

1 A bill to be entitled
2 An act relating to optometry; amending s. 463.0135,
3 F.S.; prohibiting licensed practitioners from using
4 certain terms to describe their practices; requiring a
5 licensed practitioner to immediately refer a patient
6 who has certain eye conditions or diseases to a
7 physician skilled in treating diseases of the eye;
8 providing legislative intent regarding prohibited
9 referrals between operating ophthalmologists and
10 licensed practitioners; requiring that postoperative
11 care provided by a licensed practitioner to be
12 provided pursuant to an established written protocol;
13 providing requirements for the written protocol;
14 requiring that the patient be informed in writing of
15 certain conditions before the commencement of
16 postoperative care; requiring that a patient who
17 elects not to be seen by the operating ophthalmologist
18 during the postoperative period affirm in writing that
19 he or she understands that the operating
20 ophthalmologist has delegated certain responsibilities
21 and that the patient is aware of certain fees;
22 requiring a licensed practitioner and the operating
23 ophthalmologist to each submit to the patient, the
24 insurer, or certain administrative agencies an
25 itemized statement of services that were rendered and
26 to charge and collect for postoperative care services
27 that the practitioner and operating ophthalmologist
28 rendered; providing a penalty; providing that the

29 | section does not exempt the licensed practitioner and
 30 | the operating ophthalmologist from certain
 31 | requirements; amending s. 463.014, F.S.; defining the
 32 | term "surgery" as it relates to certain prohibited
 33 | acts by optometrists; creating s. 463.0141, F.S.;
 34 | requiring that adverse incidents in the practice of
 35 | optometry be reported to the Department of Health;
 36 | providing requirements for the reporting of an adverse
 37 | incident to the department; providing a definition;
 38 | requiring that the department review each incident and
 39 | determine whether the conduct of the practitioner is
 40 | subject to disciplinary action; requiring the
 41 | department to publish quarterly summaries and trend
 42 | analyses of reported adverse incidents; requiring the
 43 | department to annually publish a summary and trend
 44 | analysis of reported adverse incidents and malpractice
 45 | claims; providing a statement of purpose; requiring
 46 | that certain persons who apply for licensure or
 47 | renewal of licensure under ch. 463, F.S., are subject
 48 | to certain requirements; providing an effective date.

50 | Be It Enacted by the Legislature of the State of Florida:

51 |
 52 | Section 1. Subsections (1) and (2) of section 463.0135,
 53 | Florida Statutes, are amended, and subsection (10) is added to
 54 | that section, to read:

55 | 463.0135 Standards of practice.—

56 | (1) A licensed practitioner shall provide that degree of

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57 | care which conforms to that level of care provided by medical
58 | practitioners in the same or similar communities. A licensed
59 | practitioner may not use the term "physician" or "board
60 | certified" in advertising or otherwise describing her or his
61 | practice and shall advise or assist her or his patient in
62 | obtaining further care when the service of another health care
63 | practitioner is required.

64 | (2) A licensed practitioner who diagnoses ~~diagnosing~~ angle
65 | closure, neovascular, infantile, or congenital forms of glaucoma
66 | or who diagnoses a patient experiencing progressive glaucoma
67 | shall immediately refer the patient to a physician skilled in
68 | treating diseases of the eye and licensed under chapter 458 or
69 | chapter 459.

70 | (10) The Office of Inspector General within the United
71 | States Department of Health and Human Services recognizes that a
72 | referral arrangement between an operating ophthalmologist and a
73 | licensed practitioner who wishes to receive compensation for
74 | providing postoperative care could potentially result in a
75 | referral arrangement that violates statutes prohibiting
76 | kickbacks and could compromise a patient's freedom of choice. It
77 | is the intent of the Legislature to provide guidance regarding
78 | prohibited referrals between operating ophthalmologists and
79 | licensed practitioners and to protect the safety of patients and
80 | the residents of this state from unnecessary and costly health
81 | care expenditures.

82 | (a) The provision of postoperative care by a licensed
83 | practitioner shall be conducted pursuant to the requirements of
84 | this section and a patient-specific written protocol that

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85 governs the relationship between the operating ophthalmologist
86 and the licensed practitioner. The patient-specific written
87 protocol must confirm that the operating ophthalmologist has
88 determined that:

89 1. It is not medically necessary for the operating
90 ophthalmologist to provide such postoperative care to the
91 patient.

92 2. It is clinically appropriate for the licensed
93 practitioner to provide such postoperative care.

94 3. The decision to delegate the postoperative-care
95 responsibilities to the licensed practitioner is based on a
96 determination of what is best for the patient and not on
97 economic considerations.

98 (b) The licensed practitioner shall inform the patient in
99 writing before the commencement of postoperative care that:

100 1. The licensed practitioner is not a surgeon;

101 2. The operating ophthalmologist is ultimately responsible
102 for the treatment of the patient during the postoperative
103 period;

104 3. The licensed practitioner providing the postoperative
105 care is under the supervision of the operating ophthalmologist;
106 and

107 4. The patient has the right to be seen by the operating
108 ophthalmologist during the entire postoperative period.

109 (c) A patient who elects not to be seen by the operating
110 ophthalmologist during the postoperative period shall affirm
111 this decision in writing before the commencement of
112 postoperative care. The patient shall also affirm in writing

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113 before the commencement of postoperative care that he or she
114 understands that the operating ophthalmologist has delegated
115 certain postoperative-care responsibilities to the licensed
116 practitioner and that the patient is aware of the fees to be
117 charged by the licensed practitioner for providing the
118 postoperative care. The operating ophthalmologist and the
119 licensed practitioner who has been delegated certain
120 postoperative-care responsibilities shall each:

121 1. Submit to the patient, and, when appropriate, the
122 patient's insurer and the administrative agency for any federal
123 or state health care program under which the patient is entitled
124 to benefits, an accurate and comprehensive itemized statement of
125 the specific postoperative-care services that the operating
126 ophthalmologist and the licensed practitioner each have
127 rendered, along with the charge for each service; and

128 2. Charge and collect for only the specific postoperative
129 care services that the operating ophthalmologist and the
130 licensed practitioner each have rendered.

131 (d) A violation of this section is punishable as provided
132 in s. 456.054. This section does not exempt the operating
133 ophthalmologist or the licensed practitioner from the
134 requirements in ss. 456.054 and 817.505.

135 Section 2. Subsection (4) of section 463.014, Florida
136 Statutes, is amended to read:

137 463.014 Certain acts prohibited.—

138 (4) Surgery of any kind, including the use of lasers, is
139 expressly prohibited. As used in this subsection, the term
140 "surgery" means a procedure using an instrument, including

141 lasers, scalpels, probes, or needles, in which human tissue is
 142 cut, burned, vaporized, removed, or otherwise altered by
 143 incision, injection, ultrasound, laser, radiation, infusion,
 144 cryotherapy, probe, scraping, or any other means not specified
 145 in this section. The term also includes a procedure using
 146 instruments which requires closing by suturing, clamping, or
 147 using adhesives or any other such device. A certified
 148 optometrist ~~optometrists~~ may remove superficial foreign bodies.
 149 As used in ~~For the purposes of~~ this subsection, the term
 150 "superficial foreign bodies" means any foreign matter that is
 151 embedded in the conjunctiva or cornea but that ~~which~~ has not
 152 penetrated the globe.

153 Section 3. Section 463.0141, Florida Statutes, is created
 154 to read:

155 463.0141 Reports of adverse incidents in the practice of
 156 optometry.—

157 (1) Any adverse incident that occurs in the practice of
 158 optometry must be reported to the department in accordance with
 159 this section.

160 (2) The required reporting to the department must be
 161 submitted in writing by certified mail and postmarked within 15
 162 days after the occurrence of the adverse incident.

163 (3) For purposes of reporting to the department pursuant
 164 to this section, the term "adverse incident" means an event that
 165 the licensed practitioner could exercise control over and that
 166 results in one of the following:

167 (a) Any condition that requires the transfer of a patient
 168 to a hospital licensed under chapter 395;

169 (b) Any condition that requires the patient to obtain care
 170 from a physician licensed under chapter 458 or chapter 459,
 171 other than a referral or a consultation required under this
 172 chapter;

173 (c) Permanent physical injury to the patient;

174 (d) Partial or complete permanent loss of sight by the
 175 patient;

176 (e) Death of the patient; or

177 (f) Adverse reaction to a topical ocular pharmaceutical
 178 agent prescribed or administered by the licensed practitioner.

179 (4) The department shall review each incident and
 180 determine whether the conduct of the licensed practitioner is
 181 subject to disciplinary action, in which case s. 456.073
 182 applies.

183 (5) The department shall:

184 (a) Publish at least quarterly on its website a summary
 185 and trend analysis of adverse incident reports submitted
 186 pursuant to this section. The summary and trend analysis may not
 187 include information that would identify the patient or the
 188 licensed practitioner involved.

189 (b) Publish on its website an annual summary and trend
 190 analysis of all adverse incident reports and malpractice claims
 191 containing information provided by licensed practitioners. The
 192 summary and trend analysis may not include information that
 193 would identify the patient or the licensed practitioner
 194 involved. The purpose of this subsection is to promote the rapid
 195 dissemination of information relating to adverse incidents and
 196 malpractice claims, to assist in the avoidance of similar

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197 adverse incidents, and to reduce patient morbidity and mortality
198 related to adverse incidents.

199 (6) Each person who applies for initial licensure under
200 chapter 463 and each licensed practitioner who applies for
201 license renewal under s. 463.007 is subject to the requirements
202 of ss. 456.039 and 456.041.

203 Section 4. This act shall take effect July 1, 2013.