



## 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 checked="" type="checkbox"/> | N/A <input type="checkbox"/>            |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/>            |
| 5. Empower families?                 | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |

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

The bill increased statutory regulations that limit the current scope of practice of Advanced Registered Nurse Practitioners and may limit the practice of Physician Assistants.

#### B. EFFECT OF PROPOSED CHANGES:

The bill creates s. 458.3245, F.S., within the medical practice act and s. 459.0126, F.S., within the osteopathic medical practice act to require a dermatologist to directly supervise a person with whom the dermatologist has a supervisory relationship when: that person evaluates a new, non-emergency patient for dermatological care or treatment; or encounters any new dermatological problem on any of the dermatologist’s patients. It does not require direct supervision of anyone who is licensed to practice medicine or osteopathic medicine.

- “Dermatological” is defined to refer to a medical condition involving the skin or subcutaneous tissue.
- “Dermatologist” is defined as any physician who has successfully completed an approved 3-year residency in dermatology and is practicing within the scope of that specialty within Florida.
- “Directly supervise” is defined to mean the dermatologist is present in the same office suite as the person being supervised.

The effective date of the bill is upon becoming a law.

#### CURRENT SITUATION

##### **Dermatology**

Dermatology is a specialty practice of medicine that deals with the skin, its structure, functions, and diseases. A dermatologist is a physician who is trained to evaluate and manage pediatric and adult patients with benign and malignant disorders of the skin, hair, nails and adjacent mucous membranes. In Florida, the Board of Medicine regulates the practice of medicine and does not regulate specialty practice.

##### **Practice of Medicine**

Chapter 458, F.S., provides for the regulation of medical physicians by the Board of Medicine within the Department of Health. It requires any person who performs acts which are comparable to those within the definition of the “practice of medicine” to be licensed or otherwise exempt.

Section 458.305, F.S., defines the “practice of medicine” to mean the diagnosis, treatment, operation, or prescription for any human disease, pain, injury, deformity, or other physical or mental condition.

Section 458.303, F.S., provides exceptions to the “practice of medicine” for: other duly licensed health care practitioners acting within their scope of practice authorized by statute; licensed out-of-state physicians when meeting in consultation with Florida licensed physicians; medical officers of the United

States Armed Forces and of the United States Public Health Service; medical residents; persons furnishing emergency medical assistance; the domestic administration of recognized family remedies; the practice of the religious tenets of any church in Florida; and any person or manufacturer who, without the use of drugs or medicine, mechanically fits or sells lenses, artificial eyes or limbs, or other apparatus or appliances, or is engaged in the mechanical examination of the eyes for the purpose of constructing or adjusting spectacles, eyeglasses, or lenses.

The medical practice act provides criminal penalties for any person who performs acts comparable to the definition of the "practice of medicine" who is not licensed or otherwise exempt from the medical licensure requirements. Under s. 458.327(1), F.S., any person who practices medicine or attempts to do so, without being licensed or otherwise exempt from the licensure requirements, is subject to a third degree felony punishable by imprisonment of up to 5 years and a fine up to \$5,000. Subsection (2) of s. 458.327, F.S., subjects any person who leads the public to believe that person is licensed as a medical doctor, or is engaged in the licensed practice of medicine, without holding a valid active license to practice medicine, to a first degree misdemeanor punishable by imprisonment of up to 1 year and a fine up to \$1,000.

Section 458.331, F.S., specifies grounds for which a medical physician may be subject to discipline by the Board of Medicine. A medical physician is subject to discipline for any act in violation of applicable standards of practice, which include gross or repeated malpractice or the failure to practice medicine with that level of care, skill, and treatment that is recognized by a reasonably prudent similar physician as being acceptable under similar conditions and circumstances.

A medical physician is also subject to discipline for 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.

### **The Practice of Osteopathic Medicine**

Chapter 459, F.S., the osteopathic medical practice act, provides similar regulation of osteopathic physicians by the Board of Osteopathic Medicine in the Department of Health.

Section 459.003, F.S., defines the "practice of osteopathic medicine" to mean the diagnosis, treatment, operation, or prescription for any human disease, pain, injury, deformity, or other physical or mental condition, which practice is based in part upon educational standards and requirements which emphasize the importance of the musculoskeletal structure and manipulative therapy in the maintenance and restoration of health.

### **Physician Assistants and Advanced Registered Nurse Practitioners**

Sections 458.347 and 459.022, F.S., provide requirements for the regulation of physician assistants by the Council on Physician Assistants, the Board of Medicine, and the Board of Osteopathic Medicine, under the Department of Health. Physician assistants perform medical services delegated by the supervising medical or osteopathic physician under indirect supervision. A physician may not supervise more than four currently licensed physician assistants at any one time.

Section 464.012, F.S., provides certification requirements for advanced registered nurse practitioners by the Board of Nursing. Advanced registered nurse practitioners perform medical acts of medical diagnosis and treatment, prescription, and operation under the general supervision of a medical or osteopathic physician as outlined in a protocol filed with the appropriate boards of the supervising physician and the supervised advanced registered nurse practitioner.

Advanced registered nurse practitioners are independent practitioners who may perform all duties of a registered nurse and advanced level nursing in accordance with established protocols, including managing selected medical problems, monitoring and altering drug therapies, initiating appropriate therapies for certain conditions, performing physical examinations, ordering and evaluating diagnostic tests, ordering physical and occupational therapy, and initiating and monitoring therapies for certain

uncomplicated acute illnesses. There are no statutory limitations on the number of advanced registered nurse practitioners with whom a physician may establish protocols.

Indirect supervision and general supervision do not require that the supervising physician be physically located within the same office suite as the person being supervised.

C. SECTION DIRECTORY:

**Section 1.** Creates s. 458.3245, F.S., to establish dermatological supervision requirements in the medical practice act.

**Section 2.** Creates s. 459.0126, F.S., to establish dermatological supervision requirements in the osteopathic medicine practice act.

**Section 3.** 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:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See Fiscal Comments, below.

D. FISCAL COMMENTS:

The Department of Health has expressed concerns that dermatology practices serving remote areas within Florida will either curtail services or be required to hire additional medical or osteopathic physicians to meet the direct supervision requirement of the bill.

## 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:

None.

**B. RULE-MAKING AUTHORITY:**

According to the Department of Health, the department's current rulemaking authority is sufficient to implement the provisions of the bill.

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

According to the department, the provisions of the bill may apply to both physician assistants and advanced registered nurse practitioners and may limit their ability to deliver cost effective services. By reducing the cost effectiveness of physician assistants who practice in conjunction with dermatologists, the costs of dermatological services will increase.

According to the department, the bill will limit access to dermatological services to the same location where the supervising physician is located. Rural and underserved areas within Florida will have reduced access to dermatological services. Direct supervision may also have the effect of increasing the waiting times for patients to be treated for dermatological conditions.

Physician assistants may be exempt from the supervision requirements of the bill according to an opinion by Edward Tellechea, Senior Assistant Attorney General, January 23, 2004. According to Mr. Tellechea, physician assistants are licensed to practice medicine (i.e. perform medical tasks as physician assistants – not as medical doctors or doctors of osteopathy) under chapters 458 and 459, F.S., as long as they do so under the indirect supervision of a licensed physician.

According a national study there is a shortage of dermatologists (Resneck and Kimball, "The Dermatology Workforce Shortage," Journal of the Am. Academy of Dermatologists, Vol. 50, No. 1, pp. 50-54, 2003.)

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

On March 30, 2004, the Subcommittee on Health Standards adopted a strike everything amendment and reported the bill favorably to the Health Care Committee. The strike everything amendment replaces the provisions of the bill with a requirement that dermatologists annually register with the board the:

- Names of all supervised licensees;
- Locations of the practitioners while subject to the physician's supervision; and
- Frequency with which the physician is at each location.

The amendment requires protocols filed by advanced registered nurse practitioners to be reviewed by the department and adds the provision that patients be informed of the option of treatment by the dermatologist.