

## CHAPTER 2019-130

### Committee Substitute for Committee Substitute for Senate Bill No. 732

An act relating to office surgery; amending s. 456.074, F.S.; requiring the Department of Health to issue an emergency order suspending or restricting the registration of certain facilities upon specified findings; amending s. 458.309, F.S.; deleting a provision relating to registration and inspection of an office in which a physician performs certain procedures or office surgeries; creating s. 458.328, F.S.; requiring an office in which a physician performs certain procedures or office surgeries to register with the department; requiring an office to designate a physician to be responsible for certain compliance requirements as part of registration by a specified date; requiring an office and physicians practicing at the office to meet certain financial responsibility requirements; authorizing the department to deny or revoke the registration of or impose certain penalties against a facility in which certain procedures or office surgeries are performed under certain circumstances; requiring the department to conduct certain inspections; providing exceptions; requiring the Board of Medicine to adopt rules governing the standards of practice for physicians practicing in such offices and to impose a specified fine on physicians who perform certain procedures or office surgeries in an unregistered office; authorizing the board to adopt rules to administer the registration, inspection, and safety of offices in which certain procedures or office surgeries are performed; amending s. 458.331, F.S.; providing that a physician performing certain procedures or office surgeries in an unregistered office constitutes grounds for denial of a license or disciplinary action; amending s. 459.005, F.S.; deleting a provision relating to registration and inspection of an office in which a physician performs certain procedures or office surgeries; creating s. 459.0138, F.S.; requiring an office in which a physician performs certain procedures or office surgeries to register with the department; requiring an office to designate a physician to be responsible for certain compliance requirements as part of registration by a specified date; requiring an office and physicians practicing at the office to meet certain financial responsibility requirements; authorizing the department to deny or revoke the registration of or impose certain penalties against a facility in which certain procedures or office surgeries are performed under certain circumstances; requiring the department to conduct certain inspections; providing exceptions; requiring the Board of Osteopathic Medicine to adopt rules governing the standards of practice for physicians practicing in such offices and to impose a specified fine on physicians who perform certain procedures or office surgeries in an unregistered office; authorizing the board to adopt rules to administer the registration, inspection, and safety of offices in which certain procedures or office surgeries are performed; amending s. 459.015, F.S.; providing that the performance of certain procedures or office surgeries by a physician in an unregistered office constitutes

grounds for denial of a license or disciplinary action; providing an effective date.

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

Section 1. Subsection (6) is added to section 456.074, Florida Statutes, to read:

456.074 Certain health care practitioners; immediate suspension of license.—

(6) The department must issue an emergency order suspending or restricting the registration of an office registered under s. 458.328 or s. 459.0139 upon a finding of probable cause that the office or a physician practicing in the office is not in compliance with the standards of practice for office surgery adopted by the boards pursuant to s. 458.328 or s. 459.0138, as applicable, or is in violation of s. 458.331(1)(v) or s. 459.015(1)(z), and that such noncompliance or violation constitutes an immediate danger to the public.

Section 2. Subsection (3) of section 458.309, Florida Statutes, is amended to read:

458.309 Rulemaking authority.—

~~(3) A physician who performs liposuction procedures in which more than 1,000 cubic centimeters of supernatant fat is removed, level 2 procedures lasting more than 5 minutes, and all level 3 surgical procedures in an office setting must register the office with the department unless that office is licensed as a facility under chapter 395. The department shall inspect the physician's office annually unless the office is accredited by a nationally recognized accrediting agency or an accrediting organization subsequently approved by the Board of Medicine. The actual costs for registration and inspection or accreditation shall be paid by the person seeking to register and operate the office setting in which office surgery is performed.~~

Section 3. Section 458.328, Florida Statutes, is created to read:

458.328 Office surgeries.—

(1) REGISTRATION.—

(a) An office in which a physician performs a liposuction procedure in which more than 1,000 cubic centimeters of supernatant fat is removed, a Level II office surgery, or a Level III office surgery must register with the department unless the office is licensed as a facility under chapter 390 or chapter 395.

(b) By January 1, 2020, each office registered under this section or s. 459.0138 must designate a physician who is responsible for the office's compliance with the office health and safety requirements of this section and

rules adopted hereunder. A designated physician must have a full, active, and unencumbered license under this chapter or chapter 459 and shall practice at the office for which he or she has assumed responsibility. Within 10 calendar days after the termination of a designated physician relationship, the office must notify the department of the designation of another physician to serve as the designated physician. The department may suspend the registration of an office if the office fails to comply with the requirements of this paragraph.

(c) As a condition of registration, each office must establish financial responsibility by demonstrating that it has met and continues to maintain, at a minimum, the same requirements applicable to physicians in ss. 458.320 and 459.0085. Each physician practicing at an office registered under this section or s. 459.0138 must meet the financial responsibility requirements under s. 458.320 or s. 459.0085, as applicable.

(d) Each physician practicing at an office registered under this section or s. 459.0138 shall advise the board, in writing, within 10 calendar days after beginning or ending his or her practice at a registered office.

(e) The department shall inspect a registered office at least annually, including a review of patient records, to ensure that the office is in compliance with this section and rules adopted hereunder unless the office is accredited by a nationally recognized accrediting agency approved by the board. The inspection may be unannounced, except for the inspection of an office that meets the description of a clinic specified in s. 458.3265(1)(a)3.h., and those wholly owned and operated physician offices described in s. 458.3265(1)(a)3.g. which perform procedures referenced in s. 458.3265(1)(a)3.h., which must be announced.

(f) The department may suspend or revoke the registration of an office in which a procedure or surgery identified in paragraph (a) is performed for failure of any of its physicians, owners, or operators to comply with this section and rules adopted hereunder or s. 459.0138 and rules adopted thereunder. If an office's registration is revoked for any reason, the department may deny any person named in the registration documents of the office, including the persons who own or operate the office, individually or as part of a group, from registering an office to perform procedures or office surgeries pursuant to this section or s. 459.0138 for 5 years after the revocation date.

(g) The department may impose any penalty set forth in s. 456.072(2) against the designated physician for failure of the office to operate in compliance with the office health and safety requirements of this section and rules adopted hereunder or s. 459.0138 and rules adopted thereunder.

(h) A physician may only perform a procedure or surgery identified in paragraph (a) in an office that is registered with the department. The board shall impose a fine of \$5,000 per day on a physician who performs a procedure or surgery in an office that is not registered with the department.

(i) The actual costs of registration and inspection or accreditation shall be paid by the person seeking to register and operate the office in which a procedure or surgery identified in paragraph (a) will be performed.

(2) RULEMAKING.—

(a) The board shall adopt by rule standards of practice for physicians who perform procedures or office surgeries pursuant to this section.

(b) The board may adopt rules to administer the registration, inspection, and safety of offices in which a physician performs procedures or office surgeries pursuant to this section.

Section 4. Paragraph (vv) is added to subsection (1) of section 458.331, Florida Statutes, to read:

458.331 Grounds for disciplinary action; action by the board and department.—

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

(vv) Performing a liposuction procedure in which more than 1,000 cubic centimeters of supernatant fat is removed, a Level II office surgery, or a Level III office surgery in an office that is not registered with the department pursuant to s. 458.328 or s. 459.0138.

Section 5. Subsection (2) of section 459.005, Florida Statutes, is amended to read:

459.005 Rulemaking authority.—

~~(2) A physician who performs liposuction procedures in which more than 1,000 cubic centimeters of supernatant fat is removed, level 2 procedures lasting more than 5 minutes, and all level 3 surgical procedures in an office setting must register the office with the department unless that office is licensed as a facility under chapter 395. The department shall inspect the physician’s office annually unless the office is accredited by a nationally recognized accrediting agency or an accrediting organization subsequently approved by the Board of Osteopathic Medicine. The actual costs for registration and inspection or accreditation shall be paid by the person seeking to register and operate the office setting in which office surgery is performed.~~

Section 6. Section 459.0138, Florida Statutes, is created to read:

459.0138 Office surgeries.—

(1) REGISTRATION.—

(a) An office in which a physician performs a liposuction procedure in which more than 1,000 cubic centimeters of supernatant fat is removed, a

Level II office surgery, or a Level III office surgery must register with the department unless the office is licensed as a facility under chapter 390 or chapter 395.

(b) By January 1, 2020, each office registered under this section or s. 458.328 must designate a physician who is responsible for the office's compliance with the office health and safety requirements of this section and rules adopted hereunder. A designated physician must have a full, active, and unencumbered license under this chapter or chapter 458 and shall practice at the office for which he or she has assumed responsibility. Within 10 calendar days after the termination of a designated physician relationship, the office must notify the department of the designation of another physician to serve as the designated physician. The department may suspend a registration for an office if the office fails to comply with the requirements of this paragraph.

(c) As a condition of registration, each office must establish financial responsibility by demonstrating that it has met and continues to maintain, at a minimum, the same requirements applicable to physicians in ss. 458.320 and 459.0085. Each physician practicing at an office registered under this section or s. 458.328 must meet the financial responsibility requirements under s. 458.320 or s. 459.0085, as applicable.

(d) Each physician practicing at an office registered under this section or s. 458.328 shall advise the board, in writing, within 10 calendar days after beginning or ending his or her practice at the registered office.

(e) The department shall inspect a registered office at least annually, including a review of patient records, to ensure that the office is in compliance with this section and rules adopted hereunder unless the office is accredited by a nationally recognized accrediting agency approved by the board. The inspection may be unannounced, except for the inspection of an office that meets the description of clinic specified in s. 459.0137(1)(a)3.h., and those wholly owned and operated physician offices described in s. 459.0137(1)(a)3.g. which perform procedures referenced in s. 459.0137(1)(a)3.h., which must be announced.

(f) The department may suspend or revoke the registration of an office in which a procedure or surgery identified in paragraph (a) is performed for failure of any of its physicians, owners, or operators to comply with this section and rules adopted hereunder or s. 458.328 and rules adopted thereunder. If an office's registration is revoked for any reason, the department may deny any person named in the registration documents of the office, including the persons who own or operate the office, individually or as part of a group, from registering an office to perform procedures or office surgeries pursuant to this section or s. 458.328 for 5 years after the revocation date.

(g) The department may impose any penalty set forth in s. 456.072(2) against the designated physician for failure of the office to operate in

compliance with the office health and safety requirements of this section and rules adopted hereunder or s. 458.328 and rules adopted thereunder.

(h) A physician may only perform a procedure or surgery identified in paragraph (a) in an office that is registered with the department. The board shall impose a fine of \$5,000 per day on a physician who performs a procedure or surgery in an office that is not registered with the department.

(i) The actual costs of registration and inspection or accreditation shall be paid by the person seeking to register and operate the office in which a procedure or surgery identified in paragraph (a) will be performed.

(2) RULEMAKING.—

(a) The board shall adopt by rule standards of practice for physicians who perform procedures or office surgeries pursuant to this section.

(b) The board may adopt rules to administer the registration, inspection, and safety of offices in which a physician performs procedures or office surgeries pursuant to this section.

Section 7. Paragraph (xx) is added to subsection (1) of section 459.015, Florida Statutes, to read:

459.015 Grounds for disciplinary action; action by the board and department.—

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

(xx) Performing a liposuction procedure in which more than 1,000 cubic centimeters of supernatant fat is removed, a Level II office surgery, or a Level III office surgery in an office that is not registered with the department pursuant to s. 458.328 or s. 459.0138.

Section 8. This act shall take effect January 1, 2020.

Approved by the Governor June 25, 2019.

Filed in Office Secretary of State June 25, 2019.