1982

Session Law 82-022

Florida Senate & House of Representatives

Follow this and additional works at: https://ir.law.fsu.edu/staff-analysis

Part of the Legislation Commons

Recommended Citation


This Article is brought to you for free and open access by the Florida Legislative Documents at Scholarship Repository. It has been accepted for inclusion in Staff Analysis by an authorized administrator of Scholarship Repository. For more information, please contact efarrell@law.fsu.edu.
### COMMITTEE RECORDS

<table>
<thead>
<tr>
<th>H/S Committee</th>
<th>Year</th>
<th>Record Series: Folder title, etc.</th>
<th>Loc. Cite</th>
</tr>
</thead>
<tbody>
<tr>
<td>H Tourism</td>
<td>1982</td>
<td>Meeting files (full)</td>
<td>19/14/15 NE</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(Sub files)</td>
<td>19/14/17</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Bill files: HB 353</td>
<td></td>
</tr>
<tr>
<td>S ECCA</td>
<td>1982</td>
<td>Bill files: SB 459</td>
<td>18/11/17</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Analysis files: SB 459</td>
<td>18/13/47</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Meeting files</td>
<td>18/11/18</td>
</tr>
</tbody>
</table>

☐ continued on reverse

### Senate/House Journals

<table>
<thead>
<tr>
<th>Page #</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>SJ 285</td>
<td>March 2, 1982</td>
</tr>
</tbody>
</table>

### Committee/Floor Tapes

<table>
<thead>
<tr>
<th>H/S</th>
<th>c/f</th>
<th>Committee/subcommittee name</th>
<th>Date</th>
<th>#</th>
<th>Location Cite</th>
</tr>
</thead>
</table>

### Other Documentation

<table>
<thead>
<tr>
<th>Record Series Title, folder title, etc.</th>
<th>Location Cite</th>
</tr>
</thead>
<tbody>
<tr>
<td>H/S</td>
<td>Committee</td>
</tr>
<tr>
<td>-----</td>
<td>-----------</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**NOTES**
COMMITTEE ON TOURISM AND ECONOMIC DEVELOPMENT

HOUSE OF REPRESENTATIVES

January 27, 1982

CS/HB: 353

SPONSOR: Lehman

RELATING TO: Medical Records

I. SUMMARY:

A. Present Situation:

Section 1. Medical records may not be furnished by a physician, osteopath, chiropractor, podiatrist, naturopath, optometrist, nurse, dentist, or veterinarian to any person other than the patient or his legal representative, except upon written authorization of the patient. The only exception is contained in Rule 1.360, Florida Rules of Civil Procedure, which allows medical records to be released by court order when the mental or physical condition of a party is in controversy.

The Florida Evidence Code, s. 90.503, F.S., does specify that communications between a psychotherapist and his patient are privileged. This privilege does extend to the records made for the purpose of diagnosis or treatment. Any person authorized to practice medicine who is engaged in the diagnosis or treatment of a mental or emotional condition, including alcoholism and other drug addiction would be covered by the psychotherapist-patient privilege. In other words, physicians and osteopathic physicians, other than just psychiatrists could be covered by the privilege.

Section 2. Currently, there is some doubt regarding DPR's authority to inspect pharmacies for the purpose of taking disciplinary action against physicians, osteopathic physicians, podiatrists, dentists, and veterinarians. The Department does inspect pharmacies pursuant to s. 465.017, F.S., but this section only authorizes inspections for the purpose of determining whether the pharmacy practice act has been violated. Chapter 893 has language under which pharmacies are being inspected, but it is arguable that this chapter does not confer the necessary authority either.

B. Effect of Proposed Changes:

Section 1. This bill would authorize DPR to subpoena patient records without the authorization of the patient if the Department, and the probable cause panel of the appropriate board, find probable cause to believe that the practitioner has inappropriately prescribed controlled substances. Information obtained from such medical records could only be used for the purpose of taking disciplinary action, and would remain sealed and confidential for all other purposes.

The psychotherapist-client privilege of a medical or osteopathic practitioner who has primarily diagnosed and treated mental and nervous disorders for, at least, three years would not be abridged.

This section would apply to the records of physicians, osteopaths, podiatrists, dentists, and veterinarians.

II. FISCAL IMPACT:

None

III. COMMENTS:

This bill would partially conflict with the psychotherapist-client privilege in s. 90.503, Florida Statutes. The bill maintains the privilege for practitioners who primarily diagnose and treat mental disorders, but others who currently qualify for the psychotherapist privilege would not be able to claim the privilege within the context of an administrative investigation.

Analysis prepared by: Randall A. Holland

Staff Director: Craig A. Meyer

COPY

reproduced by
FLORIDA STATE ARCHIVES
DEPARTMENT OF STATE
R. A. GRAY BUILDING
Tallahassee, FL 32399-0250
Series 19 Carton 147
I. SUMMARY:

A. Present Situation:

Section 1. Medical records may not be furnished by a physician, osteopath, chiropractor, podiatrist, naturopath, optometrist, nurse, dentist, or veterinarian to any person other than the patient or his legal representative, except upon written authorization of the patient. The only exception is contained in Rule 1.360, Florida Rules of Civil Procedure, which allows medical records to be released by court order when the mental or physical condition of a party is in controversy.

The Florida Evidence Code, s. 90.503, F.S., does specify that communications between a psychotherapist and his patient are privileged. This privilege does extend to the records made for the purpose of diagnosis or treatment. Any person authorized to practice medicine who is engaged in the diagnosis or treatment of a mental or emotional condition, including alcoholism and other drug addiction would be covered by the psychotherapist-patient privilege. In other words, physicians and osteopathic physicians, other than just psychiatrists could be covered by the privilege.

Section 2. Currently, there is some doubt regarding DPR's authority to inspect pharmacies for the purpose of taking disciplinary action against physicians, osteopathic physicians, podiatrists, dentists, and veterinarians. The Department does inspect pharmacies pursuant to s. 465.017, F.S., but this section only authorizes inspections for the purpose of determining whether the pharmacy practice act has been violated. Chapter 893 has language under which pharmacies are being inspected, but it is arguable that this chapter does not confer the necessary authority either.

B. Effect of Proposed Changes:

Section 1. This bill would authorize DPR to subpoena patient records without the authorization of the patient if the Department, and the probable cause panel of the appropriate board, find probable cause to believe that the practitioner has inappropriately prescribed controlled substances. Information obtained from such medical records could only be used for the purpose of taking disciplinary action, and would remain sealed and confidential for all other purposes.

The psychotherapist-client privilege of a medical or osteopathic practitioner who has primarily diagnosed and treated mental and nervous disorders for at least, three years would not be abridged.

This section would apply to the records of physicians, osteopaths, podiatrists, dentists, and veterinarians.

Section 2. The bill clarifies that DPR may inspect pharmacies, and any establishment at which the services of a licensed practitioner authorized to prescribe controlled substances are offered, for the purpose of determining whether physicians, osteopaths, podiatrists, dentists, and veterinarians have violated their respective practice acts.

II. FISCAL IMPACT:

None

III. COMMENTS:

This bill would partially conflict with the psychotherapist-client privilege in s. 90.503, Florida Statutes. The bill maintains the privilege for practitioners who primarily diagnose and treat mental disorders, but others who currently qualify for the psychotherapist privilege would not be able to claim the privilege within the context of an administrative investigation.

Analysis prepared by: Randall A. Holland
Staff Director: Craig A. Meyer
A bill to be entitled
An act relating to professional regulation;
amending s. 455.241(2), Florida Statutes,
authorizing the Department of Professional
Regulation to obtain patient records without
written consent under certain circumstances;
creating s. 455.243, Florida Statutes,
expanding the authority of the department to
inspect certain places with respect to the
inappropriate or excessive prescribing of
controlled substances; providing an effective
date.

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

Section 1. Subsection (2) of section 455.241, Florida
Statutes, is amended to read:

455.241 Patient records; copies of reports to be
furnished.--

(2) Such reports shall not be furnished to any person
other than the patient or his legal representative, except
upon written authorization of the patient. Nothing, however,
shall prevent the furnishing of such reports without written
authorization to any person, firm, or corporation which, with
the patient's consent, shall have procured or furnished such
examination or treatment or when compulsory physical
examination is made pursuant to Rule 1.360, Florida Rules of
Civil Procedure, in which case copies of the medical report
shall be furnished both the defendant and the plaintiff. The
department may obtain patient records pursuant to a subpoena
without written authorization from the patient if the
Department and the probable cause panel of the appropriate board, if any, finds reasonable cause to believe that a practitioner has excessively or inappropriately prescribed any controlled substance specified in chapter 893 in violation of s. 458.331(1)(a), s. 459.015(1)(a), s. 461.013(1)(b), s. 466.028(1)(a), or s. 474.214(1)(b); but said patient record obtained pursuant to this subsection shall be used solely for the purpose of the department and board in disciplinary proceedings. Such record shall otherwise be sealed and shall not be available to the public pursuant to the provisions of s. 119.07 or any other statute providing access to public records. Nothing in this section shall be construed to limit the psychotherapist-client privilege of a medical practitioner licensed pursuant to chapter 458 or chapter 459 who has primarily diagnosed and treated mental and nervous disorders for a period of not less than 3 years, inclusive of psychiatric residency.

Section 2. Section 455.243, Florida Statutes, is created to read:

455.243 Authority to inspect.—In addition to the authority specified in s. 465.017, duly authorized agents and employees of the department shall have the power to inspect in a lawful manner at all reasonable hours any pharmacy or any establishment at which the services of a licensed practitioner authorized to prescribe controlled substances specified in chapter 893, F.S., are offered, for the purpose of:

(1) Determining if any of the provisions of chapter 458, chapter 459, chapter 461, chapter 466, or chapter 474 is being violated; or

(2) Securing such other evidence as may be needed for administrative prosecution under chapter 458, chapter 459, chapter 461, chapter 466, or chapter 474.

Section 3. This act shall take effect July 1, 1982.

CODING: Words in struck through type are deletions from existing law; words underlined are additions.
By Senator Poole-

A bill to be entitled
An act relating to professional regulation;
amending s. 455.241(2), Florida Statutes,
authorizing the Department of Professional
Regulation to obtain patient records without
consent under certain circumstances; creating
s. 455.243, Florida Statutes, expanding the
authority of the department to inspect places
where drugs and medical supplies are
manufactured, sold or stored; providing an
effective date.

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

Section 1. Subsection (2) of section 455.241, Florida
Statutes, is amended to read:
455.241 Patient records; copies of reports to be
furnished.--
(2) Such reports shall not be furnished to any person
other than the patient or his legal representative, except
upon written authorization of the patient. Nothing, however,
shall prevent the furnishing of such reports without written
authorization to any person, firm, or corporation which, with
the patient's consent, shall have procured or furnished such
examination or treatment or when compulsory physical
examination is made pursuant to Rule 1.360, Florida Rules of
Civil Procedure, in which case copies of the medical report
shall be furnished both the defendant and the plaintiff. In
addition, this section shall not prohibit the department from
obtaining patient records pursuant to a subpoena without
written authorization if the department has reasonable cause.

CODING: Words in normal type are deletions from existing law; words underlined are additions.
to believe that a practitioner has excessively or
inappropriately prescribed any controlled substance specified
in chapter 893 in violation of s. 458.331(1)(g), s. 459.015(1)(g), s. 461.013(1)(p), s. 466.028(1)(q), or s. 474.214(1)(z) or (aa).

Section 2. Section 455.243, Florida Statutes, is
created to read:
455.243 Authority to inspect.--In addition to the
authority specified in s. 465.017, duly authorized agents and
employees of the department shall have the power to inspect in
a lawful manner at all reasonable hours any pharmacy,
hospital, clinic, wholesale establishment, manufacturer,
physician's office, or any other place in the state in which
drugs and medical supplies are manufactured, packed, packaged,
made, stored, sold, offered for sale, exposed for sale, or
kept for sale for the purpose of:
(1) Determining if any of the provisions of chapter
458, chapter 459, chapter 461, chapter 466 or chapter 474 or
any rule promulgated thereunder is being violated; or
(2) Securing such other evidence as may be needed for
administrative prosecution under chapter 458, chapter 459,
chapter 461, chapter 466 or chapter 474.

Section 3. This act shall take effect July 1, 1982.

******************************************************************************

HOUSE SUMMARY

Authorizes the Department of Professional Regulation to
obtain by subpoena copies of patient records without
written authorization if the department has reasonable
cause to believe that any practitioner is inappropriately
or excessively prescribing controlled substances.

Expands the authority of the department to inspect
pharmacies, hospitals, and other places where drugs and
medical supplies are manufactured, stored or sold so that
A bill to be entitled
An act relating to professional regulation;
amending s. 455.241(2), Florida Statutes,
authorizing the Department of Professional
Regulation to obtain patient records without
consent under certain circumstances; creating
s. 455.243, Florida Statutes, expanding the
authority of the department to inspect places
where drugs and medical supplies are
manufactured, sold or stored; providing an
effective date.

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

Section 1. Subsection (2) of section 455.241, Florida
Statutes, is amended to read:

455.241 Patient records; copies of reports to be
furnished.--

(2) Such reports shall not be furnished to any person
other than the patient or his legal representative, except
upon written authorization of the patient. Nothing, however,
shall prevent the furnishing of such reports without written
authorization to any person, firm, or corporation which, with
the patient's consent, shall have procured or furnished such
examination or treatment or when compulsory physical
examination is made pursuant to Rule 1.360, Florida Rules of
Civil Procedure, in which case copies of the medical report
shall be furnished both the defendant and the plaintiff. In
addition, this section shall not prohibit the department from
obtaining patient records pursuant to a subpoena without
written authorization if the department has reasonable cause

CODING: Words in struck through type are deletions from existing law; words underlined are additions.
to believe that a practitioner has excessively or
inappropriately prescribed any controlled substance specified
in chapter 893 in violation of s. 458.331(1)(q), s.
459.015(1)(q), s. 461.013(1)(p), s. 466.028(1)(q), or s.
474.214(1)(z) or (aa).

Section 2. Section 455.243, Florida Statutes, is
created to read:

455.243 Authority to inspect.--In addition to the
authority specified in s. 465.017, duly authorized agents and
employees of the department shall have the power to inspect in
a lawful manner at all reasonable hours any pharmacy,
hospital, clinic, wholesale establishment, manufacturer,
physician's office, or any other place in the state in which
drugs and medical supplies are manufactured, packed, packaged,
made, stored, sold, offered for sale, exposed for sale, or
kept for sale for the purpose of:

(1) Determining if any of the provisions of chapter
458, chapter 459, chapter 461, chapter 466 or chapter 474 or
any rule promulgated thereunder is being violated; or

(2) Securing such other evidence as may be needed for
administrative prosecution under chapter 458, chapter 459,
chapter 461, chapter 466 or chapter 474.

Section 3. This act shall take effect July 1, 1982.

HOUSE SUMMARY

Authorizes the Department of Professional Regulation to
obtain by subpoena copies of patient records without
written authorization if the department has reasonable
cause to believe that any practitioner is inappropriately
or excessively prescribing controlled substances.

Expands the authority of the department to inspect
pharmacies, hospitals, and other places where drugs and
medical supplies are manufactured, stored or sold so that
violations of laws relating to physicians, osteopathic
physicians, podiatrists, dentists, and veterinarians can
be investigated.

CODING: Words in struck through type are deletions from existing law; words underlined are additions.
A bill to be entitled
An act relating to professional regulation;
amending s. 455.241(2), Florida Statutes,
authorizing the Department of Professional
Regulation to obtain patient records without
consent under certain circumstances; creating
s. 455.243, Florida Statutes, expanding the
authority of the department to inspect places
where drugs and medical supplies are
manufactured, sold or stored; providing an
effective date.

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

Section 1. Subsection (2) of section 455.241, Florida
Statutes, is amended to read:

455.241 Patient records; copies of reports to be
furnished.--

(2) Such reports shall not be furnished to any person
other than the patient or his legal representative, except
upon written authorization of the patient. Nothing, however,
shall prevent the furnishing of such reports without written
authorization to any person, firm, or corporation which, with
the patient’s consent, shall have procured or furnished such
examination or treatment or when compulsory physical
examination is made pursuant to Rule 1.360, Florida Rules of
Civil Procedure, in which case copies of the medical report
shall be furnished both the defendant and the plaintiff. The
department may obtain patient records pursuant to a subpoena
without written authorization from the patient if the
department and the probable cause panel of the appropriate

CODING: Words in struck through type are deletions from existing law; words underlined are additions.
board, if any, finds reasonable cause to believe that a 
practitioner has excessively or inappropriately prescribed any 
controlled substance specified in chapter 893 in violation of 
g. 458.331(1)(g), s. 459.015(1)(g), s. 461.013(1)(p), s. 
466.028(1)(g), or s. 474.214(1)(z) or (aa), but said patient 
record obtained pursuant to this subsection shall be used 
solely for the purpose of the department and board in 
disciplinary proceedings; such record shall otherwise be 
sealed and shall not be available to the public pursuant to 
the provisions of s. 119.07, or any other statute providing 
access to public records. Nothing in this section shall be 
construed to limit the psychotherapist-client privilege of a 
medical practitioner licensed pursuant to chapter 458 or 
chapter 459 who has primarily diagnosed and treated mental and 
nervous disorders for a period of not less than 3 years, 
inclusive of psychiatric residency.

Section 2. Section 455.243, Florida Statutes, is 
created to read:

455.243 Authority to inspect.--In addition to the 
authority specified in s. 465.017, duly authorized agents and 
employees of the department shall have the power to inspect in 
a lawful manner at all reasonable hours any;

(1) Pharmacy; or 
(2) Any establishment at which the services of a 
licensed practitioner authorized to prescribe controlled 
substances specified in chapter 893 are offered; for the 
purpose of:

(3) Determining if any of the provisions of chapter 
458, chapter 459, chapter 461, chapter 466 or chapter 474 or 
any rule promulgated thereunder is being violated; or
(4) Securing such other evidence as may be needed for administrative prosecution under chapter 458, chapter 459, chapter 461, chapter 466 or chapter 474.

Section 3. This act shall take effect July 1, 1982.
A bill to be entitled
An act relating to professional regulation;
amending s. 455.241(2), Florida Statutes,
authorizing the Department of Professional
Regulation to obtain patient records without
consent under certain circumstances; creating
s. 455.243, Florida Statutes, expanding the
authority of the department to inspect places
where drugs and medical supplies are
manufactured, sold or stored; providing an
effective date.

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

Section 1. Subsection (2) of section 455.241, Florida
Statutes, is amended to read:

455.241 Patient records; copies of reports to be
furnished.--

(2) Such reports shall not be furnished to any person
other than the patient or his legal representative, except
upon written authorization of the patient. Nothing, however,
shall prevent the furnishing of such reports without written
authorization to any person, firm, or corporation which, with
the patient's consent, shall have procured or furnished such
examination or treatment or when compulsory physical
examination is made pursuant to Rule 1.360, Florida Rules of
Civil Procedure, in which case copies of the medical report
shall be furnished both the defendant and the plaintiff. The
department may obtain patient records pursuant to a subpoena
without written authorization from the patient if the
department and the probable cause panel of the appropriate

CODING: Words in error through type are deletions from existing law; words underlined are additions.
board, if any, find reasonable cause to believe that a practitioner has excessively or inappropriately prescribed any controlled substance specified in chapter 893 in violation of s. 458.331(1)(g), s. 459.015(1)(g), s. 461.013(1)(p), s. 466.028(1)(g), or s. 474.214(1)(z) or (aa), but the patient record obtained pursuant to this subsection shall be used solely for the purpose of the department and board in disciplinary proceedings; the record shall otherwise be sealed and shall not be available to the public pursuant to the provisions of s. 119.07, or any other statute providing access to public records. Nothing in this section shall be construed to limit the psychotherapist-patient privilege of a medical practitioner licensed pursuant to chapter 458 or chapter 459 who has primarily diagnosed and treated mental and nervous disorders for a period of not less than 3 years, inclusive of psychiatric residency.

Section 2. Section 455.243, Florida Statutes, is created to read:

455.243 Authority to inspect.--In addition to the authority specified in s. 465.017, duly authorized agents and employees of the department shall have the power to inspect in a lawful manner at all reasonable hours any:

(1) Pharmacy; or

(2) Any establishment at which the services of a licensed practitioner authorized to prescribe controlled substances specified in chapter 893 are offered; for the purpose of:

(3) Determining if any of the provisions of chapter 458, chapter 459, chapter 461, chapter 466 or chapter 474 or any rule promulgated thereunder is being violated; or
Securing such other evidence as may be needed for administrative prosecution under chapter 458, chapter 459, chapter 461, chapter 466 or chapter 474.

Section 3. This act shall take effect July 1, 1982.

CODING: Words in strike through type are deletions from existing law; words underlined are additions.
Known in the black market as "ludes," the drug has accounted for 174 deaths in Dade County over the last ten years, the majority since 1978. Deaths are due to suicide, homicide, overdosage, and auto accidents. The typical abuser is white, 25-35 years old, and frequently polydrug users (1 use several drugs or 2 use black market ludes containing drug contaminants). The drug modifies judgement and motor coordination, relaxes inhibitions, increases sexual desires and may produce a "high." This drug is sometimes used to counteract the effects of a "cocaine high."

In 1979, the disciplinary sections of the Health Care Practices Acts expanded. Two sections deal specifically with Schedule II controlled drugs, which include Methaqualone:

1. "Employing a trick or scheme in the practice of medicine when such scheme or trick fails to conform to the generally prevailing standards of treatment in the medical community."
   
   EXAMPLE: "Stress Clinics"
   
   Here, clients walk in, fill out a form, briefly see a doctor, pay $100 cash, get a script for 40 quaaludes and are permitted to return in 30 days for another script and pay another $100. (Street value - $200 - $320).

2. "Prescribing or dispensing any controlled substance other than in the course of the physician's personal practice. It shall be legally presumed that prescribing or dispensing Schedule II controlled substances inappropriately or in excessive or inappropriate quantities is not in the best interest of the patient and is not in the course of the physician's professional practice, without regard to his intent."
   
   EXAMPLE: "Script Doctors"
   
   Physicians, osteopaths, dentists, podiatrists, and veterinarians who, in the course of their daily practice, write prescriptions for methaqualone inappropriately or in excessive amounts not indicated by any specific complaint or illness.

In the 1982 session, legislation has been introduced to stop the prescribing of methaqualone in Florida:

1. HB 156 by Rep. Fred Lippman and Rep. David J. Lehman removes Methaqualone from Schedule II (severely restricted medical use in the United States) and places it in Schedule I (no currently accepted medical use in the United States) and further states that "and shall not be prescribed or dispensed by practitioners or dispensed by pharmacists."

*Present trade name produce by Lemmon Pharmaceuticals ("Lemmon 714" stamped on tablets)
Note: SB 100 by Sen. Jenne has been combined with HB 156.

2. HB 353 by Rep. David J. Lehman and Rep. Fred Lippman will close two loopholes in the law:
   a. "Shall not prohibit the Department of Professional Regulation from obtaining patient records without written authorization pursuant to a subpoena if the Department has reasonable cause to believe that a practitioner has excessively or inappropriately prescribed any controlled substance specified in Chapter 893."
   b. "Expressly delineate the Department's power to inspect pharmacies and to seize evidence in order to establish violations of health care related practice acts (Chapters 458, 459, 461, 466 and 474)."

Methaqualone is the most serious drug problem that we have in Florida today. The potential of abuse of this drug which causes the death and injury of so many young people far exceeds any legitimate medical indication for the drug.

Rep. David J. Lehman, M.D.
State Representative
97th District
I. SUMMARY:

A. Present Situation:

Section 1. Medical records may not be furnished by a physician, osteopath, chiropractor, podiatrist, naturopath, optometrist, nurse, dentist, or veterinarian to any person other than the patient or his legal representative, except upon written authorization of the patient. The only exception is contained in Rule 1.360, Florida Rules of Civil Procedure, which allows medical records to be released by court order when the mental or physical condition of a party is in controversy.

The Florida Evidence Code, s. 90.503, F.S., does specify that communications between a psychotherapist and his patient are privileged. This privilege does extend to the records made for the purpose of diagnosis or treatment. Any person authorized to practice medicine who is engaged in the diagnosis or treatment of a mental or emotional condition, including alcoholism and other drug addiction would be covered by the psychotherapist-patient privilege. In other words, physicians and osteopathic physicians, other than just psychiatrists could be covered by the privilege.

Section 2. Currently, there is some doubt regarding DPR's authority to inspect pharmacies for the purpose of taking disciplinary action against physicians, osteopathic physicians, podiatrists, dentists, and veterinarians. The Department does inspect pharmacies pursuant to s. 465.017, F.S., but this section only authorizes inspections for the purpose of determining whether the pharmacy practice act has been violated. Chapter 893 has language under which pharmacies are being inspected, but it is arguable that this chapter does not confer the necessary authority either.

B. Effect of Proposed Changes:

Section 1. This bill would authorize DPR to obtain patient records without the authorization of the patient if the Department has probable cause and obtains a subpoena. The bill would apply to the records of physicians, osteopaths, podiatrists, dentists, and veterinarians.

Section 2. The bill clarifies that DPR may inspect pharmacies for the purpose of determining whether physicians, osteopaths, podiatrists, dentists, and veterinarians have violated their respective practice acts.

II. FISCAL IMPACT:

None

III. COMMENTS:

The bill would create a conflict by allowing for the release of medical records which would otherwise be privileged communications pursuant to s. 90.503, F.S.

Analysis prepared by: Randall A. Holland

Staff Director: Craig A. Meyer
November 12, 1981

David J. Lehman, M.D.
State Representative
97th District
Suite 104 Center Court Bldg.
2450 Hollywood Blvd.
Hollywood, Florida 33020

Dear Representative Lehman:

Thank you for providing me with the opportunity to suggest changes in the Practice Acts and Chapter 893, Florida Statutes, to assist the Department in prosecuting overprescribing cases.

I have two (2) primary areas of concern: (1) our inability to obtain patient records without a written release; and (2) our doubtful authority to inspect pharmacies to determine overprescribing by health care practitioners.

As you know, section 455.241(2), Florida Statutes (1979), requires written authorization of the patient in order for us to obtain his medical records from a practitioner. We are consistently confronted with the problem of the practitioner who is prescribing controlled substances to an addict, the latter of whom often has a serious criminal record. It can oftentimes be dangerous for our investigators, who are unarmed, to attempt to approach addicts and obtain a records release. Further, I am sure that you can see the disincentive that an addict would have to provide us with this information; his "source" would be cut off.

As a practical matter, we have had to search for people who are under pending criminal charges or who are on probation and obtain a patient release through assistance of the prosecutor or probation officer. If we are unable to obtain patient records, we may prove a violation only if the drugs and the amounts prescribed reflect that there is no theoretical medical purpose for which these could have been appropriately prescribed. Obviously, this is a difficult question for any practitioner to answer.
I suggest that section 455.241(2), Florida Statutes (1979), be amended to permit the Department to obtain patient records without written authorization if the Department has reasonable cause to believe that a practitioner has excessively or inappropriately prescribed controlled substances to that person, as prohibited by section 458.331(1)(a), Florida Statutes (1980) and section 893.05(1), Florida Statutes (1979).

My second concern surrounds the Department's authority to inspect pharmacies to determine violations of the Practice Acts regulating health-care practitioners. The only specific authority to inspect pharmacies is contained in section 465.017, Florida Statutes (1979). That provision limits our authority, in relevant part, to inspect pharmacies to determine if any of the provisions of the Pharmacy Practice Act or rules promulgated thereunder are being violated. In Olson v. State, 287 So.2d 313 (Fla. 1973), the Supreme Court prohibited the use in a criminal prosecution of evidence seized by Board of Pharmacy investigators. The court pointed out that warrantless searches were authorized only under section 465.017 for prosecutions under that Practice Act. Consequently, this evidence could not be utilized for prosecutions under other criminal laws.

I believe that a good attorney could convince a Judge that Olson prohibits the use of prescriptions obtained during pharmacy audits by our drug diversion unit in licensing proceedings against health care practitioners.

It is arguable that the Department possesses inspection authority under section 893.09(1), Florida Statutes (1979), which permits agencies which regulate professions affected by Chapter 893 to enforce that Chapter. Section 893.07(1) requires certain record keeping with regard to controlled substance prescriptions, and section 893.05(1), Florida Statutes (1979), permits a practitioner to prescribe controlled substances only in good faith and in the course of his professional practice. I am not particularly comfortable with this implied authority in Chapter 893 to inspect pharmacies and to use the results of our inspection in disciplinary proceedings against health care practitioners.
I suggest that any changes in 893 be made only after consultation with the General Counsel for the Florida Department of Law Enforcement as well as the General Counsel for this Department. An amendment of Chapter 455 which does not conflict with Chapter 893 might be appropriate to expressly delineate the Department's power to inspect pharmacies and to seize evidence in order to establish violations of health care related Practice Acts. Another option is placing language similar to that contained in section 465.017, the Pharmacy Practice Act, in all health care related Practice Acts.

If I may provide further information to you, Representative Lehman, please do not hesitate to contact me. I am very interested in changes which will assist us in handling the mammoth excessive prescribing problem which we have in this State.

Sincerely yours,

DEBORAH J. MILLER
Assistant General Counsel

DJM/dmb

cc: Ed Jaffry
Paul Powell, General Counsel
Florida Department of Law Enforcement
Ed Ashley, Administrator
FACT SHEET

This bill has been requested by DPR to assist them in identifying health care professionals who are overprescribing controlled substances listed in Chapter 893, F.S. In 1980, the legislature authorized the hiring of 12 new investigators for the Department. Since then, these investigators have recorded and computerized every Schedule II prescription in all of Florida's 2,300 drug stores twice a year. They are conducting over 300 undercover investigations at this time. This bill proposes to:

1) Assist the Department in obtaining patient records pursuant to a subpoena without written authorization from the patient if the Department and the Probable Cause Panel of the appropriate Board finds reasonable cause to believe that a practitioner has excessively or inappropriately prescribed any controlled substance specified in Chapter 893. This evidence shall be used solely by the Department and the Board in disciplinary proceedings; such records shall otherwise be sealed and not available to the public pursuant to Chapter 119. The bill does not affect the psychotherapist-client privilege in criminal or civil court cases;

AND

2) Increase the Department's authority to inspect pharmacies by giving the investigators the power to inspect in a lawful manner at reasonable hours any:

   a) pharmacy and

   b) any establishment at which the services of a licensed practitioner is authorized to prescribe controlled substances.

These inspections will be done to determine if any provisions of the Medical, Osteopathic, Dental, Podiatry, or Veterinarian Practice Acts or any rule promulgated thereunder is being violated for the purpose of preparing administrative prosecutions. The ultimate goal is to rescind or revoke the licenses of overprescribers.

Rep. David J. Lehman, M.D.
Senator Van B. Poole
Sponsors
MEMORANDUM

TO: Representative David J. Lehman
FROM: Randall A. Holland, Legislative Analyst
SUBJECT: Medical Records

During discussion of HB 353, at the February 1 meeting of the Committee on Tourism and Economic Development, several questions surfaced concerning the confidentiality of medical records. Hopefully the following paragraphs clarify the problems.

A common misconception is that the confidentiality of a patient's communications with a doctor, and the related medical records, are protected by a doctor-patient privilege. In criminal proceedings, this is not true; such communications are subject to examination pursuant to a lawful subpoena. There is, however, a psychotherapist-client privilege which is applicable to doctor-patient relationships where the diagnosis or treatment of mental conditions is involved. To restate the above; there is no doctor-client privilege, but some doctor-client communications are confidential pursuant to the psychotherapist-client privilege.

CS/HB 353 does not affect the psychotherapist-client privilege in criminal or civil court cases. The bill only changes the confidentiality of medical records in situations where the DPR instigates administrative action against a medical licensee. Currently, the DPR may not obtain medical records without the consent of the patient. The bill authorizes DPR to obtain such records (pursuant to certain procedures), but only for the purpose of taking administrative action against a licensee.

The bill does limit the psychotherapist privilege to practitioners who have primarily diagnosed and treated mental disorders for a three year period. But the privilege is only limited in administrative proceedings against DPR licensees!
To summarize the above:

- There is no doctor-patient privilege in Florida.
- There is a psychotherapist-patient privilege which includes certain doctor-patient relationships.
- Under current law, DPR may not obtain medical records without the patient's consent.
- HB 353 would allow the department (only for the purpose of administrative prosecutions) to obtain patient records pursuant to certain conditions.
- HB 353 would not affect the psychotherapist-patient privilege in civil or criminal proceedings, but its scope would be narrowed with regard to administrative proceedings by DPR.
I. SUMMARY:

A. Present Situation:

Reports made by licensed health care practitioners in the course of making a physical or mental examination of a person can not be furnished to any person other than the patient or his legal representative, unless the patient gives written authorization (s. 455.241, F.S.).

The Department of Professional Regulation (DPR) has the power to issue subpoenas for the purpose of any investigation or proceeding (s. 455.223, F.S.).

Section 90.503, F.S., the Florida Evidence Code, sets out the psychotherapist-patient privilege. A psychotherapist is defined as "a person authorized to practice medicine in any state or nation . . . who is engaged in the diagnosis or treatment of a mental or emotional condition, including alcoholism and other drug addiction." This definition could include medical doctors and osteopaths. This privilege means that a patient can refuse to disclose, and can prevent any other person from disclosing, confidential communications or records made for the purpose of diagnosis or treatment of his mental or emotional condition, including alcoholism and other drug addiction. There are three exceptions to the privilege: 1) in proceedings for involuntary hospitalization, 2) when a judge orders an examination of the mental or emotional condition of the patient, and 3) when a patient, as a litigant, puts his mental condition in issue.

In the "Florida Pharmacy Act," s. 465.017, F.S., DPR has the power to inspect places which deal with drugs and medical supplies to determine if any provision of the pharmacy practice act has been violated.

B. Effect of Proposed Changes:

The DPR could obtain patient records without written authorization pursuant to a subpoena if the department had reason to believe that a practitioner had excessively or inappropriately prescribed any controlled substance specified in ch. 893, F.S.

The DPR would have the authority to inspect places which deal with drugs and medical supplies to determine if any provision of chapters 458 (Medical Practice), 459 (Osteopathy), 461 (Podiatry), 466 (Dentistry), or 474 (Veterinary Medical Practice), F.S., had been violated.
II. ECONOMIC IMPACT AND FISCAL NOTE:
   A. Public:
      None
   B. Government:
      None

III. COMMENTS:
   A companion bill, HB 353, was introduced in the House.

   Article I, Section 23, Florida Constitution, states, "Every natural person has the right to be let alone and free from governmental intrusion into his private life."
Differences Between
SB 459 and Proposed CS/SB 459

1. The department, in conjunction with the probable cause panel of the appropriate board, if one exists, must find reasonable cause to believe that a practitioner has excessively or inappropriately prescribed any controlled substance before a subpoena for medical records can be issued.

2. The medical records are not available to the public and can be used only by the department and board in disciplinary proceedings.

3. Nothing in this section shall be construed to limit the psychotherapist-client privilege of a medical doctor or osteopath who has primarily diagnosed and treated mental and nervous disorders for a period of not less than 3 years, including psychiatric residency.

4. Inspectors can inspect pharmacies and establishments at which the services of a licensed practitioner authorized to prescribe controlled substances specified in ch. 893, F.S., are offered.
STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR SENATE BILL 459

1. The department, in conjunction with the probable cause panel of the appropriate board, if one exists, must find reasonable cause to believe that a practitioner has excessively or inappropriately prescribed any controlled substance before a subpoena for medical records can be issued.

2. The medical records are not available to the public and can be used only by the department and board in disciplinary proceedings.

3. Nothing in this section shall be construed to limit the psychotherapist-patient privilege of a medical doctor or osteopath who has primarily diagnosed and treated mental and nervous disorders for a period of not less than 3 years, including psychiatric residency.

4. Inspectors can inspect pharmacies and establishments at which the services of a licensed practitioner authorized to prescribe controlled substances specified in ch. 893, F.S., are offered for the purpose of determining if any provision of chapters 458, 459, 461, 466, or 474, F.S., had been violated.
I. SUMMARY:

A. Present Situation:

Reports made by licensed health care practitioners in the course of making a physical or mental examination of a person can not be furnished to any person other than the patient or his legal representative, unless the patient gives written authorization (s. 455.241, F.S.).

The Department of Professional Regulation (DPR) has the power to issue subpoenas for the purpose of any investigation or proceeding (s. 455.223, F.S.).

Section 90.503, F.S., the Florida Evidence Code, sets out the psychotherapist-patient privilege. A psychotherapist is defined as "a person authorized to practice medicine in any state or nation . . . who is engaged in the diagnosis or treatment of a mental or emotional condition, including alcoholism and other drug addiction." This definition could include medical doctors and osteopaths. This privilege means that a patient can refuse to disclose, and can prevent any other person from disclosing, confidential communications or records made for the purpose of diagnosis or treatment of his mental or emotional condition, including alcoholism and other drug addiction. There are three exceptions to the privilege: 1) in proceedings for involuntary hospitalization, 2) when a judge orders an examination of the mental or emotional condition of the patient, and 3) when a patient, as a litigant, puts his mental condition in issue.

In the "Florida Pharmacy Act," s. 465.017, F.S., DPR has the power to inspect places which deal with drugs and medical supplies to determine if any provision of the pharmacy practice act has been violated.

B. Effect of Proposed Changes:

The DPR could obtain patient records without written authorization pursuant to a subpoena if the department and the probable cause panel of the appropriate board, if any, had reason to believe that a practitioner had excessively or inappropriately prescribed any controlled substance specified in ch. 893, F.S. Any patient record obtained pursuant to s. 455.241(2), F.S., can be used solely for the purpose of the department and board in disciplinary proceedings.

Nothing in s. 455.241(2), F.S., shall be construed to limit the psychotherapist-patient privilege of a medical doctor licensed pursuant to ch. 458 or 459, F.S., who has primarily diagnosed and treated mental disorders for a period of not less than 3 years, inclusive of psychiatric residency.
SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

The DPR would have the authority to inspect pharmacies and establishments at which the services of a licensed practitioner authorized to prescribe controlled substances specified in ch. 893, F.S., are offered to determine if any provision of chapters 458 (Medical Practice), 459 (Osteopathy), 461 (Podiatry), 466 (Dentistry), or 474 (Veterinary Medical Practice), F.S., had been violated.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:
   None

B. Government
   None

III. COMMENTS:

   A companion bill, HB 353, was introduced in the House.

   Article I, Section 23, Florida Constitution, states, "Every natural person has the right to be let alone and free from governmental intrusion into his private life . . . ."

IV. AMENDMENTS:

   None
1. The department, in conjunction with the probable cause panel of the appropriate board, if one exists, must find reasonable cause to believe that a practitioner has excessively or inappropriately prescribed any controlled substance before a subpoena for medical records can be issued.

2. The medical records are not available to the public and can be used only by the department and board in disciplinary proceedings.

3. Nothing in this section shall be construed to limit the psychotherapist-patient privilege of a medical doctor or osteopath who has primarily diagnosed and treated mental and nervous disorders for a period of not less than 3 years, including psychiatric residency.

4. Inspectors can inspect pharmacies and establishments at which the services of a licensed practitioner authorized to prescribe controlled substances specified in ch. 893, F.S., are offered for the purpose of determining if any provision of chapters 458, 459, 461, 466, or 474, F.S., had been violated.