

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 861 Medical Specialty Designations

**SPONSOR(S):** Health & Human Services Committee, Professions & Public Health Subcommittee, Massullo

**TIED BILLS:** IDEN./SIM. **BILLS:** SB 1192

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Professions & Public Health Subcommittee	14 Y, 4 N, As CS	Morris	McElroy
2) Health & Human Services Committee	18 Y, 3 N, As CS	Morris	Calamas

### SUMMARY ANALYSIS

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

An unlicensed individual may be subject to administrative action or criminal penalties if the individual states or otherwise implies that he or she is a licensed medical professional. This may include the use of certain terms or titles that the public generally associates with a specific medical profession. DOH does not license a health care practitioner's specialty or sub-specialty based upon board certification, but does limit who can hold themselves out as board-certified specialists.

CS/CS/HB 861 makes using terms indicating any practitioner has attained a medical specialty recognized by the Accreditation Council on Graduate Medical Education (ACGME) or the American Osteopathic Association (AOA) grounds for licensure discipline unless the practitioner:

- Completed a residency or fellowship program recognized by the ACGME or AOA in such specialty;
- Attained diplomate status in a chiropractic specialty; or
- Is otherwise expressly authorized by law to use such specialty terms.

Additionally, the bill requires DOH to discipline a practitioner who violates the bill's provisions and grants DOH the same enforcement authority as the applicable board.

The bill has an indeterminate, negative fiscal impact on DOH, which current resources are adequate to absorb, and no fiscal impact on local governments.

The bill provides an effective date of July 1, 2022.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Present Situation

#### Licensure and Regulation of Health Care Practitioners

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

- The Board of Acupuncture, created under ch. 457, F.S.;
- The Board of Medicine, created under ch. 458, F.S.;
- The Board of Osteopathic Medicine, created under ch. 459, F.S.;
- The Board of Chiropractic Medicine, created under ch. 460, F.S.;
- The Board of Podiatric Medicine, created under ch. 461, F.S.;
- Naturopathy, as provided under ch. 462, F.S.;
- The Board of Optometry, created under ch. 463, F.S.;
- The Board of Nursing, created under part I of ch. 464, F.S.;
- Nursing assistants, as provided under part II of ch. 464, F.S.;
- The Board of Pharmacy, created under ch. 465, F.S.;
- The Board of Dentistry, created under ch. 466, F.S.;
- Midwifery, as provided under ch. 467, F.S.;
- The Board of Speech-Language Pathology and Audiology, created under part I of ch. 468, F.S.;
- The Board of Nursing Home Administrators, created under part II of ch. 468, F.S.;
- The Board of Occupational Therapy, created under part III of ch. 468, F.S.;
- Respiratory therapy, as provided under part V of ch. 468, F.S.;
- Dietetics and nutrition practice, as provided under part X of ch. 468, F.S.;
- The Board of Athletic Training, created under part XIII of ch. 468, F.S.;
- The Board of Orthotists and Prosthetists, created under part XIV of ch. 468, F.S.;
- Electrolysis, as provided under ch. 478, F.S.;
- The Board of Massage Therapy, created under ch. 480, F.S.;
- The Board of Clinical Laboratory Personnel, created under part III of ch. 483, F.S.;
- Medical physicists, as provided under part IV of ch. 483, F.S.;
- The Board of Opticianry, created under part I of ch. 484, F.S.;
- The Board of Hearing Aid Specialists, created under part II of ch. 484, F.S.;
- The Board of Physical Therapy Practice, created under ch. 486, F.S.;
- The Board of Psychology, created under ch. 490, F.S.;
- School psychologists, as provided under ch. 490, F.S.;
- The Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling, created under ch. 491, F.S.; and
- Emergency medical technicians and paramedics, as provided under part III of ch. 401, F.S.

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

<sup>2</sup> Florida Department of Health, Division of Medical Quality Assurance, *Annual Report and Long-Range Plan, Fiscal Year 2019-2020*, p. 5, <http://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/documents/2019-2020-annual-report.pdf> (last visited Feb. 7, 2022).

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

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

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

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

The boards determine the course of action and any disciplinary action to take against a practitioner.<sup>6</sup> For professions in which there is no board, DOH determines the action and discipline to take against a practitioner and issues the final orders.<sup>7</sup> DOH is responsible for ensuring that licensees comply with the terms and penalties imposed by the boards.<sup>8</sup> If a case is appealed, DOH attorneys defend the final actions of the boards before the appropriate appellate court.<sup>9</sup>

These different DOH and board roles apply to all statutory grounds for discipline against a practitioner. Under current law, DOH only takes on the disciplinary functions of a board for practitioner types that do not have a board. Currently, DOH itself takes no final disciplinary action against practitioners for which there is a board.

### Board Certification and Florida Licensure

DOH does not license health care practitioners by specialty or subspecialty; rather, practitioners become board certified in specialties by private, national specialty boards, such as the American Board of Medical Specialties (ABMS), the Accreditation Board for Specialty Nursing Certification, and the American Board of Dental Specialties.<sup>10</sup>

Current law limits which health care practitioners may hold themselves out as board-certified specialists. An allopathic physician may not hold himself or herself out as a board-certified specialist unless he or she has received formal recognition as a specialist from a specialty board of the ABMS or other recognizing agency<sup>11</sup> approved by the allopathic board.<sup>12</sup> Additionally, an allopathic physician may not hold himself or herself out as a board-certified specialist in dermatology unless the recognizing agency, whether authorized in statute or by rule, is triennially reviewed and reauthorized by the allopathic board.<sup>13</sup> Similarly, an osteopathic physician may not hold himself or herself out as a board-certified specialist unless he or she has successfully completed the requirements for certification by the American Osteopathic Association (AOA) or the Accreditation Council on Graduate Medical Education (ACGME) and is certified as a specialist by a certifying agency<sup>14</sup> approved by the board.<sup>15</sup>

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<sup>4</sup> Department of Health, *Investigative Services*, <http://www.floridahealth.gov/licensing-and-regulation/enforcement/admin-complaint-process/isu.html> (last visited Feb. 7, 2022).

<sup>5</sup> Department of Health, *Prosecution Services*, <http://www.floridahealth.gov/licensing-and-regulation/enforcement/admin-complaint-process/psu.html> (last visited Feb. 7, 2022).

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

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

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

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

<sup>10</sup> Examples of specialties include dermatology, emergency medicine, ophthalmology, pediatric medicine, certified registered nurse anesthetist, clinical nurse specialist, cardiac nurse, nurse practitioner, endodontics, orthodontics, and pediatric dentistry.

<sup>11</sup> The allopathic board has approved the specialty boards of the ABMS as recognizing agencies. Rule 64B8-11.001(1)(f), F.A.C.

<sup>12</sup> Section 458.3312, F.S.

<sup>13</sup> *Id.*

<sup>14</sup> The osteopathic board has approved the specialty boards of the ABMS and AOA as recognizing agencies. Rule 64B15-14.001(h), F.A.C.

<sup>15</sup> Section 459.0152, F.S.

A dentist may not hold himself or herself out as a specialist, or advertise membership in or specialty recognition by an accrediting organization, unless the dentist has completed a specialty education program approved by the American Dental Association and the Commission on Dental Accreditation and the dentist is:<sup>16</sup>

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

If a dentist announces or advertises a specialty practice for which there is not an approved accrediting organization, the dentist must clearly state that the specialty is not recognized or that the accrediting organization has not been approved by the American Dental Association or the Florida Board of Dentistry.<sup>17</sup>

Additionally, an advanced practice registered nurse may not advertise or hold himself or herself out as a specialist for which he or she has not received certification.<sup>18</sup>

By rule, the Board of Chiropractic Medicine (BCM) prohibits chiropractors from using deceptive, fraudulent, and misleading advertising. However, the BCM permits chiropractors to advertise that he or she has attained Diplomate status in a chiropractic specialty area recognized by the BCM. BCM recognized specialties include those which are recognized by the Councils of the American Chiropractic Association, the International Chiropractic Association, the International Academy of Clinical Neurology, or the International Chiropractic Pediatric Association.<sup>19</sup>

#### Health Care Practitioners: Specialty Designations

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

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

Using a term designating a medical specialty unless the practitioner has completed a residency or fellowship program accredited or recognized by the ACGME or the AOA in such specialty is not ground for discipline under current law.

If the board or DOH finds that a licensee committed a violation, the board or DOH may:<sup>20</sup>

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

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<sup>16</sup> Section 466.0282, F.S. A dentist may also hold himself or herself out as a specialist if the dentist has continuously held himself or herself out as a specialist since December 31, 1964, in a specialty recognized by the American Dental Association.

<sup>17</sup> Section 466.0282(3), F.S.

<sup>18</sup> Section 464.018(1)(s), F.S.

<sup>19</sup> Rule 64B-15.001(2)(e), F.A.C. Examples of chiropractic specialties include chiropractic acupuncture, chiropractic internist, chiropractic and clinical nutrition, radiology chiropractic, and pediatric chiropractors.

<sup>20</sup> Section 456.073(1), F.S.

- Refund fees billed and collected from the patient or third party on behalf of the patient; or
- Require the licensee to undergo remedial education.

## **Effect of the Bill**

### Health Care Practitioners: Specialty Designations

Current law prohibits a physician from holding himself or herself out as a specialist unless he or she has received formal recognition as a specialist from a specialty board of the ABMS or other recognizing agency approved by the Board of Medicine or the Board of Osteopathic Medicine. Such law is applicable only to licensed physicians.

CS/CS/HB 861 makes using a term which indicates a practitioner has completed a residency or fellowship program accredited by the ACGME or the AOA in a medical specialty if he or she has not completed such residency or fellowship grounds for discipline unless the licensee:

- Completed a residency or fellowship program recognized by the ACGME or AOA in such specialty;
- Attained diplomate status in a chiropractic specialty; or
- Is otherwise expressly authorized by law to use such specialty terms.

This means that any practitioner who is not a physician and has not completed a residency or fellowship is prohibited from using terms such as “oncologist” or “dermatologist” to describe his or her practice. However, a licensed chiropractor who have attained diplomate status and any other licensed practitioner specifically authorized by law to use specialty terms may use such ACGME or AOA recognized specialty terms to describe his or her practice.

The bill also requires DOH to discipline and take final action against a practitioner who violates the bill’s provisions and grants DOH the same enforcement authority as the applicable board. This means that DOH, not the applicable board, is entirely responsible for the disciplinary action against a practitioner who violates the bill’s provisions.

The provides an effective date of July 1, 2022.

#### B. SECTION DIRECTORY:

**Section 1:** Amends s. 456.072, F.S., relating to grounds for discipline; penalties; enforcement.

**Section 2:** Provides an effective date of upon becoming law.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

None.

##### 2. Expenditures:

DOH may experience a recurring increase in workload associated with rulemaking, which can be absorbed within current resources.<sup>21</sup>

DOH may also experience a recurring increase in workload associated with additional complaints, investigations, and prosecutions resulting from the bill. The extent to which such complaints,

<sup>21</sup> Department of Health, Agency Analysis of 2022 House Bill 861 (Jan. 11, 2022).

investigations, and prosecutions may materialize is unknown; therefore, the fiscal impact is indeterminate.<sup>22</sup>

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Health care practitioners in violation of the restrictions in this bill may be subject to disciplinary actions and fines.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

The bill provides sufficient rulemaking authority to DOH to implement the provisions of the bill.

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

The bill requires DOH to enforce the bill's provisions. This appears to conflict with several sections of the statutes which specifically vest disciplinary authority in the appropriate boards. Disciplinary authority is vested in the department only in the absence of a duly appointed board.<sup>23</sup>

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

On January 25, 2022, the Professions and Public Health Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment prohibits a practitioner from using a term designating a medical specialty accredited or recognized by the American Osteopathic Association (AOA) unless the practitioner has completed a residency or fellowship program accredited or recognized by the AOA.

On February 10, 2022, the Health and Human Services Committee adopted an amendment and reported the bill favorably as a committee substitute. The amendment makes using terms indicating any practitioner has attained a medical specialty recognized by the ACGME or the AOA grounds for licensure discipline unless the practitioner:

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<sup>22</sup> Id.

<sup>23</sup> Id. See sections 456.072 and 456.073, F.S.

- Completed a residency or fellowship program recognized by the ACGME or AOA;
- Attained diplomate status in a chiropractic specialty; or
- Is otherwise expressly authorized by law to use such specialty terms.

This analysis is drafted to the committee substitute as passed by the Health and Human Services Committee.