

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 507 Health Care/Disclosure of Credentials  
**SPONSOR(S):** Galvano  
**TIED BILLS:** None. **IDEN./SIM. BILLS:** SB 2066 (s)

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Health Standards (Sub)</u>	<u></u>	<u>Mitchell</u>	<u>Collins</u>
2) <u>Health Care</u>	<u></u>	<u></u>	<u></u>
3) <u></u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

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### SUMMARY ANALYSIS

HB 507 bill imposes requirements on all licensees to advise patients and the public of their licensure, specialty recognition and postgraduate training. It imposes limitations on the Board of Medicine and medical physicians licensed by the board in use of the term "board certified."

The bill requires specific licensure information to be included in all advertisements and patient interactions by health care practitioners outside of hospitals and nursing homes. It provides grounds for discipline of a health care practitioner for failure to fully disclose medical licensure, postgraduate education and scope of practice to patients, in advertisements and on informed consent forms.

The bill also limits which physicians can advertise as board certified specialists. It requires medical physicians licensed under ch. 458, F.S., who hold themselves out as board-certified specialists to have successfully completed residency programs approved by the American Board of Medical Specialties. The bill limits Board of Medicine rulemaking authority to interpret board certification.

The Department of Health licenses over 700,000 health care practitioners and entities. Each practitioner is subject to the grounds for discipline listed in individual practice acts as well as Chapter 456, F.S. Section 456.072(1)(a), F.S., prohibits making misleading, deceptive, or fraudulent representations in or related to the practice of the licensee's profession. In addition, grounds for discipline in each of the individual practice acts include a prohibition on false and misleading advertising. Many of the regulatory boards already have rules regarding what constitutes misleading advertising. The Board of Medicine Rule, 64B8-11, F.A.C., imposes requirements and limitations on licensees using the term "board certified" in their advertising.

The bill provides an effective date of July 1, 2003.

The Department of Health has identified concerns with provisions of the bill that are not clearly defined and which may conflict with existing provisions of statute. See Section IV. of the bill analysis for additional comments.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** h0507.hc.doc  
**DATE:** April 8, 2003

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |   |  |   |
|--------------------------------------|---|--|---|
| 1. Reduce government?                | Yes <input type="checkbox"/>            | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/>            |
| 2. Lower taxes?                      | Yes <input type="checkbox"/>            | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/>            | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/>            | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 5. Empower families?                 | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/>            | N/A <input type="checkbox"/>            |

For any principle that received a "no" above, please explain:

The bill increases requirements on physicians and other health care providers to disclose additional information about their credentials in their forms and advertisements and increases the enforcement responsibility of the Department of Health.

#### B. EFFECT OF PROPOSED CHANGES:

HB 507 bill imposes requirements on all licensees to advise patients and the public of their licensure, specialty recognition and postgraduate training. It imposes limitations on the Board of Medicine and medical physicians licensed by the board in using the term "board certified."

The bill requires specific licensure information to be included in all advertisements and patient interactions by health care practitioners outside of hospitals and nursing homes. It provides or revises the grounds for discipline of a health care practitioner for failure to fully disclose medical licensure, postgraduate education and scope of practice to patients, in advertisements and on informed consent forms.

The bill also limits which physicians can advertise as board certified specialists. It requires medical physicians licensed under ch. 458, F.S., who hold themselves out as board-certified specialists to have successfully completed residency programs approved by the American Board of Medical Specialties . The bill limits Board of Medicine rulemaking authority to interpret board certification.

#### PRESENT SITUATION:

The Department of Health licenses over 700,000 health care practitioners and entities. Each practitioner is subject to the grounds for discipline listed in individual practice acts as well as Chapter 456, F.S.

Section 456.072(1)(a), F.S., prohibits making misleading, deceptive, or fraudulent representations in or related to the practice of the licensee's profession. In addition, the grounds for discipline in each of the individual practice acts include a prohibition on false and misleading advertising.

Many of the regulatory boards have rules regarding what constitutes misleading advertising.

The Board of Medicine Rule, 64B8-11, F.A.C., imposes requirements and limitations on licensees using the term "board certified" in their advertising.

#### EFFECTS OF THE BILL:

The bill provides findings that there is a compelling state interest that patients are informed of the credentials of the health care practitioners who treat them and that the public is protected from misleading health care advertising. The findings include that the American Council on Graduate

Medical Education and the American Board of Medical Specialties are the recognized medical certification organizations.

The bill amends s. 456.072, F.S. to create two additional grounds for discipline of health care practitioners outside of a licensed health care facility (as defined by reference to chapters 395 and 400, F.S., which include hospitals and ambulatory surgical care centers, and nursing homes). The grounds for discipline are: failure of the health care practitioner to provide to a patient or in an advertisement, the type of license under which they are practicing; and providing a professional opinion without informing the patient of the type of their health care license and the scope of their practice.

The bill reenacts the grounds for disciplinary provisions of each health care practice act for acupuncture, medical practice, osteopathic medicine, chiropractic medicine, podiatric medicine, naturopathy, optometry, nursing, pharmacy, dentistry, midwifery, speech-language pathology and audiology, nursing home administration, occupational therapy, respiratory therapy, dietetics and nutrition practice, athletic trainers, orthotics, prosthetics, and pedorthics, electrolysis, massage practice, clinical laboratory personnel, medical physicists, dispensing of optical devices and hearing aids, physical therapy practice, psychological services, and clinical, counseling, and psychotherapy services, in ss. 457.109, 458.3135, 458.331, 459.015, 460.413, 461.013, 462.14, 463.016, 464.018, 465.016, 466.028, 467.203, 468.1295, 468.1755, 468.217, 468.365, 468.518, 468.719, 468.811, 478.52, 480.046, 483.825, 483.901, 484.014, 484.056 486.125, 490.009, and 491.009, F.S.

The bill amends ss. 458.309, 458.331 and 458.3312, F.S., to impose restrictions on the Board of Medicine relating to board certification. The bill changes the way the term "board certified" is determined for medical doctors by limiting the authority of the Board of Medicine to make that determination to specified parameters of education and training. This will affect practitioners and specialty boards that grant certification if a practitioner or specialty board currently meets the requirements for board certification recognition, but do not meet the requirements of the proposed bill.

The bill amends sections of ch. 458, F.S., relating to medical physicians licensed by the Board of Medicine, to establish a clear standard for using the term "board certified" in an advertisement. The standard is successful completion of a residency program in that specialty accredited by the American Council on Graduate Medical Education. The bill amends s. 458.309, F.S., to limit certification authority to American Board of Medical Specialties. The bill amends s. 458.331, F.S., to require all medical doctors who are not board certified by the American Board of Medical Specialties (ABMS) to affirmatively state in all advertisements, including letterheads, telephone book listings and signs that they are not board certified. It limits the listing of postgraduate education to only completed programs approved by the American Council on Graduate Medical Education (ACGME).

The bill also amends s. 458.3312, F.S., to prohibit medical physicians licensed by the Board of Medicine from holding themselves out as a board-certified specialist unless they have successfully completed a residency program in that specialty accredited by the American Council on Graduate Medical Education.

The bill provides that it shall take effect July 1, 2003.

#### C. SECTION DIRECTORY:

**Section 1.** Amends s. 456.072, F.S., relating to health professions and occupations, to provide that failure of a health care practitioner to disclose medical licensure in advertisements and to patients, and failure to disclose scope of practice when providing a professional opinion, are grounds for discipline.

**Sections 2-29.** Reenact the grounds for disciplinary provisions of each health care practice act in ss. 457.109, 458.3135, 458.331, 459.015, 460.413, 461.013, 462.14, 463.016, 464.018, 465.016, 466.028, 467.203, 468.1295, 468.1755, 468.217, 468.365, 468.518, 468.719, 468.811, 478.52, 480.046, 483.825, 483.901, 484.014, 484.056 486.125, 490.009, and 491.009, F.S.

**Section 30.** Amends s. 458.309, F.S. relating to medical practice, providing requirements for approval of boards granting medical specialty certification.

**Section 31.** Amends s. 458.331, F.S., relating to medical practice, expanding the disciplinary ground of false, deceptive, misleading advertising applicable to physicians to include failure to disclose information relating to medical specialty and postgraduate education in advertisements and informed consent forms.

**Section 32.** Amends s. 458.3312, F.S., relating to medical practice, requiring physicians who hold themselves out as board-certified specialists to have successfully completed a specified residency program.

**Section 33.** Provides that the bill shall take effect July 1, 2003.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

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

The requirement that all physicians who are not board certified must change every sign, listing, letterhead and business card to affirmatively state that they are not board certified will have a direct fiscal impact. By requiring certain practitioners to affirmatively state that they are not board certified, the bill will provide a market advantage to those physicians with certain board certification.

### D. FISCAL COMMENTS:

According to the Department of Health, the fiscal impact of the bill is undetermined. It is unknown whether the changes in the advertising rule will generate a workload issue for the department due to possible increased handling complaints and prosecution.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenues.

##### 2. Other:

According to the Department of Health, there may be freedom of speech issues due to the requirements on advertising.

#### B. RULE-MAKING AUTHORITY:

The department has expressed concern that there is no rule making authority provided for the provisions of section 1 of the bill.

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

The Department of Health has expressed concern that the new and undefined requirements, including use of undefined terms such as "advertisement," "professional opinion," and "scope of the health care practitioner's practice," may offer additional sources of complaints and litigation, which would increase the workload of the Department's complaint and prosecution functions. No rulemaking authority is granted in this section.

Sections 30 to 32 of the bill will impact medical doctors. Section 31 of the bill requires physicians who are not board certified by the American Board of Medical Specialties (ABMS) to affirmatively state in all advertisements, including letterheads, telephone book listings and signs, that they are not board certified. According to the department, this requirement is inconsistent with other provisions of the bill and with current Board of Medicine rule that recognizes other specialty certification boards. According to the department, the requirement may raise freedom of speech concerns. The bill does not make clear whether the changes to board certification recognition are prospective or retroactive. The department suggests deletion of this provision.

According to the department, the educational and residency requirements for board certification in sections 30 to 32 of the bill are more narrowly defined than current Board of Medicine rule. Requirements of section 32 of the bill will prevent providers who are currently considered "board certified" but who have not completed an approved residency in their practice area from advertising themselves as "board certified."

The department has also expressed concerned that the effective date may not provide adequate time for medical doctors to change advertisements, letterheads, forms and signs to meet the requirements of the proposal and recommends a change of the effective date to January 1, 2004.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES