

By Representative Sublette

1 A bill to be entitled
2 An act relating to regulation of professions
3 and occupations; amending s. 455.225, F.S.,
4 relating to disciplinary proceedings for boards
5 within the Department of Business and
6 Professional Regulation and the Department of
7 Health; providing for confidentiality while an
8 investigation is active; authorizing disclosure
9 of an active investigation under certain
10 circumstances; providing an effective date.

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

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14 Section 1. The introductory paragraph and subsections
15 (2) and (10) of section 455.225, Florida Statutes, 1996
16 Supplement, are amended to read:

17 455.225 Disciplinary proceedings.--Disciplinary
18 proceedings for each board shall be within the jurisdiction of
19 the Department of Business and Professional Regulation or the
20 Department of Health ~~Agency for Health Care Administration~~, as
21 appropriate.

22 (2) The Department of Business and Professional
23 Regulation and the Agency for Health Care Administration,
24 through its contract with the Department of Health, shall
25 allocate sufficient and adequately trained staff to
26 expeditiously and thoroughly determine legal sufficiency and
27 investigate all legally sufficient complaints. When its
28 investigation is complete and legally sufficient, the
29 Department of Business and Professional Regulation or the
30 Agency for Health Care Administration, through its contract
31 with the Department of Health, shall prepare and submit to the

1 probable cause panel of the appropriate regulatory board the
2 investigative report of the Department of Business and
3 Professional Regulation or the Agency for Health Care
4 Administration, through its contract with the Department of
5 Health. The report shall contain the investigative findings
6 and the recommendations of the Department of Business and
7 Professional Regulation or the Agency for Health Care
8 Administration, through its contract with the Department of
9 Health, concerning the existence of probable cause. At any
10 time after legal sufficiency is found, the Department of
11 Business and Professional Regulation or the Agency for Health
12 Care Administration, through its contract with the Department
13 of Health, may dismiss any case, or any part thereof, if the
14 Department of Business and Professional Regulation or the
15 Agency for Health Care Administration, through its contract
16 with the Department of Health, determines that there is
17 insufficient evidence to support the prosecution of
18 allegations contained therein. The Department of Business and
19 Professional Regulation or the Agency for Health Care
20 Administration, through its contract with the Department of
21 Health, shall provide a detailed report to the appropriate
22 probable cause panel prior to dismissal of any case or part
23 thereof, and to the subject of the complaint after dismissal
24 of any case or part thereof, under this section. ~~For cases~~
25 ~~dismissed prior to a finding of probable cause, such report is~~
26 ~~confidential and exempt from s. 119.07(1)~~. The probable cause
27 panel shall have access, upon request, to the investigative
28 files pertaining to a case prior to dismissal of such case.
29 If the Department of Business and Professional Regulation or
30 the Agency for Health Care Administration, through its
31 contract with the Department of Health, dismisses a case, the

1 probable cause panel may retain independent legal counsel,
2 employ investigators, and continue the investigation and
3 prosecution of the case as it deems necessary.

4 (10) The complaint and all information obtained
5 pursuant to an ~~the~~ investigation by the Department of Business
6 and Professional Regulation or the Agency for Health Care
7 Administration, through its contract with the Department of
8 Health, are confidential and exempt from s. 119.07(1) until
9 such investigation ceases to be active. For purposes of this
10 subsection, an investigation is considered "active" so long as
11 the Department of Business and Professional Regulation, the
12 Agency for Health Care Administration, the Department of
13 Health, or any law enforcement or administrative agency is
14 proceeding with reasonable dispatch and has a reasonable, good
15 faith belief that it may lead to the filing of administrative,
16 civil, or criminal proceedings. An investigation ceases to be
17 active when the Department of Business and Professional
18 Regulation or the Agency for Health Care Administration,
19 through its contract with the Department of Health, dismisses
20 the case prior to a finding of probable cause and the board
21 has not exercised its option to pursue the case or 10 days
22 after the board, or the Department of Business and
23 Professional Regulation or the Department of Health when there
24 is no board, makes a determination regarding probable cause.
25 All information, records, and transcriptions regarding a
26 complaint that has been determined to be legally sufficient to
27 state a claim within the jurisdiction of the Department of
28 Business and Professional Regulation, the Agency for Health
29 Care Administration, the Department of Health, or the
30 applicable board become available to the public when the
31 investigation ceases to be active, except information that is

1 otherwise confidential or exempt from s. 119.07(1). However,
2 in response to an inquiry about the licensure status of an
3 individual, the Department of Business and Professional
4 Regulation or the Agency for Health Care Administration,
5 through its contract with the Department of Health, may
6 disclose the existence of an active investigation initiated by
7 the Department of Business and Professional Regulation or the
8 Agency for Health Care Administration, through its contract
9 with the Department of Health, based on reasonable cause to
10 believe that a violation occurred or will occur, if the nature
11 of the violation under investigation involves the potential
12 for substantial physical, psychological, or financial harm to
13 the public. The Department of Business and Professional
14 Regulation or the Agency for Health Care Administration,
15 through its contract with the Department of Health, need not
16 disclose the existence of an investigation if it determines
17 that such disclosure would be detrimental to the investigation
18 ~~10 days after probable cause has been found to exist by the~~
19 ~~probable cause panel or by the department or the agency, or~~
20 ~~until the regulated professional or subject of the~~
21 ~~investigation waives his privilege of confidentiality,~~
22 ~~whichever occurs first. Upon completion of an the~~
23 investigation, but prior to submission to the probable cause
24 panel, and pursuant to a written request received within 30
25 days after the notification of the existence of an
26 investigation by a the subject receiving a copy of the
27 complaint that resulted in the initiation of an investigation,
28 the Department of Business and Professional Regulation or the
29 Agency for Health Care Administration, through its contract
30 with the Department of Health, shall provide the subject an
31 opportunity to inspect the investigative file or, at the

1 subject's expense, forward to the subject a copy of the
2 investigative file. Notwithstanding s. 455.241, the subject
3 may inspect or receive a copy of any expert witness report or
4 patient record connected with the investigation, if the
5 subject agrees in writing to maintain the confidentiality of
6 any information received under this subsection until the
7 investigation is completed or ceases to be active ~~10 days~~
8 ~~after probable cause is found~~ and to maintain the
9 confidentiality of patient records pursuant to s. 455.241.
10 The subject may file a written response to the information
11 contained in the investigative file. Such response must be
12 filed within 20 days after the subject's opportunity to
13 inspect, or, if requested, from the subject's receipt of a
14 copy of the investigative file, unless an extension of time
15 has been granted ~~by the department or the agency~~. This
16 subsection does not prohibit the Department of Business and
17 Professional Regulation, ~~or~~ the Agency for Health Care
18 Administration, or the Department of Health from providing
19 such information to any law enforcement agency or to any other
20 regulatory agency.

21 Section 2. This act shall take effect October 1, 1997.

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24 HOUSE SUMMARY

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26 With respect to disciplinary proceedings for boards
27 within the Department of Business and Professional
28 Regulation and the Department of Health, provides for
29 confidentiality while an investigation is active and
30 authorizes disclosure of an active investigation under
31 certain circumstances. See bill for details.