IN THE GENERAL ASSEMBLY STATE OF __________

Health Care Professional Transparency Act

Be it enacted by the People of the State of __________, represented in the General
Assembly:

Section 1. Title. This act shall be known as and may be cited as the “Health Care Professional
Transparency Act.”

Section 2. Purpose. The Legislature hereby finds and declares that:

(a) There are a multitude of professional degrees using the term “doctor,” including
Medical Doctor (M.D.); Doctor of Osteopathic Medicine (D.O); Doctor of Dental Surgery
(D.D.S.) Doctor of Podiatric Medicine (D.P.M.); Doctor of Optometry (O.D.); Doctor of
Chiropractic (D.C.); and other designations which may be used by health care practitioners.

(b) A June 2014 study by the American Medical Association found that twenty-two
(22) percent of patients believe that a chiropractor is a medical doctor; thirty-five (35) percent of
patients believe that a doctor of nursing practice is a medical doctor; thirty-six (36) percent of
patients believe that a psychologist is a medical doctor; forty-two (42) percent of patients believe
that an optometrist is a medical doctor; and seventy-four (74) percent of patients believe a
podiatrist is a medical doctor.

(c) There are widespread differences regarding the training and qualifications
required to earn the professional degrees described in and subject to this Act. These differences
often concern the training and skills necessary to correctly detect, diagnose, prevent and treat serious health care conditions.

(d) There is a compelling state interest in patients being promptly and clearly informed of the training and qualifications of the health care practitioners who provide health care services.

(e) There is a compelling state interest in the public being protected from potentially misleading and deceptive health care advertising that might cause patients to have undue expectations regarding their treatment and outcome.

**Section 3. Definitions.**

(a) “Advertisement” denotes any communication or statement, whether printed, electronic, or oral, that names the health care practitioner in relation to his or her practice, profession, or institution in which the individual is employed, volunteers or otherwise provides health care services. This includes business cards, letterhead, patient brochures, e-mail, Internet, audio and video, and any other communication or statement used in the course of business.

(b) “Deceptive” or “misleading” includes, but is not limited to, any advertisement or affirmative communication or representation that mis-states, falsely describes, holds out or falsely details the health care practitioner’s profession, skills, training, expertise, education, board certification or licensure.

(c) “Health care practitioner” means any person who engages in acts that are the subject of licensure or regulation.

*Drafting Note Re: Health care practitioner—To provide further guidance on different types of health care practitioners a state may wish to include as a subset under this “Definitions” provision, this Drafting Note provides the following suggestions.*

Categories of health care practitioner include:
(1) Practitioners of allopathic medicine, signified by the letters “M.D.” or the words surgeon, medical doctor, or doctor of medicine by a person licensed to practice medicine and surgery.

(2) Practitioners of osteopathic medicine, signified by the letters “D.O.” or the words surgeon, osteopathic surgeon, osteopath, doctor of osteopathy, or doctor of osteopathic medicine.

(3) Practitioners of nursing, signified by the letters “D.N.P.”, “N.P.”, “R.N.”, “L.P.N.”, “C.R.N.A.”, “C.N.A.”, or any other commonly used signifier to denote a doctorate of nursing practice, nurse practitioner, registered nurse, licensed practical nurse, certified registered nurse anesthetist, or certified nurse assistant, respectively, as appropriate to signify the appropriate degree of licensure and degree earned from a regionally accredited institution of higher education in the appropriate field of learning.

(4) Practitioners of podiatry, signified by the letters “D.P.M.” or the words podiatrist, doctor of podiatry, podiatric surgeon, or doctor of podiatric medicine.

(5) Practitioners of chiropractic, signified by the letters “D.C.” or the words chiropractor or doctor of chiropractic.

(6) Practitioners of dentistry, signified by the letters “D.D.S.” or “D.M.D.”, as appropriate, or the words dentist, doctor of dental surgery, or doctor of dental medicine, as appropriate.

(7) Practitioners of optometry, signified by the letters “O.D.” or the words optometrist or doctor of optometry.

(8) Practitioners of naturopathy, signified by the letters, “N.D.” or the words naturopathic doctor or doctor of naturopathy.

(9) Physician assistants, signified by the letters “P.A.” or the words physician assistant.
(10) Medical assistants, signified by the letters “M.A.” or the words medical assistant.

(11) Practitioners of Audiology, signified by the letters “Au.D.”, “Sc.D.”, or “Ph.D.”, or the words audiologist or doctor of Audiology.

(12) Psychologists, pharmacists, physical therapists, speech-language pathologists, counselors, or any other health care practitioner not covered under this section, including but not limited to those signified by the letters “Ph.D.”, “Ed.D.”, “Pharm.D.”, “P.T.”, “M.P.T.”, “Psy.D.”, or “Sc.D.”, as appropriate to signify the appropriate degree of licensure and degree earned from a regionally accredited institution of higher education in the appropriate field of learning.

(d) “Licensee” means a health care practitioner who holds an active license with the licensing board governing his or her practice in this State.

Section 4. Requirements.

(a) An advertisement for health care services that names a health care practitioner must identify the type of license held pursuant to the definitions under this Act. The advertisement shall be free from any and all deceptive or misleading information.

Drafting Note Re: Board Certification—To provide further guidance on an additional type of requirement related to M.D. or D.O. board certification, this Drafting Note provides the following sample.

A medical doctor or doctor of osteopathic medicine may not hold oneself out to the public in any manner as being certified by a public or private board including but not limited to a multidisciplinary board or "board certified," unless all of the following criteria are satisfied:

(a) The advertisement states the full name of the certifying board.

(b) The board either:
1. Is a member board of the American Board of Medical Specialties (ABMS) or the American Osteopathic Association (AOA).

2. Requires successful completion of a postgraduate training program approved by the Accreditation Commission for Graduate Medical Education (ACGME) or the AOA that provides complete training in the specialty or subspecialty certified, followed by prerequisite certification by the ABMS or AOA board for that training field and further successful completion of examination in the specialty or subspecialty certified.

(b) A health care practitioner providing health care services in this state must conspicuously post and affirmatively communicate the practitioner’s specific licensure as defined under this Act. This shall consist of the following:

1. The health care practitioner shall wear a photo identification name tag during all patient encounters that shall include (i) a recent photograph of the employee; (ii) the employee’s name; (iii) the type of license (e.g. “medical doctor”, “psychologist”, “nurse practitioner”, “podiatrist”); and (iv) the expiration date of the license. The name tag shall be of sufficient size and be worn in a conspicuous manner so as to be visible and apparent; and

2. The health care practitioner shall display in his or her office a writing that clearly identifies the type of license held by the health care practitioner. The writing must be of sufficient size so as to be visible and apparent to all current and prospective patients.

(c) A health care practitioner who practices in more than one office shall be required to comply with these requirements in each practice setting.
(d) A medical doctor or doctor of osteopathic medicine who supervises or participates in collaborative practice agreements with non-M.D. or non-D.O. health care practitioners shall be required to conspicuously post in each office a schedule of the regular hours when he or she will be present in that office.

(e) Health care practitioners working in non-patient care settings, and who do not have any direct patient care interactions, are not subject to the provisions of this Act.

_Drafting Note Re: Exceptions—To provide further guidance on different types of exceptions provisions, this drafting note provides a representative sample from states with truth in advertising laws._

California, Nevada, and Tennessee waive any name tag requirements for health care practitioners who provide services in certain medical facilities such as medical research laboratories, community mental health facilities, and other medical facilities where the person does not provide services directly to the public.

Texas, Illinois and Utah require that health care providers who are providing direct patient care at the hospital must where a photo identification badge during all patient encounters, unless precluded by sterilization or isolation protocols.

Maine, Mississippi and Illinois provide that health care practitioners working in non-patient care settings, and who do not have any direct patient care interactions, are not subject to provisions regarding the use of a name badge/identification during the course of service.

Pennsylvania and Utah provide an exemption when wearing a badge would not be clinical feasible.

Pennsylvania, Utah, and West Virginia allow the last name of the employee to be concealed or omitted when the employee is concerned about his or her safety, when delivering
direct care to a consumer who exhibits signs of irrationality or violence, or when wearing identification would jeopardize the health care provider’s safety.

Utah exempts solo health care practitioners or offices where the license type and names of all health care providers in the office are displayed on the office door.

Section 5. Violations and Enforcement.

(a) Failure to comply with any provision under this Section shall constitute a violation under this Act.

(b) Knowingly aiding, assisting, procuring, employing or advising any unlicensed person or entity to practice or engage in acts contrary to the health care practitioner’s degree of licensure shall constitute a violation under this Act.

(c) Delegating or contracting for the performance of health care services by a health care practitioner when the licensee delegating or contracting for performance knows, or has reason to know, the person does not have the required authority pursuant to the person’s licensure, shall constitute a violation under this Act.

(d) Each day this act is violated shall constitute a separate offense and shall be punishable as such.

(e) Any health care practitioner who violates any provision under this Act is guilty of unprofessional conduct and subject to disciplinary action under the appropriate licensure provisions governing the respective health care practitioner.

(f) Any and all fees and other amounts billed to and paid by the patient shall be effectively rescinded and refunded. This includes third parties contracted to collect fees on behalf of the health care practitioner, the health care practitioner’s employer, or other entity contracting with the health care practitioner.
The imposition of professional sanctions, administrative fees or other disciplinary actions shall be publicly reported in a journal of official record.

Notwithstanding the imposition of any penalty, a professional licensing board or other administrative agency with jurisdiction may seek an injunction or other legal means as appropriate against a person or entity violating this Act.

Drafting Note Re: Enforcement—To provide further guidance on different types of enforcement provisions, this Drafting Note provides a representative sample from eight states with TIA-type laws.

California. Current law requires a health care practitioner to display the type of license, highest level of academic degree and the name of a certifying board or association (if applicable) in writing at the patient’s initial office visit or in a prominent display in an office area visible to patients. Violators are guilty of a misdemeanor, may result in license revocation or suspension, “or other disciplinary action including an administrative fine not to exceed $10,000.” (Cal. Bus. & Prof. Code §651 (2010)).

Florida. Current law requires health care practitioners to inform patients about their credentials. Violations for misleading or deceptive statements, or offering to practice beyond one’s scope of practice, include professional licensure sanctions, suspension, restrictions and probation. Violators also may be subject to administrative fines and be forced to undergo “remedial education.” (Fla. Stat. § 456.072 (2006)).

Georgia. Current law provides that “Any person willfully violating, with intent to defraud, subsection (a) of this Code section shall be guilty of a misdemeanor.” (Ga. Code Ann. §10-1-422 (2006)).

Illinois. Under current law, advertisements for health care services must identify the license of the health care professional and be free of deceptive or misleading information. The
law also requires a health care professional to clearly communicate his or her licensure on a
visible name tag or office display. Violators are guilty of unprofessional conduct and subject to
disciplinary action at the discretion of the state medical board. (225 ILCS § 145 (2010)).

New Hampshire. Current law is limited to health care practitioners being required to
wear name tags or some other form of identification that “readily discloses the name, licensure
status, if any, and staff position.” Violations are limited to fines “of no more than $50 on the

Oklahoma. Current law provides that any advertisement must include a notice stating
“If you find anything in this communication to be inaccurate or misleading, you may report the
same by writing to [the M.D. or D.O. medical board].” The law also deems violations of the
appropriate health care practitioner licensing act. An amendment enacted in 2010 provides that
nine classes of health professionals may use the title “doctor” or “Dr.” in conjunction with
appropriate licensing designation. The amendment requires a provider to identify in any
advertisement for health care services the type of license, using the applicable words for the
profession. Violators are subject to fines; repeated or gross violations will be referred to the
Attorney General. (O.S. § 59-725.1-3 (2010)).

Tennessee. Current law provides a requirement that all licensed health care practitioners
in the state keep their “certificate of registration” in a conspicuous place, and the certificate
contain the “recognized professional abbreviation or designation” after the practitioner’s name.
An amendment enacted in 2011 expands the categories of health care practitioners who are
required to communicate this information, and requires disclosure of licensure on Internet
advertisements. Violations, including civil penalties, suspension or license revocation, are at the
[Amended Effective January 1, 2012]).
Utah. Current law requires all licensed health care providers to include their name and license type in any advertisement for health care services. Violations are considered unprofessional conduct. (Utah Code Section § 58-1-501.6 (2011)). See also, Ariz. Rev. Stat. § 32-3213.

Section 6. Effective. This Act shall become effective immediately upon being enacted into law.

Section 7. Severability. If any provision of this Act is held by a court to be invalid, such invalidity shall not affect the remaining provisions of this Act, and to this end the provisions of this Act are hereby declared severable.