

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/CS/HB 861

INTRODUCER: Health and Human Services Committee; Professions and Public Health Subcommittee;
and Representative Massullo

SUBJECT: Medical Specialty Designations

DATE: March 7, 2022

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Brown</u>	<u>Phelps</u>	<u>RC</u>	<u>Pre-meeting</u>

I. Summary:

CS/CS/HB 861 creates s. 456.072(1)(tt), F.S., to provide a new behavior that, if carried out by a licensed health care practitioner, constitutes grounds for which the disciplinary actions contained in s. 456.072(2), F.S., may be imposed on the practitioner.

The specific behavior created under the bill as new grounds for discipline is the act of using a term designating a medical specialty for which the Accreditation Council for Graduate Medical Education or the American Osteopathic Association accredits or recognizes as a residency or fellowship program, unless one or more of three exceptions applies.

The bill provides that the Department of Health (DOH) must enforce the bill's provisions and has the same enforcement authority as an applicable board.

The bill authorizes the DOH to adopt rules to implement the bill's provisions.

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

II. Present Situation:

Licensure and Regulation of Health Care Practitioners

The Division of Medical Quality Assurance (MQA), within the DOH, has general regulatory authority over health care practitioners.¹ The MQA works in conjunction with 22 regulatory

¹ Pursuant to s. 456.001(4), F.S., health care practitioners are defined to include acupuncturists, physicians, physician assistants, chiropractors, podiatrists, naturopaths, dentists, dental hygienists, optometrists, nurses, nursing assistants, pharmacists, midwives, speech language pathologists, nursing home administrators, occupational therapists, respiratory therapists, dietitians, 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.

boards and four councils to license and regulate seven types of health care facilities and more than 40 health care professions.² Each profession is regulated by an individual practice act and by ch. 456, F.S., which provides general regulatory and licensure authority for the MQA. The MQA is statutorily responsible for the following boards and professions established within the division:³

- The Board of Acupuncture, created under ch. 457, F.S.;
- The Board of Medicine, created under ch. 458, F.S.;
- The Board of Osteopathic Medicine, created under ch. 459, F.S.;
- The Board of Chiropractic Medicine, created under ch. 460, F.S.;
- The Board of Podiatric Medicine, created under ch. 461, F.S.;
- Naturopathy, as 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 I of ch. 483, F.S.;
- Medical physicists, as provided under part II 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.

The DOH and the practitioner boards have different roles in the regulatory system. Boards establish practice standards by rule, pursuant to statutory authority and directives. The DOH

² 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 Mar. 7, 2022).

³ Section 456.001(4), F.S.

receives and investigates complaints about practitioners, and prosecutes cases for disciplinary action against practitioners.

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

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

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

Board Certification and Florida Licensure

The 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.¹⁰

Prohibitions

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

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

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

⁶ Section 456.072(2), F.S.

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

⁸ *Supra*, note 5.

⁹ *Id.*

¹⁰ 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.

of the ABMS or other recognizing agency¹¹ approved by the Board of Medicine.¹² 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 Board of Medicine.¹³

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 agency¹⁴ approved by the board.¹⁵

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

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

Additionally, an advanced practice registered nurse (APRN) may not advertise or hold himself or herself out as a specialist for which he or she has not received certification.¹⁸

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.¹⁹

¹¹ The Board of Medicine has approved the specialty boards of the ABMS as recognizing agencies. See Rule 64B8-11.001(1)(f), F.A.C.

¹² Section 458.3312, F.S.

¹³ *Id.*

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

¹⁵ Section 459.0152, F.S.

¹⁶ 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.

¹⁷ Section 466.0282(3), F.S.

¹⁸ Section 464.018(1)(s), F.S.

¹⁹ Rule 64B2-15.001(2)(e), F.A.C. Examples of chiropractic specialties include chiropractic acupuncture, chiropractic internist, chiropractic and clinical nutrition, radiology chiropractic, and pediatric chiropractors.

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:²⁰

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

Anesthesiology

Under chs. 458 and 459, F.S., "anesthesiology" is defined as the practice of medicine that specializes in the relief of pain during and after surgical procedures and childbirth, during certain chronic disease processes, and during resuscitation and critical care of patients in the operating room and intensive care environments.²¹

The term "anesthesiologist" is defined as an allopathic or osteopathic physician who holds an active, unrestricted license; who has successfully completed an anesthesiology training program approved by the Accreditation Council on Graduate Medical Education or its equivalent; and who is certified by the American Board of Anesthesiology, is eligible to take that board's examination, or is certified by the Board of Certification in Anesthesiology affiliated with the American Association of Physician Specialists.²²

Nurse Anesthetists

A certified registered nurse anesthetist (CRNA) is an APRN, licensed by the Board of Nursing (BON), who specializes in anesthetic services.

²⁰ Section 456.072(2), F.S.

²¹ Sections 458.3475(1)(c) and 459.023(1)(c), F.S.

²² Sections 458.3475(1)(a) and 459.023(1)(a), F.S.

APRNs are regulated under part I of ch. 464, F.S., the Nurse Practice Act. The BON provides, by rule, the eligibility criteria for applicants to be licensed as APRNs and the applicable regulatory standards for APRN nursing practices.²³ Additionally, the BON is responsible for administratively disciplining an APRN who commits prohibited acts.²⁴

In Florida “advanced or specialized nursing practice” includes, in addition to practices of professional nursing that registered nurses are authorized to perform, advanced-level nursing acts approved by the BON as appropriate for APRNs to perform by virtue of their post-basic specialized education, training, and experience.²⁵ Advanced or specialized nursing acts may only be performed if authorized under a supervising physician’s protocol.²⁶ In addition to advanced or specialized nursing practices, APRNs are authorized to practice certain medical acts, as opposed to nursing acts, as authorized within the framework of an established supervisory physician’s protocol.²⁷

A CRNA may, to the extent authorized by established protocol approved by the medical staff of the facility in which the anesthetic service is performed, perform any or all of the following:

- Determine the health status of the patient as it relates to the risk factors and to the anesthetic management of the patient through the performance of the general functions.
- Based on history, physical assessment, and supplemental laboratory results, determine, with the consent of the responsible physician, the appropriate type of anesthesia within the framework of the protocol.
- Order pre-anesthetic medication under the protocol.
- Perform under the protocol procedures commonly used to render the patient insensible to pain during the performance of surgical, obstetrical, therapeutic, or diagnostic clinical procedures. These procedures include ordering and administering regional, spinal, and general anesthesia; inhalation agents and techniques; intravenous agents and techniques; and techniques of hypnosis.
- Order or perform monitoring procedures indicated as pertinent to the anesthetic health care management of the patient.
- Support life functions during anesthesia health care, including induction and intubation procedures, the use of appropriate mechanical supportive devices, and the management of fluid, electrolyte, and blood component balances.
- Recognize and take appropriate corrective action for abnormal patient responses to anesthesia, adjunctive medication, or other forms of therapy.
- Recognize and treat a cardiac arrhythmia while the patient is under anesthetic care.
- Participate in management of the patient while in the post-anesthesia recovery area, including ordering the administration of fluids and drugs.
- Place special peripheral and central venous and arterial lines for blood sampling and monitoring as appropriate.

²³ See s. 464.004, F.S., and Fla. Admin. Code R. 64B9-3 (2020).

²⁴ See ss. 464.018 and 456.072, F.S.

²⁵ Section 464.003(2), F.S.

²⁶ Section 464.012(3)-(4), F.S.

²⁷ *Id.*

“Nurse Anesthesiologist”

On August 8, 2019, at the general BON meeting, the BON considered requests for declaratory statements.²⁸ The second request for a declaratory statement was made by John P. McDonough, A.P.R.N., C.R.N.A., license number 3344982.²⁹

For the meeting, McDonough’s Petition for Declaratory Statement acknowledged that the type of Florida nursing license he held was as an *A.P.R.N.*, and that he was a certified registered nurse anesthetist (C.R.N.A.), but requested that he be permitted to use the phrase “nurse anesthesiologist” as a descriptor for him or his practice, and that the BON not subject him to discipline under ss. 456.072 and 464.018, F.S.,³⁰ based on the following grounds:

- A New Hampshire Board of Nursing’s Position Statement that the nomenclature, *Nurse Anesthesiologist* and *Certified Registered Nurse Anesthesiologist*, are not title changes or an expansion of scope of practice, but are optional, accurate descriptors;³¹ and
- Florida law grants no title protection to the words *anesthesiologist* or *anesthetist*.³²

The Florida Association of Nurse Anesthetists (FANA) and the Florida Medical Association, Inc. (FMA), Florida Society of Anesthesiologists, Inc. (FSA), and Florida Osteopathic Medical Association, Inc. (FOMA), filed timely and legally sufficient³³ motions to intervene³⁴ pursuant to

²⁸ Section 120.565, F.S. Provides that, “[a]ny substantially affected person may seek a declaratory statement regarding an agency’s opinion as to the applicability of a statutory provision as it applies to the petitioner’s particular set of circumstances. The agency must give notice of the filing of a petition in the Florida Administrative Register, provide copies of the petition to the board, and issue a declaratory statement or deny the petition within 90 days after the filing. The declaratory statement or denial of the petition is then noticed in the next Florida Administrative Register, and disposition of a petition is a final agency action.”

²⁹ The Florida Board of Nursing, Meeting Minutes, Disciplinary Hearings & General Business, *Declaratory Statements*, No. 2, Aug. 8, 2019, available at <https://floridasnursing.gov/meetings/minutes/2019/08-august/08072019-minutes.pdf> p. 28 (last visited Mar. 7, 2022).

³⁰ *Petition for Declaratory Statement Before the Board of Nursing, In re: John P. McDonough, A.P.R.N., C.R.N.A., Ed.D.*, filed at the Department of Health, July 10, 2019 (on file with the Senate Rules Committee).

³¹ New Hampshire Board of Nursing, *Position Statement Regarding the use of Nurse Anesthesiologist as a communication tool and optional descriptor for Certified Registered Nurse Anesthetists (CRNAs)*, Nov. 20, 2018, available at <https://static1.squarespace.com/static/5bf069ef3e2d09d0f4e0a54f/t/5f6f8a708d2cb23bb10f50a0/1601145457231/NH+BON+NURSE+ANESTHESIOLOGIST.pdf> (last visited Mar. 7, 2022).

³² *Id.*

³³ Fla. Adm. Code R. 28-105.0027(2) and 28.106.205(2) (2019), both of which state that to be legally sufficient, a motion to intervene in a proceeding on a petition for a declaratory statement must contain the following information: (a) The name, address, the e-mail address, and facsimile number, if any, of the intervenor; if the intervenor is not represented by an attorney or qualified representative;(b) The name, address, e-mail address, telephone number, and any facsimile number of the intervenor’s attorney or qualified representative, if any; (c) Allegations sufficient to demonstrate that the intervenor is entitled to participate in the proceeding as a matter of constitutional or statutory right or pursuant to agency rule, or *that the substantial interests of the intervenor are subject to determination or will be affected by the declaratory statement*; (d) The signature of the intervenor or intervenor’s attorney or qualified representative; and (e) The date.

³⁴ The Florida Medical Association, Inc., Florida Society of Anesthesiologists, Inc., and Florida Osteopathic Medical Association, Inc., *Motion to Intervene In Florida Board of Nursing’s Consideration of the Petition for Declaratory Statement in Opposition of Petitioner John P. McDonough, A.P.R.N., C.R.N.A., Ed.D.*, filed at the Department of Health, Aug. 1, 2019, (on file with the Senate Rules Committee).

Florida Administrative Code Rule 28-106.205.³⁵ The FANA's petition³⁶ was in support of petitioner's Declaratory Statement while the motion filed jointly by the FMA, FSA, and FOMA was in opposition.

The FMA, FSA, and FOMA argued they were entitled to participate in the proceedings, on behalf of their members, as the substantial interests of their members – some 32,300 – could be adversely affected by the proceeding.³⁷ Specifically, the FMA, FSA, and FOMA argued that the substantial interests of their respective members would be adversely affected by the issuance of a Declaratory Statement that petitioner could use the term “nurse anesthesiologist,” without violating ss. 456.072 and 464.018, F.S., on the grounds that:

- A substantial number of their members use the term “anesthesiologist” with the intent and understanding that patients, and potential patients, would recognize the term to refer to them as physicians licensed under chs. 458 or 459, F.S., not “nurse anesthetists;”
- Sections 458.3475(1)(a) and 459.023(1)(a), F.S., both define the term “anesthesiologist” as a licensed allopathic or osteopathic physician and do not include in those definitions a “nurse anesthetist;”
- The Merriam-Webster Dictionary defines an “anesthesiologist” as a “physician specializing in anesthesiology,” not as a nurse specializing in anesthesia; and
- The Legislature clearly intended a distinction between the titles to be used by physicians practicing anesthesiology and nurses delivering anesthesia, to avoid confusion, as s. 464.015(6), F.S., specifically states that:
 - Only persons who hold valid certificates to practice as certified registered nurse anesthetists in this state may use the title “Certified Registered Nurse Anesthetist” and the abbreviations “C.R.N.A.” or “nurse anesthetist;” and
 - Petitioner is licensed as a “registered nurse anesthetist” under s. 464.012(1)(a), F.S., and the term “nurse anesthesiologist” is not found in statute.

At the hearing, the attorney for the BON advised the BON that, “[t]he first thing the Board need[ed] to do [was] determine whether or not the organizations that [had] filed petitions to intervene have standing in order to participate in the discussion of the Declaratory Statement”³⁸ and that:

“Basically in order to make a determination of whether an organization has standing, they have to show that the members of their organization would have an actual injury in fact, or suffer an immediate harm of some sort of immediacy were the Board to issue this particular Declaratory

³⁵ Fla. Adm. Code. R. 28-106.205 (2019), in pertinent part, provides, “Persons other than the original parties to a pending proceeding whose substantial interest will be affected by the proceeding and who desire to become parties may move the presiding officer for leave to intervene.”

³⁶ *Florida Association of Nurse Anesthetists Motion to Intervene*, filed at the Department of Health, July 31, 2019, (on file with the Senate Rules Committee).

³⁷ See *Florida Home Builders Association, et al., Petitioners, v. Department of Labor And Employment Security, Respondent*, 412 S.2d 351 (Fla. 1982), holding that a trade association does have standing under s. 120.56(1), F.S., to challenge the validity of an agency ruling on behalf of its members when that association fairly represents members who have been substantially affected by the ruling.

³⁸ Record at p. 3, ll. 13-17. Declaratory Statement, Dr. John P. McDonough, Before the Board of Nurses, State of Florida, Department of Health, Sanibel Harbor Marriott. (on file with the Senate Rules Committee).

Statement, and then the Board also has to make a determination of whether the nature of the injury would be within the zone of interest that the statute is addressing.”³⁹

However, the above special injury standard,⁴⁰ provided by board counsel to the BON to apply to determine the organizations’ standing to intervene, based on their members’ substantial interests being affected by the declaratory statement, was held inapplicable to trade associations in *Florida Home Builders Ass’n. v. Department of Labor and Employment Security*, 412 So.2d 351 (Fla. 1982). The Florida Supreme Court, in *Florida Home Builders, Ass’n.*, held that a trade or professional association is able to challenge an agency action on behalf of its members, even though each member could individually challenge the agency action, if the organization could demonstrate that:

- A substantial number of the association members, though not necessarily a majority, would be “substantially affected” by the challenged action;
- The subject matter of the challenged action is within the association’s scope of interest and activity; and
- The relief requested is appropriate for the association’s members.⁴¹

The FANA’s motion to intervene was granted, based on the application of an incorrect standard, without the BON making the findings required by *Florida Home Builders, Ass’n*. However, the motion to intervene filed by the FMA, FSA, and FOMA was denied, also based on the application of an incorrect standard, on the grounds that:

- Their members are regulated by the Board of Medicine, not the Board of Nursing;
- Nursing disciplinary guidelines were being discussed;
- Their members’ licenses and discipline would not be affected by an interpretation of nursing discipline;⁴² and
- Their members are not regulated by the Nurse Practice Act.

A motion was made to approve McDonough’s Petition for Declaratory Statement, and it passed unanimously. According to the BON’s approval, McDonough may use of the term “nurse anesthesiologist” as a descriptor, and such use is not grounds for discipline against his nursing license. The final order, DOH-19-1500-DS-MQA, was issued September 13, 2019.⁴³

However, while s. 120.565, F.S., provides that any person may seek a declaratory statement regarding the potential impact of a statute, rule or agency opinion on a petitioner’s particular situation, approval or denial of the petition only applies to the petitioner. It is not a method of obtaining a policy statement from a board of general applicability.⁴⁴ News media have reported that the BON’s Declaratory Statement in favor of McDonough has created significant concern

³⁹ *Id.* p. 3-4, ll. 22- 25, 1-6.

⁴⁰ *United States Steel Corp. v. Save Sand Key, Inc.*, 303 So.2d 9 (Fla. 1974).

⁴¹ *Florida Home Builders Ass’n. v. Department of Labor and Employment Security*, 412 So.2d 351 (Fla. 1982), pp. 353-354.

⁴² Record at p. 7, ll. 1-13. Declaratory Statement, Dr. John P. McDonough, Before the Board of Nurses, State of Florida, Department of Health, Sanibel Harbor Marriott. (on file with the Senate Rules Committee).

⁴³ State of Florida Board of Nursing, *Final Order*, Sept. 13, 2019, available at https://www.floridahealth.gov/licensing-and-regulation/declaratory/_documents/nursing/DOH-19-1500-DS.pdf (last visited Mar. 7, 2022).

⁴⁴ Florida Department of Health, Board of Nursing, *What is a Declaratory Statement?*, available at <https://floridasnursing.gov/help-center/what-is-a-declaratory-statement/> (last visited Mar. 7, 2022).

for patient safety and the potential for confusion in the use of the moniker “anesthesiologist” among Florida’s medical professionals.^{45, 46, 47}

III. Effect of Proposed Changes:

As described above, 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 creates s. 456.072(1)(tt), F.S., to make using a term that 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.

Under the bill, any practitioner who is a 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, the bill allows a licensed chiropractor who has attained diplomate status, and any other licensed practitioner specifically authorized by law to use specialty terms, to use such ACGME-recognized or AOA-recognized specialty terms to describe his or her practice.

The bill also requires the DOH to enforce the bill’s provisions and grants the DOH the same enforcement authority as an applicable board.

The bill authorizes the DOH to adopt rules for the bill’s implementation.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

⁴⁵ Christine Sexton, The News Service of Florida, “Nursing Board Signs Off On ‘Anesthesiologist’ Title,” August 16, 2019, The Gainesville Sun, available at: <https://www.gainesville.com/news/20190816/nursing-board-signs-off-on-anesthesiologist-title> (last visited Mar. 7, 2022).

⁴⁶ Christine Sexton, The News Service of Florida, “Florida Lawmaker Takes Aim At Health Care Titles,” October 10, 2019, Health News Florida, available at <https://health.wusf.usf.edu/post/florida-lawmaker-takes-aim-health-care-titles> (last visited Mar. 7, 2022).

⁴⁷ Christine Section, The News Service of Florida, “What’s In A Name? Health Panel Seeks Clarity on Health Care Providers,” Nov. 14, 2019, available at <https://health.wusf.usf.edu/post/what-s-name-health-panel-seeks-clarity-health-care-providers> (last visited Mar. 7, 2022).

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The DOH advises that:⁴⁸

- The bill establishes a type of title protection that may restrict licensed health care practitioners from advising the public regarding the specialized nature of their practice. Some certifications issued by the ACGME use terms that are so common that practitioners could inadvertently violate this provision of law. Examples may include the psychologist or mental health counselor who limits his or her practice to child and adolescent psychology, a massage therapist who specializes in working with oncology patients, and a surgeon who performs orthopedic surgery but is not currently certified in that specialty.
- Certifications offered by other recognized professional organizations use the same terminology as the ACGME. It is unclear how a health care practitioner who earns a recognized certification or specialization in such an area could use that credential under the bill.
- The BON's final order DOH-19-1500-DS-MQA held that a particular CRNA could use the term "nurse anesthesiologist" to refer to himself and his duties. The bill's language will not prevent a nurse from using the term "nurse anesthesiologist."

⁴⁸ Department of Health, 2022 Agency Legislative Bill Analysis for HB 861, Jan. 11, 2022, on file with the Senate Rules Committee.

C. Government Sector Impact:

The DOH advises that:⁴⁹

- The bill provides enforcement authority to the DOH that is the same as the regulatory boards and requires the DOH to enforce the bill. However, the DOH does not currently have a process or the personnel to enforce the bill separate from the boards. Establishing such an office would require recurring financial resources and additional full-time equivalent positions, including additional professional legal staff, but the precise impact of the bill is unknown; therefore, the fiscal impact of creating a separate disciplinary office within the DOH, separate from the boards, cannot be calculated.
- While the bill does not specifically require licensed practitioners to report specialty designations to the DOH, the DOH would need to gather that information from each practitioner, then store and maintain it, in order to regulate disciplinary matters and associated penalties resulting from practitioners who violate the bill. The DOH would experience a non-recurring increase in workload and costs associated with updating the Licensing and Enforcement Information Database System (LEIDS), Online Service and Data Download Portals, Cognitive Virtual Agent, Continuing Education Tracking System, License Verification and other search sites, MQA Business Intelligence Portal, and the boards' websites to create and support detailed specialty information by practitioners. The MQA would experience recurring costs associated with establishing and maintaining additional transactions in LEIDS and Versa Online for providers updating their credentials. Updates to fully integrate these credentials are estimated to need six months.

VI. Technical Deficiencies:

The DOH advises that the bill appears to create statutory conflicts.⁵⁰ To wit:

- The bill provides enforcement authority to the department that is the same as a regulatory board. This provision creates a situation where two entities have the same enforcement authority, which they are required to exercise, which in turn creates competing enforcement provisions within the Florida Statutes and will make implementation problematic.
- The DOH does not have the power to circumvent a board's authority to take disciplinary action against a licensed practitioner, except under emergency circumstances. According to s. 456.072(2), F.S., the DOH may impose penalties on disciplinary acts provided in s. 456.072(1), F.S., only for professions for which there is no regulatory board.
- Section 456.073, F.S., provides that the DOH investigates complaints and determines legal sufficiency, but the appropriate board determines whether or not probable cause exists to pursue disciplinary action. The statute further provides that the DOH must follow the direction of the probable cause panel regarding filing a formal administrative complaint. The bill's requirement for the DOH to enforce the bill in place of a regulatory board appears to conflict with the requirements of s. 456.073, F.S.

⁴⁹ *Id.*

⁵⁰ *Id.*

VII. Related Issues:

The DOH advises that line 18 of the bill provides that a practitioner may not use a term designating a medical specialty unless one or more of three exceptions is met. No context is provided for the term “using,” and it is not defined in the bill or in any other statute. Terms may be “used” in any number of ways. This may subject the bill to challenge as being so vague as to be unenforceable. Any rules promulgated in response to the bill may also be subject to challenge as lacking sufficient statutory authority.

VIII. Statutes Affected:

This bill substantially amends section 456.072 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.