from an agency approved by the board.
Section 13	**Amends Section 458.345, F.S.** Requires hospitals employing/utilizing services of resident physicians, assistant resident physicians, house physicians, interns, or fellows in fellowship training which leads to subspecialty board certification to furnish DOH with a list of employees. Requires hospital to notify Board of Medicine of employee responsible for furnishing list of employees.
Section 14	**Amends Section 458.346, F.S.** Reduces the number of times the Public Sector Physician Advisory Committee is required to meet each year from at least four times to at least once, or upon the call of the chairperson.
Section 15	**Amends Section 458.347, F.S.** Specifies that physicians who supervise PA's cannot be employed by the PA. Requires applicant who does not hold a current NCCPA certification and has not actively practiced as a PA within the immediately preceding 4 years to retake and successfully complete the entry level exam to be eligible for certification.
Section 16	**Amends Section 458.3458, F.S.** Clarifies that medical assistants are required to be directly supervised by licensed physicians.
Section 17	**Creates Section 458.350, F.S.** Requires physicians to file reports of incidents of patient harm that occur in outpatient facilities.

Section 18	**Creates Section 458.355, F.S.** Specifies that the physician/patient relationship is essentially the same regardless of whether the physician is independent or practices in a managed care environment. Specifies legal requirements of the physician towards patients. Makes it clear that individuals making medical-related decisions, regardless of the organizational structure within which they operate, **must** be Florida-licensed. (NOTE:) The historical independent physician/patient relationship is well understood, however, the physician/patient relationship in a managed care environment is not as clearly defined.
CHAPTER 459, F.S. -- BOARD OF OSTEOPATHIC MEDICINE	
Section 19	**Creates Section 459.025, F.S.** Requires osteopathic physicians to file reports of incidents of patient harm that occur in outpatient facilities.
CHAPTER 460, F.S. -- BOARD OF CHIROPRACTIC	
Section 20	**Amends Section 460.413, F.S.** Requires licensee to submit to a mental or physical exam, under certain circumstances. Establishes burden of proof level required when taking disciplinary action. Allows board to refuse to renew/reinstate licensee who is not in compliance with a Final Order. Allows, through court action, enjoinment of licensees who are unable to practice with reasonable skill and safety. Requires Final Orders to specify practice act violation.
Section 21	**Amends Section 460.4138, F.S.** Allows patient records considered vital to an investigation to be subpoenaed.
Section 22	**Amends Section 460.4165, F.S.** Extends renewal cycle for chiropractic physicians authorized to supervise certified chiropractic physician's assistants from annual to bi-annual. Clarifies that "supervision" must be by an individual chiropractor rather than a group.
CHAPTER 464, F.S. -- BOARD OF NURSING	
Section 23	**Creates Section 464.0205, F.S.** Establishes a retired volunteer nurse program, requires certification, and describes the application process.
Section 24	**Amends Section 464.022, F.S.** Allows nurses licensed in another state to practice for time limited periods (30 days) for the general public benefit, such as: Red Cross and other nursing services authorized by the state Emergency Management Act, students in post-basic or graduate nursing programs, rendering of non-clinical consultative services by properly licensed out-of-state nurses, and out-of-state licensees whose employment requires accompaniment and care for a patient who temporarily resides in Florida, not to exceed 30 days.

SUMMARY OF 1997 MQA LEGISLATIVE PROPOSALS
Substantive & Technical Revisions to Board/Council Practice Acts
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CHAPTER 465, F.S. -- BOARD OF PHARMACY	
Section 25	**Amends Section 465.0156, F.S.** Parallels the reporting requirements for community pharmacies to those of non-resident pharmacies.
Section 26	**Amends Section 465.035, F.S.** Conforms state law to the Federal controlled substance code, providing for the Facsimile of an original prescription for certain Schedule II drugs (intravenous analgesics and prescriptions for long term care facility residents).
CHAPTER 466, F.S. -- BOARD OF DENTISTRY	
Section 27	**TECHNICAL. Amends Section 466.006, F.S.** Deletes obsolete language authorizing an exam until December, 1991.
Section 28	**TECHNICAL. Amends Section 466.017, F.S.** Deletes obsolete language referencing a grandfather clause which provided an alternate route to licensure for individuals involved in certain types of treatment 10 years prior to 1/1/1980.
Section 29	**Amends Section 466.024, F.S.** Specifies that the board can limit the types of instruments and devices that may be used in performing delegable tasks. (NOTE: A recent DOAH ruling indicated that Chapter 466 is unclear with respect to whether the board has clear legislative authority to limit such devices).
CHAPTER 467, F.S. -- COUNCIL ON LICENSED MIDWIFERY	
Section 30	**Amends Section 467.003, F.S.** Allows ARNP's to function as preceptors for midwifery students.
Section 31	**Amends Section 467.009, F.S.** Reduces the number of women that a student midwife must care for, from 50 to 40, in each of the 3 stages of delivery. Increases the number of women that a student midwife must observe in the intrapartal period. Requires the establishment of a process to make it easier for student midwives to observe and participate in supervised prenatal, labor, delivery, and postpartal clinical experiences. Allows the Department of Education to adopt curricular frameworks for private educational programs, as they now do for public programs. Requires nonpulic educational institutions that conduct approved midwifery programs to either hold full accreditation or be seeking accreditation from the Commission on Recognition of Postsecondary Accreditation. Clarifies that public institutions that conduct approved midwifery programs must be accredited by one of the regional accrediting associations recognized by the United States Department of Education.

Section 32	**Amends Section 467.0125, F.S.** Precludes midwives who hold a temporary certification from being preceptors. Requires credentials of foreign trained applicants to be approved by a professional credentialing organization approved by the department, rather than relying on in-house staff to verify credentials obtained in other countries.
Section 33	**Creates Section 467.0126, F.S.** Provides for the issuance of a temporary certificate, good for a maximum of one year, after completion of an approved midwifery program.
Section 34	**Amends Section 467.015, F.S.** Allows licensed midwives to prescribe and administer drugs used during and right after childbirth. Allows midwives to order appropriate laboratory and diagnostic tests for ongoing evaluation of risk assessment.
Section 35	**Amends Section 467.017, F.S.** Eliminates need for midwives to submit written plans for emergency care as a part of licensure renewal, unless the plans are modified. Written emergency care plans are still required for initial licensure, in all cases.
Section 36	**Amends Section 467.203, F.S.** Clarifies that penalties for practice act violations are not limited to those outlined in this section of law.
PART I OF CHAPTER 468, F.S. -- SPEECH-LANGUAGE PATHOLOGY & AUDIOLOGY	
Section 37	**Amends Section 468.1115, F.S.** Allows licensees and individuals certified in speech-language impairment/hearing impairment under Chapter 231, F.S., to supervise non-licensed persons performing hearing screenings in a school setting. Allows out-of-state licensees to provide certain treatment in Florida, under supervision and for a limited period of time (no more than 5 calendar days per month or 15 calendar days per year).
Section 38	**Amends Section 468.1155, F.S.** Clarifies who must obtain provisional licensure and under what circumstances provisional licensure is required. Specifies that the educational institution from which the required Masters; degree is earned must be recognized by an approved accrediting agency. Foreign trained graduates must demonstrate that the educational institution meets standards established by an approved accrediting body. Specifies coursework and clinical clock hour requirements for speech-language licensees seeking licensure in audiology and vice versa.
Section 39	**Amends Section 468.1185, F.S.** Recognizes licensure/certification in U.S. Territories, not just other states.

Section 40	**Creates Section 468.1190, F.S.** Requires HIV/AIDS course as condition of initial licensure. Gives applicant 6 months to complete course if it has not been taken at time of licensure.
Section 41	**Amends Section 468.1195, F.S.** Specifies that licensee/certificate holder must have completed continuing education requirements specified by the board. Exempts individuals licensed/certified 6 months or less before the end of the biennial licensure cycle from continuing education requirements. Allows board to establish standards for the approval of continuing education providers.
Section 42	**Amends Section 468.1215, F.S.** Authorizes the board to establish on-the-job training and supervision requirements for certification.
Section 43	**Amends 468.1295, F.S.** Clarifies that the following actions constitute practice act violations: fraud; misrepresentation; employing a licensee/business in a manner that is contradictory to the requirements of Chapter 455, F.S.; failing to notify DOH of address changes; practicing beyond the scope of practice; aiding, assisting, or employing an unlicensed person; sexual misconduct on a patient/client; inability to practice safely because of impairment. By including this language in the practice act, it is easier to prosecute violators. Clarifies that certificateholders, not just licensees, can be placed on probation.
Section 44	**Creates Section 468.1296, F.S.** Strengthens board's ability to discipline licensees who engage in sexual misconduct by specifying that this act is a violation of the practice act. Authorizes board to define "sexual misconduct".
PART II OF CHAPTER 468, F.S. -- NURSING HOME ADMINISTRATORS	
Section 45	**Amends Section 468.1695, F.S.** Gives DOH the flexibility to administer less than four, but at least two, exams per year, based upon an analysis of need. **NOTE:** The law currently requires that the exam be given 4 times per year.
PART III OF CHAPTER 468, F.S. -- OCCUPATIONAL THERAPY COUNCIL	
Section 46	**Amends Section 468.203, F.S.** Amends the definition of OT to conform to AOTA terminology. Requires OT aide to work under the direct supervision of a licensed OT or OT assistant.
Section 47	**Amends Section 468.205, F.S.** Increases council membership 3 to 5. Requires the board to appoint 2 OT's, 2 OT assistants, and one consumer. **NOTE:** The council currently consists of 3 OT's.

Section 48	**Amends Section 468.209, F.S.** Deletes reference to programs being accredited by particular accrediting organizations (AMA/AOTA). Clarifies that one temporary permit may be obtained by examination and one temporary permit may be obtained under licensure by endorsement, under certain circumstances.
Section 49	**Amends Section 468.211, F.S.** Requires applicant to take additional educational / training courses, after failing the exam 3 times.
Section 50	**Amends Section 468.213, F.S.** Corrects the statutory reference to the national certifying body. Clarifies that board is allowed to endorse applicants licensed in a territory/jurisdiction of the U.S.
Section 51	**Amends Section 468.225, F.S.** Deletes reference to exemption for persons working under the direct supervision of an OT. **NOTE:** Language no longer necessary in this section because the issue is being addressed elsewhere. Allows PA/speech-language pathologist/audiologist to use OT as part of or incidental to the practice of these professions.
Section 52	**Amends Section 468.351, F.S.** Changes professional status terminology to conform with national terms. Eliminates requirement that licensees be supervised by licensed clinical laboratory personnel while performing blood gas analysis and specimen collection. **NOTE:** This restriction was initially included in the practice act because of grandfathering provisions, which ended 12/31/88. Additional, scope of practice provides for these functions.
Section 53	**TECHNICAL. Amends Section 468.352, F.S.** Conforms terminology.
Section 54	**TECHNICAL. Amends Section 468.353, F.S.** Eliminates obsolete language.
Section 55	**TECHNICAL. Amends Section 468.354, F.S.** Conforms terminology and eliminates obsolete language.
Section 56	**Amends Section 468.355, F.S.** Corrects name of accrediting entity. Conforms terminology.
Section 57	**Amends Section 468.356, F.S.** Corrects name of accrediting entity. Allows for approval of educational programs by other accrediting organizations recognized by the U.S. Office of Education. Conforms terminology.
Section 58	**TECHNICAL. Amends Section 468.357, F.S.** Deletes obsolete language.
Section 59	**TECHNICAL. Amends Section 468.358, F.S.** Conforms terminology.

Section 60	**TECHNICAL. Amends Section 468.359, F.S.** Conforms terminology.
Section 61	**Amends Section 468.36, F.S.** Requires licensees to notify DOH of their primary place of residence address rather than service delivery address.
Section 62	**TECHNICAL. Amends Section 468.361, F.S.** Conforms continuing education language.
Section 63	**TECHNICAL. Amends Section 468.363, F.S.** Conforms terminology.
Section 64	**Amends Section 468.365, F.S.** Conforms terminology. Specifies that entering a plea of nolo contendere to, regardless of adjudication constitutes grounds for disciplinary action.
Section 65	**TECHNICAL. Amends Section 468.366, F.S.** Conforms terminology.
Section 66	**TECHNICAL. Amends Section 468.368, F.S.** Conforms terminology.
CHAPTER 478, F.S. -- ELECTROLYSIS COUNCIL	
Section 67	**Amends Section 478.45, F.S.** Eliminates Florida residency requirements for licensure. Deletes obsolete grandfather clause. Requires DOH to examine at least twice a year.
Section 68	**TECHNICAL. Amends Section 478.46, F.S.** Corrects statutory site. Designates the professional reference as electrolysis, rather than electrology.
Section 69	**Amends Section 478.47, F.S.** Clarifies that applicant can become licensed by endorsement without having to take an exam.
Section 70	**Amends Section 478.52, F.S.** Specifies that operating an electrolysis facility without a license is grounds for disciplinary action.
CHAPTER 480, F.S. -- BOARD OF MASSAGE	
Section 71	**Repeals Section 480.025, F.S.** Eliminates Inactive Status language. This issue is addressed in Chapter 455 for all health care practitioners.
Seetion 72	**Amends Section 480.033, F.S.** Changes name of "Board of Massage" to "Board of Massage Therapy". Clarifies that this profession falls under the jurisdiction of DOH rather than DBPR.
Section 73	**Amends Section 480.035, F.S. (Technical).** Establishes the Board within DOH.
Section 74	**Amends Section 480.041, F.S.** Repeals provisional licensure provision.

Section 75	**Amends Section 480.042, F.S.** Eliminates requirement that board ensures that exam measures applicant's competency of statutes related to the profession.
Section 76	**Amends Section 480.043, F.S.** Specifies that massage establishment licenses cannot be transferred from one owner to another. Clarifies that a license may be transferred from one location to another, and from one business to another, with board approval
Section 77	**Amends Section 480.044, F.S.** Repeals reference to provisional licensure fees. Makes other technical corrections.
Section 78	**Amends Section 480.046, F.S.** Strengthens board's ability to discipline licensees who engage in sexual misconduct by specifying that such activity is a violation of the practice act.
Section 79	**Amends Section 480.047, F.S.** Clarifies that it is unlawful to hold oneself out as a massage therapist or to practice massage unless licensed, or unless specifically exempted.
PART IV OF CHAPTER 483, F.S. -- CLINICAL LABORATORY PERSONNEL	
Section 80	**Amends Section 483.041, F.S.** Allows optometrists and licensed midwives to order their own lab work.
Section 81	**Amends Section 483.800, F.S.** Recognizes the patient-focused benefits of hospital-based training for lab and non-lab personnel for testing within hospitals and commercial labs.
Section 82	**Amends Section 483.803, F.S.** Defines "clinical laboratory examination" in part IV. (NOTE: When parts I and IV were separated this term should have been defined in both parts and was not). Defines "public health laboratory scientists" as licensed directors, supervisors, technologists, and technicians engaged in lab testing of human specimens in a state, county, or city public health lab.
Section 83	**Amends Section 483,809, F.S.** Specifies that an approved national certification exam may be accepted in lieu of the state exam for public health laboratory scientists.
Section 84	**Creates Section 483.812, F.S.** Specifies procedures for licensure of public health laboratory scientists (director, supervisor, technologist, technical levels). Specifies that clinical lab personnel may work in public health labs, as appropriate.
Section 85	**Amends Section 483.813, F.S.** Authorizes DOH to grant temporary licenses up to one-year rather than 6 months. Authorizes a 3-year conditional license.

Section 86	**Amends Section 483.823, F.S.** Clarifies that education, training, experience, or passing an exam; or any combination thereof, may be required in order for applicant to qualify for licensure. Clarifies that "practitioners of the healing arts" licensed to practice under this section are not required to be licensed as clinical laboratorians or pay accompanying fees, except for fees required for lab licensure.
Section 87	**Amends Section 483.825, F.S.** Clarifies that applicants, registrants, and licensees are subject to disciplinary actions, as appropriate. Includes the following violations as grounds for disciplinary action: (1) Attempting to obtain/renew license which was obtained either by fraudulent misrepresentations or error. (2) Being unable to perform/report clinical laboratory exams with reasonable skill and safety due to illness or impairment. (3) Delegating professional responsibilities to individuals known to be unlicensed. (4) Failure to report actions taken against license in another state, territory, or country. Clarifies that acceptance of a relinquishment of a license, stipulation, consent order or other settlement, offered in response to or in anticipation of the filing of administrative charges is considered as disciplinary action against the licensee.
Section 88	**Creates Section 483.828, F.S.** Includes disciplinary penalties in this section of the practice act. When Parts I and IV were separated, this language was inadvertently left out of Part IV.
PART V OF CHAPTER 483, F.S. -- ADVISORY COUNCIL OF MEDICAL PHYSICISTS	
Section 89	**Amends Section 483.901, F.S.** Revises various provisions of the Florida Medial Physicists Act that was passed in 1995. **NOTE:** Clean-up language only -- no substantive changes.
PART II OF CHAPTER 484, F.S. -- BOARD OF HEARING AID SPECIALISTS	
Section 90	**Amends Section 484.051, F.S. (Technical).** Eliminates reference to DBPR.
CHAPTER 486, F.S. -- BOARD OF PHYSICAL THERAPY	
Section 91	**Amends Section 486.023, F.S.** Increases board membership from 7 to 9. Adds one PT assistant and 2 consumers. Deletes requirement that board membership consist of an allopathic or osteopathic physician.
Section 92	**Amends Section 486.031, F.S.** Clarifies name of accrediting authority. Clarifies that prior to 1971 PT applicants must have passed the American Registry Exam (ARE). Facilitates computer based testing by eliminating the requirement that exams be administered by the department.

Section 93	**Amends Section 486.041, F.S.** Facilitates computer based testing by eliminating unnecessary costs related to direct application to the department.
Section 94	**Amends Section 486.051, F.S.** Facilitates computer based testing by eliminating language requiring the department to purchase exams.
Section 95	**Amends Section 486.081, F.S.** Clarifies that Pt applying for licensure by endorsement must have passed the ARE prior to 1971, or an equivalent exam administered by the department. **NOTE:** Individuals to took and passed the ARE prior to 1971 are currently ineligible for endorsement.
Section 96	**TECHNICAL. Amends Section 486.102, F.S.** Deletes requirement that accrediting bodies be approved by the Council on Postsecondary Accreditation, since this organization is no longer in existence. Facilitates computer based testing by eliminating the requirement that exams be administered by the department.
Section 97	**Amends Section 486.103, F.S.** Facilitates computer based testing for PT Assistants by eliminating language requiring the department to purchase exams.
Section 98	**Amends Section 486.104, F.S.** Facilitates computer based testing for PT Assistants by eliminating language requiring the department to provide for exams.
Section 99	**Amends Section 486.109, F.S.** Allows courses sponsored by the American Physical Therapy Association to be accepted for continuing education credits.
Section 100	**Creates Section 486.123, F.S.** Strengthens board's ability to discipline individuals involved in sexual misconduct by specifying that such activities are violations of the practice act.
Section 101	**Amends Section 486.125, F.S.** Allows board to recover costs associated with investigation and prosecution.
CHAPTER 490, F.S. -- BOARD OF PSYCHOLOGY	
Section 102	**Amends Section 490.003, F.S.** Allows board to define use of psychological methods as performed in the practice of psychology by board rule.
Section 103	**Creates Section 490.0051, F.S.** Allows board to authorize the issuance of provisional licenses, under certain circumstances.
Section 104	**Repeals Section 490.008, F.S.** Repeals inactive status language. Issue is addressed in Chapter 455.
Section 105	**Amends Section 490.009, F.S.** Clarifies disciplinary penalties for violation of

	psychologist/patient confidentiality provisions.
Section 106	**Repeals Section 490.012(2), F.S.** Repeals requirement that license # be used in professional advertisements.
Section 107	**Repeals Section 490.014(5), F.S.** Repeals obsolete exemption language requiring that individuals register intent to become licensed by 10/1/95.
Section 108	**Repeals Section 490.0141, F.S.** Repeals nebulous language referencing the practice of hypnosis. NOTE: Licensees may currently practice hypnosis.
Section 109	**Repeals Section 490.0143, F.S.** Repeals nebulous language referencing the practice of sex therapy. NOTE: Licensees may currently hold themselves out as sex therapists.
Section 110	**Amends Section 490.0147, F.S.** Clarifies conditions under which licensee may release confidential information.
Section 111	**Creates Section 490.016, F.S.** Specifies that the board has sole authority for rulemaking to define the practice of psychology and to implement/interpret provisions of practice act.
CHAPTER 491, F.S. -- BOARD OF CLINICAL SOCIAL WORK, MARRIAGE & FAMILY THERAPY, & MENTAL HEALTH COUNSELING	
Section 112	**Amends Section 491.003, F.S.** Removes the list of activities which define the practice of these professions. Restructures definitions to include activities.
Section 113	**Creates Section 491.0045, F.S.** Establishes requirements for intern registration. Allows board to determine whether a supervisor is qualified **prior to** internship.
Section 114	**Amends Section 491.005, F.S.** Allows MFT & MHC interns to commence completion of experience requirements after Master's degree, even if all coursework has not been satisfied, under certain circumstances. Requires licensed mental health professional to be on the premises anytime an intern is providing psychotherapy services.
Section 115	**Creates Section 491.0061, F.S.** Establishes provisional licensure requirements.
Section 116	**Amends Section 491.009, F.S.** Subjects provisional licensee and registered intern disciplinary provisions. Prohibits individuals covered by Chapter 491 from engaging in the sale, use, or distribution of controlled substances, for any illegitimate purpose.
Section 117	**Amends Section 491.012, F.S.** Prohibits use of protected titles unless individuals hold valid license/registration.

Section 118	**Amends Section 491.014, F.S.** Requires individuals exempted from licensure who are employed by the state, work in an agency endorsed by the state, or individuals employed by / volunteering for organizations not licensed under this Chapter to follow adopted protocols for the provision of psychotherapeutic services. Specifies that certain psychological/psychotherapeutic services cannot be performed by behavior analysts.
Section 119	**Creates Section 491.0142, F.S.** Clarifies conditions under which students are exempted from licensure/registration requirements.
Section 120	**Creates Section 491.0144, F.S.** Clarifies conditions under which psychotherapy services may be provided, without licensure/certification, on a temporary basis; not to exceed 5 days in one month or 15 days in a calendar year.
Section 121	**Amends Section 491.0149, F.S.** Requires registered interns/provisional licensees to conspicuously display registration/license. Requires their titles to appear on any promotional materials. **NOTE:** All other professionals licensed under this chapter are currently required to adhere to these provisions.
Section 122	**ENACTING CLAUSE -- Unless otherwise specified, this Act shall take effect on 7/1/97.**

9.d. Senate Staff Analysis and Economic Impact Statement, Bill PCS/SB 1814, Subject: Regulation of Health Care Professions (Florida Archives, Series 18, Carton 2267).

FLORIDA DEPARTMENT *of* STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

I, Judith Ring, Division Director, Division of Library and Information Services, Florida Department of State, hereby certify the records of the State Legislature were transferred to the custody of the Florida State Archives pursuant to the provisions of Chapter 257, Florida Statutes, and that I am, by the terms of that transfer, the official custodian of the records.

I further certify that the attached is a true and correct copy of the record in the State Archives of Florida, the original of which may be found in Series 18, carton 2267.

***WITNESS MY SIGNATURE**, this 13th Day of January, 2014.*

***JUDITH RING**, Director*
Division of Library and Information Services

BY: _____
State Archives of Florida

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SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: March 31, 1997 Revised: _____ _____ _____ _____

Subject: Regulation of Health Care Professions

	Analyst	Staff Director	Reference	Action
1.	Munroe BJM	Wilson JW	HC	
2.			GO	
3.			WM	
4.				
5.				

I. Summary:

Senate Bill 1814 makes changes in the practice acts of the following health care professions: acupuncture, health care service pools, medicine, osteopathic medicine, chiropractic, podiatry, optometry, nursing, pharmacy, dentistry, speech-language pathology and audiology, nursing home administrators, occupational therapy, respiratory therapy, electrolysis, clinical laboratory personnel, physical therapy, massage therapy, and hearing aid specialists.

The bill amends the following sections of the Florida Statutes: 402.48 (1996 Supp.), 457.102, 457.103, 457.105, 457.107, 457.108, 457.1085, 457.109, 457.116, 458.303, 458.305, 458.307, 455.206, 458.311 (1996 Supp.), 458.313 (1996 Supp.), 458.317, 458.319, 458.320 (1996 Supp.), 458.331 (1996 Supp.), 458.345, 458.346, 458.347 (1996 Supp.), 458.3485, 459.003, 459.021, 459.0075, 459.0085 (1996 Supp.), 459.015 (1996 Supp.), 459.022 (1996 Supp.), 240.4067, 390.011, 395.0191, 408.035, 409.905 (1996 Supp.), 415.102, 415.1034, 415.504 (1996 Supp.), 440.106, 440.13 (1996 Supp.), 440.134, 440.15 (1996 Supp.), 456.31, 459.006, 462.01, 468.301, 468.302 (1996 Supp.), 476.044, 477.0135, 483.291, 621.03, 627.351 (1996 Supp.), 627.357, 627.6482, 725.01, 766.101 (1996 Supp.), 766.103, 766.105 (1996 Supp.), 766.110, 817.234, 945.047, 460.403 (1996 Supp.), 460.413 (1996 Supp.), 320.0848(9), 455.236(4)(g), 766.111(2), 460.4165, 461.003, 461.013, 461.018 (1996 Supp.), 464.003 (1996 Supp.), 464.004 (1996 Supp.), 464.008 (1996 Supp.), 464.009 (1996 Supp.), 464.012 (1996 Supp.), 464.013 (1996 Supp.), 464.014 (1996 Supp.), 464.018 (1996 Supp.), 464.019 (1996 Supp.), 464.022, 465.003, 465.004, 465.014, 465.0156, 465.016, 465.035, 466.003, 466.006, 466.017, 466.028, 468.1115, 468.1125, 468.1155, 468.1185, 468.1195, 468.1215, 468.1245, 468.1295, 468.1655, 468.1695, 468.203, 468.205, 468.209, 468.211, 468.213, 468.225, 468.351, 468.352, 468.354, 468.355, 468.356, 468.357, 468.358, 468.359, 468.36, 468.361, 468.363, 468.364, 468.365, 468.366, 468.368, 478.42, 478.45, 478.46, 478.47, 478.52, 480.033, 480.034, 480.035, 480.041, 480.0415, 480.042, 480.043, 480.044, 480.047, 20.43 (1996 Supp.), 381.81, 483.800, 483.801, 483.803,

483.809, 483.813, 483.823, 483.825, 483.901, 484.041, 484.042, 484.051, 486.021, 486.023, 486.031, 486.041, 486.051, 486.081, 486.102, 486.103, 486.104, 486.125 and 641.495.

The bill creates the following sections of the Florida Statutes: 458.3312, 459.0152, 464.0205, 468.1201, 468.1296, 480.0485, 483.812, 483.828 and 486.123.

The bill repeals ss. 468.362 and 480.0425, Florida Statutes.

II. Present Situation:

GENERAL REGULATORY PROVISIONS

Chapter 455, F.S., provides for the general powers and duties of the Department of Business and Professional Regulation (DBPR) and the Agency for Health Care Administration (AHCA or agency) to implement and enforce professional regulation. On July 1, 1994, the health care professions in the Division of Medical Quality Assurance within DBPR were transferred to the Division of Health Quality Assurance within AHCA. In addition to the general regulatory provisions in chapter 455, F.S., each profession has its own practice act setting forth provisions applicable to the practice standards and requirements for that profession.

Chapter 96-403, L.O.F., transfers the regulation of various health care professions from the Agency for Health Care Administration to the Department of Health by a type two transfer, effective July 1, 1997. Section 20.06, F.S., defines a type two transfer to include all of the statutory powers, duties, functions, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds. Chapter 96-403, L.O.F., imposes limitations on the transfer of specified regulatory functions. The law expressly transfers to the Department of Health specific regulatory functions relating to the health professions including all licensing, examination, publication, administrative, and management information services, but requires the Department of Health to contract with the Agency for Health Care Administration for the provision of consumer complaint, investigative, and prosecutorial services, which are not transferred. Section 12, chapter 96-403, L.O.F., transfers by a type two transfer the regulation of athletic trainers, the Board of Massage, and the Board of Hearing Aid Specialists from the Department of Business and Professional Regulation to the newly created Department of Health, effective July 1, 1997.

Effective July 1, 1997, the professions regulated within the Division of Medical Quality Assurance within the Department of Health will include: nursing assistants; health care service pools; acupuncture; medicine; osteopathic medicine; chiropractic; podiatric medicine; naturopathy; optometry; nursing; pharmacy; dentistry; midwifery; speech-language pathology and audiology; nursing home administration; occupational therapy; respiratory therapy; dietetics and nutrition; athletic trainers; electrolysis; massage; clinical laboratory personnel; medical physicists; opticianry; hearing aid specialists; physical therapy; psychology; clinical social work; marriage and family therapy; and mental health counseling.

HEALTH CARE SERVICES POOLS

Section 402.48, F.S., requires health care services pools to register with the Department of Business and Professional Regulation each year. Health care services pools are any person or business engaged for hire in the business of providing temporary employment in health care facilities for licensed health care personnel.

ACUPUNCTURE

Chapter 457, F.S., provides for the regulation of the practice of acupuncture by the Board of Acupuncture. The board is composed of 5 members which include 3 licensed acupuncturists and 2 laypersons who are not and who have never been acupuncturists or members of any closely related profession. The chapter provides three basic ways to become an acupuncturist. There is a two-year tutorial program, a formal two-year course of study process, and a five-year experience program. A person may become certified to practice acupuncture if he is at least 18 years old and meets one of the following criteria: is a citizen of the United States; is a permanent resident of the United States; or is a legal alien who has resided in the United States for 6 months before qualifying for examination. The chapter authorizes the board to require up to 30 hours of continuing education as a condition of license renewal every 2 years. The board may establish a continuing education provider fee no greater than $100 for each acupuncture continuing education provider.

BOARD OF MEDICINE

Chapter 458, F.S., provides for the regulation of the practice of medicine. Section 458.303, F.S., provides an exemption for a physician's trained assistant, a registered nurse or a licensed practical nurse who performs services under the direct supervision and control of a licensed medical physician. Section 458.307, F.S., establishes the Board of Medicine and requires the board to establish probable cause panels. The Board of Medicine is limited to not more than two probable cause panels.

Section 458.311(2), F. S., provides that after October 1, 1986, an applicant who fails the medical exam 5 times, is no longer eligible to take the exam. Chapter 458, F. S., requires foreign-trained applicants to be certified by the Educational Commission on Foreign Medical Graduates (ECFMG), and to pass a national medical exam. As of 1994, the United States Medical Licensing Examination (USMLE), a national examination, has been used by all 50 states to license physicians. Foreign-trained applicants must have completed an approved residency of at least 3 years in one specialty field to fulfill the licensing requirements of chapter 458, F.S.

Doctors applying for licensure by endorsement must have passed the FLEX or a similar national medical exam within the last 10 years. If passage of a national exam was in excess of 10 years ago, the board by rule, requires the applicant to pass the SPEX examination. The SPEX examination is a national examination developed for this specific purpose.

Medical schools located within the United States or its territories must be accredited by an agency recognized by the U.S. Office of Education. For renewal of a license, the licensee must have actively practiced medicine within the previous 4 years.

Section 458.320, F.S., specifies financial responsibility requirements for licensed physicians and provides a number of exemptions to the financial responsibility requirements, including physicians who practice medicine exclusively as an officer, employee, or agent of the Federal Government or of the state or its agencies or its subdivisions. An agent of the state is a person who is eligible for coverage under any self-insurance or insurance program authorized under s. 768.28, F.S. If a physician chooses not to carry financial responsibility coverage, he is required to either post a sign stating this fact, or provide a written notice of this fact to each patient.

Limited medical licenses are issued pursuant to s. 458.317, F.S. To receive a limited license without supervision, the applicant must be retired, or planning to retire, and have actively practiced medicine within the prior three years. The recipient of a limited license must work only in certain public institutions or nonprofit organizations as defined in this section. If a physician with a limited license is working for free, the fees provided for in this section are waived.

The medical practice act specifies grounds for which the Board of Medicine may discipline a physician which, among other things, include: failure to keep written medical records justifying the course of treatment; prescribing certain Schedule II drugs for any person other than children in the treatment of behavioral syndrome; and advertising or holding oneself out as a board-certified specialist in violation of the chapter. If a physician is found guilty of a violation, the board may set a number of penalties, including an administrative fine of up to $5,000 per count, and require the physician to refund any fees billed to and collected from the patient.

Section 458.345, F.S., requires hospitals to submit a list of resident physicians, assistant resident physicians, house physicians, interns, or fellows employed by the facility to the Department of Health on January 1st and July 1st of each year. Section 458.3485, F.S., recognizes medical assistants and specifies duties that a medical assistant may perform under the supervision of a licensed physician.

OSTEOPATHIC MEDICINE

Chapter 459, F.S., provides for the regulation of osteopathic medicine. Limited medical licenses are issued pursuant to s. 459.0075, F.S. To receive a limited license without supervision, the applicant must be retired and have actively practiced medicine within the previous three years. The recipient of a limited license must work only in certain public institutions or nonprofit organizations as defined in this section. If a physician with a limited license is working for free, the fees provided for in this section are waived.

The osteopathic medical practice act specifies grounds for which the Board of Osteopathic Medicine may discipline a physician which, among other things, include: failure to keep written medical records justifying the course of treatment; prescribing certain Schedule II drugs for any

person other than children in the treatment of behavioral syndrome; and advertising or holding oneself out as a board-certified specialist in violation of this chapter. If a physician is found guilty of a violation, the board may set a number of penalties, including an administrative fine of up to $5,000 per count, and require the physician to refund any fees billed to and collected from the patient.

PHYSICIAN ASSISTANTS

Sections 458.347 and 459.022, F.S., provide for the regulation of physician assistants. The Board of Medicine and the Board of Osteopathic Medicine approve physician assistant training programs which hold accreditation from the Commission on Accreditation of Allied Health Programs. The Council on Physician Assistants may develop rules and make recommendations regarding all matters relating to physician assistants to both boards.

CONTROLLED SUBSTANCES

Chapter 893, F.S., sets forth the Florida Comprehensive Drug Abuse Prevention and Control Act. The chapter classifies controlled substances into five schedules in order to regulate the manufacture, distribution, preparation, and dispensing of the substances. The chapter defines practitioners to include licensed medical physicians, dentists, veterinarians, osteopathic physicians, naturopathic physicians, and podiatric physicians who may hold a valid federal controlled substance registry number to prescribe controlled substances.

CHIROPRACTIC

Chapter 460, F.S., provides for the regulation of the practice of chiropractic. The chapter provides requirements for chiropractic physicians to supervise chiropractic physician assistants and provides grounds for which a licensed chiropractic physician may be subject to discipline.

PODIATRY

Chapter 461, F.S., provides for the regulation of podiatric medicine. Section 461.018, F.S., allows certain persons who have practiced as "quiropedistas" under a Board of Podiatry-approved protocol to obtain a license to practice without supervision in specially designated areas of need within a limited scope of practice that includes nonsurgical treatment of corns, calluses, and ingrown toenails.

NURSES

Chapter 464, F.S., provides for the regulation of the practice of nursing. Section 464.019, F.S., requires institutions desiring to conduct approved nursing programs to apply with the agency and submit evidence that the program complies with the nursing practice act and any applicable rules

adopted by the Board of Nursing for such programs. The chapter provides exemptions to nursing licensing requirements.

PHARMACY

Chapter 465, F.S., provides for the regulation of the practice of pharmacy. The chapter requires non-resident pharmacies to submit a roster of all employed pharmacists at the facility within 30 days of any change of office location, corporate officer, or pharmacist. The chapter requires annual disclosure of the location, names, and titles of all principal corporate officers and all pharmacists who are dispensing medicinal drugs to residents of the state. Under current law, a pharmacist may not dispense controlled substances based upon receipt of a facsimile of the original prescription. Other medicinal drugs may be dispensed under certain conditions. A pharmacist may delegate certain duties, tasks and functions to nonlicensed pharmacy technicians.

DENTISTRY

Chapter 466, F.S., provides for the regulation of the practice of dentistry and dental hygiene. The chapter authorizes dentists to use anesthesia after meeting certain requirements.

SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY

Part I, chapter 468, F.S., contains regulations for speech-language pathology and audiology, and provides exemptions from licensure requirements. The licensing exemption in the chapter for teachers does not specify that teachers certified under chapter 231, F.S., must be certified in speech-language impairment or hearing impairment in order to supervise non-certified or non-licensed persons who conduct hearing screening in the school setting. The current licensing requirements require an applicant to obtain two master's degrees in communication disorders, duplicating much of the same course work, in order to become dually licensed in speech-language pathology and audiology.

NURSING HOME ADMINISTRATORS

Part II, chapter 468, F.S., provides for the regulation of nursing home administrators. The part provides licensing requirements which include successful passage of a licensing examination. The part requires the Board of Nursing Home Administrators to give the examination at least 4 times per year.

OCCUPATIONAL THERAPY

Part III, chapter 468, F.S., regulates the practice of occupational therapy. The part allows three occupational therapists to comprise the Occupational Therapy Council, with no consumer members or occupational therapy assistants being represented. The part's definition of "occupational therapy" does not conform to the definition as provided by the American

Occupational Therapy Association (AOTA). Occupational therapy programs are currently accredited by the American Medical Association (AMA) in collaboration with the American Occupational Therapy Association.

RESPIRATORY THERAPY

Part V, chapter 468, F.S., provides for the regulation of respiratory therapy under the Board of Medicine. The part requires respiratory care personnel performing blood gas analysis and specimen collection to be directly supervised by either a respiratory therapist, licensed technologist, supervisor or director, or a respiratory care practitioner who has at least three years experience in this modality pursuant to chapter 483, F.S. The part utilizes the terms "certified" and "registered" with regard to respiratory therapists. The part provides a grandfather clause that allows the licensure examination to be conducted a minimum of three times annually in geographical locations advantageous to applicants that were licensed prior to 1988.

ELECTROLYSIS

Chapter 478, F.S., regulates the practice of electrolysis by the Board of Medicine. Currently, a licensure applicant must be a high school graduate, a resident of Florida, complete a program of study not to exceed 120 hours, and pass a written exam for licensure. License by endorsement candidates are only required to meet the provisions of section 478.45(1), F.S., which does not require passage of a written examination. The chapter has a glitch because endorsement candidates may be licensed if they hold an active license in a jurisdiction whose requirements are equivalent to those of this state, and requires the board to certify the candidates for such licensure. The statutory reference for a temporary permit is section 478.45, F. S., when it should be section 478.47, F.S. An electrolysis facility is required to be licensed.

CLINICAL LABORATORY PERSONNEL

Clinical Laboratory Personnel are regulated by the Board of Clinical Laboratory Personnel under Part IV, chapter 483, F.S. The chapter allows AHCA to issue temporary licenses to candidates for clinical laboratory personnel licensure. The temporary license is for six months and does not allow early exam applicants to work through the entire examination cycle. Due to the length of time necessary to score exams, issue reports, and issue licenses to passing candidates, the cycle does not end until December for the Fall exam and June for the Spring exam. The six month temporary license expires before final scoring and issuance of licenses is complete.

PHYSICAL THERAPY

Chapter 486, F. S., provides for the regulation of the practice of physical therapy. A person wishing to practice physical therapy or as a physical therapist assistant before becoming licensed through examination or through endorsement must apply to the Board of Physical Therapy for a temporary permit. The permit is valid for one year and may not be renewed. The permit automatically expires if the applicant fails the examination.

III. Effect of Proposed Changes:

Section 1. Amends s. 402.48, F.S.(1996 Supp.), relating to health care services pools, to require health care services pools to renew their registration biennially. Health care services pools currently are subject to an annual registration. Effective July 1, 1997, pursuant to ch. 96-403, L.O.F, the department having regulatory authority over health care services pools is changed from the Department of Business and Professional Regulation to the Department of Health.

Sections 2 - 3. Amends s. 457.102 and 457.103, F.S., relating to acupuncture to make minor technical and conforming changes.

Section 4. Amends s. 457.105, F.S., relating to acupuncture, to revise the licensing requirements for persons to practice acupuncture to delete the two year tutorial program, or formal two year course of study process, as viable means to become a licensed acupuncturist, or the five- year experience requirement. In lieu of the current licensing requirements, applicants must be at least 21 years of age and must complete a 3 year course of study that meets standards established by the board by rule. After July 31, 2001, the course of study for licensure must be at least 4 years in duration. Requires passage of a board-approved national examination. Revises licensing statutory fee caps: for examination, from $1,000 to $500; for application, from $750 to $300; for reexamination, from $1,000 to $500; for initial biennial licensure, from $2,000 to 400, if licensed during the first half of the biennium and $200, if licensed during the second half of the biennium.

Section 5. Amends s. 457.107, F.S., to revise the acupuncture license renewal fee statutory cap from $1,000 to $700.

Section 6. Amends s. 457.108, F.S., relating to acupuncture, to make minor technical and conforming changes.

Section 7. Amends s. 457.1085, F.S., relating to acupuncture, to require beginning October 1, 1997, that acupuncture needles that are used in the practice of acupuncture must be sterile and disposable, and provides that each needle may only be used once.

Section 8. Amends s. 457.109, F.S., relating to acupuncture, to revise references to the operation of a tutorial program to conform with changes in the bill deleting the two year tutorial program as viable means of becoming a licensed acupuncturist.

Section 9. Amends s. 457.116, F.S., relating to acupuncture, to make minor technical and conforming changes.

Section 10. Amends s. 458.303, F.S., to delete the exemption from medical licensing requirements for the "physician trained assistant", an unlicensed person, who may work under the direct supervision and control of a physician who provides specific direction and final approval for any services performed. Physicians will no longer be permitted to employ and use such

persons to provide medical services to patients. Medical assistants regulated under s. 458.3485, F.S., are exempted from medical licensing requirements.

Section 11. Amends s. 458.305, F.S., to correct the definition of "department" within which the Board of Medicine is administratively placed.

Section 12. Amends s. 458.307, F.S., to delete the requirement that the Board of Medicine may not establish more than two probable cause panels composed of three members, one of whom may be a lay member. This is covered in chapter 455, F.S., for all boards under the Agency for Health Care Administration or Department of Business Professional Regulation.

Section 13. Amends s. 455.206, F.S., relating to requirements imposed on board members, to correct a statutory cross-reference.

Section 14. Amends s. 458.311, F.S. (1996 Supp.), relating to medical licensing requirements, to reduce the number of years of residency training that foreign trained physicians must have from three years to two years. Fellowship training can be used to meet this requirement, provided that the training can be counted toward regular or subspecialty certification by a board recognized and certified by the American Board of Medical Specialties. Authorizes the board, as prescribed by board rule, to require an applicant who does not pass the licensure examination after five attempts to complete additional remedial education training within two years and then take the examination. Residents who are training on a full-time basis in a residency program in Florida may apply to take the medical licensing examination in Florida without applying for licensure to practice in the state after meeting specified requirements.

Section 15. Amends s. 458.313, F.S. (1996 Supp.), relating to the medical licensure by endorsement requirements, to no longer require individuals applying for licensure by endorsement to take the medical licensing examination over, if it has been more than ten years since the applicant took it. Allows the board to require endorsement applicants to take and pass the appropriate licensure examination prior to certifying the applicant as eligible for licensure. Eliminates an option for physicians who have not actively practiced medicine in the immediate four years prior to application, to work for one year under a licensed physician's supervision as part of their licensing requirements. In lieu of meeting the requirement of 1 year of supervised work, physicians applying for a license who have not practiced two out of the past four years must take a board-approved clinical competency examination, or show completion of board-approved postgraduate training. Defines the "active practice of medicine" and deletes the requirement that the Board of Medicine may require applicants to take an oral exam when applying for a license. Allows the board to require applicants by endorsement who do not pass the licensure examination after five attempts to complete up to two years of remedial education and training before taking it again. Certain physicians having null and void licenses due to failure to practice in Florida for one year within the first three years after licensure may reactivate the license under specified conditions.

Section 16. Amends s. 458.317, F.S., to delete the requirement that persons applying for a limited license must be retired. Provides that physicians who practice under a limited license who are not fully retired in all jurisdictions may only use the limited license for noncompensated practice. Requires any person who receives a waiver of fees for a limited license to pay such fees if he later receives compensation for his services.

Section 17. Amends s. 458.319, F.S., relating to medical license renewal, to require physicians who apply to renew their licenses to have practiced two out of the past four years or pass a board approved clinical competency examination.

Section 18. Amends s. 458.320, F.S. (1996 Supp.), relating to financial responsibility requirements for medical physicians, to require physicians who go "bare" to notify their patients to that effect by both posting a sign in the reception area and giving each patient a statement to sign and place in the patient's file.

Section 19. Amends s. 458.331, F.S., relating to medical physicians, to require physicians to keep legible written records as defined by department rule, in consultation with the board, that identifies the physician and/or the physician extender and supervising physician by name and credentials who is responsible for the records. Revises a ground for which a physician is subject to discipline to permit physicians to prescribe certain Schedule II drugs for the treatment of narcolepsy, hyperkinesis, and behavioral syndrome in adults as well as children. It requires physician assistants as well as physicians to report licensees under chapters 458 and 459, F.S., who are in violation of the law. Subjects a physician to discipline for advertising or holding himself out as a board-certified specialist unless he complies with applicable requirements under the medical practice act.

Section 20. Creates s. 458.3312, F.S., to prohibit a medical physician from holding himself out as a board-certified specialist unless the practitioner has received formal recognition from the American Board of Medical Specialties or a recognizing agency approved by the Board of Medicine.

Section 21. Amends s. 458.345, F.S., relating to the registration requirements for resident physicians, to require the chief executive officer of each hospital to inform the Executive Director of the Board of Medicine of the name, title, and address of the person who is responsible for submitting such reports. It allows a hospital resident physician, assistant resident physician, intern, or fellow to prescribe medicinal drugs described in schedules set out in chapter 893, F.S., if the person is authorized by the hospital, is engaged in an accredited training program, prescribes only in the normal course of employment, holds a Federal Drug Enforcement Administration prescriber number issued by the hospital and the prescription involved has that number printed thereon, and use of the institutional identification number and individual physician suffixes conforms to the requirements of the Federal Drug Enforcement Administration. Resident physicians, interns, and fellows are made explicitly subject to s. 458.331, F.S., relating to grounds for disciplinary action.

Section 22. Amends s. 458.346, F.S., relating to the Public Sector Physician Advisory Committee under the Board of Medicine, to require the committee to meet at least once a year, or upon the call of the chair, instead of quarterly.

Section 23. Amends s. 458.347, F.S. (1996 Supp.), relating to physician assistants, to allow the Council on Physician Assistants to recommend only those physician assistant programs that hold full accreditation or provisional accreditation from the Commission on Accreditation of Allied Health Programs. Requires an applicant who does not hold a current certificate issued by the National Commission on Certification of Physician Assistants (NCCPA) and has not practiced within the preceding four years to retake and pass the NCCPA examination to be eligible for certification.

Section 24. Amends s. 458.3485, F.S., relating to medical assistants, to require medical assistants to be directly supervised by a licensed physician to the extent they perform duties requiring medical licensure.

Section 25. Amends s. 459.003, F.S., to correct references to the Department of Health as the department having administrative jurisdiction over the Board of Osteopathic Medicine and to specify that "Doctor of Osteopathy" and "Doctor of Osteopathic Medicine" are equivalent and equal degrees.

Section 26. Amends s. 459.021, F.S., relating to the registration requirements for osteopathic medical residents, to require the hospital chief executive officer to provide the Board of Osteopathic Medicine's executive director with the name, title, and address of the person responsible for submitting the information required in this section. Resident physicians, interns, and fellows are made explicitly subject to s. 459.015, F.S., relating to grounds for disciplinary action.

Section 27. Amends s. 459.0075, F.S., relating to osteopathic limited licenses, to delete the requirement that osteopathic physicians applying for a limited license must be retired. Provides that osteopathic physicians who practice under a limited license who are not fully retired in all jurisdictions may only use the limited license for noncompensated practice. Requires any person who receives a waiver of fees for a limited license to pay such fees if he later receives compensation for his services.

Section 28. Amends s. 459.0085, F.S. (1996 Supp.), to require those physicians who go "bare" to notify their patients to that effect by posting a sign in the reception area and giving each patient a statement to sign and place in his file.

Section 29. Amends s. 459.015, F.S. (1996 Supp.), to require osteopathic physicians to keep legible written records as defined by department rule, in consultation with the Board of Osteopathic Medicine, that identifies the physician and/or the physician extender and supervising physician by name and credentials who is responsible for the records. Revises a ground for which a osteopathic physician is subject to discipline to permit physicians to prescribe certain Schedule

II drugs for the treatment of narcolepsy, hyperkinesis, and behavioral syndrome in adults as well as children. It requires physician assistants as well as physicians to report licensees under chapters 458 and 459, F.S., who are in violation of the law. Makes it grounds for disciplinary action for an osteopathic physician to advertise or hold oneself out as a board-certified specialist in violation of this chapter.

Section 30. Creates s. 459.0152, F.S., to prohibit an osteopathic physician from holding himself out as a board-certified specialist unless the practitioner has completed certain requirements.

Section 31. Amend ss. 459.022, F.S. (1996 Supp.), relating to physician assistants, to allow the Council on Physician Assistants to recommend physician assistant programs that hold full or provisional accreditation from the Commission on Accreditation of Allied Health Programs or its successor organization. Requires that an applicant who does not hold a current certificate issued by the National Commission on Certification of Physician Assistants (NCCPA) and has not practiced within the preceding four years must retake and pass the NCCPA examination to be eligible for certification.

Sections 32 - 62. Amend ss. 240.4067, 390.011, 395.0191, 408.035, 409.905 (1996 Supp.), 415.102, 415.1034, 415.504 (1996 Supp.), 440.106, 440.13 (1996 Supp.), 440.134, 440.15 (1996 Supp.), 456.31, 459.006, 462.01, 468.301, 468.302(1996 Supp.), 476.044, 477.0135, 483.291, 621.03, 627.351 (1996 Supp.), 627.357, 627.6482, 725.01, 766.101 (1996 Supp.), 766.103, 766.105 (1996 Supp.), 766.110, 817.234, and 945.047, F.S., to change references to "osteopathy" to "osteopathic medicine" and "doctor of osteopathy" or "osteopath" to "osteopathic physician" .

Section 63. Amends s. 460.403, F.S. (1996 Supp.), to correct references to the Department of Health as the department having administrative jurisdiction over the Board of Chiropractic.

Section 64. Amends s. 460.413, F.S. (1996 Supp.), to provide the Board of Chiropractic and the Department of Health with the authority to compel a chiropractic physician to undergo a mental or physical examination when there is probable cause to believe that a practitioner cannot safely practice chiropractic. Allows the Board of Chiropractic to impose additional conditions of discipline, including the imposition of the costs of the investigation and prosecution, requiring the chiropractor to undergo remedial education, issuance of a letter of concern, requiring corrective action, or requiring a refund of fees billed to and collected from the patient or a third party. Authorizes the department to seek an injunction from the circuit court to stop a chiropractor from practicing, if he is unable to practice with reasonable skill and safety and is a danger to patients.

Sections 65 - 67. Reenact ss. 320.0848, 455.236, and 766.111, F.S., for the purpose of incorporating the amendment to s. 460.413, F.S., 1996 Supp.

Section 68. Amends s. 460.4165, F.S., relating to chiropractic physician assistants, to require chiropractic physicians to submit an initial application for the supervision of chiropractic physician assistants rather than an annual application, accompanied by a fee of $100.

Section 69. Amends s. 461.003, F.S., relating to podiatry, to correct references to the Department of Health as the department having jurisdiction over the Board of Podiatric Medicine.

Section 70. Amends s. 461.013, F.S., relating to podiatry, to make minor technical changes.

Section 71. Amends s. 461.018, F.S. (1996 Supp.), relating to podiatry, to allow persons who meet certain other requirements to become licensed to practice podiatry without supervision under a limited scope of practice.

Section 72. Amends s. 464.003, F.S. (1996 Supp.), relating to nursing to correct references to the Department of Health as the department having administrative jurisdiction over the Board of Nursing.

Sections 73 - 78. Amend ss. 464.004 (1996 Supp.), 464.008 (1996 Supp.), 464.009 (1996 Supp.), 464.012 (1996 Supp.), 464.013 (1996 Supp.), 464.014 (1996 Supp.), F.S., relating to nursing, to make minor technical changes to reflect the transfer of the Board of Nursing from the Agency for Health Care Administration to the Department of Health. Changes references to "agency" to "department" wherever the term appears in chapter 464, F.S.

Section 79. Amends s. 464.018, F.S. (1996 Supp.); relating to nursing, to provide that being convicted of or entering a plea of nolo contendere, regardless of adjudication, to a crime in any jurisdiction which directly relates to the practice of nursing is grounds for disciplinary action

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Section 80. Amends s. 464.019, F.S. (1996 Supp.), to authorize the Board of Nursing to set a program review fee no greater than $1,000 to cover expenses related to reviewing nursing school programs.

Section 81. Creates s. 464.0205, F.S., to establish provisions for a retired practical or registered nurse certificate. Allows retired nurses to volunteer their services in public agencies or institutions or in nonprofit agencies or institutions in areas of critical nursing need or underserved areas. Establishes procedures for the submission and approval or denial of the application, practice settings, and practice parameters. Requires the retired nurse to submit a $25 application fee.

Section 82. Amends s. 464.022, F.S., to create an exception to allow qualified nurses from another state whose employment requires them to accompany an out-of-state patient to Florida to perform nursing services for that patient for up to 30 consecutive days. Establishes requirements for pre-travel notification to the Board of Nursing and pre-travel arrangements should the patient require placement in an in-patient setting.

Section 83. Amends s. 465.003, F.S., to correct references to the Department of Health as the department having administrative jurisdiction over the Board of Pharmacy.

Section 84. Amends s. 465.004, F.S., relating to pharmacy, to increase the Board of Pharmacy from seven to nine members by adding two additional licensed pharmacists; specifying that to the extent practicable, board membership should represent the various pharmacy settings. Revises appointment requirements so that two board members must be pharmacists from either a Class II institutional pharmacy or a Modified Class II institutional pharmacy.

Section 85. Amends s. 465.014, F.S., to permit a pharmacist to supervise up to three pharmacy technicians under guidelines established by the Board of Pharmacy.

Section 86. Amends s. 465.0156, F.S., to change certain reporting requirements (changes in ownership, management, location, and staffing) for non-resident pharmacies to more closely parallel requirements for in-state community pharmacies.

Section 87. Amends s. 465.016, F.S., relating to pharmacy, to make minor technical changes.

Section 88. Amends s. 465.035, F.S., relating to pharmacy, to allow a pharmacy to dispense controlled substances listed in Schedule II, to the extent allowed by 21 C.F.R. s. 1306.11, based on receipt of a facsimile of a prescription if certain conditions are met.

Section 89. Amends s. 466.003, F.S., relating to dentistry, to correct references the Department of Health as the department having jurisdiction over the Board of Dentistry.

Section 90. Amends s. 466.006, F.S., to delete provisions relating to a licensure route for graduates of foreign dental schools to become licensed as dentists after completion of a manual skills examination. The exam was discontinued December 31, 1991.

Section 91. Amends s. 466.017, F.S., to delete obsolete provisions that predate 1980 that allowed certain dentists to not meet the training requirements for administration of anesthesia required in subsection (3) of this section.

Section 92. Amends s. 466.028, F.S., relating to dentistry, to revise existing grounds for which a dentist may be subject to discipline for prescribing a schedule II drug, to expressly allow dentists to prescribe some schedule II drugs without the current limitations imposed on dentists to have prior Board of Dentistry approval for the use of such drugs pursuant to a clinical investigative protocol. Makes other minor technical changes.

Section 93. Amends s. 468.1115, F.S., relating to speech-language pathology and audiology, to allow persons licensed under this chapter and teachers certified in speech-language impairment or hearing impairment under chapter 231, F.S., to supervise unlicensed persons performing hearing screening in a school setting, and to allow a person licensed in another state to provide services for a limited period of time while under direct supervision of a licensee. Non-licensed

persons working in a hospital setting who provide newborn infant hearing screenings are exempt if training, interpretation of screenings, and protocols are provided by a licensed audiologist.

Section 94. Amends s. 468.1125, F.S., to correct references to the Department of Health as the department having administrative jurisdiction over the Board of Speech-Language Pathology and Audiology.

Section 95. Amends s. 468.1155, F.S., relating to speech-language pathology and audiology license requirements, to specify who must obtain a provisional license and when it should be obtained. Required fees must be submitted before the department issues a provisional license. Establishes additional course work and clinical clock hour requirements for individuals licensed in speech-language pathology seeking licensure in audiology or vice-versa.

Section 96. Amends s. 468.1185, F.S., relating to speech-language pathology and audiology license requirements, to allow endorsement candidates who hold a valid license from a territory of the United States to apply for licensure.

Section 97. Amends s. 468.1195, F.S., relating to speech-language pathology and audiology continuing education, to require the board to establish by rule standards for the approval of continuing education activities and providers. Exempts individuals licensed or certified six months or less before the end of the biennial licensure cycle from continuing education requirements for the first renewal.

Section 98. Creates s. 468.1201, F.S., relating to speech-language pathology and audiology, to require HIV/AIDS instruction as a condition of initial licensure or certification as a speech-language pathologist, audiologist, or assistant. Provides applicants a six-month grace period to complete the requirement.

Section 99. Amends s. 468.1215, F.S., to require remittance of required fees as a condition of certification for speech-language pathology and audiology assistants. Authorizes the board to establish on-the-job training and supervision requirements for assistants. Makes other conforming and technical changes.

Section 100. Amends s. 468.1245, F.S., relating to hearing aid consumer protections, to require consumer protection disclosures on the hearing aid receipt rather than the contract for hearing aid sales.

Section 101. Amends s. 468.1295, F.S., relating to disciplinary proceedings for speech-language pathology and audiology, to add additional grounds for which a licensee may be disciplined to: prohibit practicing beyond the scope permitted by law, aiding unlicensed persons to practice, and committing sexual misconduct when practicing. Allows the board to require an impaired licensee to submit to a mental or physical examination.

Section 102. Creates s. 468.1296, F.S., prohibiting sexual misconduct by persons licensed or certified under chapter 468, F.S. Requires the board, by rule, to define sexual misconduct.

Section 103. Amends s. 468.1655, F.S., to correct references to the Department of Health as the department having administrative jurisdiction over the Board of Nursing Home Administrators.

Section 104. Amends s. 468.1695, F.S., relating to nursing home administrator licensing requirements, to require that a minimum of two nursing home administrator examinations be given annually, instead of four.

Section 105. Amends s. 468.203, F.S., to conform the definition of occupational therapy with the definition as provided by the American Occupational Therapy Association (AOTA). Requires aides to be under direct supervision by either a therapist or assistant at all times.

Section 106. Amends s. 468.205, F.S., to create a seven-member Board of Occupational Therapy, four members of the board must be licensed occupational therapists and one member must be a licensed occupational therapy assistant all of whom must be Florida residents for at least four years prior to their appointment, and two members must be consumers who are residents of the state who are not connected with the practice of occupational therapy. Provides for staggered appointments to the board.

Section 107. Amends s. 468.209 F.S., relating to occupational therapy licensing requirements, to revise a statutory reference to programs for occupational therapists being accredited by the Amercian Medical Association in collaboration with the American Occupational Therapy Association to provide that the new accrediting entity is the American Occupational Therapy Association's Accreditation Council for Occupational Therapy Education, or its successor. To conform, deletes a statutory reference to programs for occupational therapy assistants being accredited by the American Occupational Therapy Association (AOTA). Revises the licensure requirements for occupational therapy assistants so that they must have completed a specialized AOTA program before 1988, which includes completion of a 6 months supervised occupational therapist level fieldwork experience and passage of an examination, to be certified as an occupational therapist without meeting the educational requirements for occupational therapists. Revises the requirements for the issuance of temporary permits to practice occupational therapy so that only one temporary permit may be obtained by candidates for licensure by examination or licensure by endorsement. Provides an exception for students enrolled in a full-time master's program for occupational therapy if all other licensure requirements have been met, who then may have a 6-month extension of the temporary permit. Requires occupational therapy applicants who have not actively practiced for 5 years immediately preceding their application to document their compliance with continuing education requirements as prescribed by board rule.

Section 108. Amends s. 468.211, F.S., relating to occupational therapy license examination requirements, to require an applicant to take additional education or training courses before attempting a fourth examination. Limits applicants to five examination attempts.

Section 109. Amends s. 468.213, F.S., relating to occupational therapy, to revise licensure by endorsement requirements to allow the Board of Medicine to consider applicants from any U.S. jurisdiction or foreign national jurisdiction requiring equivalent standards. Lists the National Board for Certification in Occupational Therapy (NBCOT) rather than the American Occupational Therapy Association as the national certifying body for licensure by endorsement candidates.

Section 110. Amends s. 468.225, F.S., relating to occupational therapy, to delete the exemption for persons to work as occupational therapy aides under the direct supervision or employment of an occupational therapist. Allows a physician assistant, speech-language pathologist, or audiologist to use occupational therapy as a part of or incidental to their profession when practicing under the laws applicable to their profession.

Section 111. Amends s. 468.351, F.S., relating to respiratory therapy, to clarify the use of the terms "certification" and "registration" for respiratory care personnel. "Certification refers to national credentials of practitioners by a private entity and "licensure" refers to the state's credentials. Makes minor technical changes, including a reference to the Department of Health and Rehabilitative Services (HRS) to AHCA as the appropriate regulatory agency for blood gas laboratories. Addresses supervision of respiratory care practitioners who perform blood gas analysis and specimen collection according to chapter 468, part V, F.S.

Sections 112-113. Amend ss. 468.352 and 468.354, F.S., relating to respiratory therapy, to clarify that "certification" and "registration" refers to national credentials of practitioners by a private entity and "licensure" refers to the state's credentials and to make technical and conforming changes.

Section 114. Amends s. 468.355, F.S., relating to respiratory therapy, to correct references to the Commission on Accreditation of Allied Health Education Programs as the accrediting entity for respiratory care training programs and to eliminate references to Accreditation of the American Medical Association.

Section 115. Amends s. 468.356, F.S., relating to respiratory therapy, to conform the name of the accrediting entity and allow programs to be approved by other accrediting agencies recognized by the U.S. Office of Education.

Section 116. Amends s. 468.357, F.S., relating to respiratory therapy, to eliminate a provision for licensees who were initially grandfathered and practicing since 1988 who have had to complete 20 hours of continuing education each year rather than complete 24 hours of continuing education as required of the other licensees.

Sections 117-118. Amend ss. 468.358 and 468.359, F.S., relating to respiratory therapy, to make technical and conforming changes.

Section 119. Amends s. 468.36, F.S., relating to respiratory therapy, to require licensees to notify the Department of Health of their current residence address.

Section 120. Repeals s. 468.362, F.S., relating to respiratory therapy continuing education requirements and amends s. 468.361, F.S., to conform language specifying continuing education hours required for licensure and to specify that the Board of Medicine is the approving authority for continuing education courses as well as the approving authority for providers of such courses.

Sections 121-122. Amend s. 468.363 and 468.364, F.S., relating to respiratory therapy, to make technical and conforming changes.

Section 123. Amends s. 468.365, F.S., relating to respiratory therapy, to revise existing disciplinary provisions to allow the Board of Medicine to take disciplinary action against a respiratory therapist if a plea of nolo contendere is entered, regardless of adjudication by the practitioner, which relates to the practice of the respiratory therapist and to make technical and conforming changes.

Sections 124-125. Amend ss. 468.366 and 468.368, F.S., relating to respiratory therapy, to make technical and conforming changes.

Section 126. Amends s. 478.42, F.S., relating to electrology, to correct references to the Department of Health as the department having administrative jurisdiction over the Electrolysis Council.

Section 127. Amends s. 478.45, F.S., relating to electrology, to revise the qualifications for licensure. Eliminates the Florida residency requirement for licensure, the grandfather provision for certain applicants, and deletes specific reference to a particular national examination. Makes other technical changes.

Section 128. Amends s. 478.46, F.S., relating to electrology, to correct a statutory cross-reference.

Section 129. Amends. s. 478.47, F.S., relating to electrology, to revise licensure by endorsement provisions so that the Board of Medicine does not have to certify applicants for licensure. The applicants must hold an active license in a jurisdiction whose requirements are equivalent to those of this state to be licensed.

Section 130. Amends s. 478.52, F.S., to expand the grounds for which an electrologist may be disciplined by the Board of Medicine to include operating an electrolysis facility without a permit.

Section 131. Amends s. 480.033, F.S., to change the name of the Board of Massage to the Board of Massage Therapy and to correct references to the Department of Health as the department with administrative jurisdiction over the Board of Massage Therapy.

Section 132. Amends s. 480.034, F.S., relating to massage, to eliminate an exemption to the massage practice act for persons who perform treatments for the purpose of cleansing and beautifying the skin or in conjunction with a weight loss program, which include herbal wraps, body scrubs, paraffin wax treatments, and seaweed wraps.

Section 133. Amends s. 480.035, F.S., to change the name of the Board of Massage to the Board of Massage Therapy.

Section 134. Amends s. 480.041, F.S., relating to massage licensing requirements, to eliminate the provisional license which was granted to applicants who otherwise met the requirements so they could practice under supervision while waiting to sit for the state licensure examination. The board now requires a national licensure examination.

Section 135. Amends s. 480.0415, F.S., relating to massage, to increase continuing education requirements from 12 up to 25 classroom hours of continuing education in massage that the Board of Massage Therapy may require every 2 years as a condition of license renewal.

Section 136. Amends s. 480.042, F.S., relating to massage licensing requirements, to eliminate a state law and rules examination for licensure.

Section 137. Repeals s. 480.0425, F.S., relating to inactive status provisions for massage licensees. The requirements for inactive licensure are addressed in chapter 455, F.S., for all boards.

Section 138. Amends s. 480.043, F.S., relating to massage, to specify that a license for a massage establishment may not be transferred from one owner to another unless the new owner submits to another inspection, obtains approval by the board, and the pays a fee no greater than $125. A license may be transferred from one business name to another upon approval of the board and the payment of an application fee no greater than $25.

Section 139. Amends s. 480.044, F.S., relating to massage, to delete the fee for the application and provisional license.

Section 140. Amends s. 480.047, F.S., relating to massage, to clarify that a person may not practice massage unless duly licensed or unless specifically exempted from licensure under the massage practice act.

Section 141. Creates s. 480.0485, F.S., relating to massage, to define and prohibit sexual misconduct in the practice of massage.

Section 142. Amends s. 20.43, F.S. (1996 Supp.), relating to the organization of the Department of Health, to make minor technical changes.

Section 143. Amends s. 381.81, F.S., relating to the Minority Health Improvement Act, to include hearing aid specialists in the definition of health care professional for purposes of the act and correct a statutory cross-reference.

Section 144. Amends s. 483.800, F.S., relating to clinical laboratory personnel, to revise the legislative intent relating to the regulation to specify that hospital-based training for laboratory and nonlaboratory personnel for testing is beneficial in hospital and commercial laboratories. Eliminates alternate sites from this intent language.

Section 145. Amends s. 483.801, F.S., relating to clinical laboratory personnel exemptions, to exempt advanced registered nurse practitioners performing provider-performed microscopy procedures from licensure under chapter 483, Part IV.

Section 146. Amends s. 483.803, F.S., relating to the definitions under the clinical laboratory personnel regulation, to provide definitions for a clinical laboratory examination and public health scientist.

Section 147. Amends s. 483.809, F.S., relating to clinical laboratory personnel licensing requirements, to provide that the Board of Clinical Laboratory Personnel may certify to the department those applicants who are eligible for licensure. Makes conforming changes relating to the board's authority to specify by rule clinical laboratory personnel licensure qualifications.

Section 148. Creates s. 483.812, F.S., relating to clinical laboratory personnel, to establish a licensure avenue for individuals working in public health laboratories.

Section 149. Amends s. 483.813, F.S., relating to clinical laboratory personnel, to authorize the Department of Health to issue temporary permits to clinical lab personnel exam candidates for up to one year to practice rather than 6 months. Creates a conditional license which may be used for a period up to 3 years by persons applying under the newly-created licensure category for clinical laboratory personnel working as a technician in a public health setting.

Section 150. Amends s. 483.823, F.S., to authorize the Board of Clinical Laboratory Personnel to adopt by rule personnel qualifications to require appropriate education, training, or experience, or the passing of an appropriate examination for clinical laboratory personnel under their regulatory jurisdiction. Provides that practitioners of the healing arts are not required to obtain licensure under this part or pay associated fees, except those required for a clinical laboratory license.

Section 151. Amends s. 483.825, F.S., relating to clinical laboratory personnel, to include applicants and registrants with licensees as persons eligible to be disciplined or denied licensure by the board. Expands the grounds for which a licensee, applicant, or registrant may be disciplined by the board to include: being unable to perform or report a clinical laboratory examination with reasonable skill and safety; delegating responsibilities to unqualified persons; and failing to report action taken against a license in another state, territory, or country. Allows

the board to require an impaired licensee to submit to a mental or physical examination. Creates a public records and meetings law exemption for the identification of the licensee in a related summary proceeding.

Section 152. Creates s. 483.828, F.S., to create various prohibited acts relating to the practice of clinical laboratory personnel, that subjects any violator to a third degree felony punishable by the imposition of imprisonment for up to 5 years and a fine up to $5,000.

Section 153. Amends s. 483.901, F.S., to make technical and substantive corrections to the practice act for medical physicists. Revises the role of the council as advisory to the Department of Health. Increases the council from seven to nine members by adding two consumer members to the council and changes the appointment term from three to four years. Provides that continuing education hours are to be completed biennially and allows the department, with the advice of the council, to set requirements by rule for continuing education for persons who hold more than one specialty license. Revises the requirements for licensure for applicants until October 1, 1997 and after October 1, 1997. Creates grounds for which licensed medical physicists may be subject to disciplinary action and the penalties that may be assessed and the criminal sanctions for unlicensed activity. Eliminates an exception from licensure for those medical physicists who have been practicing for five or more years as of July 1, 1995.

Sections 154 - 155. Amend ss. 484.041 and 484.042, F.S., to correct references to the Department of Health as the department having administrative jurisdiction over the Board of Hearing Aid Specialists.

Section 156. Amends s. 484.051, F.S., relating to hearing aid specialists, to require persons fitting and selling hearing aids to provide the purchaser with a receipt, rather than a contract, containing the seller's signature, address of regular practice, license number, and other identifying information and designates the Department of Health as the entity with which to file a complaint.

Section 157. Amends s. 486.021, F.S.,to correct references to the Department of Health as the department having administrative jurisdiction over the Board of Physical Therapy.

Section 158. Amends s. 486.023, F.S., to increase the Board of Physical Therapy from seven to nine members. One new member is a licensed physical therapist assistant and the other is a consumer member.

Section 159. Amends s. 486.031, F.S., to allow the Board of Physical Therapy to waive the examination for licensure of physical therapists who took the American Registry Examination prior to 1971. Facilitates computer based testing by eliminating the requirement that exams be administered by the department.

Section 160. Amends s. 486.041, F.S., relating to physical therapy licensure application procedures, to facilitate computer-based testing by allowing the applicant to bypass the department when applying to take the required exam.

Section 161. Amends s. 486.051, F.S., relating to physical therapy examination requirements, to revise the procedures for examinations to facilitate computer-based testing by eliminating language requiring the department to purchase exams.

Section 162. Amends s. 486.081, F.S., to allow the board to waive the examination for physical therapists applying by endorsement who took the American Registry Examination prior to 1971.

Section 163. Amends s. 486.102, F.S., relating to physical therapy, to delete the requirement that accrediting bodies be approved by the Council on Postsecondary Accreditation, since this organization is no longer in existence. Makes other minor technical and conforming changes.

Sections 164-165. Amend ss. 486.103 and 486.104, F.S., relating to physical therapy, to make technical and conforming changes to facilitate computer-based testing for physical therapist assistants by eliminating language requiring the department to purchase exams.

Section 166. Creates s. 486.123, F.S., to provide that sexual misconduct in the practice of physical therapy is prohibited.

Section 167. Amends s. 486.125, F.S., relating to physical therapy, to allow the Board of Physical Therapy to recover investigative and prosecution costs.

Section 168. Amends s. 641.495, F.S., relating to health maintenance organizations, to require health maintenance organizations to designate a medical director who is a medical physician or osteopathic physician who is licensed to practice in this state.

Section 169. Provides an effective date of July 1, 1997.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

Section 24 of Article I of the Florida Constitution governs the creation and expansion of exemptions, to provide, in effect, that any legislation that creates a new exemption or that substantially amends an existing exemption must also contain a statement of the public necessity that justifies the exemption. Article I, s. 24, Fla. Const. provides that any bill that

contains an exemption may not contain other substantive provisions, although it may contain multiple exemptions.

The bill expressly creates public records and meetings law exemptions for the identification of chiropractors, speech-language pathologists and audiologists, and clinical laboratory personnel in summary procedures relating to the Department of Health's enforcement to compel an impaired licensee to submit to a physical or mental examination. The bill creates by implication, public records and meetings exemptions to the extent existing exemptions for disciplinary actions in chapter 455, F.S., and specific practice acts apply, for specialized certification in nursing.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Section 19(f) of the Florida Constitution.

D. Other Constitutional Issues:

To the extent the bill authorizes the Board of Acupuncture to establish licensure standards by rule, which are part of a 3 or 4 year course of study, it raises the question whether this provides adequate limitations and safeguards so that the Legislature's delegation to the board is not a violation of Article II, Section 3 of the Florida Constitution. The bill does not appear to expressly provide a sufficient limitation on the board's authority to establish requirements on who should be granted a license to practice oriental medicine.

The Florida Supreme Court struck down a former section of law respecting the power of the Board of Psychological Examiners to grant certificates with the title "psychologist" and to determine the qualifications of applicants as unconstitutional in that it failed sufficiently to fix the standards to be applied and in effect delegated the application of the statute without sufficient limitations on the board's discretion. Husband v. Cassel, 130 So.2d 69 (1961).

Article II, Section 3 of the Florida Constitution provides that the powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein. The Florida Supreme Court has acknowledged that "Where the Legislature makes the fundamental policy decision and delegates to some other body the task of implementing that policy under adequate safeguards, there is no violation of the [Delegation of Powers] doctrine." Askew v. Cross Key Waterways, 372 So.2d 913 at 921 (Fla.1978).

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

Medical residents applying to sit for the medical licensing examination in Florida without applying for licensure to practice in this state will be subject to a nonrefundable administration fee no greater than $50, an examination fee no greater than $300, plus the actual cost per person to the Department of Health for the medical licensing examination.

Persons who hold limited licenses to practice medicine or osteopathy must pay any application or licensing fees currently waived if they receive compensation.

New nursing program applicants will be subject to a program review fee no greater than $1,000 .

Applicants for a retired volunteer nurse certificate are subject to an application and processing fee of $25.

Owners of massage establishments that are transferring ownership are subject to an application and inspection fee no greater than $125.

Owners of massage establishments that are changing the business name are subject to an application fee no greater than $25.

B. Private Sector Impact:

Medical residents who are training in Florida on a full-time basis who wish to practice in other states will benefit to the extent the bill allows the residents to sit for the medical licensing examination in Florida while training as a resident without having to apply for licensure to practice in this state.

Any physician who practices medicine exclusively as an officer, employee, or agent of the federal government or the state who is currently paying any costs to meet all financial responsibility requirements for staff privileges at any hospital, ambulatory surgical center or other licensed facility will benefit to the extent the bill provides that such physicians have met all financial responsibility when the physician is acting within the scope of his or her employment or agency.

C. Government Sector Impact:

The Department of Health estimates that it will have a reduction of $33,000 in revenue relating to the shift from an annual to a biennial registration of health care service pools.

The Department of Health indicates that there are 569 first year post-graduate training slots out of a total of 2,694 post-graduate training slots allocated in the various residency programs throughout the state. If ten percent of the persons in available first year residency training slots took the examination without applying for medical licensure each year, the department estimates a loss of revenue of approximately $23,370 (57 applicants @ $410 application fee).

The Department of Health estimates that during the biennial period 1997-1999 it will review approximately 14 new nursing programs and assess each program $1,000 and collect a total of $14,000 to recover its review costs.

The Department of Health estimates that it will receive 25 retired volunteer nurse applications during the biennial period 1997-1999 and collect a total of $625.

To the extent the bill increases the Board of Pharmacy from 7 to 9 members the Department of Health estimates the costs will be approximately $32,000 for additional travel and mailing expenses over the biennial period 1997-1999.

To the extent the bill increases the Board of Physical Therapy from 7 to 9 members the Department of Health estimates the costs will be approximately $9,200 for additional travel and mailing expenses over the biennial period 1997-1999.

To the extent the bill increases the Council of Occupational Therapy from 3 to 5 members the Department of Health estimates the costs will be approximately $1,000 for additional travel and mailing expenses over the biennial period 1997-1999.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 152 of the bill creates a felony offense for any person to commit various prohibited acts relating to the practice of clinical laboratory personnel, the violation of which subjects the person to a third degree felony punishable by the imposition of imprisonment for up to 5 years and a fine up to $5,000. Section 153 of the bill creates a felony offense for any person to commit various prohibited acts relating to the practice of medical physicists, the violation of which subjects the person to a third degree felony punishable by the imposition of imprisonment for up to 5 years and a fine up to $5,000. Section 921.001, F.S., provides that any legislation that creates a felony offense, enhances a misdemeanor offense to a felony or reclassifies an existing felony offense to a greater felony classification result in a net zero sum impact in the overall prison population as determined by the Criminal Justice Estimating Conference, unless the legislation contains a sufficient funding source to accommodate the change, or the Legislature abrogates the application of s. 921.001, F.S. To the extent the bill creates a felony offense for certain acts

relating to the practice of clinical laboratory personnel and the practice of medical physicists, it may have a fiscal impact based on its impact on the overall prison population as determined by the Criminal Justice Estimating Conference under procedures established in s. 216.136(5), F.S.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
PROPOSED COMMITTEE SUBSTITUTE FOR
Senate Bill 1814

The committee substitute revises the regulatory provisions relating to various health professions:

1. No longer requires any person who interprets a health maintenance organization's policy relating to medical necessity or medical appropriateness to be a licensed medical or osteopathic physician.

2. Eliminates the requirement for medical or osteopathic physicians to file incident reports with the appropriate regulatory board.

3. No longer authorizes a pharmacy technician who works under the supervision of a licensed pharmacist to initiate communications with a practitioner, on behalf of a patient, regarding refill authorization requests.

4. No longer revises the financial responsibility requirements for medical or osteopathic physicians who practice exclusively as employees or agents of the federal or state government to exempt such physicians from financial responsibilities for staff privileges at a licensed hospital or other facility when such physicians are acting within the scope of their employment or agency.

5. Authorizes dentists to prescribe certain schedule II controlled substances.

6. No longer permits the Department of Health to issue subpoenas to obtain names and addresses of some or all of a chiropractor's patients when pursuing an investigation of the chiropractor for alleged professional misconduct.

7. Revises the acupuncture licensing requirements.

8. Creates a seven-member Board of Occupational Therapy and revises occupational therapy licensing requirements.

9. Revises the massage therapy licensing requirements.

Committee on Health Care

Staff Director John Wilson

10. Chapter 99-397, Section 95

FLORIDA DEPARTMENT of STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

This is to certify that this is a true copy made from:

Laws of Florida Chapter 99-397, Section 95

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reasonable restrictions on the applicant's license to practice. These restrictions may include, but are not limited to:

1. Periodic and random department ~~agency~~ audits of the licensee's patient records and review of those records by the board or the department ~~agency~~.

2. Periodic appearances of the licensee before the board or the department ~~agency~~.

3. Submission of written reports to the board or the department ~~agency~~.

(b) A restricted licensee under this section shall practice under the supervision of a full licensee approved by the board with the first year of the licensure period being under direct supervision as defined by board rule and the second year being under indirect supervision as defined by board rule.

(c) The board may adopt rules necessary to implement this subsection.

(3)(a) A restricted license issued by the department ~~agency~~ under this section is valid for 2 years unless sooner revoked or suspended, and a restricted licensee is subject to the requirements of this chapter, part II of chapter 455, and any other provision of law not in conflict with this section. Upon expiration of such restricted license, a restricted licensee shall become a full licensee if the restricted licensee:

1. Is not under discipline, investigation, or prosecution for a violation which poses a substantial threat to the public health, safety, or welfare; and

2. Pays all renewal fees required of a full licensee.

(b) The department ~~agency~~ shall renew a restricted license under this section upon payment of the same fees required for renewal for a full license if the restricted licensee is under discipline, investigation, or prosecution for a violation which posed or poses a substantial threat to the public health, safety, or welfare and the board has not permanently revoked the restricted license. A restricted licensee who has renewed such restricted license shall become eligible for full licensure when the licensee is no longer under discipline, investigation, or prosecution.

(4) The board shall adopt rules necessary to carry out the provisions of this section.

Section 95. Subsections (1), (2), and (8) of section 458.313, Florida Statutes, are amended to read:

458.313 Licensure by endorsement; requirements; fees.—

(1) The department shall issue a license by endorsement to any applicant who, upon applying to the department on forms furnished by the department and remitting a fee set by the board not to exceed $500 ~~set by the board~~, the board certifies:

(a) Has met the qualifications for licensure in s. 458.311(1)(b)-(g) or in s. 458.311(1)(b)-(e) and (g) and (3);

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(b) Prior to January 1, 2000, has obtained a passing score, as established by rule of the board, on the licensure examination of the Federation of State Medical Boards of the United States, Inc. (FLEX), on ~~or of~~ the United States Medical Licensing Examination (USMLE), or on the examination of the National Board of Medical Examiners, or on a combination thereof, and on or after January 1, 2000, has obtained a passing score on the United States Medical Licensing Examination (USMLE) ~~provided the board certifies as eligible for licensure by endorsement any applicant who took the required examinations more than 10 years prior to application~~; and

(c) Has submitted evidence of the active licensed practice of medicine in another jurisdiction, for at least 2 of the immediately preceding 4 years, or evidence of successful completion of either a board-approved postgraduate training program within 2 years preceding filing of an application~~,~~ or a board-approved clinical competency examination~~,~~ within the year preceding the filing of an application for licensure. For purposes of this paragraph, "active licensed practice of medicine" means that practice of medicine by physicians, including those employed by any governmental entity in community or public health, as defined by this chapter, medical directors under s. 641.495(11) who are practicing medicine, and those on the active teaching faculty of an accredited medical school.

~~(2)(a) As prescribed by board rule, the board may require an applicant who does not pass the licensing examination after five attempts to complete additional remedial education or training. The board shall prescribe the additional requirements in a manner that permits the applicant to complete the requirements and be reexamined within 2 years after the date the applicant petitions the board to retake the examination a sixth or subsequent time.~~

~~(b)~~ The board may require an applicant for licensure by endorsement to take and pass the appropriate licensure examination prior to certifying the applicant as eligible for licensure.

~~(8) The department shall reactivate the license of any physician whose license has become void by failure to practice in Florida for a period of 1 year within 3 years after issuance of the license by endorsement, if the physician was issued a license by endorsement prior to 1989, has actively practiced medicine in another state for the last 4 years, applies for licensure before October 1, 1998, pays the applicable fees, and otherwise meets any continuing education requirements for reactivation of the license as determined by the board.~~

Section 96. Subsection (1) of section 458.315, Florida Statutes, is amended to read:

458.315 Temporary certificate for practice in areas of critical need.—Any physician who is licensed to practice in any other state, whose license is currently valid, and who pays an application fee of $300 may be issued a temporary certificate to practice in communities of Florida where there is a critical need for physicians. A certificate may be issued to a physician who will be employed by a county health department, correctional facility, community health center funded by s. 329, s. 330, or s. 340 of the United States

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10.a. House of Representatives as Revised by the Committee on Governmental Operations Analysis, HB 2125 (PCB HCS 99-05), Relating to Department of Health (Florida Archives, Series 19, Carton 3070).

FLORIDA DEPARTMENT *of* STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

I, Judith Ring, Division Director, Division of Library and Information Services, Florida Department of State, hereby certify the records of the Florida Legislature were transferred to the custody of the Florida State Archives pursuant to the provisions of Chapter 257, Florida Statutes, and that I am, by the terms of that transfer, the official custodian of the records.

I further certify that the attached is a true and correct copy of the record in the State Archives of Florida, the original of which may be found in Series 19, carton 3070.

***WITNESS MY SIGNATURE**, this 10th Day of January, 2014.*

***JUDITH RING**, Director*
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HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
GOVERNMENTAL OPERATIONS
ANALYSIS

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BILL #: HB 2125 (PCB HCS 99-05)

RELATING TO: Department of Health

SPONSOR(S): Committee on Health Care Services and Representative Peaden

COMPANION BILL(S): CS/SB 2220 (similar)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

(1) HEALTH CARE SERVICES YEAS 16 NAYS 1
(2) GOVERNMENTAL OPERATIONS
(3) GOVERNMENTAL RULES & REGULATIONS
(4) HEALTH & HUMAN SERVICES APPROPRIATIONS

I. SUMMARY:

HB 2125 includes several provisions designed to improve efficiency of public health programs within the Department of Health. These provisions: clarify language regarding the use of incentives and promotional items in disease prevention and health education; revise the list of divisions that are authorized to exist in the department; update career service exemptions; permit the department to contract with the Department of Children and Family Services to conduct administrative hearings in matters concerning the Special Supplemental Food Program for Women, Infants, and Children (WIC) and Children's Medical Services (CMS); clarify co-payment requirements relating to primary care challenge grants; authorize the department to purchase automobiles for use by county health departments; remove any responsibility regarding alligator management and trapping from the Department of Health and Rehabilitative Services; remove language that prevents the preliminary HIV test results of a mother who has just given birth from being released to the mother at the time of delivery; clarify requirements relating to the performance of HIV tests on deceased persons; give the department authority to adopt rules relating to inspection of certain group care facilities; give the department authority to adopt rules relating to family planning; provide a definition for "multi-family water system" and revise the definition of "private water system"; revise the membership of the Health Information Systems Council; require the council to establish a review process for agency health-related data collection and maintenance; revise department authority relating to vital records; provide the department with authority to adopt rules for the requirement of notarized documents; remove language relating to reproduction and destruction of records and the disclosure of certain social security numbers; clarify procedures and modify reporting requirements relating to birth records; correct the name of the WIC program to conform to federal law; revise the membership of the Diabetes Advisory Council; remove language requiring the department to reimburse hospitals for the cost of furnishing data for the cancer registry; make technical changes relating to eligibility for the Medicaid service package in the CMS program; allow the department to use excess money for the improvement of health facilities; authorize the department to establish an advisory body for the A.G. Holley State Hospital; provide for a phase-in of Medicaid capitated payments to CMS; and authorize nursing homes to purchase medical oxygen.

In addition, HB 2125 makes several amendments to ch. 499, F.S., to: clarify that a person must be authorized to sell or transfer prescription drugs under ch. 499, and that the person acquiring prescription drugs must be authorized to do so; clarify that providing the department with false information regarding any matter within the jurisdiction of ch. 499 is prohibited; prohibit distribution of a legend device to a patient without a prescription or order from a licensed practitioner; conform the prescription statement on labels to recently enacted federal language; authorize federal, state, and local government employees, acting within the scope of employee, to possess prescription drug samples; and authorize the immediate effect of a cease and desist order.

HB 2125 also provides names for three Department of Health buildings; and repeals obsolete and unnecessary provisions relating to the submission of Healthy Communities plans, Medicaid alternative service networks, and transportation of radioactive materials.

HB 2125 takes effect July 1, 1999.

The Department of Health estimates that the repeal of certain requirements in this bill will provide the department with an annual savings of $3,000. In addition, the Department of Health will be permitted to retain an estimated $800,000 in fees collected by vital statistics for birth certificates. This portion of the fees is now transferred to the General Revenue Fund.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Department of Health

In 1996, legislation was passed creating a Department of Health (DOH) to protect and promote the health and safety of residents of, and visitors to, the state. The new department, which came into official existence on January 1, 1997, is composed of the State Health Office and Children's Medical Services Program of the former Department of Health and Rehabilitative Services (HRS). Examination and licensure of the medical professions were also removed from AHCA and transferred to DOH, effective July 1, 1997.

With the creation of DOH, HRS was renamed the Department of Children and Family Services and reorganized to include four program offices as well as an administration office. The four programs include: Children & Families, Mental Health & Substance Abuse, Economic Self-Sufficiency, and Developmental Services.

There are still several references to HRS in the statute that have not yet been changed to conform to the creation of the Department of Health and the Department of Children and Family Services.

The purpose and organizational structure for DOH is provided in s. 20.43, F.S. This section establishes that the divisions of the Department of Health include the: Division of Administration; Division of Environmental Health; Division of Disease Control; Division of Family Health Services; Division of Children's Medical Services; Division of Local Health Planning, Education, and Workforce Development, and Division of Medical Quality Assurance, which is responsible for medical boards and professions.

Section 20.43, F.S., also gives DOH the authority to use state or federal funds to protect or improve the public health by providing incentives for encouraging disease prevention and patient compliance with medical treatment, and through health education campaigns and promotional campaigns to recruit health professionals to be employed by the department.

Section 120.80(15), F.S., 1998 Supp., provides that notwithstanding s. 120.57(1)(a), F.S., a formal hearing may not be conducted by the Secretary of Health, the director of the Agency for Health Care Administration, or a board or member of a board within the Department of Health or the Agency for Health Care Administration for matters relating to regulations of any activity, occupation, profession, or vocation regulated by the department in the Division of Medical Quality Assurance.

When DOH was still a part of HRS, a process was established that allowed the agency to conduct its own administrative hearings in matters concerning the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), Children's Medical Services (CMS) program, and exemption from disqualification review for certified nurse assistants. DOH no longer has the authority to continue this process.

Private and Public Water Systems

Section 381.0062, F.S., provides that "it is the intent of the Legislature to protect the public's health by establishing standards for the construction, modification, and operation of public and private water systems to assure consumers that the water provided to those systems is potable." Subsection (2) of s. 381.0062, F.S., defines "private water system" as "a water system that provides piped water for no more than four nonrental residences." No definition is provided for a water system that serves only one rental residence, and therefore, a single rental residence would now be included within the definitions of a private water system and a multi-family water system.

Chapter 64E-8, Florida Administrative Code, requires that owners of water systems connecting one or two residences only meet well setback from potential sources of contamination. Owners of water

systems connecting three or four residences must meet the setback requirement, and also obtain a construction permit and provide satisfactory bacteria, nitrate, and lead analytical results. There is no reference made to a single rental residence.

Testing for Human Immunodeficiency Virus (HIV)

Section 381.004(3)(a), F.S., provides that a test designed to identify HIV may not be ordered without the informed consent of the person being tested, except under specified circumstances. Additionally, s. 381.004(3)(d), F.S., provides that test results shall not be determined as positive or revealed to any person, without corroborating or confirmatory tests being conducted, except in certain situations. An exception to this requirement which was enacted in ch. 98-171, L.O.F. , provides that "preliminary test results may be released to health care providers and to the person tested when decisions about medical care or treatment of the person tested cannot await the results of confirmatory testing." There is concern that the words "treatment of the person tested" prevents the preliminary HIV test results of a mother who has just given birth from being released to the mother for purposes of immediate initiation of drug therapy for the newborn. Certain drug therapy may help prevent the newborn from contracting HIV from the mother, and because the earlier the drug therapy is initiated the more effective it is, a delay in drug treatment could be detrimental to the infant. This situation only occurs when women who have received no prenatal care arrive at hospital emergency rooms for delivery, because they have not been offered HIV tests as part of a prenatal care program.

Chapter 98-171, L.O.F., also provided for additional exceptions to when informed consent is not required in ordering an HIV test. Section 381.004(3)(h)12, F.S., provides that informed consent is not required "for the performance of an HIV test by the medical examiner upon a deceased individual who is the source of a significant exposure to medical personnel or nonmedical personnel who provided emergency medical assistance and who expired or could not be resuscitated during treatment for the medical emergency." This change was made to allow medical persons and "Good Samaritans" to learn the test results of the source of exposure so that preventative treatment options could begin if the test results were positive. The concern with this language is that not all deceased individuals who are the source of a significant exposure are sent to medical examiners.

Health Information Systems Council

The Health Information Systems Council was created by s. 381.90, F.S., within the Department of Health to, "facilitate the identification, collection, standardization, sharing, and coordination of health-related data, including fraud and abuse data, and professional and facility licensing data among federal, state, local, and private entities." Membership of the council is provided for in this section and includes: the secretary of the Department of Health; the secretary of the Department of Business and Professional Regulation; the secretary of the Department of Children and Family Services; the director of the Agency for Health Care Administration; the secretary of the Department of Corrections; the Attorney General; the executive director of the Correctional Medical Authority; two members representing county health departments, one from a small county and one from a large county, appointed by the Governor; and a representative from the Florida Association of Counties.

Vital Records

Section 382.013, F.S., provides that a certificate for each live birth that occurs in this state shall be filed within 5 days after such birth with the local registrar of the district in which the birth occurred. This section sets out procedures for filing, as well as requirements for registration of paternity, the name of the child, undetermined parentage, and disclosure.

Section 382.025(1), F.S., provides that all Florida birth records are confidential and exempt from the provisions of s. 119.07(1), F.S. Subsection (2) of s. 382.025, F.S., provides that the department authorizes the issuance of a certified copy of any marriage, dissolution of marriage, or death or fetal death certificate, excluding confidential portions, to the person requesting the information. Death and fetal death certificates which include the confidential portions will only be issued to the registrant's spouse or parent, child, grandchild, or sibling (of legal age), or to any family member who provides a will, insurance policy, or document demonstrating his or her interest in the registrant's estate. The confidential portions will also be provided to any agency of the state or local government or the

United States for official purposes upon approval of the department or upon order of any court of competent jurisdiction.

Section 382.0255, F.S., provides that the department is entitled to certain fees for the processing, filing, and retrieving of vital records and registrations. Previously, a portion of these fees was deposited in the Crimes Against Children Trust Fund administered by the Department of Law Enforcement. This trust fund, however, was eliminated on July 1, 1995, and the funds that were being deposited in this trust fund are now transferred to general revenue rather than to Vital Statistics.

Florida Drug and Cosmetic Act

Chapter 499, F.S., is known as the Florida Drug and Cosmetic Act and its purpose is to: protect the public from injury by the use and merchandising of drugs, devices, and cosmetics; provide uniform legislation to be administered in conformity with federal laws which expressly prohibit the false advertisement of drugs, devices and cosmetics; and promote uniformity of such state and federal laws.

Section 499.05, F.S., establishes prohibited acts relating to drugs, devices, and cosmetics. This section prohibits the sale or transfer of a legend drug or compressed medical gas if the person is not authorized to do so under the law of the state in which he or she resides. A person's residence, however, is irrelevant when determining whether that person is authorized to sell or receive prescription drugs.

According to s. 499.007, F.S., any drug that is habit forming or not safe for use unless under the supervision of a practitioner licensed by law to administer such drugs, is misbranded if it fails to bear on the label the statement: "Caution: Federal Law Prohibits Dispensing Without Prescription" or "Caution: State Law Prohibits Dispensing Without Prescription." In 1997, Congress passed the Food and Drug Administration Modernization Act, which provides that the label statement on such drugs is to appear as "Rx Only" or the prescription symbol followed by the word "Only." Federal regulations implementing this new prescription statement provide for a phase-in of labeling changes through February 2003. If ch. 499, F.S., is not revised to reflect this change in federal law, many prescription drug products entering Florida will be misbranded under Florida law.

Section 499.028, F.S., relating to drug samples and complimentary drugs, provides that individuals may not possess a prescription drug sample unless: the drug sample was prescribed to her or him, the individual is the employee of a complimentary drug distributor that holds a permit, or the individual is a person to whom prescription drug samples may be distributed pursuant to this section. Currently, there is no clear provision allowing federal, state, and local government employees, acting within the scope of employment, to possess prescription drug samples.

The Administrative Procedure Act and Agency Rulemaking Authority

Section 120.536(1), F.S., states that, "A grant of rulemaking authority is necessary but not sufficient to allow an agency to adopt a rule; a specific law to be implemented is also required. An agency may only adopt rules that implement, interpret, or make specific the particular powers and duties granted by the enabling statute." Section 120.536, F.S., further establishes that an agency may not adopt a rule merely because it is reasonably related to the purpose of the enabling legislation, nor may the agency have the authority to implement statutory provisions setting forth general legislative intent or policy.

Section 120.536(2), F.S., required each agency to provide the Administrative Procedures Committee a listing of rules adopted by the agency before October 1, 1996, which exceeded the rulemaking authority permitted in this section. These lists were to be provided by October 1, 1997, and subsequently combined and presented to the Speaker of the House of Representatives and the President of the Senate. This section further provides that the 1998 Legislature was to consider whether specific legislation authorizing these rules should be enacted. According to s. 120.536(2), F.S., each agency must have initiated appropriate proceedings to appeal rules exceeding rulemaking authority by January 1, 1999. By February 1, 1999, the Administrative Procedure Committee was required to submit to the President of the Senate and the Speaker of the House of Representatives,

a report identifying rules that exceed rule authority for which repeal proceedings have not yet been initiated.

B. EFFECT OF PROPOSED CHANGES:

The list of divisions authorized under the Department of Health will be revised and language regarding use of incentives and promotional items in disease prevention and health education activities will be clarified.

Certain language referring to the Department of Health & Rehabilitative Services will be updated to conform to the creation of the Department of Health and the Department of Children and Family Services.

The Department of Health will be provided with necessary rule authority required by s. 120.536, F.S.

The Department of Health will be given the authority to purchase vehicles for use by county health departments, subject to approval of the Department of Management Services.

Language requiring the Department of Health to reimburse hospitals for the cost of furnishing data for the cancer registry will be removed from statute.

The Special Supplemental Food Program for Women, Infants, and Children will be retitled the Special Supplemental Nutrition Program for Women, Infants, and Children, to conform to federal law.

Language relating to benefits provided under the program for children with special health care needs will be clarified, and provision is made for the phase-in or Medicaid capitated payments for such services.

Co-payment requirements relating to primary care challenge grantees will be clarified.

The difference in regulatory requirements for public and private drinking water systems will be clarified.

The membership of the Health Information Systems Council will be revised, and the council will be given the responsibility of establishing a review process for agency health-related data collection and maintenance.

The membership of the Diabetes Advisory Council will be revised.

Technical and clarifying changes will be made to department requirements relating to birth records.

Language that may prevent the preliminary HIV test results of a mother who has just given birth from being released to the mother for purposes of immediate initiation of drug treatment therapy for the her newborn infant will be removed, and specific requirements will be established for the performance of HIV tests on deceased persons.

Technical changes will be made to ch. 499, F.S., to conform to federal requirements and improve clarity.

Certain department buildings will be named after Wilson T. Sowder, M.D., E. Charlton Prather, M.D., and William G. "Doc" Myers, M.D.

Sections 381.731(3), 383.307(5), 404.20(7), and 409.9125, F.S., will be repealed.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

   a. Does the bill create, increase or reduce, either directly or indirectly:

      (1) any authority to make rules or adjudicate disputes?

      Yes, the Department of Health is given authority to adopt rules to implement particular sections in the bill and to comply with s. 120.536, F.S.

      (2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

      No.

      (3) any entitlement to a government service or benefit?

      No.

   b. If an agency or program is eliminated or reduced:

   An agency or program is not eliminated or reduced.

      (1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

      N/A

      (2) what is the cost of such responsibility at the new level/agency?

      N/A

      (3) how is the new agency accountable to the people governed?

      N/A

2. Lower Taxes:

   a. Does the bill increase anyone's taxes?

   No.

   b. Does the bill require or authorize an increase in any fees?

   No.

   c. Does the bill reduce total taxes, both rates and revenues?

   No.

   d. Does the bill reduce total fees, both rates and revenues?

   No.

   e. Does the bill authorize any fee or tax increase by any local government?

   No.

3. Personal Responsibility:

   a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

      No.

   b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

      No.

4. Individual Freedom:

   a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

      No.

   b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

      No.

5. Family Empowerment:

   a. If the bill purports to provide services to families or children:

      The bill does not purport to provide services to families or children.

      (1) Who evaluates the family's needs?

          N/A

      (2) Who makes the decisions?

          N/A

      (3) Are private alternatives permitted?

          N/A

      (4) Are families required to participate in a program?

          N/A

      (5) Are families penalized for not participating in a program?

          N/A

   b. Does the bill directly affect the legal rights and obligations between family members?

      Yes, the bill will clarify that a mother who has just given birth will be able to receive her HIV test results for purposes of determining medical care for her newborn infant.

   c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

The bill does not create or change a program providing services to families or children.

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Sections 20.43, 39.303, 63.162, 110.205, 120.80, 154.504, 287.155, 372.6672, 381.004, 381.0051, 381.006, 381.0061, 381.0062, 381.731, 381.90, 382.003, 382.004, 382.008, 382.013, 382.015, 382.016, 382.019, 382.025, 382.0255, 383.14, 383.307, 385.202, 385.203, 391.021, 391.028, 391.0315, 391.221, 391.222, 391.223, 392.69, 404.20, 409.9125, 409.9126, 465.019, 499.005, 499.007, 499.028, 499.066, 499.069, 742.10, F.S.

E. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 20.43, F.S., relating to the Department of Health. The following subsections are amended:

Subsection (3) is amended to add the Division of Children's Medical Services Network, Division of Emergency Medical Services and Community Health Resources, Division of Children's Medical Services Prevention and Intervention, Division of Information Resource Management, and the Division of Health Awareness and Tobacco to the list of divisions that are authorized to exist in the Department of Health. The Division of Children's Medical Services and the Division of Local Health Planning, Education, and Workforce Department are removed from the authorized list of divisions.

Subsection (7) is amended to clarify language regarding the use of incentives and promotional items in disease prevention and health education activities.

Section 2. Amends s. 39.303, F.S., relating to child protection teams, to conform titles relating to Children's Medical Services.

Section 3. Amends s. 63.162, F.S., relating to hearings and records in adoption proceedings, to clarify the use of the term "intermediary."

Section 4. Amends s. 110.205, F.S., relating to career service exemptions, to update language regarding the establishment of exempt positions that now pertains to the Department of Health and Rehabilitative Services to conform to the creation of the Department of Health and the Department of Children and Family Services, and to include the positions of Assistant County Health Department Director and County Health Department Financial Administrator to the list of exempt positions.

Section 5. Amends s. 120.80, F.S., relating to exceptions and special requirements of the Department of Health, to allow the Department of Health to contract with the Department of Children and Family Services to conduct administrative hearings in matters concerning the Special Supplemental Nutrition Program for Women, Infants and Children, Children's Medical Services programs, Child Care Food Program, and exemption from disqualification reviews for certified nurse assistants.

Section 6. Amends s. 154.504, F.S., relating to eligibility and benefits, to permit providers to enter into contracts pursuant to s. 766.1115, F.S., provided co-payments are not used as compensation for services to health care providers.

Section 7. Amends s. 287.155, F.S., relating to the purchase of motor vehicles by certain agencies, to authorize the Department of Health to purchase automobiles, trucks, and other automotive equipment for use by county health departments, subject to the approval of the Department of Management Services.

Section 8. Amends s. 372.6672, F.S., relating to alligator management and trapping program implementation, to delete the Department of Health and Rehabilitative Services from any responsibility regarding alligator management and trapping.

Section 9. Amends s. 381.004, F.S., relating to testing for human immunodeficiency virus. The following subsections of this section are amended:

Subsection (3) is amended to remove language that prevents the preliminary HIV test results of a mother from being released to the mother at the time of delivery; and

Subsection (12) is amended to clarify requirements for the performance of HIV tests on deceased persons.

Section 10. Amends s. 381.0051, F.S., relating to family planning, to give the Department of Health the authority to adopt rules for family planning.

Section 11. Amends s. 381.006, F.S., relating to environmental health, to provide the department with rulemaking authority relating to the health inspection of certain group care facilities.

Section 12. Amends s. 381.0061, F.S., relating to administrative fines, to authorize the department to impose fines for violations relating to group care facilities.

Section 13. Amends s. 381.0062, F.S., relating to water systems. The following subsections of this section are amended:

Subsection (2) is amended to provide that "multi-family water system" means a water system that provides piped water for three to four residences, one of which may be a rental residence, and to clarify the definition of "private water system" to mean a water system that provides piped water for one or two residences, one of which may be a rental residence, or for a church located more than 200 feet from a water system covered under the Florida Safe Drinking Water Act.

Subsections (3), (4), and (5) are amended to include the term "multi-family water system" when applicable in place of private water system.

Section 14. Amends s. 381.90, F.S., relating to the Health Information Systems Council. The following subsections of this section are amended:

Subsection (3) is amended to revise the membership of the council. Added members include: the State Treasurer/Insurance Commissioner; a representative from the Florida Healthy Kids Corporation; a representative from a school of public health chosen by the Board of Regents; the Commissioner of Education; the secretary of the Department of Elderly Affairs; and the secretary of the Department of Juvenile Justice.

Subsection (7) is amended to revise the duties of the council. Additional responsibilities will include developing a review process to ensure cooperative planning among agencies that collect or maintain health-related data. The council is required to submit a report on the implementation of this data to the Governor, the Speaker of the House of Representatives, and the President of the Senate, by January 1, 2000.

Section 15. Amends s. 382.003, F.S., relating to powers and duties of the Department of Health, to remove the word "rescinding" in relation to the department's rule authority regarding vital records, and to provide the department with the authority to adopt rules for the requirement of notarized documents.

Section 16. Amends s. 382.004, F.S., relating to reproduction and destruction of records, to remove unnecessary language.

Section 17. Amends s. 382.008, F.S. relating to death and fetal death registration, to remove language relating to the limited disclosure of social security numbers, which is in conflict with federal law.

Section 18. Amends s. 382.013, F.S., relating to birth registration, to provide that a certificate for each live birth that occurs in this state shall be filed with the mother's health insurer or HMO. The following subsections of this section are also amended:

Subsection (1) is amended to clarify procedures to be followed when a birth occurs outside a health care facility, and to provide authority for the department to require documents and proof as it deems necessary to establish the fact of a birth when it occurred outside of a health care facility and was not attended by a Florida licensed physician, certified nurse midwife, Florida licensed midwife, or a public health nurse employed by the department. A technical change replacing one of the parents with the mother or the father is also made;

Subsection (2) is amended to clarify circumstances for listing the name of the husband of the mother on the birth certificate; and

Subsection (4) is amended to clarify the responsibility for registering a birth record of a child of undetermined parentage and to delete ambiguous language.

Section 19. Amends s. 382.015, F.S., relating to new certificates of live birth, to replace the term "court decree" with "court order," and to delete language addressing the administrative acknowledgment of paternity. A technical change to delete unnecessary language is also made.

Section 20. Amends s. 382.016, F.S., relating to amendment of records. Subsections (3), (4), and (5) are created to add to s. 382.016, F.S., the language similar to that removed from s. 382.015(2), F.S., by the previous section.

Section 21. Amends s. 382.019, F.S., relating to delayed registration and administrative procedures, to clarify that after receipt of an application the department may file a delayed registration, and to clarify when the department may dismiss an inactive application.

Section 22. Amends s. 382.025, F.S., relating to certified copies of vital records. The following subsections of this section are amended:

Subsection (1) is amended to clarify that birth records over 100 years old are exempted from the confidential and exempt provisions of s. 119.07(1), F.S., and to provide a method for indicating death on a commemorative birth certificate; and

Subsection (2) is amended to allow for issuance of cause of death information to any person providing documented proof of need rather than restricting it to a family member only.

Section 23. Amends s. 382.0255, F.S., relating to the fee for a certification of a birth record, to permit the department to retain fees collected by vital statistics for birth certificates rather than transferring the fees to the General Revenue Fund.

Section 24. Amends s. 383.14, F.S., relating to screening for metabolic disorders, other hereditary and congenital disorders, and environmental risk factors, to change the name of the WIC program from the Special Supplemental Food Program for Women, Infants, and Children, to the Special Supplemental Nutrition Program for Women, Infants, and Children, to conform with federal law.

Section 25. Amends s. 385.202, F.S., relating to the statewide cancer registry, to remove language that requires the department to reimburse hospitals for the cost of furnishing data for the cancer registry.

Section 26. Amends s. 385.203, F.S., relating to the Diabetes Advisory Council, to revise the membership requirements of the council, and the scope of the council's activities.

Section 27. Amends s. 391.021, F.S., relating to definitions applying to Children's Medical Services, to give the Director of Children's Medical Services authority to appoint division directors subject to the approval of the secretary.

Section 28. Amends s. 391.028, F.S., relating to administration of the Children's Medical Services program, to remove "the Division of" from the title of Children's Medical Services, and to provide that the director of Children's Medical Services may appoint division directors subject to the approval of the secretary.

Section 29. Amends s. 391.0315, F.S., relating to benefits, to clarify that benefits provided under the program for children with special health care needs shall be the same benefits provided to children in ss. 409.905 and 409.906, F.S., relating to Medicaid.

Section 30. Amends s. 391.221, F.S., relating to the Statewide Children's Medical Services Network Advisory Council, to provide conforming language that is needed due to the reorganization of Children's Medical Services into two divisions.

Section 31. Amends s. 391.222, F.S., relating to the Cardiac Advisory Council, to provide conforming language that is needed due the reorganization of Children's Medical Services into two divisions.

Section 32. Amends s. 391.223, F.S., relating to technical advisory panels, to provide conforming language that is needed due the reorganization of Children's Medical Services into two divisions.

Section 33. Amends s. 392.69, F.S., relating to appropriations, sinking, and maintenance trust funds, to allow the department to use excess money, notwithstanding ch. 216, F.S., for the improvement of health facilities at A.G. Holley State Hospital, and to authorize the department to establish an advisory board to review and make recommendations relating to patient care at A.G. Holley State Hospital. Members of the advisory board shall be appointed for a term of 3 years, with such appointments being staggered so that the terms of no more than two members expire in any one year. Members are to serve without remuneration, but per diem and travel expenses may be reimbursed as provided in s. 112. 061, F.S.

Section 34. Amends s. 409.9126, F.S., relating to children with special health care needs, to provide for a phase-in of Medicaid capitation payments to Children's Medical Services for services provided to Medicaid eligible children with special health care needs.

Section 35. Amends s. 465.019, F.S., relating to institutional pharmacies, to allow nursing homes to purchase and possess medical oxygen.

Section 36. Amends s. 499.005, F.S., relating to prohibited acts, to clarify that a person must be authorized to sell or transfer legend drugs and compressed medical gas under ch. 499, and that a person acquiring a legend drug must be authorized to do so under the applicable law where the receipt occurs. Providing the department with false information regarding any matter within the jurisdiction of ch. 499 is prohibited, not just as it relates to a drug, device, or cosmetic. The distribution of a legend device to the patient or ultimate consumer without a prescription or order from a practitioner to use or prescribe the device is prohibited.

Section 37. Amends s. 499.007, F.S., relating to misbranded drugs or devices, to conform the prescription statement of labels to match recently enacted federal language.

Section 38. Amends s. 499.028, F.S., relating to drug samples or complimentary drugs, to authorize federal, state, and local government employees, acting within the scope of their employment, to possess prescription drug samples.

Section 39. Amends s. 499.066, F.S., relating to penalties and remedies, to authorize the immediate effect of a cease and desist order relating to persons who have violated ss. 499.001-499.081, F.S.,

or any rule adopted pursuant to those sections. Chapter 120, F.S., hearing rights attach for an abatement or modification of the cease and desist order.

Section 40. Amends s. 499.069, F.S., relating to punishment for violations of s. 499.005, F.S., to correct a statutory cross-reference to make the purchase of a prescription drug from an unauthorized source a third degree felony, rather than the purchase of a compressed medical gas from an unauthorized source a first-degree misdemeanor.

Section 41. Amends s. 742.10, F.S., relating to establishment of paternity for children born out of wedlock, to conform statutory cross-references.

Section 42. Provides that the building known as the 1911 State Board of Health Building which is part of a multi-building complex with the address of 1217 Pearl Street, Jacksonville, Florida shall be known as the Wilson T. Sowder, M.D. Building.

Section 43. Provides that the building authorized by Chapter 98-307, L.O.F., that will be located on Seagrape Drive on the Tampa Campus of the University of South Florida which will house laboratory facilities for the Department of Health shall be known as the William G. "Doc" Myers, M.D. Building.

Section 44. Provides that the Department of Health headquarters building that will comprise approximately 100,000 square feet that is authorized by item 1986 in the 1998-99 Appropriations Act shall be known as the E. Charlton Prather, M.D. Building.

Section 45. Repeals subsection (3) of s. 381.731, F.S., relating to submission of an initial Healthy Communities plan that was submitted in 1992.

Section 46. Repeals subsection (5) of s. 383.307, F.S., relating to department consultation agreements with birth centers that are unable to find consultants.

Section 47. Repeals subsection (7) of s. 404.20, F.S., relating to department monitoring requirements of the transportation of radioactive materials.

Section 48. Repeals s. 409.9125, F.S., relating to study requirements for Medicaid alternative service networks.

Section 49. Provides an effective date of July 1, 1999.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

   None.

2. Recurring Effects:

   The Department of Health estimates that it will save $3,000 a year with the repeal of technologically obsolete radioactive monitoring requirements in s. 404.20, F.S. In addition, the Department of Health will be permitted to retain an estimated $800,000 in fees collected by vital statistics for birth certificates. This portion of the fees is now transferred to the General Revenue Fund.

3. Long Run Effects Other Than Normal Growth:

   None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenue in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Several revisions to the original PCB HCS 99-05 were needed to conform to SB 2220 and to make technical bill drafting corrections. In addition, the Committee on Health Care Services passed a series of amendments to the bill on March 23, 1999.

VII. SIGNATURES:

COMMITTEE ON HEALTH CARE SERVICES:

Prepared by: Amy K. Guinan

Staff Director: Phil E. Williams

AS REVISED BY THE COMMITTEE ON GOVERNMENTAL OPERATIONS:

Prepared by: Jen Girgen

Staff Director: Jimmy O. Helms

10.b. Senate Staff Analysis and Economic Impact Statement, CS/SB 2220, Subject: Department of Health, March 23, 1999, (Florida Archives, Series 18, Carton 2432).

FLORIDA DEPARTMENT *of* STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

I, Judith Ring, Division Director, Division of Library and Information Services, Florida Department of State, hereby certify the records of the Florida Legislature were transferred to the custody of the Florida State Archives pursuant to the provisions of Chapter 257, Florida Statutes, and that I am, by the terms of that transfer, the official custodian of the records.

I further certify that the attached is a true and correct copy of the record in the State Archives of Florida, the original of which may be found in Series 18, carton 2432.

***WITNESS MY SIGNATURE**, this 10th Day of January, 2014.*

***JUDITH RING**, Director*
Division of Library and Information Services

BY: _____
State Archives of Florida

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SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

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BILL: CS/SB 2220

SPONSOR: Health, Aging and Long-Term Care Committee and Senator Clary

SUBJECT: Department of Health

DATE: March 23, 1999 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Wilson	HC	Favorable/CS
2.			GO	
3.			FP	
4.				
5.				

I. Summary:

The Committee Substitute for Senate Bill 2220 makes revisions to address glitches in the statutes relating to the administration of the Department of Health. The bill gives the Department of Health specific authority for certain existing administrative rules, updates statutory references to the Department of Health and makes changes to comply with changes in federal law.

Significant provisions of the bill: modify the Department of Health's authority in the use of incentives and promotional items in disease prevention and health education; revise and rename divisions within the department; authorize the Department of Health to adopt rules for certain group-care facilities and to impose fines for violation of its rules; revise the requirements and the membership of the Diabetes Advisory Council; grant the Department of Health specific statutory authority to approve training programs for emergency medical technicians and paramedics and to impose minimum requirements on permitted emergency medical vehicles; allow the Department of Health to require documents to be submitted by emergency medical licensees and emergency medical certification applicants to the department under oath; update career service exemptions; impose additional requirements on co-payments made pursuant to primary care challenge grants; revise requirements for the Department of Health to hold formal hearings for disqualification reviews of certified nurse assistants; delay and revise the implementation of a plan to reimburse providers through the Children's Medical Services Program for services provided to Medicaid eligible children with special needs on a capitated basis; allow nursing homes to administer medical oxygen to their residents without getting a pharmacy license; authorize the Department of Health to contract with the Department of Children and Family Services to conduct administrative hearings for matters relating to the Special Supplemental Nutrition Program for Women, Infants and Children and the Children's Medical Services Program; permit the Department of Health to purchase automobiles for use by county health departments; eliminate the Department of Health's responsibility for monitoring the transportation of radioactive materials; revise the requirements for the release of preliminary results of an HIV test so that the results for a mother who has just delivered an infant may be released to the mother at the time of delivery to enhance treatment options for the mother's infant; revise requirements for the

performance of an HIV test on persons who die during treatment; authorize the Department of Health to adopt rules for family planning; revise the membership and responsibilities of the Health Information Systems Council; define multi-family water system; revise the Department of Health procedures for birth records in the Office of Vital Statistics and authorize the department to retain fees paid to that office for birth certificates in lieu of being transferred into the General Revenue Fund; eliminate requirements for the Department of Health to reimburse hospitals for costs of furnishing data for the cancer registry; revise penalties for certain violations of the Florida Drug and Cosmetic Act, and authorize federal, state, and local government employees to possess prescription drug samples when acting within the scope of their employment; prohibit the distribution of a legend device to a patient without a prescription or order from a licensed practitioner; revise the Department of Health's authority to issue a cease and desist order so that it has immediate effect and provide for an administrative hearing to abate or modify the department's order; authorize the Department of Health to use earned dollars to improve the A.G. Holley Hospital through a legislative budget request and to establish an advisory body for the facility; name the new Department of Health headquarters the "E. Charlton Prather, M.D., Building and the Division of Health's headquarters in honor of Dr. Wilson T. Sowder and facilities that will house the department's laboratory facilities in recognition of Senator Myers; authorizes the Department of Health to apply for and become a National Environmental Laboratory Accreditation program accrediting authority.

This bill substantially amends the following sections of the Florida Statutes: 20.43, 110.205, 120.80, 154.504, 287.155, 372.6672, 381.004, 381.0051, 381.006, 381.0061, 381.0062, 381.90, 382.003, 382.004, 382.008, 382.013, 382.015, 382.016, 382.019, 382.025, 382.0255, 383.14, 385.202, 385.203, 391.028, 391.0315, 392.69, 401.25, 401.27, 401.30, 401.35, 409.9126, 465.019, 499.005, 499.007, 499.028, 499.066, 499.069, 742.10, 39.303, 385.203, 391.021, 391.221, 391.222, 391.223, and 63.162.

The bill creates section 401.49, Florida Statutes.

This bill repeals the following sections of the Florida Statutes: 381.731(3), 383.307(5), 404.20(7), and 409.9125.

This bill creates four sections that have not been designated to a section within the Florida Statutes.

II. Present Situation:

Department of Health

Chapter 96-403, Laws of Florida, created the Department of Health (DOH) to promote and protect the health of all residents and visitors in the state. The department is composed of the State Health Office and Children's Medical Services Program of the former Department of Health and Rehabilitative Services (HRS). Examination and licensure of the health care professions were transferred from the Agency for Health Care Administration to the Department of Health on July 1, 1997. With the creation of the Department of Health, the Department of Health and Rehabilitative Services was renamed the Department of Children and Family Services. There are still several references to HRS in the statute that have not yet been changed to

conform to the creation of the Department of Health and the Department of Children and Family Services.

The purpose and organizational structure for the Department of Health is provided in s. 20.43, F.S. This section establishes that the divisions of the Department of Health include: Division of Administration; Division of Environmental Health; Division of Disease Control; Division of Family Health Services; Division of Children's Medical Services; Division of Local Health Planning, Education, and Workforce Development, and Division of Medical Quality Assurance, which is responsible for medical boards and professions.

Section 20.43, F.S., also gives the Department of Health the authority to use state or federal funds to protect or improve the public health by providing incentives for encouraging disease prevention and patient compliance with medical treatment, and through health education campaigns and promotional campaigns to recruit health professionals to be employed by the department.

Section 120.80(15), F.S., 1998 Supplement, provides that notwithstanding s. 120.57(1)(a), a formal hearing may not be conducted by the Secretary of Health, the director of the Agency Health Care Administration, or a board or member of a board within the Department of Health or the Agency for Health Care Administration for matters relating to regulations of any activity, occupation, profession, or vocation regulated by the department in the Division of Medical Quality Assurance.

When the Department of Health was still part of the Department of Health and Rehabilitative Services, a procedure was established that allowed the Department of Health to conduct its own administrative hearings in matters concerning the Special Supplemental Food Program for Women, Infants, and Children (WIC), Children's Medical Services (CMS) program, and exemption from disqualification review for certified nurse assistants. The Department of Health no longer has authority to continue this process.

Private and Public Water Systems

Section 381.0062, F.S., provides legislative intent to protect the public's health by establishing standards for the construction, modification, and operation of public and private water systems to assure consumers that the water provided to those systems is potable. Subsection (2) of s. 381.0062, F.S., defines "private water system" to mean a water system that provides piped water for no more than four nonrental residences. No definition is provided for a water system that serves only one rental residence, and therefore, a single rental residence would now be included within the definitions of a private water system and a multi-family water system.

Chapter 64E-8, Florida Administrative Code, requires that any owner of water systems connecting one or two residences only meet well setback requirements to protect the well from potential sources of contamination. Owners of water systems connecting three or four residences must meet the setback requirement, and also obtain a construction permit and provide satisfactory bacteria, nitrate and lead analytical results. There is no reference made to a single rental residence.

Testing for Human Immunodeficiency Virus (HIV)

Section 381.004(3)(a), F.S., provides that a test designed to identify HIV may not be ordered without the informed consent of the person being tested, except under specified circumstances. Additionally, s. 381.004(3)(d), F.S., provides that test results shall not be determined as positive or revealed to any person, without corroborating or confirmatory tests being conducted, except in certain situations. An exception to this requirement which was enacted in chapter 98-171, L.O.F., provides that preliminary test results may be released to health care providers and to the person tested when decisions about medical care or treatment of the person tested cannot await the results of confirmatory testing. It is unclear under the exception, whether the preliminary HIV test results of a mother who has just given birth may be released to the mother for purposes of immediate initiation of drug therapy for the newborn. Officials at the Department of Health have indicated that certain drug therapy may help prevent the newborn from contracting HIV from the mother. The earlier the drug therapy is initiated the more effective it is, and any delay in drug treatment could be detrimental to the infant. The Department of Health officials noted that this situation only occurs when a woman who has not received any prenatal care at all and therefore, has not been offered HIV tests as part of that prenatal care, arrives at a hospital emergency room for delivery.

Chapter 98-171, L.O.F., also provided for additional exceptions for when informed consent is not required in ordering an HIV test. Section 381.004(3)(h)12, F.S., provides that informed consent is not required for the performance of an HIV test by the medical examiner upon a deceased individual who was the source of a significant exposure to medical personnel or nonmedical personnel who provided emergency medical assistance and who expired or could not be resuscitated during treatment for the medical emergency. This exception to the informed consent requirements for ordering an HIV test allows medical personnel and "good Samaritans" to learn the test results of the potential source of exposure so that preventive treatment options could begin if the test results were positive. According to the Department of Health, not all deceased individuals who are the source of a significant exposure are sent to medical examiners so that a HIV test may be performed.

Health Information Systems Council

The Health Information Systems Council was created by s. 381.90, F.S., within the Department of Health to facilitate the identification, collection, standardization, sharing, and coordination of health-related data, including fraud and abuse data, and professional and facility licensing data among federal, state, local, and private entities. Under s. 381.90, F.S., the membership of the council includes: the secretary of the Department of Health; the secretary of the Department of Business and Professional Regulation; the secretary of the Department of Children and Family Services; the director of the Agency of Health Care Administration; the secretary of the Department of Corrections; the Attorney General; the executive director of the Correctional Medical Authority; two members representing county health departments, one from a small county and one from a large county, appointed by the Governor; and a representative from the Florida Association of Counties.

Vital Records

Section 382.013, F.S., requires a certificate for each live birth that occurs in this state to be filed within 5 days after such birth with the local registrar of the district in which the birth occurred. Section 382.013, F.S., sets out procedures for filing and requirements for the registration of paternity and the name of the child, undetermined parentage, and disclosure.

Section 382.025(1), F.S., provides that all Florida birth records are confidential and exempt from the provisions of s. 119.07(1), F.S., the Public Records Law. Subsection (2) of s. 382.025, F.S., authorizes the department to issue a certified copy of any marriage, dissolution of marriage, or death or fetal death certificate, excluding confidential portions, to the person requesting the information. Death and fetal death certificates which include the confidential portions will only be issued to the registrant's spouse or parent, child, grandchild, or sibling, of legal age, or to any family member who provides a will, insurance policy, or document demonstrating his or her interest in the registrant's estate. The confidential portions of records will also be provided to a state agency or local government or the United States for official purposes upon approval of the Department of Health or upon the order of any court of competent jurisdiction.

Section 382.0255, F.S., provides that the department is entitled to certain fees for the processing, filing, and retrieving of vital records and registrations. Previously, a portion of these fees was deposited in the Crimes Against Children Trust Fund administered by the Department of Law Enforcement. This trust fund, however, was eliminated on July 1, 1995, and the funds that were being deposited in this trust fund are now transferred to general revenue rather than to Vital Statistics within the Department of Health.

Emergency Medical Services

Part II, chapter 401, Florida Statutes, authorizes the Department of Health to make grants to local agencies and emergency medical services organizations to assist the agencies in providing emergency medical services. The Department of Health must certify advanced life support services, and basic life support services pursuant to s. 401.27, F.S. Section 401.27, F.S., establishes standards and certification requirements for emergency medical technicians and paramedics. Section 401.30, F.S., requires each permitted advanced life support service, basic life support service, or air ambulance (licensee) to maintain accurate records of emergency calls on forms that contain such information as is required by the department. The Department of Health has established by rule: requirements for staffing of permitted emergency medical service vehicles (64E-2.007, F.A.C.); requirements for the delivery of patient records by licensees (64E-2.013, F.A.C.); requirements for the department's approval of programs that educate emergency medical technicians and paramedics (64E-2.011, F.A.C.); and specific standards for the security and storage of controlled substances, medications, and fluids by licensees (64E-2.003, F.A.C.). Pursuant to s. 120.536, F.S., the Department of Health submitted administrative rules to the Joint Administrative Procedures Committee as rules that exceeded the rulemaking authority permitted in this section.

Florida Drug and Cosmetic Act

Chapter 499, Florida Statutes, provides for the regulation of drugs, cosmetics and household products by the Department of Health. Part I, ch. 499, F.S., (ss. 499.001-499.081, F.S.) sets forth the Florida Drug and Cosmetic Act. The purpose of this Act is to safeguard the public health and promote the public welfare by protecting the public from injury by product use and by merchandising deceit involving drugs, devices, and cosmetics. The part provides uniform legislation to be administered so far as practicable in conformity with the provisions of, and regulations issued under, the federal Food, Drug, and Cosmetic Act and the applicable portions of the federal Trade Commission Act which prohibits the false advertising of drugs, devices, and cosmetics. The part specifies prohibited acts and requirements for the distribution and manufacture of legend drugs and legend devices by pharmacies, manufacturers, and other entities.

Section 499.05, F.S., establishes prohibited acts relating to drugs, devices, and cosmetics. Section 499.05, F.S., prohibits the sale or transfer of a legend drug or compressed medical gas if the person is not authorized to do so under the law of the state in which he or she resides. A person's residence, however, is irrelevant when determining whether that person is authorized to sell or receive prescription drugs.

Under s. 499.007, F.S., any drug that is habit forming or not safe for use unless under the supervision of a practitioner licensed by law to administer such drugs, is misbranded if it fails to bear on the label the statement" "Caution: Federal Law Prohibits Dispensing Without Prescription" or "Caution: State Law Prohibits Dispensing Without Prescription." In 1997, Congress passed the Food and Drug Administration Modernization Act, which provides that the label statement on such drugs is to appear as "Rx Only" or the prescription symbol followed by the word "Only." Federal regulations implementing this new prescription statement provide for a phase-in of labeling changes through February 2003. If ch. 499, F.S., is not revised to reflect this change in federal law, many prescription drug products entering Florida will be misbranded under Florida law.

Section 499.028, F.S., relating to drug samples and complimentary drugs, provides that individuals may not possess a prescription drug sample unless: the drug sample was prescribed to her or him, the individual is the employee of a complimentary drug distributor that holds a permit, or the individual is a person to whom prescription drug samples may be distributed pursuant to this section. No clear provision under state law allows federal, state, and local government employees, acting within the scope of their employment, to possess prescription drug samples.

The Administrative Procedure Act and Agency Rulemaking Authority

Section 120.536(1), F.S., states that, "A grant of rulemaking authority is necessary but not sufficient to allow an agency to adopt a rule; a specific law to be implemented is also required. An agency may only adopt rules that implement, interpret, or make specific the particular powers and duties granted by the enabling statute." Section 120.536, F.S., further established that an agency may not adopt a rule merely because it is reasonably related to the purpose of the enabling

legislation, nor may the agency have the authority to implement statutory provisions setting forth general legislative intent or policy.

Section 120.536(2), F.S., required each agency to provide the Administrative Procedures Committee a listing of rules adopted by the agency before October 1, 1996, which exceeded the rulemaking authority permitted in this section. These lists were to be provided by October 1, 1997, and subsequently combined and presented to the Speaker of the House of Representatives and the President of the Senate. This section further provided that the 1998 Legislature was to consider whether specific legislation authorizing these rules should be enacted. According to s. 120.536(2), F.S., each agency must have initiated appropriate proceedings to repeal rules exceeding rulemaking authority by January 1, 1999. By February 1, 1999, the Administrative Procedure Committee was required to submit to the President of the Senate and the Speaker of the House of Representatives, a report identifying rules that exceed rule authority for which repeal proceedings have not yet been initiated.

III. Effect of Proposed Changes:

Section 1. Amends s. 20.43, F.S., 1998 Supplement, relating to the Department of Health, to add the Division of Children's Medical Services Network, Division of Emergency Medical Services and Community Health Resources, Division of Children's Medical Services Prevention and Intervention, Division of Information Resource Management, and the Division of Health Awareness and Tobacco to the list of divisions that are authorized to exist in the Department of Health. The Division of Children's Medical Services and the Division of Local Health Planning, Education, and Workforce Department are removed from the authorized list of divisions. The Department of Health's authority to improve the public health by its use of incentives and promotional items in disease prevention and health education activities is expanded.

Section 2. Amends s. 110.205, F.S., relating to career service exemptions, to update language regarding the establishment of exempt positions that now pertains to the Department of Health and Rehabilitative Services to conform to the creation of the Department of Health and the Department of Children and Family Services, and to include the positions of Assistant County Health Department Director and County Health Department Financial Administrator to the list of exempt positions.

Section 3. Amends s. 120.80., F.S., 1998 Supplement, relating to exceptions and special requirements of the Department of Health, to allow the Department of Health to contract with the Department of Children and Family Services to conduct administrative hearings in matters concerning the Special Supplemental Nutrition Program for Women, Infants and Children; Child Care Food Program; Children's Medical Services Program; and exemption from disqualification reviews for the certified nurse assistants program. The Department of Health is exempt from the requirements of a formal hearing under the Administrative Procedure Act for these programs.

Section 4. Amends s. 154.504, F.S., 1998 Supplement, relating to eligibility and benefits for the primary care challenge grant program, to permit providers to enter into contracts pursuant to s. 766.1115, F.S., relating to the provision of uncompensated care to low-income recipients by certain health care providers, if co-payments under the primary care challenge grants are not used as compensation for services to health care providers.

Section 5. Amends s. 287.155, F.S., relating to the purchase of motor vehicles by certain agencies, to authorize the Department of Health, to purchase automobiles, trucks, and other automotive equipment for use by county health departments, subject to the approval of the Department of Management Services.

Section 6. Amends s. 372.6672, F.S., 1998 Supplement, relating to alligator management and trapping program implementation, to delete obsolete references to the Department of Health and Rehabilitative Services.

Section 7. Amends s. 381.004, F.S., 1998 Supplement, relating to testing for human immunodeficiency virus, to revise requirements authorizing the use of preliminary HIV test results so that the information may be released to a mother at the time of delivery, for treatment and diagnosis of a newborn infant. Requirements for the performance of HIV tests on deceased persons are revised by authorizing the attending physician in addition to a medical examiner to perform an HIV test under limited circumstances to provide treatment options for medical personnel who were subject to a significant exposure when providing care or assistance to a person who expired or could not be resuscitated while receiving emergency care.

Section 8. Amends s. 381.0051, F.S., relating to family planning, to give the Department of Health the authority to adopt rules for family planning.

Section 9. Amends s. 381.006, F.S., 1998 Supplement, relating to environmental health, to provide the Department of Health with rulemaking authority relating to the health inspection of certain group-care facilities.

Section 10. Amends s. 381.0061, F.S., relating to administrative fines, to authorize the Department of Health to impose fines for violations relating to group care facilities.

Section 11. Amends s. 381.0062, F.S., 1998 Supplement, relating to water systems, to define "multi-family water system" to mean a water system that provides piped water for three to four residences, one of which may be a rental residence, and defines "private water system" to mean a water system that provides piped water for one to two residences, one of which may be a rental residence. Other minor and technical changes to conform to the new definition of "multi-family water system" are made.

Section 12. Amends s. 381.90, F.S., relating to the Health Information Systems Council, to revise the membership of the Health Information Systems Council by adding the State Treasurer/Insurance Commissioner; a representative from the Florida Healthy Kids Corporation; a representative from a school of public health chosen by the Board of Regents; the Commissioner of Education; the secretary of the Department of Elderly Affairs; and the secretary of the Department of Juvenile Justice. The duties of the Health Information Systems Council are revised so that it must develop a review process to ensure cooperative planning among agencies that collect or maintain health-related data and must submit a report on the implementation of this requirement to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 1, 2000.

Section 13. Amends s. 382.003, F.S., relating to powers and duties of the Department of Health, to remove the word "rescinding" in relation to the department's rule authority regarding vital records, and to authorize the department to adopt rules to require that forms, documents, and information submitted to the department to create or amend a vital record be under oath.

Section 14. Amends s. 382.004, F.S., relating to reproduction and destruction of records, to make minor and technical changes.

Section 15. Amends s. 382.008, F.S., 1998 Supplement, relating to death and fetal death registration, to delete obsolete language that limits the disclosure of social security numbers, which is in conflict with federal law.

Section 16. Amends s. 382.013, F.S., 1998 Supplement, relating to birth registration, to revise procedures to be followed when a birth occurs outside a health care facility, and to provide authority for the Department of Health to require documents and proof as it deems necessary to establish the fact of a birth when it occurred outside of a health care facility and was not attended by a Florida licensed physician, certified nurse midwife, Florida licensed midwife or a public health nurse employed by the department. Circumstances for listing the name of the husband of the mother on the birth certificate and procedures for the registration of a birth record of a child of undetermined parentage are revised. Other minor and technical changes to delete unnecessary language are made.

Section 17. Amends s. 382.015, F.S., relating to new certificates of live birth, to replace the term "court decree" with "court order," and to delete language addressing the administrative acknowledgment of paternity. Other minor and technical changes to delete unnecessary language are made.

Section 18. Amends s. 382.016, F.S., relating to amendment of birth records, to reinstate provisions outlining the amendment of a birth record in s. 382.015(2), F.S. relating to the administrative acknowledgment of paternity and subsequent amendment of the birth record.

Section 19. Amends s. 382.019, F.S., relating to delayed registration and administrative procedures for birth, death, or fetal death, to clarify that, after receipt of an application, the department may file a delayed registration and to authorize the Department of Health to dismiss an application not actively pursued within 1 year.

Section 20. Amends s. 382.025, F.S., relating to certified copies of vital records, to provide that birth records over 100 years old which are not sealed by a court order are available as a public record and to provide a method for indicating death on a commemorative birth certificate. The Department of Health is authorized to issue cause of death information to any person providing documented proof of need rather than restricting it to only a family member.

Section 21. Amends s. 382.0255, F.S., relating to fees for a certification of a birth record, to permit the Department of Health to retain fees collected by the Office of Vital Statistics for birth certificates rather than transferring the fees to the General Revenue Fund.

Section 22. Amends s. 383.14, F.S., relating to screening for metabolic disorders, other hereditary and congenital disorders, and environmental risk factors, to change the name of the WIC program from the Special Supplemental Food Program for Women, Infants, and Children, to the Special Supplemental Nutrition Program for Women, Infants, and Children to conform with federal law.

Section 23. Amends s. 385.202, F.S., relating to the statewide cancer registry, to no longer require the Department of Health to reimburse hospitals for the cost of furnishing data for the cancer registry.

Section 24. Amends s. 385.203, F.S., relating to the Diabetes Advisory Council, to revise the requirements and membership of the council. The council's membership is expanded from 18 to 25 members.

Section 25. Amends s. 391.028, F.S., 1998 Supplement, relating to administration of the Children's Medical Services program, to remove "the Division of" from the title of Children's Medical Services, and to provide that the director of Children's Medical Services may appoint division directors subject to the approval of the secretary.

Section 26. Amends s. 391.0315, F.S., 1998 Supplement, relating to benefits for children with special health needs, to clarify that benefits provided under the program shall be the same benefits provided to children in ss. 409.905 and 409.906, F.S., relating to Medicaid.

Section 27. Amends s. 392.69, FS, relating to appropriations, sinking, and maintenance trust funds, to allow the department to use excess money, notwithstanding ch. 216, F.S., for the improvement of health facilities at A. G. Holley State Hospital. The department is authorized to establish an advisory board to review and make recommendations relating to patient care at A. G. Holley State Hospital. Members of the advisory board shall be appointed by the Department of Health for a term of 3 years, with such appointments being staggered so that the terms of no more than two members expire in any one year. Members are to serve without compensation, but per diem and travel expenses may be reimbursed by the Department of Health as provided in s. 112.061, F.S.

Section 28. Amends s. 401.25, F.S., relating to the licensure of a basic life support (BLS) or an advanced life support (ALS) service, to grant the Department of Health with specific authority for its administrative rule (64E-2003, F.A.C.) that imposes minimum staffing requirements. A BLS service must be occupied by at least two persons: a certified emergency medical technician, certified paramedic, or licensed physician and one ambulance driver. An ALS service must be occupied by at least two persons: a certified paramedic or licensed physician and one who is a certified emergency medical technician, certified paramedic, or licensed physician who meets requirements of s. 401.281, F.S., as a driver. The person with the highest medical certifications must be in charge of patient care.

Section 29. Amends s. 401.27, F.S., relating to standards and certification of emergency medical services personnel, to grant the Department of Health specific authority for its administrative rule (64E-2.008 and 64E-2.009, F.A.C.) that requires applicants for emergency medical technician or paramedic certification and recertification to apply under oath to the department on forms

provided by the department. The staff of the Joint Administrative Procedures Committee have raised concerns regarding the department's authority to require documents to be submitted under oath.

Section 30. Amends s. 401.30, F.S., 1998 Supplement, relating to records that must be maintained by permitted ambulance services, to grant the Department of Health specific authority for its administrative rule (64E-2.013, F.A.C.) that requires each licensee to maintain records and reports and to submit the record to the department as requested. Licensed ambulance services, basic life support services, and advanced life support services, must provide the receiving hospital with a copy of an individual patient care record for each patient who is transported to the hospital. The information contained on the record and the method and timeframe for providing the record must be prescribed by rule of the department.

Section 31. Amends s. 401.35, F.S., relating to the Department of Health's rulemaking authority to enforce provisions relating to the regulation of emergency medical services, to grant the Department of Health with specific rulemaking authority for its administrative rule (64E-2.003, F.A.C.) that requires licensed ambulance services, basic life support services, and advanced life support services to meet specific standards for the security and storage of controlled substances, medications, and fluids that are not inconsistent with requirements of ch. 499, F.S., the Florida Drug and Cosmetic Act or ch. 893, F.S., relating to the regulation of controlled substances.

Section 32. Creates s. 401.49, F.S., to grant the Department of Health specific authority for its administrative rule (64E-2.011, F.A.C.) that specifies requirements for the department's approval of programs that educate emergency medical technicians and paramedics.

Section 33. Amends s. 409.9126, F.S., 1998 Supplement, relating to services provided through the Children's Medical Services network for children with special health care needs, to revise the implementation of a plan to reimburse providers through the Children's Medical Services program for services provided to Medicaid eligible children with special health care needs on a capitated basis. Beginning July 1, 1999, the Florida Medicaid program must phase in by geographical area, capitation payment to Children's Medical Services for services provided to Medicaid children with special health care needs. By January 1, 2001, the Agency for Health Care Administration must make capitation payments for Children's Medical Services enrollees statewide, to the extent provided by federal law.

Section 34. Amends s. 465.019, F.S., 1998 Supplement, relating to institutional pharmacies, to revise the definition of a Class I institutional pharmacy to provide an exception for licensed nursing homes to purchase medical oxygen for administration to residents. Although licensed nursing homes provide medical oxygen to residents through the use of bulk canisters, it is unclear whether current law requires nursing homes to be licensed as Class I institutional pharmacies.

Section 35. Amends s. 499.005, F.S., 1998 Supplement, relating to prohibited acts under the Florida Drug and Cosmetic Act, to clarify that a person must be authorized to sell or transfer legend drugs and compressed medical gas under ch. 499, F.S., and that a person acquiring a legend drug must be authorized to do so under the applicable law where the receipt occurs. Providing the department with false information regarding any matter within the jurisdiction of ch. 499, F.S., is prohibited, not just as it relates to a drug, device, or cosmetic. The distribution of

a legend device to the patient or ultimate consumer without a prescription or order from a practitioner to use or prescribe the device is prohibited.

Section 36. Amends s. 499.007, F.S., relating to misbranded drugs or devices, to conform the prescription statement of labels to match recently enacted federal language.

Section 37. Amends s. 499.028, F.S., relating to drug samples or complimentary drugs, to authorize federal, state, and local government employees, acting within the scope of their employment, to possess prescription drug samples.

Section 38. Amends s. 499.066, F.S., relating to penalties and remedies under the Florida Drug and Cosmetic Act, to authorize the immediate effect of a cease and desist order relating to persons who have violated ss. 499.001-499.081, F.S., (the Florida Drug and Cosmetic Act), or any rule adopted pursuant to that law. Any person subject to a cease and desist order issued by the Department of Health may request an administrative hearing to abate or modify the cease and desist order.

Section 39. Amends s. 499.069, F.S., relating to punishment for violations of the Florida Drug and Cosmetic Act, to revise criminal penalties to make the purchase or receipt of a prescription drug from an unauthorized source a third degree felony punishable by up to a 5 year imprisonment and a $5,000 fine. The criminal penalties for the purchase of compressed medical gas from an unauthorized source is changed from a third degree felony to a first-degree misdemeanor punishable by imprisonment of up to 1 year and a $1,000 fine.

Section 40. Amends s. 742.10, F.S., relating to establishment of paternity for children born out of wedlock, to conform statutory cross-references.

Section 41. Amends s. 39.303, F.S., 1998 Supplement, relating to child protection teams, to conform titles relating to Children's Medical Services.

Section 42. Amends s. 385.203, F.S., relating to the Diabetes Advisory Council, to conform titles relating to Children's Medical Services.

Section 43. Amends s. 391.021, F.S., 1998 Supplement, relating to definitions applying to Children's Medical Services, to conform titles relating to Children's Medical Services.

Section 44. Amends s. 391.221, F.S., 1998 Supplement, relating to the Statewide Children's Medical Services Network Advisory Council to provide conforming language that is needed due to the reorganization of Children's Medical Services.

Section 45. Amends s. 391.222, F.S., 1998 Supplement, relating to the Cardiac Advisory Council, to provide conforming language that is needed due the reorganization of Children's Medical Services into two divisions.

Section 46. Amends s. 391.223, F.S., 1998 Supplement, relating to technical advisory panels, to provide conforming language that is needed due the reorganization of Children's Medical Services into two division.

Section 47. Amends s. 63.162, F.S., relating to hearings and records in adoption proceedings, to clarify the use of the term "intermediary."

Section 48. Repeals subsection (3) of s. 381.731, F.S., relating to submission of an initial Healthy Communities plan that was submitted in 1992.

Section 49. Repeals subsection (5) of s. 383.307, F.S., relating to the Department of Health's consultation agreements with birth centers that are unable to find consultants.

Section 50. Repeals subsection (7) of s. 404.20, F.S., relating to the Department of Health's monitoring requirements of the transportation of radioactive materials.

Section 51. Repeals s. 409.9125, F.S., relating to study requirements for Medicaid alternative service networks.

Section 52. Provides that the building known as the 1911 State Board of Health Building which is part of a multi-building complex with the address of 1217 Pearl Street, Jacksonville, Florida shall be known as the Wilson T. Sowder, M. D., Building.

Section 53. Provides that the building authorized by Chapter 98-307, L.O.F., that will be located on Seagrape Drive on the Tampa Campus of the University of South Florida which will house laboratory facilities for the Department of Health shall be known as the William G. "Doc" Myers, M. D., Building.

Section 54. Provides that the Department of Health headquarters building that will comprise approximately 100,000 square feet that is authorized by item 1986 in the 1998-99 Appropriations Act shall be known as the E. Charlton Prather, M. D., Building.

Section 55. Authorizes the Department of Health to apply for and to become a National Environmental Laboratory Accreditation program accrediting authority. Legislative intent is provided that the Department of Health shall have authority to adopt rules to enforce the standards of the National Environmental Accreditation program, impose fees, and process applications.

Section 56. Provides an effective date of July 1, 1999.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of Health estimates that it will save approximately $3,000 each year by not having to administer a system to monitor the transportation of radioactive materials that is repealed under the bill. The Department of Health estimates that it will retain $800,000 in fees collected by the Office of Vital Statistics for the issuance of birth certificates. These fees are currently transferred to the general revenue fund.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill creates a third degree felony offense for any person who makes the purchase or receipt of a prescription drug from an unauthorized source. Violations subject the person to imprisonment for up to 5 years and a fine up to $5,000. Section 921.001, F.S., requires any legislation that creates a felony offense, enhances a misdemeanor offense to a felony or reclassifies an existing felony offense to a greater felony classification to result in a net zero sum impact in the overall prison population as determined by the Criminal Justice Estimating Conference, unless the

legislation contains a sufficient funding source to accommodate the change, or the Legislature abrogates the application of s. 921.001, F.S. To the extent the bill creates a felony offense for any person who makes the purchase or receipt of a prescription drug from an unauthorized source, it may have a fiscal impact based on its impact on the overall prison population as determined by the Criminal Justice Estimating Conference under procedures established in s. 216.136(5), F.S.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
Senate Bill 2220

The committee substitute authorizes the Department of Health to adopt rules to inspect certain group facilities and to impose fines for violations of its rules. The bill revises the membership of the Diabetes Advisory Council. The bill revises the implementation of a plan to reimburse providers through the Children's Medical Services program for services provided to Medicaid eligible children with special health care needs on a capitated basis. The bill gives the Department of Health specific statutory authority to approve training programs for emergency medical technicians and paramedics and to establish minimum requirements for the staffing of permitted emergency medical vehicles; patient records; the security and storage of medications, controlled substances, and fluid on permitted emergency medical vehicles; and documents that must be submitted to the department under oath. The bill authorizes licensed nursing homes to administer medical oxygen to their residents without being a licensed pharmacy. The bill authorizes the Department of Health to apply for and become a National Environmental Laboratory Accreditation program accrediting authority.

Committee on Health, Aging and Long-Term Care

Staff Director John Wilson

(FILE TWO COPIES WITH THE SECRETARY OF THE SENATE)

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

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BEFOR
MEETIN

BILL: PCS/SB 2220

SPONSOR: Health, Aging and Long-Term Care Committee and Senator Clary

SUBJECT: Department of Health

DATE: March 21, 1999 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Wilson	HC	
2.			GO	
3.			FP	
4.				
5.				

I. Summary:

The Proposed Committee Substitute for Senate Bill 2220 makes revisions to address glitches in the statutes relating to the administration of the Department of Health. The bill gives the Department of Health specific authority for certain existing administrative rules, updates statutory references to the Department of Health and makes changes to comply with changes in federal law.

Significant provisions of the bill: modify the Department of Health's authority in the use of incentives and promotional items in disease prevention and health education; revise and rename divisions within the department; authorize the Department of Health to adopt rules for certain group-care facilities and to impose fines for violation of its rules; revise the requirements and the membership of the Diabetes Advisory Council; grant the Department of Health specific statutory authority to approve training programs for emergency medical technicians and paramedics and to impose minimum requirements on permitted emergency medical vehicles; allow the Department of Health to require documents to be submitted by emergency medical licensees and emergency medical certification applicants to the department under oath; update career service exemptions; impose additional requirements on co-payments made pursuant to primary care challenge grants; revise requirements for the Department of Health to hold formal hearings for disqualification reviews of certified nurse assistants; delay and revise the implementation of a plan to reimburse providers through the Children's Medical Services Program for services provided to Medicaid eligible children with special needs on a capitated basis; allow nursing homes to administer medical oxygen to their residents without getting a pharmacy license; authorize the Department of Health to contract with the Department of Children and Family Services to conduct administrative hearings for matters relating to the Special Supplemental Nutrition Program for Women, Infants and Children and the Children's Medical Services Program; permit the Department of Health to purchase automobiles for use by county health departments; eliminate the Department of Health's responsibility for monitoring the transportation of radioactive materials; revise the requirements for the release of preliminary results of an HIV test so that the results for a mother who has just delivered an infant may be released to the mother at the time of

delivery to enhance treatment options for the mother's infant; revise requirements for the performance of an HIV test on persons who die during treatment; authorize the Department of Health to adopt rules for family planning; revise the membership and responsibilities of the Health Information Systems Council; define multi-family water system; revise the Department of Health procedures for birth records in the Office of Vital Statistics and authorize the department to retain fees paid to that office for birth certificates in lieu of being transferred into the General Revenue Fund; eliminate requirements for the Department of Health to reimburse hospitals for costs of furnishing data for the cancer registry; revise penalties for certain violations of the Florida Drug and Cosmetic Act, and authorize federal, state, and local government employees to possess prescription drug samples when acting within the scope of their employment; prohibit the distribution of a legend device to a patient without a prescription or order from a licensed practitioner; revise the Department of Health's authority to issue a cease and desist order so that it has immediate effect and provide for an administrative hearing to abate or modify the department's order; authorize the Department of Health to use earned dollars to improve the A.G. Holley Hospital through a legislative budget request and to establish an advisory body for the facility; name the new Department of Health headquarters the "E. Charlton Prather, M.D., Building and the Division of Health's headquarters in honor of Dr. Wilson T. Sowder and facilities that will house the department's laboratory facilities in recognition of Senator Myers.

This bill substantially amends the following sections of the Florida Statutes: 20.43, 110.205, 120.80, 154.504, 287.155, 372.6672, 381.004, 381.0051, 381.006, 381.0061, 381.0062, 381.90, 382.003, 382.004, 382.008, 382.013, 382.015, 382.016, 382.019, 382.025, 382.0255, 383.14, 385.202, 385.203, 391.028, 391.0315, 392.69, 401.25, 401.27, 401.30, 401.35, 409.9126, 465.019, 499.005, 499.007, 499.028, 499.066, 499.069, 742.10, 39.303, 385.203, 391.021, 391.221, 391.222, 391.223, and 63.162.

The bill creates section 401.49, Florida Statutes.

This bill repeals the following sections of the Florida Statutes: 381.731(3), 383.307(5), 404.20(7), and 409.9125.

This bill creates three sections that have not been designated to a section within the Florida Statutes.

II. Present Situation:

Department of Health

Chapter 96-403, Laws of Florida, created the Department of Health (DOH) to promote and protect the health of all residents and visitors in the state. The department is composed of the State Health Office and Children's Medical Services Program of the former Department of Health and Rehabilitative Services (HRS). Examination and licensure of the health care professions were transferred from the Agency for Health Care Administration to the Department of Health on July 1, 1997. With the creation of the Department of Health, the Department of Health and Rehabilitative Services was renamed the Department of Children and Family Services. There are still several references to HRS in the statute that have not yet been changed to

conform to the creation of the Department of Health and the Department of Children and Family Services.

The purpose and organizational structure for the Department of Health is provided in s. 20.43, F.S. This section establishes that the divisions of the Department of Health include: Division of Administration; Division of Environmental Health; Division of Disease Control; Division of Family Health Services; Division of Children's Medical Services; Division of Local Health Planning, Education, and Workforce Development, and Division of Medical Quality Assurance, which is responsible for medical boards and professions.

Section 20.43, F.S., also gives the Department of Health the authority to use state or federal funds to protect or improve the public health by providing incentives for encouraging disease prevention and patient compliance with medical treatment, and through health education campaigns and promotional campaigns to recruit health professionals to be employed by the department.

Section 120.80(15), F.S., 1998 Supplement, provides that notwithstanding s. 120.57(1)(a), a formal hearing may not be conducted by the Secretary of Health, the director of the Agency Health Care Administration, or a board or member of a board within the Department of Health or the Agency for Health Care Administration for matters relating to regulations of any activity, occupation, profession, or vocation regulated by the department in the Division of Medical Quality Assurance.

When the Department of Health was still part of the Department of Health and Rehabilitative Services, a procedure was established that allowed the Department of Health to conduct its own administrative hearings in matters concerning the Special Supplemental Food Program for Women, Infants, and Children (WIC), Children's Medical Services (CMS) program, and exemption from disqualification review for certified nurse assistants. The Department of Health no longer has authority to continue this process.

Private and Public Water Systems

Section 381.0062, F.S., provides legislative intent to protect the public's health by establishing standards for the construction, modification, and operation of public and private water systems to assure consumers that the water provided to those systems is potable. Subsection (2) of s. 381.0062, F.S., defines "private water system" to mean a water system that provides piped water for no more than four nonrental residences. No definition is provided for a water system that serves only one rental residence, and therefore, a single rental residence would now be included within the definitions of a private water system and a multi-family water system.

Chapter 64E-8, Florida Administrative Code, requires that any owner of water systems connecting one or two residences only meet well setback requirements to protect the well from potential sources of contamination. Owners of water systems connecting three or four residences must meet the setback requirement, and also obtain a construction permit and provide satisfactory bacteria, nitrate and lead analytical results. There is no reference made to a single rental residence.

Testing for Human Immunodeficiency Virus (HIV)

Section 381.004(3)(a), F.S., provides that a test designed to identify HIV may not be ordered without the informed consent of the person being tested, except under specified circumstances. Additionally, s. 381.004(3)(d), F.S., provides that test results shall not be determined as positive or revealed to any person, without corroborating or confirmatory tests being conducted, except in certain situations. An exception to this requirement which was enacted in chapter 98-171, L.O.F., provides that preliminary test results may be released to health care providers and to the person tested when decisions about medical care or treatment of the person tested cannot await the results of confirmatory testing. It is unclear under the exception, whether the preliminary HIV test results of a mother who has just given birth may be released to the mother for purposes of immediate initiation of drug therapy for the newborn. Officials at the Department of Health have indicated that certain drug therapy may help prevent the newborn from contracting HIV from the mother. The earlier the drug therapy is initiated the more effective it is, and any delay in drug treatment could be detrimental to the infant. The Department of Health officials noted that this situation only occurs when a woman who has not received any prenatal care at all and therefore, has not been offered HIV tests as part of that prenatal care, arrives at a hospital emergency room for delivery.

Chapter 98-171, L.O.F., also provided for additional exceptions for when informed consent is not required in ordering an HIV test. Section 381.004(3)(h)12, F.S., provides that informed consent is not required for the performance of an HIV test by the medical examiner upon a deceased individual who was the source of a significant exposure to medical personnel or nonmedical personnel who provided emergency medical assistance and who expired or could not be resuscitated during treatment for the medical emergency. This exception to the informed consent requirements for ordering an HIV test allows medical personnel and "good Samaritans" to learn the test results of the potential source of exposure so that preventive treatment options could begin if the test results were positive. According to the Department of Health, not all deceased individuals who are the source of a significant exposure are sent to medical examiners so that a HIV test may be performed.

Health Information Systems Council

The Health Information Systems Council was created by s. 381.90, F.S., within the Department of Health to facilitate the identification, collection, standardization, sharing, and coordination of health-related data, including fraud and abuse data, and professional and facility licensing data among federal, state, local, and private entities. Under s. 381.90, F.S., the membership of the council includes: the secretary of the Department of Health; the secretary of the Department of Business and Professional Regulation; the secretary of the Department of Children and Family Services; the director of the Agency of Health Care Administration; the secretary of the Department of Corrections; the Attorney General; the executive director of the Correctional Medical Authority; two members representing county health departments, one from a small county and one from a large county, appointed by the Governor; and a representative from the Florida Association of Counties.

Vital Records

Section 382.013, F.S., requires a certificate for each live birth that occurs in this state to be filed within 5 days after such birth with the local registrar of the district in which the birth occurred. Section 382.013, F.S., sets out procedures for filing and requirements for the registration of paternity and the name of the child, undetermined parentage, and disclosure.

Section 382.025(1), F.S., provides that all Florida birth records are confidential and exempt from the provisions of s. 119.07(1), F.S., the Public Records Law. Subsection (2) of s. 382.025, F.S., authorizes the department to issue a certified copy of any marriage, dissolution of marriage, or death or fetal death certificate, excluding confidential portions, to the person requesting the information. Death and fetal death certificates which include the confidential portions will only be issued to the registrant's spouse or parent, child, grandchild, or sibling, of legal age, or to any family member who provides a will, insurance policy, or document demonstrating his or her interest in the registrant's estate. The confidential portions of records will also be provided to a state agency or local government or the United States for official purposes upon approval of the Department of Health or upon the order of any court of competent jurisdiction.

Section 382.0255, F.S., provides that the department is entitled to certain fees for the processing, filing, and retrieving of vital records and registrations. Previously, a portion of these fees was deposited in the Crimes Against Children Trust Fund administered by the Department of Law Enforcement. This trust fund, however, was eliminated on July 1, 1995, and the funds that were being deposited in this trust fund are now transferred to general revenue rather than to Vital Statistics within the Department of Health.

Emergency Medical Services

Part II, chapter 401, Florida Statutes, authorizes the Department of Health to make grants to local agencies and emergency medical services organizations to assist the agencies in providing emergency medical services. The Department of Health must certify advanced life support services, and basic life support services pursuant to s. 401.27, F.S. Section 401.27, F.S., establishes standards and certification requirements for emergency medical technicians and paramedics. Section 401.30, F.S., requires each permitted advanced life support service, basic life support service, or air ambulance (licensee) to maintain accurate records of emergency calls on forms that contain such information as is required by the department. The Department of Health has established by rule: requirements for staffing of permitted emergency medical service vehicles (64E-2.007, F.A.C.); requirements for the delivery of patient records by licensees (64E-2.013, F.A.C.); requirements for the department's approval of programs that educate emergency medical technicians and paramedics (64E-2.011, F.A.C.); and specific standards for the security and storage of controlled substances, medications, and fluids by licensees (64E-2.003, F.A.C.). Pursuant to s. 120.536, F.S., the Department of Health submitted administrative rules to the Joint Administrative Procedures Committee as rules that exceeded the rulemaking authority permitted in this section.

Florida Drug and Cosmetic Act

Chapter 499, Florida Statutes, provides for the regulation of drugs, cosmetics and household products by the Department of Health. Part I, ch. 499, F.S., (ss. 499.001-499.081, F.S.) sets forth the Florida Drug and Cosmetic Act. The purpose of this Act is to safeguard the public health and promote the public welfare by protecting the public from injury by product use and by merchandising deceit involving drugs, devices, and cosmetics. The part provides uniform legislation to be administered so far as practicable in conformity with the provisions of, and regulations issued under, the federal Food, Drug, and Cosmetic Act and the applicable portions of the federal Trade Commission Act which prohibits the false advertising of drugs, devices, and cosmetics. The part specifies prohibited acts and requirements for the distribution and manufacture of legend drugs and legend devices by pharmacies, manufacturers, and other entities.

Section 499.05, F.S., establishes prohibited acts relating to drugs, devices, and cosmetics. Section 499.05, F.S., prohibits the sale or transfer of a legend drug or compressed medical gas if the person is not authorized to do so under the law of the state in which he or she resides. A person's residence, however, is irrelevant when determining whether that person is authorized to sell or receive prescription drugs.

Under s. 499.007, F.S., any drug that is habit forming or not safe for use unless under the supervision of a practitioner licensed by law to administer such drugs, is misbranded if it fails to bear on the label the statement" "Caution: Federal Law Prohibits Dispensing Without Prescription" or "Caution: State Law Prohibits Dispensing Without Prescription." In 1997, Congress passed the Food and Drug Administration Modernization Act, which provides that the label statement on such drugs is to appear as "Rx Only" or the prescription symbol followed by the word "Only." Federal regulations implementing this new prescription statement provide for a phase-in of labeling changes through February 2003. If ch. 499, F.S., is not revised to reflect this change in federal law, many prescription drug products entering Florida will be misbranded under Florida law.

Section 499.028, F.S., relating to drug samples and complimentary drugs, provides that individuals may not possess a prescription drug sample unless: the drug sample was prescribed to her or him, the individual is the employee of a complimentary drug distributor that holds a permit, or the individual is a person to whom prescription drug samples may be distributed pursuant to this section. No clear provision under state law allows federal, state, and local government employees, acting within the scope of their employment, to possess prescription drug samples.

The Administrative Procedure Act and Agency Rulemaking Authority

Section 120.536(1), F.S., states that, "A grant of rulemaking authority is necessary but not sufficient to allow an agency to adopt a rule; a specific law to be implemented is also required. An agency may only adopt rules that implement, interpret, or make specific the particular powers and duties granted by the enabling statute." Section 120.536, F.S., further established that an agency may not adopt a rule merely because it is reasonably related to the purpose of the enabling

legislation, nor may the agency have the authority to implement statutory provisions setting forth general legislative intent or policy.

Section 120.536(2), F.S., required each agency to provide the Administrative Procedures Committee a listing of rules adopted by the agency before October 1, 1996, which exceeded the rulemaking authority permitted in this section. These lists were to be provided by October 1, 1997, and subsequently combined and presented to the Speaker of the House of Representatives and the President of the Senate. This section further provided that the 1998 Legislature was to consider whether specific legislation authorizing these rules should be enacted. According to s. 120.536(2), F.S., each agency must have initiated appropriate proceedings to repeal rules exceeding rulemaking authority by January 1, 1999. By February 1, 1999, the Administrative Procedure Committee was required to submit to the President of the Senate and the Speaker of the House of Representatives, a report identifying rules that exceed rule authority for which repeal proceedings have not yet been initiated.

III. Effect of Proposed Changes:

Section 1. Amends s. 20.43, F.S., 1998 Supplement, relating to the Department of Health, to add the Division of Children's Medical Services Network, Division of Emergency Medical Services and Community Health Resources, Division of Children's Medical Services Prevention and Intervention, Division of Information Resource Management, and the Division of Health Awareness and Tobacco to the list of divisions that are authorized to exist in the Department of Health. The Division of Children's Medical Services and the Division of Local Health Planning, Education, and Workforce Department are removed from the authorized list of divisions. The Department of Health's authority to improve the public health by its use of incentives and promotional items in disease prevention and health education activities is expanded.

Section 2. Amends s. 110.205, F.S., relating to career service exemptions, to update language regarding the establishment of exempt positions that now pertains to the Department of Health and Rehabilitative Services to conform to the creation of the Department of Health and the Department of Children and Family Services, and to include the positions of Assistant County Health Department Director and County Health Department Financial Administrator to the list of exempt positions.

Section 3. Amends s. 120.80., F.S., 1998 Supplement, relating to exceptions and special requirements of the Department of Health, to allow the Department of Health to contract with the Department of Children and Family Services to conduct administrative hearings in matters concerning the Special Supplemental Nutrition Program for Women, Infants and Children; Child Care Food Program; Children's Medical Services Program; and exemption from disqualification reviews for the certified nurse assistants program. The Department of Health is exempt from the requirements of a formal hearing under the Administrative Procedure Act for these programs.

Section 4. Amends s. 154.504, F.S., 1998 Supplement, relating to eligibility and benefits for the primary care challenge grant program, to permit providers to enter into contracts pursuant to s. 766.1115, F.S., relating to the provision of uncompensated care to low-income recipients by certain health care providers, if co-payments under the primary care challenge grants are not used as compensation for services to health care providers.

Section 5. Amends s. 287.155, F.S., relating to the purchase of motor vehicles by certain agencies, to authorize the Department of Health, to purchase automobiles, trucks, and other automotive equipment for use by county health departments, subject to the approval of the Department of Management Services.

Section 6. Amends s. 372.6672, F.S., 1998 Supplement, relating to alligator management and trapping program implementation, to delete obsolete references to the Department of Health and Rehabilitative Services.

Section 7. Amends s. 381.004, F.S., 1998 Supplement, relating to testing for human immunodeficiency virns, to revise requirements authorizing the use of preliminary HIV test results so that the information may be released to a mother at the time of delivery, for treatment and diagnosis of a newborn infant. Requirements for the performance of HIV tests on deceased persons are revised by authorizing the attending physician in addition to a medical examiner to perform an HIV test under limited circumstances to provide treatment options for medical personnel who were subject to a significant exposure when providing care or assistance to a person who expired or could not be resuscitated while receiving emergency care.

Section 8. Amends s. 381.0051, F.S., relating to family planning, to give the Department of Health the authority to adopt rules for family planning.

Section 9. Amends s. 381.006, F.S., 1998 Supplement, relating to environmental health, to provide the Department of Health with rulemaking authority relating to the health inspection of certain group-care facilities.

Section 10. Amends s. 381.0061, F.S., relating to administrative fines, to authorize the Department of Health to impose fines for violations relating to group care facilities.

Section 11. Amends s. 381.0062, F.S., 1998 Supplement, relating to water systems, to define "multi-family water system" to mean a water system that provides piped water for three to four residences, one of which may be a rental residence, and defines "private water system" to mean a water system that provides piped water for one to two residences, one of which may be a rental residence. Other minor and technical changes to conform to the new definition of "multi-family water system" are made.

Section 12. Amends s. 381.90, F.S., relating to the Health Information Systems Council, to revise the membership of the Health Information Systems Council by adding the State Treasurer/Insurance Commissioner; a representative from the Florida Healthy Kids Corporation; a representative from a school of public health chosen by the Board of Regents; the Commissioner of Education; the secretary of the Department of Elderly Affairs; and the secretary of the Department of Juvenile Justice. The duties of the Health Information Systems Council are revised so that it must develop a review process to ensure cooperative planning among agencies that collect or maintain health-related data and must submit a report on the implementation of this requirement to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 1, 2000.

Section 13. Amends s. 382.003, F.S., relating to powers and duties of the Department of Health, to remove the word "rescinding" in relation to the department's rule authority regarding vital records, and to authorize the department to adopt rules to require that forms, documents, and information submitted to the department to create or amend a vital record be under oath.

Section 14. Amends 382.004, F.S., relating to reproduction and destruction of records, to make minor and technical changes.

Section 15. Amends s. 382.008, F.S., 1998 Supplement, relating to death and fetal death registration, to delete obsolete language that limits the disclosure of social security numbers, which is in conflict with federal law.

Section 16. Amends s. 382.013, F.S., 1998 Supplement, relating to birth registration, to revise procedures to be followed when a birth occurs outside a health care facility, and to provide authority for the Department of Health to require documents and proof as it deems necessary to establish the fact of a birth when it occurred outside of a health care facility and was not attended by a Florida licensed physician, certified nurse midwife, Florida licensed midwife or a public health nurse employed by the department. Circumstances for listing the name of the husband of the mother on the birth certificate and procedures for the registration of a birth record of a child of undetermined parentage are revised. Other minor and technical changes to delete unnecessary language are made.

Section 17. Amends s. 382.015, F.S., relating to new certificates of live birth, to replace the term "court decree" with "court order," and to delete language addressing the administrative acknowledgment of paternity. Other minor and technical changes to delete unnecessary language are made.

Section 18. Amends s. 382.016, F.S., relating to amendment of birth records, to reinstate provisions outlining the amendment of a birth record in s. 382.015(2), F.S. relating to the administrative acknowledgment of paternity and snbsequent amendment of the birth record.

Section 19. Amends s. 382.019, F.S., relating to delayed registration and administrative procedures for birth, death, or fetal death, to clarify that, after receipt of an application, the department may file a delayed registration and to authorize the Department of Health to dismiss an application not actively pursued within 1 year.

Section 20. Amends s. 382.025, F.S., relating to certified copies of vital records, to provide that birth records over 100 years old which are not sealed by a court order are available as a public record and to provide a method for indicating death on a commemorative birth certificate. The Department of Health is authorized to issue cause of death information to any person providing documented proof of need rather than restricting it to only a family member.

Section 21. Amends s. 382.0255, F.S., relating to fees for a certification of a birth record, to permit the Department of Health to retain fees collected by the Office of Vital Statistics for birth certificates rather than transferring the fees to the General Revenue Fund.

Section 22. Amends s. 383.14, F.S., relating to screening for metabolic disorders, other hereditary and congenital disorders, and environmental risk factors, to change the name of the WIC program from the Special Supplemental Food Program for Women, Infants, and Children, to the Special Supplemental Nutrition Program for Women, Infants, and Children to conform with federal law.

Section 23. Amends s. 385.202, F.S., relating to the statewide cancer registry, to no longer require the Department of Health to reimburse hospitals for the cost of furnishing data for the cancer registry.

Section 24. Amends s. 385.203, F.S., relating to the Diabetes Advisory Council, to revise the requirements and membership of the council. The council's membership is expanded from 18 to 25 members.

Section 25. Amends s. 391.028, F.S., 1998 Supplement, relating to administration of the Children's Medical Services program, to remove "the Division of" from the title of Children's Medical Services, and to provide that the director of Children's Medical Services may appoint division directors subject to the approval of the secretary.

Section 26. Amends s. 391.0315, F.S., 1998 Supplement, relating to benefits for children with special health needs, to clarify that benefits provided under the program shall be the same benefits provided to children in ss. 409.905 and 409.906, F.S., relating to Medicaid.

Section 27. Amends s. 392.69, FS, relating to appropriations, sinking, and maintenance trust funds, to allow the department to use excess money, notwithstanding ch. 216, F.S., for the improvement of health facilities at A. G. Holley State Hospital. The department is authorized to establish an advisory board to review and make recommendations relating to patient care at A. G. Holley State Hospital. Members of the advisory board shall be appointed by the Department of Health for a term of 3 years, with such appointments being staggered so that the terms of no more than two members expire in any one year. Members are to serve without compensation, but per diem and travel expenses may be reimbursed by the Department of Health as provided in s. 112.061, F.S.

Section 28. Amends s. 401.25, F.S., relating to the licensure of a basic life support (BLS) or an advanced life support (ALS) service, to grant the Department of Health with specific authority for its administrative rule (64E-2003, F.A.C.) that imposes minimum staffing requirements. A BLS service must be occupied by at least two persons: a certified emergency medical technician, certified paramedic, or licensed physician and one ambulance driver. An ALS service must be occupied by at least two persons: a certified paramedic or licensed physician and one who is a certified emergency medical technician, certified paramedic, or licensed physician who meets requirements of s. 401.281, F.S., as a driver. The person with the highest medical certifications must be in charge of patient care.

Section 29. Amends s. 401.27, F.S., relating to standards and certification of emergency medical services personnel, to grant the Department of Health specific authority for its administrative rule (64E-2.008 and 64E-2.009, F.A.C.) that requires applicants for emergency medical technician or paramedic certification and recertification to apply under oath to the department on forms

provided by the department. The staff of the Joint Administrative Procedures Committee have raised concerns regarding the department's authority to require documents to be submitted under oath.

Section 30. Amends s. 401.30, F.S., 1998 Supplement, relating to records that must be maintained by permitted ambulance services, to grant the Department of Health specific authority for its administrative rule (64E-2.013, F.A.C.) that requires each licensee to maintain records and reports and to submit the record to the department as requested. Licensed ambulance services, basic life support services, and advanced life support services, must provide the receiving hospital with a copy of an individual patient care record for each patient who is transported to the hospital. The information contained on the record and the method and timeframe for providing the record must be prescribed by rule of the department.

Section 31. Amends s. 401.35, F.S., relating to the Department of Health's rulemaking authority to enforce provisions relating to the regulation of emergency medical services, to grant the Department of Health with specific rulemaking authority for its administrative rule (64E-2.003, F.A.C.) that requires licensed ambulance services, basic life support services, and advanced life support services to meet specific standards for the security and storage of controlled substances, medications, and fluids that are not inconsistent with requirements of ch. 499, F.S., the Florida Drug and Cosmetic Act or ch 893, F.S., relating to the regulation of controlled substances.

Section 32. Creates s. 401.49, F.S., to grant the Department of Health specific authority for its administrative rule (64E-2.011, F.A.C.) that specifies requirements for the department's approval of programs that educate emergency medical technicians and paramedics.

Section 33. Amends s. 409.9126, F.S., 1998 Supplement, relating to services provided through the Children's Medical Services network for children with special health care needs, to delay and revise the implementation of a plan to reimbnrse providers through the Children's Medical Services program for services provided to Medicaid eligible children with special health care needs on a capitated basis which is scheduled to take effect July 1, 1999. Beginning January 1, 2000, the Florida Medicaid program must phase in by geographical area, capitation payment to Children's Medical Services for services provided to Medicaid children with special health care needs. By January 1, 2001, the Agency for Health Care Administration must make capitation payments for Children's Medical Services enrollees statewide, to the extent provided by federal law.

Section 34. Amends s. 465.019, F.S., 1998 Supplement, relating to institutional pharmacies, to revise the definition of a Class I institutional pharmacy to provide an exception for licensed nursing homes to purchase medical oxygen for administration to residents. Although licensed nursing homes provide medical oxygen to residents through the use of bulk canisters, it is unclear whether current law requires nursing homes to be licensed as Class I institutional pharmacies.

Section 35. Amends s. 499.005, F.S., 1998 Supplement, relating to prohibited acts under the Florida Drug and Cosmetic Act, to clarify that a person must be authorized to sell or transfer legend drugs and compressed medical gas under ch. 499, F.S., and that a person acquiring a legend drug must be authorized to do so under the applicable law where the receipt occurs. Providing the department with false information regarding any matter within the jurisdiction of

ch 499, F.S., is prohibited, not just as it relates to a drug, device, or cosmetic. The distribution of a legend device to the patient or ultimate consumer without a prescription or order from a practitioner to use or prescribe the device is prohibited.

Section 36. Amends s. 499.007, F.S., relating to misbranded drugs or devices, to conform the prescription statement of labels to match recently enacted federal language.

Section 37. Amends s. 499.028, F.S., relating to drug samples or complimentary drugs, to authorize federal, state, and local government employees, acting within the scope of their employment, to possess prescription drug samples.

Section 38. Amends s. 499.066, F.S., relating to penalties and remedies under the Florida Drug and Cosmetic Act, to authorize the immediate effect of a cease and desist order relating to persons who have violated ss. 499.001-499.081, F.S., (the Florida Drug and Cosmetic Act), or any rule adopted pursuant to that law. Any person subject to a cease and desist order issued by the Department of Health may request an administrative hearing to abate or modify the cease and desist order.

Section 39. Amends s. 499.069, F.S., relating to punishment for violations of the Florida Drug and Cosmetic Act, to revise criminal penalties to make the purchase or receipt of a prescription drug from an unauthorized source a third degree felony punishable by up to a 5 year imprisonment and a $5,000 fine. The criminal penalties for the purchase of compressed medical gas from an unauthorized source is changed from a third degree felony to a first-degree misdemeanor punishable by imprisonment of up to 1 year and a $1,000 fine.

Section 40. Amends s. 742.10, F.S., relating to establishment of paternity for children born out of wedlock, to conform statutory cross-references.

Section 41. Amends s. 39.303, F.S., 1998 Supplement, relating to child protection teams, to conform titles relating to Children's Medical Services.

Section 42. Amends s. 385.203, F.S., relating to the Diabetes Advisory Council, to conform titles relating to Children's Medical Services.

Section 43. Amends s. 391.021, F.S., 1998 Supplement, relating to definitions applying to Children's Medical Services, to conform titles relating to Children's Medical Services.

Section 44. Amends s. 391.221, F.S., 1998 Supplement, relating to the Statewide Children's Medical Services Network Advisory Council to provide conforming language that is needed due to the reorganization of Children's Medical Services.

Section 45. Amends s. 391.222, F.S., 1998 Supplement, relating to the Cardiac Advisory Council, to provide conforming language that is needed due the reorganization of Children's Medical Services into two divisions.

Section 46. Amends s. 391.223, F.S., 1998 Supplement, relating to technical advisory panels, to provide conforming language that is needed due the reorganization of Children's Medical Services into two division.

Section 47. Amends s. 63.162, F.S., relating to hearings and records in adoption proceedings, to clarify the use of the term "intermediary."

Section 48. Repeals subsection (3) of s. 381.731, F.S., relating to submission of an initial Healthy Communities plan that was submitted in 1992.

Section 49. Repeals subsection (5) of s. 383.307, F.S., relating to the Department of Health's consultation agreements with birth centers that are unable to find consultants.

Section 50. Repeals subsection (7) of s. 404.20, F.S., relating to the Department of Health's monitoring requirements of the transportation of radioactive materials.

Section 51. Repeals s. 409.9125, F.S., relating to study requirements for Medicaid alternative service networks.

Section 52. Provides that the building known as the 1911 State Board of Health Building which is part of a multi-building complex with the address of 1217 Pearl Street, Jacksonville, Florida shall be known as the Wilson T. Sowder, M. D., Building.

Section 53. Provides that the building authorized by Chapter 98-307, L.O.F., that will be located on Seagrape Drive on the Tampa Campus of the University of South Florida which will house laboratory facilities for the Department of Health shall be known as the William G. "Doc" Myers, M. D., Building.

Section 54. Provides that the Department of Health headquarters building that will comprise approximately 100,000 sqnare feet that is authorized by item 1986 in the 1998-99 Appropriations Act shall be known as the E. Charlton Prather, M. D., Building.

Section 55. Provides an effective date of July 1, 1999.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of Health estimates that it will save approximately $3,000 each year by not having to administer a system to monitor the transportation of radioactive materials that is repealed under the bill. The Department of Health estimates that it will retain $800,000 in fees collected by the Office of Vital Statistics for the issuance of birth certificates. These fees are currently transferred to the general revenue fund.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill creates a third degree felony offense for any person who makes the purchase or receipt of a prescription drug from an unauthorized source. Violations subject the person to imprisonment for up to 5 years and a fine up to $5,000. Section 921.001, F.S., requires any legislation that creates a felony offense, enhances a misdemeanor offense to a felony or reclassifies an existing felony offense to a greater felony classification to resnlt in a net zero sum impact in the overall prison population as determined by the Criminal Justice Estimating Conference, nnless the legislation contains a sufficient funding source to accommodate the change, or the Legislature abrogates the application of s. 921.001, F.S. To the extent the bill creates a felony offense for any person who makes the purchase or receipt of a prescription drug from an unauthorized source, it may have a fiscal impact based on its impact on the overall prison population as determined by the Criminal Justice Estimating Conference under procedures established in s. 216.136(5), F.S.

VIII. Amendments:

None.

STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
PROPOSED COMMITTEE SUBSTITUTE FOR
Senate Bill 2220

The proposed committee substitute authorizes the Department of Health to adopt rules to inspect certain group facilities and to impose fines for violations of its rules. The bill revises the membership of the Diabetes Advisory Council. The bill delays and revises the implementation of a plan to reimburse providers through the Children's Medical Services program for services provided to Medicaid eligible children with special health care needs on a capitated basis. The bill gives the Department of Health specific statutory authority to approve training programs for emergency medical technicians and paramedics and to establish minimum requirements for the staffing of permitted emergency medical vehicles; patient records; the security and storage of medications, controlled substances, and fluid on permitted emergency medical vehicles; and documents that must be submitted to the department under oath. The bill authorizes licensed nursing homes to administer medical oxygen to their residents without being a licensed pharmacy.

Committee on Health, Aging and Long-Term Care

Staff Director John Wilson

(FILE TWO COPIES WITH THE SECRETARY OF THE SENATE)

SENATE VOTE RECORD ON BILL NO. SB 2220

COMMITTEE ON: Health, Aging and Long-Term Care
ACTION: Favorably with Committee Substitute
DATE: March 23, 1999
TIME: 1:00 PM -- 3:00 PM
PLACE: Room 110 Senate Office Bldg.

OTHER COMMITTEE REFERENCES:
Gov. Oversight and Productivity
Fiscal Policy

FINAL BILL VOTE		SENATORS	Motion to hear Prop. CS by Clary		Amend #1 by Forman P68,L29-30 Respratory Care		Amend #2 by Forman P68,L29-30 Environ. Lab.		Amend #3 by Clary P55,L5 Date AT TABLE		Amend #4 by Clary P51, 3 technical	
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay
X		Dawson-White										
X		Forman										
		Klein										
		Latvala										
		Myers										
X		Saunders										
X		VICE CHAIRMAN Bronson										
X		CHAIRMAN Clary										
5	0	TOTAL	FWO	–	–	WD	FWO	–	FWO	–	FWO	–
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay

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APPEARANCE: Key Sponsor X Senator ___ Sponsor's Aide ___ Other ___
(File with Secretary of the Senate)

03/24/99 4:11 PM

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

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BEFORE MEETING

BILL: SB 2220

SPONSOR: Senator Clary

SUBJECT: Department of Health

DATE: March 20, 1999 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Wilson	HC	
2.			GO	
3.			FP	
4.				
5.				

I. Summary:

Senate Bill 2220 makes revisions to address glitches in the statutes relating to the administration of the Department of Health. The bill gives the Department of Health specific authority for certain existing administrative rules, updates statutory references to the Department of Health and makes changes to comply with changes in federal law.

Significant provisions of the bill: modify the Department of Health's authority in the use of incentives and promotional items in disease prevention and health education; revise and rename divisions within the department; update career service exemptions; impose additional requirements on co-payments made pursuant to primary care challenge grants; revise requirements for the Department of Health to hold formal hearings for disqualification reviews of certified nurse assistants; authorize the Department of Health to contract with the Department of Children and Family Services to conduct administrative hearings for matters relating to the Special Supplemental Nutrition Program for Women, Infants and Children and the Children's Medical Services Program; permit the Department of Health to purchase automobiles for use by county health departments; eliminate the Department of Health's responsibility for monitoring the transportation of radioactive materials; revise the requirements for the release of preliminary results of an HIV test so that the results for a mother who has just delivered an infant may be released to the mother at the time of delivery to enhance treatment options for the mother's infant; revise requirements for the performance of an HIV test on persons who die during treatment; authorize the Department of Health to adopt rules for family planning; revise the membership and responsibilities of the Health Information Systems Council; define multi-family water system; revise the Department of Health procedures for birth records in the Office of Vital Statistics and authorize the department to retain fees paid to that office for birth certificates in lieu of being transferred into the General Revenue Fund; eliminate requirements for the Department of Health to reimburse hospitals for costs of furnishing data for the cancer registry; revise penalties for certain violations of the Florida Drug and Cosmetic Act, and authorize federal, state, and local government employees to possess prescription drug samples when acting within the scope of their employment; prohibit the distribution of a legend device to a patient

without a prescription or order from a licensed practitioner; revise the Department of Health's authority to issue a cease and desist order so that it has immediate effect and provide for an administrative hearing to abate or modify the department's order; authorize the Department of Health to use earned dollars to improve the A.G. Holley Hospital through a legislative budget request and to establish an advisory body for the facility; name the new Department of Health headquarters the "E. Charlton Prather, M.D., Building and the Division of Health's headquarters in honor of Dr. Wilson T. Sowder and facilities that will house the department's laboratory facilities in recognition of Senator Myers.

This bill substantially amends the following sections of the Florida Statutes: 20.43, 110.205, 120.80, 154.504, 287.155, 372.6672, 381.004, 381.0051, 381.0062, 381.90, 382.003, 382.004, 382.008, 382.013, 382.015, 382.016, 382.019, 382.025, 382.0255, 383.14, 385.202, 391.028, 391.0315, 392.69, 499.005, 499.007, 499.028, 499.066, 499.069, 742.10, 39.303, 385.203, 391.021, 391.221, 391.222, 391.223, and 63.162.

This bill repeals the following sections of the Florida Statutes: 381.731(3), 383.307(5), 404.20(7), and 409.9125.

This bill creates three sections that have not been designated to a section within the Florida Statutes.

II. Present Situation:

Department of Health

Chapter 96-403, Laws of Florida, created the Department of Health (DOH) to promote and protect the health of all residents and visitors in the state. The department is composed of the State Health Office and Children's Medical Services Program of the former Department of Health and Rehabilitative Services (HRS). Examination and licensure of the health care professions were transferred from the Agency for Health Care Administration to the Department of Health on July 1, 1997. With the creation of the Department of Health, the Department of Health and Rehabilitative Services was renamed the Department of Children and Family Services. There are still several references to HRS in the statute that have not yet been changed to conform to the creation of the Department of Health and the Department of Children and Family Services.

The purpose and organizational structure for the Department of Health is provided in s. 20.43, F.S. This section establishes that the divisions of the Department of Health include: Division of Administration; Division of Environmental Health; Division of Disease Control; Division of Family Health Services; Division of Children's Medical Services; Division of Local Health Planning, Education, and Workforce Development, and Division of Medical Quality Assurance, which is responsible for medical boards and professions.

Section 20.43, F.S., also gives the Department of Health the authority to use state or federal funds to protect or improve the public health by providing incentives for encouraging disease prevention and patient compliance with medical treatment, and through health education

campaigns and promotional campaigns to recruit health professionals to be employed by the department.

Section 120.80(15), F.S., 1998 Supplement, provides that notwithstanding s. 120.57(1)(a), a formal hearing may not be conducted by the Secretary of Health, the director of the Agency Health Care Administration, or a board or member of a board within the Department of Health or the Agency for Health Care Administration for matters relating to regulations of any activity, occupation, profession, or vocation regulated by the department in the Division of Medical Quality Assurance.

When the Department of Health was still part of the Department of Health and Rehabilitative Services, a procedure was established that allowed the Department of Health to conduct its own administrative hearings in matters concerning the Special Supplemental Food Program for Women, Infants, and Children (WIC), Children's Medical Services (CMS) program, and exemption from disqualification review for certified nurse assistants. The Department of Health no longer has authority to continue this process.

Private and Public Water Systems

Section 381.0062, F.S., provides legislative intent to protect the public's health by establishing standards for the construction, modification, and operation of public and private water systems to assure consumers that the water provided to those systems is potable. Subsection (2) of s. 381.0062, F.S., defines "private water system" to mean a water system that provides piped water for no more than four nonrental residences. No definition is provided for a water system that serves only one rental residence, and therefore, a single rental residence would now be included within the definitions of a private water system and a multi-family water system.

Chapter 64E-8, Florida Administrative Code, requires that any owner of water systems connecting one or two residences only meet well setback requirements to protect the well from potential sources of contamination. Owners of water systems connecting three or four residences must meet the setback requirement, and also obtain a construction permit and provide satisfactory bacteria, nitrate and lead analytical results. There is no reference made to a single rental residence.

Testing for Human Immunodeficiency Virus (HIV)

Section 381.004(3)(a), F.S., provides that a test designed to identify HIV may not be ordered without the informed consent of the person being tested, except under specified circumstances. Additionally, s. 381.004(3)(d), F.S., provides that test results shall not be determined as positive or revealed to any person, without corroborating or confirmatory tests being conducted, except in certain situations. An exception to this requirement which was enacted in chapter 98-171, L.O.F., provides that preliminary test results may be released to health care providers and to the person tested when decisions about medical care or treatment of the person tested cannot await the results of confirmatory testing. It is unclear under the exception, whether the preliminary HIV test results of a mother who has just given birth may be released to the mother for purposes of immediate initiation of drug therapy for the newborn. Officials at the Department of Health have indicated that certain drug therapy may help prevent the newborn from contracting HIV from the

mother. The earlier the drug therapy is initiated the more effective it is, and any delay in drug treatment could be detrimental to the infant. The Department of Health officials noted that this situation only occurs when a woman who has not received any prenatal care at all and therefore, has not been offered HIV tests as part of that prenatal care, arrives at a hospital emergency room for delivery.

Chapter 98-171, L.O.F., also provided for additional exceptions for when informed consent is not required in ordering an HIV test. Section 381.004(3)(h)12, F.S., provides that informed consent is not required for the performance of an HIV test by the medical examiner upon a deceased individual who was the source of a significant exposure to medical personnel or nonmedical personnel who provided emergency medical assistance and who expired or could not be resuscitated during treatment for the medical emergency. This exception to the informed consent requirements for ordering an HIV test allows medical personnel and "good Samaritans" to learn the test results of the potential source of exposure so that preventive treatment options could begin if the test results were positive. According to the Department of Health, not all deceased individuals who are the source of a significant exposure are sent to medical examiners so that a HIV test may be performed.

Health Information Systems Council

The Health Information Systems Council was created by s. 381.90, F.S., within the Department of Health to facilitate the identification, collection, standardization, sharing, and coordination of health-related data, including fraud and abuse data, and professional and facility licensing data among federal, state, local, and private entities. Under s. 381.90, F.S., the membership of the council includes: the secretary of the Department of Health; the secretary of the Department of Business and Professional Regulation; the secretary of the Department of Children and Family Services; the director of the Agency of Health Care Administration; the secretary of the Department of Corrections; the Attorney General; the executive director of the Correctional Medical Authority; two members representing county health departments, one from a small county and one from a large county, appointed by the Governor; and a representative from the Florida Association of Counties.

Vital Records

Section 382.013, F.S., requires a certificate for each live birth that occurs in this state to be filed within 5 days after such birth with the local registrar of the district in which the birth occurred. Section 382.013, F.S., sets out procedures for filing and requirements for the registration of paternity and the name of the child, undetermined parentage, and disclosure.

Section 382.025(1), F.S., provides that all Florida birth records are confidential and exempt from the provisions of s. 119.07(1), F.S., the Public Records Law. Subsection (2) of s. 382.025, F.S., authorizes the department to issue a certified copy of any marriage, dissolution of marriage, or death or fetal death certificate, excluding confidential portions, to the person requesting the information. Death and fetal death certificates which include the confidential portions will only be issued to the registrant's spouse or parent, child, grandchild, or sibling, of legal age, or to any family member who provides a will, insurance policy, or document demonstrating his or her interest in the registrant's estate. The confidential portions of records will also be provided to a

state agency or local government or the United States for official purposes upon approval of the Department of Health or upon the order of any court of competent jurisdiction.

Section 382.0255, F.S., provides that the department is entitled to certain fees for the processing, filing, and retrieving of vital records and registrations. Previously, a portion of these fees was deposited in the Crimes Against Children Trust Fund administered by the Department of Law Enforcement. This trust fund, however, was eliminated on July 1, 1995, and the funds that were being deposited in this trust fund are now transferred to general revenue rather than to Vital Statistics within the Department of Health.

Florida Drug and Cosmetic Act

Chapter 499, Florida Statutes, provides for the regulation of drugs, cosmetics and household products by the Department of Health. Part I, ch. 499, F.S., (ss. 499.001-499.081, F.S.) sets forth the Florida Drug and Cosmetic Act. The purpose of this Act is to safegnard the public health and promote the public welfare by protecting the public from injury by product use and by merchandising deceit involving drugs, devices, and cosmetics. The part provides uniform legislation to be administered so far as practicable in conformity with the provisions of, and regulations issued under, the federal Food, Drug, and Cosmetic Act and the applicable portions of the federal Trade Commission Act which prohibits the false advertising of drugs, devices, and cosmetics. The part specifies prohibited acts and requirements for the distribution and manufacture of legend drugs and legend devices by pharmacies, manufacturers, and other entities.

Section 499.05, F.S., establishes prohibited acts relating to drugs, devices, and cosmetics. Section 499.05, F.S., prohibits the sale or transfer of a legend drug or compressed medical gas if the person is not authorized to do so under the law of the state in which he or she resides. A person's residence, however, is irrelevant when determining whether that person is authorized to sell or receive prescription drugs.

Under s. 499.007, F.S., any drug that is habit forming or not safe for use unless under the supervision of a practitioner licensed by law to administer such drugs, is misbranded if it fails to bear on the label the statement" "Caution: Federal Law Prohibits Dispensing Without Prescription" or "Caution: State Law Prohibits Dispensing Without Prescription." In 1997, Congress passed the Food and Drug Administration Modernization Act, which provides that the label statement on such drugs is to appear as "Rx Only" or the prescription symbol followed by the word "Only." Federal regulations implementing this new prescription statement provide for a phase-in of labeling changes through February 2003. If ch. 499, F.S., is not revised to reflect this change in federal law, many prescription drug products entering Florida will be misbranded under Florida law.

Section 499.028, F.S., relating to drug samples and complimentary drugs, provides that individuals may not possess a prescription drug sample unless: the drug sample was prescribed to her or him, the individual is the employee of a complimentary drug distributor that holds a permit, or the individual is a person to whom prescription drug samples may be distributed pursuant to this section. No clear provision under state law allows federal, state, and local

government employees, acting within the scope of their employment, to possess prescription drug samples.

The Administrative Procedure Act and Agency Rulemaking Authority

Section 120.536(1), F.S., states that, "A grant of rulemaking authority is necessary but not sufficient to allow an agency to adopt a rule; a specific law to be implemented is also required. An agency may only adopt rules that implement, interpret, or make specific the particular powers and duties granted by the enabling statute." Section 120.536, F.S., further established that an agency may not adopt a rule merely because it is reasonably related to the purpose of the enabling legislation, nor may the agency have the authority to implement statutory provisions setting forth general legislative intent or policy.

Section 120.536(2), F.S., required each agency to provide the Administrative Procedures Committee a listing of rules adopted by the agency before October 1, 1996, which exceeded the rulemaking authority permitted in this section. These lists were to be provided by October 1, 1997, and subsequently combined and presented to the Speaker of the House of Representatives and the President of the Senate. This section further provided that the 1998 Legislature was to consider whether specific legislation authorizing these rules should be enacted. According to s. 120.536(2), F.S., each agency must have initiated appropriate proceedings to repeal rules exceeding rulemaking authority by January 1, 1999. By February 1, 1999, the Administrative Procedure Committee was required to submit to the President of the Senate and the Speaker of the House of Representatives, a report ideutifying rules that exceed rule authority for which repeal proceedings have not yet been initiated.

III. Effect of Proposed Changes:

Section 1. Amends s. 20.43, F.S., 1998 Supplement, relating to the Department of Health, to add the Division of Children's Medical Services Network, Division of Emergency Medical Services and Community Health Resources, Division of Children's Medical Services Prevention and Intervention, Division of Information Resource Management, and the Division of Health Awareness and Tobacco to the list of divisions that are authorized to exist in the Department of Health. The Division of Children's Medical Services and the Division of Local Health Planning, Education, and Workforce Department are removed from the authorized list of divisions. The Department of Health's authority to improve the public health by its use of incentives and promotional items in disease prevention and health education activities is expanded.

Section 2. Amends s. 110.205, F.S., relating to career service exemptions, to update language regarding the establishment of exempt positions that now pertains to the Department of Health and Rehabilitative Services to conform to the creation of the Department of Health and the Department of Children and Family Services, and to include the positions of Assistant County Health Department Director and County Health Department Financial Administrator to the list of exempt positions.

Section 3. Amends s. 120.80., F.S., 1998 Supplement, relating to exceptions and special requirements of the Department of Health, to allow the Department of Health to contract with the

Department of Children and Family Services to conduct administrative hearings in matters concerning the Special Supplemental Nutrition Program for Women, Infants and Children; Child Care Food Program; Children's Medical Services Program; and exemption from disqualification reviews for the certified nurse assistants program. The Department of Health is exempt from the requirements of a formal hearing under the Administrative Procedure Act for these programs.

Section 4. Amends s. 154.504, F.S., 1998 Supplement, relating to eligibility and benefits for the primary care challenge grant program, to permit providers to enter into contracts pursuant to s. 766.1115, F.S., relating to the provision of uncompensated care to low-income recipients by certain health care providers, if co-payments under the primary care challenge grants are not used as compensation for services to health care providers.

Section 5. Amends s. 287.155, F.S., relating to the purchase of motor vehicles by certain agencies, to authorize the Department of Health, to purchase automobiles, trucks, and other automotive equipment for use by county health departments, subject to the approval of the Department of Management Services.

Section 6. Amends s. 372.6672, F.S., 1998 Supplement, relating to alligator management and trapping program implementation, to delete obsolete references to the Department of Health and Rehabilitative Services.

Section 7. Amends s. 381.004, F.S., 1998 Supplement, relating to testing for human immunodeficiency virus, to revise requirements authorizing the use of preliminary HIV test results so that the information may be released to a mother at the time of delivery, for treatment and diagnosis of a newborn infant. Requirements for the performance of HIV tests on deceased persons are revised by authorizing the attending physician in addition to a medical examiner to perform an HIV test under limited circumstances to provide treatment options for medical personnel who were subject to a significant exposure when providing care or assistance to a person who expired or could not be resuscitated while receiving emergency care.

Section 8. Amends s. 381.0051, F.S., relating to family planning, to give the Department of Health the authority to adopt rules for family planning.

Section 9. Amends s. 381.0062, F.S., 1998 Supplement, relating to water systems, to define "multi-family water system" to mean a water system that provides piped water for three to four residences, one of which may be a rental residence, and defines "private water system" to mean a water system that provides piped water for one to two residences, one of which may be a rental residence. Other minor and technical changes to conform to the new definition of "multi-family water system" are made.

Section 10. Amends s. 381.90, F.S., relating to the Health Information Systems Council, to revise the membership of the Health Information Systems Council by adding the State Treasurer/Insurance Commissioner; a representative from the Florida Healthy Kids Corporation; a representative from a school of public health chosen by the Board of Regents; the Commissioner of Education; the secretary of the Department of Elderly Affairs; and the secretary of the Department of Juvenile Justice. The duties of the Health Information Systems Council are revised so that it must develop a review process to ensure cooperative planning among agencies

that collect or maintain health-related data and must submit a report on the implementation of this requirement to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 1, 2000.

Section 11. Amends s. 382.003, F.S., relating to powers and duties of the Department of Health, to remove the word "rescinding" in relation to the department's rule authority regarding vital records, and to authorize the department to adopt rules to require that forms, docnments, and information submitted to the department to create or amend a vital record be under oath.

Section 12. Amends 382.004, F.S., relating to reproduction and destruction of records, to make minor and technical changes.

Section 13. Amends s. 382.008, F.S., 1998 Supplement, relating to death and fetal death registration, to delete obsolete language that limits the disclosure of social security numbers, which is in conflict with federal law.

Section 14. Amends s. 382.013, F.S., 1998 Supplement, relating to birth registration, to revise procedures to be followed when a birth occurs outside a health care facility, and to provide authority for the Department of Health to require documents and proof as it deems necessary to establish the fact of a birth when it occurred outside of a health care facility and was not attended by a Florida licensed physician, certified nurse midwife, Florida licensed midwife or a public health nurse employed by the department. Circumstances for listing the name of the husband of the mother on the birth certificate and procedures for the registration of a birth record of a child of undetermined parentage are revised. Other minor and technical changes to delete unnecessary language are made.

Section 15. Amends s. 382.015, F.S., relating to new certificates of live birth, to replace the term "court decree" with "court order," and to delete language addressing the administrative acknowledgment of paternity. Other minor and technical changes to delete unnecessary language are made.

Section 16. Amends s. 382.016, F.S., relating to amendment of birth records, to reinstate provisions outlining the amendment of a birth record in s. 382.015(2), F.S. relating to the administrative acknowledgment of paternity and subsequent amendment of the birth record.

Section 17. Amends s. 382.019, F.S., relating to delayed registration and administrative procedures for birth, death, or fetal death, to clarify that, after receipt of an application, the department may file a delayed registration and to authorize the Department of Health to dismiss an inactive application.

Section 18. Amends s. 382.025, F.S., relating to certified copies of vital records, to provide that birth records over 100 years old which are not sealed by a court order are available as a public record and to provide a method for indicating death on a commemorative birth certificate. The Department of Health is authorized to issue cause of death information to any person providing documented proof of need rather than restricting it to only a family member. The Department of Health may release non-confidential data to anyone requesting it upon payment of a fee

prescribed in s. 382.0255(1)(h), and data exempt from the Public Records Law that are sold to companies by the Office of Vital Statistics may not be resold by the companies.

Section 19. Amends s. 382.0255, F.S., relating to fees for a certification of a birth record, to permit the Department of Health to retain fees collected by the Office of Vital Statistics for birth certificates rather than transferring the fees to the General Revenue Fund.

Section 20. Amends s. 383.14, F.S., relating to screening for metabolic disorders, other hereditary and congenital disorders, and environmental risk factors, to change the name of the WIC program from the Special Supplemental Food Program for Women, Infants, and Children, to the Special Supplemental Nutrition Program for Women, Infants, and Children to conform with federal law.

Section 21. Amends s. 385.202, F.S., relating to the statewide cancer registry, to no longer require the Department of Health to reimburse hospitals for the cost of furnishing data for the cancer registry.

Section 22. Amends s. 391.028, F.S., 1998 Supplement, relating to administration of the Children's Medical Services program, to remove "the Division of" from the title of Children's Medical Services, and to provide that the director of Children's Medical Services may appoint division directors subject to the approval of the secretary.

Section 23. Amends s. 391.0315, F.S., 1998 Supplement, relating to benefits for children with special health needs, to clarify that benefits provided under the program shall be the same benefits provided to children in ss. 409.905 and 409.906, F.S., relating to Medicaid.

Section 24. Amends s. 392.69, FS, relating to appropriations, sinking, and maintenance trust funds, to allow the department to use excess money, notwithstanding ch. 216, F.S., for the improvement of health facilities at A. G. Holley State Hospital. The department is authorized to establish an advisory board to review and make recommendations relating to patient care at A. G. Holley State Hospital. Members of the advisory board shall be appointed by the Department of Health for a term of 3 years, with such appointments being staggered so that the terms of no more than two members expire in any one year. Members are to serve without compensation, but per diem and travel expenses may be reimbursed by the Department of Health as provided in s. 112.061, F.S.

Section 25. Amends s. 499.005, F.S., 1998 Supplement, relating to prohibited acts under the Florida Drug and Cosmetic Act, to clarify that a person must be authorized to sell or transfer legend drugs and compressed medical gas under ch. 499, F.S., and that a person acquiring a legend drug must be authorized to do so under the applicable law where the receipt occurs. Providing the department with false information regarding any matter within the jurisdiction of ch. 499, F.S., is prohibited, not just as it relates to a drug, device, or cosmetic. The distribution of a legend device to the patient or ultimate consumer without a prescription or order from a practitioner to use or prescribe the device is prohibited.

Section 26. Amends s. 499.007, F.S., relating to misbranded drugs or devices, to conform the prescription statement of labels to match recently enacted federal language.

Section 27. Amends s. 499.028, F.S., relating to drug samples or complimentary drugs, to authorize federal, state, and local government employees, acting within the scope of their employment, to possess prescription drug samples.

Section 28. Amends s. 499.066, F.S., relating to penalties and remedies under the Florida Drug and Cosmetic Act, to authorize the immediate effect of a cease and desist order relating to persons who have violated ss. 499.001-499.081, F.S., (the Florida Drug and Cosmetic Act), or any rule adopted pursuant to that law. Any person subject to a cease and desist order issued by the Department of Health may request an administrative hearing to abate or modify the cease and desist order.

Section 29. Amends s. 499.069, F.S., relating to punishment for violations of the Florida Drug and Cosmetic Act, to revise criminal penalties to make the purchase or receipt of a prescription drug from an unauthorized source a third degree felony punishable by up to a 5 year imprisonment and a $5,000 fine. The criminal penalties for the purchase of compressed medical gas from an unauthorized source is changed from a third degree felony to a first-degree misdemeanor punishable by imprisonment of up to 1 year and a $1,000 fine.

Section 30. Amends s. 742.10, F.S., relating to establishment of paternity for children born out of wedlock, to conform statutory cross-references.

Section 31. Amends s. 39.303, F.S., 1998 Supplement, relating to child protection teams, to conform titles relating to Children's Medical Services.

Section 32. Amends s. 385.203, F.S., relating to the Diabetes Advisory Council, to conform titles relating to Children's Medical Services.

Section 33. Amends s. 391.021, F.S., 1998 Supplement, relating to definitions applying to Children's Medical Services, to conform titles relating to Children's Medical Services.

Section 34. Amends s. 391.221, F.S., 1998 Supplement, relating to the Statewide Children's Medical Services Network Advisory Council to provide conforming language that is needed due to the reorganization of Children's Medical Services.

Section 35. Amends s. 391.222, F.S., 1998 Supplement, relating to the Cardiac Advisory Council, to provide conforming language that is needed due the reorganization of Children's Medical Services into two divisions.

Section 36. Amends s. 391.223, F.S., 1998 Supplement, relating to technical advisory panels, to provide conforming language that is needed due the reorganization of Children's Medical Services into two division.

Section 37. Amends s. 63.162, F.S., relating to hearings and records in adoption proceedings, to clarify the use of the term "intermediary."

Section 38. Repeals subsection (3) of s. 381.731, F.S., relating to submission of an initial Healthy Communities plan that was submitted in 1992.

Section 39. Repeals subsection (5) of s. 383.307, F.S., relating to the Department of Health's consultation agreements with birth centers that are unable to find consultants.

Section 40. Repeals subsection (7) of s. 404.20, F.S., relating to the Department of Health's monitoring requirements of the transportation of radioactive materials.

Section 41. Repeals s. 409.9125, F.S., relating to study requirements for Medicaid alternative service networks.

Section 42. Provides that the building known as the 1911 State Board of Health Building which is part of a multi-building complex with the address of 1217 Pearl Street, Jacksonville, Florida shall be known as the Wilson T. Sowder, M. D., Building.

Section 43. Provides that the building authorized by Chapter 98-307, L.O.F., that will be located on Seagrape Drive on the Tampa Campus of the University of South Florida which will house laboratory facilities for the Department of Health shall be known as the William G. "Doc" Myers, M. D., Building.

Section 44. Provides that the Department of Health headqnarters bnilding that will comprise approximately 100,000 square feet that is authorized by item 1986 in the 1998-99 Appropriations Act shall be known as the Charlton E. Prather, M. D., Building.

Section 45. Provides an effective date of July 1, 1999.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the connties nnder the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

On page 16, lines 23-27, the bill makes information that a person receives regarding the results of an HIV test exempt from the public records law in violation of the requirements of Art. I, sec 24 of the State constitution that requires legislation creating exemptions to the public records law to be in a bill that only relates to exemptions to the public records law. This information is already exempt from the public record law under s. 381.004(3)(e), F.S. and a reference to the requirements of that section may be necessary.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of Health estimates that it will save approximately $3,000 each year by not having to administer a system to monitor the transportation of radioactive materials that is repealed under the bill. The Department of Health estimates that it will retain $800,000 in fees collected by the Office of Vital Statistics for the issuance of birth certificates. These fees are currently transferred to the general revenue fund.

VI. Technical Deficiencies:

On page 9, line 2, the semicolon should be replaced with a comma.

On page 58, line 10 , the correct appellation for the building is "E. Charlton Prather, M.D., Building."

On page 24, line 29, "in anticipation" should be deleted.

On page 36, line 19 "and" should be deleted and replaced with "which are".

On page 43, line 8, "division" should be typed and struck.

VII. Related Issues:

On page 36, lines 11-14, the Department of Health may dismiss an application for a delayed birth or death registration that is "not actively pursued", but there is no statutory standard as to how much time must accrue so that an application is not actively pursued.

On page 40, lines 4-8, the Department of Health, at its discretion, is authorized to release records that otherwise are exempt from the public records law, but may not release records that are both confidential and exempt from the public records law. It is unclear why the department's release of nonconfidential data requested by a company or individual needs to be specifically excepted from the requirements of the public records law exemption applicable to the data.

The bill creates a third degree felony offense for any person who makes the purchase or receipt of a prescription drug from an unauthorized source. Violations subject the person to imprisonment for up to 5 years and a fine up to $5,000. Section 921.001, F.S., requires any legislation that

creates a felony offense, enhances a misdemeanor offense to a felony or reclassifies an existing felony offense to a greater felony classification to result in a net zero sum impact in the overall prison population as determined by the Criminal Justice Estimating Conference, unless the legislation contains a sufficient funding source to accommodate the change, or the Legislature abrogates the application of s. 921.001, F.S. To the extent the bill creates a felony offense for any person who makes the purchase or receipt of a prescription drug from an unauthorized source, it may have a fiscal impact based on its impact on the overall prison population as determined by the Criminal Justice Estimating Conference under procedures established in s. 216.136(5), F.S.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

10c. Senate Staff Analysis and Economic Impact Statement, CS/SB 2220, Subject: Department of Health, April 16, 1999, (Florida Archives, Series 18, Carton 2351)

FLORIDA DEPARTMENT *of* STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

I, Judith Ring, Division Director, Division of Library and Information Services, Florida Department of State, hereby certify the records of the Florida Legislature were transferred to the custody of the Florida State Archives pursuant to the provisions of Chapter 257, Florida Statutes, and that I am, by the terms of that transfer, the official custodian of the records.

I further certify that the attached is a true and correct copy of the record in the State Archives of Florida, the original of which may be found in Series 18, carton 2351.

***WITNESS MY SIGNATURE**, this 10th Day of January, 2014.*

***JUDITH RING**, Director*
Division of Library and Information Services

BY: _____
State Archives of Florida

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SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

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BILL: CS/SB 2220

SPONSOR: Health, Aging and Long-Term Care Committee and Senator Clary

SUBJECT: Department of Health

DATE: April 16, 1999 REVISED: 4/20/99

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Wilson	HC	Favorable/CS
2.	Wilson	Wilson	GO	Fav/14 amendments
3.			FP	
4.				
5.				

I. Summary:

The Committee Substitute for Senate Bill 2220 makes revisions to address glitches in the statutes relating to the administration of the Department of Health. The bill gives the Department of Health specific authority for certain existing administrative rules, updates statutory references to the Department of Health and makes changes to comply with changes in federal law.

Significant provisions of the bill: modify the Department of Health's authority in the use of incentives and promotional items in disease prevention and health education; revise and rename divisions within the department; authorize the Department of Health to adopt rules for certain group-care facilities and to impose fines for violation of its rules; revise the requirements and the membership of the Diabetes Advisory Council; grant the Department of Health specific statutory authority to approve training programs for emergency medical technicians and paramedics and to impose minimum requirements on permitted emergency medical vehicles; allow the Department of Health to require documents to be submitted by emergency medical licensees and emergency medical certification applicants to the department under oath; update career service exemptions; impose additional requirements on co-payments made pursuant to primary care challenge grants; revise requirements for the Department of Health to hold formal hearings for disqualification reviews of certified nurse assistants; delay and revise the implementation of a plan to reimburse providers through the Children's Medical Services Program for services provided to Medicaid eligible children with special needs on a capitated basis; allow nursing homes to administer medical oxygen to their residents without getting a pharmacy license; authorize the Department of Health to contract with the Department of Children and Family Services to conduct administrative hearings for matters relating to the Special Supplemental Nutrition Program for Women, Infants and Children and the Children's Medical Services Program; permit the Department of Health to purchase automobiles for use by county health departments; eliminate the Department of Health's responsibility for monitoring the transportation of radioactive materials; revise the requirements for the release of preliminary results of an HIV test so that the results for a mother who has just delivered an infant may be released to the mother at the time of

delivery to enhance treatment options for the mother's infant; revise requirements for the performance of an HIV test on persons who die during treatment; authorize the Department of Health to adopt rules for family planning; revise the membership and responsibilities of the Health Information Systems Council; define multi-family water system; revise the Department of Health procedures for birth records in the Office of Vital Statistics and authorize the department to retain fees paid to that office for birth certificates in lieu of being transferred into the General Revenue Fund; eliminate requirements for the Department of Health to reimburse hospitals for costs of furnishing data for the cancer registry; revise penalties for certain violations of the Florida Drug and Cosmetic Act, and authorize federal, state, and local government employees to possess prescription drug samples when acting within the scope of their employment; prohibit the distribution of a legend device to a patient without a prescription or order from a licensed practitioner; revise the Department of Health's authority to issue a cease and desist order so that it has immediate effect and provide for an administrative hearing to abate or modify the department's order; authorize the Department of Health to use earned dollars to improve the A.G. Holley Hospital through a legislative budget request and to establish an advisory body for the facility; name the new Department of Health headquarters the "E. Charlton Prather, M.D., Building and the Division of Health's headquarters in honor of Dr. Wilson T. Sowder and facilities that will house the department's laboratory facilities in recognition of Senator Myers; authorizes the Department of Health to apply for and become a National Environmental Laboratory Accreditation program accrediting authority.

This bill substantially amends the following sections of the Florida Statutes: 20.43, 110.205, 120.80, 154.504, 287.155, 372.6672, 381.004, 381.0051, 381.006, 381.0061, 381.0062, 381.90, 382.003, 382.004, 382.008, 382.013, 382.015, 382.016, 382.019, 382.025, 382.0255, 383.14, 385.202, 385.203, 391.028, 391.0315, 392.69, 401.25, 401.27, 401.30, 401.35, 409.9126, 465.019, 499.005, 499.007, 499.028, 499.066, 499.069, 742.10, 39.303, 385.203, 391.021, 391.221, 391.222, 391.223, and 63.162.

The bill creates section 401.49, Florida Statutes.

This bill repeals the following sections of the Florida Statutes: 381.731(3), 383.307(5), 404.20(7), and 409.9125.

This bill creates four sections that have not been designated to a section within the Florida Statutes.

II. Present Situation:

Department of Health

Chapter 96-403, Laws of Florida, created the Department of Health (DOH) to promote and protect the health of all residents and visitors in the state. The department is composed of the State Health Office and Children's Medical Services Program of the former Department of Health and Rehabilitative Services (HRS). Examination and licensure of the health care professions were transferred from the Agency for Health Care Administration to the Department of Health on July 1, 1997. With the creation of the Department of Health, the Department of

Health and Rehabilitative Services was renamed the Department of Children and Family Services. There are still several references to HRS in the statute that have not yet been changed to conform to the creation of the Department of Health and the Department of Children and Family Services.

The purpose and organizational structure for the Department of Health is provided in s. 20.43, F.S. This section establishes that the divisions of the Department of Health include: Division of Administration; Division of Environmental Health; Division of Disease Control; Division of Family Health Services; Division of Children's Medical Services; Division of Local Health Planning, Education, and Workforce Development, and Division of Medical Quality Assurance, which is responsible for medical boards and professions.

Section 20.43, F.S., also gives the Department of Health the authority to use state or federal funds to protect or improve the public health by providing incentives for encouraging disease prevention and patient compliance with medical treatment, and through health education campaigns and promotional campaigns to recruit health professionals to be employed by the department.

Section 120.80(15), F.S., 1998 Supplement, provides that notwithstanding s. 120.57(1)(a), F.S., a formal hearing may not be conducted by the Secretary of Health, the director of the Agency Health Care Administration, or a board or member of a board within the Department of Health or the Agency for Health Care Administration for matters relating to regulations of any activity, occupation, profession, or vocation regulated by the department in the Division of Medical Quality Assurance.

When the Department of Health was still part of the Department of Health and Rehabilitative Services, a procedure was established that allowed the Department of Health to conduct its own administrative hearings in matters concerning the Special Supplemental Food Program for Women, Infants, and Children (WIC), Children's Medical Services (CMS) program, and exemption from disqualification review for certified nurse assistants. The Department of Health no longer has authority to continue this process.

Private and Public Water Systems

Section 381.0062, F.S., provides legislative intent to protect the public's health by establishing standards for the construction, modification, and operation of public and private water systems to assure consumers that the water provided to those systems is potable. Subsection (2) of s. 381.0062, F.S., defines "private water system" to mean a water system that provides piped water for no more than four nonrental residences. No definition is provided for a water system that serves only one rental residence, and therefore, a single rental residence would now be included within the definitions of a private water system and a multi-family water system.

Chapter 64E-8, Florida Administrative Code, requires that any owner of water systems connecting one or two residences only meet well setback requirements to protect the well from potential sources of contamination. Owners of water systems connecting three or four residences must meet the setback requirement, and also obtain a construction permit and provide

satisfactory bacteria, nitrate and lead analytical results. There is no reference made to a single rental residence.

Testing for Human Immunodeficiency Virus (HIV)

Section 381.004(3)(a), F.S., provides that a test designed to identify HIV may not be ordered without the informed consent of the person being tested, except under specified circumstances. Additionally, s. 381.004(3)(d), F.S., provides that test results shall not be determined as positive or revealed to any person, without corroborating or confirmatory tests being conducted, except in certain situations. An exception to this requirement which was enacted in ch. 98-171, L.O.F., provides that preliminary test results may be released to health care providers and to the person tested when decisions about medical care or treatment of the person tested cannot await the results of confirmatory testing. It is unclear under the exception, whether the preliminary HIV test results of a mother who has just given birth may be released to the mother for purposes of immediate initiation of drug therapy for the newborn. Officials at the Department of Health have indicated that certain drug therapy may help prevent the newborn from contracting HIV from the mother. The earlier the drug therapy is initiated the more effective it is, and any delay in drug treatment could be detrimental to the infant. The Department of Health officials noted that this situation only occurs when a woman who has not received any prenatal care at all and therefore, has not been offered HIV tests as part of that prenatal care, arrives at a hospital emergency room for delivery.

Chapter 98-171, L.O.F., also provided for additional exceptions for when informed consent is not required in ordering an HIV test. Section 381.004(3)(h)12, F.S., provides that informed consent is not required for the performance of an HIV test by the medical examiner upon a deceased individual who was the source of a significant exposure to medical personnel or nonmedical personnel who provided emergency medical assistance and who expired or could not be resuscitated during treatment for the medical emergency. This exception to the informed consent requirements for ordering an HIV test allows medical personnel and "good Samaritans" to learn the test results of the potential source of exposure so that preventive treatment options could begin if the test results were positive. According to the Department of Health, not all deceased individuals who are the source of a significant exposure are sent to medical examiners so that a HIV test may be performed.

Health Information Systems Council

The Health Information Systems Council was created by s. 381.90, F.S., within the Department of Health to facilitate the identification, collection, standardization, sharing, and coordination of health-related data, including fraud and abuse data, and professional and facility licensing data among federal, state, local, and private entities. Under s. 381.90, F.S., the membership of the council includes: the secretary of the Department of Health; the secretary of the Department of Business and Professional Regulation; the secretary of the Department of Children and Family Services; the director of the Agency of Health Care Administration; the secretary of the Department of Corrections; the Attorney General; the executive director of the Correctional Medical Authority; two members representing county health departments, one from a small

county and one from a large county, appointed by the Governor; and a representative from the Florida Association of Counties.

Vital Records

Section 382.013, F.S., requires a certificate for each live birth that occurs in this state to be filed within 5 days after such birth with the local registrar of the district in which the birth occurred. Section 382.013, F.S., sets out procedures for filing and requirements for the registration of paternity and the name of the child, undetermined parentage, and disclosure.

Section 382.025(1), F.S., provides that all Florida birth records are confidential and exempt from the provisions of s. 119.07(1), F.S., the Public Records Law. Subsection (2) of s. 382.025, F.S., authorizes the department to issue a certified copy of any marriage, dissolution of marriage, or death or fetal death certificate, excluding confidential portions, to the person requesting the information. Death and fetal death certificates which include the confidential portions will only be issued to the registrant's spouse or parent, child, grandchild, or sibling, of legal age, or to any family member who provides a will, insurance policy, or document demonstrating his or her interest in the registrant's estate. The confidential portions of records will also be provided to a state agency or local government or the United States for official purposes upon approval of the Department of Health or upon the order of any court of competent jurisdiction.

Section 382.0255, F.S., provides that the department is entitled to certain fees for the processing, filing, and retrieving of vital records and registrations. Previously, a portion of these fees was deposited in the Crimes Against Children Trust Fund administered by the Department of Law Enforcement. This trust fund, however, was eliminated on July 1, 1995, and the funds that were being deposited in this trust fund are now transferred to general revenue rather than to Vital Statistics within the Department of Health.

Emergency Medical Services

Part II, chapter 401, Florida Statutes, authorizes the Department of Health to make grants to local agencies and emergency medical services organizations to assist the agencies in providing emergency medical services. The Department of Health must certify advanced life support services, and basic life support services pursuant to s. 401.27, F.S. Section 401.27, F.S., establishes standards and certification requirements for emergency medical technicians and paramedics. Section 401.30, F.S., requires each permitted advanced life support service, basic life support service, or air ambulance (licensee) to maintain accurate records of emergency calls on forms that contain such information as is required by the department. The Department of Health has established by rule: requirements for staffing of permitted emergency medical service vehicles (64E-2.007, F.A.C.); requirements for the delivery of patient records by licensees (64E-2.013, F.A.C.); requirements for the department's approval of programs that educate emergency medical technicians and paramedics (64E-2.011, F.A.C.); and specific standards for the security and storage of controlled substances, medications, and fluids by licensees (64E-2.003, F.A.C.). Pursuant to s. 120.536, F.S., the Department of Health submitted administrative rules to the Joint Administrative Procedures Committee as rules that exceeded the rulemaking authority permitted in this section.

Florida Drug and Cosmetic Act

Chapter 499, Florida Statutes, provides for the regulation of drugs, cosmetics and household products by the Department of Health. Part I, ch. 499, F.S., (ss. 499.001-499.081, F.S.) sets forth the Florida Drug and Cosmetic Act. The purpose of this Act is to safeguard the public health and promote the public welfare by protecting the public from injury by product use and by merchandising deceit involving drugs, devices, and cosmetics. The part provides uniform legislation to be administered so far as practicable in conformity with the provisions of, and regulations issued under, the federal Food, Drug, and Cosmetic Act and the applicable portions of the federal Trade Commission Act which prohibits the false advertising of drugs, devices, and cosmetics. The part specifies prohibited acts and requirements for the distribution and manufacture of legend drugs and legend devices by pharmacies, manufacturers, and other entities.

Section 499.05, F.S., establishes prohibited acts relating to drugs, devices, and cosmetics. Section 499.05, F.S., prohibits the sale or transfer of a legend drug or compressed medical gas if the person is not authorized to do so under the law of the state in which he or she resides. A person's residence, however, is irrelevant when determining whether that person is authorized to sell or receive prescription drugs.

Under s. 499.007, F.S., any drug that is habit forming or not safe for use unless under the supervision of a practitioner licensed by law to administer such drugs, is misbranded if it fails to bear on the label the statement" "Caution: Federal Law Prohibits Dispensing Without Prescription" or "Caution: State Law Prohibits Dispensing Without Prescription." In 1997, Congress passed the Food and Drug Administration Modernization Act, which provides that the label statement on such drugs is to appear as "Rx Only" or the prescription symbol followed by the word "Only." Federal regulations implementing this new prescription statement provide for a phase-in of labeling changes through February 2003. If ch. 499, F.S., is not revised to reflect this change in federal law, many prescription drug products entering Florida will be misbranded under Florida law.

Section 499.028, F.S., relating to drug samples and complimentary drugs, provides that individuals may not possess a prescription drug sample unless: the drug sample was prescribed to her or him, the individual is the employee of a complimentary drug distributor that holds a permit, or the individual is a person to whom prescription drug samples may be distributed pursuant to this section. No clear provision under state law allows federal, state, and local government employees, acting within the scope of their employment, to possess prescription drug samples.

The Administrative Procedure Act and Agency Rulemaking Authority

Section 120.536(1), F.S., states that, "A grant of rulemaking authority is necessary but not sufficient to allow an agency to adopt a rule; a specific law to be implemented is also required. An agency may only adopt rules that implement, interpret, or make specific the particular powers and duties granted by the enabling statute." Section 120.536, F.S., further established that an agency may not adopt a rule merely because it is reasonably related to the purpose of the

enabling legislation, nor may the agency have the authority to implement statutory provisions setting forth general legislative intent or policy.

Section 120.536(2), F.S., required each agency to provide the Administrative Procedures Committee a listing of rules adopted by the agency before October 1, 1996, which exceeded the rulemaking authority permitted in this section. These lists were to be provided by October 1, 1997, and subsequently combined and presented to the Speaker of the House of Representatives and the President of the Senate. This section further provided that the 1998 Legislature was to consider whether specific legislation authorizing these rules should be enacted. According to s. 120.536(2), F.S., each agency must have initiated appropriate proceedings to repeal rules exceeding rulemaking authority by January 1, 1999. By February 1, 1999, the Administrative Procedure Committee was required to submit to the President of the Senate and the Speaker of the House of Representatives, a report identifying rules that exceed rule authority for which repeal proceedings have not yet been initiated.

III. Effect of Proposed Changes:

Section 1. Amends s. 20.43, F.S., 1998 Supplement, relating to the Department of Health, to add the Division of Children's Medical Services Network, Division of Emergency Medical Services and Community Health Resources, Division of Children's Medical Services Prevention and Intervention, Division of Information Resource Management, and the Division of Health Awareness and Tobacco to the list of divisions that are authorized to exist in the Department of Health. The Division of Children's Medical Services and the Division of Local Health Planning, Education, and Workforce Department are removed from the authorized list of divisions. The Department of Health's authority to improve the public health by its use of incentives and promotional items in disease prevention and health education activities is expanded.

Section 2. Amends s. 110.205, F.S., relating to career service exemptions, to update language regarding the establishment of exempt positions that now pertains to the Department of Health and Rehabilitative Services to conform to the creation of the Department of Health and the Department of Children and Family Services, and to include the positions of Assistant County Health Department Director and County Health Department Financial Administrator to the list of exempt positions.

Section 3. Amends s. 120.80., F.S., 1998 Supplement, relating to exceptions and special requirements of the Department of Health, to allow the Department of Health to contract with the Department of Children and Family Services to conduct administrative hearings in matters concerning the Special Supplemental Nutrition Program for Women, Infants and Children; Child Care Food Program; Children's Medical Services Program; and exemption from disqualification reviews for the certified nurse assistants program. The Department of Health is exempt from the requirements of a formal hearing under the Administrative Procedure Act for these programs.

Section 4. Amends s. 154.504, F.S., 1998 Supplement, relating to eligibility and benefits for the primary care challenge grant program, to permit providers to enter into contracts pursuant to s. 766.1115, F.S., relating to the provision of uncompensated care to low-income recipients by

certain health care providers, if co-payments under the primary care challenge grants are not used as compensation for services to health care providers.

Section 5. Amends s. 287.155, F.S., relating to the purchase of motor vehicles by certain agencies, to authorize the Department of Health, to purchase automobiles, trucks, and other automotive equipment for use by county health departments, subject to the approval of the Department of Management Services.

Section 6. Amends s. 372.6672, F.S., 1998 Supplement, relating to alligator management and trapping program implementation, to delete obsolete references to the Department of Health and Rehabilitative Services.

Section 7. Amends s. 381.004, F.S., 1998 Supplement, relating to testing for human immunodeficiency virus, to revise requirements authorizing the use of preliminary HIV test results so that the information may be released to a mother at the time of delivery, for treatment and diagnosis of a newborn infant. Requirements for the performance of HIV tests on deceased persons are revised by authorizing the attending physician in addition to a medical examiner to perform an HIV test under limited circumstances to provide treatment options for medical personnel who were subject to a significant exposure when providing care or assistance to a person who expired or could not be resuscitated while receiving emergency care.

Section 8. Amends s. 381.0051, F.S., relating to family planning, to give the Department of Health the authority to adopt rules for family planning.

Section 9. Amends s. 381.006, F.S., 1998 Supplement, relating to environmental health, to provide the Department of Health with rulemaking authority relating to the health inspection of certain group-care facilities.

Section 10. Amends s. 381.0061, F.S., relating to administrative fines, to authorize the Department of Health to impose fines for violations relating to group care facilities.

Section 11. Amends s. 381.0062, F.S., 1998 Supplement, relating to water systems, to define "multi-family water system" to mean a water system that provides piped water for three to four residences, one of which may be a rental residence, and defines "private water system" to mean a water system that provides piped water for one to two residences, one of which may be a rental residence. Other minor and technical changes to conform to the new definition of "multi-family water system" are made.

Section 12. Amends s. 381.90, F.S., relating to the Health Information Systems Council, to revise the membership of the Health Information Systems Council by adding the State Treasurer/Insurance Commissioner; a representative from the Florida Healthy Kids Corporation; a representative from a school of public health chosen by the Board of Regents; the Commissioner of Education; the secretary of the Department of Elderly Affairs; and the secretary of the Department of Juvenile Justice. The duties of the Health Information Systems Council are revised so that it must develop a review process to ensure cooperative planning among agencies that collect or maintain health-related data and must submit a report on the implementation of

this requirement to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 1, 2000.

Section 13. Amends s. 382.003, F.S., relating to powers and duties of the Department of Health, to remove the word "rescinding" in relation to the department's rule authority regarding vital records, and to authorize the department to adopt rules to require that forms, documents, and information submitted to the department to create or amend a vital record be under oath.

Section 14. Amends s. 382.004, F.S., relating to reproduction and destruction of records, to make minor and technical changes.

Section 15. Amends s. 382.008, F.S., 1998 Supplement, relating to death and fetal death registration, to delete obsolete language that limits the disclosure of social security numbers, which is in conflict with federal law.

Section 16. Amends s. 382.013, F.S., 1998 Supplement, relating to birth registration, to revise procedures to be followed when a birth occurs outside a health care facility, and to provide authority for the Department of Health to require documents and proof as it deems necessary to establish the fact of a birth when it occurred outside of a health care facility and was not attended by a Florida licensed physician, certified nurse midwife, Florida licensed midwife or a public health nurse employed by the department. Circumstances for listing the name of the husband of the mother on the birth certificate and procedures for the registration of a birth record of a child of undetermined parentage are revised. Other minor and technical changes to delete unnecessary language are made.

Section 17. Amends s. 382.015, F.S., relating to new certificates of live birth, to replace the term "court decree" with "court order," and to delete language addressing the administrative acknowledgment of paternity. Other minor and technical changes to delete unnecessary language are made.

Section 18. Amends s. 382.016, F.S., relating to amendment of birth records, to reinstate provisions outlining the amendment of a birth record in s. 382.015(2), F.S. relating to the administrative acknowledgment of paternity and subsequent amendment of the birth record.

Section 19. Amends s. 382.019, F.S., relating to delayed registration and administrative procedures for birth, death, or fetal death, to clarify that, after receipt of an application, the department may file a delayed registration and to authorize the Department of Health to dismiss an application not actively pursued within 1 year.

Section 20. Amends s. 382.025, F.S., relating to certified copies of vital records, to provide that birth records over 100 years old which are not sealed by a court order are available as a public record and to provide a method for indicating death on a commemorative birth certificate. The Department of Health is authorized to issue cause of death information to any person providing documented proof of need rather than restricting it to only a family member.

Section 21. Amends s. 382.0255, F.S., relating to fees for a certification of a birth record, to permit the Department of Health to retain fees collected by the Office of Vital Statistics for birth certificates rather than transferring the fees to the General Revenue Fund.

Section 22. Amends s. 383.14, F.S., relating to screening for metabolic disorders, other hereditary and congenital disorders, and environmental risk factors, to change the name of the WIC program from the Special Supplemental Food Program for Women, Infants, and Children, to the Special Supplemental Nutrition Program for Women, Infants, and Children to conform with federal law.

Section 23. Amends s. 385.202, F.S., relating to the statewide cancer registry, to no longer require the Department of Health to reimburse hospitals for the cost of furnishing data for the cancer registry.

Section 24. Amends s. 385.203, F.S., relating to the Diabetes Advisory Council, to revise the requirements and membership of the council. The council's membership is expanded from 18 to 25 members.

Section 25. Amends s. 391.028, F.S., 1998 Supplement, relating to administration of the Children's Medical Services program, to remove "the Division of" from the title of Children's Medical Services, and to provide that the director of Children's Medical Services may appoint division directors subject to the approval of the secretary.

Section 26. Amends s. 391.0315, F.S., 1998 Supplement, relating to benefits for children with special health needs, to clarify that benefits provided under the program shall be the same benefits provided to children in ss. 409.905 and 409.906, F.S., relating to Medicaid.

Section 27. Amends s. 392.69, FS, relating to appropriations, sinking, and maintenance trust funds, to allow the department to use excess money, notwithstanding ch. 216, F.S., for the improvement of health facilities at A. G. Holley State Hospital. The department is authorized to establish an advisory board to review and make recommendations relating to patient care at A. G. Holley State Hospital. Members of the advisory board shall be appointed by the Department of Health for a term of 3 years, with such appointments being staggered so that the terms of no more than two members expire in any one year. Members are to serve without compensation, but per diem and travel expenses may be reimbursed by the Department of Health as provided in s. 112.061, F.S.

Section 28. Amends s. 401.25, F.S., relating to the licensure of a basic life support (BLS) or an advanced life support (ALS) service, to grant the Department of Health with specific authority for its administrative rule (64E-2003, F.A.C.) that imposes minimum staffing requirements. A BLS service must be occupied by at least two persons: a certified emergency medical technician, certified paramedic, or licensed physician and one ambulance driver. An ALS service must be occupied by at least two persons: a certified paramedic or licensed physician and one who is a certified emergency medical technician, certified paramedic, or licensed physician who meets requirements of s. 401.281, F.S., as a driver. The person with the highest medical certifications must be in charge of patient care.

Section 29. Amends s. 401.27, F.S., relating to standards and certification of emergency medical services personnel, to grant the Department of Health specific authority for its administrative rule (64E-2.008 and 64E-2.009, F.A.C.) that requires applicants for emergency medical technician or paramedic certification and recertification to apply under oath to the department on forms provided by the department. The staff of the Joint Administrative Procedures Committee have raised concerns regarding the department's authority to require documents to be submitted under oath.

Section 30. Amends s. 401.30, F.S., 1998 Supplement, relating to records that must be maintained by permitted ambulance services, to grant the Department of Health specific authority for its administrative rule (64E-2.013, F.A.C.) that requires each licensee to maintain records and reports and to submit the record to the department as requested. Licensed ambulance services, basic life support services, and advanced life support services, must provide the receiving hospital with a copy of an individual patient care record for each patient who is transported to the hospital. The information contained on the record and the method and time frame for providing the record must be prescribed by rule of the department.

Section 31. Amends s. 401.35, F.S., relating to the Department of Health's rulemaking authority to enforce provisions relating to the regulation of emergency medical services, to grant the Department of Health with specific rulemaking authority for its administrative rule (64E-2.003, F.A.C.) that requires licensed ambulance services, basic life support services, and advanced life support services to meet specific standards for the security and storage of controlled substances, medications, and fluids that are not inconsistent with requirements of ch. 499, F.S., the Florida Drug and Cosmetic Act or ch. 893, F.S., relating to the regulation of controlled substances.

Section 32. Creates s. 401.49, F.S., to grant the Department of Health specific authority for its administrative rule (64E-2.011, F.A.C.) that specifies requirements for the department's approval of programs that educate emergency medical technicians and paramedics.

Section 33. Amends s. 409.9126, F.S., 1998 Supplement, relating to services provided through the Children's Medical Services network for children with special health care needs, to revise the implementation of a plan to reimburse providers through the Children's Medical Services program for services provided to Medicaid eligible children with special health care needs on a capitated basis. Beginning July 1, 1999, the Florida Medicaid program must phase in by geographical area, capitation payment to Children's Medical Services for services provided to Medicaid children with special health care needs. By January 1, 2001, the Agency for Health Care Administration must make capitation payments for Children's Medical Services enrollees statewide, to the extent provided by federal law.

Section 34. Amends s. 465.019, F.S., 1998 Supplement, relating to institutional pharmacies, to revise the definition of a Class I institutional pharmacy to provide an exception for licensed nursing homes to purchase medical oxygen for administration to residents. Although licensed nursing homes provide medical oxygen to residents through the use of bulk canisters, it is unclear whether current law requires nursing homes to be licensed as Class I institutional pharmacies.

Section 35. Amends s. 499.005, F.S., 1998 Supplement, relating to prohibited acts under the Florida Drug and Cosmetic Act, to clarify that a person must be authorized to sell or transfer legend drugs and compressed medical gas under ch. 499, F.S., and that a person acquiring a legend drug must be authorized to do so under the applicable law where the receipt occurs. Providing the department with false information regarding any matter within the jurisdiction of ch. 499, F.S., is prohibited, not just as it relates to a drug, device, or cosmetic. The distribution of a legend device to the patient or ultimate consumer without a prescription or order from a practitioner to use or prescribe the device is prohibited.

Section 36. Amends s. 499.007, F.S., relating to misbranded drugs or devices, to conform the prescription statement of labels to match recently enacted federal language.

Section 37. Amends s. 499.028, F.S., relating to drug samples or complimentary drugs, to authorize federal, state, and local government employees, acting within the scope of their employment, to possess prescription drug samples.

Section 38. Amends s. 499.066, F.S., relating to penalties and remedies under the Florida Drug and Cosmetic Act, to authorize the immediate effect of a cease and desist order relating to persons who have violated ss. 499.001-499.081, F.S., (the Florida Drug and Cosmetic Act), or any rule adopted pursuant to that law. Any person subject to a cease and desist order issued by the Department of Health may request an administrative hearing to abate or modify the cease and desist order.

Section 39. Amends s. 499.069, F.S., relating to punishment for violations of the Florida Drug and Cosmetic Act, to revise criminal penalties to make the purchase or receipt of a prescription drug from an unauthorized source a third degree felony punishable by up to a 5 year imprisonment and a $5,000 fine. The criminal penalties for the purchase of compressed medical gas from an unauthorized source is changed from a third degree felony to a first-degree misdemeanor punishable by imprisonment of up to 1 year and a $1,000 fine.

Section 40. Amends s. 742.10, F.S., relating to establishment of paternity for children born out of wedlock, to conform statutory cross-references.

Section 41. Amends s. 39.303, F.S., 1998 Supplement, relating to child protection teams, to conform titles relating to Children's Medical Services.

Section 42. Amends s. 385.203, F.S., relating to the Diabetes Advisory Council, to conform titles relating to Children's Medical Services.

Section 43. Amends s. 391.021, F.S., 1998 Supplement, relating to definitions applying to Children's Medical Services, to conform titles relating to Children's Medical Services.

Section 44. Amends s. 391.221, F.S., 1998 Supplement, relating to the Statewide Children's Medical Services Network Advisory Council to provide conforming language that is needed due to the reorganization of Children's Medical Services.

Section 45. Amends s. 391.222, F.S., 1998 Supplement, relating to the Cardiac Advisory Council, to provide conforming language that is needed due the reorganization of Children's Medical Services into two divisions.

Section 46. Amends s. 391.223, F.S., 1998 Supplement, relating to technical advisory panels, to provide conforming language that is needed due the reorganization of Children's Medical Services into two division.

Section 47. Amends s. 63.162, F.S., relating to hearings and records in adoption proceedings, to clarify the use of the term "intermediary."

Section 48. Repeals subsection (3) of s. 381.731, F.S., relating to submission of an initial Healthy Communities plan that was submitted in 1992.

Section 49. Repeals subsection (5) of s. 383.307, F.S., relating to the Department of Health's consultation agreements with birth centers that are unable to find consultants.

Section 50. Repeals subsection (7) of s. 404.20, F.S., relating to the Department of Health's monitoring requirements of the transportation of radioactive materials.

Section 51. Repeals s. 409.9125, F.S., relating to study requirements for Medicaid alternative service networks.

Section 52. Provides that the building known as the 1911 State Board of Health Building which is part of a multi-building complex with the address of 1217 Pearl Street, Jacksonville, Florida shall be known as the Wilson T. Sowder, M. D., Building.

Section 53. Provides that the building authorized by Chapter 98-307, L.O.F., that will be located on Seagrape Drive on the Tampa Campus of the University of South Florida which will house laboratory facilities for the Department of Health shall be known as the William G. "Doc" Myers, M. D., Building.

Section 54. Provides that the Department of Health headquarters building that will comprise approximately 100,000 square feet that is authorized by item 1986 in the 1998-99 Appropriations Act shall be known as the E. Charlton Prather, M. D., Building.

Section 55. Authorizes the Department of Health to apply for and to become a National Environmental Laboratory Accreditation program accrediting authority. Legislative intent is provided that the Department of Health shall have authority to adopt rules to enforce the standards of the National Environmental Accreditation program, impose fees, and process applications.

Section 56. Provides an effective date of July 1, 1999.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Art. VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Art. I, subsections 24(a) and (b), Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Art. III, s. 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

Amendments adopted in committee pass along increase in examination fees for radiological certification to the tested applicants. Approximately 2,700 applicants will take or retake such examinations at an additional per person cost of $50 or $135,000 annually.

B. Private Sector Impact:

The American Registry of Radiologic Technologists in St. Paul, Minnesota is the developer and owner of the examination instruments to whom the additional fees will be paid.

C. Government Sector Impact:

The Department of Health estimates that it will save approximately $3,000 each year by not having to administer a system to monitor the transportation of radioactive materials that is repealed under the bill. The Department of Health estimates that it will retain $800,000 in fees collected by the Office of Vital Statistics for the issuance of birth certificates. These fees are currently transferred to the general revenue fund.

The bill adds seven members to the Diabetes Advisory Council. Using the nominal amount of $500 per meeting per member the estimated additional expense associated with this increase is $10,500 annually.

The bill expands by 34 the statutory list of positions eligible for inclusion in the Selected Exempt Services (SES) personnel class. Assistant directors in county health departments and their financial administrators will receive position, salary and benefit upgrades as follows: discretionary salary increases will total $104,600; the financial exposure due to the purchase

of accrued leave resulting from SES upgrade is another $200,000; and the employer's share of employee's co-payments for insurance benefits, approximately $82,000 ($200/month times 12 months times 34 positions). The affected employees will lose their career service rights and will also receive higher leave credits and year-end accruals. Accrued but unused compensatory leave may transfer with the employees or be cashed out by the sending agency.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill creates a third degree felony offense for any person who makes the purchase or receipt of a prescription drug from an unauthorized source.

Section 27 of the bill exempts the department from all of the planning and budgeting statutes in ch. 216, F.S. The agency is currently engaged in an enterprise operation at one of its hospital facilities in which it derives income from the subleasing of vacant space. The agency would like to keep these funds rather than having them subject to the budget amendment process. A more appropriate exemption tailored to the activity at hand would cross reference s. 216.181 or s. 216.292, F.S., only.

VIII. Amendments:

#1 by Governmental Oversight and Productivity:
Amends s. 110.205, F.S., to delete the inappropriate use of plural term.

#2 by Governmental Oversight and Productivity:
Amends s. 381.006, F.S., to delete reference to nursing homes as part of the authority given the Department of Health in the promulgation of rules on environmental health.

#3 by Governmental Oversight and Productivity:
Amends s. 392.69, F.S., to provide an exemption from a specific part of the planning and budgeting statutes, s. 216.292, F.S., rather than the entire ch. 216, F.S.

#4 by Governmental Oversight and Productivity:
Amends ss. 401.25, 401.27, 401.2701, 401.2715, 401.30, and 401.35, F.S. to provide specific legal authority for the department to promulgate rules on its basic and advanced life support regulatory programs. (WITH TITLE AMENDMENT)

#5 by Governmental Oversight and Productivity:
Deletes amendments to s. 499.066, F.S., providing additional administrative enforcement authority to the department. (WITH TITLE AMENDMENT)

#6 by Governmental Oversight and Productivity:
Deletes from the bill proposed amendments to s. 63.162, F.S., revising the requirements for the release of the identity of birth parents in an adoption proceeding. (WITH TITLE AMENDMENT)

#7 by Governmental Oversight and Productivity:
Corrects an incorrect street address reference to a state building designation.

#8 by Governmental Oversight and Productivity:
Substitutes revised language for the designation of the Department of Health as a nationally approved accrediting authority for laboratories.

#9 by Governmental Oversight and Productivity:
Amends s. 381.0022, F.S., to maintain the confidential and exempt status of any information on Medicaid recipients shared by the Department of Health with other agencies when auditing payments for services. (WITH TITLE AMENDMENT)

#10 by Governmental Oversight and Productivity:
Amends s. 383.011, F.S., to give the Department of Health permissive rather than mandatory authority to rules consistent with regulations of the federal Child Care Food Program. (WITH TITLE AMENDMENT)

#11 by Governmental Oversight and Productivity:
Amends s. 468.304, F.S., to pass along increases in examination costs to applicants for radiological certification. (WITH TITLE AMENDMENT)

#12 by Governmental Oversight and Productivity:
Amends s. 468.306, F.S., to pass along increased costs of purchased examinations to the tested applicants. (WITH TITLE AMENDMENT)

#13 by Governmental Oversight and Productivity:
Amends s. 468.309, F.S., to revise the renewal period of a radiological technologist license from December 31 to the birth month. (WITH TITLE AMENDMENT)

#14 by Governmental Oversight and Productivity:
Amends s. 455.557, F.S., to exempt hospital interns from physician profiling requirements. (WITH TITLE AMENDMENT)

The American Registry of Radiologic Technologists

March 17, 1999

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TO: James A. Futch
Bureau of Radiation Control
FAX: (850) 921-6365

FROM: Gayle Roth

Here is the information you requested regarding state exam fees:

EXAMS	CURRENT EXAM FEE		FEES EFFECTIVE 1/1/2000	
Radiography, Nuclear Medicine, Radiation Therapy	Submitted on compatible magnetic media	Not submitted on compatible magnetic media	Submitted on compatible magnetic media	Not submitted on compatible magnetic media
	$15.00	$20.00	$65.00	$70.00

EXAMS	CURRENT EXAM FEE		FEES EFFECTIVE 1/1/2001	
Limited Scope of Practice in Radiography	Submitted on compatible magnetic media	Not submitted on compatible magnetic media	Submitted on compatible magnetic media	Not submitted on compatible magnetic media
	$20.00	$25.00	$70.00	$75.00

Please feel free to contact us if you need any additional information.

Thank you.

MAL. N = 2000
PETMCS N = 700

1255 Northland Drive • St. Paul, Minnesota 55120-1155 • (651) 687-0048

The American Registry of Radiologic Technologists

ABOUT THE ARRT & STATE LICENSING

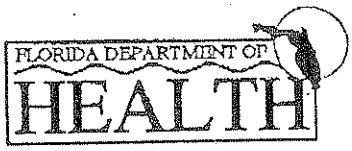
In 1979, the ARRT announced its willingness to enter into agreements with states to administer the ARRT-developed examinations in radiography, nuclear medicine technology, and radiation therapy to state-approved candidates for state licensing purposes. In 1996, the availability of examinations was extended to include the ARRT-developed advanced examinations.

Some states require ARRT certification and/or registration in radiography. In addition, twenty-three states currently have formal agreements regarding the use of ARRT primary category examinations for state licensing purposes. One state has an agreement for use of an advanced ARRT examination.

The ARRT also administers the *Examination for the Limited Scope of Practice in Radiography* for licensing states. In 1986, the ARRT began administering ARRT-developed examinations covering radiography of the chest or radiography of the extremities to state-approved examinees. Three additional separately scored categories for skull/sinus, spine, and podiatry were added in June 1988. Although developed and administered by the ARRT, the intended purpose of this examination is solely for licensing by states, with no certification awarded by the ARRT. It is the philosophy of the ARRT that those persons having a scope of practice that is limited to a particular area must be as knowledgeable in the particular area as the technologist whose scope of practice reflects that of the entry-level general staff radiographer. It is the stated intention that the depth of understanding required for intelligent performance of a task not be limited, but rather only that the breadth of content coverage be limited according to the particular tasks performed. Twenty states currently have agreements with the ARRT for the administration of the limited scope examination.

Beginning January 1, 2000, all ARRT examinations (except limited scope) will be administered as computer based tests (CBT). The limited scope exam will be converted to CBT in 2001. Computerized testing provides flexibility for examinees in scheduling individual testing appointments at their convenience, as well as flexibility for states in providing scheduling information for approved state candidates to the ARRT. Examination score results will also be more quickly available.

1255 Northland Drive • St. Paul, Minnesota 55120-1155 • (651) 687-0048



Jeb Bush
Governor

Robert G. Brooks, M.D.
Secretary

Bureau of Radiation Control • Radiologic Technology Program

FAX COVER SHEET

DATE: 03/17/99 Resent on 4/12/99
TIME: 12:32 PM
NUMBER OF PAGES: ~~two~~ three
(including the cover sheet)

TO: Amy Jones

PHONE NUMBER:

FAX NUMBER: 413-8743

FROM: James Futch
Environmental Administrator

PHONE NUMBER: (850) 487-3451
SunCom: 277-3451

FAX NUMBER: (850) 921-6365
SunCom: 291-6365

REMARKS: ☒ PER OUR CONVERSATION ☐ PLEASE REVIEW/COMMENT ☐ FYI ☐ OTHER

Amy, attached is the letter from ARRT that you requested yesterday. It describes the current fees they charge us for our Rad Tech exams, and what the fees will increase to on January 1, 2000 and January 1, 2001.

ARRT currently charges us $20 per Basic X-ray Operator exam, which they refer to as a Limited Scope Radiography exam. If we don't provide the applicant list on magnetic media (floppy disk), they charge $25 per applicant (we always provide this on disk). **ARRT will begin charging us $70 for this exam on January 1, 2001** ($75 if not on floppy).

For all other exams, General Radiographer, Nuclear Medicine Technologist & Radiation Therapy, ARRT charges us $15 currently ($20 if not on floppy). **This will increase to $65 on January 1, 2000.**

We currently charge $65 for all initial exams (Basic, Nuclear Med. Tech, etc.) and $50 for all re-exams. The extra $45-$50 we collect over ARRT's fee covers our costs since we process and evaluate the application, do the scheduling, send out the scores, issue & print the license, etc. ARRT charges the same price for initial and re-exam.

We can't pass along ARRT's 250-333% fee increases and also cover our costs because our current cap is set at $100 for initial exams by s. 468.304 F.S., and at $75 for re-exams by s. 468.306 (4) F.S. And yes, these folks are the only game in town.

Per your suggestion, I agree we should try to increase our caps. Perhaps we should also try to eliminate the separate re-exam cap since ARRT charges the same fee for both initial & re-exams.

2020 Capital Circle SE, Bin C21 • Tallahassee, FL 32399-1741
Overnight or Express Mail • Suite 200 • Oakland Building • 2009 Apalachee Parkway • Tallahassee, FL 32301-4830
Internet Home Page: WWW.DOH.STATE.FL.US/ENVIRONMENT/RADIATION

Proposed Assistant County Health Department Director and County Health Department Financial Administrator classes

If approved, there would be 34 positions allocated to these 2 classes based on proposed criteria. Because these are county health department positions, no additional budget would be required.

Proposed budget information:

Salary Increases for proposed Assistant County Health Department Director. There are 6 filled positions of 17 CHDs with 150+ FTEs.

Current total annual salary for these positions:	$381,955.08
Proposed total annual salary for these positions based upon 10% increase to salary:	$418,851.68
Difference	$ 36,896.60

Salary Increases for proposed County Health Department Financial Administrator. There are 13 filled positions.

Current total annual salary for these positions:	$622,107.98
Proposed total annual salary for these positions based upon 10% increase to salary:	$688,791.22 *
Difference	$ 66,683.24

Two employees would receive 14% and 20% increase to be brought to minimum of SES PG 530

Proposed leave buyout information:

For payment of leave buyout for ~~19~~ employees:	$145,059.58

CHDs with 150 or more FTEs could use these classes. 34 positions statewide maximum; 17 CHDs have 150 FTEs or more. Some CHDs will need only one (Volusia).

10.d. Senate Staff Analysis and Economic Impact Statement, CS/SB 2220, Subject: Department of Health, April 21, 1999, (Florida Archives, Series 18, Carton 2397)

FLORIDA DEPARTMENT *of* STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

I, Judith Ring, Division Director, Division of Library and Information Services, Florida Department of State, hereby certify the records of the Florida Legislature were transferred to the custody of the Florida State Archives pursuant to the provisions of Chapter 257, Florida Statutes, and that I am, by the terms of that transfer, the official custodian of the records.

I further certify that the attached is a true and correct copy of the record in the State Archives of Florida, the original of which may be found in Series 18, carton 2397.

***WITNESS MY SIGNATURE**, this 10th Day of January, 2014.*

***JUDITH RING**, Director*
Division of Library and Information Services

BY: _____
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SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

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BILL: CS/SB 2220

SPONSOR: Health, Aging and Long-Term Care Committee and Senator Clary

SUBJECT: Department of Health

DATE: April 21, 1999 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Wilson	HC	Favorable/CS
2.	Wilson	Wilson	GO	Fav/14 amendments
3.	Peters	Hadi	FP	Favorable
4.				
5.				

I. Summary:

The Committee Substitute for Senate Bill 2220 makes revisions to address glitches in the statutes relating to the administration of the Department of Health. The bill gives the Department of Health specific authority for certain existing administrative rules, updates statutory references to the Department of Health and makes changes to comply with changes in federal law.

Significant provisions of the bill: modify the Department of Health's authority in the use of incentives and promotional items in disease prevention and health education; revise and rename divisions within the department; authorize the Department of Health to adopt rules for certain group-care facilities and to impose fines for violation of its rules; revise the requirements and the membership of the Diabetes Advisory Council; grant the Department of Health specific statutory authority to approve training programs for emergency medical technicians and paramedics and to impose minimum requirements on permitted emergency medical vehicles; allow the Department of Health to require documents to be submitted by emergency medical licensees and emergency medical certification applicants to the department under oath; update career service exemptions; impose additional requirements on co-payments made pursuant to primary care challenge grants; revise requirements for the Department of Health to hold formal hearings for disqualification reviews of certified nurse assistants; delay and revise the implementation of a plan to reimburse providers through the Children's Medical Services Program for services provided to Medicaid eligible children with special needs on a capitated basis; allow nursing homes to administer medical oxygen to their residents without getting a pharmacy license; authorize the Department of Health to contract with the Department of Children and Family Services to conduct administrative hearings for matters relating to the Special Supplemental Nutrition Program for Women, Infants and Children and the Children's Medical Services Program; permit the Department of Health to purchase automobiles for use by county health departments; eliminate the Department of Health's responsibility for monitoring the transportation of radioactive materials; revise the requirements for the release of preliminary results of an HIV test so that the results for a mother who has just delivered an infant may be released to the mother at the time of

delivery to enhance treatment options for the mother's infant; revise requirements for the performance of an HIV test on persons who die during treatment; authorize the Department of Health to adopt rules for family planning; revise the membership and responsibilities of the Health Information Systems Council; define multi-family water system; revise the Department of Health procedures for birth records in the Office of Vital Statistics and authorize the department to retain fees paid to that office for birth certificates in lieu of being transferred into the General Revenue Fund; eliminate requirements for the Department of Health to reimburse hospitals for costs of furnishing data for the cancer registry; revise penalties for certain violations of the Florida Drug and Cosmetic Act, and authorize federal, state, and local government employees to possess prescription drug samples when acting within the scope of their employment; prohibit the distribution of a legend device to a patient without a prescription or order from a licensed practitioner; revise the Department of Health's authority to issue a cease and desist order so that it has immediate effect and provide for an administrative hearing to abate or modify the department's order; authorize the Department of Health to use earned dollars to improve the A.G. Holley Hospital through a legislative budget request and to establish an advisory body for the facility; name the new Department of Health headquarters the "E. Charlton Prather, M.D., Building and the Division of Health's headquarters in honor of Dr. Wilson T. Sowder and facilities that will house the department's laboratory facilities in recognition of Senator Myers; authorizes the Department of Health to apply for and become a National Environmental Laboratory Accreditation program accrediting authority.

This bill substantially amends the following sections of the Florida Statutes: 20.43, 110.205, 120.80, 154.504, 287.155, 372.6672, 381.004, 381.0051, 381.006, 381.0061, 381.0062, 381.90, 382.003, 382.004, 382.008, 382.013, 382.015, 382.016, 382.019, 382.025, 382.0255, 383.14, 385.202, 385.203, 391.028, 391.0315, 392.69, 401.25, 401.27, 401.30, 401.35, 409.9126, 465.019, 499.005, 499.007, 499.028, 499.066, 499.069, 742.10, 39.303, 385.203, 391.021, 391.221, 391.222, 391.223, and 63.162.

The bill creates section 401.49, Florida Statutes.

This bill repeals the following sections of the Florida Statutes: 381.731(3), 383.307(5), 404.20(7), and 409.9125.

This bill creates four sections that have not been designated to a section within the Florida Statutes.

II. Present Situation:

Department of Health

Chapter 96-403, Laws of Florida, created the Department of Health (DOH) to promote and protect the health of all residents and visitors in the state. The department is composed of the State Health Office and Children's Medical Services Program of the former Department of Health and Rehabilitative Services (HRS). Examination and licensure of the health care professions were transferred from the Agency for Health Care Administration to the Department of Health on July 1, 1997. With the creation of the Department of Health, the Department of

Health and Rehabilitative Services was renamed the Department of Children and Family Services. There are still several references to HRS in the statute that have not yet been changed to conform to the creation of the Department of Health and the Department of Children and Family Services.

The purpose and organizational structure for the Department of Health is provided in s. 20.43, F.S. This section establishes that the divisions of the Department of Health include: Division of Administration; Division of Environmental Health; Division of Disease Control; Division of Family Health Services; Division of Children's Medical Services; Division of Local Health Planning, Education, and Workforce Development, and Division of Medical Quality Assurance, which is responsible for medical boards and professions.

Section 20.43, F.S., also gives the Department of Health the authority to use state or federal funds to protect or improve the public health by providing incentives for encouraging disease prevention and patient compliance with medical treatment, and through health education campaigns and promotional campaigns to recruit health professionals to be employed by the department.

Section 120.80(15), F.S., 1998 Supplement, provides that notwithstanding s. 120.57(1)(a), F.S., a formal hearing may not be conducted by the Secretary of Health, the director of the Agency Health Care Administration, or a board or member of a board within the Department of Health or the Agency for Health Care Administration for matters relating to regulations of any activity, occupation, profession, or vocation regulated by the department in the Division of Medical Quality Assurance.

When the Department of Health was still part of the Department of Health and Rehabilitative Services, a procedure was established that allowed the Department of Health to conduct its own administrative hearings in matters concerning the Special Supplemental Food Program for Women, Infants, and Children (WIC), Children's Medical Services (CMS) program, and exemption from disqualification review for certified nurse assistants. The Department of Health no longer has authority to continue this process.

Private and Public Water Systems

Section 381.0062, F.S., provides legislative intent to protect the public's health by establishing standards for the construction, modification, and operation of public and private water systems to assure consumers that the water provided to those systems is potable. Subsection (2) of s. 381.0062, F.S., defines "private water system" to mean a water system that provides piped water for no more than four nonrental residences. No definition is provided for a water system that serves only one rental residence, and therefore, a single rental residence would now be included within the definitions of a private water system and a multi-family water system.

Chapter 64E-8, Florida Administrative Code, requires that any owner of water systems connecting one or two residences only meet well setback requirements to protect the well from potential sources of contamination. Owners of water systems connecting three or four residences must meet the setback requirement, and also obtain a construction permit and provide

satisfactory bacteria, nitrate and lead analytical results. There is no reference made to a single rental residence.

Testing for Human Immunodeficiency Virus (HIV)

Section 381.004(3)(a), F.S., provides that a test designed to identify HIV may not be ordered without the informed consent of the person being tested, except under specified circumstances. Additionally, s. 381.004(3)(d), F.S., provides that test results shall not be determined as positive or revealed to any person, without corroborating or confirmatory tests being conducted, except in certain situations. An exception to this requirement which was enacted in ch. 98-171, L.O.F., provides that preliminary test results may be released to health care providers and to the person tested when decisions about medical care or treatment of the person tested cannot await the results of confirmatory testing. It is unclear under the exception, whether the preliminary HIV test results of a mother who has just given birth may be released to the mother for purposes of immediate initiation of drug therapy for the newborn. Officials at the Department of Health have indicated that certain drug therapy may help prevent the newborn from contracting HIV from the mother. The earlier the drug therapy is initiated the more effective it is, and any delay in drug treatment could be detrimental to the infant. The Department of Health officials noted that this situation only occurs when a woman who has not received any prenatal care at all and therefore, has not been offered HIV tests as part of that prenatal care, arrives at a hospital emergency room for delivery.

Chapter 98-171, L.O.F., also provided for additional exceptions for when informed consent is not required in ordering an HIV test. Section 381.004(3)(h)12, F.S., provides that informed consent is not required for the performance of an HIV test by the medical examiner upon a deceased individual who was the source of a significant exposure to medical personnel or nonmedical personnel who provided emergency medical assistance and who expired or could not be resuscitated during treatment for the medical emergency. This exception to the informed consent requirements for ordering an HIV test allows medical personnel and "good Samaritans" to learn the test results of the potential source of exposure so that preventive treatment options could begin if the test results were positive. According to the Department of Health, not all deceased individuals who are the source of a significant exposure are sent to medical examiners so that a HIV test may be performed.

Health Information Systems Council

The Health Information Systems Council was created by s. 381.90, F.S., within the Department of Health to facilitate the identification, collection, standardization, sharing, and coordination of health-related data, including fraud and abuse data, and professional and facility licensing data among federal, state, local, and private entities. Under s. 381.90, F.S., the membership of the council includes: the secretary of the Department of Health; the secretary of the Department of Business and Professional Regulation; the secretary of the Department of Children and Family Services; the director of the Agency of Health Care Administration; the secretary of the Department of Corrections; the Attorney General; the executive director of the Correctional Medical Authority; two members representing county health departments, one from a small county and one from a large county, appointed by the Governor; and a representative from the Florida Association of Counties.

Vital Records

Section 382.013, F.S., requires a certificate for each live birth that occurs in this state to be filed within 5 days after such birth with the local registrar of the district in which the birth occurred. Section 382.013, F.S., sets out procedures for filing and requirements for the registration of paternity and the name of the child, undetermined parentage, and disclosure.

Section 382.025(1), F.S., provides that all Florida birth records are confidential and exempt from the provisions of s. 119.07(1), F.S., the Public Records Law. Subsection (2) of s. 382.025, F.S., authorizes the department to issue a certified copy of any marriage, dissolution of marriage, or death or fetal death certificate, excluding confidential portions, to the person requesting the information. Death and fetal death certificates which include the confidential portions will only be issued to the registrant's spouse or parent, child, grandchild, or sibling, of legal age, or to any family member who provides a will, insurance policy, or document demonstrating his or her interest in the registrant's estate. The confidential portions of records will also be provided to a state agency or local government or the United States for official purposes upon approval of the Department of Health or upon the order of any court of competent jurisdiction.

Section 382.0255, F.S., provides that the department is entitled to certain fees for the processing, filing, and retrieving of vital records and registrations. Previously, a portion of these fees was deposited in the Crimes Against Children Trust Fund administered by the Department of Law Enforcement. This trust fund, however, was eliminated on July 1, 1995, and the funds that were being deposited in this trust fund are now transferred to general revenue rather than to Vital Statistics within the Department of Health.

Emergency Medical Services

Part II, chapter 401, Florida Statutes, authorizes the Department of Health to make grants to local agencies and emergency medical services organizations to assist the agencies in providing emergency medical services. The Department of Health must certify advanced life support services, and basic life support services pursuant to s. 401.27, F.S. Section 401.27, F.S., establishes standards and certification requirements for emergency medical technicians and paramedics. Section 401.30, F.S., requires each permitted advanced life support service, basic life support service, or air ambulance (licensee) to maintain accurate records of emergency calls on forms that contain such information as is required by the department. The Department of Health has established by rule: requirements for staffing of permitted emergency medical service vehicles (64E-2.007, F.A.C.); requirements for the delivery of patient records by licensees (64E-2.013, F.A.C.); requirements for the department's approval of programs that educate emergency medical technicians and paramedics (64E-2.011, F.A.C.); and specific standards for the security and storage of controlled substances, medications, and fluids by licensees (64E-2.003, F.A.C.). Pursuant to s. 120.536, F.S., the Department of Health submitted administrative rules to the Joint Administrative Procedures Committee as rules that exceeded the rulemaking authority permitted in this section.

Florida Drug and Cosmetic Act

Chapter 499, Florida Statutes, provides for the regulation of drugs, cosmetics and household products by the Department of Health. Part I, ch. 499, F.S., (ss. 499.001-499.081, F.S.) sets forth the Florida Drug and Cosmetic Act. The purpose of this Act is to safeguard the public health and promote the public welfare by protecting the public from injury by product use and by merchandising deceit involving drugs, devices, and cosmetics. The part provides uniform legislation to be administered so far as practicable in conformity with the provisions of, and regulations issued under, the federal Food, Drug, and Cosmetic Act and the applicable portions of the federal Trade Commission Act which prohibits the false advertising of drugs, devices, and cosmetics. The part specifies prohibited acts and requirements for the distribution and manufacture of legend drugs and legend devices by pharmacies, manufacturers, and other entities.

Section 499.05, F.S., establishes prohibited acts relating to drugs, devices, and cosmetics. Section 499.05, F.S., prohibits the sale or transfer of a legend drug or compressed medical gas if the person is not authorized to do so under the law of the state in which he or she resides. A person's residence, however, is irrelevant when determining whether that person is authorized to sell or receive prescription drugs.

Under s. 499.007, F.S., any drug that is habit forming or not safe for use unless under the supervision of a practitioner licensed by law to administer such drugs, is misbranded if it fails to bear on the label the statement" "Caution: Federal Law Prohibits Dispensing Without Prescription" or "Caution: State Law Prohibits Dispensing Without Prescription." In 1997, Congress passed the Food and Drug Administration Modernization Act, which provides that the label statement on such drugs is to appear as "Rx Only" or the prescription symbol followed by the word "Only." Federal regulations implementing this new prescription statement provide for a phase-in of labeling changes through February 2003. If ch. 499, F.S., is not revised to reflect this change in federal law, many prescription drug products entering Florida will be misbranded under Florida law.

Section 499.028, F.S., relating to drug samples and complimentary drugs, provides that individuals may not possess a prescription drug sample unless: the drug sample was prescribed to her or him, the individual is the employee of a complimentary drug distributor that holds a permit, or the individual is a person to whom prescription drug samples may be distributed pursuant to this section. No clear provision under state law allows federal, state, and local government employees, acting within the scope of their employment, to possess prescription drug samples.

The Administrative Procedure Act and Agency Rulemaking Authority

Section 120.536(1), F.S., states that, "A grant of rulemaking authority is necessary but not sufficient to allow an agency to adopt a rule; a specific law to be implemented is also required. An agency may only adopt rules that implement, interpret, or make specific the particular powers and duties granted by the enabling statute." Section 120.536, F.S., further established that an agency may not adopt a rule merely because it is reasonably related to the purpose of the enabling

legislation, nor may the agency have the authority to implement statutory provisions setting forth general legislative intent or policy.

Section 120.536(2), F.S., required each agency to provide the Administrative Procedures Committee a listing of rules adopted by the agency before October 1, 1996, which exceeded the rulemaking authority permitted in this section. These lists were to be provided by October 1, 1997, and subsequently combined and presented to the Speaker of the House of Representatives and the President of the Senate. This section further provided that the 1998 Legislature was to consider whether specific legislation authorizing these rules should be enacted. According to s. 120.536(2), F.S., each agency must have initiated appropriate proceedings to repeal rules exceeding rulemaking authority by January 1, 1999. By February 1, 1999, the Administrative Procedure Committee was required to submit to the President of the Senate and the Speaker of the House of Representatives, a report identifying rules that exceed rule authority for which repeal proceedings have not yet been initiated.

III. Effect of Proposed Changes:

Section 1. Amends s. 20.43, F.S., 1998 Supplement, relating to the Department of Health, to add the Division of Children's Medical Services Network, Division of Emergency Medical Services and Community Health Resources, Division of Children's Medical Services Prevention and Intervention, Division of Information Resource Management, and the Division of Health Awareness and Tobacco to the list of divisions that are authorized to exist in the Department of Health. The Division of Children's Medical Services and the Division of Local Health Planning, Education, and Workforce Department are removed from the authorized list of divisions. The Department of Health's authority to improve the public health by its use of incentives and promotional items in disease prevention and health education activities is expanded.

Section 2. Amends s. 110.205, F.S., relating to career service exemptions, to update language regarding the establishment of exempt positions that now pertains to the Department of Health and Rehabilitative Services to conform to the creation of the Department of Health and the Department of Children and Family Services, and to include the positions of Assistant County Health Department Director and County Health Department Financial Administrator to the list of exempt positions.

Section 3. Amends s. 120.80., F.S., 1998 Supplement, relating to exceptions and special requirements of the Department of Health, to allow the Department of Health to contract with the Department of Children and Family Services to conduct administrative hearings in matters concerning the Special Supplemental Nutrition Program for Women, Infants and Children; Child Care Food Program; Children's Medical Services Program; and exemption from disqualification reviews for the certified nurse assistants program. The Department of Health is exempt from the requirements of a formal hearing under the Administrative Procedure Act for these programs.

Section 4. Amends s. 154.504, F.S., 1998 Supplement, relating to eligibility and benefits for the primary care challenge grant program, to permit providers to enter into contracts pursuant to s. 766.1115, F.S., relating to the provision of uncompensated care to low-income recipients by certain health care providers, if co-payments under the primary care challenge grants are not used as compensation for services to health care providers.

Section 5. Amends s. 287.155, F.S., relating to the purchase of motor vehicles by certain agencies, to authorize the Department of Health, to purchase automobiles, trucks, and other automotive equipment for use by county health departments, subject to the approval of the Department of Management Services.

Section 6. Amends s. 372.6672, F.S., 1998 Supplement, relating to alligator management and trapping program implementation, to delete obsolete references to the Department of Health and Rehabilitative Services.

Section 7. Amends s. 381.004, F.S., 1998 Supplement, relating to testing for human immunodeficiency virus, to revise requirements authorizing the use of preliminary HIV test results so that the information may be released to a mother at the time of delivery, for treatment and diagnosis of a newborn infant. Requirements for the performance of HIV tests on deceased persons are revised by authorizing the attending physician in addition to a medical examiner to perform an HIV test under limited circumstances to provide treatment options for medical personnel who were subject to a significant exposure when providing care or assistance to a person who expired or could not be resuscitated while receiving emergency care.

Section 8. Amends s. 381.0051, F.S., relating to family planning, to give the Department of Health the authority to adopt rules for family planning.

Section 9. Amends s. 381.006, F.S., 1998 Supplement, relating to environmental health, to provide the Department of Health with rulemaking authority relating to the health inspection of certain group-care facilities.

Section 10. Amends s. 381.0061, F.S., relating to administrative fines, to authorize the Department of Health to impose fines for violations relating to group care facilities.

Section 11. Amends s. 381.0062, F.S., 1998 Supplement, relating to water systems, to define "multi-family water system" to mean a water system that provides piped water for three to four residences, one of which may be a rental residence, and defines "private water system" to mean a water system that provides piped water for one to two residences, one of which may be a rental residence. Other minor and technical changes to conform to the new definition of "multi-family water system" are made.

Section 12. Amends s. 381.90, F.S., relating to the Health Information Systems Council, to revise the membership of the Health Information Systems Council by adding the State Treasurer/Insurance Commissioner; a representative from the Florida Healthy Kids Corporation; a representative from a school of public health chosen by the Board of Regents; the Commissioner of Education; the secretary of the Department of Elderly Affairs; and the secretary of the Department of Juvenile Justice. The duties of the Health Information Systems Council are revised so that it must develop a review process to ensure cooperative planning among agencies that collect or maintain health-related data and must submit a report on the implementation of this requirement to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 1, 2000.

Section 13. Amends s. 382.003, F.S., relating to powers and duties of the Department of Health, to remove the word "rescinding" in relation to the department's rule authority regarding vital records, and to authorize the department to adopt rules to require that forms, documents, and information submitted to the department to create or amend a vital record be under oath.

Section 14. Amends s. 382.004, F.S., relating to reproduction and destruction of records, to make minor and technical changes.

Section 15. Amends s. 382.008, F.S., 1998 Supplement, relating to death and fetal death registration, to delete obsolete language that limits the disclosure of social security numbers, which is in conflict with federal law.

Section 16. Amends s. 382.013, F.S., 1998 Supplement, relating to birth registration, to revise procedures to be followed when a birth occurs outside a health care facility, and to provide authority for the Department of Health to require documents and proof as it deems necessary to establish the fact of a birth when it occurred outside of a health care facility and was not attended by a Florida licensed physician, certified nurse midwife, Florida licensed midwife or a public health nurse employed by the department. Circumstances for listing the name of the husband of the mother on the birth certificate and procedures for the registration of a birth record of a child of undetermined parentage are revised. Other minor and technical changes to delete unnecessary language are made.

Section 17. Amends s. 382.015, F.S., relating to new certificates of live birth, to replace the term "court decree" with "court order," and to delete language addressing the administrative acknowledgment of paternity. Other minor and technical changes to delete unnecessary language are made.

Section 18. Amends s. 382.016, F.S., relating to amendment of birth records, to reinstate provisions outlining the amendment of a birth record in s. 382.015(2), F.S. relating to the administrative acknowledgment of paternity and subsequent amendment of the birth record.

Section 19. Amends s. 382.019, F.S., relating to delayed registration and administrative procedures for birth, death, or fetal death, to clarify that, after receipt of an application, the department may file a delayed registration and to authorize the Department of Health to dismiss an application not actively pursued within 1 year.

Section 20. Amends s. 382.025, F.S., relating to certified copies of vital records, to provide that birth records over 100 years old which are not sealed by a court order are available as a public record and to provide a method for indicating death on a commemorative birth certificate. The Department of Health is authorized to issue cause of death information to any person providing documented proof of need rather than restricting it to only a family member.

Section 21. Amends s. 382.0255, F.S., relating to fees for a certification of a birth record, to permit the Department of Health to retain fees collected by the Office of Vital Statistics for birth certificates rather than transferring the fees to the General Revenue Fund.

Section 22. Amends s. 383.14, F.S., relating to screening for metabolic disorders, other hereditary and congenital disorders, and environmental risk factors, to change the name of the WIC program from the Special Supplemental Food Program for Women, Infants, and Children, to the Special Supplemental Nutrition Program for Women, Infants, and Children to conform with federal law.

Section 23. Amends s. 385.202, F.S., relating to the statewide cancer registry, to no longer require the Department of Health to reimburse hospitals for the cost of furnishing data for the cancer registry.

Section 24. Amends s. 385.203, F.S., relating to the Diabetes Advisory Council, to revise the requirements and membership of the council. The council's membership is expanded from 18 to 25 members.

Section 25. Amends s. 391.028, F.S., 1998 Supplement, relating to administration of the Children's Medical Services program, to remove "the Division of" from the title of Children's Medical Services, and to provide that the director of Children's Medical Services may appoint division directors subject to the approval of the secretary.

Section 26. Amends s. 391.0315, F.S., 1998 Supplement, relating to benefits for children with special health needs, to clarify that benefits provided under the program shall be the same benefits provided to children in ss. 409.905 and 409.906, F.S., relating to Medicaid.

Section 27. Amends s. 392.69, FS, relating to appropriations, sinking, and maintenance trust funds, to allow the department to use excess money, notwithstanding ch. 216, F.S., for the improvement of health facilities at A. G. Holley State Hospital. The department is authorized to establish an advisory board to review and make recommendations relating to patient care at A. G. Holley State Hospital. Members of the advisory board shall be appointed by the Department of Health for a term of 3 years, with such appointments being staggered so that the terms of no more than two members expire in any one year. Members are to serve without compensation, but per diem and travel expenses may be reimbursed by the Department of Health as provided in s. 112.061, F.S.

Section 28. Amends s. 401.25, F.S., relating to the licensure of a basic life support (BLS) or an advanced life support (ALS) service, to grant the Department of Health with specific authority for its administrative rule (64E-2003, F.A.C.) that imposes minimum staffing requirements. A BLS service must be occupied by at least two persons: a certified emergency medical technician, certified paramedic, or licensed physician and one ambulance driver. An ALS service must be occupied by at least two persons: a certified paramedic or licensed physician and one who is a certified emergency medical technician, certified paramedic, or licensed physician who meets requirements of s. 401.281, F.S., as a driver. The person with the highest medical certifications must be in charge of patient care.

Section 29. Amends s. 401.27, F.S., relating to standards and certification of emergency medical services personnel, to grant the Department of Health specific authority for its administrative rule (64E-2.008 and 64E-2.009, F.A.C.) that requires applicants for emergency medical technician or paramedic certification and recertification to apply under oath to the department on forms

provided by the department. The staff of the Joint Administrative Procedures Committee have raised concerns regarding the department's authority to require documents to be submitted under oath.

Section 30. Amends s. 401.30, F.S., 1998 Supplement, relating to records that must be maintained by permitted ambulance services, to grant the Department of Health specific authority for its administrative rule (64E-2.013, F.A.C.) that requires each licensee to maintain records and reports and to submit the record to the department as requested. Licensed ambulance services, basic life support services, and advanced life support services, must provide the receiving hospital with a copy of an individual patient care record for each patient who is transported to the hospital. The information contained on the record and the method and time frame for providing the record must be prescribed by rule of the department.

Section 31. Amends s. 401.35, F.S., relating to the Department of Health's rulemaking authority to enforce provisions relating to the regulation of emergency medical services, to grant the Department of Health with specific rulemaking authority for its administrative rule (64E-2.003, F.A.C.) that requires licensed ambulance services, basic life support services, and advanced life support services to meet specific standards for the security and storage of controlled substances, medications, and fluids that are not inconsistent with requirements of ch. 499, F.S., the Florida Drug and Cosmetic Act or ch. 893, F.S., relating to the regulation of controlled substances.

Section 32. Creates s. 401.49, F.S., to grant the Department of Health specific authority for its administrative rule (64E-2.011, F.A.C.) that specifies requirements for the department's approval of programs that educate emergency medical technicians and paramedics.

Section 33. Amends s. 409.9126, F.S., 1998 Supplement, relating to services provided through the Children's Medical Services network for children with special health care needs, to revise the implementation of a plan to reimburse providers through the Children's Medical Services program for services provided to Medicaid eligible children with special health care needs on a capitated basis. Beginning July 1, 1999, the Florida Medicaid program must phase in by geographical area, capitation payment to Children's Medical Services for services provided to Medicaid children with special health care needs. By January 1, 2001, the Agency for Health Care Administration must make capitation payments for Children's Medical Services enrollees statewide, to the extent provided by federal law.

Section 34. Amends s. 465.019, F.S., 1998 Supplement, relating to institutional pharmacies, to revise the definition of a Class I institutional pharmacy to provide an exception for licensed nursing homes to purchase medical oxygen for administration to residents. Although licensed nursing homes provide medical oxygen to residents through the use of bulk canisters, it is unclear whether current law requires nursing homes to be licensed as Class I institutional pharmacies.

Section 35. Amends s. 499.005, F.S., 1998 Supplement, relating to prohibited acts under the Florida Drug and Cosmetic Act, to clarify that a person must be authorized to sell or transfer legend drugs and compressed medical gas under ch. 499, F.S., and that a person acquiring a legend drug must be authorized to do so under the applicable law where the receipt occurs. Providing the department with false information regarding any matter within the jurisdiction of ch. 499, F.S., is prohibited, not just as it relates to a drug, device, or cosmetic. The distribution of

a legend device to the patient or ultimate consumer without a prescription or order from a practitioner to use or prescribe the device is prohibited.

Section 36. Amends s. 499.007, F.S., relating to misbranded drugs or devices, to conform the prescription statement of labels to match recently enacted federal language.

Section 37. Amends s. 499.028, F.S., relating to drug samples or complimentary drugs, to authorize federal, state, and local government employees, acting within the scope of their employment, to possess prescription drug samples.

Section 38. Amends s. 499.066, F.S., relating to penalties and remedies under the Florida Drug and Cosmetic Act, to authorize the immediate effect of a cease and desist order relating to persons who have violated ss. 499.001-499.081, F.S., (the Florida Drug and Cosmetic Act), or any rule adopted pursuant to that law. Any person subject to a cease and desist order issued by the Department of Health may request an administrative hearing to abate or modify the cease and desist order.

Section 39. Amends s. 499.069, F.S., relating to punishment for violations of the Florida Drug and Cosmetic Act, to revise criminal penalties to make the purchase or receipt of a prescription drug from an unauthorized source a third degree felony punishable by up to a 5 year imprisonment and a $5,000 fine. The criminal penalties for the purchase of compressed medical gas from an unauthorized source is changed from a third degree felony to a first-degree misdemeanor punishable by imprisonment of up to 1 year and a $1,000 fine.

Section 40. Amends s. 742.10, F.S., relating to establishment of paternity for children born out of wedlock, to conform statutory cross-references.

Section 41. Amends s. 39.303, F.S., 1998 Supplement, relating to child protection teams, to conform titles relating to Children's Medical Services.

Section 42. Amends s. 385.203, F.S., relating to the Diabetes Advisory Council, to conform titles relating to Children's Medical Services.

Section 43. Amends s. 391.021, F.S., 1998 Supplement, relating to definitions applying to Children's Medical Services, to conform titles relating to Children's Medical Services.

Section 44. Amends s. 391.221, F.S., 1998 Supplement, relating to the Statewide Children's Medical Services Network Advisory Council to provide conforming language that is needed due to the reorganization of Children's Medical Services.

Section 45. Amends s. 391.222, F.S., 1998 Supplement, relating to the Cardiac Advisory Council, to provide conforming language that is needed due the reorganization of Children's Medical Services into two divisions.

Section 46. Amends s. 391.223, F.S., 1998 Supplement, relating to technical advisory panels, to provide conforming language that is needed due the reorganization of Children's Medical Services into two division.

Section 47. Amends s. 63.162, F.S., relating to hearings and records in adoption proceedings, to clarify the use of the term "intermediary."

Section 48. Repeals subsection (3) of s. 381.731, F.S., relating to submission of an initial Healthy Communities plan that was submitted in 1992.

Section 49. Repeals subsection (5) of s. 383.307, F.S., relating to the Department of Health's consultation agreements with birth centers that are unable to find consultants.

Section 50. Repeals subsection (7) of s. 404.20, F.S., relating to the Department of Health's monitoring requirements of the transportation of radioactive materials.

Section 51. Repeals s. 409.9125, F.S., relating to study requirements for Medicaid alternative service networks.

Section 52. Provides that the building known as the 1911 State Board of Health Building which is part of a multi-building complex with the address of 1217 Pearl Street, Jacksonville, Florida shall be known as the Wilson T. Sowder, M. D., Building.

Section 53. Provides that the building authorized by Chapter 98-307, L.O.F., that will be located on Seagrape Drive on the Tampa Campus of the University of South Florida which will house laboratory facilities for the Department of Health shall be known as the William G. "Doc" Myers, M. D., Building.

Section 54. Provides that the Department of Health headquarters building that will comprise approximately 100,000 square feet that is authorized by item 1986 in the 1998-99 Appropriations Act shall be known as the E. Charlton Prather, M. D., Building.

Section 55. Authorizes the Department of Health to apply for and to become a National Environmental Laboratory Accreditation program accrediting authority. Legislative intent is provided that the Department of Health shall have authority to adopt rules to enforce the standards of the National Environmental Accreditation program, impose fees, and process applications.

Section 56. Provides an effective date of July 1, 1999.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Art. VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Art. I, subsections 24(a) and (b), Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Art. III, s. 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

Amendments adopted in committee pass along increase in examination fees for radiological certification to the tested applicants. Approximately 2,700 applicants will take or retake such examinations at an additional per person cost of $50 or $135,000 annually.

B. Private Sector Impact:

The American Registry of Radiologic Technologists in St. Paul, Minnesota is the developer and owner of the examination instruments to whom the additional fees will be paid.

C. Government Sector Impact:

The Department of Health estimates that it will save approximately $3,000 each year by not having to administer a system to monitor the transportation of radioactive materials that is repealed under the bill. The Department of Health estimates that it will retain $800,000 in fees collected by the Office of Vital Statistics for the issuance of birth certificates. These fees are currently transferred to the general revenue fund.

The bill adds seven members to the Diabetes Advisory Council. Using the nominal amount of $500 per meeting per member the estimated additional expense associated with this increase is $10,500 annually.

The bill expands by 34 the statutory list of positions eligible for inclusion in the Selected Exempt Services (SES) personnel class. Assistant directors in county health departments and their financial administrators will receive position, salary and benefit upgrades as follows: discretionary salary increases will total $104,600; the financial exposure due to the purchase

of accrued leave resulting from SES upgrade is another $200,000; and the employer's share of employee's co-payments for insurance benefits, approximately $82,000 ($200/month times 12 months times 34 positions). The affected employees will lose their career service rights and will also receive higher leave credits and year-end accruals. Accrued but unused compensatory leave may transfer with the employees or be cashed out by the sending agency.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill creates a third degree felony offense for any person who makes the purchase or receipt of a prescription drug from an unauthorized source.

Section 27 of the bill exempts the department from all of the planning and budgeting statutes in ch. 216, F.S. The agency is currently engaged in an enterprise operation at one of its hospital facilities in which it derives income from the subleasing of vacant space. The agency would like to keep these funds rather than having them subject to the budget amendment process. A more appropriate exemption tailored to the activity at hand would cross reference s. 216.181 or s. 216.292, F.S., only.

VIII. Amendments:

#1 by Governmental Oversight and Productivity:
Amends s. 110.205, F.S., to delete the inappropriate use of plural term.

#2 by Governmental Oversight and Productivity:
Amends s. 381.006, F.S., to delete reference to nursing homes as part of the authority given the Department of Health in the promulgation of rules on environmental health.

#3 by Governmental Oversight and Productivity:
Amends s. 392.69, F.S., to provide an exemption from a specific part of the planning and budgeting statutes, s. 216.292, F.S., rather than the entire ch. 216, F.S.

#4 by Governmental Oversight and Productivity:
Amends ss. 401.25, 401.27, 401.2701, 401.2715, 401.30, and 401.35, F.S. to provide specific legal authority for the department to promulgate rules on its basic and advanced life support regulatory programs. (WITH TITLE AMENDMENT)

#5 by Governmental Oversight and Productivity:
Deletes amendments to s. 499.066, F.S., providing additional administrative enforcement authority to the department. (WITH TITLE AMENDMENT)

#6 by Governmental Oversight and Productivity:

Deletes from the bill proposed amendments to s. 63.162, F.S., revising the requirements for the release of the identity of birth parents in an adoption proceeding. (WITH TITLE AMENDMENT)

#7 by Governmental Oversight and Productivity:
Corrects an incorrect street address reference to a state building designation.

#8 by Governmental Oversight and Productivity:
Substitutes revised language for the designation of the Department of Health as a nationally approved accrediting authority for laboratories.

#9 by Governmental Oversight and Productivity:
Amends s. 381.0022, F.S., to maintain the confidential and exempt status of any information on Medicaid recipients shared by the Department of Health with other agencies when auditing payments for services. (WITH TITLE AMENDMENT)

#10 by Governmental Oversight and Productivity:
Amends s. 383.011, F.S., to give the Department of Health permissive rather than mandatory authority to rules consistent with regulations of the federal Child Care Food Program. (WITH TITLE AMENDMENT)

#11 by Governmental Oversight and Productivity:
Amends s. 468.304, F.S., to pass along increases in examination costs to applicants for radiological certification. (WITH TITLE AMENDMENT)

#12 by Governmental Oversight and Productivity:
Amends s. 468.306, F.S., to pass along increased costs of purchased examinations to the tested applicants. (WITH TITLE AMENDMENT)

#13 by Governmental Oversight and Productivity:
Amends s. 468.309, F.S., to revise the renewal period of a radiological technologist license from December 31 to the birth month. (WITH TITLE AMENDMENT)

#14 by Governmental Oversight and Productivity:
Amends s. 455.557, F.S., to exempt hospital interns from physician profiling requirements. (WITH TITLE AMENDMENT)

10.e. House of Representatives as Revised by the Committee on Health Care Services Final Analysis, HB 2125 (PCS HCS 99-05), Relating to Department of Health, (Florida Archives, Series 19, Carton 3139).

FLORIDA DEPARTMENT of STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

I, Judith Ring, Division Director, Division of Library and Information Services, Florida Department of State, hereby certify the records of the Florida Legislature were transferred to the custody of the Florida State Archives pursuant to the provisions of Chapter 257, Florida Statutes, and that I am, by the terms of that transfer, the official custodian of the records.

I further certify that the attached is a true and correct copy of the record in the State Archives of Florida, the original of which may be found in Series 19, carton 3139.

***WITNESS MY SIGNATURE**, this 10th Day of January, 2014.*

***JUDITH RING**, Director*
Division of Library and Information Services

BY: _____
State Archives of Florida

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DATE: June 14, 1999

FINAL ACTION
SEE FINAL ACTION STATUS SECTION

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HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
HEALTH CARE SERVICES
FINAL ANALYSIS

BILL #: HB 2125 (PCB HCS 99-05)

RELATING TO: Department of Health

SPONSOR(S): Committee on Health Care Services and Representative Peaden

COMPANION BILL(S): CS/SB 2220 (similar); See also CS/HB 1, HB 699, HB 981, CS/HB 1927, HB 2231, CS/SB 2360, CS/SB 2554, CS/HB 319, HB 687, HB 797, HB 965, HB 1073, HB 1431, CS/HB 1467, HB 1703, HB 1847, HB 1881, HB 2031, and HB 2239.

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

(1) HEALTH CARE SERVICES YEAS 16 NAYS 1
(2) GOVERNMENTAL OPERATIONS YEAS 5 NAYS 0
(3) GOVERNMENTAL RULES & REGULATIONS (W/D)
(4) HEALTH & HUMAN SERVICES APPROPRIATIONS (W/D)

I. FINAL ACTION STATUS:

06/18/99 Approved by Governor; Chapter No. 99-397; See also CS/HB 1 (Ch. 99-377), HB 699 (Ch. 99-349), HB 981 (Ch. 99-183), CS/HB 1927 (Ch. 99-393), HB 2231 (Ch. 99-356), CS/SB 2360 (Ch. 99-332), CS/SB 2554 (Ch. 99-275)

II. SUMMARY:

This bill includes provisions designed to improve efficiency of public health programs within the Department of Health (DOH). The bill: removes language that prevents certain individuals from receiving their HIV test results; clarifies requirements relating to HIV tests on deceased persons; amends language relating to public and private water systems; authorizes nursing homes to purchase medical oxygen; provides for clinical trials to be conducted on the use of the drug Secretin by nonprofit providers; revises the membership and duties of the Health Information Systems Council; permits DOH to become an accrediting entity of the National Environmental Laboratory Accreditation program; permits DOH to increase certain examination costs; changes the time of biennial renewal for certified radiologic technicians; provides names for three DOH buildings; repeals certain obsolete provisions; makes clarifying amendments to ch. 499, F.S.; allows DOH to use excess money for the improvement of health facilities at A.G. Holley State Hospital; and authorizes an advisory board. The bill also: revises DOH authority relating to vital records; encourages DOH to foster the provision of trauma care and serve as a catalyst for improvements in trauma care and updating the state trauma system planning process; and establishes statutory authority for DOH rules relating to Emergency Medical Services.

With regard to the Agency for Health Care Administration (AHCA), the bill: provides for issuance of Medicaid identification numbers to certain children; makes technical changes relating to Medicaid eligibility in the CMS program; provides for a phase-in of Medicaid capitated payments to CMS; permits DOH and AHCA to share certain confidential Medicaid information; enables AHCA to pursue a certified match program relating to Healthy Start funding and federal matching funds if necessary; amends Medicaid third-party liability language to require health insurers and HMOs to develop certain tape matches; creates the "Medicaid Estate Recovery Act;" deletes the requirement that one of the four Medicaid provider service network demonstration projects be conducted in Orange County; authorizes AHCA to withhold payments based on evidence of fraud associated with the delivery of Medicaid goods or services; deletes limitations that the agency may only reduce payments up to certain amounts when an overpayment exceeds $75,000; provides for prompt payment of withheld payments to providers once withholding disputes are settled; specifically addresses Medicaid program integrity issues in the context of Medicaid physician providers; repeals obsolete provisions relating to Medicaid alternative service networks; and requires AHCA to enter into agreements with the not-for-profit organizations based in this state for the purpose of providing vision screening.

Relating to medical quality assurance, the bill clarifies language relating to credentialing to provide for the standardized credentialing process for health care practitioners licensed under chapter 458, 459, 460, or 461, F.S., and amends provisions relating to various health care practitioners regulated by DOH including: general provisions; acupuncture; medicine; osteopathic medicine; chiropractic medicine; podiatric medicine; nursing; pharmacy; dentistry; speech-language pathology & audiology; respiratory therapy; athletic trainer; orthotics, prosthetics, & pedorthics; certified nursing assistants; electrolysis; clinical laboratories; clinical laboratory personnel; medical physicists; opticians; fitting/dispensing of hearing aids; physical therapy; psychology; clinical social work, marriage & family therapy, & mental health counseling. The bill also sets requirements for the reports of adverse incidents from office surgery.

In addition, the bill: requires HMOs and provider fiscal intermediaries to include detailed explanation of services for payments to providers; establishes certain requirements for compressed air used for recreational sport diving; and sets public records and public meeting requirements for area agencies on aging within the Department of Elderly Affairs.

The bill creates the following task forces and study groups: the Minority HIV & AIDS Task Force; the Task Force on Telehealth; a seven-member task force to review sources of funds deposited into the Public Medical Assistance Trust Fund; an AHCA study of clinical laboratory services for kidney dialysis patients; and a task force on the study of collaborative drug therapy management.

The effective date of this bill is July 1, 1999, except as otherwise expressly provided.

III. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Department of Health

General Public Health Provisions

In 1996, legislation was passed creating a Department of Health (DOH) to protect and promote the health and safety of residents of, and visitors to, the state. The new department, which came into official existence on January 1, 1997, is composed of the State Health Office and Children's Medical Services Program of the former Department of Health and Rehabilitative Services (HRS). Examination and licensure of the medical professions were removed from the Agency for Health Care Administration (AHCA) and transferred to DOH, effective July 1, 1997.

With the creation of DOH, HRS was renamed the Department of Children and Family Services and reorganized to include four program offices as well as an administration office. The four programs include: Children & Families, Mental Health & Substance Abuse, Economic Self-Sufficiency, and Developmental Services.

There are still several references to HRS in the statute that have not yet been changed to conform to the creation of the Department of Health and the Department of Children and Family Services.

The purpose and organizational structure for DOH are provided in s. 20.43, F.S. This section establishes that the divisions of the Department of Health include the: Division of Administration; Division of Environmental Health; Division of Disease Control; Division of Family Health Services; Division of Children's Medical Services; Division of Local Health Planning, Education, and Workforce Development; and Division of Medical Quality Assurance, which is responsible for medical boards and professions.

Section 20.43, F.S., also gives DOH the authority to use state or federal funds to protect or improve the public health by providing incentives for encouraging disease prevention and patient compliance with medical treatment. The section also gives DOH authority to use funds for health education campaigns and promotional campaigns to recruit health professionals to be employed by the department.

Section 120.80(15), F.S., 1998 Supp., provides that notwithstanding s. 120.57(1)(a), F.S., a formal hearing may not be conducted by the Secretary of Health, the director of the Agency for Health Care Administration, or a board or member of a board within the Department of Health or the Agency for Health Care Administration for matters relating to regulations of any activity, occupation, profession, or vocation regulated by the department in the Division of Medical Quality Assurance. When DOH was still a part of HRS, a process was established that allowed the agency to conduct its own administrative hearings in matters concerning the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), Children's Medical Services (CMS) program, and exemption from disqualification review for certified nurse assistants. DOH no longer has the authority to continue this process.

Private and Public Water Systems

Section 381.0062, F.S., provides that "it is the intent of the Legislature to protect the public's health by establishing standards for the construction, modification, and operation of public and private water systems to assure consumers that the water provided to those systems is potable." Subsection (2) of s. 381.0062, F.S., defines "private water system" as "a water system that provides piped water for no more than four nonrental residences." No definition is provided for a water system that serves only one rental residence, and therefore, a single rental residence would now be included within the definitions of a private water system and a multi-family water system.

Chapter 64E-8, Florida Administrative Code, requires that owners of water systems connecting one or two residences only meet well setback from potential sources of contamination. Owners of water

systems connecting three or four residences must meet the setback requirement, and also obtain a construction permit and provide satisfactory bacteria, nitrate, and lead analytical results. There is no reference made to a single rental residence.

Testing for Human Immunodeficiency Virus (HIV)

Section 381.004(3)(a), F.S., provides that a test designed to identify HIV may not be ordered without the informed consent of the person being tested, except under specified circumstances. Additionally, s. 381.004(3)(d), F.S., provides that test results shall not be determined as positive or revealed to any person, without corroborating or confirmatory tests being conducted, except in certain situations. An exception to this requirement which was enacted in ch. 98-171, L.O.F., provides that "preliminary test results may be released to health care providers and to the person tested when decisions about medical care or treatment of the person tested cannot await the results of confirmatory testing." There is concern that the words "treatment of the person tested" prevents the preliminary HIV test results of a mother who has just given birth from being released to the mother for purposes of immediate initiation of drug therapy for the newborn. Certain drug therapy may help prevent the newborn from contracting HIV from the mother, and because the earlier the drug therapy is initiated the more effective it is, a delay in drug treatment could be detrimental to the infant. This situation only occurs when women who have received no prenatal care arrive at hospital emergency rooms for delivery, because they have not been offered HIV tests as part of a prenatal care program.

Chapter 98-171, L.O.F., also provided for additional exceptions to when informed consent is not required in ordering an HIV test. Section 381.004(3)(h)12, F.S., provides that informed consent is not required "for the performance of an HIV test by the medical examiner upon a deceased individual who is the source of a significant exposure to medical personnel or nonmedical personnel who provided emergency medical assistance and who expired or could not be resuscitated during treatment for the medical emergency." This change was made to allow medical persons and "Good Samaritans" to learn the test results of the source of exposure so that preventative treatment options could begin if the test results were positive. The concern with this language is that not all deceased individuals who are the source of a significant exposure are sent to medical examiners.

Health Information Systems Council

The Health Information Systems Council was created by s. 381.90, F.S., within the Department of Health to, "facilitate the identification, collection, standardization, sharing, and coordination of health-related data, including fraud and abuse data, and professional and facility licensing data among federal, state, local, and private entities." Membership of the council is provided for in this section and includes: the secretary of the Department of Health; the secretary of the Department of Business and Professional Regulation; the secretary of the Department of Children and Family Services; the director of the Agency for Health Care Administration; the secretary of the Department of Corrections; the Attorney General; the executive director of the Correctional Medical Authority; two members representing county health departments, one from a small county and one from a large county, appointed by the Governor; and a representative from the Florida Association of Counties.

Vital Records

Section 382.013, F.S., provides that a certificate for each live birth that occurs in this state shall be filed within 5 days after such birth with the local registrar of the district in which the birth occurred. This section sets out procedures for filing, as well as requirements for registration of paternity, the name of the child, undetermined parentage, and disclosure.

Section 382.025(1), F.S., provides that all Florida birth records are confidential and exempt from the provisions of s. 119.07(1), F.S. Subsection (2) of s. 382.025, F.S., provides that the department authorizes the issuance of a certified copy of any marriage, dissolution of marriage, or death or fetal death certificate, excluding confidential portions, to the person requesting the information. Death and fetal death certificates which include the confidential portions will only be issued to the registrant's spouse or parent, child, grandchild, or sibling (of legal age), or to any family member who provides a will, insurance policy, or document demonstrating his or her interest in the registrant's estate. The confidential portions will also be provided to any agency of the state or local government or the

United States goverment for official purposes upon approval of the department or upon order of any court of competent jurisdiction.

Section 382.0255, F.S., provides that the department is entitled to certain fees for the processing, filing, and retrieving of vital records and registrations. Previously, a portion of these fees was deposited in the Crimes Against Children Trust Fund administered by the Department of Law Enforcement. This trust fund, however, was eliminated on July 1, 1995, and the funds that were being deposited in this trust fund are now transferred to general revenue rather than to Vital Statistics.

Florida Drug and Cosmetic Act

Chapter 499, Part I, F.S., relates to the Florida Drug and Cosmetic Act. Its purposes are to: safeguard the public health and promote the public welfare by protecting the public from injury by product use and by merchandising deceit involving drugs, devices, and cosmetics; provide uniform legislation to be administered as far as practical in conformity with the provisions of, and regulations issued under the authority of the Federal Food, Drug, and Cosmetic Act and the portion of the Federal Trade Commission Act which prohibits false advertising of drugs, devices, and cosmetics; and promote uniformity of state and federal laws, and their administration and enforcement, throughout the United States.

Section 499.05, F.S., establishes prohibited acts relating to drugs, devices, and cosmetics. This section prohibits the sale or transfer of a legend drug or compressed medical gas if the person is not authorized to do so under the law of the state in which he or she resides. A person's residence, however, is irrelevant when determining whether that person is authorized to sell or receive prescription drugs.

According to s. 499.007, F.S., any drug that is habit forming or not safe for use unless under the supervision of a practitioner licensed by law to administer such drugs, is misbranded if it fails to bear on the label the statement: "Caution: Federal Law Prohibits Dispensing Without Prescription" or "Caution: State Law Prohibits Dispensing Without Prescription." In 1997, Congress passed the Food and Drug Administration Modernization Act, which provides that the label statement on such drugs is to appear as "Rx Only" or the prescription symbol followed by the word "Only." Federal regulations implementing this new prescription statement provide for a phase-in of labeling changes through February 2003. If ch. 499, F.S., is not revised to reflect this change in federal law, many prescription drug products entering Florida will be misbranded under Florida law.

Section 499.012, F.S., provides for "wholesale distribution" of prescription drugs to persons other than a consumer or patient, with a number of exceptions identified. A few of the listed exceptions include the following: purchases by a hospital or other health care entity that is a member of a group purchasing organization; the sale or trade of a prescription drug by a charitable organization; the sale or trade of prescription drugs among hospitals of common ownership; the sale or trade of prescription drugs among federal, state, or local governmental health care entities that are under common control; transfers between retail pharmacies to alleviate a temporary shortage; and the purchase of a prescription drug by an emergency medical director for use by emergency medical providers acting pursuant to ch. 401, F.S.

In s. 31, ch. 98-151, Laws of Florida, changes were made to the numbering of s. 499.012, and the Department of Health was granted authority to adopt rules governing the recordkeeping, storage, and handling with respect to each of the distributions of prescription drugs specified in subparagraphs (1)(a)1., 2., 4., and 5., of this section as revised. These identified subparagraphs cover the same basic "wholesale distribution" of prescription drug exceptions identified above (prior to the 1998 changes).

The rules authorized in the 1998 change have been adopted and became effective January 26, 1999. According to the department, substantially similar authorization has been granted through rulemaking for the governmental sale or transfer of prescription drugs to any entity eligible to purchase such drugs at public health prices pursuant to s. 602 of Public Law No. 102-585 for a contract provider or its subcontractor for eligible patients under certain conditions. The rule provides

for the issuance of a restricted distributor's permit to monitor this activity. Also, the rule does not prohibit prescription drugs transferred under this authority from being billed to Medicaid.

Section 499.028, F.S., relating to drug samples and complimentary drugs, provides that individuals may not possess a prescription drug sample unless: the drug sample was prescribed to her or him, the individual is the employee of a complimentary drug distributor that holds a permit, or the individual is a person to whom prescription drug samples may be distributed pursuant to this section. Currently, there is no clear provision allowing federal, state, and local government employees, acting within the scope of employment, to possess prescription drug samples.

AIDS/HIV

- National Data & Background

The U.S. Department of Health and Human Services (HHS) reports that AIDS is a leading cause of death for all persons 25 to 44 years of age. The Centers for Disease Control and Prevention (CDC) estimates that there are 650,000 to 900,000 Americans living with HIV infection. HHS further identifies that AIDS has disproportionately affected minority populations. Racial and ethnic minorities constitute approximately 25 percent of the total U.S. population, yet account for nearly 54 percent of all AIDS cases. While the epidemic is decreasing in some populations, the number of new AIDS cases among blacks is now greater than the number of new AIDS cases among whites.

According to the HHS, there are several different HIV epidemics occurring in the U.S. Although the number of AIDS diagnoses among gay and bisexual men has decreased among white men since 1989, the number of AIDS diagnoses among heterosexual black men has increased. In addition, AIDS cases and new infections related to injecting drug use appear to be increasingly concentrated in minorities; of these cases, almost 75 percent were among minority populations (56 percent black and 20 percent Hispanic). Of the cases reported among women and children, more than 75 percent are among racial and ethnic minorities.

Additionally, HHS reports that during 1995 and 1996, AIDS death rates declined by 23 percent for the total U.S. population. AIDS death rates declined by 13 percent for blacks and 20 percent for Hispanics. HHS contributes the mortality disparities to late identification of the disease and lack of health insurance to pay for drug therapies.

HHS identifies that inadequate recognition of risk, detection of infection, and referral to follow-up care are major issues for high-risk populations. About one-third of persons who are at risk of HIV/AIDS have never been tested.

- Florida Data & Background

According to the Department of Health, Florida has the third highest number of reported AIDS cases and the second highest number of reported pediatric AIDS cases in the nation. As of January 1999, there were 70,881 Floridians over age 13 with AIDS. Further review of the statistics reveal that approximately 59 percent of the reported AIDS cases occur among blacks, Hispanics, and other minority groups. There are a total of 31,822 black persons and a total of 10,796 Hispanic persons with AIDS in Florida.

The Department of Health reports that from July 1997 to January 1999, there were 9,675 reported HIV cases. Seventy-five percent of these cases occurred among blacks, Hispanics, and other minority groups; 5,643 black persons and 1,401 Hispanic persons are reported to have HIV. Black women who are heterosexually infected with HIV are the fastest growing group of infected persons.

Furthermore, members of the black community tend to develop AIDS within one month of being diagnosed with HIV. Commensurate with national data outlined above, the Department of Health identifies that the black community fails to receive early testing for HIV and subsequent life-prolonging treatment for this condition.

The Florida Department of Health estimates the medical and related costs for a person infected with HIV can reach $175,000 over the person's lifetime. At the same time, studies reveal that sustained,

comprehensive prevention efforts can have a significant impact on slowing the course of the HIV/AIDS epidemic.

Autism

- The Disease

Autism is a complex neurodevelopmental disability affecting communication, social functioning, and adaptive behavior. It is estimated that autism occurs in about 15 of every 10,000 births nationwide. The Center for Autism and Related Disabilities in Florida notes that autism occurs by itself, with mental retardation, or with other health problems such as epilepsy, viral infections, or changes in a person's growth rate or metabolism. According to the National Institute of Child Health and Human Development, autism is a major pediatric health issue in the United States, with associated health care costs exceeding $13 billion per year. The cause of autism is unknown. According to the National Institute of Mental Health, it is generally accepted that autism is caused by abnormalities in brain structures or functions.

Section 393.063(3), F.S., 1998 Supplement, defines autism as "a pervasive, neurologically based developmental disability of extended duration which causes severe learning, communication, and behavior disorders with age of onset during infancy or childhood. Individuals with autism exhibit impairment in reciprocal social interaction, impairment in verbal and nonverbal communication and imaginative ability, and a markedly restricted repertoire of activities and interests." Individuals with autism, regardless of severity of impairments and the presence of coexisting conditions, do share some common needs. Difficulties with speech and language necessitate varying degrees of speech therapy. Occupational and physical therapy may also be helpful in improving social and functional abilities. Intensive behavioral programs, varying in intensity and structure based on individual need, are universally recognized as essential in assisting people with autism with developing critical social and functional skills. Finally, early intervention is important for children. Interventions that occur during this critical period in a child's development have been documented to significantly increase a child's skills and capacities for life-long learning.

According to the National Institute of Mental Health (NIMH), a number of treatment approaches have evolved in the decades since autism was first identified, including developmental and behaviorist approaches. Developmental approaches provide consistency and structure along with appropriate levels of stimulation. Behaviorist training involves time-intensive, highly structured, repetitive sequences in which a child is given a command and rewarded each time he responds correctly. By using this approach for up to 40 hours a week, some children may be brought to the point of near-normal behavior. Others are much less responsive to the treatment. However, some researchers and therapists believe that less intensive treatments, particularly those begun early in a child's life, may be more efficient and just as effective. Presently, NIMH is funding several types of behaviorist treatment approaches to help determine the best time for treatment to start, the optimum treatment intensity and duration, and the most effective methods to reach both high and low functioning children.

- Secretin

According to the National Institutes of Health, Secretin is a gastrointestinal peptide hormone that controls digestion. The primary action of Secretin is to increase the volume and bicarbonate content of secreted pancreatic juices. The United States Food and Drug Administration has approved Secretin for single dose use in diagnosing gastrointestinal problems such as impaired pancreatic function or gastric problems such as ulcers in adults. The use of Secretin for any other purpose may be considered a use for which the United States Food and Drug Administration has not issued formal approval; such use is commonly referred to as "off-label" use of a drug.

Little research has been published on the use of Secretin as a treatment for children with autism. A recent study of three children with autism and gastro-intestinal problems titled "Improved social and language skills after Secretin administration in patients with autistic spectrum disorders" (Horvath K, et al. published in the *Journal of the Association for Academic Minority Physicians* 1998; 9: 9-15) indicated that after Secretin infusion, the children's gastro-intestinal problems improved and the children became more sociable and communicative. On October 7, 1998, *Dateline NBC* reported that

an autistic child, Parker Beck, who had suffered constant diarrhea and vomiting for almost two years and who was given Secretin while being treated for the gastro-intestinal problems, had improved communicative skills. According to the director of the Autism Research Institute, unofficially, about 200 children have received Secretin and more than half of the children have shown some positive response. The Autism Research Institute preliminary survey on the use of Secretin to treat autism indicated that there is little data as to what is the best dosage and optimal schedule of administration of Secretin for treatment of autism.

The National Institutes of Health encourages human and animal research including genetic, neuroanatomic, neurophysiologic, immunologic, neurochemical, and neuropsychologic studies to shed light on the etiology and pathophysiology of autism and studies of effective behavioral and psychopharmacologic interventions. The National Institutes of Health does not currently have a formal position on the therapeutic use of Secretin in the treatment of autism. The National Institute of Child Health and Human Development invites qualified applicants to submit applications for research funding to explore the safety, efficacy, and mechanism of action of Secretin as an effective treatment for autism or gastro-intestinal disorders associated with autism.

- Protection of Human Subjects

The United States Department of Health and Human Services has established regulations (Protection of Human Subjects, 45 Code of Federal Regulations part 46) to establish a federal policy for the protection of human subjects. The federal policy for the protection of human subjects applies to all research involving human subjects conducted, supported, or otherwise subject to regulation by any federal department or agency which takes appropriate action to make the policy applicable to such research. Under the federal regulation for the protection of human subjects, institutional review boards must review and have authority to approve, require modifications in, or disapprove all research activities. Federally sanctioned institutional review boards use the following criteria for approval of research: risks to subjects are minimized by the use of procedures which are consistent with sound research design; risks to subjects are reasonable in relation to anticipated benefits; selection of subjects is equitable; informed consent will be sought from each prospective subject or the subject's legally authorized representative; informed consent is appropriately documented; when appropriate, the research plan makes adequate provision for monitoring data to ensure the safety of subjects; and when appropriate, there are adequate provisions to protect the privacy of subjects and to maintain the confidentiality of data.

- Children's Medical Services

Under the authority of chapters 383 and 391, F.S., the Children's Medical Services (CMS) Office of the Department of Health provides a comprehensive system of care ranging from prevention services to long-term care services for financially-eligible high-risk pregnant women, sick or low birthweight newborns, and children with chronically handicapping or potentially handicapping conditions. Prevention services are available through statewide programs such as infant metabolic screening, infant hearing screening, and poison control centers. Prevention services also include the statewide Regional Perinatal Intensive Care Centers (RPICC) Program, which provides specialized services to high-risk pregnant women and newborns. Early intervention services are available throughout the state for infants and toddlers who are at risk for developmental delay. These services are provided by local agencies and Developmental Evaluation and Intervention programs. To administer the Children's Medical Services Program, the Department of Health has among its powers, duties, and responsibilities the charge "to sponsor or promote grants for projects, programs, education, or research in the field of medical needs of children, with an emphasis on early diagnosis and treatment" (s. 391.026(7), F.S., 1998 Supplement).

Emergency Medical Services

Chapter 401, F.S., relates to Medical Telecommunications and Transportation. Part I addresses Emergency Telecommunication Systems, Part II is known as the "Florida Emergency Medical Services Grant Act," and Part III is cited as the "Raymond H. Alexander, M.D., Emergency Transportation Services Act."

Section 401.25, F.S., establishes the licensing and operational requirements for emergency medical service licensees. Current law requires basic or advanced life support service licensure, submission of an application and relevant documents, payment of fees, licensure requirements, authority to suspend or revoke a license, license expiration dates, requirements for renewal, and an option for counties to adopt by ordinance reasonable standards. The Department of Health reports that the current law has the following shortcomings:

- lacks time frames, other than the expiration date of a license, for the timely submission of licensure renewal applications;
- does not address medical direction as a condition of licensure;
- does not address trauma transport protocol as a condition of licensure. This limits the department's ability to provide oversight in the coordination of trauma transports; and
- lacks explicit rule authority for the department to administer the requirements of the section.

Section 401.27, F.S., relates to the certification/recertification requirements for emergency medical technicians and paramedics. In addition, s. 401.27(1), F.S., provides staffing requirements for basic life support vehicles, but fails to include requirements for advanced life support vehicles. Requirements for staffing of permitted vehicles are currently established in rule. Repeal of the rule effective July 1, 1999, pursuant to the revised Administrative Procedure Act (APA), will leave the department without authority to establish staffing requirements. Rule authority is not provided to the department to administer the section.

Section 401.30, F.S., establishes records requirements for emergency medical service licensees. The section provides for the confidentiality of patient records and appropriate limited release of these records without the consent of the patient. The section permits release of the emergency medical service licensee's patient records to the treating hospital, but does not provide an explicit requirement to deliver such copy to the hospital. Requirements for delivery of patient records by licensees to receiving hospitals are currently established in rules. Repeal of the rule effective July 1, 1999, pursuant to the APA, leaves the department without authority to require licensees to provide emergency medical services patients' records to receiving hospitals.

Chapter 401, F.S., does not clearly define the department's role in the regulation of entities that provide emergency medical technician and paramedic certification and recertification education. Requirements for the regulation of education programs are currently established in rules. Repeal of the rule effective July 1, 1999, pursuant to the APA, leaves the department without authority to regulate emergency medical technician and paramedic education programs.

There is currently no provision in law authorizing the department to administer oaths, take depositions, or issue subpoenas in its investigations or proceedings. Lack of such authority hinders the department in obtaining evidence during investigations.

Although there is a provision in chapter 401, F.S., for emergency medical service licensees to share patient information with receiving hospitals, there is no provision for hospitals to share information with the licensee without the consent of the patient. Emergency medical service licensees lack the definitive diagnoses of patient's conditions which can be used in quality management programs to improve the care and treatment provided to the public.

Agency for Health Care Administration and Medicaid

Medicaid Estate Recovery

In August 1993, Congress passed the Omnibus Budget Reconciliation Act (OBRA 93) which, in part, requires state Medicaid agencies to establish and maintain estate recovery programs. The act requires states to recover the cost of medical assistance correctly paid on behalf of an eligible recipient who had reached age 55 prior to receiving services. OBRA 93 allows states to recover the costs of such benefits after the death of the recipient and after the death of the surviving spouse, dependent minor, or adult or minor handicapped children meeting the Social Security Administration definition of handicapped, if any. The Agency for Health Care Administration is responsible for identifying the estates of former Medicaid recipients and recovering any funds the estate might owe the state as reimbursement for Medicaid expenditures made on behalf of the decedent. Under the

provisions of Article X, Section 4, of the Florida Constitution, the homestead of the individual is exempt from estate recovery.

Medicaid's estate recovery efforts operate under the general provisions relating to public assistance. While specifying Medicaid estate recovery provisions in law, the Legislature has taken steps in the past to enhance the state's estate recovery efforts. For example, ch. 98-191, L.O.F., amended s. 198.30, F.S., relating to estate recovery, to require that circuit judges provide to AHCA a copy of a monthly report containing the estate information of all decedents whose wills have been or will be probated before the court judge. This 1998 measure also amended s. 414.28, F.S., relating to public assistance debts, to raise public assistance recovery debts from Class 7 (debts acquired after death) to Class 3 (debts and taxes with preferences under federal law).

The primary source of information for estate recoveries comes from monthly Clerk of Court reports that are to detail every estate that was opened in that county during that month. Letters of Administration submitted by personal representatives or attorneys also serve as leads for the recoveries, but are inconsistently provided to AHCA. When a lead is received, research is conducted to determine if the individual was a Medicaid recipient and meets all the criteria for an estate recovery. Once the information has been verified, the recipient's claim history is reviewed to determine a lien amount to file against the estate. This lien amount may be amended as Medicaid providers file additional claims on the recipient.

The Agency for Health Care Administration contracted with a private attorney to conduct the state's Estate Recovery Program from January 1994 until December 1995. The agency competitively procured a contractor to conduct the estate recovery program and, in June 1996, AHCA awarded the contract to Public Consulting Group. The contract expired in April, 1999; however the agency plans to exercise one of its renewal options to extend the contract through October 31, 1999. The estate recovery program has been very successful in recoveries. Collection figures based on state fiscal years are as follows:

Year	Collection Amount
1995	$1,175,590
1996	$3,955,840
1997	$3,511,365
1998	$6,024,165

Section 733.212, F.S., relates to notices of administration and the filing of claims against estates of decedents. Such notice requirements currently do not involve any notice to AHCA for estates of decedents who may have been Medicaid recipients.

Medicaid Third-Party Liability

Section 409.910, F.S., 1998 Supplement, is the "Medicaid Third-Party Liability Act," under which AHCA is to seek to recover the cost of goods and services delivered to a Medicaid recipient when another third party may be responsible for such costs of services. Subsection (20) of this section requires insurers and health maintenance organizations (HMOs) to "provide such records and information as are necessary to accomplish the purpose of this section, unless such requirement results in an unreasonable burden." Additionally, this subsection requires AHCA and the Insurance Commissioner to enter a cooperative agreement for requesting and obtaining information from insurers and HMOs for purposes of the subsection, including the adoption of rules for implementing the cooperative agreement. Even though this authority for a cooperative agreement has been in statute for several years, no such agreement exists.

Medicaid Program Integrity/Fraud and Abuse

More than $1 trillion is spent on health care each year in the United States. The proportion of annual health care expenditures lost to fraud and abuse remains unknown because such losses are not systematically measured. Conventional wisdom, supported by relatively recent Medicare studies undertaken by multiple federal agencies, estimates that losses to fraud and abuse may exceed 10 percent of annual health care spending. Given this degree of fraudulent activity, Florida has taken a number of steps in the past few years to avoid and detect fraud and abuse in the Medicaid program.

As a result of initiatives on the part of AHCA, the Legislature, the Attorney General's Medicaid Fraud Control Unit, and the Grand Jury convened by the Statewide Prosecutor, much has been accomplished to keep "bad" providers out of the Medicaid program. What remains to be reviewed is how to make sure that the remaining "good" providers are not unnecessarily burdened by program integrity reviews within the Medicaid program, while at the same time guarding against any provider abuses of the program.

Section 409.913, F.S., provides for the oversight of the integrity of the Florida Medicaid program. Staff of Medicaid Program Integrity developed and use statistical methodologies to identify providers who exhibit aberrant billing patterns, conduct investigations and audits of these providers, calculate provider overpayments, initiate recovery of overpayments in instances of provider abuse, recommend administrative sanctions for providers who have abused or defrauded Medicaid, and refer cases of suspected fraud to the Medicaid Fraud Control Unit in the Attorney General's Office.

Medicaid Healthy Start Waiver Authorization

Section 1 of ch. 98-288, L.O.F., directed AHCA, working in consultation with the Department of Health and the Florida Association of Healthy Start Coalitions, to seek a federal waiver to secure federal Medicaid matching funds for Healthy Start services. Section 52 of the 1998 act also amended s. 409.906, F.S., to create a new subsection (11) which authorized Healthy Start services as an optional Medicaid service, pursuant to a waiver of federal requirements relating to amount, duration, and scope of services. The intent of these revisions was to use existing state and local funds to draw down matching federal Medicaid funding for Healthy Start's continuum of risk-appropriate medical and psychological services. The Agency for Health Care Administration has applied for the waiver, and is still awaiting final federal approval of the waiver.

Medicaid Provider Service Network Demonstration Projects

Section 10 of ch. 97-260, L.O.F., and s. 15 of ch. 97-263, L.O.F., codified as s. 409.912(3)(d), F.S., provided authorization for the Agency for Health Care Administration to conduct no more than 4 provider service network demonstration projects, with the stipulation that one of the projects be conducted in Orange County. After releasing its Invitation to Negotiate, AHCA had only one bidder from Orange County. During the course of negotiations, this sole bidder decided not to participate in the demonstration project. The Orange County stipulation in the statute precludes AHCA from going elsewhere for a demonstration project.

Public Medical Assistance Trust Fund

Chapter 395, F.S., relates to hospital licensing and regulation. Part IV of ch. 395, F.S., relates to the Public Medical Assistance Trust Fund. Section 395.701, F.S., 1998 Supplement, imposes an assessment of 1.5 percent on the net operating revenue for each hospital, as determined by AHCA, based on the actual audited data of the hospital as reported to AHCA.

Section 395.7015, F.S., 1998 Supplement, imposes an annual assessment of 1.5 percent on the net operating revenues of certain health care entities. The assessment is imposed on the following entities: ambulatory surgical centers and mobile surgical facilities licensed under s. 395.003, F.S.; clinical laboratories licensed under s. 483.091, F.S. (with certain exclusions); freestanding radiation therapy centers providing treatment through the use of radiation therapy machines that are registered under s. 404.22, F.S., and rules 10D-91.902, 10D-91.903, and 10D-91.904 of the Florida Administrative Code; and diagnostic-imaging centers that provide specialized services for the identification or determination of diseases through examinations, and also provide sophisticated radiological services rendered by physicians licensed under s. 458.311, 458.313, 458.317, 459.006, 459.007, or 459.0075, F.S.

Chapter 98-192, L.O.F., provided an exemption from the assessment on hospital net operating revenues for outpatient radiation therapy services provided by a hospital, and provided for the elimination of the assessment on freestanding radiation therapy centers. The exemption and elimination were made contingent upon AHCA receiving written confirmation from the federal Health Care Financing Administration (HCFA) that the changes would not adversely affect the use of the remaining assessments as state matches for the Medicaid program. On July 7, 1998, AHCA

submitted a letter to HCFA requesting that they confirm that the provisions of chapter 98-192, L.O.F., would have no impact on the permissibility under federal rules of the remaining assessments. On December 17, 1998, HCFA requested additional information from the agency. The agency is evaluating HCFA's request to determine how best to obtain the data that the agency does not now have, or how to otherwise approximate the requested information. Because HCFA confirmation has not been received, the assessments are still in place.

All assessments collected under ss. 395.701 and 395.7015, F.S., 1998 Supplement, are deposited into the Public Medical Assistance Trust Fund. The assessments, combined with the projected revenues from cigarette taxes and interest earnings, are fully utilized each year in the General Appropriations Act.

The Social Services Estimating Conference met on February 16, 1999, and adopted the following estimates for the Public Medical Assistance Trust Fund for FY 1999-2000:

Estimated revenues:	
Assessments on hospitals	$253,300,000
Assessments on other health care entities	19,200,000
Cigarette tax distribution to PMATF	118,300,000
Interest	3,000,000
Total estimated revenues	$393,800,000
Estimated expenditures:	
Hospital inpatient services	$393,600,000
Administration	200,000
Total estimated expenditures	$393,800,000
Estimated ending cash balance	$0

Patient's Rights and Services Provided by Health Care Practitioners and Facilities

Section 381.0261, F.S., deals with the Florida Patient's Bill of Rights. It provides for a health care practitioner or a health care facility to provide, upon request by a patient, a summary of their rights, pursuant to this section. Currently, the responsibility for enforcement of these provisions rests with the Agency for Health Care Administration. The Department of Health's Division of Medical Quality Assurance has no enforcement responsibility for these requirements with health care practitioners.

Health Care Practitioners

General Provisions -- Chapter 455, F.S.

Chapter 455, part II, F.S., is the administrative chapter that applies to all medical "health care practitioners" contained in the Division of Medical Quality Assurance (MQA) within the Department of Health.

The present status of various sections of ch. 455, F.S., is as follows:

455.501 - Provides a list of all the various medical professions. However, through oversight and because various professions have been added to the Division without being added to the section, the following "health care practitioners" are not included: certified nursing assistants; midwives; nursing home administrators; athletic trainers; orthotists; prosthetists and pedorthetists; electrologists; clinical laboratory personnel; or medical physicists. While all these professions are regulated under MQA, because they are not listed in this definition, technically none of the provisions of ch. 455 currently apply to these professions.

455.564 - Provides authority to grant continuing education credits for attending risk management courses, disciplinary portions of board meetings; and establishes that volunteer expert witnesses or

members of probable cause panels are limited to the four boards named in this section (medical, osteopathic, chiropractic, and podiatric). Other boards in MQA have requested this authority.

455.565 - Establishes information required for licensure. Currently it is unclear as to whether practitioners (medical, osteopathic, chiropractic, and podiatric) are to report the year they began practicing in Florida or the year they began practice in any jurisdiction. Information on hospital discipline of a health care practitioner is currently required to be included in the practitioner profile report prepared by the Department of Health.

455.567 - Allows the department or boards to refuse to license applicants for examination or licensure if they have committed an act of sexual misconduct or had a license in another jurisdiction revoked or surrendered based on a violation of sexual misconduct. However, this section does not have a definition for sexual misconduct which has made it difficult to implement.

455.574 - Sets department requirements for examination services. Examination services do not have the authority to restrict a candidate's access to only the incorrect answers when the candidate asks for a review of his or her score. This causes security and confidentiality problems.

455.587 - MQA does not currently have the authority to charge a fee to recoup its costs when printing a duplicate wall certificate or a wall certificate for a practitioner licensed prior to July 1, 1998.

455. 604 - Licensees under part X, ch. 468 (dietetics and nutrition), are not currently required to complete a continuing education course on human immunodeficiency virus and acquired immune deficiency syndrome for licensure renewal.

455.607 - Licensed athletic trainers are not currently required to complete a course on human immunodeficiency virus and acquired immune deficiency syndrome for licensure renewal.

455.624 - MQA has been unsuccessful in prosecuting cases against licensees because they lack authority "as grounds for discipline" in the following situations: failure to provide patients with information about their patient rights and how to file a complaint; attempting to engage or engaging a patient or a client in verbal or physical sexual activity; failure to comply with the requirements of profiling and credentialing; failure to report within 30 days a conviction or adjudication of a crime in any jurisdiction; or improperly using information gained from police accident reports.

Also, the present cap of a $5,000 fine per count for violations of ch. 455 is not felt to be punitive enough in some disciplinary situations.

455.654 - Sets requirements for financial arrangements between referring health care providers and providers of health care services. Defines a health care provider as any one licensed under chs. 458, 459, 460, 461, 463, or 466. Provides a number of exceptions (12) to the definition of referrals, such as services: by a radiologist for an MRI; by a physician specializing in radiation therapy services; by a provider for diagnostic laboratory services related to renal dialysis; and by a nephrologist for renal dialysis services and supplies.

455.667 - Provides for the ownership and control of patient records. In certain instances, the department may obtain patient records and insurance records if a complaint has been filed alleging inadequate medical care based on termination of insurance. In the course of its investigations, the department has determined that the patient's billing records are needed to determine if fraud has been committed. However, the department has had difficulty obtaining these records in the past. The keeper of the records maintains that the department is only entitled to patient records, and that billing records are not part of these records.

455.687 - Provides for immediate suspension of license for certain health care practitioners. The department states that it currently has no authority to suspend, on an emergency basis, the license of any practitioner who tests positive on a drug screen conducted for purposes of employment.

455.694 - Provides requirements for financial responsibility for a selected number of professions (acupuncture, dentistry, advanced registered nurse practitioner, and chiropractic and podiatric medicine). Midwives are not currently required to comply with financial responsibility laws.

In addition, business establishments licensed under the various MQA chapters currently are not required to meet the same conditions as practitioners in maintaining active status licenses or held to the same disciplinary standards.

Acupuncture - Chapter 457, F.S.

Currently, there is no approval process, registration, or regulation of visiting faculty who wish to teach, demonstrate, or lecture in the arena of professional acupuncture education. Many other professions currently have provisions for faculty permits or licenses.

Medicine - Chapter 458, F.S.

Current law requires all applicants for testing to apply to the Board of Medicine. However, as of January 1, 1999, all medical examinations will be given by the Federation of State Medical Boards and the applications are to be submitted to the Federation and not the various states. Also, effective January 1, 2000, only applicants for licensure who have passed all parts of the USMLE examination will be accepted for licensure. The examination requirement section of the Medical Practice Act needs conforming to the existing requirements of national medical examinations and removal of obsolete language.

The endorsement requirement section in ch. 458 needs conformation to the current requirements of the national medical examinations and contains obsolete language. Effective January 1, 2000, only applicants for licensure who have passed all parts of the USMLE examination will be accepted for licensure by endorsement.

Current law, as it relates to the issuance of temporary licenses, provides that each time a licensee wants to move between areas of critical need, the licensee must make an application to the Board of Medicine for approval. There has been an expressed need for portability of a temporary certificate for practice in areas of critical need instead of requiring re-licensure whenever a practitioner moves from one locale to another.

Current law requires a full application and review process before a licensee with an active license may convert it to a limited license (part-time/retirement). There is a need for a simple conversion of a full license to a limited license under certain conditions without a lengthy re-application and certification process.

The Board of Medicine does not currently have the authority to discipline a licensee for failure to comply with the law regarding patient rights. Also, the current cap is a $5,000 fine per count for disciplinary offenses. This has been in effect for a long period and it is felt by the board that the cap of a $5,000 fine per count for disciplinary offenses is not punitive enough for some situations, such as cases of egregious fraud.

There is currently no statutory time limit on a temporary license issued to a physician assistant under ch. 458. Also, the current law requires a practical examination as a component of the licensure examination for physician assistants.

Osteopathic Medicine - Chapter 459, F.S.

The current definition of the "practice of medicine" does not encompass making or approving a diagnosis, treatment plan, operation, procedure, or prescription as the medical director of an institution, program, health plan, or insurer. The Board of Osteopathic Medicine maintains there is no accountability to the board under its standards by these individuals for the practice of medicine. The definition is silent as to whether the practice of osteopathic medicine includes coverage decisions for purposes of insurance benefits.

Current law requires a full application and review process before a licensee with an active license may convert it to a limited license (part-time/retirement). There is a need for a simple conversion of a full license to a limited license under certain conditions without a lengthy re-application and certification process.

The Board of Osteopathic Medicine does not currently have the authority to discipline a licensee for failure to comply with the law regarding patient rights. Also, the current cap is a $5,000 fine per count for disciplinary offenses. This has been in effect for a long period and it is felt that the cap of a $5,000 fine per count for disciplinary offenses is not punitive enough for some situations, such as cases of egregious fraud.

Chiropractic Medicine - Chapter 460, F.S.

Presently, a requirement exists for chiropractic licensure candidates to complete a post graduate internship. In the past, the Board of Chiropractic Medicine had established rules for the qualifications and procedures of a supervising physician. However, these rules were determined to exceed the board's authority. The board is of the opinion that the law should be changed to grant them the authority to establish rules for the qualifications and procedures of a supervising physician.

Also, the board may not fine a licensee more than $2,000 per count in any disciplinary case, even in such cases as egregious fraud.

Podiatric Medicine - Chapter 461, F.S.

Currently, podiatric X-ray assistants are not regulated under the Board of Podiatric Medicine. They are certified under the provisions of a different chapter of law and by a different division of the Department of Health. There are no requirements or practice guidelines specified in the Podiatric Medicine Practice Act for the use of X-ray machines by podiatric X-ray assistants. They are currently certified under ch. 468, part IV, F.S., relating to radiologic technology. Section 468.307, F.S., does not contain any provision for the department to establish by rule a subcategory of a certificate limiting the holder to a specific procedure or specified type of equipment.

The licensure requirements for podiatric medicine presently does not have any provisions to require that an applicant has been actively training, teaching, or practicing within a certain time frame before licensure. There is no definition of "active practice of podiatric medicine." In some instances, this prevents the board from denying licensure to an applicant who has been out of active practice for many years.

Also, the Board of Podiatric Medicine does not have authority to discipline licensees who violate the patient's rights law. The board can not impose more than a $1,000 fine per count for disciplinary offenses, no matter how serious the violation.

Nursing - Chapter 464, F. S.

There is currently no limit on the number of times an applicant may take the nursing licensure examination or authority for the board to establish by rule, guidelines or conditions for re-training in the event of failure.

The definition of the "practice of nursing" does not encompass those individuals who may be enrolled in remedial courses in order to be approved for examination.

Pharmacy - Chapter 465, F.S.

Chapter 465, F.S., regulates the practice of pharmacy. The Board of Pharmacy is currently composed of nine members. Two of the members are consumer members and the remaining seven members are pharmacists.

Section 465.003(12), F.S., defines the "practice of pharmacy" as including "compounding, dispensing, and consulting concerning contents, therapeutic values, and uses of any medicinal drug and consulting concerning therapeutic values and interactions of patent or proprietary preparations, whether pursuant to prescriptions or in the absence and entirely independent of such prescriptions or orders." The phrase also includes "any other act, service, operation, or transaction incidental to, or forming a part of, any of the foregoing acts, requiring, involving, or employing the science or art of any branch of the pharmaceutical profession, study, or training, and shall expressly permit a

pharmacist to transmit information from persons authorized to prescribe medicinal drugs to their patients."

While pharmacists are authorized to dispense medications and consult with patients regarding their medications, they are not authorized to evaluate and monitor the patient's health as it relates to drug therapy and assist the patient in the management of their drug therapy. A pharmacist does not have authority to diagnose and treat patients, or to alter the prescriber's directions.

Present regulations allow pharmacists to order and evaluate laboratory tests in nursing homes and long-term care facilities.

Section 465.016, F.S., provides various grounds for disciplinary actions against a pharmacist. One ground for disciplinary action is placing in the stock of a pharmacy any part of a prescription which is returned by a patient; however, an exception is made for a hospital, nursing home, or extended care facility in which unit-dose medication is dispensed to patients and the medication meets certain requirements.

There is currently no definition in the pharmacy statute for a "data communication device" as used in a pharmacy setting.

The return of unit-dose prescriptions in institutions does not currently encompass pharmacies located in correctional facilities. Also, the Pharmacy Practice Act does not make provision for disciplining licensees who do not protect the confidentiality of patients' records. The board may not fine more than $1,000 per disciplinary offense, no matter how serious the violation.

Also, the present law is unclear as to who owns the records maintained in a pharmacy and does not specify the conditions under which those records may be released by a patient to other parties. There is no prohibition on the use of records obtained through data communication devices, and no explicit ground for disciplining a pharmacist for unauthorized release of a patient's records.

Dentistry - Chapter 466, F.S.

Work orders for use by unlicensed personnel to perform dental laboratory services are now required to be on a form approved by the department. This form must be supplied to the dentists by the department at a cost not to exceed that of printing and handling.

The current definition of the "practice of dentistry" does not encompass making or approving a diagnosis, treatment plan, operation, procedure, or prescription. The definition is silent as to whether the practice of dentistry includes coverage decisions for purposes of insurance benefits.

Speech-Language Pathology & Audiology - Chapter 468, Part I, F.S.

Currently, there are two avenues for licensure. One avenue is to meet the requirements of the practice act. The second avenue, or exception, is through the Department of Education, which expires on January 1, 2000. After this date, there will only be one licensure procedure, which will provide for uniform licensure.

The current law only requires a master's degree with a major emphasis in speech-language pathology. However, the University of Florida has a program that does not offer a master's degree, only a doctoral degree. There is currently confusion as to whether the University of Florida program will comply with the letter of the law.

Also, the board may certify certain persons who meet specific criteria as a speech-language pathology assistant, or as an audiology assistant. While it is not clear, the Department of Education has requested that the statutory language reflect the reality that these applicants must obtain a bachelor's degree.

Dietitians & Nutritionists - Chapter 468, Part X, F.S.

The practice act for dietitians and nutritionists does not currently define sexual misconduct. This makes it extremely difficult to prosecute a licensee for a violation.

Athletic Trainers - Chapter 468, Part XIII, F.S.

There is currently a Council of Athletic Training composed of seven members reporting to the department. Four of the council members are required to be athletic trainers, one member a physician licensed under ch. 460, F.S., one member a physician licensed under either chapter 458 or 459, F.S., and one consumer member. The council is to advise and assist the department in regulating this profession.

Orthotics, Prosthetics, & Pedorthics - Chapter 468, Part XIV, F.S.

A new Board of Orthotics and Prosthetics was created in 1997, to regulate this profession. A March 1, 1998, date was provided to grandfather in certain professionals who were currently practicing or in the process of becoming certified to practice this profession. Provision was provided to either issue a license or a provisional license based on the qualifications of these individuals.

Electrolysis - Chapter 478, F.S.

Electrolysis has an advisory council that makes recommendations to the Board of Medicine which actually regulates this profession. Electrolysis or electrology means the permanent removal of hair using needle type epilation devices that are registered with the United States Food and Drug Administration. These devices are used pursuant to protocols approved by the council and the board. Recently, new types of devices have become available that no longer fit the above definition. The board wants to change s. 478.42, F.S., to reflect this new type of equipment and clarify the approved equipment that may be used in the practice of electrology.

Clinical Laboratories - Chapter 483, Part I, F.S.

Clinical laboratories are regulated by the Agency for Health Care Administration. Section 483.041, F.S., provides definitions for clinical laboratories, but the definition of clinical laboratory services is not provided in much detail. An expansion of this definition would benefit regulation of this service.

Clinical Laboratory Personnel - Chapter 483, Part III, F.S.

Clinical laboratory personnel are regulated by the Department of Health. They are classified as health care practitioners. Sections 483.800 through 483.828, F.S., provide for the regulation of clinical laboratory personnel. A number of the provisions for applications and renewal fees for laboratory training need clarification. The Board of Clinical Laboratory Personnel needs rule-making authority to designate approved certification examinations. The annual registration of clinical laboratory trainees is onerous and unnecessary according to the department. The current requirements for public health laboratory scientists restrict the number of applicants that may qualify for licensure as laboratory scientists in public health.

Also, the board does not have rule-making authority to impose remedial training on failed applicants.

State requirements for licensure of laboratory directors do not necessarily conform to federal standards. In addition, the board lacks the authority to discipline for criminal convictions under the same provisions as other boards in MQA. Much of the language in s. 483.825, F.S., relating to grounds for disciplinary action, does not conform to provisions similar to those of other regulatory boards.

Medical Physicists - Chapter 483, Part IV, F.S.

Medical physicists have been regulated by the state for approximately four years. The law that initially provided for their regulation could not be implemented because of several technical difficulties. It was recently discovered that s. 483.901, F.S., provides for the department to issue a

temporary license for an indefinite period. The department needs to delete the authority to issue a temporary license for an indefinite time period.

Opticians - Chapter 484, Part I, F.S.

Currently, s. 484.007, F.S., provides no guidance as to the experience required prior to an optician being able to supervise an optician trainee. Without any guidance, a newly licensed optician can supervise trainees immediately. The board is of the opinion that additional experience is necessary prior to the supervision of a trainee.

Fitting/Dispensing of Hearing Aids - Chapter 484, Part II, F.S.

Current statutes provide a 30-day trial period in which a hearing aid may be returned for a full refund. However, there are many instances reported where the refund is not made in a prompt manner. It has been suggested that the period for a refund should mirror language that speech-language pathology and audiology have in their practice act. It requires a refund within 30 days of the return or attempted return of the hearing aid.

Physical Therapy - Chapter 486, F.S.

Currently, the Board of Physical Therapy issues a temporary license as a physical therapist or for a physical therapist assistant. Because the board has recently changed to computer-based testing, there is no longer a need to issue temporary licenses.

Psychology - Chapter 490, F.S.

To become licensed as a psychologist in Florida, an applicant must meet various requirements which include graduation from a school with a psychology program accredited by an agency recognized and approved by the United States Department of Education. These requirements applied to education received prior to July 1, 1999. However, a provision was passed last year which provided that an applicant could submit to the board prior to July 1, 2001, that the applicant was enrolled and graduated from a school, not accredited, but with a standard of education and training comparable to programs accredited by an agency recognized by the United States Department of Education. The comparability was to be determined by the board.

Also, a psychologist licensed in another state may become licensed in Florida by endorsement provided the requirements in the other state were substantially equivalent to those of Florida, or the psychologist is a diplomate in good standing with the American Board of Professional Psychology, Inc.

Clinical Social Work, Marriage & Family Therapy, & Mental Health Counseling - Chapter 491, F.S.

The current statute provides that effective January 1, 1998, any individual who intends to practice in Florida to satisfy postgraduate or post-master's level experience requirements, must register (with the board) as an intern in the profession for which the individual is seeking licensure prior to beginning such experience. Also, such individual must be certified by the board as having met certain other requirements.

Section 491.0045, F.S., provides certain educational requirements for clinical social workers, mental health counselors, and marriage and family therapists.

Section 491.0046, F.S., provides that any individual who has satisfied the clinical experience requirements and is applying for licensure by examination or endorsement intending to provide clinical social work, marriage and family therapy, or mental health counseling services in Florida must have a provisional license while satisfying the examination requirements. The provisional license must be obtained prior to beginning practice.

Subsection (4) of s. 491.005, F.S., as passed last year, changes the educational requirements for licensure as a mental health counselor effective January 1, 2001. The board needs rule

promulgation authority for administering the new requirements for licensure of mental health counselors.

Pursuant to the requirements of s. 491.0085, F.S., the board is now required to give laws and rules examinations four times a year. The law does not currently allow the providers of laws and rules courses to test licensees upon completion of the courses.

The exemptions contained in s. 491.014, F.S., provides that a nonlicensed person may perform services authorized in this chapter no more than 5 days in any month, and no more than 15 days in any calendar year.

Medical Practice/Telemedicine

- National Interests

According to the *U.S. Department of Commerce Report to Congress on Telemedicine* published January 31, 1997, there has been a tremendous expansion in the number and scope of "telemedicine" projects in the last decade. The report recognizes that telemedicine offers the potential to provide health services across vast distances; however, health professionals must be licensed and regulated at the state level. Currently, each state has established a Medical Practice Act that defines the process and procedures for granting licensure, renewing the license, and regulating the medical practice within the state.

The report delineates that historically, interstate physician-to-physician communications have not been subject to licensing requirements. These communications can take a variety of forms, including: the mailing of x-rays; clinical histories and pathological and laboratory specimens for evaluation and interpretation; and oral or written inquiries to another out-of-state physician involved in the patient's care or in the form of a specific consultative request to a physician with specific expertise. In these interstate communications, the consulted physician or other health care professional is regarded either as practicing medicine only in his or her home state or is exempt from licensure under the "consultation exception" in the patient's state.

The report identifies that, until recently, few states have addressed issues concerning out-of-state physicians who provide patient health care via electronic communications. Like the state medical practice acts on which they are based, the text of specific telemedicine provisions varies significantly from state to state.

In 1996, the Federation of State Medical Boards (FSMB) produced "A Model Act to Regulate Practice of Telemedicine by Other Means Across State Lines." This report contains legislative language to create a secondary or limited license for telemedicine purposes. Three states, Alabama, Tennessee, and Texas, have enacted legislation consistent with FSMB's philosophy. The American Medical Association (AMA) has opposed the model act produced by FSMB and called for a resolution requiring "full and unrestricted license" in each state for "those who wish to regularly practice telemedicine in that state."

In the past several years, several other states including, Kansas, Nevada, California, Connecticut, Indiana, Oklahoma, and South Dakota have enacted regulations or legislation governing licensure of out-of-state telemedicine health professionals. All of these states, except California, have adopted the AMA's resolution and require an out-of-state physician to obtain a full and unrestricted license before consulting directly with patients in the state.

- Interstate Commerce

The U.S. Supreme Court has long recognized that states, pursuant to their police powers under Article X of the Constitution, have the authority to regulate their own activities of legitimate local concern, including the regulation of health professionals. However, the Commerce Clause of the Constitution under Article I, prohibits states from erecting barriers against interstate trade. The *U.S. Department of Commerce Report to Congress on Telemedicine* addresses the fact that although the practice of medicine has traditionally been local in nature, the advent of telemedicine automatically introduces a distance independent variable that is, by definition, neither local nor traditional.

Further, the report concludes that if asked to examine a restrictive state licensure law, the courts must balance the objective of the state law against the burden on interstate commerce. Twenty-two courts have upheld state statutes requiring out-of-state entities to obtain a license to engage in the practice of medicine within the state's borders. In these situations, the court found that the burden of obtaining a license was outweighed by the need to protect important state interest.

- Florida

Medical doctors, or allopathic physicians, seeking to practice medicine in Florida must apply for state licensure. The Department of Health, Board of Medicine is the regulatory agent administering the Medical Practice Act found in chapter 458, F.S. The Board of Medicine maintains that "practicing in this state" relates to the location of the patient. Any physician located and licensed in any jurisdiction other than Florida, who has the primary responsibility for the care or diagnosis of a patient residing in Florida, is subject to Florida licensure. Section 458.303, F.S., exempts physicians who are lawfully licensed in another jurisdiction and providing consultation to a Florida physician. This constitutes Florida's "consultation exemption".

Rule 64B8-2.001(8), Florida Administrative Code, defines "consultation" as: an examination of a patient, taking a history and physical, reviewing laboratory tests and x-rays, and making recommendations to a Florida licensed physician with regard to the diagnosis and treatment of a patient. However, "consultation" does not include the performance of any medical procedure or rendering of treatment to a patient.

In 1995, the Legislature passed s. 458.3255, F.S., which states "... only a physician licensed in this state or otherwise authorized to practice medicine in this state may order, from a person outside this state, electronic-communications diagnostic-imaging or treatment services for a person located in this state." The Board of Medicine maintains that this section does not specify that the out-of-state practitioner providing electronic-communications diagnostic imaging or treatment services must be licensed in Florida. Accordingly, as long as the physician ordering the tests and sending them out of the state for interpretation is a Florida licensed physician, the practice complies with existing law.

For instance, the physician(s) for a large company in South Florida currently have a large number, if not all, of their radiologic images sent out of state to be read by physicians located at a University in California. This practice currently complies with existing law. According to the DOH, no documented cases or major problems have occurred because of this arrangement.

Section 458.327, F.S., establishes that the practice of medicine without a license in Florida is a third degree felony. The Department of Health has established an office that handles investigations of unlicensed activity cases and coordinates prosecutorial actions with the State Attorney.

In 1998, the Department of Health created a Task Force on Telemedicine. The task force is examining regulatory issues, technological issues, and access to care issues relating to telemedicine. The task force first met on December 11, 1998, and anticipates completing its work by late 1999, concluding with a report to the Secretary of the Department of Health and including recommendations for legislative action for the year 2000 session.

Nurse Practice Act/Telehealth Services

The term "telehealth" is not defined in the Nurse Practice Act, nor is it currently used anywhere in the act. The American Nurses Association (ANA) distinguishes telecommunications technologies in providing health care services as being broader than the discipline or practice of medicine. As such, "telehealth" encompasses telemedicine, telenursing, and teleradiology. The mechanisms of telecommunication used include telephones, computers, interactive video, and teleconferencing. ANA recognizes that while the application of this new technology offers the possibility of significant benefits to the health of individuals, it is also important to address the concerns and problems attendant to this technologic advancement.

An area of controversy on the subject of telehealth relates to the question of where the service is considered to take place. Is the delivery of health care construed as an activity that takes place at the location of the patient or at the location of the health care practitioner (doctor, nurse, etc.)

providing the advice, instruction, or consultation? The answer to this question is significant because of at least two factors. One factor is that Medicare uses the location of the service (the "pricing locality") as a partial determinate of the amount it will pay. The second relates to health care practitioner licensure requirements. The licensure of health care practitioners is accomplished on a state-by-state basis. Generally speaking, a person must be licensed in any state in which he or she practices and a person licensed in another state is not allowed to practice in Florida unless he or she is also licensed in Florida.

On the other hand, persons who live in Florida have a reasonable and legal option to travel to another state and seek treatment options and services of health care professionals licensed in that state. For obvious reasons, the consulted health care practitioner is not required to obtain a Florida license based upon seeing a Florida patient. Therefore, should the provision of telehealth services be considered to take place as if: (1) the out-of-state practitioner has traveled to the in-state patient to deliver the services, or (2) the in-state patient has traveled to the out-of-state practitioner to receive the services?

There are significant legal implications in health care service transactions between the patient and the practitioner. If the services are considered to take place where the patient is located, essentially all telehealth services by out-of-state health care professionals would be severely constricted since it is not practical for a health care professional to be licensed in multiple states.

The Board of Nursing has previously taken the position that care occurs where the patient is, not where the practitioner is. However, there is no evidence that the Department of Health has attempted to prosecute any of the health care professionals who engage in the out-of-state provision of telecommunicated health care services.

Health Care Practitioners/Adverse Incident Reports

Currently, there is no requirement for physicians licensed pursuant to chapter 458 or 459, F.S., to file reports of adverse incidents that occur during surgery performed in their offices. However, s. 395.0198, F.S., requires the reporting of all adverse incidents that occur in facilities licensed pursuant to ch. 395 (mainly hospitals and ambulatory surgery centers). The report is filed with the Agency for Health Care Administration with the information available to the Department of Health to determine if disciplinary action is required against a licensee of the department.

Adverse incidents are described as an incident which results in one of the following: death of a patient; brain or spinal damage; performance of a surgical procedure on the wrong patient; performance of a wrong-site surgical procedure; performance of a wrong surgical procedure; and performance of a medically unnecessary procedure, to identify a few of the named procedures.

These reports that are filed are confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I, of the State Constitution. In addition, the information is not discoverable or admissible in a civil or administrative action, unless the action is a disciplinary proceeding by the department or appropriate regulatory board.

Section 119.07(1), Florida Statutes, and section 24(a), Article I of the State Constitution, provide for public access to any records produced or obtained by a government agency. However, the Legislature is authorized to provide by general law for the exemption of certain records. The general law exempting the records must state with specificity the public necessity justifying the exemption.

The justification for the exemption is the fact that the Legislature found that these exemptions are a public necessity, and that it would be an invasion of a patient's privacy for such personal, sensitive information contained in these reports to be publicly available. Also, the fact that an investigation is being conducted, would deter the collection and reporting of this information to the department. This would prevent the agency or department and the appropriate regulatory boards from effectively carrying out their responsibility to protect the health, safety, and welfare of the public. The Legislature has consistently and repeatedly acknowledged the public necessity of these types of exemptions.

The need for the Board of Medicine to adopt more stringent rules relating to office surgery has recently become a topic of concern. The board first adopted rules relating to office surgery in 1994. In the past two years, the board has become increasingly concerned about public safety issues relating to office surgery as reflected by the number of physician cases involving patient disfigurement and deaths related to plastic surgery and other procedures.

The Ft. Lauderdale Sun Sentinel published a series of investigative reports from November 29 through December 4, 1998, about deaths and complications resulting from plastic surgery. The Sun Sentinel reported that at least 34 people have died in Florida after plastic surgery performed in physicians' offices, surgery centers, or hospitals since 1986. Many of the cases reported did not reach the board for potential disciplinary action because current regulations for office-based surgery do not require a report of all serious injuries like is required for hospitals or ambulatory surgery centers licensed under ch. 395. Therefore, the board does not become aware of the physician's unsafe practice unless a patient files a complaint, a hospital files a report, or a notice of malpractice litigation is submitted sometimes years after the event. According to the Department of Health, the absence of injury reports and mandatory inspections or accreditation compromises the board's ability to take rapid action to prevent avoidable patient injuries and protect the general public.

Authority for the Board of Medicine to adopt rules requiring the registration and inspection of physicians' offices used for office surgery is currently under review. The Department of Health and the Board of Medicine maintain that the board has such authority. The statute cited for the rulemaking authority was passed in 1998 (s. 458.331(1)(v), F.S.). A notice of a proposed rule change was published on January 22, 1999, in the Florida Administrative Weekly. While the board's position is that it has rulemaking authority to address this issue, staff of the Joint Administrative Procedures Committee has questioned the board's authority. The board has requested legislation clarifying this rulemaking authority to reaffirm the Legislature's intention that the board adopt the necessary rules to ensure adequate standards of care for office-based surgery.

Standardized Credentialing of Health Care Practitioners

Prior to 1998 Legislative Session - There was no standardized credentialing process for health care practitioners licensed under chapters 458, 459, 460, or 461, Florida Statutes (medical, osteopathic medicine, chiropractic medicine, and podiatric medicine physicians, respectively). There were approximately 50,000 physicians licensed in those four professions. The majority, approximately 40,000, were licensed medical physicians.

Those four professions were the primary health care practitioners involved in the duplication resulting from the current multiple credentialing process required by the various health care entities (hospitals, managed care groups, health insurance groups, and other third-party health care payers). The duplication involved in credentialing and recredentialing was unnecessarily costly and cumbersome for both the practitioner and the entity granting practice privileges. There was no one group to receive and verify the core credentials of a physician. A health care practitioner's core credentials data was collected, validated, maintained, and stored by each health care entity for which the practitioner applied for practice privileges.

The 1997 Legislature recognized that health care practitioner credentialing activities had increased significantly as a result of health care reform and recent changes in health care delivery and reimbursement systems. To expedite a standardized credentialing system and eliminate duplication, the Legislature, in chapter 97-261, Laws of Florida, provided for the appointment of a special task force by the Secretary of the Department of Health to study the issue and report back to the 1998 Legislature.

The task force reviewed the issues and made its final report in January, 1998. The following is a summary of their recommendations:

- A standardized system for collecting and verifying core credentials of health care practitioners through a certified credentials verification entity should be established.

- Data on individual practitioners should be centrally stored with only one entity. Each entity must meet national standards and be certified by national accrediting organizations. Monitoring

procedures should be in place to ensure quality control and maintain continuity in the credentials verification process.

- Health care entities should be held harmless and should not be liable if they rely on data obtained from a certified credentials verification entity.
- Core credentials data should be collected only once by a certified credentials verification entity. However, a health care entity may obtain additional information if required by the entity's credentialing process.
- All efforts should be made in the legislation to minimize costs to health care practitioners as well as to health care entities.
- Credentials verification entities should be required to establish procedures to ensure primary source verification of core credentials, whenever possible. Exceptions should be allowed only in accordance with standards outlined by national accrediting organizations.
- Health care practitioners should have an opportunity to review the core credentials data before it is stored in the data bank of an entity.
- The credentials verification entity must collect the core credentials data on a standardized form. The data must be updated whenever the practitioner's status changes; otherwise at least quarterly.

Chapter 97-273 relating to physician profiling provided for the Department of Health to gather much of the core credentialing data. It provided for the department to compile certain information submitted in a physician profile of each licensee and to make those profiles available to the public. The profiles were to be developed for the following four practitioners: medical, osteopathic, chiropractic, and podiatric physicians. The profiles were mailed out by the department in February, 1999, and were to be returned to the department by April 15, 1999, and compiled and available to the public over the Internet beginning July 1, 1999. However, prior to release of the profile over the Internet, the department is required to allow the practitioner 30 days to review and make factual corrections. In 2000, the department is to recommend other professions, if any, that should be added to the profiling requirements of s. 455.565, F.S.

Applicants for licensure or relicensure in the four professions are required to submit a set of fingerprints and pay certain fees. Applicants for relicensure are not required to submit a set of fingerprints until after January 1, 2000. The department must submit the fingerprints to the Department of Law Enforcement for a national criminal background check (includes FBI). Failure to comply, within 30 days of notice of noncompliance, may result in a citation and a fine of up to $50 for each day of noncompliance.

The department was authorized to issue emergency orders suspending the license of a medical or osteopathic physician who failed to comply with certain financial responsibility requirements of the appropriate chapter.

The 1997 law provided that liability actions and information in the possession of the department relating to bankruptcy proceedings of specified practitioners are public records. The department was required to make this information available upon request. Insurers were required to report professional liability claims and actions. The time frame for reporting was 45 days.

1998 Legislative Action - As a result of the Task Force report, the Legislature passed HB 4515 (ch. 98-226, Laws of Florida). HB 4515 provided for standardized credentialing of physicians licensed under chapter 458, 459, 460, or 461, F.S. (medicine, osteopathic medicine, chiropractic medicine, and podiatric medicine, respectively). Provision was made for other health care practitioners to participate provided they meet the profiling requirements of s. 455.565, F.S. **The effective date of this law is July 1, 1999.**

The 1998 law provided a statement of intent about the current duplication in credentialing and how it was unnecessarily costly and cumbersome for both the practitioner and the entity granting practice

privileges. It further provided for the establishment of a mandatory credentials verification program. Definitions were provided for implementation of a standardized program with standardized forms.

Once a health care practitioner's core credentials data was collected and validated by a "credentials verification entity" (CVE), the health care practitioner was not required to resubmit this initial data when applying for practice privileges with health care entities. Timely updating of this information, no less than quarterly, was required. A CVE was required to be certified by a quality assurance program from one of several national accreditation organizations. The practitioner may select a "designated" CVE responsible for responding to all inquiries about said practitioner. A health care entity may use either the designated CVE or the Department of Health to obtain current credentials data on a practitioner applying for privileges with such entity. This law required the Department of Health to become a credentials verification entity and to meet the quality standards required for private CVEs. Any additional information required by such entity may be collected from a primary source, or the designated CVE. The department, in consultation with a thirteen-member advisory council, was to develop standard forms for the reporting of initial data for credentialing and periodic updating for recredentialing purposes.

Under current law, a health care entity is held harmless and is not liable if it relies on data obtained from a CVE or the department as a CVE. All CVEs, other than the department, are required to maintain liability insurance coverage. Any CVE that does business in Florida must be certified and registered with the department.

At the time of passage, the total potential savings to the private sector were not available. However, according to several health care entities, the savings were to be substantial.

July 1, 1998, to present - During the summer of 1998, and up to approximately November 1, 1998, the department attempted to implement the provisions of HB 4515. Several meetings were held with the Credentials Advisory Council, and the department held numerous meetings with the various groups involved in credentialing health care practitioners. However, it became evident to the department that they could not meet all of the requirements to be a fully certified CVE since the national certification program was not designed for a state agency.

With that policy decision being made, the health care industry (mostly hospitals and HMOs) decided they wanted to continue with their current credentialing process with as few changes as possible. It was decided that the department would serve as a central depository of all health care practitioner's core data, and any corrections, updates, or modifications. The data maintained by the department would in most instances be unverified data, and it would be the responsibility of each health care entity to electronically obtain the information from the department, and the responsibility of the primary source to verify the data the way they had done in the past.

The principle difference is that each health care practitioner will no longer be required to submit the same core data to every health care entity that wanted it. Once the data is available from the department, a health care practitioner will no longer be required to supply it to all of the entities with whom they have a relationship. The average health care practitioner maintains a relationship with an estimated 25 health care entities.

Once that decision was reached, the department began working with a consultant to assist them in developing a system that would meet these requirements in a timely fashion. According to the department, a prototype of this system will be available July 1,1999, and the system will be fully operational by December 31, 1999. As of this date, the various health care entities around the state will be able to electronically obtain all of the necessary data on Florida's approximately 50,000 health care practitioners.

Miscellaneous Issues

The Administrative Procedure Act and Agency Rulemaking Authority

Section 120.536(1), F.S., states that, "A grant of rulemaking authority is necessary but not sufficient to allow an agency to adopt a rule; a specific law to be implemented is also required. An agency may only adopt rules that implement, interpret, or make specific the particular powers and duties granted

by the enabling statute." Section 120.536, F.S., further establishes that an agency may not adopt a rule merely because it is reasonably related to the purpose of the enabling legislation, nor may the agency have the authority to implement statutory provisions setting forth general legislative intent or policy.

Section 120.536(2), F.S., required each agency to provide the Administrative Procedures Committee a listing of rules adopted by the agency before October 1, 1996, which exceeded the rulemaking authority permitted in this section. These lists were to be provided by October 1, 1997, and subsequently combined and presented to the Speaker of the House of Representatives and the President of the Senate. This section further provides that the 1998 Legislature was to consider whether specific legislation authorizing these rules should be enacted. According to s. 120.536(2), F.S., each agency must have initiated appropriate proceedings to repeal rules exceeding rulemaking authority by January 1, 1999. By February 1, 1999, the Administrative Procedure Committee was required to submit to the President of the Senate and the Speaker of the House of Representatives, a report identifying rules that exceed rule authority for which repeal proceedings have not yet been initiated.

Recreational Sport Diving

According to the Professional Association of Diving Instructors, three individuals have died in the United States in the past nine years from unsafe compressed air. Air compressors for divers may be found at dive shops, marinas, on dive boats, and at some bait shops. It is estimated that 500 compressed air vendors are located in Florida. Compressed air is not presently required to be sampled and analyzed. Three laboratories nationwide, including one in Florida, are presently the only laboratories certified for this type of testing. The Department of Health's laboratory does not provide the services required for this type of analysis.

The Professional Association of Diving Instructors (PADI) currently requires its twenty-five Five Star facilities in Florida to test compressed air quarterly. Beginning in January of 2000, PADI will begin voluntary testing of compressed air nationwide in all affiliated shops.

Fiscal Intermediary Services - Sections 626.883 and 641.316, F. S.

Effective January 1, 1999, all fiscal intermediaries were required to meet certain bond requirements and register with the Department of Insurance. The current requirements for a fiscal intermediary do not include any provisions relating to an explanation of benefits for payments to a health care provider. These payments are usually the result of contracts with health maintenance organizations.

Clinical Laboratory Services for Kidney Dialysis Patients

Currently, vertically integrated corporate entities that have dialysis clinics also have clinical laboratories that perform laboratory procedures on dialysis patients concomitant to the dialysis services. There are differing opinions regarding whether such arrangements should be allowed to operate this way, or whether there should be a divestiture of one service from the other within a single corporate entity. The Florida Legislature has not made a public policy decision regarding this issue. There are no data as to the extent to which this dual function is occurring, and what benefit or detriment may exist for dialysis patients from such arrangements.

Under current law, a nephrologist, when referring for renal dialysis services and supplies, is included as one of a limited number of practitioners and services that are exempt from the prohibition against self-referral in s. 455.654, F.S., the "Patient Self-Referral Act of 1992." The same is the case for a health care provider for diagnostic clinical laboratory services where such services are directly related to renal dialysis. Such services are supposedly exempted because of the highly specialized nature of the services and the limited number of providers of such services.

Department of Elderly Affairs/Area Agencies on Aging

Section 20.41, F.S. provides that, as mandated by the Older Americans Act, the Department of Elderly Affairs shall designate and contract with area agencies on aging in each of the department's eleven planning and service areas. Area agencies on aging have responsibility for development of

plans for all aging issues in each of the planning and service areas and are to ensure a coordinated and integrated provision of long-term care services to the elderly, as well as ensure the provision of prevention and early intervention services. In addition, the role of area agencies on aging is to administer: the federally funded Older Americans Act program; the Emergency Home Energy Assistance for the Elderly Program (EHEAEP): the state funded Community Care for the Elderly (CCE); the Alzheimer's Disease Initiative (ADI); and the Home Care for the Elderly (HCE) programs. Area agencies on aging have not been subject to public records and public meeting requirements.

B. EFFECT OF PROPOSED CHANGES:

Department of Health

General Public Health Provisisions

This bill will improve efficiency of public health programs within the Department of Health. The bill will: clarify language regarding the use of incentives and promotional items in disease prevention and health education; revise the list of divisions that are authorized to exist in the department; update career service exemptions; permit the department to contract with the Department of Children and Family Services to conduct administrative hearings in matters concerning the Special Supplemental Food Program for Women, Infants, and Children (WIC) and Children's Medical Services (CMS); clarify co-payment requirements relating to primary care challenge grants; authorize the department to purchase automobiles for use by county health departments; remove any responsibility regarding alligator management and trapping from the Department of Health and Rehabilitative Services; correct the name of the WIC program to conform to federal law; revise the membership of the Diabetes Advisory Council; and remove language requiring the department to reimburse hospitals for the cost of furnishing data for the cancer registry.

The bill will also: remove language that prevents the preliminary HIV test results of a mother who has just given birth from being released to the mother at the time of delivery; clarify requirements relating to the performance of HIV tests on deceased persons; give the department authority to adopt rules relating to inspection of certain group care facilities; give the department authority to adopt rules relating to family planning; provide a definition for "multi-family water system"; revise the definition of "private water system"; authorize nursing homes to purchase medical oxygen; revise the membership of the Health Information Systems Council; require the council to establish a review process for agency health-related data collection and maintenance; permit the Department of Health to become an accrediting entity of the National Environmental Laboratory Accreditation program; permit the Department of Health to pass on an increase in examination costs that the American Registry of Radiologic Technologist will make on January 1, 2000; change the time of biennial renewal to the birth month of the certified radiologic technician from December 31; provide names for three Department of Health buildings; repeal obsolete and unnecessary provisions relating to the submission of Healthy Communities plans and transportation of radioactive materials; allow the department to use excess money for the improvement of health facilities at, and authorize the department to establish an advisory body for, the A.G. Holley State Hospital.

Vital Statistics

The bill will revise department authority relating to vital records; provide the department with authority to adopt rules for the requirement of notarized documents; remove language relating to reproduction and destruction of records and the disclosure of certain Social Security numbers; and clarify procedures and modify reporting requirements relating to birth records.

Autism/Secretin

The Division of Children's Medical Services of the Department of Health will be directed to contract with a private nonprofit provider affiliated with a teaching hospital to conduct clinical trials, approved by a federally-sanctioned institutional review board within the teaching hospital, on the use of the drug Secretin to treat autism, and require the nonprofit provider to report its findings to the Division of Children's Medical Services, the President of the Senate, the Speaker of the House of Representatives, and other appropriate bodies.

An amount of $50,000 is appropriated to the Division of Children's Medical Services of the Department of Health from the General Revenue Fund for the purpose of implementing this program.

Chapter 499--Drug, Cosmetics, and Household Products

Amendments to ch. 499, F.S., will be made to: clarify that a person must be authorized to sell or transfer prescription drugs under ch. 499, and that the person acquiring prescription drugs must be authorized to do so; clarify that providing the department with false information regarding any matter within the jurisdiction of ch. 499 is prohibited; prohibit distribution of a legend device to a patient without a prescription or order from a licensed practitioner; conform the prescription statement on labels to recently enacted federal language; and authorize federal, state, and local government employees, acting within the scope of employment, to possess prescription drug samples.

Trauma Care and Planning

Legislative findings and intent are provided that state that there has been a lack of timely access to trauma care due to the state's fragmented trauma system and that there is a necessity to plan for and establish an inclusive system which would incorporate and coordinate all providers who have resources to meet the needs of trauma victims. Additional findings relate to: coordinating the trauma-related activities of several state agencies; planning a statewide system; and the benefit of establishing interagency teams and agreements to develop guidelines, standards, and rules. Leadership responsibility for this activity is given to the Department of Health. Specific duties and issues which the multiple agencies must address are provided. Medical directors of emergency medical services providers are required to have medical accountability for the trauma victim during an inter-facility transfer.

The department is encouraged to foster the provision of trauma care and serve as a catalyst for improvements in trauma care, including the promotion of trauma centers and agencies in each trauma region and updating the state trauma system plan by December, 2000, and every five years thereafter.

The definitions of local and regional trauma agencies is deleted. A definition is provided for trauma agency, which may be established and operated by one or more counties. A definition of "trauma alert victim" is provided. The definition of "trauma victim" is modified to include injuries due to burns and to remove "life-threatening" as a condition of being defined as a trauma victim. The frequency for submission of trauma agency plans is decreased from annually to every five years. Requirements for the department to approve or disapprove plans within specified time frames are eliminated. Requirements for public hearings with adequate notice and the requirement that trauma agencies submit written notice to the department 90 days prior to ceasing operation are removed.

Requirements of periodic revision by the Legislature of county trauma service area assignments based on recommendations made in local or regional trauma plans will be deleted. The bill requires the department to assume this review and assignment function, and requires the department to take into consideration regional recommendations and the recommendations made as a part of the state trauma plan in the review and assignment function. The review is to take place in the year 2000 and every five years thereafter.

Level I and Level II trauma centers will be required to each have the capability of treating a minimum of 1,000 and 500 trauma patients annually, respectively, with injury severity scores of nine or greater.

Emergency Medical Services providers will be required to transport trauma alert victims to hospitals approved as trauma centers, except as provided in local or regional trauma protocols or, if no local or regional trauma protocol is in effect, as provided for in a provider's departmentally approved trauma protocol, and that trauma alert victims be identified through the use of a trauma scoring system.

Emergency Medical Services

Statutory authority for specific sections of chapter 64-E, Florida Administrative Code, will be established. Statutory authority will be provided for current rules that relate to the regulation of emergency medical technician and paramedic education programs, staffing of advanced life support

transport vehicles, and the provision of a patient's prehospital medical record to the hospital that receives the patient.

The Minority HIV and AIDS Task Force

The bill establishes the Minority HIV and AIDS Task Force within the Department of Health. The task force will develop and provide recommendations to strengthen HIV and AIDS prevention and treatment programs in minority communities. The Secretary of the Department of Health will appoint at least 15 persons to the task force. Membership will include, but not be limited to: persons infected with HIV or AIDS; minority community-based support organizations; minority treatment providers; members of the religious community within groups of persons infected with HIV or AIDS; and the Department of Health. The task force is required to report research findings and recommendations to the Legislature by February 1, 2001. The task force will be abolished by July 1, 2001.

The bill also directs the Department of Health to develop and implement a statewide HIV and AIDS minority prevention campaign. Elements of the campaign are to consist of: television, radio, and outdoor advertising; public service announcements; and peer-to-peer outreach intended to reach minorities at risk of HIV infection.

The bill establishes four additional positions within the Department of Health. The regional minority coordinators will facilitate statewide efforts to implement and coordinate HIV and AIDS prevention and treatment efforts. The statewide coordinator will report findings, conclusions, and recommendations directly to the chief of the Bureau of HIV and AIDS within the Department of Health. In conjunction with the Minority HIV and AIDS Task Force and the Department of Health, the minority statewide coordinator will conduct a Black Leadership Conference on HIV and AIDS to convene by January 2000.

The bill provides an appropriation of $250,000 from the General Revenue Fund for carrying out the provisions of the Minority HIV and AIDS Task Force.

Agency for Health Care Administration and Medicaid

General Provisions

The Department of Children and Family Services and the Agency for Health Care Administration are required to develop a system to allow unborn children of Medicaid-eligible mothers to be issued a Medicaid identification number to be used for billing purposes and for monitoring of care for the child beginning with the child's date of birth. Technical changes relating to eligibility for the Medicaid service package in the CMS program are made. A phase-in of Medicaid capitated payments to CMS is provided. The Department of Health and the Agency for Health Care Administration are given the ability to share confidential information when it is needed for Medicaid reimbursement purposes. Language is provided to enable the Agency for Health Care Administration to pursue a certified match program to use local and state Healthy Start funding to draw down federal matching funds in the event that the federal government does not approve the pending Healthy Start waiver request. The section of statute relating to Medicaid third-party liability is amended to require health insurers and health maintenance organizations to develop the capability for tape matches for purposes of Medicaid file matches, using the Medicare standard billing format, to determine if Medicaid recipients might have any applicable insurance coverage. The "Medicaid Estate Recovery Act," is created which codifies into statute Medicaid's estate recovery process. The bill: amends the section of statute relating to Medicaid provider service network demonstration projects as a cost-effective means of purchasing, to delete the requirement that one of the four demonstration projects be conducted in Orange County; authorizes the Agency for Health Care Administration to withhold payments in whole or in part based on evidence of fraud, willful misrepresentation, or criminal activities associated with the delivery of Medicaid goods or services; deletes existing limitations that the agency may only reduce payments up to ten percent of amounts owed, or up to $25,000 per month when an overpayment by the agency exceeds $75,000; provides for prompt payment of withheld payments to providers once withholding disputes are settled; creates a new section of statute that specifically addresses Medicaid program integrity issues in the context of Medicaid physician providers; and repeals obsolete and unnecessary provisions relating to Medicaid alternative service networks. The Agency for Health Care Administration will be required to enter into

agreements with the not-for-profit organizations based in this state for the purpose of providing vision screening.

Public Medical Assistance Trust Fund

The bill will provide for the establishment of a seven-member task force to review sources of funds deposited into the Public Medical Assistance Trust Fund. Members are to be appointed by the Senate President (2), the House Speaker (2), and the Governor (3). Specific study topics include: the need for any statute updates; whether current assessments are equitably imposed; and whether exemption from or inclusions within the assessments are justified. In addition, the bill directs AHCA to provide staff support and technical assistance to the task force, and requires the task force to convene no later than August 1, 1999, and report its findings and recommendations by December 1, 1999.

Regulation of Health Care Practitioners

HB 1467 was amended onto HB 2125 to include provisions relating to various health care practitioners regulated by the Department of Health.

General Provisions - Chapter 455, F.S.

A uniform definition for sexual misconduct and its prohibition will be established. The opportunity for regulatory boards to discipline practitioners for certain violations will be expanded (including failing to comply with the requirements of profiling and credentialing, testing positive for drugs or illegal drugs without a legitimate medical reason for such drug, and failing to inform patients about their rights). The bill will clarify that business establishments regulated by the Division of Medical Quality Assurance (MQA) are required to maintain an active business license. Information on hospital discipline of a health care practitioner from the practitioner profile report prepared by the Department of Health will be removed. The definitions in s. 455.667, F.S., will be expanded to provide that, in certain instances, the department may obtain patient records, billing records, and insurance records without patient consent if a complaint has been filed alleging inadequate medical care, fraud, kickbacks, etc., and certain conditions are met. Midwives will be required to meet the financial requirements contained in s. 455.694, F.S. Language will be provided establishing that there is no presumption that a blood-borne infection is a job-related injury, and that any person injured as a result of a willful violation of section 455.561, F.S., relating to disclosure of confidential information, shall have a civil cause of action for treble damages, reasonable attorney fees, and costs.

Acupuncture - Chapter 457, F.S.

Acupuncture teaching permits will be provided and faculty from other countries and states will be permitted to teach in schools in Florida, for a period of up to 12 months, without a Florida license. Prescriptive rights will be defined to mean the prescription, administration, and use of needles and devices, restricted devices, and prescription devices that are used in the practice of acupuncture and oriental medicine.

Medicine - Chapter 458, F.S.

The bill will authorize individuals possessing temporary licenses to practice in areas of critical need to work for approved employers in any area of critical need without getting approval for each area; establish authority to convert active licenses to limited licenses for retirement/volunteer practice without making a full application and meeting the other requirements; increase the board's administrative fine cap for practice act violations from a maximum of $5,000 per violation to $10,000; extend the examination period for certain foreign physicians; and authorize the Department of Health to charge foreign licensed examinees a fee not to exceed 25% for the costs of the first exam and a fee not to exceed 75% of the actual costs for subsequent exams.

Osteopathic Medicine - Chapter 459, F.S.

The bill will authorize individuals possessing temporary licenses to practice in areas of critical need to work for approved employers in any area of critical need without getting approval for each area;

establish authority to convert active licenses to limited licenses for retirement/volunteer practice without making a full application and meeting the other requirements; increase the board's administrative fine cap for practice act violations from a maximum of $5,000 per violation to $10,000; and add authority to impose an administrative fine for a violation of a patient's rights.

Chiropractic Medicine - Chapter 460, F.S.

Chiropractic students enrolled in an accredited chiropractic college and participating in a community-based internship under direct supervision of a credentialed doctor of chiropractic medicine will be exempt from the provisions of ch. 460, F.S. Additionally: community-based internship will be defined; the board will be authorized to establish, by rule, qualifications for serving as a supervising chiropractic physician and procedures for approving a supervisor; the board's administrative fine cap for practice act violations will be increased from a maximum of $2,000 per violation to $10,000; the requirement for a post graduate internship for chiropractic licensure candidate will be deleted; and an undergraduate, "community-based" internship will be permitted.

Podiatric Medicine - Chapter 461, F.S.

A definition of the "practice of podiatric medicine" will be provided that includes the active practice of not less than two years of the four years prior to application. A certified podiatric X-ray assistant will be defined as a person employed under the direct supervision of a licensed podiatric physician to perform specific radiologic functions. The board will be directed to adopt rules to implement this program and provisions for the operation of X-ray machines by podiatric X-ray assistants will be adopted. The board's administrative fine cap for practice act violations will be increased from a maximum of $1,000 per violation to $10,000.

Nursing - Chapter 464, F.S.

The number of times an applicant is permitted to take the examination will be limited and remedial training approved by the board will be required prior to subsequent examinations. In addition, no provisions of this chapter will be construed to prohibit the practice of nursing by individuals enrolled in board-approved remedial courses and certain uses of the title "Nurse" will be considered misdemeanors of the first degree.

Pharmacy - Chapter 465, F.S.

The bill will define "data communication device" as an electronic device that receives electronic information from one source and transmits or routes it to another, including, but not limited to, any such bridge, router, switch, or gateway; prohibit the use of records obtained through data communication devices; provide for the return of unit-dose prescriptions in institutions to include pharmacies located in correctional facilities; explicitly provide that a pharmacist may be disciplined for unauthorized release of a patient's records; increase the board's administrative fine cap for practice act violations from a maximum of $1,000 per violation to $5,000.

Dentistry - Chapter 466, F.S.

The bill will clarify that written work order forms are no longer required to be furnished by the department. Dentists will be required to obtain their own forms, which must be approved by the board.

Speech-Language Pathology & Audiology - Chapter 468, Part I, F.S.

The bill clarifies that a master's degree or a doctoral degree with a major emphasis in speech-language pathology qualifies for licensure and requires a bachelor's degree for all speech-language pathology or audiology assistants.

Respiratory Therapy - Chapter 468, Part V, F.S.

The bill creates the Board of Respiratory Care in place of the Advisory Council of Respiratory Care. It also revises membership of the board, establishes that board in this part refers to the Board of

Respiratory Care rather than the Board of Medicine, and provides that the board may adopt rules to administer this part.

Athletic Trainer - Chapter 468, Part XIII, F.S.

The bill converts the Council of Athletic Training composed of seven members reporting to the department to a Board of Athletic Training composed of nine members. It requires five of the council members to be athletic trainers, one member to be a physician licensed under ch. 460, one to be a physician licensed under either chapter 458 or 459, and two members to be consumers; and provides for staggered terms. The board shall maintain its headquarters in Tallahassee. All council member terms are terminated on July 1, 1999. Council members may be considered for appointment to the new board.

Orthotics, Prosthetics, & Pedorthics - Chapter 468, Part XIV, F.S.

The bill provides a "grandfather" provision for certain professionals. Applicants who successfully completed, prior to March 1, 1998, at least half of the examination requirements for national certification, and completed the remaining portion prior to July 1, 1998, are "grandfathered" in and considered as nationally certified by March 1, 1998.

Certified Nursing Assistants - Chapter 468, Part XV

House Bill 2031 was added to HB 2125 to create part XV, chapter 468, F.S., to require the Department of Health to regulate the practice of certified nursing assistants in Florida. The bill provides requirements for certification. Additionally, the department is authorized to deny, suspend, or revoke certification of certified nursing assistants and to impose administrative penalties for the commission of prohibited acts specified in the bill.

Furthermore, the bill: authorizes the department to issue a letter of exemption from disqualification of certification; requires the department to maintain a registry of certified nursing assistants; provides for a first-degree misdemeanor penalty for a certified nursing assistant or applicant for certification who makes any false statement or fails to disclose information with respect to any voluntary or paid employment or licensure as a certified nursing assistant; gives the Department of Health access to the background screening registry for nursing home employees maintained by the Agency for Health Care Administration and the child abuse screening system maintained by the Department of Children and Family Services; requires each employer of certified nursing assistants to submit to the Department of Health a list of names and Social Security numbers of each person employed by the employer as a certified nursing assistant in a nursing-related occupation for a minimum of 8 hours for monetary compensation during the preceding 24 months; exempts an employer who terminates or denies employment to a certified nursing assistant whose certification is inactive as shown on the certified nursing assistant registry or whose name appears on the central abuse registry and tracking system of the Department of Children and Family Services or on a criminal screening report from the Florida Department of Law Enforcement from civil liability for the termination or denial; provides that any complaint or record maintained by the Department of Health pursuant to the discipline of a certified nursing assistant and any proceeding held by the department to discipline a certified nursing assistant shall remain open and available to the public; and authorizes the department to adopt rules for the implementation of part XV, chapter 468, F.S.

Electrolysis - Chapter 478, F.S.

The bill clarifies the definition of electrolysis to mean the permanent removal of hair by destroying the hair-producing cells using equipment and devices approved by the Board of Medicine and cleared by and registered with the U.S. Food and Drug Administration.

Clinical Laboratories - Chapter 483, Part I, F.S.

The bill expands the definition in s. 483.041, F.S., for clinical laboratories, by including specific services that are provided, and authorizes a clinical laboratory to accept an order from an out-of-state practitioner as long as the patient resides in the same state.

Clinical Laboratory Personnel - Chapter 483, Part III, F.S.

The bill revises several sections of law relating to this profession, mainly to conform clinical laboratory director qualifications to federal regulation, and strengthens and conforms grounds for disciplinary action to mirror provisions in other practice acts of professions regulated by MQA.

Medical Physicists - Chapter 483, Part IV, F.S.

The bill removes the provision for the issuance of a temporary license which is no longer necessary because the department is able to process applications in a timely manner.

Opticians - Chapter 484, Part I, F.S.

The bill provides that a licensed optician must have been licensed for at least one year prior to being able to supervise an apprentice.

Fitting/Dispensing of Hearing Aids - Chapter 484, Part II, F.S.

The bill provides that the period for a refund mirrors language that is in the Speech-Language Pathology and Audiology Practice Act, and requires a refund within 30 days of the return or attempted return of the hearing aid. Increases the penalty for the unlicensed practice of the profession from a second-degree misdemeanor to a third-degree felony.

Physical Therapy - Chapter 486, F.S.

The bill provides that a physical therapist may refer patients to or consult with licensed Advanced Registered Nurse Practitioners (ARNP), and revises several sections of statutes to repeal temporary license status.

Psychology - Chapter 490, F.S.

The bill: amends a provision passed last year which provided that the date an applicant could submit to the board from prior to July 1, 2001, to August 31, 2001, and that the applicant was enrolled and graduated from a school, not accredited, but with a standard of education and training comparable to programs accredited by an agency recognized by the United States Department of Education; changes comparability from that determined by the board, to providing a certificate of comparability provided by the program director of an accredited doctoral-level psychology program; provides that a psychologist with a doctoral degree in psychology, and who has at least 20 years of experience as a licensee in any jurisdiction of the United States within 25 years preceding the date of application, may be licensed in Florida; and provides that a patient's psychological report may be released to an employer or insurance carrier.

Clinical Social Work, Marriage & Family Therapy, & Mental Health Counseling - Chapter 491, F.S.

The bill provides that applicants who register as interns on or before December 31, 2001, and meet the education requirements in effect on December 31, 2000, are deemed to have met the educational requirements for licensure and clarifies that an applicant may be issued a duel license and charged a fee.

Credentialing

The Department of Health will no longer be identified as a credentialing verification entity (CVE) for all health care practitioners in the state. The department is designated as a depository for mostly unverified core credentials data and responsible for corrections, updates, or modifications to such data. Core credentials data will be electronically available to any health care entity that is authorized access to the data by the health care practitioner. Access to the new system without prior approval of the health care practitioner is prohibited.

The definition of "core credentials data" is changed to accommodate the needs of the health care entities. A CVE will be changed to "credentials verification organization" (CVO), which is the common name used in the industry.

All practitioners will be required to provide "core credentials data" and corrections, updates, or modifications to such data to the department instead of a designated CVO. However, a health care practitioner may still designate a CVO for the same purpose. A designated CVO must meet the time frames established for a practitioner or face license suspension. Also, a designated CVO is prohibited from releasing any information without prior approval of the practitioner.

The time period for reporting certain incidents will be changed from within 30 days to within 45 days to coincide with the requirements of profile reporting. Rather than file two reports (profile and credentials update), a credentials report is redesigned to comply with the requirements of a profile report.

Effective July 1, 2002, no Florida agency may collect or attempt to collect duplicate core credentials data from any practitioner if the information is available from the department. This does not restrict requesting additional information not included in the department's file.

A CVO must maintain liability insurance to meet certification or accreditation requirements.

No health care entity or CVO is liable if information/data was obtained directly from the department.

Reports of Adverse Incidents/Office Surgery

House Bill 1847 was amended onto HB 2125 to: establish that effective January 1, 2000, medical and osteopathic physicians must file reports of adverse incidents that occur in their offices within 15 days after the occurrence of the adverse incident; provide that adverse incidents include incidents resulting in the death of a patient, brain or spinal damage, performance of a surgical procedure on the wrong patient, performance of a wrong-site surgical procedure, and performance of a wrong surgical procedure; require the report to be filed with the Department of Health, which determines whether disciplinary action is required against a licensee; and provide that if disciplinary action is necessary, it will be administered by the board which licensed the health care practitioner.

In addition, the Board of Medicine is granted rulemaking authority relating to standards of practice for office surgery and the department is authorized to require registration and inspection of offices where levels two and three office surgery is performed. The department will inspect the offices annually unless the office is accredited by a nationally recognized accrediting agency or an accrediting organization approved by the appropriate board.

Task Force on Telehealth

CS/HB 965 was amended onto HB 2125 and establishes the Task Force on Telehealth. The Secretary of the Department of Health is directed to appoint the members of this task force, with a membership to include representatives from the affected medical and allied health professions and other health care industries.

The task force will review and research the various health care telecommunications and electronic communications providing health care information. In addition, the task force will identify laws, regulations, and reimbursement practices relating to telehealth practices.

The bill directs the task force to submit a report of findings and recommendations to the Legislature and Governor by January 1, 2000.

Task Force for the Study of Collaborative Drug Therapy Management

A 10-member Task Force for the Study of Collaborative Drug Therapy Management will be created within the Department of Health in order to determine the states in which collaborative drug therapy management has been enacted by law or administrative rule and summarize the content of all such laws and rules; receive testimony from interested parties and identifying the extent to which

collaborative drug therapy management is currently being practiced in this state and other states; and determine the efficacy of collaborative drug therapy management in improving health care outcomes of patients.

Miscellaneous

Department of Elderly Affairs

The bill provides that area agencies on aging within the Department of Elderly Affairs are subject to ch. 119, F.S., relating to public records, and, when considering any contracts requiring the expenditure of funds, are subject to ss. 286.011-286.012, F.S., relating to public meetings.

Clinical Laboratory Services For Kidney Dialysis Patients

The bill requires the Agency for Health Care Administration, in conjunction with other agencies, to conduct a detailed study and analysis of clinical laboratory services for kidney dialysis patients in Florida. The study shall include: an analysis of the past and present utilization rates of clinical laboratory services for dialysis patients; financial arrangements among kidney dialysis centers, their medical directors, and any business relationships and affiliations with clinical laboratories; any self-referral to clinical laboratory services for dialysis patients in Florida; and the average annual revenue for dialysis patients for clinical laboratory services for the past ten years. The agency shall report back to the President of the Senate, Speaker of the House of Representatives, and chairs of the appropriate substantive committees of the Legislature on its findings no later than February 1, 2000.

Recreational Sport Diving

The bill requires the Department of Health to establish maximum levels of contaminants in compressed air used for recreational sport diving based on levels of contaminants allowed by the Grade "E" Recreational Diving Standards of the Compressed Gas Association. It: requires compressed air vendors to collect a sample of air from their equipment and submit it to a laboratory certified by either the American Industrial Hygiene Association or the American Association for Laboratory Accreditation; authorizes the department to issue certificates stating when vendors submitting samples meet the standards established by the department; provides that civil penalties are not to exceed $500 for violations of the provisions of the bill; establishes that persons violating the provisions are liable for any damages resulting from the violation; and provides for exemptions from this legislation for any government entity using a governmentally owned compressed air source for work-related activities, for any person providing compressed air for their own use, and for foreign registered vessels upon which a compressor is used to provide compressed air for work related to the operation of the vessel.

Fiscal Intermediary Services - Sections 626.883 and 641.316, F. S.

The bill provides that all health care provider and health maintenance organization fiscal intermediaries are required to include a detailed explanation of services for payments to a health care provider.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

Yes, the Department of Health is given authority to adopt rules to implement particular sections in the bill and to comply with s. 120.536, F.S.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

An agency or program is not eliminated or reduced.

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

   a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

      No.

   b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

      No.

5. Family Empowerment:

   a. If the bill purports to provide services to families or children:

      The bill does not purport to provide services to families or children.

      (1) Who evaluates the family's needs?

      N/A

      (2) Who makes the decisions?

      N/A

      (3) Are private alternatives permitted?

      N/A

      (4) Are families required to participate in a program?

      N/A

      (5) Are families penalized for not participating in a program?

      N/A

   b. Does the bill directly affect the legal rights and obligations between family members?

      Yes, the bill will clarify that a mother who has just given birth will be able to receive her HIV test results for purposes of determining medical care for her newborn infant.

   c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

      The bill does not create or change a program providing services to families or children.

      (1) parents and guardians?

      N/A

      (2) service providers?

      N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Sections 20.41, 20.43, 39.303, 110.205, 120.80, 154.504, 232.435, 287.155, 372.6672, 381.0022, 381.004, 381.0051, 381.006, 381.0061, 381.0062, 381.026, 381.0261, 381.731, 381.90, 382.003, 382.004, 382.008, 382.013, 382.015, 382.016, 382.019, 382.025, 382.0255, 383.011, 383.14, 383.307, 385.202, 385.203, 391.021, 391.028, 391.0315, 391.221, 391.222, 391.223, 392.69, 395.40, 395.401, 395.402, 395.4045, 400.211, 401.25, 401.27, 401.2701, 401.2715, 401.30, 401.35, 404.20, 409.906, 409.910, 409.9101, 409.912, 409.9125, 409.9126, 409.913, 409.9131, 455.501, 455.507, 455.521, 455.557, 455.564, 455.565, 455.5651, 455.567, 455.574, 455.587, 455.601, 455.604, 455.607, 455.624, 455.651, 455.664, 455.667, 455.687, 455.694, 455.712, 457.102, 458.307, 458.309, 458.311, 458.3115, 458.3124, 458.313, 458.315, 458.3165, 458.317, 458.331, 458.347, 458.351, 459.005, 459.0075, 459.015, 459.026, 460.402, 460.403, 460.406, 460.413, 460.4165, 460.4166, 461.003, 461.006, 461.007, 461.013, 461.0135, 464.008, 464.016, 464.022, 465.003, 465.014, 465.015, 465.016, 465.019, 465.0196, 466.021, 468.1155, 468.1215, 468.304, 468.306, 468.307, 468.309, 468.352, 468.353, 468.354, 468.355, 468.357, 468.364, 468.365, 468.506, 468.701, 468.703, 468.705, 468.707, 468.709, 468.711, 468.719, 468.721, 468.805, 468.806, 468.812, 468.821, 468.822, 468.823, 468.824, 468.825, 468.826, 468.827, 468.828, 478.42, 483.041, 483.803, 483.807, 483.809, 483.812, 483.813, 483.821, 483.824, 483.825, 483.901, 484.007, 484.0512, 484.053, 484.056, 486.041, 486.081, 486.103, 486.107, 490.005, 490.006, 490.0085, 491.0045, 491.0046, 491.005, 491.006, 491.0085, 491.014, 499.003, 499.005, 499.007, 499.012, 499.028, 499.069, 626.883, 641.261, 641.316, 641.411, 733.212, 742.10. The bill also amends various chapter laws and creates several undesignated sections of law.

E. SECTION-BY-SECTION ANALYSIS:

Section 1. Requires the Department of Children and Family Services and the Agency for Health Care Admninistration to, by October 1, 1999, develop a system to allow unborn children of Medicaid-eligible mothers to be issued a Medicaid identification number that shall be used for billing purposes and for monitoring of care for the child beginning with the child's date of birth.

Section 2. Amends s. 20.43, F.S., 1998 Supplement, relating to the Department of Health. The following subsections are amended:

Subsection (3) is amended to add the Division of Children's Medical Services Network, Division of Emergency Medical Services and Community Health Resources, Division of Children's Medical Services Prevention and Intervention, Division of Information Resource Management, and the Division of Health Awareness and Tobacco to the list of divisions that are authorized to exist in the Department of Health. The Division of Children's Medical Services and the Division of Local Health Planning, Education, and Workforce Development are removed from the authorized list of divisions.

Subsection (7) is amended to clarify language regarding the use of incentives and promotional items in disease prevention and health education activities.

Section 3. Amends s. 110.205, F.S., relating to career service exemptions, to update language regarding the establishment of exempt positions that now pertains to the Department of Health and Rehabilitative Services to conform to the creation of the Department of Health and the Department of Children and Family Services, and to include the positions of Assistant County Health Department Director and County Health Department Financial Administrator to the list of exempt positions.

Section 4. Amends s. 120.80, F.S., 1998 Supplement, relating to exceptions and special requirements of the Department of Health, to allow the Department of Health to contract with the Department of Children and Family Services to conduct administrative hearings in matters concerning the Special Supplemental Nutrition Program for Women, Infants and Children, Children's Medical Services programs, Child Care Food Program, and exemption from disqualification reviews for certified nurse assistants.

Section 5. Amends s. 154.504, F.S., 1998 Supplement, relating to eligibility and benefits for primary care challenge grant programs, to permit providers to enter into contracts pursuant to s. 766.1115, F.S., provided co-payments are not used as compensation for services to health care providers.

Section 6. Amends s. 287.155, F.S., relating to the purchase of motor vehicles by certain agencies, to authorize the Department of Health to purchase automobiles, trucks, and other automotive equipment for use by county health departments, subject to the approval of the Department of Management Services.

Section 7. Amends s. 372.6672, F.S., 1998 Supplement, relating to alligator management and trapping program implementation, to delete the Department of Health and Rehabilitative Services from any responsibility regarding alligator management and trapping.

Section 8. Amends s. 381.004, F.S., 1998 Supplement, relating to testing for human immunodeficiency virus, to remove language that prevents the preliminary HIV test results of a mother from being released to the mother at the time of delivery, and to clarify requirements for the performance of HIV tests on deceased persons.

Section 9. Amends s. 381.0051, F.S., relating to family planning, to give the Department of Health the authority to adopt rules for family planning services.

Section 10. Amends s. 381.006, F.S., relating to environmental health, to provide the department with rulemaking authority relating to the health inspection of certain group care facilities.

Section 11. Amends s. 381.0061, F.S., relating to administrative fines, to authorize the department to impose fines for violations relating to group care facility inspections conducted as authorized under s. 381.006 (16), F.S.

Section 12. Amends s. 381.0062, F.S., 1998 Supplement, relating to water systems. The following subsections of this section are amended:

Subsection (2) is amended to provide that "multi-family water system" means a water system that provides piped water for three to four residences, one of which may be a rental residence, and to clarify the definition of "private water system" to mean a water system that provides piped water for one or two residences, one of which may be a rental residence.

Subsections (3), (4), and (5) are amended to include the term "multi-family water system" when applicable in place of private water system.

Section 13. Amends s. 381.90, F.S., relating to the Health Information Systems Council. The following subsections of this section are amended:

Subsection (3) is amended to revise the membership of the council. Added members include: the State Treasurer/Insurance Commissioner; a representative from the Florida Healthy Kids Corporation; a representative from a school of public health chosen by the Board of Regents; the Commissioner of Education; the secretary of the Department of Elderly Affairs; and the secretary of the Department of Juvenile Justice.

Subsection (7) is amended to revise the duties of the council. Additional responsibilities will include developing a review process to ensure cooperative planning among agencies that collect or maintain health-related data. The council is required to submit a report on the implementation of this requirement to the Governor, the Speaker of the House of Representatives, and the President of the Senate, by January 1, 2000.

Section 14. Amends s. 382.003, F.S., relating to powers and duties of the Department of Health, to remove the word "rescinding" in relation to the department's rule authority regarding vital records, and to provide the department with the authority to adopt rules for forms, documents, and information submitted under oath.

Section 15. Amends s. 382.004, F.S., relating to reproduction and destruction of records, to remove unnecessary language.

Section 16. Amends s. 382.008, F.S.,1998 Supplement, relating to death and fetal death registration, to remove language relating to the limited disclosure of Social Security numbers, which is in conflict with federal law.

Section 17. Amends s. 382.013, F.S., 1998 Supplement, relating to birth registration. The following subsections of this section are amended:

Subsection (1) is amended to clarify procedures to be followed when a birth occurs outside a health care facility, and to provide authority for the department to require documents and proof as it deems necessary to establish the fact of a birth when it occurred outside of a health care facility and was not attended by a Florida licensed physician, certified nurse midwife, Florida licensed midwife, or a public health nurse employed by the department. A technical change replacing one of the parents with the mother or the father is also made;

Subsection (2) is amended to clarify circumstances for listing the name of the husband of the mother on the birth certificate; and

Subsection (4) is amended to clarify the responsibility for registering a birth record of a child of undetermined parentage and to delete ambiguous language.

Section 18. Amends s. 382.015, F.S., relating to new certificates of live birth, to replace the terms "court certified copy" with "certified copy" and "court decree" with "court order," and to delete language addressing the administrative acknowledgment of paternity. A technical change to delete unnecessary language is also made.

Section 19. Amends s. 382.016, F.S., relating to amendment of records. Subsections (3), (4), and (5) are created to add to s. 382.016, F.S., the language similar to that removed from s. 382.015(2), F.S., by the previous section, relating to paternity, substitution of birth certificates, and paternity-related court orders.

Section 20. Amends s. 382.019, F.S., relating to delayed registration and administrative procedures, to clarify that after receipt of an application the department may file a delayed registration, and to clarify when the department may dismiss an inactive application.

Section 21. Amends s. 382.025, F.S., relating to certified copies of vital records. The following subsections of this section are amended:

Subsection (1) is amended to clarify that birth records over 100 years old are exempted from the confidential and exempt provisions of s. 119.07(1), F.S., and to provide a method for indicating death on a commemorative birth certificate; and

Subsection (2) is amended to allow for issuance of cause of death information to any person providing documented proof of need rather than restricting it to a family member only.

Section 22. Amends s. 382.0255, F.S., relating to the fee for a certification of a birth record, to permit the department to retain fees collected by Vital Statistics for birth certificates rather than transferring the fees to the General Revenue Fund.

Section 23. Amends s. 383.14, F.S., relating to screening for metabolic disorders, other hereditary and congenital disorders, and environmental risk factors, to change the name of the WIC program from the Special Supplemental Food Program for Women, Infants, and Children, to the Special Supplemental Nutrition Program for Women, Infants, and Children, to conform with federal law.

Section 24. Amends s. 385.202, F.S., relating to the statewide cancer registry, to remove language that requires the department to reimburse hospitals for the cost of furnishing data for the cancer registry.

Section 25. Amends s. 385.203, F.S., relating to the Diabetes Advisory Council, to revise the membership requirements of the council, and the scope of the council's activities.

Section 26. Amends s. 391.028, F.S., 1998 Supplement, relating to administration of the Children's Medical Services program, to give the Director of Children's Medical Services authority to appoint division directors subject to the approval of the secretary, and to remove "division" from the title of director.

Section 27. Amends s. 391.0315, F.S., 1998 Supplement, relating to benefits, to clarify that benefits provided under the CMS program for children with special health care needs shall be the same benefits provided to children in ss. 409.905 and 409.906, F.S., relating to Medicaid.

Section 28. Amends s. 392.69, F.S., relating to appropriations, sinking, and maintenance trust funds, to allow the department to use excess money, notwithstanding s. 216.292(5)(b), F.S., for the improvement of health facilities at A.G. Holley State Hospital, and to authorize the department to establish an advisory board to review and make recommendations relating to patient care at A.G. Holley State Hospital. Members of the advisory board shall be appointed for a term of 3 years, with such appointments being staggered so that the terms of no more than two members expire in any one year. Members are to serve without remuneration, but per diem and travel expenses may be reimbursed as provided in s. 112. 061, F.S.

Section 29. Amends s. 401.25, F.S., relating to the licensure of a basic life support (BLS) or an advanced life support (ALS) emergency medical service, to grant to the Department of Health specific authority for its administrative rule (64E-2003, F.A.C.) that imposes minimum staffing requirements. A BLS service vehicle must be staffed by at least two persons: a certified emergency medical technician, certified paramedic, or licensed physician and one ambulance driver. An ALS service vehicle must be staffed by at least two persons: a certified paramedic or licensed physician and one who is a certified emergency medical technician, certified paramedic, or licensed physician who meets requirements of s. 401.281, F.S., as a driver. The person with the highest medical certifications must be in charge of patient care.

Section 30. Amends s. 401.27, F.S., relating to standards and certification of emergency medical services personnel, to grant the Department of Health specific authority for its administrative rule (64E-2.008 and 64E-2.009, F.A.C.) that requires applicants for emergency medical technician or paramedic certification and recertification to apply under oath to the department on forms provided by the department.

Section 31. Creates s. 401.2701, F.S., relating to emergency medical services training programs. The following subsections are created:

Subsection (1) provides that any private or public institution in Florida desiring to conduct an approved program for the education of emergency medical technicians and paramedics shall: submit a completed application on a form provided by the department which includes certain required information; and receive a scheduled site visit from the department to the applicant's institution. Such site visit shall be conducted within 30 days after notification to the institution that the application was accepted. During the site visit, the department must determine the applicant's compliance with the certain criteria.

Subsection (2) provides that, after completion of the site visit, the department shall prepare a report which shall be provided to the institution. Upon completion of the report, the application shall be deemed complete and the provisions of s. 120.60, F.S., shall apply.

Subsection (3) provides that, if the program is approved, the department must issue the institution a 2-year certificate of approval as an emergency medical technician training program or a paramedic training program. If the application is denied, the department must notify the applicant of any areas of strength, areas needing improvement, and any suggested means of improvement of the program. Notification requirements and time frames are established.

Subsection (4) requires approved emergency medical services training programs to maintain records and reports that are available to the department, upon written request. Requirements for records are established.

Subsection (5) requires each approved program to notify the department within 30 days of any change in the professional or employment status of faculty. Each approved program must require its students to pass a comprehensive final written and practical examination of evaluating the skills described in the current United States Department of Transportation EMT-Basic or EMT-Paramedic, National Standard Curriculum, and issue a certificate of completion to program graduates within 14 days of completion.

Section 32. Creates s. 401.2715, F.S., relating to recertification training of emergency medical technicians and paramedics. The following subsections are created:

Subsection (1) requires the department to establish by rule criteria for all emergency medical technician and paramedic recertification training. Requirements for such rules are established.

Subsection (2) permits any individual, institution, school, corporation, or governmental entity to conduct emergency medical technician or paramedic recertification training upon application to the department and payment of a nonrefundable fee to be deposited into the Emergency Medical Services Trust Fund. Exempts institutions conducting department-approved educational programs as provided in this chapter and licensed ambulance services from the application process and payment of fees. Directs the department to adopt rules for the application and payment of a fee not to exceed the actual cost of administering this approval process.

Subsection (3) requires certified emergency medical technicians and paramedics to provide proof of completion of training conducted pursuant to this section to be eligible for recertification as provided in s. 401.27, F.S. Establishes requirements for the department's acceptance of documentation that the certificate holder has completed a minimum of 30 hours of recertification training as provided herein.

Section 33. Amends s. 401.30, F.S., 1998 Supplement, relating to records that must be maintained by permitted ambulance services, to grant the Department of Health specific authority for its administrative rule (64E-2.013, F.A.C.) that requires each licensee to maintain records and reports and to submit the record to the department as requested. Licensed ambulance services, basic life support services, and advanced life support services, must provide the receiving hospital with a copy of an individual patient care record for each patient who is transported to the hospital. The information contained on the record and the method and time frame for providing the record must be prescribed by rule of the department.

Section 34. Amends s. 401.35, F.S., relating to the Department of Health's rulemaking authority to enforce provisions relating to the regulation of emergency medical services, to grant the department specific rulemaking authority for its administrative rule (64E-2.003, F.A.C.) that requires licensed ambulance services, basic life support services, and advanced life support services to meet specific standards for the security and storage of controlled substances, medications, and fluids that are not inconsistent with requirements of ch. 499, F.S., the Florida Drug and Cosmetic Act or ch. 893, F.S., relating to the regulation of controlled substances. Requires an application for each respective service license to include an oath, upon forms provided by the department which shall contain such information as the department reasonably requires, which may include affirmative evidence of ability to comply with applicable laws and rules.

Section 35. Amends s. 409.9126, F.S., 1998 Supplement, relating to children with special health care needs, to provide for a geographic phase-in of Medicaid capitation payments to Children's Medical Services for services provided to Medicaid eligible children with special health care needs, beginning July 1, 1999, with statewide implementation to be complete by January 1, 2000.

Section 36. Amends s. 465.019, F.S., 1998 Supplement, relating to institutional pharmacies, to allow nursing homes to purchase and possess medical oxygen.

Section 37. Amends s. 499.005, F.S., 1998 Supplement, relating to prohibited acts, to clarify that a person must be authorized to sell or transfer legend drugs and compressed medical gas under ch. 499, and that a person acquiring a legend drug must be authorized to do so under the applicable law where the receipt occurs. Providing the department with false information regarding any matter within the jurisdiction of ch. 499 is prohibited, not just as it relates to a drug, device, or cosmetic. The distribution of a legend device to the patient or ultimate consumer without a prescription or order from a practitioner licensed by law to use or prescribe the device is prohibited.

Section 38. Amends s. 499.007, F.S., relating to misbranded drugs or devices, to conform the prescription statement of labels to match recently enacted federal language.

Section 39. Amends s. 499.028, F.S., relating to drug samples or complimentary drugs, to authorize federal, state, and local government employees, acting within the scope of their employment, to possess prescription drug samples.

Section 40. Amends s. 499.069, F.S., relating to punishment for violations of s. 499.005, F.S., to correct a statutory cross-reference to make the purchase of a prescription drug from an unauthorized source a third degree felony, rather than the purchase of a compressed medical gas from an unauthorized source a first-degree misdemeanor.

Section 41. Amends s. 742.10, F.S., relating to establishment of paternity for children born out of wedlock, to conform a statutory cross-references.

Section 42. Amends s. 39.303, F.S., 1998 Supplement, relating to child protection teams, to conform titles relating to Children's Medical Services.

Section 43. Amends s. 391.021, F.S., 1998 Supplement, relating to definitions used in reference to Children's Medical Services, to provide conforming language that is needed due to the reorganization of Children's Medical Services into two divisions.

Section 44. Amends s. 391.221, F.S., 1998 Supplement, relating to the Statewide Children's Medical Services Network Advisory Council, to provide conforming language that is needed due to the reorganization of Children's Medical Services into two divisions.

Section 45. Amends s. 391.222, F.S., 1998 Supplement, relating to the Cardiac Advisory Council, to provide conforming language that is needed due to the reorganization of Children's Medical Services into two divisions.

Section 46. Amends s. 391.223, F.S., 1998 Supplement, relating to technical advisory panels, to provide conforming language that is needed due to the reorganization of Children's Medical Services into two divisions.

Section 47. Repeals subsection (3) of s. 381.731, F.S., relating to submission of an initial Healthy Communities plan that was submitted in 1992.

Section 48. Repeals subsection (5) of s. 383.307, F.S., relating to department consultation agreements with birth centers that are unable to find consultants.

Section 49. Repeals subsection (7) of s. 404.20, F.S., relating to department monitoring requirements of the transportation of radioactive materials.

Section 50. Repeals s. 409.9125, F.S., relating to study requirements for Medicaid alternative service networks.

Section 51. Provides that the building known as the 1911 State Board of Health Building which is part of a multi-building complex with the address of 1217 Pearl Street, Jacksonville, Florida shall be known as the Wilson T. Sowder, M.D. Building.

Section 52. Provides that the building authorized by Chapter 98-307, L.O.F., that will be located at the University of South Florida which will house laboratory facilities for the Department of Health shall be known as the William G. "Doc" Myers, M.D. Building.

Section 53. Provides that the Department of Health headquarters building that will comprise approximately 100,000 square feet that is authorized by item 1986 in the 1998-99 General Appropriations Act shall be known as the E. Charlton Prather, M.D. Building.

Section 54. Permits the Department of Health to become an accrediting entity of the National Environmental Laboratory Accreditation program.

Section 55. Amends s. 381.0022, F.S., 1998 Supplement, to give the Department of Health and the Agency for Health Care Administration the ability to share confidential information when it is needed for Medicaid reimbursement purposes.

Section 56. Amends s. 383.011, F.S., 1998 Supplement, relating to administration of maternal and child health programs, to provide that, with respect to the Child Care Food Program, the rules adopted by the department that interpret and implement relevant federal regulations, *may*, rather than *must*, address at least those program requirements and procedures identified in paragraph (1)(i).

Section 57. Amends s. 468.304, F.S., 1998 Supplement, relating to certification examination, to provide that fees are not to exceed $100 plus the actual per-applicant cost to the department for purchasing the examination from a national organization.

Section 58. Amends s. 468.306, F.S., 1998 Supplement, relating to examinations, to provide that fees shall not exceed $75 plus the actual per-applicant cost for purchasing the examination from a national organization.

Section 59. Amends s. 468.309, F.S., relating to certificate; duration, renewal; reversion to inactive status, to provide that radiologic technologist's certificates issued in accordance with this part expire as specified in rules adopted by the department which establish a procedure for the biennial renewal of certificates.

Section 60. Amends s. 455.565, F.S., 1998 Supplement, relating to designated health care professionals and information required for licensure, to exempt registered physician interns, residents, or fellows from the physician licensure profiling and credentialing requirements.

Section 61. Directs the Division of Children's Medical Services of the Department of Health to contract with a private nonprofit provider affiliated with a teaching hospital to conduct clinical trials, approved by a federally-sanctioned institutional review board within the teaching hospital, on the use of the drug Secretin to treat autism, and require the nonprofit provider to report its findings to the Division of Children's Medical Services, the President of the Senate, the Speaker of the House of Representatives, and other appropriate bodies.

Section 62. Provides an appropriation of $50,000 to the Division of Children's Medical Services of the Department of Health from the General Revenue Fund for the purpose of implementing this act.

Section 63. Amends s. 232.435, F.S., relating to extracurricular athletic activities and athletic trainers, to conform a cross-reference to part XIII of ch. 468, F.S.

Section 64. Amends s. 381.026, F.S., 1998 Supplement, relating to Florida Patient's Bill of Rights and Responsibilities, to specify that "department" means the Department of Health.

Section 65. Amends s. 381.0261, F.S., 1998 Supplement, relating to summary of patient's bill of rights, distribution, and penalty, to clarify that certain administration fines may be imposed by the Agency for Health Care Administration, and to establish that each intentional and willful violation constitutes a separate violation and is subject to a separate fine. Permits administrative fines to be imposed by the appropriate regulatory board, or the department if there is no board, when any health

care provider fails to make available to patients a summary of their rights, pursuant to s. 381.026, F.S., and this section.

Section 66. Amends s. 409.906(11), F.S., 1998 Supplement, relating to optional Medicaid services and the Healthy Start waiver authorized thereunder, to enable the Agency for Health Care Administration to pursue a certified match program to use local and state Healthy Start funding to draw down federal matching funds in the event that the federal government does not approve the pending Healthy Start waiver.

Section 67. Amends s. 409.910, F.S., 1998 Supplement, relating to Medicaid third-party liability, to add as a new subsection (21) the requirement that health insurers and health maintenance organizations develop the capability for tape matches for purposes of Medicaid file matches, using current Medicare standard billing formats, to determine if Medicaid recipients might have any applicable insurance coverage. Existing subsection (21) is renumbered as (22).

Section 68. Creates s. 409.9101, F.S., relating to recovery for payments made on behalf of Medicaid-eligible persons. This section codifies into statute Medicaid's estate recovery process. This new section contains the following subsections:

Subsection (1) provides the short title, the "Medicaid Estate Recovery Act."

Subsection (2) provides legislative findings and intent.

Subsection (3) imposes the requirement of serving of a notice of administration to AHCA by estate personal representatives under s. 733.212(4)(a), F.S.

Subsection (4) provides a statement of the fact that acceptance of Medicaid services creates a claim in favor of AHCA as an interested person, in those instances involving a deceased Medicaid recipient who has reached age 55.

Subsection (5) provides AHCA with authority to amend claim amounts based on receipt of reimbursement requests from providers subsequent to filing the claim.

Subsection (6) specifies the process for determining an estate claim amount based on AHCA's provider payment processing system, and provides for such system reports to be considered prima facie evidence in AHCA's claim.

Subsection (7) specifies that a claim against an estate is a Class 3 claim, in conformity with the current public assistance claim standing.

Subsection (8) stipulates that a claim against an estate will not be enforced if the decedent is survived by a spouse, a child under age 21, or a child meeting the federal definition of disabled.

Subsection (9) indicates that no claim will be made against a homestead determined to be exempt from the claims of creditors, in conformity with the Florida Constitution.

Subsection (10) provides an exemption from enforcement of these provisions in circumstances in which doing so would create a hardship. Criteria are specified for determination of a hardship, and relate to residency issues, basic needs issues, care history issues, and property settlement cost considerations.

Subsection (11) provides guidance in cases involving settlement proceeds from liable third parties.

Subsection (12) provides guidance in situations involving non-liquid real property.

Subsection (13) authorizes AHCA to adopt rules to implement this section.

Section 69. Amends s. 409.912(3)(d), F.S., 1998 Supplement, relating to Medicaid provider service network demonstration projects as a cost-effective means of purchasing Medicaid services, to delete the requirement that one of the four demonstration projects be conducted in Orange County. (The

sole bidder there to the Agency for Health Care Administration's Invitation to Negotiate decided not to participate as a demonstration project.)

Section 70. Amends s. 409.913(24)(a), F.S., relating to the withholding of payments as part of Medicaid program integrity activity, to authorize AHCA to withhold payments, in whole or in part, based on evidence of fraud, willful misrepresentation, or criminal activities associated with the delivery of Medicaid goods or services. Deletes existing limitations that the agency may only reduce payments by up to 10 percent of the amount due, and up to $25,000 per month when an overpayment by the agency exceeds $75,000. (The agency indicates that it is not currently adhering to this latter limitation due to federal withholding requirements.) A stipulation is added that withheld amounts be placed in a suspended account, readily accessible for payment to providers within 14 days of the settlement of the withheld amount.

Section 71. Creates s. 409.9131, F.S., addressing Medicaid program integrity issues (fraud and abuse) in the context of Medicaid physician providers. Specifically addressed are: findings and intent; definitions of 6 specific terms; on-site records review, including prior notice provisions; notice of due process; and determination of overpayment. These new provisions address a review of medical records, consideration of physician case-mix, including patient age and whether the physician's patients include Children's Medical Services Network patients, and peer review as part of determination of any physician provider overpayments. In addition, the Agency for Health Care Administration is directed to study and report to the Legislature its methodology for overpayment calculations, including the appropriateness of using physician specialty and case-mix parameters in the methodology.

Section 72. Amends s. 455.501, F.S., relating to the definition of "health care practitioner" as used in part II of ch. 455, F.S., to add those professions that are inadvertently not included.

Section 73. Amends s. 455.507, F.S., to add "or the department when there is no board" to that section relating to exemptions for members of the armed forces or their spouses.

Section 74. Amends s. 455.521, F.S., 1998 Supplement, relating to the powers and duties of the department for the "professions" under its jurisdiction.

Section 75. Amends s. 455.557, F.S., 1998 Supplement, relating to standardized credentialing for health care practitioners, as follows:

Provides that the Department of Health no longer act as a credentials verification entity (CVE) for all health care practitioners in the state. Requires the department to serve as a depository for mostly unverified core credentials data and corrections, updates, or modifications to such data. Requires such data to become available electronically to any health care entity that is authorized to access the data by the health care practitioner. Access to the new system is prohibited without prior approval of the health care practitioner. Credentials verfication organizations (CVOs) gathering data on a health care practitioner must get the core credentials data from the department the same as a health care entity.

Provides for a new definition of "core credential data" in order to accommodate the needs of the health care entities. Also, a credentials verification entity (CVE) is changed to a credentials verification organization (CVO), which is the more common name used in the industry.

Requires all health care practitioners to provide "core credentials data" and corrections, updates, or modifications to such data to the department instead of a designated CVO. However, a health care practitioner may still designate a CVO, which must provide the data to the department as agent for the practitioner. A designated CVO must meet all the time frames established for a practitioner, or face suspension of its license to operate in Florida. Also, a designated CVO is prohibited from releasing any information on its client without prior approval by the practitioner.

Changes the time period for reporting certain incidents from "within 30 days" to "within 45 days" to coincide with the requirements of profile reporting. Rather than file two reports (profile and credentials update), a credentials report is redesigned to comply with the requirements of a profile

report. Also, the provision that every practitioner must file a quarterly update if no data changes had been filed, is deleted.

Effective July 1, 2002, no Florida agency may collect or attempt to collect duplicate core credentials data from any practitioner if the information is available from the department. This does not restrict the right of any state agency to request additional information not included in the department's file, which is deemed necessary for the agency's specific credentialing purposes.

Prohibits liability insurance requirements from being established by the department for CVOs. Requires each CVO to maintain liability insurance appropriate to meet the certification or accreditation requirements established in s. 455.557, F.S.

Provides that no liability against a CVO or any health care entity may be incurred for reliance on data obtained directly from the department.

Requires that the Credentials Advisory Council be abolished October 1, 1999. After the council is abolished, the department may carry out all council-consulted duties on its own.

Section 76. Amends s. 455.564, F.S., 1998 Supplement, to specify that an incomplete application expires 1 year after intial filing, to provide for a wall-card size license, to require 1 hour of risk-management training as part of continuing education requirements, and to provide that if there is no regulatory board, the Department of Health has the authority to adopt rules and establish the criteria for continuing education courses required for license renewal.

Section 77. Amends s. 455.5651, F.S., 1998 Supplement, to provide that the Department of Health may not include disciplinary action taken by a licensed hospital or an ambulatory surgical center in the practitioner profile.

Section 78. Amends s. 455.567, F.S., clarifying the definition of sexual misconduct in the practice of a health care profession by a health care practitioner.

Section 79. Amends s. 455.574, F.S., 1998 Supplement, to clarify that an applicant may review the questions the applicant answered incorrectly or the parts of the examination failed.

Section 80. Amends s. 455.587, F.S., to authorize a fee of up to $25 for the issuance of wall certificates authorized in 1998 to licensees licensed prior to July 1, 1998, or for a duplicate wall certificate.

Section 81. Amends s. 455.601, F.S., relating to Hepatitis B or human immunodeficiency carriers, to provide language establishing that there is no presumption that a blood-borne infection is a job-related injury for employees of a health care facility.

Section 82. Amends s. 455.604, F.S., 1998 Supplement, to add the profession licensed under part X of ch. 468, the Dietetics and Nutrition Practice Act, to the list of professions required to complete a continuing education course on HIV and AIDS.

Section 83. Amends s. 455.607, F.S., relating to HIV and AIDS continuing education course requirements for certain professions, to correct a cross-reference.

Section 84. Amends s. 455.624, F.S., to expand the opportunity for regulatory boards to discipline practitioners for certain violations (including attempting to engage a patient or client in sexual activity, failing to comply with the requirements of profiling and credentialing, failing to report to the board or department after being convicted or found guilty of a crime, using information from accident reports, and failing to inform patients about their rights).

Section 85. Amends s. 455.664, F.S., relating to advertisement by a health care practitioner of free or discounted services, to change the term health care provider to health care practitioner. This conforms to 1998 changes in terms. Also, the requirements are made applicable to the following chapters: 465, 467, 478, 483, 484, 490, and 491.

Section 86. Amends s. 455.667, F.S., 1998 Supplement, to expand the definitions to provide that in certain instances, the department may obtain patient records, billing records, and insurance records without patient consent if a complaint has been filed alleging inadequate medical care, fraud, kickbacks, etc., and certain conditions are met.

Section 87. Amends s. 455.687, F.S., to clarify that the department may issue an emergency suspension order of the license of any health care practitioner who tests positive for any drug on any government or private-sector pre-employment or employer-ordered drug test, if the practitioner does not have a legitimate medical reason for using such drug. The practitioner is given 48 hours from the time of notification to produce a lawful prescription for the drug before an emergency order is issued.

Section 88. Amends s. 455.694, F.S., 1998 Supplement, relating to financial responsibility requirements, to include ch. 467, midwives.

Section 89. Creates s. 455.712, F.S., to require all business establishments regulated by the Division of Medical Quality Assurance pursuant to ss. 455.517 through 455.707, F.S., to obtain an active status business license prior to operating such business. Business establishments include, but are not limited to, dental laboratories, electrology facilities, massage establishments, pharmacies, and health care services pools.

Section 90. Amends s. 457.102, F.S., 1998 Supplement, relating to definition used in ch. 457, F.S., to provide that "prescriptive rights" means the prescription, administration, and use of needles and devices, restricted devices, and prescription devices that are used in the practice of acupuncture and oriental medicine.

Section 91. Amends s. 458.307, F.S., 1998 Supplement, relating to the Board of Medicine, to require that one member of the Board of Medicine be a health care risk manager licensed under s. 395.10974 (hospital chapter) rather than a hospital risk manager certified under part IX of ch 626 (insurance chapter), and to remove outdated language.

Section 92. Creates s. 458.309(3), F.S., 1998 Supplement, to grant authority to the Board of Medicine to promulgate rules requiring registration of all physician offices performing levels 2 and 3 office surgery. The department is authorized to inspect such offices unless the offices are accredited by a nationally recognized agency or an accrediting organization subsequently approved by the board. All costs for registration, inspection, or accreditation shall be paid by the person seeking to register and operate the office setting in which office surgery is performed.

Section 93. Amends s. 458.311, F.S., 1998 Supplement, to provide for the Federation of State Medical Boards to give the medical examination rather than the Board of Medicine as was done prior to 1999. Also, after the year 2000, only the United States Medical Licensing Examination (USMLE) will be accepted for licensure by Florida and the various other states. (Prior to this date, a combination of the various approved medical examinations has been acceptable.) Provision is made to allow an individual who was licensed in another state and practiced for at least 10 years to become licensed in Florida by passage of the Special Purpose Examination (SPEX). However, for the purpose of examination of any applicant who was licensed on the basis of a state board examination prior to 1974, who is currently licensed in at least 3 other jurisdictions of the U.S. or Canada, and who has practiced pursuant to such licensure for a period of at least 20 years, this provision does not apply. Various provisions of obsolete language are deleted.

Section 94. Amends s. 458.3115, F.S., 1998 Supplement, to delete obsolete language related to the Agency for Health Care Administration (agency), and insert "department" for the Department of Health. The medical boards were transferred from the agency to the department effective July 1, 1997.

Section 95. Amends s. 458.313, F.S., to provide that prior to January 1, 2000, a physician who meets various requirements and has passed a combination of the various approved medical examinations can be licensed in Florida by endorsement. After that date, they can only be licensed by endorsement if they passed all parts of the USMLE examination. Provides that an applicant may complete a board-approved postgraduate training program within 2 years of filing an application in

lieu of the actual practice of medicine for at least 2 of the preceding 4 years. Also, various obsolete language is deleted.

Section 96. Amends s. 458.315, F.S., relating to a certificate to practice in areas of critical need, to authorize a physician to practice in all approved areas of critical need rather than seek approval for each area. The recipient of a temporary certificate shall notify the board within 30 days after accepting employment, of all such employment and of any places where practice privileges were denied.

Section 97. Amends s. 458.3165, F.S., relating to public psychiatry certificate, to provide that a recipient of a public psychiatry certificate may use the certificate to work at any public mental health facility or program funded in part or entirely by state funds.

Section 98. Amends s. 458.317, F.S., 1998 Supplement, to authorize any physician holding an active Florida license to convert it to a limited license for the purpose of providing uncompensated care for low-income Floridians. Applicants who receive no compensation will have all fees and assessments waived.

Section 99. Amends s. 458.331, F.S., 1998 Supplement, to increase the administrative fine cap from $5,000 to $10,000, and include provision for fining a physician who violates the Patient's Bill of Rights.

Section 100. Amends s. 458.347, F.S., 1998 Supplement, relating to physician assistants, to delete obsolete language related to examinations and to provide that temporary licenses expire 30 days after receiving test scores.

Section 101. Amends s. 459.005, F.S., 1998 Supplement, to grant authority to the Board of Osteopathic Medicine to promulgate rules requiring registration of all physician offices performing levels 2 and 3 office surgery. The department is authorized to inspect such offices unless the offices are accredited by a nationally recognized agency or an accrediting organization subsequently approved by the board. All costs for registration, inspection, or accreditation shall be paid by the person seeking to register and operate the office setting in which office surgery is performed.

Section 102. Amends s. 459.0075, F.S., to authorize any physician holding an active Florida license to convert it to a limited license for the purpose of providing uncompensated care for low-income Floridians. Applicants who receive no compensation, will have all fees and assessments waived.

Section 103. Amends s. 459.015, F.S., 1998 Supplement, to provide that failing to comply with the requirements of ss. 381.026 and 381.0261, F.S., to provide patients with information about their patient rights and how to file a patient complaint, constitutes grounds for which certain disciplinary actions may be taken.

Section 104. Amends s. 460.402, F.S., to exempt from chiropractic licensure requirements chiropractic students enrolled in a community-based internship.

Section 105. Amends s. 460.403, F.S., 1998 Supplement, to provide a definition for a "community-based internship" for purposes of chiropractic licensure.

Section 106. Amends s. 460.406, F.S., 1998 Supplement, to remove the requirement for a post-graduate chiropractic internship program.

Section 107. Amends s. 460.413, F.S., 1998 Supplement, to increase the administrative fine cap from $2,000 to $10,000 for chiropractic physicians.

Section 108. Amends s. 460.4165 F.S., relating to chiropractic physicians' assistants, to: clarify language relating to certified chiropractic physicians' assistants; provide that ch. 460, does not prevent third-party payers from reimbursing employers of chiropractic physicians' assistants from covered services rendered by certified chiropractic physicians' assistants; set requirements for curriculum; establish application approval for certified chiropractic physicians' assistants; delete language relating to board rules and certifications of chiropractic physicians' assistants; and establish

requirements for the supervision of registered chiropractic assistants and certification renewal. Obsolete language is deleted.

Section 109. Provides that persons holding certificates as certified chiropractic physicians' assistants on the effective date of this act need not reapply for certification, but must comply with biennial renewal requirements as provided in s. 460.4165(6), F.S.

Section 110. Amends s. 460.4166, F.S., 1998 Supplement, to establish that registered chiropractic assistants may perform certain duties under the supervision of a certified chiropractic physician's assistant.

Section 111. Amends s. 461.003, F.S., 1998 Supplement, to provide a definition for "certified podiatric x-ray assistant," "department," and "practice of podiatric medicine."

Section 112. Amends s. 461.006, F.S., 1998 Supplement, relating to licensure by examination, to expand the clinical experience requirements that allow an applicant to be examined by the department to become a licensed podiatric physician, and to specificially define "active licensed practice" in this context.

Section 113. Amends s. 461.007, F.S., 1998 Supplement, relating to renewal of license, to include requirements for renewal of license for licensees who have not actively practiced podiatric medicine within a certain time period.

Section 114. Amends s. 461.013, F.S., 1998 Supplement, relating to grounds for disciplinary action, to provide that failing to comply with the requirements of ss 381.026 and 381.0261, F.S., to provide patients with information about their patient rights and how to file a complaint, shall constitute grounds for which specified disciplinary actions may be taken; and to increase the board's administrative fine cap for practice act violations from a maximum of $1,000 per violation to $10,000.

Section 115. Creates s. 461.0135, F.S., to establish provisions for the operation of X-ray machines by podiatric X-ray assistants.

Section 116. Amends s. 464.008, F.S., relating to nurse licensure by examination, to provide that any applicant who fails the examination a certain number of times, regardless of the jurisdiction in which the examination is taken, will be required to complete a board-approved remedial course before the applicant will be approved for reexamination.

Section 117. Amends s. 464.022, F.S., relating to nursing, to provide that no provision of chapter 464 shall be construed to prohibit the practice of nursing by individuals enrolled in board-approved remedial courses.

Section 118. Amends s. 465.003, F.S., to change the statutory definition of the "practice of the profession of pharmacy" to include "other pharmaceutical services" which means evaluation and monitoring of a patient's health as it relates to drug therapy and assisting in the management of such drug therapy. A definition is added for "data communication device."

Section 119. Amends s. 465.016, F.S., to add correctional facilities to the institutional practice sites where return of unit-dose medications for reuse is permitted. Specifies that using or releasing a patient's records except as authorized under chapter 465 or chapter 455, F.S., is grounds for disciplinary action. Increases the administrative fine from a maximum of $1,000 to a maximum of $5,000 for each offense.

Section 120. Amends s. 465.014, F.S., relating to pharmacy technicians, to conform a cross-reference.

Section 121. Amends s. 465.015, F.S., relating to violations and penalties, to conform a cross-reference.

Section 122. Amends s. 465.0196, F.S., relating to special pharmacy permits, to conform a cross-reference.

Section 123. Amends s. 468.812, F.S., relating to exemptions from licensure, to conform a cross-reference.

Section 124. Amends s. 499.003, F.S., relating to definitions of terms used in ss. 499.001-499.081, F.S., to conform a cross-reference.

Section 125. Creates within the Department of Health a 15-member Task Force for the Study of Collaborative Drug Therapy Management. The task force consists of representatives of 10 associations and 5 state entities. The charge to the task force is to provide an overview of other states' laws or rules relating to collaborative drug therapy management, receive testimony and identify the extent of this practice currently, and determine the efficacy of this practice in improving health care patient outcomes. The task force is directed to meet by August 1, 1999, and submit a report of its findings to the Senate President, House Speaker, and applicable legislative committees not later than December 31, 1999.

Section 126. Amends s. 466.021, F.S., relating to penalties for employment of unlicensed persons by dentists, to delete the requirement that the department furnish the actual work order forms to dentists, and to incorporate technical revisions.

Section 127. Amends s. 468.1155, F.S., to clarify that an applicant for a provisional license to practice speech-language pathology is qualified with either a master's or a doctoral degree.

Section 128. Amends s. 468.1215, F.S., to clarify that a bachelor's degree is required for licensure as a speech-language pathology assistant.

Section 129. Amends s. 468.307, F.S., 1998 Supplement, relating to radiologic technology, to authorize the department to establish by rule a subcategory of a certificate limiting the holder to a specific procedure or specified type of equipment.

Section 130. Amends s. 468.506, F.S., 1998 Supplement, to replace "director" with "secretary" and "agency" with "department," with regard to the Dietetics and Nutrition Practice Council.

Section 131. Amends s. 468.701, F.S., 1998 Supplement, to change the definitions section specific to athletic trainers to delete "council" and insert "Board of Athletic Training."

Section 132. Amends s. 468.703, F.S., 1998 Supplement, to convert the Council of Athletic Training composed of seven members reporting to the department to a Board of Athletic Training composed of nine members. Five of the council members are required to be athletic trainers, one member a physician licensed under ch. 460, one a physician licensed under either chapter 458 or 459, and two consumer members. Obsolete language is deleted.

Section 133. Amends s. 468.705, F.S., 1998 Supplement, to provide for the new Board of Athletic Training to have rule making authority for specified issues.

Section 134. Amends s. 468.707, F.S., 1998 Supplement, relating to licensure by examination, to replace "department" with "board" and to conform a cross-reference.

Section 135. Amends s. 468.709, F.S., relating to fees, to replace "department" with "board."

Section 136. Amends s. 468.711, F.S., 1998 Supplement, relating to renewal of license, to replace "department" with "board" and to correct a cross-reference.

Section 137. Amends s. 468.719, F.S., 1998 Supplement, relating to disciplinary actions, to replace "department" with "board."

Section 138. Amends s. 468.721, F.S., relating to the saving clause, to provide that department rules remain in effect pending adoption of rules by the board, and to delete obsolete language.

Section 139. Amends s. 20.43, F.S., 1998 Supplement, to include the Board of Athletic Training created under part XIII of ch. 468, under the Division of Medical Quality Assurance within the Department of Health.

Section 140. Provides that the Council of Athletic Training and the terms of its members are terminated on July 1, 1999.

Section 141. Amends s. 468.805, F.S., relating to grandfathering of a person who has practiced orthotics, prosthetics, or pedorthics, to provide for a grandfather clause for certain people who meet certain examination requirements related to meeting a March 1, 1998, deadline.

Section 142. Amends s. 468.806, F.S., relating to biennial renewal of license, to provide that the Board of Orthotists and Prosthetists, shall establish a procedure for approving continuing education providers, and may set a fee for provider approval.

Section 143. Amends s. 478.42, F.S., to clarify the definition of electrolysis to mean the permanent removal of hair by destroying the hair-producing cells using equipment and devices approved by the Board of Medicine and cleared by and registered with the U.S. Food and Drug Administration.

Section 144. Amends s. 483.041, F.S., to expand the definition of "clinical laboratory," to include specific laboratory services that are provided, and to define "clinical laboratory examination." The definition of "licensed practitioner" is expanded to include a duly licensed out-of-state practitioner who orders a laboratory examination for non-Florida residents who reside in the same state as the out-of-state ordering practitioner.

Section 145. Amends s. 483.803, F.S., relating to definitions applicable to clinical laboratory personnel, to state that a "clinical laboratory examination" means an examination as defined in s. 483.041, F.S.

Section 146. Amends s. 483.807, F.S., 1998 Supplement, to clarify language relating to initial application for a laboratory training program.

Section 147. Amends s. 483.809, F.S., 1998 Supplement, relating to licensure; examinations; registration of trainees; approval of curricula, to authorize the board to designate by rule a national examination in lieu of a state examination for clinical laboratory personnel.

Section 148. Amends s. 483.812, F.S., relating to public health laboratory scientists' licensure, to revise clinical laboratory director requirements to bring the standards into conformity with federal law.

Section 149. Amends s. 483.813, F.S., relating to clinical laboratory personnel license, to delete provision for a conditional license for a period of up to 3 years.

Section 150. Amends s. 483.821, F.S., relating to periodic demonstration of competency; continuing education or reexamination, to authorize the Board of Clinical Laboratory Personnel to provide by rule for continuing education or retraining requirements for candidates failing an examination two or more times.

Section 151. Amends s. 483.824, F.S., relating to qualifications of clinical laboratory director, to specify that a holder of a doctoral degree be nationally certified.

Section 152. Amends s. 483.825, F.S., relating to grounds for disciplinary action against clinical laboratory personnel, to include a number of items, such as, convicted or found guilty of, or entered a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction which directly relates to the activities of clinical laboratory personnel or involves moral turpitude or fraudulent or dishonest dealing, as well as additional grounds relating to patient care and quality of care.

Section 153. Amends s. 483.901, F.S., 1998 Supplement, relating to medical physicists, to delete the provision for a temporary license to an applicant pending completion of the application process, and to conform references.

Section 154. Amends s. 484.007, F.S., relating to licensure of opticians, to provide that a licensed optician must have been licensed in this state for at least one year before being authorized to supervise an apprentice.

Section 155. Amends s. 484.0512, F.S., relating to a hearing aid thirty-day trial period; purchaser's right to cancel; notice; refund; cancellation fee, to provide that the period for a refund mirrors language that speech-language pathology and audiology have in their practice act. It requires a refund within 30 days of the return or attempted return of the hearing aid.

Section 156. Amends s. 484.053, F.S., relating to prohibitions and penalties relating to hearing aids, to increase the penalty for the unlicensed practice of the profession from a second-degree misdemeanor to a third-degree felony.

Section 157. Amends s. 484.056, F.S., 1998 Supplement, relating to hearing aid disciplinary proceedings, to correct a cross-reference.

Section 158. Amends s. 486.041, F.S., relating to physical therapist application for license, to delete the provision for issuance of a temporary permit.

Section 159. Amends s. 486.081, F.S., relating to physical therapist issuance of license without examination to person passing examination of another authorized examining board, to delete the provision for issuance of a temporary permit.

Section 160. Amends s. 486.103, F.S., relating to physical therapist assistant, to delete the provision for issuance of a temporary permit.

Section 161. Amends s. 486.107, F.S., relating to physical therapist assistants, to delete the provision for issuance of a temporary permit.

Section 162. Amends s. 490.005, F.S., 1998 Supplement, relating to psychological services licensure by examination, to amend a provision passed in 1998 that provided the date an applicant could submit to the board from prior to July 1, 2001, to August 31, 2001, and that the applicant was enrolled and graduated from a school, not accredited, but with a standard of education and training comparable to programs accredited by an agency recognized by the United States Department of Education. Existing reference to comparability being determined by the board is deleted.

Section 163. Amends s. 490.006, F.S., relating to licensure by endorsement, to provide that a psychologist with a doctoral degree in psychology and who has a least 20 years of experience as a licensee in any jurisdiction of the United States within 25 years preceding the date of application may be licensed in Florida.

Section 164. Amends s. 490.0085, F.S., relating to psychologist continuing education, to correct the name of the Medical Quality Trust Fund.

Section 165. Amends s. 491.0045, F.S., relating to clinical social work, marriage and family therapy, and mental health counseling intern registration, to provide that applicants who register as interns on or before December 31, 2001, and meet the education requirements in effect on December 31, 2000, are deemed to have met the educational requirements for licensure.

Section 166. Amends s. 491.0046, F.S., relating to clinical social work, marriage and family therapy, and mental health counseling provisional license requirements, to provide additional educational requirements for applicants applying for licensure by examination or endorsement.

Section 167. Amends s. 491.005, F.S., relating to licensure by exam, to provide that, for the purposes of dual licensure, the department shall license as a marriage and family therapist any person who meets the requirements of s. 491.0057. Fees shall not exceed those stated in this subsection. An individual who is registered as an intern and has satisfied all of the education requirements for the profession for which the applicant seeks licensure shall be certified as having met the educational requirements for licensure under this section. Also, the section provides that the board may adopt rules necessary to implement any education or experience requirement of this

section for licensure as a clinical social worker, marriage and family therapist, or mental health counselor.

Section 168. Amends s. 491.005, F.S., to provide that effective January 1, 2001, a series of enhanced educational requirements for licensure by endorsement take effect.

Section 169. Amends s. 491.006, F.S., relating to licensure or certification by endorsement, to provide for licensure by endorsement or by passage of the examination in the profession which the applicant seeks licensure.

Section 170. Amends s. 491.0085, F.S., relating to continuing education, to provide that laws and rules courses and their providers and programs, may test the applicants for the courses offered.

Section 171. Amends s. 491.014, F.S., 1998 Supplement, relating to exemptions, to delete the requirement that such services may be performed for no more than five days in any month and no more than 15 days in a calendar year.

Section 172. Amends s. 499.012, F.S., 1998 Supplement, relating to wholesale distributions of prescription drugs, to provide for certain governmental transfers of drugs between identified entities.

Also, the governmental sale, purchase, trade, or other transfer of prescription drugs to certain entities for an authorized contract provider for eligible patients who meet certain conditions must be based on written authorization from the Secretary of the Department of Health or his designee, and specified conditions must be met. The current department rule provides for the issuance of a restricted distributor's permit to monitor this activity instead. In addition, the current rule does not prohibit prescription drugs transferred under this authority from being billed to Medicaid, which is prohibited in the bill.

Section 173. Amends s. 626.883, F.S., relating to insurance administrators, to require that payments by a fiscal intermediary to a health care provider include the following information:

- For a *noncapitated* health care provider, an explanation of services being reimbursed which includes specific information such as the patient's name, date of service, procedure code, amount of reimbursement, and plan identification.
- For a *capitated* health care provider, a statement of services which must include the number of patients covered by the contract, the rate per patient, the total amount of payment, and the identification of the plan on whose behalf the payment is made.

Section 174. Amends s. 641.316, F.S., 1998 Supplement, relating to fiscal intermediary services, to require that payments by a fiscal intermediary to a health care provider include the following information:

- For a *noncapitated* health care provider, an explanation of services being reimbursed which includes specific information such as the patient's name, date of service, procedure code, amount of reimbursement, and plan identification.
- For a *capitated* health care provider, a statement of services which must include the number of patients covered by the contract, the rate per patient, the total amount of payment, and the identification of the plan on whose behalf the payment is made.

Section 175. Establishes a Task Force on Telehealth that will review the various aspects of telehealth services. Provides legislative intent. Directs the Secretary of Health to appoint an unspecified number of task force members representing affected medical and allied health professions and other affected health care industries. Specifies nine specific study issues. Directs the task force to provide recommendations to the Legislature and Governor by January 1, 2000.

Section 176. Amends s. 468.352, F.S., relating to definitions used in part V, ch. 468, F.S., relating to respiratory therapy, to define "board" to mean the Board of Respiratory Care.

Section 177. Amends s. 468.353, F.S., relating to board functions related to respiratory care, to give the powers and duties of the Board of Medicine to the Board of Respiratory Care and to give the Board of Respiratory Care certain rulemaking authority.

Section 178. Amends s. 468.354, F.S., relating to the respiratory care board; organization; function; to create the Board of Respiratory Care in place of the Advisory Council on Respiratory Care, to establish board membership, and incorporate conforming revisions.

Section 179. Amends s. 468.355, F.S., relating to eligibility for licensure; temporary licensure, to remove outdated language and to require the Board of Respiratory Care to review the examinations and standards of the National Board for Respiratory Care "periodically" rather than "annually."

Section 180. Amends s. 468.357, F.S., relating to licensure by examination, to make changes necessary as a result of the creation of the Board of Respiratory Care, and to delete outdated language.

Section 181. Amends s. 468.364, F.S., 1998 Supplement, relating to fees; establishment; disposition, to remove certain fee-related rulemaking authority from the board.

Section 182. Amends s. 468.365, F.S., 1998 Supplement, relating to respiratory care disciplinary grounds and actions, to make necessary changes as a result of the creation of the Board of Respiratory Care.

Section 183. Amends s. 464.016, F.S., relating to violations and penalties, to specify that use of the title "nurse" to imply that a person is licensed or certified as same, unless such person is licensed or certified, constitutes a misdeamnor of the first degree.

Section 184. Amends s. 458.3115, F.S., 1998 Supplement, relating to restricted license; certain foreign-licensed physicians; United States Medical Licensing Examination or agency-developed examination; restrictions on practice; full licensure, to provide that a person who is eligible to take and elects to take the USMLE who has previously passed part 1 or part 2 of the previously administered FLEX shall not be required to retake or pass the equivalent part of the USMLE up to the year 2002, rather than 2000, and clarifies language relating to practice in any jurisdiction.

Section 185. Amends s. 458.3124, F.S., 1998 Supplement, relating to restricted license; certain experienced foreign-trained physicians, to amend the date by which a person applying for licensure must submit application to the Department of Health.

Section 186. Amends section 301 of chapter 98-166, Laws of Florida, to include language stating that the fee charged by the department for foreign licensed physician examinees is not to exceed 25 percent of the actual costs of the first examination administered pursuant to s. 458.3115, F.S., 1998 Supplement, and a fee not to exceed 75 percent of the actual costs for any subsequent examination administered pursuant to that section.

Section 187. Directs the Agency for Health Care Administration, in conjunction with other agencies as appropriate, to conduct a detailed study and analysis of clinical laboratory services for kidney dialysis patients in the State of Florida. The study shall include, but not be limited to: an analysis of the past and present utilization rates of clinical laboratory services for dialysis patients; financial arrangements among kidney dialysis centers, their medical directors, any business relationships and affiliations with clinical laboratories and any self-referral to clinical laboratory services; the quality and responsiveness of clinical laboratory services for dialysis patients in Florida; and the average annual revenue for dialysis patients for clinical laboratory services for the past 10 years. The agency is required to report its findings to the Legislature by February 1, 2000.

Section 188. Amends s. 455.651, F.S., 1998 Supplement, relating to disclosure of confidential information, to provide that any person injured as a result of a willful violation of this section shall have a civil cause of action for treble damages, reasonable attorney fees, and costs.

Section 189. Amends s. 641.261, F.S., relating to HMO other reporting requirements, to conform references to the Agency for Health Care Administration from the Department of Health and Rehabilitative Services.

Section 190. Amends s. 641.411, F.S., relating to prepaid health clinic other reporting requirements, to conform references to the Agency for Health Care Administration from the Department of Health and Rehabilitative Services.

Section 191. Amends s. 733.212, F.S., notice of administration; filing of objections and claims, to provide that under s. 409.9101, F.S., the Agency for Health Care Administration is considered a reasonably ascertainable creditor in instances where the decedent had received Medicaid assistance for medical care after reaching 55 years of age.

Section 192. Provides for the establishment of a seven-member task force to review sources of funds deposited into the Public Medical Assistance Trust Fund. Members are to be appointed as follows: 2 by the President of the Senate, one of whom is a member of the Senate and one of whom represents a hospital subject to the PMATF assessment; 2 by the Speaker of the House of Representatives, one of whom is a member of the House and one of whom represents a non-hospital health care entity subject to the PMATF assessment; and 3 by the Governor, the Director of AHCA or his designee, a medical doctor licensed to practice in the state, and a consumer with no employment or investment interest in any health care entity subject to the PMATF and who is a representative of Florida TaxWatch. The Governor is to designate the task force chair from among the members.

Specific study topics include:

- Whether any provisions of ss. 395.701 and 395.7015, F.S., relating to assessments on net operating revenues of hospitals and non-hospital health care entities for deposit into the Public Medical Assistance Trust Fund, and s. 409.918, F.S., relating to the creation of and authorization for the Public Medical Assistance Trust Fund, need to be revised;
- Whether current assessments are equitably imposed;
- Whether exemptions from, or inclusions within, the assessments are justified; and
- The extent to which modifications to other statutory provisions that require deposit of specified revenue into the Public Medical Assistance Trust Fund could result in increased revenue for the trust fund, including but not limited to: s. 210.20, F.S., relating to cigarette tax funds; s. 395.1041, F.S., relating to hospital emergency room access violation fines; s. 408.040, F.S., relating to certificate-of-need violation fines; and s. 408.08, F.S., relating to hospital cost containment violation fines.

Directs the task force to provide an analysis of the budgetary impact of any recommended exemptions from, inclusions within, or modifications to, existing assessments. In addition, the bill directs AHCA to provide staff support and technical assistance to the task force, and requires the task force to convene no later than August 1, 1999, and report its findings and recommendations by December 1, 1999.

Section 193. Creates s. 395.40, F.S., to provide Legislative findings and intent that there has been a lack of timely access to trauma care due to the state's fragmented trauma system and that there is a necessity to plan for and establish an inclusive system which would incorporate and coordinate all providers who have resources to meet the needs of trauma victims. Provides findings that there would be significant benefits from coordinating the trauma-related activities of several state agencies. States the intent of the Legislature to place primary responsibility for planning a statewide system with the Department of Health and finds that there would be significant benefit from the department, the Agency for Health Care Administration and the Boards of Medicine and Nursing establishing interagency teams and agreements to develop guidelines, standards, and rules. Gives leadership responsibility for this activity to the Department of Health. Suggests that the above-named entities should establish a coordinated methodology for: monitoring, evaluating, and enforcing the requirements of the state's trauma system which recognizes the interest of each agency; developing

roles for trauma agencies which include issues of system evaluation and managed care; developing and submitting federal waivers as necessary; developing criteria which later will become the basis for mandatory trauma victim care consultation and mandatory transfer of appropriate victims to trauma centers; developing a coordinated approach to trauma victim care, including movement of the trauma victim through the trauma system and identification of medical responsibility for each phase of in- and out-of-hospital trauma care; and requiring medical directors of emergency medical services providers to have medical accountability for the trauma victim during an inter-facility transfer. Encourages the department to foster the provision of trauma care and serve as a catalyst for improvements in trauma care including the promotion of trauma centers and agencies in each trauma region and updating the state trauma system plan by December, 2000, and every five years thereafter.

Section 194. Amends s. 395.401, F.S., 1998 Supplement, to delete the definitions of local and regional trauma agencies and provide a definition of trauma agency, which may be established and operated by one or more counties. Also, provides a definition of "trauma alert victim" and modifies the definition of "trauma victim" to include injuries due to burns and to remove "life-threatening" as a condition of being defined as a trauma victim. Decreases the frequency for submission of trauma agency plans from annually to every 5 years, and eliminates requirements for the department to approve or disapprove plans within specified time frames. Removes requirements for public hearings with adequate notice and removes the requirement that trauma agencies submit written notice to the department 90 days prior to ceasing operation.

Section 195. Amends s. 395.402, F.S., to delete periodic revision by the Legislature of county trauma service area assignments based on recommendations made in local or regional trauma plans. The bill requires the department to assume this review and assignment function, and requires the department to take into consideration regional recommendations and the recommendations made as a part of the state trauma plan in the review and assignment function. The review is to take place in the year 2000 and every 5 years thereafter.

Section 196. Amends s. 395.4045, F.S., to require Emergency Medical Services providers to transport trauma alert victims to hospitals approved as trauma centers, except as provided in local or regional trauma protocols or, if no local or regional trauma protocol is in effect, as provided for in a provider's departmentally approved trauma protocol, and that trauma alert victims be identified through the use of a trauma scoring system.

Section 197. Effective January 1, 2000, creates s. 458.351, F.S., to require physicians licensed under chapter 458, F.S., to file adverse incident reports within 15 days of the occurrence of the incident. Includes a definition of "adverse incident," and requires the department to review each incident. Provides rulemaking authority to implement this section. (NOTE: HB 1843 or similar legislation did not pass that would have provided for public record exemptions and other restrictions on disclosure of the records generated by this action.)

Section 198. Effective January 1, 2000, creates s. 459.026, F.S., to require physicians licensed under chapter 459, F.S., to file adverse incident reports within 15 days of the occurrence of the incident. Includes a definition of "adverse incident," and requires the department to review each incident. Provides rulemaking authority to implement this section. (NOTE: HB 1843 or similar legislation did not pass that would have provided for public record exemptions and other restrictions on disclosure of the records generated by this action.)

Section 199. Requires the Department of Health to establish maximum allowable levels for contaminants in compressed air used for recreational sport diving; provides for periodic compressed air contaminant testing; provides for exemptions; requires compressed air vendors to display certificates received from accredited laboratories; and provides for penalties. The department is also authorized to adopt rules to implement the provisions of this section. Provides an effective date of January 1, 2000.

Section 200. Creates the Minority HIV and AIDS Task Force within the Department of Health. The task force will develop and provide recommendations to the Governor, the Legislature, and the Department of Health on ways to strengthen the HIV and AIDS prevention programs and early intervention and treatment efforts in minority communities. In addition, the tack force will address the needs of the state's minorities infected with HIV and those who have AIDS, and their families.

The bill directs the Secretary of the Department of Health to appoint 15 members to the task force and provides the membership composition of the task force from a broad range of backgrounds, including: persons infected with HIV or AIDS; minority community-based support organizations; minority treatment providers; the religious community within groups of persons infected with HIV or AIDS; and the Department of Health. The bill provides that members will not be compensated.

The task force report must address:

- Strategies for reducing the risk of HIV and AIDS in minority communities.
- A plan for establishing mentor programs and exchanging information and ideas among minority community-based organizations providing HIV and AIDS prevention services.
- Strategies to implement prevention and treatment programs within minority communities.
- Strategies for ensuring that at-risk minority persons who test positive for HIV or AIDS are provided with access to treatment and secondary prevention services.
- Strategies to help reduce or eliminate high-risk behaviors in persons who test negative but engage in high-risk behaviors.
- A plan to evaluate the implementation of the recommendations made by the task force.

Section 201. Directs the Department of Health to develop and implement a statewide HIV and AIDS prevention campaign targeted towards minorities at risk of HIV infection. This campaign will include television, radio, and outdoor advertising; public service announcements; and peer-to-peer outreach. The campaign will also provide information on the risk of HIV and AIDS infection and the strategies to follow for prevention, early detection, and treatment. All of the messages and concepts will be evaluated with members of the target group and utilize culturally sensitive language and educational materials.

The bill also directs the Department of Health to establish four positions within the department, including HIV and AIDS regional minority coordinators and one statewide HIV and AIDS minority coordinator. The regional minority coordinators will facilitate statewide efforts to implement and coordinate HIV and AIDS prevention and treatment programs. The statewide coordinator will report to the chief of the Bureau of HIV/AIDS in the Department of Health.

The Department of Health, Minority HIV and AIDS Task Force, and the statewide coordinator are to plan and conduct a statewide Black Leadership Conference on HIV and AIDS by January 2000. The conference will provide workshops for minority organizations in building skills and improving the capacity to conduct HIV and AIDS prevention and treatment programs.

Section 202. Provides an appropriation of $250,000 in fiscal year 1999-2000 from the General Revenue Fund to the Department of Health to carry out these minority HIV and AIDS initiatives.

Section 203. Amends s. 20.41, F.S., relating to the Department of Elderly Affairs, to provide that area agencies on aging are subject to ch. 119, F.S., relating to public records, and, when considering any contracts requiring the expenditure of funds, are subject to ss. 286.011-286.012, F.S., relating to public meetings.

Section 204. Effective October 1, 1999, creates part XV of ch. 468, F.S., consisting of ss. 468.821, 468.822, 468.823, 468.824, 468.825, 468.826, 468.827, and 468.828, F.S., to require the Department of Health to regulate the practice of certified nursing assistants in Florida and provides requirements for certification. Additionally, the department is authorized to deny, suspend, or revoke certification of certified nursing assistants and to impose administrative penalties for the commission of specified prohibited acts.

Furthermore: provides definitions; authorizes the department to issue a letter of exemption from disqualification of certification; requires the department to maintain a registry of certified nursing assistants; provides for a first-degree misdemeanor penalty for a certified nursing assistant or

applicant for certification who makes any false statement or fails to disclose information with respect to any voluntary or paid employment or licensure as a certified nursing assistant; gives the Department of Health access to the background screening registry for nursing home employees maintained by the Agency for Health Care Administration and the child abuse screening system maintained by the Department of Children and Family Services; requires each employer of certified nursing assistants to submit to the Department of Health a list of names and Social Security numbers of each person employed by the employer as a certified nursing assistant in a nursing-related occupation for a minimum of 8 hours for monetary compensation during the preceding 24 months; exempts an employer who terminates or denies employment to a certified nursing assistant whose certification is inactive as shown on the certified nursing assistant registry or whose name appears on the central abuse registry and tracking system of the Department of Children and Family Services or on a criminal screening report from the Florida Department of Law Enforcement from civil liability for the termination or denial; provides that any complaint or record maintained by the Department of Health pursuant to the discipline of a certified nursing assistant and any proceeding held by the department to discipline a certified nursing assistant shall remain open and available to the public; and requires the department to adopt rules for the implementation of part XV, chapter 468, F.S.

Section 205. Provides that by October 1, 1999, and by October 1 of every year thereafter, each employer of certified nursing assistants shall submit to the Department of Health a list of the names and Social Security numbers of each person employed by the employer as a certified nursing assistant in a nursing-related occupation for a minimum of 8 hours for monetary compensation during the preceding 24 months. Provides requirements of updating the registry and assigning inactive certification. Provides that this section is repealed October 2, 2001.

Section 206. Effective October 1, 1999, amends s. 400.211, F.S., 1998 Supplement, relating to certification of persons employed as nursing assistants, to provide necessary language and deletions to conform with language created in sections 204 and 205 of the bill.

Section 207. Amends s. 409.912, F.S., 1998 Supplement, relating to Medicaid cost-effective purchasing of health care, to require the Agency for Health Care Administration to enter into agreements with not-for-profit organizations based in this state for the purpose of providing vision screening.

Section 208. Provides for an effective date of July 1, 1999, except as otherwise expressly provided in this act.

IV. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

DEPARTMENT OF HEALTH

1. Non-recurring Effects:

	Year 1	Year 2
Program Planning, Support/Regulation Budget Entity (64100000)		
Certified Nursing Assistant (CNA) Registry and Program Medical Quality Assurance Fiscal Impact Statement		
GENERAL REVENUE		
Expenses:		
Regulatory Spec I (4 FTE)	$9,548	
Regulatory Spec II (2 FTE)	$5,710	
TOTAL Expenses - MQA	$15,258	
OCO:		
Regulatory Spec I (4 FTE)	$16,708	
Regulatory Spec II (2 FTE)	$8,354	
TOTAL OCO	$25,062	

TOTAL Non-Recurring - MQA	$40, 320
Information Resource Management (IRM) Fiscal Impact	
Expenses:	
Software -- Operating System, Data Base, Web, Application, Development, Tools, Utilities	$150,000
800 Service - Startup plus first 9 months of operation	$6,100
Contract programming -- Application and Voice Response Unit	$712,000
PRAES Modifications	$10,000
Public Awareness and Outreach	$80,000
Standard Expense Packages (2 FTE)	$5,710
TOTAL Expenses -- IRM	$963,810
Operating Capital Outlay:	
Hardware Servers -- Application, Data Base, Web	$225,000
Storage -- DASD, Tape	$75,000
Standard OCO Packages (2 FTE)	$8,354
TOTAL OCO -- IRM	$308,354
TOTAL Non-Recurring -- IRM	$1,272,164
TOTAL Non-Recurring -- MQA & IRM	$1,312,484

2. Recurring Effects:

Health Services Budget Entity (64200000)

EXPENSES:		
Radiation Protection Trust Fund		
Radioactive Monitoring Systems at weigh stations		
Reduction in travel costs	($3,000)	($3,000)
REVENUES:		
Planning & Evaluation Trust Fund		
Vital Statistics Fees $2 Surcharge	$800,000	$800,000
General Revenue		
HIV Minority Task Force	$250,000	$250,000

Children's Medical Services Budget Entity (64300000)

Clinical Trials on Secretin		
CONTRACTED SERVICES:		
General Revenue	$50,000	$50,000

Program Planning, Support/Regulation Budget Entity (64100000)

Certified Nursing Assistant (CNA) Registry and Program		
Medical Quality Assurance Fiscal Impact Statement		
GENERAL REVENUE		
6 FTE: Salary and Benefits (25% lapse)		
Regulatory Spec I (4 FTE)	$97,428	$129,904
Regulatory Spec II (2 FTE)	$53,128	$70,386
TOTAL SALARIES AND BENEFITS	$150,556	$200,290
6 FTE, Expense (2 @ $5,307, 4 @ $4,988)	$30,566	$30,566
TOTAL RECURRING COSTS - MQA	$181,122	$230,856
Information Resource Management		
Salary and Benefits (calculated at midpoint)		

Systems Project Analyst PG24	1.0	$61,580	$82,107
Distributed Computer Systems Analyst PG22	1.0	$54,509	$72,679
TOTAL SALARIES AND BENEFITS		$116,089	$154,786
EXPENSES:			
Standard Expense (2 FTE)		$26,012	$26,012
800 Service (monthly usage on annual basis)		$12,000	$12,000
Voice Response Unit Maintenance		$20,000	$20,000
TOTAL RECURRING EXPENSES		$58,012	$58,012
TOTAL RECURRING - IRM		$174,101	$174,101

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

	Year 1	Year 2
Non-Recurring	$1,312,484	$0
Recurring	$1,452,223	$1,540,654
TOTAL REVENUES AND EXPENDITURES	$2,764,707	$1,540,654

AGENCY FOR HEALTH CARE ADMINISTRATION

According to the Agency for Health Care Administration, "The provisions of the bill have some minor fiscal impacts on the Agency which must be addressed through existing resources. The bill authorizes the Agency to request budget through authority of chapter 216, F.S., in the event the Healthy Start Medicaid waiver is not approved and the Agency reqests implementation of a certified match program for Healthy Start services."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

None.

V. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenue in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

VI. COMMENTS:

As adopted by the Health Care Services Committee on April 5, 1999, as a strike-all amendment to HB 687, a function of the PMATF task force was review of federal requirements relating to provider assessments, an issue included because of federal requirements relating to "provider taxes." On May 28, 1999, HCFA notified AHCA of federal approval of Florida's request (resulting from 1998 legislation) for an exemption from the assessment on hospital net operating revenues for outpatient radiation therapy services provided by a hospital and for elimination of the assessment on freestanding radiation therapy centers. Such changes do, in fact, meet all federal tests relating to a "broad based health care-related tax" and uniformity requirements, and this federal approval, and federal requirements generally, may have an impact on the deliberations of the PMATF Task Force.

VII. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Several revisions to the original PCB HCS 99-05 were needed to conform to SB 2220 and to make technical bill drafting corrections. In addition, the Committee on Health Care Services passed a series of amendments to the bill on March 23, 1999.

At its meeting on April 21, 1999, the Committee on Governmental Operations reported HB 2125 favorably. The vote was unanimous, 5-0. The committee adopted twelve amendments, which made necessary technical changes, required development of a system for newborn Medicaid identification, gave certain authority to the Department of Health, and removed certain language relating to birth records, cease and desist orders, and inspection of nursing homes.

On April 26, 1999, the House unanimously passed HB 2125, including the committee amendments. The bill was then messaged to the Senate, where the bill was substantially amended. The amendments added language from several other bills including:

CS/HB 319, relating to Pharmacy Practice;
HB 687, relating to the Public Medical Assistance Trust Fund;
HB 797, relating to Minority HIV and AIDS Prevention;
HB 965, relating to the Telehealth Task Force;
HB 1073, relating to Recreational Sport Diving;
HB 1431, relating to Emergency Medical Services;
CS/HB 1467, relating to Health Care Practioner/Regulation;
HB 1703, relating to Medical Practice Telemedicine;
HB 1847, relating to Health Care Practioner/Regulation/Adverse Incidents;

HB 1881, relating to Health Care Practioner/Credentials;
HB 2031, relating to Certified Nursing Assistants; and
HB 2239, relating to the Medicaid Program.

The bill was then returned to the House where it passed unanimously, as amended by the Senate, on April 30, 1999.

VIII. SIGNATURES:

COMMITTEE ON HEALTH CARE SERVICES:

Prepared by:	Staff Director:
Amy K. Guinan	Phil E. Williams

AS REVISED BY THE COMMITTEE ON GOVERNMENTAL OPERATIONS:

Prepared by:	Staff Director:
Jen Girgen	Jimmy O. Helms

FINAL ANALYSIS PREPARED BY THE COMMITTEE ON HEALTH CARE SERVICES:

Prepared by:	Staff Director:
Amy K. Guinan	Phil E. Williams

STORAGE NAME: pcb05b...cs
DATE: March 23, 1999

HOUSE OF REPRESENTATIVES
COMMITTEE ON
HEALTH CARE SERVICES
ANALYSIS

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BILL #: PCB HCS 99-05

RELATING TO: Department of Health

SPONSOR(S): Committee on Health Care Services

COMPANION BILL(S): SB 2220 (s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) HEALTH CARE SERVICES YEAS 16 NAYS 1
(2)
(3)

I. SUMMARY:

PCB HCS 99-05 includes several provisions designed to improve efficiency of public health programs within the Department of Health. These provisions: clarify language regarding the use of incentives and promotional items in disease prevention and health education; revise the list of divisions that are authorized to exist in the department; update career service exemptions; permit the department to contract with the Department of Children and Family Services to conduct administrative hearings in matters concerning WIC and CMS; clarify co-payment requirements relating to primary care challenge grants; authorize the department to purchase automobiles for use by county health departments; remove any responsibility regarding alligator management and trapping from the Department of Health and Rehabilitative Services; remove language that prevents the preliminary HIV test results of a mother who has just given birth from being released to the mother at the time of delivery; clarify requirements relating to the performance of HIV tests on deceased persons; give the department authority to adopt rules relating to inspection of certain group care facilities; give the department authority to adopt rules relating to family planning; provide a definition for "multi-family water system" and revise the definition of "private water system"; revise the membership of the Health Information Systems Council; require the council to establish a review process for agency health-related data collection and maintenance; revise department authority relating to vital records; provide the department with authority to adopt rules for the requirement of notarized documents; remove language relating to reproduction and destruction of records and the disclosure of certain social security numbers; clarify procedures and modify reporting requirements relating to birth records; correct the name of the WIC program to conform to federal law; revise the membership of the Diabetes Advisory Council; remove language requiring the department to reimburse hospitals for the cost of furnishing data for the cancer registry; make technical changes relating to eligibility for the Medicaid service package in the CMS program; allow the department to use excess money for the improvement of health facilities; authorize the department to establish an advisory body for the A.G. Holley State Hospital; provide for a phase-in of Medicaid capitated payments to CMS; and authorize nursing homes to purchase medical oxygen.

In addition, PCB HCS 99-05 makes several amendments to ch. 499, F.S., to: clarify that a person must be authorized to sell or transfer prescription drugs under ch. 499, and the person acquiring prescription drugs must be authorized to do so; clarify that providing the department with false information regarding any matter within the jurisdiction of ch. 499 is prohibited; prohibit distribution of a legend device to a patient without a prescription or order from a licensed practitioner; conform the prescription statement on labels to recently enacted federal language; authorize federal, state, and local government employees, acting within the scope of employee, to possess prescription drug samples; and authorize the immediate effect of a cease and desist order.

PCB HCS 99-05 also provides names for three Department of Health buildings; and repeals obsolete and unnecessary provisions relating to the submission of Healthy Communities plans, Medicaid alternative service networks, and transportation of radioactive materials.

The Department of Health estimates that the repeal of certain requirements in this bill will provide the department with an annual savings of $3,000. In addition, the Department of Health will be permitted to retain an estimated $800,000 in fees collected by vital statistics for birth certificates. This portion of the fees is now transferred to the General Revenue Fund.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Department of Health

In 1996, legislation was passed creating a Department of Health (DOH) to protect and promote the health and safety of residents of, and visitors to, the state. The new department, which came into official existence on January 1, 1997, is composed of the State Health Office and Children's Medical Services Program of the former Department of Health and Rehabilitative Services (HRS). Examination and licensure of the medical professions were also removed from AHCA and transferred to DOH, effective July 1, 1997.

With the creation of DOH, HRS was renamed the Department of Children and Family Services and reorganized to include four program offices as well as an administration office. The four programs include: Children & Families, Mental Health & Substance Abuse, Economic Self-Sufficiency, and Developmental Services.

There are still several references to HRS in the statute that have not yet been changed to conform to the creation of the Department of Health and the Department of Children and Family Services.

The purpose and organizational structure for DOH is provided in s. 20.43, F.S. This section establishes that the divisions of the Department of Health include: Division of Administration; Division of Environmental Health; Division of Disease Control; Division of Family Health Services; Division of Children's Medical Services; Division of Local Health Planning, Education, and Workforce Development, and the Division of Medical Quality Assurance, which is responsible for medical boards and professions.

Section 20.43, F.S., also gives DOH the authority to use state or federal funds to protect or improve the public health by providing incentives for encouraging disease prevention and patient compliance with medical treatment, and through health education campaigns and promotional campaigns to recruit health professionals to be employed by the department.

Section 120.80(15), F.S., 1998 Supplement, provides that notwithstanding s. 120.57(1)(a), a formal hearing may not be conducted by the Secretary of Health, the director of the Agency Health Care Administration, or a board or member of a board within the Department of Health or the Agency for Health Care Administration for matters relating to regulations of any activity, occupation, profession, or vocation regulated by the department in the Division of Medical Quality Assurance.

When DOH was still a part of HRS, a process was established that allowed the agency to conduct its own administrative hearings in matters concerning the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), Children's Medical Services (CMS) program, and exemption from disqualification review for certified nurse assistants. DOH no longer has the authority to continue this process.

Private and Public Water Systems

Section 381.0062, F.S., provides that "it is the intent of the Legislature to protect the public's health by establishing standards for the construction, modification, and operation of public and private water systems to assure consumers that the water provided to those systems is potable." Subsection (2) of s. 381.0062, F.S., defines "private water system" as "a water system that provides piped water for no more than four nonrental residences." No definition is provided for a water system that serves only one rental residence, and therefore, a single rental residence would now be included within the definitions of a private water system and a multi-family water system.

Chapter 64E-8, Florida Administrative Code, requires that owners of water systems connecting one or two residences only meet well setback from potential sources of contamination. Owners of water systems connecting three or four residences must meet the setback requirement, and also obtain a

construction permit and provide satisfactory bacteria, nitrate and lead analytical results. There is no reference made to a single rental residence.

Testing for Human Immunodeficiency Virus (HIV)

Section 381.004(3)(a), F.S., provides that a test designed to identify HIV may not be ordered without the informed consent of the person being tested, except under specified circumstances. Additionally, s. 381.004(3)(d), provides that test results shall not be determined as positive or revealed to any person, without corroborating or confirmatory tests being conducted, except in certain situations. An exception to this requirement which was enacted in chapter 98-171, L.O.F. , provides that "preliminary test results may be released to health care providers and to the person tested when decisions about medical care or treatment of the person tested cannot await the results of confirmatory testing." There is concern that the words "treatment of the person tested" prevents the preliminary HIV test results of a mother who has just given birth from being released to the mother for purposes of immediate initiation of drug therapy for the newborn. Certain drug therapy may help prevent the newborn from contracting HIV from the mother, but because the earlier the drug therapy is initiated the more effective it is, a delay in drug treatment could be detrimental to the infant. This situation only occurs when women who have received no prenatal care arrive at hospital emergency rooms for delivery, because they have not been offered HIV tests as part of a prenatal care program.

Chapter 98-171, L.O.F., also provided for additional exceptions to when informed consent is not required in ordering an HIV test. Section 381.004(3)(h)12, F.S., provides that informed consent is not required "for the performance of an HIV test by the medical examiner upon a deceased individual who is the source of a significant exposure to medical personnel or nonmedical personnel who provided emergency medical assistance and who expired or could not be resuscitated during treatment for the medical emergency." This change was made to allow medical persons and "Good Samaritans" to learn the test results of the source of exposure so that preventative treatment options could begin if the test results were positive. The concern with this language is that not all deceased individuals who are the source of a significant exposure are sent to medical examiners.

Health Information Systems Council

The Health Information Systems Council was created by s. 381.90, F.S., within the Department of Health to, "facilitate the identification, collection, standardization, sharing, and coordination of health-related data, including fraud and abuse data, and professional and facility licensing data among federal, state, local, and private entities." Membership of the council is provided for in this section and includes: the secretary of the Department of Health; the secretary of the Department of Business and Professional Regulation; the secretary of the Department of Children and Family Services; the director of the Agency for Health Care Administration; the secretary of the Department of Corrections; the Attorney General; the executive director of the Correctional Medical Authority; two members representing county health departments, one from a small county and one from a large county, appointed by the Governor; and a representative from the Florida Association of Counties.

Vital Records

Section 382.013, F.S., provides that a certificate for each live birth that occurs in this state shall be filed within 5 days after such birth with the local registrar of the district in which the birth occurred. This section sets out procedures for filing, as well as requirements for registration of paternity, the name of the child, undetermined parentage, and disclosure.

Section 382.025(1), F.S., provides that all Florida birth records are confidential and exempt from the provisions of s. 119.07(1), F.S. Subsection (2) of s. 382.025, F.S., provides that the department authorizes the issuance of a certified copy of any marriage, dissolution of marriage, or death or fetal death certificate, excluding confidential portions, to the person requesting the information. Death and fetal death certificates which include the confidential portions will only be issued to the registrant's spouse or parent, child, grandchild, or sibling, of legal age, or to any family member who provides a will, insurance policy, or document demonstrating his or her interest in the registrant's estate. The confidential portions will also be provided to any agency of the state or local government or the United States for official purposes upon approval of the department or upon order of any court of competent jurisdiction.

Section 382.0255, F.S., provides that the department is entitled to certain fees for the processing, filing, and retrieving of vital records and registrations. Previously, a portion of these fees was deposited in the Crimes Against Children Trust Fund administered by the Department of Law Enforcement. This trust fund, however, was eliminated on July 1, 1995, and the funds that were being deposited in this trust fund are now transferred to general revenue rather than to Vital Statistics.

Florida Drug and Cosmetic Act

Chapter 499, F.S., is known as the Florida Drug and Cosmetic Act and its purpose is to: protect the public from injury by the use and merchandising of drugs, devices, and cosmetics; provide uniform legislation to be administered in conformity with federal laws which expressly prohibit the false advertisement of drugs, devices and cosmetics; and promote uniformity of such state and federal laws.

Section 499.05, F.S., establishes prohibited acts relating to drugs, devices, and cosmetics. This section prohibits the sale or transfer of a legend drug or compressed medical gas if the person is not authorized to do so under the law of the state in which he or she resides. A person's residence, however, is irrelevant when determining whether that person is authorized to sell or receive prescription drugs.

According to s. 499.007, F.S., any drug that is habit forming or not safe for use unless under the supervision of a practitioner licensed by law to administer such drugs, is misbranded if it fails to bear on the label the statement: "Caution: Federal Law Prohibits Dispensing Without Prescription" or "Caution: State Law Prohibits Dispensing Without Prescription." In 1997, Congress passed the Food and Drug Administration Modernization Act, which provides that the label statement on such drugs is to appear as "Rx Only" or the prescription symbol followed by the word "Only." Federal regulations implementing this new prescription statement provide for a phase-in of labeling changes through February 2003. If ch. 499, F.S., is not revised to reflect this change in federal law, many prescription drug products entering Florida will be misbranded under Florida law.

Section 499.028, F.S., relating to drug samples and complimentary drugs, provides that individuals may not possess a prescription drug sample unless: the drug sample was prescribed to her or him, the individual is the employee of a complimentary drug distributor that holds a permit, or the individual is a person to whom prescription drug samples may be distributed pursuant to this section. Currently, there is no clear provision allowing federal, state, and local government employees, acting within the scope of employment, to possess prescription drug samples.

The Administrative Procedure Act and Agency Rulemaking Authority

Section 120.536(1), F.S., states that, "A grant of rulemaking authority is necessary but not sufficient to allow an agency to adopt a rule; a specific law to be implemented is also required. An agency may only adopt rules that implement, interpret, or make specific the particular powers and duties granted by the enabling statute." Section 120.536, F.S., further establishes that an agency may not adopt a rule merely because it is reasonably related to the purpose of the enabling legislation, nor may the agency have the authority to implement statutory provisions setting forth general legislative intent or policy.

Section 120.536(2), F.S., required each agency to provide the Administrative Procedures Committee a listing of rules adopted by the agency before October 1, 1996, which exceeded the rulemaking authority permitted in this section. These lists were to be provided by October 1, 1997, and subsequently combined and presented to the Speaker of the House of Representatives and the President of the Senate. This section further provides that the 1998 Legislature was to consider whether specific legislation authorizing these rules should be enacted. According to s. 120.536(2), F.S., each agency must have initiated appropriate proceedings to appeal rules exceeding rulemaking authority by January 1, 1999. By February 1, 1999, the Administrative Procedure Committee was required to submit to the President of the Senate and the Speaker of the House of Representatives, a report identifying rules that exceed rule authority for which repeal proceedings have not yet been initiated.

B. EFFECT OF PROPOSED CHANGES:

The list of divisions authorized under the Department of Health will be revised and language regarding use of incentives and promotional items in disease prevention and health education activities will be clarified.

Certain language referring to the Department of Health & Rehabilitative Services will be updated to conform to the creation of the Department of Health and the Department of Children and Family Services.

The Department of Health will be provided with necessary rule authority required by s. 120.536, F.S.

The Department of Health will be given the authority to purchase vehicles for use by county health departments, subject to approval of the Department of Management Services.

Language requiring the Department of Health to reimburse hospitals for the cost of furnishing data for the cancer registry will be removed from statute.

The Special Supplemental Food Program for Women, Infants, and Children will be retitled the Special Supplemental Nutrition Program for Women, Infants, and Children, to conform to federal law.

Language relating to benefits provided under the program for children with special health care needs will be clarified, and provision is made for the phase-in or Medicaid capitated payments for such services.

Co-payment requirements relating to primary care challenge grantees will be clarified.

The difference in regulatory requirements for public and private drinking water systems will be clarified.

The membership of the Health Information Systems Council will be revised, and the council will be given the responsibility of establishing a review process for agency health-related data collection and maintenance.

The membership of the Diabetes Advisory Council will be revised.

Technical and clarifying changes will be made to department requirements relating to birth records.

Language that may prevent the preliminary HIV test results of a mother who has just given birth from being released to the mother for purposes of immediate initiation of drug treatment therapy for the her newborn infant will be removed, and specific requirements will be established for the performance of HIV tests on deceased persons.

Technical changes will be made to ch. 499, F.S., to conform to federal requirements and improve clarity.

Certain department buildings will be named after Wilson T. Sowder, M.D., E. Charlton Prather, M.D., and William G. "Doc" Myers, M.D.

Sections 381.731(3), 383.307(5), 404.20(7), and 409.9125, F.S., will be repealed.

C. APPLICATION OF PRINCIPLES:

1. <u>Less Government:</u>

   a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

Yes, the Department of Health is given authority to adopt rules to implement particular sections in the bill and to comply with s. 120.536, F.S.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

Yes, the bill will clarify that a mother who has just given birth will be able to receive her HIV test results for purposes of determining medical care for her newborn infant.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Sections 20.43, 39.303, 63.162, 110.205, 120.80, 154.504, 287.155, 372.6672, 381.004, 381.0051, 381.006, 381.0061, 381.0062, 381.731, 381.90, 382.003, 382.004, 382.008, 382.013, 382.015, 382.016, 382.019, 382.025, 382.0255, 383.14, 383.307, 385.202, 385.203, 391.012, 391.028, 391.0315, 391.221, 391.222, 391.223, 392.69, 404.20, 409.9125, 409.9126, 465.019, 499.005, 499.007, 499.028, 499.066, 499.069, 742.10, F.S.

E. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 20.43, F.S., relating to the Department of Health. The following subsections are amended:

Subsection (3) is amended to add the Division of Children's Medical Services Network, Division of Emergency Medical Services and Community Health Resources, Division of Children's Medical Services Prevention and Intervention, Division of Information Resource Management, and the Division of Health Awareness and Tobacco to the list of divisions that are authorized to exist in the Department of Health. The Division of Children's Medical Services and the Division of Local Health Planning, Education, and Workforce Department are removed from the authorized list of divisions.

Subsection (7) is amended to clarify language regarding the use of incentives and promotional items in disease prevention and health education activities.

Section 2. Amends s. 39.303, F.S., relating to child protection teams, to conform titles relating to Children's Medical Services.

Section 3. Amends s. 63.162, F.S., relating to hearings and records in adoption proceedings, to clarify the use of the term "intermediary."

Section 4. Amends s. 110.205, F.S., relating to career service exemptions, to update language regarding the establishment of exempt positions that now pertains to the Department of Health and Rehabilitative Services to conform to the creation of the Department of Health and the Department of Children and Family Services, and to include the positions of Assistant County Health Department Director and County Health Department Financial Administrator to the list of exempt positions.

Section 5. Amends s. 120.80, F.S., relating to exceptions and special requirements of the Department of Health, to allow the Department of Health to contract with the Department of Children and Family Services to conduct administrative hearings in matters concerning the Special Supplemental Nutrition Program for Women, Infants and Children, Children's Medical Services programs, Child Care Food Program, and exemption from disqualification reviews for certified nurse assistants.

Section 6. Amends s. 154.504, F.S., relating to eligibility and benefits, to permit providers to enter into contracts pursuant to s. 766.1115, F.S., provided co-payments are not used as compensation for services to health care providers.

Section 7. Amends s. 287.155, F.S., relating to the purchase of motor vehicles by certain agencies, to authorize the Department of Health to purchase automobiles, trucks, and other automotive equipment for use by county health departments, subject to the approval of the Department of Management Services.

Section 8. Amends s. 372.6672, F.S., relating to alligator management and trapping program implementation, to delete the Department of Health and Rehabilitative Services from any responsibility regarding alligator management and trapping.

Section 9. Amends s. 381.004, F.S., relating to testing for human immunodeficiency virus. The following subsections of this section are amended:

Subsection (3) is amended to remove language that prevents the preliminary HIV test results of a mother from being released to the mother at the time of delivery; and

Subsection (12) is amended to clarify requirements for the performance of HIV tests on deceased persons.

Section 10. Amends s. 381.0051, F.S., relating to family planning, to give the Department of Health the authority to adopt rules for family planning.

Section 11. Amends s. 381.006, F.S., relating to environmental health, to provide the department with rule making authority relating to the health inspection of certain group care facilities.

Section 12. Amends s. 381.0061, F.S., relating to administrative fines, to authorize the department to impose fines for violations relating to group care facilities.

Section 13. Amends s. 381.0062, F.S., relating to water systems. The following subsections of this section are amended:

Subsection (2) is amended to provide that "multi-family water system" means a water system that provides piped water for three to four residences, one of which may be a rental residence, and to clarify the definition of "private water system" to mean a water system that provides piped water for one or two residences, one of which may be a rental residence, or for a church located more than 200 feet from a water system covered under the Florida Safe Drinking Water Act.

Subsections (3), (4), and (5) are amended to include the term "multi-family water system" when applicable in place of private water system.

Section 14. Amends s. 381.90, F.S., relating to the Health Information Systems Council. The following subsections of this section are amended:

Subsection (3) is amended to revise the membership of the council. Added members include: the State Treasurer/Insurance Commissioner; a representative from the Florida Healthy Kids Corporation; a representative from a school of public health chosen by the Board of Regents; the Commissioner of Education; the secretary of the Department of Elderly Affairs; and the secretary of the Department of Juvenile Justice.

Subsection (7) is amended to revise the duties of the council. Additional responsibilities will include developing a review process to ensure cooperative planning among agencies that collect or maintain health-related data. The council is required to submit a report on the implementation of this data to the Governor, the Speaker of the House of Representatives, and the President of the Senate, by January 1, 2000.

Section 15. Amends s. 382.003, F.S., relating to powers and duties of the Department of Health, to remove the word "rescinding" in relation to the department's rule authority regarding vital records, and to provide the department with the authority to adopt rules for the requirement of notarized documents.

Section 16. Amends s. 382.004, F.S., relating to reproduction and destruction of records, to remove unnecessary lanuage.

Section 17. Amends s. 382.008, F.S. relating to death and fetal death registration, to remove language relating to the limited disclosure of social security numbers, which is in conflict with federal law.

Section 18. Amends s. 382.013, F.S., relating to birth registration, to provide that a certificate for each live birth that occurs in this state shall be filed with the mother's health insurer or HMO. The following subsections of this section are also amended:

Subsection (1) is amended to clarify procedures to be followed when a birth occurs outside a health care facility, and to provide authority for the department to require documents and proof as it deems necessary to establish the fact of a birth when it occurred outside of a health care facility and was not attended by a Florida licensed physician, certified nurse midwife, Florida licensed midwife, or a public health nurse employed by the department. A technical change replacing one of the parents with the mother or the father is also made;

Subsection (2) is amended to clarify circumstances for listing the name of the husband of the mother on the birth certificate; and

Subsection (4) is amended to clarify the responsibility for registering a birth record of a child of undetermined parentage and to delete ambiguous language.

Section 19. Amends s. 382.015, F.S., relating to new certificates of live birth, to replace the term "court decree" with "court order," and to delete language addressing the administrative acknowledgment of paternity. A technical change to delete unnecessary language is also made.

Section 20. Amends s. 382.016, F.S., relating to amendment of records. Subsections (3), (4), and (5) are created to add to s. 382.016, F.S., the language similar to that removed from s. 382.015(2), F.S., by the previous section.

Section 21. Amends s. 382.019, F.S., relating to delayed registration and administrative procedures, to clarify that after receipt of an application the department may file a delayed registration, and to clarify when the department may dismiss an inactive application.

Section 22. Amends s. 382.025, F.S., relating to certified copies of vital records. The following subsections of this section are amended:

Subsection (1) is amended to clarify that birth records over 100 years old are exempt from provisions of s. 119.07(1), F.S. and to provide a method for indicating death on a commemorative birth certificate; and

Subsection (2) is amended to allow for issuance of cause of death information to any person providing documented proof of need rather than restricting it to a family member only.

Section 23. Amends s. 382.0255, F.S., relating to the fee for a certification of a birth record, to permit the department to retain fees collected by vital statistics for birth certificates rather than transferring the fees to the General Revenue Fund.

Section 24. Amends s. 383.14, F.S., relating to screening for metabolic disorders, other hereditary and congenital disorders, and environmental risk factors, to change the name of the WIC program from the Special Supplemental Food Program for Women, Infants, and Children, to the Special Supplemental Nutrition Program for Women, Infants, and Children, to conform with federal law.

Section 25. Amends s. 385.202, F.S., relating to the statewide cancer registry, to remove language that requires the department to reimburse hospitals for the cost of furnishing data for the cancer registry.

Section 26. Amends s. 385.203, F.S., relating to the Diabetes Advisory Council, to revise the membership requirements of the council, and the scope of the council's activities.

Section 27. Amends s. 391.021, F.S., relating to definitions applying to Children's Medical Services, to give the Director of Children's Medical Services authority to appoint division directors subject to the approval of the secretary.

Section 28. Amends s. 391.028, F.S., relating to administration of the Children's Medical Services program, to remove "the Division of" from the title of Children's Medical Services, and to provide that the director of Children's Medical Services may appoint division directors subject to the approval of the secretary.

Section 29. Amends s. 391.0315, F.S., relating to benefits, to clarify that benefits provided under the program for children with special health care needs shall be the same benefits provided to children in ss. 409.905 and 409.906, F.S., relating to Medicaid.

Section 30. Amends s. 391.221, F.S., relating to the Statewide Children's Medical Services Network Advisory Council, to provide conforming language that is needed due to the reorganization of Children's Medical Services into two divisions.

Section 31. Amends s. 391.222, F.S., relating to the Cardiac Advisory Council, to provide conforming language that is needed due the reorganization of Children's Medical Services into two divisions.

Section 32. Amends s. 391.223, F.S., relating to technical advisory panels, to provide conforming language that is needed due the reorganization of Children's Medical Services into two divisions.

Section 33. Amends s. 392.69, F.S., relating to appropriations, sinking, and maintenance trust funds, to allow the department to use excess money, notwithstanding ch. 216, F.S., for the improvement of health facilities at A.G. Holley State Hospital, and to authorize the department to establish an advisory board to review and make recommendations relating to patient care at A.G. Holley State Hospital. Members of the advisory board shall be appointed for a term of 3 years, with such appointments being staggered so that the terms of no more than two members expire in any one year. Members are to serve without remuneration, but per diem and travel expenses may be reimbursed as provided in s. 112. 061, F.S.

Section 34. Amends s. 409.9126, F.S., relating to children with special health care needs, to provide for a phase-in of Medicaid capitation payments to Children's Medical Services for services provided to Medicaid eligible children with special health care needs.

Section 35. Amends s. 465.019, F.S., relating to institutional pharmacies, to allow nursing homes to purchase and possess medical oxygen.

Section 36. Amends s. 499.005, F.S., relating to prohibited acts, to clarify that a person must be authorized to sell or transfer legend drugs and compressed medical gas under ch. 499, and that a person acquiring a legend drug must be authorized to do so under the applicable law where the receipt occurs. Providing the department with false information regarding any matter within the jurisdiction of ch. 499 is prohibited, not just as it relates to a drug, device, or cosmetic. The distribution of a legend device to the patient or ultimate consumer without a prescription or order from a practitioner to use or prescribe the device is prohibited.

Section 37. Amends s. 499.007, F.S., relating to misbranded drugs or devices, to conform the prescription statement of labels to match recently enacted federal language.

Section 38. Amends s. 499.028, F.S., relating to drug samples or complimentary drugs, to authorize federal, state, and local government employees, acting within the scope of their employment, to possess prescription drug samples.

Section 39. Amends s. 499.066, F.S., relating to penalties and remedies, to authorize the immediate effect of a cease and desist order relating to persons who have violated ss. 499.001-499.081, F.S., or any rule adopted pursuant to those sections. Chapter 120, F.S., hearing rights attach for an abatement or modification of the cease and desist order.

Section 40. Amends s. 499.069, F.S., relating to punishment for violations of s. 499.005, F.S., to correct a statutory cross-reference to make the purchase of a prescription drug from an unauthorized source a third degree felony, rather than the purchase of a compressed medical gas from an unauthorized source a first-degree misdemeanor.

Section 41. Amends s. 742.10, F.S., relating to establishment of paternity for children born out of wedlock, to conform statutory cross-references.

Section 42. Provides that the building known as the 1911 State Board of Health Building which is part of a multi-building complex with the address of 1217 Pearl Street, Jacksonville, Florida shall be known as the Wilson T. Sowder, M.D. Building.

Section 43. Provides that the building authorized by Chapter 98-307, L.O.F., that will be located on Seagrape Drive on the Tampa Campus of the University of South Florida which will house laboratory facilities for the Department of Health shall be known as the William G. "Doc" Myers, M.D. Building.

Section 44. Provides that the Department of Health headquarters building that will comprise approximately 100,000 square feet that is authorized by item 1986 in the 1998-99 Appropriations Act shall be known as the E. Charlton Prather, M.D. Building.

Section 45. Repeals subsection (3) of s. 381.731, F.S., relating to submission of an initial Healthy Communities plan that was submitted in 1992.

Section 46. Repeals subsection (5) of s. 383.307, F.S., relating to department consultation agreements with birth centers that are unable to find consultants.

Section 47. Repeals subsection (7) of s. 404.20, F.S., relating to department monitoring requirements of the transportation of radioactive materials.

Section 48. Repeals s. 409.9125, F.S., relating to study requirements for Medicaid alternative service networks.

Section 49. Provides an effective date of July 1, 1999.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

   None.

2. Recurring Effects:

   The Department of Health estimates that it will save $3,000 a year with the repeal of technologically obsolete radioactive monitoring requirements in s. 404.20, F.S. In addition, the Department of Health will be permitted to retain an estimated $800,000 in fees collected by vital statistics for birth certificates. This portion of the fees is now transferred to the General Revenue Fund.

3. Long Run Effects Other Than Normal Growth:

   None.

4. Total Revenues and Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

   None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenue in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Several revisions to the original PCB HCS 99-05 were needed to conform to SB 2220 and to make technical bill drafting corrections. In addition, the Committee on Health Care Services passed a series of amendments to the bill on March 23, 1999.

VII. SIGNATURES:

COMMITTEE ON HEALTH CARE SERVICES:

Prepared by:

Amy K. Guinan

Staff Director:

Phil E. Williams

STORAGE NAME: pcb05a.hcs
DATE: March 15, 1999

HOUSE OF REPRESENTATIVES
COMMITTEE ON
HEALTH CARE SERVICES
ANALYSIS

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BILL #: PCB HCS 99-05A

RELATING TO: Department of Health

SPONSOR(S): Committee on Health Care Services

COMPANION BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) HEALTH CARE SERVICES
(2)
(3)

I. SUMMARY:

PCB HCS 99-05A includes several provisions designed to improve efficiency of public health programs within the Department of Health. These provisions: clarify language regarding the use of incentives and promotional items in disease prevention and health education; revise the list of divisions that are authorized to exist in the department; update career service exemptions; permit the department to contract with the Department of Children and Family Services to conduct administrative hearings in matters concerning WIC and CMS; clarify co-payment requirements relating to primary care challenge grants; authorize the department to purchase automobiles for use by county health departments; remove any responsibility regarding alligator management and trapping from the Department of Health and Rehabilitative Services; remove language that prevents the preliminary HIV test results of a mother who has just given birth from being released to the mother at the time of delivery; clarify requirements relating to the performance of HIV tests on deceased persons; give the department authority to adopt rules relating to inspection of certain group care facilities; give the department authority to adopt rules relating to family planning; provide a definition for "multi-family water system"; revise the membership of the Health Information Systems Council; provide the Health Information Systems Council with the responsibility of establishing a review process for agency health-related data collection and maintenance; revise department authority relating to vital records; provide the department with authority to adopt rules for the requirement of notarized documents; remove language relating to reproduction and destruction of records and the disclosure of certain social security numbers; clarify procedures relating to birth records; correct the name of the WIC program to conform to federal law; revise the membership of the Diabetes Advisory Council; remove language requiring the department to reimburse hospitals for the cost of furnishing data for the cancer registry; make technical changes relating to eligibility for the Medicaid service package in the CMS program; allow the department to use excess money for the improvement of health facilities; authorize the department to establish an advisory body for the A.G. Holley State Hospital.

In addition, PCB HCS 99-05A makes several amendments to Chapter 499, F.S., to: clarify that a person must be authorized to sell or transfer prescription drugs under Chapter 499, and the person acquiring prescription drugs must be authorized to do so; clarify that providing the department with false information regarding any matter within the jurisdiction of Chapter 499 is prohibited; prohibit distribution of a legend device to a patient without a prescription or order from a licensed practitioner; conform the prescription statement on labels to recently enacted federal language; authorize federal, state, and local government employees, acting within the scope of employee, to possess prescription drug samples; and authorize the immediate effect of a cease and desist order.

PCB HCS 99-05A also provides for the naming of the Wilson T. Sowder, M.D. Building, the William G. "Doc" Myers, M.D. Building, and the E. Charlton Prather, M.D. Building; and repeals language relating to: consultation agreements between the department and birth centers; obsolete provisions relating to the submission of Healthy Communities plans and Medicaid alternative service networks; and technologically obsolete requirements regarding the transportation of radioactive materials.

The Department of Health estimates that the repeal of certain requirements in this bill will provide the department with an annual savings of $3,000. In addition, the Department of Health will be permitted to retain an estimated $800,000 in fees collected by vital statistics for birth certificates. This portion of the fees is now transferred to the General Revenue Fund.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Department of Health

In 1996, legislation was passed creating a Department of Health (DOH) to protect and promote the health and safety of residents of, and visitors to, the state. The new department, which came into official existence on January 1, 1997, is composed of the State Health Office and Children's Medical Services Program of the former Department of Health and Rehabilitative Services (HRS). Examination and licensure of the medical professions were also removed from AHCA and transferred to DOH, effective July 1, 1997.

With the creation of DOH, HRS was renamed the Department of Children and Family Services and reorganized to include four program offices as well as an administration office. The four programs include: Children & Families, Mental Health & Substance Abuse, Economic Self-Sufficiency, and Developmental Services.

There are still several references to HRS in the statute that have not yet been changed to conform to the creation of the Department of Health and the Department of Children and Family Services.

The purpose and organizational structure for DOH is provided in s. 20.43, F.S. This section establishes that the divisions of the Department of Health include: Division of Administration; Division of Environmental Health; Division of Disease Control; Division of Family Health Services; Division of Children's Medical Services; Division of Local Health Planning, Education, and Workforce Development, and the Division of Medical Quality Assurance, which is responsible for medical boards and professions.

Section 20.43, F.S., also gives DOH the authority to use state or federal funds to protect or improve the public health by providing incentives for encouraging disease prevention and patient compliance with medical treatment, and through health education campaigns and promotional campaigns to recruit health professionals to be employed by the department.

Section 120.80(15), F.S., 1998 Supplement, provides that notwithstanding s. 120.57(1)(a), a formal hearing may not be conducted by the Secretary of Health, the director of the Agency Health Care Administration, or a board or member of a board within the Department of Health or the Agency for Health Care Administration for matters relating to regulations of any activity, occupation, profession, or vocation regulated by the department in the Division of Medical Quality Assurance.

When DOH was still a part of HRS, a process was established that allowed the agency to conduct its own administrative hearings in matters concerning the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), Children's Medical Services (CMS) program, and exemption from disqualification review for certified nurse assistants. DOH no longer has the authority to continue this process.

Private and Public Water Systems

Section 381.0062, F.S., provides that "it is the intent of the Legislature to protect the public's health by establishing standards for the construction, modification, and operation of public and private water systems to assure consumers that the water provided to those systems is potable." Subsection (2) of s. 381.0062, F.S., defines "private water system" as "a water system that provides piped water for no more than four nonrental residences." No definition is provided for a water system that serves only one rental residence, and therefore, a single rental residence would now be included within the definitions of a private water system and a multi-family water system.

Chapter 64E-8, Florida Administrative Code, requires that owners of water systems connecting one or two residences only meet well setback from potential sources of contamination. Owners of water systems connecting three or four residences must meet the setback requirement, and also obtain a

construction permit and provide satisfactory bacteria, nitrate and lead analytical results. There is no reference made to a single rental residence.

Testing for Human Immunodeficiency Virus (HIV)

Section 381.004(3)(a), F.S., provides that a test designed to identify HIV may not be ordered without the informed consent of the person being tested, except under specified circumstances. Additionally, s. 381.004(3)(d), provides that test results shall not be determined as positive or revealed to any person, without corroborating or confirmatory tests being conducted, except in certain situations. An exception to this requirement which was enacted in chapter 98-171, L.O.F. , provides that "preliminary test results may be released to health care providers and to the person tested when decisions about medical care or treatment of the person tested cannot await the results of confirmatory testing." There is concern that the words "treatment of the person tested" prevents the preliminary HIV test results of a mother who has just given birth from being released to the mother for purposes of immediate initiation of drug therapy for the newborn. Certain drug therapy may help prevent the newborn from contracting HIV from the mother, but because the earlier the drug therapy is initiated the more effective it is, a delay in drug treatment could be detrimental to the infant. This situation only occurs when women who have received no prenatal care arrive at hospital emergency rooms for delivery, because they have not been offered HIV tests as part of a prenatal care program.

Chapter 98-171, L.O.F., also provided for additional exceptions to when informed consent is not required in ordering an HIV test. Section 381.004(3)(h)12, F.S., provides that informed consent is not required "for the performance of an HIV test by the medical examiner upon a deceased individual who is the source of a significant exposure to medical personnel or nonmedical personnel who provided emergency medical assistance and who expired or could not be resuscitated during treatment for the medical emergency." This change was made to allow medical persons and "good Samaritans" to learn the test results of the source of exposure so that preventative treatment options could begin if the test results were positive. The concern with this language is that not all deceased individuals who are the source of a significant exposure are sent to medical examiners.

Health Information Systems Council

The Health Information Systems Council was created by s. 381.90, F.S., within the Department of Health to, "facilitate the identification, collection, standardization, sharing, and coordination of health-related data, including fraud and abuse data, and professional and facility licensing data among federal, state, local, and private entities." Membership of the council is provided for in this section and includes: the secretary of the Department of Health; the secretary of the Department of Business and Professional Regulations; the secretary of the Department of Children and Family Services; the director of the Agency for Health Care Administration; the secretary of the Department of Corrections; the Attorney General; the executive director of the Correctional Medical Authority; two members representing county health departments, one from a small county and one from a large county, appointed by the Governor; and a representative from the Florida Association of Counties.

Vital Records

Section 382.013, F.S., provides that a certificate for each live birth that occurs in this state shall be filed within 5 days after such birth with the local registrar of the district in which the birth occurred. This section sets out procedures for filing, as well as requirements for registration of paternity, the name of the child, undetermined parentage, and disclosure.

Section 382.025(1), F.S., provides that all Florida birth records are confidential and exempt from the provisions of s. 119.07(1), F.S. Subsection (2) of s. 382.025, F.S., provides that the department authorizes the issuance of a certified copy of any marriage, dissolution of marriage, or death or fetal death certificate, excluding confidential portions, to the person requesting the information. Death and fetal death certificates which include the confidential portions will only be issued to the registrants's spouse or parent, child, grandchild, or sibling, of legal age, or to any family member who provides a will, insurance policy, or document demonstrating his or her interest in the registrant's estate. The confidential portions will also be provided to any agency of the state or local government or the United States for official purposes upon approval of the department or upon order of any court of competent jurisdiction.

Section 382.0255, F.S., provides that the department is entitled to certain fees for the processing, filing, and retrieving of vital records and registrations. Previously, a portion of these fees was deposited in the Crimes Against Children Trust Fund administered by the Department of Law Enforcement. This trust fund, however, was eliminated on July 1, 1995, and the funds that were being deposited in this trust fund are now transferred to general revenue rather than to Vital Statistics.

Florida Drug and Cosmetic Act

Chapter 499, F.S., is known as the Florida Drug and Cosmetic Act and its purpose is to: protect the public from injury by the use and merchandising of drugs, devices, and cosmetics; provide uniform legislation to be administered in conformity with federal laws which expressly prohibit the false advertisement of drugs, devices and cosmetics; and promote uniformity of such state and federal laws.

Section 499.05, F.S., establishes prohibited acts relating to drugs, devices, and cosmetics. This section prohibits the sale or transfer of a legend drug or compressed medical gas if the person is not authorized to do so under the law of the state in which he or she resides. A person's residence, however, is irrelevant when determining whether that person is authorized to sell or receive prescription drugs.

According to s. 499.007, F.S., any drug that is habit forming or not safe for use unless under the supervision of a practitioner licensed by law to administer such drugs, is misbranded if it fails to bear on the label the statement: "Caution: Federal Law Prohibits Dispensing Without Prescription" or "Caution: State Law Prohibits Dispensing Without Prescription." In 1997, Congress passed the Food and Drug Administration Modernization Act, which provides that the label statement on such drugs is to appear as "Rx Only" or the prescription symbol followed by the word "Only." Federal regulations implementing this new prescription statement provide for a phase-in of labeling changes through February 2003. If ch. 499, F.S., is not revised to reflect this change in federal law, many prescription drug products entering Florida will be misbranded under Florida law.

Section 499.028, F.S., relating to drug samples and complimentary drugs, provides that individuals may not possess a prescription drug sample unless: the drug sample was prescribed to her or him, the individual is the employee of a complimentary drug distributor that holds a permit, or the individual is a person to whom prescription drug samples may be distributed pursuant to this section. Currently, there is no clear provision allowing federal, state, and local government employees, acting within the scope of employment, to possess prescription drug samples.

The Administrative Procedure Act and Agency Rulemaking Authority

Section 120.536(1), F.S., states that, "A grant of rulemaking authority is necessary but not sufficient to allow an agency to adopt a rule; a specific law to be implemented is also required. An agency may only adopt rules that implement, interpret, or make specific the particular powers and duties granted by the enabling statute." Section 120.536, F.S., further established that an agency may not adopt a rule merely because it is reasonably related to the purpose of the enabling legislation, nor may the agency have the authority to implement statutory provisions setting forth general legislative intent or policy.

Section 120.536(2), F.S., required each agency to provide the Administrative Procedures Committee a listing of rules adopted by the agency before October 1, 1996, which exceeded the rulemaking authority permitted in this section. These lists were to be provided by October 1, 1997, and subsequently combined and presented to the Speaker of the House of Representatives and the President of the Senate. This section further provides that the 1998 Legislature was to consider whether specific legislation authorizing these rules should be enacted. According to s. 120.536(2), F.S., each agency must have initiated appropriate proceedings to appeal rules exceeding rulemaking authority by January 1, 1999. By February 1, 1999, the Administrative Procedure Committee was required to submit to the President of the Senate and the Speaker of the House of Representatives, a report identifying rules that exceed rule authority for which repeal proceedings have not yet been initiated.

B. EFFECT OF PROPOSED CHANGES:

The list of divisions authorized under the Department of Health will be revised and language regarding use of incentives and promotional items in disease prevention and health education activities will be clarified.

Certain language referring to the Department of Health & Rehabilitative Services will be updated to conform to the creation of the Department of Health and the Department of Children and Family Services.

The Department of Health will be provided with necessary rule authority required by s. 120.536, F.S.

The Department of Health will be given the authority to purchase vehicles for use by county health departments, subject to approval of the Department of Management Services.

Language requiring the Department of Health to reimburse hospitals for the cost of furnishing data for the cancer registry will be removed from statute.

The Special Supplemental Food Program for Women, Infants, and Children will be retitled the Special Supplemental Nutrition Program for Women, Infants, and Children to conform to federal law.

Language relating to benefits provided under the program for children with special health care needs will be clarified.

Co-payment requirements relating to primary care challenge grantees will be clarified.

The difference in regulatory requirements for drinking water systems will be clarified.

The membership of the Health Information Systems Council will be revised, and the Health Information Systems Council will be given the responsibility of establishing a review process for agency health-related data collection and maintenance.

The membership of the Diabetes Advisory Council will be revised.

Technical and clarifying changes will be made to department requirements relating to birth records.

Language that may prevent the preliminary HIV test results of a mother who has just given birth from being released to the mother for purposes of immediate initiation of drug treatment therapy for the her newborn infant will be removed, and specific requirements will be established for the performance of HIV tests on deceased persons.

Technical changes will be made to ch. 499, F.S., to conform to federal requirements and improve clarity.

Certain department buildings will be named after Wilson T. Sowder, M.D., E. Charlton Prather, M.D., and William G. "Doc" Myers, M.D.

Sections 381.731(3), 383.307(5), 404.20(7), and 409.9125, F.S., will be repealed.

C. APPLICATION OF PRINCIPLES:

1. <u>Less Government:</u>

   a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

Yes, the Department of Health is given authority to adopt rules to implement particular sections in the bill and to comply with s. 120.536, F.S.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

Yes, the bill will clarify that a mother who has just given birth will be able to receive her HIV test results for purposes of determining medical care for her newborn infant.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Sections 20.43, 39.303, 63.162, 110.205, 120.80, 154.504, 287.155, 372.6672, 381.004, 381.0051, 381.006, 381.0061, 381.0062, 381.731, 381.90, 382.003, 382.004, 382.008, 382.013, 382.015, 382.016, 382.019, 382.025, 382.0255, 383.14, 383.307, 385.202, 385.203, 391.012, 391.028, 391.0315, 391.221, 391.222, 391.223, 392.69, 404.20, 409.9125, 499.005, 499.007, 499.028, 499.066, 499.069, 742.10, F.S.

E. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 20.43, F.S., relating to the Department of Health. The following subsections are amended:

Subsection (3) is amended to add the Division of Children's Medical Services Network, Division of Emergency Medical Services and Community Health Resources, Division of Children's Medical Services Prevention and Intervention, Division of Information Resource Management, and the Division of Health Awareness and Tobacco to the list of divisions that are authorized to exist in the Department of Health. The Division of Children's Medical Services and the Division of Local Health Planning, Education, and Workforce Department are removed from the authorized list of divisions;

Subsection (7) is amended to clarify language regarding the use of incentives and promotional items in disease prevention and health education activities.

Section 2. Amends s. 39.303, F.S., relating to child protection teams, to conform titles relating to Children's Medical Services.

Section 3. Amends s. 63.162, F.S., relating to hearings and records in adoption proceedings, to clarify the use of the term "intermediary."

Section 4. Amends s. 110.205, F.S., relating to career service exemptions, to update language regarding the establishment of exempt positions that now pertains to the Department of Health and Rehabilitative Services to conform to the creation of the Department of Health and the Department of Children and Family Services, and to include the positions of Assistant County Health Department Director and County Health Department Financial Administrator to the list of exempt positions.

Section 5. Amends s. 120.80, F.S., relating to exceptions and special requirements of the Department of Health, to allow the Department of Health to contract with the Department of Children and Family Services to conduct administrative hearings in matters concerning the Special Supplemental Nutrition Program for Women, Infants and Children, Children's Medical Services programs, Child Care Food Program, and exemption from disqualification reviews for certified nurse assistants.

Section 6. Amends s. 154.504, F.S., relating to eligibility and benefits, to permit providers to enter into contracts pursuant to s. 766.1115, F.S., provided co-payments are not used as compensation for services to health care providers.

Section 7. Amends s. 287.155, F.S., relating to the purchase of motor vehicles by certain agencies, to authorize the Department of Health to purchase automobiles, trucks, and other automotive equipment for use by county health departments, subject to the approval of the Department of Management Services.

Section 8. Amends s. 372.6672, F.S., relating to alligator management and trapping program implementation, to delete the Department of Health and Rehabilitative Services from any responsibility regarding alligator management and trapping.

Section 9. Amends s. 381.004, F.S., relating to testing for human immunodeficiency virus. The following subsections of this section are amended:

Subsection (3) is amended to remove language that prevents the preliminary HIV test results of a mother from being released to the mother at the time of delivery; and

Subsection (12) is amended to clarify requirements for the performance of HIV tests on deceased persons.

Section 10. Amends s. 381.0051, F.S., relating to family planning, to give the Department of Health the authority to adopt rules for family planning.

Section 11. Amends s. 381.006, F.S., relating to environmental health, to provide the department with rule making authority relating to the health inspection of certain group care facilities.

Section 12. Amends s. 381.0061, F.S., relating to administrative fines, to authorize the department to impose fines for violations relating to group care facilities.

Section 13. Amends s. 381.0062, F.S., relating to water systems. The following subsections of this section are amended:

Subsection (2) is amended to provide that "multi-family water system" means a water system that provides piped water for three to four residences, one of which may be a rental residence, and to clarify the definition of "private water system" to mean a water system that provides piped water for one or two residences, one of which may be a rental residence.

Subsections (3), (4), and (5) are amended to include the term "multi-family water system" when applicable in place of private water system.

Section 14. Amends s. 381.90, F.S., relating to the Health Information Systems Council. The following subsections of this section are amended:

Subsection (3) is amended to revise the membership of the Health Information Systems Council. Added members include: the State Treasurer/Insurance Commissioner; a representative from the Florida Healthy Kids Corporation; a representative from a school of public health chosen by the Board of Regents; the Commissioner of Education; the secretary of the Department of Elderly Affairs; and the secretary of the Department of Juvenile Justice.

Subsection (7) is amended to revise the duties of the Health Information System Council. Additional responsibilities will include developing a review process to ensure cooperative planning among agencies that collect or maintain health-related data. The council is required to submit a report on the implementation of this data to the Governor, the Speaker of the House of Representatives, and the President of the Senate, by January 1, 2000.

Section 15. Amends s. 382.003, F.S., relating to powers and duties of the Department of Health, to remove the word "rescinding" in relation to the department's rule authority regarding vital records, and to provide the department with the authority to adopt rules for the requirement of notarized documents.

Section 16. Amends 382.004, F.S., relating to reproduction and destruction of records, to remove unnecessary lanuage.

Section 17. Amends s. 382.008, F.S. relating to death and fetal death registration, to remove language relating to the limited disclosure of social security numbers, which is in conflict with federal law.

Section 18. Amends s. 382.013, F.S., relating to birth registration. The following subsections of this section are amended:

Subsection (1) is amended to clarify procedures to be following when a birth occurs outside a health care facility, and to provide authority for the department to require documents and proof as it deems necessary to establish the fact of a birth when it occurred outside of a health care facility and was not attended by a Florida licensed physician, certified nurse midwife, Florida licensed midwife or a public health nurse employed by the department. A technical change replacing one of the parents with the mother or the father is also made;

Subsection (2) is amended to clarify circumstances for listing the name of the husband of the mother on the birth certificate;

Subsection (4) is amended to clarify the responsibility for registering a birth record of a child of undetermined parentage and to delete ambiguous language.

Section 19. Amends s. 382.015, F.S., relating to new certificates of live birth, to replace the term "court decree" with "court order," and to delete language addressing the administrative acknowledgment of paternity. A technical change to delete unnecessary language is also made.

Section 20. Amends s. 382.016, F.S., relating to amendment of records. Subsections (3), (4), and (5) are created to add to s. 382.016, F.S., the language similar to that removed from s. 382.015(2), F.S., by the previous section.

Section 21. Amends s. 382.019, F.S., relating to delayed registration and administrative procedures, to clarify that after receipt of an application the department may file a delayed registration, and to clarify when the department may dismiss an inactive application.

Section 22. Amends s. 382.025, F.S., relating to certified copies of vital records. The following subsections of this section are amended:

Subsection (1) is amended to clarify that birth records over 100 years old are exempt from provisions of s. 119.07(1), F.S. and to provide a method for indicating death on a commemorative birth certificate;

Subsection (2) is amended to allow for issuance of cause of death information to any person providing documented proof of need rather than restricting it to a family member only;

Subsection (3) is amended to add language clarifying that non-confidential data shall be available to anyone requesting it upon payment of a fee prescribed in s. 382.0255(1)(h), and to add language clarifying that data exempt from ch. 119, F.S., which is sold to companies by the Office of Vital Statistics, may not be resold by the companies.

Section 23. Amends s. 382.0255, F.S., relating to fee for a certification of a birth record, to permit the department to retain fees collected by vital statistics for birth certificates rather than transferring the fees to the General Revenue Fund.

Section 24. Amends s. 383.14, F.S., relating to screening for metabolic disorders, other hereditary and congenital disorders, and environmental risk factors, to change the name of the WIC program from the Special Supplemental Food Program for Women, Infants, and Children, to the Special Supplemental Nutrition Program for Women, Infants, and Children to conform with federal law.

Section 25. Amends s. 385.202, F.S., relating to statewide cancer registry, to remove language that requires the department to reimburse hospitals for the cost of furnishing data for the cancer registry.

Section 26. Amends s. 385.203, F.S., relating to the Diabetes Advisory Council, to revise the membership requirements of the Council.

Section 27. Amends s. 391.021, F.S., relating to definitions applying to Children's Medical Services, to give the Director of Children's Medical Services authority to appoint division directors subject to the approval of the secretary.

Section 28. Amends s. 391.028, F.S., relating to administration of the Children's Medical Services program, to remove "the Division of" from the title of Children's Medical Services, and to provide that the director of Children's Medical Services may appoint division directors subject to the approval of the secretary.

Section 29. Amends s. 391.0315, F.S., relating to benefits, to clarify that benefits provided under the program for children with special health care needs shall be the same benefits provided to children in ss. 409.905 and 409.906, F.S., relating to Medicaid.

Section 30. Amends s. 391.221, F.S., relating to the Statewide Children's Medical Services Network Advisory Council, to provide conforming language that is needed due to the reorganization of Children's Medical Services into two divisions.

Section 31. Amends s. 391.222, F.S., relating to the Cardiac Advisory Council, to provide conforming language that is needed due the reorganization of Children's Medical Services into two divisions.

Section 32. Amends s. 391.223, F.S., relating to technical advisory panels, to provide conforming language that is needed due the reorganization of Children's Medical Services into two divisions.

Section 33. Amends s. 392.69, F.S., relating to appropriations, sinking, and maintenance trust funds, to allow the department to use excess money, notwithstanding ch. 216, F.S., for the improvement of health facilities at A.G. Holley State Hospital, and to authorize the department to establish an advisory board to review and make recommendations relating to patient care at A.G. Holley State Hospital. Members of the advisory board shall be appointed for a term of 3 years, with such appointments being staggered so that the terms of no more than two members expire in any one year. Members are to serve without remuneration, but per diem and travel expenses may be reimbursed as provided in s. 112. 061, F.S.

Section 34. Amends s. 499.005, F.S., relating to prohibited acts, to clarify that a person must be authorized to sell or transfer legend drugs and compressed medical gas under ch. 499, and that a person acquiring a legend drug must be authorized to do so under the applicable law where the receipt occurs. Providing the department with false information regarding any matter within the jurisdiction of ch. 499 is prohibited, not just as it relates to a drug, device, or cosmetic. The distribution of a legend device to the patient or ultimate consumer without a prescription or order from a practitioner to use or prescribe the device is prohibited.

Section 35. Amends s. 499.007, F.S., relating to misbranded drug or device, to conform the prescription statement of labels to match recently enacted federal language.

Section 36. Amends s. 499.028, F.S., relating to drug samples or complimentary drugs, to authorize federal, state, and local government employees, acting within the scope of their employment, to possess prescription drug samples.

Section 37. Amends s. 499.066, F.S., relating to penalties and remedies, to authorize their immediate effect of a cease and desist order relating to persons who have violated ss. 499.001-499.081, F.S., or any rule adopted pursuant to those sections. Chapter 120, F.S., hearing rights attach for an abatement or modification of the cease and desist order.

Section 38. Amends s. 499.069, F.S., relating to punishment for violations of s. 499.005, F.S., to correct a statutory cross-reference to make the purchase of a prescription drug from an unauthorized source a third degree felony, rather than the purchase of a compressed medical gas from an unauthorized source a first-degree misdemeanor.

Section 39. Amends s. 742.10, F.S., relating to establishment of paternity for children born out of wedlock, to conform statutory cross-references.

Section 40. Provides that the building known as the 1911 State Board of Health Building which is part of a multi-building complex with the address of 1217 Pearl Street, Jacksonville, Florida shall be known as the Wilson T. Sowder, M.D. Building.

Section 41. Provides that the building authorized by Chapter 98-307, L.O.F., that will be located on Seagrape Drive on the Tampa Campus of the University of South Florida which will house laboratory facilities for the Department of Health shall be known as the William G. "Doc" Myers, M.D. Building.

Section 42. Provides that the Department of Health headquarters building that will comprise approximately 100,000 square feet that is authorized by item 1986 in the 1988-99 Appropriations Act shall be known as the E. Charlton Prather, M.D. Building.

Section 43. Repeals subsection (3) of s. 381.731, F.S., relating to submission of an initial Healthy Communities plan that was submitted in 1992.

Section 44. Repeals subsection (5) of s. 383.307, F.S., relating to department consultation agreements with birth centers that are unable to find consultants.

Section 45. Repeals subsection (7) of s. 404.20, F.S., relating to department monitoring requirements of the transportation of radioactive materials.

Section 46. Repeals s. 409.9125, F.S., relating to study requirements for Medicaid alternative service networks.

Section 47. Provides an effective date of July 1, 1999.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

   None.

2. Recurring Effects:

   The Department of Health estimates that it will save $3,000 a year with the repeal of technologically obsolete radioactive monitroing requirements in s. 404.20, F.S. In addition, the Department of Health will be permitted to retain an estimated $800,000 in fees collected by vital statistics for birth certificates. This portion of the fees is now transferred to the General Revenue Fund.

3. Long Run Effects Other Than Normal Growth:

   None.

4. Total Revenues and Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

   None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenue in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

Several revisions to PCB HCS 99-05 were needed to conform to SB 2220 and to make technical bill drafting corrections. A new version of the bill, PCB HCS 99-05A , was drafted to include these technical changes. The revisions to PCB HCS 99-05A:

- Provide conforming language that is needed due the reorganization of Children's Medical Services into two divisions;
- Correct the name of the new Division of Health Awareness and Tobacco;
- Provide for the complete name of the Department of Children and Family Services;
- Correct references to public records exemptions regarding the confidentiality of HIV test results;
- Correct an error in a date;
- Correct a name for purposes of a building designation;
- Combine two unnecessarily separate sections into one section;
- Provide language to clarify the use of the term "intermediary" in s. 63.162(4)(d); and
- Incorporate other technical revisions.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON HEALTH CARE SERVICES:

Prepared by:

Amy K. Guinan

Staff Director:

Phil E. Williams

STORAGE NAME: pcb05.hc
DATE: March 6, 1999

HOUSE OF REPRESENTATIVES
COMMITTEE ON
HEALTH CARE SERVICES
ANALYSIS

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BILL #: PCB HCS 99-05

RELATING TO: Department of Health

SPONSOR(S): Committee on Health Care Services

COMPANION BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) HEALTH CARE SERVICES
(2)
(3)

I. SUMMARY:

PCB HCS 99-05 includes several provisions designed to improve efficiency of public health programs within the Department of Health. These provisions: clarify language regarding the use of incentives and promotional items in disease prevention and health education; revise the list of divisions that are authorized to exist in the department; update career service exemptions; permit the department to contract with the Department of Children and Family Services to conduct administrative hearings in matters concerning WIC and CMS; clarify co-payment requirements relating to primary care challenge grants; authorize the department to purchase automobiles for use by county health departments; remove any responsibility regarding alligator management and trapping from the Department of Health and Rehabilitative Services; remove language that prevents the preliminary HIV test results of a mother who has just given birth from being released to the mother at the time of delivery; clarify requirements relating to the performance of HIV tests on deceased persons; give the department authority to adopt rules for family planning; provide a definition for "multi-family water system"; revise the membership of the Health Information Systems Council; provide the Health Information Systems Council with the responsibility of establishing a review process for agency health-related data collection and maintenance; revise department authority relating to vital records; provide the department with authority to adopt rules for the requirement of notarized documents; removes language relating to reproduction and destruction of records and the disclosure of certain social security numbers; clarify procedures relating to birth records; correct the name of the WIC program to conform to federal law; remove language requiring the department to reimburse hospitals for the cost of furnishing data for the cancer registry; make technical changes relating to eligibility for the Medicaid service package in the CMS program; allow the department to use excess money for the improvement of health facilities; authorize the department to establish an advisory body for the A.G. Holley State Hospital.

In addition, PCB HCS 99-05 makes several amendments to Chapter 499, F.S., to: clarify that a person must be authorized to sell or transfer prescription drugs under Chapter 499, and the person acquiring prescription drugs must be authorized to do so; clarify that providing the department with false information regarding any matter within the jurisdiction of Chapter 499 is prohibited; prohibit distribution of a legend device to a patient without a prescription or order from a licensed practitioner; conform the prescription statement on labels to recently enacted federal language; authorize federal, state, and local government employees, acting within the scope of employee, to possess prescription drug samples; and authorize the immediate effect of a cease and desist order.

PCB HCS 99-05 also provides for the naming of the Wilson T. Sowder, M.D. Building, the Williams G. Doc Myers, M.D. Building, and the Charlton E. Prather, M.D. Building; and repeals language relating to: consultation agreements between the department and birth centers; obsolete provisions relating to the submission of Healthy Communities plans and Medicaid alternative service networks; and technologically obsolete requirements regarding the transportation of radioactive materials.

The Department of Health estimates that the repeal of certain requirements in this bill will provide the department with an annual savings of $3,000. In addition, the Department of Health will be permitted to retain an estimated $800,000 in fees collected by vital statistics for birth certificates. This portion of the fees is now transferred to the General Revenue Fund.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Department of Health

In 1996, legislation was passed creating a Department of Health (DOH) to protect and promote the health and safety of residents of, and visitors to, the state. The new department, which came into official existence on January 1, 1997, is composed of the State Health Office and Children's Medical Services Program of the former Department of Health and Rehabilitative Services (HRS). Examination and licensure of the medical professions were also removed from AHCA and transferred to DOH, effective July 1, 1997.

With the creation of DOH, HRS was renamed the Department of Children and Family Services and reorganized to include four program offices as well as an administration office. The four programs include: Children & Families, Mental Health & Substance Abuse, Economic Self-Sufficiency, and Developmental Services.

There are still several references to HRS in the statute that have not yet been changed to conform to the creation of the Department of Health and the Department of Children and Family Services.

The purpose and organizational structure for DOH is provided in s. 20.43, F.S. This section establishes that the divisions of the Department of Health include: Division of Administration; Division of Environmental Health; Division of Disease Control; Division of Family Health Services; Division of Children's Medical Services; Division of Local Health Planning, Education, and Workforce Development, and the Division of Medical Quality Assurance, which is responsible for medical boards and professions.

Section 20.43, F.S., also gives DOH the authority to use state or federal funds to protect or improve the public health by providing incentives for encouraging disease prevention and patient compliance with medical treatment, and through health education campaigns and promotional campaigns to recruit health professionals to be employed by the department.

Section 120.80(15), F.S., 1998 Supplement, provides that notwithstanding s. 120.57(1)(a), a formal hearing may not be conducted by the Secretary of Health, the director of the Agency Health Care Administration, or a board or member of a board within the Department of Health or the Agency for Health Care Administration for matters relating to regulations of any activity, occupation, profession, or vocation regulated by the department in the Division of Medical Quality Assurance.

When DOH was still a part of HRS, a process was established that allowed the agency to conduct its own administrative hearing in matters concerning the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), Children's Medical Services (CMS) program, and exemption from disqualification review for certified nurse assistants. DOH no longer has the authority to continue this process.

Private and Public Water Systems

Section 381.0062, F.S., provides that "it is the intent of the Legislature to protect the public's health by establishing standards for the construction, modification, and operation of public and private water systems to assure consumers that the water provided to those systems is potable." Subsection (2) of s. 381.0062, F.S., defines "private water system" as "a water system that provides piped water for no more than four nonrental residences." No definition is provided for a water system that serves only one rental residence, and therefore, a single rental residence would now be included within the definitions of a private water system and a multi-family water system.

Chapter 64E-8, Florida Administrative Code, requires that owners of water systems connecting one or two residences only meet well setback from potential sources of contamination. Owners of water

systems connecting three or four residences must meet the setback requirement, and also obtain a construction permit and provide satisfactory bacteria, nitrate and lead analytical results. There is no reference made to a single rental residence.

Testing for Human Immunodeficiency Virus (HIV)

Section 381.004(3)(a), F.S., provides that a test designed to identify HIV may not be ordered without the informed consent of the person being tested, except under specified circumstances. Additionally, s. 381.004(3)(d), provides that test results shall not be determined as positive or revealed to any person, without corroborating or confirmatory tests being conducted, except in certain situations. An exception to this requirement which was enacted in chapter 98-171, L.O.F. , provides that "preliminary test results may be released to health care providers and to the person tested when decisions about medical care or treatment of the person tested cannot await the results of confirmatory testing." There is concern that the words "treatment of the person tested" prevents the preliminary HIV test results of a mother who has just given birth from being released to the mother for purposes of immediate initiation of drug therapy for the newborn. Certain drug therapy may help prevent the newborn from contracting HIV from the mother, but because the earlier the drug therapy is initiated the more effective it is, a delay in drug treatment could be detrimental to the infant. This situation only occurs when women who have received no prenatal care arrive at hospital emergency rooms for delivery, because they have not been offered HIV tests as part of a prenatal care program.

Chapter 98-171, L.O.F., also provided for additional exceptions to when informed consent is not required in ordering an HIV test. Section 381.004(3)(h)12, F.S., provides that informed consent is not required "for the performance of an HIV test by the medical examiner upon a deceased individual who is the source of a significant exposure to medical personnel or nonmedical personnel who provided emergency medical assistance and who expired or could not be resuscitated during treatment for the medical emergency." This change was made to allow medical persons and "good Samaritans" to learn the test results of the source of exposure so that preventative treatment options could begin if the test results were positive. The concern with this language is that not all deceased individuals who are the source of a significant exposure are sent to medical examiners.

Health Information Systems Council

The Health Information Systems Council was created by s. 381.90, F.S., within the Department of Health to, "facilitate the identification, collection, standardization, sharing, and coordination of health-related data, including fraud and abuse data, and professional and facility licensing data among federal, state, local, and private entities." Membership of the council is provided for in this section and includes: the secretary of the Department of Health; the secretary of the Department of Business and Professional Regulations; the secretary of the Department of Children and Family Services; the director of the Agency for Health Care Administration; the secretary of the Department of Corrections; the Attorney General; the executive director of the Correctional Medical Authority; two members representing county health departments, one from a small county and one from a large county, appointed by the Governor; and a representative from the Florida Association of Counties.

Vital Records

Section 382.013, F.S., provides that a certificate for each live birth that occurs in this state shall be filed within 5 days after such birth with the local registrar of the district in which the birth occurred. This section sets out procedures for filing, as well as requirements for registration of paternity, the name of the child, undetermined parentage, and disclosure.

Section 382.025(1), F.S., provides that all Florida birth records are confidential and exempt from the provisions of s. 119.07(1), F.S. Subsection (2) of s. 382.025, F.S., provides that the department authorizes the issuance of a certified copy of any marriage, dissolution of marriage, or death or fetal death certificate, excluding confidential portions, to the person requesting the information. Death and fetal death certificates which include the confidential portions will only be issued to the registrants's spouse or parent, child, grandchild, or sibling, of legal age, or to any family member who provides a will, insurance policy, or document demonstrating his or her interest in the registrant's estate. The confidential portions will also be provided to any agency of the state or local government or the

United States for official purposes upon approval of the department or upon order of any court of competent jurisdiction.

Section 382.0255, F.S., provides that the department is entitled to certain fees for the processing, filing, and retrieving of vital records and registrations. Previously, a portion of these fees was deposited in the Crimes Against Children Trust Fund administered by the Department of Law Enforcement. This trust fund, however, was elminated on July 1, 1995, and the funds that were being deposited in this trust fund are now transferred to general revenue rather than to Vital Statistics.

Florida Drug and Cosmetic Act

Chapter 499, F.S., is known as the Florida Drug and Cosmetic Act and its purpose is to: protect the public from injury by the use and merchandising of drugs, devices, and cosmetics; provide uniform legislation to be administered in conformity with federal laws which expressly prohibit the false advertisement of drugs, devices and cosmetics; and promote uniformity of such state and federal laws.

Section 499.05, F.S., establishes prohibited acts relating to drugs, devices, and cosmetics. This section prohibits the sale or transfer of a legend drug or compressed medical gas if the person is not authorized to do so under the law of the state in which he or she resides. A person's residence, however, is irrelevant when determining whether that person is authorized to sell or receive prescription drugs.

According to s. 499.007, F.S., any drug that is habit forming or not safe for use unless under the supervision of a practitioner licensed by law to administer such drugs, is misbranded if it fails to bear on the label the statement: "Caution: Federal Law Prohibits Dispensing Without Prescription" or "Caution: State Law Prohibits Dispensing Without Prescription." In 1997, Congress passed the Food and Drug Administration Modernization Act, which provides that the label statement on such drugs is to appear as "Rx Only" or the prescription symbol followed by the word "Only." Federal regulations implementing this new prescription statement provide for a phase-in of labeling changes through February 2003. If ch. 499, F.S., is not revised to reflect this change in federal law, many prescription drug products entering Florida will be misbranded under Florida law.

Section 499.028, F.S., relating to drug samples and complimentary drugs, provides that individuals may not possess a prescription drug sample unless: the drug sample was prescribed to her or him, the individual is the employee of a complimentary drug distributor that holds a permit, or the individual is a person to whom prescription drug samples may be distributed pursuant to this section. Currently, there is no clear provision allowing federal, state, and local government employees, acting within the scope of employment, to possess prescription drug samples.

The Administrative Procedure Act and Agency Rulemaking Authority

Section 120.536(1), F.S., states that, "A grant of rulemaking authority is necessary but not sufficient to allow an agency to adopt a rule; a specific law to be implemented is also required. An agency may only adopt rules that implement, interpret, or make specific the particular powers and duties granted by the enabling statute." Section 120.536, F.S., further established that an agency may not adopt a rule merely because it is reasonably related to the purpose of the enabling legislation, nor may the agency have the authority to implement statutory provisions setting forth general legislative intent or policy.

Section 120.536(2), F.S., required each agency to provide the Administrative Procedures Committee a listing of rules adopted by the agency before October 1, 1996, which exceeded the rulemaking authority permitted in this section. These lists were to be provided by October 1, 1997, and subsequently combined and presented to the Speaker of the House of Representatives and the President of the Senate. This section further provides that the 1998 Legislature was to consider whether specific legislation authorizing these rules should be enacted. According to s. 120.536(2), F.S., each agency must have initiated appropriate proceedings to appeal rules exceeding rulemaking authority by January 1, 1999. By February 1, 1999, the Administrative Procedure Committee was required to submit to the President of the Senate and the Speaker of the House of Representatives,

a report identifying rules that exceed rule authority for which repeal proceedings have not yet been initiated.

B. EFFECT OF PROPOSED CHANGES:

The list of divisions authorized under the Department of Health will be revised and language regarding use of incentives and promotional items in disease prevention and health education activities will be clarified.

Certain language referring to the Department of Health & Rehabilitative Services will be updated to conform to the creation of the Department of Health and the Department of Children and Family Services.

The Department of Health will be provided with necessary rule authority required by s. 120.536, F.S.

The Department of Health will be given the authority to purchase vehicles for use by county health departments, subject to approval of the Department of Management Services.

Language requiring the Department of Health to reimburse hospitals for the cost of furnishing data for the cancer registry will be removed from statute.

The Special Supplemental Food Program for Women, Infants, and Children will be retitled the Special Supplemental Nutrition Program for Women, Infants, and Children to conform to federal law.

Language relating to benefits provided under the program for children with special health care needs will be clarified.

Co-payment requirements relating to primary care challenge grantees will be clarified.

The difference in regulatory requirements for drinking water systems will be clarified.

The membership of the Health Information Systems Council will be revised, and the Health Information Systems Council will be given the responsibility of establishing a review process for agency health-related data collection and maintenance.

Technical and clarifying changes will be made to department requirements relating to birth records.

Language that may prevent the preliminary HIV test results of a mother who has just given birth from being released to the mother for purposes of immediate initiation of drug treatment therapy for the her newborn infant will be removed, and specific requirements will be established for the performance of HIV tests on deceased persons.

Technical changes will be made to ch. 499, F.S., to conform to federal requirements and improve clarity.

Certain department buildings will be named after Wilson T. Sowder, M.D., Charlton E. Prather, M.D., and William G. Doc Myers, M.D.

Sections 381.731(3), 383.307(5), 404.20(7), and 409.9125, F.S., will be repealed.

C. APPLICATION OF PRINCIPLES:

1. <u>Less Government:</u>

   a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

Yes, the Department of Health is given authority to adopt rules to implement particular sections in the bill and to comply with s. 120.536, F.S.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

Yes, the bill will clarify that a mother who has just given birth will be able to receive her HIV test results for purposes of determining medical care for her newborn infant.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Sections 20.43, 110.205, 120.80, 154.504, 287.155, 372.6672, 381.004, 381.0051, 381.0062, 381.731, 381.90, 382.003, 382.008, 382.013, 382.015, 382.016, 382.019, 382.025, 382.0255, 383.14, 383.307, 385.202, 391.028, 391.0315, 392.69, 404.20, 409.9125, 499.005, 499.007, 499.028, 499.066, 499.069, 742.10, F.S.

E. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 20.43, F.S., relating to the Department of Health. The following subsections are amended:

Subsection (3) is amended to add the Division of Children's Medical Services Network, Division of Emergency Medical Services and Community Health Resources, Division of Children's Medical Services Prevention and Intervention, Division of Information Resource Management, and the Division of Health and Tobacco Awareness to the list of divisions that are authorized to exist in the Department of Health. The Division of Children's Medical Services and the Division of Local Health Planning, Education, and Workforce Department are removed from the authorized list of divisions;

Subsection (7) is amended to clarify language regarding the use of incentives and promotional items in disease prevention and health education activities.

Section 2. Amends s. 110.205, F.S., relating to career service exemptions, to update language regarding the establishment of exempt positions that now pertains to the Department of Health and Rehabilitative Services to conform to the creation of the Department of Health and the Department of Children and Family Services, and to include the positions of Assistant County Health Department Director and County Health Department Financial Administrator to the list of exempt positions.

Section 3. Amends s. 120.80, F.S., relating to exceptions and special requirements of the Department of Health, to allow the Department of Health to contract with the Department of Children and Family Services to conduct administrative hearings in matters concerning the Special Supplemental Nutrition Program for Women, Infants and Children, Children's Medical Services programs, Child Care Food Program, and exemption from disqualification reviews for certified nurse assistants.

Section 4. Amends s. 154.504, F.S., relating to eligibility and benefits, to permit providers to enter into contracts pursuant to s. 766.1115, F.S., provided co-payments are not used as compensation for services to health care providers.

Section 5. Amends s. 287.155, F.S., relating to the purchase of motor vehicles by certain agencies, to authorize the Department of Health, to purchase automobiles, trucks, and other automotive equipment for use by county health departments, subject to the approval of the Department of Management Services.

Section 6. Amends s. 372.6672, F.S., relating to alligator management and trapping program implementation, to delete the Department of Health and Rehabilitative Services from any responsibility regarding alligator management and trapping.

Section 7. Amends s. 381.004, F.S., relating to testing for human immunodeficiency virus. The following subsections of this section are amended:

Subsection (3) is amended to remove language that prevents the preliminary HIV test results of a mother from being released to the mother at the time of delivery; and

Subsection (12) is amended to clarify requirements for the performance of HIV tests on deceased persons.

Section 8. Amends s. 381.0051, F.S., relating to family planning, to give the Department of Health the authority to adopt rules for family planning.

Section 9. Amends s. 381.0062, F.S., relating to water systems. The following subsections of this section are amended:

Subsection (2) is amended to provide that "multi-family water system" means a water system that provides piped water for three to four residences, one of which may be a rental residence, and to clarify the definition of "private water system" to mean a water system that provides piped water for one or two residences, one of which may be a rental residence.

Subsections (3), (4), and (5) are amended to include the term "multi-family water system" when applicable in place of private water system.

Section 10. Amends s. 381.90(3), F.S., relating to the Health Information Systems Council, to revise the membership of the Health Information Systems Council. Added members include: the State Treasurer/Insurance Commissioner; a representative from the Florida Healthy Kids Corporation; a representative from a school of public health chosen by the Boards of Regents; the Commissioner of Education; the secretary of Elderly Affairs; and the secretary of the Department of Juvenile Justice.

Section 11. Amends s. 381.90(7), F.S., relating to the Health Information System Council, to revise the duties of the Health Information System Council. Additional responsibilities will include developing a review process to ensure cooperative planning among agencies that collect or maintain health-related data. The council is required to submit a report on the implementation of this data to the Governor, the Speaker of the House of Representatives, and the President of the Senate, by January 1, 2000.

Section 12. Amends s. 382.003, F.S., relating to powers and duties of the Department of Health, to remove the word "rescinding" in relation to the departments rule authority regarding vital records, and to provide the department with the authority to adopt rules for the requirement of notarized documents.

Section 13. Amends 382.004, F.S., relating to reproduction and destruction of records, to remove unnecessary lanuage.

Section 14. Amends s. 382.008, F.S. relating to death and fetal death registration, to remove language relating to the limited disclosure of social security numbers, which is in conflict with federal law.

Section 15. Amends s. 382.013, F.S., relating to birth registration. The following subsections of this section are amended:

Subsection (1) is amended to clarify procedures to be following when a birth occurs outside a health care facility, and to provide authority for the department to require documents and proof as it deems necessary to establish the fact of a birth when it occurred outside of a health care facility and was not attended by a Florida licensed physician, certified nurse midwife, Florida licensed midwife or a public health nurse employed by the department. A technical change replacing one of the parents with the mother or the father is also made;

Subsection (2) is amended to clarify circumstances for listing the name of the husband of the mother on the birth certificate;

Subsection (4) is amended to clarify the responsibility for registering a birth record of a child of undetermined parentage and to delete ambiguous language.

Section 16. Amends s. 382.015, F.S., relating to new certificates of live birth, to replace the term "court decree" with "court order," and to delete language addressing the administrative acknowledgment of paternity. A technical change to delete unnecessary language is also made.

Section 17. Amends s. 382.016, F.S., relating to amendment of records. Subsections (3), (4), and (5) are created to add to s. 382.016, F.S., the language similar to that removed from s. 382.015(2), F.S., by the previous section.

Section 18. Amends s. 382.019, F.S., relating to delayed registration and administrative procedures, to clarify that after receipt of an application the department may file a delayed registration, and to clarify when the department may dismiss an inactive application.

Section 19. Amends s. 382.025, F.S., relating to certified copies of vital records. The following subsections of this section are amended:

Subsection (1) is amended to clarify that birth records over 100 years old are exempt from provisions of s. 119.07(1), F.S. and to provide a method for indicating death on a commemorative birth certificate;

Subsection (2) is amended to allow for issuance of cause of death information to any person providing documented proof of need rather than restricting it to a family member only;

Subsection (3) is amended to add language clarifying that non-confidential data shall be available to anyone requesting it upon payment of a fee prescribed in s. 382.0255(h), and to add language clarifying that data exempt from ch. 119, F.S., which is sold to companies by the Office of Vital Statistics, may not be resold by the companies.

Section 20. Amends s. 382.0255, F.S., relating to fee for a certification of a birth record, to permit the department to retain fees collected by vital statistics for birth certificates rather than transferring the fees to the General Revenue Fund.

Section 21. Amends s. 383.14, F.S., relating to screening for metabolic disorders, other hereditary and congenital disorders, and environmental risk factors, to change the name of the WIC program from the Special Supplemental Food Program for Women, Infants, and Children, to the Special Supplemental Nutrition Program for Women, to conform with federal law.

Section 22. Amends s. 385.202, F.S., relating to statewide cancer registry, to remove language that requires the department to reimburse hospitals for the cost of furnishing data for the cancer registry.

Section 23. Amends s. 391.028, F.S., relating to administration of the Children's Medical Services program, to remover "the Division of" from the title of Children's Medical Services, and to provide that the director of Children's Medical Services may appoint division directors subject to the approval of the secretary.

Section 24. Amends s. 391.0315, F.S., relating to benefits, to clarify that benefits provided under the program for children with special health care needs shall be the same benefits provided to children in ss. 409.905 and 409.906, F.S.

Section 25. Amends s. 392.69, F.S., relating to appropriations, sinking, and maintenance trust funds, to allow the department to use excess money, notwithstanding ch. 216, F.S., for the improvement of health facilities at A.G. Holley State Hospital, and to authorize the department to establish an advisory board to review and make recommendations relating to patient care at A.G. Holley State Hospital. Members of the advisory board shall be appointed for a term of 3 years, with such appointments being staggered so that the terms of no more than two members expire in any one year. Members are to serve without remuneration, but per diem and travel expenses may be reimburse as provided in s. 112. 061, F.S.

Section 26. Amends s. 499.005, F.S., relating to prohibited acts, to clarify that a person must be authorized to sell or transfer legend drugs and compressed medical gas under ch. 499, and that a person acquiring a legend drug must be authorized to do so under the applicable law where the receipt occurs. Providing the department with false information regarding any matter within the jurisdiction of ch. 499 is prohibited, not just as it relates to a drug, device, or cosmetic. The distribution of a legend device to the patient or ultimate consumer without a prescription or order from a practitioner to use or prescribe the device is prohibited.

Section 27. Amends s. 499.007, F.S., relating to misbranded drug or device, to conform the prescription statement of labels to match recently enacted federal language.

Section 28. Amends s. 499.028, F.S., relating to drug samples or complimentary drugs, to authorize federal, state, and local government employees, acting within the scope of their employment, to possess prescription drug samples.

Section 29. Amends s. 499.066, F.S., relating to penalties and remedies, to authorize their immediate effect of a cease and desist order relating to persons who have violated ss. 499.001-499.081, F.S., or any rule adopted pursuant to those sections. Chapter 120, F.S., hearing rights attach for an abatement or modification of the cease and desist order.

Section 30. Amends s. 499.069, F.S., relating to punishment for violations of s. 499.005, F.S., to correct a statutory cross-reference to make the purchase of a prescription drug from an unauthorized source a third degree felony, rather than the purchase of a compressed medical gas from an unauthorized source a first-degree misdemeanor.

Section 31. Amends s. 742.10, F.S., relating to establishment of paternity for children born out of wedlock, to conform statutory cross-references.

Section 32. Provides that the building known as the 1911 State Board of Health Building which is part of a multi-building complex with the address of 1217 Pearl Street, Jacksonville, Florida shall be known as the Wilson T. Sowder, M.D. Building.

Section 33. Provides that the building authorized by Chapter 98-307, L.O.F., that will be located on Seagrape Drive on the Tampa Campus of the University of South Florida which will house laboratory facilities for the Department of Health shall be known as the William G. Doc Myers, M.D. Building.

Section 34. Provides that the Department of Health headquarters building that will comprise approximately 100,000 square feet that is authorized by item 1986 in the 1988-99 Appropriations Act shall be known as the Charlton E. Prather, M.D. Building.

Section 35. Repeals subsection (3) of s. 381.731, F.S., relating to submission of an initial Healthy Communities plan that was submitted in 1992.

Section 36. Repeals subsection (5) of s. 383.307, F.S., relating to department consultation agreements with birth centers that are unable to find consultants.

Section 37. Repeals subsection (7) of s. 404.20, F.S., relating to department monitoring requirements of the transportation of radioactive materials.

Section 38. Repeals s. 409.9125, F.S., relating to study requirements for Medicaid alternative service networks.

Section 39. Provides an effective date of July 1, 1999.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

The Department of Health estimates that it will save $3,000 a year with the repeal of technologically obsolete radioactive monitroing requirements in s. 404.20, F.S. In addition, the Department of Health will be permitted to retain an estimated $800,000 in fees collected by vital statistics for birth certificates. This portion of the fees is now transferred to the General Revenue Fund.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenue in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

Committee staff and Department of Health staff have identified the need for a number of amendments to this PCB. These will need to be dealt with by a series of amendments, or by an updated draft of the PCB.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON HEALTH CARE SERVICES:

Prepared by:

Amy K. Guinan

Staff Director:

Phil E. Williams

PCB HCS 99-05
Revisions

Several revisions to PCB HCS 99-05 are needed to conform to SB 2220 and to make technical bill drafting corrections. A new version of PCB HCS 99-05 will be drafted to include these technical changes. These revisions will:

- Provide conforming language that is needed due the reorganization of Children's Medical Services into two divisions;
- Correct the name of the new Division of Health Awareness and Tobacco;
- Provide for the complete name of the Department of Children and Family Services;
- Correct references to public records exemptions regarding the confidentiality of HIV test results;
- Correct an error in a date;
- Correct a name for purposes of a building designation;
- Combine two unnecessarily separate sections into one section;
- Provide language to clarify the use of the term "intermediary" in s. 63.162(4)(d); and
- Incorporate other technical revisions.

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PCB HCS 99-05
1999 DOH Public Health Bill

PCB HCS 99-05 is the Department of Health Public Health "Glitch" Bill which is designed to improve or increase the efficiency of public health programs. The bill includes provisions to:

- Give the department certain rulemaking authority;
- Improve the clarity of language;
- Update or conform the statutes to the creation of the Department of Health and the Department of Children and Family Services;
- Improve the organizational structure and administrative ability of the Department of Health; and
- Repeal certain language containing obsolete requirements.

In addition, the bill makes several amendments to Chapter 499, F.S., to clarify requirements regarding the sale of prescriptions drugs and legend devices.

The bill also contains language clarifying when preliminary HIV test results may be released and when tests may be performed on deceased persons.

Finally, PCB HCS 99-05 includes several clean-up and technical revisions relating to Vital Statistics and regulatory requirements for drinking water systems.

The Department of Health estimates that the repeal of certain requirements in this bill will provide the department with an annual savings of $3,000. In addition, the Department of Health will be permitted to retain an estimated $800,000 in fees collected by vital statistics for birth certificates. This portion of the fees is now transferred to the General Revenue Fund.

LEON RAWNER, M.D.,

Petitioner,

vs. DOAH Case No.: 13-4651

BOARD OF MEDICINE,

Respondent

JOINT EXHIBIT 6

Laws of Florida and associated legislative history and staff analysis, set forth in Respondent's Motion for Official Recognition. (See attached chart for reference).

1. Chapter 75-154, Section 1

FLORIDA DEPARTMENT of STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

This is to certify that this is a true copy made from:

Laws of Florida Chapter 75-154, Section 1

Located in the Florida Public Documents collection of the State Library of Florida and is available for inspection at the State Library of Florida. Certified this10th day of January, 2014.

By: _____ (Cheri Ellison)
(Signature)

Acquisitions Librarian
(Title)

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CHAPTER 75-153

House Bill No. 308

AN ACT relating to game and fresh water fish; repealing s. 372.02, Florida Statutes, relating to the general powers, duties, and authority of the Game and Fresh Water Fish Commission and the authority of the commission to issue rules and orders; repealing s. 372.022, Florida Statutes, relating to the power of the commission to sell and trade commission lands in Lake and Marion Counties; repealing s. 372.08, Florida Statutes, relating to the yearly audit of the Game and Fresh Water Fish Commission required by the governor; repealing s. 372.10, Florida Statutes, relating to the payment of all accounts by the commission; repealing s. 372.43, Florida Statutes, which prohibits the catching, wounding, or killing of carrier pigeons and provides a penalty therefor; repealing s. 372.572, Florida Statutes, to remove provisions relating to the right of county residents to fish in certain waters bounded by more than one county; repealing s. 372.63, Florida Statutes, which requires that persons who rent boats to hunters and fishermen must purchase a license from the Game and Fresh Water Fish Commission; repealing s. 372.67, Florida Statutes, relating to the requirement that those seeking a license to hunt and trap list the game and fur bearing animals they have taken in the preceding season; providing an effective date.

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

Section 1. Sections 372.02, 372.022, 372.08, 372.10, 372.43, 372.572, 372.63, and 372.67, all Florida Statutes, are hereby repealed.

Section 2. This act shall take effect upon becoming a law.

Approved by the Governor June 22, 1975.

Filed in Office Secretary of State June 23, 1975.

CHAPTER 75-154

House Bill No. 435

AN ACT relating to medical practice; amending s. 458.05(3), Florida Statutes, to provide an alternative to certain license examination requirements for certain graduates of foreign medical schools; providing an effective date.

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

Section 1. Present subsection (4) of section 458.05, Florida Statutes, is renumbered as subsection (5), and new subsection (4) is added to said section to read:

458.05 Application for license; qualifications as applicant.—

(4) Notwithstanding the provisions of subsection (2)(c), a graduate of a foreign medical school need not present the certificate issues by the

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Educational Council for Foreign Medical Graduates or pass the American medical examination for foreign medical graduates if he:

(a) Has completed undergraduate work in an accredited United States college or university;

(b) Has studied at a medical school which is recognized by the World Health Organization;

(c) Has completed all of the formal requirements of the foreign medical school, except the internship or social service requirements and has passed part I of the National Board of Medical Examiners examination or the ECFMG equivilent; and

(d) Has completed an academic year of supervised clinical training in a hospital affiliated with a medical school approved by the Council on Medical Education of the American Medical Association and upon completion has passed part II of the National Board of Medical Examiners examination or the ECFMG equivalent.

(e) Has been a bona fide resident of the State of Florida for one year;

(5) ~~(4)~~ The board is granted the authority to waive the requirements of subsection (2)(c) for an applicant who demonstrates that he is either eligible for or has been examined and certified as a specialist by one of the appropriate American specialty boards accredited by the Council of the American Medical Association.

Section 2. This act shall take effect July 1, 1975.

Approved by the Governor June 22, 1975.

Filed in Office Secretary of State June 23, 1975.

CHAPTER 75-155

House Bill No. 548

AN ACT relating to podiatry; amending s. 461.10(1), Florida Statutes, directing the Board of Podiatry Examiners to comply with the provisions of the Administrative Procedure Act with respect to hearings in regard to the suspension or revocation of licenses; changing the voting procedure for license revocation by the Board of Podiatry Examiners from a two-thirds majority vote to a majority vote; providing an effective date.

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

Section 1. Subsection (1) of section 461.10, Florida Statutes, is amended to read:

461.10 Power of board to revoke licenses; review by circuit court; reissue of license.—

(1) The Board of Podiatry Examiners may *after notice and hearing pursuant to F. S. Ch. 120, and,* upon satisfactory proof made that any

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1.a. Senate Standing Committee on Health and Rehabilitative Services, Staff Evaluation, HB 435 by Representative Kutun, Relating to: Medical Practice Act Fifth Pathway, (Florida Archives, Series 18, Carton 261)

FLORIDA DEPARTMENT of STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

I, Judith Ring, Division Director, Division of Library and Information Services, Florida Department of State, hereby certify the records of the Florida Legislature were transferred to the custody of the Florida State Archives pursuant to the provisions of Chapter 257, Florida Statutes, and that I am, by the terms of that transfer, the official custodian of the records.

I further certify that the attached is a true and correct copy of the record in the State Archives of Florida, the original of which may be found in Series 18, carton 261.

***WITNESS MY SIGNATURE**, this 10th Day of January, 2014.*

***JUDITH RING**, Director*
Division of Library and Information Services

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SENATE STANDING COMMITTEE ON
HEALTH AND REHABILITATIVE SERVICES

STAFF EVALUATION (Imhof)

1975
BILL NUMBER AND INTRODUCER
HB 435 by Representative Kutun

RELATING TO:
Medical Practice Act
Fifth Pathway

I. SUMMARY

HB 435 provides an alternative method by which foreign medical graduates can be allowed to sit for the Florida Board Exam. It provides that an applicant can be accepted for the exam if he: has completed undergraduate premedical training in an accredited American college or university; has completed, in a foreign medical school recognized by the World Health Organization all of the requirements of such school except a foreign internship or social service and has completed a nine-month academic year of clinical training under the supervision of a medical school approved by the Board and also has completed an Internship or one year of residency approved by the AMA.

II. ANALYSIS

The "Fifth Pathway" was established by the American Medical Association in 1971 and amended in 1972. It provides a method by which American foreign medical graduates can compensate for the clinical deficiencies of the curricula in the foreign schools. The American Medical Association has determined that an additional year of such supervised clinical training will establish the appropriate clinical background essentially equivalent to that of the United States medical school graduates.

The National Public Health Service has designated 24 counties as areas of critical medical need. These areas encompass 15% of the 1973 estimated population of Florida, or 1.9 million people. This type of critical physician shortage documents the need for more M.D.'s in Florida. Unfortunately due to the present economic and political situation, construction and maintenance of additional medical schools or the expansion of existing facilities is prohibited. As shown above the estimated cost for foreign medical graduates under the fifth pathway is substantially less than the cost of our four year program. The following states have indicated acceptance of the fifth pathway program:

Arizona
California
Connecticut
Delaware
Indiana
Iowa
Michigan
Montana
New Jersey
New York
North Carolina
North Dakota
Ohio
Pennsylvania
Puerto Rico
South Dakota
Wyoming

At the present time, a Fifth Pathway Program is in existence at the University Hospital in Jacksonville in conjunction with the University of Florida Medical School. There are five students enrolled at the present time with a maximum capacity of 16 in the program.

III. TECHNICAL ERRORS

None noted.

IV. COMMENTS

This type of program has been established or is accepted in numerous other states as is shown above. It should be noted that funds need

to be appropriated for this bill only if programs of this type are to be established or continued with additional funding in the State. It is possible for Florida foreign medical graduates to receive this type of clinical training in other states. The passage of this bill would allow an individual who has completed the requirements for the program to sit for the Florida licensing exam.

REFERENCE: Health and Rehabilitative Services only.

SENATE STANDING COMMITTEE ON HEALTH AND REHABILITATIVE SERVICES

STAFF EVALUATION (Imhof)

BILL NUMBER AND INTRODUCER
HB 435 by Rep. Kutun as enrolled
(Similar to CS/SB 414 by Senators Gordon and Lane, J.)

RELATING TO:
Medical Practice Act: Fifth Pathway

I. SUMMARY

This legislation amends s. 458.05 of the Medical Practice Act to provide for an alternative method of licensing foreign medical graduates. It provides that the foreign medical graduate need not be certified by the Educational Council for Foreign Medical Graduates (ECFMG) if he has:

(a) completed a program of undergraduate work in an accredited U.S. college or university;

(b) studied in a medical school recognized by the World Health Organization;

(c) completed all of the formal requirements of the foreign medical school, except the internship or social service and has passed part I of the National Board of Medical Examiners examination or the ECFMG equivalent;

(d) completed an academic year of supervised clinical training in a hospital affiliated with a medical school approved by the Council on Medical Education of the American Medical Association and upon completion has passed part II of the National Board of Medical Examiners examination or the ECFMG equivalent; and

(e) been a resident of the State of Florida for one year.

II. ANALYSIS

The "Fifth Pathway" was established by the American Medical Association in 1971 and amended in 1972. It provides a method by which American foreign medical graduates can compensate for the clinical deficiencies of the curricula in the foreign schools. The American Medical Association has determined that an additional year of such supervised clinical training will establish the appropriate clinical background essentially equivalent to that of the United States medical school graduates.

The National Public Health Service has designated 24 counties as areas of critical medical need. These areas encompass 15% of the 1973 estimated population of Florida, or 1.9 million people. This type of critical physician shortage documents the need for more M.D.'s in Florida. Unfortunately due to the present economic and political situation, construction and maintenance of addtional medical schools or the expansion of existing facilities is prohibited.

The following states have indicated acceptance of the fifth pathway program:

Arizona	Montana	Puerto Rico
California	New Jersey	South Dakota
Connecticut	New York	Wyoming
Delaware	North Carolina	
Indiana	North Dakota	
Iowa	Ohio	
Michigan	Pennsylvania	

At the present time, a fifth pathway program is in existence at the University Hospital in Jacksonville in conjunction with the University of Florida Medical School. There are five students enrolled at the present time with a maximum capacity of 16 in the program. The University of Miami does not have an organized program as such, but has taken students on an individual basis for this type of training.

BILL ACTION REPORT

(C3-75: File with Secretary of Senate) (S)(H) BILL NO. 435

COMMITTEE ON HEALTH AND REHABILITATIVE SERVICES

DATE MAY 26, 1975 Date Reported May 26, 1975

TIME 6:00 P.M.

PLACE Committee Room C

OTHER COMMITTEE REFERENCES:
(In order shown)

NONE

FINAL ACTION:

x Favorably with 0 amendments

____ Favorably with Committee Substitute

____ Unfavorably

OTHER: ____ Temporarily Passed

____ Reconsidered

____ Not Considered

THE VOTE WAS:

FINAL BILL VOTE		SENATORS	amendments to conform to SB									
Aye	Nay		Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay
X		CHILDERS, DON C.	X									
X		GLISSON, JAMES A.		X								
	X	LANE, DAVID C.	X									
NOT PRESENT		MACKAY, KENNETH H.										
X		RENICK, RICHARD		X								
	X	SIMS, WALTER	X									
	X	THOMAS, JON C.	X									
X		VOGT, JOHN W.		X								
X		GORDON, JACK D.		X								
5	3	TOTAL	4	4								
Aye	Nay		Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay

(Attach additional page if necessary)

Please Complete: The key sponsor appeared (x)
A Senator appeared ( )
Sponsor's aide appeared ( )
Other appearance ( )

1.b. "Some Criticism on this Program…"
(Florida Archives, Series 18, Carton 262).

FLORIDA DEPARTMENT of STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

I, Judith Ring, Division Director, Division of Library and Information Services, Florida Department of State, hereby certify the records of the Florida Legislature were transferred to the custody of the Florida State Archives pursuant to the provisions of Chapter 257, Florida Statutes, and that I am, by the terms of that transfer, the official custodian of the records.

I further certify that the attached is a true and correct copy of the record in the State Archives of Florida, the original of which may be found in Series 18, carton 262.

***WITNESS MY SIGNATURE**, this 10th Day of January, 2014.*

***JUDITH RING**, Director*
Division of Library and Information Services

BY: _____
State Archives of Florida

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SOME CRITICISM ON THIS PROGRAM HAS BEEN RAISED ON THE FOLLOWING POINTS:

1) It discriminates against the U.S. graduate:

This is hardly the case since the U.S. graduate is able to sit for the board exam if he is 21 years of age or older, is of good moral charactor, has graduated from an accredited medical school approved by the board and has completed one year of internship or five years of private practice. A U.S. medical graduate can also be licensed through endorsement by being certified by the Federation of State Medical Board of United States Inc. (FLEX) or being certified by exam by National Board of Medical Examiners.

The Fifth Pathway Program requires that the individual complete a year of clinical training in addition to his four years in medical schools, his internship and his residency requirements.

2) It's very expensive:

According to estimates we have received from other states, the year of supervised clinical training costs approximately $10,000 per year per student. The Florida State Department of Education has estimated it costs approximately $12,500 per year per student, at state supported medical schools, so for the same period of time the estimates are that the fifth pathway is not more expensive than U.S. medical training per year.

3) Quality of medical care is reduced:

This is especially critical in the time of medical malpractice crisis.

The bill establishes a quality control factor in subsection (4) where it states that the FMG must "(a) has completed, in an accredited U.S. college or university, undergraduate premedical work of the quality acceptable for entrance to an accredited medical school in the United States;" This section guarantees that the student will be one which has the quality to get into a U.S. school but couldn't because of space limitations.

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Series 18 Carton 262

1.c. Senate Standing Committee on Health and Rehabilitative Services, Staff Evaluation (Imhof), SB 414-Senator Gordon, J. Lane, Relating to Medical Practices Act Fifth Pathway). (Florida Archives, Series 18, Carton 260).

FLORIDA DEPARTMENT *of* STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

I, Judith Ring, Division Director, Division of Library and Information Services, Florida Department of State, hereby certify the records of the Florida Legislature were transferred to the custody of the Florida State Archives pursuant to the provisions of Chapter 257, Florida Statutes, and that I am, by the terms of that transfer, the official custodian of the records.

I further certify that the attached is a true and correct copy of the record in the State Archives of Florida, the original of which may be found in Series 18, carton 260.

***WITNESS MY SIGNATURE**, this 10th Day of January, 2014.*

***JUDITH RING**, Director*
Division of Library and Information Services

BY: _____
State Archives of Florida

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SENATE STANDING COMMITTEE ON
HEALTH AND REHABILITATIVE SERVICES

STAFF EVALUATION (Imhof)

BILL NUMBER AND INTRODUCER
SB 414 - Senator Gordon, J. Lane

RELATING TO:
Medical Practices Act
Fifth Pathway

I. SUMMARY

This legislation amends Section 458.05 of the Medical Practice Act to provide for an alternative method of licensing foreign medical graduates. It provides that the foreign medical graduate need not be certified by the Educational Council for Foreign Medical Graduates if he has:

a) completed a program of premedical work, in an accredited U.S. college or university, of such a quality acceptable for entrance to a U.S. medical school; and

b) studied in a medical school recognized by the World Health Organization; and

c) completed all of the formal requirements of the foreign medical school, except the internship or social service; and

d) completed an academic year of supervised clinical training in a hospital affiliated with a medical school approved by the Council on Medical Education of the American Medical Association.

This bill also provides that the State Board of Regents shall establish a sufficient number of clinical training programs in hospitals around the State to meet the needs of Florida's citizens.

II. ANALYSIS

The "Fifth Pathway" was established by the American Medical Association in 1971 and amended in 1972. It provides a method by which American foreign medical graduates can compensate for the clinical deficiencies of the curricula in the foreign schools. The American Medical Association has determined that an additional year of such supervised clinical training will establish the appropriate clinical background essentially equivalent to that of the United States medical school graduates.

Cost data on this type of program in other states has been received for comparison with the cost to put a graduate through a four year medical school.

The cost of the program for one year of supervised clinical training has been estimated at $10,000 per student per year. The cost in Florida to educate a student at one of the medical schools in the state is approximately $12,500 per student per year. So the total cost to the State of Florida to prepare and qualify a medical student to sit for the board exam is estimated at:

$10,000 - Fifth Pathway. Supervised clinical training program (FMG)

$50,000 - Graduate of Florida 4 year medical school program.

The National Public Health Service has designated 24 counties as areas of critical medical need. These areas encompass 15% of the 1973 estimated population of Florida or 1.9 million people. This type of critical physician shortage documents the need for more M.D.'s in Florida. Unfortunately due to the present economic and political

situation, construction and maintenance of additional medical schools or the expansion of existing facilities is prohibited. As shown above the estimated cost for foreign medical graduates under the fifth pathway is substantially less than the cost of our four year program. The following states have indicated acceptance of the fifth pathway program:

Arizona	Montana	Puerto Rico
California	New Jersey	South Dakota
Connecticut	New York	Wyoming
Delaware	North Carolina	
Indiana	North Dakota	
Iowa	Ohio	
Michigan	Pennsylvania	

At the present time, a Fifth Pathway Program is in existence at the University Hospital in Jacksonville in conjunction with the University of Florida Medical School. There are five students enrolled at the present time with a maximum capacity of 16 in the program.

III. TECHNICAL ERRORS

None note.

IV. COMMENTS

This type of program has been established or is accepted in numerous other states as is shown above. It should be noted that funds need to be appropriated for this bill only if programs of this type are to be established or continued with additional funding in the State. It is possible for Florida foreign medical graduates to receive this type of clinical training in other states. The passage of this bill would allow an individual who has completed the requirements for the program to sit for the Florida licensing exam.

REFERENCE: Health and Rehabilitative Services

SENATE STANDING COMMITTEE ON
HEALTH AND REHABILITATIVE SERVICES

STAFF EVALUATION (Imhof)

BILL NUMBER AND INTRODUCER
CS/SB 414 - Senators Gordon and Lane, J.

RELATING TO:
Medical Practice Act:
Fifth Pathway

I. SUMMARY

This legislation amends section 458.05 of the Medical Practices Act to provide for an alternative method of licensing foreign medical graduates. It provides that the foreign medical graduate need not be certified by the Educational Council for Foreign Medical Graduates if he has:

(a) been a bona fide resident of the State of Florida for 5 years;

(b) completed a program of undergraduate work in an accredited U.S. college or university;

(c) studied in a medical school recognized by the World Health Organization;

(d) completed all of the formal requirements of the foreign medical school, except the internship or social service and has passed part I of the National Board of Medical Examiners examination or the ECFMG equivalent; and

(e) completed an academic year of supervised clinical training in a hospital affiliated with a medical school approved by the Council on Medical Education of the American Medical Association and upon completion has passed part II of the National Board of Medical Examiners examination or the ECFMG equivalent.

This bill also provides that the State Board of Regents shall establish, before July 1, 1985, a sufficient number of clinical training programs in hospitals around the state to meet the needs of Florida citizens.

The CS/SB 414 also provides that any individual licensed through the Fifth Pathway mechanism shall practice for two years in an area of critical medical need as defined in section 458.055, Florida Statutes.

II. ANALYSIS

The "Fifth Pathway" was established by the American Medical Association in 1971 and amended in 1972. It provides a method by which American foreign medical graduates can compensate for the clinical deficiencies of the curricula in the foreign schools. The American Medical Association has determined that an additional year of such supervised clinical training will establish the appropriate clinical background essentially equivalent to that of the United States medical school graduates.

Cost date on this type of program in other states has been received for comparison with the cost to put a graduate through a four year medical school.

The cost of the program for one year of supervised clinical training has been estimated up to a maximum of $10,000 per student per year. The cost in Florida to educate a student at one of the medical schools in the state is approximately $12,500 per student per year. So the total cost to the State of Florida to prepare and qualify a medical student to sit for the board exam is estimated at:

Up to $10,000 - Fifth Pathway. Supervised clinical training program (FMG)

$50,000 - Graduate of Florida 4-year medical school program.

The National Public Health Service has designated 24 counties as areas of critical medical need. These areas encompass 15% of the 1973 estimated population of Florida, or 1.9 million people. This type of critical physician shortage documents the need for more M.D.'s in Florida. Unfortunately due to the present economic and political situation, construction and maintenance of additional medical schools or the expansion of existing facilities is prohibited. As shown above the estimated cost for foreign medical graduates under the fifth pathway is substantially less than the cost of our four year program. The following states have indicated acceptance of the fifth pathway program:

Arizona	Montana	Puerto Rico
California	New Jersey	South Dakota
Connecticut	New York	Wyoming
Delaware	North Carolina	
Indiana	North Dakota	
Iowa	Ohio	
Michigan	Pennsylvania	

At the present time, a Fifth Pathway Program is in existence at the University Hospital in Jacksonville in conjunction with the University of Florida Medical School. There are five students enrolled at the present time with a maximum capacity of 16 in the program.

III. TECHNICAL ERRORS

None noted.

IV. COMMENTS

This type of program has been established or is accepted in numerous other states as is shown above. It should be noted that funds need to be appropriated for this bill only if programs of this type are to be established or continued with additional funding in the State. It is possible for Florida foreign medical graduates to receive this type of clinical training in other states. The passage of this bill would allow an individual who has completed the requirements for the program to sit for the Florida licensing exam.

REFERENCE: Health and Rehabilitative Services only.

RESPONSE TO CRITICISMS OF SENATE BILL 414 AS AMELIORATED BY COMMITTEE SUBSTITUTE FOR SENATE BILL 414.

I. THE FIFTH PATHWAY IS AN INFERIOR PROGRAM COMPARED TO THE ECFMG CERTIFICATION PROCESS.--

The additional language included in the CS for SB 414 addresses this criticism by requiring extensive examinations of the fifth pathway students. The Fifth Pathway Program offers a better program than that offered by taking the ECFMG and receiving certification through the Educational Council, which is how foreign medical school graduates are able to sit for the Florida exam now. The reason for this statement is that a person receives an ECFMG certificate after being awarded a degree by the foreign medical school which requires completion of a year of internship or social service in that country. Such internships usually require a graduate to treat patients in an unsupervised setting, with little or no additional clinical training.

The CS for SB 414 requires that a student must receive an additional year of supervised clinical training and complete the first two parts of the National Board of Medical Examiners examination or the ECFMG equivalent before the foreign medical graduate is allowed to sit for the Florida exam.

II. STUDENTS AND CURRICULUM AT FOREIGN SCHOOLS ARE INFERIOR IN QUALITY.--

1. Many individuals have criticized the curriculum at foreign medical schools, especially the one at Guadalajara, Mexico as inferior. Conversations with American graduates from the Mexican school brings these statements into question. While at Guadalajara, one student stated, that M.D.'s were brought, on a visiting basis, from some of the best schools in the United States including the University of Southern California to teach neurology, Stanford University to lecture on psychiatry and from Cornell and Harvard to teach infectuous diseases. The testimony criticized the school as having lecture classes of over 100 but information the Committee has received from students indicate that classroom size was no more than 50 which many times were broken into groups of 5 for discussion and clinical training purposes.

2. Many individuals contend that students who go overseas to medical schools are of inferior quality or else they would have gone to United States medical schools. This is not the case since all across the country medical schools have many more times the applicants than there are positions available. For example, the University of Florida had 80 positions available for the 1978 class and had 2,047 applicants or a ratio of 25 applicants for every one position at the medical school. The University of South Florida School of Medicine had 74 slots to fill and approximately 1,000 applicants or 13 applicants for every one position.

SECTION BY SECTION ANALYSIS

OF THE FIFTH PATHWAY

SECTION 1. Provides for a short title, "The Fifth Pathway for Foreign Medical Graduates Act of 1975".

SECTION 2. Adds subsection (4) to section 458.05, Florida Statutes, to provide that a foreign medical graduate need not be certified by the Educational Council for Foreign Medical Graduates if:

a.) he has graduated from an accredited United States college or university with undergraduate premedical work acceptable to a United States medical school;

b.) he has studied at a medical school recognized by the World Health Organization;

c.) he has completed all of the formal requirements of the foreign medical school, except internship or social service; and

d.) he has completed a year of supervised clinical training in a hospital affiliated with an accredited medical school.

Provides that the Board of Regents shall establish a sufficient number of programs to meet the needs of Florida's citizens.

Subsection (4) is renumbered subsection (5).

SECTION 3. Provides for an effective date of July 1, 1975.

STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR SENATE BILL 414

Provides that a participant in the Fifth Pathway Program must be a bona fide resident of the State of Florida for 5 years.

Provides that a person who is licensed and has gained entrance to the Florida licensing exam through the Fifth Pathway Program shall practice for two years in an area of critical medical need.

Provides that the State Board of Regents shall establish clinical training programs in the state until July 1, 1985.

Committee on Health and Rehabilitative Services

Kathy L. Carver
Chairman or Staff Director

C14(4-74) (File 2 copies with Committee Substitutes)

BILL ACTION REPORT

(C3-75: File with Secretary of Senate) (S)(H) BILL NO. SB 414

COMMITTEE ON HEALTH AND REHABILITATIVE SERVICES

DATE April 21, 1975 Date Reported 4/21/75

TIME 10:30 A.M.

PLACE Committee Room A

OTHER COMMITTEE REFERENCES:
(In order shown)

NONE

FINAL ACTION:

_____ Favorably with _____ amendments

_____ Favorably with Committee Substitute

_____ Unfavorably

OTHER: X Temporarily Passed

_____ Reconsidered

_____ Not Considered

THE VOTE WAS:

FINAL BILL VOTE		SENATORS										
Aye	Nay		Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay
ABSENT		CHILDERS, DON C.										
X		GLISSON, JAMES A.										
X		LANE, DAVID C.										
X		MACKAY, KENNETH H.										
X		RENICK, RICHARD										
X		SIMS, WALTER										
X		THOMAS, JON C.										
X		VOGT, JOHN W.										
X		GORDON, JACK D.										
8	0	TOTAL										
Aye	Nay		Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay

(Attach additional page if necessary)

Please Complete: The key sponsor appeared ( )
A Senator appeared ( )
Sponsor's aide appeared ( )

BILL ACTION REPORT

(C3-75: File with Secretary of Senate) (S) (H) BILL NO. 414

COMMITTEE ON HEALTH AND REHABILITATIVE SERVICES

DATE April 29, 1975 Date Reported 4/29/75

TIME 9:00 A.M.

PLACE Committee Room A

OTHER COMMITTEE REFERENCES:
(In order shown)

None

FINAL ACTION:

____ Favorably with ____ amendments

xx Favorably with Committee Substitute

____ Unfavorably

OTHER: ____ Temporarily Passed

____ Reconsidered

____ Not Considered

THE VOTE WAS:

FINAL BILL VOTE		SENATORS	motion to have CS		Amendment one to CS		Amendment two to CS		Motion to Reconsider Amendment 2		Vote on Amendment two	
Aye	Nay		Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay
X		CHILDERS, DON C.	unanimous by voice		Unanimous by voice		X		X			X
	X	GLISSON, JAMES A.					X		X			X
	X	LANE, DAVID C.					X		X		X	
X		MACKAY, KENNETH H.			NOT PRESENT		NOT PRESENT		X			X
X		RENICK, RICHARD						X	X			X
	X	SIMS, WALTER					X		X		X	
	X	THOMAS, JON C.					X		X		X	
X		VOGT, JOHN W.						X	X			X
X		GORDON, JACK D.						X	X			X
5	4	TOTAL	0	0	8	0	5	3	9	0	3	6
Aye	Nay		Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay

(Attach additional page if necessary)

Please Complete: The key sponsor appeared ( )
A Senator appeared (x)
Sponsor's aide appeared ( )

(S)(H) BILL NO. 414

Page No. TWO (2)

BILL ACTION REPORT (Continued)

(To be used for additional amendments and motions)

COMMITTEE ON HEALTH AND REHABILITATIVE SERVICES

The Vote Was:

SENATORS	amendment three		amendment four		amendment five		amendment six		Incorporate amendments			
	Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay
CHILDERS, DON C.	Unanimous by voice vote		Defeated by voice vote		Defeated by voice vote		Passed by voice vote		Unanimous by voice vote			
GLISSON, JAMES A.												
LANE, DAVID C.												
MACKAY, KENNETH H.												
RENICK, RICHARD												
SIMS, WALTER												
THOMAS, JON												
VOGT, JOHN W.												
GORDON, JACK D.												
TOTAL												
	Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay

2. Chapter 79-302, Section 1

FLORIDA DEPARTMENT of STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

This is to certify that this is a true copy made from:

Laws of Florida Chapter 79-302, Section 1

Located in the Florida Public Documents collection of the State Library of Florida and is available for inspection at the State Library of Florida. Certified this10th day of January, 2014 .

By: _____ (Cheri Ellison)
(Signature)

Acquisitions Librarian
(Title)

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(3) The remainder of the moneys recovered on behalf of the state, its agencies, or units of state government shall be deposited in the General Revenue Fund, or in the case of other governmental units, transferred to the appropriate fund of such government, or in the case of persons, distributed to such persons or for their benefit, as approved by a court of competent jurisdiction.

(4) "Moneys recovered" means damages or penalties or any other monetary payment, including monetary proceeds from property forfeited to the state pursuant to s. 943.464, made by any defendant by reason of any decree or settlement in any Racketeer Influenced and Corrupt Organization Act, or state or federal antitrust action prosecuted by the Attorney General, but shall exclude attorneys' fees and costs.

(5) Any moneys remaining in the fund at the end of any fiscal year which exceed $1,000,000 shall be transferred to the General Revenue Fund unallocated.

Section 2. This act shall take effect July 1, 1979.

Approved by the Governor June 29, 1979.

Filed in Office Secretary of State July 3, 1979.

CHAPTER 79-302

House Bill No. 1814

An act relating to medical practice; creating chapter 458, Florida Statutes; providing intent and definitions; providing applicability of the chapter; providing for medical faculty certificates; providing for a Board of Medical Examiners and providing the membership and terms of the board; authorizing issuance of temporary licenses and providing criteria; providing for licensure by examination and providing eligibility requirements; authorizing issuance of licenses by endorsement; authorizing issuance of limited licenses and providing requirements; providing disciplinary actions and penalties and specifying grounds therefor; prohibiting sexual misconduct in the practice of medicine; requiring medical organizations to provide certain notification of disciplinary actions taken against physicians and providing a penalty for noncompliance; providing that acceptance of a license constitutes agreement to certain activities relating to handwriting samples and confidentiality of medical records; providing for search pursuant to a search warrant under certain circumstances; providing for subpoena of certain records; providing criminal penalties for specified unlawful acts with respect to the practice and licensing of medicine; providing procedures for the renewal of licenses; providing for inactive status; providing for certification of hospital residents and interns; providing duties of hospitals; providing penalties; providing for physicians' assistants and providing procedures for the approval of programs for such assistants; providing penalties; providing procedures relating to patient

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records and disposition of deceased practitioners' records under specified medical practice chapters; providing, for physicians and osteopathic physicians, procedures and limitations with respect to emergency treatment of minors, consent of unwed pregnant minors to medical care, and termination of pregnancy; providing penalties; providing duties of abortion referral or counseling agencies and providing penalties; providing restrictions with respect to electroconvulsive and psychosurgical procedures; authorizing physicians and osteopathic physicians to prescribe or administer laetrile or DMSO; creating s. 382.195, Florida Statutes, transferring to chapter 382 provisions relating to the reporting of terminations of pregnancies; exempting certain state employees from licensure requirement; providing for effect on certain rules; providing for repeal and legislative review; repealing chapter 458, Florida Statutes; providing for licenses and certificates which are valid, and proceedings which are pending, on the effective date of the act; providing an effective date.

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

Section 1. Chapter 458, Florida Statutes, consisting of sections 458.0015, 458.0025, 458.003, 458.004, 458.005, 458.006, 458.007, 458.008, 458.009, 458.011, 458.012, 458.0125, 458.013, 458.014, 458.015, 458.0155, 458.016, 458.017, 458.501, 458.502, 458.503, 458.504, 458.505, 458.506, 458.507, 458.508, and 458.509, is created to read:

CHAPTER 458
MEDICAL PRACTICE ACT
PART I
PHYSICIANS

458.0015 Purpose.--The Legislature recognizes that the practice of medicine is potentially dangerous to the public if conducted by unsafe and incompetent practitioners. The Legislature finds further that it is difficult for the public to make an informed choice when selecting a physician and that the consequences of a wrong decision could seriously harm the public health and safety. The sole legislative purpose in enacting this chapter is to ensure that every physician practicing in this state meets minimum requirements for safe practice. It is the legislative intent that physicians who fall below minimum competency or who otherwise present a danger to the public shall be prohibited from practicing in this state.

458.0025 Definitions.--As used in this chapter:

(1) "Board" means the Board of Medical Examiners.

(2) "Department" means the Department of Professional Regulation.

(3) "Practice of medicine" means the diagnosis, treatment, operation or prescription for any human disease, pain, injury, deformity or other physical or mental condition.

(4) "Physician" means a person who is licensed to practice medicine in this state.

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458.003 Chapter not applicable to other practitioners; exceptions, etc.--

(1) The provisions of part I of this chapter shall have no application to:

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

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

(c) Commissioned medical officers of the Armed Forces of the United States and of the Public Health Service of the United States while on active duty.

(d) Any person while actually serving without salary or professional fees on the resident medical staff of a hospital in this state, subject to the provisions of s. 458.015.

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

(f) The domestic administration of recognized family remedies.

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

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

(i) The holder of a medical faculty certificate. The department may issue a medical faculty certificate without examination to an individual who remits an application fee not to exceed $25 as set by the board and who demonstrates to the board that he is a graduate of an accredited medical school. The certificate shall authorize the holder to practice only in conjunction with his teaching duties at an accredited medical school or in its main teaching hospital. Such certificate shall automatically expire when the holder's relationship is terminated with the medical school or after a period of 1 year, whichever occurs sooner, and shall be renewable only if the holder of the medical faculty certificate has taken an examination conducted by the department pursuant to s. 458.005 during the preceding year and if the dean of the medical school where the holder of the certificate is teaching recommends in writing that the certificate be renewed. Such renewal shall be for a period of 1 year, and no medical faculty certificate holder shall be entitled to more than two consecutive 1-year renewals.

(2) Nothing in this part shall be construed to prohibit any service rendered by a physician's trained assistant, a registered nurse, or a licensed practical nurse, if such service is rendered under the direct supervision and control of a licensed physician. Further, nothing in this or any other chapter shall be construed to prohibit any service rendered by a physician's trained assistant in accordance with the provisions of this subsection.

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458.004 Board of Medical Examiners.--

(1) There is created within the Department of Professional Regulation a Board of Medical Examiners, composed of eleven members appointed by the Governor and confirmed by the Senate.

(2) Nine members of the board shall be licensed physicians in good standing in this state who are residents of the state and who have been engaged in the practice of medicine for at least 4 years immediately prior to their appointment and who are not connected in any way with any medical college. The remaining members shall be residents of the state who are not nor have ever been licensed health care practitioners.

(3) Within 30 days after June 30, 1979, the Governor shall appoint seven eligible and qualified members of the board as follows:

(a) Four members for terms of 2 years each.

(b) Four members for terms of 3 years each.

(c) Three members for terms of 4 years each.

(4) As the terms of the members expire, the Governor shall appoint successors for terms of 4 years, and such members shall serve until their successors are appointed. The members of the board serving on the effective date of this act shall continue in office until their successors are appointed.

(5) All provisions of chapter 455 relating to activities of the board shall apply.

458.005 Licensure by examination.--

(1) Any person desiring to be licensed as a physician shall apply to the department to take the licensure examination. The department shall examine each applicant who the board certifies has:

(a) Completed the application form and remitted an approved examination fee not to exceed $250 as set by the board.

(b) Graduated from a medical school or college recognized and approved by an accrediting agency recognized by the United States Office of Education.

(c) Completed an approved internship of at least 1 year or at least 5 years of licensed practice.

(2) Notwithstanding the provisions of subsection (1)(b), graduates of foreign medical schools, except approved schools in Canada, who are otherwise qualified, whose medical credentials have been evaluated by the Educational Commission for Foreign Medical Graduates, and who have passed the Educational Commission Qualification Examination for Foreign Medical Graduates, may be accepted for the examinations in Florida. However, a graduate of a foreign medical school need not present the certificate by said educational commission or pass the Educational Commission Examination for Foreign Medical Graduates if:

(a) He is licensed through written examination in at least one state of the United States whose examination requirements shall have

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been approved by the board as substantially equivalent to or more stringent than the Florida examination;

(b) His license is in good standing in said state;

(c) He has continuously and actively engaged in the practice of medicine in said state for any 4 of the preceding 5 years immediately prior to application; and

(d) He has been examined and certified as a specialist by one of the appropriate American specialty boards accredited by the Council on Medical Education of the American Medical Association.

(3) Notwithstanding the provisions of subsection (1)(b), a graduate of a foreign medical school need not present the certificate issued by the Educational Commission for Foreign Medical Graduates or pass the Educational Commission Examination for Foreign Medical Graduates if he:

(a) Has completed undergraduate work in an accredited United States college or university.

(b) Has studied at a medical school which is recognized by the World Health Organization.

(c) Has completed all of the formal requirements of the foreign medical school except the internship or social service requirements and has passed part I of the National Board of Medical Examiners examination or the ECFMG equivalent.

(d) Has completed an academic year of supervised clinical training in a hospital affiliated with a medical school approved by the Council on Medical Education of the American Medical Association and upon completion has passed part II of the National Board of Medical Examiners examination or the ECFMG equivalent.

(4) The department shall waive the requirements of subsection (1)(b) for an applicant who demonstrates to the board that he has been examined and certified as a specialist by one of the appropriate American specialty boards accredited by the Council on Medical Education of the American Medical Association.

(5) Each applicant who successfully passes the examination and meets the requirements of this chapter shall be entitled to be licensed as a physician, with rights as defined by law. The department shall not issue a license to any applicant who is under investigation in another jurisdiction for offenses which would constitute a violation of this part. Upon completion of the investigation, the provisions of s. 458.007 shall apply.

458.0055 Temporary licenses for practice in areas of critical need.--Any physician who is licensed to practice in any other state and whose license is currently valid and who pays a fee of $100 may be issued a temporary certificate to practice in communities of Florida where there is a critical need for physicians and the population is less than 7,500. The Florida Board of Medical Examiners may issue this temporary certificate with the following restrictions:

(1) The board shall determine the areas of critical need, and the physician so certified may practice only in that specific area for a

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time to be determined by the board. Such areas shall include, but not be limited to, health manpower shortage areas designated by the United States Department of Health, Education and Welfare.

(2) The board may administer an abbreviated oral examination to determine the physician's competency, but no written regular examination is necessary.

(3) Any certificate issued hereunder shall be valid only so long as the area for which it is issued remains an area of critical need. The Florida Board of Medical Examiners shall review the service within said area not less than annually to ascertain that the minimum requirements of the Medical Practice Act and the rules and regulations promulgated thereunder are being complied with. If it is determined that such minimum requirements are not being met, the board shall forthwith revoke such certificate.

458.006 Licensure by endorsement.--

(1) The department shall issue a license by endorsement to any applicant who, upon applying to the department and remitting a fee not to exceed $250 set by the board, demonstrates to the board that he has met the qualifications for licensure in s. 458.005 and has:

(a) Is more than 18 years of age;

(b) Is of good moral character and has not committed any act or offense within or without the state which would constitute the basis for disciplining a physician pursuant to s. 458.007;

(c) Is a graduate of a medical school or college maintaining a standard and reputation approved by the board pursuant to s. 458.005; and

(d) Has been certified by licensure examination of the Federation of State Medical Boards of the United States, Inc. (FLEX) or is certified by the National Board of Medical Examiners as having completed its examination; provided that said examination required shall have been so certified within the 10 years immediately preceding the filing of his application for licensure under this section.

(2) The board may require oral examinations of any applicant under the provisions of this section. However, the applicant must be given adequate notice of the examination, both as to the time, place, nature, and scope thereof, as well as a statement of the reasons requiring such examination.

(3) A license so issued by endorsement shall become void and of no force and effect unless the recipient utilizes the same by actively engaging in the practice of medicine in this state within 3 years after issuance of the license and continues his practice in Florida for a minimum period of 1 year. Use and residence may be postponed until the holder has been discharged from Military Service of the United States.

(4) The board may promulgate rules and regulations, to be applied on a uniform and consistent basis, which may be necessary to carry out the provisions of this section.

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(5) The department shall not issue a license by endorsement to any applicant who is under investigation in another state for acts which would constitute a violation of this chapter until such time as the investigation is complete, at which time the provisions of s. 458.007 shall apply.

458.0065 Limited licenses; restrictions, review.--Notwithstanding any contrary provisions in this chapter, the Florida Board of Medical Examiners shall grant for a fee of $100, to physicians licensed to practice in another state, limited licenses to practice in this state. Limited licenses shall not be issued to a person who has been adjudged unqualified or guilty of any of the acts enumerated in s. 458. Limited licenses shall be issued pursuant to the following conditions:

(1) The licensee shall apply to the Florida Board of Medical Examiners on a form prescribed by the board and shall submit with such application an affidavit under oath that he has been licensed to practice his profession in such state in good standing and pursuant to law for at least 10 years, has now retired, and was in good standing at the time of retirement.

(2) If it has been more than 5 years since active practice was conducted by the applicant, the full-time director of the local health unit shall supervise the applicant for a period of 6 months before such applicant is granted a limited license for practice. Procedures for such supervisions shall be established by the board.

(3) Applications adopted by the board shall indicate areas of medical specialty.

(4) The recipient of a limited license may practice only in the employ of public agencies or institutions or nonprofit agencies or institutions meeting the requirements of s. 501(c)(3) of the Internal Revenue Code, which agencies or institutions are located in the areas of critical medical need as determined by the board. Determination of medically underserved areas shall be made by the board after consultation with the Department of Health and Rehabilitative Services and statewide medical organizations, the provisions of s. 458.0055 to the contrary notwithstanding; however, such determination shall include, but not be limited to, health manpower shortage areas designated by the United States Department of Health, Education and Welfare.

(5) The board shall notify the director of the full-time local health unit of any county in which a licensee intends to practice under the provisions of this act. The director of the full-time health unit shall assist in the supervision of any licensee within his county, and shall notify the board which issued the licensee his license if he becomes aware of any actions by the licensee which would be grounds for revocation of the limited license. The board shall establish procedures for such supervision.

Nothing herein limits in any way any policy by the board otherwise authorized by law to grant licenses to physicians duly licensed in other states under conditions less restrictive than the requirements of this section.

(6) The board shall review the practice of each licensee annually to verify compliance with the restrictions prescribed in this

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section. If it is determined that a licensee is not complying with such restrictions, the board shall revoke the license of such licensee. A license may also be revoked by a board on any ground for which a regular license of such board may be revoked by law.

458.007 Grounds for disciplinary action; action by the board, etc.--

(1) The following acts shall constitute grounds for which the disciplinary actions specified in subsection (2) may be taken:

(a) Attempting to obtain, obtaining, or renewing a license to practice medicine by bribery, fraudulent misrepresentations, or through an error of the department or the board.

(b) Having a license to practice medicine revoked, suspended or otherwise acted against, including the denial of licensure, by the licensing authority of another state, territory or country.

(c) Being convicted or found guilty, regardless of adjudication, of a crime in any jurisdiction which directly relates to the practice of medicine or to the ability to practice medicine. Any plea of nolo contendere shall be considered a conviction for purposes of this chapter.

(d) False, deceptive or misleading advertising.

(e) Advertising, practicing or attempting to practice under a name other than one's own.

(f) Failing to report to the department any person who the licensee knows is in violation of this chapter or of the rules of the department or the board.

(g) Aiding, assisting, procuring, or advising any unlicensed person to practice medicine contrary to this chapter or to rule of the department or the board.

(h) Failing to perform any statutory or legal obligation placed upon a licensed physician.

(i) Making or filing a report which the licensee knows to be false, intentionally or negligently failing to file a report or record required by state or federal law, willfully impeding or obstructing such filing or inducing another person to do so. Such reports or records shall include only those which are signed in the capacity as a licensed physician.

(j) Paying or receiving any commission, bonus, kickback, rebate, or engaging in any split fee arrangement in any form whatsoever with a physician, organization, agency, or person, either directly or indirectly, for patients referred to providers of health care goods and services including, but not limited to, hospitals, nursing homes, clinical laboratories, ambulatory surgical centers or pharmacies. The provisions of this paragraph shall not be construed to prevent a physician from receiving a fee for professional consultation services.

(k) Exercising influence within a patient-physician relationship for purposes of engaging a patient in sexual activity. A patient

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shall be presumed to be incapable of giving free, full and informed consent to sexual activity with his or her physician.

(l) Making deceptive, untrue or fraudulent representations in the practice of medicine, or employing a trick or scheme in the practice of medicine when such scheme or trick fails to conform to the generally prevailing standards of treatment in the medical community.

(m) Soliciting patients either personally or through an agent through the use of fraud, intimidation, undue influence or forms of overreaching or vexatious conduct. A solicitation is any communication which directly or implicitly requests an immediate oral response from the recipient.

(n) Failing to keep written medical records justifying the course of treatment of the patient including, but not limited to, patient histories, examination results and test results.

(o) Exercising influence on the patient or client in such a manner as to exploit the patient or client for financial gain of the licensee or of a third party which shall include, but not be limited to, the promotion or sale of services, goods, appliances, or drugs and the promoting or advertising on any prescription form of a community pharmacy, unless the form shall also state "This prescription may be filled at any pharmacy of your choice."

(p) Performing professional services which have not been duly authorized by the patient or client or his legal representative except as provided in ss. 458.503, 768.13, or 768.46.

(q) Prescribing, dispensing, administering, mixing, or otherwise preparing a legend drug, including all controlled substances, other than in the course of the physician's professional practice. For the purposes of this paragraph, it shall be legally presumed that prescribing, dispensing, administering, mixing or otherwise preparing legend drugs, including all controlled substances, inappropriately or in excessive or inappropriate quantities is not in the best interest of the patient and is not in the course of the physician's professional practice, without regard to his intent.

(r) Prescribing, dispensing or administering any medicinal drug appearing on any schedule set forth in chapter 893 by the physician to himself except those prescribed, dispensed or administered to the physician by another practitioner authorized to prescribe, dispense or administer them.

(s) Being unable to practice medicine with reasonable skill and safety to patients by reason of illness, or use of alcohol, drugs, narcotics, chemicals, or any other type of material, or as a result of any mental or physical condition. In enforcing this paragraph the department shall, upon probable cause, have authority to compel a physician to submit to a mental or physical examination by physicians designated by the department. Failure of a physician to submit to such examination when so directed shall constitute an admission of the allegations against him unless the failure was due to circumstances beyond his control, consequent upon which a default and final order may be entered without the taking of testimony or presentation of evidence. A physician affected under this paragraph shall at reasonable intervals be afforded an opportunity to demonstrate that he can resume the competent practice of medicine with reasonable skill and safety to patients. In any proceeding

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under this paragraph, neither the record of proceedings nor the orders entered by the board shall be used against a physician in any other proceeding.

(t) Gross or repeated malpractice or the failure to practice medicine with that level of care, skill and treatment which is recognized by a reasonably prudent similar physician as being acceptable under similar conditions and circumstances. The board shall give great weight to the provisions of s. 768.45 when enforcing this paragraph.

(u) Performing any procedure or prescribing any therapy which, by the prevailing standards of medical practice in the community, would constitute experimentation on human subjects without first obtaining full, informed and written consent.

(v) Practicing or offering to practice beyond the scope permitted by law, or accepting and performing professional responsibilities which the licensee knows or has reason to know that he is not competent to perform.

(w) Delegating professional responsibilities to a person when the licensee delegating such responsibilities knows or has reason to know that such person is not qualified by training, experience or licensure to perform them.

(x) Violating any provision of this chapter, a rule of the board or department, or a lawful order of the board or department, previously entered in a disciplinary hearing, or failing to comply with a lawfully issued subpoena of the department.

(y) Conspiring with another licensee or with any other person to commit an act, or committing an act, which would tend to coerce, intimidate or preclude another licensee from lawfully advertising his services.

(z) Procuring, aiding or abetting in the procuring of an unlawful termination of pregnancy.

(aa) Pre-signing blank prescription forms.

(bb) Prescribing any medicinal drug appearing on schedule II in chapter 893 by the physician for office use.

(2) When the board finds any person guilty of any of the grounds set forth in subsection (1), it may enter an order imposing one or more of the following penalties:

(a) Refusal to certify to the department an application for licensure.

(b) Revocation or suspension of a license.

(c) Restriction of practice.

(d) Imposition of an administrative fine not to exceed $1,000 for each count or separate offense.

(e) Issuance of a reprimand.

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(f) Placing the physician on probation for a period of time and subject to such conditions as the board may specify, including, but not limited to, requiring the physician to submit to treatment, to attend continuing education courses, to submit to reexamination, and to work under the supervision of another physician.

(3) The board shall not reinstate the license of a physician, or cause a license to be issued to a person it has deemed unqualified, until such time as it is satisfied that he has complied with all the terms and conditions set forth in the final order and that such person is capable of safely engaging in the practice of medicine.

(4) The board shall by rule establish guidelines for the disposition of disciplinary cases involving specific types of violations. Such guidelines may include minimum and maximum fines, periods of supervision or probation, or conditions of probation or reissuance of a license.

458.008 Sexual misconduct in the practice of medicine.--The physician-patient relationship is founded on mutual trust. Sexual misconduct in the practice of medicine shall mean violation of the physician-patient relationship through which the physician uses said relationship to induce or attempt to induce, engage or attempt to engage the patient in sexual activity outside the scope of the practice or the scope of generally accepted examination or treatment of the patient. Sexual misconduct in the practice of medicine is prohibited.

458.009 Reports of disciplinary actions by medical organizations.--The department shall be notified when any physician has been removed or suspended or has had any other disciplinary action taken by his peers within any professional medical association, society, body or professional standards review organization established pursuant to s. 249F of Public Law 92-603, or similarly constituted professional organization, whether or not such association, society, body or organization is local, regional, state, national or international in scope, or has been disciplined, which shall include allowing a physician to resign, by a licensed hospital or medical staff of said hospital for any act that constitutes a violation of this chapter. Any organization taking action as set forth in this section shall report such action to the department within 30 days of its initial occurrence regardless of the pendency of appeals therefrom. Any organization failing to report such action pursuant to this section shall be subject to a fine assessed by the department in an amount not exceeding $1,000.

458.011 Physician's consent; handwriting samples; mental or physical examinations.--Every physician who accepts a license to practice medicine in this state shall, by so accepting or by making and filing a renewal of licensure to practice in this state, be deemed to have given his consent during a lawful investigation of a complaint to the following:

(1) To render a handwriting sample to an agent of the department and further to have waived any objections to its use as evidence against him.

(2) To waive the confidentiality and authorize the release of all medical records pertaining to the mental or physical condition of the physician himself and to have waived any objection to the admissibility of the records as constituting privileged

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communications. Such material shall remain confidential in the hands of the department until probable cause is found and an administrative complaint issued.

458.012 Search warrants for certain violations.--When the department has reason to believe that violations of s. 458.007(1)(q), or (r) have occurred or are occurring, its agents or other duly authorized persons may search a physician's place of practice at reasonable hours for purposes of securing such evidence as may be needed for prosecution. Such evidence shall not include any medical records of patients unless pursuant to the patients' written consent. Notwithstanding the consent of the patient, such records shall be treated as confidential and shall not be transferred to any other agency. Provided that this section shall not limit the psychotherapist-patient privileges of section 90.503. Prior to a search, the department shall secure a search warrant from any judge authorized by law to issue them. The search warrant shall be issued upon probable cause, supported by oath or affirmation particularly describing the things to be seized. The application for the warrant shall be sworn to and subscribed, and the judge may require further testimony from witnesses, supporting affidavits, or depositions in writing to support the application. The application and supporting information, if required, must set forth the facts tending to establish the grounds of the application or probable cause that they exist. If the judge is satisfied that probable cause exists, he shall issue a search warrant signed by him with his name of office to any agent or other person duly authorized by the department to execute process, commanding the agent or person to search the place described in the warrant for the property specified. The search warrant shall be served only by the agent or person mentioned in it and by no other person except an aide of the agent or person when such agent or person is present and acting in its execution.

458.0125 Subpoena of certain records.--Notwithstanding the provisions of s. 458.501, the department may issue subpoenas duces tecum requiring the names and addresses of some or all of the patients of a physician against whom a complaint has been filed pursuant to s. 455.013.

458.013 Penalty for violations.--

(1) Each of the following acts constitutes a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or 775.084:

(a) The practice of medicine or an attempt to practice medicine without an active license.

(b) Use or attempted use of a license to practice medicine which is suspended or revoked.

(2) Each of the following acts constitutes a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084:

(a) Using the name or title "Doctor of Medicine," "Medical Doctor," or any other name or title which would lead the public to believe that the person using the name or title is licensed to practice medicine, unless such person holds a valid license.

(b) Knowingly concealing information relating to violations of this chapter.

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(c) Attempting to obtain or obtaining a license to practice medicine by fraudulent misrepresentation.

(d) Making any willfully false oath or affirmation whenever an oath or affirmation is required by this chapter.

458.014 Renewal of license.--

(1) The department shall renew a license upon receipt of the renewal application and fee.

(2) The department shall adopt rules establishing a procedure for the biennial renewal of licenses.

(3) Any license which is not renewed at the end of the biennium prescribed by the department shall automatically revert to an inactive status. Such license may be reactivated only if the licensee meets the other qualifications for reactivation in section 458.015.

(4) Sixty days prior to the end of the biennium and automatic reversion of a license to inactive status, the department shall mail notice of renewal and possible reversion to the last known address of the licensee.

(5) The licensee must have on file with the department the address of his primary place of practice within this state prior to engaging in that practice. Prior to changing the address of his primary place of practice, whether or not within this state, the licensee shall notify the department of the address of his new primary place of practice.

458.015 Inactive status.--

(1) A licensee may request that his license be placed in an inactive status by making application to the department and paying a fee in an amount set by the board not the exceed $50.

(2) A license which has been inactive for less than 1 year after the end of the biennium prescribed by the department may be renewed pursuant to section 458.014 upon payment of the late renewal penalty. The renewed license shall expire 2 years after the date the license automatically reverted to inactive status.

(3) A license which has been inactive for more than 1 year may be reactivated upon application to the department. The board shall prescribe, by rule, continuing education requirements as a condition of reactivating a license. The continuing education requirements for reactivating a license shall not exceed 12 classroom hours for each year the license was inactive and in no event shall exceed 120 classroom hours. Any license which is inactive for more than 10 years shall automatically be suspended. One year prior to this suspension the department shall give notice to the licensee. A suspended license may be reinstated as provided in section 458.007.

458.0155 Authority to make rules.--The board is authorized to make such rules not inconsistent with law as may be necessary to carry out the duties and authority conferred upon the board by this chapter and as may be necessary to protect the health, safety and welfare of the public.

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458.016 Registration of hospital residents and interns.--Every person practicing as a resident physician, assistant resident physician, house physician or intern in this state shall register with the department showing the date upon which he started to practice as aforesaid within this state. Every hospital employing a resident physician, assistant resident physician, house physician, or intern shall, on January 1 and July 1 of each year, furnish the department with a list of their employees and such other information as the board may direct. Unless previously authorized by the board no person may be employed as a house physician or act as a resident physician, assistant resident physician, or an intern in a hospital of this state for more than 2 years without a license, except that resident physicians, assistant resident physicians, and interns in approved training programs shall be exempt from this limitation. Any person violating this section shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

458.017 Physicians' assistants.--

(1) LEGISLATIVE INTENT.--

(a) In its concern with the growing shortage and geographic maldistribution of health care services in Florida, the Legislature intends to establish in this section a framework for development of a new category of health manpower--the physician's assistant.

(b) The purpose of this section is to encourage the more effective utilization of the skills of physicians by enabling them to delegate health care tasks to qualified assistants when such delegation is consistent with the patients' health and welfare.

(c) In order that maximum skills may be obtained within a minimum time period of education, the physician's assistant shall be specialized to the extent that he can operate efficiently and effectively in the specialty areas in which he has been trained or is experienced.

(d) This section is established to encourage the utilization of physician's assistants by physicians and to allow for innovative development of programs for the education of physician's assistants.

(2) DEFINITIONS.--As used in this section:

(a) "Board" means the Board of Medical Examiners.

(b) "Department" means the Department of Professional Regulation.

(c) "Approved program" means a program for the education of physician's assistants, which has been formally approved by the board.

(d) "Trainee" means a person who is currently enrolled in an approved program.

(e) "Physician's assistant" means a person who is a graduate of an approved program or its equivalent and is approved by the department to perform medical services under the supervision of a physician or group of physicians certified by the board to supervise such assistant.

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(f) "Supervision" means responsible supervision and control, with the licensed physician assuming legal liability for the services rendered by the physician's assistant. Except in cases of emergency, supervision shall require the easy availability or physical presence of the licensed physician for consultation and direction of the actions of the physician's assistant. The board shall further establish rules as to what constitutes responsible supervision of the physician's assistant.

(3) PERFORMANCE BY PHYSICIAN'S ASSISTANT.--Notwithstanding any other provision of law, a physician's assistant may perform medical services when such services are rendered under the supervision of a licensed physician or group of physicians certified by the board, in the specialty area or areas for which the physician's assistant is trained or experienced. Any physician's assistant certified under this section to perform services may perform those services only:

(a) In the office of the physician to whom the physician's assistant has been assigned, where such physician maintains his primary practice;

(b) When the physician to whom he is assigned is present;

(c) In a hospital or clinic where the physician to whom he is assigned is a member of the staff; or

(d) On calls outside said office, on the direct order of the physician to whom he is assigned.

(4) PERFORMANCE BY TRAINEES.--Notwithstanding any other provision of law, a trainee may perform medical services when such services are rendered within the scope of an approved program.

(5) PROGRAM APPROVAL.--

(a) The department shall issue certificates of approval for programs for the education and training of physician's assistants which meet board standards. Any basic program curricula certified by the board shall cover a period of 24 months, except that for applicants with 10 or more years relevant experience in the United States Armed Services Medical Corps or who are graduates of accredited medical schools and licensed to practice medicine in a state other than Florida, the basic program shall cover a period of 3 months.

(b) In developing criteria for program approval, the board shall give consideration to, and encourage, the utilization of equivalency and proficiency testing and other mechanisms whereby full credit is given to trainees for past education and experience in health fields.

(c) The board shall create groups of specialty classifications of training for physician's assistants. These classifications will reflect the training and experience of the physician's assistant. The physician's assistant may receive training in one or more such classifications, which shall be shown on the certificate issued.

(d) The board shall adopt and publish standards to insure that such programs operate in a manner which does not endanger the health and welfare of the patients who receive services within the scope of the program. The board shall review the quality of the curricula, faculties, and facilities of such programs, issue certificates of

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approval, and take whatever other action is necessary to determine that the purposes of this section are being met.

(6) APPLICATION APPROVAL.--

(a) The board shall formulate guidelines for the consideration of applications by a licensed physician or physicians to supervise physician's assistants. Each application made by a physician or physicians shall include all of the following:

1. The qualifications, including related experience, of the physician's assistant intended to be employed.

2. The professional background and specialty of the physician or physicians.

3. A description by the physician of his, or physicians of their, practice and the way in which the assistant or assistants are to be utilized.

The board shall certify an application by a licensed physician to supervise a physician's assistant when the proposed assistant is a graduate of an approved program or its equivalent and is fully qualified by reason of experience and education to perform medical services under the responsible supervision of a licensed physician and that the public will be adequately protected by the arrangement proposed in the application.

(7) PENALTY.--Any person who has not been certified by the board and approved by the department and who holds himself out as a physician's assistant, or who uses any other term in indicating or implying that he is a physician's assistant, is guilty of a felony of the third degree, punishable as provided in s. 775.082 or s. 775.084 or by fine not exceeding $5,000.

(8) REVOCATION OF APPROVAL.--The certificate of approval to supervise a physician's assistant held by any physician or group of physicians may be revoked when the board determines the intent of this section is not being carried out.

(9) RULES.--The board shall adopt rules necessary for the administration of the physician's assistant program. The board shall adopt such rules as are necessary to insure both the continued competency of physician's assistants and the proper utilization of them by physicians or groups of physicians. Rules shall be adopted to assure that every physician's assistant performs his services under the responsible supervision and control of a physician or group of physicians.

(10) FEES.--

(a) A fee not to exceed $100 as set by the board shall accompany the annual application by a physician or group of physicians for authorization to supervise a physician's assistant.

(b) Upon approval of an application for certification of a physician's assistant in a specialty area, the applicant shall be charged an initial certification fee for the first biennium not to exceed $50, and a biennial renewal fee not to exceed $60 shall

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(11) EXISTING PROGRAMS.--Nothing in this section shall be construed to eliminate or supersede existing laws relating to other paramedical professions or services. It is the intent of this section to supplement, and be in addition to, all such existing programs relating to the certification and practice of paramedical professions, as may be authorized by law.

(12) LIABILITY.--All physicians or physician groups utilizing physician's assistants shall be liable for any acts or omissions of physician's assistants acting under their supervision and control.

PART II
MISCELLANEOUS PROVISIONS RELATING TO HEALTH
CARE PRACTITIONERS

458.501 Patient records; copies of reports to be furnished.--

(1) Any health care practitioner licensed pursuant to chapters 458, 459, 460, 461, 462, 463, 464, 466, or 474 making a physical or mental examination of, or administering treatment to, any person shall, upon request of such person or his legal representative, furnish copies of all reports made of such examination or treatment. The furnishing of such copies shall not be conditioned upon payment of a disputed fee for services rendered.

(2) Such reports shall not be furnished to any person other than the patient or his legal representative except upon written authorization of the patient. Nothing, however, shall prevent the furnishing of such reports without written authorization to any person, firm or corporation who, with the patient's consent, shall have procured or furnished such examination or treatment or where compulsory physical examination is made pursuant to Rule 1.360, Florida Rules of Civil Procedure, in which case copies of the medical report shall be furnished both the defendant and the plaintiff.

458.502 Disposition of records of deceased practitioners.--Each board created under the provisions of chapters 458, 459, 460, 461, 462, 463, 464, 466, or 474 shall provide by rule for the disposition of the medical records of practitioners under said chapters which are in existence at the time of the death of the practitioner and which pertain to the practitioner's patients. The rules shall provide for disposition of such records by the estate of the practitioner and shall provide that the records shall be retained for at least 1 year after the practitioner's death.

458.503 Emergency medical care or treatment to minors.--

(1) The absence of parental consent notwithstanding, a physician licensed under chapter 458 or an osteopathic physician licensed under chapter 459 may render emergency medical care or treatment to any minor who has been injured in an accident or who is suffering from an acute illness, disease, or condition if, within a reasonable degree of medical certainty, delay in initiation of emergency medical care or treatment would endanger the health of the minor, and provided such emergency medical care or treatment is administered in a hospital licensed by the state under chapter 395 or in a college health service.

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(2) This section shall apply only when parental consent cannot be immediately obtained for one of the following reasons:

(a) The minor's condition has rendered him unable to reveal the identity of his parents, guardian, or legal custodian and such information is unknown to any person who accompanied the minor to the hospital; or

(b) The parents, guardian, or legal custodian cannot be immediately located by telephone at their place of residence or business.

(3) Notification shall be accomplished as soon as possible after the emergency medical care or treatment is administered. The hospital records shall reflect the reason such consent was not initially obtained and shall contain a statement by the attending physician that immediate emergency medical care or treatment was necessary for the patient's health. The hospital records shall be open for inspection by the person legally responsible for the minor.

(4) No physician, hospital, or college health service shall incur civil liability by reason of having rendered emergency medical care or treatment pursuant to this section, provided such treatment or care was rendered in accordance with acceptable standards of medical practice.

458.504 Unwed pregnant minor or minor mother; consent to medical services for minor or minor's child valid.--

(1) An unwed pregnant minor may consent to the performance of medical or surgical care or services relating to her pregnancy by a hospital, clinic, or physician licensed under chapter 458 or chapter 459, and such consent is valid and binding as if she had achieved her majority.

(2) An unwed minor mother may consent to the performance of medical or surgical care or services for her child by a hospital, clinic, or physician licensed under chapter 458 or chapter 459, and such consent is valid and binding as if she had achieved her majority.

(3) Nothing in this act shall affect the provisions of s. 458.505.

458.505 Termination of pregnancies.--

(1) As used in this section, unless the context clearly requires otherwise:

(a) "Physician" means a doctor of medicine or osteopathic medicine licensed by the state under this chapter or chapter 459 or a physician practicing medicine or osteopathic medicine in the employment of the United States or this state.

(b) "Approved facility" means:

1. A hospital licensed by the state; or

2. A medical facility licensed by the Department of Health and Rehabilitative Services pursuant to rules adopted for that purpose,

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provided such rules shall require regular evaluation and review procedures.

(2) No termination of pregnancy shall be performed on any human being in the last trimester of pregnancy unless:

(a) Two physicians certify in writing to the fact that, to a reasonable degree of medical probability, the termination of pregnancy is necessary to save the life or preserve the health of the pregnant woman; or

(b) The physician certifies in writing to the medical necessity for legitimate emergency medical procedures for termination of pregnancy in the last trimester, and another physician is not available for consultation.

(3) No termination of pregnancy shall be performed at any time except by a physician as defined herein.

(4) Prior to terminating a pregnancy the physician shall obtain the written informed consent of the pregnant woman, or in the case of a mental incompetent, the written consent of the court-appointed guardian.

(a) If the pregnant woman is under 18 years of age and unmarried, in addition to her written request, the physician shall obtain the written informed consent of a parent, custodian, or legal guardian of such unmarried minor, or the physician may rely on an order of the Circuit Court, on petition of the pregnant unmarried minor or another person on her behalf, authorizing, for good cause shown, such termination of pregnancy without the written consent of her parent, custodian, or legal guardian. The cause may be based on a showing that the minor is sufficiently mature to give an informed consent to the procedure, or based on the fact that a parent unreasonably withheld consent by her parent, custodian, or legal guardian, or based on the minor's fear of physical or emotional abuse if her parent, custodian, or legal guardian were requested to consent, or based upon any other good cause shown. At its discretion the court may enter its order ex parte. The court shall determine the best interest of the minor and enter its order in accordance with such determination.

(b) If the woman is married, the husband shall be given notice of the proposed termination of pregnancy and an opportunity to consult with the wife concerning the procedure. The physician may rely on a written statement of the wife that such notice and opportunity has been given, or he may rely on the written consent of the husband to the proposed termination of pregnancy. If the husband and wife are separated or estranged, the provisions of this paragraph for notice or consent shall not be required. The physician may rely upon a written statement from the wife that the husband is voluntarily living apart or estranged from her.

(c) In the event a medical emergency exists and the above requirements have not been complied with, a physician may terminate a pregnancy provided he has obtained at least one corroborative medical opinion attesting to the medical necessity for emergency medical procedures and to the fact that to a reasonable degree of medical certainty the continuation of the pregnancy would threaten the life of the pregnant woman.

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(5) STANDARD OF MEDICAL CARE TO BE USED DURING VIABILITY.--If a termination of pregnancy is performed during viability, no person who performs or induces a termination of pregnancy shall fail to use that degree of professional skill, care, and diligence to preserve the life and health of the fetus which such person would be required to exercise in order to preserve the life and health of any fetus intended to be born and not aborted. "Viability" means that stage of fetal development when the life of the unborn child may with a reasonable degree of medical probability be continued indefinitely outside the womb. Notwithstanding the provisions of this paragraph, the woman's life and health shall constitute an overriding and superior consideration to the concern for the life and health of the fetus when such concerns are in conflict.

(6) EXPERIMENTATION ON FETUS PROHIBITED; EXCEPTION.--No person shall use any live fetus or live, premature infant for any type of scientific, research, laboratory, or other kind of experimentation either prior to or subsequent to any termination of pregnancy procedure except as necessary to protect or preserve the life and health of such fetus or live, permature infant.

(7) Nothing in this section shall require any hospital or any person to participate in the termination of a pregnancy, nor shall any hospital or any person be liable for such refusal. No person who is a member of, or associated with, the staff of a hospital nor any employee of a hospital or physician in which or by whom the termination of a pregnancy has been authorized or performed, who shall state an objection to such procedure on moral or religious grounds, shall be required to participate in the procedure which will result in the termination of pregnancy. The refusal of any such person or employee to participate shall not form the basis for any disciplinary or other recriminatory action against such person.

(8) The provisions of this section shall not apply to the performance of a procedure which terminates a pregnancy in order to deliver a live child.

(9) Any person who willfully performs, or participates in, the termination of a pregnancy in violation of the requirements of this section is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083 or s. 775.084.

(10) Any person who performs, or participates in the termination of a pregnancy in violation of the provisions of this section which results in the death of the woman shall be guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

458.506 Abortion referral or counseling agencies.--

(1) As used in this section, an "abortion referral or counseling agency" is any person, group, or organization, whether funded publicly or privately, that provides advice or help to persons in obtaining abortions.

(2) An abortion referral or counseling agency, before making a referral or aiding a person in obtaining an abortion, shall furnish such person with a full and detailed explanation of abortion, including the effects of and alternatives to abortion. If the person advised is a minor, a good faith effort shall be made by the referral or counseling agency to furnish such information to the parents or

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guardian of the minor. No abortion referral or counseling agency shall charge or accept any fee, kickback, or compensation of any nature from a physician, hospital, clinic, or other medical facility for referring a person thereto for an abortion.

(3) Any person who violates the provisions of this section is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

458.507 Electroconvulsive and psychosurgical procedures.--

(1) In each case of utilization of electroconvulsive or psychosurgical procedures, prior written consent shall be obtained after disclosure to the patient if he is competent, or his guardian if he is a minor or incompetent, of the purpose of the procedure, the common side effects thereof, alternative treatment modalities, the approximate number of such procedures considered necessary, and that any consent given may be revoked prior to or between treatments, by the patient or his guardian.

(2) Before convulsive therapy or psychosurgery may be administered, the patient's treatment record shall be reviewed and the proposed convulsive therapy or psychosurgery agreed to by one other physician not directly involved with the patient. Such agreement shall be documented in the patient's treatment record and be signed by both physicians.

458.508 Prescription or administration of amygdalin (laetrile); disciplinary action; signed release by patient.--

(1) As used in this section, unless the context clearly requires otherwise, "physician" means a doctor of medicine or osteopathic medicine licensed under this chapter or chapter 459.

(2) No physician shall be subject to disciplinary action by the Board of Medical Examiners or Board of Osteopathic Medical Examiners for prescribing or administering amygdalin (laetrile) to a patient under his care who has requested the substance unless the Boards of Medical Examiners and Osteopathic Medical Examiners, in a hearing conducted under the provisions of the Administrative Procedure Act, chapter 120, have made a formal finding that the substance is harmful.

(3) The patient, after being fully informed as to alternative methods of treatment and their potential for cure, and upon requesting the administration of amygdalin (laetrile) by his physician, shall sign a written release, releasing the physician and, when applicable, the hospital or health facility from any liability therefor.

(4) The physician shall inform the patient in writing that amygdalin (laetrile) has not been approved as a treatment or cure by the Food and Drug Administration of the United States Department of Health, Education and Welfare.

458.509 Prescription or administration of dimethyl sulfoxide (DMSO).--

(1) As used in this section, unless the context clearly requires otherwise, "physician" means a doctor of medicine or osteopathic medicine licensed under this chapter or chapter 459.

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(2) No physician shall be subject to disciplinary action by the Board of Medical Examiners or Board of Osteopathic Medical Examiners for prescribing or administering dimethyl sulfoxide (DMSO) to a patient under his care who has requested the substance unless the Boards of Medical Examiners and Osteopathic Medical Examiners, in a hearing conducted under the provisions of the Administrative Procedure Act, chapter 120, have made a formal finding that the substance is harmful.

(3) The patient, after being fully informed as to alternative methods of treatment and their potential for cure and upon request for the administration of dimethyl sulfoxide (DMSO) by his physician, shall sign a written release, releasing the physician and, when applicable, the hospital or health facility from any liability therefor.

(4) The physician shall inform the patient in writing if dimethyl sulfoxide (DMSO) has not been approved as a treatment or cure by the Food and Drug Administration of the United States Department of Health, Education and Welfare for the disorder for which it is being prescribed.

(5) This act shall not apply to conditions for which dimethyl sulfoxide (DMSO) has been approved as a treatment by the Food and Drug Administration of the United States Department of Health, Education and Welfare.

Section 2. Section 382.195, Florida Statutes, is created to read:

382.195 Termination of pregnancies; reporting.--

(1) The director of any medical facility in which a pregnancy is terminated shall maintain a record of such procedures. The record shall include the date the procedure was performed, the reason for same and the period of gestation at the time the procedure was performed. A copy of such record shall be filed with the Department of Health and Rehabilitative Services which shall be responsible for keeping such records in a central place from which statistical data and analysis can be made.

(2) Where the termination of pregnancy is not performed in a medical facility, the physician performing the procedure shall be responsible for maintaining the record and reporting as required in subsection (1).

(3) Records maintained pursuant to this section shall be privileged information and deemed to be confidential records and shall not be revealed except upon the order of a court of competent jurisdiction in a civil or criminal proceeding.

Section 3. Exemption of state employees from licensure.--

(1) The licensing requirements in chapters 458, 459, and 460 to the contrary notwithstanding, persons employed as physicians, osteopathic physicians, or chiropractic physicians in a state institution, except those under the control of the Department of Corrections on June 28, 1977, may be exempted from licensure in accordance with the following provisions:

(a) No more than 10 percent of such persons shall be exempted from licensure during their continued employement in a state

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2.a. House Summary HB 1814 (Florida Archives, Series 19, Carton 541).

FLORIDA DEPARTMENT of STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

I, Judith Ring, Division Director, Division of Library and Information Services, Florida Department of State, hereby certify the records of the Florida Legislature were transferred to the custody of the Florida State Archives pursuant to the provisions of Chapter 257, Florida Statutes, and that I am, by the terms of that transfer, the official custodian of the records.

I further certify that the attached is a true and correct copy of the record in the State Archives of Florida, the original of which may be found in Series 19, carton 541.

***WITNESS MY SIGNATURE**, this 10th Day of January, 2014.*

***JUDITH RING**, Director*
Division of Library and Information Services

BY: _____
State Archives of Florida

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Series 19 Carton 541

**********	1:hbs
HOUSE SUMMARY	1:hbs
Revises chapter 458, F.S., relating to medical practice. Provides legislative intent and definitions and specifies persons who are exempt from the chapter.	85.1/25 85.1/26
Provides for a 7-member Board of Medical Examiners and for the appointment and terms of members. Provides eligibility requirements for examination for licensure and provides for licensure by endorsement of certain persons.	85.1/28 85.1/29
Provides disciplinary actions and penalties and the grounds for imposition thereof. Requires medical organizations to provide certain notification of disciplinary actions taken against physicians and provides a penalty for noncompliance. Provides that acceptance of a license constitutes agreement to certain activities relating to handwriting samples, and confidentiality of medical records. Provides for search of a physician's place of practice pursuant to a search warrant under certain circumstances. Provides for subpoena of certain records. Provides criminal penalties for specified unlawful acts with respect to the practice and licensing of medicine.	85.1/31 85.1/32 85.1/34 85.1/35 85.1/36 85.1/37 85.1/38 85.1/39
Provides procedures for the renewal of licenses. Provides for inactive status. Provides for certification of hospital residents and interns. Provides duties of hospitals and provides penalties. Provides for physicians' assistants, provides procedures for the approval of programs for such assistants, and provides penalties.	85.1/41 85.1/43 85.1/44 85.1/45 85.1/46
Provides procedures relating to patient records and disposition of deceased practitioner's records under specified medical practice chapters. Provides, for physicians and osteopathic physicians, procedures and limitations with respect to emergency treatment of minors, consent of unwed pregnant minors to medical care, and termination of pregnancy. Provides penalties. Provides duties of abortion referral or counseling agencies and provides penalties. Provides restrictions with respect to electroconvulsive and psychosurgical procedures. Authorizes physicians and osteopaths to prescribe or administer laetrile or DMSO. Transfers existing provisions relating to reports of terminations of pregnancies to chapter 382, F.S., relating to vital statistics.	85.1/48 85.1/50 85.1/51 85.1/52 85.1/53 85.1/54 85.1/55 85.1/56 85.1/57
Provides for repeal and legislative review. Provides for licenses and certificates which are valid, and proceedings which are pending, on the effective date of the act.	85.1/60

CODING: Words in ~~struck through~~ type are deletions from existing law; words underlined are additions.

COMMITTEE INFORMATION RECORD

House of Representatives

Committee on Regulatory Reform

Date of meeting 5/23/79

Time 5:45 PM

Place 21 HOB

Bill No. PCB - Medical Examiners

HB 1814

FINAL ACTION: X FAVORABLE

___ FAVORABLE WITH ___ AMENDMENTS

___ FAVORABLE WITH SUBSTITUTE

___ UNFAVORABLE

VOTE:

YEA	MEMBER	NAY
X	Mr. Batchelor	
	Mr. Bush	
X	Mr. Campbell	
X	Ms. Cox	
X	Mr. Danson	
	Mr. Dunbar	
X	Mr. Gersten	
X	Mr. Girardeau	
X	Ms. Gordon	
X	Mr. Hawkins	
	Mr. Hector	
X	Mr. Johnson	
	Ms. Margolis	
X	Mr. Ogden	
X	Mr. Sheldon	

YEA	MEMBER	NAY

Total Yeas 11

Total Nays 0

Chairman

COMMITTEE APPEARANCE RECORD

The following persons (other than legislators) appeared before the committee during the consideration of this bill:

Name	Representing	Address

NOTE: Please indicate by an "X" any State employee appearing at the request of Committee Chairman.

(If additional persons, enter on reverse side and check here__)

File 2 copies with Clerk

H-22(1976)

2.b. PB Medical Practice Act, Regulatory Reform Committee HB 1814 (Florida Archives, Series 18, Carton 965).

FLORIDA DEPARTMENT *of* STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

I, Judith Ring, Division Director, Division of Library and Information Services, Florida Department of State, hereby certify the records of the Florida Legislature were transferred to the custody of the Florida State Archives pursuant to the provisions of Chapter 257, Florida Statutes, and that I am, by the terms of that transfer, the official custodian of the records.

I further certify that the attached is a true and correct copy of the record in the State Archives of Florida, the original of which may be found in Series 18, carton 965.

***WITNESS MY SIGNATURE**, this 10th Day of January, 2014.*

***JUDITH RING**, Director*
Division of Library and Information Services

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BILL # PCB - Medical Practice Act

SPONSOR Regulatory Reform Committee

RELATING TO Medical Practice Act

OTHER COMMITTEE OF REFERENCE

SIMILAR/COMPANION BILLS

May 23, 1979

I. SUMMARY

A. Present Situation - Chapter 458, the statute that regulates the practice of medicine, was repealed, pursuant to the Regulatory Reform Act of 1976. Unless the Legislature re-enacts the chapter, there will cease to be regulation of medical doctors on July 1, 1979

B. Probable Effect of Proposed Changes - This proposal conforms to the DPR reorganization law. In addition, it makes the following changes:

1. Reduces the board from 11 members to 7, consisting of five professionals and two lay persons.

2. Removes the ban against medical faculty serving on the board.

3. Clarifies that a physician can delegate medical acts to a medical assistant under direct supervision.

4. Expands the licensure by endorsement provision to eliminate the 8-year recency requirement for equivalent exams and allow the holder of a valid license in another state to endorse into Florida.

5. Deletes the provisions for temporary licenses for practice.

6. Deletes the limited license provision for practice in public agencies in medically underserved areas.

7. Greatly expands the grounds for which a medical physician may be disciplined. Some key additions are failing to report violations of the statute, failing to keep written medical records, filing false reports, paying or receiving kickbacks, exercising influence on a patient for financial gain, prescribing Schedule II amphetamines or being disciplined in another state.

8. Allows advertising which is not false, misleading or deceptive.

9. Provides that implicit consent is given by the physician to render a handwriting sample and waive the confidentiality of his own medical records. Allows the department to ask a judge for a search warrant to seize patient records only during the course of a drug investigation.

10. Removes the provision by which the executive director and two board members can suspend a doctor if the evidence is "clear, competent and unequivocal". Relies instead on the emergency suspension procedure in the Administrative Procedures Act..

11. Increases the renewal fees that the board can set to a maximum of $300 biennially.

12. Creates a Part II of Chapter 458 for miscellaneous provisions relating to various practitioners. Applies the access to medical records provision to all practitioners. Directs boards to promulgat rules regarding disposition of the records of a deceased practitioner.

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Series 18 Carton 965

13. Allows to stand repealed the various provision regulating abortions in other than the last trimester, portions of which have been held unconstitutional by the Florida Supreme Court. Transfers the reporting of abortions to Vital Statistics. Re-enacts the language regarding the consent of the women and allowing an employee to refuse to participate in a termination of pregnancy.

II. Economic Impact

The liberalized endorsement provision might increase the supply of physicians and, if market forces work, keep costs down. On the other hand, there may be an opposite effect produced.

III. Comments

None.

Prepared by Keith Higgins

Staff Director: L Van Ostrand

BILL ACTION REPORT

(C3-75: File with Secretary of Senate) X(XS)(H) BILL NO. 1814

COMMITTEE ON GOVERNMENTAL OPERATIONS

DATE May 31, 1979 Date Reported 5 /31/79

TIME 12:15 p.m. - 1:30 p.m.

PLACE Room A

OTHER COMMITTEE REFERENCES:
(In order shown)

None

FINAL ACTION:

X Favorably with 13 amendments

____ Favorably with Committee Substitute

____ Unfavorably

OTHER: ____ Temporarily Passed

____ Reconsidered

____ Not Considered

THE VOTE WAS:

5/30/79

FINAL BILL VOTE		SENATORS	Amend #1 Neal		Amend #2 Scarborough		Amend #3 Scarborough		Amend #4 Scarborough		Amend #5 Neal	
Aye	Nay		Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay
✓		GORMAN, BILL										X
		HAIR, MATTOX, V.CH.										X
✓		HENDERSON, WARREN S.										X
✓		MAXWELL, CLARK										X
✓		MYERS, KENNETH										X
✓		NEAL, PATRICK K.									X	
✓		SCARBOROUGH, DAN										X
✓		THOMAS, PAT										X
✓		WILLIAMSON, GEORGE										X
✓		DUNN, EDGAR M. JR., CH.									X	
Unanimous Consent of Those Present			Without Objection		Without Objection		Without Objection		Without Objection			
X		TOTAL	X		X		X		X		2	8
Aye	Nay		Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay

(Attach additional page if necessary)

Please Complete: The key sponsor appeared ( )
A Senator appeared ( )
Sponsor's aide appeared ( )
Other appearance ( )

3. Chapter 85-344, Section 1

FLORIDA DEPARTMENT of STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

This is to certify that this is a true copy made from:

Laws of Florida Chapter 85-344, Section 1

Located in the Florida Public Documents collection of the State Library of Florida and is available for inspection at the State Library of Florida. Certified this10th day of January, 2014.

By: _____ (Cheri Ellison)
(Signature)

Acquisitions Librarian
(Title)

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department, whether or not there exists an adequate remedy at law, and such injunctions shall issue without bond.

Section 13. Subsection (5) of section 513.01, Florida Statutes, 1984 Supplement, is amended to read:

513.01 Definitions.--As used in this chapter, the term:

(5) "Recreational vehicle" shall have the meaning provided in s. 320.01 ~~means a vehicular, portable structure which is built on a chassis, which is designed as a dwelling for travel, recreation, or vacation, which has a transportable body width not exceeding 8 body feet and a length not exceeding 35 feet, and which does not qualify as a "mobile home" under subsection (2).~~

Section 14. Sections 1 and 2 of this act shall take effect upon becoming a law, and sections 3 through 13 of this act shall take effect July 1, 1985.

Approved by the Governor June 24, 1985.

Filed in Office Secretary of State June 24, 1985.

CHAPTER 85-344

Committee Substitute for Senate Bill No. 783

An act relating to the licensure of graduates of foreign medical schools to practice medicine; amending s. 458.311, F.S.; permitting specified applicants to take the Federation Licensing Examination; providing an effective date.

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

Section 1. Subsection (5) of section 458.311, Florida Statutes, 1984 Supplement, as amended by section 4 of chapter 84-553, Laws of Florida, is renumbered as subsection (6), and a new subsection (5) is added to said section to read:

458.311 Licensure by examination.--

(5) Notwithstanding the requirements of this section, those graduates of foreign medical schools whose supervised clinical training does not meet the requirements established by the board by rule, who apply for licensure by examination prior to July 1, 1985 and whose supervised clinical training was completed prior to November 28, 1984, shall be required to meet the standards for such training utilized by the board prior to November 28, 1984. Such graduates shall meet the requirements for licensure contained in this section, however, they shall not be accepted for the licensure examination after the June 1986 Federation Licensure Examination.

Section 2. This act shall take effect upon becoming a law.

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Approved by the Governor June 24, 1985.

Filed in Office Secretary of State June 24, 1985.

CHAPTER 85-345

Committee Substitute for Senate Bill No. 762

An act relating to aquatic preserves; amending s. 258.39, F.S., revising the boundaries of certain aquatic preserves; creating the Guana River Marsh Aquatic Preserve and the Big Bend Seagrasses Aquatic Preserve; amending s. 258.393, F.S.; adding to the land description of the Terra Ceia Aquatic Preserve; Environmental Regulation Commission designating aquatic preserves as Outstanding Florida Waters; providing an effective date.

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

Section 1. Subsections (6), (7), (10), (18), and (31) of section 258.39, Florida Statutes, 1984 Supplement, are amended and paragraph (f) is added to subsection (30) thereof to read:

258.39 Boundaries of preserves.--The submerged lands included within the boundaries of Nassau, Duval, St. Johns, Flagler, Volusia, Brevard, Indian River, St. Lucie, Charlotte, Pinellas, Martin, Palm Beach, ~~Broward~~, Dade, Monroe, Collier, Lee, Citrus, Franklin, Gulf, Bay, Okaloosa, Santa Rosa, Hernando, and Escambia Counties, as hereinafter described, with the exception of privately held submerged lands lying landward of established bulkheads and of privately held submerged lands within Monroe County where the establishment of bulkhead lines is not required, are hereby declared to be aquatic preserves. Such aquatic preserve areas include:

(6) Banana River Aquatic Preserve, as described in the Official Records of Brevard County in Book 1143, pages 195-198, and the sovereignty submerged lands lying within the following described boundaries: BEGIN at the intersection of the westerly ordinary high water line of Newfound Harbor with the North line of Section 12, Township 25 South, Range 36 East, Brevard County: Thence proceed northeasterly crossing Newfound Harbor to the intersection of the South line of Section 31, Township 24 South, Range 37 East, with the easterly ordinary high water line of said Newfound Harbor; thence proceed northerly along the easterly ordinary high water line of Newfound Harbor to its intersection with the easterly ordinary high water line of Sykes Creek; thence proceed northerly along the easterly ordinary high water line of said creek to its intersection with the southerly right-of-way of Hall Road; thence proceed westerly along said right-of-way to the westerly ordinary high water line of Sykes Creek; thence southerly along said ordinary high water line to its intersection with the ordinary high water line of Newfound Harbor; thence proceed southerly along the westerly ordinary high water line of Newfound Harbor to the POINT OF BEGINNING.

(7)(a) Indian River-Malabar to Vero Beach ~~Sebastian~~ Aquatic Preserve, as described in the Official Records of Brevard County in Book 1143, pages 199-202, and in the Official Records of Indian River County in Book 368, pages 5-8 and the sovereignty submerged lands lying within the following described boundaries, excluding those

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3.a. Senate Staff Analysis and Economic Impact Statement, Subject: Foreign Medical School Graduates, CS/SB 783 by the HRS Committee and Senator Fox (Florida Archives, Series 18, Carton 1409).

FLORIDA DEPARTMENT of STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

I, Judith Ring, Division Director, Division of Library and Information Services, Florida Department of State, hereby certify the records of the State Legislature were transferred to the custody of the Florida State Archives pursuant to the provisions of Chapter 257, Florida Statutes, and that I am, by the terms of that transfer, the official custodian of the records.

I further certify that the attached is a true and correct copy of the record in the State Archives of Florida, the original of which may be found in Series 18, carton 1409.

***WITNESS MY SIGNATURE**, this 13th Day of January, 2014.*

***JUDITH RING**, Director*
Division of Library and Information Services

BY: _____
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SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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Series 18 Carton 1409
File Format

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Hansen	Hill	1. HRS	Fav/CS
2. Terry DT	Burnside BB	2. ECCA	Favorable
3.		3.	

SUBJECT:

Foreign Medical School Graduates

BILL NO. AND SPONSOR:

CS/SB 783 by the HRS Committee and Senator Fox

I. SUMMARY:

A. Present Situation:

Chapter 458, Florida Statutes, provides for the regulation of the practice of medicine by the Board of Medical Examiners within the Department of Professional Regulation (DPR). Section 458.311, Florida Statutes, provides for licensure by examination to practice medicine in Florida and establishes criteria for the licensure of graduates of foreign medical schools. The section provides that graduates of foreign medical schools may qualify to take the state licensure examination by satisfying one of the three following sets of qualification requirements: 1) the applicant's medical credentials have been evaluated by the Educational Commission for Foreign Medical Graduates (ECFMG) or the board, and the applicant has passed the ECFMG exam or the Federation Licensing Examination (FLEX); 2) the applicant is licensed through written exam in another state which has exam requirements equivalent to those in this state, holds his license in good standing, has been practicing medicine for four of the preceding five years, and has been examined and certified as a specialist by the Council on Medical Education of the American Medical Association (AMA); or 3) the applicant has completed his undergraduate work at an accredited college or university in the United States, has studied at a medical school recognized by the World Health Organization, has completed certain formal requirements of the foreign medical school, has completed an academic year of supervised clinical training in a hospital affiliated with a medical school approved by the AMA, and has passed parts I and II of the National Board of Medical Examiners exam or the ECFMG exam equivalent.

B. Effect of Proposed Changes:

The bill adds a new subsection to section 458.311, Florida Statutes. The subsection provides that graduates of foreign medical schools whose supervised clinical training does not meet the requirements established by board rule, who apply for licensure by examination prior to July 1, 1985, and whose supervised clinical training was completed prior to November 28, 1984, shall be required to meet the board adopted supervised clinical training standards which were in effect prior to November 28, 1984. Such graduates shall be required to meet the section's requirements for licensure and shall not be accepted for the licensure exam after the June, 1986 FLEX.

The bill provides that it shall take effect upon becoming a law.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

Certain graduates of foreign medical schools who would otherwise qualify for the licensure exam but whose supervised clinical training does not meet the board's current standards will be able to take the exam when it is offered until June, 1986. To the extent that such graduates apply for and pass the exam under the bill's provisions, they will not have to incur the expense of satisfying the board's current supervised clinical training standards.

B. Government:

The DPR does not expect the bill to have an economic impact on the department.

III. COMMENTS:

According to the DPR, approximately 40 foreign medical school graduates will become eligible to take the licensure exam pursuant to the provisions of the bill.

This bill was passed by the Legislature and ordered enrolled on May 31, 1985.

IV. AMENDMENTS:

None.

3.b. Senate Staff Analysis and Economic Impact Statement, Subject: Foreign Medical School Graduates, CS for SB 0783 by HRS Committee and Senator Fox. (Florida Archives, Series 18, Carton 1480).

FLORIDA DEPARTMENT *of* STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

I, Judith Ring, Division Director, Division of Library and Information Services, Florida Department of State, hereby certify the records of the Florida Legislature were transferred to the custody of the Florida State Archives pursuant to the provisions of Chapter 257, Florida Statutes, and that I am, by the terms of that transfer, the official custodian of the records.

I further certify that the attached is a true and correct copy of the record in the State Archives of Florida, the original of which may be found in Series 18, carton 1480.

***WITNESS MY SIGNATURE**, this 13th Day of January, 2014.*

***JUDITH RING**, Director*
Division of Library and Information Services

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SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Hansen mph	Hill	1. HRS	Fav/CS
2.		2. ECCA	
3.		3.	

SUBJECT:

Foreign Medical School Graduates

BILL NO. AND SPONSOR:

CS for SB 0783 by
HRS Committee and
Senator Fox

I. SUMMARY:

A. Present Situation:

Section 458.311, Florida Statutes, provides for licensure by examination to practice medicine in Florida. Subsection (2) of the section establishes criteria for the licensure of graduates of foreign medical schools. The subsection provides that graduates of foreign medical schools may take the state licensure examination if they meet other criteria in the law and if: 1) their medical credentials have been evaluated by the Education Commission for Foreign Medical Graduates or the Board of Medical Examiners; and 2) they have passed the Educational Commission of Foreign Medical Graduates Examination (ECFMG) or the Federation Licensing Examination (FLEX).

B. Effect of Proposed Changes:

CS for SB 783 amends section 458.311, F.S., to permit certain foreign medical school graduates to take the FLEX examination and be licensed to practice medicine in the state. The bill exempts certain foreign medical school graduates from existing board rules and requires them to meet board rules in effect prior to November 28, 1984. A time limitation is placed on this exemption so that it will no longer be in effect after June 30, 1986.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

None.

B. Government:

None.

III. COMMENTS:

This bill is apparently designed to give a group of some 40 foreign medical graduates an opportunity to be licensed in Florida.

IV. AMENDMENTS:

None.

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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN

COMMITTEE SUBSTITUTE FOR SENATE BILL 0783

The Committee Substitute is more precise than the original bill in describing which foreign medical school graduates may take the licensure examination.

Committee on Health and Rehabilitative Services

Kandace M Hill

Chairman or Staff Director

C14(4-74) (File 2 copies with Committee Substitutes)

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Hansen	Hill	1. HRS	
2.		2. ECCA	
3.		3.	

SUBJECT:

Foreign Medical School Graduates

BILL NO. AND SPONSOR:

SB 0783 by
Senator Fox

I. SUMMARY:

A. Present Situation:

Section 458.311, Florida Statutes, provides for licensure by examination to practice medicine in Florida. Subsection (2) of the section establishes criteria for the licensure of graduates of foreign medical schools. The subsection provides that graduates of foreign medical schools may take the state licensure examination if they meet other criteria in the law and if: 1) their medical credentials have been evaluated by the Education Commission for Foreign Medical Graduates or the Board of Medical Examiners; and 2) they have passed the Educational Commission of Foreign Medical Graduates Examination or the Federation Licensing Examination.

B. Effect of Proposed Changes:

Senate Bill 783 amends subsection (2) of section 458.311, F.S., to permit graduates of foreign medical schools whose credentials have been evaluated by the Education Commission for Foreign Medical Graduates, or the BME, to take Part I of the Federal Licensing Examination (FLEX). Further, the bill provides that applicants who have passed the Educational Commission for Foreign Medical Graduates Examination or Part I of the FLEX and who have completed an internship are eligible to take Part II of the FLEX.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

None.

B. Government:

None.

III. COMMENTS:

This bill is apparently designed to give a group of some 40 foreign medical graduates an opportunity to be licensed in Florida. It is not clear that the bill will accomplish this goal, and it is extremely difficult to determine what this bill would accomplish as written.

IV. AMENDMENTS:

None.

4. Chapter 86-245, Section 6

FLORIDA DEPARTMENT of STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

This is to certify that this is a true copy made from:

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By: _____ (Cheri Ellison)
(Signature)

Acquisitions Librarian
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458.307 Board of Medicine ~~Medical Examiners~~.--

(1) There is created within the Department of Professional Regulation a Board of Medicine ~~Medical Examiners~~, composed of 13 ~~12~~ members appointed by the Governor and confirmed by the Senate.

(2) Ten ~~Nine~~ members of the board shall be licensed physicians in good standing in this state who are residents of the state, who have been engaged in the practice of medicine for at least 4 years immediately prior to their appointment. At least one of the ten physicians shall be a graduate of a foreign medical school. The remaining members shall be residents of the state who are not, nor have ever been, licensed health care practitioners.

~~(3)--The--Governor-shall-appoint-12-eligible-and-qualified-members of-the-board-as-follows:~~

~~(a)--Four-members-for-terms-of-2-years-each;~~

~~(b)--Four-members-for-terms-of-3-years-each;~~

~~(c)--Four-members-for-terms-of-4-years-each;~~

(3)~~(4)~~ As the terms of the members expire, the Governor shall appoint successors for terms of 4 years, and such members shall serve until their successors are appointed. ~~The--members-of-the-board serving-on-the-effective-date-of-this-act-shall--continue--in--office until-their-successors-are-appointed;~~

(4)~~(5)~~ All provisions of chapter 455 relating to activities of the board shall apply.

Section 5. Section 458.309, Florida Statutes, is amended to read:

458.309 Authority to make rules.--The board is authorized to make such rules not inconsistent with law as may be necessary to carry out the duties and authority conferred upon the board by this chapter and as may be necessary to protect the health, safety, and welfare of the public. Any rules which the board adopts relating to the classroom phase of medical education shall not apply to any person who is enrolled in the classroom phase of medical education or has graduated prior to or at the time the rule becomes effective, so long as such person does not interrupt his medical education. Any rules which the board adopts relating to the clinical clerkship phase of medical education shall not apply to any person who is enrolled in the clinical clerkship phase of medical education prior to or at the time the rule becomes effective, so long as such person does not interrupt his medical education. Any rules which the board adopts relating to residency shall not apply to any person who has begun his residency prior to or at the time the rule becomes effective, so long as such person does not interrupt his residency.

Section 6. Section 458.311, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 458.311, F.S., for present text.)

458.311 Licensure by examination; requirements; fees.--

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(1) Any person desiring to be licensed as a physician shall apply to the department to take the licensure examination. The department shall examine each applicant whom the board certifies:

(a) Has completed the application form and remitted a nonrefundable application fee not to exceed $100 and an examination fee not to exceed $500, which is refundable if the applicant is found to be ineligible to take the examination.

(b) Is at least 21 years of age.

(c) Is of good moral character.

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

(e) For any applicant who has graduated from medical school after October 1, 1992, has completed the equivalent of 2 academic years of preprofessional, postsecondary education, as determined by rule of the board, which shall include at a minimum, courses in such fields as anatomy, biology, and chemistry prior to entering medical school.

(f) Meets one of the following medical education and postgraduate training requirements:

1.a. Is a graduate of an allopathic medical school or allopathic college recognized and approved by an accrediting agency recognized by the United States Office of Education; and

b. If the language of instruction of the medical school is other than English, has demonstrated competency in English through presentation of a satisfactory grade on the Test of Spoken English of the Educational Testing Service or a similar test approved by rule of the board; and

c. Has completed an approved residency of at least 1 year.

2.a. Is a graduate of a foreign medical school registered with the World Health Organization and certified pursuant to s. 458.314 as having met the standards required to accredit medical schools in the United States or reasonably comparable standards;

b. If the language of instruction of the foreign medical school is other than English, has demonstrated competency in English through presentation of the Educational Commission on Foreign Medical Graduates English proficiency certificate or by a satisfactory grade on the Test of Spoken English of the Educational Testing Service or a similar test approved by rule of the board; and

c. Has completed an approved residency of at least 1 year.

3.a. Is a graduate of a foreign medical school which has not been certified pursuant to s. 458.314; and

b. Has had his medical credentials evaluated by the Education Commission on Foreign Medical Graduates, holds an active, valid certificate issued by that commission, and has passed the Foreign Medical Graduate Examination in the Medical Sciences or the Educational Commission for Foreign Medical Graduates Examination; and

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c. Has completed an approved residency of at least 1 year; however, after October 1, 1992, the applicant shall have completed an approved residency of at least 3 years in one specialty area.

(2) Every applicant who is otherwise qualified may take the licensing examination five times after October 1, 1986, notwithstanding the number of times the examination has been previously failed. If an applicant fails the examination taken after October 1, 1986 five times, he shall no longer be eligible for licensure.

(3) Notwithstanding the provisions of paragraph (1)(f)3., a graduate of a foreign medical school need not present the certificate issued by the Educational Commission for Foreign Medical Graduates or pass the Foreign Medical Graduate Examination in the Medical Sciences or the Educational Commission for Foreign Medical Graduates examination if he:

(a) Has completed undergraduate work in an accredited United States college or university.

(b) Has studied at a medical school which is recognized by the World Health Organization.

(c) Has completed all of the formal requirements of the foreign medical school, except the internship or social service requirements, and has passed part I of the National Board of Medical Examiners examination or the Educational Commission for Foreign Medical Graduates examination equivalent.

(d) Has completed an academic year of supervised clinical training in a hospital affiliated with a medical school approved by the Council on Medical Education of the American Medical Association and upon completion has passed part II of the National Board of Medical Examiners examination or the Educational Commission for Foreign Medical Graduates examination equivalent.

This subsection is repealed effective October 1, 1991.

(4) The department shall issue a license to any applicant who has met the requirements of this section and has obtained a passing score, as established by rule of the board, on the licensure examination of the Federation of State Medical Boards of the United States, Inc. (FLEX) or on Part III of the examination of the National Board of Medical Examiners; however, the FLEX or Part III of the National Board examination shall have been passed within 10 years immediately preceding the filing of his application for licensure under this section.

(5) Each applicant who passes the examination and meets the requirements of this chapter shall be licensed as a physician, with rights as defined by law. The department may not issue a license to any applicant who is under investigation in another jurisdiction for an offense which would constitute a violation of this chapter until such investigation is completed. Upon completion of the investigation, the provisions of s. 458.331 shall apply.

(6) Notwithstanding any of the provisions of this section, the department shall issue a restricted license to any applicant who successfully completes the Florida Board Examination and who the

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board certifies has met the criteria of paragraph (a) or paragraph (b) as follows:

(a)1. Is a graduate of a foreign medical institution located in a country in the Western Hemisphere with which the United States does not maintain diplomatic relations;

2. Received a medical education which was substantially similar at the time of the applicant's graduation to approved United States Medical Programs;

3. Has resided in Florida for at least three years immediately preceding his application;

4. Practiced medicine in a foreign country from which he immigrated to the United States of America and has lawful immigration status, including employment authority; and

5. Successfully completed the Educational Commission for Foreign Medical Graduates Examination or Foreign Medical Graduate Examination in the Medical Sciences or successfully completed a course developed by the University of Miami for physician training equivalent to the course developed for such purposes pursuant to chapter 74-105, Laws of Florida; or

(b) Obtained a certificate of completion from the program established at the first accredited medical school pursuant to chapter 74-105, Laws of Florida, prior to January 1, 1982.

(c) The holder of a restricted license issued pursuant to this subsection may only practice medicine under the direct supervision of a physician with an active, valid license issued pursuant to s. 458.311 or s. 458.313.

(d) Upon demonstration to the board that the holder of a restricted license issued pursuant to this subsection has practiced for 1 year under direct supervision, has had no malpractice suits filed against him, and has not committed any act or is not under investigation for any act which would constitute a violation of this chapter, the department shall issue an unrestricted license to the restricted license holder.

(e) The Florida Board Examination may be translated into a foreign language at the request of no fewer than five applicants who are otherwise qualified pursuant to this subsection, however, the cost for such translation shall be paid by such applicants.

(f) The first sitting for the Florida Board Examination shall be held by no later than February 2, 1987, and shall be offered in 6-month intervals thereafter.

This subsection is repealed effective October 1, 1991.

Section 7. Section 458.313, Florida Statutes, is amended to read:

458.313 Licensure by endorsement; requirements; fees.--

(1) The department shall issue a license by endorsement to any applicant who, upon applying to the department and remitting a fee not to exceed $400 set by the board, demonstrates to the board that

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4.a. Senate Staff Analysis and Economic Impact Statement, Subject: Medical Practice Act (Sunset), CS/CS/SB 1090 by Appropriations, HRS Committee and Senator Fox, (Florida Archives, Series 18, Carton 1598).

FLORIDA DEPARTMENT *of* STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

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I further certify that the attached is a true and correct copy of the record in the State Archives of Florida, the original of which may be found in Series 18, carton 1598.

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***JUDITH RING**, Director*
Division of Library and Information Services

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SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Hansen	Hill	1. HRS	FAV/CS
2. Easterling	Smith	2. AP	FAV/CS
3.		3.	

SUBJECT:

Medical Practice Act
(SUNSET)

BILL NO. AND SPONSOR:

CS/CS/SB 1090 by Appropriations, HRS Committee and Senator Fox

I. SUMMARY:

A. Present Situation:

Chapter 458, Florida Statutes, the Medical Practice Act, provides for the regulation and licensing of medical doctors. The act is subject to Sunset Review under the provisions of s. 11.61, F.S., and if not reenacted will stand repealed effective October 1, 1986.

Administrative responsibility for the regulation of physicians is given to the Department of Professional Regulation (DPR) by the act, which also creates the Board of Medical Examiners (board) as a 12 member regulatory board with DPR. The board reviews all applications for licensure and determines which applicants are qualified to take the examination for licensure under the chapter. In addition, the board is responsible for disciplining licensed physicians who violate the provisions of the chapter.

Two methods for obtaining an unrestrictive medical license are contained in the act - licensure by examination and licensure by endorsement. In order to be licensed by examination, an applicant must be a graduate of an accredited medical school, complete a one year internship, and pass the Federation Licensing Examination (FLEX). However, graduates of unapproved foreign schools may be licensed if they meet an array of specified criteria, depending on which foreign school they attended and upon their training and experience.

Licensure by endorsement requires that an applicant meet the requirements for licensure by examination. Further, the applicant must not have committed an offense which constitutes grounds for discipline under Florida's Medical Practice Act. One additional requirement must be met for licensure by endorsement. The applicant must have passed the FLEX examination or National Board of Medical Examiners Examination (NBME) within the ten years immediately preceding his application for licensure in Florida.

Many nonresident physicians who wish to practice in Florida do not meet the ten year requirement for licensure by endorsement. These physicians must retake and pass the FLEX exam or the NBME exam in order to be licensed in Florida, a process which is apparently very difficult for a physician who has been out of medical school for more than ten years. A number of exemptions have been enacted into law to circumvent the ten year requirement, including the Mayo Clinic bill (ch. 85-56, Laws of Florida) the public health certificate (s. 458.316, F.S.), the temporary certificate to practice in areas of critical need (s. 458.315, F.S.), the limited license (s. 458.317, F.S.) and the medical faculty certificate (s. 458.303, F.S.).

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In addition to licensing requirements, chapter 458, F.S., also contains a number of special provisions. For example, s. 458.322, F.S., requires physicians to indicate as part of their licensure renewal whether they will accept Medicare assignment. This information is published and made available to the general public. Another section (s. 458.324, F.S.) requires physicians to inform patients with breast cancer of treatment alternatives available to the patient. Section 458.323, F.S., requires physicians to provide their patients an itemized patient billing upon request, and sections 458.333 and 458.335, F.S., prohibit the board from disciplining physicians for prescribing laetrile or DMSO unless the Board of Medical Examiners and the Board of Osteopathic Medical Examiners find laetrile or DMSO to be harmful.

Chapter 458, F.S., also provides for regulation of physician's assistants (P.A.). The chapter authorizes the board to approve training programs for P.A.'s, and to certify a physician to supervise a P.A.

Finally, the chapter requires unlicensed physicians working in hospitals, including a resident physician, an assistant resident physician, a house physician or an intern to register with DPR in January and July of each year. Hospitals who employ unlicensed physicians are also required to register with DPR. A two year limit is placed on the practice of unlicensed hospital physicians except for those in approved training programs.

B. Effect of Proposed Changes:

The Sunset bill reenacts chapter 458, F.S., thus prohibiting the repeal of the chapter on October 1, 1986. A number of revisions are made to the chapter in accordance with the provisions of the Sunset Review process of ensuring minimum regulation to protect the health, safety, and welfare of the public. A section analysis of the revisions of the chapter follows.

Section Analysis

Section 1. Amends s. 458.301, F.S., relating to legislative intent to clarify the Legislature's purpose in enacting the chapter.

Section 2. Amends sections of s. 458.303, F.S., relating to exceptions to the practice act, to repeal the medical facility certificate and define direct supervision and control.

Section 3. Amends s. 458.305, F.S., relating to definitions, to change the name of the Board of Medical Examiners to the Board of Medicine.

Section 4. Amends s. 458.307, F.S., relating to the Board of Medical Examiners, to change the name to the Board of Medicine and to expand the board's membership from 12 to 13 members. The new member is required to be a graduate of a foreign medical school. This was done because although an estimated 30 percent of licensed Florida physicians are graduates of foreign medical schools, none of the current members of the board is a foreign medical graduate.

Section 5. Amends s. 458.309, F.S., which authorizes the board to adopt rules necessary to carry out its duties. The section is amended to prohibit the board from adopting rules of a retroactive nature for any medical student in the classroom

phase, the clinical clerkship phase, or the internship phase of their medical education.

Section 6. Substantially rewords s. 458.311, F.S., relating to licensure by endorsement, to establish three pathways for licensure by examination as follows:

- graduates of accredited American schools must:

  1) complete an approved residency of one year

  2) demonstrate English competency if the language of instruction is other than English

  3) pass the Flex

- graduates of foreign medical schools which have been certified pursuant to Section 8. of the act must:

  1) complete an approved residency of one year

  2) demonstrate English competency if the language of instruction is other than English

  3) pass the Flex

- graduates of noncertified medical schools must:

  1) have their medical credentials evaluated by the Education Commission on Foreign Medical Graduates (ECFMG) and pass the ECFMG examination.

  2) complete an approved residency of one year, however, after 1992 a three year residency program must be completed.

  3) pass the Flex.

The section also permits each qualified applicant to take the FLEX examination five times, regardless of the number of times he has taken the exam prior to the effective date of the act.

Two additional pathways are included in the section. The so called "fifth pathway" for graduates of certain Mexican medical schools is included, just as it exists in current law. Also, a provision is included for the licensing of political exiles who come to this country after having practiced medicine in another country in the Western Hemisphere. Both of these pathways are repealed effective October 1, 1992.

Section 7. Amends s. 458.313, F.S., relating to licensure by endorsement, to establish criteria for licensure by endorsement as follows. The applicant must:

- meet certain requirements for licensure by examination

- hold a valid, active license to practice in another state

- have obtained a passing score on the NBME exam or the FLEX exam, or be a board certified specialist.

The section also deletes a provision which permitted certain physicians who did not meet the ten year requirement to be licensed in connection with their employment by a specified nonprofit corporation.

Section 8. Creates s. 458.314, F.S., which provides for the certification of foreign medical institutions by DPR as follows:

- In order to be certified, the foreign institutions must provide a medical education which is reasonably comparable to American medical schools.
- DPR may contract with outside providers to do the evaluation.
- A technical advisory group is established by DPR to make recommendations regarding each foreign medical institution which applies for certification.
- Three types of certification are established: temporary, provisional and permanent.
- Foreign institution are required to pay the cost of certification.

Section 9. Amends s. 458.319, F.S., relating to renewal of license, to establish a fee of not more than $250.

Section 10. Amends s. 458.321, F.S., relating to inactive status, to increase continuing education requirements for reactivating an inactive license.

Section 11. Amends s. 458.322, F.S., relating to Medicare assignment, to conform the statute to actual practice in regard to the distribution of information on physicians who accept Medicare assignment.

Section 12. Amends s. 458.324, F.S., relating to breast cancer treatment alternatives, to clear up ambiguous language and specify that a physician shall inform patients with breast cancer of treatment alternatives.

Section 13. Amends s. 458.327, F.S., relating to penalty for violation, to delete language which prohibits someone from using the title of "Doctor of Medicine" or "Medical Doctor" unless they are licensed to practice medicine.

Section 14. Amends s. 458.331, F.S., relating to grounds for disciplinary action, to clarify and correct errors in existing language and to permit a physician to advertise or practice under a name other than his own.

Section 15. Substantially rewords s. 458.3315, F.S., relating to treatment programs for impaired professionals. The substitute language establishes a more generic impaired professionals program which can be used in a variety of practice acts by DPR.

Section 16. Substantially rewords s. 458.347, F.S., relating to physician assistants (PA's) to change the method for certification of PA's. In order to be certified as a PA, an applicant must meet the same educational requirements of current law, but in addition, he must pass a proficiency examination. Once certified, a PA may change employment by simply registering with the board the name of his new supervising physician. In order to change employment under current law, a PA must reapply to the board and be recertified. Current law also requires that the board approve the practice protocols of each PA which is certified. This bill requires the board to adopt in rule general principles that the supervising physician must use in developing the scope of practice of a PA under direct supervision and under indirect

supervision. The bill also establishes the PA Advisory Committee in statute. The committee is currently provided for only in administrative rule of the board.

Section 17. Provides that medical assistants, under hte direct responsibility of a licensed physician, can perform dialysis procedures, including home dialysis.

Section 18. Provides that any rule adopted by the board relating to clinical clerkships for foreign medical graduates does not apply to an applicant who completed or began his clerkship before the effective date of the rule so long as the clerkship takes no longer than three years to complete.

Section 19. Expresses legislative intent that all Floridian's have a right to adequate physician care, and imposes a duty upon physicians to treat indigent patients. Since the duty is not met by all physicians on an equal basis, physicians who do not provide indigent care are required to pay an indigent care assessment of $500 biennially. All physicians must pay the assessment upon receipt of their initial license. Physicians must also pay the assessment when renewing their license unless they submit a sworn statement to the board that they have provided a specified level of indigent care or are employed by certain indigent care providers such as a primary care center. Indigent care assessments paid to DPR are deposited in the Medicaid Physician's Trust Fund, which is created in the act, and is used to increase Medicaid payments for physician office visits and other primary care procedures.

Section 20. Amends s. 110.131, F.S., relating to other personal services (OPS) temporary employment, to require the Department of Administration to approve extension of OPS employment for health care professionals.

Section 21. Amends s. 768.28, F.S., relating to waiver of sovereign immunity in tort actions, to include in the definition of state agencies or subdivisions, independent universities with medical schools and teaching hospitals when these institutions provide indigent care. The section also extends sovereign immunity to health care professionals under OPS employment with the Department of Health and Rehabilitative Services.

Section 22. Authorizes physicians holding a medical faculty certificate, a temporary certificate, or a limited license as of the effective date of the act, to continue to renew the certificate or license under the provisions of current law. This bill repeals these categories of licensure.

Section 23. Revises and readopts the medical practice act, chapter 458, F.S., and prevents it from being repealed on October 1, 1986 according to the provisions of the Regulatory Sunset Act. The section also repeals the medical faculty certificate (s. 458.303(1)(i), F.S), the public health certificate s. 458.315, F.S.), the limited license to practice in areas of critical need (s. 458.316, F.S.), and the restricted license (s. 458.317, F.S.). Each of these sections was enacted in order to circumvent the ten year requirement on licensure by endorsement, which is deleted by this act. The section also repeals s. 458.333, F.S., relating to laetrile.

Section 24. Repeals s. 458.320, F.S., relating to financial responsibility for physicians.

Section 25. Repeals chapter 458, F.S., on October 1, 1996 and requires that it be reviewed pursuant to the Regulatory Sunset Act (s. 11.61, F.S.).

Section 26. Provides an effective date.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Private Sector:

The current cost to the private sector of regulating medical doctors approximates from $1.2 to $2.2 million dollars annually in fees. Enactment of this legislation would continue that cost. There is additional cost to the public in the form of higher physician fees due to the limits on competition which regulation imposes on medical doctors. The amount of this additional cost is undetermined but will continue at current levels if this bill is enacted.

The indigent care assessment imposed on physicians would require each physician to pay an additional $500 for his initial license, and $500 biennially for license renewal. Physicians who provide a specified amount of indigent care or are employed by certain indigent care providers are exempt from the renewal assessment. It is estimated by HRS that the assessment will generate approximately $7 million annually in state funds. When matched with federal funds, the assessment will provide adequate resources to approximately double Medicaid reimbursement for office visits. Private practice physicians treating Medicaid patients would benefit from this increase in Medicaid reimbursement for office visits. Medicaid patients will also benefit through more ready access to private practice physicians.

B. Government:

Regulation of medical doctors is the administrative responsibility of the Department of Professional Regulation, and would continue to be so if this bill is enacted.

The cost to DPR for regulation is totally covered by fees and fines, and requires no state General Revenue. This situation will continue if this legislation is enacted.

The cost for certifying foreign medical institutions will vary depending on the number of such institutions which apply. However, the certification process is totally fee supported.

The costs to the Department of Professional Regulation are minimal:

1. The addition of 1 member of the Board of Medicare, $4,200,

2. The addition of the Technical Advising Group, $8,400,and

3. The cost of administering the Spanish version of the Florida Board Examiniation, $7,500.

III. COMMENTS:

The reader is referred to the Sunset Review of chapter 458, F.S., prepared by the staff of the Senate HRS Committee for more detail on this legislation.

This bill would take effect October 1, 1986.

IV. AMENDMENTS:

None.

STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
Committee Substitute/Senate Bill 1090

The CS/CS/SB 1090 is substantially different from CS/SB 1090 in that it authorizes medical assistants to perform dialysis procedures, including home dialysis.

Committee on Appropriations

John Andrew Smith
Staff Director

(FILE TWO COPIES WITH THE SECRETARY OF THE SENATE)

STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
Committee Substitute/Senate Bill 1090

The CS/CS/SB 1090 is substantially different from CS/SB 1090 in that it authorizes medical assistants to perform dialysis procedures, including home dialysis.

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Committee on Appropriations

John Andrew Smith
Staff Director

(FILE TWO COPIES WITH THE SECRETARY OF THE SENATE)

4b. Senate Staff Analysis and Economic Impact Statement, Subject: Medical Practice Act (Sunset), Senate Bill 5-B, Senators Fox and Myers (Florida Archives, Series 19, Carton 1562).

FLORIDA DEPARTMENT of STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

I, Judith Ring, Division Director, Division of Library and Information Services, Florida Department of State, hereby certify the records of the Florida Legislature were transferred to the custody of the Florida State Archives pursuant to the provisions of Chapter 257, Florida Statutes, and that I am, by the terms of that transfer, the official custodian of the records.

I further certify that the attached is a true and correct copy of the record in the State Archives of Florida, the original of which may be found in Series 19, carton 1562.

***WITNESS MY SIGNATURE**, this 10th Day of January, 2014.*

***JUDITH RING**, Director*
Division of Library and Information Services

BY: _____
State Archives of Florida

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SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Hansen	Hill	1. HRS	Withdrawn
2.		2.	
3.		3.	

SUBJECT:

Medical Practice Act
(SUNSET)

BILL NO. AND SPONSOR:

Senate Bill 5-B
Senators Fox and Myers

I. SUMMARY:

A. Present Situation:

Chapter 458, Florida Statutes, the Medical Practice Act, provides for the regulation and licensing of medical doctors. The act is subject to Sunset Review under the provisions of s. 11.61, F.S., and if not reenacted will stand repealed effective October 1, 1986.

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Administrative responsibility for the regulation of physicians is given to the Department of Professional Regulation (DPR) by the act, which also creates the Board of Medical Examiners (board) as a 12 member regulatory board within DPR. The board reviews all applications for licensure and determines which applicants are qualified to take the examination for licensure under the chapter. In addition, the board is responsible for disciplining licensed physicians who violate the provisions of the chapter.

Two methods for obtaining an unrestricted medical license are contained in the act - licensure by examination and licensure by endorsement. In order to be licensed by examination, an applicant must be a graduate of an accredited medical school, complete a one year internship, and pass the Federation Licensing Examination (FLEX). However, graduates of unapproved foreign schools may be licensed if they meet an array of specified criteria, depending on which foreign school they attended and upon their training and experience.

Licensure by endorsement requires that an applicant meet the requirements for licensure by examination. Further, the applicant must not have committed an offense which constitutes grounds for discipline under Florida's Medical Practice Act. One additional requirement must be met for licensure by endorsement. The applicant must have passed the FLEX or National Board of Medical Examiners Examination (NBME) within the ten years immediately preceding his application for licensure in Florida.

In addition to licensing requirements, chapter 458, F.S., also contains a number of special provisions. For example, s. 458.322, F.S., requires physicians to indicate as part of their licensure renewal whether they will accept Medicare assignment. This information is published and made available to the general public. Another section (s. 458.324, F.S.) requires physicians to inform patients with breast cancer of treatment alternatives available to the patient. Section 458.323, F.S., requires physicians to provide their patients an itemized patient billing upon request, and sections 458.333 and 458.335, F.S., prohibit the board from disciplining physicians for prescribing laetrile or DMSO unless the Board of Medical Examiners and the

Board of Osteopathic Medical Examiners find laetrile or DMSO to be harmful.

Chapter 458, F.S., also provides for regulation of physician's assistants (P.A.). The chapter authorizes the board to approve training programs for P.A.'s, and to certify a physician to supervise a P.A.

B. Effect of Proposed Changes:

The Sunset bill reenacts chapter 458, F.S., thus prohibiting the repeal of the chapter on October 1, 1986. A number of revisions are made to the chapter in accordance with the provisions of the Sunset Review process of ensuring minimum regulation to protect the health, safety, and welfare of the public. A sectional analysis of the revisions of the chapter follows.

Sectional Analysis

Section 1. Amends s. 458.301, F.S., relating to legislative intent to clarify the Legislature's purpose in enacting the chapter.

Section 2. Amends sections of s. 458.303, F.S., relating to exceptions to the practice act, to repeal the medical facility certificate and define direct supervision and control.

Section 3. Amends s. 458.305, F.S., relating to definitions, to change the name of the Board of Medical Examiners to the Board of Medicine.

Section 4. Amends s. 458.307, F.S., relating to the Board of Medical Examiners, to change the name to the Board of Medicine and to expand the board's membership from 12 to 13 members. The new member is required to be a graduate of a foreign medical school. This was done because although an estimated 30 percent of licensed Florida physicians are graduates of foreign medical schools, none of the current members of the board is a foreign medical graduate.

Section 5. Amends s. 458.309, F.S., which authorizes the board to adopt rules necessary to carry out its duties. The section is amended to prohibit the board from adopting rules of a retroactive nature for any medical student in the classroom phase, the clinical clerkship phase, or the residency phase of his medical education.

Section 6. Substantially rewords s. 458.311, F.S., relating to licensure by examination, to establish three pathways for licensure by examination as follows:

- graduates of accredited American schools must:

  1) complete an approved residency of one year

  2) demonstrate English competency if the language of instruction is other than English

  3) pass the Flex

- graduates of foreign medical schools which have been certified pursuant to Section 8. of the act must:

  1) complete an approved residency of one year

2) demonstrate English competency if the language of instruction is other than English

3) pass the Flex

- graduates of noncertified medical schools must:

1) have their medical credentials evaluated by the Education Commission on Foreign Medical Graduates (ECFMG) and pass the ECFMG examination.

2) complete an approved residency of one year, however, after 1992 a three year residency program must be completed.

3) pass the Flex.

The section also permits each qualified applicant to take the FLEX examination five times, regardless of the number of times he has taken the exam prior to the effective date of the act.

Two additional pathways are included in the section. The so-called "fifth pathway" for graduates of certain Mexican medical schools is included, just as it exists in current law. Also, a provision is included for the licensing of political exiles who come to this country after having practiced medicine in another country in the Western Hemisphere. Both of these pathways are repealed effective October 1, 1992.

Section 7. Amends s. 458.313, F.S., relating to licensure by endorsement, to establish criteria for licensure by endorsement as follows. The applicant must:

- meet certain requirements for licensure by examination

- have obtained a passing score on the NBME exam or the FLEX exam within ten years of applying for licensure in Florida.

The section also reenacts a provision which permits certain physicians who did not meet the ten year requirement to be licensed in connection with their employment by a specified nonprofit corporation.

Section 8. Creates s. 458.314, F.S., which provides for the certification of foreign medical institutions by DPR as follows:

- In order to be certified, the foreign institutions must provide a medical education which is reasonably comparable to American medical schools.

- DPR may contract with outside providers to do the evaluation.

- A technical advisory group is established by DPR to make recommendations regarding each foreign medical institution which applies for certification.

- Three types of certification are established: temporary, provisional and permanent.

- Foreign institution are required to pay the cost of certification.

Section 9. Creates s. 458.3145, F.S., which establishes a medical faculty certificate for a physician holding a faculty appointment with an accredited medical school.

Section 10. Amends s. 458.316, F.S., relating to a public health certificate, to revise the procedures for obtaining the certificate.

Section 11. Creates s. 458.3165, F.S., which establishes a public psychiatry certificate for board certified psychiatrists licensed in another state who practice in a state funded public mental health facility or program.

Section 12. Amends s. 458.317, F.S., relating to limited licenses, to revise procedures by which a physician may receive a limited license.

Section 13. Amends s. 458.319, F.S., relating to renewal of license, to establish a fee of not more than $250.

Section 14. Amends s. 458.321, F.S., relating to inactive status, to increase continuing education requirements for reactivating an inactive license.

Section 15. Amends s. 458.322, F.S., relating to Medicare assignment, to conform the statute to actual practice with regard to the distribution of information on physicians who accept Medicare assignment.

Section 16. Amends s. 458.324, F.S., relating to breast cancer treatment alternatives, to clear up ambiguous language and specify that a physician shall inform patients with breast cancer of treatment alternatives.

Section 17. Amends s. 458.327, F.S., relating to penalty for violation, to delete language which prohibits someone from using the title "Doctor of Medicine" or "Medical Doctor" unless they are licensed to practice medicine.

Section 18. Amends s. 458.331, F.S., relating to grounds for disciplinary action, to clarify and correct errors in existing language and to permit a physician to advertise or practice under a name other than his own.

Section 19. Substantially rewords s. 458.3315, F.S., relating to treatment programs for impaired professionals, to authorize physicians licensed under the chapter to participate in a generic impaired professionals program which can be used by professionals licensed under a variety of practice acts by DPR.

Section 20. Substantially rewords s. 458.347, F.S., relating to physician assistants (PA's) to change the method for certification of PA's. In order to be certified as a PA, an applicant must meet the same educational requirements as current law, but in addition, he must pass a proficiency examination. Once certified, a PA may change employment by simply registering with the board the name of his new supervising physician. In order to change employment under current law, a PA must reapply to the board and be recertified. Current law also requires that the board approve the practice protocols of each PA who is certified. This bill requires the board to adopt, in rule, general principles that the supervising physician must use in developing the scope of practice for a PA under direct supervision and under indirect supervision. The bill also establishes the PA Advisory Committee in statute. The committee is currently provided for only in administrative rule of the board.

Section 21. Provides that medical assistants, under the direct responsibility of a licensed physician, can perform dialysis procedures, including home dialysis.

Section 22. Provides that any rule adopted by the board relating to clinical clerkships for foreign medical graduates does not apply to an applicant who completed or began his clerkship before the effective date of the rule so long as the clerkship takes no longer than three years to complete.

Section 23. Authorizes the Secretary of the Department of Health and Rehabilitative Services to extend OPS (other-personal-services) employment for physicians beyond 2,080 hours.

Section 24. Provides that nothing in this act affects or abrogates the amendments made to s. 458.320, F.S., during the 1986 Regular Legislative Session.

Section 25. Revises and readopts the medical practice act, chapter 458, F.S., and prevents it from being repealed on October 1, 1986 according to the provisions of the Regulatory Sunset Act. The section repeals s. 458.333, F.S., relating to laetrile.

Section 26. Repeals chapter 458, F.S., effective October 1, 1996 and schedules the chapter for Sunset Review.

Section 27. Repeals chapter 458, F.S., on October 1, 1996 and requires that it be reviewed pursuant to the Regulatory Sunset Act (s. 11.61, F.S.).

Section 28. Provides an effective date.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Private Sector:

The current cost to the private sector of regulating medical doctors approximates $1.2 to $2.2 million dollars annually in fees. Enactment of this legislation would continue that cost. There is additional cost to the public in the form of higher physician fees due to the limits on competition which regulation imposes on medical doctors. The amount of this additional cost is undetermined but will continue at current levels if this bill is enacted.

B. Government:

Regulation of medical doctors is the administrative responsibility of the Department of Professional Regulation, and would continue to be so if this bill is enacted.

The cost to DPR for regulation is totally covered by fees and fines, and requires no state General Revenue. This situation will continue if this legislation is enacted.

The cost of certifying foreign medical institutions will vary depending on the number of such institutions which apply. However, the certification process is totally fee supported.

The costs to the Department of Professional Regulation are minimal:

1. The addition of 1 member of the Board of Medicine, $4,200,

2. The addition of the Technical Advisory Group, $8,400,and

3. The cost of administering the Spanish version of the Florida Board Examination, $7,500.

III. COMMENTS:

The reader is referred to the Sunset Review of chapter 458, F.S., prepared by the staff of the Senate HRS Committee for more detail on this legislation.

This bill would take effect October 1, 1986.

IV. AMENDMENTS:

None.

ORIGINAL COPY

1986 SPECIAL SESSION

Senate Bill 5-B

The Sunset bill reenacts chapter 458, F.S., thus prohibiting the repeal of the chapter on October 1, 1986. A number of revisions are made to the chapter in accordance with the provisions of the Sunset Review process of ensuring minimum regulation to protect the health, safety, and welfare of the public. The bill changes the name of the Board of Medical Examiners to the Board of Medicine and expands the board's membership from 12 to 13 members; prohibits the board from adopting rules of a retroactive nature for any medical student in the classroom phase, the clinical clerkship phase, or the residency phase of his medical education; establishes three pathways for licensure by examination; establishes criteria for licensure by endorsement; provides for the certification of foreign medical institutions by DPR; and substantially rewords s. 458.347, F.S., relating to physician assistants (PA's) to change the method for certification of PA's.

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SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Hansen MH	Hill KWH	1. HRS	Fav/CS
2.		2. AP	
3.		3.	

SUBJECT:

Medical Practice Act (SUNSET)

BILL NO. AND SPONSOR:

CS/SB 1090 by
HRS Committee and Senator Fox

I. SUMMARY:

A. Present Situation:

Chapter 458, Florida Statutes, the Medical Practice Act, provides for the regulation and licensing of medical doctors. The act is subject to Sunset Review under the provisions of s. 11.61, F.S., and if not reenacted will stand repealed effective October 1, 1986.

Administrative responsibility for the regulation of physicians is given to the Department of Professional Regulation (DPR) by the act, which also creates the Board of Medical Examiners (board) as a 12 member regulatory board with DPR. The board reviews all applications for licensure and determines which applicants are qualified to take the examination for licensure under the chapter. In addition, the board is responsible for disciplining licensed physicians who violate the provisions of the chapter.

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Two methods for obtaining an unrestrictive medical license are contained in the act - licensure by examination and licensure by endorsement. In order to be licensed by examination, an applicant must be a graduate of an accredited medical school, complete a one year internship, and pass the Federation Licensing Examination (FLEX). However, graduates of unapproved foreign schools may be licensed if they meet an array of specified criteria, depending on which foreign school they attended and upon their training and experience.

Licensure by endorsement requires that an applicant meet the requirements for licensure by examination. Further, the applicant must not have committed an offense which constitutes grounds for discipline under Florida's Medical Practice Act. One additional requirement must be met for licensure by endorsement. The applicant must have passed the FLEX examination or National Board of Medical Examiners Examination (NBME) within the ten years immediately preceding his application for licensure in Florida.

Many nonresident physicians who wish to practice in Florida do not meet the ten year requirement for licensure by endorsement. These physicians must retake and pass the FLEX exam or the NBME exam in order to be licensed in Florida, a process which is apparently very difficult for a physician who has been out of medical school for more than ten years. A number of exemptions have been enacted into law to circumvent the ten year requirement, including the Mayo Clinic bill (ch. 85-56, Laws of Florida) the public health certificate (s. 458.316, F.S.), the temporary certificate to practice in areas of critical need (s. 458.315, F.S.), the limited license (s. 458.317, F.S.) and the medical faculty certificate (s. 458.303, F.S.).

In addition to licensing requirements, chapter 458, F.S., also contains a number of special provisions. For example, s. 458.322, F.S., requires physicians to indicate as part of their licensure renewal whether they will accept Medicare assignment. This information is published and made available to the general public. Another section (s. 458.324, F.S.) requires physicians to inform patients with breast cancer of treatment alternatives available to the patient. Section 458.323, F.S., requires physicians to provide their patients an itemized patient billing upon request, and sections 458.333 and 458.335, F.S., prohibit the board from disciplining physicians for prescribing laetrile or DMSO unless the Board of Medical Examiners and the Board of Osteopathic Medical Examiners find laetrile or DMSO to be harmful.

Chapter 458, F.S., also provides for regulation of physician's assistants (P.A.). The chapter authorizes the board to approve training programs for P.A.'s, and to certify a physician to supervise a P.A.

Finally, the chapter requires unlicensed physicians working in hospitals, including a resident physician, an assistant resident physician, a house physician or an intern to register with DPR in January and July of each year. Hospitals who employ unlicensed physicians are also required to register with DPR. A two year limit is placed on the practice of unlicensed hospital physicians except for those in approved training programs.

B. Effect of Proposed Changes:

The Sunset bill reenacts chapter 458, F.S., thus prohibiting the repeal of the chapter on October 1, 1986. A number of revisions are made to the chapter in accordance with the provisions of the Sunset Review process of ensuring minimum regulation to protect the health, safety, and welfare of the public. A section analysis of the revisions of the chapter follows.

Section Analysis

Section 1. Amends s. 458.301, F.S., relating to legislative intent to clarify the Legislature's purpose in enacting the chapter.

Section 2. Amends sections of s. 458.303, F.S., relating to exceptions to the practice act, to repeal the medical facility certificate and define direct supervision and control.

Section 3. Amends s. 458.305, F.S., relating to definitions, to change the name of the Board of Medical Examiners to the Board of Medicine.

Section 4. Amends s. 458.307, F.S., relating to the Board of Medical Examiners, to change the name to the Board of Medicine and to expand the board's membership from 12 to 13 members. The new member is required to be a graduate of a foreign medical school. This was done because although an estimated 30 percent of licensed Florida physicians are graduates of foreign medical schools, none of the current members of the board is a foreign medical graduate.

Section 5. Amends s. 458.309, F.S., which authorizes the board to adopt rules necessary to carry out its duties. The section is amended to prohibit the board from adopting rules of a retroactive nature for any medical student in the classroom

phase, the clinical clerkship phase, or the internship phase of their medical education.

Section 6. Substantially rewords s. 458.311, F.S., relating to licensure by endorsement, to establish three pathways for licensure by examination as follows:

- graduates of accredited American schools must:

  1) complete an approved residency of one year

  2) demonstrate English competency if the language of instruction is other than English

  3) pass the Flex

- graduates of foreign medical schools which have been certified pursuant to Section 8. of the act must:

  1) complete an approved residency of one year

  2) demonstrate English competency if the language of instruction is other than English

  3) pass the Flex

- graduates of noncertified medical schools must:

  1) have their medical credentials evaluated by the Education Commission on Foreign Medical Graduates (ECFMG) and pass the ECFMG examination.

  2) complete an approved residency of one year, however, after 1992 a three year residency program must be completed.

  3) pass the Flex.

The section also permits each qualified applicant to take the FLEX examination five times, regardless of the number of times he has taken the exam prior to the effective date of the act.

Two additional pathways are included in the section. The so called "fifth pathway" for graduates of certain Mexican medical schools is included, just as it exists in current law. Also, a provision is included for the licensing of political exiles who come to this country after having practiced medicine in another country in the Western Hemisphere. Both of these pathways are repealed effective October 1, 1992.

Section 7. Amends s. 458.313, F.S., relating to licensure by endorsement, to establish criteria for licensure by endorsement as follows. The applicant must:

- meet certain requirements for licensure by examination

- hold a valid, active license to practice in another state

- have obtained a passing score on the NBME exam or the FLEX exam, or be a board certified specialist.

The section also deletes a provision which permitted certain physicians who did not meet the ten year requirement to be licensed in connection with their employment by a specified nonprofit corporation.

Section 8. Creates s. 458.314, F.S., which provides for the certification of foreign medical institutions by DPR as follows:

- In order to be certified, the foreign institutions must provide a medical education which is reasonably comparable to American medical schools.
- DPR may contract with outside providers to do the evaluation.
- A technical advisory group is established by DPR to make recommendations regarding each foreign medical institution which applies for certification.
- Three types of certification are established: temporary, provisional and permanent.
- Foreign institution are required to pay the cost of certification.

Section 9. Amends s. 458.319, F.S., relating to renewal of license, to establish a fee of not more than $250.

Section 10. Amends s. 458.321, F.S., relating to inactive status, to increase continuing education requirements for reactivating an inactive license.

Section 11. Amends s. 458.322, F.S., relating to Medicare assignment, to conform the statute to actual practice in regard to the distribution of information on physicians who accept Medicare assignment.

Section 12. Amends s. 458.324, F.S., relating to breast cancer treatment alternatives, to clear up ambiguous language and specify that a physician shall inform patients with breast cancer of treatment alternatives.

Section 13. Amends s. 458.327, F.S., relating to penalty for violation, to delete language which prohibits someone from using the title of "Doctor of Medicine" or "Medical Doctor" unless they are licensed to practice medicine.

Section 14. Amends s. 458.331, F.S., relating to grounds for disciplinary action, to clarify and correct errors in existing language and to permit a physician to advertise or practice under a name other than his own.

Section 15. Substantially rewords s. 458.3315, F.S., relating to treatment programs for impaired professionals. The substitute language establishes a more generic impaired professionals program which can be used in a variety of practice acts by DPR.

Section 16. Substantially rewords s. 458.347, F.S., relating to physician assistants (PA's) to change the method for certification of PA's. In order to be certified as a PA, an applicant must meet the same educational requirements of current law, but in addition, he must pass a proficiency examination. Once certified, a PA may change employment by simply registering with the board the name of his new supervising physician. In order to change employment under current law, a PA must reapply to the board and be recertified. Current law also requires that the board approve the practice protocols of each PA which is certified. This bill requires the board to adopt in rule general principles that the supervising physician must use in developing the scope of practice of a PA under direct supervision and under indirect

supervision. The bill also establishes the PA Advisory Committee in statute. The committee is currently provided for only in administrative rule of the board.

Section 17. Provides that any rule adopted by the board relating to clinical clerkships for foreign medical graduates does not apply to an applicant who completed or began his clerkship before the effective date of the rule so long as the clerkship takes no longer than three years to complete.

Section 18. Expresses legislative intent that all Floridian's have a right to adequate physician care, and imposes a duty upon physicians to treat indigent patients. Since the duty is not met by all physicians on an equal basis, physicians who do not provide indigent care are required to pay an indigent care assessment of $500 biennially. All physicians must pay the assessment upon receipt of their initial license. Physicians must also pay the assessment when renewing their license unless they submit a sworn statement to the board that they have provided a specified level of indigent care or are employed by certain indigent care providers such as a primary care center. Indigent care assessments paid to DPR are deposited in the Medicaid Physician's Trust Fund, which is created in the act, and is used to increase Medicaid payments for physician office visits and other primary care procedures.

Section 19. Amends s. 110.131, F.S., relating to other personal services (OPS) temporary employment, to require the Department of Administration to approve extension of OPS employment for health care professionals.

Section 20. Amends s. 768.28, F.S., relating to waiver of sovereign immunity in tort actions, to include in the definition of state agencies or subdivisions, independent universities with medical schools and teaching hospitals when these institutions provide indigent care. The section also extends sovereign immunity to health care professionals under OPS employment with the Department of Health and Rehabilitative Services.

Section 21. Authorizes physicians holding a medical faculty certificate, a temporary certificate, or a limited license as of the effective date of the act, to continue to renew the certificate or license under the provisions of current law. This bill repeals these categories of licensure.

Section 22. Revises and readopts the medical practice act, chapter 458, F.S., and prevents it from being repealed on October 1, 1986 according to the provisions of the Regulatory Sunset Act. The section also repeals the medical faculty certificate (s. 458.303(1)(i), F.S), the public health certificate s. 458.315, F.S.), the limited license to practice in areas of critical need (s. 458.316, F.S.), and the restricted license (s. 458.317, F.S.). Each of these sections was enacted in order to circumvent the ten year requirement on licensure by endorsement, which is deleted by this act. The section also repeals s. 458.333, F.S., relating to laetrile.

Section 23. Repeals s. 458.320, F.S., relating to financial responsibility for physicians.

Section 24. Repeals chapter 458, F.S., on October 1, 1996 and requires that it be reviewed pursuant to the Regulatory Sunset Act (s. 11.61, F.S.).

Section 25. Provides an effective date.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Private Sector:

The current cost to the private sector of regulating medical doctors approximates from $1.2 to $2.2 million dollars annually in fees. Enactment of this legislation would continue that cost. There is additional cost to the public in the form of higher physician fees due to the limits on competition which regulation imposes on medical doctors. The amount of this additional cost is undetermined but will continue at current levels if this bill is enacted.

The indigent care assessment imposed on physicians would require each physician to pay an additional $500 for his initial license, and $500 biennially for license renewal. Physicians who provide a specified amount of indigent care or are employed by certain indigent care providers are exempt from the renewal assessment. It is estimated by HRS that the assessment will generate approximately $7 million annually in state funds. When matched with federal funds, the assessment will provide adequate resources to approximately double Medicaid reimbursement for office visits. Private practice physicians treating Medicaid patients would benefit from this increase in Medicaid reimbursement for office visits. Medicaid patients will also benefit through more ready access to private practice physicians.

B. Government:

Regulation of medical doctors is the administrative responsibility of the Department of Professional Regulation, and would continue to be so if this bill is enacted.

The cost to DPR for regulation is totally covered by fees and fines, and requires no state General Revenue. This situation will continue if this legislation is enacted.

The cost for certifying foreign medical institutions will vary depending on the number of such institutions which apply. However, the certification process is totally fee supported.

Extending sovereign immunity to OPS employees of HRS and to independent universities with medical schools and teaching hospitals will result in costs to state and local governments but the amount of such cost is unknown.

III. COMMENTS:

The reader is referred to the Sunset Review of chapter 458, F.S., prepared by the staff of the Senate HRS Committee for more detail on this legislation.

IV. AMENDMENTS:

None.

ORIGINAL COPY

STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
Senate Bill 1090

The committee substitute contains the following revisions to the original bill:

- Two pathways are added for licensure by examination, one for immigrants from certain Western Hemisphere countries and one for certain Mexican schools.

- Language relating to a physician indigent care assessment is revised to impose a duty on physicians to provide indigent care, or to pay a $500 biennial assessment into a fund for increasing Medicaid physicians fees for office visits.

- Sovereign immunity is extended to independent universities with medical schools, nonprofit teaching hospitals and certain contract employees when such entities or employees are providing indigent care.

- Section 458.320, F.S., is repealed. This section requires a physician, as a prerequisite to licensure, to demonstrate financial responsibility to pay claims related to his practice.

- Revisions to section 458.345, F.S., relating to registration of house physicians, residents and interns are deleted.

- Physicians holding a medical faculty certificate, a limited license or a temporary certificate may renew their certificate or license under the terms of existing law, notwithstanding the repeal of all of these categories of special licenses by the bill.

Committee on Health and Rehabilitative Services

Kandace Hill
Staff Director

(FILE TWO COPIES WITH THE SECRETARY OF THE SENATE)

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Hansen MPH	Hill KMH	1. HRS	
2.		2. AP	
3.		3.	

SUBJECT:

Medical Practice Act (SUNSET)

BILL NO. AND SPONSOR:

Proposed CS/SB 1090 by HRS Committee and Senator Fox

I. SUMMARY:

A. Present Situation:

Chapter 458, Florida Statutes, the Medical Practice Act, provides for the regulation and licensing of medical doctors. The act is subject to Sunset Review under the provisions of s. 11.61, F.S., and if not reenacted will stand repealed effective October 1, 1986.

Administrative responsibility for the regulation of physicians is given to the Department of Professional Regulation (DPR) by the act, which also creates the Board of Medical Examiners (board) as a 12 member regulatory board with DPR. The board reviews all applications for licensure and determines which applicants are qualified to take the examination for licensure under the chapter. In addition, the board is responsible for disciplining licensed physicians who violate the provisions of the chapter.

Two methods for obtaining an unrestrictive medical license are contained in the act - licensure by examination and licensure by endorsement. In order to be licensed by examination, an applicant must be a graduate of an accredited medical school, complete a one year internship, and pass the Federation Licensing Examination (FLEX). However, graduates of unapproved foreign schools may be licensed if they meet an array of specified criteria, depending on which foreign school they attended and upon their training and experience.

Licensure by endorsement requires that an applicant meet the requirements for licensure by examination. Further, the applicant must not have committed an offense which constitutes grounds for discipline under Florida's Medical Practice Act. One additional requirement must be met for licensure by endorsement. The applicant must have passed the FLEX examination or National Board of Medical Examiners Examination (NBME) within the ten years immediately preceding his application for licensure in Florida.

Many nonresident physicians who wish to practice in Florida do not meet the ten year requirement for licensure by endorsement. These physicians must retake and pass the FLEX exam or the NBME exam in order to be licensed in Florida, a process which is apparently very difficult for a physician who has been out of medical school for more than ten years. A number of exemptions have been enacted into law to circumvent the ten year requirement, including the Mayo Clinic bill (ch. 85-56, Laws of Florida) the public health certificate (s. 458.316, F.S.), the temporary certificate to practice in areas of critical need (s. 458.315, F.S.), the limited license (s. 458.317, F.S.) and the medical faculty certificate (s. 458.303, F.S.).

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In addition to licensing requirements, chapter 458, F.S., also contains a number of special provisions. For example, s. 458.322, F.S., requires physicians to indicate as part of their licensure renewal whether they will accept Medicare assignment. This information is published and made available to the general public. Another section (s. 458.324, F.S.) requires physicians to inform patients with breast cancer of treatment alternatives available to the patient. Section 458.323, F.S., requires physicians to provide their patients an itemized patient billing upon request, and sections 458.333 and 458.335, F.S., prohibit the board from disciplining physicians for prescribing laetrile or DMSO unless the Board of Medical Examiners and the Board of Osteopathic Medical Examiners find laetrile or DMSO to be harmful.

Chapter 458, F.S., also provides for regulation of physician's assistants (P.A.). The chapter authorizes the board to approve training programs for P.A.'s, and to certify a physician to supervise a P.A.

Finally, the chapter requires unlicensed physicians working in hospitals, including a resident physician, an assistant resident physician, a house physician or an intern to register with DPR in January and July of each year. Hospitals who employ unlicensed physicians are also required to register with DPR. A two year limit is placed on the practice of unlicensed hospital physicians except for those in approved training programs.

B. Effect of Proposed Changes:

The Sunset bill reenacts chapter 458, F.S., thus prohibiting the repeal of the chapter on October 1, 1986. A number of revisions are made to the chapter in accordance with the provisions of the Sunset Review process of ensuring minimum regulation to protect the health, safety, and welfare of the public. A section analysis of the revisions of the chapter follows.

Section Analysis

Section 1. Amends s. 458.301, F.S., relating to legislative intent to clarify the Legislature's purpose in enacting the chapter.

Section 2. Amends sections of s. 458.303, F.S., relating to exceptions to the practice act, to repeal the medical facility certificate and define direct supervision and control.

Section 3. Amends s. 458.305, F.S., relating to definitions, to change the name of the Board of Medical Examiners to the Board of Medicine.

Section 4. Amends s. 458.307, F.S., relating to the Board of Medical Examiners, to change the name to the Board of Medicine and to expand the board's membership from 12 to 13 members. The new member is required to be a graduate of a foreign medical school. This was done because although an estimated 30 percent of licensed Florida physicians are graduates of foreign medical schools, none of the current members of the board is a foreign medical graduate.

Section 5. Amends s. 458.309, F.S., which authorizes the board to adopt rules necessary to carry out its duties. The section is amended to prohibit the board from adopting rules of a retroactive nature for any medical student in the classroom

phase, the clinical clerkship phase, or the internship phase of their medical education.

Section 6. Substantially rewords s. 458.311, F.S., relating to licensure by endorsement, to establish three pathways for licensure by examination as follows:

- graduates of accredited American schools must:

  1) complete an approved residency of one year

  2) demonstrate English competency if the language of instruction is other than English

  3) pass the Flex

- graduates of foreign medical schools which have been certified pursuant to Section 8. of the act must:

  1) complete an approved residency of one year

  2) demonstrate English competency if the language of instruction is other than English

  3) pass the Flex

- graduates of noncertified medical schools must:

  1) have their medical credentials evaluated by the Education Commission on Foreign Medical Graduates (ECFMG) and pass the ECFMG examination.

  2) complete an approved residency of one year, however, after 1992 a three year residency program must be completed.

  3) pass the Flex.

The section also permits each qualified applicant to take the FLEX examination five times, regardless of the number of times he has taken the exam prior to the effective date of the act.

Two additional pathways are included in the section. The so called "fifth pathway" for graduates of certain Mexican medical schools is included, just as it exists in current law. Also, a provision is included for the licensing of political exiles who come to this country after having practiced medicine in another county for at least three years. Both of these pathways are repealed effective October 1, 1992.

Section 7. Amends s. 458.313, F.S., relating to licensure by endorsement, to establish criteria for licensure by endorsement as follows. The applicant must:

- meet certain requirements for licensure by examination

- hold a valid, active license to practice in another state

- have obtained a passing score on the NBME exam or the FLEX exam, or be a board certified specialist.

The section also deletes a provision which permitted certain physicians who did not meet the ten year requirement to be licensed in connection with their employment by a specified nonprofit corporation.

Section 8. Creates s. 458.314, F.S., which provides for the certification of foreign medical institutions by DPR as follows:

- In order to be certified, the foreign institutions must provide a medical education which is reasonably comparable to American medical schools.
- DPR may contract with outside providers to do the evaluation.
- A technical advisory group is established by DPR to make recommendations regarding each foreign medical institution which applies for certification.
- Three types of certification are established: temporary, provisional and permanent.
- Foreign institution are required to pay the cost of certification.

Section 9. Amends s. 458.319, F.S., relating to renewal of license, to establish a fee of not more than $250.

Section 10. Amends s. 458.319, F.S., relating to inactive status, to increase continuing education requirements for reactivating an inactive license.

Section 11. Amends s. 458.327, F.S., relating to Medicare assignment, to conform the statute to actual practice in regard to the distribution of information on physicians who accept Medicare assignment.

Section 12. Amends s. 458.324, F.S., relating to breast cancer treatment alternatives, to clear up ambiguous language and specify that a physician shall inform patients with breast cancer of treatment alternatives.

Section 13. Amends s. 458.327, F.S., relating to penalty for violation, to make it a third degree felony for an unlicensed physician to serve as a hospital resident, physician, assistant resident physician, house physician, or intern unless he has registered with DPR. The section also deletes language which prohibited someone from using the title of "Doctor of Medicine" or "Medical Doctor" unless they are licensed to practice medicine.

Section 14. Amends s. 458.311, F.S., relating to grounds for disciplinary action, to clarify and correct errors in existing language and to permit a physician to advertise or practice under a name other than his own.

Section 15. Substantially rewords s. 458.3315, F.S., relating to treatment programs for impaired professionals. The substitute language establishes a more generic impaired professionals program which can be used in a variety of practice acts by DPR.

Section 16. Amends s. 458.345, F.S., relating to registration of resident interns and physicians to require that resident physicians, assistant resident physicians, house physicians and interns who are not licensed to practice medicine in Florida must apply to DPR to be registered. Registration is valid for two years only unless the physician is enrolled in an approved internship or residency program. This amendment was made because the existing system of registration of unlicensed hospital physicians has been ineffective.

Section 17. Substantially rewords s. 458.347, F.S., relating to physician assistants (PA's) to change the method for certification of PA's. In order to be certified as a PA, an applicant must meet the same educational requirements of current law, but in addition, he must pass a proficiency examination. Once certified, a PA may change employment by simply registering with the board the name of his new supervising physician. In order to change employment under current law, a PA must reapply to the board and be recertified. Current law also requires that the board approve the practice protocols of each PA which is certified. This bill requires the board to adopt in rule general principles that the supervising physician must use in developing the scope of practice of a PA under direct supervision and under indirect supervision. The bill also establishes the PA Advisory Committee in statute. The committee is currently provided for only in administrative rule of the board.

Section 18. Provides that any rule adopted by the board relating to clinical clerkships for foreign medical graduates does not apply to an applicant who completed or began his clerkship before the effective date of the rule so long as the clerkship takes no longer than three years to complete.

Section 19. Expresses legislative intent that all Floridian's have a right to adequate physician care, and imposes a duty upon physicians to treat indigent patients. Since the duty is not met by all physicians on an equal basis, physicians who do not provide indigent care are required to pay an indigent care assessment of $500 biennially. All physicians must pay the assessment upon receipt of their initial license. Physicians must also pay the assessment when renewing their license unless they submit a sworn statement to the board that they have provided a specified level of indigent care or are employed by certain indigent care providers such as a primary care center. Indigent care assessments paid to DPR are deposited in the Medicaid Physician's Trust Fund, which is created in the act, and is used to increase Medicaid payments for physician office visits and other primary care procedures.

Section 20. Amends s. 110.131, F.S., relating to other personal services (OPS) temporary employment, to require the Department of Administration to approve extension of OPS employment for health care professionals.

Section 21. Amends s. 768.28, F.S., relating to waiver of sovereign immunity in tort actions, to include in the definition of state agencies or subdivisions, independent universities with medical schools and teaching hospitals when these institutions provide indigent care. The section also extends sovereign immunity to health care professionals under OPS employment with the Department of Health and Rehabilitative Services.

Section 22. Authorizes physicians holding a medical faculty certificate, a temporary certificate, or a limited license as of the effective date of the act, to continue to renew the certificate or license under the provisions of current law. This bill repeals these categories of licensure.

Section 23. Revises and readopts the medical practice act, chapter 458, F.S., and prevents it from being repealed on October 1, 1986 according to the provisions of the Regulatory Sunset Act. The section also repeals the medical faculty certificate (s. 458.303(1)(i), F.S), the public health certificate s. 458.315, F.S.), the limited license to practice in areas of critical need (s. 458.316, F.S.), and the restricted license (s. 458.317, F.S.). Each of these sections

was enacted in order to circumvent the ten year requirement on licensure by endorsement, which is deleted by this act. The section also repeals s. 458.333, F.S., relating to laetrile.

Section 24. Repeals s. 458.320, F.S., relating to financial responsibility for physicians.

Section 25. Repeals chapter 458, F.S., on October 1, 1996 and requires that it be reviewed pursuant to the Regulatory Sunset Act (s. 11.61, F.S.).

Section 26. Provides an effective date.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Private Sector:

The current cost to the private sector of regulating medical doctors approximates from $1.2 to $2.2 million dollars annually in fees. Enactment of this legislation would continue that cost. There is additional cost to the public in the form of higher physician fees due to the limits on competition which regulation imposes on medical doctors. The amount of this additional cost is undetermined but will continue at current levels if this bill is enacted.

The indigent care assessment imposed on physicians would require each physician to pay an additional $500 for his initial license, and $500 biennially for license renewal. Physicians who provide a specified amount of indigent care or are employed by certain indigent care providers are exempt from the renewal assessment. It is estimated by HRS that the assessment will generate approximately $7 million annually in state funds. When matched with federal funds, the assessment will provide adequate resources to approximately double Medicaid reimbursement for office visits. Private practice physicians treating Medicaid patients would benefit from this increase in Medicaid reimbursement for office visits. Medicaid patients will also benefit through more ready access to private practice physicians.

B. Government:

Regulation of medical doctors is the administrative responsibility of the Department of Professional Regulation, and would continue to be so if this bill is enacted.

The cost to DPR for regulation is totally covered by fees and fines, and requires no state General Revenue. This situation will continue if this legislation is enacted.

The cost for certifying foreign medical institutions will vary depending on the number of such institutions which apply. However, the certification process is totally fee supported.

Extending sovereign immunity to OPS employees of HRS and to independent universities with medical schools and teaching hospitals will result in costs to state and local governments but the amount of such cost is unknown.

III. COMMENTS:

The reader is referred to the Sunset Review of chapter 458, F.S., prepared by the staff of the Senate HRS Committee for more detail on this legislation.

IV. AMENDMENTS:

None.

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Hansen	Hill	1. HRS	
2.		2. AP	
3.		3.	

SUBJECT: Medical Practice Act (SUNSET)

BILL NO. AND SPONSOR: SB 1090 by Senator Fox

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I. SUMMARY:

A. Present Situation:

Chapter 458, Florida Statutes, the Medical Practice Act, provides for the regulation and licensing of medical doctors. The act is subject to Sunset Review under the provisions of s. 11.61, F.S., and if not reenacted will stand repealed effective October 1, 1986.

Administrative responsibility for the regulation of physicians is given to the Department of Professional Regulation (DPR) by the act, which also creates the Board of Medical Examiners (board) as a 12 member regulatory board with DPR. The board reviews all applications for licensure and determines which applicants are qualified to take the examination for licensure under the chapter. In addition, the board is responsible for disciplining licensed physicians who violate the provisions of the chapter.

Two methods for obtaining an unrestrictive medical license are contained in the act - licensure by examination and licensure by endorsement. In order to be licensed by examination, an applicant must be a graduate of an accredited medical school, complete a one year internship, and pass the Federation Licensing Examination (FLEX). However, graduates of unapproved foreign schools may be licensed if they meet an array of specified criteria, depending on which foreign school they attended and upon their training and experience.

Licensure by endorsement requires that an applicant meet the requirements for licensure by examination. Further, the applicant must not have committed an offense which constitutes grounds for discipline under Florida's Medical Practice Act. One additional requirement must be met for licensure by endorsement. The applicant must have passed the FLEX examination or National Board of Medical Examiners Examination (NBME) within the ten years immediately preceding his application for licensure in Florida.

Many nonresident physicians who wish to practice in Florida do not meet the ten year requirement for licensure by endorsement. These physicians must retake and pass the FLEX exam or the NBME exam in order to be licensed in Florida, a process which is apparently very difficult for a physician who has been out of medical school for more than ten years. A number of exemptions have been enacted into law to circumvent the ten year requirement, including the Mayo Clinic bill (ch. 85-56, Laws of Florida) the public health certificate (s. 458.316, F.S.), the temporary certificate to practice in areas of critical need (s. 458.315, F.S.), the limited license (s. 458.317, F.S.) and the medical faculty certificate (s. 458.303, F.S.).

In addition to licensing requirements, chapter 458, F.S., also contains a number of special provisions. For example, s. 458.322, F.S., requires physicians to indicate as part of their licensure renewal whether they will accept Medicare assignment. This information is published and made available to the general public. Another section (s. 458.324, F.S.) requires physicians to inform patients with breast cancer of treatment alternatives available to the patient. Section 458.323, F.S., requires physicians to provide their patients an itemized patient billing upon request, and sections 458.333 and 458.335, F.S., prohibit the board from disciplining physicians for prescribing laetrile or DMSO unless the Board of Medical Examiners and the Board of Osteopathic Medical Examiners find laetrile or DMSO to be harmful.

Chapter 458, F.S., also provides for regulation of physician's assistants (P.A.). The chapter authorizes the board to approve training programs for P.A.'s, and to certify a physician to supervise a P.A.

Finally, the chapter requires unlicensed physicians working in hospitals, including a resident physician, an assistant resident physician, a house physician or an intern to register with DPR in January and July of each year. Hospitals who employ unlicensed physicians are also required to register with DPR. A two year limit is placed on the practice of unlicensed hospital physicians except for those in approved training programs.

B. Effect of Proposed Changes:

The Sunset bill reenacts chapter 458, F.S., thus prohibiting the repeal of the chapter on October 1, 1986. A number of revisions are made to the chapter in accordance with the provisions of the Sunset Review process of ensuring minimum regulation to protect the health, safety, and welfare of the public. A section analysis of the revisions of the chapter follows.

Section Analysis

Section 1. Amends s. 458.301, F.S., relating to legislative intent to clarify the Legislature's purpose in enacting the chapter.

Section 2. Amends sections of s. 458.303, F.S., relating to exceptions to the practice act, to repeal the medical facility certificate and define direct supervision and control.

Section 3. Amends s. 458.305, F.S., relating to definitions, to change the name of the Board of Medical Examiners to the Board of Medicine.

Section 4. Amends s. 458.307, F.S., relating to the Board of Medical Examiners, to change the name to the Board of Medicine and to expand the board's membership from 12 to 13 members. The new member is required to be a graduate of a foreign medical school. This was done because although an estimated 30 percent of licensed Florida physicians are graduates of foreign medical schools, none of the current members of the board is a foreign medical graduate.

Section 5. Amends s. 458.309, F.S., which authorizes the board to adopt rules necessary to carry out its duties. The section is amended to prohibit the board from adopting rules of a retroactive nature for any medical student in the classroom

phase, the clinical clerkship phase, or the internship phase of their medical education.

Section 6. Substantially rewords s. 458.311, F.S., relating to licensure by endorsement, to establish three pathways for licensure by examination as follows:

- graduates of accredited American schools must:

  1) complete an approved residency of one year

  2) demonstrate English competency if the language of instruction is other than English

  3) pass the Flex

- graduates of foreign medical schools which have been certified pursuant to Section 8. of the act must:

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  2) demonstrate English competency if the language of instruction is other than English

  3) pass the Flex

- graduates of noncertified medical schools must:

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  2) complete an approved residency of one year, however, after 1992 a three year residency program must be completed.

  3) pass the Flex.

The section also permits each qualified applicant to take the FLEX examination five times, regardless of the number of times he has taken the exam prior to the effective date of the act.

Section 7. Amends s. 458.313, F.S., relating to licensure by endorsement, to establish criteria for licensure by endorsement as follows. The applicant must:

- meet certain requirements for licensure by examination

- hold a valid, active license to practice in another state

- have obtained a passing score on the NBME exam or the FLEX exam, or be a board certified specialist.

The section also deletes a provision which permitted certain physicians who did not meet the ten year requirement to be licensed in connection with their employment by a specified nonprofit corporation.

Section 8. Creates s. 458.314, F.S., which provides for the certification of foreign medical institutions by DPR as follows:

- In order to be certified, the foreign institutions must provide a medical education which is reasonably comparable to American medical schools.

- DPR may contract with outside providers to do the evaluation.

- A technical advisory group is established by DPR to make recommendations regarding each foreign medical institution which applies for certification.

- Three types of certification are established: temporary, provisional and permanent.

- Foreign institution are required to pay the cost of certification, up to $15,000.

Section 9. Amends s. 458.319, F.S., relating to renewal of license, to establish a fee of not more than $250, and an indigent care assessment of $500 for renewal of a license to practice medicine.

Section 10. Amends s. 458.319, F.S., relating to inactive status, to increase continuing education requirements for reactivating an inactive license.

Section 11. Amends s. 458.327, F.S., relating to Medicare assignment, to conform the statute to actual practice in regard to the distribution of information on physicians who accept Medicare assignment.

Section 12. Amends s. 458.324, F.S., relating to breast cancer treatment alternatives, to clear up ambiguous language and specify that a physician shall inform patients with breast cancer of treatment alternatives.

Section 13. Amends s. 458.327, F.S., relating to penalty for violation, to make it a third degree felony for an unlicensed physician to serve as a hospital resident, physician, assistant resident physician, house physician, or intern unless he has registered with DPR. The section also deletes language which prohibited someone from using the title of "Doctor of Medicine" or "Medical Doctor" unless they are licensed to practice medicine.

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Section 16. Amends s. 458.345, F.S., relating to registration of resident interns and physicians to require that resident physicians, assistant resident physicians, house physicians and interns who are not licensed to practice medicine in Florida must apply to DPR to be registered. Registration is valid for two years only unless the physician is enrolled in an approved internship or residency program. This amendment was made because the existing system of registration of unlicensed hospital physicians has been ineffective.

Section 17. Amends s. 458.347, F.S., relating to physician's assistants, to provide a mechanism for temporary approval of a physician/physician's assistant relationship. Existing language requires board approval before a physician's assistant begins employment and this has resulted in an undue hardship on physician's assistants. The section also clarifies the board's authority to discipline a physician's assistant and provides a biennial renewal fee of $100 for certification of a physician's assistant or a supervising physician.

Section 18. Provides that any rule adopted by the board relating to clinical clerkships for foreign medical graduates does not apply to an applicant who completed or began his clerkship before the effective date of the rule so long as the clerkship takes no longer than three years to complete.

Section 19. Directs the Department of Health and Rehabilitative Services to increase Medicaid reimbursement to physicians for office visits using the funds available from the indigent care assessment as established in Section 9. of the act.

Section 20. Revises and readopts the medical practice act, chapter 458, F.S., and prevents it from being repealed on October 1, 1986 according to the provisions of the Regulatory Sunset Act. The section also repeals the medical faculty certificate (s. 458.303(1)(i), F.S), the public health certificate s. 458.315, F.S.), the limited license to practice in areas of critical need (s. 458.316, F.S.), and the restricted license (s. 458.317, F.S.). Each of these sections was enacted in order to circumvent the ten year requirement on licensure by endorsement, which is deleted by this act. The section also repeals s. 458.333, F.S., relating to laetrile.

Section 21. Repeals chapter 458, F.S., on October 1, 1996 and requires that it be reviewed pursuant to the Regulatory Sunset Act (s. 11.61, F.S.).

Section 22. Provides an effective date.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Private Sector:

The current cost to the private sector of regulating medical doctors approximates from $1.2 to $2.2 million dollars annually in fees. Enactment of this legislation would continue that cost. There is additional cost to the public in the form of higher physician fees due to the limits on competition which regulation imposes on medical doctors. The amount of this additional cost is undetermined but will continue at current levels if this bill is enacted.

The indigent care assessment imposed on physicians would require each physician to pay an additional $500 biennially for license renewal. Private practice physicians treating Medicaid patients would benefit from this through a doubling of Medicaid reimbursement for office visits. Medicaid patients will also benefit through more ready access to private practice physicians.

B. Government:

Regulation of medical doctors is the administrative responsibility of the Department of Professional Regulation, and would continue to be so if this bill is enacted.

The cost to DPR for regulation is totally covered by fees and fines, and requires no state General Revenue. This situation will continue if this legislation is enacted.

The cost for certifying foreign medical institutions will vary depending on the number of such institutions which apply. However, the certification process is totally fee supported.

III. COMMENTS:

The reader is referred to the Sunset Review of chapter 458, F.S., prepared by the staff of the Senate HRS Committee for more detail on this legislation.

IV. AMENDMENTS:

None.

STORAGE NAME: PCB 86-18 Sa

Date: April 25, 1986
Revised:
Final:

PCB 86-18

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HOUSE OF REPRESENTATIVES
COMMITTEE ON (NAME OF COMMITTEE)
STAFF ANALYSIS

BILL #:

RELATING TO:

SPONSOR(S):

EFFECTIVE DATE:

COMPANION BILL(S):

OTHER COMMITTEES OF REFERENCE: (1)

(2)

****

I. SUMMARY:

A. Present

Chapter 458, Florida Statutes, the Medical Practice Act, provides for the regulation and licensing of medical doctors. The act is subject to Sunset Review under the provisions of s. 11.61, Florida Statutes, and if not reenacted will stand repealed effective October 1, 1986.

Administrative responsibility for the regulation of physicians is given to the Department of Professional Regulation (DPR) by the act, which also creates the Board of Medical Examiners (board) as a 12-member regulatory board with DPR. The board reviews all applications for licensure and determines which applicants are qualified for licensure under the chapter.

Two methods for obtaining an unrestrictive medical license are contained in the act - licensure by examination and licensure by endorsement. In order to be licensed by examination, an applicant must be a graduate of an accredited medical school, complete a one year internship, and pass the Federation Licensing Examination (FLEX). However, graduates of unapproved foreign schools may be licensed if they meet an array of specified criteria, depending on which foreign school they attended and upon their training and experience.

Licensure by endorsement requires that an applicant meet the requirements for licensure by examination. Further, the applicant must not have committed an offense which constitutes grounds for discipline under Florida's medical practice act. One additional requirement must be met for licensure by endorsement. The applicant must have passed the FLEX examination or National Board of Medical Examiners Examination (NBME) within the ten years immediately

preceding this application for licensure in Florida. The Mayo Clinic bill (Ch. 85-86 Laws of Florida) provided an avenue through which a limited number of physicians could become licensed by endorsement.

A number of provisions enable practice of medicine in the state without having a full licensure status, the public health certificate (s. 458.316 F.S.), the temporary certificate to practice in areas of critical need (s. 458.315 F.S.), the limited license (s. 458.317, F.S.), and the medical faculty certificate (s. 458.303, F.S.).

In addition to licensing requirements, chapter 458, F.S., also contains a number of special provisions. For example, s. 458.322, F.S., requires physicians to indicate as part of their licensure renewal whether they will accept Medicare assignment. This information is published and made available to the general ublic. Another section (s. 458.324, F.S.) requires physcians to inform patients with breast cancer of treatment alternatives available to the patient. Section 458.323, F.S., requires physicians to provide their patients an itemized patient billing upon request, and sections 458.333 and 458.335, F.S., probibit the board from disciplining physicians for prescribing laetrile or SMSO unless the Board of Medical Examiners and the Board of Osteopathic Medical Examiners find laetrile or DMSO to be harmful.

Chapter 458, F.S., also provides for regulation of physician'sassistants (P.A.). The chapter authorizes the board to approval training programs for P.A.'s, and to certify a physician to supervise a P.A.

Finally, the chapter requires unlicensed physicians working in hospitals, including a resident physician, an assistant resident physician, a house physician or an intern to register with DPR in January and July of each year. Hospitals who employ unlicensed physicians are also required to register with DPR. A two-year limit is placed on the practice of unlicensed hospital physicians except for those in approved training programs.

B. Effect of Proposed Changes

Section 1. The intent section is amended to state that the primary, rather than sole, purpose of the chapter is to ensure that physicians meet minimum standards for safe and effective medical practice.

Section 2. The categories of residents and medical faculty certificate holders are deleted from the exemption section of the chapter. These categories are included later in the substantive section of the bill.

This section modifies the exemption regarding emergency care to exclude physicians licensed under this chapter. This would allow disciplinary action pursuant to this chapter. This would allow disciplinary action pursuant to this chapter to be taken against a physician who violates the provisions of this chapter when providing emergency care, but would not modify the provisions regarding civil liability in the Good Samaritan Act, s. 768.13.

Currently, statutory language lists categories of persons who are exempt from the chapter if they are rendering services under the direct and immediate supervision of a physician. Included in the list are physician's trained assistants (which is undefined), registered nurses, or license practical nurses. This bill provides that nothing in this chapter shall probhibit any service rendered by any person under the direct and immediate supervision of a physician. Direct and immediate supervision is defined to require immediate availability of the supervising physician.

Section 3. The definition of "board" is changed from Board of Medical Examiners to Board of Medical Practice.

Section 4. This section adds three members to the board, all of which would be residents of the state who are not, nor have ever been, licensed health care practitioners.

Section 5. A new section containing general licensure requirements is created. Current law contains two categories of full licensure and a variety of restricted licensure or certification categories. Currently, even the basis requirements such as age, moral character, and existence of disciplinary actions taken against the applicant are inconsistently contained in chapter 458. This bill provides requirements which must be met by persons applying for any type of licensure or certification provided by this chapter. These requirements are basic requirements which are supplemented by requirements in the more specific licensure and certification sections. This section requires any person desiring to be licensed or certified to (a) submit an application and fee, (b) be at least 21 years of age, (c) be of good moral character, (d) complete two years of pre-professional postsecondary education, (e) have not violated this or any other medical practice act, and (f) be a graduate of amedical school or college registered by the World Health Organization.

Section 6. In order to become licensed by examination pursuant to this bill a person must (a) complete a one-year internship in an approved program if such person graduated from a certified medical school, or complete a three-year internship in one specialty area if such person graduated from a school which is not certified, (b) Pass either the examination of the Educational Commission for Foreign Medical Graduates (FMGEMS) or the Parts I and II of the National Boards, and (c) Pass either the examination of the Federation of State Medical Boards (FLEX) or Part III of the National Boards within 2 years of application. The language from the Comprehensive Medical Malpractice Reform Act of 1985 which requires passage of the FLEX test within five attempts with a provision that any person that passed the FLEX prior to October 1, 1985, shall not be subject to the requirements of this section. This provision addresses the problem encountered by a number of applicants for licensure who passed theFLEX prior to the effective date of the 1985 legislation, but did not take the requisite education between attempts.

Section 7. In order to become licensed by endorsement, an applicant must complete the approved internships, and pass either the

examination of the Educational Commission for Foreign Medical Graduates or Parts I and II of the National boards, as required for licensure by examination. The applicant must also (a) Pass the FLEX or Part III of the National Boards within 10 years of application, (b) Hold a valid license in some state, (c) Have been licensed in some state within two years of passing the FLEX or Part III of the National Boards and have practiced without interruption of more than one year since initial licensure. An alternate method of licensure by endorsement is provided by the Mayo Clinic provision (ch. 85-56, Laws of Florida).

Section 8. A new section is created to provide for certification of foreign educational institutions. Certification is based upon a finding that a foreign medical school substantially meets the same standards and qualifications of similar institutions accredited in the United States or Canada. The Board of Medical Practice will set standards, promulgate rules, and contract for the review of foreign medical schools. The individual schools desiring certification shall apply to the department andpay a registration fee, not to exceed $1000, at the time of application. Certification is on a biennial basis.

Section 9. This section moves the medical faculty certificate from the exemption section of the bill to the substantive area of the chapter. The certification authorizes practice only in conjunction with teaching duties and only during the holder's relationship with the medical school.

Section 10. The public health certificate section is amended to allow the holder to practice only in conjunction with his employment duties with theDepartmentof Health and Rehabilitative Services rather than the current limitation to practice in the county public health units. Annual renewal is changes to biennial renewal for purposes of consistency with DPR general licensure procedures.

Section 11. The limited licensure section is modified to clarify existing language. Substantive changes include shortening the years of break in active practice required for supervision of limited license holders and granting the board discretion in determining the appropriate period for supervision of limited license holders.

Section 12. Certification of physicians in post graduate training replaces the provision which currently requires registrationof such individuals. This section requires the certificate holders to meet the general licensure provisions and provides DPR with regulatory authority over such persons.

Section 13. This section adds certificates to the renewal section of the chapter and provides for automatic expiration if a certificate or license is not renewed. Continuing education requirements similar to those provided in the Comprehensive Medical Malpractice Act of 1985 are included in this section.

Section 14. This section provides an application fee of $100 for all of the licenses and certificates available to physicians under this

chapter. An examination fee of $500 is provided to cover the cost of the licensure examination. Such fee is refundable if the applicant is ineligible to take the licensure examination. A biennial renewal fee of $250 and reactivation fee of $50 are also provided.

Section 15. This section creates a Medicaid Physicians Trust Fund as a funding source to cover indigent health care. Beginning October 1, 1986, an indigent care assessment of $250 shall be collected in addition to the licensure renewal fee. Beginning October 1, 1987, an indigent care assessment of $500 shall be collected in addition to the licensure renewal fee.

Section 16. This section amends the inactive status section of the chapter to require the board to determine the length of time, not less than 2 nor more than 4 years, within which an inactive license shall automatically expire.

!!xSection 17. This section is amended to codify current practice and reflect the current operational structure of HRS.

Section 18. This section is amended to require that whenever an itemized statement is sent to a third party payor, that a copy of the statement be simultaneously provided to the patient.

Section 19. This section is amended to clarify that physicians must meet the requirements of providing patients with information with information on breast cancer.

Section 20. This section states that, in addition to current acts constituting criminal violations, the practice beyond the scope of specific licenses or certificates may constitute grounds for criminal action. This section also deletes using the name or title "Doctor of Medicine" unless such person holds a valid license. This was recommended by DPR and the Board because the mere graduating from medical scool grants a person a "Doctor of Medicine" degree. Fraudulently altering records, sending or receiving referrals under certain circumstances and receiving kickbacks are added to grounds for misdemeanor criminal action.

Section 21. The disciplinary section is expanded to include actions to be taken against certificate holders, as well as licenses. The following are added as grounds for disciplinary action:

(1) giving false testimony in legal or administrative proceedings

(2) referring patients to any entity in which the physician has any financial interest, unless such physician provide the required notice to his patients

(3) fraudulently altering or destroying medical records. Amended sections incorporate revisions of the impaired professional program, clarify that deceptive, untre or fraudulent representations are not allowed regardless of whether "such scheme or trick fails to conform to the generally prevailing standards of teatment in the medical community, clarify certain language regarding prescribing, supplying,

selling, giving, dispensing or administering certain drugs, and include paramedics and other persons in the list of persons which a physician must adequately supervise.

Penalties which theBoard may ipose are amended to cindlue certification with restrictions, an increase in the maximum available administrative fine, issuance of a letter of concern, and mandatory sentencing for certain acts. The Board is also directed to establish comprehensive disciplinary guidelines.

Section 22. Impaired Professionals

Section 23. This section requires DPR to investigate reports of disciplinary actions taken aginst physicians by hospitals, nursing homes, ambulatory surgical centers, and professional organizations. The fine for failing to report disciplinary action is amended from $1000 for any offense to $1000 for the first offense and $5000 for any offense thereafter.

Section 24. This section includes technical amendments to include "certification" as it relates to physician's consenting to furnish handwriting samples and submitting to mental or physical examinations for regulatory purposes.

Section 25: This section is amended to provide that search warrants need not be served at "reasonable hours".

Section 26. The physician's assistants section is amended to create a Physician's Assistants Committee and to provide for certification of physician's assistants.

II. ECONOMIC IMPACT:

A. Public:

The current copst to the private sector of regulating medical doctors approximates $1.2 to $2.2 million dollars annually in fees. Enactment of this legislation would continue this cost.

This bill also provides $250-$500 assessment from persons renewing licenses. Such assessment shall be used to fund indigent health care.

B. Government:

Regulation of medical doctors is the administrative responsibility of the Department of Profssional Regulation, and would continue to be so if this bill is enacted.

The cost to DPR for regulation is totally covered by fees and fines, and requires no state General Revenue. This situation will continue if this legislation is enacted.

III. STATE COMPREHENSIVE PLAN IMPACT:

This legislation is directly related to the goal that Florida cultivate good health care for its citizens and assure access to quality health care.

IV. COMMENTS:

None.

V. AMENDMENTS:

None.

VI. PREPARED BY: Terry Meek

VII. STAFF DIRECTOR: Brian Deffenbaugh

TM:db

4.c. House of Representatives, Health Care and Insurance Committee, PCB 86-18, (Florida Archives, Series 19, Carton 1529).

FLORIDA DEPARTMENT of STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

I, Judith Ring, Division Director, Division of Library and Information Services, Florida Department of State, hereby certify the records of the Florida Legislature were transferred to the custody of the Florida State Archives pursuant to the provisions of Chapter 257, Florida Statutes, and that I am, by the terms of that transfer, the official custodian of the records.

I further certify that the attached is a true and correct copy of the record in the State Archives of Florida, the original of which may be found in Series 19, carton 1529.

***WITNESS MY SIGNATURE**, this 10th Day of January, 2014.*

***JUDITH RING**, Director*
Division of Library and Information Services

BY: _____
State Archives of Florida

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STORAGE NAME: PCB 86-18/sa

Date: May 4, 1986
Revised: May 19, 1986
Final:

1395

HOUSE OF REPRESENTATIVES
COMMITTEE ON (NAME OF COMMITTEE)
STAFF ANALYSIS

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BILL #: PCB 86-18

RELATING TO: Medical Practice Act

SPONSOR(S): Health Care and Insurance Committee

EFFECTIVE DATE: October 1, 1986

COMPANION BILL(S):

OTHER COMMITTEES OF REFERENCE: (1)

(2)

****

I. SUMMARY:

A. Present

Chapter 458, Florida Statutes, the Medical Practice Act, provides for the regulation and licensing of medical doctors. The act is subject to sunset review under the provisions of s. 11.61, Florida Statutes, and if not reenacted will stand repealed effective October 1, 1986.

Administrative responsibility for the regulation of physicians is given to the Department of Professional Regulation (DPR) by the act, which also creates the Board of Medical Examiners (board) as a 12-member regulatory board with DPR. The board reviews all applications for licensure and determines which applicants are qualified for licensure under the chapter.

Two methods for obtaining an unrestrictive medical license are contained in the act - licensure by examination and licensure by endorsement. In order to be licensed by examination, an applicant must be a graduate of an accredited medical school, complete a one year internship, and pass the Federation Licensing Examination (FLEX) or Part III of the National Boards. However, graduates of unapproved foreign schools may be licensed if they meet an array of specified criteria, depending on which foreign school they attended and upon their training and experience.

Licensure by endorsement requires that an applicant meet the requirements for licensure by examination. Further, the applicant must not have committed an offense which constitutes grounds for discipline under Florida's medical practice act. One additional requirement must be met for licensure by endorsement. The applicant must have passed the FLEX examination or National Board of Medical Examiners Examination (NBME) within the ten years immediately

preceding this application for licensure in Florida. The Mayo Clinic bill (Ch. 85-86 Laws of Florida) provided an avenue through which a limited number of physicians could become licensed by endorsement.

A number of provisions enable practice of medicine in the state without having a full licensure status--the public health certificate (s. 458.316 F.S.), the temporary certificate to practice in areas of critical need (s. 458.315 F.S.), the limited license (s. 458.317, F.S.), and the medical faculty certificate (s. 458.303, F.S.).

In addition to licensure requirements, chapter 458, F.S., also contains a number of special provisions. Such provisions include, s. 458.322, F.S., which requires physicians to indicate as part of their licensure renewal whether they will accept Medicare assignment. This information is published and made available to the general public. Another section, s. 458.324, F.S., requires physicians to inform patients with breast cancer of treatment alternatives available to the patient. Section 458.323, F.S., requires physicians to provide their patients an itemized patient billing, upon request, and sections 458.333 and 458.335, F.S., prohibit the board from disciplining physicians for prescribing laetrile or DMSO under certain conditions.

Chapter 458, F.S., also provides for regulation of physician's assistants (P.A.'s). The chapter authorizes the board to approve training programs for P.A.s, and to certify physicians for supervision of P.A.s.

Finally, the chapter requires unlicensed physicians working in hospitals, including a resident physician, an assistant resident physician, a house physician or an intern to register with DPR in January and July of each year. Hospitals who employ unlicensed physicians are also required to register with DPR. A two-year limit is placed on the practice of unlicensed hospital physicians except for those in approved training programs.

B. Effect of Proposed Changes

Section 1. The intent section is amended to state that the primary, rather than sole, purpose of the chapter is to ensure that physicians meet minimum standards for safe and effective medical practice.

Section 2. The categories of residents and medical faculty certificate holders are deleted from the exemption section of the chapter. These categories are included later in the substantive section of the bill.

This section modifies the exemption regarding emergency care to exclude physicians licensed under this chapter. This would allow disciplinary action pursuant to this chapter to be taken against a physician who violates the provisions of this chapter when providing emergency care, but would not modify the provisions regarding civil liability in the Good Samaritan Act, s. 768.13.

Currently, statutory language lists categories of persons who are exempt from the chapter if they are rendering services under the direct supervision of a physician. Included in the list are physician's trained assistants (which is undefined), registered nurses, or license practical nurses. This bill provides that nothing in this chapter shall prohibit any service rendered by any person under the direct and immediate supervision of a physician. Direct supervision is defined to require availability of the supervising physician, specific direction for any service to be performed, and final approval by the physician for all services performed.

Section 3. The definition of "board" is changed from Board of Medical Examiners to Board of Medical Practice.

Section 4. This section adds three members to the board, two of which would be physicians who have been engaged in the practice of medicine for at least four years immediately prior to their appointment. One of these physician members must practice primarily in the area of geriatric medicine.

Section 5. A new section containing general licensure requirements is created. Current law contains two categories of full licensure and a variety of restricted licensure or certification categories. Currently, even the basic requirements such as age, moral character, and existence of disciplinary actions taken against the applicant are inconsistently contained in chapter 458. This bill provides requirements which must be met by persons applying for any type of licensure or certification provided by this chapter. These requirements are basic requirements which are supplemented by requirements in the more specific licensure and certification sections. This section requires any person desiring to be licensed or certified to (a) submit an application and fee, (b) be at least 21 years of age, (c) be of good moral character, (d) have completed two years of pre-professional postsecondary education as of October 1, 1992, (e) have not violated this or any other medical practice act, and (f) be a graduate of a medical school or college registered by the World Health Organization.

Section 6. In order to become licensed by examination pursuant to this bill a person must (a) Complete a one-year internship in an approved program if such person graduated from a certified medical school, or complete a three-year internship in one specialty area if such person graduated from a school which is not certified, (b) Pass either the examination of the Educational Commission for Foreign Medical Graduates (FMGEMS) or the Parts I and II of the National Boards, and (c) Pass either the examination of the Federation of State Medical Boards (FLEX) or Part III of the National Boards within 2 years of application. The language from the Comprehensive Medical Malpractice Reform Act of 1985 which requires passage of the FLEX test within five attempts is included with a provision that any person that passed the FLEX prior to October 1, 1985, shall not be subject to the requirements of this paragraph. This provision addresses the problem encountered by a number of applicants for licensure who passed the FLEX prior to the effective date of the 1985

legislation, but did not take the requisite education between attempts.

Section 7. In order to become licensed by endorsement, an applicant must complete an approved internship, and pass either the examination of the Educational Commission for Foreign Medical Graduates (FMGEMS) or Parts I and II of the National boards, as required for licensure by examination. The applicant must also: (a) Pass the FLEX or Part III of the National Boards within 10 years of application, (b) Hold a valid license in some state, (c) Have been licensed in some state within two years of passing the FLEX or Part III of the National Boards and have practiced without interruption of more than one year since initial licensure, and (d) have passed the FLEX examination within five attempts, and have completed requisite education after the third and fourth attempts. An alternate method of licensure by endorsement is provided by the Mayo Clinic provision (ch. 85-56, Laws of Florida).

Section 8. A new section is created to provide for certification of foreign educational institutions. Certification is based upon a finding that a foreign medical school substantially meets the same standards and qualifications of similar institutions accredited in the United States or Canada. The board will set standards, promulgate rules, and contract for the review of foreign medical schools. The individual schools desiring certification shall apply to the board and pay a registration fee, not to exceed $1000, at the time of application and shall pay the costs of review and inspection not to exceed $25,000. Certification may be granted on a temporary or full basis. Renewal is required every seven years.

Section 9. This section moves the medical faculty certificate from the exemption section of the bill to the substantive area of the chapter. The certification authorizes practice only in conjunction with teaching duties and only during the holder's relationship with the medical school.

Section 10. The public health certificate section is amended to allow the holder to practice only in conjunction with his employment duties with the Department of Health and Rehabilitative Services rather than the current limitation to practice in the county public health units. Annual renewal is changed to biennial renewal for purposes of consistency with DPR general licensure procedures.

Section 11. The limited licensure section is modified to clarify existing language. Substantive changes include shortening the years of break in active practice required for supervision of limited license holders and granting the board discretion in determining the appropriate period for supervision of limited license holders.

Section 12. Certification of physicians in post-graduate training replaces the provision which currently requires registration of such individuals. This section requires the certificate holders to meet the general licensure provisions and provides DPR with regulatory authority over such persons.

Section 13. This section provides for automatic expiration if a license is not renewed. Continuing education requirements similar to those provided in the Comprehensive Medical Malpractice Act of 1985 are included in this section.

Section 14. This section provides an application fee of $100 for all licenses and certificates available to physicians under this chapter. An examination fee of $500 is provided to cover the cost of the licensure examination. Such fee is refundable if the applicant is ineligible to take the licensure examination. A biennial renewal fee of $250 and reactivation fee of $50 are also provided. (See Economic Impact below for further details.)

Section 15. This section creates a Medicaid Physicians Trust Fund as a funding source to cover indigent health care. Beginning October 1, 1986, an indigent care assessment of $250 shall be collected in addition to the biennial licensure renewal fee. Beginning October 1, 1987, an indigent care assessment of $500 shall be collected in addition to the biennial licensure renewal fee.

Section 16. This section amends the inactive status section of the chapter to require the board to determine the length of time, not less than 2 nor more than 4 years, within which an inactive license shall automatically expire.

Section 17. This section, relating to notice by a physician to DPR, HRS, and the general public of acceptance of Medicare assignment is amended to include notification of participation in the Medicaid program, to codify current practice and to reflect the current operational structure of HRS.

Section 18. This section is amended to require that whenever an itemized statement is sent to a third party payor, that a copy of the statement be simultaneously provided to the patient.

Section 19. This section is created to provide rulemaking authority and guidelines regarding the handling of medical records of physicians when a physician sells or otherwise terminates a practice.

Section 20. This section states that, in addition to current acts constituting criminal violations, the practice beyond the scope of specific licenses or certificates may constitute grounds for criminal action. Fraudulently altering records, sending referrals for health care goods or services to certain entities in which the physician or the physician's employer holds a 10% equity interest unless the physician provides notice to the patient, and receiving kickbacks are added to grounds for misdemeanor criminal action.

Section 21. The disciplinary section is expanded to include actions to be taken against certificate holders, as well as licensees. The following are added as grounds for disciplinary action:

(1) giving false testimony in legal or administrative proceedings,

(2) referring any patient for health care goods or services, to certain entities in which the physician or the physicians employer holds a 10% equity interest unless the physician provides notice to the patient, and

(3) fraudulently altering or destroying medical records.

Amended sections incorporate revisions of the impaired professional program, clarify that deceptive, untrue or fraudulent representations are not allowed regardless of whether "such scheme or trick fails to conform to the generally prevailing standards of treatment in the medical community", clarify certain language regarding prescribing, supplying, selling, giving, dispensing or administering certain drugs, and include paramedics and other persons in the list of persons which a physician must adequately supervise.

Penalties which the board may impose are amended to include certification with restrictions, an increase in the maximum available administrative fine, issuance of a letter of concern, and mandatory sentencing for certain acts. The Board is also directed to establish comprehensive disciplinary guidelines.

Section 22. This section creates an Impaired Practitioners Committee in the Department of Professional Regulation to approve treatment programs for impaired practitioners licensed under chapters 458, 459, 460, 461, 463, 464, 465, 466, 467, 474, 484, and 486. The section provides for consultants to assist in carrying out the provisions of the section, and provides for the probable cause panel of the regulatory board to determine limitations on the scope of practice during treatment. The provision states that no complaint shall be filed for a violation of impairment only if the practitioner is participating in the program. Under this section, impairment may be considered a mitigating factor in other related violations. Finally, the section provides criminal penalties for collaboration between a practitioner and a treatment provider or consultant.

Section 23. This section requires DPR to investigate reports of disciplinary actions taken aginst physicians by hospitals, nursing homes, ambulatory surgical centers, and professional organizations. The fine for failing to report disciplinary action is amended from $1000 for any offense to $1000 for the first offense and $5000 for any offense thereafter.

Section 24. This section includes technical amendments to include "certification" as it relates to physician's consenting to furnish handwriting samples and submitting to mental or physical examinations for regulatory purposes.

Section 25. This section is amended to provide that search warrants need not be served at "reasonable hours".

Section 26. The physician's assistants section is amended to create a Physician's Assistants Committee and to provide for certification of physician's assistants.

II. ECONOMIC IMPACT:

A. Public:

Currently, chapter 458 provides for a fee of up to $400 for licensure by examination and licensure by endorsement, a fee of $100 for a temporary certification to practice in areas of critical need and a limited license and a fee of up to $25 for a public health certifcate and a medical faculty certificate. Currently, the Board assesses a $100 biennial renewal fee of Florida residents. A fee of up to $50 is paid for renewal of medical faculty certificates. Currently, out-of-state physicians are required to pay a $1000 fee for licensure by examination, licensure by endorsement and renewal. In February, 1986, the Federal District Court declared the $1000 fee for out-of-state physicians unconstitutional. This provision has been deleted from the bill. This bill provides a $100 application fee for all licenses and certificates available to physicians under this chapter, an examination fee of $500 for the cost of the licensure examination required in 458.311, a renewal fee of $250, and a reactivation fee of $50.

This bill also provides $250-$500 assessment from persons renewing licenses. Such assessment shall be used to fund indigent health care.

B. Government:

Regulation of medical doctors is the administrative responsibility of the Department of Professional Regulation, and would continue to be so if this bill is enacted.

The cost to DPR for regulation is totally covered by fees and fines, and requires no state General Revenue. This situation will continue if this legislation is enacted.

III. STATE COMPREHENSIVE PLAN IMPACT:

This legislation is directly related to the goal that Florida cultivate good health care for its citizens and assure access to quality health care.

IV. COMMENTS:

None.

V. AMENDMENTS:

None.

VI. PREPARED BY: Terry Meek TM

VII. STAFF DIRECTOR: Brian Deffenbaugh BD

STATE OF FLORIDA
HOUSE OF REPRESENTATIVES

Prepared 5/25/86
by the Committee on
Appropriations

1986
FISCAL NOTE

HB 1395
Bill Number

In compliance with Rule 7.16, there is hereby submitted a fiscal note on the above listed bill relative to the effect on revenues, expenditures, or fiscal liability of the State, and of Local Governments as a whole.

I. DESCRIPTION OF BILL

A. Fund or Tax Affected

Professional Regulation Trust Fund
Medicaid Physicians Trust Fund

B. Principal Agency Affected

Department of Professional Regulation
Board of Medical Examiners
Department of Health & Rehabilitative Services

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C. Narrative Summary

This bill revises Chapter 458, Florida Statutes, governing the regulation of medical practices, scheduled for repeal October 1, 1986. The bill makes the following changes to the law:

1. Changes the name of the Board of Medical Examiners to the Board of Medical Practice and increases the number of Board members to 15.

2. Requires persons desiring to be licensed or certified to:

   (a) Submit an application and fee;
   (b) Be at least 21 years of age;
   (c) Be of good moral character;
   (d) Have completed two years of pre-professional postsecondary education as of October 1, 1992;
   (e) Have not violated this or any other medical practice act; and
   (f) Be a graduate of a medical school or college registered by the World Health Organization.

3. Requires persons desiring to become licensed by examination to:

   (a) Complete a one-year internship in an approved program if such person graduated from a certified medical school, or complete a three-year internship in one specialty area if such person graduated from a school which is not certified;

   (b) Pass either the examination of the Educational Commission for Foreign Medical Graduates (FMGEMS) or the Parts I and II of the National Boards, and

   (c) Pass either the examination of the Federation of State Medical Boards (FLEX) or Part III of the National Boards within two years of application.

4. Requires persons desiring to become licensed by endorsement to complete an approved internship, and pass either the examination of the Educational Commission for Foreign Medical Graduates (FMGEMS) or Parts I and II of the National Boards, as required for licensure by examination. The applicant must also:

   (a) Pass the FLEX or Part III of the National Boards within 10 years of application;

   (b) Hold a valid license in some state;

(c) Have been licensed in some state within two years of passing the FLEX or Part III of the National Boards and have practiced without interruption of more than one year since initial licensure; and

(d) Have passed the FLEX examination within five attempts, and have completed requisite education after the third and fourth attempts.

The bill provides for certification of foreign educational institutions. The board will set standards, promulgate rules and contract for the review of foreign medical schools. Individual schools desiring certification will be required to apply to the board and pay a registration fee, not to exceed $1,000, at the time of application and shall pay the costs of review and inspection not to exceed $25,000. Certification may be granted on a full or temporary basis and renewal is required every seven years.

The bill makes the following changes with respect to limited licenses:

1. Holders of the medical faculty certificate are authorized to practice only in conjunction with teaching duties and only during the holder's relationship with the medical school.

2. Holders of the public health certificate are allowed to practice only in conjunction with employment duties with the Department of Health and Rehabilitative Services rather than the current limitation to practice in the county public health units.

3. Holder of certificates for post-graduate training are required by the bill to meet the general licensure provisions.

The bill provides for an application fee of $100 for all licenses and certificates. The bill provides a licensure examination fee of $500. The examination fee is refundable if the applicant is ineligible to take the examination. The bill further provides a biennial renewal fee of $250 and a reactivation fee of $50.

The bill creates a Medicaid Physicians Trust Fund as a funding source to cover indigent health care. Beginning October 1, 1986, an indigent care assessment of $250 shall be collected in addition to the biennial licensure renewal fee. Beginning October 1, 1987, an indigent care assessment of $500 shall be collected in addition to the biennial licensure renewal fee. Also, beginning October 1, 1986, the Department of Health and Rehabilitative Services is to develop and implement a plan to raise, to the extent that funds are available in the Medicaid Physicians Trust Fund, the reimbursement provided to physicians under the Medicaid program.

The bill requires the Department of Professional Regulation to investigate reports of disciplinary action taken against physicians by hospitals, nursing homes, ambulatory surgical centers, and professional organizations. The fine for failing to report disciplinary action is amended from $1,000 for any offense to $1,000 for the first offense and $5,000 thereafter.

The bill creates the Phyaician's Assistant Committee and provides for certification of physician's assistants.

Effective Date: October 1, 1986

II. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS

A. Recurring or Annualized Continuation Effects

REVENUES	1986-87	1987-88	1988-89
Department of Professional Regulation:			
Application and Exam Fees	$540,000	$6,227,500	$540,000
Application Fees from Foreign Institutions	10,000	5,000	5,000
Reimbursements from Foreign Institutions for Certification Reviews	250,000	125,000	125,000
Total Recurring Revenues	$800,000	$6,357,500	$670,000
Department of Health & Rehabilitative Services:			
Physician Assessments for Medicaid Reimbursements and Medicaid Title XIX - SSA	$852,273	$31,818,182	$31,818,182
EXPENDITURES			
Department of Professional Regulation:			
Costs for Licensing and Examinations	$360,000	$360,000	$405,000
Expenses for Reviewing Foreign Institutions for Certification	250,000	125,000	125,000
Expenses for 3 additional Members of the Board of Medical Practice	12,600	12,600	12,600
Technical Advisory Group for Foreign Institution Certification	4,800	4,800	4,800
Total Expenditures	$627,400	$502,400	$547,400
Department of Health & Rehabilitative Services:			
Increased Medicaid Physician Reimbursement	$852,223	$31,818,182	$31,818,182

B. Appropriations Consequences

Professional Regulation Trust Fund:			
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Medicaid Physicians Trust Fund	$375,000	$14,000,000	$14,000,000
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Total	$852,223	$31,818,182	$31,818,182

III. DIRECT IMPACT ON THE PRIVATE SECTOR

A. Direct Private Costs

The first year's assessment, in addition to license renewal fees for physicians and osteopaths, will be $250, with an estimated 2,000 renewals, yielding private sector costs of $375,000. The second year's assessment, in addition to license renewal fees for physicians and osteopaths, will be $500, with an estimated 28,000 renewals, yielding $14 million.

IV. COMMENTS

None

Anthony P. Cirillo
Staff Director

Joe E. Neeley
Staff Analyst

SUMMARY OF AMENDMENTS

#1 - Authority to make rules.--

- o states that the board shall not adopt rules which do no retroactively apply to persons who are in the classroom or residency phases of medical education

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- o Arguments :

  - Pro - A person who enters medical training should know what licensure standards apply to him

  - Con - Licensure standards are established in the bill and by rule. This creates unequal standards and denies the existence of such standards for a selected group of applicants.

  - Neutral - As worded, implementation of this amendment might be difficult because the board could have difficulty defining how to apply the interruption of medical education language.

#2 - Licensure by examination.--

- o Florida residents whose academic credentials have been evaluated by ECFMG or the board may opt to complete a one year course developed by a school of medicine and administered by the department in lieu of ECFMG or FMGEMS. Graduate "may" take the FLEX prior to residency. All graduates must complete approved post graduate training of at least three years in one specialty area.

- o Arguments

  - Pro - Certain persons have had difficulty becoming licensed in the state. One reason is the difficulty passing the ECFMG or FMGEMS examination. This would facilitate the licensure of these persons.

  - Con - This creates unequal standards for licensure and may not adequately protect the public. There may be a concern that persons in other states who have been unable to pass the ECFMG may move to Florida for licensure (limited to "the effective date of this act")

  - Neutral - two technical amendments may be desired. The bill, HB 1395, changes the "Board of Medical Examiners" to the "Board of Medical Practice" and changes "residency and internship" to post graduate training.

#3 - Exile amendment

- Allows a restricted (one year) license to be issued to an applicant who passes the Florida Board Examination and either:

(a)	OR	(b)
graduate from country which does not maintain diplomatic relations with US		obtained a certificate of completion from program established by 74-105 prior to 1/1/80
similar education as approved United States Medical Programs		
3 year Florida resident		
practiced medicine in foreign country		
either ECFMG/FMGEMS/ or one year Univ. of Miami course (75-105)		

- Pro - Certain persons have had difficulty becoming licensed in the state. Some have taken the course offerred pursuant to 74-105 and have been unable to become licensed.

- Con - This provision allows licensure without taking the examination (ECFMG, FMGEMS, or FLEX), but requires only the completion of a one year course with no criteria given for performance in the course.

- Comments

  - The Florida Board Examination was given pre-Flex (1979-80). It is currently not being given. The test was shorter and smaller in scope than the FLEX.

  - This bill allows an unlimited number of attempts of the examination, unlike the five time limit on the FLEX

  - "Approved United States Medical Programs" is a term which is undefined in the bill. An amendment to state "accredited medical schools" may be appropriate, if that is the intent.

  - The bill requires licensure if a country with which the US has no diplomatic relations gave a medical education which was substantially

similar to that of US programs. It is uncertain how one would determine the similarity of programs in a country with which the US has no diplomatic relations. It is also uncertain how to track the everchanging relations which the US has with foreign countries.

- The amendment requires three years of residency in Florida. The current bill requires for licensure by endorsement that physicians maintain a practice uninterrupted for a period of not more than two years to ensure current fitness to practice. This appears to be facially inconsistent with the policy set forth in licensure by endorsement.

- The three year residency requirement may have US constitutional problems.

- The course from 74-105 (source DPR) was a one year course administered by the Department of Education. No exams were given. Certification was based on affidavit by the student that he/she attended class 75% of the time.

#4 Certification of Foreign Medical Schools

SUBSTITUTE AMENDMENT

#5 Referrals to entity in which physician or physician's employer has an equity interest

o This language reflects a compromise from several positions regarding discipline of physicians which maintain an interest in clinical labs or other entities which offer health care goods or services. This amendment requires notification of the interest and expression of the patient's right to purchase services elsewhere.

#6 - #9 - Series of amendments which conform the "Impaired Practitioner" section to the Senate bills in this area. (Including chapter 457 (acupuncture) and adding consultant authority to determine progress in the program)

#11 - Early repeal of section concerning requirement in licensure by endorsement section which requires active practice in Florida for one year within three years of licensure. This provision is deleted in the bill, early repeal would prevent the loss of license of several physicians.

#12 - title amendment

#13 - Addition to disciplinary section which prohibits physicians from refusing to provide care to litigious patients

STATE OF FLORIDA
HOUSE OF REPRESENTATIVES

Prepared 5/31/86
by the Committee on
Appropriations

1986
FISCAL NOTE

CS/HB 1395
Bill Number

In compliance with Rule 7.16, there is hereby submitted a fiscal note on the above listed bill relative to the effect on revenues, expenditures, or fiscal liability of the State, and of Local Governments as a whole.

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IV. COMMENTS

None

Anthony P. Carlher
Staff Director

Joel E. Maclay
Staff Analyst

This is the bill created pursuant to the sunset review of the Medical Practice Act. The bill streamlines the currently complex licensure sections of chapter 458, enhances the disciplinary section of the chapter, provides for certification of physicians assistants, provides a process for treatment and discipline of impaired physicians, and updates many of the provisions of chapter 458.

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MAJOR PROVISIONS

o Licensure

- eliminates inconsistencies in the current law by creating a section containing general licensure and certification requirements

- streamlines the licensure by examination and licensure by endorsement sections

- maintains the restricted licensure and certification sections such as the limited license (retirees), public health certificate, medical faculty certificate and creates certification, rather than registration for physicians in post-graduate training

o Certification of Foreign Medical Schools

- provides equivalent treatment of graduates of "accredited" (American and Canadian) schools and graduates of foreign medical schools which are certified by the state

- provides a system for certification of foreign medical schools

o Discipline

- adds grounds for discipline in both the criminal and administrative law sections of the chapter

- new offenses include giving false testimony, referring patients for goods and services under certain circumstances, and fraudulently altering or destroying medical records

- o Impaired Professionals
  - creates an Impaired Practitioners Committee in DPR which provides for treatment and discipline of of nurses, osteopaths, physicians and other regulated health care practitioners
- o Physician Assistants
  - eliminates barriers to certification of physician assistants
  - creates a physician assistants committee which reports to the board

GENERAL LICENSURE

1. application/fee
2. 21 years
3. good moral character
4. 2 years pre-professional postsecondary education (after 1992)
5. no violations of this chapter
6. no investigation for violations of practice acts of other jurisdictions
7. no license denied, revoked, suspended
8. graduate from medical school recognized by U.S. Office of Education or WHO

LICENSURE BY EXAMINATION

1. Internship
   a. 1 year - if graduate of accredited or certified school
   b. 3 years - if graduate of unaccredited/uncertified school
2. ECFMG (FMGEMS) or Parts I and II of the Boards
3. FLEX or Part III of the Boards
4. Must have taken the FLEX or Part III within 2 years of application
5. 5 time limit on FLEX - October 1, 1985 grandfather- continuing education required between the 3rd and 4th attempt

---

~~FIFTH PATHWAY~~ Graduates of Mexican Schools

1. undergraduate in US college
2. studied in WHO medical school
3. complete requirements of the medical school except the internship or social service requirement
4. Pass Part I of Boards or ECFMG (FMGEMS)
5. 1 year supervised clinical training in hospital affiliated with a medical school and approved by the Council of Medical Education
6. Pass Part II of the Boards of ECFMG (FMGEMS)

IMPORTANT: OUR BILL HAS A BUILT IN REPEAL OF THIS SECTION IN 1991.

LICENSURE BY ENDORSEMENT

1. Internship
   a. 1 year - if graduate of accredited or certified school
   b. 3 years - if graduate of unaccredited/uncertified school
2. ECFMG (FMGEMS) if graduate of unaccredited school
3. FLEX or Part III of the Boards within 10 years of application
4. Be licensed in at least one U.S. jurisdiction
5. Have actively and continuously engaged in the practice of medicine with 2 years of passing FLEX/Part III and practice uninterrupted for a period totaling no more than 1 year

---

MAYO CLINIC

1. Be licensed by examaniation in at least one state with substantially equivalent standards - passed with at least Florida's passing score
2. Hold a license in any state
4. Have practiced 4 of preceeding 5 years
5. Be a certified specialist of a specialty board of Council of Medical Education
6. Hold a faculty appointment in LCME accredited medical school
7. Be employed full-time and exclusively by not-for-profit corporation described in s.617.01(3)(a)

5. Chapter 89-374, Section 5

FLORIDA DEPARTMENT of STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

This is to certify that this is a true copy made from:

Laws of Florida Chapter 89-374, Section 5

Located in the Florida Public Documents collection of the State Library of Florida and is available for inspection at the State Library of Florida. Certified this10th day of January, 2014.

By: _____ (Cheri Ellison)
(Signature)

Acquisitions Librarian
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VIVA FLORIDA 500

466.037—Suspension and revocation; administrative fine.—The department may suspend or revoke the certificate of any dental laboratory registered under s. 466.032, for failing to comply with the provisions of this chapter or rules adopted by the department under this chapter. The department may impose an administrative fine not to exceed $500 for each count or separate offense.

Section 4. Section 466.038, Florida Statutes, is amended to read:

466.038 Rules.—

The department may, upon consultation with the Board of Dentistry and industry representatives of the dental laboratory profession, promulgate all rules necessary to enforce the provisions of this chapter pertaining to and regulating dental laboratories.

Section 5. Paragraphs (d) and (f) of subsection (1), and subsections (5) and (6) of section 458.311, Florida Statutes, 1988 Supplement, are amended, subsections (7), (8) and (9) are renumbered as subsections (6), (7) and (8) respectively, and a new subsection (9) is added to said section, to read:

458.311 Licensure by examination; requirements; fees.—

(1) Any person desiring to be licensed as a physician shall apply to the department to take the licensure examination. The department shall examine each applicant whom the board certifies:

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

(f) Meets one of the following medical education and postgraduate training requirements:

3.a. Is a graduate of a foreign medical school which has not been certified pursuant to s. 458.314;

b. Has had his medical credentials evaluated by the Education Commission on Foreign Medical Graduates, holds an active, valid certificate issued by that commission, and has passed the examination utilized by that commission ~~Foreign Medical Graduate Examination in the Medical Sciences or the Education Commission for Foreign Medical Graduates Examination~~; and

c. Has completed an approved residency of at least 1 year; however, after October 1, 1992, the applicant shall have completed an approved residency of at least 3 years in one specialty area.

(3) Notwithstanding the provisions of paragraph (1)(f)3., a graduate of a foreign medical school need not present the certificate issued by the Educational Commission for Foreign Medical Graduates or pass the examination utilized by that commission ~~Foreign Medical Graduate Examination in the Medical Sciences or the Educational Commission for Foreign Medical Graduates examination~~ if he:

(a) Has completed undergraduate work in an accredited United States college or university.

(b) Has studied at a medical school which is recognized by the World Health Organization.

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(c) Has completed all of the formal requirements of the foreign medical school, except the internship or social service requirements, and has passed part I of the National Board of Medical Examiners examination or the Educational Commission for Foreign Medical Graduates examination equivalent.

(d) Has completed an academic year of supervised clinical training in a hospital affiliated with a medical school approved by the Council on Medical Education of the American Medical Association and upon completion has passed part II of the National Board of Medical Examiners examination or the Educational Commission for Foreign Medical Graduates examination equivalent.

~~(5) The department shall issue a license to any applicant who has met the requirements of this section and has obtained a passing score, as established by rule of the board, on the licensure examination of the Federation of State Medical Boards of the United States, Inc. (FLEX) or on part III of the examination of the National Board of Medical Examiners; however, the FLEX or part III of the national board examination shall have been passed within 10 years immediately preceding the filing of his application for licensure under this section.~~

(5)~~(6)~~ The board may not certify to the department for licensure any applicant who is under investigation in another jurisdiction for an offense which would constitute a violation of this chapter until such investigation is completed. Upon completion of the investigation, the provisions of s. 458.331 shall apply. Furthermore, the department may not issue an unrestricted license to any individual who has committed any act or offense in any jurisdiction which would constitute the basis for disciplining a physician pursuant to s. 458.331. When the board finds that an individual has committeed an act or offense in any jurisdiction which would constitute the basis for disciplining a physician pursuant to s. 458.331, then the board may enter an order imposing one or more of the terms set forth in subsection (9).

(8)~~(9)~~ Notwithstanding any of the provisions of this section, the department shall issue a restricted license to any applicant who successfully completes the Florida Board Examination and who the board certifies has met the criteria of subparagraph (a)1. or subparagraph (a)2. as follows:

(a)1.a. Is a graduate of a foreign medical institution located in a country in the Western Hemisphere with which the United States does not maintain diplomatic relations;

b. Received a medical education which was substantially similar at the time of the applicant's graduation to approved United States Medical Programs;

c. Has resided in Florida for at least 3 years immediately preceding his application;

d. Practiced medicine in a foreign country from which he immigrated to the United States of America and has lawful immigration status, including employment authority; and

e. Successfully completed the examination utilized by the Educational Commission for Foreign Medical Graduates ~~Examination or Foreign Medical Graduate Examination in the Medical Sciences~~ or successfully completed a course developed by the University of Miami for physician training equivalent to the course developed for such purposes pursuant to chapter 74-105, Laws of Florida; or

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2. Obtained a certificate of completion from the program established at the first accredited medical school pursuant to chapter 74-105, Laws of Florida, prior to January 1, 1982.

(9) When the board determines that any applicant for licensure by examination has failed to meet, to the board's satisfaction, each of the appropriate requirements set forth in this section it may enter an order requiring one or more of the following terms:

(a) Refusal to certify to the department an application for licensure, certification, or registration;

(b) Certification to the department of an application for licensure, certification, or registration with restrictions on the scope of practice of the licensee; or

(c) Certification to the department of an application for licensure, certification, or registration with placement of the physician on probation for a period of time and subject to such conditions as the board may specify, including, but not limited to, requiring the physician to submit to treatment, attend continuing education courses, submit to reexamination, or work under the supervision of another physician.

Section 6. Paragraph (a) of subsection (1), and subsections (5) and (8) of section 458.313, Florida Statutes, 1988 Supplement, are amended, and a new subsection (8) is added to said section, to read:

458.313 Licensure by endorsement; requirements; fees.—

(1) The department shall issue a license by endorsement to any applicant who, upon applying to the department and remitting a fee not to exceed $400 set by the board, demonstrates to the board that he has met the qualifications for licensure in s. 458.311(1)(b)-(f) and:

(a) Has obtained a passing score, as established by rule of the board, on the licensure examination of the Federation of State Medical Boards of the United States, Inc. (FLEX) or on the examination of the National Board of Medical Examiners, provided that said examination required shall have been so taken within the 10 years immediately preceding the filing of his application for licensure under this section, and shows evidence of the active licensed practice of medicine in another jurisdiction, for at least 2 of the immediately preceding 4 years, or completion of board-approved postgraduate training within the year preceding the filing of an application for licensure ~~within the previous 4 years~~; or

~~(5) A license so issued by endorsement shall become void and of no force and effect unless the recipient utilizes the same by actively engaging in the practice of medicine in this state within 3 years after issuance of the license and continues his practice in this state for a minimum period of 1 year. Use and residence may be postponed until the holder has been discharged from military service of the United States.~~

(7)~~(8)~~ The department shall not issue a license by endorsement to any applicant who is under investigation in any jurisdiction ~~another state~~ for an act or offense which would constitute a violation of this chapter until such time as the investigation is complete, at which time the provisions of s. 458.331 shall apply. Furthermore, the department may not issue an unrestricted license to any individual who has committed any act or offense in any jurisdiction which would constitute

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5.a. House of Representatives Committee on Regulatory Reform, Staff Analysis and Economic Impact Statement, Bill No. 1427, Relating to Medical Practice, Companion Bill SB 1150 (Florida Archives, Series 19, Carton 2034).

FLORIDA DEPARTMENT of STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

I, Judith Ring, Division Director, Division of Library and Information Services, Florida Department of State, hereby certify the records of the Florida Legislature were transferred to the custody of the Florida State Archives pursuant to the provisions of Chapter 257, Florida Statutes, and that I am, by the terms of that transfer, the official custodian of the records.

I further certify that the attached is a true and correct copy of the record in the State Archives of Florida, the original of which may be found in Series 19, carton 2034.

***WITNESS MY SIGNATURE**, this 10th Day of January, 2014.*

***JUDITH RING**, Director*
Division of Library and Information Services

BY: _____
State Archives of Florida

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STORAGE NAME: HB 1427.RR
DATE: April 7, 1989

HOUSE OF REPRESENTATIVES
COMMITTEE ON REGULATORY REFORM
STAFF ANALYSIS & ECONOMIC IMPACT STATEMENT

BILL #: 1427

RELATING TO: Medical Practice

SPONSOR(S): D. L. Jones

EFFECTIVE DATE: October 1, 1989

COMPANION BILL(S): SB 1150

OTHER COMMITTEES OF REFERENCE: (1) Appropriations

(2)

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Series 19 Carton 2034

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I. SUMMARY:

The bill amends the Medical Practice Act, Chapter 458, Florida Statutes, modifying provisions relating to licensure of physicians by examination and by endorsement; provides grounds for disciplinary action relating to the practice of medicine; and provides for the registration of certain fellows by hospitals.

The bill also amends Chapter 459 relating to Osteopathy by prohibiting sexual misconduct and establishing disciplinary procedures.

A. PRESENT SITUATION:

The Board of Medicine has to certify to the Department of Professional Regulation each person applying to take the licensure examination to be licensed as a physician. The board certifies, amongst other criteria, that the person has not committed any act or offense in any jurisdiction which would constitute the basis for disciplining a physician. The board may not certify an applicant who is under investigation in another jurisdiction for any offense which would constitute a violation of Chapter 458, Florida Statutes.

The examination for licensure of the Federation of State Medical Boards of the United States, Inc. (FLEX) shall have been taken within the 10 years immediately preceding the filing of the application.

A license issued by endorsement shall become void unless the recipient utilizes the license by actively engaging in the practice of medicine in Florida within 3 years after the issuance of the license and continues the practice for a minimum period of 1 year. The department may not issue a license by endorsement if the applicant is under investigation in any other state for an offense which would constitute a violation of Chapter 458,

Florida Statutes.

Any licensee convicted or found guilty of a crime in any jurisdiction, regardless of adjudication, which relates to the practice of medicine shall constitute grounds for disciplinary action by the board.

The Medical Practice Act requires that any person desiring to practice as a resident physician, assistant resident physician, house physician, or intern who does not hold a valid, active license must register with the department and pay a fee of $100. The board shall certify that the applicant has met the requirements of the law. Each hospital employing such persons is required to furnish the department with a list of employees and other information as the board may direct.

Chapter 459, Florida Statutes, relates to the practice of osteopathic medicine. The Board of Osteopathic Medical Examiners is responsible for the licensure and discipline of practitioners under this chapter.

B. EFFECT OF PROPOSED CHANGES:

The bill would prohibit the department from issuing an unrestricted license to any person who has committed any act or offense in any jurisdiction which would constitute the basis for disciplining a physician in Florida. It allows the board to refuse to certify or certify with restriction or specifications applicants for licensure to the department who have failed to meet the appropriate requirements set forth in law.

An applicant for licensure by endorsement would no longer be required to have taken the FLEX examination within the 10 years immediately preceding the filing of his application for licensure, but the applicant would have to show evidence of the active practice of medicine in another jurisdiction, for at least 2 of the immediately preceding 4 years, or completion of board-approved postgraduate training with the year preceding the filing of an application for licensure. Also, a licensee by endorsement would no longer be required to practice within Florida 3 years after the issuance of the license and continue to practice in this state for a minimum period of 1 year.

The bill clarifies that a plea of nolo contendere constitutes grounds for which disciplinary action may be taken by the board. It also provides that disciplinary action may be taken for failing to report to the board, in writing, within 30 days if one's license to practice medicine in another state, territory, or country has been revoked, suspended, or otherwise acted against, including the denial of licensure.

Fellow in fellowship training which leads to subspecialty board certification is added to those who can practice without a valid, active license and requires the hospital to include them to the department on the list of the hospitals employees.

The bill would prohibit sexual misconduct in the practice of osteopathic medicine. Requires a facility to complete its investigation or inquiry if a physician resigns or withdraws from privileges and requires the facility to notify DPR of the resignation or withdrawal if the completed investigation results in a finding that the law was violated.

Includes any new sections added to Chapter 459, Florida Statutes, to be included in the Sunset review scheduled for 1996.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring or First Year Start-Up Effects:

   none

2. Recurring or Annualized Continuation Effects:

   none

3. Long Run Effects Other Than Normal Growth:

   none

4. Appropriations Consequences:

   none

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring or First Year Start-Up Effects:

   none

2. Recurring or Annualized Continuation Effects:

   none

3. Long Run Effects Other Than Normal Growth:

   none

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

   none

2. Direct Private Sector Benefits:

none

3. Effects on Competition, Private Enterprise, and Employment Markets:

The holder of a license by endorsement would no longer be required to relocate to Florida within 3 years of issuance of the license and continue his practice for a minimum period of 1 year.

D. FISCAL COMMENTS:

none

III. LONG RANGE CONSEQUENCES:

none

IV. COMMENTS:

There is a need for a "technical" amendment on page 7, line 23; incorrect reference; should read: (1).

V. AMENDMENTS:

none

VI. SIGNATURES:

SUBSTANTIVE COMMITTEE:
Prepared by: Jim Cordero

Staff Director: Patrick "Booter" Imhof

SECOND COMMITTEE OF REFERENCE:
Prepared by:

Staff Director:

APPROPRIATIONS:
Prepared by:

Staff Director:

STORAGE NAME: H1427s.RR
DATE: April 11, 1989

HOUSE OF REPRESENTATIVES
COMMITTEE ON REGULATORY REFORM
STAFF ANALYSIS & ECONOMIC IMPACT STATEMENT

BILL #: CS/HB1427

RELATING TO: Medical Practice

SPONSOR(S): Regulatory Reform and D. L. Jones

EFFECTIVE DATE: October 1, 1989

COMPANION BILL(S): SB 1150

OTHER COMMITTEES OF REFERENCE: (1) Appropriations

(2)

****

I. SUMMARY:

The bill amends the Medical Practice Act, Chapter 458, Florida Statutes, modifying provisions relating to licensure of physicians by examination and by endorsement; provides grounds for disciplinary action relating to the practice of medicine; and provides for the registration of certain fellows by hospitals.

The bill also amends Chapter 459 relating to Osteopathy by prohibiting sexual misconduct and establishing disciplinary procedures. Clarifies that at violation connected to the impairment means a violation committed in order to obtain the misused or abused drug.

A. PRESENT SITUATION:

The Board of Medicine has to certify to the Department of Professional Regulation each person applying to take the licensure examination to be licensed as a physician. The board certifies, amongst other criteria, that the person has not committed any act or offense in any jurisdiction which would constitute the basis for disciplining a physician. The board may not certify an applicant who is under investigation in another jurisdiction for any offense which would constitute a violation of Chapter 458, Florida Statutes.

An applicant for licensure by endorsement must have taken examination by the Federation of State Medical Boards of the United States, Inc. (FLEX) within the 10 years immediately preceding the filing of the application.

A license issued by endorsement shall become void unless the recipient utilizes the license by actively engaging in the practice of medicine in Florida within 3 years after the issuance of the license and continues the practice for a minimum period of 1 year. The department may not issue a license by endorsement if

the applicant is under investigation in any other state for an offense which would constitute a violation of Chapter 458, Florida Statutes.

Any licensee convicted or found guilty of a crime in any jurisdiction, regardless of adjudication, which relates to the practice of medicine shall constitute grounds for disciplinary action by the board.

The Medical Practice Act requires that any person desiring to practice as a resident physician, assistant resident physician, house physician, or intern who does not hold a valid, active license must register with the department and pay a fee of $100. The board shall certify that the applicant has met the requirements of the law. Each hospital employing such persons is required to furnish the department with a list of employees and other information as the board may direct.

Chapter 459, Florida Statutes, relates to the practice of osteopathic medicine. The Board of Osteopathic Medical Examiners is responsible for the licensure and discipline of practitioners under this chapter.

B. EFFECT OF PROPOSED CHANGES:

The bill would prohibit the department from issuing an unrestricted license to any person who has committed any act or offense in any jurisdiction which would constitute the basis for disciplining a physician in Florida. It allows the board to refuse to certify or certify with restriction or specifications applicants for licensure to the department who have failed to meet the appropriate requirements set forth in law.

An applicant for licensure by endorsement would now have to show evidence of the active practice of medicine in another jurisdiction, for at least 2 of the immediately preceding 4 years, or completion of board-approved postgraduate training with the year preceding the filing of an application for licensure. Also, a licensee by endorsement would no longer be required to practice within Florida 3 years after the issuance of the license and continue to practice in this state for a minimum period of 1 year.

The bill clarifies that a plea of nolo contendere constitutes grounds for which disciplinary action may be taken by the board. It also provides that disciplinary action may be taken for failing to report to the board, in writing, within 30 days if one's license to practice medicine in another state, territory, or country has been revoked, suspended, or otherwise acted against, including the denial of licensure.

Fellow in fellowship training which leads to subspecialty board certification is added to those who can practice without a valid, active license and requires the hospital to include them to the department on the list of the hospitals employees.

The bill would prohibit sexual misconduct in the practice of osteopathic medicine. Requires a facility to complete its investigation or inquiry if a physician resigns or withdraws from privileges and requires the facility to notify DPR of the resignation or withdrawal if the completed investigation results in a finding that the law was violated. Clarifies that at violation connected to the impairment means a violation committed in order to obtain the misused or abused drug.

Includes any new sections added to Chapter 459, Florida Statutes, to be included in the Sunset review scheduled for 1996.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring or First Year Start-Up Effects:

   none

2. Recurring or Annualized Continuation Effects:

   none

3. Long Run Effects Other Than Normal Growth:

   none

4. Appropriations Consequences:

   none

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring or First Year Start-Up Effects:

   none

2. Recurring or Annualized Continuation Effects:

   none

3. Long Run Effects Other Than Normal Growth:

   none

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

   none

2. Direct Private Sector Benefits:

none

3. Effects on Competition, Private Enterprise, and Employment Markets:

The holder of a license by endorsement would no longer be required to relocate to Florida within 3 years of issuance of the license and continue his practice for a minimum period of 1 year.

D. FISCAL COMMENTS:

none

III. LONG RANGE CONSEQUENCES:

none

IV. COMMENTS:

There is a need for a "technical" amendment on page 7, line 23; incorrect reference; should read: (1).

V. AMENDMENTS:

none

VI. SIGNATURES:

SUBSTANTIVE COMMITTEE:
Prepared by:

Jim Cordero

Staff Director:

Patrick "Booter" Imhof

SECOND COMMITTEE OF REFERENCE:
Prepared by:

Staff Director:

APPROPRIATIONS:
Prepared by:

Staff Director:

COMMITTEE INFORMATION RECORD
House of Representatives

Committee on Regulatory Reform
Date of Meeting April 12, 1989
Time 1:15 P.M.
Place Morris Hall

Bill No.: HB 1427

FINAL ACTION:
___ Favorable
___ Favorable with ____ Amendments
X Favorable with Substitute
___ Unfavorable

VOTE:

YEA	MEMBER	NAY
	Abrams (A)	
X	Arnall	
	Brown (A)	
X	Dantzler	
X	Deutsch	
X	Flagg	
X	Graber	
X	Grindle	
X	Jones, D.L.	
X	Langton	
X	Lawson	
X	Mackey	
X	Morse	
X	Mortham	
X	Nergard	
X	Rudd	
X	Safley	
X	Sansom	
X	Tobin	

YEA	MEMBER	NAY
X	Valdes	
X	Kelly, Chairman	

Total Yeas 19

Total Nays 0

IF PRESENT, MEMBER WOULD HAVE VOTED:

Chairman

APPEARANCE RECORD

The following persons (other than legislators) appeared before the committee during the consideration of this bill:

Name	Representing	Address
George Slade, M.D.	Board of Medicine	1401 Centerville Road Tallahassee, FL

Note: Please indicate by an "X" any State employee appearing at the request of the Chairman.

(FILE WITH THE CLERK AND ATTACH SUBCOMMITTEE REPORT IF APPLICABLE)

STORAGE NAME: H1427s-f.RR
DATE: July 12, 1989

AS PASSED BY THE 1989 LEGISLATURE

HOUSE OF REPRESENTATIVES
COMMITTEE ON REGULATORY REFORM
FINAL STAFF ANALYSIS & ECONOMIC IMPACT STATEMENT

BILL #: CS/HB 1427

RELATING TO: Medical Practice

SPONSOR(S): Regulatory Reform and Representative D. L. Jones

EFFECTIVE DATE: October 1, 1989

DATE BECAME LAW: July 6, 1989

CHAPTER #: 89-374, Laws of Florida

COMPANION BILL(S): SB 1150

OTHER COMMITTEES OF REFERENCE: (1) Appropriations

(2)

****

I. SUMMARY:

The act amends amends various chapters relating to the regulation of professions and occupations.

It requires periodic inspections of dental laboratories by Department of Professional Regulation and authorizes the imposition of administrative fines.

The Medical Practice Act, chapter 458, Florida Statutes, relating to licensure of physicians by examination and by endorsement is modified; it further provides grounds for disciplinary action relating to the practice of medicine and provides for the registration of certain fellows by hospitals.

The law also amended chapter 459 relating to Osteopathy by prohibiting sexual misconduct and establishing disciplinary procedures. Clarifies that a violation connected to the impairment means a violation committed in order to obtain the misused or abused drug.

A licensed dentist, dental hygienist or applicant who carries the hepatitis B virus will be required to notify the Board of Dentistry.

The provisions of chapter 473, Florida Statutes, relating to licensure by endorsement for public accountacy were changed, as well as providing requirements which must be met by partnerships and professional service corporations in order to practice public accounting in Florida.

The law provides for the Department of Professional Regulation to inspect all direct disposal and cinerator facilities.

Pollution storage systems specialty contractors with 10 years experience are "grandfathered". Unlicensed principals involved in a construction violation are tied in with the primary qualifying agent, which will allow the denial of licenses to any business associated with such individuals. Additional monetary punishments are provided for violations.

It further allows the Construction Industry Licensing Board to revise its license and registration renewal procedures, as well as other clean up changes to chapter 489, Florida Statutes.

A treatment program is established in Chapter 463, Florida Statutes, for impaired practitioners of optometry.

Changes were made to the provisions relating to licensure by examination to practice veterinary medicine.

The various boards of the Department of Professional Regulation are allowed to utilize video cassette courses for their continuing education requirements.

The board for Nursing Home Administrators is authorized to set application fees for preceptors, interships, and continuing education providers.

Finally, changes are made to provisions relating to emergency medical services requiring the establishment of quality assurance review committees.

A. PRESENT SITUATION:

The Department of Professional Regulation (DPR) licenses and regulates 42 professions and occupations through thirty professional boards. The statutory objective of DPR is to regulate for the preservation of the health, safety and welfare of the public under the police powers of the state. The department is funded solely by user fees received from applicants and licensees.

Dental laboratories are required by section 466.032, Florida Statutes, to register biennially with the Department of Professional Regulation. The current registration fee is $20, which entitles the holder of the registration certificate to operate in the State of Florida for a period of two years.

The department may require periodic inspections of any dental laboratory and any information necessary to carry out the purpose of chapter 466, Florida Statutes. Inspections shall include inspection of sanitary conditions and facilities on the premises.

The department is authorized to suspend or revoke the certificate of any dental laboratory for violations of the law.

The Board of Medicine has to certify to the Department of Professional Regulation each person applying to take the licensure examination to be licensed as a physician. The board certifies, among other criteria, that the person has not committed any act or offense in any jurisdiction which would constitute the basis for disciplining a physician. The board may not certify an applicant who is under investigation in another jurisdiction for any offense which would constitute a violation of chapter 458, Florida Statutes.

An applicant for licensure by endorsement must have taken examination by the Federation of State Medical Boards of the United States, Inc. (FLEX) within the 10 years immediately preceding the filing of the application.

A chapter 458, Florida Statutes, license issued by endorsement shall become void unless the recipient utilizes the license by actively engaging in the practice of medicine in Florida within 3 years after the issuance of the license and continues the practice for a minimum period of 1 year. The department may not issue a license by endorsement if the applicant is under investigation in any other state for an offense which would constitute a violation of chapter 458, Florida Statutes.

Any licensee convicted or found guilty of a crime in any jurisdiction, regardless of adjudication, which relates to the practice of medicine shall constitute grounds for disciplinary action by the board.

The Medical Practice Act requires that any person desiring to practice as a resident physician, assistant resident physician, house physician, or intern who does not hold a valid, active license must register with the department and pay a fee of $100. The board shall certify that the applicant has met the requirements of the law. Each hospital employing such persons is required to furnish the department with a list of employees and other information as the board may direct.

Chapter 459, Florida Statutes, relates to the practice of osteopathic medicine. The Board of Osteopathic Medical Examiners is responsible for the licensure and discipline of practitioners under this chapter.

In 1987 the Board of Dentistry adopted rule 21G-25.004, Florida Administrative Code. This rule requires licensed dentist, dental hygienist or applicants who carry the hepatitis B virus to notify the board. To date, only five dentist out of the approximately 16,000 dentists and dental hygienists licensed to practice in Florida have notified the board that they are carriers of the virus. The board opined that the low response (statistical analysis indicates that approximately 2% of the general public are carriers of this virus) has been due to the fear of disclosure to patients. Currently there is no provision for

confidentiality in the rule.

The rule also provides for patient safeguards and procedures, known as barrier techniques which the dentist or hygienist are required to implement. Adherence to these techniques is insured by monitoring of the dentist or hygienist by the board and penalties for non-compliance.

Section 473.305, Florida Statutes, provides that the Board of Accountancy may establish fees, including a fee to reactivate a license and a late filing fee for the law and rules examination. Board rules governing continuing education require that courses must be completed by June 30 and reported by July 1 in order to renew a license by December 31.

Section 473.308, Florida Statutes, relates to licensure accountacy. That section presents two alternatives by which an out-of-state applicant may be licensed by endorsement in Florida: (1) He can meet Florida's experience requirements and have passed an examination that is equivalent to the Florida examination; or (2) he can hold a valid license in another state which, at the time the license was issued, had criteria for issuance equivalent to Florida criteria.

Section 473.309, Florida Statutes, sets out requirements to be met by partnerships and corporations in order to practice public accounting in Florida. The section requires, among other things, that, to engage in the practice of public accounting in this state, at least one shareholder of a corporation--and each shareholder, director, and officer domiciled in Florida who has authority over the practice of public accounting by the corporation--must be a certified public accountant.

Currently, the Department of Professional Regulation inspects all funeral establishments on an annualized basis. However, direct disposal and cinerator facilities are not covered by this legislative authority. The department inspects funeral establishments at no cost to the establishment. The cost of these inspections has resulted in a deficit to the board.

In section 489.131, Florida Statutes, present language seems to indicate that only contracting for a government body places the contractor under the provisions of chapter 489, Florida Statutes.

Presently, with regard to monetary penalties for violations, the construction board may only impose fines. While the board has the power to deny issuance or renewal of a license as part of its disciplinary proceeding, the statutory authority states that they "may", not that they "shall".

Presently, for a pollutant storage systems specialty contractor to be state certified, he must take either a written or a practical examination. There is a provision that a pollutant storage systems contractor with five years experience may receive a temporary license permitting him to continue operating without certification until July 1, 1989.

Under present law, the primary qualifying agent bears the brunt of the consequences when a construction operation is found guilty of any violation. A primary qualifying agent is the licensed individual who has the responsibility to supervise, direct, and manage the construction activities. Corporate officers, or unlicensed business partners, often hire the qualifying agent to obtain permits and "supervise", but are themselves actually in control of the operation. These unlicensed principals are not held accountable, and are free to involve themselves in subsequent construction jobs, regardless of their responsibility for the previous violations.

Section 474.207, Florida Statutes, provides for the licensure and examination of veterinarians. In order to become licensed by the Board of Veterinarian Medicine, an applicant must:

- Have completed the application form and remitted the $100 application fee.

- Be a graduate from a college of veterinary medicine which has been approved by the board.

- Receive a passing score on each portion of the three-part written veterinarian examination.

Currently, if a foreign graduate of an unaccredited veterinary school applies for licensure, the board must review the transcripts of the foreign graduate and determine if the curriculum is equal to or greater than the curriculum of an accredited school. The Department of Professional Regulation reports that in most cases, the curriculum is deficient, and does not meet the criteria established by the board. The board's foreign transcript review process is both time-consuming and financially burdensome.

Section 474.207, Florida Statutes, also provides allowances for those who fail the examination, and for applicants who are awaiting the results of the veterinarian examination.

Chapter 458, Florida Statutes, regulates the practice of medicine. Chapter 463, Florida Statutes, regulates the practice of optometry. Part X of chapter 468, Florida Statutes, regulates dietetics and nutrition practice. Chapters 476 and 477, Florida Statutes, regulate the practice of barbering and cosmetology, respectively. Chapter 480, Florida Statutes, regulates the practice of massage. Part I of chapter 484, Florida Statutes, regulates the practice of opticianry. Part II of chapter 484, Florida Statutes, regulates the fitting and dispensing of hearing aides. Chapter 486, Florida Statutes, regulates the practice of physical therapy.

Chapter 455, Florida Statutes, provides the Department of Professional regulation and the regulatory boards which operate within the department, with standards for the regulation of occupations and professions. The Department of Professional

Regulation reports that 26 of the practice acts require continuing education for license renewal.

Although chapter 455, Florida Statutes, does not provide the regulatory boards with the option to utilize video cassette courses for continuing education requirements, the department reports that two (2) regulatory boards (i.e., accountancy and nursing home administrators) have utilized video cassettes for continuing education course requirements.

Section 468.1695, Florida Statutes, establishes requirements for applicants for licensure as a Nursing Home Administrator. All applicants who do not have two years practical experience in certain areas of operating a nursing home must take an internship or administrator-in-training (AIT) program. Colleges and universities can develop such internships or administrator-in-training programs if they are certified (by the Board of Nursing Home Administrators) to do so. All such programs will be monitored by board members and tracked by the board office.

A preceptor is a nursing home administrator who is approved by the board for a period of three years and is responsible for supervising students in the administrator-in-training (AIT) program for one year. The preceptor must work out individual training programs for each student, teach, make assignments, evaluate, and submit a report to the board member monitor on each student the preceptor is supervising. The report would cover the progress of the student, and a synopsis of the areas covered in the program. The board estimates the administrative cost for the preceptor program to be between $75.00 and $100.00 per applicant. The preceptor program is new to the board and already forty-five people have gone through the eight-hour course required to be a preceptor. Many more have contacted the board for information on becoming a preceptor.

Section 468.1715, Florida Statutes, provides that the board may prescribe continuing education as a condition for "renewal of a license or certificate".

B. EFFECT OF PROPOSED CHANGES:

Sections 1-4 (CS\HB 393) --

The registration fee for operating a dental laboratory will now be annual and will not exceed $300 for a registration certificate allowing a dental laboratory to operate for a period of one year.

Inspections of dental laboratories will be required periodically by the Department of Professional Regulation and the department could impose an administrative fine not to exceed $500 for each offense.

The department will be required to consult with the Board of Dentistry and representatives of the dental laboratory industry when it promulgates rules for the enforcement of the provisions

of chapter 466, Florida Statutes.

Sections 5-15 (original CS\HB 1427) --

The references to the Foreign Medical Graduate Examination in the Medical Sciences or the Educational Commission for Foreign Medical Graduates Examination in chapter 458, Florida Statutes, are deleted, referring now only to the Educational Commission for Foreign Medical Graduates and the examination utilitized by that commission.

The Department of Professional Regulation is prohibited from issuing an unrestricted license to any person who has committed any act or offense in any jurisdiction which would constitute the basis for disciplining a physician in Florida. The law allows the Board of Medicine to refuse to certify or certify with restriction or specifications applicants for licensure to the department who have failed to meet the appropriate requirements set forth in law.

An applicant for licensure by endorsement will now have to show evidence of the active practice of medicine in another jurisdiction, for at least 2 of the immediately preceding 4 years, or completion of board-approved postgraduate training with the year preceding the filing of an application for licensure. Also, a license by endorsement issued after June 1, 1986, will no longer be required to practice within Florida 3 years after the issuance of the license and continue to practice in this state for a minimum period of 1 year.

A plea of nolo contendere will now constitute grounds for which disciplinary action may be taken by the board. Also, disciplinary action may be taken for failing to report to the board, in writing, within 30 days if one's license to practice medicine in another state, territory, or country has been revoked, suspended, or otherwise acted against, including the denial of licensure.

A "fellow" in fellowship training which leads to subspecialty board certification is added to those who can practice without a valid, active license and requires the hospital to include them on the list of the hospitals employees submitted to the department.

Sexual misconduct in the practice of osteopathic medicine is prohibited. A facility is required to complete its investigation or inquiry if a physician resigns or withdraws from privileges and requires the facility to notify DPR of the resignation or withdrawal if the completed investigation results in a finding that the law was violated. A violation connected to the impairment means a violation committed in order to obtain the misused or abused drug.

Section 16 --

into a letter of agreement with any professional society of physicians licensed under chapter 458 or chapter 459, Florida Statutes, for the purpose of reviewing any complaint or case referred to the society by the department which involves a question as to whether a physican's actions represented a breach of the prevailing professional standard of care.

Section 17 (CS\HB 1427 con't) --

New sections added to chapter 459, Florida Statutes, will be included in the Sunset review scheduled for 1996.

Sections 18 and 19 (CS\HB 648) --

Any licensee or applicant who is a carrier of hepatitis B virus is required to notify the Board of Dentistry.

The board will be able to establish by rule the procedures for reporting carrier status and procedures to protect patients against transmission of the virus.

The confidentiality of any reports filed by carriers is provided and such reports are exempt from section 119.07(1), Florida Statutes, except for the purpose of investigation or prosecution of violations of chapter 466, Florida Statutes.

Sections 20-22 (CS\HB 700) --

A delinquency fee not to exceed $50 is added to cover late submission of continuing professional education reporting forms for certified public accountants.

An applicant seeking to practice accountacy could qualify for licensure by endorsement if he meets the following conditions:

> The applicant is not and has not been licensed in another state, qualifies to take the Florida examination, has passed a Florida-equivalent examination, and meets Florida experience requirements; or
>
> The applicant may hold a valid license in another state if, at the time that license was issued, that state required criteria equivalent to Florida's criteria. Or the applicant may hold a valid license in another state which did not at the time of issuance have Florida-equivalent criteria if the applicant qualifies to take the Florida examination, has passed a Florida-equivalent examination, and has met the Florida experience requirements. In either case, licensure by endorsement will require that Florida-equivalent continuing education requirements have been met within two years immediately preceding the application.

At least one shareholder of a corporation practicing public accounting in Florida, as well as each of its shareholders,

directors, and officers domiciled in Florida, will be required to hold an active license in this state.

Sections 23-28 (CS\HB 888) --

The Department of Professional Regulation is authorized to inspect all direct disposal and cinerator facilities. An annual fee not to exceed $50 is established for the inspection of all direct disposal, funeral and cinerator establishments to cover the cost of this program. The inspection of funeral establishments and cinerator facilities would include all buildings, grounds, and vehicles used in the conduct of business. The Department of Professional Regulation will establish inspection requirements. Additionally, before a cremation is performed, written permission must be obtained from the person legally authorized to grant permission for cremation. The operation of an unlicensed cinerator facility is prohibited. Embalmer intern, funeral director intern and funeral establishment operators are added to the list of those the board can take discipinary action against.

Sections 29-37 (CS\HB 1432) --

Section 489.103, Florida Statutes, establishes a definition of "employee" for part I of chapter 489. The section also makes a technical adjustment, changing "spas or inground swimming pools" to "inground spas and swimming pools", and deletes all reference to capacity.

Changes the definitions of:

a) Class C air conditioning contractor,
b) Commercial pool/spa contractor,
c) Residential pool/spa contractor,
d) Swimming pool/spa servicing contractor,
e) Specialty contractor.

* The changes were made at the request of the Department of Professional Regulation and were technical.

The procedure for inactive license status would now allow the licensee "to place" his license on voluntary inactive status.

General contractors (who currently qualify to build pools under their "unlimited" general contractors license) will have two years to obtain either a commercial or residential pool license in order to continue building pools.

The Board of Construction may assess costs associated with the investigation and prosecution of any case in which the individual is found guilty of violations. The board may also assess interest payments on all unpaid fines imposed under this chapter. The non-payment of fines, costs, or interest payments, will constitute sufficient grounds for denial of issuance or renewal

of licenses.

The legislative intent (as expressed in section 489.101, Florida Statutes) now states that chapter 489, Florida Statutes, applies to all contractors operating in Florida.

A new section, 489.132, Florida Statutes, links unlicensed principals to the primary qualifier in instances where a construction operation is found guilty of a violation.

Individuals associated with the contracting business may not conceal information or activities from the qualifying agent. It further prohibits them from participating with the qualifying agent in the violation of any provision of chapter 489, Florida Statutes. The department is authorized to levy fines and investigative costs, and the department may suspend, revoke or deny a license to any qualifying agent or contracting firm who associates with anyone found to have violated this section.

Provides an exemption from the requirement for examination for licensure. Individuals who can show 10 continuous years of competent practice as a pollutant storage systems contractor are "grandfathered" in, and are not required to take any licensure examination. Additionally, the contractors whose 5 years experience currently qualify them to receive a temporary certificate allowing them to continue operating without certification until July 1, 1989, now have until July 1, 1990.

Any section added to part I of chapter 489, Florida Statutes, will have the same date (October 1, 1998) for sundown repeal as the rest of the sections contained in the chapter.

Sections 38-41 --

The membership of the Electrical Contractors' Board is increased from one alarm system contractor to 2, eliminating the one certified specialty electrical contractor.

The study committee authorized by chapter 88-156, Laws of Florida, shall continue in existence during the 1989-90 fiscal year.

Chapter 489, Florida Statutes, will be repealed on October 1, 1998, and will be reviewed by the Legislature prior to that time.

Section 42 --

The references to the Foreign Medical Graduate Examination in the Medical Sciences or the Educational Commission for Foreign Medical Graduates Examination in chapter 458 are deleted, referring now only to the Educational Commission for Foreign Medical Graduates and the examination utilitized by that commission.

Additionally, the University of Florida and the University of South Florida (medical schools) are allowed to develope a course for physician training for graduates of a foreign medical institute seeking licensure under the provisions of section 458.311 (9), Florida Statute, 1988 Supplement. The three medical schools may also develop a 500 hour review course.

Section 43 (CS\HB 1448) --

A treatment program for impaired practitioners of optometry is established in chapter 463, Florida Statutes. DPR is required to retain one or more impraired practitioner consultants.

Section 44 (CS\HB 1448) --

The application fee for licensure as a dietitian or nutrition counselor is now non-refundable. This would allow the board to retain that fee to cover costs of processing applications. The fee is currently refundable.

Section 45 (partial CS\HB 1324) --

Prior to qualifying for examination in Florida, graduates of unaccredited veterinary schools must have graduated from a college of veterinary medicine listed in the American Veterinary Medical Association Roster of Veterinary Colleges of the World, and have completed the certification program offered by the Educational Commission for Foreign Veterinary Graduates. This provision eliminates the board from having to review foreign licensure applicant transcripts.

Any applicant, who has been certified by the board prior to October 1, 1989, is allowed an additional three times to pass the examination before being required to complete the Educational Commission for Foreign Veterinary Graduates program. In addition, any foreign applicant failing to pass the examination in three tries would have an opportunity to demonstrate their competence, without having to provide transcripts which may be unobtainable due to political conditions in their native country.

Sections 46-66 (CS\HB 1448) --

Chapter 476, Florida Statutes, allows the Barbers' Board to charge barbering schools a fee to cover costs of student enrollment records and to provide for the practice of barbering in certain unlicensed locations. Barbers and cosmetologists who are licensed in the state or any other state or foreign country are allowed to practice in certain unlicensed locations in connection with movie, television, fashion photography and theatrical production; trade shows; and educational seminars.

The term "masseur(s)" is replaced with "massage therapist(s)" to

Additionally, the University of Florida and the University of South Florida (medical schools) are allowed to develope a course for physician training for graduates of a foreign medical institute seeking licensure under the provisions of section 458.311 (9), Florida Statute, 1988 Supplement. The three medical schools may also develop a 500 hour review course.

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Chapter 476, Florida Statutes, allows the Barbers' Board to charge barbering schools a fee to cover costs of student enrollment records and to provide for the practice of barbering in certain unlicensed locations. Barbers and cosmetologists who are licensed in the state or any other state or foreign country are allowed to practice in certain unlicensed locations in connection with movie, television, fashion photography and theatrical production; trade shows; and educational seminars.

The term "masseur(s)" is replaced with "massage therapist(s)" to

reflect the present usage of that term. The modification would be made throughout the massage practice act, chapter 480, Florida Statutes, and in chapters 455, 460, and 486, Florida Statutes, where the term also appears.

The Board of Massage is authorized to establish criteria for approving correspondence courses that may be used to satisfy the current continuing education requirements for biennial renewal and for reactivation of an inactive license. The board is also authorized to adopt criteria for approving continuing education providers and to charge a fee of up to $100 for the initial approval of providers and for the renewal of that approval.

The prerequisites for examination under part I of chapter 484, Florida Statutes, are revised and a continuing education requirement for opticianry apprentices is created.

The section would also require an opticianry apprentice to successfully complete 5 hours of continuing education during each year of registration as an apprentice. The apprenticeship is a 3-year period and must be completed within a 5-year timespan.

The bill would authorize the board to charge a processing fee to cover the costs of administering apprenticeship rules.

Part II of chapter 484, Florida Statutes, revises the examination requirements for hearing aide specialist trainees. The pre-qualifying exam that hearing aide specialist trainees must pass before entering training eliminated. Trainees would take the written and practical exam after the training program. They would be required to take the first available exam. If they failed either the written or practical exam, they could repeat the training program once and retake the failed exam. Also, the Board of Hearing Aide Specialists will review the administrative rules adopted to implement the training program prerequisites for licensure as a hearing aide specialist.

The grounds for disciplining physical therapists or physical therapist assistants licensed pursuant to chapter 486, Florida Statutes, are revised. Disciplinary action against physical therapists and physical therapy assistants could be taken for acts of fraud in the practice of physical therapy or deceit in obtaining a license. Action could also be taken against licensees who make or file false reports in the capacity of physical therapist.

Section 67 (HB 1436) --

Chapter 455, Florida Statutes, authorizes regulatory boards within the Division of Professions to adopt rules to utilize videocassette courses for licensee continuing education requirements. The videocassette courses could not exceed five (5) hours per subject.

The regulatory boards have the authority to establish criteria

for course content, and establish a course validation procedure.

Sections 68 and 69 (HB 1098) --

The Board of Nursing Home Administrators is authorized to establish preceptor and AIT application fees. Each time an individual applies for certification or re-certification as a preceptor, the board may assess a fee not to exceed $100.00. Each time an individual applies for admission into a board prescribed AIT program, the board may assess a fee not to exceed $500.00.

The board will also assess an application fee not to exceed $100.00 for anyone seeking approval to provide the continuing education courses required in some cases. The fee would be to cover administrative costs involved in investigating and approving the provider along with the appropriateness of the proposed curriculum.

Sections 70-72 --

Finally, changes are made to provisions relating to emergency medical services by requiring the establishment of a quality assurance review committee by each medical director. There is no monetary liability on the part of any person, including a witness, incident reporter to, or investigator for, an emergency medical review committee for any act or proceeding undertaken or performed within the scope of the functions of any emergency medical review committee.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

Sections 1-4 (CS\HB 393) --

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

	FY 89-90	FY 90-91
1. Non-recurring or First Year Start-Up Effects:		
Department of Professional Regulation		
Operating Capital Outlay for positions	$23,459	0
2. Recurring or Annualized Continuation Effects:		
Department of Professional Regulation		
Salaries/Benefits (5 FTE)	$124,240	$130,452
Expenses	10,888	11,432
Subtotal	$135,128	$141,884

Investigative costs:

Expenses	79,220	83,181
Total recurring	$214,348	$225,065

3. Long Run Effects Other Than Normal Growth:

None

4. Appropriations Consequences:

Department of Professional Regulation

REVENUES:		
932 X $300 per year	$279,600	$279,600
EXPENDITURES:		
Total	$237,807	$225,065

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring or First Year Start-Up Effects:

None

2. Recurring or Annualized Continuation Effects:

None

3. Long Run Effects Other Than Normal Growth:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

The registration would now be required on an annual basis and the fee is increased from $20 to $300.

2. Direct Private Sector Benefits:

None

3. Effects on Competition, Private Enterprise, and Employment Markets:

None

D. FISCAL COMMENTS:

Sections 23-28 (CS\HB 888) --

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring or First Year Start-Up Effects:

None.

2. Recurring or Annualized Continuation Effects:

None.

3. Long Run Effects Other Than Normal Growth:

Unknown.

4. Appropriations Consequences:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring or First Year Start-Up Effects:

None.

2. Recurring or Annualized Continuation Effects:

	Amount Year 1 (FY 89-90)	Amount Year 2 (FY 90-91)
Costs: (Minimal)		
Increased Revenue (Fee at $35)		
Received with Renewals:		
Funeral Homes (760-90/91)	$ -0-	$26,600
Crematory (95-89/90, 107-91/92)	$3,325	$ -0-
Direct Disposers (45-89/90, 65-91/92)	$1,575	$ -0-
Received with Application for Initial License:		
Funeral Homes (68 each year)	$2,380	$2,380
Crematory (20 each year)	$ 700	$ 700
Direct Disposers (12 each year)	$ 420	$ 420
TOTAL INCREASED REVENUE	$8,400	$30,100

3. Long Run Effects Other Than Normal Growth:

Unknown.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

The required $50 inspection fee may be passed on to the consumer by the establishment.

2. Direct Private Sector Benefits:

Inspecting the establishments will further protect the health, safety and welfare of the citizens of the State of Florida.

3. Effects on Competition, Private Enterprise, and Employment Markets:

None.

D. FISCAL COMMENTS:

The inspection fee of $50 will cover the cost of inspecting funeral and direct disposal establishments and cinerator facilities. The fees will be collected at the time of application.

Sections 29-37 (CS\HB 1432) --

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring or First Year Start-Up Effects:

Costs: None

2. Recurring or Annualized Continuation Effects:

	Amount Year 1 (FY 89-90) (9 Months)	Amount Year 2 (FY 90-91
Recurring Costs:		
Complaints	$ 840	$ 1,176
Investigations	$ 14,000	$ 19,600
Legal	$ 52,800	$ 73,920
TOTAL RECURRING COSTS:	$ 67,640	$ 94,696
Revenue:		
Applications (750 @ $50)	$ 37,500	$ -0-
License Fee (750 @ $129)-2 years	$ 96,750	$ -0-
Application Fee (20 @ $50)	$ -0-	$ 1,000

License Fee (20 @ $67)-1 year	$ -0-	$ 1,340
Renewal Fee (770 @ $129)	$ -0-	$ 99,330
	$134,250	$101,670

3. Long Run Effects Other Than Normal Growth:

Unknown

4. Appropriations Consequences:

Expenditures	$ 67,640	$ 94,696
Revenue	$ 134,250	$ 101,670
	$ 66,610	$ 6,974

The department states the recurring costs would come out of existing resources and be covered by the department's budget request.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring or First Year Start-Up Effects:

None

2. Recurring or Annualized Continuation Effects:

None

3. Long Run Effects Other Than Normal Growth:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None

2. Direct Private Sector Benefits:

None

3. Effects on Competition, Private Enterprise, and Employment Markets:

None

D. FISCAL COMMENTS:

Section 67 (HB 1436) --

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring or First Year Start-Up Effects:

None

2. Recurring or Annualized Continuation Effects:

None

3. Long Run Effects Other Than Normal Growth:

None

4. Appropriations Consequences:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring or First Year Start-Up Effects:

None

2. Recurring or Annualized Continuation Effects:

None

3. Long Run Effects Other Than Normal Growth:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

The licensee will defray the costs for videocassette courses for continuing education requirements.

2. Direct Private Sector Benefits:

HB 1436 may represent a cost-savings to licensees who are required to travel distances (i.e., out-of-state) in order to meet state continuing education requirements.

3. Effects on Competition, Private Enterprise, and Employment Markets:

None

D. FISCAL COMMENTS:

None

Sections 46-66 (CS\HB 1448) --

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring or First Year Start-Up Effects:

	FY 89-90 (9 months)	FY 90-91
Barbers' Board		
Expenses (O.C.O./.5 F.T.E.)	$ 553	$ -0-
Board of Massage		
Expenses (O.C.O./.5 F.T.E.)	$ 4,776	$ -0-

2. Recurring or Annualized Continuation Effects:

Barbers' Board		
Revenues (3,500 student enrollment records @ $10 each.)	$35,000	$35,000
Expenditures	$ 8,235	$11,528
Board of Massage		
Revenues (100 applications and 60 renewals at $100 and $50, respectively.)	$10,000	$13,000
Expenditures (.50 F.T.E.)	$ 8,234	$11,528

3. Long Run Effects Other Than Normal Growth:

None.

4. Appropriations Consequences:

Department of Professional Regulation		
Professional Regulation Trust Fund		
Revenues	$45,000	$48,000
Expenditures	(21,798)	(23,056)
Balance	$23,202	$24,944

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring or First Year Start-Up Effects:

None.

2. Recurring or Annualized Continuation Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Barbering schools would incur direct costs if the Barbers' Board adopts a student enrollment records fee.

Opticianry apprentices would incur additional costs associated with satisfying the continuing education requirement and the administrative processing fee created by the bill.

Individuals who seek approval as continuing education providers under the Massage Practice Act would incur direct costs as a result of initial application and renewal fees established by the bill.

2. Direct Private Sector Benefits:

The bill would allow barbering and cosmetology to be perform in unlicensed locations in conjunction with the motion picture, fashion photography, theatrical, and television industry; manufacture trade show demonstrations; and educational seminars. These businesses would avoid the costs of becoming licensed barbershops or cosmetology salons. Licensed barbers and cosmetologists could practice in such locations without violating their respective practice acts and incurring associated penalties.

3. Effects on Competition, Private Enterprise, and Employment Markets:

The bill would allow individuals to enter training to become hearing aide specialists without passing a pre-qualifying examination. This could facilitate entry into this field.

D. FISCAL COMMENTS:

Making the application fee for licensure as a dietitian or nutrition counselor non-refundable would allow retention of that fee to cover the cost of processing applications. The Department of Professional Regulation reports a deficit for administering that practice act.

Pursuant to rule 21L-28.010, Florida Administrative Code, the Board of Massage requires providers of continuing education programs for massage therapists to be approved by the board. The approval process involves a review of the proposed course and of the credentials of instructors. No fee is currently charged providers to offset the cost of approval. This bill would allow the board to recover associated costs.

The Department of Professional Regulation anticipates that examination costs for hearing aide specialists would not be changed by eliminating the pre-qualifying examination for trainees. Costs associated with developing new items for the existing pre-qualifying exam would be eliminated, but similar costs would be incurred for revising the written portion of the licensure exam.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

All other Sections including orginal CS\HB 1427

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring or First Year Start-Up Effects:

   none

2. Recurring or Annualized Continuation Effects:

   none

3. Long Run Effects Other Than Normal Growth:

   none

4. Appropriations Consequences:

   none

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring or First Year Start-Up Effects:

   none

2. Recurring or Annualized Continuation Effects:

   none

3. Long Run Effects Other Than Normal Growth:

   none

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

   none

2. Direct Private Sector Benefits:

   none

3. Effects on Competition, Private Enterprise, and Employment Markets:

The holder of a license by endorsement would no longer be required to relocate to Florida within 3 years of issuance of the license and continue his practice for a minimum period of 1 year.

D. FISCAL COMMENTS:

none

III. LONG RANGE CONSEQUENCES:

none

IV. COMMENTS:

CS\HB 1427 was amended on the floor of the House to combine the following bills: CS\HB 393, CS\HB 648, CS\HB 700, CS\HB 888, HB1098, CS\HB 1432, HB 1436, CS\HB 1448, and part of CS\HB 1324.

Note: see original analysis's for additional information.

VI. SIGNATURES:

SUBSTANTIVE COMMITTEE:
Prepared by:

Jim Cordero

Staff Director:

Patrick L. "Booter" Imhof

SECOND COMMITTEE OF REFERENCE:
Prepared by:

Staff Director:

APPROPRIATIONS:
Prepared by:

Staff Director:

6. Chapter 89-374, Section 42

FLORIDA DEPARTMENT *of* STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

This is to certify that this is a true copy made from:

Laws of Florida Chapter 89-374, Section 42

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By: _____ (Cheri Ellison)
(Signature)

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Section 39. Subsection (5) of section 489.521, Florida Statutes, 1988 supplement, is amended to read:

489.521 Business organizations; qualifying agents.—

(5) At least one member or supervising employee of the business organization must be qualified under this act in order for the business organization to be qualified to engage in contracting in the category of the business conducted for which the member or supervising employee is qualified. If any individual so qualified on behalf of the business organization ceases to be affiliated with the business organization, he shall notify the board and the department thereof within 30 days after such occurrence. In addition, if the individual is the only qualified individual affiliated with the business organization, the business organization shall notify the board and the department of the individual's termination, and it shall have a period of 60 days from the termination of the individual's affiliation with the business organization in which to qualify another person under the provision of this act, failing which, the board shall determine that the business organization is no longer qualified to engage in contracting. The individual shall also inform the board in writing when he proposes to engage in contracting in his own name or in affiliation with another business organization, and he, or such new business organization, shall supply the same information to the board as required for applicants under this act. After an investigation of the financial responsibility, credit, and business reputation of the individual or the new business organization and upon a favorable determination, the board shall certify the business organization as qualified, and the department shall issue, without ~~charge or~~ examination, a new certificate in the individual's name, which shall include the name of the new business organization, as provided in this section.

Section 40. Notwithstanding the provisions of s. 216.301(1)(b), Florida Statutes, s. 489.109(7), Florida Statutes, and subsection (5) of section 19 of chapter 88-156, Laws of Florida, the committee created in section 19 of chapter 88-156, Laws of Florida, shall continue in existence during the 1989-1990 fiscal year until such time as the committee completes its report on unlicensed activity as assigned in paragraph (1)(c) of section 19 of chapter 88-156, Laws of Florida. The committee shall draw upon such unused funds as previously allocated to it in section 24 of chapter 88-156, Laws of Florida.

Section 41. Each section which is added to chapter 489, Florida Statutes, by this act is repealed on October 1, 1998, and shall be reviewed by the Legislature pursuant to s. 11.61, Florida Statutes.

Section 42. Paragraphs (d) and (f) of subsection (1), subsection (3), and paragraph (a) of subsection (9) of section 458.311, Florida Statutes, 1988 Supplement, are amended to read:

458.311 Licensure by examination; requirements; fees.—

(1) Any person desiring to be licensed as a physician shall apply to the department to take the licensure examination. The department shall examine each applicant whom the board certifies:

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

(f) Meets one of the following medical education and postgraduate training requirements:

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3.a. Is a graduate of a foreign medical school which has not been certified pursuant to s. 458.314;

b. Has had his medical credentials evaluated by the Education Commission on Foreign Medical Graduates, holds an active, valid certificate issued by that commission, and has passed the examination utilized by that commission ~~Foreign Medical Graduate Examination in the Medical Sciences or the Educational Commission for Foreign Medical Graduates Examination~~; and

c. Has completed an approved residency of at least 1 year; however, after October 1, 1992, the applicant shall have completed an approved residency of at least 3 years in one specialty area.

(3) Notwithstanding the provisions of paragraph (1)(f)3., a graduate of a foreign medical school need not present the certificate issued by the Educational Commission for Foreign Medical Graduates or pass the examination utilized by that commission ~~Foreign Medical Graduate Examination in the Medical Sciences or the Educational Commission for Foreign Medical Graduates examination~~ if he:

(a) Has completed undergraduate work in an accredited United States college or university.

(b) Has studied at a medical school which is recognized by the World Health Organization.

(c) Has completed all of the formal requirements of the foreign medical school, except the internship or social service requirements, and has passed part I of the National Board of Medical Examiners examination or the Educational Commission for Foreign Medical Graduates examination equivalent.

(d) Has completed an academic year of supervised clinical training in a hospital affiliated with a medical school approved by the Council on Medical Education of the American Medical Association and upon completion has passed part II of the National Board of Medical Examiners examination or the Educational Commission for Foreign Medical Graduates examination equivalent.

(9) Notwithstanding any of the provisions of this section, the department shall issue a restricted license to any applicant who successfully completes the Florida Board Examination and who the board certifies has met the criteria of subparagraph (a)1. or subparagraph (a)2. as follows:

(a)1.a. Is a graduate of a foreign medical institution located in a country in the Western Hemisphere with which the United States does not maintain diplomatic relations;

b. Received a medical education which was substantially similar at the time of the applicant's graduation to approved United States Medical Programs;

c. Has resided in Florida for at least 3 years immediately preceding his application;

d. Practiced medicine in a foreign country from which he immigrated to the United States of America and has lawful immigration status, including employment authority; and

e. Successfully completed the examination utilized by the Educational Commission for Foreign Medical Graduates ~~Examination or Foreign Medical Graduate~~

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~~Examination in the Medical Sciences~~ or successfully completed a course developed by the University of Miami, the University of Florida, or the University of South Florida for physician training which is equivalent to the course developed for such purposes pursuant to chapter 74-105, Laws of Florida, or successfully completed a 500 hour review course developed and administered by one of the three university medical schools or developed by said schools and administered by an organization accredited by the Accreditation Council for Continuing Medical Education and approved by the board. The board shall monitor each such course. Each applicant must have approval from the board prior to taking such course and must demonstrate, to the satisfaction of the board, that he has met the requirements of the course; or

2. Obtained a certificate of completion from the program established at the first accredited medical school pursuant to chapter 74-105, Laws of Florida, prior to January 1, 1982.

This subsection is repealed effective October 1, 1991.

Section 43. Section 463.0165, Florida Statutes, is created to read:

463.0165 Treatment programs for impaired practitioners.—

(1) The board shall appoint a licensee who shall serve on the Impaired Practitioners Committee.

(2) The department shall by rule designate approved treatment programs under this section. The department may adopt rules setting forth appropriate criteria for approval of treatment providers based on the policies and guidelines established by the committee.

(3) The department shall retain one or more impaired practitioner consultants as recommended by the committee. A consultant shall be a practitioner or recovered practitioner licensed under this chapter, chapter 457, chapter 458, chapter 459, chapter 460, chapter 461, chapter 464, chapter 465, chapter 466, chapter 467, chapter 474, chapter 484, or chapter 486. The consultant shall assist the probable cause panel and the department in carrying out the responsibilities of this section. This shall include working with department investigators to determine whether a practitioner is, in fact, impaired.

(4)(a) Whenever the consultant is notified that there is reason to believe that a practitioner licensed under this chapter is impaired as a result of the misuse or abuse of alcohol or drugs, or both, or due to a mental condition, which could affect the practitioner's ability to practice his profession, and no complaint against the practitioner other than impairment exists, the reporting of such information shall not constitute a complaint within the meaning of s. 455.225 if the probable cause panel of the board under which the practitioner is licensed finds that:

1. The practitioner has acknowledged his impairment problem;

2. The practitioner has voluntarily enrolled in an appropriate, approved treatment program;

3. The practitioner has voluntarily withdrawn from his practice or limited the scope of his practice as determined by the panel in each case, until such time as the panel is satisfied that he has successfully completed an approved treatment program; and

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8. Chapter 97-103, Section 1086

FLORIDA DEPARTMENT of STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

This is to certify that this is a true copy made from:

Laws of Florida Chapter 97-103, Section 1086

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Section 1085. Paragraph (a) of subsection (3) of section 455.261, Florida Statutes (1996 Supplement), is amended to read:

455.261 Treatment programs for impaired practitioners.—

(3)(a) Whenever the department receives a written or oral legally sufficient complaint alleging that a licensee under the jurisdiction of the Division of Medical Quality Assurance within the department is impaired as a result of the misuse or abuse of alcohol or drugs, or both, or due to a mental or physical condition which could affect the licensee's ability to practice with skill and safety, and no complaint against the licensee other than impairment exists, the reporting of such information shall not constitute a complaint within the meaning of s. 455.225 if the probable cause panel of the appropriate board, or the department when there is no board, finds:

1. The licensee has acknowledged the impairment problem.

2. The licensee has voluntarily enrolled in an appropriate, approved treatment program.

3. The licensee has voluntarily withdrawn from practice or limited the scope of practice as determined by the panel, or the department when there is no board, in each case, until such time as the panel, or the department when there is no board, is satisfied the licensee has successfully completed an approved treatment program.

4. The licensee has executed releases for medical records, authorizing the release of all records of evaluations, diagnoses, and treatment of the licensee, including records of treatment for emotional or mental conditions, to the consultant. The consultant shall make no copies or reports of records that do not regard the issue of the licensee's impairment and his <u>or her</u> participation in a treatment program.

Section 1086. Paragraph (f) of subsection (1), subsections (2), (3), and (4), and paragraph (a) of subsection (9) of section 458.311, Florida Statutes (1996 Supplement), are amended to read:

458.311 Licensure by examination; requirements; fees.—

(1) Any person desiring to be licensed as a physician shall apply to the department to take the licensure examination. The department shall examine each applicant whom the board certifies:

(f) Meets one of the following medical education and postgraduate training requirements:

1.a. Is a graduate of an allopathic medical school or allopathic college recognized and approved by an accrediting agency recognized by the United States Office of Education;

b. If the language of instruction of the medical school is other than English, has demonstrated competency in English through presentation of a satisfactory grade on the Test of Spoken English of the Educational Testing Service or a similar test approved by rule of the board; and

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c. Has completed an approved residency of at least 1 year.

2.a. Is a graduate of a foreign medical school registered with the World Health Organization and certified pursuant to s. 458.314 as having met the standards required to accredit medical schools in the United States or reasonably comparable standards;

b. If the language of instruction of the foreign medical school is other than English, has demonstrated competency in English through presentation of the Educational Commission on Foreign Medical Graduates English proficiency certificate or by a satisfactory grade on the Test of Spoken English of the Educational Testing Service or a similar test approved by rule of the board; and

c. Has completed an approved residency of at least 1 year.

3.a. Is a graduate of a foreign medical school which has not been certified pursuant to s. 458.314;

b. Has had his or her medical credentials evaluated by the Education Commission on Foreign Medical Graduates, holds an active, valid certificate issued by that commission, and has passed the examination utilized by that commission; and

c. Has completed an approved residency of at least 1 year; however, after October 1, 1992, the applicant shall have completed an approved residency of at least 3 years in one specialty area.

(2) Every applicant who is otherwise qualified may take the licensing examination five times after October 1, 1986, notwithstanding the number of times the examination has been previously failed. If an applicant fails the examination taken after October 1, 1986, five times, the applicant ~~he~~ shall no longer be eligible for licensure.

(3) Notwithstanding the provisions of subparagraph (1)(f)3., a graduate of a foreign medical school need not present the certificate issued by the Educational Commission for Foreign Medical Graduates or pass the examination utilized by that commission if the graduate ~~he~~:

(a) Has received a bachelor's degree from an accredited United States college or university.

(b) Has studied at a medical school which is recognized by the World Health Organization.

(c) Has completed all of the formal requirements of the foreign medical school, except the internship or social service requirements, and has passed part I of the National Board of Medical Examiners examination or the Educational Commission for Foreign Medical Graduates examination equivalent.

(d) Has completed an academic year of supervised clinical training in a hospital affiliated with a medical school approved by the Council on Medical Education of the American Medical Association and upon completion has

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passed part II of the National Board of Medical Examiners examination or the Educational Commission for Foreign Medical Graduates examination equivalent.

(4) The department and the board shall assure that applicants for licensure meet the criteria in subsection (1) through an investigative process. When the investigative process is not completed within the time set out in s. 120.60(1) and the department or board has reason to believe that the applicant does not meet the criteria, the secretary or the secretary's ~~his~~ designee may issue a 90-day licensure delay which shall be in writing and sufficient to notify the applicant of the reason for the delay. The provisions of this subsection shall control over any conflicting provisions of s. 120.60(1).

(9)(a) Notwithstanding any of the provisions of this section, an applicant who, at the time of his or her medical education, was a citizen of the country of Nicaragua and, at the time of application for licensure under this subsection, is either a citizen of the country of Nicaragua or a citizen of the United States may make initial application to the department on or before July 1, 1992, for licensure subject to this subsection and may reapply pursuant to board rule. Upon receipt of such application, the department shall issue a 2-year restricted license to any applicant therefor upon the applicant's successful completion of the licensure examination as described in paragraph (1)(a) and who the board certifies has met the following requirements:

1. Is a graduate of a World Health Organization recognized foreign medical institution located in a country in the Western Hemisphere.

2. Received a medical education which has been determined by the board to be substantially similar, at the time of the applicant's graduation, to approved United States medical programs.

3. Practiced medicine in the country of Nicaragua for a period of 1 year prior to residing in the United States and has lawful employment authority in the United States.

4. Has had his or her medical education verified by the Florida Board of Medicine.

5. Successfully completed the Educational Commission for Foreign Medical Graduates Examination or Foreign Medical Graduate Examination in the Medical Sciences or successfully completed a course developed for the University of Miami for physician training equivalent to the course developed for such purposes pursuant to chapter 74-105, Laws of Florida. No person shall be permitted to enroll in the physician training course until he or she has been certified by the board as having met the requirements of this paragraph or conditionally certified by the board as having substantially complied with the requirements of this paragraph. Any person conditionally certified by the board shall be required to establish, to the board's satisfaction, full compliance with all the requirements of this paragraph prior to completion of the physician training course and shall not be permitted to sit for the licensure examination unless the board certifies that all of the requirements of this paragraph have been met.

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However, applicants eligible for licensure under s. 455.218 or subsection (9), 1988 Supplement to the Florida Statutes 1987, as amended by s. 18, chapter 89-162, Laws of Florida, and ss. 5 and 42, chapter 89-374, Laws of Florida, and renumbered as subsection (8) by s. 5, chapter 89-374, Laws of Florida, shall not be eligible to apply under this subsection.

Section 1087. Subsections (1), (3), and (4) of section 458.313, Florida Statutes (1996 Supplement), are amended to read:

458.313 Licensure by endorsement; requirements; fees.—

(1) The department shall issue a license by endorsement to any applicant who, upon applying to the department and remitting a fee not to exceed $500 set by the board, demonstrates to the board that he <u>or she</u>:

(a) Has met the qualifications for licensure in s. 458.311(1)(b)-(f);

(b) Has obtained a passing score, as established by rule of the board, on the licensure examination of the Federation of State Medical Boards of the United States, Inc. (FLEX), the United States Medical Licensing Examination (USMLE), or the examination of the National Board of Medical Examiners, or on a combination thereof, provided that said examination or combination of examinations required shall have been so taken within the 10 years immediately preceding the filing of his <u>or her</u> application for licensure under this section; and

(c) Shows evidence of the active licensed practice of medicine in another jurisdiction, for at least 2 of the immediately preceding 4 years, or completion of board-approved postgraduate training within the year preceding the filing of an application for licensure.

(3) The department and the board shall assure that applicants for licensure by endorsement meet applicable criteria in this chapter through an investigative process. When the investigative process is not completed within the time set out in s. 120.60(1) and the department or board has reason to believe that the applicant does not meet the criteria, the secretary or <u>the secretary's</u> ~~his~~ designee may issue a 90-day licensure delay which shall be in writing and sufficient to notify the applicant of the reason for the delay. The provisions of this subsection shall control over any conflicting provisions of s. 120.60(1).

(4) If the applicant has not actively practiced medicine or been on the active teaching faculty of an accredited medical school within the previous 4 years, the board shall certify the applicant to the department for licensure by endorsement subject to the condition that the applicant work under the supervision of another physician for a period, not to exceed 1 year, as determined by the board based on its determination of the licensee's ability to practice medicine. The supervising physician shall have had no probable cause findings against him <u>or her</u> within the previous 3 years.

Section 1088. Subsection (2) of section 458.3145, Florida Statutes (1996 Supplement), is amended to read:

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7. Chapter 92-149, Section 77

FLORIDA DEPARTMENT of STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

This is to certify that this is a true copy made from:

Laws of Florida Chapter 92-149, Section 77

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consider equivalent national or state educational courses, including those offered by a medical society or specialty organization, to fulfill part or all of the requirements of this subsection. The respective boards shall adopt rules to implement the provisions of this subsection.

Section 77. Effective upon this act becoming a law, subsection (3) of section 458.311, Florida Statutes, is amended to read:

458.311 Licensure by examination; requirements; fees.—

(3) Notwithstanding the provisions of subparagraph (1)(f)3., a graduate of a foreign medical school need not present the certificate issued by the Educational Commission for Foreign Medical Graduates or pass the examination utilized by that commission if he:

(a) Has received a bachelor's degree from ~~completed undergraduate work in~~ an accredited United States college or university.

(b) Has studied at a medical school which is recognized by the World Health Organization.

(c) Has completed all of the formal requirements of the foreign medical school, except the internship or social service requirements, and has passed part I of the National Board of Medical Examiners examination or the Educational Commission for Foreign Medical Graduates examination equivalent.

(d) Has completed an academic year of supervised clinical training in a hospital affiliated with a medical school approved by the Council on Medical Education of the American Medical Association and upon completion has passed part II of the National Board of Medical Examiners examination or the Educational Commission for Foreign Medical Graduates examination equivalent.

~~This subsection is repealed effective October 1, 1991.~~

Section 78. Paragraph (b) of subsection (1) of section 458.313, Florida Statutes, is amended to read:

458.313 Licensure by endorsement; requirements; fees.—

(1) The department shall issue a license by endorsement to any applicant who, upon applying to the department and remitting a fee not to exceed $500 set by the board, demonstrates to the board that he:

(b) Has obtained a passing score, as established by rule of the board, on the licensure examination of the Federation of State Medical Boards of the United States, Inc. (FLEX), the United States Medical Licensing Examination (USMLE), or ~~on~~ the examination of the National Board of Medical Examiners, or on a combination thereof, provided that said examination or combination of examinations required shall have been so taken within the 10 years immediately preceding the filing of his application for licensure under this section; and

Section 79. Subsections (1) and (5) of section 458.3145, Florida Statutes, are amended to read:

458.3145 Medical faculty certificate.—

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

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7.a. House of Representatives as further Revised by the Committee on Appropriations: Bill Analysis and Economic Impact Statement, Bill No. CS/HB 2249, Relating to: Regulation of Professions (Florida Archives, Series 19, Carton 2239).

FLORIDA DEPARTMENT of STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

I, Judith Ring, Division Director, Division of Library and Information Services, Florida Department of State, hereby certify the records of the Florida Legislature were transferred to the custody of the Florida State Archives pursuant to the provisions of Chapter 257, Florida Statutes, and that I am, by the terms of that transfer, the official custodian of the records.

I further certify that the attached is a true and correct copy of the record in the State Archives of Florida, the original of which may be found in Series 19, carton 2239.

***WITNESS MY SIGNATURE**, this 10th Day of January, 2014.*

***JUDITH RING**, Director*
Division of Library and Information Services

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HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON APPROPRIATIONS:
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT

BILL #: CS/HB 2249

RELATING TO: Regulation of Professions

SPONSOR(S): Committee on Appropriations, Committee on Regulatory Reform and Representative Tobin

STATUTE(S) AFFECTED: Chapters 20, 215, 455, 458, 459, 460, 461, 462, 463, 464, 465, 466, 468, 470, 471, 472, 473, 474, 475, 480, 481, 484, 486, 489, 490, 491, 492, Florida Statutes

COMPANION BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

(1) REGULATORY REFORM YEA 20 NAY 0
(2) FINANCE & TAXATION YEAS 24 NAYS 0
(3) APPROPRIATIONS YEAS 24 NAYS 0
(4)
(5)

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I. SUMMARY:

HB 2249 revises and consolidates certain provisions relating to professions regulated by the Department of Professional Regulation (DPR). Specifically, it expands enforcement efforts relating to unprofessional conduct to include all health care practitioners rather than just physicians; requires boards to consist of at least seven members; specifies consistent, staggered terms; increases consumer representation on boards; prohibits cash deficits and requires each profession to operate within anticipated fees; strengthens regulations relating to board expenses; combines parts I and II of chapter 455, Florida Statutes; defines several relevant terms; prohibits rebates and commissions; requires DPR to implement a long-range policy planning and monitoring component; requires concise, quarterly management reports and specifies information concerning budgets, finances, performance statistics be included therein; clarifies committee quorum requirements; specifies information to be included in certain department publications; authorizes the Department of Legal Affairs to defend board members' businesses provided the suit arises from statutorily authorized actions taken by the member; authorizes the secretary to request declaratory statements from boards; provides that boards cannot challenge each other's rules; includes prosecution and appeal in another jurisdiction as a basis for denying licensure; gives boards more flexibility in determining appropriate continuing education requirements; encourages services to indigent and underserved populations; amends provisions relating to procurement, development, preparation, grading, evaluation and candidate review of examinations; allows DPR to contract for these services; requires that exams meet certain requirements and that providers bear the costs for defense of exam challenges; authorizes administration of exams in languages other than English; requires the department to maintain exam records for three years; requires DPR to apprise boards of changes made to proposed legislation and legislative budget requests; requires professions to ensure license fees cover the cost of regulation; establishes voluntary

mediation procedures; amends statutory language relating to citations; deletes letters of guidance from citation procedures and authorizes issuance of such letters in lieu of a finding of probable cause; provides for personal service of citations; authorizes boards to have more than one probable cause panel; requires that probable cause panels have at least one professional member and allows past board members to serve on probable cause panels; requires, under certain circumstances, boards to have consumer representation on probable cause panels and on final agency action committees; authorizes DPR to disclose case disposition information if a case is dismissed without a finding of probable cause, provided the request for information is in writing and identifies both the subject and the complainant; requires additional training for complaint analysts and investigators; places violations common among regulated professions in chapter 455, Florida Statutes, and makes associated penalties uniform; authorizes recovery of investigation and prosecution costs; authorizes civil action to recover fines/costs when not timely paid; provides for permanent revocation; revises disciplinary guideline requirements; requires hearing officers to follow penalty guidelines; requires reporting of criminal violations by practitioners; specifies that a Notice to Cease and Desist is not final agency action and is therefore, not subject to chapter 120, Florida Statutes, provisions; provides that medical information and school transcripts supplied by applicants will remain confidential; prohibits subject of investigation from disclosing confidential information; adds to those health care practitioners subject to immediate suspension those who enter pleas of nolo contendere, or who are convicted or found guilty, regardless of adjudication; expands requirements for full disclosure of all financial interests; amends impaired practitioner committee language; requires department to designate approved treatment programs; requires department to retain impaired practitioner consultants; specifies duties of consultants; makes impaired practitioner provisions available to all boards when inferior practice results from impairment; provides mechanism to compel examination of licensee; clarifies that activities relating to impaired practitioners are remedial not penal; clarifies that enforcement of unlicensed activity is a state priority and requires regulated professions to incur related costs; and makes several technical changes to certain practice acts to delete obsolete language, correct inaccurate references, and repeal unnecessary statutory provisions where appropriate.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

SECTION 1: Most boards have a maximum of two consumer members. Also, many boards have developed a problem in their staggered terms, and a large proportion of their members' terms are expiring at the same time.

SECTION 2: The statutes imply that the various professions regulated by DPR are not allowed to deficit spend. However, there is not a specific statement to that effect. A number of the boards (approximately 17) currently have cash deficits, totaling approximately $3.2 million. This section also provides for allocation of the cost of operating the various professions.

SECTION 3: Chapter 455 is divided in two parts. Part I is entitled "General Provisions" and Part II is entitled "Regulation by Department of Professional Regulation." Each part has a separate section for definitions.

SECTION 4: The definitions as currently contained in the statutes are outdated, and do not include all required definitions.

SECTION 5: Section 455.11, Florida Statues, sets up the qualifications for immigrants to be examined to practice a licensed profession in Florida.

SECTION 6: This section contains legislative intent as it relates to regulation of the various professions.

SECTION 7: Chapter 455, Florida Statutes, which applies to all professions, contains no provisions on rebates and referral fees. Section 465.185, Florida Statutes, prohibits paying or receiving any commissions, rebates, referral fees, etc., by anyone to obtain pharmacy business. There are similar, but less explicit prohibitions for nursing homes, doctors, and dentists.

SECTION 8: Section 455. 202 deals with the powers and duties of the department.

SECTION 9: There is no specific requirement in the department's statutes requiring long-range policy planning, reports, and recommendations. While there is the agency functional plan and related requirements, these do not provide specific directions as related to estimates of board revenues, license fees, expenditures, cash balances, and detailed performance statistics. Section 455.2285, F.S., provides for an annual report concerning administrative complaints and disciplinary actions taken by the department. It does not provide for any financial information, information to facilitate efficient and cost-effective operations of the department, or recommendations for proposed legislative changes. The department's current review of anticipated revenues (license fee increases) for the various boards is for two or three years. There is no long-range review (minimum of 5 years) of anticipated revenues by the department or the various boards.

SECTION 10: This section provides for board organization, meetings, compensation, and travel expenses of members.

SECTION 11: The department and the various boards are authorized to provide information to licensees by newsletter or other publications; with no direction as to the type information which should be provided.

SECTION 12: Section 455.209, Florida Statutes, provides requirements for accountability and liability of board members. It also provides for the Department of Legal Affairs to defend any board member for cases related to official business.

SECTION 13: The Secretary of the department has standing pursuant to section 455.211 to challenge any rule or proposed rule of a board. The department and the boards have standing to appeal any administrative decision made on challenges to their rules.

SECTION 14: A board, or the department when there is no board, may refuse to issue a license to any applicant who is under investigation in any jurisdiction for an action that would constitute a violation of chapter 455 or any of the practice acts until such investigation is complete. However, the statute does not include authority to refuse to issue a license to an applicant who is under prosecution in another jurisdiction. Several of the practice acts provide for continuing education requirements as a condition for renewal of a license. There is no general authorization in chapter 455.

SECTION 15: The only licensed professionals authorized to obtain a limited license are physicians (section 458.317, Florida Statutes) or retired osteopathic physicians (section 459.0075, Florida Statutes). The limited license authorizes a retired physician to practice medicine only if employed by a public agency or institution, or nonprofit agency which is located in an area of critical medical need or in a medically underserved area.

SECTION 16: Section 455.217, Florida Statutes, establishes the procedures and requirements for the various examinations administered by the department. It contains requirements on development, security, examination, and recordkeeping.

SECTION 17: Section 455.218, Florida Statutes, delineates special examination and licensure provisions for foreign-trained professionals.

SECTION 18: The statutes imply that the various professions regulated by DPR are not to deficit spend. However, there is not a specific statement to that effect. A number of the boards (approximately 17) currently have cash deficits. It is the responsibility of the various boards to increase fees to adequately cover all costs. DPR can only advise the boards and recommend fee increases. In most instances, the various boards do not have authority to make one-time assessments to cover deficits or unanticipated expenses. Also, the various boards with deficits are in effect borrowing money from the boards with adequate cash

balances, and as a result, boards with cash balances lose interest on these funds. The total deficits are approximately $3.2 million. While the department provides financial reports to the boards, there has been concern raised as to the adequacy of these as management reports.

SECTION 19: This section addresses requirements for instruction on human immunodeficiency virus and acquired immune deficiency syndrome.

SECTION 20: The department is required to investigate all legally sufficient complaints. Procedures for processing complaints are contained in section 455.225. These provisions do not provide for mediation.

SECTION 21: Section 455.224 allows the boards, or the department when there is no board, to designate certain violations as appropriate for the issuance of citations. These citations are designed for offenses which are not a substantial threat to the public health, safety, and welfare and may include those violations which are punishable by a letter of guidance. The department has exclusive authority to specify citable offenses if the boards failed to do so by January 1, 1992.

SECTION 22: Section 455.225, Florida Statutes, requires the department to expeditiously investigate all complaints filed with their agency. Only complaints determined to be legally sufficient are investigated by DPR. As used by the department, "legally sufficient" means a complaint alleging facts which, if proven, would constitute a violation of some law or administrative rule over which DPR has jurisdiction. In March, 1991, DPR's Division of Regulation had a backlog of cases, totalling 11,500 complaints. Consequently, the department implemented a program designed to expedite complaint investigations. However, the new program does not ensure that complaint staff (i.e., complaint analysts, investigators, etc.) are adequately trained to determine legal sufficiency and investigate complaints.

The determination of whether probable cause exists in a complaint is to be determined by a probable cause panel of the board or by the department. The panels are to be composed of board members but may not include more than one consumer member. After a finding of probable cause, the probable cause panel may choose to direct the department to issue a letter of guidance to the subject of the complaint rather than recommend a formal complaint be filed against the licensee. These letters of guidance constitute discipline. The department must, upon request, forward to the subject of the complaint a copy of the investigative file. The department may not publicly disclose the existence or status of any complaint until ten days after probable cause has been found.

SECTION 23: Currently, the grounds for discipline, penalties, and enforcement, are in the various practice acts. Even though many are common to the various practice acts, chapter 455, Florida Statutes, does not currently contain uniform penalties for the same violations.

SECTION 24: Each board is required to adopt by rule disciplinary guidelines applicable to each specific ground for discipline. These guidelines are to specify a meaningful range of designated penalties. A specific finding of aggravating or mitigating circumstances allows the board to impose a penalty other than that in the guidelines.

SECTION 25: This section prescribes penalties for giving false information.

SECTION 26: Several practice acts for various professions contain a provision which requires the applicable board to report all criminal violations relating to that profession to the appropriate prosecuting authority. There is no such general provision applicable to all professions in chapter 455, Florida Statutes.

SECTION 27: Section 455.228 provides the department authority to issue a cease and desist notice when it has probable cause to believe that an unlicensed person has violated any of the practice acts or to any person who aids or abets the unlicensed practice of a profession. To enforce a notice to cease and desist, the department must file a proceeding in circuit court. It is not stated specifically, however, that the proper place to challenge a notice to cease and desist is in circuit court and not in an administrative hearing.

SECTION 28: Pursuant to section 455.228, Florida Statutes, DPR may issue a notice to cease and desist to any unlicensed person who violates certain regulatory provisions. However, as a result of insufficient funding, the department has not aggressively enforced unlicensed activities.

SECTION 29: Section 455,2285, Florida Statutes, provides for an annual report concerning administrative complaints and disciplinary actions taken by the department. It does not provide for any financial information, information to facilitate efficient and cost-effective operations of the department, or recommendations for proposed legislative changes.

SECTION 30: Relates to the penalties for misrepresentation in making application for licensure. Such misrepresentation constitutes a third degree felony.

SECTION 31: Section 455.232 prohibits any officer, employee, or person under contract with the department or any board to disclose confidential information to any person who is not lawfully entitled to the information.

SECTION 32: A cease and desist order may currently be seen as constituting agency action for which a section 120.57, Florida Statutes, hearing must be held.

SECTION 33: The department is required to submit a yearly report to the legislature concerning administrative complaints and disciplinary actions.

SECTION 34: Relates to public inspection of information required of applicants. Presently such information is open to the public, except certain financial records and examination materials.

SECTION 35: Relates to the penalties associated with disclosure of confidential information (it is a second degree misdemeanor).

SECTION 36: Relates to disclosure requirements associated with any licensed health care provider's advertisement of free or discounted services.

SECTION 37: Health care practitioners authorized to administer or dispense drugs are subject to immediate suspension if convicted of a felony under chapter 893 (drug violation) or the U.S. Code.

SECTION 38: Section 455.25, Florida Statutes, only applies to referrals by physicians of patients to physician-owned physical therapy facilities. It does not include the various other types of facilities owned by many physicians. The recently adopted position of the American Medical Association is that, in most instances, physicians should not refer patients to physician-owned facilities.

SECTION 39: Section 455.26 provides for the Impaired Practitioners Committee.

SECTION 40: Each practice act which provides for treatment programs for impaired practitioners contains the relevant provisions for the approval of programs in the applicable practice act. These provisions are not provided for in chapter 455, Florida Statutes.

SECTION 41: Several practice acts contain provisions which give the board or the department authority to suspend or restrict the practice of a profession by a licensee who is unable to practice the profession with reasonable skill and safety by reason of illness, use of alcohol, drugs, narcotics, chemicals, or any other type of material, or as a result of any mental or physical condition. These provisions also contain enforcement procedures. These provisions are not in chapter 455, Florida Statutes.

SECTION 42: Section 458.331 contains provisions relating to grounds for discipline by the Board of Medicine. Paragraph (e) of subsection (1) references treatment providers approved pursuant to section 458.3315. Paragraph (jj) of subsection (1) references the requirement under section 455.28 which requires certain health care practitioners to report any physician the licensee knows has violated the applicable practice act and who provides services in a hospital where the physician and the licensee both provide services.

SECTION 43: Section 459.015 contains provisions relating to grounds for discipline by the Board of Osteopathic Medical Examiners. Paragraph (e) of subsection (1) references treatment providers approved pursuant to chapter 458. Paragraph (mm) of subsection (1) references the requirement under section 455.28 which mandates that certain health care practitioners report any physician the licensee knows has violated the applicable practice act and who provides

services in a hospital where the physician and the licensee both provide services.

SECTION 44: Section 460.413 contains provisions relating to grounds for discipline by the Board of Chiropractic. Paragraph (hh) of subsection (1) references the requirement under section 455.28 which requires certain health care practitioners to report any physician the licensee knows has violated the applicable practice act and who provides services in a hospital where the physician and the licensee both provide services.

SECTION 45: Section 461.013 contains provisions relating to grounds for discipline by the Board of Podiatric Medicine. Paragraph (bb) of subsection (1) references the requirement under section 455.28 which requires certain health care practitioners to report any physician the licensee knows has violated the applicable practice act and who provides services in a hospital where the physician and the licensee both provide services.

SECTION 46: Subsection (4) of section 463.003, relating to the Board of Optometry, references section 20.30(5) for further board requirements.

SECTION 47: Section 464.018 contains provisions relating to grounds for discipline by the Board of Nursing. Paragraph (m) of subsection (1) references the requirement under section 455.28 which requires certain health care practitioners to report any physician the licensee knows has violated the applicable practice act and who provides services in a hospital where the physician and the licensee both provide services.

SECTION 48: Section 465.016 contains provisions relating to grounds for discipline by the Board of Pharmacy. Paragraph (o) of subsection (1) references the requirement under section 455.28 which requires certain health care practitioners to report any physician the licensee knows has violated the applicable practice act and who provides services in a hospital where the physician and the licensee both provide services.

SECTION 49: Section 466.028 contains provisions relating to grounds for discipline by the Board of Dentistry. Paragraph (ii) of subsection (1) references the requirement under section 455.28 which requires certain health care practitioners to report any physician the licensee knows has violated the applicable practice act and who provides services in a hospital where the physician and the licensee both provide services.

SECTION 50: Section 468.384 contains provisions relating to the Board of Auctioneers. These include provisions which provide for initial terms of members and are now obsolete. Additional provisions relating to board structure, procedures, and liability are also found in chapter 455.

SECTION 51: Section 472.007 contains provisions relating to the Board of Professional Land Surveyors. These include provisions which provide for initial terms of members and are now obsolete.

SECTION 52: Section 484.042 contains provisions relating to the Board of Hearing Aid Specialists. These include provisions which provide for initial terms of members and are now obsolete.

SECTION 53: Section 489.515 authorizes the Electrical Contractors' Licensing Board to refuse to certify any applicant who has violated section 489.533, which contains grounds for discipline, or section 489.535, which requires the board to report any criminal violation of the practice act to the proper prosecuting authority.

SECTION 54: Section 492.103 contains provisions relating to the Board of Professional Geologists. These include provisions which provide for initial terms of members and are now obsolete.

SECTION 55: Section 455.20 contains a definition of "board" which is applicable to part II of chapter 455

Section 455.215 authorizes the appropriate board to intervene in any proceeding regarding the issuance of a license to an applicant on behalf of the applicant or the department.

Section 455.2182 provides that nothing in chapter 455 shall be construed to allow the unsupervised practice of any health care practitioner licensed pursuant to chapter 86-90, Laws of Florida. This provision has been interpreted by the Florida Supreme Court to be applicable only to foreign-trained osteopathic physicians.

Section 455.28 requires certain health care practitioners to report any physician the licensee knows has violated the applicable practice act and who provides services in a hospital where the licensee also provides services.

Section 462.15 contains provisions relating to proceedings for the revocation of a license to practice naturopathy. Chapter 455 also contains these procedures.

Section 465.185 prohibits any person from paying or receiving any kind of payment for the referral of patients to a pharmacy.

Section 468.1175 requires a person desiring to be licensed as a speech-language pathologist or an audiologist to apply to the department to take the licensure examination. The department is to administer the licensure examination to each applicant whom the board certifies.

The following sections require the applicable board to report all criminal violations relating to the practice of the applicable profession to the proper prosecuting authority: 463.017, 466.029, 468.1305, 468.1765, 470.037, 471.035, 472.035, 473.324, 474.218, 475.454, 480.048, 481.227, 481.327, 484.016, 484.057, 489.535, and 489.559.

The following sections contain provisions relating to procedures and treatment programs for impaired practitioners for the applicable profession: 458.3315, 459.0155, 460.417, 461.0132, 463.0165, 464.0185, 465.0165, 466.0283, 474.2141, 490.0095, and 491.0095.

B. EFFECT OF PROPOSED CHANGES:

This bill would produce a more cost-effective, efficient, and responsive Department of Professional Regulation.

It would require the department to work with the various boards to implement long range planning; including a five-year fiscal and management plan and monitoring process with detailed recommendations for all professions. This long range plan is required to be updated annually.

In the **financial** area, it would require the department to produce a concise, quarterly management report which apprises boards of their financial status, including a summary sheet with cash balances for all boards. It would also require the department to implement "direct billing" procedures, which allows the legislature to determine true administrative costs, rather than relying totally on the existing cost allocation procedure which makes it harder to pinpoint how much the department is charging for specific activities. It would require the boards to ensure license fees are adequate to cover anticipated costs. It would require the boards to maintain minimum cash balances and authorize boards to increase fees or borrow money from the trust fund to comply with minimum cash balance requirements. If the boards do not address cash balance problems within one year, it would authorize the department to raise fees to cover the deficit and ensure compliance with minimum cash balance requirements.

In the area of **examinations**, it would authorize DPR, after consultation with the appropriate boards, to contract for certain examination services, to include development, preparation, administration, grading, evaluation, and candidate review and would establish an exam review and approval process. Further, it would authorize DPR to require providers to bear costs for legal defense of exam challenges; provided the exam, or portions thereof, was developed by the provider. It would allow exams to be given in languages other than English, provided practice of the profession by non-English speaking individuals will not result in a threat to the health, safety, and welfare of the consumer. It would require applicants seeking to take the exam in a language other than English to incur all relevant costs. It would require DPR to maintain exam records for 3 years and would specify that DPR may not prohibit board members from reviewing exams. Finally, boards, or the department when there is no board, would be authorized to require applicants to pass an exam pertaining to applicable state laws and rules.

In the area of **legal issues and discipline**, it would establish a mediation process and authorize boards, or the department when there is no board, to designate suitable disciplinary violations. It would authorize the department to use letters of guidance in lieu of a finding of probable cause and would clarify that letters of guidance do not constitute discipline and are not appropriate for citation procedures. It would authorize disclosure of the disposition of a case if the case is dismissed without a finding of probable cause; providing the person making the inquiry can identify

the licensee as well as the person making the complaint. It would establish that a notice to cease and desist is not a final agency action and does not require a chapter 120 hearing.

The bill would also expand the consumer-oriented posture of the department in several ways. It would expand consumer representation on the boards. Specifically, it would increase the minimum number of consumer members for boards with ten or fewer members to three (up from the standard two), and require a minimum of four consumer members for boards with eleven or more. It would establish legislative intent that enforcement of licensure for certain professional activities is a state priority and enforcement costs should be covered by the various regulated professionals. It would authorize the boards to impose a special fee to develop an "unlicensed activity" fund to facilitate enforcement of unlicensed activity.

Regarding **indigent and under-served populations**, it would authorize boards to adopt rules to allow retired professionals to serve indigent and/or under-served populations or areas of critical need. It would also encourage such activities by allowing pro bono service to substitute for a portion of required mandatory continuing education requirements for licenses in instances where continuing education is required.

Regarding the **organizational structure of the boards**, it would require consistent, staggered, member terms for all boards, with specified term-ending dates. It would authorize boards to increase the number of probable cause panels. It would specify that probable cause panel membership must include both consumer and professional representation, if at all possible.

C. SECTION-BY-SECTION ANALYSIS:

SECTION 1: Amends section 20.30, Florida Statutes, dealing with the organization of the Department of Professional Regulation (DPR) and the various boards created within it. It provides that all health care practitioners, in addition to physicians, shall be included in DPR's efforts to assure quality, cost-effective health care throughout the state. It increases the proportion of consumer representation on the various boards and mandates that boards of certain sizes have a minimum number of consumer members. It establishes provisions designed to guarantee staggered terms, and requires boards to have at least seven members. This section establishes legislative intent language which specifies that the department should regulate newly regulated professions unless a compelling need for a board is established, and delays for one year the actual creation of any statutorily established board, unless otherwise provided by law.

SECTION 2: Amends section 215.37, Florida Statutes, and clarifies legislative intent that each profession should operate within existing fees. It strengthens and moves requirements for allocation of board expenses to section 455.219, Florida Statutes.

SECTION 3: Provides that parts I and II of chapter 455, Florida Statutes, be combined and that the chapter will no longer be divided into parts. This is being done because chapter 455, Florida Statutes, will only contain general provisions relating to regulated professions, thus the chapter needs no division.

SECTION 4: Amends section 455.01, Florida Statutes, to clarify and establish new definitions. It expands the definition of health care practitioner to include all practitioners currently regulated by DPR who deliver health services. Further, it defines the following terms: board, consumer member, department, license, licensee, and profession.

SECTION 5: Amends section 455.11, Florida Statutes, and makes technical revisions which delete obsolete language.

SECTION 6: Amends section 455.201, Florida Statutes, to provide a statement of legislative intent that department policies ensure expenditures are made in the most cost-effective manner possible to maximize competition, minimize licensure costs, and maximize public access to board meetings. Specifies moneys deposited in professional regulation trust funds are public funds used for administering the regulation of the professions, and not the property of individual professions. Requires department policies to reflect sound fiscal principles.

SECTION 7: Creates section 455.2025, Florida Statutes, to clarify and expand enforcement of the prohibition on rebates and referral fees to apply to all licensed health care practitioners. It moves section 465.185, Florida Statutes, dealing with rebates paid by pharmacies to chapter 455, Florida Statutes, and clarifies that it applies to all health care practitioners. It authorizes minimum penalties, and transfers responsibility for enforcement of these provisions from HRS to DPR. It clarifies that a pharmacy may contract with a nursing home to collect for medication, and establishes procedures for a service fee not to exceed the actual cost of collection.

SECTION 8: Amends section 455.203, Florida Statutes, to authorize DPR to issue 4-year licenses to selected licensees, unless otherwise provided by law. Requires DPR to provide training relating to all relevant fiscal matters to all new board members. Makes technical changes relating to obsolete language.

SECTION 9: Creates section 455.204, Florida Statutes, to require DPR to implement a long range policy planning and monitoring component, including long-range estimates of revenues, expenditures, cash balances, and performance statistics. It also requires an annual update of all long-range plans.

SECTION 10: Amends section 455.207, Florida Statutes, to make language gender-neutral; deletes obsolete and unnecessary language; clarifies quorum requirements for boards or committees; and specifies three consecutive unexcused absences within any twelve month period results in a position vacancy. Expands language relating to special committees and makes provisions for appointment

of the third member, provided special committees cannot agree on who that individual should be. Requires special committees to recommend rules to resolve disagreement, and requires participating boards to share costs associated with defending rules. Requires DPR to provide legal representation for special committees.

SECTION 11: Amends section 455.208, Florida Statutes, to require publication of a summary of final orders resulting in fines, suspensions, or revocations.

SECTION 12: Amends section 455.209, Florida Statutes, to authorize the Department of Legal Affairs to defend board members' businesses in any action against the company, provided the suit arises from statutorily authorized actions taken by the member.

SECTION 13: Amends section 455.211, Florida Statutes, to provide standing for the secretary to request a declaratory statement from a board and provides that boards cannot challenge each other's rules. Instead, boards should follow the procedures for settling differences outlined by section 455.207, Florida Statutes.

SECTION 14: Amends section 455.213, Florida Statute, to clarify relevant provisions and facilitate proper interpretation of existing language relating to licensing; includes prosecution and appeal in another jurisdiction as a basis for not issuing a license; authorizes each board, or the department when there is no board, which requires continuing education for renewal of a license, to adopt rules to establish criteria for continuing education courses, to allow part of the required continuing education hours to be fulfilled by: (1) the performance of pro bono services to indigent/underserved populations, (2) by performing research in critical need areas, or (3) for training leading to advanced professional certification; provides that the department shall adopt rules to provide for the administration of continuing education requirements.

SECTION 15: Amends section 455.214, Florida Statutes, to authorize boards, or the department when there is no board, to issue limited licenses to retired professionals who are willing to provide service to indigent, underserved, and critical need populations. Specifies limited license application process; provides conditions under which limited licenses may be denied; specifies limited licensees may practice only in public or nonprofit institutions/agencies. Authorizes boards, or the department when there is no board, to develop rules addressing supervision of limited licensees.

SECTION 16: Amends section 455.217, Florida Statutes, to authorize the department, after consultation with the appropriate board, to contract for certain examination services, to include development, preparation, administration, grading, evaluation, and candidate review. Requires the department to maintain a review and approval process consistent with section 287.057(17) and requires examinations to conform to requirements of section 760.10(5). Authorizes DPR to require providers to bear costs for legal defense of exam challenges; provided exam, or portions thereof, was developed by provider. Allows exams to be given in language other

than English, provided practice of the profession by non-English speaking individuals will not result in a threat to the health, safety, and welfare of the consumer. Requires applicants seeking to take the exam in a language other than English to bear the cost of preparation, administration, and evaluation of the exam. Requires DPR to maintain exam records for 3 years. Specifies DPR may not prohibit board members from reviewing exams. Authorizes boards, or the department when there is no board, to require applicants to pass an exam pertaining to applicable state laws and rules.

SECTION 17: Amends section 455.218, Florida Statutes, to clarify that passage of an examination is necessary for licensure; provides that license will not be issued if applicant is under prosecution or appeal in any jurisdiction.

SECTION 18: Amends section 455.219, Florida Statutes, to increase fiscal accountability and communications between the boards and DPR. It includes the following changes: a statement of legislative intent prohibiting cash deficits; requires a condensed management report which provides information concerning budgets, finances, performance statistics, and recommendations to be presented at least quarterly to all boards; requires each board to ensure license fees are adequate to cover all anticipated costs and maintain a minimum cash balance; authorizes each board, or the department when there is no board, to, by rule, assess and collect, once in a 4-year period, a one-time fee from each licensee in an amount sufficient to eliminate a cash deficit. Each profession is authorized, under certain circumstances, to receive temporary loans with interest, for a period not to exceed 2 years. Finally, it defines direct charge expenses and authorizes the department to contract with public and private entities for the deposit of revenue.

SECTION 19: Amends section 455.2226, Florida Statutes, to clarify relevant language and facilitate proper interpretation of existing provisions relating to the requirements for instruction on human immunodeficiency virus and acquired immune deficiency syndrome and to correct internal statutory references.

SECTION 20: Creates section 455.2235, Florida Statutes, to provide that boards, or the department when there is no board, may designate which disciplinary violations are suitable for mediation, provided the harm caused by the licensee is economic in nature and can be remedied by the licensee; provides that, if complainant and subject reach agreement through a mediation process and provide acknowledgements of satisfaction within a particular time frame, then no further action will be taken against the licensee; and provides for limitation on the number of times a licensee can use mediation.

SECTION 21: Amends section 455.224, Florida Statutes, to provide that a citation which is not challenged shall become a final order of the department when there is no board, and specifically states that a citation constitutes discipline; deletes letters of guidance from citation procedures since it is recommended in proposed changes to section 455.225(4) that letters of guidance no longer constitute

discipline and, therefore, are not appropriate for citation procedures; provides for personal service of citations; provides continuing jurisdiction for boards which adopt citation offenses and penalties prior to Jan. 1, 1992, and allows new boards to designate citation violations and penalties within 6 months of their creation.

SECTION 22: Amends section 455.225, Florida Statutes, to clarify relevant language and facilitate proper interpretation of existing provisions relating to the requirements for disciplinary proceedings; deletes departmental authority to delegate its investigative function to boards; requires the department to allocate sufficient and adequately trained staff to expeditiously and thoroughly determine legal sufficiency and investigate all legally sufficient complaints; provides for confidentiality of the reports made to probable cause panels by the department prior to the department's dismissal of any case where legal sufficiency was found, but a determination was made that there is insufficient evidence to support prosecution and such case is actually dismissed prior to a finding of probable cause; provides boards with authority to have more than one probable cause panel; provides that probable cause panels must have at least one professional member; provides that a past board member may serve on a probable cause panel but if that person is a past professional board member, the individual must hold an active valid license for that profession; requires boards to have a consumer member on probable cause panels if one is available and willing to serve; provides that probable cause panels, or the department when there is no board, may issue a letter of guidance in lieu of a finding of probable cause; provides that the department may forward to a subject of a complaint, at the subject's expense, a copy of the department's investigative file, provided the subject agrees to maintain the confidentiality of the information received until ten days after probable cause is found; provides that if a case is dismissed without a finding of probable cause, the department may disclose only the disposition of the case to anyone making written inquiry and who identifies the subject and complainant. Requires DPR to provide additional training to complaint analysts and investigators.

SECTION 23: Amends section 455.227, Florida Statutes, to place violations and penalties common among professions in chapter 455, Florida Statutes. Common violations addressed are; fraudulent representations; intentional violation of rules; being convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication; knowingly filing false reports against licensee; obtaining a license through bribery, fraud, misrepresentation, or administrative error; failing to report violations of professional practice acts; facilitating unlicensed activity; failing to perform statutory obligations; mailing or filing false reports; making deceptive, untrue, or fraudulent representations relating to a regulated profession; exercising influence on patient/client for financial gain; practicing or offering to practice beyond scope permitted by law; contracting with unqualified individuals to perform a service which requires a license; violating provisions of chapter 455, Florida Statutes,; and interfering with an investigation or inspection. Common penalties addressed are: refusal to certify application for licensure;

suspension, permanent revocation, or placement of a licensee on probation; restriction of practice; imposition of an administrative fine not to exceed $5,000 for each separate offense; issuance of a reprimand; corrective action; restitution; and assessment of costs related to investigation and prosecution. This section also specifies that revocation of a license is permanent, and authorizes the board, or the department when there is no board, to establish by rule requirements for reapplication.

SECTION 24: Amends section 455.2273, Florida Statutes, relating to disciplinary guidelines; requires each board, or the department when there is no board, to adopt by rule disciplinary guidelines for each ground for disciplinary action which may be imposed and, when applicable, possible aggravating and mitigating circumstances and the variation and range of penalties permitted for such circumstances; requires hearing officers, when recommending penalties in any recommended order, to follow the disciplinary guidelines and state in writing the aggravating or mitigating circumstances upon which the recommended penalty is based.

SECTION 25: Amends section 455.2275, Florida Statutes, to conform with the definition of "license" proposed by this bill for section 455.01.

SECTION 26: Creates section 455.2277, Florida Statutes, to require the department or the appropriate board to report any criminal violation relating to the practice of a profession regulated by the department or board to the proper prosecuting authority.

SECTION 27: Amends section 455.228, Florida Statutes, to provide that a notice to cease and desist is not agency action for which a 120.57 hearing can be sought to make clear that the appropriate place for enforcement and challenge of these notices is in circuit court.

SECTION 28: Creates section 455.2281, Florida Statutes, to establish enforcement of unlicensed activities as a state priority. Effective July 1, 1993, boards, or the department when there is no board, are authorized to impose a $5 unlicensed activity fee which would be used to fund unlicensed activity enforcement. This section further provides that $5 of the current licensure fee may be used for this unlicensed activity enforcement, provided professions are not in a deficit financial posture. DPR is required to make direct charges and direct credits to each individual profession's account, and requires the department to include all financial and statistical data resulting from unlicensed activity enforcement as a separate category in the quarterly management reports provided to all boards.

SECTION 29: Amends section 455.2285, Florida Statutes, to enhance management and financial accountability by requiring DPR to include certain fiscal information and recommendations in its annual report to the legislature effective November 1, 1993.

SECTION 30: Amends section 455.229, Florida Statutes, to exempt medical information and school transcripts from public records requirements.

SECTION 31: Amends section 455.232, Florida Statutes, to prohibit subject of investigation from disclosing confidential information; specifies disciplinary penalties for violations.

SECTION 32: Amends section 455.24, Florida Statutes, to specify that only one disclosure is necessary in a classified directory.

SECTION 33: Amends section 455.241, Florida Statutes, to expand provisions to include all health care practitioners.

SECTION 34: Amends section 455.2415, Florida Statutes, to provide for technical changes which make language gender neutral.

SECTION 35: Amends section 455.242, Florida Statutes, to provide for technical changes which make language gender neutral.

SECTION 36: Amends section 455.243, Florida Statutes, to make technical changes relating to inspection authority.

SECTION 37: Amends section 455.245, Florida Statutes, to provide that health care practitioners who enter a plea of nolo contendere, or are convicted or found guilty, regardless of adjudication, are subject to immediate licensure suspension. Makes technical changes to conform language to individual practice acts.

SECTION 38: Amends section 455.25, Florida Statutes, to expand and enhance enforcement of the requirement for notification by a physician to any patient who is referred to other physician-owned health care facilities. It expands the requirement to include disclosure of all financial interests by a physician in any facility which a patient is referred. Currently it applies only to physical therapy facilities. The penalties for violations of this section are increased.

SECTION 39: Amends section 455.26, Florida Statutes, to clarify impaired practitioner committee language.

SECTION 40: Amends section 455.261, Florida Statutes, to require DPR to designate approved treatment programs for impaired practitioners; requires DPR to retain impaired practitioner consultants; and specifies duties of consultant.

SECTION 41: Amends section 455.27, Florida Statutes, to make impaired practitioner procedures available to all boards when a licensee fails to practice with skill and safety due to an impairment. It provides a mechanism to compel examination of a licensee; and provides that action under this section is remedial and not penal.

SECTION 42: Amends section 458.331, Florida Statutes, to correct statutory references.

SECTION 43: Amends section 459.015, Florida Statutes, to correct statutory references.

SECTION 44: Amends section 460.413, Florida Statutes, to correct statutory references.

SECTION 45: Amends section 461.013, Florida Statutes, to correct statutory references.

SECTION 46: Amends section 463.003, Florida Statutes, to correct statutory references.

SECTION 47: Amends section 646.018, Florida Statutes, to correct statutory references.

SECTION 48: Amends section 465.016, Florida Statutes, to correct statutory references.

SECTION 49: Amends section 466.028, Florida Statutes, to correct statutory references.

SECTION 50: Amends section 468.384, Florida Statutes, to delete obsolete and duplicate language.

SECTION 51: Amends section 472.007, Florida Statutes, to delete obsolete language.

SECTION 52: Amends section 484.042, Florida Statutes, to delete obsolete and duplicate language.

SECTION 53: Amends section 489.515, Florida Statutes, to make technical revisions.

SECTION 54: Amends section 492.103, Florida Statutes, to delete obsolete language.

SECTION 55: Repeals sections 455.20, 455.215, 455.2182, 455.28, 462.15, 465.185, 463.017, 466.029, 468.1765, 470.037, 471.035, 472.035, 473.324, 474.218, 475.454, 480.048, 481.227, 481.327, 484.016, 484.057, 489.535, and 489.559, Florida Statutes; sections 468.1305 and 468.1175, Florida Statutes, as created by chapters 90-134 and 90.345, Laws of Florida; sections 458.3315, 459.0155, 461.0132, 463.0165, 464.0185, 465.0165, 466.0283, 474.2141, and 490.0095, Florida Statutes, as amended by chapter 91-140, Laws of Florida; section 460.117, Florida Statutes, as created by chapter 90-25, Laws of Florida; and section 491.0095, Florida Statutes, as created by chapter 90-263, Laws of Florida.

SECTION 56: Provides an effective date of October 1, 1992, except as otherwise provided by law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

Revenues: $3,350,000
Professional Regulation Trust Fund

Note: This fee source can only be used once in any 4 year period without specific legislative authority.

2. Recurring Effects:

	FY92-93	FY93-94
Expenses (Board Per Diem):	$9,000	$9,000
Revenues:	$3,943,000	$3,943,000
Add. Invest. Income:*	75,000	75,000
	$4,018,000	$4,018,000

Professional Regulation Trust Fund

* Section 18 will result in a positive fiscal impact of approximately $75,000 annually as a result of a lock box contract with the Department of Revenue.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

	FY92-93	FY93-94
Non-Recurring Revenues:	$3,350,000	
Recurring Revenues:	$3,943,000	$3,943,000
Add. Invest. Income:	75,000	75,000
	$7,368,000	$4,018,000
Expenditures:	9,000	9,000

Professional Regulation Trust Fund

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Licensees may have to pay additional fees as a result of this legislation. Most likely those fees will be passed on to the consumer.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

None.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

None.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

None.

V. COMMENTS:

This bill will result in several significant statutory changes which will enhance agency efficiency and effectiveness, increase consumer protection, enhance financial accountability by prohibiting deficit spending, expand enforcement prohibitions on rebate/referral fees, require long-range planning, and increase management accountability by improving communications between boards and the department.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The committee substitute differs from the original bill in that it specifies in Section 6 that all moneys received by the Department or board, shall be considered public funds and used for administering the regulation of the professions, with the jurisdiction of the Department instead of for a valid public purpose, as previously stated.

It further specifies that Section 7 is intended to prohibit payment for referrals only and is not to be construed to prevent or affect payment for legitimate consultant services rendered.

VII. SIGNATURES:

COMMITTEE ON REGULATORY REFORM:
Prepared by: Gloria C. Henderson
Staff Director: Gloria C. Henderson

COMMITTEE ON FINANCE & TAXATION:
Prepared by: Joe McVaney
Staff Director: José Diez-Arguelles

COMMITTEE ON APPROPRIATIONS:
Prepared by: Leo Charles Lachat
Staff Director: Peter J. Mitchell

Committee Information Record
House of Representatives

Committee on Appropriations

Bill No. H 2249

Date of meeting 02/25/92
Time 08:00 AM
Place Morris Hall

Final Action:
___ Favorable
___ Favorable with ___ Amendments
X Favorable with Substitute
___ Unfavorable

YEA	Member	NAY
Y	Albright	
Y	Arnold	
Y	Ascherl	
	Brown	
	Clark	
Y	Davis	
Y	Flagg	
Y	Friedman	
	Garcia	
Y	Gordon	
	Graber	
	Gutman	
Y	Hafner	
	Hawkins	
	Healey	
Y	Holzendorf	
Y	Ireland	
Y	King	
	Lawson	

YEA	Member	NAY
	Liberti	
Y	Long	
Y	Mackenzie	
Y	Mims	
Y	Mitchell	
Y	Morse	
Y	Ritchie	
	Rojas	
Y	Rudd	
	Rush	
	Sanderson	
	Silver	
Y	Sindler	
Y	Stone	
Y	Tobiassen	
Y	Trammell	
	Valdes	
Y	Young	
Y	Saunders (CH.)	

Yeas 24

Nays 00

If present, member would have voted:

Chairman

Committee Appearance Record

The following persons (other than legislators) appeared before the committee during the consideration of this bill:

Name	Representing	Address

NOTE: Please indicate by an 'X' any State employee appearing at the request of the Committee Chairman.

7.b. Sectional Analysis by Department of Professional Regulation on HB 2249 requested by House Appropriations Committee (Florida Archives, Series 19, Carton 2246).

FLORIDA DEPARTMENT of STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

I, Judith Ring, Division Director, Division of Library and Information Services, Florida Department of State, hereby certify the records of the Florida Legislature were transferred to the custody of the Florida State Archives pursuant to the provisions of Chapter 257, Florida Statutes, and that I am, by the terms of that transfer, the official custodian of the records.

I further certify that the attached is a true and correct copy of the record in the State Archives of Florida, the original of which may be found in Series 19, carton 2246.

***WITNESS MY SIGNATURE**, this 10th Day of January, 2014.*

***JUDITH RING**, Director*
Division of Library and Information Services

BY: _____
State Archives of Florida

DIVISION OF LIBRARY AND INFORMATION SERVICES
R. A. Gray Building • 500 South Bronough Street • Tallahassee, Florida 32399-0250
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VIVA FLORIDA 500

DEPARTMENT OF PROFESSIONAL REGULATION

Lawton Chiles
Governor

George Stuart
Secretary

COMMITTEE RECEIVED

92 FEB 13 AM 11:10

SENT TO: CHAIRMAN _____
STAFF DIR _____ STAFF _____

February 13, 1992

To: Mr. Pete Mitchell
Staff Director
House Appropriations Committee
Room 221, Capitol
Tallahassee, Florida 32399

From: Glenda Wood
Director Public Information and Legislative Affairs
Department of Professional Regulation

Subject: Analysis HB 2249

Please find attached the sectional analysis on House Bill 2249 as requested by your Committee. Also attached for your information is a five-year analysis of cash balances by board. If you need any additional information or assistance, please contact the legislative affairs office at 487-4827.

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HOUSE APPROPRIATIONS
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SECTIONAL ANALYSIS OF HB 2249

1. Sec. 20.30-- Currently there are three existing boards, Employee Leasing, Acupuncture, and the Board of Auctioneers which are composed of five board members. The proposed legislation would increase these boards to a minimum of seven members. The cost associated with this increase is approximately $9,000 annually. This anticipates the boards meeting four times a year for two days.

2. 215.37-- Requires fiscal accountability of all boards.

3. 455.01-- Definitions-Includes Speech Pathology and Audiology. No fiscal impact.

4. 455.11-- No fiscal impact.

5. 455.201-- No fiscal impact to the Department.

6. 455.2025-- This language allows for a minimum fine of up to $5,000 dollars with a maximum of $10,000 for certain prohibited acts related to business activities of licensees. Prosecution under this section could result in a higher prosecution cost. This Section should allow for the recoupment of all costs associated with enforcement and prosecution. Indeterminate fiscal impact. Successful enforcement of this section may lead to lower health costs to the public, which would be of great advantage for the consumer.

7. 455.203-- Possible positive fiscal impact depending on assessment for renewal of four year licensure.

8. 455.204-- Can be handled through existing department revenues.

9. 455.207-- Will experience additional costs associated with use of former board members participation on probable cause panels. However, it is anticipated that there will be a savings due to a more timely resolution of disciplinary actions.

10. 455.208-- Negligible fiscal impact to Department and Board. Presently newsletters are printed and distributed to licensees.

11. 455.209-- Currently present board members are defended by the Department. No additional costs expected.

12. 455.211-- Handled through current resources.

13. 455.213-- Cost of development of any additional rules promulgated by the board can be absorbed within existing revenues.

14. 455.214--Limited licenses. There are currently 324 physicians with limited licenses. It is indeterminable to project how many applicants there would be for limited licenses under this provision, as the language is permissive. Any additional

application processing costs would be offset by fees of those licensees who would be working for compensation. A substantial benefit would occur in the delivery of services to areas of critical need, and enhance the delivery of our medical health care to the disadvantaged.

15. 455.217-- Examinations- An increase in the privatization of examinations could result in a two-fold savings to the Department. Requests for bids for delivery of services would afford the Department optimal cost comparisons. Secondly, this provision would require the provider of the service to bear all costs relative to the defense of the exam. Provision requires test results be kept for three years instead of two, no additional cost.

Note: The Department currently experiences approximately 40 to 60 exam challenges yearly at a substantial cost to the Department.

16. 455.218-- No fiscal impact.

17. 455.219-- This provision would allow a board to assess a fee on its licensees to eliminate any cash deficit. This fee could only be assessed once during any four year period. Currently there are 16 boards that have a negative cash balance. This fee would create a positive fiscal impact to the applicable board and eliminate current inequities in the budget process. The provision that allows the Department of Professional Regulation to contract with either public or private entities to receive and deposit revenues will result in a positive fiscal impact to the Department. As an example of these cost savings, the D.P.R. will save approximately $ 150,000 biennially as a result of a "lock box" contract with the Department of Revenue. These figures were based on a .15 cent per license savings, times approximately 500,000 annual license renewals. The savings were realized by having the ability to contract with another agency to perform this service which charged the department a smaller fee. Additional savings could be realized as the Department identifies other areas that could utilize this provision.

In addition, more timely deposits of revenues will result in a positive fiscal impact, attributed to the increase in interest earnings.

18. 455.2226-- Requires education concerning HIV and AIDS. No fiscal impact.

19. 455.2235-- Mediation- This language is permissive and allows the board to determine which offenses they deem appropriate for mediation. As a result, it is indeterminate as to the cost savings to the Department. There may be some costs associated with the training of mediators to resolve those complaints designated by the boards. As an alternative to prosecution however, the mediation process would significantly reduce overall costs to the Department

as it would preclude further review by both the legal section and investigative services section. Any additional record keeping relative to this provision could be handled by the existing case management tracking system.

20. 455.224-- Negligible fiscal impact.

21. 455.225--Disciplinary proceedings-- Any additional probable cause panels established under this provision would result in additional costs relative to per diem, travel, and administrative costs. However, the facilitation of quicker case resolution would negate against costs currently resulting from delays or backlogs of cases.

22. 455.227-- Can be handled under existing revenues.

23. 455.2273-- No fiscal impact.

24. 455.2275-- Technical amendment.

25. 455.2277-- No fiscal impact. Currently being performed by the Department's investigative services section.

26. 455.228-- Unlicensed practice, cease and desist notice; civil penalty, enforcement.- minimal positive fiscal impact. Reduces litigation.

27. 455.2281-- Assesses $5 fee per licensee upon initial licensure or renewal. Revenue is to be used to combat unlicensed activity. Positive fiscal impact--revenue will cover costs of enforcement.

28. 455.2285-- Requires Department to submit annual report to Legislature. Can be handled with existing resources.

29. 455.229-- Prohibits dissemination of medical records and school transcripts of an applicant. No fiscal impact.

30. 455.232-- No fiscal impact.

31. 455.24-- No fiscal impact.

32. 455.241-- No fiscal impact.

33. 455.2415-- Gender neutral language, no fiscal impact.

34 . 455.242-- No fiscal impact.

35. 455.243-- No fiscal impact.

36. 455.245-- No fiscal impact.

37. 455.25-- To ensure positive fiscal impact this provision should provide recoupment of all costs associated with prosecution. Maximum fine amount could be exceeded by prosecutorial costs.

38. 455.26-- Technical clean up. No fiscal impact.

39. 455.261-- New language. If the Department uses an additional consultant as allowed under this provision, this would have a fiscal impact. Intervention by the impaired practitioner program would preclude necessity for prosecutorial action. This would result in an undeterminable cost saving to the Department. Costs associated with participation in the treatment program are paid by the impaired professional. The inclusion of the words "physical condition" as a determinant for entry into the impaired practitioner program would increase participants, but minimal administrative costs would result.

40. 455.27-- No fiscal impact.

41. 458.331; 459.015; 460.413; 461.013; 464.003; 464.015; 465.016; 466.028; 468.384; 472.007; 484.042; 489.515; 492.103 --conforms language in these practice acts to proposed changes in 455.

42. Section 55 of this bill repeals provisions in the various practice acts to conform to proposed language in 455 and certain sections of Ch. 455 to conform to the proposed provisions of the bill.

FIVE YEAR ANALYSIS OF UNENCUMBERED
CASH BALANCES BY BOARD

	1986-87	1987-88	1988-89	1989-90	1990-91	
ACCOUNTANCY	$1,369,886	$1,212,657	$897,455	$1,155,864	$1,288,084	ACCOUNTANCY
ACUPUNCTURE	($316,313)	($277,234)	($292,272)	($189,307)	($195,924)	ACUPUNCTURE
ARCHITECTURE	$817,769	$669,292	$889,885	$517,080	$1,149,893	ARCHITECTURE
AUCTIONEERS	$13,431	$169,438	$145,457	$348,437	$260,600	AUCTIONEERS
BARBERS	$130,181	($1,806)	$228,055	$152,163	$220,047	BARBERS
CHIROPRACTIC	($326,847)	($63,336)	($478,926)	$483	($474,152)	CHIROPRACTIC
CONSTRUCTION	$127,069	($1,973,603)	$912,631	$245,559	($1,135,551)	CONSTRUCTION
COSMETOLOGY	$2,486,278	$2,993,600	$2,860,165	$3,106,687	$2,304,786	COSMETOLOGY
CSW/MF/MHC	N/A	$995,614	$951,985	$817,396	$728,038	CSW/MF/MHC
DENTISTRY	($526,274)	$137,304	($1,223,773)	($303,480)	($82,154)	DENTISTRY
ELECTRICAL	$24,044	$470,657	$560,492	$753,166	$533,900	ELECTRICAL
ENGINEERS	$499,296	$30,998	$643,361	($239,353)	$655,467	ENGINEERS
FUNERAL	$348,586	$448,469	$242,865	$308,393	$128,079	FUNERAL
GEOLOGIST	N/A	($26,505)	$23,759	$45,683	$50,037	GEOLOGIST
HEARING AID SPEC.	($84,601)	($263,799)	($170,041)	$4,684	$99,502	HEARING AID S
LAND SURVEYORS	$140,354	($5,914)	($136,774)	($42,804)	$262,105	LAND SURVEYOR
LANDSCAPE ARCH	($89,473)	($77,068)	($201,115)	($60,060)	($168,944)	LANDSCAPE ARC
MASSAGE	$150,146	$29,056	$291,314	$109,877	$460,494	MASSAGE
MEDICINE	$1,293,273	$4,729,932	($334,642)	$6,050,782	$3,213,470	MEDICINE
NURSING HOME ADMIN	$58,664	$201,295	$130,069	$257,906	$214,041	NURSING HOME
NURSING	$1,888,026	$684,664	$1,748,524	$624,869	$914,176	NURSING
OPTICIANRY	($22,909)	$85,157	($97,367)	($8,309)	($110,145)	OPTICIANRY
OPTOMETRY	$124,865	($85,202)	$135,192	($111,323)	$168,712	OPTOMETRY
OSTEOPATHIC	($102,677)	$10,625	($363,211)	($81,820)	($530,673)	OSTEOPATHIC
PHARMACY	$237,313	($309,516)	$1,031,971	$522,262	$2,206,248	PHARMACY
PILOTS	$137,326	$102,063	$59,104	$63,536	$141,226	PILOTS
PODIATRY	$103,278	$247,261	$35,241	$69,587	($173,823)	PODIATRY
PSYCHOLOGICAL EXAM.	$71,655	$110,457	($58,267)	$111,745	($131,612)	PSYCHOLOGICAL
REAL ESTATE	($2,667,799)	($2,281,279)	($607,316)	$3,354	($41,712)	REAL ESTATE
REAL ESTATE RECOVERY	$709,714	$323,815	$434,483	$586,892	$892,219	REAL ESTATE R
VETERINARY MEDICINE	($173,001)	$63,843	($287,434)	$167,056	($84,385)	VETERINARY ME
ATHLETE AGENTS	N/A	N/A	($13,444)	$2,661	$9,140	ATHLETE AGENT
CERT. SOCIAL WORKERS	N/A	($2,597)	($4,823)	($16,625)	($16,106)	CERT. SOCIAL
CERT.FOREIGN SCHOOLS	($21,308)	($12,676)	($19,133)	N/A	N/A	CERT.FOREIGN
DIETICIANS	N/A	N/A	($30,562)	$320,020	$587,200	DIETICIANS
FOREIGN TRAINED EX	($26,959)	($39,663)	($41,295)	N/A	N/A	FOREIGN TRAIN
INDUSTRIAL HYG.	N/A	($4,102)	($2,727)	($7,848)	($10,131)	INDUSTRIAL HY
INTERIOR DESIGNERS	N/A	N/A	$1,850	$246,838	$644,509	INTERIOR DESI
NATUROPATH	($64,251)	($79,084)	($94,533)	($120,065)	($133,862)	NATUROPATH
OCCUPATIONAL THER.	N/A	N/A	$52,088	$52,444	$121,466	OCCUPATIONAL
PHYSICAL THER.	N/A	N/A	$188,556	$92,110	$302,351	PHYSICAL THER
RESPIRATORY THER.	N/A	N/A	$325,454	$199,165	$236,063	RESPIRATORY T
SCHOOL PSYCHOLOGY	$50,683	$33,110	$31,840	$28,125	$51,704	SCHOOL PSYCHO
TALENT AGENCIES	($17,994)	$39,453	($25,622)	($31,665)	($109,800)	TALENT AGENCI
CSW	$422,628	N/A	N/A	N/A	N/A	CSW
M&FT	$207,915	N/A	N/A	N/A	N/A	M&FT
MHC	$394,361	N/A	N/A	N/A	N/A	MHC
SPEECH-LANGUAGE	N/A	N/A	N/A	N/A	$221,567	SPEECH-LANGUA
TOTALS	$7,366,335	$8,285,376	$8,338,519	$15,752,165	$14,666,150	TOTALS

Attch.

7.c. House of Representatives Committee on Regulatory Reform Final Bill Analysis & Economic Impact Statement, CS/HB 2249 (PCB RR 92-17), Relating to Regulation of Professions, (Florida Archives, Series 19, Carton 2334).

FLORIDA DEPARTMENT of STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

I, Judith Ring, Division Director, Division of Library and Information Services, Florida Department of State, hereby certify the records of the Florida Legislature were transferred to the custody of the Florida State Archives pursuant to the provisions of Chapter 257, Florida Statutes, and that I am, by the terms of that transfer, the official custodian of the records.

I further certify that the attached is a true and correct copy of the record in the State Archives of Florida, the original of which may be found in Series 19, carton 2334.

***WITNESS MY SIGNATURE**, this 10th Day of January, 2014.*

***JUDITH RING**, Director*
Division of Library and Information Services

BY: _____
State Archives of Florida

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STORAGE NAME: h2249s1 r
DATE: April 15, 1992

**AS P ED BY THE LEGISLA
CHAPTER #: 92-149, Laws of Florida

HOUSE OF REPRESENTATIVES
COMMITTEE ON
REGULATORY REFORM
FINAL BILL ANALYSIS & ECONOMIC IMPACT STATEMENT

BILL #: CS/HB 2249 (PCB RR 92-17)

RELATING TO: Regulation of Professions

SPONSOR(S): Committee on Appropriations, Committee on Regulatory Reform and Representative Tobin

STATUTE(S) AFFECTED: Chapters 20, 215, 395, 440, 455, 458, 459, 460, 461, 462, 463, 464, 465, 466, 468, 470, 471, 472, 473, 474, 475, 476, 480, 481, 484, 486, 489, 490, 491, 492, 499, 766, 817, and 877, Florida Statutes

COMPANION BILL(S): SB 1706

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

(1)	REGULATORY REFORM	YEAS 20	NAYS 0
(2)	FINANCE & TAXATION	YEAS 24	NAYS 0
(3)	APPROPRIATIONS	YEAS 24	NAYS 0

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I. SUMMARY:

CS/HB 2249 revises and consolidates certain provisions relating to professions regulated by the Department of Professional Regulation (DPR). It combines the following individual bills: CS/HB 2249, HB 517, HB 793, HB 1055, HB 1935, HB 2257, HB 2259, and CS/HBs 179 & 391. Specifically, it expands enforcement efforts relating to unprofessional conduct to include all health care practitioners rather than just physicians; requires staggered member terms; prohibits cash deficits and requires each profession to operate within anticipated fees; strengthens regulations relating to board expenses; requires boards to review budget requests prior to submission to the Legislature; combines parts I and II of chapter 455, Florida Statutes; defines several relevant terms; authorizes up to 4-year licenses; expands training requirements for new board members; requires DPR to implement a long-range policy planning and monitoring component; requires concise, quarterly management reports and specifies information concerning budgets, finances, performance statistics be included therein; clarifies committee quorum requirements; specifies information to be included in certain department publications; authorizes the Department of Legal Affairs to defend board members' businesses provided the suit arises from statutorily authorized actions taken by the member; authorizes the secretary to request declaratory statements from boards; provides that boards cannot challenge each other's rules; includes prosecution and appeal in another jurisdiction as a basis for denying licensure; gives boards more flexibility in determining appropriate continuing education requirements; encourages services to indigent and underserved populations; amends provisions relating to procurement, development, preparation, grading, evaluation and candidate review of examinations; allows DPR to contract for these services; requires that exams meet certain requirements and that providers bear the costs for defense of exam challenges; authorizes administration of exams in languages other than English; requires the department to maintain exam records for three years; requires DPR to apprise boards of changes made to proposed legislation and legislative budget requests; requires

professions to ensure license fees cover the cost of regulation; establishes voluntary mediation procedures; amends statutory language relating to citations; deletes letters of guidance from citation procedures and authorizes issuance of such letters in lieu of a finding of probable cause; provides for personal service of citations; authorizes boards to have more than one probable cause panel; requires that probable cause panels have at least one professional member and allows past board members to serve on probable cause panels; requires, under certain circumstances, boards to have consumer representation on probable cause panels and on final agency action committees; requires additional training for complaint analysts and investigators; provides for permanent revocation; revises disciplinary guideline requirements; requires hearing officers to follow penalty guidelines; requires reporting of criminal violations; specifies that a Notice to Cease and Desist is not final agency action and is therefore, not subject to chapter 120, Florida Statutes, provisions; provides that medical information and school transcripts supplied by applicants will remain confidential; prohibits subject of investigation from disclosing confidential information; adds to those health care practitioners subject to immediate suspension those who enter pleas of nolo contendere, or who are convicted or found guilty, regardless of adjudication; amends impaired practitioner committee language; requires department to designate approved treatment programs; requires department to retain impaired practitioner consultants; specifies duties of consultants; authorizes the Board of Medicine to issue restricted licenses annually to up to 100 persons to practice medicine, provided they meet certain criteria; clarifies that enforcement of unlicensed activity is a state priority and requires regulated professions to incur related costs; makes several technical changes to certain practice acts to delete obsolete language, correct inaccurate references, and repeal unnecessary statutory provisions where appropriate (construction, medicine, osteopathic medicine, chiropractic, nursing, dental hygiene); authorizes graduates of unaccredited dental schools to be licensed as dental hygienists; authorizes DPR to certify foreign dental schools comparable to U.S. accredited dental schools; authorizes DPR to issue temporary certificates to dentists to practice in state and county government facilities; provides authority to establish protocols regarding on-site supervision restrictions placed on certified speech-language pathology-audiology assistants; clarifies educational requirements and licensure exam application procedures for audiologists and speech-language pathologists; clarifies minimal procedures and equipment for all licensed audiologists who fit/sell hearing aids and requires an itemized price list of goods and services; prohibits sale/distribution of hearing aids through mail to the ultimate consumer; removes veterinary board's authority to issue certificates to exempt faculty from practice and clarifies exemption provision; requires veterinary schools to provide DPR with a list of exempt faculty; increases psychologists exam fee cap from $350 to $500, biennial renewal fee cap from $250 to $500, and fee cap for continuing education providers from $100 to $500; advances effective date of chapters 490 and 491, Florida Statutes, becoming practice acts from 1995 to 1992; exempts the following practitioners/programs from licensure requirements contained in chapters 490 and 491, Florida Statutes: child care programs, child placing agencies, domestic violence centers, private non-profit organizations, and hypnotists; repeals provisions of chapters 490 and

491, Florida Statutes, relating to the practice of hypnosis effective October 1, 1995; repeals certain experience requirements for chapter 491 licensees; authorizes licensed school psychologists employed by school districts to render certain services; requires psychologists and school psychologists to maintain patient/client records; provides that tattooing may be performed by persons acting under general supervision of a physician; transfers responsibility for enforcement of prohibited rebates from HRS to DPR; repeals language authorizing licensure of certain foreign-trained dentists; clarifies effective dates related to the Auctioneer Recovery Trust Fund; amends effective date and license fee provisions for employee leasing company regulation; amends various sections relating to regulation of funeral directors and embalmers; modifies definitions, rulemaking authority, licensure by endorsement, intern provisions, cinerator licensure, and requires display of licenses; amends various sections relating to regulation of engineers; modifies provisions related to examination prerequisites, temporary certificates, certification of partnerships and corporations, seals, and grounds for discipline; clarifies licensure by endorsement requirements for veterinarians; amends provisions relating to regulation of sellers and appraisers of real estate; modifies provisions relating to discipline, disclosure, definitions, the Real Estate Appraisal Board, instructor permits, and display of licenses; amends licensure requirements for barbers and barbershops; amends licensure requirements for opticians; amends several provisions relating to the Construction Industry Licensing Board and the Electrical Contractors' Licensing Board; provides local jurisdictions greater authority and more extensive disciplinary powers for dealing with registered contractors; amends "contractor" definition; restricts types of contractors board is required to register; makes a lower-cost "tracking license" available; creates a Division of Technology, Testing, and Training within DPR; requires physicians to accept medicare assignments; exempts physicians and osteopathic physicians licensed in other states who are employed by a sports entity visiting Florida for a specific sporting event from licensure requirements; authorizes these physicians/osteopathic physicians to provide limited medical services to team members; provides statements of legislative intent regarding newly regulated professions within DPR, fiscal issues, unlicensed activity, and affordable medical care.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

SECTION 1: Much of the existing language relating to the DPR's organizational structure is obsolete. Currently, professional regulatory statutes require physicians to assure cost-effective health care, and does not make mention of other health care providers. Many boards have developed problems with their staggered term provisions, and a large proportion of their members' terms are expiring at the same time.

SECTION 2: The statutes imply that the various professions regulated by DPR are not allowed to deficit spend. However, there is not a specific statement to that effect. A number of the boards (approximately 17) currently have cash deficits, totaling approximately $3.2 million. This section also provides for allocation of the cost of operating the various professions.

SECTION 3: Chapter 455 is divided into two parts. Part I is entitled "General Provisions" and Part II is entitled "Regulation by Department of Professional Regulation." Each part has a separate section for definitions.

SECTION 4: The definitions as currently contained in section 455.01, Florida Statutes, are outdated and do not include all required definitions.

SECTION 5: Section 455.11, Florida Statutes, sets up the qualifications for immigrants to be examined to practice a licensed profession in Florida.

SECTION 6: Section 455.201, Florida Statutes, contains legislative intent as it relates to regulation of the various professions.

SECTION 7: Section 455.203, Florida Statutes, authorizes DPR to issue up to a 3-year license to selected licensees and develop training programs for newly appointed members to familiarize them with substantive and procedural laws and rules.

SECTION 8: There is no specific requirement in the department's statutes requiring long-range policy planning, reports, and recommendations. While there is the agency functional plan and related requirements, these do not provide specific directions as related to estimates of board revenues, license fees, expenditures, cash balances, and detailed performance statistics. Section 455.2285, Florida Statutes, provides for an annual report concerning administrative complaints and disciplinary actions taken by the department. It does not provide for any financial information, information to facilitate efficient and cost-effective operations of the department, or recommendations for proposed legislative changes. The department's current review of anticipated revenues (license fee increases) for the various boards is for two or three years. There is no long-range review (minimum of 5 years) of anticipated revenues by the department or the various boards.

SECTION 9: Section 455.207, Florida Statutes, provides for board organization, meetings, compensation, and travel expenses of members.

SECTION 10: Section 455.208, Florida Statutes, authorizes the department and the various boards to provide information to licensees by newsletter or other publications, with no direction as to the type information which should be provided.

SECTION 11: Section 455.209, Florida Statutes, provides requirements for accountability and liability of board members. It also provides for the Department of Legal Affairs to defend any board member for cases related to official business.

SECTION 12: The secretary of the department has standing pursuant to section 455.211, Florida Statutes, to challenge any rule or proposed rule of a board. The department and the boards have standing to appeal any administrative decision made on challenges to their rules.

SECTION 13: Section 455.213, Florida Statutes, authorizes boards, or the department when there is no board, to refuse to issue a license to any applicant who is under investigation in any jurisdiction for an action that would constitute a violation of chapter 455, Florida Statutes, or any of the practice acts until such investigation is complete. However, the statute does not include authority to refuse to issue a license to an applicant who is under prosecution in another jurisdiction. Several of the practice acts provide for continuing education requirements as a condition for renewal of a license. There is no general authorization in chapter 455, Florida Statutes.

SECTION 14: The only licensed professionals authorized to obtain a limited license are physicians (section 458.317, Florida Statutes) or retired osteopathic physicians (section 459.0075, Florida Statutes). The limited license authorizes a retired physician to practice medicine only if employed by a public agency or institution, or nonprofit agency which is located in an area of critical medical need or in a medically underserved area.

SECTION 15: Section 455.217, Florida Statutes, establishes the procedures and requirements for the various examinations administered by the department. It contains requirements on development, security, examination, and recordkeeping.

SECTION 16: Section 455.218, Florida Statutes, delineates special examination and licensure provisions for foreign-trained professionals.

SECTION 17: The statutes imply that the various professions regulated by DPR are not to deficit spend. However, there is not a specific statement to that effect. A number of the boards (approximately 17) currently have cash deficits. It is the responsibility of the various boards to increase fees to adequately cover all costs. DPR can only advise the boards and recommend fee increases. In most instances, the various boards do not have

authority to make one-time assessments to cover deficits or unanticipated expenses. Also, the various boards with deficits are in effect borrowing money from the boards with adequate cash balances, and as a result, boards with cash balances lose interest on these funds. The total deficits are approximately $3.2 million. While the department provides financial reports to the boards, there has been concern raised as to the adequacy of these as management reports.

SECTION 18: Section 455.2226, Florida Statutes, addresses requirements for instruction on human immunodeficiency virus and acquired immune deficiency syndrome.

SECTION 19: The department is required to investigate all legally sufficient complaints. Procedures for processing complaints are contained in section 455.225. These provisions do not provide for mediation.

SECTION 20: Section 455.224, Florida Statutes, allows the boards, or the department when there is no board, to designate certain violations as appropriate for the issuance of citations. These citations are designed for offenses which are not a substantial threat to the public health, safety, and welfare and may include those violations which are punishable by a letter of guidance. The department has exclusive authority to specify citable offenses if the boards failed to do so by January 1, 1992.

SECTION 21: Section 455.225, Florida Statutes, requires the department to expeditiously investigate all complaints filed with their agency. Only complaints determined to be legally sufficient are investigated by DPR. As used by the department, "legally sufficient" means a complaint alleging facts which, if proven, would constitute a violation of some law or administrative rule over which DPR has jurisdiction. In March, 1991, DPR's Division of Regulation had a backlog of cases, totalling 11,500 complaints. Consequently, the department implemented a program designed to expedite complaint investigations. However, the new program does not ensure that complaint staff (i.e., complaint analysts, investigators, etc.) are adequately trained to determine legal sufficiency and investigate complaints.

The determination of whether probable cause exists in a complaint is to be determined by a probable cause panel of the board or by the department. The panels are to be composed of board members but may not include more than one consumer member. After a finding of probable cause, the probable cause panel may choose to direct the department to issue a letter of guidance to the subject of the complaint rather than recommend a formal complaint be filed against the licensee. These letters of guidance constitute discipline. The department must, upon request, forward to the subject of the complaint a copy of the investigative file. The department may not publicly disclose the existence or status of any complaint until ten days after probable cause has been found.

SECTION 22: Section 455.227, Florida Statutes, grants boards the power to revoke, suspend, or deny the renewal of licenses if certain practice act violations occur. There is no reference to the permanence of revocation.

SECTION 23: Each board is required to adopt by rule disciplinary guidelines applicable to each specific ground for discipline. These guidelines are to specify a meaningful range of designated penalties. A specific finding of aggravating or mitigating circumstances allows the board to impose a penalty other than that in the guidelines.

SECTION 24: This section prescribes penalties for giving false information.

SECTION 25: Several practice acts for various professions contain provisions which require applicable boards to report all criminal violations relating to that profession to the appropriate prosecuting authority. There is no such general provision applicable to all professions in chapter 455, Florida Statutes.

SECTION 26: Section 455.228, Florida Statutes, provides the department authority to issue a cease and desist notice when it has probable cause to believe that an unlicensed person has violated any of the practice acts or to any person who aids or abets the unlicensed practice of a profession. To enforce a notice to cease and desist, the department must file a proceeding in circuit court. It is not stated specifically, however, that the proper place to challenge a notice to cease and desist is in circuit court and not in an administrative hearing.

SECTION 27: Section 455.228, Florida Statutes, authorizes DPR to issue a notice to cease and desist to any unlicensed person who violates certain regulatory provisions. However, as a result of insufficient funding, the department has not aggressively enforced unlicensed activities.

SECTION 28: Section 455.2285, Florida Statutes, provides for an annual report concerning administrative complaints and disciplinary actions taken by the department. It does not provide for any financial information, information to facilitate efficient and cost-effective operations of the department, or recommendations for proposed legislative changes.

SECTION 29: Section 455.229, Florida Statutes, provides that information required by DPR from applicants for licensure is public, with the exception of financial information, examination questions, answers, papers, grades, and grading keys. Medical information and school transcripts and not statutorily exempt from public scrutiny.

SECTION 30: Section 455.232, Florida Statutes, prohibits any officer, employee, or person under contract with the department or any board to disclose confidential information to any person who is not lawfully entitled to the information.

SECTION 31: Section 455.24, Florida Statutes, requires health care providers who advertise for free, discounted fee, or reduced fee services, examination, or treatment provided to clearly delineate that patients may refuse to pay, cancel payment, or be reimbursed for payment for services provided within 72 hours of responding to an advertisement. The statement is not required if the ad appears in a classified directory which primarily advertises free, reduced, or discounted prices to persons 60 years of age or older; provided the statement is prominently displayed in the directory.

SECTION 32: Section 455.241, Florida Statutes, provides that certain health care providers who are authorized to administer or dispense drugs are subject to immediate suspension if convicted of a felony under chapter 893 (drug violation), Florida Statutes, or the United States Code.

SECTION 33: Section 455.2415, Florida Statutes, requires that communications between a patient and a psychiatrist are confidential, and can only be disclosed upon request of the patient's legal representative.

SECTION 34: Section 455.242, Florida Statutes, requires boards and the department to develop rules for disposition of records of practitioners who are deceased, or who relocate or terminate their practice.

SECTION 35: Section 455.243, Florida Statutes, authorizes DPR to inspect pharmacies and establishments authorized to prescribe controlled substances.

SECTION 36: Section 455.245, Florida Statutes, defines "health care practitioner" and requires DPR to issue emergency orders suspending licenses of such practitioners convicted of certain felonies.

SECTION 37: Section 455.26, Florida Statutes, provides for the appointment of impaired practitioner committees.

SECTION 38: Each practice act which provides for treatment programs for impaired practitioners contains the relevant provisions for the approval of programs in the applicable practice act. These provisions are not provided for in chapter 455, Florida Statutes.

SECTION 39: Section 458.331, Florida Statutes, contains provisions relating to grounds for discipline by the Board of Medicine. Paragraph (e) of subsection (1) references treatment providers approved pursuant to section 458.3315, Florida Statutes. Paragraph (jj) of subsection (1) references the requirement under section 455.28, Florida Statutes, which requires certain health care practitioners to report any physician the licensee knows has violated the applicable practice act and who provides services in a hospital where the physician and the licensee both provide services.

SECTION 40: Section 459.015, Florida Statutes, contains provisions relating to grounds for discipline by the Board of Osteopathic Medical Examiners. Paragraph (e) of subsection (1) references

treatment providers approved pursuant to chapter 458, Florida Statutes. Paragraph (mm) of subsection (1) references the requirement under section 455.28, Florida Statutes, which mandates that certain health care practitioners report any physician the licensee knows has violated the applicable practice act and who provides services in a hospital where the physician and the licensee both provide services.

SECTION 41: Section 460.413, Florida Statutes, contains provisions relating to grounds for discipline by the Board of Chiropractic. Paragraph (hh) of subsection (1) references the requirement under section 455.28, Florida Statutes, which requires certain health care practitioners to report any physician the licensee knows has violated the applicable practice act and who provides services in a hospital where the physician and the licensee both provide services.

SECTION 42: Section 461.013, Florida Statutes, contains provisions relating to grounds for discipline by the Board of Podiatric Medicine. Paragraph (bb) of subsection (1) references the requirement under section 455.28, Florida Statutes, which requires certain health care practitioners to report any physician the licensee knows has violated the applicable practice act and who provides services in a hospital where the physician and the licensee both provide services.

SECTION 43: Subsection (4) of section 463.003, Florida Statutes, relating to the Board of Optometry, references section 20.30(5), Florida Statutes, for further board requirements.

SECTION 44: Section 464.018, Florida Statutes, contains provisions relating to grounds for discipline by the Board of Nursing. Paragraph (m) of subsection (1) references the requirement under section 455.28, Florida Statutes, which requires certain health care practitioners to report any physician the licensee knows has violated the applicable practice act and who provides services in a hospital where the physician and the licensee both provide services.

SECTION 45: Section 465.016, Florida Statutes, contains provisions relating to grounds for discipline by the Board of Pharmacy. Paragraph (o) of subsection (1) references the requirement under section 455.28, Florida Statutes, which requires certain health care practitioners to report any physician the licensee knows has violated the applicable practice act and who provides services in a hospital where the physician and the licensee both provide services.

SECTION 46: Section 466.028, Florida Statutes, contains provisions relating to grounds for discipline by the Board of Dentistry. Paragraph (ii) of subsection (1) references the requirement under section 455.28, Florida Statutes, which requires certain health care practitioners to report any physician the licensee knows has violated the applicable practice act and who provides services in a hospital where the physician and the licensee both provide services.

SECTION 47: Section 468.384, Florida Statutes, contains provisions relating to the Board of Auctioneers. These include provisions which provide for initial terms of members and are now obsolete. Additional provisions relating to board structure, procedures, and liability are also found in chapter 455, Florida Statutes.

SECTION 48: Section 472.007, Florida Statutes, contains provisions relating to the Board of Professional Land Surveyors. These include provisions which provide for initial terms of members and are now obsolete.

SECTION 49: Section 484.042, Florida Statutes, contains provisions relating to the Board of Hearing Aid Specialists. These include provisions which provide for initial terms of members and are now obsolete.

SECTION 50: There is currently no specific legislative intent language in chapter 455, Florida Statutes, encouraging affordable medical services. Additionally, no reference exists to authorize the Board of Medicine to issue restricted licenses annually to up to 100 persons to practice medicine in Florida.

SECTION 51: Section 489.515, Florida Statutes, authorizes the Electrical Contractors' Licensing Board to refuse to certify any applicant who has violated section 489.533, Florida Statutes, which contains grounds for discipline, or section 489.535, Florida Statutes, which requires the board to report any criminal violation of the practice act to the proper prosecuting authority.

SECTION 52: Section 492.103, Florida Statutes, contains provisions relating to the Board of Professional Geologists. These include provisions which provide for initial terms of members and are now obsolete.

SECTION 53: Several professional regulation statutes contain obsolete language.

SECTIONS 54-56: Chapter 87-394, Laws of Florida, created sections 455.301-455.309, Florida Statutes, providing for regulation of asbestos consultants and contractors by DPR. No licensee is currently required to advertise, offer, bid, or contract to perform asbestos abatement consulting or contracting. According to the definitions, licensure is required only when actual consulting or abatement activity is performed.

Asbestos consultants and contractors are presently licensed and disciplined by and subject to the rules of either the Board of Professional Engineers, the Board of Architecture and Interior Design, the Construction Industry Licensing Board, or DPR, depending on the credentials supplied to obtain licensure.

Asbestos consultant or contractor licenses may currently be issued only to individuals. There is no provision whereby an individual provides licensure for a company. A company may bid and contract for an asbestos abatement project, then hire a licensed person.

Training requirements are established for consultants, contractors, and certain other persons not licensed under these provisions, who are involved in asbestos projects. Criteria for approval of training courses are set by the United States Environmental Protection Agency.

SECTIONS 57-71: Florida's current system of construction contractor regulation has the very unusual aspect of allowing licensure requirements to be satisfied through either local licensure or statewide licensure. The statewide license is a "certificate." The license allowing a locally licensed contractor to work in the jurisdiction where he holds a local license is called a "registration." The Construction Industry Licensing Board (and DPR) is ultimately responsible for providing the discipline for both types of contractors.

There are 18 different kinds of statewide construction contractor licenses (certificates) set forth in part I of chapter 489, Florida Statutes. In addition, the Construction Industry Licensing Board (CILB) is authorized to establish (by rule) "specialty" categories of construction contractors. Local jurisdictions may locally license individuals in any of the 18 categories established in the chapter, and may additionally design virtually whatever other construction licensure categories they choose. The CILB requires anyone who is locally licensed to obtain a registration from the board. Strictly speaking, it is the presence of the registration (not the local license) which allows the locally licensed contractor to lawfully operate.

"Contractor" is defined very broadly in part I of chapter 489, Florida Statutes. According to the definition found in section 489.105, Florida Statutes, anyone who -- for compensation -- alters or improves a building or structure (or the ground around it) is a contractor. The section goes on to provide specific definitions (the job scope) for each contractor category. These definitions are established in subsequent paragraphs ([a] through [o]) by stating that the licensee (a plumber, general contractor, swimming pool contractor, roofing contractor, etc.) is "a contractor whose services are limited to... (certain activities)." Having thereby incorporated the definition of contractor -- by virtue of the presence of that phrase -- into each particular contractor definition, each subsequent paragraph then provides the specific activities which comprise the job scope of each license category. Other provisions in the chapter require anyone who is performing contractor services in Florida to be either registered or certified.

Presently, the CILB has the authority to establish certifications for "specialty contractors" by rule. These specialty contractor categories must be for a "particular phase of construction," or "limited to a subset" of the activities in one of the statutorily enumerated certification categories.
Presently, there is some confusion over whether the specialty contractor categories established through board (CILB) rule constitute a mandatory licensure requirement, or whether they simply establish an optional path for those who prefer statewide licensure to local licensure.

Presently, the CILB is requiring all individuals who are issued a local construction contractor license to also be registered (at a cost of $104). This is board policy even for individuals licensed in categories such as "painters," "door hangers," or "tile setters" (categories which have no analogous certification licensure category). Even if the CILB did not require the registration, some local jurisdictions are insisting upon it, and are threatening to prosecute if the locally licensed painters or tile setters, etc., do not become registered.

Presently, the "owner-builder" exemption found in part I of the chapter allows the owner of either a home, commercial building, or farm outbuilding to do his own construction under certain circumstances. The farm outbuilding element of the provision is absent from the owner-builder exemption found in part II (regarding electrical contracting).

Presently, the CILB has statutory authority to charge up to $50 for late renewal of a license. There are also statutory provisions providing authority to charge $100 for the reactivation of an "involuntarily inactive" license. The CILB is presently ruling that a license which is not renewed on time is rendered immediately "involuntarily inactive." Rather than utilize the $50 late fee, the board is treating a late renewal application as an application to reactivate the applicant's "involuntarily inactive" license, and levying a charge of $100 for "reactivation."

SECTIONS 72-76, 82, 84-85, 88, 96, 107, and 122-123: Currently, the board which regulates medical physicians is the Board of Medicine, and the board which regulates osteopathic physicians is the Board of Osteopathic Medicine.

SECTION 77: Section 458.311 (3), Florida Statutes, deals with the existing program for licensure of American college graduates, who attend a recognized foreign medical school, and complete an academic year of supervised clinical training in an approved American hospital. This program has been referred to as the "5th pathway program". This program expired October 1, 1991, and did not contain a Sunset review provision.

SECTION 78: To be eligible for endorsement as a physician, an applicant must have passed the examination of the Federation of State Medical Boards (FLEX) or the examination of the National Board of Medical Examiners within a specified time period. These two examinations are being phased out and will be replaced with the United States Medical Licensing Examination (USMLE).

SECTION 79: An applicant for a medical faculty certificate who is otherwise qualified is required to hold a current, valid license to practice medicine in another jurisdiction in the United States and complete one year's post graduate training (internship/residency) accredited by the Accreditation Council for Graduate Medical Education. The maximum number of medical faculty certificates per institution is currently five.

SECTION 80: Section 458.317, Florida Statutes, presently requires that applicants must be retired at the time of making application for a limited license. Additionally, applicants who are otherwise qualified are required to have completed one year of accredited postgraduate training.

SECTION 81: Currently, the practice of medicine or an attempt to practice medicine without an active license constitutes a felony of the third degree.

SECTION 83: Section 458.345, Florida Statutes, presently requires every hospital employing the services of resident physicians, assistant resident physicians, house physicians, interns or fellows to register such persons with the board. Over the past year or so, in the case of at least one Florida medical school, persons serving in these capacities are now being paid by the university and not by the hospitals in order that such persons may have sovereign immunity. This has resulted in non-reporting by the hospitals since these positions are no longer employees of the hospital, even though the training program is under the auspices of the hospital which is affiliated with the medical school. The board currently has no statutory authority to require universities to report.

SECTIONS 86-87, and 89: The title of this organization is currently the National Board of Osteopathic Medical Examiners.

SECTION 90: Currently, only hospital residents and interns are required to be registered with DPR. There is no fee for processing the registration and there is no requirement that any person receiving a registration as an intern or resident shall be at least 18 years of age.

SECTION 91: Notification to the Board of Osteopathic Medicine for changes by osteopathic physician assistants is currently ten days.

SECTION 92: Licensure applicants must be graduates of a chiropractic college that is accredited by or has status with an agency or its successor which is recognized and approved by the U.S. Office of Education and the Council on Postsecondary Accreditation or by DPR. The department could be requested to evaluate an application from an accrediting agency and to either grant or deny approval to that agency to accredit chiropractic colleges. In addition, confusion exists in paragraph (2) of section 460.406, Florida Statutes, as to whether the exemption in this section applies to the basic examination and/or the certification examination. It is unclear in section 460.406(4), Florida Statutes, as to the licensure requirements, the board's process of certification and the rights of the applicants thereunder.

SECTION 93: A licensed chiropractor is required to submit a copy of a claim to the insured at the same time the claim is submitted to the third-party payor and failure to provide this copy constitutes a violation of the statute. Many licensees have advised that it is difficult, and in some cases impossible, to stay in compliance with this section.

SECTION 94: All nurse licensure applicant names are currently required to be submitted to the Department of Health and Rehabilitative Services for an abuse registry check. This requirement duplicates other abuse registry check requirements for employees of nursing homes and home health care agencies. It is estimated that this requirement will cost approximately $161,000 in 1992.

SECTION 95: Section 465.0276, Florida Statutes, requires all practitioners who are authorized to dispense drugs to register with DPR, and pay a $25 registration fee. The registration fee is used to offset costs incurred by the department to annually inspect offices of dispensing practitioners. Currently, approximately 3,000 physicians are registered to dispense drugs, and have paid their $25 registration fee, which has generated approximately $75,000 in revenue. Each DPR inspection takes approximately 1.5 hours, and costs approximately $55 per hour. Consequently, the inspection costs for 3,000 physician offices is approximately $247,500, which results in a shortfall of approximately $172,500 a biennium. The shortfall amount is absorbed from other revenues collected from physician license fees.

SECTION 97: Currently, the Council on Dental Hygiene is required to meet at least twice a year at the call or approval of the chairman of the Board of Dentistry, or approval of the secretary of DPR. The council is not authorized to meet at the call of the council chairman.

SECTION 98: Presently, only a graduate of a board-approved dental hygiene college or school, or an accredited dental hygiene college or school may apply for licensure as a dental hygienist. DPR reports 241 foreign-trained dentists applied for licensure as a dentist in FY 1990-91; 129 (54%) of which were not licensed. Therefore, it could be expected that -- if authorized to do so -- the 129 who were not licensed as dentists would apply for licensure as a dental hygienist.

SECTION 99: Although the Board of Dentistry currently evaluates unaccredited dentistry programs to determine if the school's program is equivalent to accredited dental programs, it does not certify such programs. The board reports it currently receives applications from graduates of approximately 12 different foreign dental schools; only one of which could be considered "reasonably comparable" to United States accredited schools.

SECTION 100: Section 466.025, Florida Statutes, currently authorizes DPR to issue an annual permit to an individual, who graduated from a school approved by the Board of Dentistry, to work in an institution operated by the state (i.e., correctional institution). However, the Florida Dental Association reports the term "permit" impedes upon job reclassifications and pay upgrades for such individuals.

SECTION 101: Assistants must have direct on-site supervision by a licensed speech-language pathologist or audiologist depending on the area of certification. Assistants cannot provide services for which

they are certified unless they are directly supervised by a licensee who is in the same facility at the time the assistant is providing those services. In locations where there is a critical shortage of supervising licensees, services are disrupted when the supervisor is out of the facility, resulting in hardship on the supervisor, assistant and consumer.

SECTION 102: To receive a provisional license, the statutes require only that academic programs be accredited by the Council on Postsecondary Accreditation in order to qualify. Six semester hours at the graduate level in certain designated areas are required by audiologists and speech-language pathologists. Audiologists usually have the six semester hours in speech-language pathology courses at the graduate level; however, most speech-language pathologists do not have six semester hours in audiology at the graduate level. Neither in-state nor out-of-state curriculums require six semester hours in audiology at the graduate level for speech-language pathologists.

SECTION 103: Applicants for licensure in audiology and speech-language pathology take a national examination administered by the Educational Testing Service (ETS) of Princeton, New Jersey. Application is made directly to the ETS which administers the test and then submits a score report to the board. This national exam is given to graduate students in the last semester of their program. These graduate students cannot even qualify for the provisional license until the Master's degree is conferred. The degree has not been conferred when the exam is taken.

SECTION 104: The minimal procedures and equipment currently required by law relate only to audiologists who fit and sell hearing aids. There are no requirements for audiologists who do not fit and sell hearing aids or for speech-language pathologists selling communicative devices other than hearing aids. Also, testimony given by professionals on the board indicates that much of the law under audiometric testing is outdated.

SECTION 105: Only licensees who fit and sell hearing aids are required to furnish an itemized listing of prices. A receipt which includes prescribed information must be given at the time of delivery to all purchasers of hearing aids.

SECTION 106: Current law does not define to whom a hearing aid is sold or distributed when sent through the mail.

SECTION 107: Technical.

SECTION 108: Pursuant to section 474.203, Florida Statutes, the Board of Veterinary Medicine is authorized to certify all veterinarian school faculty who are exempt from licensure requirements. However, DPR reports this language is unclear, and should be clarified. In addition, the department reports no fees have been collected to offset the costs (approximately $1,500 to $3,000) incurred for certifying an estimated 25 to 30 faculty who are exempt from licensure.

SECTIONS 109-111: DPR reports that the Board of Psychological Examiners is in a deficit posture totalling $133,224. Therefore, the department is recommending an increase in fee caps for examinations, biennial renewals, and continuing education providers.

SECTION 112: Currently, the Board of Psychological Examiners is authorized to discipline any psychologist who fails to provide his or her client -- upon request -- with a copy of any psychological test, which has been paid for by the client. DPR reports that requiring the submission of a "test" opposed to "test results" does not ensure confidentiality and maintain the validity of the psychological test.

SECTIONS 113, 114, 118, and 120: The practices of psychology (chapter 490, Florida Statutes), clinical social work, marriage and family therapy, and mental health counseling (chapter 491, Florida Statutes) are currently "title acts" and are scheduled to become "practice acts" on October 1, 1995. The October 1, 1995 practice act effective dates were established to give all persons currently practicing psychotherapy adequate notice of the implementation date. In addition, school psychologists are also licensed under chapter 490, Florida Statutes, as a title act. However, the 11th United States Circuit Court of Appeals recently held that a "title act" violates the First Amendment right to free speech. In addition, although sections 490.014 and 491.014, Florida Statutes, currently exempt salaried employees of certain government agencies, such sections do not provide an exemption for child care programs, child placing agencies, domestic violence centers, or private non-profit organizations. Consequently, advancing the effective date of chapters 490 and 491, Florida Statutes, could prohibit certain employees of such entities from performing counseling-type duties.

SECTIONS 115 and 121: The Florida Association of Hypnotists interprets present law to allow a person to perform hypnosis as long as such person does not use a protected title, and when hypnosis is for "therapeutic purposes" they must have a referral by a "practitioner". In addition, the association does not consider hypnosis performed to help a person lose weight, stop smoking, improve study habits or improve a person's golf game to be for therapeutic purposes. Consequently, the association reports advancing the effective date of chapters 490 and 491, Florida Statutes, becoming practice acts would limit hypnotists who are not licensed pursuant to such chapters to only practice hypnotism for therapeutic purposes.

SECTION 116: Section 112.313(7), Florida Statutes, currently prohibits a licensed school psychologist who is an employee or contract employee of a public school district from also having a private practice, when such employment and private practice could be viewed as a conflict of interest.

SECTION 117: Chapter 490, Florida Statutes, does not require a psychologist or school psychologist to maintain client records. However, the department reports the maintenance of such records could be beneficial to both the client and the licensee.

SECTION 119: Section 491.035, Florida Statutes, currently authorizes any individual applying for licensure as a clinical social worker, marriage and family therapist, or mental health counselor prior to December 31, 1991, to have obtained their two years of supervised experience at the pre-master's level.

SECTIONS 122 and 123: Technical.

SECTION 124: Section 877.04, Florida Statutes, prohibits tattooing except by a physician licensed under chapters 458, 459, and 466, Florida Statutes, or a person "under his direction." The Board of Medicine has ruled that the application of permanent cosmetic makeup is tattooing. Recent court decisions have interpreted "under his direction" to require the direct supervision of the physician (e.g., in the same room). Normally, permanent cosmetic makeup has been under the "general supervision" of a physician which is not in the same room or building. Clarification is needed for this issue.

SECTION 125: Section 465.185, Florida Statutes, currently prohibits any person from paying or receiving any kind of payment for the referral of patients to a pharmacy. The Department of Health and Rehabilitative Services is responsible for enforcement of this section.

SECTION 126: Section 109 of chapter 91-282, Laws of Florida, authorizes DPR to license certain foreign-trained dentists.

SECTION 127: Sections 490.0141 and 491.0141, Florida Statutes, permit a licensed psychotherapist, who is qualified as determined by their respective board. In addition, the sections provide that chapters 490 and 491, Florida Statutes, do not limit or affect the right of any person qualified pursuant to chapter 456, Florida Statutes, to practice hypnosis pursuant to that chapter.

SECTION 128: Section 491.035, Florida Statutes, currently authorizes any individual applying for licensure as a clinical social worker, marriage and family therapist, or mental health counselor prior to December 31, 1991, to have obtained their two years of supervised experience at the pre-master's level.

SECTION 129: Sections 458.322, 459.0095, 460.4095, 461.0074, and 499.037, Florida Statutes, are obsolete requirements dealing with DPR furnishing HRS certain information on physicians who will or will not accept medicare assignments or other obsolete language. Current federal law requires all physicians to prepare medicare reimbursement paperwork.

SECTIONS 130-158:

CHAPTER 468

Chapter 91-207, Laws of Florida, created the Auctioneer Recovery Trust Fund. This fund will replace the bonding requirement for auctioneers and auction businesses. The recovery fund is intended to provide for the consumer's relief and the culpable licensee would

have to reimburse the fund in order to continue to operate. Current bonding requirements would be repealed on October 1, 1995.

CHAPTER 470

Subsection (4) of section 470.002, Florida Statutes, exclude agents registered under chapter 639, Florida Statutes, who sell preneed contracts for funeral merchandise or services from the definition of "practice of funeral directing." Subsection (10) permits direct disposers registered under section 470.017, Florida Statutes, to bury or cremate without being licensed as a funeral director. In subsection (18), the definition of "legally authorized person" provides a list of persons who may authorize a cremation.

The Board of Funeral Directors and Embalmers has authority to adopt rules necessary to implement the provisions of chapter 470, Florida Statutes. The Department of Professional Regulation (DPR) has authority to adopt rules relating to the inspection of funeral establishments and cinerators. This rulemaking authority does not specifically provide for rules which relate to the handling or biohazardous and hazardous materials. The Department of Environmental Regulation regulates hazardous materials and the Department of Health and Rehabilitative Services (HRS) regulates generators of biohazardous waste. Funeral establishments are considered generators of hazardous waste but do not get inspected adequately by HRS. DPR is required to inspect funeral establishments at least annually.

Sections 470.007 and 470.011, Florida Statutes, provide procedures for the licensure of embalmers and funeral directors by endorsement. Applicants for licensure by endorsement cannot begin to work for a funeral establishment until after successful completion of an examination on state and local laws and rules.

Sections 470.008 and 470.012, Florida Statutes, provide for registration as an embalmer or funeral director intern. An internship is required prior to licensure. These sections also provide for the establishment of an internship program and criteria for intern training agencies. Any funeral establishment where funeral directing or embalming is practiced may be an intern training agency.

Each licensed funeral establishment must have a full-time funeral director in charge and must have a licensed funeral director reasonably available to the public during normal business hours. There is no requirement that a license be displayed or that a recent photograph be on the license. This has resulted in identification problems for the department during inspections, and for the public in general.

Section 470.025, Florida Statutes, provides for the licensure of cinerator facilities where cremations may be performed. The statute does not specifically provide the kinds of materials which may be received or incinerated by a licensed cinerator. It is reported by the department that some of these facilities are receiving medical wastes from hospitals for the purpose of incineration. Presently,

the Department of Environmental Regulation regulates medical waste incinerators.

CHAPTER 471

Section 471.013, Florida Statutes, currently imposes no limit on the number of times applicants may take the licensure examination. There is also no requirement that the fundamentals portion of the exam be passed prior to the principles and practices portion being taken.

Section 471.021, Florida Statutes, currently allows professional engineers from other states to apply and receive temporary licensure for one project not to exceed one year, as long as the state in which they are licensed has a reciprocal agreement to issue temporary licenses to Florida professional engineers seeking temporary licenses in their states. No licensing standard is placed on the person requesting a Florida temporary license, and the board could be forced to issue a temporary license to a person not meeting the standards for permanent licensure.

Sections 471.023, 471.025, and 471.033, Florida Statutes, relate to certification of partnerships and corporations, seals, and disciplinary proceedings. Language relating to signing and sealing of final drawings, specifications, plans, reports, or other papers or documents varies throughout these sections and, according to the board, should be made consistent.

CHAPTER 475

Section 475.25, Florida Statutes, currently authorizes the Florida Real Estate Commission to deny applications for or renewal of licenses, certificates, registration, or permit; invoke probation, suspension or revocation; impose administrative fines or issue reprimands for failure to deliver personal property being held in escrow at an agreed upon time or upon request. If the licensee, in good faith, questions entitlement, or if conflicting demands exist on the escrowed property, the licensee can request the commission to issue an escrow disbursement order determining entitlement, submit matter arbitration or mediation , or seek adjudication in court. No reference is made to who will conduct mediation services.

Currently no statutory language exists requiring realtors to disclose structural defects.

Section 475.611, Florida Statutes, currently inaccurately sites a federal entity which lacks the authority to define the scope of practice.

Section 475.613, Florida Statutes, currently specifies that two members of the Real Estate Appraisal Board must be licensed or certified residential real estate appraisers and that two members must be certified general real estate appraisers. It is unclear whether members must remain in these classifications for the duration of their membership.

Section 475.618, Florida Statutes, currently inadvertently omits language addressing renewal of instructor permits. Because of this omission, there exists no mechanism by which appraiser instructor permit holders can renew such permits.

Section 475.622, Florida Statutes, does not currently conform to recently enacted legislation accommodating the newly federally-recognized level of residential certification. It does not delineate the two types of certified appraisers set forth elsewhere in the law.

Section 475.627, Florida Statutes, currently inadvertently allows certified residential appraisers to, without having to pass a written exam, teach higher level courses outside the scope of their knowledge.

CHAPTER 476

Section 476.144, Florida Statutes, provides for a restricted license for barbers. The statute is somewhat confusing and has been interpreted by the Barber's Board to require an applicant for a restricted license to have practiced in another state for at least fifteen years. The Barber's Board believes, however, that the intent of the section was not to place a minimum number of years as a requirement but, rather, the applicant could not have been disciplined for the practice of barbering at any time during the previous fifteen years.

Subsection (7) of section 476.184, Florida Statutes, provides that a barbershop license may be transferred from one location to another upon approval by DPR. These requests for transfer require inspection of the new location by the department just as if a new license had been requested. No transfer fee is provided for in the statute to cover the cost of inspecting the new facility.

CHAPTER 484

Section 484.007, Florida Statutes, provides for licensure and examination of persons desiring to practice opticianry. One available option to qualify to take the examination is to serve as an apprentice for not less than three years of 40-hour workweeks under the supervision of an optician, a physician, or an optometrist licensed in Florida. The apprenticeship must be completed within a five year period. For those qualifying by apprenticeship, any time spent as an apprentice during a workweek which was less than 40 hours cannot be applied toward fulfilling this requirement.

CHAPTER 489

Section 489.107, Florida Statutes, currently contains obsolete language stipulating how original appointments to the Construction Industry Licensing Board were to be made. This section also authorizes establishment of an eighteen member board, containing two lay persons.

Section 489.507, Florida Statutes, currently specifies two members of the Electrical Contractors Licensing Board shall be lay persons. No requirement for being actively engaged in the construction industry they represent or for being a Florida citizen exists.

SECTION 159: Section 20.30, Florida Statutes, creates the Department of Professional Regulation and establishes divisions within its jurisdiction. One such division is the Division of Examination and Licensure.

SECTION 160: Medicare is a federal program which provides health care services to elderly and disabled Americans. There are two parts to Medicare. Part A is hospital insurance and Part B is medical insurance. Copayments and deductibles apply to both Parts A and B and there is a monthly premium required for Part B (for 1992 it is $31.80 a month).

Physicians have several billing options for Medicare patients. A physician may become a "participating physician" by agreeing to accept assignment on all Medicare beneficiaries the physician treats. In this case, the physician will receive 80 percent of the reasonable charge (as determined by Medicare) from Medicare and may bill the patient for the remaining 20 percent (but may bill the patient for no more). A participating physician receives a slightly higher reimbursement rate than a physician who is not a participating physician.

A second option available to physicians is to accept assignment on some Medicare patients and not others. For those patients where the physician accepts assignment, the physician is paid 80 percent of the reasonable charge by Medicare and the physician bills the patient for the remaining 20 percent.

Instead of accepting assignment, a physician may bill the patient directly and charge any amount up to a federally determined maximum charge (although the physician is now required to complete the paperwork and submit the bill for all Medicare patients). In these cases, the patient pays the physician directly and then the patient receives 80 percent of the reasonable amount directly from Medicare.

In 1987, 75 percent of money paid for Part B services nationally was paid on assignment. In Florida, the assignment rate was 68 percent.

Several states, including Massachusetts, Vermont, Rhode Island, Connecticut, Pennsylvania and New York, have passed laws prohibiting or modifying balance billing. Questions have arisen as to whether such limitations increase access to health care for the elderly by making medical services more affordable, or decrease access to health care through limiting the number of physicians who will accept Medicare patients.

SECTIONS 161 and 162: Chapters 458 and 459, Florida Statutes, provide for the regulation of physicians and osteopathic physicians, and require these individuals to be licensed in Florida in order to legally practice their craft. Although limited license provisions

are addressed in both chapters, no specific authorization is granted for the provision of medical services by out-of-state physicians while traveling in Florida with team members.

B. EFFECT OF PROPOSED CHANGES:

This bill would make numerous substantive and technical changes to chapter 455, Florida Statutes, the general practice act relating to regulation of professions, and to several medical and non-medical practice acts. Specifically, the bill would require the Department of Professional Regulation (DPR) to work with the various boards to implement a long-range planning and monitoring component, including a five-year fiscal and management plan which contains detailed recommendations for all professions.

Regarding construction contracting and electrical contracting issues, the bill would provide local jurisdictions greater disciplinary authority and more extensive disciplinary powers for dealing with registered contractors. Local jurisdictions would be authorized to collect outstanding fines issued by the Construction Industry Licensing Board, and to keep 25% of what they collect. DPR would be required to design and implement an automated system to provide licensure information to local jurisdictions. The definition of "contractor" would be narrowed, and the types of contractors the board is required to register would be restricted. The bill would clarify that the board does not have the authority, through rule, to require licensure of a person or group not already required by statute to be licensed. These provisions should reduce the amount of time it takes to discipline practitioners who violate rules and produce a regulatory system which will prevent unlicensed contracting to a greater degree than currently exists.

The bill would expand the consumer-oriented posture of the department in several ways. Specifically, it would establish legislative intent that enforcement of licensure for certain department regulated professional activities is a state priority and enforcement costs should be covered by the various regulated professionals. The bill would authorize the boards to impose a special fee to develop an "unlicensed activity" fund to facilitate enforcement of unlicensed activity. The bill would further streamline many of the department's administrative functions to provide a more timely, cost-effective response to consumer complaints.

With regard to dentistry and dental hygiene, the bill would authorize the chairman of the Council of Dental Hygiene to call meetings of the council; authorize a graduate of an unaccredited dental school (foreign-trained dentist) to be licensed as a dental hygienist upon meeting certain continuing education, examination, and credential requirements; and authorize DPR to certify a foreign dental school whose dentistry program is reasonably comparable to accredited dental schools located in the United States.

In the area of examinations, the bill would authorize the department to administer exams in languages other than English, provided practice of the profession by non-English speaking individuals will

not result in a threat to the health, safety, and welfare of the consumer. The bill would require applicants seeking to take the exam in a language other than English to incur all relevant costs. Finally, boards, or the department when there is no board, would be authorized to require applicants to pass an exam pertaining to applicable state laws and rules.

In the financial area, the bill would require the department to produce a concise, quarterly management report which apprises boards of their financial status, including a summary sheet with cash balances for all boards. The bill would also require the department to implement "direct billing" procedures, to the maximum extent possible, rather than relying totally on the existing cost allocation procedure which makes it hard to pinpoint how much the department is actually charging for specific activities. The bill would require the boards to ensure license fees are adequate to cover anticipated costs. The bill would require the boards to maintain minimum cash balances and authorize boards to increase fees or borrow money from the trust fund to comply with minimum cash balance requirements. If the boards do not address cash balance problems within one year of notification by the department, the bill would authorize the department to raise fees to cover the deficit and ensure compliance with minimum cash balance requirements.

Regarding indigent and under-served populations, the bill would authorize boards to adopt rules to allow retired professionals to serve indigent, under-served, or critical need populations. The bill would encourage such activities by allowing pro bono service to substitute for a portion of required mandatory continuing education requirements for licenses in instances where continuing education is required.

In the area of legal issues and discipline, the bill would establish a mediation process and authorize boards, or the department when there is no board, to designate suitable disciplinary violations. The bill would authorize the department to use letters of guidance in lieu of a finding of probable cause and clarify that letters of guidance do not constitute discipline and are not appropriate for citation procedures. The bill would establish that a notice to cease and desist is not a final agency action and does not require a chapter 120, Florida Statutes, hearing.

Regarding medical quality assurance professions, the bill would reinstate section 458.311(3), Florida Statutes, which expired October 1, 1991, and address the existing licensure program for American college graduates who attend a recognized foreign medical school and complete an academic year of supervised clinical training in an approved American hospital. The bill would make several amendments to statutory authority of the Board of Medicine; specify certain penalties for practicing medicine without an active license; require hospitals utilizing services of unlicensed physicians as resident physicians, assistant resident physicians, house physicians, interns or fellows to register such activity with the board; clarify what chiropractic colleges are accepted in Florida; address third-party payor provisions; eliminate a requirement that names of nurse licensure applicants be submitted to the Department

of Health and Rehabilitative Services for an abuse registry check; amend licensure requirements for audiologists and speech-language pathologists; and amend provisions relating to hearing aid specialists, veterinary medicine, psychology, and tattooing.

Regarding requiring physicians to accept Medicare assignments, medical doctors, osteopaths, chiropractors, and podiatrists will be required to accept Medicare assignment when treating a patient for an emergency condition. Additionally, all consulting physicians will be required to accept assignment when treating a Medicare beneficiary, if the patient's primary physician accepts assignment, unless the patient agrees, in writing and prior to receiving the treatment, that such acceptance is not required. Any attempt by any of these physicians to collect more than the amount authorized under assignment will be considered null, void and of no merit.

Regarding non-medical quality assurance professions, the bill would address technical concerns presented by various professions (auctioneering, barbering, construction, employee leasing, engineering, funeral directing/embalming, opticianry, and real estate). These changes clarify, conform, and delete obsolete language; enable DPR to assess fees to cover certain administrative costs; correct statutory references; and enhance the ability of DPR and the boards to function more efficiently. Notably, these changes:

-- clarify that no claims shall be submitted for payment from the Auctioneer Recovery Trust Fund until October 1, 1995

-- amend sections 476.144 and 476.184, Florida Statutes, to clarify that applicants for restricted barber's licenses need not have practiced for a minimum length of time in another state, and authorize the department to collect a fee of $125 for the transfer of a barbershop license from one location to another

-- require realtors, upon written request of any party to a real estate sales transaction, to disclose termite and roof inspection reports ordered within the year preceding the contract's effective date

Regarding the organizational structure of the boards, the bill would require consistent and staggered member terms for all boards, with specified term-ending dates. The bill would authorize boards to increase the number of probable cause panels. The bill would specify that probable cause panel membership must include both consumer and professional representation, if at all possible.

C. SECTION-BY-SECTION ANALYSIS:

<u>SECTION 1:</u> Amends section 20.30, Florida Statutes, dealing with the organization of the Department of Professional Regulation (DPR) and the various boards created within it. It provides that all health care practitioners, in addition to physicians, shall be included in DPR's efforts to assure quality, cost-effective health care

throughout the state. It establishes provisions designed to guarantee staggered terms. This section establishes legislative intent language which specifies that the department should regulate newly regulated professions unless a compelling need for a board is established, and delays for one year the actual creation of any statutorily established board, unless otherwise provided by law.

SECTION 2: Amends section 215.37, Florida Statutes, and clarifies legislative intent that each profession should operate within existing fees. It strengthens and moves requirements for allocation of board expenses to section 455.219, Florida Statutes.

SECTION 3: Provides that parts I and II of chapter 455, Florida Statutes, be combined and that the chapter will no longer be divided into parts. This is being done because chapter 455, Florida Statutes, will only contain general provisions relating to regulated professions, thus the chapter needs no division.

SECTION 4: Amends section 455.01, Florida Statutes, to clarify and establish new definitions. It expands the definition of health care practitioner to include all practitioners currently regulated by DPR who deliver health services. Further, it defines the following terms: board, consumer member, department, license, licensee, and profession.

SECTION 5: Amends section 455.11, Florida Statutes, and makes technical revisions which delete obsolete language.

SECTION 6: Amends section 455.201, Florida Statutes, to provide a statement of legislative intent that department policies ensure expenditures are made in the most cost-effective manner possible to maximize competition, minimize licensure costs, and maximize public access to board meetings. Requires department policies to reflect sound fiscal principles.

SECTION 7: Amends section 455.203, Florida Statutes, to authorize boards to issue up to a 4-year license. Expands training requirements for new board members. Strikes language relating to peer review.

SECTION 8: Creates section 455.204, Florida Statutes, to require DPR to implement a long range policy planning and monitoring component, including long-range estimates of revenues, expenditures, cash balances, and performance statistics. It also requires an annual update of all long-range plans.

SECTION 9: Amends section 455.207, Florida Statutes, to make language gender-neutral; deletes obsolete and unnecessary language; clarifies quorum requirements for boards or committees; and specifies three consecutive unexcused absences within any twelve month period results in a position vacancy. Expands language relating to special committees and makes provisions for appointment of the third member, provided special committees cannot agree on who that individual should be. Requires special committees to recommend rules to resolve disagreement, and requires participating boards to

share costs associated with defending rules. Requires DPR to provide legal representation for special committees.

SECTION 10: Amends section 455.208, Florida Statutes, to require publication of a summary of final orders resulting in fines, suspensions, or revocations.

SECTION 11: Amends section 455.209, Florida Statutes, to authorize the Department of Legal Affairs to defend board members' businesses in any action against the company, provided the suit arises from statutorily authorized actions taken by the member.

SECTION 12: Amends section 455.211, Florida Statutes, to provide that boards cannot challenge each other's rules. Instead, boards should follow the procedures for settling differences outlined by section 455.207, Florida Statutes.

SECTION 13: Amends section 455.213, Florida Statute, to clarify relevant provisions and facilitate proper interpretation of existing language relating to licensing; includes prosecution and appeal in another jurisdiction as a basis for not issuing a license; authorizes each board, or the department when there is no board, which requires continuing education for renewal of a license, to adopt rules to establish criteria for continuing education courses, to allow part of the required continuing education hours to be fulfilled by: (1) the performance of pro bono services to indigent/underserved populations, (2) by performing research in critical need areas, or (3) for training leading to advanced professional certification; provides that the department shall adopt rules to provide for the administration of continuing education requirements. Provides for employment by public agencies of elected officials licensed under any practice act within the purview of chapter 455.

SECTION 14: Amends section 455.214, Florida Statutes, to authorize boards, or the department when there is no board, to issue limited licenses to retired professionals who are willing to provide service to indigent, underserved, and critical need populations. Specifies limited license application process; provides conditions under which limited licenses may be denied; specifies limited licensees may practice only in public or nonprofit institutions/agencies. Authorizes boards, or the department when there is no board, to develop rules addressing supervision of limited licensees.

SECTION 15: Amends section 455.217, Florida Statutes, to allow exams to be given in an applicant's native language, provided the applicant bears the full cost for development, preparation, administration, grading, and evaluation of the specialized exam. Authorizes boards, or the department when there is no board, to require applicants to pass an exam pertaining to applicable state laws and rules.

SECTION 16: Amends section 455.218, Florida Statutes, to clarify that passage of an examination is necessary for licensure; provides that license will not be issued if applicant is under prosecution or appeal in any jurisdiction.

SECTION 17: Amends section 455.219, Florida Statutes, to increase fiscal accountability and communications between the boards and DPR. It includes the following changes: a statement of legislative intent prohibiting cash deficits; requires a condensed management report which provides information concerning budgets, finances, performance statistics, and recommendations to be presented at least quarterly to all boards; requires each board to ensure license fees are adequate to cover all anticipated costs and maintain a minimum cash balance; authorizes each board, or the department when there is no board, to, by rule, assess and collect, once in a 4-year period, a one-time fee from each licensee in an amount sufficient to eliminate a cash deficit. Each profession is authorized, under certain circumstances, to receive temporary loans with interest, for a period not to exceed 2 years. Finally, it defines direct charge expenses and authorizes the department to contract with public and private entities for the deposit of revenue.

SECTION 18: Amends section 455.2226, Florida Statutes, to clarify relevant language and facilitate proper interpretation of existing provisions relating to the requirements for instruction on human immunodeficiency virus and acquired immune deficiency syndrome and to correct internal statutory references.

SECTION 19: Creates section 455.2235, Florida Statutes, to provide that boards, or the department when there is no board, may designate which disciplinary violations are suitable for mediation, provided the harm caused by the licensee is economic in nature and can be remedied by the licensee; provides that, if complainant and subject reach agreement through a mediation process and provide acknowledgements of satisfaction within a particular time frame, then no further action will be taken against the licensee; and provides for limitation on the number of times a licensee can use mediation.

SECTION 20: Amends section 455.224, Florida Statutes, to provide that a citation which is not challenged shall become a final order of the department when there is no board, and specifically states that a citation constitutes discipline; deletes letters of guidance from citation procedures since it is recommended in proposed changes to section 455.225(4) that letters of guidance no longer constitute discipline and, therefore, are not appropriate for citation procedures; provides for personal service of citations; provides continuing jurisdiction for boards which adopt citation offenses and penalties prior to Jan. 1, 1992, and allows new boards to designate citation violations and penalties within 6 months of their creation.

SECTION 21: Amends section 455.225, Florida Statutes, to clarify relevant language and facilitate proper interpretation of existing provisions relating to the requirements for disciplinary proceedings; deletes departmental authority to delegate its investigative function to boards; requires the department to allocate sufficient and adequately trained staff to expeditiously and thoroughly determine legal sufficiency and investigate all legally sufficient complaints; provides for confidentiality of the reports made to probable cause panels by the department prior to the department's dismissal of any case where legal sufficiency was

found, but a determination was made that there is insufficient evidence to support prosecution and such case is actually dismissed prior to a finding of probable cause; provides boards with authority to have more than one probable cause panel; provides that probable cause panels must have at least one professional member; provides that a past board member may serve on a probable cause panel but if that person is a past professional board member, the individual must hold an active valid license for that profession; requires boards to have a consumer member on probable cause panels if one is available, willing to serve, and authorized to do so by the chairman; provides that probable cause panels, or the department when there is no board, may issue letters of guidance in lieu of finding of probable cause; provides that the department may forward to a subject of a complaint, at the subject's expense, a copy of the department's investigative file, provided the subject agrees to maintain the confidentiality of the information received until ten days after probable cause is found. Requires DPR to provide additional training to complaint analysts and investigators.

SECTION 22: Amends section 455.227, Florida Statutes, to specify that revocation of a license is permanent, and authorizes the board, or the department when there is no board, to establish by rule requirements for reapplication.

SECTION 23: Amends section 455.2273, Florida Statutes, relating to disciplinary guidelines; requires each board, or the department when there is no board, to adopt by rule disciplinary guidelines for each ground for disciplinary action which may be imposed and, when applicable, possible aggravating and mitigating circumstances and the variation and range of penalties permitted for such circumstances; requires hearing officers, when recommending penalties in any recommended order, to follow the disciplinary guidelines and state in writing the aggravating or mitigating circumstances upon which the recommended penalty is based.

SECTION 24: Amends section 455.2275, Florida Statutes, to conform with the newly enacted definition of "license".

SECTION 25: Creates section 455.2277, Florida Statutes, to require the department or the appropriate board to report any criminal violation relating to the practice of a profession regulated by the department or board to the proper prosecuting authority.

SECTION 26: Amends section 455.228, Florida Statutes, to provide that a notice to cease and desist is not agency action for which a 120.57 hearing can be sought to make clear that the appropriate place for enforcement and challenge of these notices is in circuit court.

SECTION 27: Creates section 455.2281, Florida Statutes, to establish enforcement of unlicensed activities as a state priority. Effective July 1, 1993, boards, or the department when there is no board, are authorized to impose a $5 unlicensed activity fee which would be used to fund unlicensed activity enforcement. This section further provides that $5 of the current licensure fee may be used for this unlicensed activity enforcement, provided professions are

not in a deficit financial posture. DPR is required to make direct charges and direct credits to each individual profession's account, and requires the department to include all financial and statistical data resulting from unlicensed activity enforcement as a separate category in the quarterly management reports provided to all boards.

SECTION 28: Amends section 455.2285, Florida Statutes, to enhance management and financial accountability by requiring DPR to include certain fiscal information and recommendations in its annual report to the legislature effective November 1, 1993.

SECTION 29: Amends section 455.229, Florida Statutes, to exempt medical information and school transcripts from public records requirements.

SECTION 30: Amends section 455.232, Florida Statutes, to prohibit subject of investigation from disclosing confidential information; specifies disciplinary penalties for violations.

SECTION 31: Amends section 455.24, Florida Statutes, to specify that only one disclosure is necessary in a classified directory.

SECTION 32: Amends section 455.241, Florida Statutes, to expand provisions to include all health care practitioners.

SECTION 33: Amends section 455.2415, Florida Statutes, to provide for technical changes which make language gender neutral.

SECTION 34: Amends section 455.242, Florida Statutes, to provide for technical changes which make language gender neutral.

SECTION 35: Amends section 455.243, Florida Statutes, to make technical changes relating to inspection authority.

SECTION 36: Amends section 455.245, Florida Statutes, to provide that health care practitioners who enter a plea of nolo contendere, or are convicted or found guilty, regardless of adjudication, are subject to immediate licensure suspension. Makes technical changes to conform language to individual practice acts.

SECTION 37: Amends section 455.26, Florida Statutes, to make technical changes and clarify impaired practitioner committee language.

SECTION 38: Amends section 455.261, Florida Statutes, to require DPR to designate approved treatment programs; require DPR to retain impaired practitioner consultants; specifies duties of consultant.

SECTIONS 39-49: Amends sections 458.331, 459.015, 460.413, 461.013, 463.003, 464.018, 465.016, 466.028, 468.384, 472.007, 484.042, to correct internal references and delete obsolete language.

SECTION 50: Provides a statement of legislative intent regarding the provision of affordable medical care. Authorizes the Board of Medicine to issue restricted licenses annually to up to 100 persons to practice medicine, provided they meet certain criteria.

SECTIONS 51 and 52: Amends sections 489.515 and 492.103, Florida Statutes, to correct internal references and delete obsolete language.

SECTION 53: Repeals sections 455.20, 455.215, 455.2182, 455.28, 462.15, 463.017, 466.029, 468.1765, 470.037, 471.035, 472.035, 473.324, 474.218, 475.454, 480.048, 481.227, 481.327, 484.016, 484.057, 489.535, and 489.559, Florida Statutes; section 468.1305, Florida Statutes, as created by chapters 90-134 and 90.345, Laws of Florida; sections 458.3315, 459.0155, 461.0132, 463.0165, 464.0185, 465.0165, 466.0283, 474.2141, and 490.0095, Florida Statutes, as amended by chapter 91-140, Laws of Florida; section 460.417, Florida Statutes, as created by chapter 90-25, Laws of Florida; and section 491.0095, Florida Statutes, as created by chapter 90-263, Laws of Florida.

SECTIONS 54-56: Creates an asbestos abatement program in chapter 455, Florida Statutes. Section 455.301, Florida Statutes, defines the term "training course provider". Section 455.3022, Florida Statutes, authorizes limited abatement activities by trained employees of governmental units, manufacturing, and utilities, for school reinspection, and provides for abatement activities by homeowners. Section 455.310, Florida Statutes, specifies duties of DPR in approving training courses and providers required for initial and renewal certification.

SECTION 57: Amends section 489.105, Florida Statutes, to modify the definition of contractor. Current statutes define a contractor as anyone who modifies a structure (or the ground around it) for compensation. This section would define a contractor as one who does that and who is performing an activity within the job scope of one of the specific contractor definitions. This change narrows the definition to correspond to the actual enforcement practice of the board and department. This section also provides clarifying language regarding the scope of work for the residential contractor, and clarifies that a contractor is only responsible for the portion of the work he has contracted for.

SECTION 58. Amends section 489.109, Florida Statutes, to establish a 90 day "grace period" for late licensure renewal applications, before rendering the license "involuntarily inactive." During the 90 days, a late fee could be charged, but the license would not be rendered involuntarily inactive. After 90 days the license would become involuntarily inactive.

SECTION 59: Amends section 489.113, Florida Statutes, to clarify that categories of certified specialty contractors established by board rule exist as voluntary, rather than mandatory, licensure provisions. This section would also clarify that the addition of a new contractor category does not restrict the job scope of a previously established contractor.

SECTION 60: Amends section 489.115, Florida Statutes, to change one of the paths available for licensure by endorsement. Presently, the individual may gain licensure by showing he has a state's license which he obtained according to standards substantially

equivalent to whatever certification standards Florida had at the time he was licensed. This section would require the individual to show that he has a license he obtained according to standards substantially equivalent to current Florida certification standards.

SECTION 61: Amends section 489.117, Florida Statutes, to prohibit requiring registration of individuals licensed in locally-designed contractor categories, unless there is an analogous state certification category. This section would also provide a lower-cost "tracking license" for those categories which may not be registered, but which involve activities which involve live safety considerations and a significant potential danger to the consumer.

SECTION 62: Amends section 489.124, Florida Statutes, to require contractors to maintain business records for three years.

SECTION 63: Amends section 489.129, Florida Statutes, to take what is presently a single paragraph detailing grounds for discipline, and separate it into three paragraphs. It would add "repeated negligence" and "negligence resulting in a significant danger to life or property" as grounds for discipline.

SECTION 64: Amends section 489.131, Florida Statutes, to clarify that an occupational license is in the nature of a "tax," rather than a professional license.

SECTION 65: Amends section 489.503, Florida Statutes, to extend the owner-builder exemption in part II of the chapter (concerning electrical contracting) to include farm outbuildings.

SECTION 66: Amends section 489.511, Florida Statutes, to clarify that the job scope of a specialty contractor (in part II of the chapter) would be established by the board, by rule.

SECTION 67: Amends section 489.119, Florida Statutes, to prohibit an individual who has had his contractor's license revoked from subsequently serving in a managerial or supervisory capacity with a contracting firm.

SECTION 68: Amends section 489.120, Florida Statutes, to require the Department of Professional Regulation to design and implement (by July 1, 1993) an automated system for distributing licensure information to local jurisdictions.

SECTION 69: Amends section 489.127, Florida Statutes, to clarify that local jurisdictions who collect fines pursuant to the provisions of the section may retain these funds, or direct their use, as they wish. It would also allow local jurisdictions to collect outstanding fines issued by the Construction Industry Licensing Board, and to keep 25% of what they collect.

SECTION 70: Amends section 489.131, Florida Statutes, to provide local jurisdictions clear authority to exercise the full range of disciplinary action against registered contractors. Local jurisdictions would have the same range of penalties available to them as the Construction Industry Licensing Board (CILB) presently

has. When a local jurisdiction disciplines a registered contractor (in addition to any local penalty imposed), the local jurisdiction will also issue a recommended penalty for board (CILB) action. If the disciplined contractor does not appeal the recommendation, that recommended penalty will become a final order of the board. If the disciplined contractor does appeal, the case will proceed as under the current system, except that the discipline by the local jurisdiction will be considered sufficient as probable cause (relieving the board of the need for a probable cause panel hearing). This provision should reduce the backlog of cases before the Construction Industry Licensing Board.

SECTION 71: Amends section 489.509, Florida Statutes, to establish terms for moving an electrical or alarm contracting license into a voluntary inactive status.

SECTIONS 72-76: Amends section 20.30, 395.012, 395.1015, 440.37, and 455.213, Florida Statutes, to make technical changes to correct the name of the Boards of Medicine or Osteopathic Medicine.

SECTION 77: Amends section 458.311(3), Florida Statutes, to reinstate the existing program for licensure of American college graduates, who attend a recognized foreign medical school, and completes an academic year of supervised clinical training in an approved American hospital. This program expired October 1, 1991.

SECTION 78: Amends section 458.311, Florida Statutes, to include name of new uniform exam for medical licensure in the United States.

SECTION 79: Amends section 458.3145, Florida Statutes, to allow the board to consider licensure in another jurisdiction (outside the United States) and training determined by the board to be equivalent to one year ACGME accredited postgraduate training for issuance of Medical Faculty Certificates. Also, increases maximum number of medical certificateholders.

SECTION 80: Amends section 458.311, Florida Statutes, to allow Board to consider military medical training/medical experience in lieu of one-year accredited post-graduate training for applicants who graduated from medical school prior to 1946. Authorizes Board to deny license to applicant if employing agent/institution has caused or permitted violations of provisions of chapter 458, Florida Statutes, which it knew or should have known were occurring.

SECTION 81: Amends section 458.327, Florida Statutes, to establish a different level of penalty for practice of medicine by a person who has never held a Florida Medical License as compared to a physician practicing medicine with an inactive license.

SECTION 82: Amends section 458.335, Florida Statutes, to make technical changes.

SECTION 83: Amends section 458.345, Florida Statutes, to require every hospital employing/utilizing services of unlicensed physician as assistant resident physician, house physician, intern, fellows, to register such activity with Board.

SECTIONS 84-89: Amends section 459.003, 459.004, 459.006, 459.007, 459.0075, and 459.0092, Florida Statutes, to make technical changes. Changes the name of the board from Board of Osteopathic Medical Examiners to the Board of Osteopathic Medicine.

SECTION 90: Amends section 459.021, Florida Statutes, to require all persons in training leading to sub-specialty certification (osteopathic) to be registered with DPR. (Necessary to track osteopathic physicians not previously registered).

SECTION 91: Amends section 459.022, Florida Statutes, to make technical changes.

SECTION 92: Amends section 460.406, Florida Statutes, to clarify statutes indicating which chiropractic colleges are acceptable for graduates. Clarifies and provides proper prior notice to applicants of licensure requirements and the board process for certifying applicants, as well as their ability to work pending certification.

SECTION 93: Amends section 460.413, Florida Statutes, to better define grounds for disciplinary action; adds "upon the request of the insured" serves the same statutory purpose but makes it more economical for the physician.

SECTION 94: Amends section 464.008, Florida Statutes, to remove an abuse registry check requirement for all nurse licensure applicants.

SECTION 95: Amends section 465.0276, Florida Statutes, to increase dispensing practitioner registration fee cap from $25 to $100.

SECTION 96: Amends section 465.186, Florida Statutes, to make technical changes. Changes name of Board of Osteopathic Medical Examiners to the Board of Osteopathic Medicine.

SECTION 97: Amends section 466.004, Florida Statutes, to authorize the chairman of the Council on Dental Hygiene to call a meeting of the council.

SECTION 98: Amends section 466.007, Florida Statutes, to authorize a graduate of an unaccredited dental school to be licensed as a dental hygienist if such applicant meets certain credentialing requirements, successfully completes 19 semester hours of dental hygiene course work, and passes the national dental hygiene exam.

SECTION 99: Amends section 466.008, Florida Statutes, to authorize the department to evaluate and certify a foreign dental school whose dentistry program is reasonably comparable to U.S. accredited dental schools.

SECTION 100: Amends section 466.025, Florida Statutes, to authorize DPR to issue temporary certificates to dentists to practice in state and county government facilities.

SECTION 101: Amends section 468.1125, Florida Statutes, to give Board authority to establish protocols regarding on-site supervision restrictions placed on certified speech-language pathology/audiology

assistants. (Allows assistants to provide services when supervisor is not on-site.)

SECTION 102: Amends section 468.1155, Florida Statutes, to clarify language relating to educational requirements for audiologists and speech-language pathologists in the opposite area from the license being sought.

SECTION 103: Amends section 468.1175, Florida Statutes, to clarify language relating to licensure examination application procedures for speech-language pathologists and audiologists. Deletes requirement for applicant to apply to the department.

SECTION 104: Amends section 468.1225, Florida Statutes, to clarify sections pertaining to minimal procedures & equipment for ALL licensed audiologists who fit/sell hearing aids. Gives Board authority to adopt/enforce Rules relating to minimal procedures, protocols, equipment.

SECTION 105: Amends section 468.1245, Florida Statutes, to require licensees to furnish, upon request, an itemized price list of goods and services. Substitutes "contract" for "receipt" ("contract" more accurate description of document given to purchasers.)

SECTION 106: Amends section 468.1265, Florida Statutes, to clarify statute. Prohibits sale/distribution of hearing aids through mail to the ultimate consumer.

SECTION 107: Amends section 468.203, Florida Statutes, to make technical changes. Changes the name of the Board of Medical Examiners to the Board of Medicine.

SECTION 108: Amends section 474.203, Florida Statutes, to remove board's authority to issue certificates to faculty who are exempt from practice; clarifies exemption provision for faculty; requires veterinary schools to provide DPR with a list of exempt faculty.

SECTION 109: Amends section 490.005, Florida Statutes, to increase psychologists exam fee cap from $350 to $500.

SECTION 110: Amends section 490.007, Florida Statutes, to increase psychologists biennial renewal fee cap from $250 to $500.

SECTION 111: Amends section 490.0085, Florida Statutes, to increase psychologists fee cap for continuing education providers from $100 to $500.

SECTION 112: Amends section 490.009, Florida Statutes, to clarify language relative to copies of "test results". Insures confidentiality/validity of test. Relates to disciplining licensee for breach of confidentiality.

SECTION 113: Amends section 490.012, Florida Statutes, to advance the effective date of chapter 490 becoming a practice act from 1995 to 1992.

SECTION 114: Amends section 490.014, Florida Statutes, to provide an exemption from chapter 490 for child care programs; child placing agencies; domestic violence centers; private non-profit organizations.

SECTION 115: Amends section 490.0141, Florida Statutes, to provide an exemption from chapter 490 for hypnotists.

SECTION 116: Creates section 490.0121, Florida Statutes, to authorize a licensed school psychologist employed by a school district to render or offer private practice services to school district students, upon meeting certain requirements.

SECTION 117: Creates section 490.0148, Florida Statutes, to require psychologists and school psychologists to maintain patient/client records. Requires board, or DPR in case of school psychologists, to adopt rules establishing parameters for recordkeeping procedures.

SECTION 118: Amends section 491.012, Florida Statutes, to advance the effective date of chapter 491 becoming a practice act from 1995 to 1992.

SECTION 119: Amends section 491.035, Florida Statutes, to revise experience requirements for certain 491 licensure applicants.

SECTION 120: Amends section 491.014, Florida Statutes, to provide an exemption from chapter 491 for child care programs; child placing agencies; domestic violence centers; private non-profit organizations.

SECTION 121: Amends section 491.0141, Florida Statutes, to provide an exemption from chapter 491 for hypnotists.

SECTIONS 122 and 123: Amends sections 766.314 and 817.234, Florida Statutes, to make several technical changes.

SECTION 124: Amends section 877.04, Florida Statutes, to provide that tattooing may be performed by a person acting under the general supervision of a physician as defined by Board of Medicine rule. Provides for report on subject of tattooing to be submitted to the 1993 Legislature.

SECTION 125: Amends section 465.185, Florida Statutes, to change responsibility for enforcement of prohibited rebates from HRS to DPR.

SECTION 126: Repeals section 109 of chapter 91-282, Laws of Florida, which passed last session to allow for the licensure of certain foreign-trained dentists.

SECTION 127: Repeals sections 490.0141 and 491.0141, Florida Statutes, relating to the practice of hypnosis effective October 1, 1995.

SECTION 128: Repeals section 491.035, Florida Statutes, relating to certain experience requirements for 491 licensees.

SECTION 129: Repeals obsolete language in sections 458.322, 459.0095, 460.4095, 461.0074, and 499.037, Florida Statutes.

SECTION 130: Amends section 468.393, Florida Statutes, to clarify that after October 1, 1992, the board is authorized to assess fees to maintain a minimum balance of $500,000 in the Auctioneer Recovery Trust Fund.

SECTION 131: Amends section 468.395, Florida Statutes, to clarify that no claims shall be submitted for payment to or paid from the Auctioneer Recovery Trust Fund until October 1, 1995. On that date, bonding requirements are repealed and the trust fund is anticipated to be at a sufficient amount to handle any payments.

SECTION 132: Amends section 468.526, Florida Statutes, to change the effective date and license fee provisions for employee leasing company regulation.

SECTION 133: Amends definitions contained in section 470.002, Florida Statutes, to clarify that agents who sell preneed contracts for funeral merchandise or services are exempt from the definition of "practice of funeral directing" so long as the agent does not make arrangements after learning that the subject of the arrangements is deceased; to clarify that registered direct disposers are not permitted to make arrangements for final disposition; to add grandchildren and grandparents to those legally authorized to arrange for cremation; and to define the term "human remains".

SECTION 134: Amends section 470.005, Florida Statutes, to authorize the Board of Funeral Directors and Embalmers to adopt rules not inconsistent with law to define and regulate hazardous materials generated in connection with the practice of embalming, funeral directing, and direct disposition. DPR is required to adopt rules relating to the inspection of funeral establishments and cinerators which include requirements to inspect for compliance with federal and state laws relating to the receiving, handling, storage, and disposal of biohazardous waste.

SECTION 135: Amends section 470.007, Florida Statutes, to authorize the board to adopt rules which provide for the temporary licensure of embalmers who are applying for licensure by endorsement. Such temporary licensure permits applicants to work under the direct supervision of a licensee while awaiting licensure by endorsement. The temporary licensure shall expire 60 days after the date of the next available examination required of applicants for licensure by endorsement unless extended for good cause by the board.

SECTION 136: Amends section 470.008, Florida Statutes, to require the board to adopt rules which establish criteria for embalmer intern supervisors. This section requires a funeral establishment seeking to become an embalmer intern training agency to obtain board approval.

SECTION 137: Amends section 470.011, Florida Statutes, to provide for temporary licensure as a funeral director by endorsement. Such

temporary licensure permits applicants to work under the direct supervision of a licensee while awaiting licensure by endorsement. The temporary licensure shall expire 60 days after the date of the next available examination required of applicants for licensure by endorsement unless extended for good cause by the board.

SECTION 138: Amends section 470.012, Florida Statutes, to authorize the board to adopt rules which establish criteria for funeral director intern supervisors. This section requires a funeral establishment seeking to become a funeral director intern training agency to obtain board approval.

SECTION 139: Amends section 470.013, Florida Statutes, to require that each license issued to a funeral director or embalmer must include a recent photograph of the licensee and that the board shall adopt rules which require each license issued under chapter 470, Florida Statutes, to be displayed in a manner to make it visible to the public as well as facilitate inspection by the department.

SECTION 140: Amends section 470.025, Florida Statutes, to prohibit a licensed cinerator facility from receiving, for the purpose of incinerating, any material other than dead human bodies. In addition, this section requires licensed cinerator facilities to be under the general supervision of a licensed funeral director or a registered direct disposer.

SECTION 141: Amends section 471.013, Florida Statutes, to prohibit applicants from taking the principles and practice part of the licensure examination until those persons have successfully completed the fundamentals examination.

This section is further amended to limit the number of times applicants could take any part of the licensure examination to five times, notwithstanding the number of times that portion had been previously failed. If applicants fail any part of the exam taken after October 1, 1992, five times, additional college level education courses in the area of deficiency would be required as a condition of future eligibility to take the exam.

SECTION 142: Amends section 471.021, Florida Statutes, to require that professional engineers from other states requesting temporary licenses while working in Florida would be qualified for licensure by endorsement. There is currently no licensing standard on a person requesting a temporary license. According to DPR, the Board of Engineering may be forced to issue temporary licenses to persons who do not meet the standards for permanent licensure. There is also a question of regulation should these persons not complete permanent licensure in Florida and problems occur on the project they are working on.

SECTION 143: Amends section 471.023, Florida Statutes, to standardize language relating to final drawings, specifications, plans, reports, or documents described in sections of the law relating to certification of partnerships and corporations.

SECTION 144: Amends section 471.025, Florida Statutes, to standardize language relating to the sealing of final drawings, specifications, plans, reports, or documents.

SECTION 145: Amends section 471.033, Florida Statutes, to standardize language relating to final drawings, specifications, plans, reports, or documents as described under this section specifying disciplinary proceedings.

SECTION 146: Amends section 474.217, Florida Statutes, to clarify licensure by endorsement requirements for veterinarians.

SECTION 147: Amends section 475.25, Florida Statutes, to authorize DPR to either conduct mediation or contract for such services to resolve questionable escrow disbursement orders.

SECTION 148: Amends section 475.422, Florida Statutes, to require realtors, upon written request of any party to a real estate sales transaction, to provide copies of all termite and roof inspection reports ordered by or in the possession of the realtor, provided the inspection reports were ordered within the year preceding the contract's effective date. Specifies that failure to comply may subject the licensee to disciplinary procedures established in s. 475.25, Florida Statutes.

SECTION 149: Amends section 475.611, Florida Statutes, to identify the proper means by which the scope of appraisal practice is defined and authorized.

SECTION 150: Amends section 475.613, Florida Statutes, to allow board members to seek higher levels of certification within their profession without jeopardizing their continued service on the Appraisal Board. The current requirement that two members be general appraisers and two members be residential appraisers was imposed to ensure a broad representation of the industry. Due to federal requirements which become effective January 1, 1992, many appraisers will be required to obtain the higher level of certification to practice their profession. This amendment clarifies that board members should not be penalized for seeking higher professional credentials.

SECTION 151: Amends section 475.618, Florida Statutes, to allow holders of appraiser instructor permits to renew their permits upon fulfilling requirements set forth in statute and rule.

SECTION 152: Amends section 475.622, Florida Statutes, to clearly identify the two levels of certification which may be held by appraisers so that the proper designation can be displayed and disclosed to the public in the conduct of appraisal activities. This clarification should assist enforcement efforts while reducing the potential for public deception.

SECTION 153: Amends section 475.627, Florida Statutes, to allow certified residential appraisers to teach residential level courses and allow certified general appraisers, which is a higher level of certification, to teach both residential and general level courses.

SECTION 154: Amends section 476.144, Florida Statutes, to clarify that applicants for restricted barber's licenses need not have practiced for a minimum length of time in another state but that applicants shall not have been disciplined for the practice of barbering in the previous fifteen years no matter how long applicants have actually practiced.

SECTION 155: Amends section 476.184, Florida Statutes, to authorize DPR to collect a fee of $125 for the transfer of a barbershop license from one location to another. This fee is assessed to cover administrative costs.

SECTION 156: Amends section 484.007, Florida Statutes, to provide that persons serving as apprentice opticians in order to qualify to take the examination for licensure shall complete 6,240 hours of supervised training within a five year period.

SECTION 157: Amends section 489.107, Florida Statutes, to delete obsolete language pertaining to Construction Industry Licensing Board membership; clarify membership terms, increase board membership to nineteen, and add a third consumer member to the board.

SECTION 158: Amends section 489.507, Florida Statutes, to specify that additional qualifications for Electrical Contractor's Licensing Board membership include requiring members to be actively practicing the profession they represent and be citizens residing in Florida.

SECTION 159: Amends section 20.30, Florida Statutes, to create a Division of Technology, Testing, and Training within the Department of Professional Regulation.

SECTION 160: Adds CS/HBs 179 & 391 to require physicians to accept medicare assignments under certain emergency conditions.

SECTIONS 161 and 162: Amends sections 458.3095 and 459.0051, Florida Statutes, to exempt physicians and osteopathic physicians licensed in other states who are employed by a sports entity visiting Florida for a specific sporting event from licensure requirements. Authorizes these physicians/osteopathic physicians to provide limited medical services to team members.

SECTION 163: Provides an effective date.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

For the provisions of CS/HB 2249, any section not listed below either has no fiscal impact, the fiscal impact is negligible, or the implementation of the proposal can be absorbed within existing resources, per the Department of Professional Regulation. The potential impact of CS/SB 2390 was not included in the information provided.

1. Non-recurring Effects:

See Below.

2. Recurring Effects:

Section 17 would authorize each board to assess a one-time fee in an amount necessary to eliminate a cash deficit. The total deficit is currently approximately $3,350,000. This source can only be used once in any 4 year period without specific legislative authority.

Section 18 will result in a positive fiscal impact of approximately $75,000 annually as a result of a lock box contract with the Department of Revenue.

Section 27 would authorize each board to assess a $5 fee to be used for unlicensed activity. This would generate approximately $3,943,000 annually.

Sections 54-56 will require four positions and cost approximately $222,410 the first year, and $182,400 each year thereafter. Per the department, funding for these positions will come from fees paid by the training course providers. Annual savings of $947,345 are estimated for the various school boards because the school boards are authorized to do their own inspections.

Section 90 would generate $2,000 per year in revenue. The Board of Osteopathic Medicine is currently not charging for this registration. The Board estimates approximately 40 persons a year will register under this provision at the anticipated fee of $50 to be set by rule. The Board office feels this would cover costs of staff time, office supplies and postage required to carry out this provision.

Section 94 would result in an estimated $53,000 annual cost-savings to the Board of Nursing. In addition, the provision will save licensure applicants a total of $108,000 per year (18,000 applicants @ $6 an applicant).

Section 95 would help to alleviate shortfalls which have occurred as a result of DPR's inspection of dispensing practitioners (e.g., Board of Medicine: currently, approximately 3,000 physicians are registered to dispense drugs, and have paid their $25 registration fee, which has generated approximately $75,000. Each DPR inspection takes approximately 1.5 hours, and costs approximately $55 per hour. Consequently, the inspection costs for 3,000 physician offices is approximately $247,500, which results in a shortfall of approximately $172,500. The shortfall amount is absorbed from other revenues collected from physician license fees) offices or facilities. As noted, the inspections cost more than the revenues generated from the $25 registration fee.

Section 98 could potentially generate $35,750 (i.e., 130 applicants @ $50 per applicant = $6,500 in application fees, and

130 applicants @ $225 per application = $29,250 in examination fees) for the Board of Dentistry.

Section 99 would require all foreign schools which apply for certification to incur all costs, up to $40,000.

Section 108 would result in a positive fiscal impact of $1,500 to $3,000. Currently, the Board of Veterinary Medicine does not collect fees to offset the costs for certifying faculty who are exempt from licensure.

Sections 109 through 111 would, as reported by the department, generate as much as $701,400 per biennium (i.e., $48,000 from examination fees, $581,000 from renewal fees, and $72,400 from continuing education provider fees), which would help to eliminate the Board of Psychological Examiner's $133,224 deficit status.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

	FY92-93	FY93-94
Non-Recurring Revenues:		
Section 17	$3,350,000	
Recurring Revenues:		
Sections 18 & 27	$4,018,000	$4,018,000
Sections 90, 95, 99, 108, 109-111	603,250	603,250
TOTAL	$4,621,250	$4,621,250
Expenditures:		
Nursing (cost savings) Section 94	($ 53,000)	($ 53,000)
Sections 54-56		
Salaries	$ 85,810	$ 85,810
Consultants	75,000	75,000
Expenses	96,600	96,600
OCO (1st year only)	$ 40,000	-0-
TOTAL	$222,410	$182,410

Per the department, funding for these positions will come from fees paid by the training course providers.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

Local school districts currently expend approximately $1,200 per facility for AHERA-required asbestos reinspections every three years. The annualized costs to public schools for such reinspections is approximately $947,000. The bill exempts public and private schools from licensure where reinspections are conducted by an appropriately trained employee. Over the expected life of the asbestos abatement program in the public schools (ten-fifteen years), the total savings should approach ten million dollars.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Licensees may have to pay additional fees as a result of this legislation. Most likely those fees will be passed on to the consumer.

2. Direct Private Sector Benefits:

Section 94 will save licensure applicants an estimated $108,000 per year.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

None.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

None.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

None.

V. COMMENTS:

This bill will result in several significant statutory changes which will enhance agency efficiency and effectiveness, increase consumer protection, enhance financial accountability by prohibiting deficit spending, require long-range planning, and increase management accountability by improving communications between boards and the department.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The committee substitute differs from the original bill in that it consolidates the following individual bills: CS/HB 2249, HB 517, HB 793, HB 1055, HB 1935, HB 2257, HB 2259, and CS/HBs 179 & 391.

VII. SIGNATURES:

COMMITTEE ON REGULATORY REFORM:
Prepared by: Gloria C. Henderson
Staff Director: Gloria C. Henderson

COMMITTEE ON FINANCE & TAXATION:
Prepared by: Joe McVaney
Staff Director: José Diez-Arguelles

COMMITTEE ON APPROPRIATIONS:
Prepared by: Leo Charles Lachat
Staff Director: Peter J. Mitchell

FINAL ANALYSIS PREPARED BY COMMITTEE ON REGULATORY REFORM:
Prepared by: Gloria C. Henderson
Staff Director: Gloria C. Henderson

STORAGE NAME: h2249.hrr
DATE: January 29, 1992

HOUSE OF REPRESENTATIVES
COMMITTEE ON
REGULATORY REFORM
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT

BILL #: HB 2249 (PCB RR 92-17)

RELATING TO: Regulation of Professions

SPONSOR(S): Committee on Regulatory Reform

STATUTE(S) AFFECTED: Chapters 20, 215, 455, 458, 459, 460, 461, 462, 463, 464, 465, 466, 468, 470, 471, 472, 473, 474, 475, 480, 481, 484, 486, 489, 490, 491, 492, Florida Statutes

COMPANION BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) REGULATORY REFORM YEA 20 NAY 0
(2) FINANCE & TAXATION
(3) APPROPRIATIONS
(4)
(5)

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I. SUMMARY:

HB 2249 revises and consolidates certain provisions relating to professions regulated by the Department of Professional Regulation (DPR). Specifically, it expands enforcement efforts relating to unprofessional conduct to include all health care practitioners rather than just physicians; requires boards to consist of at least seven members; specifies consistent, staggered terms; increases consumer representation on boards; prohibits cash deficits and requires each profession to operate within anticipated fees; strengthens regulations relating to board expenses; combines parts I and II of chapter 455, Florida Statutes; defines several relevant terms; prohibits rebates and commissions; requires DPR to implement a long-range policy planning and monitoring component; requires concise, quarterly management reports and specifies information concerning budgets, finances, performance statistics be included therein; clarifies committee quorum requirements; specifies information to be included in certain department publications; authorizes the Department of Legal Affairs to defend board members' businesses provided the suit arises from statutorily authorized actions taken by the member; authorizes the secretary to request declaratory statements from boards; provides that boards cannot challenge each other's rules; includes prosecution and appeal in another jurisdiction as a basis for denying licensure; gives boards more flexibility in determining appropriate continuing education requirements; encourages services to indigent and underserved populations; amends provisions relating to procurement, development, preparation, grading, evaluation and candidate review of examinations; allows DPR to contract for these services; requires that exams meet certain requirements and that providers bear the costs for defense of exam challenges; authorizes administration of exams in languages other than English; requires the department to maintain exam records for three years; requires DPR to apprise boards of changes made to proposed legislation and legislative budget requests; requires professions to ensure license fees cover the cost of regulation; establishes voluntary mediation procedures; amends statutory language relating to citations;

deletes letters of guidance from citation procedures and authorizes issuance of such letters in lieu of a finding of probable cause; provides for personal service of citations; authorizes boards to have more than one probable cause panel; requires that probable cause panels have at least one professional member and allows past board members to serve on probable cause panels; requires, under certain circumstances, boards to have consumer representation on probable cause panels and on final agency action committees; authorizes DPR to disclose case disposition information if a case is dismissed without a finding of probable cause, provided the request for information is in writing and identifies both the subject and the complainant; requires additional training for complaint analysts and investigators; places violations common among regulated professions in chapter 455, Florida Statutes, and makes associated penalties uniform; authorizes recovery of investigation and prosecution costs; authorizes civil action to recover fines/costs when not timely paid; provides for permanent revocation; revises disciplinary guideline requirements; requires hearing officers to follow penalty guidelines; requires reporting of criminal violations by practitioners; specifies that a Notice to Cease and Desist is not final agency action and is therefore, not subject to chapter 120, Florida Statutes, provisions; provides that medical information and school transcripts supplied by applicants will remain confidential; prohibits subject of investigation from disclosing confidential information; adds to those health care practitioners subject to immediate suspension those who enter pleas of nolo contendere, or who are convicted or found guilty, regardless of adjudication; expands requirements for full disclosure of all financial interests; amends impaired practitioner committee language; requires department to designate approved treatment programs; requires department to retain impaired practitioner consultants; specifies duties of consultants; makes impaired practitioner provisions available to all boards when inferior practice results from impairment; provides mechanism to compel examination of licensee; clarifies that activities relating to impaired practitioners are remedial not penal; clarifies that enforcement of unlicensed activity is a state priority and requires regulated professions to incur related costs; and makes several technical changes to certain practice acts to delete obsolete language, correct inaccurate references, and repeal unnecessary statutory provisions where appropriate.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

SECTION 1: Most boards have a maximum of two consumer members. Also, many boards have developed a problem in their staggered terms, and a large proportion of their members' terms are expiring at the same time.

SECTION 2: The statutes imply that the various professions regulated by DPR are not allowed to deficit spend. However, there is not a specific statement to that effect. A number of the boards (approximately 17) currently have cash deficits, totaling approximately $3.2 million. This section also provides for allocation of the cost of operating the various professions.

SECTION 3: Chapter 455 is divided in two parts. Part I is entitled "General Provisions" and Part II is entitled "Regulation by Department of Professional Regulation." Each part has a separate section for definitions.

SECTION 4: The definitions as currently contained in the statutes are outdated, and do not include all required definitions.

SECTION 5: Section 455.11, Florida Statues, sets up the qualifications for immigrants to be examined to practice a licensed profession in Florida.

SECTION 6: This section contains legislative intent as it relates to regulation of the various professions.

SECTION 7: Chapter 455, Florida Statutes, which applies to all professions, contains no provisions on rebates and referral fees. Section 465.185, Florida Statutes, prohibits paying or receiving any commissions, rebates, referral fees, etc., by anyone to obtain pharmacy business. There are similar, but less explicit prohibitions for nursing homes, doctors, and dentists.

SECTION 8: Section 455. 202 deals with the powers and duties of the department.

SECTION 9: There is no specific requirement in the department's statutes requiring long-range policy planning, reports, and recommendations. While there is the agency functional plan and related requirements, these do not provide specific directions as related to estimates of board revenues, license fees, expenditures, cash balances, and detailed performance statistics. Section 455.2285, F.S., provides for an annual report concerning administrative complaints and disciplinary actions taken by the department. It does not provide for any financial information, information to facilitate efficient and cost-effective operations of the department, or recommendations for proposed legislative changes. The department's current review of anticipated revenues (license fee increases) for the various boards is for two or three years. There is no long-range review (minimum of 5 years) of anticipated revenues by the department or the various boards.

SECTION 10: This section provides for board organization, meetings, compensation, and travel expenses of members.

SECTION 11: The department and the various boards are authorized to provide information to licensees by newsletter or other publications; with no direction as to the type information which should be provided.

SECTION 12: Section 455.209, Florida Statutes, provides requirements for accountability and liability of board members. It also provides for the Department of Legal Affairs to defend any board member for cases related to official business.

SECTION 13: The Secretary of the department has standing pursuant to section 455.211 to challenge any rule or proposed rule of a board. The department and the boards have standing to appeal any administrative decision made on challenges to their rules.

SECTION 14: A board, or the department when there is no board, may refuse to issue a license to any applicant who is under investigation in any jurisdiction for an action that would constitute a violation of chapter 455 or any of the practice acts until such investigation is complete. However, the statute does not include authority to refuse to issue a license to an applicant who is under prosecution in another jurisdiction. Several of the practice acts provide for continuing education requirements as a condition for renewal of a license. There is no general authorization in chapter 455.

SECTION 15: The only licensed professionals authorized to obtain a limited license are physicians (section 458.317, Florida Statutes) or retired osteopathic physicians (section 459.0075, Florida Statutes). The limited license authorizes a retired physician to practice medicine only if employed by a public agency or institution, or nonprofit agency which is located in an area of critical medical need or in a medically underserved area.

SECTION 16: Section 455.217, Florida Statutes, establishes the procedures and requirements for the various examinations administered by the department. It contains requirements on development, security, examination, and recordkeeping.

SECTION 17: Section 455.218, Florida Statutes, delineates special examination and licensure provisions for foreign-trained professionals.

SECTION 18: The statutes imply that the various professions regulated by DPR are not to deficit spend. However, there is not a specific statement to that effect. A number of the boards (approximately 17) currently have cash deficits. It is the responsibility of the various boards to increase fees to adequately cover all costs. DPR can only advise the boards and recommend fee increases. In most instances, the various boards do not have authority to make one-time assessments to cover deficits or unanticipated expenses. Also, the various boards with deficits are in effect borrowing money from the boards with adequate cash

balances, and as a result, boards with cash balances lose interest on these funds. The total deficits are approximately $3.2 million. While the department provides financial reports to the boards, there has been concern raised as to the adequacy of these as management reports.

SECTION 19: This section addresses requirements for instruction on human immunodeficiency virus and acquired immune deficiency syndrome.

SECTION 20: The department is required to investigate all legally sufficient complaints. Procedures for processing complaints are contained in section 455.225. These provisions do not provide for mediation.

SECTION 21: Section 455.224 allows the boards, or the department when there is no board, to designate certain violations as appropriate for the issuance of citations. These citations are designed for offenses which are not a substantial threat to the public health, safety, and welfare and may include those violations which are punishable by a letter of guidance. The department has exclusive authority to specify citable offenses if the boards failed to do so by January 1, 1992.

SECTION 22: Section 455.225, Florida Statutes, requires the department to expeditiously investigate all complaints filed with their agency. Only complaints determined to be legally sufficient are investigated by DPR. As used by the department, "legally sufficient" means a complaint alleging facts which, if proven, would constitute a violation of some law or administrative rule over which DPR has jurisdiction. In March, 1991, DPR's Division of Regulation had a backlog of cases, totalling 11,500 complaints. Consequently, the department implemented a program designed to expedite complaint investigations. However, the new program does not ensure that complaint staff (i.e., complaint analysts, investigators, etc.) are adequately trained to determine legal sufficiency and investigate complaints.

The determination of whether probable cause exists in a complaint is to be determined by a probable cause panel of the board or by the department. The panels are to be composed of board members but may not include more than one consumer member. After a finding of probable cause, the probable cause panel may choose to direct the department to issue a letter of guidance to the subject of the complaint rather than recommend a formal complaint be filed against the licensee. These letters of guidance constitute discipline. The department must, upon request, forward to the subject of the complaint a copy of the investigative file. The department may not publicly disclose the existence or status of any complaint until ten days after probable cause has been found.

SECTION 23: Currently, the grounds for discipline, penalties, and enforcement, are in the various practice acts. Even though many are common to the various practice acts, chapter 455, Florida Statutes, does not currently contain uniform penalties for the same violations.

SECTION 24: Each board is required to adopt by rule disciplinary guidelines applicable to each specific ground for discipline. These guidelines are to specify a meaningful range of designated penalties. A specific finding of aggravating or mitigating circumstances allows the board to impose a penalty other than that in the guidelines.

SECTION 25: This section prescribes penalties for giving false information.

SECTION 26: Several practice acts for various professions contain a provision which requires the applicable board to report all criminal violations relating to that profession to the appropriate prosecuting authority. There is no such general provision applicable to all professions in chapter 455, Florida Statutes.

SECTION 27: Section 455.228 provides the department authority to issue a cease and desist notice when it has probable cause to believe that an unlicensed person has violated any of the practice acts or to any person who aids or abets the unlicensed practice of a profession. To enforce a notice to cease and desist, the department must file a proceeding in circuit court. It is not stated specifically, however, that the proper place to challenge a notice to cease and desist is in circuit court and not in an administrative hearing.

SECTION 28: Pursuant to section 455.228, Florida Statutes, DPR may issue a notice to cease and desist to any unlicensed person who violates certain regulatory provisions. However, as a result of insufficient funding, the department has not aggressively enforced unlicensed activities.

SECTION 29: Section 455,2285, Florida Statutes, provides for an annual report concerning administrative complaints and disciplinary actions taken by the department. It does not provide for any financial information, information to facilitate efficient and cost-effective operations of the department, or recommendations for proposed legislative changes.

SECTION 30: Relates to the penalties for misrepresentation in making application for licensure. Such misrepresentation constitutes a third degree felony.

SECTION 31: Section 455.232 prohibits any officer, employee, or person under contract with the department or any board to disclose confidential information to any person who is not lawfully entitled to the information.

SECTION 32: A cease and desist order may currently be seen as constituting agency action for which a section 120.57, Florida Statutes, hearing must be held.

SECTION 33: The department is required to submit a yearly report to the legislature concerning administrative complaints and disciplinary actions.

SECTION 34: Relates to public inspection of information required of applicants. Presently such information is open to the public, except certain financial records and examination materials.

SECTION 35: Relates to the penalties associated with disclosure of confidential information (it is a second degree misdemeanor).

SECTION 36: Relates to disclosure requirements associated with any licensed health care provider's advertisement of free or discounted services.

SECTION 37: Health care practitioners authorized to administer or dispense drugs are subject to immediate suspension if convicted of a felony under chapter 893 (drug violation) or the U.S. Code.

SECTION 38: Section 455.25, Florida Statutes, only applies to referrals by physicians of patients to physician-owned physical therapy facilities. It does not include the various other types of facilities owned by many physicians. The recently adopted position of the American Medical Association is that, in most instances, physicians should not refer patients to physician-owned facilities.

SECTION 39: Section 455.26 provides for the Impaired Practitioners Committee.

SECTION 40: Each practice act which provides for treatment programs for impaired practitioners contains the relevant provisions for the approval of programs in the applicable practice act. These provisions are not provided for in chapter 455, Florida Statutes.

SECTION 41: Several practice acts contain provisions which give the board or the department authority to suspend or restrict the practice of a profession by a licensee who is unable to practice the profession with reasonable skill and safety by reason of illness, use of alcohol, drugs, narcotics, chemicals, or any other type of material, or as a result of any mental or physical condition. These provisions also contain enforcement procedures. These provisions are not in chapter 455, Florida Statutes.

SECTION 42: Section 458.331 contains provisions relating to grounds for discipline by the Board of Medicine. Paragraph (e) of subsection (1) references treatment providers approved pursuant to section 458.3315. Paragraph (jj) of subsection (1) references the requirement under section 455.28 which requires certain health care practitioners to report any physician the licensee knows has violated the applicable practice act and who provides services in a hospital where the physician and the licensee both provide services.

SECTION 43: Section 459.015 contains provisions relating to grounds for discipline by the Board of Osteopathic Medical Examiners. Paragraph (e) of subsection (1) references treatment providers approved pursuant to chapter 458. Paragraph (mm) of subsection (1) references the requirement under section 455.28 which mandates that certain health care practitioners report any physician the licensee knows has violated the applicable practice act and who provides

services in a hospital where the physician and the licensee both provide services.

SECTION 44: Section 460.413 contains provisions relating to grounds for discipline by the Board of Chiropractic. Paragraph (hh) of subsection (1) references the requirement under section 455.28 which requires certain health care practitioners to report any physician the licensee knows has violated the applicable practice act and who provides services in a hospital where the physician and the licensee both provide services.

SECTION 45: Section 461.013 contains provisions relating to grounds for discipline by the Board of Podiatric Medicine. Paragraph (bb) of subsection (1) references the requirement under section 455.28 which requires certain health care practitioners to report any physician the licensee knows has violated the applicable practice act and who provides services in a hospital where the physician and the licensee both provide services.

SECTION 46: Subsection (4) of section 463.003, relating to the Board of Optometry, references section 20.30(5) for further board requirements.

SECTION 47: Section 464.018 contains provisions relating to grounds for discipline by the Board of Nursing. Paragraph (m) of subsection (1) references the requirement under section 455.28 which requires certain health care practitioners to report any physician the licensee knows has violated the applicable practice act and who provides services in a hospital where the physician and the licensee both provide services.

SECTION 48: Section 465.016 contains provisions relating to grounds for discipline by the Board of Pharmacy. Paragraph (o) of subsection (1) references the requirement under section 455.28 which requires certain health care practitioners to report any physician the licensee knows has violated the applicable practice act and who provides services in a hospital where the physician and the licensee both provide services.

SECTION 49: Section 466.028 contains provisions relating to grounds for discipline by the Board of Dentistry. Paragraph (ii) of subsection (1) references the requirement under section 455.28 which requires certain health care practitioners to report any physician the licensee knows has violated the applicable practice act and who provides services in a hospital where the physician and the licensee both provide services.

SECTION 50: Section 468.384 contains provisions relating to the Board of Auctioneers. These include provisions which provide for initial terms of members and are now obsolete. Additional provisions relating to board structure, procedures, and liability are also found in chapter 455.

SECTION 51: Section 472.007 contains provisions relating to the Board of Professional Land Surveyors. These include provisions which provide for initial terms of members and are now obsolete.

SECTION 52: Section 484.042 contains provisions relating to the Board of Hearing Aid Specialists. These include provisions which provide for initial terms of members and are now obsolete.

SECTION 53: Section 489.515 authorizes the Electrical Contractors' Licensing Board to refuse to certify any applicant who has violated section 489.533, which contains grounds for discipline, or section 489.535, which requires the board to report any criminal violation of the practice act to the proper prosecuting authority.

SECTION 54: Section 492.103 contains provisions relating to the Board of Professional Geologists. These include provisions which provide for initial terms of members and are now obsolete.

SECTION 55: Section 455.20 contains a definition of "board" which is applicable to part II of chapter 455

Section 455.215 authorizes the appropriate board to intervene in any proceeding regarding the issuance of a license to an applicant on behalf of the applicant or the department.

Section 455.2182 provides that nothing in chapter 455 shall be construed to allow the unsupervised practice of any health care practitioner licensed pursuant to chapter 86-90, Laws of Florida. This provision has been interpreted by the Florida Supreme Court to be applicable only to foreign-trained osteopathic physicians.

Section 455.28 requires certain health care practitioners to report any physician the licensee knows has violated the applicable practice act and who provides services in a hospital where the licensee also provides services.

Section 462.15 contains provisions relating to proceedings for the revocation of a license to practice naturopathy. Chapter 455 also contains these procedures.

Section 465.185 prohibits any person from paying or receiving any kind of payment for the referral of patients to a pharmacy.

Section 468.1175 requires a person desiring to be licensed as a speech-language pathologist or an audiologist to apply to the department to take the licensure examination. The department is to administer the licensure examination to each applicant whom the board certifies.

The following sections require the applicable board to report all criminal violations relating to the practice of the applicable profession to the proper prosecuting authority: 463.017, 466.029, 468.1305, 468.1765, 470.037, 471.035, 472.035, 473.324, 474.218, 475.454, 480.048, 481.227, 481.327, 484.016, 484.057, 489.535, and 489.559.

The following sections contain provisions relating to procedures and treatment programs for impaired practitioners for the applicable profession: 458.3315, 459.0155, 460.417, 461.0132, 463.0165, 464.0185, 465.0165, 466.0283, 474.2141, 490.0095, and 491.0095.

B. EFFECT OF PROPOSED CHANGES:

This bill would produce a more cost-effective, efficient, and responsive Department of Professional Regulation.

It would require the department to work with the various boards to implement long range planning; including a five-year fiscal and management plan and monitoring process with detailed recommendations for all professions. This long range plan is required to be updated annually.

In the financial area, it would require the department to produce a concise, quarterly management report which apprises boards of their financial status, including a summary sheet with cash balances for all boards. It would also require the department to implement "direct billing" procedures, which allows the legislature to determine true administrative costs, rather than relying totally on the existing cost allocation procedure which makes it harder to pinpoint how much the department is charging for specific activities. It would require the boards to ensure license fees are adequate to cover anticipated costs. It would require the boards to maintain minimum cash balances and authorize boards to increase fees or borrow money from the trust fund to comply with minimum cash balance requirements. If the boards do not address cash balance problems within one year, it would authorize the department to raise fees to cover the deficit and ensure compliance with minimum cash balance requirements.

In the area of **examinations**, it would authorize DPR, after consultation with the appropriate boards, to contract for certain examination services, to include development, preparation, administration, grading, evaluation, and candidate review and would establish an exam review and approval process. Further, it would authorize DPR to require providers to bear costs for legal defense of exam challenges; provided the exam, or portions thereof, was developed by the provider. It would allow exams to be given in languages other than English, provided practice of the profession by non-English speaking individuals will not result in a threat to the health, safety, and welfare of the consumer. It would require applicants seeking to take the exam in a language other than English to incur all relevant costs. It would require DPR to maintain exam records for 3 years and would specify that DPR may not prohibit board members from reviewing exams. Finally, boards, or the department when there is no board, would be authorized to require applicants to pass an exam pertaining to applicable state laws and rules.

In the area of **legal issues and discipline**, it would establish a mediation process and authorize boards, or the department when there is no board, to designate suitable disciplinary violations. It would authorize the department to use letters of guidance in lieu of a finding of probable cause and would clarify that letters of guidance do not constitute discipline and are not appropriate for citation procedures. It would authorize disclosure of the disposition of a case if the case is dismissed without a finding of probable cause; providing the person making the inquiry can identify

the licensee as well as the person making the complaint. It would establish that a notice to cease and desist is not a final agency action and does not require a chapter 120 hearing.

The bill would also expand the consumer-oriented posture of the department in several ways. It would expand consumer representation on the boards. Specifically, it would increase the minimum number of consumer members for boards with ten or fewer members to three (up from the standard two), and require a minimum of four consumer members for boards with eleven or more. It would establish legislative intent that enforcement of licensure for certain professional activities is a state priority and enforcement costs should be covered by the various regulated professionals. It would authorize the boards to impose a special fee to develop an "unlicensed activity" fund to facilitate enforcement of unlicensed activity.

Regarding indigent and under-served populations, it would authorize boards to adopt rules to allow retired professionals to serve indigent and/or under-served populations or areas of critical need. It would also encourage such activities by allowing pro bono service to substitute for a portion of required mandatory continuing education requirements for licenses in instances where continuing education is required.

Regarding the organizational structure of the boards, it would require consistent, staggered, member terms for all boards, with specified term-ending dates. It would authorize boards to increase the number of probable cause panels. It would specify that probable cause panel membership must include both consumer and professional representation, if at all possible.

C. SECTION-BY-SECTION ANALYSIS:

SECTION 1: Amends section 20.30, Florida Statutes, dealing with the organization of the Department of Professional Regulation (DPR) and the various boards created within it. It provides that all health care practitioners, in addition to physicians, shall be included in DPR's efforts to assure quality, cost-effective health care throughout the state. It increases the proportion of consumer representation on the various boards and mandates that boards of certain sizes have a minimum number of consumer members. It establishes provisions designed to guarantee staggered terms, and requires boards to have at least seven members. This section establishes legislative intent language which specifies that the department should regulate newly regulated professions unless a compelling need for a board is established, and delays for one year the actual creation of any statutorily established board, unless otherwise provided by law.

SECTION 2: Amends section 215.37, Florida Statutes, and clarifies legislative intent that each profession should operate within existing fees. It strengthens and moves requirements for allocation of board expenses to section 455.219, Florida Statutes.

SECTION 3: Provides that parts I and II of chapter 455, Florida Statutes, be combined and that the chapter will no longer be divided into parts. This is being done because chapter 455, Florida Statutes, will only contain general provisions relating to regulated professions, thus the chapter needs no division.

SECTION 4: Amends section 455.01, Florida Statutes, to clarify and establish new definitions. It expands the definition of health care practitioner to include all practitioners currently regulated by DPR who deliver health services. Further, it defines the following terms: board, consumer member, department, license, licensee, and profession.

SECTION 5: Amends section 455.11, Florida Statutes, and makes technical revisions which delete obsolete language.

SECTION 6: Amends section 455.201, Florida Statutes, to provide a statement of legislative intent that department policies ensure expenditures are made in the most cost-effective manner possible to maximize competition, minimize licensure costs, and maximize public access to board meetings. Specifies moneys deposited in professional regulation trust funds are public funds and not the property of individual professions. Requires department policies to reflect sound fiscal principles.

SECTION 7: Creates section 455.2025, Florida Statutes, to clarify and expand enforcement of the prohibition on rebates and referral fees to apply to all licensed health care practitioners. It moves section 465.185, Florida Statutes, dealing with rebates paid by pharmacies to chapter 455, Florida Statutes, and clarifies that it applies to all health care practitioners. It authorizes minimum penalties, and transfers responsibility for enforcement of these provisions from HRS to DPR. It clarifies that a pharmacy may contract with a nursing home to collect for medication, and establishes procedures for a service fee not to exceed the actual cost of collection.

SECTION 8: Amends section 455.203, Florida Statutes, to authorize DPR to issue 4-year licenses to selected licensees, unless otherwise provided by law. Requires DPR to provide training relating to all relevant fiscal matters to all new board members. Makes technical changes relating to obsolete language.

SECTION 9: Creates section 455.204, Florida Statutes, to require DPR to implement a long range policy planning and monitoring component, including long-range estimates of revenues, expenditures, cash balances, and performance statistics. It also requires an annual update of all long-range plans.

SECTION 10: Amends section 455.207, Florida Statutes, to make language gender-neutral; deletes obsolete and unnecessary language; clarifies quorum requirements for boards or committees; and specifies three consecutive unexcused absences within any twelve month period results in a position vacancy. Expands language relating to special committees and makes provisions for appointment of the third member, provided special committees cannot agree on who

that individual should be. Requires special committees to recommend rules to resolve disagreement, and requires participating boards to share costs associated with defending rules. Requires DPR to provide legal representation for special committees.

SECTION 11: Amends section 455.208, Florida Statutes, to require publication of a summary of final orders resulting in fines, suspensions, or revocations.

SECTION 12: Amends section 455.209, Florida Statutes, to authorize the Department of Legal Affairs to defend board members' businesses in any action against the company, provided the suit arises from statutorily authorized actions taken by the member.

SECTION 13: Amends section 455.211, Florida Statutes, to provide standing for the secretary to request a declaratory statement from a board and provides that boards cannot challenge each other's rules. Instead, boards should follow the procedures for settling differences outlined by section 455.207, Florida Statutes.

SECTION 14: Amends section 455.213, Florida Statute, to clarify relevant provisions and facilitate proper interpretation of existing language relating to licensing; includes prosecution and appeal in another jurisdiction as a basis for not issuing a license; authorizes each board, or the department when there is no board, which requires continuing education for renewal of a license, to adopt rules to establish criteria for continuing education courses, to allow part of the required continuing education hours to be fulfilled by: (1) the performance of pro bono services to indigent/underserved populations, (2) by performing research in critical need areas, or (3) for training leading to advanced professional certification; provides that the department shall adopt rules to provide for the administration of continuing education requirements.

SECTION 15: Amends section 455.214, Florida Statutes, to authorize boards, or the department when there is no board, to issue limited licenses to retired professionals who are willing to provide service to indigent, underserved, and critical need populations. Specifies limited license application process; provides conditions under which limited licenses may be denied; specifies limited licensees may practice only in public or nonprofit institutions/agencies. Authorizes boards, or the department when there is no board, to develop rules addressing supervision of limited licensees.

SECTION 16: Amends section 455.217, Florida Statutes, to authorize the department, after consultation with the appropriate board, to contract for certain examination services, to include development, preparation, administration, grading, evaluation, and candidate review. Requires the department to maintain a review and approval process consistent with section 287.057(17) and requires examinations to conform to requirements of section 760.10(5). Authorizes DPR to require providers to bear costs for legal defense of exam challenges; provided exam, or portions thereof, was developed by provider. Allows exams to be given in language other than English, provided practice of the profession by non-English

speaking individuals will not result in a threat to the health, safety, and welfare of the consumer. Requires applicants seeking to take the exam in a language other than English to bear the cost of preparation, administration, and evaluation of the exam. Requires DPR to maintain exam records for 3 years. Specifies DPR may not prohibit board members from reviewing exams. Authorizes boards, or the department when there is no board, to require applicants to pass an exam pertaining to applicable state laws and rules.

SECTION 17: Amends section 455.218, Florida Statutes, to clarify that passage of an examination is necessary for licensure; provides that license will not be issued if applicant is under prosecution or appeal in any jurisdiction.

SECTION 18: Amends section 455.219, Florida Statutes, to increase fiscal accountability and communications between the boards and DPR. It includes the following changes: a statement of legislative intent prohibiting cash deficits; requires a condensed management report which provides information concerning budgets, finances, performance statistics, and recommendations to be presented at least quarterly to all boards; requires each board to ensure license fees are adequate to cover all anticipated costs and maintain a minimum cash balance; authorizes each board, or the department when there is no board, to, by rule, assess and collect, once in a 4-year period, a one-time fee from each licensee in an amount sufficient to eliminate a cash deficit. Each profession is authorized, under certain circumstances, to receive temporary loans with interest, for a period not to exceed 2 years. Finally, it defines direct charge expenses and authorizes the department to contract with public and private entities for the deposit of revenue.

SECTION 19: Amends section 455.2226, Florida Statutes, to clarify relevant language and facilitate proper interpretation of existing provisions relating to the requirements for instruction on human immunodeficiency virus and acquired immune deficiency syndrome and to correct internal statutory references.

SECTION 20: Creates section 455.2235, Florida Statutes, to provide that boards, or the department when there is no board, may designate which disciplinary violations are suitable for mediation, provided the harm caused by the licensee is economic in nature and can be remedied by the licensee; provides that, if complainant and subject reach agreement through a mediation process and provide acknowledgements of satisfaction within a particular time frame, then no further action will be taken against the licensee; and provides for limitation on the number of times a licensee can use mediation.

SECTION 21: Amends section 455.224, Florida Statutes, to provide that a citation which is not challenged shall become a final order of the department when there is no board, and specifically states that a citation constitutes discipline; deletes letters of guidance from citation procedures since it is recommended in proposed changes to section 455.225(4) that letters of guidance no longer constitute discipline and, therefore, are not appropriate for citation

procedures; provides for personal service of citations; provides continuing jurisdiction for boards which adopt citation offenses and penalties prior to Jan. 1, 1992, and allows new boards to designate citation violations and penalties within 6 months of their creation.

SECTION 22: Amends section 455.225, Florida Statutes, to clarify relevant language and facilitate proper interpretation of existing provisions relating to the requirements for disciplinary proceedings; deletes departmental authority to delegate its investigative function to boards; requires the department to allocate sufficient and adequately trained staff to expeditiously and thoroughly determine legal sufficiency and investigate all legally sufficient complaints; provides for confidentiality of the reports made to probable cause panels by the department prior to the department's dismissal of any case where legal sufficiency was found, but a determination was made that there is insufficient evidence to support prosecution and such case is actually dismissed prior to a finding of probable cause; provides boards with authority to have more than one probable cause panel; provides that probable cause panels must have at least one professional member; provides that a past board member may serve on a probable cause panel but if that person is a past professional board member, the individual must hold an active valid license for that profession; requires boards to have a consumer member on probable cause panels if one is available and willing to serve; provides that probable cause panels, or the department when there is no board, may issue a letter of guidance in lieu of a finding of probable cause; provides that the department may forward to a subject of a complaint, at the subject's expense, a copy of the department's investigative file, provided the subject agrees to maintain the confidentiality of the information received until ten days after probable cause is found; provides that if a case is dismissed without a finding of probable cause, the department may disclose only the disposition of the case to anyone making written inquiry and who identifies the subject and complainant. Requires DPR to provide additional training to complaint analysts and investigators.

SECTION 23: Amends section 455.227, Florida Statutes, to place violations and penalties common among professions in chapter 455, Florida Statutes. Common violations addressed are; fraudulent representations; intentional violation of rules; being convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication; knowingly filing false reports against licensee; obtaining a license through bribery, fraud, misrepresentation, or administrative error; failing to report violations of professional practice acts; facilitating unlicensed activity; failing to perform statutory obligations; mailing or filing false reports; making deceptive, untrue, or fraudulent representations relating to a regulated profession; exercising influence on patient/client for financial gain; practicing or offering to practice beyond scope permitted by law; contracting with unqualified individuals to perform a service which requires a license; violating provisions of chapter 455, Florida Statutes,; and interfering with an investigation or inspection. Common penalties addressed are: refusal to certify application for licensure; suspension, permanent revocation, or placement of a licensee on

probation; restriction of practice; imposition of an administrative fine not to exceed $5,000 for each separate offense; issuance of a reprimand; corrective action; restitution; and assessment of costs related to investigation and prosecution. This section also specifies that revocation of a license is permanent, and authorizes the board, or the department when there is no board, to establish by rule requirements for reapplication.

SECTION 24: Amends section 455.2273, Florida Statutes, relating to disciplinary guidelines; requires each board, or the department when there is no board, to adopt by rule disciplinary guidelines for each ground for disciplinary action which may be imposed and, when applicable, possible aggravating and mitigating circumstances and the variation and range of penalties permitted for such circumstances; requires hearing officers, when recommending penalties in any recommended order, to follow the disciplinary guidelines and state in writing the aggravating or mitigating circumstances upon which the recommended penalty is based.

SECTION 25: Amends section 455.2275, Florida Statutes, to conform with the definition of "license" proposed by this bill for section 455.01.

SECTION 26: Creates section 455.2277, Florida Statutes, to require the department or the appropriate board to report any criminal violation relating to the practice of a profession regulated by the department or board to the proper prosecuting authority.

SECTION 27: Amends section 455.228, Florida Statutes, to provide that a notice to cease and desist is not agency action for which a 120.57 hearing can be sought to make clear that the appropriate place for enforcement and challenge of these notices is in circuit court.

SECTION 28: Creates section 455.2281, Florida Statutes, to establish enforcement of unlicensed activities as a state priority. Effective July 1, 1993, boards, or the department when there is no board, are authorized to impose a $5 unlicensed activity fee which would be used to fund unlicensed activity enforcement. This section further provides that $5 of the current licensure fee may be used for this unlicensed activity enforcement, provided professions are not in a deficit financial posture. DPR is required to make direct charges and direct credits to each individual profession's account, and requires the department to include all financial and statistical data resulting from unlicensed activity enforcement as a separate category in the quarterly management reports provided to all boards.

SECTION 29: Amends section 455.2285, Florida Statutes, to enhance management and financial accountability by requiring DPR to include certain fiscal information and recommendations in its annual report to the legislature effective November 1, 1993.

SECTION 30: Amends section 455.229, Florida Statutes, to exempt medical information and school transcripts from public records requirements.

SECTION 31: Amends section 455.232, Florida Statutes, to prohibit subject of investigation from disclosing confidential information; specifies disciplinary penalties for violations.

SECTION 32: Amends section 455.24, Florida Statutes, to specify that only one disclosure is necessary in a classified directory.

SECTION 33: Amends section 455.241, Florida Statutes, to expand provisions to include all health care practitioners.

SECTION 34: Amends section 455.2415, Florida Statutes, to provide for technical changes which make language gender neutral.

SECTION 35: Amends section 455.242, Florida Statutes, to provide for technical changes which make language gender neutral.

SECTION 36: Amends section 455.243, Florida Statutes, to make technical changes relating to inspection authority.

SECTION 37: Amends section 455.245, Florida Statutes, to provide that health care practitioners who enter a plea of nolo contendere, or are convicted or found guilty, regardless of adjudication, are subject to immediate licensure suspension. Makes technical changes to conform language to individual practice acts.

SECTION 38: Amends section 455.25, Florida Statutes, to expand and enhance enforcement of the requirement for notification by a physician to any patient who is referred to other physician-owned health care facilities. It expands the requirement to include disclosure of all financial interests by a physician in any facility which a patient is referred. Currently it applies only to physical therapy facilities. The penalties for violations of this section are increased.

SECTION 39: Amends section 455.26, Florida Statutes, to clarify impaired practitioner committee language.

SECTION 40: Amends section 455.261, Florida Statutes, to require DPR to designate approved treatment programs for impaired practitioners; requires DPR to retain impaired practitioner consultants; and specifies duties of consultant.

SECTION 41: Amends section 455.27, Florida Statutes, to make impaired practitioner procedures available to all boards when a licensee fails to practice with skill and safety due to an impairment. It provides a mechanism to compel examination of a licensee; and provides that action under this section is remedial and not penal.

SECTION 42: Amends section 458.331, Florida Statutes, to correct statutory references.

SECTION 43: Amends section 459.015, Florida Statutes, to correct statutory references.

SECTION 44: Amends section 460.413, Florida Statutes, to correct statutory references.

SECTION 45: Amends section 461.013, Florida Statutes, to correct statutory references.

SECTION 46: Amends section 463.003, Florida Statutes, to correct statutory references.

SECTION 47: Amends section 646.018, Florida Statutes, to correct statutory references.

SECTION 48: Amends section 465.016, Florida Statutes, to correct statutory references.

SECTION 49: Amends section 466.028, Florida Statutes, to correct statutory references.

SECTION 50: Amends section 468.384, Florida Statutes, to delete obsolete and duplicate language.

SECTION 51: Amends section 472.007, Florida Statutes, to delete obsolete language.

SECTION 52: Amends section 484.042, Florida Statutes, to delete obsolete and duplicate language.

SECTION 53: Amends section 489.515, Florida Statutes, to make technical revisions.

SECTION 54: Amends section 492.103, Florida Statutes, to delete obsolete language.

SECTION 55: Repeals sections 455.20, 455.215, 455.2182, 455.28, 462.15, 465.185, 463.017, 466.029, 468.1765, 470.037, 471.035, 472.035, 473.324, 474.218, 475.454, 480.048, 481.227, 481.327, 484.016, 484.057, 489.535, and 489.559, Florida Statutes; sections 468.1305 and 468.1175, Florida Statutes, as created by chapters 90-134 and 90.345, Laws of Florida; sections 458.3315, 459.0155, 461.0132, 463.0165, 464.0185, 465.0165, 466.0283, 474.2141, and 490.0095, Florida Statutes, as amended by chapter 91-140, Laws of Florida; section 460.117, Florida Statutes, as created by chapter 90-25, Laws of Florida; and section 491.0095, Florida Statutes, as created by chapter 90-263, Laws of Florida.

SECTION 56: Provides an effective date of October 1, 1992, except as otherwise provided by law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

Per the department, section 18 would generate a one-time non-recurring source of revenue of $3,350,000 which would be used to eliminate existing cash deficits. This fee source can only be used once in any 4 year period without specific legislative authority.

2. Recurring Effects:

Following is a section-by-section analysis of the provisions which result in a significant positive/negative fiscal impact. Sections not listed either have a negligible fiscal impact or implementation of proposal can be absorbed within existing resources:

a. Section 1 will result in a negative fiscal impact of approximately $9,000 annually because of per diem entitlements for additional board members.

b. Section 18 will result in a positive fiscal impact of approximately $150,000 biennially as a result of a lock box contract with the Department of Revenue.

c. Section 28 would generate approximately $3,943,000 in recurring revenue to specifically combat unlicensed activity.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

	RECURRING		RECURRING
Revenues	$3,943,000 75,000 $4,018,000	Expenditures	$9,000

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

None.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

None.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

None.

V. COMMENTS:

Proposed Committee Bill #17 will result in several significant statutory changes which will enhance agency efficiency and effectiveness, increase consumer protection, enhance financial accountability by prohibiting deficit spending, expand enforcement prohibitions on rebate/referral fees, require long-range planning, and increase management accountability by improving communications between boards and the department.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

VII. SIGNATURES:

COMMITTEE ON REGULATORY REFORM:
Prepared by:

Gloria C. Henderson

Gloria C. Henderson

Staff Director:

Gloria C. Henderson

Gloria C. Henderson

STORAGE NAME: pcb17b.h.r
DATE: January 25, 1992

HOUSE OF REPRESENTATIVES
COMMITTEE ON
REGULATORY REFORM
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT

BILL #: PCB RR 92-17

RELATING TO: Regulation of Professions

SPONSOR(S): Committee on Regulatory Reform

STATUTE(S) AFFECTED: Chapters 20, 215, 455, 458, 459, 460, 461, 462, 463, 464, 465, 466, 468, 470, 471, 472, 473, 474, 475, 480, 481, 484, 486, 489, 490, 491, 492, Florida Statutes

COMPANION BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) REGULATORY REFORM YEA 20 NAY 0
(2)
(3)
(4)
(5)

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I. SUMMARY:

PCB RR 92-17 revises and consolidates certain provisions relating to professions regulated by the Department of Professional Regulation (DPR). Specifically, it expands enforcement efforts relating to unprofessional conduct to include all health care practitioners rather than just physicians; requires boards to consist of at least seven members; specifies consistent, staggered terms; increases consumer representation on boards; prohibits cash deficits and requires each profession to operate within anticipated fees; strengthens regulations relating to board expenses; combines parts I and II of chapter 455, Florida Statutes; defines several relevant terms; prohibits rebates and commissions; requires DPR to implement a long-range policy planning and monitoring component; requires concise, quarterly management reports and specifies information concerning budgets, finances, performance statistics be included therein; clarifies committee quorum requirements; specifies information to be included in certain department publications; authorizes the Department of Legal Affairs to defend board members' businesses provided the suit arises from statutorily authorized actions taken by the member; authorizes the secretary to request declaratory statements from boards; provides that boards cannot challenge each other's rules; includes prosecution and appeal in another jurisdiction as a basis for denying licensure; gives boards more flexibility in determining appropriate continuing education requirements; encourages services to indigent and underserved populations; amends provisions relating to procurement, development, preparation, grading, evaluation and candidate review of examinations; allows DPR to contract for these services; requires that exams meet certain requirements and that providers bear the costs for defense of exam challenges; authorizes administration of exams in languages other than English; requires the department to maintain exam records for three years; requires DPR to apprise boards of changes made to proposed legislation and legislative budget requests; requires professions to ensure license fees cover the cost of regulation; establishes voluntary mediation procedures; amends statutory language relating to citations;

deletes letters of guidance from citation procedures and authorizes issuance of such letters in lieu of a finding of probable cause; provides for personal service of citations; authorizes boards to have more than one probable cause panel; requires that probable cause panels have at least one professional member and allows past board members to serve on probable cause panels; requires, under certain circumstances, boards to have consumer representation on probable cause panels and on final agency action committees; authorizes DPR to disclose case disposition information if a case is dismissed without a finding of probable cause, provided the request for information is in writing and identifies both the subject and the complainant; requires additional training for complaint analysts and investigators; places violations common among regulated professions in chapter 455, Florida Statutes, and makes associated penalties uniform; authorizes recovery of investigation and prosecution costs; authorizes civil action to recover fines/costs when not timely paid; provides for permanent revocation; revises disciplinary guideline requirements; requires hearing officers to follow penalty guidelines; requires reporting of criminal violations by practitioners; specifies that a Notice to Cease and Desist is not final agency action and is therefore, not subject to chapter 120, Florida Statutes, provisions; provides that medical information and school transcripts supplied by applicants will remain confidential; prohibits subject of investigation from disclosing confidential information; adds to those health care practitioners subject to immediate suspension those who enter pleas of nolo contendere, or who are convicted or found guilty, regardless of adjudication; expands requirements for full disclosure of all financial interests; amends impaired practitioner committee language; requires department to designate approved treatment programs; requires department to retain impaired practitioner consultants; specifies duties of consultants; makes impaired practitioner provisions available to all boards when inferior practice results from impairment; provides mechanism to compel examination of licensee; clarifies that activities relating to impaired practitioners are remedial not penal; clarifies that enforcement of unlicensed activity is a state priority and requires regulated professions to incur related costs; and makes several technical changes to certain practice acts to delete obsolete language, correct inaccurate references, and repeal unnecessary statutory provisions where appropriate.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

SECTION 1: Most boards have a maximum of two consumer members. Also, many boards have developed a problem in their staggered terms, and a large proportion of their members' terms are expiring at the same time.

SECTION 2: The statutes imply that the various professions regulated by DPR are not allowed to deficit spend. However, there is not a specific statement to that effect. A number of the boards (approximately 17) currently have cash deficits, totaling approximately $3.2 million. This section also provides for allocation of the cost of operating the various professions.

SECTION 3: Chapter 455 is divided in two parts. Part I is entitled "General Provisions" and Part II is entitled "Regulation by Department of Professional Regulation." Each part has a separate section for definitions.

SECTION 4: The definitions as currently contained in the statutes are outdated, and do not include all required definitions.

SECTION 5: Section 455.11, Florida Statues, sets up the qualifications for immigrants to be examined to practice a licensed profession in Florida.

SECTION 6: This section contains legislative intent as it relates to regulation of the various professions.

SECTION 7: Chapter 455, Florida Statutes, which applies to all professions, contains no provisions on rebates and referral fees. Section 465.185, Florida Statutes, prohibits paying or receiving any commissions, rebates, referral fees, etc., by anyone to obtain pharmacy business. There are similar, but less explicit prohibitions for nursing homes, doctors, and dentists.

SECTION 8: Section 455. 202 deals with the powers and duties of the department.

SECTION 9: There is no specific requirement in the department's statutes requiring long-range policy planning, reports, and recommendations. While there is the agency functional plan and related requirements, these do not provide specific directions as related to estimates of board revenues, license fees, expenditures, cash balances, and detailed performance statistics. Section 455.2285, F.S., provides for an annual report concerning administrative complaints and disciplinary actions taken by the department. It does not provide for any financial information, information to facilitate efficient and cost-effective operations of the department, or recommendations for proposed legislative changes. The department's current review of anticipated revenues (license fee increases) for the various boards is for two or three years. There is no long-range review (minimum of 5 years) of anticipated revenues by the department or the various boards.

SECTION 10: This section provides for board organization, meetings, compensation, and travel expenses of members.

SECTION 11: The department and the various boards are authorized to provide information to licensees by newsletter or other publications; with no direction as to the type information which should be provided.

SECTION 12: Section 455.209, Florida Statutes, provides requirements for accountability and liability of board members. It also provides for the Department of Legal Affairs to defend any board member for cases related to official business.

SECTION 13: The Secretary of the department has standing pursuant to section 455.211 to challenge any rule or proposed rule of a board. The department and the boards have standing to appeal any administrative decision made on challenges to their rules.

SECTION 14: A board, or the department when there is no board, may refuse to issue a license to any applicant who is under investigation in any jurisdiction for an action that would constitute a violation of chapter 455 or any of the practice acts until such investigation is complete. However, the statute does not include authority to refuse to issue a license to an applicant who is under prosecution in another jurisdiction. Several of the practice acts provide for continuing education requirements as a condition for renewal of a license. There is no general authorization in chapter 455.

SECTION 15: The only licensed professionals authorized to obtain a limited license are physicians (section 458.317, Florida Statutes) or retired osteopathic physicians (section 459.0075, Florida Statutes). The limited license authorizes a retired physician to practice medicine only if employed by a public agency or institution, or nonprofit agency which is located in an area of critical medical need or in a medically underserved area.

SECTION 16: Section 455.217, Florida Statutes, establishes the procedures and requirements for the various examinations administered by the department. It contains requirements on development, security, examination, and recordkeeping.

SECTION 17: Section 455.218, Florida Statutes, delineates special examination and licensure provisions for foreign-trained professionals.

SECTION 18: The statutes imply that the various professions regulated by DPR are not to deficit spend. However, there is not a specific statement to that effect. A number of the boards (approximately 17) currently have cash deficits. It is the responsibility of the various boards to increase fees to adequately cover all costs. DPR can only advise the boards and recommend fee increases. In most instances, the various boards do not have authority to make one-time assessments to cover deficits or unanticipated expenses. Also, the various boards with deficits are in effect borrowing money from the boards with adequate cash

balances, and as a result, boards with cash balances lose interest on these funds. The total deficits are approximately $3.2 million. While the department provides financial reports to the boards, there has been concern raised as to the adequacy of these as management reports.

SECTION 19: This section addresses requirements for instruction on human immunodeficiency virus and acquired immune deficiency syndrome.

SECTION 20: The department is required to investigate all legally sufficient complaints. Procedures for processing complaints are contained in section 455.225. These provisions do not provide for mediation.

SECTION 21: Section 455.224 allows the boards, or the department when there is no board, to designate certain violations as appropriate for the issuance of citations. These citations are designed for offenses which are not a substantial threat to the public health, safety, and welfare and may include those violations which are punishable by a letter of guidance. The department has exclusive authority to specify citable offenses if the boards failed to do so by January 1, 1992.

SECTION 22: Section 455.225, Florida Statutes, requires the department to expeditiously investigate all complaints filed with their agency. Only complaints determined to be legally sufficient are investigated by DPR. As used by the department, "legally sufficient" means a complaint alleging facts which, if proven, would constitute a violation of some law or administrative rule over which DPR has jurisdiction. In March, 1991, DPR's Division of Regulation had a backlog of cases, totalling 11,500 complaints. Consequently, the department implemented a program designed to expedite complaint investigations. However, the new program does not ensure that complaint staff (i.e., complaint analysts, investigators, etc.) are adequately trained to determine legal sufficiency and investigate complaints.

The determination of whether probable cause exists in a complaint is to be determined by a probable cause panel of the board or by the department. The panels are to be composed of board members but may not include more than one consumer member. After a finding of probable cause, the probable cause panel may choose to direct the department to issue a letter of guidance to the subject of the complaint rather than recommend a formal complaint be filed against the licensee. These letters of guidance constitute discipline. The department must, upon request, forward to the subject of the complaint a copy of the investigative file. The department may not publicly disclose the existence or status of any complaint until ten days after probable cause has been found.

SECTION 23: Currently, the grounds for discipline, penalties, and enforcement, are in the various practice acts. Even though many are common to the various practice acts, chapter 455, Florida Statutes, does not currently contain uniform penalties for the same violations.

SECTION 24: Each board is required to adopt by rule disciplinary guidelines applicable to each specific ground for discipline. These guidelines are to specify a meaningful range of designated penalties. A specific finding of aggravating or mitigating circumstances allows the board to impose a penalty other than that in the guidelines.

SECTION 25: This section prescribes penalties for giving false information.

SECTION 26: Several practice acts for various professions contain a provision which requires the applicable board to report all criminal violations relating to that profession to the appropriate prosecuting authority. There is no such general provision applicable to all professions in chapter 455, Florida Statutes.

SECTION 27: Section 455.228 provides the department authority to issue a cease and desist notice when it has probable cause to believe that an unlicensed person has violated any of the practice acts or to any person who aids or abets the unlicensed practice of a profession. To enforce a notice to cease and desist, the department must file a proceeding in circuit court. It is not stated specifically, however, that the proper place to challenge a notice to cease and desist is in circuit court and not in an administrative hearing.

SECTION 28: Pursuant to section 455.228, Florida Statutes, DPR may issue a notice to cease and desist to any unlicensed person who violates certain regulatory provisions. However, as a result of insufficient funding, the department has not aggressively enforced unlicensed activities.

SECTION 29: Section 455,2285, Florida Statutes, provides for an annual report concerning administrative complaints and disciplinary actions taken by the department. It does not provide for any financial information, information to facilitate efficient and cost-effective operations of the department, or recommendations for proposed legislative changes.

SECTION 30: Relates to the penalties for misrepresentation in making application for licensure. Such misrepresentation constitutes a third degree felony.

SECTION 31: Section 455.232 prohibits any officer, employee, or person under contract with the department or any board to disclose confidential information to any person who is not lawfully entitled to the information.

SECTION 32: A cease and desist order may currently be seen as constituting agency action for which a section 120.57, Florida Statutes, hearing must be held.

SECTION 33: The department is required to submit a yearly report to the legislature concerning administrative complaints and disciplinary actions.

SECTION 34: Relates to public inspection of information required of applicants. Presently such information is open to the public, except certain financial records and examination materials.

SECTION 35: Relates to the penalties associated with disclosure of confidential information (it is a second degree misdemeanor).

SECTION 36: Relates to disclosure requirements associated with any licensed health care provider's advertisement of free or discounted services.

SECTION 37: Health care practitioners authorized to administer or dispense drugs are subject to immediate suspension if convicted of a felony under chapter 893 (drug violation) or the U.S. Code.

SECTION 38: Section 455.25, Florida Statutes, only applies to referrals by physicians of patients to physician-owned physical therapy facilities. It does not include the various other types of facilities owned by many physicians. The recently adopted position of the American Medical Association is that, in most instances, physicians should not refer patients to physician-owned facilities.

SECTION 39: Section 455.26 provides for the Impaired Practitioners Committee.

SECTION 40: Each practice act which provides for treatment programs for impaired practitioners contains the relevant provisions for the approval of programs in the applicable practice act. These provisions are not provided for in chapter 455, Florida Statutes.

SECTION 41: Several practice acts contain provisions which give the board or the department authority to suspend or restrict the practice of a profession by a licensee who is unable to practice the profession with reasonable skill and safety by reason of illness, use of alcohol, drugs, narcotics, chemicals, or any other type of material, or as a result of any mental or physical condition. These provisions also contain enforcement procedures. These provisions are not in chapter 455, Florida Statutes.

SECTION 42: Section 458.331 contains provisions relating to grounds for discipline by the Board of Medicine. Paragraph (e) of subsection (1) references treatment providers approved pursuant to section 458.3315. Paragraph (jj) of subsection (1) references the requirement under section 455.28 which requires certain health care practitioners to report any physician the licensee knows has violated the applicable practice act and who provides services in a hospital where the physician and the licensee both provide services.

SECTION 43: Section 459.015 contains provisions relating to grounds for discipline by the Board of Osteopathic Medical Examiners. Paragraph (e) of subsection (1) references treatment providers approved pursuant to chapter 458. Paragraph (mm) of subsection (1) references the requirement under section 455.28 which mandates that certain health care practitioners report any physician the licensee knows has violated the applicable practice act and who provides

services in a hospital where the physician and the licensee both provide services.

SECTION 44: Section 460.413 contains provisions relating to grounds for discipline by the Board of Chiropractic. Paragraph (hh) of subsection (1) references the requirement under section 455.28 which requires certain health care practitioners to report any physician the licensee knows has violated the applicable practice act and who provides services in a hospital where the physician and the licensee both provide services.

SECTION 45: Section 461.013 contains provisions relating to grounds for discipline by the Board of Podiatric Medicine. Paragraph (bb) of subsection (1) references the requirement under section 455.28 which requires certain health care practitioners to report any physician the licensee knows has violated the applicable practice act and who provides services in a hospital where the physician and the licensee both provide services.

SECTION 46: Subsection (4) of section 463.003, relating to the Board of Optometry, references section 20.30(5) for further board requirements.

SECTION 47: Section 464.018 contains provisions relating to grounds for discipline by the Board of Nursing. Paragraph (m) of subsection (1) references the requirement under section 455.28 which requires certain health care practitioners to report any physician the licensee knows has violated the applicable practice act and who provides services in a hospital where the physician and the licensee both provide services.

SECTION 48: Section 465.016 contains provisions relating to grounds for discipline by the Board of Pharmacy. Paragraph (o) of subsection (1) references the requirement under section 455.28 which requires certain health care practitioners to report any physician the licensee knows has violated the applicable practice act and who provides services in a hospital where the physician and the licensee both provide services.

SECTION 49: Section 466.028 contains provisions relating to grounds for discipline by the Board of Dentistry. Paragraph (ii) of subsection (1) references the requirement under section 455.28 which requires certain health care practitioners to report any physician the licensee knows has violated the applicable practice act and who provides services in a hospital where the physician and the licensee both provide services.

SECTION 50: Section 468.384 contains provisions relating to the Board of Auctioneers. These include provisions which provide for initial terms of members and are now obsolete. Additional provisions relating to board structure, procedures, and liability are also found in chapter 455.

SECTION 51: Section 472.007 contains provisions relating to the Board of Professional Land Surveyors. These include provisions which provide for initial terms of members and are now obsolete.

SECTION 52: Section 484.042 contains provisions relating to the Board of Hearing Aid Specialists. These include provisions which provide for initial terms of members and are now obsolete.

SECTION 53: Section 489.515 authorizes the Electrical Contractors' Licensing Board to refuse to certify any applicant who has violated section 489.533, which contains grounds for discipline, or section 489.535, which requires the board to report any criminal violation of the practice act to the proper prosecuting authority.

SECTION 54: Section 492.103 contains provisions relating to the Board of Professional Geologists. These include provisions which provide for initial terms of members and are now obsolete.

SECTION 55: Section 455.20 contains a definition of "board" which is applicable to part II of chapter 455

Section 455.215 authorizes the appropriate board to intervene in any proceeding regarding the issuance of a license to an applicant on behalf of the applicant or the department.

Section 455.2182 provides that nothing in chapter 455 shall be construed to allow the unsupervised practice of any health care practitioner licensed pursuant to chapter 86-90, Laws of Florida. This provision has been interpreted by the Florida Supreme Court to be applicable only to foreign-trained osteopathic physicians.

Section 455.28 requires certain health care practitioners to report any physician the licensee knows has violated the applicable practice act and who provides services in a hospital where the licensee also provides services.

Section 462.15 contains provisions relating to proceedings for the revocation of a license to practice naturopathy. Chapter 455 also contains these procedures.

Section 465.185 prohibits any person from paying or receiving any kind of payment for the referral of patients to a pharmacy.

Section 468.1175 requires a person desiring to be licensed as a speech-language pathologist or an audiologist to apply to the department to take the licensure examination. The department is to administer the licensure examination to each applicant whom the board certifies.

The following sections require the applicable board to report all criminal violations relating to the practice of the applicable profession to the proper prosecuting authority: 463.017, 466.029, 468.1305, 468.1765, 470.037, 471.035, 472.035, 473.324, 474.218, 475.454, 480.048, 481.227, 481.327, 484.016, 484.057, 489.535, and 489.559.

The following sections contain provisions relating to procedures and treatment programs for impaired practitioners for the applicable profession: 458.3315, 459.0155, 460.417, 461.0132, 463.0165, 464.0185, 465.0165, 466.0283, 474.2141, 490.0095, and 491.0095.

B. EFFECT OF PROPOSED CHANGES:

This bill would produce a more cost-effective, efficient, and responsive Department of Professional Regulation.

It would require the department to work with the various boards to implement long range planning; including a five-year fiscal and management plan and monitoring process with detailed recommendations for all professions. This long range plan is required to be updated annually.

In the financial area, it would require the department to produce a concise, quarterly management report which apprises boards of their financial status, including a summary sheet with cash balances for all boards. It would also require the department to implement "direct billing" procedures, which allows the legislature to determine true administrative costs, rather than relying totally on the existing cost allocation procedure which makes it harder to pinpoint how much the department is charging for specific activities. It would require the boards to ensure license fees are adequate to cover anticipated costs. It would require the boards to maintain minimum cash balances and authorize boards to increase fees or borrow money from the trust fund to comply with minimum cash balance requirements. If the boards do not address cash balance problems within one year, it would authorize the department to raise fees to cover the deficit and ensure compliance with minimum cash balance requirements.

In the area of examinations, it would authorize DPR, after consultation with the appropriate boards, to contract for certain examination services, to include development, preparation, administration, grading, evaluation, and candidate review and would establish an exam review and approval process. Further, it would authorize DPR to require providers to bear costs for legal defense of exam challenges; provided the exam, or portions thereof, was developed by the provider. It would allow exams to be given in languages other than English, provided practice of the profession by non-English speaking individuals will not result in a threat to the health, safety, and welfare of the consumer. It would require applicants seeking to take the exam in a language other than English to incur all relevant costs. It would require DPR to maintain exam records for 3 years and would specify that DPR may not prohibit board members from reviewing exams. Finally, boards, or the department when there is no board, would be authorized to require applicants to pass an exam pertaining to applicable state laws and rules.

In the area of legal issues and discipline, it would establish a mediation process and authorize boards, or the department when there is no board, to designate suitable disciplinary violations. It would authorize the department to use letters of guidance in lieu of a finding of probable cause and would clarify that letters of guidance do not constitute discipline and are not appropriate for citation procedures. It would authorize disclosure of the disposition of a case if the case is dismissed without a finding of probable cause; providing the person making the inquiry can identify

the licensee as well as the person making the complaint. It would establish that a notice to cease and desist is not a final agency action and does not require a chapter 120 hearing.

The bill would also expand the consumer-oriented posture of the department in several ways. It would expand consumer representation on the boards. Specifically, it would increase the minimum number of consumer members for boards with ten or fewer members to three (up from the standard two), and require a minimum of four consumer members for boards with eleven or more. It would establish legislative intent that enforcement of licensure for certain professional activities is a state priority and enforcement costs should be covered by the various regulated professionals. It would authorize the boards to impose a special fee to develop an "unlicensed activity" fund to facilitate enforcement of unlicensed activity.

Regarding indigent and under-served populations, it would authorize boards to adopt rules to allow retired professionals to serve indigent and/or under-served populations or areas of critical need. It would also encourage such activities by allowing pro bono service to substitute for a portion of required mandatory continuing education requirements for licenses in instances where continuing education is required.

Regarding the organizational structure of the boards, it would require consistent, staggered, member terms for all boards, with specified term-ending dates. It would authorize boards to increase the number of probable cause panels. It would specify that probable cause panel membership must include both consumer and professional representation, if at all possible.

C. SECTION-BY-SECTION ANALYSIS:

SECTION 1: Amends section 20.30, Florida Statutes, dealing with the organization of the Department of Professional Regulation (DPR) and the various boards created within it. It provides that all health care practitioners, in addition to physicians, shall be included in DPR's efforts to assure quality, cost-effective health care throughout the state. It increases the proportion of consumer representation on the various boards and mandates that boards of certain sizes have a minimum number of consumer members. It establishes provisions designed to guarantee staggered terms, and requires boards to have at least seven members. This section establishes legislative intent language which specifies that the department should regulate newly regulated professions unless a compelling need for a board is established, and delays for one year the actual creation of any statutorily established board, unless otherwise provided by law.

SECTION 2: Amends section 215.37, Florida Statutes, and clarifies legislative intent that each profession should operate within existing fees. It strengthens and moves requirements for allocation of board expenses to section 455.219, Florida Statutes.

SECTION 3: Provides that parts I and II of chapter 455, Florida Statutes, be combined and that the chapter will no longer be divided into parts. This is being done because chapter 455, Florida Statutes, will only contain general provisions relating to regulated professions, thus the chapter needs no division.

SECTION 4: Amends section 455.01, Florida Statutes, to clarify and establish new definitions. It expands the definition of health care practitioner to include all practitioners currently regulated by DPR who deliver health services. Further, it defines the following terms: board, consumer member, department, license, licensee, and profession.

SECTION 5: Amends section 455.11, Florida Statutes, and makes technical revisions which delete obsolete language.

SECTION 6: Amends section 455.201, Florida Statutes, to provide a statement of legislative intent that department policies ensure expenditures are made in the most cost-effective manner possible to maximize competition, minimize licensure costs, and maximize public access to board meetings. Specifies moneys deposited in professional regulation trust funds are public funds and not the property of individual professions. Requires department policies to reflect sound fiscal principles.

SECTION 7: Creates section 455.2025, Florida Statutes, to clarify and expand enforcement of the prohibition on rebates and referral fees to apply to all licensed health care practitioners. It moves section 465.185, Florida Statutes, dealing with rebates paid by pharmacies to chapter 455, Florida Statutes, and clarifies that it applies to all health care practitioners. It authorizes minimum penalties, and transfers responsibility for enforcement of these provisions from HRS to DPR. It clarifies that a pharmacy may contract with a nursing home to collect for medication, and establishes procedures for a service fee not to exceed the actual cost of collection.

SECTION 8: Amends section 455.203, Florida Statutes, to authorize DPR to issue 4-year licenses to selected licensees, unless otherwise provided by law. Requires DPR to provide training relating to all relevant fiscal matters to all new board members. Makes technical changes relating to obsolete language.

SECTION 9: Creates section 455.204, Florida Statutes, to require DPR to implement a long range policy planning and monitoring component, including long-range estimates of revenues, expenditures, cash balances, and performance statistics. It also requires an annual update of all long-range plans.

SECTION 10: Amends section 455.207, Florida Statutes, to make language gender-neutral; deletes obsolete and unnecessary language; clarifies quorum requirements for boards or committees; and specifies three consecutive unexcused absences within any twelve month period results in a position vacancy. Expands language relating to special committees and makes provisions for appointment of the third member, provided special committees cannot agree on who

that individual should be. Requires special committees to recommend rules to resolve disagreement, and requires participating boards to share costs associated with defending rules. Requires DPR to provide legal representation for special committees.

SECTION 11: Amends section 455.208, Florida Statutes, to require publication of a summary of final orders resulting in fines, suspensions, or revocations.

SECTION 12: Amends section 455.209, Florida Statutes, to authorize the Department of Legal Affairs to defend board members' businesses in any action against the company, provided the suit arises from statutorily authorized actions taken by the member.

SECTION 13: Amends section 455.211, Florida Statutes, to provide standing for the secretary to request a declaratory statement from a board and provides that boards cannot challenge each other's rules. Instead, boards should follow the procedures for settling differences outlined by section 455.207, Florida Statutes.

SECTION 14: Amends section 455.213, Florida Statute, to clarify relevant provisions and facilitate proper interpretation of existing language relating to licensing; includes prosecution and appeal in another jurisdiction as a basis for not issuing a license; authorizes each board, or the department when there is no board, which requires continuing education for renewal of a license, to adopt rules to establish criteria for continuing education courses, to allow part of the required continuing education hours to be fulfilled by: (1) the performance of pro bono services to indigent/underserved populations, (2) by performing research in critical need areas, or (3) for training leading to advanced professional certification; provides that the department shall adopt rules to provide for the administration of continuing education requirements.

SECTION 15: Amends section 455.214, Florida Statutes, to authorize boards, or the department when there is no board, to issue limited licenses to retired professionals who are willing to provide service to indigent, underserved, and critical need populations. Specifies limited license application process; provides conditions under which limited licenses may be denied; specifies limited licensees may practice only in public or nonprofit institutions/agencies. Authorizes boards, or the department when there is no board, to develop rules addressing supervision of limited licensees.

SECTION 16: Amends section 455.217, Florida Statutes, to authorize the department, after consultation with the appropriate board, to contract for certain examination services, to include development, preparation, administration, grading, evaluation, and candidate review. Requires the department to maintain a review and approval process consistent with section 287.057(17) and requires examinations to conform to requirements of section 760.10(5). Authorizes DPR to require providers to bear costs for legal defense of exam challenges; provided exam, or portions thereof, was developed by provider. Allows exams to be given in language other than English, provided practice of the profession by non-English

speaking individuals will not result in a threat to the health, safety, and welfare of the consumer. Requires applicants seeking to take the exam in a language other than English to bear the cost of preparation, administration, and evaluation of the exam. Requires DPR to maintain exam records for 3 years. Specifies DPR may not prohibit board members from reviewing exams. Authorizes boards, or the department when there is no board, to require applicants to pass an exam pertaining to applicable state laws and rules.

SECTION 17: Amends section 455.218, Florida Statutes, to clarify that passage of an examination is necessary for licensure; provides that license will not be issued if applicant is under prosecution or appeal in any jurisdiction.

SECTION 18: Amends section 455.219, Florida Statutes, to increase fiscal accountability and communications between the boards and DPR. It includes the following changes: a statement of legislative intent prohibiting cash deficits; requires a condensed management report which provides information concerning budgets, finances, performance statistics, and recommendations to be presented at least quarterly to all boards; requires each board to ensure license fees are adequate to cover all anticipated costs and maintain a minimum cash balance; authorizes each board, or the department when there is no board, to, by rule, assess and collect, once in a 4-year period, a one-time fee from each licensee in an amount sufficient to eliminate a cash deficit. Each profession is authorized, under certain circumstances, to receive temporary loans with interest, for a period not to exceed 2 years. Finally, it defines direct charge expenses and authorizes the department to contract with public and private entities for the deposit of revenue.

SECTION 19: Amends section 455.2226, Florida Statutes, to clarify relevant language and facilitate proper interpretation of existing provisions relating to the requirements for instruction on human immunodeficiency virus and acquired immune deficiency syndrome and to correct internal statutory references.

SECTION 20: Creates section 455.2235, Florida Statutes, to provide that boards, or the department when there is no board, may designate which disciplinary violations are suitable for mediation, provided the harm caused by the licensee is economic in nature and can be remedied by the licensee; provides that, if complainant and subject reach agreement through a mediation process and provide acknowledgements of satisfaction within a particular time frame, then no further action will be taken against the licensee; and provides for limitation on the number of times a licensee can use mediation.

SECTION 21: Amends section 455.224, Florida Statutes, to provide that a citation which is not challenged shall become a final order of the department when there is no board, and specifically states that a citation constitutes discipline; deletes letters of guidance from citation procedures since it is recommended in proposed changes to section 455.225(4) that letters of guidance no longer constitute discipline and, therefore, are not appropriate for citation

procedures; provides for personal service of citations; provides continuing jurisdiction for boards which adopt citation offenses and penalties prior to Jan. 1, 1992, and allows new boards to designate citation violations and penalties within 6 months of their creation.

SECTION 22: Amends section 455.225, Florida Statutes, to clarify relevant language and facilitate proper interpretation of existing provisions relating to the requirements for disciplinary proceedings; deletes departmental authority to delegate its investigative function to boards; requires the department to allocate sufficient and adequately trained staff to expeditiously and thoroughly determine legal sufficiency and investigate all legally sufficient complaints; provides for confidentiality of the reports made to probable cause panels by the department prior to the department's dismissal of any case where legal sufficiency was found, but a determination was made that there is insufficient evidence to support prosecution and such case is actually dismissed prior to a finding of probable cause; provides boards with authority to have more than one probable cause panel; provides that probable cause panels must have at least one professional member; provides that a past board member may serve on a probable cause panel but if that person is a past professional board member, the individual must hold an active valid license for that profession; requires boards to have a consumer member on probable cause panels if one is available and willing to serve; provides that probable cause panels, or the department when there is no board, may issue a letter of guidance in lieu of a finding of probable cause; provides that the department may forward to a subject of a complaint, at the subject's expense, a copy of the department's investigative file, provided the subject agrees to maintain the confidentiality of the information received until ten days after probable cause is found; provides that if a case is dismissed without a finding of probable cause, the department may disclose only the disposition of the case to anyone making written inquiry and who identifies the subject and complainant. Requires DPR to provide additional training to complaint analysts and investigators.

SECTION 23: Amends section 455.227, Florida Statutes, to place violations and penalties common among professions in chapter 455, Florida Statutes. Common violations addressed are; fraudulent representations; intentional violation of rules; being convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication; knowingly filing false reports against licensee; obtaining a license through bribery, fraud, misrepresentation, or administrative error; failing to report violations of professional practice acts; facilitating unlicensed activity; failing to perform statutory obligations; mailing or filing false reports; making deceptive, untrue, or fraudulent representations relating to a regulated profession; exercising influence on patient/client for financial gain; practicing or offering to practice beyond scope permitted by law; contracting with unqualified individuals to perform a service which requires a license; violating provisions of chapter 455, Florida Statutes,; and interfering with an investigation or inspection. Common penalties addressed are: refusal to certify application for licensure; suspension, permanent revocation, or placement of a licensee on

probation; restriction of practice; imposition of an administrative fine not to exceed $5,000 for each separate offense; issuance of a reprimand; corrective action; restitution; and assessment of costs related to investigation and prosecution. This section also specifies that revocation of a license is permanent, and authorizes the board, or the department when there is no board, to establish by rule requirements for reapplication.

SECTION 24: Amends section 455.2273, Florida Statutes, relating to disciplinary guidelines; requires each board, or the department when there is no board, to adopt by rule disciplinary guidelines for each ground for disciplinary action which may be imposed and, when applicable, possible aggravating and mitigating circumstances and the variation and range of penalties permitted for such circumstances; requires hearing officers, when recommending penalties in any recommended order, to follow the disciplinary guidelines and state in writing the aggravating or mitigating circumstances upon which the recommended penalty is based.

SECTION 25: Amends section 455.2275, Florida Statutes, to conform with the definition of "license" proposed by this bill for section 455.01.

SECTION 26: Creates section 455.2277, Florida Statutes, to require the department or the appropriate board to report any criminal violation relating to the practice of a profession regulated by the department or board to the proper prosecuting authority.

SECTION 27: Amends section 455.228, Florida Statutes, to provide that a notice to cease and desist is not agency action for which a 120.57 hearing can be sought to make clear that the appropriate place for enforcement and challenge of these notices is in circuit court.

SECTION 28: Creates section 455.2281, Florida Statutes, to establish enforcement of unlicensed activities as a state priority. Effective July 1, 1993, boards, or the department when there is no board, are authorized to impose a $5 unlicensed activity fee which would be used to fund unlicensed activity enforcement. This section further provides that $5 of the current licensure fee may be used for this unlicensed activity enforcement, provided professions are not in a deficit financial posture. DPR is required to make direct charges and direct credits to each individual profession's account, and requires the department to include all financial and statistical data resulting from unlicensed activity enforcement as a separate category in the quarterly management reports provided to all boards.

SECTION 29: Amends section 455.2285, Florida Statutes, to enhance management and financial accountability by requiring DPR to include certain fiscal information and recommendations in its annual report to the legislature effective November 1, 1993.

SECTION 30: Amends section 455.229, Florida Statutes, to exempt medical information and school transcripts from public records requirements.

SECTION 31: Amends section 455.232, Florida Statutes, to prohibit subject of investigation from disclosing confidential information; specifies disciplinary penalties for violations.

SECTION 32: Amends section 455.24, Florida Statutes, to specify that only one disclosure is necessary in a classified directory.

SECTION 33: Amends section 455.241, Florida Statutes, to expand provisions to include all health care practitioners.

SECTION 34: Amends section 455.2415, Florida Statutes, to provide for technical changes which make language gender neutral.

SECTION 35: Amends section 455.242, Florida Statutes, to provide for technical changes which make language gender neutral.

SECTION 36: Amends section 455.243, Florida Statutes, to make technical changes relating to inspection authority.

SECTION 37: Amends section 455.245, Florida Statutes, to provide that health care practitioners who enter a plea of nolo contendere, or are convicted or found guilty, regardless of adjudication, are subject to immediate licensure suspension. Makes technical changes to conform language to individual practice acts.

SECTION 38: Amends section 455.25, Florida Statutes, to expand and enhance enforcement of the requirement for notification by a physician to any patient who is referred to other physician-owned health care facilities. It expands the requirement to include disclosure of all financial interests by a physician in any facility which a patient is referred. Currently it applies only to physical therapy facilities. The penalties for violations of this section are increased.

SECTION 39: Amends section 455.26, Florida Statutes, to clarify impaired practitioner committee language.

SECTION 40: Amends section 455.261, Florida Statutes, to require DPR to designate approved treatment programs for impaired practitioners; requires DPR to retain impaired practitioner consultants; and specifies duties of consultant.

SECTION 41: Amends section 455.27, Florida Statutes, to make impaired practitioner procedures available to all boards when a licensee fails to practice with skill and safety due to an impairment. It provides a mechanism to compel examination of a licensee; and provides that action under this section is remedial and not penal.

SECTION 42: Amends section 458.331, Florida Statutes, to correct statutory references.

SECTION 43: Amends section 459.015, Florida Statutes, to correct statutory references.

SECTION 44: Amends section 460.413, Florida Statutes, to correct statutory references.

SECTION 45: Amends section 461.013, Florida Statutes, to correct statutory references.

SECTION 46: Amends section 463.003, Florida Statutes, to correct statutory references.

SECTION 47: Amends section 646.018, Florida Statutes, to correct statutory references.

SECTION 48: Amends section 465.016, Florida Statutes, to correct statutory references.

SECTION 49: Amends section 466.028, Florida Statutes, to correct statutory references.

SECTION 50: Amends section 468.384, Florida Statutes, to delete obsolete and duplicate language.

SECTION 51: Amends section 472.007, Florida Statutes, to delete obsolete language.

SECTION 52: Amends section 484.042, Florida Statutes, to delete obsolete and duplicate language.

SECTION 53: Amends section 489.515, Florida Statutes, to make technical revisions.

SECTION 54: Amends section 492.103, Florida Statutes, to delete obsolete language.

SECTION 55: Repeals sections 455.20, 455.215, 455.2182, 455.28, 462.15, 465.185, 463.017, 466.029, 468.1765, 470.037, 471.035, 472.035, 473.324, 474.218, 475.454, 480.048, 481.227, 481.327, 484.016, 484.057, 489.535, and 489.559, Florida Statutes; sections 468.1305 and 468.1175, Florida Statutes, as created by chapters 90-134 and 90.345, Laws of Florida; sections 458.3315, 459.0155, 461.0132, 463.0165, 464.0185, 465.0165, 466.0283, 474.2141, and 490.0095, Florida Statutes, as amended by chapter 91-140, Laws of Florida; section 460.117, Florida Statutes, as created by chapter 90-25, Laws of Florida; and section 491.0095, Florida Statutes, as created by chapter 90-263, Laws of Florida.

SECTION 56: Provides an effective date of October 1, 1992, except as otherwise provided by law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

Per the department, section 18 would generate a one-time non-recurring source of revenue of $3,350,000 which would be used to eliminate existing cash deficits. This fee source can only be used once in any 4 year period without specific legislative authority.

2. Recurring Effects:

Following is a section-by-section analysis of the provisions which result in a significant positive/negative fiscal impact. Sections not listed either have a negligible fiscal impact or implementation of proposal can be absorbed within existing resources:

a. Section 1 will result in a negative fiscal impact of approximately $9,000 annually because of per diem entitlements for additional board members.

b. Section 18 will result in a positive fiscal impact of approximately $150,000 biennially as a result of a lock box contract with the Department of Revenue.

c. Section 28 would generate approximately $3,943,000 in recurring revenue to specifically combat unlicensed activity.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

	RECURRING		RECURRING
Revenues	$3,943,000	Expenditures	$9,000
	75,000		
	$4,018,000		

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

None.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

None.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

None.

V. COMMENTS:

Proposed Committee Bill #17 will result in several significant statutory changes which will enhance agency efficiency and effectiveness, increase consumer protection, enhance financial accountability by prohibiting deficit spending, expand enforcement prohibitions on rebate/referral fees, require long-range planning, and increase management accountability by improving communications between boards and the department.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

VII. SIGNATURES:

COMMITTEE ON REGULATORY REFORM:
Prepared by:

Gloria C. Henderson

Staff Director:

Gloria C. Henderson

STORAGE NAME: pcb17a.hrr
DATE: January 15, 1992

HOUSE OF REPRESENTATIVES
COMMITTEE ON
REGULATORY REFORM
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT

BILL #: PCB RR 92-17

RELATING TO: Regulation of Professions

SPONSOR(S): Committee on Regulatory Reform

STATUTE(S) AFFECTED: Chapters 20, 215, 455, 458, 459, 460, 461, 462, 463, 464, 465, 466, 468, 470, 471, 472, 473, 474, 475, 480, 481, 484, 486, 489, 490, 491, 492, Florida Statutes

COMPANION BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) REGULATORY REFORM
(2)
(3)
(4)
(5)

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I. SUMMARY:

PCB RR 92-17 revises and consolidates certain provisions relating to professions regulated by the Department of Professional Regulation (DPR). Specifically, it expands enforcement efforts relating to unprofessional conduct to include all health care practitioners rather than just physicians; requires boards to consist of at least seven members; specifies consistent, staggered terms; increases consumer representation on boards; prohibits cash deficits and requires each profession to operate within anticipated fees; strengthens regulations relating to board expenses; combines parts I and II of chapter 455, Florida Statutes; defines several relevant terms; prohibits rebates and commissions; requires DPR to implement a long-range policy planning and monitoring component; requires concise, quarterly management reports and specifies information concerning budgets, finances, performance statistics be included therein; clarifies committee quorum requirements; specifies information to be included in certain department publications; authorizes the Department of Legal Affairs to defend board members' businesses provided the suit arises from statutorily authorized actions taken by the member; authorizes the secretary to request declaratory statements from boards; provides that boards cannot challenge each other's rules; includes prosecution and appeal in another jurisdiction as a basis for denying licensure; gives boards more flexibility in determining appropriate continuing education requirements; encourages services to indigent and underserved populations; amends provisions relating to procurement, development, preparation, grading, evaluation and candidate review of examinations; allows DPR to contract for these services; requires that exams meet certain requirements and that providers bear the costs for defense of exam challenges; authorizes administration of exams in languages other than English; requires the department to maintain exam records for three years; requires DPR to apprise boards of changes made to proposed legislation and legislative budget requests; requires professions to ensure license fees cover the cost of regulation; establishes voluntary mediation procedures; amends statutory language relating to citations;

deletes letters of guidance from citation procedures and authorizes issuance of such letters in lieu of a finding of probable cause; provides for personal service of citations; authorizes boards to have more than one probable cause panel; requires that probable cause panels have at least one professional member and allows past board members to serve on probable cause panels; requires, under certain circumstances, boards to have consumer representation on probable cause panels and on final agency action committees; authorizes DPR to disclose case disposition information if a case is dismissed without a finding of probable cause, provided the request for information is in writing and identifies both the subject and the complainant; requires additional training for complaint analysts and investigators; places violations common among regulated professions in chapter 455, Florida Statutes, and makes associated penalties uniform; authorizes recovery of investigation and prosecution costs; authorizes civil action to recover fines/costs when not timely paid; provides for permanent revocation; revises disciplinary guideline requirements; requires hearing officers to follow penalty guidelines; requires reporting of criminal violations by practitioners; specifies that a Notice to Cease and Desist is not final agency action and is therefore, not subject to by chapter 120, Florida Statutes; provisions; provides that medical information and school transcripts supplied by applicants will remain confidential; prohibits subject of investigation from disclosing confidential information; adds to those health care practitioners subject to immediate suspension those who enter pleas of nolo contendere, or who are convicted or found guilty, regardless of adjudication; expands requirements for full disclosure of all financial interests; amends impaired practitioner committee language; requires department to designate approved treatment programs; requires department to retain impaired practitioner consultants; specifies duties of consultants; makes impaired practitioner provisions available to all boards when inferior practice results from impairment; provides mechanism to compel examination of licensee; clarifies that activities relating to impaired practitioners are remedial not penal; clarifies that enforcement of unlicensed activity is a state priority and requires regulated professions to incur related costs; and makes several technical changes to certain practice acts to delete obsolete language, correct inaccurate references, and repeal unnecessary statutory provisions where appropriate.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

SECTION 1: Most boards have a maximum of two consumer members. Also, many boards have developed a problem in their staggered terms, and a large proportion of their members' terms are expiring at the same time.

SECTION 2: The statutes imply that the various professions regulated by DPR are not allowed to deficit spend. However, there is not a specific statement to that effect. A number of the boards (approximately 17) currently have cash deficits, totaling approximately $3.2 million. This section also provides for allocation of the cost of operating the various professions.

SECTION 3: Chapter 455 is divided in two parts. Part I is entitled "General Provisions" and Part II is entitled "Regulation by Department of Professional Regulation." Each part has a separate section for definitions.

SECTION 4: The definitions as currently contained in the statutes are outdated, and do not include all required definitions.

SECTION 5: Section 455.11, Florida Statues, sets up the qualifications for immigrants to be examined to practice a licensed profession or occupation in Florida.

SECTION 6: This section contains legislative intent as it relates to regulation of the various professions.

SECTION 7: Chapter 455, Florida Statutes, which applies to all professions, contains no provisions on rebates and referral fees. Section 465.185, Florida Statutes, prohibits paying or receiving any commissions, rebates, referral fees, etc., by anyone to obtain pharmacy business. There are similar, but less explicit prohibitions for nursing homes, doctors, and dentists.

SECTION 8: Section 455. 202 deals with the powers and duties of the department.

SECTION 9: There is no specific requirement in the department's statutes requiring long-range policy planning, plans, reports, and recommendations. While there is the agency functional plan and related requirements, these do not provide specific directions as related to estimates of board revenues, license fees, expenditures, cash balances, and detailed performance statistics. Section 455.2285, F.S., provides for an annual report concerning administrative complaints and disciplinary actions taken by the department. It does not provide for any financial information, information to facilitate efficient and cost-effective operations of the department, or recommendations for proposed legislative changes. The department's current review of anticipated revenues (license fee increases) for the various boards is for two or three years. There is no long-range review (minimum of 5 years) of anticipated revenues by the department or the various boards.

SECTION 10: This section provides for board organization, meetings, compensation, and travel expenses of members.

SECTION 11: The department and the various boards are authorized to advise licensees by newsletter or other publications with no direction as to the type information.

SECTION 12: Section 455.209, Florida Statutes, provides requirements for accountability and liability of board members. It also provides for the Department of Legal Affairs to defend any board member for cases related to official business.

SECTION 13: The Secretary of the department has standing pursuant to section 455.211 to challenge any rule or proposed rule of a board. The department and the boards have standing to appeal any administrative decision made on challenges to their rules.

SECTION 14: A board, or the department when there is no board, may refuse to issue a license to any applicant who is under investigation in any jurisdiction for an action that would constitute a violation of chapter 455 or any of the practice acts until such investigation is complete. However, the statute does not include authority to refuse to issue a license to an applicant who is under prosecution in another jurisdiction. Several of the practice acts provide for continuing education requirements as a condition for renewal of a license. There is no general authorization in chapter 455.

SECTION 15: The only licensed professionals authorized to obtain a limited license are physicians (section 458.317, Florida Statutes) or retired osteopathic physicians (section 459.0075, Florida Statutes). The limited license authorizes a retired physician to practice medicine only if employed by a public agency or institution, or nonprofit agency which is located in an area of critical medical need or in a medically underserved area.

SECTION 16: Section 455.217, Florida Statutes, establishes the procedures and requirements for the various examinations administered by the department. It contains requirements on development, security, examination, and recordkeeping.

SECTION 17: Section 455.218, Florida Statutes, delineates special examination and licensure provisions for foreign-trained professions.

SECTION 18: The statutes imply that the various professions regulated by DPR are not to deficit spend. However, there is not a specific statement to that effect. A number of the boards (approximately 17) currently have cash deficits. It is the responsibility of the various boards to increase fees to adequately cover all costs. DPR can only advise the boards and recommend fee increases. In most instances, the various boards do not have authority to make one-time assessments to cover deficits or unanticipated expenses. Also, the various boards with deficits are in effect borrowing money from the boards with adequate cash balances, and as a result, boards with cash balances lose interest

on these funds. The total deficits are approximately $3.2 million. While the department provides financial reports to the boards, there has been concern raised as to the adequacy of these as management reports.

SECTION 19: This section addresses requirements for instruction on human immunodeficiency virus and acquired immune deficiency syndrome.

SECTION 20: The department is required to investigate all legally sufficient complaints. Procedures for processing complaints are contained in section 455.225. These provisions do not provide for mediation.

SECTION 21: Section 455.224 allows the boards, or the department when there is no board, to designate certain violations as appropriate for the issuance of citations. These citations are designed for offenses which are not a substantial threat to the public health, safety, and welfare and may include those violations which are punishable by a letter of guidance. The department has exclusive authority to specify citable offenses if the boards failed to do so by January 1, 1992.

SECTION 22: Section 455.225, Florida Statutes, requires the department to expeditiously investigate all complaints filed with their agency. Only complaints determined to be legally sufficient are investigated by DPR. As used by the department, "legally sufficient" means a complaint alleging facts which, if proven, would constitute a violation of some law or administrative rule over which DPR has jurisdiction. In March, 1991, DPR's Division of Regulation had a backlog of cases, totalling 11,500 complaints. Consequently, the department implemented a program designed to expedite complaint investigations. However, the new program does not ensure that complaint staff (i.e., complaint analysts, investigators, etc.) are adequately trained to determine legal sufficiency and investigate complaints.

The determination of whether probable cause exists in a complaint is to be determined by a probable cause panel of the board or by the department. The panels are to be composed of board members but may not include more than one lay member. After a finding of probable cause, the probable cause panel may choose to direct the department to issue a letter of guidance to the subject of the complaint rather than recommend a formal complaint be filed against the licensee. These letters of guidance constitute discipline. The department must, upon request, forward to the subject of the complaint a copy of the investigative file. The department may not publicly disclose the existence or status of any complaint until ten days after probable cause has been found.

SECTION 23: Currently, the grounds for discipline, penalties, and enforcement, are in the various practice acts. Even though many are common to the various practice acts, Chapter 455, does not currently contain uniform penalties for the same violations.

SECTION 24: Each board is required to adopt by rule disciplinary guidelines applicable to each specific ground for discipline. These guidelines are to specify a meaningful range of designated penalties. A specific finding of aggravating or mitigating circumstances allows the board to impose a penalty other than that in the guidelines.

SECTION 25: This section prescribes penalties for giving false information.

SECTION 26: Several practice acts for various professions contain a provision which requires the applicable board to report all criminal violations relating to that profession to the appropriate prosecuting authority. There is no such general provision applicable to all professions in chapter 455.

SECTION 27: Section 455.228 provides the department authority to issue a cease and desist notice when it has probable cause to believe that an unlicensed person has violated any of the practice acts or to any person who aids or abets the unlicensed practice of a profession. To enforce a notice to cease and desist, the department must file a proceeding in circuit court. It is not stated specifically, however, that the proper place to challenge a notice to cease and desist is in circuit court and not in an administrative hearing.

SECTION 28: Pursuant to section 455.228, Florida Statutes, DPR may issue a notice to cease and desist to any unlicensed person who violates certain regulatory provisions. However, as a result of insufficient funding, the department has not aggressively enforced unlicensed activities.

SECTION 29: Section 455,2285, Florida Statutes, provides for an annual report concerning administrative complaints and disciplinary actions taken by the department. It does not provide for any financial information, information to facilitate efficient and cost-effective operations of the department, or recommendations for proposed legislative changes.

SECTION 30: Relates to the penalties for misrepresentation in making application for licensure. Such misrepresentation constitutes a third degree felony.

SECTION 31: Section 455.232 prohibits any officer, employee, or person under contract with the department or any board to disclose confidential information to any person who is not lawfully entitled to the information.

SECTION 32: A cease and desist order may currently be seen as constituting agency action for which a section 120.57, Florida Statutes, hearing must be held.

SECTION 33: The department is required to submit a yearly report to the legislature concerning administrative complaints and disciplinary actions.

SECTION 34: Relates to public inspection of information required of applicants. Presently such information is open to the public, except certain financial records and examination materials.

SECTION 35: Relates to the penalties associated with disclosure of confidential information (it is a second degree misdemeanor).

SECTION 36: Relates to disclosure requirements associated with any licensed health care provider's advertisement of free or discounted services.

SECTION 37: Health care practitioners authorized to administer or dispense drugs are subject to immediate suspension if convicted of a felony under chapter 893 (drug violation) or the U.S. Code.

SECTION 38: Section 455.25, Florida Statutes, only applies to referrals by physicians of patients to physician-owned physical therapy facilities. It does not include the various other types of facilities owned by many physicians. The recently adopted position of the American Medical Association is that, in most instances, physicians should not refer patients to physician-owned facilities.

SECTION 39: Section 455.26 provides for the Impaired Practitioners Committee.

SECTION 40: Each practice act which provides for treatment programs for impaired practitioners contains the relevant provisions for the approval of programs in the applicable practice act. These provisions are not provided for in chapter 455.

SECTION 41: Several practice acts contain provisions which give the board or the department authority to suspend or restrict the practice of a profession by a licensee who is unable to practice the profession with reasonable skill and safety by reason of illness, use of alcohol, drugs, narcotics, chemicals, or any other type of material, or as a result of any mental or physical condition. These provisions also contain enforcement procedures. These provisions are not in chapter 455.

SECTION 42: Section 458.331 contains provisions relating to grounds for discipline by the Board of Medicine. Paragraph (e) of subsection (1) references treatment providers approved pursuant to section 458.3315. Paragraph (jj) of subsection (1) references the requirement under section 455.28 which requires certain health care practitioners to report any physician the licensee knows has violated the applicable practice act and who provides services in a hospital where the physician and the licensee both provide services.

SECTION 43: Section 459.015 contains provisions relating to grounds for discipline by the Board of Osteopathic Medical Examiners. Paragraph (e) of subsection (1) references treatment providers approved pursuant to chapter 458. Paragraph (mm) of subsection (1) references the requirement under section 455.28 which requires certain health care practitioners to report any physician the licensee knows has violated the applicable practice act and who

provides services in a hospital where the physician and the licensee both provide services.

SECTION 44: Section 460.413 contains provisions relating to grounds for discipline by the Board of Chiropractic. Paragraph (hh) of subsection (1) references the requirement under section 455.28 which requires certain health care practitioners to report any physician the licensee knows has violated the applicable practice act and who provides services in a hospital where the physician and the licensee both provide services.

SECTION 45: Section 461.013 contains provisions relating to grounds for discipline by the Board of Podiatric Medicine. Paragraph (bb) of subsection (1) references the requirement under section 455.28 which requires certain health care practitioners to report any physician the licensee knows has violated the applicable practice act and who provides services in a hospital where the physician and the licensee both provide services.

SECTION 46: Subsection (4) of section 463.003, relating to the Board of Optometry, references section 20.30(5) for further board requirements.

SECTION 47: Section 464.018 contains provisions relating to grounds for discipline by the Board of Nursing. Paragraph (m) of subsection (1) references the requirement under section 455.28 which requires certain health care practitioners to report any physician the licensee knows has violated the applicable practice act and who provides services in a hospital where the physician and the licensee both provide services.

SECTION 48: Section 465.016 contains provisions relating to grounds for discipline by the Board of Pharmacy. Paragraph (o) of subsection (1) references the requirement under section 455.28 which requires certain health care practitioners to report any physician the licensee knows has violated the applicable practice act and who provides services in a hospital where the physician and the licensee both provide services.

SECTION 49: Section 466.028 contains provisions relating to grounds for discipline by the Board of Dentistry. Paragraph (ii) of subsection (1) references the requirement under section 455.28 which requires certain health care practitioners to report any physician the licensee knows has violated the applicable practice act and who provides services in a hospital where the physician and the licensee both provide services.

SECTION 50: Section 468.384 contains provisions relating to the Board of Auctioneers. These include provisions which provide for initial terms of members and are now obsolete. Additional provisions relating to board structure, procedures, and liability are also found in chapter 455.

SECTION 51: Section 472.007 contains provisions relating to the Board of Professional Land Surveyors. These include provisions which provide for initial terms of members and are now obsolete.

SECTION 52: Section 484.042 contains provisions relating to the Board of Hearing Aid Specialists. These include provisions which provide for initial terms of members and are now obsolete.

SECTION 53: Section 489.515 authorizes the Electrical Contractors' Licensing Board to refuse to certify any applicant who has violated section 489.533, which contains grounds for discipline, or section 489.535, which requires the board to report any criminal violation of the practice act to the proper prosecuting authority.

SECTION 54: Section 492.103 contains provisions relating to the Board of Professional Geologists. These include provisions which provide for initial terms of members and are now obsolete.

SECTION 55: Section 455.20 contains a definition of "board" which is applicable to part II of chapter 455

Section 455.215 authorizes the appropriate board to intervene in any proceeding regarding the issuance of a license to an applicant on behalf of the applicant or the department.

Section 455.2182 provides that nothing in chapter 455 shall be construed to allow the unsupervised practice of any health care practitioner licensed pursuant to chapter 86-90, Laws of Florida. This provision has been interpreted by the Florida Supreme Court to be applicable only to foreign-trained osteopathic physicians.

Section 455.28 requires certain health care practitioners to report any physician the licensee knows has violated the applicable practice act and who provides services in a hospital where the licensee also provides services.

Section 462.15 contains provisions relating to proceedings for the revocation of a license to practice naturopathy. Chapter 455 also contains these procedures.

Section 465.185 prohibits any person from paying or receiving any kind of payment for the referral of patients to a pharmacy.

Section 468.1175 requires a person desiring to be licensed as a speech-language pathologist or an audiologist to apply to the department to take the licensure examination. The department is to administer the licensure examination to each applicant whom the board certifies.

The following sections require the applicable board to report all criminal violations relating to the practice of the applicable profession to the proper prosecuting authority: 463.017, 466.029, 468.1305, 468.1765, 470.037, 471.035, 472.035, 473.324, 474.218, 475.454, 480.048, 481.227, 481.327, 484.016, 484.057, 489.535, and 489.559.

The following sections contain provisions relating to procedures and treatment programs for impaired practitioners for the applicable profession: 458.3315, 459.0155, 460.417, 461.0132, 463.0165, 464.0185, 465.0165, 466.0283, 474.2141, 490.0095, and 491.0095.

B. EFFECT OF PROPOSED CHANGES:

This bill would produce a more efficient and responsive Department of Professional Regulation.

It would require the department to work together with the various boards to implement long range planning, including a five-year fiscal and management plan and monitoring process with detailed recommendations for all professions. This long range plan is required to be updated annually.

In the financial area, it would require the department to produce a concise, quarterly management report which apprises boards of their financial status, including a summary sheet with cash balances for all boards. It would also require the department to implement "direct billing" procedures, which allows the legislature to determine true administrative costs, rather than relying totally on the existing cost allocation procedure which makes it harder to pinpoint how much the department is charging for specific activities. It would require the boards to ensure license fees are adequate to cover anticipated costs. It would require the boards to maintain minimum cash balances and authorize boards to increase fees or borrow money from the trust fund to comply with minimum cash balance requirements. If the boards do not address cash balance problems within one year, it would authorize the department to raise fees to cover the deficit and ensure compliance with minimum cash balance requirement.

In the area of **examinations**, it would authorize DPR, after consultation with the appropriate boards, to contract for certain examination services, to include development, preparation, administration, grading, evaluation, and candidate review and establishes an exam review and approval process. Further, it authorizes DPR to require providers to bear costs for legal defense of exam challenges; provided exam, or portions thereof, was developed by provider. It allows exams to be given in languages other than English, provided practice of the profession by non-English speaking individuals will not result in a threat to the health, safety, and welfare of the consumer. It requires applicants seeking to take the exam in a language other than English to incur all relevant costs. It requires DPR to maintain exam records for 3 years and specifies that DPR may not prohibit board members from reviewing exams. Finally, boards, or the department when there is no board, are authorized to require applicants to pass an exam pertaining to applicate state laws and rules.

In the area of **legal issues and discipline**, it would establish a mediation process and authorize boards, or the department when there is no board, to designate suitable disciplinary violations. It would authorize the department to use letters of guidance in lieu of a finding of probable cause and would clarify that letters of guidance do not constitute discipline and are not appropriate for citation procedures. It would authorize disclosure of the disposition of a case if the case is dismissed without a finding of probable cause, providing the person making the inquiry can identify the licensee as well as the person making the complaint. It would

establish that a notice to cease and desist is not an agency action and does not require a chapter 120 hearing.

The bill would also expand the consumer-oriented posture of the department in several ways. It would expand consumer representation on the boards. Specifically, it would increase the minimum number of consumer members for boards with ten or fewer members to three (up from the standard two), and require a minimum of four consumer members for boards with eleven or more. It would establish legislative intent that enforcement of licensure for certain professional activities is a state priority and enforcement costs should be covered by various professionals. It would authorize the boards to impose a special fee to develop an "unlicensed activity" fund to facilitate enforcement of unlicensed activity.

Regarding indigent and under-served populations, it would authorize boards to adopt rules to allow retired professionals to serve indigent and/or under-served populations or areas of critical need. It would encourage such services by allowing this pro bono service to substitute for a portion of required mandatory continuing education requirements.

Regarding the organizational structure of the boards, it would require consistent, staggered, member terms for all boards, with specified term-ending dates. It would authorize boards to increase the number of probable cause panels. It would specify that probable cause panel membership must include both consumer and professional representation, if at all possible.

C. SECTION-BY-SECTION ANALYSIS:

SECTION 1: Amends section 20.30, Florida Statutes, dealing with the organization of the Department of Professional Regulation (DPR) and the various boards created within it. It provides that all health care practitioners, in addition to physicians, shall be included in DPR's efforts to assure quality, cost-effective health care throughout the state. It increases the proportion of consumer representation on the various boards and mandates that boards of certain sizes have a certain number of consumer members. It establishes provisions designed to guarantee staggered terms, and requires boards to have at least seven members. This section establishes legislative intent language which specifies that the department should regulate newly regulated professions unless a compelling need for a board is established, and delays for one year the actual creation of any statutorily established board.

SECTION 2: Amends section 215.37, Florida Statutes, and clarifies legislative intent that each profession should operate within existing fees. It strengthens and moves requirements for allocation of board expenses to section 455.219, Florida Statutes.

SECTION 3: Provides that parts I and II of chapter 455, Florida Statutes, be combined and that the chapter will no longer be divided into parts. This is being done because chapter 455 will only contain general provisions relating to regulated professions, thus the chapter needs no division.

SECTION 4: Amends section 455.01, Florida Statutes, to clarify and establish new definitions. It expands the definition of health care practitioner to include all practitioners currently regulated by DPR who deliver health services. Further, it defines the following terms: board, consumer member, department, license, licensee, and profession.

SECTION 5: Amends section 455.11, Florida Statutes, and makes technical revisions which deletes obsolete language.

SECTION 6: Amends section 455.201, Florida Statutes, to provide a statement of legislative intent that department policies ensure expenditures are made in the most cost-effective manner possible to maximize competition, minimize licensure costs, and maximize public access to board meetings. Specifies moneys deposited in professional regulation trust funds are public funds and not the property of individual professions. Requires department policies to reflect sound fiscal principles.

SECTION 7: Creates section 455.2025, Florida Statutes, to clarify and expand enforcement of the prohibition on rebates and referral fees to apply to all licensed health care practitioners. It moves section 465.185, Florida Statutes, dealing with rebates paid by pharmacies to chapter 455, Florida Statutes, and clarifies that it applies to all health care practitioners. It authorizes minimum penalties, and transfers responsibility for enforcement of these provisions from HRS to DPR. It clarifies that a pharmacy may contract with a nursing home to collect for medication, and establishes procedures for a service fee not to exceed the actual cost of collection.

SECTION 8: Amends section 455.203, Florida Statutes, to authorize DPR to issue 4-year licenses to selected licensees, unless otherwise provided by law. Requires DPR to provide training relating to all relevant fiscal matters to all new board members. Makes technical changes relating to obsolete language.

SECTION 9: Creates section 455.204, Florida Statutes, to require DPR to implement a long range policy planning and monitoring component, including long-range estimates of revenues, expenditures, cash balances, and performance statistics. It also requires an annual update of all long-range plans.

SECTION 10: Amends section 455.207, Florida Statutes, to make language gender neutral; deletes obsolete and unnecessary language; clarifies quorum requirements for boards or committees; specifies three consecutive unexcused absences within any twelve month period results in a position vacancy. Expands language relating to special committees and makes provisions for appointment of the third member, provided special committees cannot agree on who that individual should be. Requires special committees to recommend rules to resolve disagreement, and requires participating boards to share costs associated with defending rules. Requires DPR to provide legal representation for special committees.

SECTION 11: Amends section 455.208, Florida Statutes, to require publication of a summary of final orders resulting in fines, suspensions, or revocations.

SECTION 12: Amends section 455.209, Florida Statutes, to authorize the Department of Legal Affairs to defend board members' businesses in any action against the company, provided the suit arises from statutorily authorized actions taken by the member.

SECTION 13: Amends section 455.211, Florida Statutes, to provide standing for the secretary to request a declaratory statement from a board and provides that boards cannot challenge each other's rules. Instead boards should follow the procedures for settling differences outlined by section 455.207, Florida Statutes.

SECTION 14: Amends section 455.213, Florida Statute, to clarify relevant provisions and facilitate proper interpretation of existing language relating to licensing; includes prosecution and appeal in another jurisdiction as a basis for not issuing a license; authorizes each board, or the department when there is no board, to require continuing education for renewal of a license, to adopt rules to establish criteria for continuing education courses, to allow part of the required continuing education hours to be fulfilled by the performance of pro bono services to indigent/underserved populations, by performing research in critical need areas, or for training leading to advanced professional certification; provides that the department shall adopt rules to provide for the administration of continuing education requirements.

SECTION 15: Amends section 455.214, Florida Statutes, to authorize boards, or department when there is no board, to issue limited licenses to indigent, underserved, and critical need populations. Specifies limited license application process; provides conditions under which limited licenses may be denied; specifies limited licensees may practice only in public or nonprofit institutions/agencies. Authorizes boards, or the department when there is no board, to develop rules addressing supervision of limited licensees.

SECTION 16: Amends section 455.217, Florida Statutes, to authorize the department, after consultation with the appropriate board, to contract for certain examination services, to include development, preparation, administration, grading, evaluation, and candidate review. Requires the department to maintain a review and approval process consistent with section 287.057(17) and requires examinations to conform to requirements of section 760.10(5). Authorizes DPR to require providers to bear costs for legal defense of exam challenges; provided exam, or portions thereof, was developed by provider. Allows exams to be given in language other than English, provided practice of the profession by non-English speaking individuals will not result in a threat to the health, safety, and welfare of the consumer. Requires applicant seeking to take the exam in a language other than English to bear the cost of preparation, administration, and evaluation of the exam. Requires DPR to maintain exam records for 3 years. Specifies DPR may not prohibit board members from reviewing exams. Authorizes boards, or

the department when there is no board, to require applicants to pass an exam pertaining to applicable state laws and rules.

SECTION 17: Amends section 455.218, Florida Statutes, to clarify that passage of an examination is necessary for licensure; provides that license will not be issued if applicant is under prosecution or appeal in any jurisdiction.

SECTION 18: Amends section 455.219, Florida Statutes, to increase fiscal accountability and communications between the boards and DPR. It includes the following changes: a statement of legislative intent prohibiting cash deficits; requires a condensed management report which provides information concerning budgets, finances, performance statistics, and recommendations to be presented at least quarterly to all boards; requires each board to ensure license fees are adequate to cover all anticipated costs and maintain a minimum cash balance; authorizes each board, or the department when there is no board, to by rule assess and collect, once in a 4-year period, a one-time fee from each licensee in an amount sufficient to eliminate a cash deficit. Each profession is authorized, under certain circumstances, to receive temporary loans with interest, for a period not to exceed 2 years. Finally, it defines direct charge expenses and authorizes the department to contract with public and private entities for the deposit of revenue.

SECTION 19: Amends section 455.2226, Florida Statutes, to clarify relevant language and facilitate proper interpretation of existing provisions relating to the requirements for instruction on human immunodeficiency virus and acquired immune deficiency syndrome and to correct internal statutory references.

SECTION 20: Creates section 455.2235, Florida Statutes, to provide that boards, or the department when there is no board, may designate which disciplinary violations are suitable for mediation, provided the harm caused by the licensee is economic in nature and can be remedied by the licensee; provides that, if complainant and subject reach agreement through a mediation process and provide acknowledgements of satisfaction within a particular time frame, then no further action will be taken against the licensee; and provides for limitation on the number of times a licensee can use mediation.

SECTION 21: Amends section 455.224, Florida Statutes, to provide that a citation which is not challenged shall become a final order of the department when there is no board, and specifically states that a citation constitutes discipline; deletes letters of guidance from citation procedures since it is recommended in proposed changes to section 455.225(4) that letters of guidance no longer constitute discipline and, therefore, are not appropriate for citation procedures; provides for personal service of citations; provides continuing jurisdiction for boards which adopt citation offenses and penalties prior to Jan. 1, 1992, and allows new boards to designate citation violations and penalties within 6 months of their creation.

SECTION 22: Amends section 455.225, Florida Statutes, to clarify relevant language and facilitate proper interpretation of existing

provisions relating to the requirements for disciplinary proceedings; deletes departmental authority to delegate investigative function to boards since this section has not been used; requires the department to allocate sufficient and adequately trained staff to expeditiously and thoroughly determine legal sufficiency and investigate all legally sufficient complaints; provides for confidentiality of the reports made to probable cause panels by the department prior to the department's dismissal of any case where legal sufficiency was found but the department determines there is insufficient evidence to support its prosecution and such case is actually dismissed prior to a finding of probable cause; provides boards authority to have more than one probable cause panel; provides that probable cause panels must have at least one professional member; provides that a past board member may serve on a probable cause panel but if that person is a past professional board member, that past professional board member must hold an active valid license for that profession; requires boards to have a consumer member on probable cause panels if one is available and willing to serve; provides that probable cause panels, or the department when there is no board, may issue a letter of guidance in lieu of a finding of probable cause; provides that the department may forward to a subject of a complaint, at the subject's expense, a copy of the department's investigative file, provided the subject agrees to maintain the confidentiality of the information received until ten days after probable cause is found; provides that if a case is dismissed without a finding of probable cause, the department may disclose only the disposition of the case to anyone making written inquiry and who identifies the subject and complainant. Requires DPR to provide additional training to complaint analysts and investigators.

<u>SECTION 23:</u> Amends section 455.227, Florida Statutes, to place violations and penalties common among professions in chapter 455, Florida Statutes. Common violations addressed are; fraudulent representations; intentional violation of rules; being convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication; knowingly filing false reports against licensee; obtaining a license through bribery, fraud, misrepresentation, or administrative error; failing to report violations of professional practice acts; facilitating unlicensed activity; failing to perform statutory obligations; mailing or filing false reports; making deceptive, untrue, or fraudulent representations relating to a regulated profession; exercising influence on patient/client for financial gain; practicing or offering to practice beyond scope permitted by law; contracting with unqualified individuals to perform a service which requires a license; violating provisions of chapter 455, Florida Statutes,; and interfering with an investigation or inspection. Common penalties addressed are: refusal to certify application for licensure; suspension, permanent revocation, or placement of a licensee on probation; restriction of practice; imposition of an administrative fine not to exceed $5,000 for each separate offense; issuance of a reprimand; corrective action; restitution; and assessment of costs related to investigation and prosecution. This section also specifies that revocation of a license is permanent, and authorizes

the board, or the department when there is no board, to establish by rule requirements for reapplication.

SECTION 24: Amends section 455.2273, Florida Statutes, relating to disciplinary guidelines; requires each board, or the department when there is no board, to adopt by rule disciplinary guidelines for each ground for disciplinary action which may be imposed and, when applicable, possible aggravating and mitigating circumstances and the variation and range of penalties permitted for such circumstances; requires hearing officers, when recommending penalties in any recommended order, to follow the disciplinary guidelines and state in writing the aggravating or mitigating circumstances upon which the recommended penalty is based.

SECTION 25: Amends section 455.2275, Florida Statutes, to conform with the definition of "license" proposed by this bill for section 455.01.

SECTION 26: Creates section 455.2277, Florida Statutes, to require the department or the appropriate board to report any criminal violation relating to the practice of a profession regulated by the department or board to the proper prosecuting authority.

SECTION 27: Amends section 455.228, Florida Statutes, to provide that a notice to cease and desist is not agency action for which a 120.57 hearing can be sought to make clear that the appropriate place for enforcement and challenge of these notices is in circuit court.

SECTION 28: Creates section 455.2281, Florida Statutes, to establish enforcement of unlicensed activities as a state priority. Effective July 1, 1993, boards, or the department when there is no board, are authorized to impose a $5 unlicensed activity fee which would be used to fund unlicensed activity enforcement. This section further provides that $5 of the current licensure fee may be used for this unlicensed activity enforcement, provided professions are not in a deficit financial posture. DPR is required to make direct charges and direct credits to each individual profession's account, and requires the department to include all financial and statistical data resulting from unlicensed activity enforcement as a separate category in the quarterly management reports provided to all boards.

SECTION 29: Amends section 455.2285, Florida Statutes, to enhance management and financial accountability by requiring DPR to include certain fiscal information and recommendations in its annual report to the legislature effective November 1, 1993.

SECTION 30: Amends section 455.229, Florida Statutes, to exempt medical information and school transcripts from public records requirements.

SECTION 31: Amends section 455.232, Florida Statutes, to prohibit subject of investigation from disclosing confidential information; specifies disciplinary penalties for violations.

SECTION 32: Amends section 455.24, Florida Statutes, to specify that only one disclosure is necessary in a classified directory.

SECTION 33: Amends section 455.241, Florida Statutes, to expand provisions to include all health care practitioners.

SECTION 34: Amends section 455.2415, Florida Statutes, to provide for technical changes which make language gender neutral.

SECTION 35: Amends section 455.242, Florida Statutes, to provide for technical changes which make language gender neutral.

SECTION 36: Amends section 455.243, Florida Statutes, to make technical changes relating to inspection authority.

SECTION 37: Amends section 455.245, Florida Statutes, to provide that health care practitioners who enter a plea of nolo contendere, or are convicted or found guilty, regardless of adjudication, are subject to immediate licensure suspension. Makes technical changes to conform language to individual practice acts.

SECTION 38: Amends section 455.25, Florida Statutes, to expand and enhance enforcement of the requirement for notification by a physician to any patient who is referred to other physician-owned health care facilities. It expands the requirement to include disclosure of all financial interests by a physician in any facility which a patient is referred. Currently it applies only to physical therapy facilities. The penalties for violations of this section are increased.

SECTION 39: Amends section 455.26, Florida Statutes, to clarify impaired practitioner committee language.

SECTION 40: Amends section 455.261, Florida Statutes, to require DPR to designate approved treatment programs for impaired practitioners; requires DPR to retain impaired practitioner consultants; and specifies duties of consultant.

SECTION 41: Amends section 455.27, Florida Statutes, to make impaired practitioner procedures available to all boards when a licensee fails to practice with skill and safety due to an impairment. It provides a mechanism to compel examination of a licensee; and provides that action under this section is remedial and not penal.

SECTION 42: Amends section 458.331, Florida Statutes, to correct statutory references.

SECTION 43: Amends section 459.015, Florida Statutes, to correct statutory references.

SECTION 44: Amends section 460.413, Florida Statutes, to correct statutory references.

SECTION 45: Amends section 461.013, Florida Statutes, to correct statutory references.

SECTION 46: Amends section 463.003, Florida Statutes, to correct statutory references.

SECTION 47: Amends section 646.018, Florida Statutes, to correct statutory references.

SECTION 48: Amends section 465.016, Florida Statutes, to correct statutory references.

SECTION 49: Amends section 466.028, Florida Statutes, to correct statutory references.

SECTION 50: Amends section 468.384, Florida Statutes, to delete obsolete and duplicate language.

SECTION 51: Amends section 472.007, Florida Statutes, to delete obsolete language.

SECTION 52: Amends section 484.042, Florida Statutes, to delete obsolete and duplicate language.

SECTION 53: Amends section 489.515, Florida Statutes, to make technical revisions.

SECTION 54: Amends section 492.103, Florida Statutes, to delete obsolete language.

SECTION 55: Repeals sections 455.20, 455.215, 455.2182, 455.28, 462.15, 465.185, 463.017, 466.029, 468.1765, 470.037, 471.035, 472.035, 473.324, 474.218, 475.454, 480.048, 481.227, 481.327, 484.016, 484.057, 489.535, and 489.559, Florida Statutes; sections 468.1305 and 468.1175, Florida Statutes, as created by chapters 90-134 and 90.345, Laws of Florida; sections 458.3315, 459.0155, 461.0132, 463.0165, 464.0185, 465.0165, 466.0283, 474.2141, and 490.0095, Florida Statutes, as amended by chapter 91-140, Laws of Florida; section 460.117, Florida Statutes, as created by chapter 90-25, Laws of Florida; and section 491.0095, Florida Statutes, as created by chapter 90-263, Laws of Florida.

SECTION 56: Provides an effective date of October 1, 1992, except as otherwise provided by law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

Per the department, section 18 would generate a one-time non-recurring source of revenue of $3,350,000 which would be used to eliminate existing cash deficits. This fee source can only be used once in any 4 year period without specific legislative authority.

2. Recurring Effects:

Following is a section-by-section analysis of the provisions which result in a significant positive/negative fiscal impact. Sections not listed either have a negligible fiscal impact or implementation of proposal can be absorbed within existing resources:

a. Section 1 will result in a negative fiscal impact of approximately $9,000 annually because of per diem entitlements for additional board members.

b. Section 18 will result in a positive fiscal impact of approximately $150,000 biennially as a result of a lock box contract with the Department of Revenue.

c. Section 28 would generate approximately $3,943,000 in recurring revenue to specifically combat unlicensed activity.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

	RECURRING		RECURRING
Revenues	$3,943,000 75,000 $4,018,000	Expenditures	$9,000

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

None.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

None.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

None.

V. COMMENTS:

Proposed Committee Bill #17 will result in several significant statutory changes which will enhance agency efficiency and effectiveness, increase consumer protection, enhance financial accountability by prohibiting deficit spending, expand enforcement prohibitions on rebate/referral fees, require long-range planning, and increase management accountability by improving communications between boards and the department.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Amendment #1: Strengthens language which prohibits the department from using one profession's money to cover costs incurred on behalf of another profession.

Amendment #2: Strengthens and clarifies language authorizing the various boards to assess and collect a one-time fee to eliminate a deficit from active and inactive licensees.

Amendment #3: Strengthens language which prohibits the department from using one profession's money to cover costs incurred on behalf of another profession, and requires the department to maintain adequate records to be made available to the boards for review.

Amendment #4: Specifies that only those boards which currently require continuing education for license renewal is required to adopt rules to establish criteria for such courses.

Amendment #5: Authorizes the department to assess and collect costs for investigation and prosecution of a case, in addition to any penalties.

Amendment #6: Authorizes the department to assess and collect costs for investigation and prosecution of a case, in addition to any penalties. (This language needed to be inserted in two different sections of the bill)

Amendment #7: Tightens up language contained in Section 40 relating to treatment programs for impaired practitioners. It requires receipt of legally sufficient complaints prior to activation of administrative review.

Amendment #8: Specifically exempts pharmacists from being required to report violations to chapter 455, Florida Statutes.

Amendment #9: Conceptual amendment adopted by the committee authorizing staff to correct a technical error and prepare a title amendment, if necessary.

VII. SIGNATURES:

COMMITTEE ON REGULATORY REFORM:

Prepared by:

Gloria C. Henderson

Staff Director:

Gloria C. Henderson

STORAGE NAME: pcb17.hrr
DATE: January 14, 1992

HOUSE OF REPRESENTATIVES
COMMITTEE ON
REGULATORY REFORM
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT

BILL #: PCB RR 92-17

RELATING TO: Regulation of Professions

SPONSOR(S): Committee on Regulatory Reform

STATUTE(S) AFFECTED: Chapters 20, 215, 455, 458, 459, 460, 461, 462, 463, 464, 465, 466, 468, 470, 471, 472, 473, 474, 475, 480, 481, 484, 486, 489, 490, 491, 492, Florida Statutes

COMPANION BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) REGULATORY REFORM
(2)
(3)
(4)
(5)

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I. SUMMARY:

PCB RR 92-17 revises and consolidates certain provisions relating to professions regulated by the Department of Professional Regulation (DPR). Specifically, it expands enforcement efforts relating to unprofessional conduct to include all health care practitioners rather than just physicians; requires boards to consist of at least seven members; specifies consistent, staggered terms; increases consumer representation on boards; prohibits cash deficits and requires each profession to operate within anticipated fees; strengthens regulations relating to board expenses; combines parts I and II of chapter 455, Florida Statutes; defines several relevant terms; prohibits rebates and commissions; requires DPR to implement a long-range policy planning and monitoring component; requires concise, quarterly management reports and specifies information concerning budgets, finances, performance statistics be included therein; clarifies committee quorum requirements; specifies information to be included in certain department publications; authorizes the Department of Legal Affairs to defend board members' businesses provided the suit arises from statutorily authorized actions taken by the member; authorizes the secretary to request declaratory statements from boards; provides that boards cannot challenge each other's rules; includes prosecution and appeal in another jurisdiction as a basis for denying licensure; gives boards more flexibility in determining appropriate continuing education requirements; encourages services to indigent and underserved populations; amends provisions relating to procurement, development, preparation, grading, evaluation and candidate review of examinations; allows DPR to contract for these services; requires that exams meet certain requirements and that providers bear the costs for defense of exam challenges; authorizes administration of exams in languages other than English; requires the department to maintain exam records for three years; requires DPR to apprise boards of changes made to proposed legislation and legislative budget requests; requires professions to ensure license fees cover the cost of regulation; establishes voluntary mediation procedures; amends statutory language relating to citations;

deletes letters of guidance from citation procedures and authorizes issuance of such letters in lieu of a finding of probable cause; provides for personal service of citations; authorizes boards to have more than one probable cause panel; requires that probable cause panels have at least one professional member and allows past board members to serve on probable cause panels; requires, under certain circumstances, boards to have consumer representation on probable cause panels and on final agency action committees; authorizes DPR to disclose case disposition information if a case is dismissed without a finding of probable cause, provided the request for information is in writing and identifies both the subject and the complainant; requires additional training for complaint analysts and investigators; places violations common among regulated professions in chapter 455, Florida Statutes, and makes associated penalties uniform; authorizes recovery of investigation and prosecution costs; authorizes civil action to recover fines/costs when not timely paid; provides for permanent revocation; revises disciplinary guideline requirements; requires hearing officers to follow penalty guidelines; requires reporting of criminal violations by practitioners; specifies that a Notice to Cease and Desist is not final agency action and is therefore, not subject to by chapter 120, Florida Statutes; provisions; provides that medical information and school transcripts supplied by applicants will remain confidential; prohibits subject of investigation from disclosing confidential information; adds to those health care practitioners subject to immediate suspension those who enter pleas of nolo contendere, or who are convicted or found guilty, regardless of adjudication; expands requirements for full disclosure of all financial interests; amends impaired practitioner committee language; requires department to designate approved treatment programs; requires department to retain impaired practitioner consultants; specifies duties of consultants; makes impaired practitioner provisions available to all boards when inferior practice results from impairment; provides mechanism to compel examination of licensee; clarifies that activities relating to impaired practitioners are remedial not penal; clarifies that enforcement of unlicensed activity is a state priority and requires regulated professions to incur related costs; and makes several technical changes to certain practice acts to delete obsolete language, correct inaccurate references, and repeal unnecessary statutory provisions where appropriate.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

SECTION 1: Most boards have a maximum of two consumer members. Also, many boards have developed a problem in their staggered terms, and a large proportion of their members' terms are expiring at the same time.

SECTION 2: The statutes imply that the various professions regulated by DPR are not allowed to deficit spend. However, there is not a specific statement to that effect. A number of the boards (approximately 17) currently have cash deficits, totaling approximately $3.2 million. This section also provides for allocation of the cost of operating the various professions.

SECTION 3: Chapter 455 is divided in two parts. Part I is entitled "General Provisions" and Part II is entitled "Regulation by Department of Professional Regulation." Each part has a separate section for definitions.

SECTION 4: The definitions as currently contained in the statutes are outdated, and do not include all required definitions.

SECTION 5: Section 455.11, Florida Statues, sets up the qualifications for immigrants to be examined to practice a licensed profession or occupation in Florida.

SECTION 6: This section contains legislative intent as it relates to regulation of the various professions.

SECTION 7: Chapter 455, Florida Statutes, which applies to all professions, contains no provisions on rebates and referral fees. Section 465.185, Florida Statutes, prohibits paying or receiving any commissions, rebates, referral fees, etc., by anyone to obtain pharmacy business. There are similar, but less explicit prohibitions for nursing homes, doctors, and dentists.

SECTION 8: Section 455. 202 deals with the powers and duties of the department.

SECTION 9: There is no specific requirement in the department's statutes requiring long-range policy planning, plans, reports, and recommendations. While there is the agency functional plan and related requirements, these do not provide specific directions as related to estimates of board revenues, license fees, expenditures, cash balances, and detailed performance statistics. Section 455.2285, F.S., provides for an annual report concerning administrative complaints and disciplinary actions taken by the department. It does not provide for any financial information, information to facilitate efficient and cost-effective operations of the department, or recommendations for proposed legislative changes. The department's current review of anticipated revenues (license fee increases) for the various boards is for two or three years. There is no long-range review (minimum of 5 years) of anticipated revenues by the department or the various boards.

SECTION 10: This section provides for board organization, meetings, compensation, and travel expenses of members.

SECTION 11: The department and the various boards are authorized to advise licensees by newsletter or other publications with no direction as to the type information.

SECTION 12: Section 455.209, Florida Statutes, provides requirements for accountability and liability of board members. It also provides for the Department of Legal Affairs to defend any board member for cases related to official business.

SECTION 13: The Secretary of the department has standing pursuant to section 455.211 to challenge any rule or proposed rule of a board. The department and the boards have standing to appeal any administrative decision made on challenges to their rules.

SECTION 14: A board, or the department when there is no board, may refuse to issue a license to any applicant who is under investigation in any jurisdiction for an action that would constitute a violation of chapter 455 or any of the practice acts until such investigation is complete. However, the statute does not include authority to refuse to issue a license to an applicant who is under prosecution in another jurisdiction. Several of the practice acts provide for continuing education requirements as a condition for renewal of a license. There is no general authorization in chapter 455.

SECTION 15: The only licensed professionals authorized to obtain a limited license are physicians (section 458.317, Florida Statutes) or retired osteopathic physicians (section 459.0075, Florida Statutes). The limited license authorizes a retired physician to practice medicine only if employed by a public agency or institution, or nonprofit agency which is located in an area of critical medical need or in a medically underserved area.

SECTION 16: Section 455.217, Florida Statutes, establishes the procedures and requirements for the various examinations administered by the department. It contains requirements on development, security, examination, and recordkeeping.

SECTION 17: Section 455.218, Florida Statutes, delineates special examination and licensure provisions for foreign-trained professions.

SECTION 18: The statutes imply that the various professions regulated by DPR are not to deficit spend. However, there is not a specific statement to that effect. A number of the boards (approximately 17) currently have cash deficits. It is the responsibility of the various boards to increase fees to adequately cover all costs. DPR can only advise the boards and recommend fee increases. In most instances, the various boards do not have authority to make one-time assessments to cover deficits or unanticipated expenses. Also, the various boards with deficits are in effect borrowing money from the boards with adequate cash balances, and as a result, boards with cash balances lose interest

on these funds. The total deficits are approximately $3.2 million. While the department provides financial reports to the boards, there has been concern raised as to the adequacy of these as management reports.

SECTION 19: This section addresses requirements for instruction on human immunodeficiency virus and acquired immune deficiency syndrome.

SECTION 20: The department is required to investigate all legally sufficient complaints. Procedures for processing complaints are contained in section 455.225. These provisions do not provide for mediation.

SECTION 21: Section 455.224 allows the boards, or the department when there is no board, to designate certain violations as appropriate for the issuance of citations. These citations are designed for offenses which are not a substantial threat to the public health, safety, and welfare and may include those violations which are punishable by a letter of guidance. The department has exclusive authority to specify citable offenses if the boards failed to do so by January 1, 1992.

SECTION 22: Section 455.225, Florida Statutes, requires the department to expeditiously investigate all complaints filed with their agency. Only complaints determined to be legally sufficient are investigated by DPR. As used by the department, "legally sufficient" means a complaint alleging facts which, if proven, would constitute a violation of some law or administrative rule over which DPR has jurisdiction. In March, 1991, DPR's Division of Regulation had a backlog of cases, totalling 11,500 complaints. Consequently, the department implemented a program designed to expedite complaint investigations. However, the new program does not ensure that complaint staff (i.e., complaint analysts, investigators, etc.) are adequately trained to determine legal sufficiency and investigate complaints.

The determination of whether probable cause exists in a complaint is to be determined by a probable cause panel of the board or by the department. The panels are to be composed of board members but may not include more than one lay member. After a finding of probable cause, the probable cause panel may choose to direct the department to issue a letter of guidance to the subject of the complaint rather than recommend a formal complaint be filed against the licensee. These letters of guidance constitute discipline. The department must, upon request, forward to the subject of the complaint a copy of the investigative file. The department may not publicly disclose the existence or status of any complaint until ten days after probable cause has been found.

SECTION 23: Currently, the grounds for discipline, penalties, and enforcement, are in the various practice acts. Even though many are common to the various practice acts, Chapter 455, does not currently contain uniform penalties for the same violations.

SECTION 24: Each board is required to adopt by rule disciplinary guidelines applicable to each specific ground for discipline. These guidelines are to specify a meaningful range of designated penalties. A specific finding of aggravating or mitigating circumstances allows the board to impose a penalty other than that in the guidelines.

SECTION 25: This section prescribes penalties for giving false information.

SECTION 26: Several practice acts for various professions contain a provision which requires the applicable board to report all criminal violations relating to that profession to the appropriate prosecuting authority. There is no such general provision applicable to all professions in chapter 455.

SECTION 27: Section 455.228 provides the department authority to issue a cease and desist notice when it has probable cause to believe that an unlicensed person has violated any of the practice acts or to any person who aids or abets the unlicensed practice of a profession. To enforce a notice to cease and desist, the department must file a proceeding in circuit court. It is not stated specifically, however, that the proper place to challenge a notice to cease and desist is in circuit court and not in an administrative hearing.

SECTION 28: Pursuant to section 455.228, Florida Statutes, DPR may issue a notice to cease and desist to any unlicensed person who violates certain regulatory provisions. However, as a result of insufficient funding, the department has not aggressively enforced unlicensed activities.

SECTION 29: Section 455,2285, Florida Statutes, provides for an annual report concerning administrative complaints and disciplinary actions taken by the department. It does not provide for any financial information, information to facilitate efficient and cost-effective operations of the department, or recommendations for proposed legislative changes.

SECTION 30: Relates to the penalties for misrepresentation in making application for licensure. Such misrepresentation constitutes a third degree felony.

SECTION 31: Section 455.232 prohibits any officer, employee, or person under contract with the department or any board to disclose confidential information to any person who is not lawfully entitled to the information.

SECTION 32: A cease and desist order may currently be seen as constituting agency action for which a section 120.57, Florida Statutes, hearing must be held.

SECTION 33: The department is required to submit a yearly report to the legislature concerning administrative complaints and disciplinary actions.

SECTION 34: Relates to public inspection of information required of applicants. Presently such information is open to the public, except certain financial records and examination materials.

SECTION 35: Relates to the penalties associated with disclosure of confidential information (it is a second degree misdemeanor).

SECTION 36: Relates to disclosure requirements associated with any licensed health care provider's advertisement of free or discounted services.

SECTION 37: Health care practitioners authorized to administer or dispense drugs are subject to immediate suspension if convicted of a felony under chapter 893 (drug violation) or the U.S. Code.

SECTION 38: Section 455.25, Florida Statutes, only applies to referrals by physicians of patients to physician-owned physical therapy facilities. It does not include the various other types of facilities owned by many physicians. The recently adopted position of the American Medical Association is that, in most instances, physicians should not refer patients to physician-owned facilities.

SECTION 39: Section 455.26 provides for the Impaired Practitioners Committee.

SECTION 40: Each practice act which provides for treatment programs for impaired practitioners contains the relevant provisions for the approval of programs in the applicable practice act. These provisions are not provided for in chapter 455.

SECTION 41: Several practice acts contain provisions which give the board or the department authority to suspend or restrict the practice of a profession by a licensee who is unable to practice the profession with reasonable skill and safety by reason of illness, use of alcohol, drugs, narcotics, chemicals, or any other type of material, or as a result of any mental or physical condition. These provisions also contain enforcement procedures. These provisions are not in chapter 455.

SECTION 42: Section 458.331 contains provisions relating to grounds for discipline by the Board of Medicine. Paragraph (e) of subsection (1) references treatment providers approved pursuant to section 458.3315. Paragraph (jj) of subsection (1) references the requirement under section 455.28 which requires certain health care practitioners to report any physician the licensee knows has violated the applicable practice act and who provides services in a hospital where the physician and the licensee both provide services.

SECTION 43: Section 459.015 contains provisions relating to grounds for discipline by the Board of Osteopathic Medical Examiners. Paragraph (e) of subsection (1) references treatment providers approved pursuant to chapter 458. Paragraph (mm) of subsection (1) references the requirement under section 455.28 which requires certain health care practitioners to report any physician the licensee knows has violated the applicable practice act and who

provides services in a hospital where the physician and the licensee both provide services.

SECTION 44: Section 460.413 contains provisions relating to grounds for discipline by the Board of Chiropractic. Paragraph (hh) of subsection (1) references the requirement under section 455.28 which requires certain health care practitioners to report any physician the licensee knows has violated the applicable practice act and who provides services in a hospital where the physician and the licensee both provide services.

SECTION 45: Section 461.013 contains provisions relating to grounds for discipline by the Board of Podiatric Medicine. Paragraph (bb) of subsection (1) references the requirement under section 455.28 which requires certain health care practitioners to report any physician the licensee knows has violated the applicable practice act and who provides services in a hospital where the physician and the licensee both provide services.

SECTION 46: Subsection (4) of section 463.003, relating to the Board of Optometry, references section 20.30(5) for further board requirements.

SECTION 47: Section 464.018 contains provisions relating to grounds for discipline by the Board of Nursing. Paragraph (m) of subsection (1) references the requirement under section 455.28 which requires certain health care practitioners to report any physician the licensee knows has violated the applicable practice act and who provides services in a hospital where the physician and the licensee both provide services.

SECTION 48: Section 465.016 contains provisions relating to grounds for discipline by the Board of Pharmacy. Paragraph (o) of subsection (1) references the requirement under section 455.28 which requires certain health care practitioners to report any physician the licensee knows has violated the applicable practice act and who provides services in a hospital where the physician and the licensee both provide services.

SECTION 49: Section 466.028 contains provisions relating to grounds for discipline by the Board of Dentistry. Paragraph (ii) of subsection (1) references the requirement under section 455.28 which requires certain health care practitioners to report any physician the licensee knows has violated the applicable practice act and who provides services in a hospital where the physician and the licensee both provide services.

SECTION 50: Section 468.384 contains provisions relating to the Board of Auctioneers. These include provisions which provide for initial terms of members and are now obsolete. Additional provisions relating to board structure, procedures, and liability are also found in chapter 455.

SECTION 51: Section 472.007 contains provisions relating to the Board of Professional Land Surveyors. These include provisions which provide for initial terms of members and are now obsolete.

SECTION 52: Section 484.042 contains provisions relating to the Board of Hearing Aid Specialists. These include provisions which provide for initial terms of members and are now obsolete.

SECTION 53: Section 489.515 authorizes the Electrical Contractors' Licensing Board to refuse to certify any applicant who has violated section 489.533, which contains grounds for discipline, or section 489.535, which requires the board to report any criminal violation of the practice act to the proper prosecuting authority.

SECTION 54: Section 492.103 contains provisions relating to the Board of Professional Geologists. These include provisions which provide for initial terms of members and are now obsolete.

SECTION 55: Section 455.20 contains a definition of "board" which is applicable to part II of chapter 455

Section 455.215 authorizes the appropriate board to intervene in any proceeding regarding the issuance of a license to an applicant on behalf of the applicant or the department.

Section 455.2182 provides that nothing in chapter 455 shall be construed to allow the unsupervised practice of any health care practitioner licensed pursuant to chapter 86-90, Laws of Florida. This provision has been interpreted by the Florida Supreme Court to be applicable only to foreign-trained osteopathic physicians.

Section 455.28 requires certain health care practitioners to report any physician the licensee knows has violated the applicable practice act and who provides services in a hospital where the licensee also provides services.

Section 462.15 contains provisions relating to proceedings for the revocation of a license to practice naturopathy. Chapter 455 also contains these procedures.

Section 465.185 prohibits any person from paying or receiving any kind of payment for the referral of patients to a pharmacy.

Section 468.1175 requires a person desiring to be licensed as a speech-language pathologist or an audiologist to apply to the department to take the licensure examination. The department is to administer the licensure examination to each applicant whom the board certifies.

The following sections require the applicable board to report all criminal violations relating to the practice of the applicable profession to the proper prosecuting authority: 463.017, 466.029, 468.1305, 468.1765, 470.037, 471.035, 472.035, 473.324, 474.218, 475.454, 480.048, 481.227, 481.327, 484.016, 484.057, 489.535, and 489.559.

The following sections contain provisions relating to procedures and treatment programs for impaired practitioners for the applicable profession: 458.3315, 459.0155, 460.417, 461.0132, 463.0165, 464.0185, 465.0165, 466.0283, 474.2141, 490.0095, and 491.0095.

B. EFFECT OF PROPOSED CHANGES:

This bill would produce a more efficient and responsive Department of Professional Regulation.

It would require the department to work together with the various boards to implement long range planning, including a five-year fiscal and management plan and monitoring process with detailed recommendations for all professions. This long range plan is required to be updated annually.

In the financial area, it would require the department to produce a concise, quarterly management report which apprises boards of their financial status, including a summary sheet with cash balances for all boards. It would also require the department to implement "direct billing" procedures, which allows the legislature to determine true administrative costs, rather than relying totally on the existing cost allocation procedure which makes it harder to pinpoint how much the department is charging for specific activities. It would require the boards to ensure license fees are adequate to cover anticipated costs. It would require the boards to maintain minimum cash balances and authorize boards to increase fees or borrow money from the trust fund to comply with minimum cash balance requirements. If the boards do not address cash balance problems within one year, it would authorize the department to raise fees to cover the deficit and ensure compliance with minimum cash balance requirement.

In the area of examinations, it would authorize DPR, after consultation with the appropriate boards, to contract for certain examination services, to include development, preparation, administration, grading, evaluation, and candidate review and establishes an exam review and approval process. Further, it authorizes DPR to require providers to bear costs for legal defense of exam challenges; provided exam, or portions thereof, was developed by provider. It allows exams to be given in languages other than English, provided practice of the profession by non-English speaking individuals will not result in a threat to the health, safety, and welfare of the consumer. It requires applicants seeking to take the exam in a language other than English to incur all relevant costs. It requires DPR to maintain exam records for 3 years and specifies that DPR may not prohibit board members from reviewing exams. Finally, boards, or the department when there is no board, are authorized to require applicants to pass an exam pertaining to applicate state laws and rules.

In the area of legal issues and discipline, it would establish a mediation process and authorize boards, or the department when there is no board, to designate suitable disciplinary violations. It would authorize the department to use letters of guidance in lieu of a finding of probable cause and would clarify that letters of guidance do not constitute discipline and are not appropriate for citation procedures. It would authorize disclosure of the disposition of a case if the case is dismissed without a finding of probable cause, providing the person making the inquiry can identify the licensee as well as the person making the complaint. It would

establish that a notice to cease and desist is not an agency action and does not require a chapter 120 hearing.

The bill would also expand the consumer-oriented posture of the department in several ways. It would expand consumer representation on the boards. Specifically, it would increase the minimum number of consumer members for boards with ten or fewer members to three (up from the standard two), and require a minimum of four consumer members for boards with eleven or more. It would establish legislative intent that enforcement of licensure for certain professional activities is a state priority and enforcement costs should be covered by various professionals. It would authorize the boards to impose a special fee to develop an "unlicensed activity" fund to facilitate enforcement of unlicensed activity.

Regarding indigent and under-served populations, it would authorize boards to adopt rules to allow retired professionals to serve indigent and/or under-served populations or areas of critical need. It would encourage such services by allowing this pro bono service to substitute for a portion of required mandatory continuing education requirements.

Regarding the organizational structure of the boards, it would require consistent, staggered, member terms for all boards, with specified term-ending dates. It would authorize boards to increase the number of probable cause panels. It would specify that probable cause panel membership must include both consumer and professional representation, if at all possible.

C. SECTION-BY-SECTION ANALYSIS:

SECTION 1: Amends section 20.30, Florida Statutes, dealing with the organization of the Department of Professional Regulation (DPR) and the various boards created within it. It provides that all health care practitioners, in addition to physicians, shall be included in DPR's efforts to assure quality, cost-effective health care throughout the state. It increases the proportion of consumer representation on the various boards and mandates that boards of certain sizes have a certain number of consumer members. It establishes provisions designed to guarantee staggered terms, and requires boards to have at least seven members. This section establishes legislative intent language which specifies that the department should regulate newly regulated professions unless a compelling need for a board is established, and delays for one year the actual creation of any statutorily established board.

SECTION 2: Amends section 215.37, Florida Statutes, and clarifies legislative intent that each profession should operate within existing fees. It strengthens and moves requirements for allocation of board expenses to section 455.219, Florida Statutes.

SECTION 3: Provides that parts I and II of chapter 455, Florida Statutes, be combined and that the chapter will no longer be divided into parts. This is being done because chapter 455 will only contain general provisions relating to regulated professions, thus the chapter needs no division.

SECTION 4: Amends section 455.01, Florida Statutes, to clarify and establish new definitions. It expands the definition of health care practitioner to include all practitioners currently regulated by DPR who deliver health services. Further, it defines the following terms: board, consumer member, department, license, licensee, and profession.

SECTION 5: Amends section 455.11, Florida Statutes, and makes technical revisions which deletes obsolete language.

SECTION 6: Amends section 455.201, Florida Statutes, to provide a statement of legislative intent that department policies ensure expenditures are made in the most cost-effective manner possible to maximize competition, minimize licensure costs, and maximize public access to board meetings. Specifies moneys deposited in professional regulation trust funds are public funds and not the property of individual professions. Requires department policies to reflect sound fiscal principles.

SECTION 7: Creates section 455.2025, Florida Statutes, to clarify and expand enforcement of the prohibition on rebates and referral fees to apply to all licensed health care practitioners. It moves section 465.185, Florida Statutes, dealing with rebates paid by pharmacies to chapter 455, Florida Statutes, and clarifies that it applies to all health care practitioners. It authorizes minimum penalties, and transfers responsibility for enforcement of these provisions from HRS to DPR. It clarifies that a pharmacy may contract with a nursing home to collect for medication, and establishes procedures for a service fee not to exceed the actual cost of collection.

SECTION 8: Amends section 455.203, Florida Statutes, to authorize DPR to issue 4-year licenses to selected licensees, unless otherwise provided by law. Requires DPR to provide training relating to all relevant fiscal matters to all new board members. Makes technical changes relating to obsolete language.

SECTION 9: Creates section 455.204, Florida Statutes, to require DPR to implement a long range policy planning and monitoring component, including long-range estimates of revenues, expenditures, cash balances, and performance statistics. It also requires an annual update of all long-range plans.

SECTION 10: Amends section 455.207, Florida Statutes, to make language gender neutral; deletes obsolete and unnecessary language; clarifies quorum requirements for boards or committees; specifies three consecutive unexcused absences within any twelve month period results in a position vacancy. Expands language relating to special committees and makes provisions for appointment of the third member, provided special committees cannot agree on who that individual should be. Requires special committees to recommend rules to resolve disagreement, and requires participating boards to share costs associated with defending rules. Requires DPR to provide legal representation for special committees.

SECTION 11: Amends section 455.208, Florida Statutes, to require publication of a summary of final orders resulting in fines, suspensions, or revocations.

SECTION 12: Amends section 455.209, Florida Statutes, to authorize the Department of Legal Affairs to defend board members' businesses in any action against the company, provided the suit arises from statutorily authorized actions taken by the member.

SECTION 13: Amends section 455.211, Florida Statutes, to provide standing for the secretary to request a declaratory statement from a board and provides that boards cannot challenge each other's rules. Instead boards should follow the procedures for settling differences outlined by section 455.207, Florida Statutes.

SECTION 14: Amends section 455.213, Florida Statute, to clarify relevant provisions and facilitate proper interpretation of existing language relating to licensing; includes prosecution and appeal in another jurisdiction as a basis for not issuing a license; authorizes each board, or the department when there is no board, to require continuing education for renewal of a license, to adopt rules to establish criteria for continuing education courses, to allow part of the required continuing education hours to be fulfilled by the performance of pro bono services to indigent/underserved populations, by performing research in critical need areas, or for training leading to advanced professional certification; provides that the department shall adopt rules to provide for the administration of continuing education requirements.

SECTION 15: Amends section 455.214, Florida Statutes, to authorize boards, or department when there is no board, to issue limited licenses to indigent, underserved, and critical need populations. Specifies limited license application process; provides conditions under which limited licenses may be denied; specifies limited licensees may practice only in public or nonprofit institutions/agencies. Authorizes boards, or the department when there is no board, to develop rules addressing supervision of limited licensees.

SECTION 16: Amends section 455.217, Florida Statutes, to authorize the department, after consultation with the appropriate board, to contract for certain examination services, to include development, preparation, administration, grading, evaluation, and candidate review. Requires the department to maintain a review and approval process consistent with section 287.057(17) and requires examinations to conform to requirements of section 760.10(5). Authorizes DPR to require providers to bear costs for legal defense of exam challenges; provided exam, or portions thereof, was developed by provider. Allows exams to be given in language other than English, provided practice of the profession by non-English speaking individuals will not result in a threat to the health, safety, and welfare of the consumer. Requires applicant seeking to take the exam in a language other than English to bear the cost of preparation, administration, and evaluation of the exam. Requires DPR to maintain exam records for 3 years. Specifies DPR may not prohibit board members from reviewing exams. Authorizes boards, or

the department when there is no board, to require applicants to pass an exam pertaining to applicable state laws and rules.

SECTION 17: Amends section 455.218, Florida Statutes, to clarify that passage of an examination is necessary for licensure; provides that license will not be issued if applicant is under prosecution or appeal in any jurisdiction.

SECTION 18: Amends section 455.219, Florida Statutes, to increase fiscal accountability and communications between the boards and DPR. It includes the following changes: a statement of legislative intent prohibiting cash deficits; requires a condensed management report which provides information concerning budgets, finances, performance statistics, and recommendations to be presented at least quarterly to all boards; requires each board to ensure license fees are adequate to cover all anticipated costs and maintain a minimum cash balance; authorizes each board, or the department when there is no board, to by rule assess and collect, once in a 4-year period, a one-time fee from each licensee in an amount sufficient to eliminate a cash deficit. Each profession is authorized, under certain circumstances, to receive temporary loans with interest, for a period not to exceed 2 years. Finally, it defines direct charge expenses and authorizes the department to contract with public and private entities for the deposit of revenue.

SECTION 19: Amends section 455.2226, Florida Statutes, to clarify relevant language and facilitate proper interpretation of existing provisions relating to the requirements for instruction on human immunodeficiency virus and acquired immune deficiency syndrome and to correct internal statutory references.

SECTION 20: Creates section 455.2235, Florida Statutes, to provide that boards, or the department when there is no board, may designate which disciplinary violations are suitable for mediation, provided the harm caused by the licensee is economic in nature and can be remedied by the licensee; provides that, if complainant and subject reach agreement through a mediation process and provide acknowledgements of satisfaction within a particular time frame, then no further action will be taken against the licensee; and provides for limitation on the number of times a licensee can use mediation.

SECTION 21: Amends section 455.224, Florida Statutes, to provide that a citation which is not challenged shall become a final order of the department when there is no board, and specifically states that a citation constitutes discipline; deletes letters of guidance from citation procedures since it is recommended in proposed changes to section 455.225(4) that letters of guidance no longer constitute discipline and, therefore, are not appropriate for citation procedures; provides for personal service of citations; provides continuing jurisdiction for boards which adopt citation offenses and penalties prior to Jan. 1, 1992, and allows new boards to designate citation violations and penalties within 6 months of their creation.

SECTION 22: Amends section 455.225, Florida Statutes, to clarify relevant language and facilitate proper interpretation of existing

provisions relating to the requirements for disciplinary proceedings; deletes departmental authority to delegate investigative function to boards since this section has not been used; requires the department to allocate sufficient and adequately trained staff to expeditiously and thoroughly determine legal sufficiency and investigate all legally sufficient complaints; provides for confidentiality of the reports made to probable cause panels by the department prior to the department's dismissal of any case where legal sufficiency was found but the department determines there is insufficient evidence to support its prosecution and such case is actually dismissed prior to a finding of probable cause; provides boards authority to have more than one probable cause panel; provides that probable cause panels must have at least one professional member; provides that a past board member may serve on a probable cause panel but if that person is a past professional board member, that past professional board member must hold an active valid license for that profession; requires boards to have a consumer member on probable cause panels if one is available and willing to serve; provides that probable cause panels, or the department when there is no board, may issue a letter of guidance in lieu of a finding of probable cause; provides that the department may forward to a subject of a complaint, at the subject's expense, a copy of the department's investigative file, provided the subject agrees to maintain the confidentiality of the information received until ten days after probable cause is found; provides that if a case is dismissed without a finding of probable cause, the department may disclose only the disposition of the case to anyone making written inquiry and who identifies the subject and complainant. Requires DPR to provide additional training to complaint analysts and investigators.

SECTION 23: Amends section 455.227, Florida Statutes, to place violations and penalties common among professions in chapter 455, Florida Statutes. Common violations addressed are; fraudulent representations; intentional violation of rules; being convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication; knowingly filing false reports against licensee; obtaining a license through bribery, fraud, misrepresentation, or administrative error; failing to report violations of professional practice acts; facilitating unlicensed activity; failing to perform statutory obligations; mailing or filing false reports; making deceptive, untrue, or fraudulent representations relating to a regulated profession; exercising influence on patient/client for financial gain; practicing or offering to practice beyond scope permitted by law; contracting with unqualified individuals to perform a service which requires a license; violating provisions of chapter 455, Florida Statutes,; and interfering with an investigation or inspection. Common penalties addressed are: refusal to certify application for licensure; suspension, permanent revocation, or placement of a licensee on probation; restriction of practice; imposition of an administrative fine not to exceed $5,000 for each separate offense; issuance of a reprimand; corrective action; restitution; and assessment of costs related to investigation and prosecution. This section also specifies that revocation of a license is permanent, and authorizes

the board, or the department when there is no board, to establish by rule requirements for reapplication.

SECTION 24: Amends section 455.2273, Florida Statutes, relating to disciplinary guidelines; requires each board, or the department when there is no board, to adopt by rule disciplinary guidelines for each ground for disciplinary action which may be imposed and, when applicable, possible aggravating and mitigating circumstances and the variation and range of penalties permitted for such circumstances; requires hearing officers, when recommending penalties in any recommended order, to follow the disciplinary guidelines and state in writing the aggravating or mitigating circumstances upon which the recommended penalty is based.

SECTION 25: Amends section 455.2275, Florida Statutes, to conform with the definition of "license" proposed by this bill for section 455.01.

SECTION 26: Creates section 455.2277, Florida Statutes, to require the department or the appropriate board to report any criminal violation relating to the practice of a profession regulated by the department or board to the proper prosecuting authority.

SECTION 27: Amends section 455.228, Florida Statutes, to provide that a notice to cease and desist is not agency action for which a 120.57 hearing can be sought to make clear that the appropriate place for enforcement and challenge of these notices is in circuit court.

SECTION 28: Creates section 455.2281, Florida Statutes, to establish enforcement of unlicensed activities as a state priority. Effective July 1, 1993, boards, or the department when there is no board, are authorized to impose a $5 unlicensed activity fee which would be used to fund unlicensed activity enforcement. This section further provides that $5 of the current licensure fee may be used for this unlicensed activity enforcement, provided professions are not in a deficit financial posture. DPR is required to make direct charges and direct credits to each individual profession's account, and requires the department to include all financial and statistical data resulting from unlicensed activity enforcement as a separate category in the quarterly management reports provided to all boards.

SECTION 29: Amends section 455.2285, Florida Statutes, to enhance management and financial accountability by requiring DPR to include certain fiscal information and recommendations in its annual report to the legislature effective November 1, 1993.

SECTION 30: Amends section 455.229, Florida Statutes, to exempt medical information and school transcripts from public records requirements.

SECTION 31: Amends section 455.232, Florida Statutes, to prohibit subject of investigation from disclosing confidential information; specifies disciplinary penalties for violations.

SECTION 32: Amends section 455.24, Florida Statutes, to specify that only one disclosure is necessary in a classified directory.

SECTION 33: Amends section 455.241, Florida Statutes, to expand provisions to include all health care practitioners.

SECTION 34: Amends section 455.2415, Florida Statutes, to provide for technical changes which make language gender neutral.

SECTION 35: Amends section 455.242, Florida Statutes, to provide for technical changes which make language gender neutral.

SECTION 36: Amends section 455.243, Florida Statutes, to make technical changes relating to inspection authority.

SECTION 37: Amends section 455.245, Florida Statutes, to provide that health care practitioners who enter a plea of nolo contendere, or are convicted or found guilty, regardless of adjudication, are subject to immediate licensure suspension. Makes technical changes to conform language to individual practice acts.

SECTION 38: Amends section 455.25, Florida Statutes, to expand and enhance enforcement of the requirement for notification by a physician to any patient who is referred to other physician-owned health care facilities. It expands the requirement to include disclosure of all financial interests by a physician in any facility which a patient is referred. Currently it applies only to physical therapy facilities. The penalties for violations of this section are increased.

SECTION 39: Amends section 455.26, Florida Statutes, to clarify impaired practitioner committee language.

SECTION 40: Amends section 455.261, Florida Statutes, to require DPR to designate approved treatment programs for impaired practitioners; requires DPR to retain impaired practitioner consultants; and specifies duties of consultant.

SECTION 41: Amends section 455.27, Florida Statutes, to make impaired practitioner procedures available to all boards when a licensee fails to practice with skill and safety due to an impairment. It provides a mechanism to compel examination of a licensee; and provides that action under this section is remedial and not penal.

SECTION 42: Amends section 458.331, Florida Statutes, to correct statutory references.

SECTION 43: Amends section 459.015, Florida Statutes, to correct statutory references.

SECTION 44: Amends section 460.413, Florida Statutes, to correct statutory references.

SECTION 45: Amends section 461.013, Florida Statutes, to correct statutory references.

SECTION 46: Amends section 463.003, Florida Statutes, to correct statutory references.

SECTION 47: Amends section 646.018, Florida Statutes, to correct statutory references.

SECTION 48: Amends section 465.016, Florida Statutes, to correct statutory references.

SECTION 49: Amends section 466.028, Florida Statutes, to correct statutory references.

SECTION 50: Amends section 468.384, Florida Statutes, to delete obsolete and duplicate language.

SECTION 51: Amends section 472.007, Florida Statutes, to delete obsolete language.

SECTION 52: Amends section 484.042, Florida Statutes, to delete obsolete and duplicate language.

SECTION 53: Amends section 489.515, Florida Statutes, to make technical revisions.

SECTION 54: Amends section 492.103, Florida Statutes, to delete obsolete language.

SECTION 55: Repeals sections 455.20, 455.215, 455.2182, 455.28, 462.15, 465.185, 463.017, 466.029, 468.1765, 470.037, 471.035, 472.035, 473.324, 474.218, 475.454, 480.048, 481.227, 481.327, 484.016, 484.057, 489.535, and 489.559, Florida Statutes; sections 468.1305 and 468.1175, Florida Statutes, as created by chapters 90-134 and 90.345, Laws of Florida; sections 458.3315, 459.0155, 461.0132, 463.0165, 464.0185, 465.0165, 466.0283, 474.2141, and 490.0095, Florida Statutes, as amended by chapter 91-140, Laws of Florida; section 460.117, Florida Statutes, as created by chapter 90-25, Laws of Florida; and section 491.0095, Florida Statutes, as created by chapter 90-263, Laws of Florida.

SECTION 56: Provides an effective date of October 1, 1992, except as otherwise provided by law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

2. Recurring Effects:

Following is a section-by-section analysis of the provisions which result in a significant positive/negative fiscal impact. Sections not listed either have a negligible fiscal impact or

implementation of proposal can be absorbed within existing resources:

a. Section 1 will result in a negative fiscal impact of approximately $9,000 annually because of per diem entitlements for additional board members.

b. Section 18 will result in a positive fiscal impact of approximately $3.2 million which would be used to eliminate existing deficits; and a positive fiscal impact of $150,000 biennially as a result of a lock box contract with the Department of Revenue; totalling $3,350,000.

$3,200,000	--	Existing Deficit Balances
150,000	--	lock box contract
$3,350,000	--	TOTAL

c. Section 28 would generate approximately $3,943,000 specifically to combat unlicensed activity.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

Revenues	$3,350,000	Expenditures	$9,000
	3,943,000		
	150,000		
	$7,443,000		

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

None.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

None.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

None.

V. COMMENTS:

Proposed Committee Bill #17 will result in several significant statutory changes which will enhance agency efficiency and effectiveness, increase consumer protection, enhance financial accountability by prohibiting deficit spending, expand enforcement prohibitions on rebate/referral fees, require long-range planning, and increase management accountability by improving communications between boards and the department.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

VII. SIGNATURES:

COMMITTEE ON REGULATORY REFORM:

Prepared by:

Gloria C. Henderson

Staff Director:

Gloria C. Henderson

7.d. House of Representatives as Revised by the Committee on Finance & Taxation, Bill Analysis & Economic Impact Statement, HB 2249 (PCB RR 92-17) (Florida Archives, Series 19, Carton 2469).

FLORIDA DEPARTMENT of STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

I, Judith Ring, Division Director, Division of Library and Information Services, Florida Department of State, hereby certify the records of the Florida Legislature were transferred to the custody of the Florida State Archives pursuant to the provisions of Chapter 257, Florida Statutes, and that I am, by the terms of that transfer, the official custodian of the records.

I further certify that the attached is a true and correct copy of the record in the State Archives of Florida, the original of which may be found in Series 19, carton 2469.

***WITNESS MY SIGNATURE**, this 10th Day of January, 2014.*

***JUDITH RING**, Director*
Division of Library and Information Services

BY: [redacted]
State Archives of Florida

[redacted]

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HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON FINANCE & TAXATION
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT

BILL #: HB 2249 (PCB RR 92-17)

RELATING TO: Regulation of Professions

SPONSOR(S): Committee on Regulatory Reform

STATUTE(S) AFFECTED: Chapters 20, 215, 455, 458, 459, 460, 461, 462, 463, 464, 465, 466, 468, 470, 471, 472, 473, 474, 475, 480, 481, 484, 486, 489, 490, 491, 492, Florida Statutes

COMPANION BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) REGULATORY REFORM YEA 20 NAY 0
(2) FINANCE & TAXATION YEAS 24 NAYS 0
(3)
(4)
(5)

AS REPORTED TO THE CLERK

****

I. SUMMARY:

HB 2249 revises and consolidates certain provisions relating to professions regulated by the Department of Professional Regulation (DPR). Specifically, it expands enforcement efforts relating to unprofessional conduct to include all health care practitioners rather than just physicians; requires boards to consist of at least seven members; specifies consistent, staggered terms; increases consumer representation on boards; prohibits cash deficits and requires each profession to operate within anticipated fees; strengthens regulations relating to board expenses; combines parts I and II of chapter 455, Florida Statutes; defines several relevant terms; prohibits rebates and commissions; requires DPR to implement a long-range policy planning and monitoring component; requires concise, quarterly management reports and specifies information concerning budgets, finances, performance statistics be included therein; clarifies committee quorum requirements; specifies information to be included in certain department publications; authorizes the Department of Legal Affairs to defend board members' businesses provided the suit arises from statutorily authorized actions taken by the member; authorizes the secretary to request declaratory statements from boards; provides that boards cannot challenge each other's rules; includes prosecution and appeal in another jurisdiction as a basis for denying licensure; gives boards more flexibility in determining appropriate continuing education requirements; encourages services to indigent and underserved populations; amends provisions relating to procurement, development, preparation, grading, evaluation and candidate review of examinations; allows DPR to contract for these services; requires that exams meet certain requirements and that providers bear the costs for defense of exam challenges; authorizes administration of exams in languages other than English; requires the department to maintain exam records for three years; requires DPR to apprise boards of changes made to proposed legislation and legislative budget requests; requires professions to ensure license fees cover the cost of regulation; establishes voluntary

mediation procedures; amends statutory language relating to citations; deletes letters of guidance from citation procedures and authorizes issuance of such letters in lieu of a finding of probable cause; provides for personal service of citations; authorizes boards to have more than one probable cause panel; requires that probable cause panels have at least one professional member and allows past board members to serve on probable cause panels; requires, under certain circumstances, boards to have consumer representation on probable cause panels and on final agency action committees; authorizes DPR to disclose case disposition information if a case is dismissed without a finding of probable cause, provided the request for information is in writing and identifies both the subject and the complainant; requires additional training for complaint analysts and investigators; places violations common among regulated professions in chapter 455, Florida Statutes, and makes associated penalties uniform; authorizes recovery of investigation and prosecution costs; authorizes civil action to recover fines/costs when not timely paid; provides for permanent revocation; revises disciplinary guideline requirements; requires hearing officers to follow penalty guidelines; requires reporting of criminal violations by practitioners; specifies that a Notice to Cease and Desist is not final agency action and is therefore, not subject to chapter 120, Florida Statutes, provisions; provides that medical information and school transcripts supplied by applicants will remain confidential; prohibits subject of investigation from disclosing confidential information; adds to those health care practitioners subject to immediate suspension those who enter pleas of nolo contendere, or who are convicted or found guilty, regardless of adjudication; expands requirements for full disclosure of all financial interests; amends impaired practitioner committee language; requires department to designate approved treatment programs; requires department to retain impaired practitioner consultants; specifies duties of consultants; makes impaired practitioner provisions available to all boards when inferior practice results from impairment; provides mechanism to compel examination of licensee; clarifies that activities relating to impaired practitioners are remedial not penal; clarifies that enforcement of unlicensed activity is a state priority and requires regulated professions to incur related costs; and makes several technical changes to certain practice acts to delete obsolete language, correct inaccurate references, and repeal unnecessary statutory provisions where appropriate.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

SECTION 1: Most boards have a maximum of two consumer members. Also, many boards have developed a problem in their staggered terms, and a large proportion of their members' terms are expiring at the same time.

SECTION 2: The statutes imply that the various professions regulated by DPR are not allowed to deficit spend. However, there is not a specific statement to that effect. A number of the boards (approximately 17) currently have cash deficits, totaling approximately $3.2 million. This section also provides for allocation of the cost of operating the various professions.

SECTION 3: Chapter 455 is divided in two parts. Part I is entitled "General Provisions" and Part II is entitled "Regulation by Department of Professional Regulation." Each part has a separate section for definitions.

SECTION 4: The definitions as currently contained in the statutes are outdated, and do not include all required definitions.

SECTION 5: Section 455.11, Florida Statues, sets up the qualifications for immigrants to be examined to practice a licensed profession in Florida.

SECTION 6: This section contains legislative intent as it relates to regulation of the various professions.

SECTION 7: Chapter 455, Florida Statutes, which applies to all professions, contains no provisions on rebates and referral fees. Section 465.185, Florida Statutes, prohibits paying or receiving any commissions, rebates, referral fees, etc., by anyone to obtain pharmacy business. There are similar, but less explicit prohibitions for nursing homes, doctors, and dentists.

SECTION 8: Section 455. 202 deals with the powers and duties of the department.

SECTION 9: There is no specific requirement in the department's statutes requiring long-range policy planning, reports, and recommendations. While there is the agency functional plan and related requirements, these do not provide specific directions as related to estimates of board revenues, license fees, expenditures, cash balances, and detailed performance statistics. Section 455.2285, F.S., provides for an annual report concerning administrative complaints and disciplinary actions taken by the department. It does not provide for any financial information, information to facilitate efficient and cost-effective operations of the department, or recommendations for proposed legislative changes. The department's current review of anticipated revenues (license fee increases) for the various boards is for two or three years. There is no long-range review (minimum of 5 years) of anticipated revenues by the department or the various boards.

SECTION 10: This section provides for board organization, meetings, compensation, and travel expenses of members.

SECTION 11: The department and the various boards are authorized to provide information to licensees by newsletter or other publications; with no direction as to the type information which should be provided.

SECTION 12: Section 455.209, Florida Statutes, provides requirements for accountability and liability of board members. It also provides for the Department of Legal Affairs to defend any board member for cases related to official business.

SECTION 13: The Secretary of the department has standing pursuant to section 455.211 to challenge any rule or proposed rule of a board. The department and the boards have standing to appeal any administrative decision made on challenges to their rules.

SECTION 14: A board, or the department when there is no board, may refuse to issue a license to any applicant who is under investigation in any jurisdiction for an action that would constitute a violation of chapter 455 or any of the practice acts until such investigation is complete. However, the statute does not include authority to refuse to issue a license to an applicant who is under prosecution in another jurisdiction. Several of the practice acts provide for continuing education requirements as a condition for renewal of a license. There is no general authorization in chapter 455.

SECTION 15: The only licensed professionals authorized to obtain a limited license are physicians (section 458.317, Florida Statutes) or retired osteopathic physicians (section 459.0075, Florida Statutes). The limited license authorizes a retired physician to practice medicine only if employed by a public agency or institution, or nonprofit agency which is located in an area of critical medical need or in a medically underserved area.

SECTION 16: Section 455.217, Florida Statutes, establishes the procedures and requirements for the various examinations administered by the department. It contains requirements on development, security, examination, and recordkeeping.

SECTION 17: Section 455.218, Florida Statutes, delineates special examination and licensure provisions for foreign-trained professionals.

SECTION 18: The statutes imply that the various professions regulated by DPR are not to deficit spend. However, there is not a specific statement to that effect. A number of the boards (approximately 17) currently have cash deficits. It is the responsibility of the various boards to increase fees to adequately cover all costs. DPR can only advise the boards and recommend fee increases. In most instances, the various boards do not have authority to make one-time assessments to cover deficits or unanticipated expenses. Also, the various boards with deficits are in effect borrowing money from the boards with adequate cash

balances, and as a result, boards with cash balances lose interest on these funds. The total deficits are approximately $3.2 million. While the department provides financial reports to the boards, there has been concern raised as to the adequacy of these as management reports.

SECTION 19: This section addresses requirements for instruction on human immunodeficiency virus and acquired immune deficiency syndrome.

SECTION 20: The department is required to investigate all legally sufficient complaints. Procedures for processing complaints are contained in section 455.225. These provisions do not provide for mediation.

SECTION 21: Section 455.224 allows the boards, or the department when there is no board, to designate certain violations as appropriate for the issuance of citations. These citations are designed for offenses which are not a substantial threat to the public health, safety, and welfare and may include those violations which are punishable by a letter of guidance. The department has exclusive authority to specify citable offenses if the boards failed to do so by January 1, 1992.

SECTION 22: Section 455.225, Florida Statutes, requires the department to expeditiously investigate all complaints filed with their agency. Only complaints determined to be legally sufficient are investigated by DPR. As used by the department, "legally sufficient" means a complaint alleging facts which, if proven, would constitute a violation of some law or administrative rule over which DPR has jurisdiction. In March, 1991, DPR's Division of Regulation had a backlog of cases, totalling 11,500 complaints. Consequently, the department implemented a program designed to expedite complaint investigations. However, the new program does not ensure that complaint staff (i.e., complaint analysts, investigators, etc.) are adequately trained to determine legal sufficiency and investigate complaints.

The determination of whether probable cause exists in a complaint is to be determined by a probable cause panel of the board or by the department. The panels are to be composed of board members but may not include more than one consumer member. After a finding of probable cause, the probable cause panel may choose to direct the department to issue a letter of guidance to the subject of the complaint rather than recommend a formal complaint be filed against the licensee. These letters of guidance constitute discipline. The department must, upon request, forward to the subject of the complaint a copy of the investigative file. The department may not publicly disclose the existence or status of any complaint until ten days after probable cause has been found.

SECTION 23: Currently, the grounds for discipline, penalties, and enforcement, are in the various practice acts. Even though many are common to the various practice acts, chapter 455, Florida Statutes, does not currently contain uniform penalties for the same violations.

SECTION 24: Each board is required to adopt by rule disciplinary guidelines applicable to each specific ground for discipline. These guidelines are to specify a meaningful range of designated penalties. A specific finding of aggravating or mitigating circumstances allows the board to impose a penalty other than that in the guidelines.

SECTION 25: This section prescribes penalties for giving false information.

SECTION 26: Several practice acts for various professions contain a provision which requires the applicable board to report all criminal violations relating to that profession to the appropriate prosecuting authority. There is no such general provision applicable to all professions in chapter 455, Florida Statutes.

SECTION 27: Section 455.228 provides the department authority to issue a cease and desist notice when it has probable cause to believe that an unlicensed person has violated any of the practice acts or to any person who aids or abets the unlicensed practice of a profession. To enforce a notice to cease and desist, the department must file a proceeding in circuit court. It is not stated specifically, however, that the proper place to challenge a notice to cease and desist is in circuit court and not in an administrative hearing.

SECTION 28: Pursuant to section 455.228, Florida Statutes, DPR may issue a notice to cease and desist to any unlicensed person who violates certain regulatory provisions. However, as a result of insufficient funding, the department has not aggressively enforced unlicensed activities.

SECTION 29: Section 455,2285, Florida Statutes, provides for an annual report concerning administrative complaints and disciplinary actions taken by the department. It does not provide for any financial information, information to facilitate efficient and cost-effective operations of the department, or recommendations for proposed legislative changes.

SECTION 30: Relates to the penalties for misrepresentation in making application for licensure. Such misrepresentation constitutes a third degree felony.

SECTION 31: Section 455.232 prohibits any officer, employee, or person under contract with the department or any board to disclose confidential information to any person who is not lawfully entitled to the information.

SECTION 32: A cease and desist order may currently be seen as constituting agency action for which a section 120.57, Florida Statutes, hearing must be held.

SECTION 33: The department is required to submit a yearly report to the legislature concerning administrative complaints and disciplinary actions.

SECTION 34: Relates to public inspection of information required of applicants. Presently such information is open to the public, except certain financial records and examination materials.

SECTION 35: Relates to the penalties associated with disclosure of confidential information (it is a second degree misdemeanor).

SECTION 36: Relates to disclosure requirements associated with any licensed health care provider's advertisement of free or discounted services.

SECTION 37: Health care practitioners authorized to administer or dispense drugs are subject to immediate suspension if convicted of a felony under chapter 893 (drug violation) or the U.S. Code.

SECTION 38: Section 455.25, Florida Statutes, only applies to referrals by physicians of patients to physician-owned physical therapy facilities. It does not include the various other types of facilities owned by many physicians. The recently adopted position of the American Medical Association is that, in most instances, physicians should not refer patients to physician-owned facilities.

SECTION 39: Section 455.26 provides for the Impaired Practitioners Committee.

SECTION 40: Each practice act which provides for treatment programs for impaired practitioners contains the relevant provisions for the approval of programs in the applicable practice act. These provisions are not provided for in chapter 455, Florida Statutes.

SECTION 41: Several practice acts contain provisions which give the board or the department authority to suspend or restrict the practice of a profession by a licensee who is unable to practice the profession with reasonable skill and safety by reason of illness, use of alcohol, drugs, narcotics, chemicals, or any other type of material, or as a result of any mental or physical condition. These provisions also contain enforcement procedures. These provisions are not in chapter 455, Florida Statutes.

SECTION 42: Section 458.331 contains provisions relating to grounds for discipline by the Board of Medicine. Paragraph (e) of subsection (1) references treatment providers approved pursuant to section 458.3315. Paragraph (jj) of subsection (1) references the requirement under section 455.28 which requires certain health care practitioners to report any physician the licensee knows has violated the applicable practice act and who provides services in a hospital where the physician and the licensee both provide services.

SECTION 43: Section 459.015 contains provisions relating to grounds for discipline by the Board of Osteopathic Medical Examiners. Paragraph (e) of subsection (1) references treatment providers approved pursuant to chapter 458. Paragraph (mm) of subsection (1) references the requirement under section 455.28 which mandates that certain health care practitioners report any physician the licensee knows has violated the applicable practice act and who provides

services in a hospital where the physician and the licensee both provide services.

SECTION 44: Section 460.413 contains provisions relating to grounds for discipline by the Board of Chiropractic. Paragraph (hh) of subsection (1) references the requirement under section 455.28 which requires certain health care practitioners to report any physician the licensee knows has violated the applicable practice act and who provides services in a hospital where the physician and the licensee both provide services.

SECTION 45: Section 461.013 contains provisions relating to grounds for discipline by the Board of Podiatric Medicine. Paragraph (bb) of subsection (1) references the requirement under section 455.28 which requires certain health care practitioners to report any physician the licensee knows has violated the applicable practice act and who provides services in a hospital where the physician and the licensee both provide services.

SECTION 46: Subsection (4) of section 463.003, relating to the Board of Optometry, references section 20.30(5) for further board requirements.

SECTION 47: Section 464.018 contains provisions relating to grounds for discipline by the Board of Nursing. Paragraph (m) of subsection (1) references the requirement under section 455.28 which requires certain health care practitioners to report any physician the licensee knows has violated the applicable practice act and who provides services in a hospital where the physician and the licensee both provide services.

SECTION 48: Section 465.016 contains provisions relating to grounds for discipline by the Board of Pharmacy. Paragraph (o) of subsection (1) references the requirement under section 455.28 which requires certain health care practitioners to report any physician the licensee knows has violated the applicable practice act and who provides services in a hospital where the physician and the licensee both provide services.

SECTION 49: Section 466.028 contains provisions relating to grounds for discipline by the Board of Dentistry. Paragraph (ii) of subsection (1) references the requirement under section 455.28 which requires certain health care practitioners to report any physician the licensee knows has violated the applicable practice act and who provides services in a hospital where the physician and the licensee both provide services.

SECTION 50: Section 468.384 contains provisions relating to the Board of Auctioneers. These include provisions which provide for initial terms of members and are now obsolete. Additional provisions relating to board structure, procedures, and liability are also found in chapter 455.

SECTION 51: Section 472.007 contains provisions relating to the Board of Professional Land Surveyors. These include provisions which provide for initial terms of members and are now obsolete.

SECTION 52: Section 484.042 contains provisions relating to the Board of Hearing Aid Specialists. These include provisions which provide for initial terms of members and are now obsolete.

SECTION 53: Section 489.515 authorizes the Electrical Contractors' Licensing Board to refuse to certify any applicant who has violated section 489.533, which contains grounds for discipline, or section 489.535, which requires the board to report any criminal violation of the practice act to the proper prosecuting authority.

SECTION 54: Section 492.103 contains provisions relating to the Board of Professional Geologists. These include provisions which provide for initial terms of members and are now obsolete.

SECTION 55: Section 455.20 contains a definition of "board" which is applicable to part II of chapter 455

Section 455.215 authorizes the appropriate board to intervene in any proceeding regarding the issuance of a license to an applicant on behalf of the applicant or the department.

Section 455.2182 provides that nothing in chapter 455 shall be construed to allow the unsupervised practice of any health care practitioner licensed pursuant to chapter 86-90, Laws of Florida. This provision has been interpreted by the Florida Supreme Court to be applicable only to foreign-trained osteopathic physicians.

Section 455.28 requires certain health care practitioners to report any physician the licensee knows has violated the applicable practice act and who provides services in a hospital where the licensee also provides services.

Section 462.15 contains provisions relating to proceedings for the revocation of a license to practice naturopathy. Chapter 455 also contains these procedures.

Section 465.185 prohibits any person from paying or receiving any kind of payment for the referral of patients to a pharmacy.

Section 468.1175 requires a person desiring to be licensed as a speech-language pathologist or an audiologist to apply to the department to take the licensure examination. The department is to administer the licensure examination to each applicant whom the board certifies.

The following sections require the applicable board to report all criminal violations relating to the practice of the applicable profession to the proper prosecuting authority: 463.017, 466.029, 468.1305, 468.1765, 470.037, 471.035, 472.035, 473.324, 474.218, 475.454, 480.048, 481.227, 481.327, 484.016, 484.057, 489.535, and 489.559.

The following sections contain provisions relating to procedures and treatment programs for impaired practitioners for the applicable profession: 458.3315, 459.0155, 460.417, 461.0132, 463.0165, 464.0185, 465.0165, 466.0283, 474.2141, 490.0095, and 491.0095.

B. EFFECT OF PROPOSED CHANGES:

This bill would produce a more cost-effective, efficient, and responsive Department of Professional Regulation.

It would require the department to work with the various boards to implement long range planning; including a five-year fiscal and management plan and monitoring process with detailed recommendations for all professions. This long range plan is required to be updated annually.

In the financial area, it would require the department to produce a concise, quarterly management report which apprises boards of their financial status, including a summary sheet with cash balances for all boards. It would also require the department to implement "direct billing" procedures, which allows the legislature to determine true administrative costs, rather than relying totally on the existing cost allocation procedure which makes it harder to pinpoint how much the department is charging for specific activities. It would require the boards to ensure license fees are adequate to cover anticipated costs. It would require the boards to maintain minimum cash balances and authorize boards to increase fees or borrow money from the trust fund to comply with minimum cash balance requirements. If the boards do not address cash balance problems within one year, it would authorize the department to raise fees to cover the deficit and ensure compliance with minimum cash balance requirements.

In the area of examinations, it would authorize DPR, after consultation with the appropriate boards, to contract for certain examination services, to include development, preparation, administration, grading, evaluation, and candidate review and would establish an exam review and approval process. Further, it would authorize DPR to require providers to bear costs for legal defense of exam challenges; provided the exam, or portions thereof, was developed by the provider. It would allow exams to be given in languages other than English, provided practice of the profession by non-English speaking individuals will not result in a threat to the health, safety, and welfare of the consumer. It would require applicants seeking to take the exam in a language other than English to incur all relevant costs. It would require DPR to maintain exam records for 3 years and would specify that DPR may not prohibit board members from reviewing exams. Finally, boards, or the department when there is no board, would be authorized to require applicants to pass an exam pertaining to applicable state laws and rules.

In the area of legal issues and discipline, it would establish a mediation process and authorize boards, or the department when there is no board, to designate suitable disciplinary violations. It would authorize the department to use letters of guidance in lieu of a finding of probable cause and would clarify that letters of guidance do not constitute discipline and are not appropriate for citation procedures. It would authorize disclosure of the disposition of a case if the case is dismissed without a finding of probable cause; providing the person making the inquiry can identify

the licensee as well as the person making the complaint. It would establish that a notice to cease and desist is not a final agency action and does not require a chapter 120 hearing.

The bill would also expand the consumer-oriented posture of the department in several ways. It would expand consumer representation on the boards. Specifically, it would increase the minimum number of consumer members for boards with ten or fewer members to three (up from the standard two), and require a minimum of four consumer members for boards with eleven or more. It would establish legislative intent that enforcement of licensure for certain professional activities is a state priority and enforcement costs should be covered by the various regulated professionals. It would authorize the boards to impose a special fee to develop an "unlicensed activity" fund to facilitate enforcement of unlicensed activity.

Regarding indigent and under-served populations, it would authorize boards to adopt rules to allow retired professionals to serve indigent and/or under-served populations or areas of critical need. It would also encourage such activities by allowing pro bono service to substitute for a portion of required mandatory continuing education requirements for licenses in instances where continuing education is required.

Regarding the organizational structure of the boards, it would require consistent, staggered, member terms for all boards, with specified term-ending dates. It would authorize boards to increase the number of probable cause panels. It would specify that probable cause panel membership must include both consumer and professional representation, if at all possible.

C. SECTION-BY-SECTION ANALYSIS:

SECTION 1: Amends section 20.30, Florida Statutes, dealing with the organization of the Department of Professional Regulation (DPR) and the various boards created within it. It provides that all health care practitioners, in addition to physicians, shall be included in DPR's efforts to assure quality, cost-effective health care throughout the state. It increases the proportion of consumer representation on the various boards and mandates that boards of certain sizes have a minimum number of consumer members. It establishes provisions designed to guarantee staggered terms, and requires boards to have at least seven members. This section establishes legislative intent language which specifies that the department should regulate newly regulated professions unless a compelling need for a board is established, and delays for one year the actual creation of any statutorily established board, unless otherwise provided by law.

SECTION 2: Amends section 215.37, Florida Statutes, and clarifies legislative intent that each profession should operate within existing fees. It strengthens and moves requirements for allocation of board expenses to section 455.219, Florida Statutes.

SECTION 3: Provides that parts I and II of chapter 455, Florida Statutes, be combined and that the chapter will no longer be divided into parts. This is being done because chapter 455, Florida Statutes, will only contain general provisions relating to regulated professions, thus the chapter needs no division.

SECTION 4: Amends section 455.01, Florida Statutes, to clarify and establish new definitions. It expands the definition of health care practitioner to include all practitioners currently regulated by DPR who deliver health services. Further, it defines the following terms: board, consumer member, department, license, licensee, and profession.

SECTION 5: Amends section 455.11, Florida Statutes, and makes technical revisions which delete obsolete language.

SECTION 6: Amends section 455.201, Florida Statutes, to provide a statement of legislative intent that department policies ensure expenditures are made in the most cost-effective manner possible to maximize competition, minimize licensure costs, and maximize public access to board meetings. Specifies moneys deposited in professional regulation trust funds are public funds and not the property of individual professions. Requires department policies to reflect sound fiscal principles.

SECTION 7: Creates section 455.2025, Florida Statutes, to clarify and expand enforcement of the prohibition on rebates and referral fees to apply to all licensed health care practitioners. It moves section 465.185, Florida Statutes, dealing with rebates paid by pharmacies to chapter 455, Florida Statutes, and clarifies that it applies to all health care practitioners. It authorizes minimum penalties, and transfers responsibility for enforcement of these provisions from HRS to DPR. It clarifies that a pharmacy may contract with a nursing home to collect for medication, and establishes procedures for a service fee not to exceed the actual cost of collection.

SECTION 8: Amends section 455.203, Florida Statutes, to authorize DPR to issue 4-year licenses to selected licensees, unless otherwise provided by law. Requires DPR to provide training relating to all relevant fiscal matters to all new board members. Makes technical changes relating to obsolete language.

SECTION 9: Creates section 455.204, Florida Statutes, to require DPR to implement a long range policy planning and monitoring component, including long-range estimates of revenues, expenditures, cash balances, and performance statistics. It also requires an annual update of all long-range plans.

SECTION 10: Amends section 455.207, Florida Statutes, to make language gender-neutral; deletes obsolete and unnecessary language; clarifies quorum requirements for boards or committees; and specifies three consecutive unexcused absences within any twelve month period results in a position vacancy. Expands language relating to special committees and makes provisions for appointment of the third member, provided special committees cannot agree on who

that individual should be. Requires special committees to recommend rules to resolve disagreement, and requires participating boards to share costs associated with defending rules. Requires DPR to provide legal representation for special committees.

SECTION 11: Amends section 455.208, Florida Statutes, to require publication of a summary of final orders resulting in fines, suspensions, or revocations.

SECTION 12: Amends section 455.209, Florida Statutes, to authorize the Department of Legal Affairs to defend board members' businesses in any action against the company, provided the suit arises from statutorily authorized actions taken by the member.

SECTION 13: Amends section 455.211, Florida Statutes, to provide standing for the secretary to request a declaratory statement from a board and provides that boards cannot challenge each other's rules. Instead, boards should follow the procedures for settling differences outlined by section 455.207, Florida Statutes.

SECTION 14: Amends section 455.213, Florida Statute, to clarify relevant provisions and facilitate proper interpretation of existing language relating to licensing; includes prosecution and appeal in another jurisdiction as a basis for not issuing a license; authorizes each board, or the department when there is no board, which requires continuing education for renewal of a license, to adopt rules to establish criteria for continuing education courses, to allow part of the required continuing education hours to be fulfilled by: (1) the performance of pro bono services to indigent/underserved populations, (2) by performing research in critical need areas, or (3) for training leading to advanced professional certification; provides that the department shall adopt rules to provide for the administration of continuing education requirements.

SECTION 15: Amends section 455.214, Florida Statutes, to authorize boards, or the department when there is no board, to issue limited licenses to retired professionals who are willing to provide service to indigent, underserved, and critical need populations. Specifies limited license application process; provides conditions under which limited licenses may be denied; specifies limited licensees may practice only in public or nonprofit institutions/agencies. Authorizes boards, or the department when there is no board, to develop rules addressing supervision of limited licensees.

SECTION 16: Amends section 455.217, Florida Statutes, to authorize the department, after consultation with the appropriate board, to contract for certain examination services, to include development, preparation, administration, grading, evaluation, and candidate review. Requires the department to maintain a review and approval process consistent with section 287.057(17) and requires examinations to conform to requirements of section 760.10(5). Authorizes DPR to require providers to bear costs for legal defense of exam challenges; provided exam, or portions thereof, was developed by provider. Allows exams to be given in language other than English, provided practice of the profession by non-English

speaking individuals will not result in a threat to the health, safety, and welfare of the consumer. Requires applicants seeking to take the exam in a language other than English to bear the cost of preparation, administration, and evaluation of the exam. Requires DPR to maintain exam records for 3 years. Specifies DPR may not prohibit board members from reviewing exams. Authorizes boards, or the department when there is no board, to require applicants to pass an exam pertaining to applicable state laws and rules.

SECTION 17: Amends section 455.218, Florida Statutes, to clarify that passage of an examination is necessary for licensure; provides that license will not be issued if applicant is under prosecution or appeal in any jurisdiction.

SECTION 18: Amends section 455.219, Florida Statutes, to increase fiscal accountability and communications between the boards and DPR. It includes the following changes: a statement of legislative intent prohibiting cash deficits; requires a condensed management report which provides information concerning budgets, finances, performance statistics, and recommendations to be presented at least quarterly to all boards; requires each board to ensure license fees are adequate to cover all anticipated costs and maintain a minimum cash balance; authorizes each board, or the department when there is no board, to, by rule, assess and collect, once in a 4-year period, a one-time fee from each licensee in an amount sufficient to eliminate a cash deficit. Each profession is authorized, under certain circumstances, to receive temporary loans with interest, for a period not to exceed 2 years. Finally, it defines direct charge expenses and authorizes the department to contract with public and private entities for the deposit of revenue.

SECTION 19: Amends section 455.2226, Florida Statutes, to clarify relevant language and facilitate proper interpretation of existing provisions relating to the requirements for instruction on human immunodeficiency virus and acquired immune deficiency syndrome and to correct internal statutory references.

SECTION 20: Creates section 455.2235, Florida Statutes, to provide that boards, or the department when there is no board, may designate which disciplinary violations are suitable for mediation, provided the harm caused by the licensee is economic in nature and can be remedied by the licensee; provides that, if complainant and subject reach agreement through a mediation process and provide acknowledgements of satisfaction within a particular time frame, then no further action will be taken against the licensee; and provides for limitation on the number of times a licensee can use mediation.

SECTION 21: Amends section 455.224, Florida Statutes, to provide that a citation which is not challenged shall become a final order of the department when there is no board, and specifically states that a citation constitutes discipline; deletes letters of guidance from citation procedures since it is recommended in proposed changes to section 455.225(4) that letters of guidance no longer constitute discipline and, therefore, are not appropriate for citation

procedures; provides for personal service of citations; provides continuing jurisdiction for boards which adopt citation offenses and penalties prior to Jan. 1, 1992, and allows new boards to designate citation violations and penalties within 6 months of their creation.

SECTION 22: Amends section 455.225, Florida Statutes, to clarify relevant language and facilitate proper interpretation of existing provisions relating to the requirements for disciplinary proceedings; deletes departmental authority to delegate its investigative function to boards; requires the department to allocate sufficient and adequately trained staff to expeditiously and thoroughly determine legal sufficiency and investigate all legally sufficient complaints; provides for confidentiality of the reports made to probable cause panels by the department prior to the department's dismissal of any case where legal sufficiency was found, but a determination was made that there is insufficient evidence to support prosecution and such case is actually dismissed prior to a finding of probable cause; provides boards with authority to have more than one probable cause panel; provides that probable cause panels must have at least one professional member; provides that a past board member may serve on a probable cause panel but if that person is a past professional board member, the individual must hold an active valid license for that profession; requires boards to have a consumer member on probable cause panels if one is available and willing to serve; provides that probable cause panels, or the department when there is no board, may issue a letter of guidance in lieu of a finding of probable cause; provides that the department may forward to a subject of a complaint, at the subject's expense, a copy of the department's investigative file, provided the subject agrees to maintain the confidentiality of the information received until ten days after probable cause is found; provides that if a case is dismissed without a finding of probable cause, the department may disclose only the disposition of the case to anyone making written inquiry and who identifies the subject and complainant. Requires DPR to provide additional training to complaint analysts and investigators.

SECTION 23: Amends section 455.227, Florida Statutes, to place violations and penalties common among professions in chapter 455, Florida Statutes. Common violations addressed are; fraudulent representations; intentional violation of rules; being convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication; knowingly filing false reports against licensee; obtaining a license through bribery, fraud, misrepresentation, or administrative error; failing to report violations of professional practice acts; facilitating unlicensed activity; failing to perform statutory obligations; mailing or filing false reports; making deceptive, untrue, or fraudulent representations relating to a regulated profession; exercising influence on patient/client for financial gain; practicing or offering to practice beyond scope permitted by law; contracting with unqualified individuals to perform a service which requires a license; violating provisions of chapter 455, Florida Statutes,; and interfering with an investigation or inspection. Common penalties addressed are: refusal to certify application for licensure; suspension, permanent revocation, or placement of a licensee on

probation; restriction of practice; imposition of an administrative fine not to exceed $5,000 for each separate offense; issuance of a reprimand; corrective action; restitution; and assessment of costs related to investigation and prosecution. This section also specifies that revocation of a license is permanent, and authorizes the board, or the department when there is no board, to establish by rule requirements for reapplication.

SECTION 24: Amends section 455.2273, Florida Statutes, relating to disciplinary guidelines; requires each board, or the department when there is no board, to adopt by rule disciplinary guidelines for each ground for disciplinary action which may be imposed and, when applicable, possible aggravating and mitigating circumstances and the variation and range of penalties permitted for such circumstances; requires hearing officers, when recommending penalties in any recommended order, to follow the disciplinary guidelines and state in writing the aggravating or mitigating circumstances upon which the recommended penalty is based.

SECTION 25: Amends section 455.2275, Florida Statutes, to conform with the definition of "license" proposed by this bill for section 455.01.

SECTION 26: Creates section 455.2277, Florida Statutes, to require the department or the appropriate board to report any criminal violation relating to the practice of a profession regulated by the department or board to the proper prosecuting authority.

SECTION 27: Amends section 455.228, Florida Statutes, to provide that a notice to cease and desist is not agency action for which a 120.57 hearing can be sought to make clear that the appropriate place for enforcement and challenge of these notices is in circuit court.

SECTION 28: Creates section 455.2281, Florida Statutes, to establish enforcement of unlicensed activities as a state priority. Effective July 1, 1993, boards, or the department when there is no board, are authorized to impose a $5 unlicensed activity fee which would be used to fund unlicensed activity enforcement. This section further provides that $5 of the current licensure fee may be used for this unlicensed activity enforcement, provided professions are not in a deficit financial posture. DPR is required to make direct charges and direct credits to each individual profession's account, and requires the department to include all financial and statistical data resulting from unlicensed activity enforcement as a separate category in the quarterly management reports provided to all boards.

SECTION 29: Amends section 455.2285, Florida Statutes, to enhance management and financial accountability by requiring DPR to include certain fiscal information and recommendations in its annual report to the legislature effective November 1, 1993.

SECTION 30: Amends section 455.229, Florida Statutes, to exempt medical information and school transcripts from public records requirements.

SECTION 31: Amends section 455.232, Florida Statutes, to prohibit subject of investigation from disclosing confidential information; specifies disciplinary penalties for violations.

SECTION 32: Amends section 455.24, Florida Statutes, to specify that only one disclosure is necessary in a classified directory.

SECTION 33: Amends section 455.241, Florida Statutes, to expand provisions to include all health care practitioners.

SECTION 34: Amends section 455.2415, Florida Statutes, to provide for technical changes which make language gender neutral.

SECTION 35: Amends section 455.242, Florida Statutes, to provide for technical changes which make language gender neutral.

SECTION 36: Amends section 455.243, Florida Statutes, to make technical changes relating to inspection authority.

SECTION 37: Amends section 455.245, Florida Statutes, to provide that health care practitioners who enter a plea of nolo contendere, or are convicted or found guilty, regardless of adjudication, are subject to immediate licensure suspension. Makes technical changes to conform language to individual practice acts.

SECTION 38: Amends section 455.25, Florida Statutes, to expand and enhance enforcement of the requirement for notification by a physician to any patient who is referred to other physician-owned health care facilities. It expands the requirement to include disclosure of all financial interests by a physician in any facility which a patient is referred. Currently it applies only to physical therapy facilities. The penalties for violations of this section are increased.

SECTION 39: Amends section 455.26, Florida Statutes, to clarify impaired practitioner committee language.

SECTION 40: Amends section 455.261, Florida Statutes, to require DPR to designate approved treatment programs for impaired practitioners; requires DPR to retain impaired practitioner consultants; and specifies duties of consultant.

SECTION 41: Amends section 455.27, Florida Statutes, to make impaired practitioner procedures available to all boards when a licensee fails to practice with skill and safety due to an impairment. It provides a mechanism to compel examination of a licensee; and provides that action under this section is remedial and not penal.

SECTION 42: Amends section 458.331, Florida Statutes, to correct statutory references.

SECTION 43: Amends section 459.015, Florida Statutes, to correct statutory references.

SECTION 44: Amends section 460.413, Florida Statutes, to correct statutory references.

SECTION 45: Amends section 461.013, Florida Statutes, to correct statutory references.

SECTION 46: Amends section 463.003, Florida Statutes, to correct statutory references.

SECTION 47: Amends section 646.018, Florida Statutes, to correct statutory references.

SECTION 48: Amends section 465.016, Florida Statutes, to correct statutory references.

SECTION 49: Amends section 466.028, Florida Statutes, to correct statutory references.

SECTION 50: Amends section 468.384, Florida Statutes, to delete obsolete and duplicate language.

SECTION 51: Amends section 472.007, Florida Statutes, to delete obsolete language.

SECTION 52: Amends section 484.042, Florida Statutes, to delete obsolete and duplicate language.

SECTION 53: Amends section 489.515, Florida Statutes, to make technical revisions.

SECTION 54: Amends section 492.103, Florida Statutes, to delete obsolete language.

SECTION 55: Repeals sections 455.20, 455.215, 455.2182, 455.28, 462.15, 465.185, 463.017, 466.029, 468.1765, 470.037, 471.035, 472.035, 473.324, 474.218, 475.454, 480.048, 481.227, 481.327, 484.016, 484.057, 489.535, and 489.559, Florida Statutes; sections 468.1305 and 468.1175, Florida Statutes, as created by chapters 90-134 and 90.345, Laws of Florida; sections 458.3315, 459.0155, 461.0132, 463.0165, 464.0185, 465.0165, 466.0283, 474.2141, and 490.0095, Florida Statutes, as amended by chapter 91-140, Laws of Florida; section 460.117, Florida Statutes, as created by chapter 90-25, Laws of Florida; and section 491.0095, Florida Statutes, as created by chapter 90-263, Laws of Florida.

SECTION 56: Provides an effective date of October 1, 1992, except as otherwise provided by law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

The Department of Professional Regulation estimates that the one-time assessment on would generate non-recurring revenue of $3.4 million. This revenue would be used to eliminate existing cash deficits. However, it is unknown as to which boards would impose such an assessment.

2. Recurring Effects:

Following is a section-by-section analysis of the provisions which result in a significant fiscal impact. Sections not listed either have an insignificant fiscal impact or implementation of the proposal can be absorbed within existing resources:

a. Section 18 will result in a positive savings of approximately $150,000 biennially as a result of a lock box contract with the Department of Revenue. Under this proposal, the DOR would handle the processing of licensure fees.

c. Section 28 could generate as much as $1.97 million annually for fiscal years beginning in 1993-94 and thereafter to specifically combat unlicensed activity. However, it is unknown as to how much of these revenues would be generated within the current license fee structure.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

The fiscal impact of the bill is positive but indeterminate. The majority of any new revenue generated by this bill is based on the one-time assessment on professionals licensed by boards with deficits and the imposition of an additional $5 fee on professionals to fund unlicensed practice enforcement. The extent that these new revenues will be actually generated is contingent upon actions by the boards and the department.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

All professionals licensed by the Department of Professional Regulation will be assessed an additional $5 fee on each license or renewal.

2. Direct Private Sector Benefits:

The Department of Professional Regulation will have additional revenues earmarked to fund the enforcement of unlicensed activities.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

None.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

None.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

None.

V. COMMENTS:

HB 2249 will result in several significant statutory changes which will enhance agency efficiency and effectiveness, increase consumer protection, enhance financial accountability by prohibiting deficit spending, expand enforcement prohibitions on rebate/referral fees, require long-range planning, and increase management accountability by improving communications between boards and the department.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

VII. SIGNATURES:

COMMITTEE ON REGULATORY REFORM:

Prepared by:	Staff Director:
Gloria C. Henderson	Gloria C. Henderson

COMMITTEE ON FINANCE & TAXATION:

Prepared by:	Staff Director:
Joe McVaney	José Diez-Arguelles

7.e. Senate Staff Analysis and Economic Impact Statement, Bill No. CS/SB 1706, Subject: Department of Professional Regulation (Florida Archives, Series 18, Carton 1928). 7.e. Senate Staff Analysis and Economic Impact Statement, Bill No. CS/SB 1706, Subject: Department of Professional Regulation (Florida Archives, Series 18, Carton 1928).

FLORIDA DEPARTMENT of STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

I, Judith Ring, Division Director, Division of Library and Information Services, Florida Department of State, hereby certify the records of the Florida Legislature were transferred to the custody of the Florida State Archives pursuant to the provisions of Chapter 257, Florida Statutes, and that I am, by the terms of that transfer, the official custodian of the records.

I further certify that the attached is a true and correct copy of the record in the State Archives of Florida, the original of which may be found in Series 18, carton 1928.

***WITNESS MY SIGNATURE**, this 10th Day of January, 2014.*

***JUDITH RING**, Director*
Division of Library and Information Services

BY: _____
State Archives of Florida

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SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

	ANALYST	STAFF DIRECTOR		REFERENCE	ACTION
1.	Munroe	Masterton	1.	PR	Fav/CS
2.			2.	AP	
3.			3.		
4.			4.		

SUBJECT:

Department of Professional Regulation

BILL NO. AND SPONSOR:

CS/SB 1706 by Professional Regulation Committee

I. SUMMARY:

A. Present Situation:

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The Department of Professional Regulation (DPR) has regulatory jurisdiction over 1.2 million practitioners in 45 occupations and professions. Chapter 455, Florida Statutes, provides for the general powers and duties of the DPR to implement and enforce professional regulation, including providing various administrative services to professional boards. The chapter authorizes the department to appoint an executive director for each board within the department subject to the approval of the board and to submit a biennial budget to the Legislature with the advice of the boards.

Section 215.37, F.S., requires all fees, and other charges assessed by each board within the DPR to be collected by the DPR and deposited into the Professional Regulation Trust Fund. The section provides that the department be financed solely from revenue collected by it from fees and other charges and that such revenue is appropriated to DPR. The section requires all salaries and expenses of the department to be paid as budgeted pursuant to the limitations of its appropriation. The section requires the department to maintain separate accounts in the PRTF for every profession in the department. The section requires DPR to provide for the proportionate allocation of expenses to each profession for expenses incurred by the DPR in the performance of its duties to those professions. The section requires DPR to provide each board an annual report of revenue and allocated expenses related to the regulation of the profession and requires the boards to use the report when setting licensing fees.

Chapter 455, F.S., authorizes the Office of the Attorney General, Department of Legal Affairs, Administrative Law Section, to serve as legal advisors to the various boards within the department for various administrative proceedings. Although the attorneys are assigned to provide legal advice to the boards, the chapter further provides that they must represent the interests of the citizens of the state by vigorously counseling the boards with respect to their obligations under the laws of the state.

The chapter requires boards to meet at least annually and provides certain requirements for what constitutes a quorum at board meetings. The chapter also provides for reimbursement of travel and compensation expenses for board members. In addition, the chapter provides a mechanism for boards within the department to settle differences between them and sets forth accountability requirements for board members in the performance of their duties as members of a board. The chapter provides general licensing provisions which authorize the board, or department when there is no board, to refuse to issue

an initial license to any applicant who is under investigation in any jurisdiction for an action that would constitute a violation of the statutes related to the practice of a profession.

The chapter sets forth the department's responsibilities in the provision of examination, investigation and legal services for professions under its regulatory jurisdiction. Special examination and licensure procedures are authorized for certain foreign-trained professionals. The chapter authorizes DPR to issue citations to licensees for minor violations for which no substantial threat to the public health, safety and welfare exists. The boards within the department must designate, by rule, those minor violations which are subject to the issuance of a citation. The citations issued by the department are based on filed complaints. The department may serve a citation to the subject of a complaint by certified mail at the last known business address or residence address of the subject.

Chapter 489, F.S., provides that the DPR may, by rule, provide for a mediation process for complainants and contractors licensed under chapter 489, F.S. Mediation is an informal and nonadversarial process with the objective of helping the disputing parties reach a mutually acceptable agreement. Under these provisions, which have not yet been implemented by the board or department, if the parties reach agreement through mediation, the DPR closes the disciplinary case noting the disposition of the complaint as being resolved by mediation.

The DPR must follow procedures set forth in the chapter relating to the conduct of disciplinary proceedings involving practitioners under its jurisdiction. A licensee may be subject to discipline if the licensee violates applicable regulations governing the licensee's profession or occupation. Boards within the department, or the department when there is no board, consider the existence of probable cause for an alleged violation on which disciplinary action may be based. Once it has been determined by the department or probable cause panel of a board that probable cause exists that a violation of applicable professional regulation statutes has occurred, the licensee may request an informal hearing if there are no disputed issues of material fact.

In the event the subject of the complaint and the DPR do not agree in writing that there are no disputed issues of material fact, chapter 455, F.S., requires a formal hearing before a Division of Administrative Hearing officer pursuant to chapter 120, F.S. The hearing provides a forum for the licensee to dispute the allegations of the administrative complaint. The hearing officer makes findings of fact and conclusions of law which are placed in a recommended order. Chapter 120, F.S., also requires the recommended order to include a recommended penalty, if applicable.

The boards may adopt the recommended order as a final order. In the final order, the boards may reject or modify the conclusions of law and interpretation of administrative rules in the recommended order. If a board rejects or modifies the findings of fact, it must first review the entire record and state with particularity the reasons therefor in its final order including a determination that the recommended findings of fact are not based upon competent substantial evidence or do not comply with the essential requirements of law. If the recommended order includes a penalty, the board may accept the recommended penalty, but the board may not increase or reduce the penalty without reviewing the complete record and stating with particularity its reasons for doing so, with specific citations to those portions of the record relied upon.

Chapter 455, F.S., was amended in 1987 to require each board within the DPR to adopt, by rule, disciplinary guidelines

applicable to the various offenses for which disciplinary action may be taken. The various practice acts regulating the professions within the DPR authorize the department and boards to impose disciplinary penalties on licensed practitioners. The DPR was required to review the disciplinary guidelines by January, 1987, and if appropriate, to challenge any of the guidelines if they did not protect the public from significant and discernible harm or damages, if they unreasonably restricted competition or the availability of professional services, or if they unnecessarily increased the cost of professional services without a corresponding public benefit. According to DPR staff, the department did not challenge any of the disciplinary guidelines adopted by the boards pursuant to this provision. The boards within DPR are authorized to impose penalties inconsistent with the guidelines only upon a showing of mitigating and aggravating circumstances. Hearing officers who may recommend a penalty pursuant to a formal disciplinary proceeding under chapter 120, F.S., are not required to follow the disciplinary guidelines established by boards within the DPR.

Chapter 455, F.S., exempts complaints and information obtained during investigations of complaints from the public records law until 10 days after probable cause has been found to exist or until the subject of the complaint waives confidentiality. The chapter requires the department, when an investigation is initiated, to provide the subject of the complaint or his attorney a copy of the complaint or document which resulted in the investigation. According to the department, current law prevents the department from acknowledging to the public that a complaint has been received even though it may have already been publicized through other sources. The DPR may not disclose the disposition of a complaint prior to a finding of probable cause or when a determination of no probable cause has been made by a probable cause panel or the department.

The chapter authorizes the DPR to issue a notice of cease and desist to unlicensed persons who have engaged in the unlicensed practice of a profession regulated by the department. The chapter also authorizes the DPR to seek the imposition of a civil penalty against unlicensed persons. In addition, unlicensed activity is a crime which state attorneys must prosecute. Various professional regulation statutes require the department or appropriate board to report criminal violations of professional regulation statutes to the proper prosecuting authority.

In 1986, the Legislature created the impaired practitioner treatment program to help rehabilitate various health care practitioners who are impaired due to substance abuse. Disciplinary action may be taken against a health care practitioner licensed as an acupuncturist, medical physician, osteopath, chiropractor, podiatrist, optometrist, nurse, pharmacist, dentist, physical therapist, dietitian, nutritionist, respiratory therapist, clinical social worker, marriage and family therapist, mental health counselor, veterinarian or psychologist who is unable to practice his profession with reasonable skill and safety due to illness or use of alcohol, drugs, narcotics, or chemicals or as a result of any mental or physical condition. By entering and successfully completing the department's impaired practitioner program, certain practitioners may avoid formal disciplinary action, if the only violation of the licensing statute under which they are regulated is the impairment. Practitioners currently eligible by statute to participate in the impaired practitioners program include physicians, osteopaths, chiropractors, podiatrists, optometrists, nurses, pharmacists, dentists, veterinarians, psychologists, and mental health practitioners licensed under chapter 491.

The provisions related to the impaired practitioner program in the practice acts for podiatrists, nurses, and pharmacists do not require practitioners who participate in the program to execute releases for certain medical records to the consultant of the impaired practitioner program. Otherwise, the statutory provisions relating to the impaired practitioner program are essentially identical.

Virtually all the practice acts for the various professions regulated by DPR have a provision related to inactive licensure status, which results when a license is not renewed by the end of the license renewal period. The policy and procedure for placing licenses on inactive status varies slightly for each profession.

B. Effect of Proposed Changes:

The committee substitute amends provisions in s. 20.30, F.S., relating to members on boards by providing a general provision for the terms of board members. The committee substitute revises the provisions relating to board membership and terms of board members in the various practice acts for the professions to conform to the general provision in the act. The committee substitute provides that no board may be transferred from its present location unless authorized by the Legislature in the General Appropriations Act. The bill establishes a legislative intent that all newly regulated professions be regulated directly by the department unless a compelling need for regulation by a board exists.

The committee substitute requires all money received by the department to be used only for a valid purpose to clearly benefit the public and not be used to solely benefit a specific profession. The committee substitute prohibits cash deficits and requires each board to operate within its anticipated fees. If sufficient action is not taken by a board within 1 year of notification by the department that license fees are projected to be inadequate, the bill requires DPR to set license fees on behalf of the board to adequately cover costs.

The committee substitute authorizes each board, or the department if there is no board to assess and collect a one-time fee from each active and each voluntary inactive licensee in an amount necessary to eliminate a cash deficit or, if there is not a cash deficit, in an amount sufficient to maintain the financial integrity of the profession's cash balance. The committee substitute authorizes DPR to provide by rule for the advancement of sufficient funds to any profession operating with a negative cash balance and to require interest to be paid on the advancement of funds.

The committee substitute requires the department with the approval of the board, to submit a biennial legislative budget by board, or by division when there is no board, and operating budgets as required of all governmental agencies. The committee substitute requires that the department's policies ensure that all expenditures are made in a cost effective manner to maximize competition, minimize licensure costs, and maximize public access to meetings conducted for the purpose of professional regulation.

The committee substitute requires the DPR to the extent possible, to directly charge all expenses to the account of each regulated profession. The committee substitute prohibits DPR from expending funds from the account of a profession to pay for the expenses incurred on behalf of another profession. The committee substitute requires DPR to implement long-range policy planning and requires DPR to provide boards with quarterly management reports. The committee substitute specifies that the reports include information concerning budgets, finances and performance statistics. The committee

substitute requires DPR to include in its annual report to the Legislature, information on revenues, expenditures, and cash balances, and a review of the adequacy of existing fees. The committee substitute requires DPR to submit recommendations to the Legislature on changes necessary to facilitate efficient and cost-effective operation of the department and the various professional boards.

The committee substitute establishes a legislative intent that the enforcement of professional regulation is a state priority. Effective July 1, 1993, the committee substitute authorizes the boards or the department when there is no board to impose a $5 unlicensed activity fee to fund unlicensed activity enforcement. The committee substitute provides that $5 of the current licensure fee of a profession may be used to fund unlicensed activity enforcement, if the profession or board does not have a cash balance deficit. The committee substitute requires the DPR to make direct charges and direct credits related to unlicensed activity to each profession's account and requires DPR to include all financial and statistical data resulting from unlicensed activity enforcement as a separate category in the quarterly reports to be provided to boards.

The committee substitute combines parts I and II of chapter 455, F.S., and defines the following terms: board; consumer member; department; license; health care practitioner; and profession. The bill authorizes the DPR or the Department of Legal Affairs to defend board members' businesses in any action against the company, if the DPR or the Department of Legal Affairs determines that the suit arises from statutorily authorized actions taken by the board member. The bill also provides that no board may challenge a rule of another board.

The committee substitute authorizes each board, or the department if there is no board, to allow up to 25 percent of continuing education hours required by the appropriate board to be fulfilled by the performance of pro bono services to indigent or underserved populations, or by performing research in critical need areas, or by completing training which leads to advanced professional certification. In addition, the bill authorizes the board, or department if there is no board, to issue limited licenses for retired professionals to only work with indigent, underserved, or critical need populations. The board, or the department, may adopt rules to define underserved and critical need areas and to provide supervision guidelines applicable to limited licenseholders. To obtain a limited license, an applicant must submit to the department an affidavit stating that the applicant has been licensed to practice in any jurisdiction in the United States for at least 10 years in the profession for which the applicant is seeking a limited license. If the applicant submits a notarized statement that the applicant will not receive monetary compensation for any service involving the practice of the profession for which he seeking a limited license, the application and all license fees are waived under the bill.

The committee substitute amends the provisions relating to the establishment of disciplinary guidelines to require the boards, or the department when there is no board, to adopt by rule disciplinary guidelines that specifically designate the range and variation of penalties permitted for aggravating and mitigating circumstances. The bill requires that such rules be adopted no later than January 1, 1993. Under the bill, the secretary of the DPR is required to review the guidelines to determine whether they establish a meaningful range of penalties. If the guidelines do not, then under the bill the secretary is authorized to challenge the guidelines pursuant to ss. 120.54 and 120.56, F.S. The bill requires hearing officers under chapter 120, F.S., to follow the disciplinary guidelines adopted by the boards or department and to state in writing the

aggravating and mitigating circumstances upon which a recommended penalty is based.

The committee substitute creates a procedure for the use of mediation to resolve complaints under certain circumstances. The bill authorizes the boards, or department when there is no board, to adopt rules designating violations of the applicable professional practice acts which are appropriate for mediation, including complaints for which the harm caused by a licensee is economic in nature or can be remedied by the licensee. The bill authorizes the DPR or its agent to conduct informal mediation to resolve an alleged violation which has been defined, by rule, as a mediation offense. The committee substitute specifies that in the event the complainant, or the individual injured by the alleged violation if other than the complainant, and the subject fail to reach a settlement or record the required acknowledgement, the DPR must process the complaint pursuant to s. 455.225, F.S. In addition, the bill provides that any conduct or statements made during any mediation are inadmissible in any disciplinary proceeding pursuant to s. 455.225, F.S.

The committee substitute authorizes the secretary of DPR to request boards to appoint a special committee to settle differences between them, in addition to the current provisions which allow the board's to make that decision. In addition, the bill requires the boards within DPR which opt to settle differences by establishing joint special committees to share costs related to defending challenges to any rules recommended by a special committee and adopted by the boards to resolve their differences. The bill authorizes boards using the special committee that cannot agree on an additional designee to serve on the committee to request the secretary of DPR to select the designee.

The committee substitute authorizes the department to contract with public and private entities to receive and deposit revenue into the Professional Regulation Trust Fund. The bill provides that issuance of a notice to cease and desist by the department does not constitute agency action for which an administrative hearing may be sought.

The committee substitute provides that after an investigation is complete DPR may provide, upon written request of the subject of the complaint, an opportunity to inspect the investigative file, or at the subject's expense, provide a copy of the department's investigative file. In order to do so, the committee substitute requires the subject to agree in writing to maintain the confidentiality of the information received until 10 days after probable cause is found. Under the bill, the subject of an investigation may be subject to a first degree misdemeanor, punishable by 1 year imprisonment and up to a $1,000 fine, for disclosing confidential information. The bill also provides that anyone who willfully discloses confidential information may be subject to disciplinary action. The committee substitute specifically provides that, notwithstanding the provisions of s. 455.241, F.S., the subject of a complaint is entitled to inspect or receive a copy of any expert witness reports and patient records obtained by the department in connection with the investigation, provided the subject agrees in writing to maintain the confidentiality of the information until 10 days after probable cause is found and to maintain the confidentiality of patient records pursuant to s. 455.241, F.S.

In addition, the committee substitute amends examination provisions to authorize the department and boards to administer licensure examinations in an applicant's native language. Applicants must bear the full cost for development, preparation, administration, grading, and evaluation of any examination in a language other than English. The bill

authorizes a board or the department if there is no board, to require licensure applicants to pass an examination on applicable state law and rules related to the practice of the profession that the department or board regulates. The bill amends s. 455.218, F.S., relating to foreign-trained professionals, to clarify that passage of an examination is necessary for licensure and to provide that a license will not be issued to an applicant who is under prosecution in another jurisdiction.

The bill provides that the department must serve a citation for minor violations to the subject of the complaint by personal service or by certified mail, restricted delivery, to the last known address of the subject. The bill provides that any board created on or after January 1, 1992, must designate citation violations and penalties within 6 months. If a board fails to do so, under the bill, the department will have the exclusive authority to adopt, by rule, citation offenses. The bill provides that a board shall have continuing authority to amend its rules relating to citation offenses which were adopted by January 1, 1992. In addition, the bill amends disciplinary provisions to authorize each board in DPR to provide by rule for multiple probable cause panels.

The committee substitute makes various technical changes to provisions requiring certain health care practitioners to provide patient records to their patients upon written request by the patient or his legal representative. The bill provides that if a patient's chapter 490 psychological records are requested by the patient or the patient's legal representative, the practitioner may provide a report of examination and treatment, in lieu of copies of the records. The committee substitute revises the department's authority to obtain the patient records of patients treated by physicians, if the department has reasonable cause to believe that a practitioner has excessively or inappropriately prescribed any controlled substance or if the practitioner has practiced his profession below a required level of care, skill, and treatment. Under the committee substitute the department's authority, is expanded so that DPR may obtain the patient records of patients treated by any health care practitioner regulated by the department. The bill expands the department's authority to inspect pharmacies and establishments authorized to prescribe controlled substances for the purpose of determining if a violation of any applicable practice act has occurred to include the violation of any practice act of a profession regulated under the department. The committee substitute provides that any licensed medical physician, osteopath, chiropractic physician, podiatrist, optometrist, nurse, pharmacist, dentist, veterinarian, optician, or hearing aid specialist who pleads guilty to, is convicted or found guilty of, or who enters a plea of nolo contendere regardless of the adjudication to a felony under chapter 893 or applicable federal law, is subject to immediate suspension of the practitioner's license.

The committee substitute repeals the impaired practitioner provisions contained in chapters 458, 459, 460, 461, 463, 464, 465, 466, 474, 490 and 491, F.S., and amends the general regulatory provisions of chapter 455, F.S., to include a single provision on the impaired practitioner treatment program. The bill authorizes any licensed practitioner under the jurisdiction of the Division of Medical Quality Assurance within DPR to participate in the impaired practitioner program. In addition, the bill requires each board under the jurisdiction of the Division of Medical Quality Assurance within the department to appoint a representative who will serve on the Impaired Practitioners Committee. The bill requires the DPR to retain one or more impaired practitioner consultants, who must be a practitioner licensed under the jurisdiction of the Division of Medical Quality Assurance

within the department and must include a practitioner or recovered practitioner licensed under chapter 458, chapter 459 or chapter 464. The bill also revises the impaired practitioner treatment program provisions to eliminate the provision which makes it a third degree felony for any collaboration between any impaired practitioner and a treatment provider to represent that an impaired practitioner is recovered when he is not.

The inactive status provisions in the various practice acts provide a procedure for placing licenses on inactive status. The bill makes this procedure standard and uniform for all professions regulated by the department, except for voluntary inactive licensees under chapter 475, F.S.

The bill amends chapter 455, F.S., to include a general provision on inactive licensure status. The bill also modifies the inactive status provisions in the various practice acts to conform to the general provision in chapter 455, F.S., so that they only contain the board's authority to establish fees and continuing education requirements for inactive licensure status. The committee substitute provides that notwithstanding any other provision of law to the contrary, the department must reactivate a liense if the licensee has paid an inactive status application fee and any applicable biennial renewal fee, if the licensee has satisfied all other requirements for licensure renewal other than the payment of an additional fee. Licensees under chapter 475, F.S., may continue to apply for and renew voluntary inactive licenses.

An identical provision exists in many practice acts which requires the DPR to notify the appropriate prosecuting authority of criminal violations of the professional regulation statutes including, but not limited to, unlicensed activity. The bill amends chapter 455, F.S., to require the DPR and the appropriate board to notify the proper prosecuting authority of criminal violations under the various practice acts and repeals the provision as it exists in the individual practice acts of professions regulated by DPR.

Disciplinary provisions in the various practice acts for DPR professions uniformly provide for licensure revocation. The bill amends chapter 455, F.S., to authorize the department or boards to impose the disciplinary penalty of permanent revocation.

Pursuant to staff's review of chapter 455, F.S., a number of technical changes should be enacted in order to streamline and update the general regulatory provisions of chapter 455, F.S. The bill makes these technical changes, including elimination of obsolete provisions and unnecessary verbiage, as appropriate.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

The committee substitute provides that licensees may be subject to a one-time fee in any amount necessary to eliminate a cash deficit or an amount sufficient to maintain the financial integrity of the profession's cash balance in the Professional Regulation Trust Fund. The bill does not provide a fee cap for the one-time fee. Licensees of professions which currently have a deficit or insufficient cash balance will incur costs associated with the provisions of the bill requiring a fee increase or one-time assessment fee to ensure the integrity of the cash balance for the regulation of their profession.

Under the committee substitute, licensees may, upon initial licensure or renewal, be subject to a $5 fee to fund DPR's efforts to combat unlicensed activity.

To the extent informal mediation is available as an alternative to disciplinary action, consumers whose complaints resulted from offenses by licensees which are appropriate for mediation may benefit when the complaint is resolved through mediation. Foreign-trained professionals and the consumers of their services may benefit to the extent that they may be able to practice under the provisions of the bill allowing them to sit for licensure examinations administered in their native language.

Consumers of the services of practitioners who hold limited licenses or who perform pro bono services may benefit to the extent that they have access to services they would otherwise not have. Limited licenseholders may be subject to a license fee not to exceed $300.

B. Government:

The department may save costs, such as costs for administrative hearings, legal services, and investigative services related to disciplining licensees, to the extent complaints of consumers may be resolved through informal mediation. Likewise, the department may save costs related to the discipline of licensees to the extent that the disciplinary guidelines adopted by the various boards designate a meaningful range of penalties, and therefore render board final orders less subject to appellate review by courts for abuse of discretion.

To the extent the DPR must implement long-range policy planning and provide boards with detailed financial information under the bill, it will incur costs.

The committee substitute prohibits boards from incurring deficits and requires each board to operate within its anticipated fees. The following professions have had chronic deficits during the last 3 fiscal years:

Cash Balances by Board

	FY 1988-89	FY 1989-90	FY1990-91	Est. 1992
Acupuncture	($292,272)	($189,307)	($195,924)	($37,865)
Chiropractic	($478,926)	483	($474,152)	$141,527*
Dentistry	($1,223,773)	($303,480)	($82,154)	$246,883
Landscape Arch.	($201,115)	($60,060)	($168,944)	($38,785)
Opticianry	($97,367)	($8,309)	($110,145)	$281,882*
Osteopathic	($363,211)	($81,820)	($530,673)	$97,445*
Cert.Social Work	($4,823)	($16,625)	($16,106)	$39,565*
Indust. Hygiene	($2,727)	($7,848)	($10,131)	($17,071)
Naturopath	($94,533)	($120,065)	($133,862)	($140,787)
Talent Agencies	($25,622)	($31,665)	($109,800)	($176,798)

* According to the department, these boards will reflect a positive cash balance at the end of fiscal year 91-92, because they recently went through a biennial renewal cycle.

The following professions have, depending on their licensure renewal cycle, incurred a deficit in their cash balance at least once in each of the last 3 fiscal years:

	FY 1988-89	FY 1989-90	FY 1990-91	Est. 1992
Construction	$ 912,631	$ 245,559	($1,135,551)	($1,844,888)
Optometry	135,192	(111,323)	$ 168,712	($ 78,500)
Podiatry	35,241	69,587	($ 173,823)	($ 93,228)
Psych. Exam.	(58,267)	111,745	($ 131,612)	128,355
Real Estate	(607,316)	3,354	($ 41,712)	($1,507,734)
Vet. Medicine	($287,434)	$ 167,056	($ 84,385)	$ 694,972
Athlete Agents	($ 13,444)	$ 2,661	$ 9,140	$ 27,123

Licensees regulated by the boards within these two groups are likely to be subject to increased licensure fees or one-time fee assessments under the committee substitute's provisions. The department will benefit from this increase in revenue to the extent it alleviates deficits in the cash balance for affected professions.

III. MUNICIPALITY/COUNTY MANDATES RESTRICTIONS:

None.

IV. COMMENTS:

A comparable bill, HB 2249 has been filed and introduced by the House Regulatory Reform Committee and referred to the House Finance and Taxation and Appropriations Committees. The committee substitute contains several provisions from the House Bill not included in the original bill. HB 2247 is a comparable bill relating to procedures for inactive licenses and has been introduced and referred to the House Appropriations Committee.

CS/SB 1706 originated as a result of a committee interim project to review chapter 455, F.S., for effectiveness and consistency of regulatory policy and procedure. Staff's findings and recommendations concerning this review are detailed in a separate report.

V. AMENDMENTS:

None.

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

	ANALYST	STAFF DIRECTOR		REFERENCE	ACTION
1.	Munroe BJM	Masterton SSM	1.	PR	
2.			2.	AP	
3.			3.		
4.			4.		

SUBJECT:

Department of Professional Regulation

BILL NO. AND SPONSOR:

SB 1706 by Professional Regulation Committee

I. SUMMARY:

A. Present Situation:

The Department of Professional Regulation (DPR) has regulatory jurisdiction over 1.2 million practitioners in 45 occupations and professions. Chapter 455, Florida Statutes, provides for the general powers and duties of the DPR to implement and enforce professional regulation, including providing various administrative services to professional boards. The chapter authorizes the department to appoint an executive director for each board within the department subject to the approval of the board and to submit a biennial budget to the Legislature with the advice of the boards.

The chapter authorizes the Office of the Attorney General, Department of Legal Affairs, Administrative Law Section, to serve as legal advisors to the various boards within the department for various administrative proceedings. Although the attorneys are assigned to provide legal advice to the boards, the chapter further provides that they must represent the interests of the citizens of the state by vigorously counseling the boards with respect to their obligations under the laws of the state.

The chapter requires boards to meet at least annually and provides certain requirements for what constitutes a quorum at board meetings. The chapter also provides for reimbursement of travel and compensation expenses for board members. In addition, the chapter provides a mechanism for boards within the department to settle differences between them and sets forth accountability requirements for board members in the performance of their duties as members of a board. The chapter provides general licensing provisions which authorize the board, or department when there is no board, to refuse to issue an initial license to any applicant who is under investigation in any jurisdiction for an action that would constitute a violation of the statutes related to the practice of a profession.

The chapter sets forth the department's responsibilities in the provision of examination, investigation and legal services for professions under its regulatory jurisdiction. Special examination and licensure procedures are authorized for certain foreign-trained professionals. The chapter authorizes DPR to issue citations to licensees for minor violations for which no substantial threat to the public health, safety and welfare exists. The boards within the department must designate, by rule, those minor violations which are subject to the issuance of a citation. The citations issued by the department are based on filed complaints. The department may serve a citation to the subject of a complaint by certified mail at the last known business address or residence address of the subject.

Chapter 489, F.S., provides that the DPR may, by rule, provide for a mediation process for complainants and contractors licensed under chapter 489, F.S. Mediation is an informal and nonadversarial process with the objective of helping the disputing parties reach a mutually acceptable agreement. Under these provisions, which have not yet been implemented by the board or department, if the parties reach agreement through mediation, the DPR closes the disciplinary case noting the disposition of the complaint as being resolved by mediation.

The DPR must follow procedures set forth in the chapter relating to the conduct of disciplinary proceedings involving practitioners under its jurisdiction. A licensee may be subject to discipline if the licensee violates applicable regulations governing the licensee's profession or occupation. Boards within the department, or the department when there is no board, consider the existence of probable cause for an alleged violation on which disciplinary action may be based. Once it has been determined by the department or probable cause panel of a board that probable cause exists that a violation of applicable professional regulation statutes has occurred, the licensee may request an informal hearing if there are no disputed issues of material fact.

In the event the subject of the complaint and the DPR do not agree in writing that there are no disputed issues of material fact, chapter 455, F.S., requires a formal hearing before a Division of Administrative Hearing officer pursuant to chapter 120, F.S. The hearing provides a forum for the licensee to dispute the allegations of the administrative complaint. The hearing officer makes findings of fact and conclusions of law which are placed in a recommended order. Chapter 120, F.S., also requires the recommended order to include a recommended penalty, if applicable.

The boards may adopt the recommended order as a final order. In the final order, the boards may reject or modify the conclusions of law and interpretation of administrative rules in the recommended order. If a board rejects or modifies the findings of fact, it must first review the entire record and state with particularity the reasons therefor in its final order including a determination that the recommended findings of fact are not based upon competent substantial evidence or do not comply with the essential requirements of law. If the recommended order includes a penalty, the board may accept the recommended penalty, but the board may not increase or reduce the penalty without reviewing the complete record and stating with particularity its reasons for doing so, with specific citations to those portions of the record relied upon.

Chapter 455, F.S., was amended in 1987 to require each board within the DPR to adopt, by rule, disciplinary guidelines applicable to the various offenses for which disciplinary action may be taken. The various practice acts regulating the professions within the DPR authorize the department and boards to impose disciplinary penalties on licensed practitioners. The DPR was required to review the disciplinary guidelines by January, 1987, and if appropriate, to challenge any of the guidelines if they did not protect the public from significant and discernible harm or damages, if they unreasonably restricted competition or the availability of professional services, or if they unnecessarily increased the cost of professional services without a corresponding public benefit. According to DPR staff, the department did not challenge any of the disciplinary guidelines adopted by the boards pursuant to this provision. The boards within DPR are authorized to impose penalties inconsistent with the guidelines only upon a showing of mitigating and aggravating circumstances. Hearing officers who may recommend a penalty pursuant to a formal disciplinary proceeding under chapter 120, F.S., are not required to follow

the disciplinary guidelines established by boards within the DPR.

Chapter 455, F.S., exempts complaints and information obtained during investigations of complaints from the public records law until 10 days after probable cause has been found to exist or until the subject of the complaint waives confidentiality. The chapter requires the department, when an investigation is initiated, to provide the subject of the complaint or his attorney a copy of the complaint or document which resulted in the investigation. According to the department, current law prevents the department from acknowledging to the public that a complaint has been received even though it may have already been publicized through other sources. The DPR may not disclose the disposition of a complaint prior to a finding of probable cause or when a determination of no probable cause has been made by a probable cause panel or the department.

The chapter authorizes the DPR to issue a notice of cease and desist to unlicensed persons who have engaged in the unlicensed practice of a profession regulated by the department. The chapter also authorizes the DPR to seek the imposition of a civil penalty against unlicensed persons. In addition, unlicensed activity is a crime which state attorneys must prosecute. Various professional regulation statutes require the department or appropriate board to report criminal violations of professional regulation statutes to the proper prosecuting authority.

In 1986, the Legislature created the impaired practitioner treatment program to help rehabilitate various health care practitioners who are impaired due to substance abuse. Disciplinary action may be taken against a health care practitioner licensed as an acupuncturist, medical physician, osteopath, chiropractor, podiatrist, optometrist, nurse, pharmacist, dentist, physical therapist, dietitian, nutritionist, respiratory therapist, clinical social worker, marriage and family therapist, mental health counselor, veterinarian or psychologist who is unable to practice his profession with reasonable skill and safety due to illness or use of alcohol, drugs, narcotics, or chemicals or as a result of any mental or physical condition. By entering and successfully completing the department's impaired practitioner program, certain practitioners may avoid formal disciplinary action, if the only violation of the licensing statute under which they are regulated is the impairment. Practitioners currently eligible by statute to participate in the impaired practitioners program include physicians, osteopaths, chiropractors, podiatrists, optometrists, nurses, pharmacists, dentists, veterinarians, pscyhologists, and mental health practitioners licensed under chapter 491.

The provisions related to the impaired practitioner program in the practice acts for podiatrists, nurses, and pharmacists do not require practitioners who participate in the program to execute releases for certain medical records to the consultant of the impaired practitioner program. Otherwise, the statutory provisions relating to the impaired practitioner program are essentially identical.

Virtually all the practice acts for the various professions regulated by DPR have a provision related to inactive licensure status, which results when a license is not renewed by the end of the license renewal period. The policy and procedure for placing licenses on inactive status varies slightly for each profession.

B. Effect of Proposed Changes:

The bill amends the provisions relating to the establishment of disciplinary guidelines to require the boards, or the

department when there is no board, to adopt by rule disciplinary guidelines that specifically designate possible aggravating and mitigating circumstances and the variation of penalties permitted for such circumstances. The bill requires that such rules be adopted no later than October 1, 1992. Under the bill, the Secretary of the DPR is required to review the guidelines to determine whether they establish a meaningful range of penalties. If the guidelines do not, then under the bill the Secretary is authorized to challenge the guidelines pursuant to ss. 120.54 and 120.56, F.S. The bill requires hearing officers under chapter 120, F.S., to follow the disciplinary guidelines adopted by the boards or department and to state in writing the aggravating and mitigating circumstances upon which the recommended penalty is based.

The bill creates a procedure for the use of mediation to resolve complaints under certain circumstances. The bill authorizes the boards, or department when there is no board, to adopt rules designating violations of the applicable professional practice acts which are appropriate for mediation, including complaints when the harm caused by a licensee is economic in nature or can be remedied by the licensee. The bill authorizes the DPR or its agent to conduct informal mediation to resolve an alleged violation which has been defined, by rule, as a mediation offense. In addition, the bill provides that the complaint and any oral or written communication relating to mediation proceedings are confidential and exempt from the public records laws and inadmissible in any disciplinary proceeding pursuant to s. 455.225, F.S.

The bill allows the secretary of DPR to request boards to appoint a special committee to settle differences between them, in addition to the current provisions which allow the board's to make that decision. In addition, the bill requires the boards within DPR which opt to settle differences by establishing joint special committees to share costs related to defending challenges to any rules recommended by a special committee and adopted by the boards to resolve their differences. The bill authorizes boards using the special committee that cannot agree on an additional designee to serve on the committee, to request the secretary of DPR to select the designee.

The bill amends current provisions related to the confidentiality of complaint information to authorize the department to make public the disposition of a disciplinary complaint after a finding of no probable cause or if a case is dismissed for any reason. In addition, the bill amends examination provisions to authorize the department and boards to administer licensure examinations in the native tongue of the applicant at the applicant's expense so long as there is no harm to the public health, safety and welfare. The bill provides that the department must serve a citation to licensees for minor violations to the subject of the complaint by personal service or by certified mail, restricted delivery, to the last known address of the subject. The bill authorizes each board in DPR to provide by rule for multiple probable cause panels.

The bill repeals the impaired practitioner provisions contained in chapters 458, 459, 460, 461, 463, 464, 465, 466, 474, 490 and 491, F.S., and amends the general regulatory provisions of chapter 455, F.S., to include a single provision on the impaired practitioner treatment program. The bill authorizes any licensed practitioner under the jurisdiction of the Division of Medical Quality Assurance within DPR to participate in the impaired practitioner program. In addition, the bill requires each board under the jurisdiction of the Division of Medical Quality Assurance within the department to appoint a representative who will serve on the Impaired Practitioners

Committee. The bill requires the DPR to retain one or more impaired practitioner consultants, who must be a practitioner licensed under the jurisdiction of the Division of Medical Quality Assurance within the department and must include a practitioner or recovered practitioner licensed under chapter 458, chapter 459 or chapter 464. The bill also revises the impaired practitioner treatment program provisions to eliminate the provision which makes it a third degree felony for any collaboration between any impaired practitioner and a treatment provider to represent that an impaired practitioner is recovered when he is not.

The inactive status provisions in the various practice acts provide a procedure for placing licenses on inactive status. The bill makes this procedure standard and uniform for all professions regulated by the department. The bill amends chapter 455, F.S., to include a general provision on inactive licensure status. The bill also modifies the inactive status provisions in the various practice acts to conform to the general provision in chapter 455, F.S., so that they only contain the board's authority to establish fees and continuing education requirements for inactive licensure status.

An identical provision exists in many practice acts which requires the DPR to notify the appropriate prosecuting authority of criminal violations of the professional regulation statutes including, but not limited to, unlicensed activity. The bill amends chapter 455, F.S., to require the DPR and the appropriate board to notify the proper prosecuting authority of criminal violations under the various practice acts and repeals the provision as it exists in the individual practice acts of professions regulated by DPR.

Disciplinary provisions in the various practice acts for DPR professions uniformly provide for licensure revocation. The bill amends chapter 455, F.S., to authorize the department or boards to impose the disciplinary penalty of permanent revocation.

Pursuant to staff's review of chapter 455, F.S., a number of technical changes should be enacted in order to streamline and update the general regulatory provisions of chapter 455, F.S. The bill makes these technical changes, including elimination of obsolete provisions and unnecessary verbiage, as appropriate.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

To the extent informal mediation is available as an alternative to disciplinary action, consumers whose complaints resulted from offenses by licensees which are appropriate for mediation may benefit when the complaint is resolved through mediation. Foreign-trained professionals and the consumers of their services may benefit to the extent that they may be able to practice under the provisions of the bill allowing them to sit for licensure examinations administered in their native tongue.

B. Government:

The department may save costs, such as costs for administrative hearings, legal services, and investigative services related to disciplining licensees, to the extent complaints of consumers may be resolved through informal mediation. Likewise, the department may save costs related to the discipline of licensees to the extent that the disciplinary guidelines adopted by the various boards designate possible aggravating and mitigating circumstances which provide a meaningful range of penalties, and therefore render board final orders less subject to appellate review by courts for abuse of discretion.

III. MUNICIPALITY/COUNTY MANDATES RESTRICTIONS:

None.

IV. COMMENTS:

The bill is a result of a committee interim project to review chapter 455, F.S., for effectiveness and consistency of regulatory policy and procedure. Staff's findings and recommendations concerning this review are detailed in a separate report.

A comparable bill, HB 2249 has been filed and introduced by the House Regulatory Reform Committee and referred to the House Finance and Taxation and Appropriations Committees. HB 2247 is a comparable bill relating to procedures for inactive licenses and has been introduced and referred to the House Appropriations Committee.

V. AMENDMENTS:

None.

STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
Senate Bill 1706

The committee substitute prohibits boards within the Department of Professional Regulation (DPR) from operating with a cash deficit and requires each board to operate within its anticipated fees. The committee substitute authorizes the boards or department to adopt rules in order to assess and collect a one-time fee from licensees to eliminate a cash deficit. The committee substitute requires the department to seek the approval of the boards when submitting a budget to the Legislature. The committee substitute provides for the assessment of fees from licensees to fund DPR's enforcement of unlicensed activity. The committee substitute requires DPR to provide the boards with quarterly management reports and to provide recommendations for statutory changes in the department's annual report to the legislature.

The committee substitute authorizes boards to approve the performance of pro bono service by licensees to fulfill continuing education requirements. The committee substitute authorizes all boards to issue limited licenses to retired professionals to serve indigent or underserved populations. The committee substitute expands access to complaint and investigative files for the subject of a complaint but requires the subject to abide by the confidentiality provisions applicable to DPR. The committee substitute makes numerous technical and conforming changes to chapter 455, F.S. and the various practice acts for the professions regulated by DPR.

Committee on Professional Regulation

Susan S. Martin
Staff Director

(FILE TWO COPIES WITH THE SECRETARY OF THE SENATE)

BILL VOTE SHEET

(VS-90: File with Secretary of Senate) BILL NO. SB 1706

COMMITTEE ON: Professional Regulation

DATE: February 10, 1992

TIME: 10:00 AM -- 01:00 PM

PLACE: Room A, Senate Office Building

OTHER COMMITTEE REFERENCES:
(in order shown)

ACTION:

___ Favorably with _____ amendments

X Favorably with Committee Substitute

___ Unfavorably

___ Submitted as a Committee Bill

___ Temporarily Passed

___ Reconsidered

___ Not Considered

___ NO QUORUM

THE VOTE WAS:

FINAL BILL VOTE		SENATORS	02/10/92 Motion to hear Prop. CS by Sen. Dudley		02/10/92 #1 by Sen. Jennings		02/10/92 Sub.to #2 by Sen. Jennings		02/10/92 Sub.to #3 by Sen. Dudley		02/10/92 #4 by Sen. Jennings	
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay
X		Davis										
X		Dudley										
		Grizzle										
X		Jennings										
X		Kirkpatrick										
		Souto										
X		Weinstein										
		VICE-CHAIRMAN Weinstock										
X		CHAIRMAN Yancey										
6	0	TOTAL	FWO	-	FWO	-	FVV	-	FWO	-	-	UVV
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay

Please Complete:
The key sponsor appeared ( )
A Senator appeared ( )
Sponsor's aide appeared ( )
Other appearance (X)

02/11/92
9:30 AM

(VS-90: File with Secretary of Senate) BILL NO. SB 1706

PAGE NO. 2

BILL VOTE SHEET (Continued)

amendments and motions

COMMITTEE ON: Professional Regulation

THE VOTE WAS:

SENATORS	02/10/92 #5 by Sen. Jennings		02/10/92 Sub. to #6 by Sen. Jennings		02/10/92 Sub. to #7 by Sen. Jennings		02/10/92 Sub. to #8 by Sen. Dudley		02/10/92 #9 by Sen. Dudley		02/10/92 #10 by Sen Dudley	
	Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay
Davis												
Dudley												
Grizzle												
Jennings												
Kirkpatrick												
Souto												
Weinstein												
VICE-CHAIRMAN Weinstock												
CHAIRMAN Yancey												
TOTAL	FWO	-	FVV	-	-	WD	FVV	-	FWO	-	FWO	-
	Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay

02/11/92
9:30 AM

(VS-90: File with Secretary of Senate) BILL NO. SB 1706

PAGE NO. 3

BILL VOTE SHEET (Continued)

amendments and motions

COMMITTEE ON: Professional Regulation

THE VOTE WAS:

SENATORS	02/10/92 #11 by Sen Dudley		02/10/92 #12 by Sen Dudley		02/10/92 #13 by Sen Dudley		02/10/92 #14-#16 by Sen.Dudley		02/10/92 #17 by Sen Dudley		02/10/92 #18 by Sen Davis	
	Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay
Davis												
Dudley												
Grizzle												
Jennings												
Kirkpatrick												
Souto												
Weinstein												
VICE-CHAIRMAN Weinstock												
CHAIRMAN Yancey												
TOTAL	FWO	-	FWO	-	FWO	-	FWO	-	FWO	-	FWO	-
	Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay

02/11/92
9:30 AM

(VS-90: File with Secretary of Senate) BILL NO. SB 1706

PAGE NO. 4

BILL VOTE SHEET (Continued)

amendments and motions

COMMITTEE ON: Professional Regulation

THE VOTE WAS:

SENATORS	02/10/92 Motion to report as CS by Sen. Davis											
	Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay
Davis												
Dudley												
Grizzle												
Jennings												
Kirkpatrick												
Souto												
Weinstein												
VICE-CHAIRMAN Weinstock												
CHAIRMAN Yancey												
TOTAL	FWO	-										
	Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay

House of Representatives

SUBCOMMITTEE REPORT/INFORMATION RECORD

File with Parent Committee

TO: Chairman, Committee on REGULATORY REFORM

Subcommittee on BUSINESS REGULATION
Date of Meeting January 14, 1992
Time 1:30 p.m.
Place Morris Hall

BILL NO. PCB RR 92-17

FINAL ACTION:
X Favorable
_____ Favorable with _____ Amendments
_____ Favorable with Proposed Substitute
_____ Unfavorable

VOTE:

YEA	MEMBER	NAY
X	Bronson, I.	
X	Brown, C.	
X	Grindle, A.	
X	Jones, Daryl	
X	Lewis, M.	
X	Smith, C. R.	
X	Starks, B.	
X	Valdes, C.	
X	Viscusi, J.	
X	Chinoy, K., Chr.	

YEA	MEMBER	NAY

Total Yeas 10

Total Nays 0

IF PRESENT, MEMBER WOULD HAVE VOTED:

Subcommittee Chairman

APPEARANCE RECORD

The following persons (other than legislators) appeared before the committee during the consideration of this bill:

Name	Representing	Address
Monica Lassiter	Katz Kurter	Tallahassee
Glenda Wood	Dept. of Professional Reg.	Tallahassee

Note: Please indicate by an "X" any State employee appearing at the request of the Chairman.

Received by Parent Committee:

Date: _____

Received by: _____

H-74(1989)

(ATTACH TO FULL COMMITTEE REPORT WHEN FILED WITH THE CLERK)

House of Representatives

COMMITTEE INFORMATION RECORD

Committee on REGULATORY REFORM

Date of Meeting January 16, 1992

Time 10:00 AM

Place Morris Hall

Bill No.: PCB RR 92-17

FINAL ACTION: X Favorable

_____ Favorable with _____ Amendments

_____ Favorable with Substitute

_____ Unfavorable

VOTE:

YEA	MEMBER	NAY
X	Bronson	
X	Brown	
X	Chinoy	
X	Cosgrove	
X	Davis	
X	Gordon	
X	Graber	
X	Grindle	
X	Jones, Daryl	
X	Jones, Dennis	
X	Lewis	
	Logan	
X	Morse	
X	Mortham	
X	Rudd	
X	Sansom	
X	Smith, C. R.	
X	Starks	
X	Valdes	
X	Viscusi	
X	Tobin, Chr.	

YEA	MEMBER	NAY

Total Yeas 20

Total Nays 0

IF PRESENT, MEMBER WOULD HAVE VOTED:

Chairman

APPEARANCE RECORD

The following persons (other than legislators) appeared before the committee during the consideration of this bill:

Name	Representing	Address
Jack McRay	DPR	Tallahassee, FL 32399

Note: Please indicate by an "X" any State employee appearing at the request of the Chairman.

(FILE WITH THE CLERK AND ATTACH SUBCOMMITTEE REPORT IF APPLICABLE)

H-22(1989)

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

FILED
14 FEB 17 PM 3:20
DIVISION OF ADMINISTRATIVE HEARINGS

LEON RAWNER, M.D.,

Petitioner,

vs. DOAH Case No. 13-4651

BOARD OF MEDICINE,

Respondent.
_____/

JOINT EXHIBITS 1, 3, 4 & 5
JOINT PRE-HEARING STIPULATION

Amy W. Schrader (Fla. Bar No. 621358)
GrayRobinson, P.A.
301 South Bronough Street, Suite 600
Post Office Box 11189 (32302)
Tallahassee, Florida 32301
Telephone (850) 577-9090
Facsimile (850) 577-3311
Email: aschrader@gray-robinson.com
Counsel for Leon Rawner, M.D.

Joint Exhibits:

Exhibit 1	Petitioner's Petition for Administrative Hearing, including attachments.
Exhibit 2	To be provided by the Board's attorney
Exhibit 3	Composite exhibit consisting of Respondent's Request for Admissions and Petitioner's Responses to Respondent's First Request for Admissions.
Exhibit 4	Composite exhibit consisting of Petitioner's Request for Admissions and Respondent's Response to Petitioner's First Request for Admissions
Exhibit 5	Composite exhibit consisting of Petitioner's Interrogatories to Respondent and Respondent's Response to Petitioner's First Set of Interrogatories.
Exhibit 6	To be provided by the Board's attorney.

STATE OF FLORIDA
BOARD OF MEDICINE

IN RE: THE APPLICATION FOR

LICENSURE OF

LEON RAWNER, M.D.

/

RECEIVED
DEPARTMENT OF HEALTH
13 NOV 12 PM 3: 3
OFFICE OF THE CLERK

PETITION FOR ADMINISTRATIVE HEARING

COMES NOW, Leon Rawner, M.D., ("Dr. Rawner") by and through the undersigned counsel, and pursuant to sections 120.569, 120.57, and 120.60, Florida Statutes, hereby timely submits this Petition for Administrative Hearing Florida challenging the Board of Medicine's ("Board") Amended Notice of Intent to Deny Licensure, dated October 22, 2013, and in support states as follows:

I. STATEMENT OF ULTIMATE FACTS ALLEGED

A. PARTIES AND BACKGROUND

1. The name and address of the affected agency is: State of Florida, Department of Health, Board of Medicine, 4052 Bald Cypress Way, Bin #C-03, Tallahassee, Florida 32399-3253. The Board of Medicine regulates the practice of medicine in the State of Florida, including the issuance of medical licenses under the provisions of chapter 458, Florida Statutes.

2. Petitioner's address is: Leon Rawner, M.D., 615 S. 68th Avenue, Apt. #3, Wausau, WI 54401. For purposes of this proceeding, Petitioner may be contacted through his counsel, Amy W. Schrader, GrayRobinson, P.A., Post Office Box 11189, Tallahassee, Florida 32302-3189; telephone 850-577-9090. Dr. Rawner is a licensed physician in the State of Wisconsin seeking licensure by endorsement as a Medical Doctor in the State of Florida.

3. Dr. Rawner submitted his application for licensure as a Medical Doctor, Initial Licensure by Endorsement ("Application") on March 13, 2013. A copy of Dr. Rawner's Application is attached as Exhibit "A."

4. Dr. Rawner is a graduate of a foreign medical school. By letter dated, March 18, 2013, Dr. Rawner filed supplemental documentation with the Board in response to information requested on the Application to support his request for licensure by endorsement. A copy of Dr. Rawner's letter, including transcripts from Brandeis University, information regarding his clinical clerkships and results from the National Practitioner Data Bank Self-Query, is attached as Exhibit "B."

5. On April 3, 2013, the Board sent Dr. Rawner a letter requesting additional information. A copy of Tehelia Mcglockton's letter is attached as Exhibit "C." Dr. Rawner responded by letter dated May 21, 2013, providing a copy of his undergraduate degree and information relating to his one year of supervised medical clinical training. A copy of Dr. Rawner's letter, including his undergraduate degree is attached as Exhibit "D."

6. All other information requested in the Board's April 3rd letter was sent directly to the Board by the appropriate agencies, and included: 1) Official U.S. Medical Licensing Exam Transcript, indicating Dr. Rawner passed USMLE Step I, II, III; 2) Letter from Residency Program Director, indicating Dr. Rawner completed one year of residency training; 3) Confirmation from Wisconsin Medical Board confirming Dr. Rawner's current, valid medical license; 4) American Medical Association (AMA) Profile Letter; and 5) Dr. Rawner's fingerprints and background check.

7. By letter dated June 26, 2013, the Board's Program Operations Administrator, Chandra Prine, notified Dr. Rawner that he must make a personal appearance before the Credentials Committee of the Board on August 1, 2013 to discuss:

- Failure to meet the training requirement pursuant to section 458.313(1)(a), 458.311(f)3.c., Florida Statutes.
- Failure to complete an academic year of supervised clinical training pursuant to section 458.313(1)(a), 458.311(3)(d), Florida Statutes.

A copy of the Board's letter is attached as Exhibit "E."

8. On August 1, 2013, Dr. Rawner appeared before the Credentials Committee of the Board, and the Committee recommended that his license application be denied.

9. On August 26, 2013, Dr. Rawner received the Board's Notice of Intent to Deny Licensure via certified mail. A copy of the Notice is attached as Exhibit "F." Specifically, the Board denied Dr. Rawner's application based on its determination: 1) that he failed to meet the postgraduate training requirements under section 458.311(1)(f)3.c., Florida Statutes; 2) that section 458.311(3), Florida Statutes, was inapplicable to someone who has obtained a certificate issued by the Educational Commission for Foreign Medical Graduates (ECFMG) and completed all requirements of the foreign medical school; and 3) that Dr. Rawner has not demonstrated that he completed "an academic year of supervised clinical training in a hospital affiliated with a medical school approved by the Council on Medical Education of the American Medical Association." *Id.*

10. On September 13, 2013, Dr. Rawner filed a Petition for Administrative Hearing challenging the Board's Notice of Intent to Deny Licensure.

11. Upon review of the initial Petition, the Credentials Committee voted to reconsider its intended action based upon the issues presented in the Petition. Per the Committee's request,

undersigned counsel appeared before the Credentials Committee on behalf of Dr. Rawner for such reconsideration on October 3, 2013.

12. On October 22, 2013, the Board issued its Amended Notice of Intent to Deny Licensure. A copy of the Amended Notice is attached as Exhibit "G." Based upon its reconsideration of Dr. Rawner's application, the Board determined that he failed to meet the requirement in subsection 458.311(3)(c), Florida Statutes, in that the subsection allows licensure by endorsement for an applicant who "[h]as completed all of the formal requirements of the foreign medical school, except the internship or social service requirements . . . " and Dr. Rawner has in fact "completed *all of the formal requirements* of the foreign medical school and there are no outstanding or pending internship or social service requirements." *Id.* at 3 (emphasis in original).

13. Dr. Rawner is substantially affected by the Board's denial of his Application for Licensure as a Medical Doctor, resulting in his inability to work in his profession within the State of Florida.

B. Requirements for Licensure by Endorsement

14. Under Florida law, applicants for licensure as a medical doctor may qualify either through applying for licensure by examination pursuant to section 458.311, Florida Statutes, or through the process for obtaining licensure by endorsement pursuant to section 458.313, Florida Statutes. Generally, physicians who have been licensed in another jurisdiction may apply for licensure by endorsement while those medical school graduates who do not yet hold a valid license in another state must apply for licensure by examination.

15. Section 458.313, Florida Statutes, sets forth the requirements for obtaining a medical license by endorsement and in subsection (a) provides two methods by which an applicant can satisfy qualifications for licensure. This section states in pertinent part:

> (1) The department shall issue a license by endorsement to any applicant who, upon applying to the department on forms furnished by the department and remitting a fee set by the board not to exceed $500, the board certifies:
>
> (a) Has met the qualifications for licensure in s. 458.311(1)(b)-(g) or in s. 458.311(1)(b)-(e) and (g) and (3);
>
> (b) Prior to January 1, 2000, has obtained a passing score, as established by rule of the board, on the licensure examination of the Federation of State Medical Boards of the United States, Inc. (FLEX), on the United States Medical Licensing Examination (USMLE), or on the examination of the National Board of Medical Examiners, or on a combination thereof, and on or after January 1, 2000, has obtained a passing score on the United States Medical Licensing Examination (USMLE); and
>
> (c) Has submitted evidence of the active licensed practice of medicine in another jurisdiction, for at least 2 of the immediately preceding 4 years, or evidence of successful completion of either a board-approved postgraduate training program within 2 years preceding filing of an application or a board-approved clinical competency examination within the year preceding the filing of an application for licensure. For purposes of this paragraph, "active licensed practice of medicine" means that practice of medicine by physicians, including those employed by any governmental entity in community or public health, as defined by this chapter, medical directors under s. 641.495(11) who are practicing medicine, and those on the active teaching faculty of an accredited medical school.

(Emphasis added.)

16. Sections 458.311(1)(b)-(e) and (g) and (3), Florida Statutes, as incorporated in section 458.313(1)(a), provide:

> (1) Any person desiring to be licensed as a physician, who does not hold a valid license in any state, shall apply to the department on forms furnished by the department. The department shall license each applicant who the board certifies:
>
> * * *
>
> (b) Is at least 21 years of age.

(c) Is of good moral character.

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

(e) For any applicant who has graduated from medical school after October 1, 1992, has completed the equivalent of 2 academic years of preprofessional, postsecondary education, as determined by rule of the board, which shall include, at a minimum, courses in such fields as anatomy, biology, and chemistry prior to entering medical school.

* * *

(g) Has submitted to the department a set of fingerprints on a form and under procedures specified by the department, along with a payment in an amount equal to the costs incurred by the Department of Health for the criminal background check of the applicant.

* * *

(3) Notwithstanding the provisions of subparagraph (1)(f)3., a graduate of a foreign medical school need not present the certificate issued by the Educational Commission for Foreign Medical Graduates or pass the examination utilized by that commission if the graduate:

(a) Has received a bachelor's degree from an accredited United States college or university.

(b) Has studied at a medical school which is recognized by the World Health Organization.

(c) <u>Has completed all of the formal requirements of the foreign medical school, except the internship or social service requirements, and has passed part I of the National Board of Medical Examiners examination or the Educational Commission for Foreign Medical Graduates examination equivalent.</u>

(d) Has completed an academic year of supervised clinical training in a hospital affiliated with a medical school approved by the Council on Medical Education of the American Medical Association and upon completion has passed part II of the National Board of Medical Examiners examination or the Educational Commission for Foreign Medical Graduates examination equivalent.

(Emphasis added.)

17. If an applicant for licensure by endorsement meets the requirements in sections 458.311(1)(b)-(e) and (g) and (3), Florida Statutes, above, they need not comply with section

458.311(1)(f), Florida Statutes, which requires the applicant to have completed "an approved residency or fellowship of at least 2 years in one specialty area." *See* §458.313(1)(a), Fla. Stat. (2013).

C. Dr. Rawner Meets All Requirements for Licensure

18. Contrary to assertions in the Board's Amended Notice of Intent to Deny Licensure, Dr. Rawner meets all requirements for licensure by endorsement under sections 458.313 and 458.311(1)(b)-(e) and (g) and (3), Florida Statutes, and, thus should be granted a license to practice medicine in the State of Florida.

19. Dr. Rawner is a Foreign Medical Graduate who is currently licensed and has been practicing medicine in Wisconsin for over two years (licensure date May 12, 2010). He received his undergraduate degree from Brandeis University in 2001 and his medical degree from American University of the Caribbean School of Medicine in 2006. *See* Ex. A.

20. While enrolled at American University of the Caribbean School of Medicine, Dr. Rawner completed an academic year of supervised clinical training with hospitals affiliated with approved medical schools, including: Wyckoff Heights Medical Center (affiliated with Medical College of Cornell University); Lutheran Medical Center (affiliated with State University of New York Health Science Center College of Medicine); and Elmhurst Hospital Center (affiliated with Mt. Sinai School of Medicine). He completed rotations in Cardiology, Nephrology, Family Medicine, Emergency Medicine, Neurology, and Anesthesiology. Dr. Rawner's Clinical Clerkship Evaluation Reports evidencing his academic year of supervised clinical training are attached as Composite Exhibit "H."

21. Subsequent to graduation from medical school, Dr. Rawner received his Educational Commission for Foreign Medical Graduates (ECFMG) certificate in June 2006. He

completed a one-year residency in Internal Medicine at Mt. Sinai—Elmhurst Hospital Center in June 2007. A copy of the residency certificate is attached as a part of Exhibit "A."

22. Since January 24, 2011, Dr. Rawner has been active in the licensed practice of medicine in Wausau, Wisconsin, as a staff physician with Knee Pain Solutions Center. A copy of Dr. Rawner's Curriculum Vitae evidencing his education and work experience is attached as Exhibit "I."

23. Despite the fact that Dr. Rawner provided ample evidence of his credentials and qualifications to be licensed via endorsement in the State of Florida both through his application and appearance at the Board's Credentials Committee, the Board has noticed its intent to deny his license application. The Board's intended decision to deny Dr. Rawner's application for license by endorsement should be reversed for the reasons set forth below.

24. The Amended Notice states that Dr. Rawner's application is being denied because he completed all requirements of the foreign medical school he attended instead of only "complet[ing] all of the formal requirements of the foreign medical school, except the internship or social service requirements . . ." §458.311(3)(c), Fla. Stat. (2013).

25. The plain reading of section 458.311(3)(c), Florida Statutes, is that an applicant must meet the formal requirements of his medical school, but does not need to meet any internship or social service requirements. The provision is structured as a general rule followed by an allowed exception. Having met all the requirements for graduation should not be a bar to a statute that requires a specific item (completed all formal requirements) and allows for certain included requirements to be circumscribed (the internship or social services requirement). This reading is especially appropriate here where it is only beneficial if in an applicant has completed the additional requirements.

26. Furthermore, section 458.313(1)(a), Florida Statutes, only requires that applicants for licensure by endorsement satisfy all "qualifications for licensure" set forth in section 458.311(3). (emphasis added). A provision excusing an applicant from completing internship or social service requirements does not amount to a "qualification for licensure," and thus, Dr. Rawner's application cannot be denied simply because he completed all of the requirements of his medical school.[1]

27. According to Black's Law Dictionary (9th ed. 2009), a "qualification" is defined as: "The possession of qualities or properties (such as fitness or capacity) inherently or legally necessary to make one eligible for a position or office, or to perform a public duty or function." Thus, a qualification for medical licensure must be the applicant's possession of some affirmative quality that makes him more capable of performing as a medical doctor. Certainly, the failure to complete internship or social service requirements in order to graduate from medical school could not be considered such a "qualification" as the lack of internship or social service experience could only detract, and not add to the competency or skills of an applicant. Thus, Dr. Rawner has completed all statutory "qualifications" required for licensure by endorsement, and is therefore entitled to issuance of a license.

28. Finally, the Board improperly applied an unadopted rule in denying Dr. Rawner's application on the basis that he attended a foreign medical school that does not have "internship or social service requirements." Specifically, the Amended Notice states that in considering applicants for licensure by endorsement, the Board presumes "that the foreign medical school has an internship or social service requirement and that the internship or social service requirement has not been completed." *Id.* at 3.

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[1] The American University of the Caribbean School of Medicine does not have "internship or social service requirements," so that the program of study is considered complete without these additional measures.

29. Nowhere in the applicable statutes, however, does it state that only graduates of foreign medical schools with "internship or social service requirements" are eligible for licensure by endorsement. On the contrary, the requirements related to medical school eligibility are explicitly listed in the preceding clause, section 458.311(3)(b), which requires that the medical school be recognized by the World Health Organization. The Board, therefore, is impermissibly attempting to make new non-rule policy preventing graduates of certain foreign medical schools from qualifying for licensure by endorsement, contrary to section 120.57(1)(e), Florida Statutes (prohibiting an agency from basing agency action which determines the substantial interests of a party on an unadopted rule). *See Dep't of Prof'l Reg., Bd. of Chiropractic v. Sherman College of Straight Chiropractic,* 682 So. 2d 559 (Fla. 1st DCA 1996) (holding that an agency cannot by rule, let alone by an unadopted rule, add an accreditation requirement that is not found in a statute); *see also Gaudet v. Fla. Bd. of Prof'l Engineers,* 900 So. 2d 574 (Fla. 4th DCA 2004).

30. Therefore, Dr. Rawner should be granted licensure by endorsement as he meets all of the statutory qualifications and the Board is prohibited from applying an unadopted rule to serve as the basis for its intended denial.

II. DISPUTED ISSUES OF MATERIAL FACT

31. Disputed issues of fact include:

(a) Whether the Board acted contrary to its own rules and governing statutes in denying Petitioner's application.

(b) Whether Petitioner's application demonstrates the required experience and training for licensure by endorsement as a medical doctor.

(c) Whether the Board is impermissibly applying an unadopted rule in denying Petitioner's application.

(d) Whether Petitioner is entitled to issuance of a medical doctor's license.

(e) Petitioner reserves the right to add additional disputed issues of material fact as revealed through discovery.

III. APPLICABLE LAW THAT REQUIRES MODIFICATION OF THE BOARD'S PROPOSED ACTION

32. Sections 458.313 and 458.311, Florida Statutes, setting forth the applicable requirements for licensure by endorsement.

33. Petitioner reserves the right to amend this Petition upon discovery of additional facts and circumstances yet to be discovered. Petitioner is entitled to relief pursuant to the provisions of sections 120.57(1), 120.569, 120.60 and chapter 458, Florida Statutes, the Board's administrative rules, together with established decisional law of Florida courts and administrative agencies.

IV. RELIEF REQUESTED

WHEREFORE, Petitioner requests:

(a) That the Board approve Petitioner's application for a licensure as a medical doctor.

(b) That if the parties cannot mutually resolve issues preventing the Board from issuing a medical doctor's license to Petitioner, that this petition be forwarded to the Division of Administrative Hearings and that a formal hearing be conducted before an Administrative Law Judge pursuant to sections 120.569 and 120.57(1), Florida Statutes.

(c) That recommended and final orders be entered determining that:

1. Petitioner's application contains evidence of the requisite training and experience for entitlement to a medical doctor's license.

2. The Board's decision not to issue a medical doctor's license to Petitioner is arbitrary and capricious.

3. That Petitioner's application for a medical licensure be approved.

4. Awarding such supplemental relief to Petitioner as may be just and legally authorized.

CERTIFICATE OF SERVICE

I hereby certify that the original of the foregoing has been filed by Hand Delivery with the Agency Clerk, Florida Department of Health, Board of Medicine, 2585 Merchants Row Blvd., Prather Building Suite 110, Tallahassee, Florida 32399-3251, and a copy has been furnished by U.S. Mail this 12th day of November, 2013, to:

Donna C. McNulty
Senior Assistant Attorney General
Office of the Attorney General
PL-01, The Capitol
Tallahassee, FL 32309-1050

/s/ Amy W. Schrader

Amy W. Schrader (Fla. Bar No. 621358)
GrayRobinson, P.A.
301 South Bronough Street, Suite 600
Post Office Box 11189 (32302)
Tallahassee, Florida 32301
Telephone (850) 577-9090
Facsimile (850) 577-3311
Email: aschrader@gray-robinson.com
Counsel for Leon Rawner, M.D.

Print a copy of your application and press the Review Page button to return to the review page.

The confirmation button at the bottom of the review page will take you to a payment screen.

Your application has not been submitted until payment is confirmed.

Review Page

License Application Modifiers

I plan to dispense medicinal drugs in the State of Florida for a fee or other remuneration and hereby register as required by Section 465.0276,F.S. I understand that the fee for the Dispensing Practitioner is $100.00 over and above the required initial license fee and will submit it along with the license fee.

NICA Non-Participating

Basic Data

Profession:	Medical Doctor
Application Type:	Inital Licensure Endorsement
First Name:	LEON
Middle Name:	
Last Name:	RAWNER
Title:	DR.
Suffix:	
Email Address:	leonrawner@googlemail.com
SSN:	084-66-8850
Phone Number:	(646) 812-2728
Business Phone:	(646) 812-2728
Date of Birth:	[redacted]
Place of Birth:	BROOKLYN, NY
Citizenship:	United States

Mailing Address

Street Number:	
Address Line 1:	615 S. 68TH AVE.
Address Line 2:	APT #3
Address Line 3:	
City:	WAUSAU
State:	WI
Country:	United States
Postal / Zip:	54401

Exhibit "A"

County:

Physical Location or Address of Employment

Street Number:
Address Line 1: 615 S. 68TH AVE.
Address Line 2: APT #3
Address Line 3:
City: WAUSAU
State: WI
Country: United States
Postal / Zip: 54401
County:

Equal Opportunity Data

Gender: MALE
Race: WHITE

Education History

Will you be using FCVS to assist you in the licensure process? Yes.

School Name: OTHER
BRANDEIS UNIVERSITY
Address Line 1: 415 SOUTH ST
Address Line 2:
City: WALTHAM
State: MA
Country: UNITED STATES
Postal / Zip: 02453
Degree / Cert: Bachelor Degree
Date of Graduation: 05/12/2001
Attended From: 09/01/1996
Attended To: 12/15/2000
School Name: AMERICAN UNIVERSITY OF THE CARIBBEAN SCHOOL OF MEDICINE
Address Line 1: #1 UNIVERSITY DRIVE
Address Line 2: AT JORDAN ROAD
City: ST. MAARTEN
State:
Country: NETHERLANDS ANTILLES
Postal / Zip:
Degree / Cert: Masters Degree

Date of Graduation:	04/23/2004
Attended From:	09/02/2002
Attended To:	04/23/2004
School Name:	AMERICAN UNIVERSITY OF THE CARIBBEAN SCHOOL OF MEDICINE
Address Line 1:	#1 UNIVERSITY DRIVE
Address Line 2:	AT JORDAN ROAD
City:	ST. MAARTEN
State:	
Country:	NETHERLANDS ANTILLES
Postal / Zip:	
Degree / Cert:	MD
Date of Graduation:	06/03/2006
Attended From:	09/02/2002
Attended To:	06/03/2006

Exam History Data

Exam Type:	USMLE III
Date Passed:	09/01/2007

Additional Education Questions

Have you ever defaulted on any health education loan or scholarship obligation? No.

If you are an international medical graduate, did you perform your core clerkships in the United States? No.

Postgraduate Training

Program Name:	MT. SINAI ELMHURST
Program City:	ELMHURST
Program State or Country:	NEW YORK
Program Type:	INTERNSHIP
Specialty Area:	IM - INTERNAL MEDICINE
Date From:	07/01/2006
Date To:	06/30/2007
Program Approval:	
Did you receive credit?	Yes

Additional Postgraduate Training Questions

Have you ever been dropped, suspended, placed on probation, asked to resign or expelled from any postgraduate training program? **No.**

Was attendance in a postgraduate training program for a period other than the established timeframe or were you required to repeat any of your postgraduate training including classes, test/exams, lectures or any other part of the curriculum? **No.**

Did you take any type of break or leave of absence for any reason during your postgraduate training? (Including maternity/paternity, medical leave or any other type of break or leave.) **No.**

Other Name History

No data entered.

Other State Licenses

License Number:	54488-020
License Type:	MEDICAL DOCTOR
Original Issue Date:	05/12/2010
Date of Expiration:	10/31/2013
Country:	UNITED STATES
State:	WI

Year Began Practice

Year Began Practice:	2011

Faculty Appointment

Do you currently hold a faculty appointment at a medical school? **No.**

Have you had responsibility for graduate medical education within the last 10 years? **No.**

Staff Privileges

Do you currently hold staff privileges in any hospital, health institution, clinic or medical facility? **No.**

Specialty Board Certifications

Are you certified by any specialty board recognized by the American Board of Medical Specialties or specialty board approved by the Florida Board of Medicine? **No.**

Practice Employment

Employment Type:	Employment
Place of Employment:	MT. SINAI ELMHURST HOSPITAL
Address Line 1:	79-01 BROADWAY
Address Line 2:	
City:	ELMHURST
State:	NY
Begin Date:	07/01/2006
End Date:	07/01/2007
Title of Position:	PGY-1 INTERNAL MEDICINE RESIDENT
Employment Type:	Employment
Place of Employment:	OUTCOMES HEALTH INFORMATION SOLUTIONS
Address Line 1:	166 FRONTIER BOULEVARD
Address Line 2:	
City:	STANFORD
State:	KY
Begin Date:	08/01/2007
End Date:	01/15/2009
Title of Position:	MEDICAL FIELD REVIEWER - TRI-STATE
Employment Type:	Employment
Place of Employment:	KINGS COUNTY HOSPITAL CENTER
Address Line 1:	451 CLARKSON AVENUE
Address Line 2:	
City:	BROOKLYN
State:	NY
Begin Date:	02/01/2009
End Date:	01/01/2011
Title of Position:	CLINICAL DOCUMENTATION SPECIALIST
Employment Type:	Employment
Place of Employment:	KNEE PAIN SOLUTIONS CENTER
Address Line 1:	3508 STEWART AVENUE

Address Line 2:	
City:	WAUSAU
State:	WI
Begin Date:	01/24/2011
End Date:	
Title of Position:	GENERAL PRACTICE PHYSICIAN

Additional Employment Questions

Have you ever had employment terminated for cause? No.

DEA Questions

Have you ever been warned or called before the United States Drug Enforcement Administration (DEA)? No.

Have you ever been made an offer to compromise or entered into any arrangement plea, or agreement instead of a federal prosecution for a drug violation regulated by DEA? No.

Have you ever been denied or surrendered a DEA registration? No.

Health History

In the last five years, have you been enrolled in, required to enter into, or participated in any drug or alcohol recovery program or impaired practitioner program for treatment of drug or alcohol abuse that occurred within the past five years? [redacted]

In the last five years, have you been admitted or referred to a hospital, facility or impaired practitioner program for treatment of a diagnosed mental disorder or impairment? [redacted]

During the last five years, have you been treated for or had a recurrence of a diagnosed mental disorder that has impaired your ability to practice medicine within the past five years? [redacted]

In the last five years, have you been treated for or had a recurrence of a diagnosed physical disorder that has impaired your ability to practice medicine? [redacted]

In the last five years, were you admitted or directed into a program for the treatment of a diagnosed substance-related (alcohol/drug) disorder or, if you were previously in such a program, did you suffer a relapse within the last five years? [redacted]

During the last five years, have you been treated for or had a recurrence of a diagnosed substance-related (alcohol/drug) disorder that has impaired your ability to practice medicine within the last five years? [redacted]

Mandatory Continuing Education (CE)

I hereby certify that since June 1, 2002, I have completed a minimum of two (2) hours of Prevention of Medical Errors continuing medical education as defined by s. 456.013(7), Florida Statutes.

Electronic Fingerprinting

I have been provided and read the statement from the Florida Department of Law Enforcement regarding the sharing, retention, privacy and right to challenge incorrect criminal history records and the 'Privacy Statement' document from the Federal Bureau of Investigation.

The Florida Care Provider Background Screening Clearinghouse does not have a record at this time.

Criminal History

Have you ever been convicted of, or entered a plea of guilty, nolo contendere, or no contest to, a crime in any jurisdiction other than a minor traffic offense? No.

Specialty Board Discipline History

Have you ever had any sanctions or final disciplinary actions taken against you by a specialty board other similar national organization? No.

Discipline History

Have you ever had any professional license or license to practice medicine revoked, suspended, placed on probation, received a citation, or other disciplinary action taken in any state, territory or country? No.

Have you ever had any staff privileges denied, suspended, revoked, modified, restricted, or placed on probation, or have you been asked to resign or take a temporary leave of absence or otherwise acted against by any facility? No.

Have you ever been asked, or allowed to resign from any facility instead of disciplinary action or during any pending investigations into your practice? No.

Have you ever had any staff privileges restricted or not renewed by any facility instead of disciplinary action? **No.**

Other Discipline History

Have you had any application for a medical license or professional license denied by any state board or other governmental agency of any state, territory, or country? **No.**

Have you ever been allowed to withdraw an application for medical licensure or professional license for any reason or during a pending investigation in any jurisdiction in lieu of your license being denied? **No.**

Have you ever been notified, invited or required to appear before any licensing agency for a hearing on a complaint of any nature including, but not limited to, a charge or violation of the Medical Practice Act, involving unprofessional or unethical conduct? **No.**

Have you ever been denied or been excluded from Medicare and/or state health care programs? **No.**

Are you currently under investigation in any jurisdiction for an act or offense that would constitute a violation of Section 458.331, Florida Statutes? **No.**

United States Military and/or Public Health

Have you ever been in the United States Military and/or Public Health Service? **No.**

Questions related to Section 456.0635(2), Florida Statutes

Have you been convicted of, or entered a plea of guilty or nolo contendere to, regardless of adjudication, a felony under Chapter 409, F.S. (relating to social and economic assistance), Chapter 817, F.S. (relating to fraudulent practices), Chapter 893, F.S. (relating to drug abuse prevention and control) or a similar felony offense(s) in another state or jurisdiction? **No.**

Have you been convicted of, or entered a plea of guilty or nolo contendere to, regardless of adjudication, a felony under 21 U.S.C. ss. 801-970 (relating to controlled substances) or 42 U.S.C. ss. 1395-1396 (relating to public health, welfare, Medicare and Medicaid issues)? **No.**

Have you ever been terminated for cause from the Florida Medicaid Program pursuant to Section 409.913, Florida Statutes? **No.**

Have you ever been terminated for cause, pursuant to the appeals procedures established by the state, from any other state Medicaid program? **No.**

Are you currently listed on the United States Department of Health and Human Services Office of Inspector General's List of Excluded Individuals and Entities? **No.**

Additional Information Data

Availability for Disaster

Will you be available to provide health care services in special needs shelters or help staff disaster medical assistance teams during times of emergency or major disaster? **Yes.**

Financial Responsibility

I do not practice medicine in the State of Florida.

Liability Claims

Within the last 10 years have you had any liability claim(s) or action(s) for damages for personal injury settled or finally adjudicated in an amount that exceeds $100,000.00? **No.**

Medical Malpractice Question

Have you ever had a judgment entered against you for medical malpractice where the incident(s) of malpractice occurred after November 2, 2004? **No.**

Payment Type Selection

Checking the box below will acknowledge this application is correct and was submitted by you (the applicant) and not a third party. You also agree to comply with all requirements for licensure and renewal.

☑ I state that these statements are true and correct. I recognize that providing false information may result in denial of licensure, disciplinary action against my license, or criminal penalties pursuant to Sections 456.067, 775.083, and 775.084, Florida Statutes. I state that I have read Chapters 456, 458 and

766.301-.316, Florida Statutes and Chapter 64B8, Florida Administrative Code.

I hereby authorize all hospitals, institutions or organizations, my references, personal physicians, employers (past and present), and all governmental agencies and instrumentalities (local, state, federal, or foreign) to release to the Florida Board of Medicine information which is material to my application for licensure.

I have carefully read the questions in the foregoing application and have answered them completely, without reservations of any kind. I state that my answers and all statements made by me herein are true and correct. Should I furnish any false information in this application, I hereby agree that such act constitutes cause for denial, suspension, or revocation of my license to practice Medicine in the State of Florida. If there are any changes to my status or any change that would affect any of my answers to this application I must notify the board within 30 days. I understand that my records are protected under federal and state regulations governing Confidentiality of Mental Health Patient Records and cannot be disclosed without my written consent unless otherwise provided in the regulations. I understand that my records are protected under federal and state regulations governing Confidentiality of Alcohol and Drug Abuse Patient Records, 42CFR Part 2, and cannot be disclosed without my written consent unless otherwise provided in the regulations. I also understand that I may revoke this consent at any time except to the extent that action has been taken in reliance upon it.

Review Page

American University of the Caribbean
School of Medicine

by the authority granted to it by the governments of
Montserrat and the Netherlands Antilles,
and on recommendation of the Faculty, hereby confers upon

Leon Raumer

the degree of

Doctor of Medicine

with all the Rights, Honors and Privileges thereunto appertaining.
Dated this 3rd day of June, 2006
at St. Maarten, Netherlands Antilles

Paul S. Tien
Chancellor

Paul Tsch... M.D.
Chief Academic Officer

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American University of the Caribbean School of Medicine

Transcript of Academic Records

#1 University Drive at Jordan Road • Cupecoy, St. Maarten, Netherlands Antilles

Student Number	Student Name	Citizenship	Sex
084-66-8850 70118	Rawner, Leon	USA	M

Address	Date of Birth	Place of Birth
1359 E 55th Street Brooklyn NY 11234	9/27/1978	Brooklyn, NY

Entrance Date	Graduation Date	Degree Conferred
September 2, 2002	June 3, 2006	DOCTOR OF MEDICINE MASTER OF SCIENCE 23-Apr-04

Course #	Title	Sem Hrs	Grade
September 2002 Semester			
100	Anatomy	10	P
109	Embryology	2	P
112	Biochemistry	6	P
120	Biostatistics	1	P
January 2003 Semester			
208	Cell Biology & Histology	7	P
219	Genetics	3	H
221	Physiology I	5	P
253	Immunology	4	H
May 2003 Semester			
323	Physiology II	5	P
330	Neuroscience	5	P
342	General Pathology	5	P
354	Medical Microbiology	6	H
September 2003 Semester			
415	Pharmacology	4	P
443	Systemic Pathology I	5	P
444	Systemic Pathology II	5	P
462	Medical Psychology	6	P
480	Medical Ethics	1	H
January 2004 Semester			
534	Introduction to Clin. Med.	8	P
548	Clinical Pathology	5	P
591	Biological Basis of Clin.	8	P

Course #	Title	Weeks	Grade
May 2004 Semester:		2 weeks	P
	Medicine (Primary Care)	8 weeks	H
	Medicine		
September 2004 Semester:		4 weeks	H
	Medicine	12 weeks	P
	Surgery		
January 2005 Semester:		6 weeks	P
	Obstetrics/Gynecology	6 weeks	P
	Pediatrics	4 weeks	P
	Psychiatry		
May 2005 Semester:		2 weeks	P
	Psychiatry	4 weeks	H
	Medicine (Emergency)	4 weeks	H
	Medicine (Neurology)		
September 2005 Semester:		4 weeks	H
	Medicine (Renal)	4 weeks	P
	Medicine (Subinternship)	4 weeks	H
	Medicine (Cardiology)		
January 2006 Semester:		4 weeks	H
	Ssurgery (Anesthesiology)	4 weeks	H
	Family Practice		

INTERIM REGISTRAR

KEY: H-HONOR 100 - 90% P-PASS 89-70% F-FAIL 69-0% R-REPEAT W-WITHDRAW

This transcript does not require a raised seal and is printed on white safety paper with fluorescent fibers and a blue colored screened background. The back of this document has an artificial watermark - hold at an angle to view.

A.12

Mount Sinai School of Medicine

of

New York University

in affiliation with

Elmhurst Hospital Center

This is to certify that

Leon Rawner, M.D.

has served in the capacity of

Resident in Internal Medicine

July 1, 2006 ~ June 30, 2007

and that the duties of the position have been faithfully and satisfactorily performed

New York, New York

July 1, 2007

Dean,
Mount Sinai School of Medicine

Chairman,
Mount Sinai School of Medicine

MOUNT SINAI SCHOOL OF MEDICINE

President,
Medical Executive Committee, EHC

Director of Service, EHC

AMES & ROLLINDORF, NY

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Educational Commission for Foreign Medical Graduates

The ECFMG® certifies that

Leon Rawner

has successfully passed the required examinations, satisfied all the requirements of the Commission, and has been awarded this Certificate.

Chair, Board of Trustees

President & Chief Executive Officer

Certificate Number	0-663-635-1
Medical Science	
USMLE Step 1	June 18, 2004
USMLE Step 2 CK	November 18, 2005
Clinical Skills	
USMLE Step 2 CS	October 1, 2005

Date Issued June 9, 2006

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18 March 2013

Leon Rawner, M.D.
615 S. 68th Ave., Apt #3
Wausau, WI 54401
(646) 812-2728

Florida Board of Medicine
4052 Bald Cypress Way,
BIN C-03
Tallahassee, Florida 32399-3253

Dear Sir/Ma'am,

I am writing to supplement my application for medical licensure and respond to information provided on the application. My Online Initial Application ID is 319809.

Under the "Education" section of the online application it states: "International Medical Graduates: Must have completed at least two full progressive years of accredited training in the U.S., Canada or Puerto Rico." However, I understand that I am eligible for licensure by endorsement given my two years of active clinical medical practice in Wisconsin and having met the specific alternative requirements to the two year residency requirement that are set out in the Florida statutes.

Specifically, subsection (1)(a) of Fla. Stat. §458.313 ("Licensure by endorsement; requirements; fees.") states two alternative sets of requirements to obtain a license by endorsement:

> "Has met the qualifications for licensure in s. 458.311(1)(b)-(g) or in s. 458.311(1)(b)-(e) and (g) and (3);"

The quoted language intentionally omits section 311(1)(f) in the second alternative set of requirements. This section 311(1)(f) is the source of the residency rules requiring two years of residency for Foreign Medical Graduates. Instead, the second alternative refers to section 311(3) and the related qualifications therein.

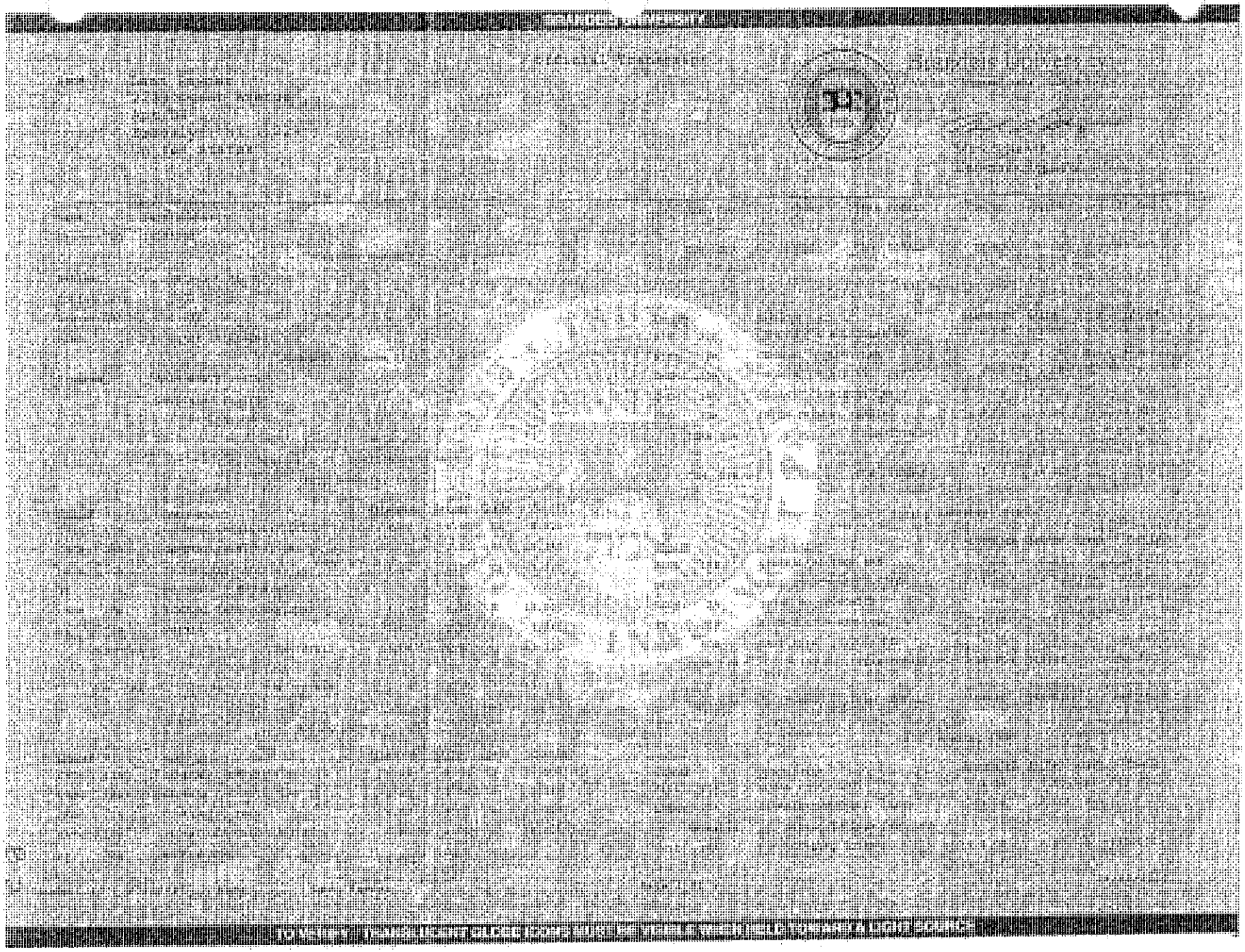
The qualifications in section 311(3) consist of: (i) having a bachelor's degree from an accredited U.S. college, (ii) having studied at a medical school recognized by the WHO, (iii) having completed all of the relevant formal requirements of my foreign medical school, and (iv) having completed an academic year of supervised clinical training in a hospital affiliated with an approved medical school and having passed the U.S. national licensing exams (now the USMLE Step 1, Step 2 and Step 3).

As I meet these requirements, I believe I qualify for licensure by endorsement.

Sincerely,

Leon Rawner, M.D.

Exhibit "B"



(1)

CLINICAL CLERKSHIP

Complete this section if you did not graduate from a school accredited by the Liaison Committee on Medical Education or the American Osteopathic Association and if your clinical clerkship (training) was completed in a country other than where your medical school is located. List all clerkships attended. Please copy and use additional page(s) if required.

UNIVERSITY OF LONDON

Complete name of affiliated university or college where clerkship was performed (Do not abbreviate)

EALING HOSPITAL - NHS TRUST

Complete name of hospital, institution or individual where clerkship was performed(Do not abbreviate)

UXBRIDGE ROAD

Address line 1

SOUTHALL

Address line 2

MIDDLESEX

City

State/Province

ENGLAND

Country

UB1 - 3HW

ZIP/Postal Code

From: 07 Month 2004 Year To: 07 Month 2004 Year PRIMARY CARE Clinical Clerkship Area

---

UNIVERSITY OF LONDON

Complete name of affiliated university or college where clerkship was performed (Do not abbreviate)

EALING HOSPITAL - NHS TRUST

Complete name of hospital, institution or individual where clerkship was performed(Do not abbreviate)

UXBRIDGE ROAD

Address line 1

SOUTHALL

Address line 2

MIDDLESEX

City

State/Province

ENGLAND

Country

UB1 - 3HW

ZIP/Postal Code

From: 07 Month 2004 Year To: 09 Month 2004 Year INTERNAL MED. Clinical Clerkship Area

CLINICAL CLERKSHIP

Complete this section if you did not graduate from a school accredited by the Liaison Committee on Medical Education or the American Osteopathic Association and if your clinical clerkship (training) was completed in a country other than where your medical school is located. List all clerkships attended. Please copy and use additional page(s) if required.

UNIVERSITY OF LONDON

Complete name of affiliated university or college where clerkship was performed (Do not abbreviate).

EALING HOSPITAL - NHS TRUST

Complete name of hospital, institution or individual where clerkship was performed(Do not abbreviate)

UXBRIDGE ROAD

Address line 1

SOUTHALL

Address line 2

MIDDLESEX

City

State/Province

ENGLAND

Country

UB1-3HW

ZIP/Postal Code

From: 10 2009 To: 12 2004 SURGERY

Month Year Month Year Clinical Clerkship Area

UNIVERSITY OF LONDON

Complete name of affiliated university or college where clerkship was performed (Do not abbreviate).

EALING HOSPITAL - NHS TRUST

Complete name of hospital, institution or individual where clerkship was performed(Do not abbreviate)

UXBRIDGE ROAD

Address line 1

SOUTHALL

Address line 2

MIDDLESEX

City

State/Province

ENGLAND

Country

UB1-3HW

ZIP/Postal Code

From: 01 2005 To: 02 2005 OB-GYN

Month Year Month Year Clinical Clerkship Area

(3)

CLINICAL CLERKSHIP

Complete this section if you did not graduate from a school accredited by the Liaison Committee on Medical Education or the American Osteopathic Association and if your clinical clerkship (training) was completed in a country other than where your medical school is located. List all clerkships attended. Please copy and use additional page(s) if required.

UNIVERSITY OF LONDON

Complete name of affiliated university or college where clerkship was performed (Do not abbreviate)

EALING HOSPITAL - NHS TRUST

Complete name of hospital, institution or individual where clerkship was performed (Do not abbreviate)

UXBRIDGE ROAD

Address line 1

SOUTHALL

Address line 2

MIDDLESEX

City

State/Province

ENGLAND

Country

UB1-3HW

ZIP/Postal Code

From: 02 2005 To: 03 2005 PEDIATRICS

Month Year Month Year Clinical Clerkship Area

UNIVERSITY OF LONDON

Complete name of affiliated university or college where clerkship was performed (Do not abbreviate)

EALING HOSPITAL - NHS TRUST

Complete name of hospital, institution or individual where clerkship was performed (Do not abbreviate)

UXBRIDGE ROAD

Address line 1

SOUTHALL

Address line 2

MIDDLESEX

City

State/Province

ENGLAND

Country

UB1-3HW

ZIP/Postal Code

From: 03 2005 To: 05 2005 PSYCHIATRY

Month Year Month Year Clinical Clerkship Area

(4)

CLINICAL CLERKSHIP

Complete this section if you did not graduate from a school accredited by the Liaison Committee on Medical Education or the American Osteopathic Association and if your clinical clerkship (training) was completed in a country other than where your medical school is located. List all clerkships attended. Please copy and use additional page(s) if required.

AMERICAN UNIVERSITY OF THE CARIBBEAN SCHOOL OF MEDICINE

Complete name of affiliated university or college where clerkship was performed (Do not abbreviate)

WYCKOFF HEIGHTS HOSPITAL

Complete name of hospital, institution or individual where clerkship was performed(Do not abbreviate)

374 STOCKHOLM STREET

Address line 1

Address line 2

BROOKLYN — City

NY — State/Province

USA — Country

11237- — ZIP/Postal Code

From: 07 (Month) 2005 (Year) To: 07 (Month) 2005 (Year) EMERGENCY MED. (Clinical Clerkship Area)

AMERICAN UNIVERSITY OF THE CARIBBEAN SCHOOL OF MEDICINE

Complete name of affiliated university or college where clerkship was performed (Do not abbreviate)

WYCKOFF HEIGHTS HOSPITAL

Complete name of hospital, institution or individual where clerkship was performed(Do not abbreviate)

374 STOCKHOLM STREET

Address line 1

Address line 2

BROOKLYN — City

NY — State/Province

USA — Country

11237- — ZIP/Postal Code

From: 08 (Month) 2005 (Year) To: 08 (Month) 2005 (Year) NEUROLOGY (Clinical Clerkship Area)

(5)

CLINICAL CLERKSHIP

Complete this section if you did not graduate from a school accredited by the Liaison Committee on Medical Education or the American Osteopathic Association and if your clinical clerkship (training) was completed in a country other than where your medical school is located. List all clerkships attended. Please copy and use additional page(s) if required.

MOUNT SINAI SCHOOL OF MEDICINE

Complete name of affiliated university or college where clerkship was performed (Do not abbreviate)

ELMHURST HOSPITAL CENTER

Complete name of hospital, institution or individual where clerkship was performed(Do not abbreviate)

79-01 BROADWAY

Address line 1

Address line 2

ELMHURST — City

NY — State/Province

USA — Country

11373- — ZIP/Postal Code

From: 09 (Month) 2005 (Year) To: 09 (Month) 2005 (Year) NEPHROLOGY — Clinical Clerkship Area

---

MOUNT SINAI SCHOOL OF MEDICINE

Complete name of affiliated university or college where clerkship was performed (Do not abbreviate)

ELMHURST HOSPITAL CENTER

Complete name of hospital, institution or individual where clerkship was performed(Do not abbreviate)

79-01 BROADWAY

Address line 1

Address line 2

ELMHURST — City

NY — State/Province

USA — Country

11373- — ZIP/Postal Code

From: 10 (Month) 2005 (Year) To: 10 (Month) 2005 (Year) CARDIOLOGY — Clinical Clerkship Area

(6)

CLINICAL CLERKSHIP

Complete this section if you did not graduate from a school accredited by the Liaison Committee on Medical Education or the American Osteopathic Association and if your clinical clerkship (training) was completed in a country other than where your medical school is located. List all clerkships attended. Please copy and use additional page(s) if required.

AMERICAN UNIVERSITY OF THE CARIBBEAN SCHOOL OF MEDICINE

Complete name of affiliated university or college where clerkship was performed (Do not abbreviate)

LUTHERAN MEDICAL CENTER

Complete name of hospital, institution or individual where clerkship was performed(Do not abbreviate)

150 55TH STREET

Address line 1

Address line 2

BROOKLYN — City

NY — State/Province

USA — Country

11220- — ZIP/Postal Code

From: 11 (Month) 2005 (Year) To: 12 (Month) 2005 (Year) INT. MED SUB-I — Clinical Clerkship Area

---

AMERICAN UNIVERSITY OF THE CARIBBEAN SCHOOL OF MEDICINE

Complete name of affiliated university or college where clerkship was performed (Do not abbreviate)

WYCKOFF HEIGHTS HOSPITAL

Complete name of hospital, institution or individual where clerkship was performed(Do not abbreviate)

374 STOCKHOLM STREET

Address line 1

Address line 2

BROOKLYN — City

NY — State/Province

USA — Country

11237- — ZIP/Postal Code

From: 01 (Month) 2006 (Year) To: 02 (Month) 2006 (Year) ANESTHESIOLOGY — Clinical Clerkship Area

(7)

CLINICAL CLERKSHIP

Complete this section if you did not graduate from a school accredited by the Liaison Committee on Medical Education or the American Osteopathic Association and if your clinical clerkship (training) was completed in a country other than where your medical school is located. List all clerkships attended. Please copy and use additional page(s) if required.

AMERICAN UNIVERSITY OF THE CARIBBEAN SCHOOL OF MEDICINE

Complete name of affiliated university or college where clerkship was performed (Do not abbreviate)

WYCKOFF HEIGHTS HOSPITAL

Complete name of hospital, institution or individual where clerkship was performed(Do not abbreviate)

374 STOCKHOLM STREET

Address line 1

Address line 2

BROOKLYN

City

NY

State/Province

USA

Country

11237-

ZIP/Postal Code

From: 03 2005 To: 03 2005

Month Year Month Year

FAM. MED SUB-I

Clinical Clerkship Area

Complete name of affiliated university or college where clerkship was performed (Do not abbreviate)

Complete name of hospital, institution or individual where clerkship was performed(Do not abbreviate)

Address line 1

Address line 2

City

State/Province

Country

ZIP/Postal Code

From: Month Year To: Month Year

Clinical Clerkship Area

the DataBank

P.O. Box 10832
Chantilly, VA 20153-0832

http://www.npdb-hipdb.hrsa.gov

5500000080756912
Process Date: 03/18/2013
Page: 1 of 1

To: RAWNER, LEON

615 SOUTH 68TH AVE., APT#3

WAUSAU, WI 54401

From: National Practitioner Data Bank / Healthcare Integrity and Protection Data Bank

Re: Response to Your Self-Query

The enclosed information is released by the National Practitioner Data Bank (NPDB) for restricted use under the provisions of Title IV of Public Law 99-660, the Health Care Quality Improvement Act of 1986, as amended and Section 1921 of the Social Security Act and the Healthcare Integrity and Protection Data Bank (HIPDB) for restricted use under the provisions of Section 1128E of the Social Security Act.

Title IV established the NPDB as an information clearinghouse to collect and release certain information related to malpractice payment history and professional competence or conduct of physicians, dentists, and other licensed health care practitioners.

Section 1921 of the Social Security Act, as amended by Section 5(b) of the Medicare and Medicaid Patient and Program Protection Act of 1987, and as amended by the Omnibus Reconciliation Act of 1990, expanded the scope of the NPDB. Section 1921 was enacted to protect program beneficiaries from unfit health care practitioners, and to improve the anti-fraud provisions of Federal and State health care programs. This legislation authorizes the NPDB to collect certain adverse State licensure actions, as well as any negative action or finding that a State licensing authority, peer review organization, or private accreditation organization has concluded against a health care practitioner or health care entity.

Section 1128E of the Social Security Act was established by Section 221 (a) of Public Law 104-191, The Health Insurance Portability and Accountability Act of 1996, as amended. This legislation established the HIPDB to combat fraud and abuse in health care delivery and to improve the quality of patient care . The HIPDB serves as a source of final adverse action information on health care practitioners, providers, and suppliers. The HIPDB collects and releases information related to adverse licensure actions, health care-related convictions and judgments; exclusions from Federal and State health care programs; and other adjudicated actions or decisions.

Regulations governing the NPDB are codified at 45 CFR part 60 and Section 1921 and the HIPDB are codified at 45 CFR part 61. Responsibility for operating the NPDB resides with the U.S. Department of Health and Human Services, Health Resources Services Administration, Division of Practitioner Data Banks. Responsibility for operating the HIPDB resides with the U.S. Department of Health and Human Services, Office of Inspector General, and the Health Resources Services Administration, Division of Practitioner Data Banks.

Reports from the NPDB and HIPDB contain limited summary information and should be used in conjunction with information from other sources in granting privileges, or in making employment affiliation, contracting or licensure decisions. NPDB/HIPDB responses may contain more than one report on a particular incident, if two or more actions were taken as a result of a single incident (e.g., an exclusion from a Federal or State health plan and an adverse licensure action). The NPDB-HIPDB is a flagging system, and a report may be included for a variety of reasons that do not necessarily reflect adversely on the professional competence or conduct of the subject named in the report.

All information received from the NPDB and HIPDB is considered confidential and must be used solely for the purpose for which it was disclosed. ANY PERSON WHO VIOLATES THE CONFIDENTIALITY PROVISIONS AS SPECIFIED IN TITLE IV OF PUBLIC LAW 99-660, AS AMENDED, IS SUBJECT TO A CIVIL MONEY PENALTY OF UP TO $11,000 FOR EACH VIOLATION. Subjects of reports who obtain information about themselves from the NPDB and/or HIPDB are permitted to share that information with anyone they choose.

If you require additional assistance, visit the NPDB-HIPDB web site (http://www.npdb-hipdb.hrsa.gov) or contact the NPDB-HIPDB Customer Service Center at 1-800-767-6732 (TDD: 1-703-802-9395). Information Specialists are available to speak with you weekdays from 8:30 a.m. to 6:00 p.m. (5:30 p.m. on Fridays) Eastern Time. The NPDB-HIPDB Customer Service Center is closed on all Federal holidays.

the DataBank

P.O. Box 10832
Chantilly, VA 20153-0832

http://www.npdb-hipdb.hrsa.gov

5500000080756912
Process Date: 03/18/2013
Page: 1 of 1

RAWNER, LEON - SELF-QUERY RESPONSE

A. SUBJECT IDENTIFICATION INFORMATION (Recipients should verify that subject identified is, in fact, the subject of interest.)

Practitioner Name: RAWNER, LEON
Date of Birth: [redacted] **Gender:** MALE
Organization Name: KNEE PAIN SOLUTIONS CENTER
Organization Type: MEDICAL GROUP/PRACTICE (365)
Work Address: 615 SOUTH 68TH AVE., APT#3, WAUSAU, WI 54401
Social Security Number: [redacted] **DEA:** FR2370269
NPI: 1700105616
License: PHYSICIAN (MD), 54488-020, WI, GENERAL PRACTICE/FAMILY PRACTICE
Professional School(s): BRANDEIS UNIVERSITY (1996)
AMERICAN UNIVERSITY OF THE CARIBBEAN SCHOOL OF MEDICINE (2006)

B. PAYMENT INFORMATION

Credit Card Information: [redacted]
NPDB Charge:
HIPDB Charge:
* Each charge will appear separat
Transaction Date:

C. SUMMARY OF REPORTS ON FILE WITH THE DATA BANK AS OF 03/18/2013

The following report types have been searched:

Medical Malpractice Payment Report(s):	No Reports	Health Plan Action(s):	No Reports
State Licensure Action(s):	No Reports	Professional Society Action(s):	No Reports
Exclusion or Debarment Action(s):	No Reports	DEA/Federal Licensure Action(s):	No Reports
Government Administrative Action(s):	No Reports	Judgment or Conviction Report(s):	No Reports
Clinical Privileges Action(s):	No Reports	Peer Review Organization Action(s):	No Reports

Copies of these reports are enclosed for restricted/limited use as prescribed by statutes listed on the preceeding cover page.

No Reports Found

CONFIDENTIAL DOCUMENT - FOR AUTHORIZED USE ONLY

April 3, 2013

Leon Rawner, M.D.
615 S. 68th Ave.
Apt #3
Wausau, WI 54401

Dear Dr. Rawner:
File # 115677

Thank you for considering Florida for physician licensure. Your application for medical licensure has been received. The application is incomplete for the reasons set out in the attached deficiency notice. Please address these deficiencies as soon as possible to avoid delay in processing your application.

Information received by this office may require additional explanation or documentation to determine licensure eligibility. After all requested documentation is received, your application will be submitted for supervisory review. We will notify you if additional information is required.

Applicants with a history of malpractice, criminal activity, discipline, physical or mental impairment, unfavorable evaluations, or other matters that need explanation may require a personal appearance before the Board of Medicine Credentials Committee for determination of licensure eligibility. If your appearance is required, you will be notified in writing once your application is complete.

You can check the status of your application online at www.FLHealthSource.com

1. Click on Licensee/Provider.
2. Click on Practitioner Login from the left sidebar.
3. Choose your profession from the Profession drop down list.
4. Your user ID is: rawnerle. Your password is: jUx8DE66.
5. Click on "Check Application Status" from left side of page.
6. Click on the listed application.
7. Click on "Supporting Documents".

THIS IS IMPORTANT: Your application will remain incomplete until all deficiencies are completed. In addition, you are required to notify the Board office immediately in writing of any occurrence(s) that would in any way change or affect any answer given in the application or an answer provided in response to any of our direct questions to you.

If I can be of further assistance, contact me at (850) 245-4131 ext. 3515 or e-mail at tehelia_mcglockton@doh.state.fl.us.

Sincerely,

Tehelia Mcglockton
Regulatory Specialist I

Enclosure(s)

Exhibit "C"

Leon Rawner, M.D. Date: April 3, 2013

REMINDER: Chapter 456.013(1)(a), Florida Statutes, provides that an incomplete application shall expire one year after initial filing with the department.

YOUR APPLICATION'S EXPIRATION DATE IS March 12, 2014

APPLICATION SUBMITTED REMAINS DEFICIENT FOR LACK OF THE FOLLOWING:

1. We await the background check results from the fingerprinting process. (FDLE/FBI processes this information). Please see the attached instructions regarding our new fingerprinting.

2. Please submit a copy of your medical school diploma.

3. If applicable, please submit an acceptable translation of your medical school transcripts and medical school diploma, prepared according to the Board's criteria.

4. The inquiry you mailed to your medical school has not been received.

5. Please submit a copy of your ECFMG certificate.

6. Your ECFMG status report, directly from the ECFMG, has not been received.

7. We await your FLEX/USMLE/SPEX/National Board exam scores, direct from the Federation of State Medical Boards, which must be requested by the applicant.

8. We await your postgraduate evaluation form direct from Mt. Sinai Elmhurst; this is regarding your training. This form needs to be completed and signed by the current Program Director and returned to our office.

9. We are in receipt of your correspondence regarding the licensure eligibility; however the Florida Statute that you are referring to pertains to Fifth Pathway applicants, which also have to provide proof of completion of 2 years of ACGME approved postgraduate training. **Please provide proof of 2 years of postgraduate training. Please have your Program Director submit a letter addressed to the Florida Board of Medicine, stating that you have successfully completed 2 years of postgraduate training and list the dates of training.**

10. Please submit both, the National Practitioner Data Bank (NPDB) report and the Healthcare Integrity Protection Data Bank (HIPDB) report to our office. You may contact the NPDB at 1-800-767-6732 to obtain this information.

11. We await the completion and receipt of your FCVS packet direct from the Federation.

If I can be of any assistance, please contact me at (850) 245-4131 ext. 3515, fax me at (850) 412-1298 or email me at tehella_mcglockton@doh.state.fl.us. The Florida Board of Medicine has assigned **115677** as your **tracking number**. Please indicate this number if you leave a message, and try to ensure that other sources include it on their communications to us as well.

C-2

Disregard all information in the paper application packet regarding fingerprinting!

If you anticipate having your fingerprints received by the Board office after January 1, 2013 do not use a paper fingerprint card. You must use the electronic process described in the following pages and must send the last page to the Board office.

If you have not sent in your application you may reduce the application fee by $43.00.

The Livescan service provider will charge you directly when you submit your fingerprints at the Livescan service provider's place of business.

Effective January 1, 2013, applicants for initial licensure who are required to submit a criminal history background check must use a LiveScan service provider to submit their prints electronically for a criminal history background check. Applicants who are fingerprinted after January 1, 2013 will have their prints retained by the Florida Department of Law Enforcement. DOH will not accept fingerprint cards after January 1, 2013. It is important to use the correct Originating Agency Identification (ORI) when submitting fingerprints. Because of this change, the current ORI numbers will no longer be in effect after December 31, 2012.

Applicants for initial licensure, whose application is received on or after January 1, 2013, for those professions licensed under chapters 458 (medical doctors), 459 (osteopathic medicine), 460 (chiropractic medicine), 461 (podiatric medicine), 464 (nursing and certified nursing assistants), or 465.022 (pharmacies) are required to submit fingerprints electronically to the Florida Department of Law Enforcement and the prints will be retained. All costs for conducting a criminal history background screening are borne by the applicant.

Electronic Fingerprinting

Applicants can use any LiveScan service provider that has been approved by the Florida Department of Law Enforcement to submit their fingerprints to the Department. Please ensure that the ORI number is provided to the service provider when you submit your fingerprints. If you do not provide an ORI number or if you provide an incorrect ORI number to the service provider, the board office will not receive your fingerprint results. The applicant is fully responsible for selecting the service provider and ensuring submission of the prints to the Department.

For more information, FAQs and a list of all approved Livescan service providers please visit our website at: http://www.doh.state.fl.us/mqa/background.html.

Confirmation of Receipt

Name: _____ File # (if known) _____

Profession: _____ Date of Birth _____
(MM/DD/YYYY)

Other last names: _____

I have been provided and read the statement from the Florida Department of Law Enforcement regarding the sharing, retention, privacy and right to challenge incorrect criminal history records and the "Privacy Statement" document from the Federal Bureau of Investigation.

☐ Yes ☐ No

Signature: _____ Date: _____
(MM/DD/YYYY)

Please send this form with your application and fees to:

Department of Health/HMQAM
P.O. Box 6330
Tallahassee, FL 32314-6330

If you send this form separate from your application please mail it to:

Department of Health
Medical Quality Assurance/Board of Medicine
4052 Bald Cypress Way
Bin # C03
Tallahassee, FL 32399-3253

Please remember if you have not sent in your application you may reduce the application fee by $43.00

May 21st, 2013

Tehelia McGlockton
Regulatory Specialist I
Department of Health (DOH) | Division of Medical Quality Assurance (MQA)
Fax: 850-412-1298, Number of Pages: 2

RE: Application Number 115677 [Please save or print this email/fax to go into my record]

Hi Tehelia,

I received your email today. In response to your request regarding deficiencies in my application, please keep this response for your records.

1. **Please submit a copy of your undergraduate degree.**

   I am including a copy of my undergraduate diploma in this correspondence. Please note that my undergraduate degree is also evidenced by the transcript I submitted as part of my application as requested previously.

2. **Please submit a copy of the certificate of completion of an academic year of supervised clinical training that was affiliated with a medical school approved by the Council on Medical Education of the American Medical Association. Please note that this is not the same as a residency that is approved by the ACGME (Accreditation Council on Graduate Medical Education).**

   My medical school does not issue certificates for completion of supervised clinical training, however, as evidenced by the FCVS materials I submitted as part of my application as requested previously, I did complete an academic year of supervised clinical training with hospitals affiliated with medical schools approved by the Council on Medical Education of the American Medical Association. This is separate from my one year of ACGME approved residency. The supervised clinical training I completed is also a requirement in order to graduate from my medical school and completion of the required rotations and the grades I received for each rotation is listed on my medical school transcript. I have taken the liberty of restating below each hospital where I performed the one year of supervised clinical rotations and in brackets I have included the medical school affiliation that was approved by the Council on Medical Education of the American Medical Association.

   - **Wyckoff Heights Medical Center**
     [Academic Affiliate of Weill Medical College of Cornell University]
     374 Stockholm Street
     Brooklyn, NY 11237
     Tel: (718) 963-7272
     Completed Supervised Clinical Training In: EMERGENCY MEDICINE, NEUROLOGY, ANESTHESIOLOGY, and FAMILY MEDICINE.

   - **Lutheran Medical Center**
     [Academic Affiliate of the State University of New York Health Science Center College of Medicine]
     150 55th St.
     Brooklyn, NY 11220
     Tel: (718) 630-7000
     Completed Supervised Clinical Training In: INTERNAL MEDICINE (SUB-I).

   - **Elmhurst Hospital Center**
     [Academic Affiliate of Mt. Sinai School of Medicine]
     79-01 Broadway Elmhurst, NY 11373
     Tel: (718) 334-4000
     Completed Supervised Clinical Training In: NEPHROLOGY, CARDIOLOGY.

Sincerely,
Leon Rawner, M.D.
Phone: 646-812-2728 / Fax: 866-624-2513

Exhibit "D"

D-1

By the Commonwealth of
the Faculty, the Trustees of

Brandeis University

have conferred on

Leon Rayner

the degree of

Bachelor of Science

and all the rights and privileges thereunto appertaining.
In witness thereof, they have caused this diploma
duly signed and countersigned, to be sealed with the seal of the University.

Issued at Brandeis University, Waltham, Massachusetts
on the twenty-third day of May, two thousand and one.

President

Secretary

Dean of Faculty

D-3

FLORIDA | Board *of* Medicine

Rick Scott
Governor
John H. Armstrong, MD, FACS
Surgeon General & Secretary

Chairman
Zachariah P. Zachariah, MD
Fort Lauderdale, Florida

Members
James W. Orr, MD
Fort Myers, Florida
Vice-Chair

Nabil El Sanadi, MD
Ft. Lauderdale, Florida

Fred Bearison, MD
Valrico, Florida

Magdalena H. Averhoff, MD
Miami, Florida

Brigitte Goersch
Orlando, Florida

Onelia G. Lage, MD
Miami, Florida

Bradley Levine
Boca Raton, Florida

Donald E. Mullins
Orlando, Florida

Enrique Ginzburg, MD
Miami, Florida

Merle A. Stringer, MD
Panama City, Florida

George Thomas, MD
Bradenton, Florida

Sarvam TerKonda, MD
Jacksonville, Florida

Bernardo Fernandez, MD
Davie, Florida

Executive Director
Allison M. Dudley, J.D.

June 26, 2013

Leon Rawner, M.D.
615 S. 68th Ave., Apt. #3
Wausau, WI 54401

Dear Dr. Rawner:

This is in further reference to your Endorsement application.

Please be advised that you are required to make a personal appearance before the Credentials Committee of the Board of Medicine to discuss:

- **Failure to meet the training requirement pursuant to section 458.313(1)(a), 458.311(f)3.c., Florida Statutes.**
- **Failure to complete an academic year of supervised clinical training pursuant to section 458.313(1)(a), 458.311(3)(d), Florida Statutes.**

In addition, the Committee may inquire into any other issues relating to your application and eligibility for licensure.

Date:	Thursday, August 1, 2013
Time:	8:00 a.m.
Location:	Hilton Deerfield Beach/Boca Raton, 100 Fairway Drive, Deerfield Beach, Florida 33441 (954) 427-7700

The meeting room will be posted in the lobby of the Hotel. (FYI- Subject to availability, a block of rooms is available for the public attending the Dept. of Health – Florida Board of Medicine's meeting. The rate is $99.00 a night; Cutoff date is July 10, 2013)

Additionally, the Committee's recommendation on your application for licensure will be presented to the full Board of Medicine, August 2-3, 2013 for final action. You are not required to attend the full board meeting.

Thank you for your continued cooperation. Should you have any questions regarding this matter, please feel free to contact me. This is your first scheduled appearance.

Sincerely,

Chandra Prine

Chandra Prine
Program Operations Administrator

*** 456.013(3)(c) In considering applications for licensure, the board, or the department when there is no board, may require a personal appearance of the applicant. If the applicant is required to appear, the time period in which a licensure application must be granted or denied shall be tolled until such time as the applicant appears. However, if the applicant fails to appear before the board at either of the next two regularly scheduled board meetings, or fails to appear before the department within 30 days if there is no board, the application for licensure shall be denied.**

4052 Bald Cypress Way, Bin C03
Tallahassee, Florida 32399-3253
Phone: (850) 245-4131 • Fax: (850) 488-0596
http://www.FLBoardofMedicine.gov

Exhibit "E"

Division of Medical Quality Assurance
MQA
Florida HEALTH

1501
File #115677
PM

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK *Angel Sanders*
DATE 8/22/2013

STATE OF FLORIDA
BOARD OF MEDICINE

IN RE: THE APPLICATION FOR
LICENSURE OF

LEON RAWNER, M.D.

_____/

NOTICE OF INTENT TO DENY LICENSURE

This matter came before the Credentials Committee of the Florida Board of Medicine at a duly-noticed public meeting on August 1, 2013, in Deerfield Beach, Florida, and the full Board of Medicine on August 2, 2013, in Deerfield Beach, Florida. The Applicant, Leon Rawner M.D., was present at the Credentials Committee meeting and was represented by Amy W. Shrader, Esquire.

The application file reveals that the Applicant does not qualify for licensure by endorsement because Dr. Rawner does not meet the requirements of Section 458.313(1)(a), Florida Statutes, which provides that each applicant meet the qualifications for licensure in Section 458.311(1)(b)-(g) or in Section 458.311(1)(b)-(e) and (g) and (3), Florida Statutes.

With respect to whether the Applicant meets Section 458.311(1)(b)-(g), Florida Statutes, the application file reveals that Dr. Rawner fails to meet the postgraduate training requirements of Section 458.311(1)(f)3.c., Florida Statutes. Regarding subsection 458.311(1)(f)3., Dr. Rawner has met the requirements of subpart (1)(f)3.a. because he is a graduate of an allopathic foreign medical school which has not been certified pursuant to Section 458.314, Florida Statutes, and he has met the requirements of subpart (1)(f)3.b. because he has had his medical credentials evaluated by the Educational Commission for Foreign Medical Graduates (ECFMG), holds an active, valid certificate issued by the ECFMG, and has passed the ECFMG examination. Dr.

Exhibit "F"

F-1

Rawner, however, fails to meet subpart (1)(f)3.c., because he has not completed an approved residency or fellowship of at least two years in one specialty area. This statutory provision requires that to be acceptable, the fellowship experience and training must be counted toward regular or subspecialty certification by a board recognized and certified by the American Board of Specialties.

With respect to whether the Applicant meets Section 458.311(1)(b)-(e) and (g) and (3), Florida Statutes, the application file reveals that Dr. Rawner fails to meet subsection (3) for the reasons set forth below. Subsection (3) provides:

> Notwithstanding the provisions of subparagraph (1)(f)3., a graduate of a foreign medical school need not present the certificate issued by the Educational Commission for Foreign Medical Graduates or pass the examination utilized by that commission if the graduate:
> (a) Has received a bachelor's degree from an accredited United States college or university.
> (b) Has studied at a medical school which is recognized by the World Health Organization.
> (c) Has completed all of the formal requirements of the foreign medical school, except the internship or social service requirements, and has passed part I of the National Board of Medical Examiners examination or the Educational Commission for Foreign Medical Graduates examination equivalent.
> (d) Has completed an academic year of supervised clinical training in a hospital affiliated with a medical school approved by the Council on Medical Education of the American Medical Association and upon completion has passed part II of the National Board of Medical Examiners examination or the Educational Commission for Foreign Medical Graduates examination equivalent.

First, Subsection (3) does not pertain to Dr. Rawner, because he *has* obtained a certificate issued the Educational Commission for Foreign Medical Graduates (ECFMG). Second, subpart (3)(c) provides in relevant part that the applicant "has completed all of the formal requirements of the foreign medical school, *except the internship or social service requirements,* and passed certain examinations. Subpart (3)(c) is inapplicable to Dr. Rawner, because the application file reveals that he completed *all requirements* of the foreign medical school and there are no outstanding or

F-2

pending internship or social service requirements. The application file demonstrates that Dr. Rawner graduated in June, 2006, with a degree as a Doctor of Medicine from the American University of the Caribbean School of Medicine. Third, Dr. Rawner has not demonstrated that he meets the requirements of subpart (3)(d) that he complete an academic year of supervised clinical training in a hospital affiliated with a medical school approved by the Council on Medical Education of the American Medical Association.

Based on the foregoing, the Board finds that the Applicant has not demonstrated that he meets the requirements for licensure by endorsement set forth in Section 458.313(1)(a), Florida Statutes.

It is therefore **ORDERED** that the application for licensure be **DENIED**.

The Board will allow the Applicant **fourteen (14)** days from the filing date of this Notice of Intent to Deny to withdraw his application for licensure by endorsement. If the Applicant wishes to withdraw his application, written notification of the withdrawal of the application should be sent to Allison Dudley, J.D., Executive Director, Board of Medicine, 4052 Bald Cypress Way, Bin C-03, Tallahassee, FL 32399-3253 or by email to Allison_Dudley@doh.state.fl.us.

This Order shall become effective upon filing with the Clerk of the Department of Health.

DONE AND ORDERED this 21st day of May, 2013.

BOARD OF MEDICINE

Allison M. Dudley, J.D., Executive Director
For Zachariah P. Zachariah, M.D., Chair

F-3

NOTICE OF RIGHT TO HEARING

This notice constitutes final agency action if no request for a hearing is received by the Board on or before the twenty-first day after the applicant's receipt of the notice. The applicant may request a hearing by filing an appropriate petition with the Executive Director of the Board at 4052 Bald Cypress Way, Bin #C-03, Tallahassee, Florida 32399-3253. The applicant may petition for a hearing involving disputed issues of material fact before an administrative law judge pursuant to Section 120.57 (1), Florida Statutes, or for a hearing not involving disputed issues of material fact pursuant to Section 120.57 (2), Florida Statutes.

A petition for a hearing involving disputed issues of material fact must contain information required by Rule 28-106.201, Florida Administrative Code, ***including a statement of all disputed issues of material fact.*** The Board may refer a petition to the Division of Administrative Hearings for assignment of an administrative law judge only if the petition is in substantial compliance with the rule requirements. A petition for a proceeding not involving disputed issues of material fact must contain information required by Rule 28.106.301, Florida Administrative Code, including a concise statement of the ultimate facts alleged, as well as the rules and statutes which entitle petitioner to relief.

In accordance with Section 120.573, Florida Statutes, mediation is not available.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by **Certified U.S. Mail** to **Leon Rawner, M.D.**, 615 S. 68TH Ave., Apt. #3, Wausau, WI 54401, and **Amy W. Shrader, Esq.**, Gray Robinson, 301 S. Bronough St., Ste. 600, Tallahassee, FL 32301-1724; and by interoffice mail to **Donna C. McNulty**, Senior Assistant Attorney General, Office of the Attorney General, PL-01, The Capitol, Tallahassee, Florida 32399-1050; this 22nd day of August, 2013

Angel Sanchez

Deputy Agency Clerk

Leon Rawner, M.D.
7012 3050 0002 3881 1591

Amy W. Shrader, Esq.
7012 3050 0002 3881 1607

F-4

1501
File # 115677
PM

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK Angel Sanders
DATE OCT 22 2013

STATE OF FLORIDA
BOARD OF MEDICINE

IN RE: THE APPLICATION FOR
LICENSURE OF

LEON RAWNER, M.D.

_____/

AMENDED NOTICE OF INTENT TO DENY LICENSURE

This matter originally came before the Credentials Committee of the Florida Board of Medicine at a duly-noticed public meeting on August 1, 2013, in Deerfield Beach, Florida, and the full Board of Medicine (Board) on August 2, 2013, in Deerfield Beach, Florida. The Applicant, Leon Rawner M.D., was present at that Credentials Committee meeting and was represented by Amy W. Schrader, Esquire.

On August 22, 2013, a Notice of Intent to Deny Licensure was filed in this matter. Dr. Rawner timely filed a Petition for Administrative Hearing (Petition). Upon review of the Petition and consideration of the issues discussed therein, this matter was presented for reconsideration to the Credentials Committee at a duly-noticed public meeting on October 3, 2013, in Orlando, Florida, and the full Board of Medicine on October 4, 2013, in Orlando, Florida. Dr. Rawner was represented by Amy W. Schrader, Esquire, at the Credentials Committee meeting. The Credentials Committee voted to reconsider this matter based on the issues presented in the Petition.

Based on the Petition, Dr. Rawner's application file, the applicable statutes, and discussion of the matter and otherwise being advised in the premises, the Board issues this Amended Notice of Intent to Deny as follows.

Exhibit "G"

The application file reveals that the Applicant does not qualify for licensure by endorsement because Dr. Rawner does not meet the requirements of Section 458.313(1)(a), Florida Statutes, which provides that each applicant meet the qualifications for licensure in Section 458.311(1)(b)-(g) or in Section 458.311(1)(b)-(e) and (g) and (3), Florida Statutes.

With respect to whether the Applicant meets Section 458.311(1)(b)-(g), Florida Statutes, the application file reveals that Dr. Rawner fails to meet the postgraduate training requirements of Section 458.311(1)(f)3.c., Florida Statutes. Regarding subsection 458.311(1)(f)3., Dr. Rawner has met the requirements of subpart (1)(f)3.a. because he is a graduate of an allopathic foreign medical school which has not been certified pursuant to Section 458.314, Florida Statutes, and he has met the requirements of subpart (1)(f)3.b. because he has had his medical credentials evaluated by the Educational Commission for Foreign Medical Graduates (ECFMG), holds an active, valid certificate issued by the ECFMG, and has passed the ECFMG examination. Dr. Rawner, however, fails to meet subpart (1)(f)3.c., because he has not completed an approved residency or fellowship of at least two years in one specialty area. This statutory provision requires that to be acceptable, the fellowship experience and training must be counted toward regular or subspecialty certification by a board recognized and certified by the American Board of Specialties.

With respect to whether the Applicant meets Section 458.311(1)(b)-(e) and (g) and (3), Florida Statutes, the application file reveals that Dr. Rawner fails to meet subsection (3) for the reasons set forth below. Subsection (3) provides:

> Notwithstanding the provisions of subparagraph (1)(f)3., a graduate of a foreign medical school need not present the certificate issued by the Educational Commission for Foreign Medical Graduates or pass the examination utilized by that commission if the graduate:
> (a) Has received a bachelor's degree from an accredited United States college or university.

G·2

(b) Has studied at a medical school which is recognized by the World Health Organization.
(c) Has completed all of the formal requirements of the foreign medical school, except the internship or social service requirements, and has passed part I of the National Board of Medical Examiners examination or the Educational Commission for Foreign Medical Graduates examination equivalent.
(d) Has completed an academic year of supervised clinical training in a hospital affiliated with a medical school approved by the Council on Medical Education of the American Medical Association and upon completion has passed part II of the National Board of Medical Examiners examination or the Educational Commission for Foreign Medical Graduates examination equivalent.

Subpart (3)(c) provides in relevant part that the applicant "has completed all of the formal requirements of the foreign medical school, *except the internship or social service requirements,* and passed certain examinations. A plain reading of this subpart is that the foreign medical school has an internship or social service requirement and that the internship or social service requirement has not been completed. The application file demonstrates that Dr. Rawner graduated in June, 2006, with a degree of Doctor of Medicine from the American University of the Caribbean School of Medicine. Thus, subpart (3)(c) is inapplicable to Dr. Rawner, because the application file reveals that he completed *all of the formal requirements* of the foreign medical school and there are no outstanding or pending internship or social service requirements.

Based on the foregoing, the Board finds that the Applicant has not demonstrated that he meets the requirements for licensure by endorsement set forth in Section 458.313(1)(a), Florida Statutes.

It is therefore **ORDERED** that the application for licensure be **DENIED.**

The Board will allow the Applicant **fourteen (14)** days from the filing date of this Notice of Intent to Deny to withdraw his application for licensure by endorsement. If the Applicant wishes to withdraw his application, written notification of the withdrawal of the application should be sent to Allison Dudley, J.D., Executive Director, Board of Medicine, 4052 Bald

Cypress Way, Bin C-03, Tallahassee, FL 32399-3253 or by email to Allison_Dudley@doh.state.fl.us.

This Order shall become effective upon filing with the Clerk of the Department of Health.

DONE AND ORDERED this 21st day of October, 2013.

BOARD OF MEDICINE

Allison M. Dudley, J.D., Executive Director
For Zachariah P. Zachariah, M.D., Chair

NOTICE OF RIGHT TO HEARING

This notice constitutes final agency action if no request for a hearing is received by the Board on or before the twenty-first day after the applicant's receipt of the notice. The applicant may request a hearing by filing an appropriate petition with the Executive Director of the Board at 4052 Bald Cypress Way, Bin #C-03, Tallahassee, Florida 32399-3253. The applicant may petition for a hearing involving disputed issues of material fact before an administrative law judge pursuant to Section 120.57 (1), Florida Statutes, or for a hearing not involving disputed issues of material fact pursuant to Section 120.57 (2), Florida Statutes.

A petition for a hearing involving disputed issues of material fact must contain information required by Rule 28-106.201, Florida Administrative Code, ***including a statement of all disputed issues of material fact.*** The Board may refer a petition to the Division of Administrative Hearings for assignment of an administrative law judge only if the petition is in substantial compliance with the rule requirements. A petition for a proceeding not involving disputed issues of material fact must contain information required by Rule 28.106.301, Florida Administrative Code, including a concise statement of the ultimate facts alleged, as well as the rules and statutes which entitle petitioner to relief.

In accordance with Section 120.573, Florida Statutes, mediation is not available.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by **Certified U.S. Mail** to **Leon Rawner, M.D.,** 615 S. 68TH Ave., Apt. #3, Wausau, WI 54401, and **Amy W. Schrader, Esq.,** Gray Robinson, 301 S. Bronough St., Ste. 600, Tallahassee, FL 32301-1724; and by interoffice mail to **Donna C. McNulty,** Senior Assistant Attorney General, Office of the Attorney General, PL-01, The Capitol, Tallahassee, Florida 32399-1050; this 22nd day of October, 2013.

Angel Sanders

Deputy Agency Clerk

Leon Rawner, M.D.

7012 3050 0002 3881 0600

Amy W. Schrader, Esq.

7012 3050 0002 3881 0617

G-5

AMERICAN UNIVERSITY OF THE CARIBBEAN

P.O. BOX 490, MONTSERRAT, WEST INDIES • TELEPHONE 2213

NOTE

SCHOOL OF MEDICINE

PLEASE RETURN EVALUATION FORMS TO:
OFFICE OF CLINICAL STUDENT AFFAIRS
c/o Medical Education Information Office
901 Ponce De Leon Blvd., Suite #401
Coral Gables, FL 33134-3036 U.S.A.
Phone: (305) 446-0600, Fax: (305) 444-6791

CLINICAL CLERKSHIP EVALUATION REPORT

Student's Name LEON RAWNER
Hospital Wyckoff Medical Center
City, State/Country Brooklyn, NY

EXACT DATES
Start 7/4/05
End 7/29/05
Clerkship E.R.

	SUPERIOR	ABOVE AVERAGE	AVERAGE	BELOW AVERAGE	FAILURE
1. H & P		✓			
2. Clinical Knowledge		✓			
3. Clinical Presentations	✓				
4. Enthusiasm	✓				
5. Attendance	✓				
6. Inter-personal Relations	✓				
7. Professional Appearance	✓				

NARRATIVE COMMENTS:
Excellent student. No doubt will be excellent resident.

8. Overall Evaluation — (SUPERIOR) ABOVE AVERAGE AVERAGE BELOW AVERAGE FAILURE

9. Without regard to scholastic ability, rate the student on the degree of human qualities and maturity as a future physician: (SUPERIOR) ABOVE AVERAGE AVERAGE BELOW AVERAGE FAILURE

H. EICHENSTEIN, M.D.
LIC# 174366

X Evaluator's Name (Print)
X Evaluator's Signature
8/23/05
Date Signed

E. KENNETH FREIBERG, D.O.

Program Director (Print)
Director's Signature and Institutional Seal
9/6/05
Date Signed

received 8/29/05 CR

Exhibit "H"

AMERICAN UNIVERSITY OF THE CARIBBEAN

P.O. BOX 400, MONTSERRAT, WEST INDIES • TELEPHONE 2213

NOTE

SCHOOL OF MEDICINE

PLEASE RETURN EVALUATION FORMS TO:
OFFICE OF CLINICAL STUDENT AFFAIRS
c/o Medical Education Information Office
901 Ponce De Leon Blvd., Suite #401
Coral Gables, FL 33134-3036 U.S.A.
Phone: (305) 446-0600, Fax: (305) 444-6791

CLINICAL CLERKSHIP EVALUATION REPORT

Student's Name LEON RAWNER
Hospital Wyckoff Medical Center
City, State/Country Brooklyn, NY

EXACT DATES
Start 8/1/05
End 8/26/05
Clerkship Neurology

	SUPERIOR	ABOVE AVERAGE	AVERAGE	BELOW AVERAGE	FAILURE
1. H & P		X			
2. Clinical Knowledge		X			
3. Clinical Presentations		X			
4. Enthusiasm	X				
5. Attendance	X				
6. Inter-personal Relations	X				
7. Professional Appearance	X				

NARRATIVE COMMENTS:

8. Overall Evaluation — (SUPERIOR) ABOVE AVERAGE AVERAGE BELOW AVERAGE FAILURE

9. Without regard to scholastic ability, rate the student on the degree of human qualities and maturity as a future physician: — (SUPERIOR) ABOVE AVERAGE AVERAGE BELOW AVERAGE FAILURE

Naveen Goyal, MD
Evaluator's Name (Print)

N Goyal MD
Evaluator's Signature

10/7/05
Date Signed

E. KENNETH FREIBERG, D.O.
Program Director (Print)

E Kenn Freiberg
Director's Signature and Institutional Seal

10/13/05
Date Signed

received 10/14/05 LC

H-2

AMERICAN UNIVERSITY OF THE CARIBBEAN

P.O. BOX 400, MONTSERRAT, WEST INDIES • TELEPHONE 2219

NOTE

SCHOOL OF MEDICINE

PLEASE RETURN EVALUATION FORMS TO:
OFFICE OF CLINICAL STUDENT AFFAIRS
c/o Medical Education Information Office
901 Ponce De Leon Blvd., Suite #401
Coral Gables, FL 33134-3036 U.S.A.
Phone: (305) 446-0600, Fax: (305) 444-6791

CLINICAL CLERKSHIP EVALUATION REPORT

Student's Name: Leon Rawner
Hospital: Elmhurst Hospital Center
City, State/Country: Elmhurst, NY 11373

EXACT DATES
Start: 9/5/05
End: 9/30/05
Clerkship: Renal

	SUPERIOR	ABOVE AVERAGE	AVERAGE	BELOW AVERAGE	FAILURE
1. H & P		✓			
2. Clinical Knowledge	✓				
3. Clinical Presentations	✓				
4. Enthusiasm	✓				
5. Attendance	✓				
6. Inter-personal Relations	✓				
7. Professional Appearance	✓				

NARRATIVE COMMENTS:
Outstanding work. Knowledge and clinical skills were excellent. Able to assess patients with real excellence (gave beautiful review on 11th floor). Very enthusiastic & all respect. Work is really excellent. Manner is excellent as well.

8. Overall Evaluation — SUPERIOR (circled) | ABOVE AVERAGE | AVERAGE | BELOW AVERAGE | FAILURE

9. Without regard to scholastic ability, rate the student on the degree of human qualities and maturity as a future physician:
SUPERIOR (circled) | ABOVE AVERAGE | AVERAGE | BELOW AVERAGE | FAILURE

Joseph Weber MD
Evaluator's Name (Print)

Joseph Weber MD Assoc Director of Medicine
Program Director (Print)

Evaluator's Signature

Director's Signature and Institutional Seal

9/27/05
Date Signed

9/27/05
Date Signed

H-3

AMERICAN UNIVERSITY OF THE CARIBBEAN

P.O. BOX 400, MONTSERRAT, WEST INDIES • TELEPHONE 2213

SCHOOL OF MEDICINE

NOTE

PLEASE RETURN EVALUATION FORMS TO:
OFFICE OF CLINICAL STUDENT AFFAIRS
c/o Medical Education Information Office
901 Ponce De Leon Blvd., Suite #401
Coral Gables, FL 33134-3036 U.S.A.
Phone: (305) 446-0600, Fax: (305) 444-6791

CLINICAL CLERKSHIP EVALUATION REPORT

Student's Name: Leon Rawner
Hospital: Elmhurst Hospital Center
City, State/Country: Elmhurst, NY 11373

EXACT DATES
Start: 10/03/05
End: 10/28/05
Clerkship: Cardiology

	SUPERIOR	ABOVE AVERAGE	AVERAGE	BELOW AVERAGE	FAILURE
1. H & P		✓			
2. Clinical Knowledge		✓			
3. Clinical Presentations		✓			
4. Enthusiasm		✓			
5. Attendance	✓				
6. Inter-personal Relations		✓			
7. Professional Appearance	✓				

NARRATIVE COMMENTS:

LEON SHOWED GREAT INTEREST AND PARTICIPATED VERY ACTIVELY IN OUR CARDIOLOGY WORK. HIS KNOWLEDGE BASE WAS EXCELLENT AND IT WAS CLEAR THAT HE ENJOYED THE MOTIVATION. OUR DIVISION ENJOYED WORKING WITH HIM.

8. Overall Evaluation — SUPERIOR | (ABOVE AVERAGE) | AVERAGE | BELOW AVERAGE | FAILURE

9. Without regard to scholastic ability, rate the student on the degree of human qualities and maturity as a future physician:

(SUPERIOR) | ABOVE AVERAGE | AVERAGE | BELOW AVERAGE | FAILURE

DAVID RUBINSTEIN
Evaluator's Name (Print)

Evaluator's Signature

10/31/05
Date Signed

DAVID RUBINSTEIN
Program Director (Print)

Director's Signature and Institutional Seal

10/31/05
Date Signed

H-4

AMERICAN UNIVERSITY OF THE CARIBBEAN

SCHOOL OF MEDICINE

OFFICE OF CLINICAL STUDENT AFFAIRS • MEDICAL EDUCATION INFORMATION OFFICE, INC.
901 PONCE DE LEON BLVD., SUITE 401 • CORAL GABLES, FL 33134
Tel.: 305-446-0600 • Fax: 305-444-6791 • www.aucmed.edu

PROVIDING QUALITY MEDICAL EDUCATION SINCE 1978

PLEASE RETURN EVALUATION FORMS TO ABOVE ADDRESS:

CLINICAL CLERKSHIP EVALUATION REPORT

Student's Name: Leon Parker

Hospital: Lutheran Medical Center

City, State, Country: 150 55th Street, Brooklyn, N.Y. 11220-9979, Attn: Medical Education

EXACT DATES

Start: 11/21/2005

End: 12/16/2005

Clerkship: Med Sub I

	SUPERIOR	ABOVE AVERAGE	AVERAGE	BELOW AVERAGE	FAILURE
1. H&P			✓		
2. Clinical Knowledge			✓		
3. Clinical Presentations		✓			
4. Enthusiasm		✓			
5. Attendance		✓			
6. Inter-personal Relations	✓				
7. Professional Appearance	✓				

NARRATIVE COMMENTS:

8. Overall Evaluation — SUPERIOR / (ABOVE AVERAGE) / AVERAGE / BELOW AVERAGE / FAILURE

9. Without regard to scholastic ability, rate the student on the degree of human qualities and maturity as a future physician: SUPERIOR / (ABOVE AVERAGE) / AVERAGE / BELOW AVERAGE / FAILURE

Dr Lewis Volchkov
Evaluator's Name (Print)

Victor Hathorodich, MD, DAC
Program Director (Print)

Evaluator's Signature

Director's Signature and Institutional Seal

Date Signed

11/13/06
Date Signed

H-5

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47

AMERICAN UNIVERSITY OF THE CARIBBEAN

P.O. BOX 400, MONTSERRAT, WEST INDIES • TELEPHONE 2213

SCHOOL OF MEDICINE

NOTE

PLEASE RETURN EVALUATION FORMS TO:
OFFICE OF CLINICAL STUDENT AFFAIRS
c/o Medical Education Information Office
901 Ponce De Leon Blvd., Suite #401
Coral Gables, FL 33134-3036 U.S.A.
Phone: (305) 446-0600, Fax: (305) 444-6791

CLINICAL CLERKSHIP EVALUATION REPORT

Student's Name LEON RAWNER

Hospital Wyckoff Heights Medical Center

City, State/Country Brooklyn, NY

EXACT DATES 4 wk

Start 2/6/06

End 3/3/06

Clerkship Anesthesia

	SUPERIOR	ABOVE AVERAGE	AVERAGE	BELOW AVERAGE	FAILURE
1. H & P		✓			
2. Clinical Knowledge		✓			
3. Clinical Presentations		✓			
4. Enthusiasm		✓			
5. Attendance		✓			
6. Inter-personal Relations		✓			
7. Professional Appearance		✓			

NARRATIVE COMMENTS:

Excellent student, pleasure to teach + work with him

8. Overall Evaluation — SUPERIOR (circled) / ABOVE AVERAGE / AVERAGE / BELOW AVERAGE / FAILURE

9. Without regard to scholastic ability, rate the student on the degree of human qualities and maturity as a future physician: — SUPERIOR (circled) / ABOVE AVERAGE / AVERAGE / BELOW AVERAGE / FAILURE

R. Raggi MD
Evaluator's Name (Print)

R. Raggi MD
Evaluator's Signature

3/3/06
Date Signed

E. KENNETH FREIBERG, D.O.
Program Director (Print)

Ellen Fabrega
Director's Signature and Institutional Seal

3/31/06
Date Signed

3/31/06

H-6

AMERICAN UNIVERSITY OF THE CARIBBEAN

P.O. BOX 400, MONTSERRAT, WEST INDIES • TELEPHONE 2213

SCHOOL OF MEDICINE

NOTE

PLEASE RETURN EVALUATION FORMS TO:
OFFICE OF CLINICAL STUDENT AFFAIRS
c/o Medical Education Information Office
901 Ponce De Leon Blvd., Suite #401
Coral Gables, FL 33134-3036 U.S.A.
Phone: (305) 446-0600, Fax: (305) 444-6791

CLINICAL CLERKSHIP EVALUATION REPORT

Student's Name Rauner, Leon

Hospital WYCKOFF HEIGHTS MEDICAL CENTER
~~374 STOCKHOLM STREET~~
City, State/Country BROOKLYN, NY 11237
~~ATTN: MEDICAL EDUCATION~~

EXACT DATES
Start 3/20/06 (4 wks)
End 4/14/06
Clerkship Family Practice Core

	SUPERIOR	ABOVE AVERAGE	AVERAGE	BELOW AVERAGE	FAILURE
1. H & P		✓			
2. Clinical Knowledge		✓			
3. Clinical Presentations		✓			
4. Enthusiasm	✓				
5. Attendance	✓				
6. Inter-personal Relations	✓				
7. Professional Appearance	✓				

NARRATIVE COMMENTS:

8. Overall Evaluation — SUPERIOR | (ABOVE AVERAGE) | AVERAGE | BELOW AVERAGE | FAILURE

9. Without regard to scholastic ability, rate the student on the degree of human qualities and maturity as a future physician:

(SUPERIOR) | ABOVE AVERAGE | AVERAGE | BELOW AVERAGE | FAILURE

DOUG REICH, M.D.
Chairman/Program Director
Department of Family, Community and Preventive Medicine
Wyckoff Heights Medical Center

Doug Reich
Evaluator's Name (Print)

Doug Reich
Evaluator's Signature

5/3/06
Date Signed

E. KENNETH FREIBERG, D.O.
Program Director (Print)

Ellen Freiberg
Director's Signature and Institutional Seal

5/31/06
Date Signed

Received 5/24/06

H-7

CURRICULUM VITAE
April 29, 2013

Leon Rawner, MD, MMSc

Contact Information

615 S. 68th Ave., Apt #3
Wausau, Wisconsin 54401
(646)812-2728
lrawner@yahoo.com

Education

Medical Degree — 2002 – 2006
American University of the Caribbean School of Medicine (AUC)
Cupecoy, St. Maarten, Netherlands Antilles

Master of Medical Sciences — 2002 – 2004
American University of the Caribbean School of Medicine (AUC)
Cupecoy, St. Maarten, Netherlands Antilles

Bachelor of Science, Biology — 1996 – 2000
Brandeis University, Liberal Arts University Biomedical Scientific Research
Waltham, Massachusetts

Postgraduate Training

Internal Medicine Internship — 2006 – 2007
Mt. Sinai – Elmhurst Hospital Center
Queens, New York
Nephrology, Anesthesiology, Pulmonary Medicine, and Cardiology

Hospital Rotations and Honors

Clinical Hospital Rotations — 2005 – 2006
New York City, New York
Honors in Cardiology, Nephrology, Family Medicine, Emergency Medicine, Neurology, and Anesthesiology

Clinical Hospital Rotations — 2004 – 2005
London, England
Honors in Internal Medicine and Primary Care

Licensure

Wisconsin Medical License — 2010 – present

Certifications

Basic Life Support/Advanced Cardiac Life Support	Expires 2013
Durable Medical Equipment	2011 – present
Medicare Compliant	2011 – present

Exhibit "I"

I - 1

Work Experience

Staff Physician — 2011 – present
Knee Pain Solutions Center
Wausau, Wisconsin
Performed complete patient histories and exams. Worked with primary care doctors to address comorbid conditions, while focusing on pain management. Practiced evidence-based medicine, and became experienced in procedures, such as video fluoroscope, ultrasound, clinical documentation, focused musculoskeletal exams, and mental health. Performed triage for emergency diagnoses: stroke, acute coronary syndrome, hypertensive emergency, pulmonary embolism, asthma attacks, etc. Advised and educated patients on optimum health, including disease and accident prevention, and coordinated with specialists.

Consulting Physician — 2009 – 2011
Kings County Hospital Center, Brooklyn, New York
Department of Regulatory Affairs and Risk Management Department
Prepared for site visit from Joint Commission on Accreditation of Healthcare Organization (JCAHO), Centers for Medicare and Medicaid Services (CMS), and Department of Health (DOH). Participated in performance improvement activities with full spectrum of hospital staff including physicians, nurses, social workers, and nutritionists.

Kings County Hospital Center, Brooklyn, New York — 2009 – 2011
Clinical Documentation Specialist
Responsible for reviewing charts and interacting with the medical staff (MDs, RNs, Administrators, etc.) for documentation compliance.

Clinical Observership, Internal Medicine — 9/2009 – 10/2009
Kings County Hospital Center, Brooklyn, New York

Clinical Field Reviewer — 9/2008 – 2/2009
Outcomes Health Solutions, New York, New Jersey, Connecticut Divisions
Trained in Healthcare Effectiveness Data and Information Set (HEDIS).

Professional Membership

Wisconsin Medical Society — 2011 – present

Volunteer Experience

Mentor — 2011 – present
Knee Pain Solutions Center
Wausau, Wisconsin
Mentored undergraduate students who expressed an interest in pursuing careers in medicine.

Hospital Volunteer — 7/2008 – 2/2009
Beth Israel Medical Center, Kings Highway, Brooklyn, New York

American University of the Caribbean School of Medicine (AUC) — 2002 – 2004
Cupecoy, St. Maarten, Netherlands Antilles
Performed diabetes screening and helped promote awareness.

I-2

Research Experience

Level II Research Assistant — 2001 – 2002
Harvard School of Medicine/Brigham and Women's Hospital
Boston, Massachusetts
Participated in Nurses' Health Study, a long-term cohort study involving genetic predisposition, environmental, and lifestyle influences relating to medical endpoints. Collected data and maintained extensive liquid nitrogen freezer farm housing more than 50,000 blood/plasma/white blood cell samples.

Non-Medical Work Experience

One hundred plus hours of training in International Classification of Diseases (ICD) coding for documentation and billing purposes.

Languages

English
Spanish: limited

References available upon request.

STATE OF FLORDA
DIVISION OF ADMINISTRATIVE HEARINGS

LEON RAWNER, M.D.,

Petitioner,

vs. DOAH Case No.: 13-4651

BOARD OF MEDICINE,

Respondent

_____/

RESPONDENT'S REQUEST FOR ADMISSIONS

Respondent Board of Medicine (Board) by and through its undersigned counsel and pursuant to Rule 28-106.206, Florida Administrative Code, propounds the following admissions to Petitioner and requests that Petitioner admit or deny the truth of the following in accordance with Rule 1.370, Florida Rules of Civil Procedures, wherein references to Petitioner include Petitioner's agents, employees, or legal representatives.

1. Petitioner did not graduate from an allopathic medical school or allopathic college recognized and approved by an accrediting agency recognized by the United States Office of Education.

   Admit_____ Deny_____

   If denied, please explain:

   _____

   _____

   _____

2. Petitioner did not graduate from an allopathic medical school or allopathic college within a territorial jurisdiction of the United States recognized by the accrediting agency of the governmental body of that jurisdiction.

   Admit_____ Deny_____

   If denied, please explain:

   _____

   _____

   _____

3. Petitioner graduated from an allopathic foreign medical school.

   Admit_____ Deny_____

   If denied, please explain:

   _____

   _____

   _____

4. Petitioner is not a graduate of an allopathic foreign medical school registered with the World Health Organization and certified pursuant to Section 458.314, Florida Statutes, as having met the standards required to accredit medical schools in the United States or reasonably comparable standards.

   Admit_____ Deny_____

   If denied, please explain:

   _____

   _____

   _____

5. Petitioner holds an active, valid certificate issued by the Educational Commission for Foreign Medical Graduates (ECFMG) and has passed the examination used by the commission.

   Admit_____ Deny_____

   If denied, please explain:

   _____

   _____

   _____

6. In 2004, Petitioner graduated from The American University of the Caribbean School of Medicine.

   Admit_____ Deny_____

   If denied, please explain:

   _____

   _____

   _____

7. Petitioner only completed one year of residency training in the Internal Medicine Program at Mt. Sinai – Elmhurst Hospital Center, Queens, New York.

   Admit_____ Deny_____

   If denied, please explain:

   _____

   _____

   _____

8. Besides the residency training program at Mt. Sinai – Elmhurst Hospital Center, Queens, New York, Petitioner has not completed any other residency or fellowship training.

Admit_____ Deny_____

If denied, please explain:

_____

_____

_____

9. Petitioner has not completed an approved residency or fellowship of at least 2 years in one specialty area.

Admit_____ Deny_____

If denied, please explain:

_____

_____

_____

10. Petitioner does not have 2 years of any residency or fellowship training which can be counted toward regular or subspecialty certification by a board recognized and certified by the American Board of Medical Specialties.

Admit_____ Deny_____

If denied, please explain:

_____

_____

_____

11. The American University of the Caribbean School of Medicine does not have an internship or social service requirement.

Admit_____ Deny_____

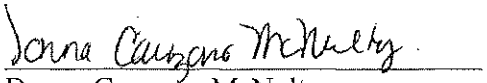
If denied, please explain:

_____

_____

_____

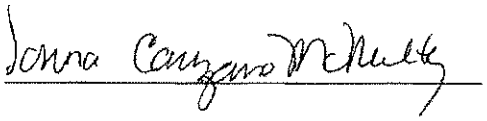
Respectfully submitted,



Donna Canzano McNulty
Senior Assistant Attorney General
Fla. Bar No. 0894168
donna.mcnulty@myfloridalegal.com
Michael T. Flury
Assistant Attorney General
Fla. Bar No. 118590
michael.flury@myfloridalegal.com
Office of the Attorney General
PL 01, The Capitol
Tallahassee, FL 32399-1050
(850) 414-3300
Fax (850) 922-6425
Attorneys for Respondent

CERTIFICATE OF SERVICE

I HERBY CERTIFY that a true and correct copy of the foregoing has been provided by furnished to Leon Rawner, M.D., by sending same to his counsel of record, Amy W. Schrader, Esq., by email at Amy.Schrader@gray-robinson.com, and by facsimile to (850) 577-3311, this 13th day of December, 2013.



STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

LEON RAWNER, M.D.,

Petitioner,

vs. DOAH Case No. 13-4651

BOARD OF MEDICINE,

Respondent.
_____/

PETITIONER'S RESPONSE TO RESPONDENT'S FIRST REQUEST FOR ADMISSIONS

Petitioner, Leon Rawner, M.D., ("Dr. Rawner") by and through his undersigned counsel and pursuant to the applicable Florida Rules of Civil Procedure, hereby answers Respondent's First Request for Admissions as follows:

1. Admitted.

2. Admitted.

3. Admitted.

4. Admitted.

5. Admitted.

6. Denied. Dr. Rawner received his Master's Degree from A.U.C. School of Medicine in 2004. Dr. Rawner's medical degree was received in June 2006.

7. Admitted.

8. Admitted.

9. Admitted.

10. Admitted.

11. Admitted.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic delivery this 17th day of January, 2014, 2013, as follows:

Donna Canzano McNulty
Senior Assistant Attorney General
Michael T. Flury
Assistant Attorney General
Office of the Attorney General
PL-01, The Capitol
Tallahassee, FL 32309-1050
donna.mcnulty@myfloridalegal.com
Michael.flury@myfloridalegal.com

/s/ Amy W. Schrader

Amy W. Schrader (Fla. Bar No. 621358)
GrayRobinson, P.A.
301 South Bronough Street, Suite 600
Post Office Box 11189 (32302)
Tallahassee, Florida 32301
Telephone (850) 577-9090
Facsimile (850) 577-3311
Email: aschrader@gray-robinson.com
Secondary email: lmclaughlin@gray-robinson.com
Counsel for Leon Rawner, M.D.

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

LEON RAWNER, M.D.,

Petitioner,

vs. DOAH Case No. 13-4651

BOARD OF MEDICINE,

Respondent.
_____/

PETITIONER'S FIRST REQUEST FOR ADMISSIONS TO RESPONDENT

Petitioner, Leon Rawner, M.D., ("Dr. Rawner") by and through undersigned counsel and pursuant to applicable Florida Rules of Civil Procedure, hereby requests that Respondent, Board of Medicine ("the Board"), admit the truth of the following statements.

1. Dr. Rawner's application for licensure demonstrates that he does not meet the postgraduate training requirements under section 458.311(1)(f)3, Florida Statutes.

2. Dr. Rawner's application for licensure by endorsement demonstrates that he is licensed to practice medicine in another jurisdiction and has been active in the practice of medicine for at least two of the immediately preceding four years, as required under section 458.313(1)(c), Florida Statutes.

3. Dr. Rawner's application for licensure demonstrates that he meets the requirement to have received a bachelor's degree from an accredited United States college or university under section 458.311(3)(a), Florida Statutes.

4. Dr. Rawner's application for licensure demonstrates that he meets the requirement to have studied at a medical school which is recognized by the World Health Organization under section 458.311(3)(b), Florida Statutes.

5. Dr. Rawner's application for licensure demonstrates that he meets the requirement to have completed all of the formal requirements of his foreign medical school under section 458.311(3)(c), Florida Statutes.

6. Dr. Rawner's application for licensure demonstrates that he meets the requirement to have passed the Educational Commission for Foreign Medical Graduates examination equivalent under section 458.311(3)(c), Florida Statutes.

7. Dr. Rawner's application for licensure demonstrates that he has completed the academic year of supervised clinical training as required under section 458.311(3)(d), Florida Statutes.

8. If an applicant for licensure by endorsement meets the requirements in sections 458.311(1)(b)-(e) and (g) and (3), Florida Statutes, above, they need not comply with section 458.311(1)(f), Florida Statutes, which requires the applicant to have completed "an approved residency or fellowship of at least 2 years in one specialty area."

9. Dr. Rawner's application for licensure by endorsement is being denied by the Board because he completed all requirements of the foreign medical school he attended instead of only "complet[ing] all of the formal requirements of the foreign medical school, except the internship or social service requirements . . ."

10. The American University of the Caribbean School of Medicine does not have internship or social service requirements, which must be met as a condition of graduation with a medical degree.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic delivery this 16th day of December, 2013, as follows:

Donna Canzano McNulty
Senior Assistant Attorney General
Michael T. Flury
Assistant Attorney General
Office of the Attorney General
PL-01, The Capitol
Tallahassee, FL 32309-1050
donna.mcnulty@myfloridalegal.com
Michael.flury@myfloridalegal.com

/s/ Amy W. Schrader

Amy W. Schrader (Fla. Bar No. 621358)
GrayRobinson, P.A.
301 South Bronough Street, Suite 600
Post Office Box 11189 (32302)
Tallahassee, Florida 32301
Telephone (850) 577-9090
Facsimile (850) 577-3311
Email: aschrader@gray-robinson.com
Secondary email: lmclaughlin@gray-robinson.com
Counsel for Leon Rawner, M.D.

STATE OF FLORDA
DIVISION OF ADMINISTRATIVE HEARINGS

LEON RAWNER, M.D.,

Petitioner,

vs. DOAH Case No.: 13-4651

BOARD OF MEDICINE,

Respondent

_____/

RESPONDENT'S RESPONSES TO PETITIONER'S FIRST REQUEST FOR ADMISSIONS

Respondent, the Board of Medicine, by and through undersigned counsel, pursuant to Rules 1.370, Florida Rules of Civil Procedure (FRCP), Rule 28-106.206, Florida Administrative Code (F.A.C.), and the Order of Prehearing Instructions, filed December 4, 2013, and responds to Petitioner's First Request for Admissions to Respondent with the following answers.

1. Dr. Rawner's application for licensure demonstrates that he does not meet the postgraduate training requirements under section 458.311(1)(f)3, Florida Statutes.

RESPONSE:

Admit ___X___ Deny:_____

2. Dr. Rawner's application for licensure by endorsement demonstrates that he is licensed to practice medicine in another jurisdiction and has been active in the practice of medicine for at least two of the immediately preceding four years, as required under section 458.313(1)(c), Florida Statutes.

RESPONSE:

Admit __X____ Deny:_____

3. Dr. Rawner's application for licensure demonstrates that he meets the requirement to have received a bachelor's degree from an accredited United States college or university under section 458.311(3)(a), Florida Statutes.

RESPONSE:

Admit _X_____ Deny:_____

4. Dr. Rawner's application for licensure demonstrates that he meets the requirement to have studied at a medical school which is recognized by the World Health Organization under section 458.311(3)(b), Florida Statutes.

RESPONSE:

Admit __X____ Deny:_____

5. Dr. Rawner's application for licensure demonstrates that he meets the requirement to have completed all of the formal requirements of his foreign medical school under section 458.311(3)(c), Florida Statutes.

RESPONSE:

Admit _X (in part)_____ Deny:___X (in part)___

Objection because this is a compound question. Admit in part and Deny in part.

Admit in part because Dr. Rawner completed all of the formal requirements for graduation from the American University of the Caribbean. Deny in part because Section

458.311(3)(c), Florida Statutes, as applied to Dr. Rawner's application, the American University of the Caribbean does not have an internship or social service requirement.

6. Dr. Rawner's application for licensure demonstrates that he meets the requirement to have passed the Educational Commission for Foreign Medical Graduates examination equivalent under section 458.311(3)(c), Florida Statutes.

RESPONSE:

Admit __X____ Deny:_____

7. Dr. Rawner's application for licensure demonstrates that he has completed the academic year of supervised clinical training as required under section 458.311(3)(d), Florida Statutes.

RESPONSE:

Admit _X_____ Deny:_____

8. If an applicant for licensure by endorsement meets the requirements in section 458.311(1)(b)-(e) and (g) and (3), Florida Statutes, above, they need not comply with section 458.311(1)(f), Florida Statutes, which requires the applicant to have completed "an approved residency or fellowship of at least 2 years in one specialty area."

RESPONSE:

Admit _____ Deny:_____

1) Objection, this request is vague in that it states "[i]f an applicant for licensure by endorsement meets the requirements in section 458.311(1)(b)-(e) and (g) and (3),

Florida Statutes, *above*, . . ." (emphasis added), and it is not clear what "above" means.

2) Objection, this request is improper in that it does not request an admission that relates to statements or opinions of fact or the application of law to fact, as required in Rule 1.370,(a), FRCP, but rather a conclusion of law. See also Davis v. Dollar Rent a Car Systems, Inc., 909 So.2d 297, 300 (Fla 5th DCA 2004) reversed on other grounds Williams v. Davis, 974 So.2d 1052 (Fla. 2007).

9. Dr. Rawner's application for licensure by endorsement is being denied by the Board because he completed all requirements of the foreign medical school he attended instead of only "complet[ing] all of the formal requirements of the foreign medical school, except the internship or social service requirements..."

RESPONSE:

Admit _____ Deny: X_____

Dr. Rawner's application for licensure by endorsement is being denied by the Board for the reasons set forth in the Amended Notice of Intent to Deny, filed October 22, 2013.

As stated in the Amended Notice, the "application file reveals that the Applicant does not qualify for licensure by endorsement because Dr. Rawner does not meet the requirements of Section 458.313(1)(a), Florida Statutes, which provides that each applicant meet the qualifications for licensure in Section 458.311(1)(b)-(g) or in Section 458.311(1)(b)-(e) and (g) and (3), Florida Statutes."

The Amended Notice further states that with "...respect to whether the Applicant meets Section 458.311(1)(b)-(g), Florida Statutes, the application file reveals that Dr. Rawner fails to meet the postgraduate training requirements of Section 458.311(1)(f)3.c., Florida Statutes."

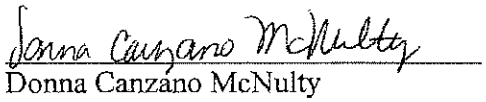
With respect to whether the Dr. Rawner meets Section 458.311(1)(b)-(e) and (g) and (3), Florida Statutes, the Amended Notice file reveals that Dr. Rawner fails to meet subsection (3). "Subpart (3)(c) provides in relevant part that the applicant "has completed all of the formal requirements of the foreign medical school, *except the internship or social service requirements,* and passed certain examinations. A plain reading of this subpart is that the foreign medical school has an internship or social service requirement and that the internship or social service requirement has not been completed. The application file demonstrates that Dr. Rawner graduated in June, 2006, with a degree of Doctor of Medicine from the American University of the Caribbean School of Medicine. Thus, subpart (3)(c) is inapplicable to Dr. Rawner, because the application file reveals that he completed *all of the formal requirements* of the foreign medical school and there are no outstanding or pending internship or social service requirements."

10. The American University of the Caribbean School of Medicine does not have internship or social service requirements, which must be met as a condition of graduation with a medical degree.

RESPONSE:

Admit __X____ Deny:_____

Respectfully submitted,



Donna Canzano McNulty
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Michael T. Flury
Assistant Attorney General
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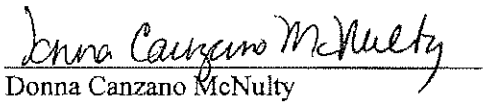
michael.flury@myfloridalegal.com
Office of the Attorney General
PL 01, The Capitol
Tallahassee, FL 32399-1050
(850) 414-3300
Fax (850) 922-6425
Attorneys for Respondent

CERTIFICATE OF SERVICE

I HERBY CERTIFY that a true and correct copy of the foregoing has been provided by furnished to Leon Rawner, M.D., by sending same to his counsel of record, Amy W. Schrader, Esq., by email at Amy.Schrader@gray-robinson.com, and by U.S. Mail at Gray Robinson, 301 South Bronough Street, Suite 600, P.O. Box 11189, Tallahassee, FL 32301, this 15th day of January, 2014.



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Fax (850) 922-6425
Attorneys for Respondent

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

LEON RAWNER, M.D.,

Petitioner,

vs. DOAH Case No. 13-4651

BOARD OF MEDICINE,

Respondent.
_____/

PETITIONER'S FIRST SET OF INTERROGATORIES TO RESPONDENT

Petitioner, Leon Rawner, M.D. ("Dr. Rawner"), hereby propounds the following First Set of Interrogatories, pursuant to Rule 28-106.206, Florida Administrative Code, and Rule 1.340, Florida Rules of Civil Procedure, to Respondent, Board of Medicine ("the Board").

General Instructions

1. Each interrogatory is to be answered separately and as completely as possible. The fact that investigation is continuing or that discovery is not complete shall not be used as an excuse for failure to answer each interrogatory as fully as possible.

2. The answers should be based upon information known to you, including information known to you through your agent or attorneys. To the extent that the answer to any interrogatory is not based upon information known to you, specify the person possessing such information.

3. If the answer to all or part of any interrogatory is not presently known or available, include a statement to that effect, specify the portion of the interrogatory which cannot be completely answered, and furnish all information that is known or available.

4. Reference to documents generally is not sufficient. Where an interrogatory requests identification of specific documents, please identify the document, date of the document, title and author.

5. In responding to these interrogatories, please identify documents in the possession of your attorneys or their investigators or all persons acting on your behalf, including but not limited to your employees, agents, officers or representatives, and not merely such information known of your own personal knowledge.

6. If you assert any privilege with respect to the information requested in these interrogatories, please state the nature and basis of each privilege claimed.

Definitions

1. The term "Dr. Rawner" shall mean Petitioner, Leon Rawner, M.D.

2. The terms "you" and "your" and "the Board" shall mean Respondent, State of Florida, Board of Medicine, and its employees, staff, officers, directors, agents, contractors, or any other persons acting on its behalf.

3. The terms "document" or "documents" shall mean any and all media in whatever form containing information of any kind.

4. The term "communication" shall mean both written and verbal exchanges between or among any person or persons and/or entities, including but not limited to verbal conversations, e-mail transmissions, telephone calls, and any "document" as earlier defined which constitutes, confirms, embodies or otherwise relates to the communications.

5. The term "identify," when used in reference to an individual person, shall mean to state the person's full name, home address, business or employment address and telephone number. When used in reference to a person other than an individual person, "identify" means

state whether that person is a corporation, partnership, or other organization, and state the name, present address, and phone number of the person. Once any person has been identified properly, it shall be sufficient thereafter when identifying that person to state only the name.

6. The term "identify," when used in reference to a document or documents, shall mean to state the date, the author, the addressee, the type of document, and any other identifying information necessary to meet the requirements for its inclusion in a request for production of documents pursuant to rule 1.350, Florida Rule of Civil Procedure. If any such document is no longer in your possession or subject to your control, state what disposition was made of it and the reason for that disposition. In lieu of identifying any document, a true and correct copy may be annexed to and incorporated in the answers to these interrogatories.

7. The term "relating to" shall mean concerning, respecting, referring to, summarizing, digesting, reflecting, tending to establish or tending not to establish, delegating from, evidencing or not evidencing, comprising, connected with, commenting on, responding to, disagreeing with, showing, describing, analyzing, representing, constituting or including.

8. The term "person" shall mean both natural persons and legal entities.

9. The term "this case" refers to the administrative action styled *Leon Rawner, M.D. v. Board of Medicine,* Case No. 13-4651, filed with the State of Florida, Division of Administrative Hearings.

10. All other terms shall be given their plain, ordinary meaning, unless indicated otherwise in the interrogatory. Terms subject to more than one interpretation shall be given their broadest possible meaning.

INTERROGATORIES

1. Identify all persons who are believed or known by you to have knowledge concerning any of the issues raised in this case by you or by Petitioner and specify the subject matter about which each person has knowledge.

2. Identify all persons whom you intend to call as witnesses in this action and specify the subject matter on which each such person has knowledge and is expected to testify.

3. Identify all expert witnesses you intend to call as witnesses, whether to present live testimony or testimony by way of affidavit, and with respect to each expert, state the following:

a. their name, address and occupation;
b. educational background, including the degrees earned and dates of attendance;
c. describe any professional designation, certificates, or certification which the expert has received and, with respect to each, the significance of the designation, certificate, or certification within the profession;
d. employment history within the field which the expert is expected to testify, giving the dates, names, and addresses of employers or institutions;
e. the name of all professional associations or societies and the dates of membership therein;
f. the title, publisher, and date of publication of any published articles, books, or similar works authorized by such expert;
g. the subject matter on which each expert is expected to testify;
h. the substance of the facts and opinions to which each expert is expected to testify; and
i. a summary of the grounds for each opinion, whether any written reports were prepared, and, if so, the date and substance of such report.

4. Please identify each and every document, item, record or other matter that you intend to introduce, or in any way rely upon, at the final hearing in this matter.

5. State the factual and legal basis for the failure to admit any of the statements in Respondent's First Request for Admissions to Petitioner.

6. State all reasons for the Board's denial of Dr. Rawner's application for licensure as a medical doctor in the State of Florida.

7. Identify all applicants for licensure by endorsement received by the Board within the last five years from applicants who were granted licenses pursuant to sections 458.311(1)(b)-(e) and (g) and (3), rather than pursuant to the alternative qualifications specified in sections 458.311(1)(b)-(f), Florida Statutes.

8. Identify all foreign medical schools that have been certified by the Board pursuant to section 458.314, Florida Statutes.

9. Identify all persons who have assisted in providing information or preparing answers to these interrogatories, and, with respect to each person, identify the interrogatory(ies) for which information or assistance in answering was provided.

Petitioner, Leon Rawner, M.D.'s First Set of Interrogatories to Respondent, Board of Medicine, numbered 1 through 9, have been answered by:

_____

Print Name: _____

STATE OF _____

COUNTY OF _____

BEFORE ME, the undersigned authority, personally appeared _____ as _____ of Board of Medicine, who by me being first duly sworn, deposes and states that the answers to the foregoing First Set of Interrogatories are true and correct to the best of his/her knowledge, information and belief. He/she is personally known to me or has produced _____ as identification.

SWORN TO OR AFFIRMED before me this _____ day of _____, 2013.

_____

NOTARY PUBLIC

STATE OF FLORDA
DIVISION OF ADMINISTRATIVE HEARINGS

LEON RAWNER, M.D.,

Petitioner,

vs. DOAH Case No.: 13-4651

BOARD OF MEDICINE,

Respondent

_____/

RESPONDENT'S RESPONSES TO PETITIONER'S FIRST SET OF INTERROGATORIES

Respondent, the Board of Medicine, by and through undersigned counsel, pursuant to Rules 1.340, Florida Rules of Civil Procedure (FRCP), Rule 28-106.206, Florida Administrative Code (F.A.C.), and the Order of Prehearing Instructions, filed December 4, 2013, and responds to Petitioner's First Set of Interrogatories to Respondent with the following answers.

1. Identify all persons who are believed or known by you to have knowledge concerning any of the issues raised in this case by you or by Petitioner and specify the subject matter about which each person has knowledge.

RESPONSE:

a. Dr. Rawner, Petitioner.

b. Chandra Prine, Programs Operations Administrator, Board of Medicine licensure unit. Ms. Prine has ultimate responsibility to present Dr. Rawner's application to the Credentials Committee of the Board of Medicine. .

c. Allison Dudley, Executive Director, Board of Medicine.

d. First processor of Dr. Rawner's application file– Tehelia McGlockton,

e. Second processor of Dr. Rawner's application file – Karrell Goldwire,

2. Identify all persons whom you intend to call as witnesses in this action and specify the subject matter on which each such person had knowledge and is expected to testify.

RESPONSE: The Respondent may call Chandra Prine, Programs Operations Administrator, Board of Medicine licensure unit (see above and if necessary, records custodian), and Petitioner, Dr. Rawner. No other person known at this time.

3. Identify all expert witnesses you intend to call as witnesses, whether to present live testimony or testimony by way of affidavit, and with respect to each expert, state the following:

   a. their name, address and occupation;

   b. educational background, including the degrees earned and dates of attendance;

   c. describe any professional designation, certificates, or certification which the expert has received and, with respect to each, the significance of the designation, certificate, or certification within the profession;

   d. employment history within the field which the expert is expected to testify, giving the dates, names, and addresses of employers or institutions;

   e. the name of all professional associations or societies and the dates of membership therein;

f. the title, publisher, and date of publication of any published articles, books, or similar works authorized by such expert;

g. the subject matter on which each expert is expected to testify;

h. the substance of the facts and opinions to which each expert is expected to testify; and

i. a summary of the grounds for each opinion, whether any written reports were prepared, and if so, the date and substance of such report.

RESPONSE: None at this time.

4. Please identify each and every document, item, record or other matter that you intend to introduce, or in any way rely upon, at the final hearing in this matter.

RESPONSE: Documents known at this time for use at hearing are as follows:

a. Dr. Rawner's application file.

b. Amended Notice of Intent to Deny, filed October 22, 2013.

c. Possible responses to discovery.

d. Laws of Florida and Legislative History.

LAWS OF FLORIDA	ASSOCIATED LEGISLATIVE SUMMARY, STAFF ANALYSIS, OR OTHER
1. Chapter 75-154, Section 1	1.a. Senate Standing Committee on Health and Rehabilitative Services, Staff Evaluation, HB 435 by Representative Kutun, Relating to: Medical Practice Act Fifth Pathway, (Florida Archives, Series 18, Carton 261) 1.b. "Some Criticism on this Program..." (Florida Archives, Series 18, Carton 262). 1.c. Senate Standing Committee on Health and Rehabilitative Services, Staff Evaluation (Imhof), SB 414-Senator Gordon, J. Lane, Relating to Medical Practices Act Fifth Pathway). (Florida Archives, Series 18, Carton 260).
2. Chapter 79-302, Section 1	2.a. House Summary HB 1814 (Florida Archives, Series

	19, Carton 541). 2.b. PB Medical Practice Act, Regulatory Reform Committee HB 1814 (Florida Archives, Series 18, Carton 965).
3. Chapter 85-344, Section 1	3.a. Senate Staff Analysis and Economic Impact Statement, Subject: Foreign Medical School Graduates, CS/SB 783 by the HRS Committee and Senator Fox (Florida Archives, Series 18, Carton 1409). 3.b. Senate Staff Analysis and Economic Impact Statement, Subject: Foreign Medical School Graduates, CS for SB 0783 by HRS Committee and Senator Fox. (Florida Archives, Series 18, Carton 1480).
4. Chapter 86-245, Section 6	4.a. Senate Staff Analysis and Economic Impact Statement, Subject: Medical Practice Act (Sunset), CS/CS/SB 1090 by Appropriations, HRS Committee and Senator Fox, (Florida Archives, Series 18, Carton 1598). 4b. Senate Staff Analysis and Economic Impact Statement, Subject: Medical Practice Act (Sunset), Senate Bill 5-B, Senators Fox and Myers (Florida Archives, Series 19, Carton 1562). 4.c. House of Representatives, Health Care and Insurance Committee, PCB 86-18, (Florida Archives, Series 19, Carton 1529).
5. Chapter 89-374, Section 5	5.a. House of Representatives Committee on Regulatory Reform, Staff Analysis and Economic Impact Statement, Bill No. 1427, Relating to Medical Practice, Companion Bill SB 1150 (Florida Archives, Series 19, Carton 2034).
6. Chapter 89-374, Section 42	None.
7. Chapter 92-149, Section 77	7.a. House of Representatives as further Revised by the Committee on Appropriations: Bill Analysis and Economic Impact Statement, Bill No. CS/HB 2249, Relating to: Regulation of Professions (Florida Archives, Series 19, Carton 2239). 7.b. Sectional Analysis by Department of Professional Regulation on HB 2249 requested by House Appropriations Committee (Florida Archives, Series 19, Carton 2246). 7.c. House of Representatives Committee on Regulatory Reform Final Bill Analysis & Economic Impact Statement, CS/HB 2249 (PCB RR 92-17), Relating to Regulation of Professions, (Florida Archives, Series 19, Carton 2334). 7.d. House of Representatives as Revised by the Committee on Finance & Taxation, Bill Analysis & Economic Impact Statement, HB 2249 (PCB RR 92-17) (Florida Archives, Series 19, Carton 2469).

	7.e. Senate Staff Analysis and Economic Impact Statement, Bill No. CS/SB 1706, Subject: Department of Professional Regulation (Florida Archives, Series 18, Carton 1928).
8. Chapter 97-103, Section 1086	None.
9. Chapter 97-264, Section 18	9.a. Senate Staff Analysis and Economic Impact Statement, Health Care Committee and Senator Jones, Bill: CS/SB 1814, Subject: Regulation of Health Care Professions (Florida Archives, Series 18, Carton 2227). 9.b. Senate Staff Analysis and Economic Impact Statement, Bill CS/CS/SB 1814, Subject: Regulation of Health Care Professions (Florida Archives, Series 18, Carton 2279). 9.c. House of Representatives Committee on Health Care Standards & Regulatory Reform Final Bill Research & Economic Impact Statement, Bill HB 2013 (Formerly PCB HCR 97-02), Relating to Regulation of Health Care Professions/Medical Quality Assurance (Florida Archives, Series 19, Carton 2938). 9.d. Senate Staff Analysis and Economic Impact Statement, Bill PCS/SB 1814, Subject: Regulation of Health Care Professions (Florida Archives, Series 18, Carton 2267).
10. Chapter 99-397, Section 95	10.a. House of Representatives as Revised by the Committee on Governmental Operations Analysis, HB 2125 (PCB HCS 99-05), Relating to Department of Health (Florida Archives, Series 19, Carton 3070). 10.b. Senate Staff Analysis and Economic Impact Statement, CS/SB 2220, Subject: Department of Health, March 23, 1999, (Florida Archives, Series 18, Carton 2432). 10c. Senate Staff Analysis and Economic Impact Statement, CS/SB 2220, Subject: Department of Health, April 16, 1999, (Florida Archives, Series 18, Carton 2351) 10.d. Senate Staff Analysis and Economic Impact Statement, CS/SB 2220, Subject: Department of Health, April 21, 1999, (Florida Archives, Series 18, Carton 2397) 10.e. House of Representatives as Revised by the Committee on Health Care Services Final Analysis, HB 2125 (PCS HCS 99-05), Relating to Department of Health, (Florida Archives, Series 19, Carton 3139).

5. State the factual and legal basis for failure to admit any of the statements in Respondent's First Request for Admissions to Petitioner.

RESPONSE: See Response to Requests for Admissions because it contains this information where appropriate.

6. State all reasons for the Board's denial of Dr. Rawner's application for licensure as a medical doctor in the State of Florida.

RESPONSE: All of the reasons for the Board's denial of Dr. Rawner's application for licensure as a medical doctor in the State of Florida are set forth in the Amended Notice of Intent to Deny, filed October 22, 2013. The Petitioner has a copy of the Amended Notice.

7. Identify all applicants for licensure by endorsement received by the Board within the last five years from applicants who were granted licensure pursuant to section 458.311(1)(b)-(e) and (g) and (3), rather than pursuant to the alternative qualifications specified in section 458.311(1)(b)-(f), Florida Statutes.

RESPONSE: Objection to the extent the question seeks information for the full five years on the grounds that it is unduly burdensome. The Board receives thousands of applications for licensure each year.

Notwithstanding this objection, the Board is able to provide the requested information for the period of June 29, 2009, to present based on the way it configures such data in its database. See Interrogatory Exhibit "A."

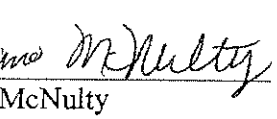
8. Identify all foreign medical schools that have been certified by the Board pursuant to section 458.314, Florida Statutes.

RESPONSE: None.

9. Identify all persons who have assisted in providing information or preparing answers for these interrogatories, and, with respect to each person, identify the interrogatory(ies) for which information or assistance in answering was provided.

RESPONSE: Chandra Prine, Programs Operations Administrator.

Respectfully submitted,



Donna Canzano McNulty
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PL 01, The Capitol
Tallahassee, FL 32399-1050
(850) 414-3300
Fax (850) 922-6425
Attorneys for Respondent

CERTIFICATE OF SERVICE

I HERBY CERTIFY that a true and correct copy of the foregoing has been provided by furnished to Leon Rawner, M.D., by sending same to his counsel of record, Amy W. Schrader, Esq., by email at Amy.Schrader@gray-robinson.com, and by U.S. Mail at Gray Robinson, 301 South Bronough Street, Suite 600, P.O. Box 11189, Tallahassee, FL 32301, this 15th day of January, 2014.

Donna Canzano McNulty
Donna Canzano McNulty
Senior Assistant Attorney General
Fla. Bar No. 0894168
donna.mcnulty@myfloridalegal.com
Michael T. Flury
Assistant Attorney General
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Office of the Attorney General
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Tallahassee, FL 32399-1050
(850) 414-3300
Fax (850) 922-6425
Attorneys for Respondent

Interrogatory No. 7 –
Exhibit "A"

CLNT_CDE	KEY_NME	APPLC_ID	APPLC_DTE	XACT_CDE	XACT_CLS_CDE	XACT_DESC	EDU_TYPE	APP_STATUS
15[illegible]	CASTILLO-NIEVES, EDGARDO	10044466	Nov/05/2009	1021	I	Inital Licensure Endorsement	5th Pathway	Approved
	BISHARA, MARK ALLEN	10033732	Nov/02/2009	1021	I	Inital Licensure Endorsement	5th Pathway	Approved
1[illegible]	CABAN, ANGEL MIGUEL	10452298	Jan/21/2010	1021	I	Inital Licensure Endorsement	5th Pathway	Approved
1501	TORRES-MOLINA, KARLA MICHELL	14066880	May/16/2011	1021	I	Inital Licensure Endorsement	5th Pathway	Approved
1501	ORTIZ MUNOZ, LUIS	15453215	May/22/2012	1021	I	Inital Licensure Endorsement	5th Pathway	Approved
1501	VERGELI-ROJAS, JEANNETTE AILEEN	15714687	Aug/16/2012	1021	I	Inital Licensure Endorsement	5th Pathway	Approved
1501	KAFER, SHELDON	15770338	Sep/14/2012	1021	I	Inital Licensure Endorsement	5th Pathway	Approved
1501	RESSLER, STEVEN H	16079980	Feb/22/2013	1021	I	Inital Licensure Endorsement	5th Pathway	Approved
1501	CAPOZZI, ANTHONY	9881792	Aug/24/2009	1021	I	Inital Licensure Endorsement	5th Pathway	Approved
1501	ROSENBERG, JOSEPH SAMUEL	10068928	Nov/12/2009	1021	I	Inital Licensure Endorsement	5th Pathway	Approved
1501	LUBITZ, ALAN SCOTT	16071202	Feb/13/2013	1021	I	Inital Licensure Endorsement	5th Pathway	Approved
1501	NOELS, HOWARD MICHAEL	15084736	Dec/29/2011	1021	I	Inital Licensure Endorsement	5th Pathway	Approved
1501	ROHANA, MARCEL PAUL	15356212	Mar/19/2012	1021	I	Inital Licensure Endorsement	5th Pathway	Approved
1501	MURE, JOSEPH	9892322	Sep/03/2009	1021	I	Inital Licensure Endorsement	5th Pathway	Approved
1501	BRILLMAN, SALIMA LYDIA	10803281	Mar/15/2010	1021	I	Inital Licensure Endorsement	5th Pathway	Approved
1501	AYALA GARCIA, LILLIAM ENID	10905885	May/20/2010	1021	I	Inital Licensure Endorsement	5th Pathway	Approved
1501	SCIORTINO, DAVID FRANK	13719857	Apr/19/2011	1021	I	Inital Licensure Endorsement	5th Pathway	Approved
1501	PIRAK, LEON	15038316	Dec/07/2011	1021	I	Inital Licensure Endorsement	5th Pathway	Approved
1501	AFTEL, SCOTT	15181752	Jan/26/2012	1021	I	Inital Licensure Endorsement	5th Pathway	Approved
1501	MALDONADO-COLON, BERMILY	15253080	Mar/06/2012	1021	I	Inital Licensure Endorsement	5th Pathway	Approved
1501	BUSHNELL, ALLAN CURTISS JR	15492874	Jun/25/2012	1021	I	Inital Licensure Endorsement	5th Pathway	Approved
1501	GORDON, MARK L	15788222	Oct/02/2012	1021	I	Inital Licensure Endorsement	5th Pathway	Approved
1501	SAMTER, BRENT ALAN	16260019	Apr/29/2013	1021	I	Inital Licensure Endorsement	5th Pathway	Approved
1501	FERNANDEZ-SEMIDEY, JOSE MANUEL	9595101	Jul/09/2009	1021	I	Inital Licensure Endorsement	5th Pathway	Approved
1501	APONTE, LUIS A	9542593	Jun/29/2009	1021	I	Inital Licensure Endorsement	5th Pathway	Approved
1501	SIMEONE, THOMAS P	13270076	Feb/25/2011	1021	I	Inital Licensure Endorsement	5th Pathway	Approved
1501	TAMBAKIS-ODOM, CONSTANCE R	14767011	Sep/14/2011	1021	I	Inital Licensure Endorsement	5th Pathway	Approved
1501	ARRIAGA-ONEILL, YARITZA	14817858	Sep/29/2011	1021	I	Inital Licensure Endorsement	5th Pathway	Approved
1501	FEINER, MARC ALAN	15039375	Dec/08/2011	1021	I	Inital Licensure Endorsement	5th Pathway	Approved
1501	ACOSTA, INDRANI ENID	10494669	Feb/08/2010	1021	I	Inital Licensure Endorsement	5th Pathway	Approved
1501	SCALI, DOMENICK LOUIS	14991808	Nov/14/2011	1021	I	Inital Licensure Endorsement	5th Pathway	Approved
1501	MAZIARZ, BRIAN W	15393052	Apr/05/2012	1021	I	Inital Licensure Endorsement	5th Pathway	Approved
1501	LOPEZ TORRES, MICHELLE	15453204	May/22/2012	1021	I	Inital Licensure Endorsement	5th Pathway	Approved
1[illegible]	SCHAFFEL, JEFFREY STEWART	9693510	Jul/27/2009	1021	I	Inital Licensure Endorsement	5th Pathway	Approved
1[illegible]	FAJARDO, DANIEL A	9822035	Jul/31/2009	1021	I	Inital Licensure Endorsement	5th Pathway	Approved
15[illegible]	RIVERA-AMILL, MONICA	9844158	Aug/07/2009	1021	I	Inital Licensure Endorsement	5th Pathway	Approved

1501	BERGER, JOHN LEE	10802088	Mar/12/2010	1021	I	Inital Licensure Endorsement	5th Pathway	Approved
	MCDONNELL, EDMOND JOSEPH JR	13238112	Feb/11/2011	1021	I	Inital Licensure Endorsement	5th Pathway	Approved
	SOUED, STEVEN MICHAEL	14546319	Jul/06/2011	1021	I	Inital Licensure Endorsement	5th Pathway	Approved
1501	SAGER, GERARD H	15007044	Nov/18/2011	1021	I	Inital Licensure Endorsement	5th Pathway	Approved
1501	MENDEZ, BRIAN L	15037847	Dec/06/2011	1021	I	Inital Licensure Endorsement	5th Pathway	Approved
1501	LOHNE, MARTIN J	15247242	Mar/02/2012	1021	I	Inital Licensure Endorsement	5th Pathway	Approved
1501	OLIN, MICHAEL STEVEN	15466199	Jun/05/2012	1021	I	Inital Licensure Endorsement	5th Pathway	Approved
1501	MEDINA-RIVERA, BIOMARIS	15493129	Jun/26/2012	1021	I	Inital Licensure Endorsement	5th Pathway	Approved
1501	BOBE VEGA, LOHALIZ	10487875	Jan/12/2010	1021	I	Inital Licensure Endorsement	5th Pathway	Approved
1501	KING, DENNIS CHARLES	13380432	Mar/23/2011	1021	I	Inital Licensure Endorsement	5th Pathway	Approved
1501	KING, THOMAS FRANCIS	15362539	Mar/23/2012	1021	I	Inital Licensure Endorsement	5th Pathway	Approved
1501	CLEVELAND, WILLIAM B III	15395092	Apr/09/2012	1021	I	Inital Licensure Endorsement	5th Pathway	Approved
1501	HYMAN, MARTIN C	9906723	Sep/21/2009	1021	I	Inital Licensure Endorsement	5th Pathway	Approved
1501	GROSS, STEWART CORY	9912186	Sep/25/2009	1021	I	Inital Licensure Endorsement	5th Pathway	Approved
1501	SAVINO, MICHAEL A	10839138	Apr/13/2010	1021	I	Inital Licensure Endorsement	5th Pathway	Approved
1501	MARRESE, ADRIANNA MARIE	10840600	Apr/15/2010	1021	I	Inital Licensure Endorsement	5th Pathway	Approved
1501	COHN, STEVEN LAWRENCE	14518662	Jun/17/2011	1021	I	Inital Licensure Endorsement	5th Pathway	Approved
1501	ORTIZ BAEZ, FERNANDO	14851396	Oct/03/2011	1021	I	Inital Licensure Endorsement	5th Pathway	Approved
1501	LAYMAN, HOWARD A	15368769	Mar/29/2012	1021	I	Inital Licensure Endorsement	5th Pathway	Approved

Petitioner, Leon Rawner, M.D.'s First Set of Interrogatories to Respondent, Board of Medicine, numbered 1 through 9, have been answered by:

Chandra Prine

Print Name: Chandra Prine

STATE OF Florida

COUNTY OF Leon

BEFORE ME, the undersigned authority, personally appeared Chandra Prine as Program Operations Administrator Board of Medicine, who by me being first duly sworn, deposes and states that the answers to the foregoing First Set of Interrogatories are true and correct to the best of his/her knowledge, information and belief. He/she is personally known to me or has produced personally known as identification.

SWORN TO OR AFFIRMED before me this 13th day of January, 2014

REBECCA P HEWETT
Commission # EE 869113
Expires February 2, 2017
Bonded Thru Troy Fain Insurance 800-385-7019

NOTARY PUBLIC

Florida Board of Medicine
June 6, 2014
Full Board Supplemental

Updated PCP List

June 2014 PCP List (front and back pages)

Tampa Airport Marriott - Tampa, Florida

Tab No.	Type of Case	Respondent	Lic. Type	Case No.	PCP Members
1	Settlement Agreement	Harry A. Huntt Jr.	M.D.	201312261	Averhoff & Goersch
2	Settlement Agreement	Jeffrey I. Marder	M.D.	201205859	Stringer
3	Settlement Agreement	John E. Davis	M.D.	201306049	El-Sanadi & Goersch
4	Settlement Agreement	Michael C. Miranda	M.D.	201316812	Orr & Tootle
5	Settlement Agreement	David G. Lehrman	M.D.	201102621	Orr & Tootle
6	Settlement Agreement	Betty Jo Carter	M.D.	201206026	Lage & Tootle
7	Settlement Agreement	Juan Carlos Gutierrez	M.D.	201306329	Fernandez & Tootle
8	Settlement Agreement	Celestino Pedro Castellon	M.D.	201217871	Fernandez & Tootle
9	Settlement Agreement	Shlomo Pascal	M.D.	201207498	Orr & Tootle
10	Settlement Agreement	Angel Marty Garcia	M.D.	200728234 & 201102938	N/A
11	Settlement Agreement	Ronald Evan Wheeler	M.D.	201203027, 201216053 & 201306688	El-Sanadi & Rosenberg
12	Settlement Agreement	Randy Mitchell Dean	M.D.	201112217	Rosenberg
13	Settlement Agreement	Richard Douglas Curtis	M.D.	201308285	Goersch & Orr
14	Settlement Agreement	Scott Steven Katzman	M.D.	201115871	N/A
15	Settlement Agreement	Willem Bian Gwan Ouw	M.D.	200912216 & 201005931	Goersch
16	Settlement Agreement	Michael Dimayuga	M.D.	201314254	Averhoff & Goersch
17	Settlement Agreement	Rajan Kumar Sareen	M.D.	201313101	El-Sanadi
18	Settlement Agreement	Abdon S. Borges	M.D.	201014416	N/A
19	Settlement Agreement	Mohammed Naji	M.D.	201216334	Lage & Rosenberg
20	Settlement Agreement	Gregory Francis Paine	M.D.	201312290	Rosenberg
21	Settlement Agreement	Paul Joseph Chappano	M.D.	201306379	El-Sanadi
22	Settlement Agreement	Kevin Martin Hornsby	M.D.	201006772	Thomas
23	Settlement Agreement	Cesar A. Velilla	M.D.	201117075	Stringer
24	Settlement Agreement	John R. Chase	M.D.	201308252	Lage & Tootle
25	Settlement Agreement	Juan Manuel Pittaluga	M.D.	201312878	Lage & Tootle
26	Settlement Agreement	Kenneth A. Berdick	M.D.	200914917, 200920820, 200924320 & 201016933	Averhoff & Tootle
27	Settlement Agreement	Murshid A. Al-Awady	M.D.	201208648	Stringer
28	Settlement Agreement	Joseph Michael Plunkett	M.D.	201301695	Averhoff & Goersch
29	Settlement Agreement	Michael J. Benjamin	M.D.	201003039	Goersch
30	Settlement Agreement	Steven Lee Case	M.D.	201302731	Rosenberg
31	Settlement Agreement	Idelfonso Quintero	M.D.	201308250	Stringer
32	Settlement Agreement	Paul Henry Wand	M.D.	200923424	Stringer & Thomas
33	Hearing Not Involving Disputed Issues of Material Facts	Oscar Mendez Turino	M.D.	201300331	Thomas
34	Hearing Not Involving Disputed Issues of Material Facts	James Michael Desantis	M.D.	201309558	El- Sanadi
35	Recommended Order	Peter V. Choy	M.D.	201111189	El-Sanadi, Goersch & Stringer
36	Determination of Waiver Hearing	Sheela Thakor Patel	M.D.	201301164	N/A
37	Determination of Waiver Hearing	Hoon Dae Yu	M.D.	201114955 & 201100164	El-Sanadi & Goersch
38	Determination of Waiver Hearing	Richard B. Karsh	M.D.	201312120	Goersch & Orr
39	Determination of Waiver Hearing	Kwame Asante-Nkansa	M.D.	201314005	Averhoff & Goersch
40	Determination of Waiver Hearing	Fadejimi Adelakun	M.D.	201016999	N/A
44	Voluntary Relinquishment	Thomas James Rodenberg	M.D.	201212070	El-Sanadi & Goersch
45	Voluntary Relinquishment	David Guy Malen	M.D.	200718402	Stringer
46	Voluntary Relinquishment	Anna Maria Kupczyk	M.D.	201400279	Waived

June 2014 PCP List (front and back pages)

Tampa Airport Marriott - Tampa, Florida

47	Voluntary Relinquishment	Abdur Razzak Tai	M.D.	201213211, 200923303 & 201022800	Zachariah
48	Voluntary Relinquishment	Christine Patricia Glavey	M.D.	201309978	Averhoff & Goersch
49	Voluntary Relinquishment	Riyaz A. Jummani	M.D.	201108947	N/A
50	Voluntary Relinquishment	Roger L. Gordon	M.D.	201008233 & 201005889	N/A
51	Voluntary Relinquishment	Miguel Antonio Montejo	M.D.	201320235	Waived
52	Voluntary Relinquishment	Ernestina Giron Schupke	E.O.	201215437 & 201303335	Averhoff
65	Voluntary Relinquishment	Harold E. Smith	M.D.	201205273	Averhoff
69	Hearing Not Involving Disputed Issues of Material Facts	Clayton E. Linkous	M.D.	201120524	Averhoff, Goersch, Rosenberg & Thomas
Updated 6/2/2014					

Additional Information

David Lehrman, M.D. –
Refer to original tab 5

From: Julia <jmi@lubellrosen.com>
Sent: Wednesday, May 28, 2014 1:09 PM
To: Sanford, Crystal
Subject: RE: Dr. Lehrman

Just to confirm, by way of this email, the Board members are aware that the doctor won't be at this meeting but he in no way is disregarding the need for his appearance. He is only missing this meeting because of his wife's condition and is certainly willing and able to attend a board meeting in the near future.

Thanks,
Julia Ingle

From: Sanford, Crystal [mailto:Crystal.Sanford@flhealth.gov]
Sent: Friday, May 23, 2014 2:02 PM
To: Julia
Subject: RE: Dr. Lehrman

Hi Julia

The way continuances work with Settlement Agreements is the matter will stay on the agenda. If the Board does not approve the Settlement Agreement at the beginning of the meeting, we will hear the case. The Board will determine at that time if they want to waive his appearance and move forward with the hearing or if they have questions for him, the matter will be rescheduled for the August Board Meeting. I will provide this email to the members to assist with their decision. If you need anything further, please let me know.
Crystal A. Sanford, CPM
Program Operations Administrator
Department of Health (DOH) | Division of Medical Quality Assurance (MQA)
Board of Medicine
Phone: 850-245-4132 | Fax: 850-412-1261
4052 Bald Cypress Way, # C03 | Tallahassee, FL. 32399-3256
New Website: www.flboardofmedicine.gov
Twitter: www.twitter.com/FLBoardofMed
There have been changes to the license renewal process. Please visit www.CEAtRenewal.com to learn more.

Mission: To protect, promote and improve the health of all people in Florida through integrated state, county, and community efforts.
Vision: To be the Healthiest State in the Nation.
Purpose: To protect the public through health care licensure, enforcement and information.
Focus: To be the nation's leader in quality health care regulation.

Values: I.C.A.R.E. (Innovation, Collaboration, Accountability, Responsiveness, Excellence)
PLEASE NOTE: Florida has a very broad public records law. Most written communications to or from
State officials regarding State business are public records available to the public and media upon request.
Your email communications may therefore be subject to public disclosure.
From: Julia [mailto:jmi@lubellrosen.com]
Sent: Friday, May 23, 2014 1:35 PM
To: Sanford, Crystal
Subject: FW: Dr. Lehrman

Crystal, how are you?

The email chain below is copied to you for assistance with rescheduling Dr. David Lehrman's Board
Appearance for his settlement agreement which is scheduled for June in Tampa. Dr. Lehrman's wife was
recently diagnosed with metastatic breast cancer and he is completely occupied with taking care of
her. Is it possible to get his appearance postponed until August? The doctor has only been practicing
part time for the last couple of years and is not really working at all right now due to his wife's grave
condition.

Any assistance would be greatly appreciated.

Sincerely,
Julia Ingle

From: Zachem, Jonathan [mailto:Jonathan.Zachem@flhealth.gov]
Sent: Friday, May 23, 2014 1:11 PM
To: Julia
Subject: RE: Dr. Lehrman

Yes, Crystal can either direct you to the right person or help you with the request. She will copy me with
the decision and let me know if they reschedule. Good luck.

Jonathan R. Zachem, Assistant General Counsel
Office of General Counsel
4052 Bald Cypress Way, Bin # C-65
Tallahassee, Florida 32399-3265
Telephone: (850) 245-4444 Ext. 8117
Email: Jonathan.Zachem@flhealth.gov
Please note: Florida has a very broad public records law. Most written communications to or from state
officials regarding state business are public records available to the public and media upon request. Your
e-mail communications may therefore be subject to public disclosure.
However, if this e-mail concerns anticipated or current litigation or adversarial administrative proceeding

to which the Florida Department of Health is a party, this email is an attorney-client communication, and
is, therefore, a limited access public document exempt from the provisions of Chapter 119, Florida
Statutes.
See Section 119.071(d)1., Florida Statutes (2010).
DOH Mission: To protect, promote & improve the health of all people in Florida through integrated state,
county, & community efforts.
Vision: Healthiest State in the Nation
Values: (ICARE)
Innovation: We search for creative solutions and manage resources wisely.
Collaboration: We use teamwork to achieve common goals & solve problems.
Accountability: We perform with integrity & respect.
Responsiveness: We achieve our mission by serving our customers & engaging our partners.
Excellence: We promote quality outcomes through learning & continuous performance improvement.
From: Julia [mailto:jmi@lubellrosen.com]
Sent: Friday, May 23, 2014 1:09 PM
To: Zachem, Jonathan
Subject: RE: Dr. Lehrman

Do I contact Crystal Sanford or can you refer me to the right person to ask?

From: Zachem, Jonathan [mailto:Jonathan.Zachem@flhealth.gov]
Sent: Friday, May 23, 2014 12:21 PM
To: Julia
Subject: RE: Dr. Lehrman

Julia,

I am fine, thank you. I hope you are well too.

I have no opposition to a continuance for medical reasons such as this. I would suggest you contact the
Board office to see if they will send the case to the Chairman and get his approval.

Jonathan R. Zachem, Assistant General Counsel
Office of General Counsel
4052 Bald Cypress Way, Bin # C-65
Tallahassee, Florida 32399-3265
Telephone: (850) 245-4444 Ext. 8117
Email: Jonathan.Zachem@flhealth.gov
Please note: Florida has a very broad public records law. Most written communications to or from state
officials regarding state business are public records available to the public and media upon request. Your
e-mail communications may therefore be subject to public disclosure. However, if this e-mail concerns anticipated or current litigation or adversarial administrative proceeding

to which the Florida Department of Health is a party, this email is an attorney-client communication, and
is, therefore, a limited access public document exempt from the provisions of Chapter 119, Florida
Statutes.
See Section 119.071(d)1., Florida Statutes (2010).
DOH Mission: To protect, promote & improve the health of all people in Florida through integrated state,
county, & community efforts.
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Collaboration: We use teamwork to achieve common goals & solve problems.
Accountability: We perform with integrity & respect.
Responsiveness: We achieve our mission by serving our customers & engaging our partners.
Excellence: We promote quality outcomes through learning & continuous performance improvement.
From: Julia [mailto:jmi@lubellrosen.com]
Sent: Friday, May 23, 2014 10:39 AM
To: Zachem, Jonathan
Subject: Dr. Lehrman

Mr. Zachem, how are you?

I just got off the phone with my client, Dr. Lehrman and I need to ask if his appearance at the board
meeting can be changed to August. Dr. Lehrman’s wife was recently diagnosed with metastatic breast
cancer and she is currently undergoing chemotherapy. He needs to be with her for the treatments and
has no one else to assist with the appointments and taking care of her at this point.

I apologize for the timing of this, but figured I would ask as soon as I got off the phone with him.

Thank you for your courtesies.

Julia Ingle

Julia M. Ingle, Esq.
Lubell & Rosen, L.L.C.
Museum Plaza, Suite 900
200 S. Andrews Ave.
Ft. Lauderdale, FL 33301
954.755.3425 Office
954.755.2993 Fax
JMI@lubellrosen.com
STATEMENT OF CONFIDENTIALITY AND PRIVILEGE
This e-mail transmission, which includes its attachments, if any, is intended for a particular addressee(s) and may contain confidential and/or attorney-client or work product

privileged material. If you are not the named addressee, or if this e-mail transmission has been addressed to you in error, or it is otherwise not clear that you are the
intended recipient (or his or her authorized agent), you are hereby notified that you have received this e-mail transmission in error and that any review, disclosure,
distribution, dissemination, copying, printing, maintaining, saving, or other use of this e-mail transmission is strictly prohibited. Delivery of this e-mail transmission to any
person other than the intended recipient(s) is not intended in any way to waive privilege or confidentiality. If you have received this e-mail transmission in error, please notify
Lubell & Rosen, LLC immediately by reply e-mail to the sender and permanently delete the e-mail transmission and its attachments, if any. Thank you.

Juan Gutierrez, M.D. –
Refer to original tab 7

One or more pages have been removed from this document for security reasons

Scroll down to see the available pages or advance to the next document if all pages have been removed.

SOME OR ALL PAGES IN THIS DOCUMENT ARE PATIENT RECORDS AND/OR DOCUMENTS THAT IDENTIFY THE PATIENT BY NAME AND ARE EXEMPT FROM PUBLIC RECORDS LAWS.

456.057 - Ownership and control of patient records; report or copies of records to be furnished.—

10)(a)All patient records obtained by the department and any other documents maintained by the department which identify the patient by name are confidential and exempt from s. 119.07(1) and shall be used solely for the purpose of the department and the appropriate regulatory board in its investigation, prosecution, and appeal of disciplinary proceedings. The records shall not be available to the public as part of the record of investigation for and prosecution in disciplinary proceedings made available to the public by the department or the appropriate board.

Mohammed Naji, M.D. –
Refer to original tab 19

Mohammed Naji, M.D.
Post Office Box 795
Glendora, California 91740

STATE OF FLORIDA

DEPARTMENT OF HEALTH

BOARD OF MEDICINE

DEPARTMENT OF HEALTH Petitioner, vs. MOHAMMED NAJI, M.D. Respondent.	)	Case No.: 2012-16334 **MOTION TO CONTINUE DISCIPLINARY HEARING SET FOR JUNE 6, 2014; DECLARATION OF MOHAMMED NAJI, M.D.; DECLARATOIN OF GLENN E. STERN** Hearing Date: June 6, 2013 Time: 8:00 a.m. Place: Tampa Airport Marriott 4200 George J. Bean Outbound Parkway Tampa, Florida 33607

TO THE STATE OF FLORIDA DEPARTMENT OF HEALTH:

Respondent Plaintiff Mohammed Naji ("Respondent") hereby requests that his disciplinary hearing before the Florida Board of Medicine set for June 6, 2014 at 8:00 a.m. be continued to a future date because Respondent is scheduled to attend his daughter's graduation from The Institute of Knowledge ("Institute") on June 6, 2014 at 6:30 p.m. in Diamond Bar, California.

Respondent's daughter's graduation ceremony is set for June 6, 2014. (Naji Decl., ¶ 2). On May 12, 2014, the Institute emailed Respondent an invitation to the graduation ceremony. (Naji Decl., Ex. "A"). The graduation ceremony is being held at the Diamond Bar Center

located at 1600 Grand Ave., Diamond Bar, California. (Naji Decl., Ex. "B", see middle left hand side of Exhibit "B").

When the date of the June 6, 2014 hearing was set with my attorney, Glenn E. Stern, Esq., Mr. Stern was unaware that I needed to attend my daughter's graduation ceremony from the Institute on June 6, 2014. (Stern Decl., ¶ 2).

Respondent respectfully requests that the June 6, 2014 disciplinary hearing before the Florida Board of Medicine be continued to a later date that is acceptable to the Florida Board of Medicine so Respondent can attend his daughter's graduation ceremony on June 6, 2014. (Naji Decl., ¶ 4).

Dated: May 28, 2014 BY: _____
MOHAMMED NAJI, M.D.

DECLARATION OF MOHAMMED NAJI, M.D.

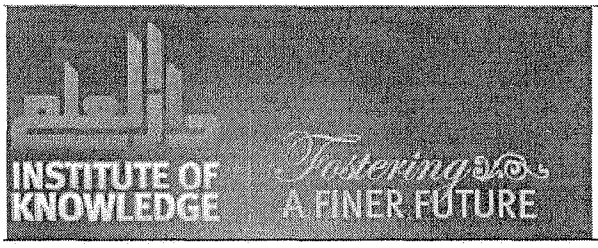
1. I, Mohammed Naji, M.D., declare that I am the Respondent in this matter, that I have personal knowledge of the following facts and if called as a witness I would competently testify thereto.
2. Attached as Exhibit "A" is a true and correct copy of the notice of The Institute of Knowledge's Annual Graduation Ceremony that was emailed to me by the Institute of Knowledge.
3. On June 6, 2014, there is a graduation ceremony for students graduating from The Institute of Knowledge. Attached hereto marked as Exhibit "B" and incorporated herein by reference is a true and correct copy of a notice from the June 6, 2014 graduation ceremony.
4. My daughter's graduation from the Institute of Knowledge is a major event in her life and it is critical that I attend her graduation ceremony. Therefore, I am requesting that my disciplinary hearing before the Florida Board of Medicine set for June 6, 2014 be continued to a future date.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 28th day of May, 2014 in Glendora, California.

Mohammed Naji, M.D., Declarant

EXHIBIT A

From: Institute of Knowledge <events@instituteofknowledge.com>
Date: May 12, 2014, 12:42:38 PM PDT
To: jalmajzoub@yahoo.com
Subject: **IOK's Annual Graduation Ceremony | Friday, June 6th, 2014**
Reply-To: events@instituteofknowledge.com



MAY 12, 2014
newsletter

السلام عليكم

In This Issue:
IOK's Annual Graduating Ceremony | Friday, June 6th, 2014
IOK Hajj w/ Sh. Nomaan Baig, Sh. Furhan Zubairi & Imam Wisam Sharieff

Friday, June 6th, 2014!

Institute of Knowledge's Annual Graduation Ceremony

with Guest Speaker Shaykh Mohammed Faqih

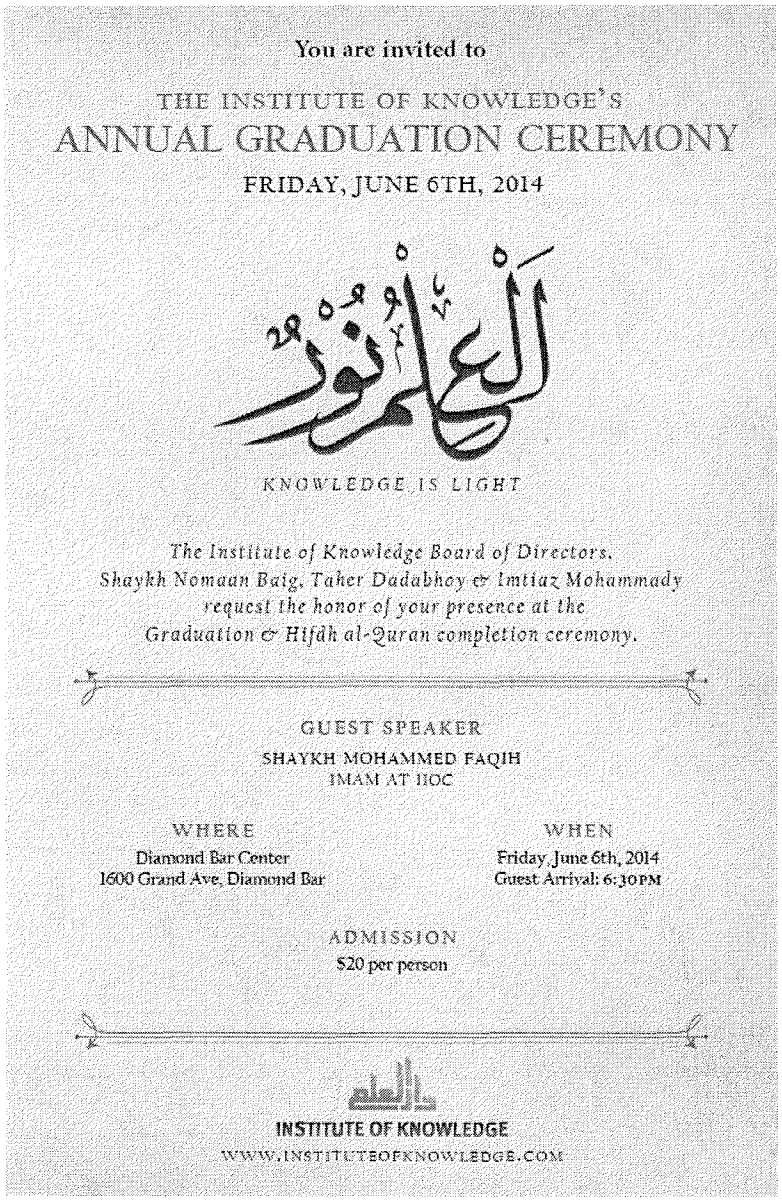
Join us to celebrate the hard work of our graduating students and those among them who

EXHIBIT B

Annual Graduation Ceremony

Friday, June 6, 2014
6:30 pm - 10:30 pm

Diamond Bar Center
(Map)



PURCHASE TICKETS

Number of Tickets

1 Ticket $20.00 USD

Name

Phone

Buy Now

Mohammed Naji, M.D.
Post Office Box 795
Glendora, California 91740

STATE OF FLORIDA

DEPARTMENT OF HEALTH

BOARD OF MEDICINE

DEPARTMENT OF HEALTH Petitioner, vs. MOHAMMED NAJI, M.D. Respondent.	Case No.: 2012-16334 **DECLARATION OF GLENN E. STERN** Hearing Date: June 6, 2013 Time: 8:00 a.m. Place: Tampa Airport Marriott 4200 George J. Bean Outbound Parkway Tampa, Florida 33607

LAW OFFICE OF GLENN E. STERN
333 West Foothill Boulevard
Glendora, CA 91741
(626) 335-6844 FAX (626) 232-7111

DECLARATION OF GLENN E. STERN

1. I, Glenn E. Stern am Dr. Mohammed Naji, M.D.'s attorney. I have personal knowledge of the matters set forth herein, unless any matters are stated upon information and belief and as to those matters I believe them to be true. If called as a witness I would and could competently testify to the following:
2. I advised on Dr. Naji's proposed settlement with the Board. At the time the date was set, I was unaware that Dr. Naji's daughter was graduating.
3. Dr. Naji is a very strong family man who loves his daughter. I know that it is very important to he and his daughter that he attends the graduation. He has a large family that will also be attending.
4. Graduation is a one time event and for a daughter a father's absence could be very hurtful.
5. I believe it is appropriate that the Board grant him another date to attend this hearing.
6. There is no prejudice to the Board or the people of the State of Florida as Dr. Naji lives in California and is not practicing in Florida at the present time. He is merely wishing to keep his license intact and restore his good name.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct .

Executed in Los Angeles County on May 28, 2014.

Glenn E. Stern

Sanford, Crystal

From: Sanford, Crystal
Sent: Friday, May 30, 2014 1:12 PM
To: 'glennstern@sternatlaw.com'
Cc: Reynolds, Patrick
Subject: RE: Dr. Naji Matter

Dear Mr. Stern

Thank you for your email. This matter will remain on the agenda as scheduled for June 6th. When the Settlement Agreement is presented, the Board will make a decision about whether to waive Dr. Naji's appearance or require him to appear at the next meeting. They may also waive his appearance and accept the Settlement Agreement. If that occurs, you and your client will receive a Final Order approximately two weeks after the hearing date. If you need anything further, please do not hesitate to contact this office.

Crystal A. Sanford, CPM
Program Operations Administrator
Department of Health (DOH) | Division of Medical Quality Assurance (MQA)
Board of Medicine
Phone: 850-245-4132 | Fax: 850-412-1261
4052 Bald Cypress Way, # C03 | Tallahassee, FL. 32399-3256
New Website: www.flboardofmedicine.gov
Twitter: www.twitter.com/FLBoardofMed
There have been changes to the license renewal process. Please visit www.CEAtRenewal.com to learn more.

Mission: To protect, promote and improve the health of all people in Florida through integrated state, county, and community efforts.

Vision: To be the **Healthiest State** in the Nation.
Purpose: To protect the public through health care licensure, enforcement and information.
Focus: To be the nation's leader in quality health care regulation.
Values: I.C.A.R.E. (Innovation, Collaboration, Accountability, Responsiveness, Excellence)
PLEASE NOTE: Florida has a very broad public records law. Most written communications to or from State officials regarding State business are public records available to the public and media upon request. Your email communications may therefore be subject to public disclosure.

From: Reynolds, Patrick
Sent: Friday, May 30, 2014 12:28 PM
To: Sanford, Crystal
Subject: FW: Dr. Naji Matter

Ms. Sanford,

Dr. Mohammed Naji, through counsel, has requested that his case be continued to the next Board meeting. His settlement agreement is at Tab No. 19 for the June 6th Board meeting. His motion for continuance is attached.

J. Patrick Reynolds
Assistant General Counsel
Prosecution Services Unit
Florida Department of Health

From: Glenn Stern [mailto:glennstern@sternatlaw.com]
Sent: Thursday, May 29, 2014 9:10 PM

To: Reynolds, Patrick
Subject: Dr. Naji Matter

Dear Mr. Reynolds,

Attached please find Dr. Naji's motion for a later hearing date. If for any reason it does not come through please let me know.

Thank you for your courtesy throughout this process.

Regards,

Glenn Stern

LAW OFFICE OF GLENN E. STERN
Glenn E. Stern
Attorney at Law
333 West Foothill Boulevard,
Glendora, CA 91741
626.335.6844
213.232.7111 Fax
glennstern@sternatlaw.com

Cesar Velilla, M.D. –
Refer to original tab 23

GUNSTER
FLORIDA'S LAW FIRM FOR BUSINESS

Bruce D. Lamb, Esquire
(813) 222-6605
blamb@gunster.com

May 19, 2014

Via electronic mail and regular U.S. mail

Allison Dudley, Esquire,
Executive Director - Board of Medicine
4052 Bald Cypress Way, Bin A-02
Tallahassee, FL 32399

Re: DOH v. Cesar Velilla, M.D.
DOH Case No. 2011-17075
Patient: C.A.
Our File No. 00036495.00001

Dear Allison:

The settlement agreement for the above-referenced case is scheduled to be presented to the Board of Medicine at its June 2014 meeting. We have previously submitted a letter and materials on behalf of Dr. Velilla for distribution to members of the Board for their consideration in conjunction with the settlement agreement. We are writing to provide additional information that was recently received regarding the quality of Dr. Velilla's medical records.

Dr. Velilla recently began the FMA medical records course which is required as part of the proposed settlement of this case. As part of this course, Dr. Velilla was asked to submit copies of his own medical records for evaluation by the course instructors. Dr. Velilla's medical records were deemed to be "excellent" overall. We are enclosing a copy of the medical records evaluation that was provided to Dr. Velilla. We believe that this information is germane to the Board's consideration of the proposed settlement agreement and request that you distribute this information to the members of the Board for their consideration in conjunction with the information that has previously been provided. Thank you for your assistance.

Very truly yours,

Bruce D. Lamb
Paula P. Bentley

MEDICINE BOARD
14 MAY 22 AM 11:09

BDL/ppb
Enclosure

cc: Cesar Velilla, M.D.
Andre Ourso, Asst. General Counsel

IV. PLEASE COMMENT ON ANY OF THE ABOVE ITEMS WHICH WERE MARKED "NO" AND USE THIS SECTION TO MAKE SUGGESTIONS WHICH YOU FEEL WOULD HELP IMPROVE THE OVERALL QUALITY OF THIS MEDICAL RECORD.

5/17/17.

Dr. Velella MD. / Dr. Wilson DO.

Overall your notes / charts are excellent.
Things that were done appropriate on record included:
- Demographic sheet included
- no editorializing. notes are objective.
- Medical Hx. Surgical Hx. allergies all documented
- meds dispensed - Dose. Route, Freq. # Dispensed, # refills recorded
- Hx + PE = A+P. Care of pt appeared logical and appropriate.
- Consent forms appear appropriate for procedure + signed
- Hx is complete. PE. complete.
- reports / labs abn + normals addressed in a note. Dated & signed
- vital signs recorded each visit.
- chief complaint addressed in notes each visit.
- Pt Ed documented on procedure
- Plan for F/U documented.
- no corrections made on record.

Things to work on: - Document if reviewed S&Sx and common side effects of meds given.
- Document. instructed pt no driving or mechanical tasks when taking narcotics / anxiolytics / muscle relaxant T.

Keep up the great work

Carole Wilson.

Juan Pittaluga, M.D. –
Refer to tab 25

METZGER & ASSOCIATES LLC
Health, Energy and Professional Regulatory Law

KENNETH J. METZGER, ESQUIRE
AV® PREEMINENT™ PEER REVIEW RATED
FLORIDA BAR BOARD CERTIFIED IN STATE & FEDERAL GOVERNMENT & ADMINISTRATIVE PRACTICE
LESLIE J. PAUGH, ESQUIRE ■ MICHAEL M. PARRISH, ESQUIRE "OF COUNSEL"

June 2, 2014

Via Electronic Mail
Allison M. Dudley, Exec. Director
Board of Medicine
Department of Health
Board of Medicine
4052 Bald Cypress Way, Bin C-03
Tallahassee, FL 32399-3253

RE: Pittaluga, Juan Manuel, M.D. – ME50173 / FL DOH vs. Pittaluga, M.D., Case # 2013-12878

Dear Allison:

This will serve as Dr. Pittaluga's timely compliance with the Department's **reporting requirement** associated with his May 6, 2014 *plea* to a "cocaine" charge in Winchester Count, Virginia and a **Deferred Disposition Order (attached)** withholding adjudication and placing him on Probation. Additionally, we would request that his **Florida Practitioner Profile be updated consistent with this Order.**

As reflected within Dr. Pittaluga's Florida License Verification, he is not currently practicing medicine in Florida but, the subject "impairment" matter from the State of Virginia is set for disposition by the Florida Board of Medicine on June 6, 2014 with a proposed "indefinite suspension" until his medical licenses elsewhere are fully restored. Dr. Pittaluga surrendered his DEA permits in 2013. Accordingly, we would urge that another Florida investigation duplicative of these matters is not necessary. However, should you require anything further, please advise us.

Sincerely,

Kenneth J. Metzger

cc: Juan Manuel Pittaluga, M.D.

1637 METROPOLITAN BOULEVARD, SUITE C-2 ■ TALLAHASSEE, FLORIDA 32308 ■ PHONE 850.329.7500 ■ FAX: 850.329.7501 ■ WWW.METZGERANDASSOCIATES.COM

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF WINCHESTER

COMMONWEALTH OF VIRGINIA

v **Docket No: CR12001104-00**

JUAN M PITTALUGA
Fax a copy of this order to:
LOCAL BASED PROBATION/
OLD DOMINION COURT
SERVICES

DEFERRED DISPOSITION ORDER

On this 6TH day of MAY, 2014 came the Assistant Attorney for the Commonwealth and the accused, who appeared in person with **PHILLIP S GRIFFIN** Esquire, his attorney. A Court reporter was present and duly sworn.

The attorney for the defendant moved the Court to enter a plea to the indictment. The defendant waived full reading of the indictment and upon inquiry as to the plea the defendant responded he would stipulate the facts were sufficient to sustain a finding of guilt in this matter.

In accordance with the plea and the evidence, the Court withheld adjudication and continued this matter from today to **MAY 19, 2015,** at 10:00 AM FOR Final Disposition as contemplated in the Written Plea Agreement

The Court continued his bail and on the following conditions:

1. The defendant shall be of good behavior and violate no laws of this Commonwealth.
3 The defendant shall be subject to a curfew when she shall not be outside his place of residence between the hours of 11PM-6 AM except for medical emergencies or employment purposes.
4 The defendant shall perform 100 hours of community Service administered through the Local Based Probation Agency/Old Dominion Court Services. A separate order was entered concerning the Community Service Hours. (SEE ATTACHED)
5

If compliant, then the charges will be reduced to Possession of Cocaine in violation of 18.2-250 and he will be placed on First Offender Probation. **Court costs will be assessed upon conviction or upon placement on First offender Probation.**

Entered on MAY 6, 2014

John E. Wetsel, Jr., Judge

OLD DOMINION COURT SERVICES
LOCAL PROBATION REFERRAL

COMMONWEALTH OF VIRGINIA: In The City/County Of: Winchester

☐ General District Court ☐ Juvenile & Domestic Court ☑ Circuit Court

Defendant JUAN M. Pittaluga Docket No(s) CR12001104

DOB 01-06-1959 Offense(s) PWID COCAINE

Address 2431 Springsbury Rd Code Section(s) 18.2-248

Berryville, VA 22611 Misdemeanor ____ Felony ✓

Phone Number (540) 550-1911 Convicted ____ Deferred ✓

The following sentence has been imposed:

Fine: ____ Fine Suspended: ____

Jail: ____ days/months Jail Suspended: ____ days/months

The defendant shall appear again before this court on: MAY 19, 2015

Supervised probation until: ____

☑ 1. The defendant is ordered to complete 100 hours of community service by: MAY 1, 2015.

☐ 2. The defendant is ordered to make restitution to: ____,

in the amount of: $____ on or before: ____.

☐ 3. The defendant is ordered to pay court costs and fines in the amount of $____ to this court, on or before: ____.

☑ 4. The defendant shall submit to random breath/urine tests as required by the ODCS-LPA, and may be required to pay for such testing at the time the test is performed. (Drug testing - $20.00, Breath Testing - $5)

☑ 5. The defendant shall actively participate in any counseling, education or treatment program as required by the Probation Officer, and shall be responsible for the cost of any such program.

☐ 6. Anger Management to be completed by: ____.

☑ 7. Other: Community Service to be initiated by 6-6-14 ____.

☑ ODCS LPA is to file a report of Community Service hours completed.

Intervention Fee: pursuant to Article 2 (53.1-185.2) of Chapter 5 of Title 53.1 of the Code of Virginia. **Old Dominion LPA will assess an intervention fee of $150.00 for six- (6) months of supervision and $175.00 for one- (1) year of supervision. Fees shall be paid by money order only.** Fees shall be waived for offenders determined to be indigent in accordance with OCCS-LPA procedures. If so determined, the referring Judge may at their discretion order a reduced fee. Offenders failing to pay fees owed may be subject to litigation or may be submitted to the Virginia Department of Taxation as specified in the Virginia Set-Off Debt Program Information Guide.

All rules, regulations and conditions set by the ODCS LPA are incorporated as terms of this order. **The defendant shall report within 5 business days to Old Dominion Court Services** – 860 Smithfield Avenue - Winchester, Virginia (540) 665-5633; or to one of the following satellite offices: 201 East 2nd Street, Front Royal, Virginia 22630, (540) 635-3900; 23 W. Main Street, Luray, Virginia 22835 (540) 743-2092; or 215 Mill Road, Suite 108 - Woodstock, Virginia (540) 459-4941.

ENTERED: 5-6-14 JUDGE: ____

DEFENDANT: ____

DISTRIBUTION: *WHITE* – COURT *YELLOW* – OLD DOMINION COURT SERVICES *PINK* - DEFENDANT

METZGER & ASSOCIATES LLC
Health, Energy and Professional Regulatory Law

KENNETH J. METZGER, ESQUIRE
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LESLIE J. PAUGH, ESQUIRE ■ MICHAEL M. PARRISH, ESQUIRE "OF COUNSEL"

June 2, 2014

Crystal Sanford, Program Op. Administrator
(Board Meeting Coordinator)
Florida Board of Medicine
4052 Bald Cypress Way, Bin C-03
Tallahassee, FL 32399-3253

RE: FL DOH vs. Juan Manuel Pittaluga, M.D., Case # 2013-12878

Dear Ms. Sanford:

This letter with the Settlement Agreement previously submitted are in support of resolving the above case matter at the June 6, 2014 Board of Medicine meeting in Tampa, Florida. The purpose of this letter with supporting documents is to provide members of the Board with information perhaps not previously provided for their consideration in conjunction with the proposed Settlement Agreement. Please take the necessary steps to assure this letter with any attachments is provided to the Board in an "addendum" to already filed materials as the undersigned counsel was just recently retained.

Case Overview

This is a very unfortunate case involving a well trained and experienced physician that was a Board Certified Cardiologist licensed in Florida 27 years with no prior violations or complaints but in recent years practicing in Virginia where he was suspended from practice due to impairment. Married with three children, his eldest daughter was diagnosed with an advanced case of leukemia undergoing prolonged and expensive treatment at John Hopkins in Baltimore, MD. Following her recovery she experienced many personal challenges as did his son, Enrique attending the University of Virginia. These difficulties only compounded Dr. Pittaluga's personal and financial challenges with being unable to find a suitable medical partner to share in his crushing overhead associated with a new office facility he had opened. Dr. Pittaluga fell victim to a cocaine addiction which he continues to battle today with the support of his family.

1637 METROPOLITAN BOULEVARD, SUITE C-2 ■ TALLAHASSEE, FLORIDA 32308 ■ PHONE 850.329.7500 ■ FAX: 850.329.7501 ■ WWW.METZGERANDASSOCIATES.COM

Juan Manuel Pittaluga, MD's Credentials

Dr. Pittaluga received his initial medical training in the Dominican Republic where after he began his medical career in a Rural Health Center. He came to the United States in 1985 completing an Internal Medicine residency, a Critical Care fellowship and Cardiology fellow ship at the University of Miami, becoming a U.S. citizen and practicing in the State of Florida until June 1994. He subsequently returned to Florida and practiced only a brief period from April to December 2008. **(See attached Curriculum Vitae and Florida License Verification as a COMPOSITE EXHIBIT)**

Respectfully submitted,

Kenneth J. Metzger

cc: Diane Kiesling, Asst. Gen. Counsel
Juan Manuel Pittaluga, M.D.

COMPOSITE EXHIBIT

Curriculum Vitae
of

JUAN M. PITTALUGA, M.D.

2431 Springsbury Road
Berryville, VA 22611
Email: jpittaluga@mac.com

CONTACT INFORMATION:
Fax: (855) 371-7416
Cell: (540) 550-1911

PERSONAL: DOB: January 6, 1959

POB: Santo Domingo, Dominican Republic
Citizenship: United States

Married to Maria A. Bogaert, MD

Three Children: Enrique (26), Laura (21) and Gabriella (19)

EDUCATION:

1989-92
Cardiology Fellow
UNIVERSITY OF MIAMI, JACKSON MEMORIAL HOSPITAL
Miami, Florida

1988-89
Critical Care Fellow
UNIVERSITY OF MIAMI, MIAMI VA MEDICAL CENTER
Miami, Florida

1985-88
Internal Medicine Resident
UNIVERSITY OF MIAMI, JACKSON MEMORIAL HOSPITAL
Miami, Florida

1984-85
Physician
SOCIAL SERVICE PROGRAM
Rural Health Clinic
Haina, Dominican Republic

1979-84
MEDICAL SCHOOL
UNIVERSIDAD NACIONAL PEDRO H. URENA
Santo Domingo, Dominican Republic

1976-79
PRE-MED
UNIVERSIDAD NACIONAL PEDRO H. URENA
Santo Domingo, Dominican Republic

HONORS/ACTIVITIES:

Doctor in Medicine
MAGNA CUM LAUDE
UNIVERSIDAD NACIONAL PEDRO H. URENA
Santo Domingo, Dominican Republic

1989 Recipient of Sodi-Pallares Award
Section of Clinical Electrophysiology
University of Miami
Miami, Florida

EXPERIENCE:

Skill Set: Diagnostic Cardiac Catheterization, Coronary Interventions including Angioplasty, Stenting, IVUS, Rotoblator, EKG interpretation, Nuclear Scan Interpretations, Performance and Interpretation of Trans-esophageal Echocardiograms, Trans-thoracic echocardiography.

Jan 2014 - present Substance abuse Rehabilitation
Caron Foundation
My First Year recovery program Caron Foundation

Jan 2014 - present Substance abuse Rehabilitation
Rivendell

White Post, VA

Dec 2013 – Jan 2014 Substance abuse Rehabilitation
Caron Foundation
Wernersville, PA

Sep 2012 – Jan 2013 Substance abuse Rehabilitation
Williamsburg, Virginia
Nashville, Tennessee

Feb 2012 – July 2012
Physician
Heart and Vascular Institute of Winchester
Winchester, Virginia 22601

May 2009 – Jan 2012
President/Physician
Valley Cardiovascular Consultants, Inc.
Winchester, Virginia 22601

Apr 2008 – Dec 2008
Physician
Internal Medicine-Cardiology Practice
Garcia & Pastoriza, P.A.
Miami, Florida

Jul 94 – Mar 2008
Physician/Partner
Selma Medical Associates, Inc.
104 Selma Drive
Winchester, Virginia 22601

Jul 94 - Dec 2011
Attending Physician and Consulting/ Interventional Cardiologist
Winchester Medical Center
Winchester, Virginia

Jan. 94 - Jun 94
Instructor of Medicine
Cardiac Transplant Program
Division of Cardiology
University of Miami
Miami, Florida

Oct. 93 - Dec. 93

Staff Physician
City Hospital, Inc.
Martinsburg, West Virginia

Aug. 92 - Oct. 93
Physician
Shenandoah Community Health Center
Martinsburg, West Virginia

Jul. 90 - Jun 92
Physician
Internal Medicine-Cardiology Practice
Garcia & Pastoriza, P.A.
Miami, Florida

LICENSURE/CERTIFICATIONS:

1991 AMERICAN BOARD OF INTERNAL MEDICINE (Diplomate)

1993 AMERICAN BOARD OF CRITICAL CARE MEDICINE (Expired)

AMERICAN BOARD OF CARDIOVASCULAR DISEASES (Expired)

Board of Interventional Cardiology (Diplomate)

Nuclear Boards Certified (2007)

West Virginia Medical License #: 16867, (suspended)

Florida Medical License #: ME 50173 (expired)

Virginia Medical License #: 0101050179 (suspended)

Maryland Medical License #: D-45292 (inactive)

ECFMG #: 367-821-6

DEA #: Surrendered, 2013

PUBLICATIONS:

1. Bogaert MA, **Pittaluga JM**, Bogaert Diaz H. Lepromatous Leprosy: Frequency of Leprosy Reactions in the Dominican Republic. Dominican Congress of Dermatology; October 1984.

2. Koenig RE, **Pittaluga JM**, Bogaert MA, Castro M, Nuñez F, Vilorio I, Santo Domingo, Dominican Republic: Del Villar L, Calzada M, Santiago, Dominican Republic; Levy JA, San Francisco, California. Prevalence of Antibodies to the Human Immunodeficiency Virus in Dominicans and Haitians in the Dominican Republic. JAMA 1987 Feb 6; 257(5): 631-4.

3. De Marchena EJ, Asch JA, Martinez JM, Wozniak PM, **Pittaluga JM**, Breuer G, Caralis PV, Chakko S, Kessler KM. Silent Myocardial Ischemia in Patients with Treated Angina. Abstract 62nd Scientific Sessions of the American Heart Association: November 13-16, 1989. New Orleans, Louisiana.

4. De Marchena EJ, Asch JA, Martinez JM, Wozniak PM, **Pittaluga JM**, Breuer G, Caralis PV, Chakko S, Kessler KM, Myerburg RJ. Prognosis of Patients Medically Converted from Angina to Silent Ischemia. Abstract 63rd Scientific Sessions of the American Heart Association: November 12-15, 1990. Dallas, Texas.

5. Bauerlein JE, De Marchena EJ, **Pittaluga JM**, Martinez JM, Bilsker M. Accuracy of Catheter Placement During Cardiac Biopsy in Patients Following Orthotopic Cardiac Transplantation. Abstract American College of Cardiology, April 12-16, 1992. Dallas Texas.

6. De Marchena EJ, Asch JA, Martinez JM, Wozniak PM, Posada DJ, **Pittaluga JM**, Breuer G, Chakko S, Kessler KM, Myerburg, RJ. Usefulness of Persistent Silent Myocardial Ischemia in Predicting a High Cardiac Event Rate in Men with Medically Controlled Stable Angina Pectoris. American Journal of Cardiology, 1994; vol.

73:390-92.

License Verification

Data As Of **5/20/2014**

JUAN MANUEL PITTALUGA

LICENSE NUMBER: **ME50173**

Printer Friendly Version

General Information | Secondary Locations | Practitioner Profile

Profession

MEDICAL DOCTOR

License/Activity Status

DELINQUENT/

Controlled Substance Prescriber

NO

License Expiration Date

1/31/2014

License Original Issue Date

02/26/1987

Discipline on File

NO

Public Complaint

YES Link To Complaint

Address of Record

NOT PRACTICING IN FLORIDA

This practitioner has indicated that they are not currently practicing their profession in the State of Florida at this time. The practitioner may choose to begin practice at anytime provided that the license status is active. If the practitioner has resumed practice, the practitioner must update their practice location address. If you have any questions, please contact the department at 850-488-0595.

The information on this page is a secure, primary source for license verification provided by The Florida Department of Health, Division of Medical Quality Assurance. This website is maintained by Division staff and is updated immediately upon a change to our licensing and enforcement database.

James Desantis, M.D. –
Refer to original tab 34

James Michael DeSantis MD

3901 Regas Drive
Marietta, GA 30066
Phone: 678-361-3028
E-Mail: jdesantismd@gmail.com

Date:	May 29, 2014
Send To:	State of Florida Department of Health
Attention:	Ms. Crystal Sanford
Office Location:	Tallahassee, Florida
From:	Dr. James DeSantis
Office Location:	
Phone Number:	678-361-3028

Total Pages Including Cover: 36

Fax

Urgent ☐ Reply ASAP ☐ Please Comment ☐ Please Review ☐ For Your Information ☐

Comments:

Ms. Sanford,

I have included my evidence for my defense. Thank you.

May 30, 2014

To Whom It May Concern:

I, Dr. James Michael DeSantis, present myself in response to Florida's investigation into the incident that occurred on Sept. 28, 2012. I choose to represent myself in this matter, and will do my utmost to adhere to legal standards.

I have been a physician for over thirty years with a stellar track record. I have only been named in three malpractice suits, all of which were dismissed without moneys paid. Up until this event, I have never been accused of any misconduct, drug or alcohol issues, or personal problems. I am a family man. I am a physician who values his patients and their wellbeing. I never drank or took a sleep aid on a day I was scheduled to work; even this incident occurred on my day off in the privacy of my hotel room.

Although I stand here today on my own, I am fortunate and grateful for the supporting team behind me. My wife of thirty years, Cheri, daughter, Megan, son-in-law, Ryan, and grandson, Fox are with me in spirit and I thank them for their unfaltering love and encouragement. Also, my friends, colleagues, employers, physicians, and others have given and continue to give their support. And I am very grateful to each and every one of them back home in Atlanta.

I would like to first address the allegations made by the physicians at Talbott Recovery Center.

I freely and fully submitted to a three-day evaluation at Talbott in an effort to satisfy the Georgia Board. This was nothing more than an isolated event that occurred directly from an adverse reaction to a legally prescribed medication, Ambien, by Dr. Deborah Hebert one of my ER directors. At the time, and in fact not until many months later, did I learn of Talbott's reputation and suits against them. I would like to stress that they made their determinations before I even arrived. Furthermore, they gave their recommendations without receiving my negative drug tests. Lastly, they stood to financially gain. Per Dr. Davis, "I have seen the self-serving evaluations they perform on physicians hundreds of times (all

recommend expensive in patient treatment with them.) I was an expert witness in 3 suits against them by MDs—all settled for $1,000,000 each."

Additionally, as my evidence states, Drs. W. Michael Brown, Nick DeFillipis, Jeffrey Klopper, and Dave Davis have all concluded that I do not meet criteria for alcohol abuse or dependence.

Next, I would like to explain the cause of the incident.

With the exception of this isolated event, I have never taken a sleep aid and consumed alcohol on the same day. Furthermore, I never consumed a sleep aid or alcohol on the day I was scheduled to work. I am a conscientious physician, who [illegible] person. This event occurred on my day off.

As Dr. Brown explains, "I firmly believe that the incident in September 2012 was associated with an amnesic effect of his use of a legally prescribed sleeping agent, Ambien, and that this lead him to consuming an uncharacteristic amount of alcohol during his personal time." He also states, "I have known Dr. James DeSantis for greater than 25 years on a professional basis and for greater than 20 on a personal basis…I have never seen him intoxicated, and certainly not in a professional setting." And again, he stresses, this incident was "due to Ambien toxicity." Importantly, a mere three months after this occurred, in January 2013, the FDA's recommended dose was cut in half. This suggests that the legally prescribed dose of 10mg was unsafe and incorrect, and supports Dr. Brown's conclusion.

At this point, I would like to address the correctness, appropriateness, and adequateness of Dr. Dave Davis' plan.

Dr. Davis' plan is working for me and has worked for others. At this point, I have been seeing him for ten months. In August 2013, Dr. Davis states, "I believe that…the program, more than any other program, guarantees that Dr. DeSantis will not abuse drugs or alcohol." In April 2014, he writes, "Dr. DeSantis has done extremely well on his program and been entirely alcohol free since 9/28/12." The same month he states, "The program that Dr. DeSantis is currently involved in here has been extremely successful for physicians." And "Dr. DeSantis' use of Antabuse has been supervised carefully and a log of its administration has been kept. This log has been perfect since the beginning."

By the time I came to Dr. Davis, I had already voluntarily abstained from alcohol for ten months. I had drug tests during this time to prove that, including the ones conducted (though ignored) by Talbott.

But it is not only Dr. Davis who sees value in his plan. Dr. Nick DeFillipis states, "...I see no reason why your current monitoring program would require any modification...[Y]ou have been fully compliant with the program, and Dr. Davis is closely monitoring this. The fact that you returned to full time work for three months without difficulty attests to the effectiveness of the current program."

Also, Dr. Paul Earley, head of the Georgia PHP states, "one of the suggestions I have, is to think about having a private advocate do this versus the Georgia Professional Health Program." He also specifically suggests Dr. Davis as the physician to carry out this program. "Dr. Dave Davis and a few other[s]...[are] really advocates of physicians' heath. And they can testify in front of the Board. And the Board still accepts those types of organizations to do this work...Dr. Davis, who has a long tract record with the Board understand[s] this whole deal. [illegible] good match in this kind of situation." With this in mind, Dr. Earley then [illegible] and completely supported.

Finally, I am safe to practice medicine.

As I have previously mentioned, I am a physician with over thirty years experience, who has only been named in three malpractice suits, all of which were dismissed without moneys paid. Until the isolated incident in 2012, I have never been accused of alcohol abuse or dependence or any other form of misconduct. I would never endanger or risk another person, particularly a patient. This event occurred on my day off, in the privacy of my hotel room, which I did not leave.

A mere two weeks after the incident, Dr. Brown concludes, "Without reservation, I recommend that Dr. DeSantis be...allowed to return to practicing medicine." And in May 2014 again states, "I am certain that he has not consumed any alcohol or sleeping agents, other than OTC medication, since the incident 9/28/12. I also feel he is more than competent to work at the same job and level of activity that he did prior to 9/28/12." Dr. Jeffrey Klopper writes, "I believe Dr. DeSantis is able to practice his profession and have no reason to believe he poses a risk or threat to patients or others...Based on my personal knowledge and reported information, Dr. DeSantis' competency or judgment has not been in question during his thirty

year career." Dr. Nick DeFillipis concurs, "I do not see evidence that you represent a danger to patients, or that you ever were a danger to patients you treated." Also, Dr. Winokur states, "I would not have allowed Jim DeSantis to work clinically if I felt that he was impaired and therefore a risk to patient safety. In fact I hired Jim to work at my urgent care center because he is an asset and the patients benefit by his presence." He describes me at work as "enthusiastic, energetic, diligent, responsible, prompt, knowledgeable, skillful, humorous, helpful, and resourceful." Dr. Winokur also adds, "He has always demonstrated ethical behavior around me and stays true to his strong moral compass." And Dr. Davis stresses in October 2013, "Dr. DeSantis' physical condition is such that he is capable of performing his duties, as is his mental condition." In March 2014 he writes, "The bottom line is that Dr. DeSantis has been perfectly compliant and is not abusing alcohol currently, and I have no reservations about his being able to practice medicine at this time." Again in April 2014, Dr. Davis acquiesces, "Like Dr. DeFillipis, I believe that Dr. DeSantis is perfectly capable of practicing medicine at this time. As you know, he has agreed to continue on this program for as long as is necessary." Finally, Affiliated Monitors (a secondary monitoring company) writes in their quarterly report dated March 26, 2014 (the most recent report to date), "Dr. Davis has no concerns over Dr. DeSantis' ability to practice safely." Not to mention the Georgia, Texas, Tennessee, and Alabama Boards who have all agreed to consent orders, as well as North Carolina and Arkansas Boards that did not institute any consent orders at all.

The fact that Drs. Brown, Klopper, DeFillipis, Winokur, and Davis, along with Affiliated Monitors and six Boards have emphatically stated that I am safe to practice medicine is proof that I am indeed, safe and competent to practice. Also, I worked successfully in the ER and in urgent care centers since October 2013 when my Georgia license was reinstated without problem or issue.

I ask the Florida Board to follow Arkansas' action, which <u>fully</u> and <u>unconditionally</u> reinstated my state medical license without a consent order. They voted to over turn their suspension of my license and reinstated me to the same status I enjoyed before this incident in September 2012. I met with the Board in person, explained the event, and presented my documentation. With a near unanimous vote, Arkansas fully and unconditionally reinstated me as an active Arkansas physician. I fully understand Florida's concerns and why the Florida Board wanted to investigate my situation. However, I believe I provide Florida with enough evidence, testimony, and facts for it to also conclude the investigation in my favor. And I respectfully request that the Florida Board close its investigation without implementing a consent order.

Furthermore, it is my opinion, as well as the opinions of the professionals included that I am a qualified, seasoned, skilled, devoted, and enthusiastic physician, who loves his job and has committed his life to practicing safely, ethically, and honorably.

Thank you,

James M. DeSantis MD

May 27, 2014

To Whom It May Concern:

On September 28, 2012, I took a prescription, Ambien, for sleep to help with transitioning between day and night shifts. Due to the memory loss effects of this drug, I drank without being aware I was doing so. This occurred on my day off and no patient care was involved. This resulted in my being anonymously reported to the Georgia Board and the ultimate suspension of my license on April 18, 2013. My license was reinstated in October 2013.

This entire problem is the result of the amnesic effects of the prescribed Ambien. I do not and have never had any issues with drugs or alcohol. These allegations are totally unfounded. I have been a practicing physician for 33 years and have worked in high acuity ERs in many different hospitals and hospital systems. I in fact worked for several months after the incident with Schumacher. I could not have functioned at the high level of competence, as my record reflects, if I had been impaired. Other than regarding this one incident, I have never been accused of drug or alcohol issues by any employer or coworker. I have only been named in three malpractice suits, all of which I was dropped from without any moneys being paid on my behalf.

I am a highly qualified physician with a sterling record who made the mistake of taking Ambien in an effort to improve my ability to switch between shifts and do an even better job for my employers. I made a personal choice not to ever drink again after this incident and have not had any alcohol since September 2012. This is a policy I will continue even after the Georgia Board discontinues monitoring me.

James M. DeSantis MD

AFFILIATED MONITORS, INC.™
INTEGRITY THROUGH COMPLIANCE

ELAINE LETARTE
ELETARTES@AFFILIATEDMONITORS.COM

December 31, 2013

Lasharn Hughes
Executive Director
Georgia Composite Medical Board
2 Peachtree St. NW, 36th Floor
Atlanta, GA 30303-3465

Re: James Michael DeSantis, MD
License Number 30595
First Quarterly Monitoring Report, amended, through December 2013

Dear Director Hughes:

As you know, Affiliated Monitors, Inc. (AMI) has been retained by Dr. DeSantis to monitor his [illegible] with the terms of his Public Consent Order issued by the Georgia Composite Medical Board on October 10, 2013. The first quarterly report was submitted on December 23, 2013; this amendment to that report adds the compliance activities reported to AMI by Dr. Davis, who is conducting and overseeing Dr. DeSantis' treatment program.

Probation: Dr. DeSantis is subject to a three-year period of probation from the date the Board signed the Agreement, that is, until October 9, 2016.

Treatment: Dr. DeSantis is to participate in a treatment program with a Board approved psychiatrist. Treatment is to include in-person therapy session no less than once every two weeks; random urine screenings every month that do not coincide with office visit; and daily use of Antabuse logged by a licensed pharmacist or physician.

Dr. DeSantis had entered a treatment program on July 30, 2013, under the care of Dave Davis, MD. Dr. Davis provided the Board and AMI a description of Dr. DeSantis' treatment regimen prior to the issuance of the Consent Agreement. Dr. DeSantis continues to participate in DR. Davis' program. In a report received December 26, 2013, Dr. Davis reported to AMI on Dr. DeSantis' compliance activities.

> Therapy sessions: Dr. Davis reported that Dr. DeSantis has attended therapy sessions every two weeks. During December, when Dr. DeSantis has been practicing in Pennsylvania, he has participated in sessions both at Dr. Davis' office and by telephone.

Random drug screens: The Consent Agreement required monthly random drug screens not to be done on dates coinciding with office visits.

Dr. Davis provided drug screens done in October, November and December 2013. The most recent was a hair test, done December 16, 2013. The results of all tests were negative.

While the specific panels varied for each test, the substances tested for included: Amphetamines; Barbiturates; Benzodiazepines; Cocaine; Cannbinoids; EtG, Meperidine; Methadone; Opiates; Oxycodone & Hydrocodone; PCP, Phencyclidine; Propoxyphene; Tramadol Fentanyl, and Sufertanil.

Antabuse / logs: The logs submitted showed that Dr. DeSantis had been administered Antabuse daily from September 11 through December 16, 2013.

Support meetings: Dr. Davis' treatment recommendations did not include Dr. DeSantis participating in 12-step support groups.

Board-approved Monitor Engaged: Dr. DeSantis signed a contact with Affiliated Monitors, Inc. effective October 14, 2013.

Monitor Sends Quarterly Reports: This is the first quarterly report, amended

Notify Board if Ceasing Practice, Moving or Changing Contact Information: Dr. DeSantis understands in the event he should leave Georgia to practice or reside for more than 30 days, he is required to notify the Board in writing of his dates of departure and return. Dr. DeSantis understands that such time outside the State of Georgia, as well as times he is not in practice while residing in Georgia do not count towards the monitoring period, expect as authorized by the Board.

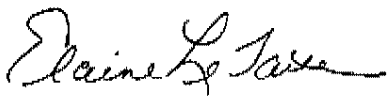
Compliance Activity: On November 22, 2013, Dr. DeSantis informed AMI he had notified the Georgia Board he was returning to work as of December 1, 2013. Mrs. DeSantis confirmed that this work was outside Georgia. Dr. Davis reported that Dr. DeSantis was working in Pennsylvania.

On December 2, 2013, Dr. DeSantis informed AMI that he had entered into a Consent Agreement with the State of Alabama, on the same issues as covered in the Georgia Agreement. He requested that a copy of AMI's quarterly reports be sent to Alabama State Board of Medical Examiners to fulfill the reporting requirement there.

Unless otherwise instructed, AMI will send the next report to the Board in March 2014. If you have questions, please contact me at 231 907-1985.

AFFILIATED MONITORS, INC.™
INTEGRITY THROUGH COMPLIANCE

Sincerely yours,



Elaine LeTarte
Compliance Analyst

ec: James M. DeSantis, MD
Dave M. Davis, MD (via facsimile 404 355-2917)
Jason O'Toole, Sr. Agent / Compliance Officer, GA Composite Medical Board
Burke Britton Savage, Physician Monitoring, Alabama Board of Medical Examiners
Catherine Keyes, Vice President for Operations, Affiliated Monitors, Inc.

AFFILIATED MONITORS, INC.
INTEGRITY THROUGH COMPLIANCE

ELAINE LETARTE
ELETARTE@AFFILIATEDMONITORS.COM

March 26, 2014

Lasharn Hughes
Executive Director
Georgia Composite Medical Board
2 Peachtree St. NW, 36th Floor
Atlanta, GA 30303-3465

Re: James Michael DeSantis, MD
License Number 30595
Second Quarterly Monitoring Report through March 2014

Dear Director Hughes:

As you know, Affiliated Monitors, Inc. (AMI) has been retained by Dr. DeSantis to monitor his compliance with the terms of his Public Consent Order issued by the Georgia Composite Medical Board on October 10, 2013. This second quarterly monitoring report includes Dr. DeSantis' compliance activities through mid-March, 2014.

Probation: Dr. DeSantis is subject to a three-year period of probation from the date the Board signed the Agreement, that is, until October 9, 2016.

Treatment: Dr. DeSantis is to participate in a treatment program with a Board approved psychiatrist. Treatment is to include in person therapy sessions no less than every [illegible] weeks; random urine screenings every month that do not coincide with office visit; and daily use of Antabuse logged by a licensed pharmacist or physician.

MD. Dr. Davis provided the Board and AMI a description of Dr. DeSantis' treatment regimen prior to the issuance of the Consent Agreement. Dr. DeSantis continues to participate in DR. Davis' program. In a second report dated March 12, 2014 Dr. Davis reported to AMI on Dr. DeSantis' compliance activities.

> Therapy sessions: Dr. Davis reported that Dr. DeSantis has attended therapy sessions every two weeks. During December, when Dr. DeSantis has been practicing in Pennsylvania, he has participated in sessions both at Dr. Davis' office and by telephone. In January through March, 2014, Dr. DeSantis and Dr. Davis met twice a month. Dr. Davis reports that Dr. DeSantis is doing well; Dr. Davis has no concerns over Dr.

DeSantis' ability to practice safely.

Random drug screens: The Consent Agreement required monthly random drug screens not to be done on dates coinciding with office visits.

Dr. Davis provided drug screens done in October, November and December 2013; a hair test was done December 16, 2013. In January through March, 2014, Dr. DeSantis submitted to four additional urine tests. The results of all tests since October 2014 were negative.

While the specific panels varied for each test, the substances tested for included: Amphetamines; Barbiturates; Benzodiazepines; Cocaine; Cannbinoids; EtG, Meperidine; Methadone; Opiates; Oxycodone & Hydrocodone; PCP, Phencyclidine; Propoxyphene; Tramadol Fentanyl, and Sufertanil.

Antabuse / logs: The logs submitted showed that Dr. DeSantis had been administered Antabuse daily from September 11, 2013 through March 12, 2014.

Support meetings: Dr. Davis' treatment recommendations did not include Dr. DeSantis participating in 12-step support groups.

Board-approved Monitor Engaged: Dr. DeSantis signed a contact with Affiliated Monitors, Inc. effective October 14, 2013.

Monitor Sends Quarterly Reports: This is the second quarterly report.

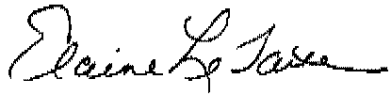
Notify Board if Ceasing Practice, Moving or Changing Contact Information: Dr. DeSantis understands in the event he should leave Georgia to practice or reside for more than 30 days, he is required to notify the Board in writing of his dates of departure and return. Dr. DeSantis understands that such time outside the State of Georgia, as well as times he is not in practice while residing in Georgia do not count towards the monitoring period, expect as authorized by the Board.

Compliance Activity: On November 22, 2013, Dr. DeSantis informed AMI he had notified the Georgia Board he was returning to work as of December 1, 2013. Mrs. DeSantis confirmed that this work was outside Georgia. Dr. Davis reported that Dr. DeSantis was working in Pennsylvania. Dr. De `Santis informed the Georgia Board and AMI that he left the Pennsylvania position at the end of February 2014, and that he would be working in Texas and in Marietta, Georgia in March 2014.

On December 2, 2013, Dr. DeSantis informed AMI that he had entered into a Consent Agreement with the State of Alabama, on the same issues as covered in the Georgia Agreement. He requested that a copy of AMI's quarterly reports be sent to Alabama State Board of Medical Examiners to fulfill the reporting requirement there.

Unless otherwise instructed, AMI will send the next report to the Board in June 2014. If you have questions, please contact AMI at 617 275-0620.

Sincerely yours,



Elaine LeTarte
Compliance Analyst

ec: James M. DeSantis, MD
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Jason O'Toole, Sr. Agent / Compliance Officer, GA Composite Medical Board
Burke Britton Savage, Physician Monitoring, Alabama Board of Medical Examiners
Catherine Keyes, Vice President for Operations, Affiliated Monitors, Inc.

Dr Earley speaking with Mr. Goldstein

[Background noise]

Dr. Earley: Mr. Goldstein **this is Dr. Paul Earley from the Georgia Professional Health Program,** do you have a moment?

Mr. Goldstein: I sure do. What can I do for you Paul?

Dr. Earley: Well, you know it seems like we just need to kind of figure how to move this case forward for you guys and I'm trying to figure out how we can best do that. I guess what I'll - we have - you sent us some information that's great. We really - that's very helpful. The only thing that we're missing is the full evaluation from Talbot. There's just a discharge letter. We need the full evaluation to look at the record. But so we need to get that, but I guess I want to give you another way of looking at this case to see if you can help your client.

We are - **there's no obligation to work with us.** There are lots of other ways of skinning this cat. And if you feel like this is we're being difficult or we're not working well with you or you don't like whatever we had to say then, you know, there's other ways of doing this that you can help move the licensure thing forward. **And one of the suggestions I have is to think about having a private advocate do this versus the Georgia Professional Health Program.** You know, the -- I'm sure you know this. You've been doing this a long time. But before we had the Physicians Health Program in Georgia there were groups of physicians, the Talbot Program, the Ridgeview Program, the MARA [ph] Program, and then some private physicians, **Dr. Dave Davis** and a few other, a few others that were **really advocates of a physicians health**. And they can testify in front of the Board. And the Board still accepts those types of organizations to do this work. [illegible] about how we need to move forward. And if it feels, you know, onerous to you or overly difficult, and you don't feel like we're working well with you, I would think maybe the next - a better way of doing this would be to find someone else to work with that you feel like will work with you, you know, so you can get your client back in the saddle.

Mr. Goldstein: Okay. Just let me say I appreciate your calling and I would you know. I don't have a particular problem with GHP. I think my client is distressful. And you know I'll tell you what I would like. This is just an aside for future reference. I know you all have applications for people you accept to do evaluations, etc., etc., etc. And I asked for a list of those people and that would be wonderful - a wonderful resource for me. Because um, honestly, and I don't know. I would assume that you're sending those people to either Talbot or Ridgeview just because of the makeup of your non-profit corporation. But if there are other people who are available such as Dave Davis or whatever, I mean that's great. And it'd be great for me to know. But that's an aside between us.

I think my client's problem is he's got a lot of mistrust and I think it was because - and I don't know if you know the whole story as to what happened. But I wasn't representing him and he had made an agreement with the Board not to practice, you know, pending an evaluation. And the next thing he knew he was summarily suspended without any, you know, which really kind of screwed him up professionally with licensure and whatever. And then it was exacerbated legally by the - by the fact that his lawyer put him on inactive status.

So we're trying to - from my standpoint I'm trying to get him back into active status. The Board's the one who said he needs to be monitored. We're all like - I'm sure he would be thrilled. And again,

it's not me. You know, I've got no bone to pick particularly. But I'm sure he would be thrilled to go to somebody else to be monitored, absolutely thrilled. So if that's okay with you that's okay with him I'm sure.

Dr. Earley: Right, and so here's the thing - and I guess that was what I was sensing is that I couldn't tell if it was where the mistrust was.

Mr. Goldstein: Yeah

Dr. Earley: It felt like we weren't working well. And you know one of the things about this sort of thing is that if he has mistrust towards us it's going to make it difficult –

Mr. Goldstein: Absolutely.

Dr. Earley: …because we're in a - we're in kind of a power position here. And if you don't trust those in power it's hard to work with them. So…

Mr. Goldstein: And there's definitely - and again, I mean I think - and it started. And correct me if I'm wrong because I wasn't involved in the case. But I think it started with -- you were the one who initially contacted him. And I'm not saying there's - you did anything in appropriately. And then it kind of - for him it kind of went downhill from there and it was exacerbated in my opinion by some mismanagement legally of what happened. And I also think that - I don't know why the Board suspended him summarily when he had signed an agreement not to practice, you know.

I mean I'm sure you've - I'm sure you've seen those agreements. In fact, I saw at one point I think there were - it was on your website. But once they do that there's no reason for them to summarily suspend somebody and put it up and you know report it to the - so anyway, it was a situation that just became worse. And I think he - I think - I mean I think you've read it correctly. I think there's a lot of mistrust on his part. And you know I know Dave Davis extremely well. And I wouldn't - I was just trying to comply with what the Board was telling him or I was trying to get him to comply with what the Board was telling him. But you're right. It's not a good situation for him as far as vis-à-vis the PHP.

Dr. Earley: Sure.

Mr. Goldstein: And you're right. And it's going to make it hard and there's like - he's like, "well, what's going to happen if I don't do this. I can go to five AA meetings a week. I travel, but you know…." I'm like let's get you reinstated and then worry about that. But that's you know. Your observation is correct. Let me just put it that way. So what do you suggest that we…?

Dr. Earley: Well, um, I think - so here's the deal. The way the Board - what happened when the PHP was instituted the Board said, you know, we're going to go with this organization and our job is to evaluate, you know. Our job is to evaluate the evaluators to make sure they're up to snuff, that's one of our jobs, and to make sure that, you know, we can divert people from having this kind of action. And that's when I spoke to the client. I said, you know, you really kind of want to get this evaluation, so we can avoid any kind of problems. I'm not interested, you know. I'm not a - I'm not a cop kind of guy. You know what I mean?

Mr. Goldstein: Uh-huh

Dr. Earley: I want to help people. That's my thing. And you know he chose not to go that way. I don't think he knew quite who we are we're kind of new, that sort of stuff. And that's why I think we wound up in this hole. So but I do know that one of the ways to do that would be to say we've - we can - we can let go of the case. We don't have to - you know, **ours is a service, you know. We're not a - there's no obligation. I will tell you that the Board prefers to work with us because it's easier because they know us, because you're down there every month, that sort of stuff.**

Mr. Goldstein: I know and I know - right. You know, I know the history and I know what happened. And some - I'm not - you're right. I mean I'm not a babe in the woods. I know about what happened and all that stuff. And I know the Board's preference. And I know they want it - they've been dying to get out of the trust of the monitoring, you know. And I measured - I know they're thrilled to not have to do that.

Dr. Earley: Sure. But again, if - it's not a hundred percent of people -- this didn't start out well for your client. You know, I don't you know and we can't deal for everybody. So I'm okay with it. The - and we'll talk about the - your statement about the evaluators list _____ [00:10:04] at the end. So I'll make sure I address that, make sure I talk about that. But you know the other providers including **Dr. Davis, who has a long track record with the Board who knows, who understands this whole deal. And you know he's a very thorough guy. You know him well.**

Mr. Goldstein: I do.

Dr. Earley: He tends, you know - he would be a fine person and may be a good match in this kind of situation, because Dr. DeSantis travels a lot, and that sort of thing, then maybe, you know, Dr. Davis might be able to figure out how to be a little more flexible with him etc., etc., etc.

Mr. Goldstein: Right, right, right…

Dr. Earley: So what I - yeah, so I think the thing to do is to say, you know, you're not obligated to go with a PHP. You don't trust them. I got it. And you know no harm no foul, it just didn't work out. And, um, and I think that's really the right way to go to sort of…

[Crosstalk]

Mr. Goldstein: Sure, I…

Dr. Earley: …_____ [00:11:00] few things _____ [00:11:02].

Mr. Goldstein: Yeah, and I mean as long as you're okay with that, um, I think that would be great for him because, you know, he's already starting on me with what's going to happen, you know what I mean. And I'm like let's get you reinstated. And he's just a wreck. So that would be great as long as you're okay with that. And I think it would be better for - yeah, I don't think it's a good fit in this case. I think we're in agreement.

Dr. Earley: That's great. And you know I'm old enough to say, you know, I can't be the be all end all for all people. in fact, I have a hard enough time being adequate for my wife. So you know, what the hell.

Mr. Goldstein: I hear you. [Laughs]

Dr. Earley: Yeah. So, um, so, uh, yeah. what we would do about it is to say to the Board, well, uh, uh, Dr. DeSantis, because of how this played out and difficulties with trust, which we completely understand. And we said, you know, **why don't you work with a private provider and that's how we'll say it to the Board. And I will acknowledge with the Board. You have my word on this but I'll say**, you know, this thing, this whole thing started out kind of gnarly. So it kind of makes sense that, you know, they have trust issues with us. And then we'll just - there's not a leg you can get to get this ball moving forward. You'll figure it out. He'll be able to complete the process and, um, and then you know he doesn't have to deal with us.

[Crosstalk]

Mr. Goldstein: _____ [00:12:43]...

[Laughter]

Mr. Goldstein: Well, I'd hate to say it but you know this has not been the easiest case okay.

Dr. Earley: Then I'll say it.

Mr. Goldstein: That would be great, okay.

Dr. Earley: Okay. Now so let's close out with this issue about the evaluator. The reason that the list thing is we have a - what we do with people is we go through a credentialing process to say, you know, what's your experience, what do you know, that sort of thing. And we have a list of people that say we do this. Now the problem is it's probably not so true in law but it's really true in healthcare that healthcare is so friable these days that a program that's good six months ago is often in the toilet six months later. So if we release a list that we just kind we would need to rerelease it every week or every five weeks or every month or two.

What I will - what I can tell you is if you call me and say, "hey, Dr. Earley, who are the best evaluators you got going right now?" I will call you back and say we've got these three people. We've got these people in town. We've got some people out of - some docs and you say I don't want to do it in Atlanta. Good, no problem, we've got some evaluators out of Atlanta. We have, um, some - depending on how complex the cases are, sometimes we've said we're okay with people going to an individual for an evaluation. Sometimes because the cases get more complex we require them to go to a center for an evaluation. And you know you can just go over the case with me and say what do you think? And I'll say here's a list of three or four places. And you know I know it seems - I don't want to sound - we don't want to be obstructive about this list but it just changes so much. And so I want to make sure we don't send a referral to you that you call me back and say that's place was a dump, you know.

Mr. Goldstein: Well...

Dr. Earley: And I just don't want to do that.

Mr. Goldstein: But you know I'm going to be honest with you. And I know you have an association or you did in the past. I have never - I've never had a client, okay, who's been evaluated by Talbott, for example, where they've come back and said this person does not need ninety days inpatient. And I'm talking about ever. And I've been doing this a long time.

So needless to say when you talk about trust issues I have a little bit of a trust issue there, you know. And I'm just - you know it could be every single one of them needed it. And most of the time by the time they get to me they probably do need it, but not everybody does. But so that's why I wanted to know for myself and I don't mind calling you on an individual basis and you know letting you know. I have no problem with that whatsoever. And I appreciate your offering that. Um, so…

Dr. Earley: Yea. Okay, so I will put all my cards on the table. Things didn't go so well with me and Talbott. I am not their biggest fan, okay.

Mr. Goldstein: I know that well…

Dr. Earley: I do use them because they are very thorough, but you know – they have a history of churning through their medical directors and spitting them out the other side. I was one of those – so I've got some issues with them too.

Mr. Goldstein: Okay.

Dr. Earley: … and I understand what your concerns are. So I am particularly aware with their… but from the outside it looks like it and I get it. What I would do as you, if the client says, "Well he used to work at Talbott…" I would say to you, "I'd say now look you know – don't go to Talbott if you have some concerns about that." I've got a big list. If the person, especially if it's a complicated story, I do like people to be sitting down in a kind of – spending three or four days with examination of the whole deal, just for psychological prepping. I like that. I think it honors the complexity of the physicians and it gives a good idea. If you have a concern about any center – don't go there and that's why we have a list. If you said to me, "My client – there is a problem…." Here I got these three other places. And if you said, "Well he's actually in the southeast or nationwide…" I've got a list of about eight, that are really top – they do fine jobs.

But fortunately -- the interesting thing about this is that there is really only about eight really good programs that do good evaluation in the entire United States. Now there's a statement on healthcare, but whatever.

Mr. Goldstein: I hear ya.

Dr. Earley: So feel free to call me and I'll say, "these people are good, these people are not." And then I am happy with you saying, you know he has a previous experience with Ridgeview, he doesn't want to go there. Not a problem. He had a previous experience with Talbott, doesn't want to go there, not a problem. We've got a long list and we can work together you and I, to find the place. So that's why the list is out there.

Now, the issue to be frank with you, is if we had a list of what happens at these treatment centers and we will put a thing up on the website that says, approved by the Georgia PHP. [Laughs]

Mr. Goldstein: Uhm, hmm.

Dr. Earley: Then all of a sudden we're liable for something we don't want to be at all and this was a good five years ago when we approved them and now it's a hellhole and that happens in behavioral health – then we're kind of stuck. So that's why we keep it like that. But I don't want to make it sound secretive, it's more like just practical.

And so call me any time about that. Call the main number and say, "Hey I need Paul to call me back." I'll give you a call.

Mr. Goldstein: Alright. I very much appreciate your calling.

Dr. Earley: Okay and let's – and if you have other questions or thoughts about, just give me a ring back and both figure out how to make it happen, okay?

Mr. Goldstein: Alright, thank you.

Dr. Earley: Bye, bye.

Mr. Goldstein: Bye.

Atlanta Behavioral Care, P.C.

Jeffrey H. Klopper, M.D., Psychiatrist

3188 Atlanta Road, SE
Smyrna, Georgia 30080
770-319-6000 Fax 770-319-6330

May 21, 2013

Scott Commander
Commander Pound Butler
400 Galleria Parkway
Suite 460
Atlanta, Georgia 30339

Re: James DeSantis, dob: 10/23/1956

To Whom It May Concern:

Dr. James DeSantis met with me on the 2nd of May for the purpose of performing a psychiatric evaluation. Per Dr. DeSantis, he had an incident that involved the use of Ambien and alcohol. Since the time of the incident Dr. DeSantis has been drug tested twice, on 02/05/2013 and 05/21/3013, and both tests revealed negative results.

Dr. DeSantis has been practicing medicine for thirty years and I have personally known him for five years. During that time I never observed or was aware of any problems with alcohol or drugs. When I had the opportunity to observe Dr. DeSantis in the practice of his profession he appeared to be highly competent. To my knowledge there has not been any question regarding drug or alcohol abuse issues or concerns. I believe Dr. DeSantis is able to practice his profession and have no reason to believe he poses a risk or threat to patients or others.

Dr. DeSantis presented on time for his appointment. He was appropriate and cooperative. His speech was normal and he was spontaneous and forthcoming with his responses. There were no bizarre behaviors. There was no frank thought disorder or cognitive dysfunction. He was alert and oriented; his memory was intact to recall and historical events; he verbalized good insight.

Dr. DeSantis' wife accompanied him to the office and gave collateral information. She reported her husband does not use or abuse alcohol or other drugs. Based on my personal knowledge and reported information, Dr. DeSantis' competency or judgment has not been in question during his thirty year career. To my knowledge he has not had any prior incidents and I feel this is an isolated occurrence. When records and results of psychological testing are available to me, I'll review them and continue to monitor Dr. DeSantis on an ongoing basis. Please contact me with any questions concerning this matter.

Respectfully,

Jeffrey H. Klopper, M. D.

ARKANSAS STATE MEDICAL BOARD

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www.armedicalboard.org

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211 Spring Street
Little Rock, AR 72201
(501) 372-4144

April 9, 2014

James Michael DeSantis, M.D.
3901 Regas Drive
Marietta, GA 30066

Re: Board Appearance

Dear Dr. DeSantis:

This letter is to confirm the decision of the Arkansas State Medical Board concerning the matter in which you appeared at the April 2014 meeting.

After reviewing the information and talking with you, it was the vote of the Board to lift the suspension of your Arkansas medical license.

Although the suspension was lifted, our records show that your license expired on October 31, 2013. Should you wish to renew your Arkansas medical license, you may do so online.

Sincerely,

Peggy Pryor Cryer
Executive Secretary

PPC/ble

This agency does not discriminate on the basis of race, color, national origin, sex, religion, age or disability in employment or the provision of service.

May 26, 2014

To whom it may concern,

I have known James Desantis,MD professionally and personally for the past 15 years. On the professional side, I was the emergency department director at Wellstar-Cobb Hospital from 10/2000 until 12/2004 while Jim worked there as an ED staff physician. Since early March 2014 Jim has worked at my urgent care center where I'm the medical director. Between these two jobs we have stayed in touch. Jim has always been consistent in terms of his performance and has never exhibited any signs or symptoms of being impaired on my watch. These are some of the adjectives I can use to describe Jim at work: enthusiastic, energetic, diligent, responsible, prompt, knowledgeable, skillful, humorous, helpful, and resourceful. In fact, I think Jim loves being a doctor more than most physicians I've been exposed to over the years.

On the personal side, Jim is a dedicated husband/father and a reliable friend. He has always demonstrated ethical behavior around me and stays true to his strong moral compass.

In my roles as an emergency department and urgent care center medical director, I would have not allowed Jim Desantis to work clinically if I felt that he was impaired and therefore a risk to patient safety. In fact, I hired Jim to work at my urgent care center because he is an asset and the patients benefit by his presence.

Sincerely,

Mark D. Winokur MD

Mark D. Winokur, MD
Medical Director
MedPost Urgent Care (formerly East Cobb Urgent Care)
1401 Johnson Ferry Rd, Suite 390
Marietta, GA 30062
Tel. 770-971-5494

Nick A. DeFilippis, Ph.D.
American Board of Professional Neuropsychology
American Board of Professional Psychology (Clinical)

May 29, 2013

James DeSantis, M.D.
3901 Regis Dr
Marietta GA 30066

Dear Dr. DeSantis:

I reviewed the documentation sent to me. This included a psychiatric evaluation/admission note from Talbott Recovery Campus dated 02/05/13 and completed by Dr. Richard Amar, a psychological evaluation by Dr. Snook, dated 02/06/13, an addiction assessment second opinion by Dr. Gupta signed on 04/16/13 but completed on 02/05/13, a patient assessment form from Talbott dated 02/04/13, an admission physical health screening from Talbott dated 02/04/13, a discharge note from Dr. Amar that is signed on 04/17/13 but provided on 02/04/13, a discharge summary from Dr. Amar on 02/07/13, an assessment report from Dr. Amar completed on 02/07/13 but signed on 02/22/13, and a number of progress notes, doctor's orders and laboratory reports from your evaluation at Talbott. As you know, I met with you and your wife on 5/28/13 to go over my impressions from the records I reviewed and to ask you further questions about your background.

My overall conclusions from my review of your situation is that you do not meet diagnostic criteria for Alcohol Abuse or Dependence and that you do not require inpatient treatment for your problems. I do not see evidence that you represent a danger to patients, or that you ever were a danger to patients you treated.

Please contact me if you have any questions concerning my opinions given in this letter.

Sincerely,

Nick A. DeFilippis, Ph.D.

Lakeside Commons • 990 Hammond Drive NE • Suite 730 • Atlanta, Georgia 30328
(770) 730-9930 • Fax (770) 730-0998

Nick A. DeFilippis, Ph.D.
American Board of Professional Neuropsychology
American Board of Professional Psychology (Clinical)

April 18, 2014

James DeSantis, M.D.
3901 Regis Drive
Marietta, Georgia 30066

Dear Dr. DeSantis:

As you know, I met with you and your wife on 04/17/14. You informed me that since I last saw you in May 2013 you continue to abstain from alcohol. You have not had anything of an alcoholic nature to drink from 09/28/12 through the present. You also have not utilized Ambien or any other prescription sleep medication. You took an over-the-counter sleep aid once in December, because you had an early morning meeting in Pennsylvania, and you informed the Pennsylvania Medical Board that you took that medication.

When I last saw you I gave an opinion that you did not meet criteria for alcohol abuse or an alcohol dependence. I noted that you had a history of excessive drinking in the past, but this did not rise to the level of causing recurrent problems in your life, which is necessary for an abuse diagnosis. The incident on the night of 09/28/12 was determined by me to be due to the effects of Ambien causing you to go into a blackout and then consuming excessive alcohol. This was an isolated incident, and you have had no other significant problems in your life related to alcohol or medication use. The infrequent complaints your wife had about your drinking over the 30 years of your marriage have not resulted in marital difficulties. I said it was warranted to look into a less intensive form of intervention than an inpatient treatment program. I also gave an opinion that I did not see your work as excessive.

You returned to work for three months, basically doing the same kind of emergency room work that you had been doing in the past, until February. In February of this year the Pennsylvania Board of Medicine determined, primarily based on an evaluation by Dr. Bernstein in December of last year, that you needed to go through an inpatient treatment program in Pennsylvania and attend AA meetings before you could practice in that state.

After I saw you, Dr. Earley, president of the Georgia Professional Health Program, said in a transcribed conversation to your attorney, Mr. Goldstein, that you did not have to go through an inpatient program and could be monitored on an outpatient basis by Dr. Davis.

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Thus, Dr. Earley agreed with my opinion that you did not need to have inpatient treatment.

You have been seeing Dr. Dave Davis twice a month since July of last year. Dr. Davis prescribed Prozac, to replace the Celexa you were taking for several years. He also asked you to take Antabuse daily since July of last year. You are taking the Antabuse tablet in front of a pharmacist on a daily basis, and you showed me documentation concerning this. You are having monthly random drug screens. There are quarterly reports sent to the Board that you are compliant with their requests. Your compliance is being monitored by Affiliated Monitors, at the request of the Georgia board. The monitoring by the Georgia Board of Medicine was set up in October.

You told me since I last saw you that you spend your free time panning for gold. You also watch your grandson. You started doing urgent care work a month ago, and you said you have about five ten- to twelve-hour shifts a month in this work. You are spending a lot of time applying for jobs. You noted that you have licenses in a number of states, with the only issue at this time being with Pennsylvania. The license in Florida has not been released yet, but you believe it will be. You indicated that there are no other significant stressors in your personal life.

You brought to the office a number of documents I reviewed. These include:

Transcript of Dr. Earley speaking to Mr. Goldstein
Letters from Affiliated Monitors to the Georgia Composite Medical Board
A number of letters from Dr. Davis to you or the medical board
Dr. Bernstein's evaluation report of you on 12/02/13, and a subsequent letter from Dr. Goldstein on 01/22/14 to the Chief Counsel of the State of Pennsylvania
A letter "to whom it may concern" from Dr. Brown concerning his opinion about your alcohol use and use of Ambien
A letter from Dr. Hatmaker concerning his opinion about your functioning
A letter from Dr. Klopper concerning his treatment of you last year
The Public Consent Order reinstating your license from the Georgia Composite Medical Board dated 10/10/13

Given the information I have, I see no reason why your current monitoring program would require any modifications. As far as I can tell from the documentation I have, you have been fully compliant with the program, and Dr. Davis is closely monitoring this. The fact that you returned to full time work for three months without difficulty attests to the effectiveness of the current program. I see no reason to believe you would require attendance at AA meetings in addition to the current monitoring program. I also see no need for inpatient rehabilitation. I continue to find that you never met criteria for an alcohol abuse or alcohol dependence diagnosis. Dr. Davis has diagnosed you as having ADHD and depression, but these conditions are well controlled with your current medications. You do not currently present with any active psychiatric disorder. I also do not find that you have an impulse control disorder that would interfere with your ability to function as a physician.

Dr. Bernstein's opinion given in his 01/22/14 letter that there was evidence you were using substantial amounts of Benadryl is not supported by any other evidence. His diagnosis of alcohol abuse and dependence was said to be in putitive remission. However, again, I do not find that you ever met criteria for alcohol abuse or dependence. Dr. Bernstein was mistaken in stating that you wanted to move to a rural locale in Pennsylvania. In fact, you only would have been periodically visiting Pennsylvania on contract work. You have been able to effectively manage your current monitoring program while you travel, so periodically being out of state should not pose any difficulties for you. He apparently felt you would not be able to have face-to-face contact with a treating professional, because you would be living in a rural area of Pennsylvania, and this is obviously incorrect. Thus, my opinion is that Dr. Bernstein's conclusions are not supported by the objective evidence, and he utilized misinformation about you to form his conclusions.

Please contact me if you have any questions concerning my opinions given in this letter.

Sincerely,

Nick A. DeFilippis, Ph.D.

Dave M. Davis, M.D., D.L.F.A.P.A., F.A.B.F.P., F.A.B.P.N.

35 Collier Road, N.W., Suite M-215
Atlanta, GA 30309-1613
Telephone: (404) 355-2914 FAX: (404) 355-2917

4-2-14

James DeSautis MD

<u>update</u>

Dr. DeSautis has done extremely well on his program and been entirely alcohol free since 9-28-12.

I think he has been a casualty of his one time lapse when he drank excessively after taking Dilaudid which was prescribed for him by Dr. Deborah Talbot for his shift work as an ER doctor.

His condition of his treatment/evaluation at Talbot rings true. I have seen the self-serving evaluations they perform on physicians hundreds of times. Call recommend expensive in patient treatment with them. I was an expert witness in 3 suits against them by MDs - all settled for $1,000,000 each.

Dr. DeSautis is stable to practice in my opinion.

Dave M. Davis MD DLFAPA DFABPN

Transcript of handwritten update from Dr. Dave Davis:

4-2-14

James DeSantis MD

Update

Dr. DeSantis has done extremely well on his program and been entirely alcohol free since 9-28-12.

I think he has been a casualty of his one time lapse when he drank excessively after taking Ambien which was prescribed for him by Dr. Deborah Hebert for his shift work as an ER doctor.

His rendition of his treatment/evaluation at Talbott rings true. I have seen the self-serving evaluations they perform on physicians hundreds of times (all recommend expensive in patient treatment with them.) I was an expert witness in 3 suits against them by MDs – all settled for $1,000,000 each.

Dr. DeSantis is stable to practice in my opinion.

Dave Davis MD DLFAPA, FABFP, FABPN

Piedmont Psychiatric Clinic

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Adolescent, Adult, Family and Administrative Psychiatry

Dave M. Davis, M.D., D.L.F.A.P.A., F.A.B.F.P., F.A.B.P.N.
Annie M. Cooper, M.D., F.A.B.P.N
Tom Dixon, L.C.S.W.

March 12, 2014

Arkansas State Medical Board
Attention: Joseph M. Beck, II, M.D., Chairman
Suite 340
1401 W. Capitol Avenue
Little Rock, Arkansas 72201

RE: James M. Desantis, M.D.
DOB: 10/23/56

Dear Dr. Beck:

James M. Desantis, M.D. will be meeting with the Arkansas State Medical Board on April 3, 2014, and has asked that I write to you regarding his treatment here at Piedmont Psychiatric Clinic. He is on a Consent Order from the Georgia Board of Medical Examiners. He has been following the guidelines of his Consent Order perfectly. As you are aware, this Order resulted from one episode of excessive alcohol use, on September 28, 2012. Dr. Desantis related this to Ambien that he was taking at the time.

I have seen Dr. Desantis for a forty-five-minute session twice a month for psychotherapy and drug counseling, as well as some sessions with both Dr. Desantis and his wife (who is a great ally). Dr. Desantis takes Antabuse 250 mg once daily, which is recorded either by myself or a pharmacist where he is working or the pharmacist at Rite-Aid; in any case, this is always supervised. Since September of 2012, Dr. Desantis has not used alcohol, and multiple observed chain-of-custody drug screens (at least two per month as well as random) have all been negative for alcohol and drugs of abuse. In the interim, Dr. Desantis has worked as an emergency-room physician in Pennsylvania and as an urgent-care physician in Georgia.

The bottom line is that Dr. Desantis has been perfectly compliant and is not abusing alcohol currently, and I have no reservations about his being able to practice medicine at this time. Unfortunately, this one unfortunate incident had a domino effect on his life.

If you have any questions, please let me know.

Sincerely,

Dave M. Davis, M.D., D.L.F.A.P.A., F.A.B.F.P., F.A.B.P.N.
Board Certified in Clinical Psychiatry
Board Certified in Forensic Psychiatry
Board Certified in Psychiatric Administration and Management
Board Certified Disability Examiner
DMD/nmg

mailed 3/14/14
Dmedw

10-15-13 mmp

Mailed

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Annie M. Cooper, M.D., F.A.B.P.N.

Tom Dixon, L.C.S.W.

October 8, 2013

RE: James Desantis, M.D.
DOB: 10/23/56

To Whom It May Concern:

James Desantis, M.D. asked that I write this letter regarding his treatment here at Piedmont Psychiatric Clinic. Currently, I am monitoring him under the direction and approval of a Consent Order from the Georgia Board of Medical Examiners, as a requirement for his medical license.

I have seen Dr. Desantis twice monthly since July 25, 2013. He has been one hundred percent compliant with his treatment program, which includes: monitoring with urine and blood alcohol tests, randomly performed once a month; psychotherapy directed toward personality issues, cognitive behavioral therapy; his wife being present for certain of his psychotherapy sessions, as she is a member of his treating team.

Dr. Santis is also monitored independently by a national company, per the terms of his Consent Order.

It should be noted that Dr. Desantis has abstained from alcohol for more than one year. He takes Antabuse (a medication that keeps him from drinking alcohol) on a daily basis and this is supervised by either myself or a pharmacist or colleague (who signs a book, which Dr. Desantis brings with him to his sessions).

I find him safe and competent to return to work and not a danger to patients. All alcohol screening during the past year has been negative. Dr. Desantis' physical condition is such that he is capable of performing his duties, as is his mental condition. A full battery of laboratory studies obtained recently revealed data all within normal range.

If you have any questions or require further information, please contact me.

With kindest regards,

Dave M. Davis, M.D., D.L.F.A.P.A., F.A.B.F.P., F.A.B.P.N.
Board Certified in Clinical Psychiatry
Board Certified in Forensic Psychiatry
Board Certified in Psychiatric Administration and Management
Board Certified Disability Examiner
DMD/nmg
Enclosure (CV)

Piedmont Psychiatric Clinic

35 Collier Road, N.W., Suite M-215
Atlanta, GA 30309-1613
Telephone: (404) 355-2914 FAX: (404) 355-2917
www.piedmontpsychiatricclinic.com
Adolescent, Adult, Family and Administrative Psychiatry

Dave M. Davis, M.D., D.L.F.A.P.A., F.A.B.F.P., F.A.B.P.N.
Annie M. Cooper, M.D., F.A.B.P.N.

Tom Dixon, L.C.S.W.

August 19, 2013

Georgia Board of Medical Examiners
Attention: Chairman, Membership Committee
Thirty-Sixth Floor
2 Peachtree Street, N.W.
Atlanta, Georgia 30303

RE: James DeSantis

Dear Mr. Chairman:

James DeSantis, M.D. asked that I write to the Membership Committee regarding his treatment here at Piedmont Psychiatric Clinic, which began on July 25, 2013. Since that time, Dr. DeSantis has been free from drugs or alcohol and, by his history and outside history, he has used no alcohol, whatsoever, since September 28, 2012.

His treatment plan is as follows:

1. Daily Antabuse, supervised. This must be supervised daily by myself, another M.D., or a registered pharmacist, who must sign his/her initials in Dr. DeSantis' log book, which he is to bring in to me for review.
2. Every two weeks, forty-five minutes of individual and/or family psychotherapy, drug education, and monitoring.
3. Drug screens on demand.
4. Alcohol testing on demand.

Dr. DeSantis has been one hundred percent compliant with his treatment program, and I know that he is not abusing drugs or alcohol.

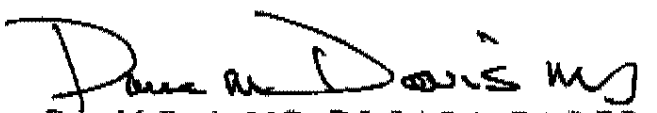
For this reason, I hope you will consider reinstating his license. I believe that the above-described program, more than any other program, guarantees that Dr. DeSantis will not abuse drugs or alcohol.

My understanding from Dr. DeSantis is that he would have to be in the PHP or some other approved AA and inpatient program in order to be able to have his license reinstated; however, I believe this is not what Paul Earley, M.D. espouses.

I have been the National Football League/Atlanta Falcons physician for substance abuse for the past thirty-eight years. Certainly, NFL players are treasured as much as physicians. In the NFL program, we offer the players a choice of different programs to solidify their compliance with sobriety. Allowing the player to choose the type of program with which he thinks he would be most successful has been proven the most effective by the MATCH study.

I was previously director of two Alcoholics Anonymous programs, one at Parkwood Hospital and the other at Peachford Hospital. These programs were in no way more successful than some individualized programs. As a matter of fact, I have found the individualized programs to be more successful than "one-size-fits-all" programs.

With kindest regards,



Dave M. Davis, M.D., D.L.F.A.P.A., F.A.B.F.P., F.A.B.P.N.
Board Certified in Clinical Psychiatry
Board Certified in Forensic Psychiatry
Board Certified in Psychiatric Administration and Management
Board Certified Disability Examiner

DMD/nmg

Oct. 12, 2013

Re: James Desantis, MD

To whom it may concern,

I am a physician, board certified in Internal Medicine and Cardiology and in practice for the last 31 years. I ran a 13 man, cardiology group that I founded, for 30 years before selling the practice and joining Wellstar Cardio-Vascular Medicine in 2011.

I have known Dr. James DeSantis for greater than 25 years on a professional basis and for greater than 20 years on a personal basis. I have the upmost confidence in his professional judgment. During the time that I have known him, I have never seen him intoxicated, and certainly not in a professional setting.

I firmly believe that the incident in September, 2012 was associated with an amnesic effect of his use of a legally prescribed sleeping agent, Ambien, and that this lead him to consuming an uncharacteristic amount of alcohol during his personal time. This resulted in a severe hypoxic episode associated with aspiration and his subsequent hospitalization.

Since that incident, I have been in close contact with on a weekly basis and I have no reason to believe he has had a single drink of alcohol during the past year. He has voluntarily chosen to take Antabuse daily, to help confirm that he is avoiding alcohol and has had several blood tests, which have shown no evidence of alcohol intake.

Without reservation, I recommend that Dr. Desantis be given back his license and allowed to return to practicing medicine.

If you should have any questions, please feel free to call me on my cell phone, 770-530-5959, or at Wellstar Cardiovascular Medicine, in Marietta, Ga.

Wm Michael Brown, MD, FACC, MBA

Wm. Michael Brown, MD, FACC, MBA

WELLSTAR.
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Teri French-Mirtschink, NP-C
Jennifer Matthews, PA-C
John C. DeCola, PA-C
Mirna Jacob-Pinto, PA-C
Pam Andler, NP-C
Dharti Patel, NP-C
Virginia Sullivan, NP-C

Wm Michael Brown, MD, FACC, MBA

420 St James Place• Marietta, Ga. 30064• Phone: 770-530-5959 • Fax: 770-424-3960

Date: 5/07/14

Dave M Davis, M.D., F.L.A.P.A., F.A.B.F.P., F.A.B.N.
Medical Director, Piedmont Psychiatric Clinic
[Company]
35 Collier Road, N.W., Suite M-215
Atlanta, Ga. 30309-1613

Re: James DeSantis, M.D.

Dear Dr. Davis:

I am the primary physician for Dr. James DeSantis and have been for the last 15 years. I have known him professionally for the last 25 years and personally for the last 20. I have been in practice in cardiology for the last 32 years and ran a cardiologist group since 1984. In 2011 our 13-man group merged with the Wellstar Cardiovascular Medicine Group.

Since Dr. DeSantis admission 9/28/12, due to Ambien toxicity, which lead to excessive alcohol consumption, I have followed him closely. I talk with him generally on a weekly basis and have monitored his Antabuse dosing on numerous occasions. This has given me an opportunity to review his Antabuse log, and I saw no missing dates for his Antabuse schedule. When out of state he has located either a pharmacist or other medical professional to monitor him taking his medication. I was the original prescriber for Dr. DeSantis' anti-depressive medication, a number of years ago when he developed mild depression. At that time he asked me to monitor his medication as a matter of intellectual honesty. He has always been compliant with his medication.

I have personally reviewed his medical records from his hospitalization 9/28/12, and am certain he aspirated secondary to the combined effects of the Ambien and uncharacteristic alcohol consumption. This occurred during his personal time and did not place any patient at risk. I have monitored his labs on a regular basis and his liver function and toxicology screens have been perfectly normal.

I an certain that he has not consumed any alcohol or sleeping agents, other than OTC medication, since the incident of 9/28/12. I also feel he is more than competent to work at the same job and level of activity that he did prior to 9/28/12. I also agree with your assessment that Dr. DeSantis' wife would report any deviation from his sobriety, immediately should it occur.

If I can be of any help in the future please feel free to call me at any time.

Sincerely,

Wm. Michael Brown, M.D., F.A.C.C., M.B.A.

Confidential Lab Report

Report for: Talbott Recovery Campus
5448 Yorktown Drive
Atlanta GA 30349

Donor: DeSantis, James **ASSMT**
Donor ID#: 7962
Specimen#: 306721 **Reason:** Random
Date: 2/4/2013 **Time:** 4:15 PM
Tests Ordered: UDS10QT

Substance Abuse Panel	IN RANGE	Initial Test Level
Mda-Analogues	Negative	250 ng/ml
Oxycodones	Negative	100 NG/ML
Methamphetamines	Negative	1000 NG/ML
Amphetamines	Negative	300 NG/ML
Barbiturates	Negative	300 NG/ML
Cocaine Metabolites	Negative	300 NG/ML
Marijuana Metabolites	Negative	500 NG/ML
Methadone	Negative	300 NG/ML
Opiates	Negative	300 NG/ML
Phencyclidine	Negative	25 NG/ML
Propoxyphene	Negative	300 NG/ML
Benzodiazepines	Negative	100 NG/ML

<< End of Report>>

500 W. Lanier Ave, #412
Fayetteville, GA 30214
770-716-1529

RPA
4/17/13

John D. Campbell, M.D. –
Refer to addendum

One or more pages have been removed from this document for security reasons

Scroll down to see the available pages or advance to the next document if all pages have been removed.

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456.057 - Ownership and control of patient records; report or copies of records to be furnished.—

10)(a)All patient records obtained by the department and any other documents maintained by the department which identify the patient by name are confidential and exempt from s. 119.07(1) and shall be used solely for the purpose of the department and the appropriate regulatory board in its investigation, prosecution, and appeal of disciplinary proceedings. The records shall not be available to the public as part of the record of investigation for and prosecution in disciplinary proceedings made available to the public by the department or the appropriate board.