

1
2 An act relating to regulation of professions;
3 dividing ch. 455, F.S., into parts;
4 transferring those provisions of ch. 455, F.S.,
5 that pertain to health-related professions into
6 the second part; duplicating publication of
7 extant provisions affecting both health-related
8 professions and other professions in the second
9 part; amending s. 11, ch. 96-403, Laws of
10 Florida; transferring certain functions from
11 the Agency for Health Care Administration to
12 the Department of Health; amending s. 20.43,
13 F.S.; prescribing guidelines for appointments
14 to boards within the Department of Health;
15 amending ss. 455.01, 455.203, 455.205, 455.207,
16 455.208, 455.209, 455.211, 455.213, 455.214,
17 455.217, 455.2175, 455.218, 455.2185, 455.221,
18 455.2226, 455.2228, 455.223, 455.224, 455.225,
19 455.227, 455.2273, 455.2275, 455.228, 455.2285,
20 455.229, 455.232, 455.24, 455.242, 455.243,
21 455.245, F.S.; conforming those sections to the
22 transfer of regulatory authority over
23 health-related professions from the Agency for
24 Health Care Administration to the Department of
25 Health; conforming those sections to the
26 subdivision of ch. 455, F.S.; creating s.
27 455.501, F.S.; providing definitions; creating
28 s. 455.504, F.S.; providing applicability;
29 creating s. 455.507, F.S.; providing for
30 continuing licensure of members of the Armed
31 Forces; creating s. 455.511, F.S.; prohibiting

1 disqualification from professional licensure on
2 account of citizenship; creating s. 455.514,
3 F.S.; providing for qualification of immigrants
4 for professional licensure examination;
5 creating s. 455.517, F.S.; providing
6 legislative intent; creating s. 455.521, F.S.;
7 prescribing powers and duties of the Department
8 of Health; creating s. 455.524, F.S.; providing
9 for long-range policy planning; creating s.
10 455.527, F.S.; providing method of contacting
11 regulatory boards; renumbering s. 455.206,
12 F.S., relating to conditions for board
13 membership; creating s. 455.534, F.S.;
14 providing for organization, meetings,
15 compensation, and travel expense for boards;
16 creating s. 455.537, F.S.; providing for
17 publication of information; creating s.
18 455.541, F.S.; providing accountability and
19 liability of board members; creating s.
20 455.544, F.S.; providing for board rules, final
21 agency action, and challenges; creating s.
22 455.547, F.S.; providing requirements with
23 respect to continuing education; creating s.
24 455.551, F.S.; providing for continued
25 recognition of certain education programs;
26 creating s. 455.554, F.S.; providing for
27 consultation with postsecondary education
28 boards; creating s. 455.561, F.S.; providing
29 for limited licenses; renumbering and amending
30 s. 455.2141, F.S., relating to general
31 licensing provisions for health-related

1 professions; prescribing additional guidelines
2 with respect to continuing education;
3 renumbering and amending s. 455.2142, F.S.,
4 relating to sexual misconduct by applicants for
5 licensure; creating s. 455.571, F.S.; providing
6 for use of professional testing services;
7 renumbering and amending s. 455.2173, F.S.,
8 relating to examinations; prescribing
9 additional powers and duties of the respective
10 boards and the department; creating s. 455.577,
11 F.S.; providing a penalty for theft or
12 reproduction of an examination; creating s.
13 455.581, F.S.; prescribing additional
14 provisions with respect to examination and
15 licensure of foreign-trained professionals;
16 creating s. 455.584, F.S.; providing exemptions
17 and limited license authorization for certain
18 foreign professionals; renumbering and amending
19 s. 455.220, F.S., relating to fees and
20 receipts; prescribing additional powers and
21 duties of the respective boards and the
22 department; renumbering and amending s.
23 455.2205, F.S., relating to the Health Care
24 Trust Fund; creating s. 455.594, F.S.;
25 providing for legal and investigative services;
26 renumbering and amending s. 455.222, F.S.,
27 relating to instruction on domestic violence;
28 renumbering s. 455.2224, F.S., relating to
29 hepatitis B and HIV carriers; creating s.
30 455.604, F.S.; providing for instruction on HIV
31 and AIDS; creating s. 455.607, F.S.; providing

1 for instruction on HIV and AIDS; creating s.
2 455.611, F.S.; providing for oaths,
3 depositions, and subpoenas; creating s.
4 455.614, F.S.; providing for mediation;
5 creating s. 455.617, F.S.; providing authority
6 to issue citations; creating s. 455.621, F.S.;
7 providing for disciplinary proceedings;
8 creating s. 455.624, F.S.; providing grounds
9 for discipline; prescribing penalties; creating
10 s. 455.627, F.S.; providing disciplinary
11 guidelines; creating s. 455.631, F.S.;
12 prescribing a penalty for giving false
13 information; creating s. 455.634, F.S.;
14 providing for prosecution of criminal
15 violations; creating s. 455.637, F.S.;
16 providing sanctions against unlicensed practice
17 of a profession; creating s. 455.641, F.S.;
18 providing for enforcement of prohibition
19 against unlicensed practice; providing a fee;
20 creating s. 455.644, F.S.; requiring an annual
21 report; creating s. 455.647, F.S.; providing
22 for public inspection of certain information;
23 creating s. 455.651, F.S.; providing a penalty
24 for disclosure of confidential information;
25 renumbering and amending s. 455.236, F.S.,
26 relating to financial arrangements between
27 referring health care providers and providers
28 of health care services; renumbering s.
29 455.237, F.S., relating to prohibiting
30 kickbacks; renumbering and amending s. 455.239,
31 F.S., relating to licensure of designated

1 health care services; creating s. 455.664,
2 F.S.; providing requirements with respect to
3 advertising by health care providers;
4 renumbering and amending s. 455.241, F.S.,
5 relating to patient records; renumbering and
6 amending s. 455.2415, F.S., relating to
7 confidential communications between a patient
8 and a psychiatrist; renumbering s. 455.2416,
9 F.S., relating to practitioner disclosure of
10 confidential information; creating s. 455.677,
11 F.S.; providing for disposition of records of
12 deceased, relocated, or retired practitioners;
13 creating s. 455.681, F.S.; providing for
14 inspections; renumbering s. 455.244, F.S.,
15 relating to chiropractic and podiatric health
16 care; creating s. 455.687, F.S.; providing for
17 immediate suspension of certain licenses;
18 renumbering s. 455.2455, F.S., relating to
19 treatment of Medicare beneficiaries;
20 renumbering and amending s. 455.2456, F.S.,
21 relating to financial responsibility;
22 renumbering s. 455.247, F.S., relating to
23 reports on professional liability claims;
24 renumbering and amending s. 455.25, F.S.,
25 relating to disclosure of certain financial
26 interests; renumbering and amending s. 455.26,
27 F.S., relating to the Impaired Practitioners
28 Committee; renumbering and amending s. 455.261,
29 F.S., relating to the treatment program for
30 impaired practitioners; creating s. 455.711,
31 F.S.; providing for inactive and delinquent

1 status; creating s. 455.714, F.S.; providing
2 for renewal and cancellation notices; creating
3 s. 455.717, F.S.; requiring an address of
4 record; renumbering and amending s. 455.277,
5 F.S., relating to the Health Care Community
6 Antitrust Guidance Act; renumbering s.
7 455.2775, F.S., relating to information
8 submitted in relation to antitrust issues;
9 repealing s. 455.2055, F.S., relating to
10 membership of practice boards, the provisions
11 of which were incorporated into s. 20.43, F.S.;
12 requiring the Secretary of Health to appoint a
13 task force to study the validation of health
14 care practitioner credentials; amending s.
15 459.0085, F.S.; directing the Department of
16 Health to suspend a license under certain
17 circumstances; increasing malpractice indemnity
18 limits for osteopathic physicians; providing
19 membership of the task force; amending s.
20 458.320, F.S.; increasing malpractice indemnity
21 limits and providing for financial
22 responsibility; amending s. 627.912, F.S.;
23 providing for insurer reporting of professional
24 liability claims and actions; revising the
25 timeframe for reporting; providing penalties;
26 amending s. 458.331, F.S.; increasing
27 malpractice indemnity limits for physicians;
28 amending s. 459.015, F.S.; increasing the
29 amount of an indemnity paid for a claim for
30 medical malpractice; amending s. 468.1645,
31 F.S.; revising an exemption from licensure as a

1 nursing home administrator relating to persons
2 employed to administer in facilities or
3 institutions operated by and for persons who
4 rely exclusively upon treatment by spiritual
5 means through prayer; amending s. 458.3115,
6 F.S.; revising requirements for the development
7 of examinations administered to certain
8 foreign-licensed physicians; prescribing
9 eligibility requirements for certain
10 foreign-trained physicians to take a
11 restricted-license examination; creating s.
12 458.3124, F.S.; providing for certain
13 foreign-trained and licensed physicians to take
14 certain licensure examinations; providing
15 restrictions and establishing fees; restricting
16 the practice of such persons; providing for
17 eligibility for full licensure; providing for
18 the adoption of rules; providing an effective
19 date.

20

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

22

23 Section 1. Section 11 of chapter 96-403, Laws of
24 Florida, is amended to read:25 Section 11. Effective July 1, 1997, the regulation of
26 nursing assistants, as provided under s. 400.211, Florida
27 Statutes; health care services pools, as provided under s.
28 402.48, Florida Statutes; the Board of Acupuncture, created
29 under chapter 457, Florida Statutes; the Board of Medicine,
30 created under chapter 458, Florida Statutes; the Board of
31 Osteopathic Medicine, created under chapter 459, Florida

ENROLLED

1997 Legislature

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1 Statutes; the Board of Chiropractic, created under chapter
2 460, Florida Statutes; the Board of Podiatric Medicine,
3 created under chapter 461, Florida Statutes; naturopathy, as
4 provided under chapter 462, Florida Statutes; the Board of
5 Optometry, created under chapter 463, Florida Statutes; the
6 Board of Nursing, created under chapter 464, Florida Statutes;
7 the Board of Pharmacy, created under chapter 465, Florida
8 Statutes; the Board of Dentistry, created under chapter 466,
9 Florida Statutes; midwifery, as provided under chapter 467,
10 Florida Statutes; the Board of Speech-Language Pathology and
11 Audiology, created under part I of chapter 468, Florida
12 Statutes; the Board of Nursing Home Administrators, created
13 under part II of chapter 468, Florida Statutes; occupational
14 therapy, as provided under part III of chapter 468, Florida
15 Statutes; respiratory therapy, as provided under part V of
16 chapter 468, Florida Statutes; dietetics and nutrition
17 practice, as provided under part X of chapter 468, Florida
18 Statutes; electrolysis, as provided under chapter 478, Florida
19 Statutes; the Board of Clinical Laboratory Personnel, created
20 under part IV of chapter 483, Florida Statutes; medical
21 physicists, as provided under part V of chapter 483, Florida
22 Statutes; the Board of Opticianry, created under part I of
23 chapter 484, Florida Statutes; the Board of Physical Therapy
24 Practice, created under chapter 486, Florida Statutes; the
25 Board of Psychology, created under chapter 490, Florida
26 Statutes; and the Board of Clinical Social Work, Marriage and
27 Family Therapy, and Mental Health Counseling, created under
28 chapter 491, Florida Statutes, under the Division of Health
29 Quality Assurance of the Agency for Health Care
30 Administration, or under the agency, within the Department of
31 Business and Professional Regulation, but not including

1 personnel, property, and unexpended balances of appropriations
2 related to consumer complaints, investigative and
3 prosecutorial services, including all licensing, examination,
4 publication, administrative, and management information
5 services, but not consumer complaint, investigative, or
6 prosecutorial services, provided by the Agency for Health Care
7 Administration, is transferred by a type two transfer, as
8 defined in s. 20.06(2), Florida Statutes, and assigned to the
9 Division of Medical Quality Assurance within the Department of
10 Health, as created by this act.

11 Section 2. Section 20.43, Florida Statutes, 1996
12 Supplement, is amended to read:

13 20.43 Department of Health.--There is created a
14 Department of Health.

15 (1) The purpose of the Department of Health is to
16 promote and protect the health of all residents and visitors
17 in the state through organized state and community efforts,
18 including cooperative agreements with counties. The
19 department shall:

20 (a) Prevent to the fullest extent possible, the
21 occurrence and progression of communicable and noncommunicable
22 diseases and disabilities.

23 (b) Maintain a constant surveillance of disease
24 occurrence and accumulate health statistics necessary to
25 establish disease trends and to design health programs.

26 (c) Conduct special studies of the causes of diseases
27 and formulate preventive strategies.

28 (d) Promote the maintenance and improvement of the
29 environment as it affects public health.

30 (e) Promote the maintenance and improvement of health
31 in the residents of the state.

1 (f) Provide leadership, in cooperation with the public
2 and private sectors, in establishing statewide and community
3 public health delivery systems.

4 (g) Provide health care and early intervention
5 services to infants, toddlers, children, adolescents, and
6 high-risk perinatal patients who are at risk for disabling
7 conditions or have chronic illnesses.

8 (h) Develop working associations with all agencies and
9 organizations involved and interested in health and health
10 care delivery.

11 (i) Analyze trends in the evolution of health systems,
12 and identify and promote the use of innovative, cost-effective
13 health delivery systems.

14 (j) Serve as the statewide repository of all aggregate
15 data accumulated by state agencies related to health care;
16 analyze that data and issue periodic reports and policy
17 statements, as appropriate; require that all aggregated data
18 be kept in a manner that promotes easy utilization by the
19 public, state agencies, and all other interested parties;
20 provide technical assistance as required; and work
21 cooperatively with the state's higher education programs to
22 promote further study and analysis of health care systems and
23 health care outcomes.

24 (k) Biennially publish, and annually update, a state
25 health plan that assesses current health programs, systems,
26 and costs; makes projections of future problems and
27 opportunities; and recommends changes needed in the health
28 care system to improve the public health.

29 (l) Regulate health practitioners, to the extent
30 authorized by the Legislature, as necessary for the
31 preservation of the health, safety, and welfare of the public.

1 (2) The head of the Department of Health is the
2 Secretary of Health and State Health Officer. The secretary
3 must be a physician licensed under chapter 458 or chapter 459
4 who has advanced training or extensive experience in public
5 health administration. The secretary is appointed by the
6 Governor subject to confirmation by the Senate. The secretary
7 serves at the pleasure of the Governor.

8 (3) The following divisions of the Department of
9 Health are established:

10 (a) Division of Administration.

11 (b) Division of Environmental Health.

12 (c) Division of Disease Control.

13 (d) Division of Family Services.

14 (e) Division of Children's Medical Services.

15 (f) ~~Effective July 1, 1997,~~ Division of Medical

16 Quality Assurance, which is responsible for the following
17 boards and professions established within the division:

18 1. Nursing assistants, as provided under s. 400.211.

19 2. Health care services pools, as provided under s.
20 402.48.

21 3. The Board of Acupuncture, created under chapter
22 457.

23 4. The Board of Medicine, created under chapter 458.

24 5. The Board of Osteopathic Medicine, created under
25 chapter 459.

26 6. The Board of Chiropractic, created under chapter
27 460.

28 7. The Board of Podiatric Medicine, created under
29 chapter 461.

30 8. Naturopathy, as provided under chapter 462.

31 9. The Board of Optometry, created under chapter 463.

- 1 10. The Board of Nursing, created under chapter 464.
- 2 11. The Board of Pharmacy, created under chapter 465.
- 3 12. The Board of Dentistry, created under chapter 466.
- 4 13. Midwifery, as provided under chapter 467.
- 5 14. The Board of Speech-Language Pathology and
- 6 Audiology, created under part I of chapter 468.
- 7 15. The Board of Nursing Home Administrators, created
- 8 under part II of chapter 468.
- 9 16. Occupational therapy, as provided under part III
- 10 of chapter 468.
- 11 17. Respiratory therapy, as provided under part V of
- 12 chapter 468.
- 13 18. Dietetics and nutrition practice, as provided
- 14 under part X of chapter 468.
- 15 19. Athletic trainers, as provided under part XIV of
- 16 chapter 468.
- 17 20. Electrolysis, as provided under chapter 478.
- 18 21. The Board of Massage, created under chapter 480.
- 19 22. The Board of Clinical Laboratory Personnel,
- 20 created under part IV of chapter 483.
- 21 23. Medical physicists, as provided under part V of
- 22 chapter 483.
- 23 24. The Board of Opticianry, created under part I of
- 24 chapter 484.
- 25 25. The Board of Hearing Aid Specialists, created
- 26 under part II of chapter 484.
- 27 26. The Board of Physical Therapy Practice, created
- 28 under chapter 486.
- 29 27. The Board of Psychology, created under chapter
- 30 490.
- 31

1 28. The Board of Clinical Social Work, Marriage and
2 Family Therapy, and Mental Health Counseling, created under
3 chapter 491.

4
5 The department may ~~shall~~ contract with the Agency for Health
6 Care Administration who shall provide consumer complaint,
7 investigative, and prosecutorial services required by the
8 Division of Medical Quality Assurance, councils, or boards, as
9 appropriate.

10 (4)(a) The members of each board within the department
11 shall be appointed by the Governor, subject to confirmation by
12 the Senate. Consumer members on the board shall be appointed
13 pursuant to paragraph (b). Members shall be appointed for
14 4-year terms, and such terms shall expire on October 31.
15 However, a term of less than 4 years may be used to ensure
16 that:

17 1. No more than two members' terms expire during the
18 same calendar year for boards consisting of seven or eight
19 members.

20 2. No more than three members' terms expire during the
21 same calendar year for boards consisting of 9 to 12 members.

22 3. No more than five members' terms expire during the
23 same calendar year for boards consisting of 13 or more
24 members.

25
26 A member whose term has expired shall continue to serve on the
27 board until such time as a replacement is appointed. A
28 vacancy on the board shall be filled for the unexpired portion
29 of the term in the same manner as the original appointment.
30 No member may serve for more than the remaining portion of a
31

1 previous member's unexpired term, plus two consecutive 4-year
2 terms of the member's own appointment thereafter.

3 (b) Each board with five or more members shall have at
4 least two consumer members who are not, and have never been,
5 members or practitioners of the profession regulated by such
6 board or of any closely related profession. Each board with
7 fewer than five members shall have at least one consumer
8 member who is not, and has never been, a member or
9 practitioner of the profession regulated by such board or of
10 any closely related profession.

11 (c) Notwithstanding any other provision of law, the
12 department is authorized to establish uniform application
13 forms and certificates of licensure for use by the boards
14 within the department. Nothing in this paragraph authorizes
15 the department to vary any substantive requirements, duties,
16 or eligibilities for licensure or certification as provided by
17 law.

18 (5)(4) The department shall plan and administer its
19 public health programs through its county health departments
20 and may, for administrative purposes and efficient service
21 delivery, establish up to 15 service areas to carry out such
22 duties as may be prescribed by the secretary. The boundaries
23 of the service areas shall be the same as, or combinations of,
24 the districts of the health and human services boards
25 established in s. 20.19 and, to the extent practicable, shall
26 take into consideration the boundaries of the jobs and
27 education regional boards.

28 (6)(5) The secretary and division directors are
29 authorized to appoint ad hoc advisory committees as necessary.
30 The issue or problem that the ad hoc committee shall address,
31 and the timeframe within which the committee is to complete

1 its work, shall be specified at the time the committee is
2 appointed. Ad hoc advisory committees shall include
3 representatives of groups or entities affected by the issue or
4 problem that the committee is asked to examine. Members of ad
5 hoc advisory committees shall receive no compensation, but
6 may, within existing departmental resources, receive
7 reimbursement for travel expenses as provided in s. 112.061.

8 Section 3. Section 455.01, Florida Statutes, 1996
9 Supplement, is amended to read:

10 455.01 Definitions.--As used in this part ~~chapter~~, the
11 term:

12 (1) "Board" means any board or commission, or other
13 statutorily created entity to the extent such entity is
14 authorized to exercise regulatory or rulemaking functions,
15 within the department, including the Florida Real Estate
16 Commission; except that, for ss. 455.201-455.261, "board"
17 means only a board, or other statutorily created entity to the
18 extent such entity is authorized to exercise regulatory or
19 rulemaking functions, within the Division of Certified Public
20 Accounting, ~~the Division of Medical Quality Assurance~~, the
21 Division of Professions, or the Division of Real Estate.

22 (2) "Consumer member" means a person appointed to
23 serve on a specific board or who has served on a specific
24 board, who is not, and never has been, a member or
25 practitioner of the profession, or of any closely related
26 profession, regulated by such board.

27 (3) "Department" means the Department of Business and
28 Professional Regulation.

29 ~~(4) "Health care practitioner" means any person~~
30 ~~licensed under chapter 457; chapter 458; chapter 459; chapter~~
31 ~~460; chapter 461; chapter 462; chapter 463; chapter 464;~~

1 ~~chapter 465; chapter 466; part I, part III, part V, or part X~~
2 ~~of chapter 468; chapter 474; chapter 484; chapter 486; chapter~~
3 ~~490; or chapter 491.~~

4 (4)~~(5)~~ "License" means any permit, registration,
5 certificate, or license issued by the department.

6 (5)~~(6)~~ "Licensee" means any person issued a permit,
7 registration, certificate, or license by the department.

8 (6)~~(7)~~ "Profession" means any activity, occupation,
9 profession, or vocation regulated by the department in the
10 Divisions of Certified Public Accounting, ~~Medical Quality~~
11 ~~Assurance~~, Professions, Real Estate, and Regulation.

12 Section 4. Section 455.203, Florida Statutes, 1996
13 Supplement, is amended to read:

14 455.203 Department; ~~Agency for Health Care~~
15 ~~Administration~~; powers and duties.--The department ~~and the~~
16 ~~Agency for Health Care Administration~~, for the boards under
17 its jurisdiction ~~their respective jurisdictions~~, shall:

18 (1) Adopt rules establishing a procedure for the
19 biennial renewal of licenses; ~~provided~~, however, the
20 department ~~or the Agency for Health Care Administration~~ may
21 issue up to a 4-year license to selected licensees
22 notwithstanding any other provisions of law to the contrary.
23 Fees for such renewal shall not exceed the fee caps for
24 individual professions on an annualized basis as authorized by
25 law.

26 (2) Appoint the executive director of each board,
27 subject to the approval of the board.

28 (3) Submit an annual budget to the Legislature at a
29 time and in the manner provided by law.

30 (4) Develop a training program for persons newly
31 appointed to membership on any board. The program shall

1 familiarize such persons with the substantive and procedural
2 laws and rules and fiscal information relating to the
3 regulation of the appropriate profession and with the
4 structure of the department ~~or the Agency for Health Care~~
5 ~~Administration.~~

6 (5) Adopt all rules necessary to administer this part
7 ~~chapter.~~

8 (6) Establish by rule ~~rules~~ procedures by which the
9 department ~~and the Agency for Health Care Administration~~ shall
10 use the expert or technical advice of the appropriate board
11 for the purposes of investigation, inspection, evaluation of
12 applications, other duties of the department, or any other
13 areas the department may deem appropriate.

14 (7) Require all proceedings of any board or panel
15 thereof and all formal or informal proceedings conducted by
16 the department, ~~the Agency for Health Care Administration,~~ an
17 administrative law judge, or a hearing officer with respect to
18 licensing or discipline to be electronically recorded in a
19 manner sufficient to assure the accurate transcription of all
20 matters so recorded.

21 (8) Select only those investigators, or consultants
22 who undertake investigations, who meet criteria established
23 with the advice of the respective boards.

24 (9) Allow applicants for new or renewal licenses and
25 current licensees to be screened by the Title IV-D child
26 support agency pursuant to s. 409.2598 to assure compliance
27 with a support obligation. The purpose of this subsection is
28 to promote the public policy of this state as established in
29 s. 409.2551. The department shall, when directed by the court,
30 suspend or deny the license of any licensee found to have a
31 delinquent support obligation. The department shall issue or

1 reinstate the license without additional charge to the
2 licensee when notified by the court that the licensee has
3 complied with the terms of the court order. The department
4 shall not be held liable for any license denial or suspension
5 resulting from the discharge of its duties under this
6 subsection.

7 Section 5. Section 455.205, Florida Statutes, is
8 amended to read:

9 455.205 Contacting boards through department ~~or~~
10 ~~agency.~~--Each board under the jurisdiction of the department
11 may be contacted through the headquarters of the department in
12 the City of Tallahassee or at any regional office of the
13 department. ~~Each board under the jurisdiction of the Agency~~
14 ~~for Health Care Administration may be contacted through the~~
15 ~~headquarters of the Agency for Health Care Administration in~~
16 ~~the City of Tallahassee.~~

17 Section 6. Subsections (1) and (3) of section 455.207,
18 Florida Statutes, are amended to read:

19 455.207 Boards; organization; meetings; compensation
20 and travel expenses.--

21 (1) Each board within the department ~~and each board~~
22 ~~within the Agency for Health Care Administration~~ shall comply
23 with the provisions of this section.

24 (3) The board shall meet at least once annually and
25 may meet as often as is necessary. The chairperson or a quorum
26 of the board shall have the authority to call other meetings.
27 A quorum shall be necessary for the conduct of official
28 business by the board or any committee thereof. Unless
29 otherwise provided by law, 51 percent or more of the appointed
30 members of the board or any committee, when applicable, shall
31 constitute a quorum. The membership of committees of the

1 board, except as otherwise authorized pursuant to this part
2 ~~chapter~~ or the applicable practice act, shall be composed of
3 currently appointed members of the board. The vote of a
4 majority of the members of the quorum shall be necessary for
5 any official action by the board or committee. Three
6 consecutive unexcused absences or absences constituting 50
7 percent or more of the board's meetings within any 12-month
8 period shall cause the board membership of the member in
9 question to become void, and the position shall be considered
10 vacant. The board, or the department when there is no board,
11 shall, by rule, define unexcused absences.

12 Section 7. Section 455.208, Florida Statutes, is
13 amended to read:

14 455.208 Publication of information.--The department,
15 ~~the Agency for Health Care Administration,~~and the boards
16 shall have the authority to advise licensees periodically,
17 through the publication of a newsletter, about information
18 that the department, ~~the Agency for Health Care~~
19 ~~Administration,~~or the board determines is of interest to the
20 industry. Unless otherwise prohibited by law, the department
21 and the boards shall publish a summary of final orders
22 resulting in fines, suspensions, or revocations, and any other
23 information the department or the board determines is of
24 interest to the public.

25 Section 8. Subsection (2) of section 455.209, Florida
26 Statutes, is amended to read:

27 455.209 Accountability and liability of board
28 members.--

29 (2) Each board member and each former board member
30 serving on a probable cause panel shall be exempt from civil
31 liability for any act or omission when acting in the member's

1 official capacity, and the department ~~or the Agency for Health~~
2 ~~Care Administration, as appropriate,~~ or the Department of
3 Legal Affairs shall defend any such member in any action
4 against any board or member of a board arising from any such
5 act or omission. In addition, the department or the Department
6 of Legal Affairs may defend the member's company or business
7 in any action against the company or business if the
8 department or the Department of Legal Affairs determines that
9 the actions from which the suit arises are actions taken by
10 the member in the member's official capacity and were not
11 beyond the member's statutory authority. In providing such
12 defense, the department, the agency, or the Department of
13 Legal Affairs may employ or utilize the legal services of
14 outside counsel.

15 Section 9. Subsections (1) and (2) of section 455.211,
16 Florida Statutes, 1996 Supplement, are amended to read:

17 455.211 Board rules; final agency action;
18 challenges.--

19 (1) The secretary of the department shall have
20 standing to challenge any rule or proposed rule of a board
21 under its jurisdiction pursuant to s. 120.56. ~~The Director of~~
22 ~~Health Care Administration shall have standing to challenge~~
23 ~~any rule or proposed rule of any board under its jurisdiction,~~
24 ~~pursuant to s. 120.56.~~ In addition to challenges for any
25 invalid exercise of delegated legislative authority, the
26 administrative law judge, upon such a challenge by the
27 secretary ~~or the Director of Health Care Administration,~~ may
28 declare all or part of a rule or proposed rule invalid if it:

29 (a) Does not protect the public from any significant
30 and discernible harm or damages;

31

1 (b) Unreasonably restricts competition or the
2 availability of professional services in the state or in a
3 significant part of the state; or

4 (c) Unnecessarily increases the cost of professional
5 services without a corresponding or equivalent public benefit.

6
7 However, there shall not be created a presumption of the
8 existence of any of the conditions cited in this subsection in
9 the event that the rule or proposed rule is challenged.

10 (2) In addition, either the secretary, ~~the Director of~~
11 ~~Health Care Administration,~~ or the board shall be a
12 substantially interested party for purposes of s. 120.54(7).
13 The board may, as an adversely affected party, initiate and
14 maintain an action pursuant to s. 120.68 challenging the final
15 agency action.

16 Section 10. Subsections (3), (7), and (8) of section
17 455.213, Florida Statutes, 1996 Supplement, are amended to
18 read:

19 455.213 General licensing provisions.--

20 (3) The board, or the department when there is no
21 board, may refuse to issue an initial license to any applicant
22 who is under investigation or prosecution in any jurisdiction
23 for an action that would constitute a violation of this part
24 ~~chapter~~ or the professional practice acts administered by the
25 department and the boards, until such time as the
26 investigation or prosecution is complete.

27 (7) Notwithstanding anything to the contrary, any
28 elected official who is licensed pursuant to any practice act
29 within the purview of this part ~~chapter~~ may hold employment
30 for compensation with any public agency concurrent with such
31

1 public service. Such dual service shall be disclosed
2 according to any disclosure required by applicable law.

3 (8) In any instance in which a licensee or applicant
4 to the department ~~or the Agency for Health Care Administration~~
5 is required to be in compliance with a particular provision
6 by, on, or before a certain date, and if that date occurs on a
7 Saturday, Sunday, or a legal holiday, then the licensee or
8 applicant is deemed to be in compliance with the specific date
9 requirement if the required action occurs on the first
10 succeeding day which is not a Saturday, Sunday, or legal
11 holiday.

12 Section 11. Subsections (3) and (6) of section
13 455.214, Florida Statutes, are amended to read:

14 455.214 Limited licenses.--

15 (3) The board, or the department when there is no
16 board, may deny limited licensure to an applicant who has
17 committed, or is under investigation or prosecution for, any
18 act which would constitute the basis for discipline pursuant
19 to the provisions of this part ~~chapter~~ or the applicable
20 practice act.

21 (6) Each applicant granted a limited license is
22 subject to all the provisions of this part ~~chapter~~ and the
23 respective practice act under which the limited license is
24 issued which are not in conflict with this section.

25 Section 12. Paragraph (e) of subsection (1) of section
26 455.217, Florida Statutes, 1996 Supplement, is amended to
27 read:

28 455.217 Examinations.--

29 (1) The Division of Technology, Licensure, and Testing
30 of the Department of Business and Professional Regulation

31

1 shall provide services for the preparation and administration
2 of all examinations.

3 (e) If the professional board with jurisdiction over
4 an examination concurs, the department may, for a fee, share
5 with any other state's licensing authority an examination
6 developed by or for the department unless prohibited by a
7 contract entered into by the department for development or
8 purchase of the examination. The department, with the
9 concurrence of the appropriate board, shall establish
10 guidelines that ensure security of a shared exam and shall
11 require that any other state's licensing authority comply with
12 those guidelines. Those guidelines shall be approved by the
13 appropriate professional board. All fees paid by the user
14 shall be applied to the department's examination and
15 development program for professions regulated by this part
16 ~~chapter~~. All fees paid by the user for professions not
17 regulated by this part ~~chapter~~ shall be applied to offset the
18 fees for the development and administration of that
19 profession's examination.

20 Section 13. Section 455.2175, Florida Statutes, is
21 amended to read:

22 455.2175 Penalty for theft or reproduction of an
23 examination.--In addition to, or in lieu of, any other
24 discipline imposed pursuant to s. 455.227, the theft of an
25 examination in whole or in part or the act of reproducing or
26 copying any examination administered by the department ~~or the~~
27 ~~Agency for Health Care Administration~~, whether such ~~said~~
28 examination is reproduced or copied in part or in whole and by
29 any means, constitutes ~~shall constitute~~ a felony of the third
30 degree, punishable as provided in s. 775.082, s. 775.083, or
31 s. 775.084.

1 Section 14. Section 455.218, Florida Statutes, is
2 amended to read:

3 455.218 Foreign-trained professionals; special
4 examination and license provisions.--

5 (1) When not otherwise provided by law, ~~within their~~
6 ~~respective jurisdictions, the Agency for Health Care~~
7 ~~Administration and~~ the department shall by rule provide
8 procedures under which exiled professionals may be examined
9 within each practice act. A person shall be eligible for such
10 examination if the person:

11 (a) Immigrated to the United States after leaving the
12 person's home country because of political reasons, provided
13 such country is located in the Western Hemisphere and lacks
14 diplomatic relations with the United States;

15 (b) Applies to the department ~~or the Agency for Health~~
16 ~~Care Administration, as appropriate,~~ and submits a fee;

17 (c) Was a Florida resident immediately preceding the
18 person's application;

19 (d) Demonstrates to the department ~~or the Agency for~~
20 ~~Health Care Administration~~, through submission of
21 documentation verified by the applicant's respective
22 professional association in exile, that the applicant was
23 graduated with an appropriate professional or occupational
24 degree from a college or university; however, the department
25 ~~or the Agency for Health Care Administration~~ may not require
26 receipt of any documentation from the Republic of Cuba as a
27 condition of eligibility under this section;

28 (e) Lawfully practiced the profession for at least 3
29 years;

30
31

1 (f) Prior to 1980, successfully completed an approved
2 course of study pursuant to chapters 74-105 and 75-177, Laws
3 of Florida; and

4 (g) Presents a certificate demonstrating the
5 successful completion of a continuing education program which
6 offers a course of study that will prepare the applicant for
7 the examination offered under subsection (2). The department
8 ~~and the Agency for Health Care Administration~~ shall develop
9 rules for the approval of such programs for its ~~their~~
10 ~~respective~~ boards.

11 (2) Upon request of a person who meets the
12 requirements of subsection (1) and submits an examination fee,
13 the department ~~or the Agency for Health Care Administration~~,
14 for its ~~their~~ ~~respective~~ boards, shall provide a written
15 practical examination that ~~which~~ tests the person's current
16 ability to practice the profession competently in accordance
17 with the actual practice of the profession. Evidence of
18 meeting the requirements of subsection (1) shall be treated by
19 the department ~~or the Agency for Health Care Administration~~ as
20 evidence of the applicant's preparation in the academic and
21 preprofessional fundamentals necessary for successful
22 professional practice, and the applicant shall not be examined
23 by the department ~~or the Agency for Health Care Administration~~
24 on such fundamentals.

25 (3) The fees charged for the examinations offered
26 under subsection (2) shall be established by the department
27 ~~and the Agency for Health Care Administration~~, for its ~~their~~
28 ~~respective~~ boards, by rule and shall be sufficient to develop
29 or to contract for the development of the examination and its
30 administration, grading, and grade reviews.

31

1 (4) The department ~~and the Agency for Health Care~~
2 ~~Administration~~ shall examine any applicant who meets the
3 requirements of subsections (1) and (2). Upon passing the
4 examination and the issuance of the license, a licensee is
5 subject to the administrative requirements of this part
6 ~~chapter~~ and the respective practice act under which the
7 license is issued. Each applicant so licensed is subject to
8 all provisions of this part ~~chapter~~ and the respective
9 practice act under which the license was issued.

10 (5) Upon a request by an applicant otherwise qualified
11 under this section, the examinations offered under subsection
12 (2) may be given in the applicant's native language, provided
13 that any translation costs are borne by the applicant.

14 (6) The department ~~and the Agency for Health Care~~
15 ~~Administration~~, for its ~~their respective~~ boards, shall not
16 issue an initial license to, or renew a license of, any
17 applicant or licensee who is under investigation or
18 prosecution in any jurisdiction for an action which would
19 constitute a violation of this part ~~chapter~~ or the
20 professional practice acts administered by the department or
21 agency and the boards until such time as the investigation or
22 prosecution is complete, at which time the provisions of the
23 professional practice acts shall apply.

24 Section 15. Section 455.2185, Florida Statutes, is
25 amended to read:

26 455.2185 Exemption for certain out-of-state or foreign
27 professionals; limited practice permitted.--

28 (1) A professional of any other state or of any
29 territory or other jurisdiction of the United States or of any
30 other nation or foreign jurisdiction is exempt from the
31 requirements of licensure under this part ~~chapter~~ and the

1 applicable professional practice act under the agency with
2 regulatory jurisdiction over the profession if that profession
3 is regulated in this state under the agency with regulatory
4 jurisdiction over the profession and if that person:

5 (a) Holds, if so required in the jurisdiction in which
6 that person practices, an active license to practice that
7 profession.

8 (b) Engages in the active practice of that profession
9 outside the state.

10 (c) Is employed or designated in that professional
11 capacity by a sports entity visiting the state for a specific
12 sporting event.

13 (2) A professional's practice under this section is
14 limited to the members, coaches, and staff of the team for
15 which that professional is employed or designated and to any
16 animals used if the sporting event for which that professional
17 is employed or designated involves animals. A professional
18 practicing under authority of this section shall not have
19 practice privileges in any licensed ~~health care facility or~~
20 veterinary facility without the approval of that facility.

21 Section 16. Subsections (1) and (2) of section
22 455.221, Florida Statutes, are amended to read:

23 455.221 Legal and investigative services.--

24 (1) A board shall retain, through the department's
25 contract procedures, board counsel from the Department of
26 Legal Affairs. The Department of Legal Affairs shall provide
27 legal services to each board within the Department of Business
28 and Professional Regulation ~~or the Agency for Health Care~~
29 ~~Administration~~, but the primary responsibility of the
30 Department of Legal Affairs shall be to represent the
31 interests of the citizens of the state by vigorously

1 counseling the boards with respect to their obligations under
2 the laws of the state. A board shall provide for the periodic
3 review and evaluation of the services provided by its board
4 counsel. Subject to the prior approval of the Attorney
5 General, any board may retain, through the department's
6 contract procedures, independent legal counsel to provide
7 legal advice to the board on a specific matter. Fees and costs
8 of such counsel by the Department of Legal Affairs or
9 independent legal counsel approved by the Attorney General
10 shall be paid from the Professional Regulation Trust Fund ~~or~~
11 ~~the Health Care Trust Fund, as appropriate.~~ All contracts for
12 independent counsel shall provide for periodic review and
13 evaluation by the board and the department of services
14 provided.

15 (2) The Department of Business and Professional
16 Regulation ~~or the Agency for Health Care Administration~~ may
17 employ or utilize the legal services of outside counsel and
18 the investigative services of outside personnel. However, no
19 attorney employed or used ~~utilized~~ by the department ~~or the~~
20 ~~Agency for Health Care Administration~~ shall prosecute a matter
21 and provide legal services to the board with respect to the
22 same matter.

23 Section 17. Subsection (1) of section 455.2226,
24 Florida Statutes, is amended to read:

25 455.2226 Requirement for instruction on human
26 immunodeficiency virus and acquired immune deficiency
27 syndrome.--

28 (1) ~~As of July 1, 1991, The appropriate~~ Board of
29 Funeral Directors and Embalmers shall require each person
30 licensed or certified under ~~chapter 457; chapter 458; chapter~~
31 ~~459; chapter 460; chapter 461; chapter 463; chapter 464;~~

1 ~~chapter 465; chapter 466; part II, part III, or part V of~~
2 ~~chapter 468; chapter 470; or chapter 486~~ to complete a
3 continuing educational course, approved by the board, on human
4 immunodeficiency virus and acquired immune deficiency syndrome
5 as part of biennial relicensure or recertification. The
6 course shall consist of education on the modes of
7 transmission, infection control procedures, clinical
8 management, and prevention of human immunodeficiency virus and
9 acquired immune deficiency syndrome. Such course shall include
10 information on current Florida law on acquired immune
11 deficiency syndrome and its impact on testing, confidentiality
12 of test results, and treatment of patients.

13 Section 18. Subsection (1) of section 455.2228,
14 Florida Statutes, is amended to read:

15 455.2228 Requirement for instruction on human
16 immunodeficiency virus and acquired immune deficiency
17 syndrome.--

18 (1) The board, or the department where there is no
19 board, shall require each person licensed or certified under
20 chapter 476 ~~or, chapter 477, chapter 480, or part XIV of~~
21 ~~chapter 468~~ to complete a continuing educational course
22 approved by the board, or the department where there is no
23 board, on human immunodeficiency virus and acquired immune
24 deficiency syndrome as part of biennial relicensure or
25 recertification. The course shall consist of education on
26 modes of transmission, infection control procedures, clinical
27 management, and prevention of human immunodeficiency virus and
28 acquired immune deficiency syndrome, with an emphasis on
29 appropriate behavior and attitude change.

30 Section 19. Section 455.223, Florida Statutes, 1996
31 Supplement, is amended to read:

1 455.223 Power to administer oaths, take depositions,
2 and issue subpoenas.--For the purpose of any investigation or
3 proceeding conducted by the department ~~or the Agency for~~
4 ~~Health Care Administration~~, the department ~~or the agency~~ shall
5 have the power to administer oaths, take depositions, make
6 inspections when authorized by statute, issue subpoenas which
7 shall be supported by affidavit, serve subpoenas and other
8 process, and compel the attendance of witnesses and the
9 production of books, papers, documents, and other evidence.
10 The department ~~or the Agency for Health Care Administration~~
11 shall exercise this power on its own initiative or whenever
12 requested by a board or the probable cause panel of any board.
13 Challenges to, and enforcement of, the subpoenas and orders
14 shall be handled as provided in s. 120.569.

15 Section 20. Subsections (1), (2), (3), and (6) of
16 section 455.224, Florida Statutes, are amended to read:

17 455.224 Authority to issue citations.--

18 (1) Notwithstanding s. 455.225, the board, or the
19 department ~~or the Agency for Health Care Administration~~ when
20 there is no board, shall adopt rules to permit the issuance of
21 citations. The citation shall be issued to the subject and
22 shall contain the subject's name and address, the subject's
23 license number if applicable, a brief factual statement, the
24 sections of the law allegedly violated, and the penalty
25 imposed. The citation must clearly state that the subject may
26 choose, in lieu of accepting the citation, to follow the
27 procedure under s. 455.225. If the subject disputes the matter
28 in the citation, the procedures set forth in s. 455.225 must
29 be followed. However, if the subject does not dispute the
30 matter in the citation with the department ~~or the agency~~,
31 ~~whichever has jurisdiction~~, within 30 days after the citation

1 is served, the citation becomes a final order and constitutes
2 discipline. The penalty shall be a fine or other conditions as
3 established by rule.

4 (2) The board, or the department ~~or the agency~~ when
5 there is no board, shall adopt rules designating violations
6 for which a citation may be issued. Such rules shall
7 designate as citation violations those violations for which
8 there is no substantial threat to the public health, safety,
9 and welfare.

10 (3) The department ~~or the Agency for Health Care~~
11 ~~Administration~~ shall be entitled to recover the costs of
12 investigation, in addition to any penalty provided according
13 to board ~~or, department, or agency~~ rule, as part of the
14 penalty levied pursuant to the citation.

15 (6) Within its jurisdiction ~~their respective~~
16 ~~jurisdictions~~, the department has ~~and the Agency for Health~~
17 ~~Care Administration have~~ exclusive authority to, and shall
18 adopt rules to, designate those violations for which the
19 licensee is subject to the issuance of a citation and
20 designate the penalties for those violations if any board
21 fails to incorporate this section into rules by January 1,
22 1992. A board created on or after January 1, 1992, has 6
23 months in which to enact rules designating violations and
24 penalties appropriate for citation offenses. Failure to enact
25 such rules gives the department ~~or the agency~~ exclusive
26 authority to adopt rules as required for implementing this
27 section. A board has continuous authority to amend its rules
28 adopted pursuant to this section.

29 Section 21. Section 455.225, Florida Statutes, 1996
30 Supplement, is amended to read:

31

1 455.225 Disciplinary proceedings.--Disciplinary
2 proceedings for each board shall be within the jurisdiction of
3 the department ~~or the Agency for Health Care Administration,~~
4 ~~as appropriate.~~

5 (1) The department ~~or the Agency for Health Care~~
6 ~~Administration,~~ for the boards under its jurisdiction ~~their~~
7 ~~respective jurisdictions,~~ shall cause to be investigated any
8 complaint that is filed before it if the complaint is in
9 writing, signed by the complainant, and legally sufficient. A
10 complaint is legally sufficient if it contains ultimate facts
11 that show that a violation of this part chapter, of any of the
12 practice acts relating to the professions regulated by the
13 department ~~or the agency,~~ or of any rule adopted by the
14 department, ~~the agency,~~ or a regulatory board in the
15 department ~~or the agency~~ has occurred. In order to determine
16 legal sufficiency, the department ~~or the agency~~ may require
17 supporting information or documentation. The department ~~or the~~
18 ~~agency~~ may investigate, and the department, ~~the agency,~~ or the
19 appropriate board may take appropriate final action on, a
20 complaint even though the original complainant withdraws it or
21 otherwise indicates a desire not to cause the complaint to be
22 investigated or prosecuted to completion. The department ~~or~~
23 ~~the agency~~ may investigate an anonymous complaint if the
24 complaint is in writing and is legally sufficient, if the
25 alleged violation of law or rules is substantial, and if the
26 department ~~or the agency~~ has reason to believe, after
27 preliminary inquiry, that the ~~alleged~~ violations alleged in
28 the complaint are true. The department ~~or the agency~~ may
29 investigate a complaint made by a confidential informant if
30 the complaint is legally sufficient, if the alleged violation
31 of law or rule is substantial, and if the department ~~or the~~

1 ~~agency~~ has reason to believe, after preliminary inquiry, that
2 the allegations of the complainant are true. The department ~~or~~
3 ~~the agency~~ may initiate an investigation if it has reasonable
4 cause to believe that a licensee or a group of licensees has
5 violated a Florida statute, a rule of the department, ~~a rule~~
6 ~~of the agency~~, or a rule of a board. ~~Except as provided in ss.~~
7 ~~458.331(9), 459.015(9), 460.413(5), and 461.013(6),~~ When an
8 investigation of any subject is undertaken, the department ~~or~~
9 ~~the agency~~ shall promptly furnish to the subject or the
10 subject's attorney a copy of the complaint or document that
11 resulted in the initiation of the investigation. The subject
12 may submit a written response to the information contained in
13 such complaint or document within 20 days after service to the
14 subject of the complaint or document. The subject's written
15 response shall be considered by the probable cause panel. The
16 right to respond does not prohibit the issuance of a summary
17 emergency order if necessary to protect the public. However,
18 if the secretary, or the secretary's designee, and the
19 chairman of the respective board or the chairman of its
20 probable cause panel agree in writing that such notification
21 would be detrimental to the investigation, the department ~~or~~
22 ~~the agency~~ may withhold notification. The department ~~or the~~
23 ~~agency~~ may conduct an investigation without notification to
24 any subject if the act under investigation is a criminal
25 offense.

26 (2) The department ~~and the Agency for Health Care~~
27 ~~Administration~~ shall allocate sufficient and adequately
28 trained staff to expeditiously and thoroughly determine legal
29 sufficiency and investigate all legally sufficient complaints.
30 When its investigation is complete and legally sufficient, the
31 department ~~or the agency~~ shall prepare and submit to the

1 probable cause panel of the appropriate regulatory board the
2 investigative report of the department ~~or the agency~~. The
3 report shall contain the investigative findings and the
4 recommendations of the department ~~or the agency~~ concerning the
5 existence of probable cause. At any time after legal
6 sufficiency is found, the department ~~or the agency~~ may dismiss
7 any case, or any part thereof, if the department ~~or the agency~~
8 determines that there is insufficient evidence to support the
9 prosecution of allegations contained therein. The department
10 ~~or the agency~~ shall provide a detailed report to the
11 appropriate probable cause panel prior to dismissal of any
12 case or part thereof, and to the subject of the complaint
13 after dismissal of any case or part thereof, under this
14 section. For cases dismissed prior to a finding of probable
15 cause, such report is confidential and exempt from s.
16 119.07(1). The probable cause panel shall have access, upon
17 request, to the investigative files pertaining to a case prior
18 to dismissal of such case. If the department ~~or the agency~~
19 dismisses a case, the probable cause panel may retain
20 independent legal counsel, employ investigators, and continue
21 the investigation and prosecution of the case as it deems
22 necessary.

23 (3) As an alternative to the provisions of subsections
24 (1) and (2), when a complaint is received, the department ~~or~~
25 ~~the agency~~ may provide a licensee with a notice of
26 noncompliance for an initial offense of a minor violation.
27 Each board, or the department ~~or the agency~~ if there is no
28 board, shall establish by rule those minor violations under
29 this provision which do not endanger the public health,
30 safety, and welfare and which do not demonstrate a serious
31 inability to practice the profession. Failure of a licensee to

1 take action in correcting the violation within 15 days after
2 notice may result in the institution of regular disciplinary
3 proceedings.

4 (4) The determination as to whether probable cause
5 exists shall be made by majority vote of a probable cause
6 panel of the board, ~~or by the department or the Agency for~~
7 ~~Health Care Administration~~, as appropriate. Each regulatory
8 board shall provide by rule that the determination of probable
9 cause shall be made by a panel of its members or by the
10 department ~~or the agency~~. Each board may provide by rule for
11 multiple probable cause panels composed of at least two
12 members. Each board may provide by rule that one or more
13 members of the panel or panels may be a former board member.
14 The length of term or repetition of service of any such former
15 board member on a probable cause panel may vary according to
16 the direction of the board when authorized by board rule. Any
17 probable cause panel must include one of the board's former or
18 present consumer members, if one is available, willing to
19 serve, and is authorized to do so by the board chairman. Any
20 probable cause panel must include a present board member. Any
21 probable cause panel must include a former or present
22 professional board member. However, any former professional
23 board member serving on the probable cause panel must hold an
24 active valid license for that profession. All proceedings of
25 the panel are exempt from s. 286.011 until 10 days after
26 probable cause has been found to exist by the panel or until
27 the subject of the investigation waives his privilege of
28 confidentiality. The probable cause panel may make a
29 reasonable request, and upon such request the department ~~or~~
30 ~~the agency~~ shall provide such additional investigative
31 information as is necessary to the determination of probable

1 cause. A request for additional investigative information
2 shall be made within 15 days from the date of receipt by the
3 probable cause panel of the investigative report of the
4 department ~~or the agency~~. The probable cause panel or the
5 department ~~or the agency~~, as may be appropriate, shall make
6 its determination of probable cause within 30 days after
7 receipt by it of the final investigative report of the
8 department ~~or the agency~~. The secretary may grant extensions
9 of the 15-day and the 30-day time limits. If the probable
10 cause panel does not find probable cause within the 30-day
11 time limit, as may be extended, or if the probable cause panel
12 finds no probable cause, the department ~~or the agency~~ may
13 determine, within 10 days after the panel fails to determine
14 probable cause or 10 days after the time limit has elapsed,
15 that probable cause exists. In lieu of a finding of probable
16 cause, the probable cause panel, or the department ~~or the~~
17 ~~agency~~ when there is no board, may issue a letter of guidance
18 to the subject. If the probable cause panel finds that
19 probable cause exists, it shall direct the department ~~or the~~
20 ~~agency~~ to file a formal complaint against the licensee. The
21 department ~~or the agency~~ shall follow the directions of the
22 probable cause panel regarding the filing of a formal
23 complaint. If directed to do so, the department ~~or the agency~~
24 shall file a formal complaint against the subject of the
25 investigation and prosecute that complaint pursuant to chapter
26 120. However, the department ~~or the agency~~ may decide not to
27 prosecute the complaint if it finds that probable cause had
28 been improvidently found by the panel. In such cases, the
29 department ~~or the agency~~ shall refer the matter to the board.
30 The board may then file a formal complaint and prosecute the
31 complaint pursuant to chapter 120. The department ~~or the~~

1 ~~agency~~ shall also refer to the board any investigation or
2 disciplinary proceeding not before the Division of
3 Administrative Hearings pursuant to chapter 120 or otherwise
4 completed by the department ~~or the agency~~ within 1 year after
5 the filing of a complaint. A probable cause panel or a board
6 may retain independent legal counsel, employ investigators,
7 and continue the investigation as it deems necessary; all
8 costs thereof shall be paid from the ~~Health Care Trust Fund or~~
9 ~~the Professional Regulation Trust Fund, as appropriate~~. All
10 proceedings of the probable cause panel are exempt from s.
11 120.525.

12 (5) A formal hearing before an administrative law
13 judge from the Division of Administrative Hearings shall be
14 held pursuant to chapter 120 if there are any disputed issues
15 of material fact. The administrative law judge shall issue a
16 recommended order pursuant to chapter 120. If any party raises
17 an issue of disputed fact during an informal hearing, the
18 hearing shall be terminated and a formal hearing pursuant to
19 chapter 120 shall be held.

20 (6) The appropriate board, with those members of the
21 panel, if any, who reviewed the investigation pursuant to
22 subsection (4) being excused, or the department when there is
23 no board, shall determine and issue the final order in each
24 disciplinary case. Such order shall constitute final agency
25 action. Any consent order or agreed settlement shall be
26 subject to the approval of the department ~~or the agency~~.

27 (7) The department ~~or the Agency for Health Care~~
28 ~~Administration, as appropriate~~, shall have standing to seek
29 judicial review of any final order of the board, pursuant to
30 s. 120.68.

31

1 (8) Any proceeding for the purpose of summary
2 suspension of a license, or for the restriction of the
3 license, of a licensee pursuant to s. 120.60(6) shall be
4 conducted by the Secretary of Business and Professional
5 Regulation or his designee ~~or the Director of Health Care~~
6 ~~Administration or his designee, as appropriate~~, who shall
7 issue the final summary order.

8 (9) The department ~~or the Agency for Health Care~~
9 ~~Administration, as appropriate~~, shall periodically notify the
10 person who filed the complaint of the status of the
11 investigation, whether probable cause has been found, and the
12 status of any civil action or administrative proceeding or
13 appeal.

14 (10) The complaint and all information obtained
15 pursuant to the investigation by the department ~~or the Agency~~
16 ~~for Health Care Administration~~ are confidential and exempt
17 from s. 119.07(1) until 10 days after probable cause has been
18 found to exist by the probable cause panel or by the
19 department ~~or the agency~~, or until the regulated professional
20 or subject of the investigation waives his privilege of
21 confidentiality, whichever occurs first. Upon completion of
22 the investigation and pursuant to a written request by the
23 subject, the department ~~or the agency~~ shall provide the
24 subject an opportunity to inspect the investigative file or,
25 at the subject's expense, forward to the subject a copy of the
26 investigative file. ~~Notwithstanding s. 455.241, the subject~~
27 ~~may inspect or receive a copy of any expert witness report or~~
28 ~~patient record connected with the investigation, if the~~
29 ~~subject agrees in writing to maintain the confidentiality of~~
30 ~~any information received under this subsection until 10 days~~
31 ~~after probable cause is found and to maintain the~~

1 ~~confidentiality of patient records pursuant to s. 455.241.~~ The
2 subject may file a written response to the information
3 contained in the investigative file. Such response must be
4 filed within 20 days, unless an extension of time has been
5 granted by the department ~~or the agency~~. This subsection does
6 not prohibit the department ~~or the Agency for Health Care~~
7 ~~Administration~~ from providing such information to any law
8 enforcement agency or to any other regulatory agency.

9 (11) A privilege against civil liability is hereby
10 granted to any complainant or any witness with regard to
11 information furnished with respect to any investigation or
12 proceeding pursuant to this section, unless the complainant or
13 witness acted in bad faith or with malice in providing such
14 information.

15 ~~(12)(a) No person who reports in any capacity, whether~~
16 ~~or not required by law, information to the department or the~~
17 ~~Division of Health Quality Assurance of the Agency for Health~~
18 ~~Care Administration with regard to the incompetence,~~
19 ~~impairment, or unprofessional conduct of any health care~~
20 ~~provider licensed under chapter 458, chapter 459, chapter 460,~~
21 ~~chapter 461, chapter 462, chapter 463, chapter 464, chapter~~
22 ~~465, or chapter 466 shall be held liable in any civil action~~
23 ~~for reporting against such health care provider if such person~~
24 ~~acts without intentional fraud or malice.~~

25 ~~(b) No facility licensed under chapter 395, health~~
26 ~~maintenance organization certificated under part I of chapter~~
27 ~~641, physician licensed under chapter 458, or osteopathic~~
28 ~~physician licensed under chapter 459 shall discharge, threaten~~
29 ~~to discharge, intimidate, or coerce any employee or staff~~
30 ~~member by reason of such employee's or staff member's report~~
31 ~~to the agency about a physician licensed under chapter 458,~~

1 ~~chapter 459, chapter 460, chapter 461, or chapter 466 who may~~
2 ~~be guilty of incompetence, impairment, or unprofessional~~
3 ~~conduct so long as such report is given without intentional~~
4 ~~fraud or malice.~~

5 ~~(c) In any civil suit brought outside the protections~~
6 ~~of paragraphs (a) and (b), where intentional fraud or malice~~
7 ~~is alleged, the person alleging intentional fraud or malice~~
8 ~~shall be liable for all court costs and for the other party's~~
9 ~~reasonable attorney's fees if intentional fraud or malice is~~
10 ~~not proved.~~

11 Section 22. Paragraphs (b), (d), (g), (i), (j), and
12 (q) of subsection (1) and subsection (4) of section 455.227,
13 Florida Statutes, are amended to read:

14 455.227 Grounds for discipline; penalties;
15 enforcement.--

16 (1) The following acts shall constitute grounds for
17 which the disciplinary actions specified in subsection (2) may
18 be taken:

19 (b) Intentionally violating any rule adopted by the
20 board or, the department, ~~or the Agency for Health Care~~
21 ~~Administration~~, as appropriate.

22 (d) Using a Class III or a Class IV laser device or
23 product, as defined by federal regulations, without having
24 complied with the rules adopted pursuant to s. 501.122(2)
25 governing the registration of such devices ~~with the Department~~
26 ~~of Health and Rehabilitative Services.~~

27 (g) Having been found liable in a civil proceeding for
28 knowingly filing a false report or complaint with the
29 department ~~or the agency~~ against another licensee.

30 (i) ~~Except as provided in s. 465.016,~~ Failing to
31 report to the department any person who the licensee knows is

1 in violation of this part ~~chapter~~, the chapter regulating the
2 alleged violator, or the rules of the department or the board.

3 (j) Aiding, assisting, procuring, employing, or
4 advising any unlicensed person or entity to practice a
5 profession contrary to this part ~~chapter~~, the chapter
6 regulating the profession, or the rules of the department or
7 the board.

8 (q) Violating any provision of this part ~~chapter~~, the
9 applicable professional practice act, a rule of the department
10 or the board, or a lawful order of the department or the
11 board, or failing to comply with a lawfully issued subpoena of
12 the department.

13 (4) In addition to, or in lieu of, any other remedy or
14 criminal prosecution, the department ~~or the Agency for Health~~
15 ~~Care Administration, as appropriate,~~ may file a proceeding in
16 the name of the state seeking issuance of an injunction or a
17 writ of mandamus against any person who violates any of the
18 provisions of this part ~~chapter~~, or any provision of law with
19 respect to professions regulated by the department ~~or the~~
20 ~~agency~~, or any board therein, or the rules adopted pursuant
21 thereto.

22 Section 23. Section 455.2273, Florida Statutes, 1996
23 Supplement, is amended to read:

24 455.2273 Disciplinary guidelines.--

25 (1) Each board, or the department when there is no
26 board, shall adopt, by rule, and periodically review the
27 disciplinary guidelines applicable to each ground for
28 disciplinary action which may be imposed by the board, or the
29 department when there is no board, pursuant to this part
30 ~~chapter~~, the respective practice acts, and any rule of the
31 board or department.

1 (2) The disciplinary guidelines shall specify a
2 meaningful range of designated penalties based upon the
3 severity and repetition of specific offenses, it being the
4 legislative intent that minor violations be distinguished from
5 those which endanger the public health, safety, or welfare;
6 that such guidelines provide reasonable and meaningful notice
7 to the public of likely penalties which may be imposed for
8 proscribed conduct; and that such penalties be consistently
9 applied by the board.

10 (3) A specific finding of mitigating or aggravating
11 circumstances shall allow the board to impose a penalty other
12 than that provided for in such guidelines. If applicable, the
13 board, or the department when there is no board, shall adopt
14 by rule disciplinary guidelines to designate possible
15 mitigating and aggravating circumstances and the variation and
16 range of penalties permitted for such circumstances.

17 (4) The department ~~or the Agency for Health Care~~
18 ~~Administration, as appropriate,~~ must review such disciplinary
19 guidelines for compliance with the legislative intent as set
20 forth herein to determine whether the guidelines establish a
21 meaningful range of penalties and may also challenge such
22 rules pursuant to s. 120.56.

23 ~~(5) The rules provided for in this section shall be~~
24 ~~promulgated no later than January 1, 1993.~~

25 (5)~~(6)~~ The administrative law judge, in recommending
26 penalties in any recommended order, must follow the penalty
27 guidelines established by the board or department and must
28 state in writing the mitigating or aggravating circumstances
29 upon which the recommended penalty is based.

30 Section 24. Section 455.2275, Florida Statutes, is
31 amended to read:

1 455.2275 Penalty for giving false information.--In
2 addition to, or in lieu of, any other discipline imposed
3 pursuant to s. 455.227, the act of knowingly giving false
4 information in the course of applying for or obtaining a
5 license from the department ~~or the Agency for Health Care~~
6 ~~Administration~~, or any board thereunder, with intent to
7 mislead a public servant in the performance of his official
8 duties, or the act of attempting to obtain or obtaining a
9 license from either the department ~~or the agency~~, or any board
10 thereunder, to practice a profession by knowingly misleading
11 statements or knowing misrepresentations constitutes a felony
12 of the third degree, punishable as provided in s. 775.082, s.
13 775.083, or s. 775.084.

14 Section 25. Subsections (1), (2), and (5) of section
15 455.228, Florida Statutes, 1996 Supplement, are amended to
16 read:

17 455.228 Unlicensed practice of a profession; cease and
18 desist notice; civil penalty; enforcement; citations;
19 allocation of moneys collected.--

20 (1) When the department ~~or the Agency for Health Care~~
21 ~~Administration~~ has probable cause to believe that any person
22 not licensed by the department ~~or the agency~~, or the
23 appropriate regulatory board within the department ~~or the~~
24 ~~agency~~, has violated any provision of this part ~~chapter~~ or any
25 statute that relates to the practice of a profession regulated
26 by the department ~~or the agency~~, or any rule adopted pursuant
27 thereto, the department ~~or the agency~~ may issue and deliver to
28 such person a notice to cease and desist from such violation.
29 In addition, the department ~~or the agency~~ may issue and
30 deliver a notice to cease and desist to any person who aids
31 and abets the unlicensed practice of a profession by employing

1 such unlicensed person. The issuance of a notice to cease and
2 desist shall not constitute agency action for which a hearing
3 under ss. 120.569 and 120.57 may be sought. For the purpose of
4 enforcing a cease and desist order, the department ~~or the~~
5 ~~agency~~ may file a proceeding in the name of the state seeking
6 issuance of an injunction or a writ of mandamus against any
7 person who violates any provisions of such order. In addition
8 to the foregoing remedies, the department ~~or the agency~~ may
9 impose an administrative penalty not to exceed \$5,000 per
10 incident pursuant to the provisions of chapter 120 or may
11 issue a citation pursuant to the provisions of subsection (3).
12 If the department ~~or the agency~~ is required to seek
13 enforcement of the ~~agency~~ order for a penalty pursuant to s.
14 120.569, it shall be entitled to collect its attorney's fees
15 and costs, together with any cost of collection.

16 (2) In addition to or in lieu of any remedy provided
17 in subsection (1), the department ~~or the agency~~ may seek the
18 imposition of a civil penalty through the circuit court for
19 any violation for which the department ~~or the agency~~ may issue
20 a notice to cease and desist under subsection (1). The civil
21 penalty shall be no less than \$500 and no more than \$5,000 for
22 each offense. The court may also award to the prevailing party
23 court costs and reasonable attorney fees and, in the event the
24 department ~~or the agency~~ prevails, may also award reasonable
25 costs of investigation.

26 (5) The provisions of this section apply only to the
27 provisions of s. 455.217 and the professional practice acts
28 administered by the department ~~or the Agency for Health Care~~
29 ~~Administration~~.

30 Section 26. Section 455.2285, Florida Statutes, is
31 amended to read:

1 455.2285 Annual report concerning finances,
2 administrative complaints, disciplinary actions, and
3 recommendations.--The department is ~~and the Agency for Health~~
4 ~~Care Administration are each~~ directed to prepare and submit a
5 report to the President of the Senate and Speaker of the House
6 of Representatives by November 1 of each year. In addition to
7 finances and any other information the Legislature may
8 require, the report shall include statistics and relevant
9 information, profession by profession, detailing:

10 (1) The revenues, expenditures, and cash balances for
11 the prior year, and a review of the adequacy of existing fees.

12 (2) The number of complaints received and
13 investigated.

14 (3) The number of findings of probable cause made.

15 (4) The number of findings of no probable cause made.

16 (5) The number of administrative complaints filed.

17 (6) The disposition of all administrative complaints.

18 (7) A description of disciplinary actions taken.

19 (8) The status of the development and implementation
20 of rules providing for disciplinary guidelines pursuant to s.
21 455.2273.

22 (9) Such recommendations for administrative and
23 statutory changes necessary to facilitate efficient and
24 cost-effective operation of the department and the various
25 boards.

26 Section 27. Section 455.229, Florida Statutes, 1996
27 Supplement, is amended to read:

28 455.229 Public inspection of information required from
29 applicants; exceptions; examination hearing.--

30 (1) All information required by the department ~~or the~~
31 ~~Agency for Health Care Administration~~ of any applicant shall

1 be a public record and shall be open to public inspection
2 pursuant to s. 119.07, except financial information, medical
3 information, school transcripts, examination questions,
4 answers, papers, grades, and grading keys, which are
5 confidential and exempt from s. 119.07(1) and shall not be
6 discussed with or made accessible to anyone except members of
7 the board, the department ~~or the Agency for Health Care~~
8 ~~Administration~~, and staff thereof, who have a bona fide need
9 to know such information. Any information supplied to the
10 department ~~or the Agency for Health Care Administration~~ by any
11 other agency which is exempt from the provisions of chapter
12 119 or is confidential shall remain exempt or confidential
13 pursuant to applicable law while in the custody of the
14 department ~~or the agency~~.

15 (2) The department ~~or the Agency for Health Care~~
16 ~~Administration~~ shall establish by rule the procedure by which
17 an applicant, and the applicant's attorney, may review
18 examination questions and answers. Examination questions and
19 answers are not subject to discovery but may be introduced
20 into evidence and considered only in camera in any
21 administrative proceeding under chapter 120. If an
22 administrative hearing is held, the department ~~or the agency~~
23 shall provide challenged examination questions and answers to
24 the administrative law judge. The examination questions and
25 answers provided at the hearing are confidential and exempt
26 from s. 119.07(1), unless invalidated by the administrative
27 law judge.

28 (3) Unless an applicant notifies the department ~~or the~~
29 ~~agency~~ at least 5 days prior to an examination hearing of the
30 applicant's inability to attend, or unless an applicant can
31 demonstrate an extreme emergency for failing to attend, the

1 department ~~or the agency~~ may require an applicant who fails to
2 attend to pay reasonable attorney's fees, costs, and court
3 costs of the department ~~or the agency~~ for the examination
4 hearing.

5 Section 28. Subsection (1) of section 455.232, Florida
6 Statutes, is amended to read:

7 455.232 Disclosure of confidential information.--

8 (1) No officer, employee, or person under contract
9 with the department ~~or the Agency for Health Care~~
10 ~~Administration~~, or any board therein, or any subject of an
11 investigation shall convey knowledge or information to any
12 person who is not lawfully entitled to such knowledge or
13 information about any public meeting or public record, which
14 at the time such knowledge or information is conveyed is
15 exempt from the provisions of s. 119.01, s. 119.07(1), or s.
16 286.011.

17 Section 29. Section 455.24, Florida Statutes, is
18 amended to read:

19 455.24 Advertisement by a veterinarian health care
20 ~~provider~~ of free or discounted services; required
21 statement.--In any advertisement for a free, discounted fee,
22 or reduced fee service, examination, or treatment by a person
23 ~~health care provider~~ licensed under ~~chapter 458, chapter 459,~~
24 ~~chapter 460, chapter 461, chapter 462, chapter 463, chapter~~
25 ~~464, chapter 466, chapter 474, or chapter 486,~~ the following
26 statement shall appear in capital letters clearly
27 distinguishable from the rest of the text: ~~THE PATIENT AND~~
28 ~~ANY OTHER~~ PERSON RESPONSIBLE FOR PAYMENT HAS A RIGHT TO REFUSE
29 TO PAY, CANCEL PAYMENT, OR BE REIMBURSED FOR PAYMENT FOR ANY
30 OTHER SERVICE, EXAMINATION, OR TREATMENT THAT WHICH IS
31 PERFORMED AS A RESULT OF AND WITHIN 72 HOURS OF RESPONDING TO

1 THE ADVERTISEMENT FOR THE FREE, DISCOUNTED FEE, OR REDUCED FEE
2 SERVICE, EXAMINATION, OR TREATMENT. However, the required
3 statement shall not be necessary as an accompaniment to an
4 advertisement of a licensed health care provider defined by
5 this section if the advertisement appears in a classified
6 directory the primary purpose of which is to provide products
7 and services at free, reduced, or discounted prices to
8 consumers and in which the statement prominently appears in at
9 least one place.

10 Section 30. Section 455.242, Florida Statutes, is
11 amended to read:

12 455.242 Disposition of records of deceased
13 practitioners or practitioners relocating or terminating
14 practice.--Each board created under the provisions of ~~chapter~~
15 ~~457, chapter 458, chapter 459, chapter 460, chapter 461,~~
16 ~~chapter 463, chapter 464, chapter 465, chapter 466, chapter~~
17 ~~474, part I of chapter 484, chapter 486, chapter 490, or~~
18 ~~chapter 491, and the department under the provisions of~~
19 ~~chapter 462,~~ shall provide by rule for the disposition, under
20 that ~~said~~ chapter, of the medical records that ~~or records of a~~
21 ~~psychological nature of practitioners which~~ are in existence
22 at the time the practitioner dies, terminates practice, or
23 relocates and is no longer available ~~to patients~~ and which
24 records pertain to the practitioner's patients. The rules
25 shall provide that the records be retained for at least 2
26 years after the practitioner's death, termination of practice,
27 or relocation. In the case of the death of the practitioner,
28 the rules shall provide for the disposition of such records by
29 the estate of the practitioner.

30 Section 31. Section 455.243, Florida Statutes, is
31 amended to read:

1 455.243 Authority to inspect.--~~In addition to the~~
2 ~~authority specified in s. 465.017,~~Duly authorized agents and
3 employees of the department ~~and the Agency for Health Care~~
4 ~~Administration~~ shall have the power to inspect in a lawful
5 manner at all reasonable hours+.

6 ~~(1) Any pharmacy; or~~
7 ~~(2)~~any establishment at which the services of a
8 licensee authorized to prescribe controlled substances
9 specified in chapter 893 are offered, for the purpose of
10 determining if any of the provisions of this part ~~chapter~~ or
11 any practice act of a profession or any rule adopted
12 ~~promulgated~~ thereunder is being violated; or for the purpose
13 of securing such other evidence as may be needed for
14 prosecution.

15 Section 32. Section 455.245, Florida Statutes, is
16 amended to read:

17 455.245 Certain ~~health care~~ practitioners; immediate
18 suspension of license.--

19 ~~(1) The department or the Agency for Health Care~~
20 ~~Administration~~ shall issue an emergency order suspending the
21 license of any person licensed under ~~chapter 458, chapter 459,~~
22 ~~chapter 460, chapter 461, chapter 462, chapter 463, chapter~~
23 ~~464, chapter 465, chapter 466, chapter 474, or chapter 484~~ who
24 pleads guilty to, is convicted or found guilty of, or who
25 enters a plea of nolo contendere to, regardless of
26 adjudication, a felony under chapter 409 or chapter 893 or
27 under 21 U.S.C. ss. 801-970 or under 42 U.S.C. ss. 1395-1396.

28 ~~(2) If the board has previously found any physician or~~
29 ~~osteopathic physician in violation of the provisions of s.~~
30 ~~458.331(1)(t) or s. 459.015(1)(x), in regard to his treatment~~
31 ~~of three or more patients, and the probable cause panel of the~~

1 ~~board finds probable cause of an additional violation of that~~
2 ~~section, then the Director of Health Care Administration shall~~
3 ~~review the matter to determine if an emergency suspension or~~
4 ~~restriction order is warranted. Nothing in this section shall~~
5 ~~be construed so as to limit the authority of the secretary of~~
6 ~~the department or the Director of Health Care Administration~~
7 ~~to issue an emergency order.~~

8 Section 33. Section 455.501, Florida Statutes, is
9 created to read:

10 455.501 Definitions.--As used in this part, the term:

11 (1) "Board" means any board or commission, or other
12 statutorily created entity to the extent such entity is
13 authorized to exercise regulatory or rulemaking functions,
14 within the department, except that, for ss. 455.517-455.707,
15 "board" means only a board, or other statutorily created
16 entity to the extent such entity is authorized to exercise
17 regulatory or rulemaking functions, within the Division of
18 Medical Quality Assurance.

19 (2) "Consumer member" means a person appointed to
20 serve on a specific board or who has served on a specific
21 board, who is not, and never has been, a member or
22 practitioner of the profession, or of any closely related
23 profession, regulated by such board.

24 (3) "Department" means the Department of Health.

25 (4) "Health care practitioner" means any person
26 licensed under chapter 457; chapter 458; chapter 459; chapter
27 460; chapter 461; chapter 462; chapter 463; chapter 464;
28 chapter 465; chapter 466; part I, part III, part V, or part X
29 of chapter 468; chapter 480; chapter 484; chapter 486; chapter
30 490; or chapter 491.

31

1 (5) "License" means any permit, registration,
2 certificate, or license issued by the department.

3 (6) "Licensee" means any person issued a permit,
4 registration, certificate, or license by the department.

5 (7) "Profession" means any activity, occupation,
6 profession, or vocation regulated by the department in the
7 Division of Medical Quality Assurance.

8 Section 34. Section 455.504, Florida Statutes, is
9 created to read:

10 455.504 Applicability of part.--This part applies only
11 to the regulation by the department of professions.

12 Section 35. Section 455.507, Florida Statutes, is
13 created to read:

14 455.507 Members of Armed Forces in good standing with
15 administrative boards.--

16 (1) Any member of the Armed Forces of the United
17 States now or hereafter on active duty who, at the time of his
18 becoming such a member, was in good standing with any
19 administrative board of the state and was entitled to practice
20 or engage in his profession or vocation in the state shall be
21 kept in good standing by such administrative board, without
22 registering, paying dues or fees, or performing any other act
23 on his part to be performed, as long as he is a member of the
24 Armed Forces of the United States on active duty and for a
25 period of 6 months after his discharge from active duty as a
26 member of the Armed Forces of the United States, provided he
27 is not engaged in his licensed profession or vocation in the
28 private sector for profit.

29 (2) The boards listed in ss. 20.165 and 20.43 shall
30 adopt rules exempting the spouses of members of the Armed
31 Forces of the United States from licensure renewal provisions,

1 but only in cases of absence from the state because of their
2 spouses' duties with the Armed Forces.

3 Section 36. Section 455.511, Florida Statutes, is
4 created to read:

5 455.511 Restriction on requirement of citizenship.--A
6 person is not disqualified from practicing an occupation or
7 profession regulated by the state solely because he is not a
8 United States citizen.

9 Section 37. Section 455.514, Florida Statutes, is
10 created to read:

11 455.514 Qualification of immigrants for examination to
12 practice a licensed profession or occupation.--

13 (1) It is the declared purpose of this section to
14 encourage the use of foreign-speaking Florida residents duly
15 qualified to become actively qualified in their professions so
16 that all people of this state may receive better services.

17 (2) Any person who has successfully completed, or is
18 currently enrolled in, an approved course of study created
19 pursuant to chapters 74-105 and 75-177, Laws of Florida, shall
20 be deemed qualified for examination and reexaminations for a
21 professional or occupational license which shall be
22 administered in the English language unless 15 or more such
23 applicants request that the reexamination be administered in
24 their native language. In the event that such reexamination
25 is administered in a foreign language, the full cost to the
26 board of preparing and administering it shall be borne by the
27 applicants.

28 (3) Each board within the department shall adopt and
29 implement programs designed to qualify for examination all
30 persons who were resident nationals of the Republic of Cuba
31 and who, on July 1, 1977, were residents of this state.

1 Section 38. Section 455.517, Florida Statutes, is
2 created to read:

3 455.517 Professions and occupations regulated by
4 department; legislative intent; requirements.--

5 (1) It is the intent of the Legislature that persons
6 desiring to engage in any lawful profession regulated by the
7 department shall be entitled to do so as a matter of right if
8 otherwise qualified.

9 (2) The Legislature further believes that such
10 professions shall be regulated only for the preservation of
11 the health, safety, and welfare of the public under the police
12 powers of the state. Such professions shall be regulated when:

13 (a) Their unregulated practice can harm or endanger
14 the health, safety, and welfare of the public, and when the
15 potential for such harm is recognizable and clearly outweighs
16 any anticompetitive impact which may result from regulation.

17 (b) The public is not effectively protected by other
18 means, including, but not limited to, other state statutes,
19 local ordinances, or federal legislation.

20 (c) Less restrictive means of regulation are not
21 available.

22 (3) It is further legislative intent that the use of
23 the term "profession" with respect to those activities
24 licensed and regulated by the department shall not be deemed
25 to mean that such activities are not occupations for other
26 purposes in state or federal law.

27 (4) No board, nor the department, shall create
28 unreasonably restrictive and extraordinary standards that
29 deter qualified persons from entering the various professions.
30 No board, nor the department, shall take any action which
31 tends to create or maintain an economic condition that

1 unreasonably restricts competition, except as specifically
2 provided by law.

3 (5) Policies adopted by the department shall ensure
4 that all expenditures are made in the most cost-effective
5 manner to maximize competition, minimize licensure costs, and
6 maximize public access to meetings conducted for the purpose
7 of professional regulation. The long-range planning function
8 of the department shall be implemented to facilitate effective
9 operations and to eliminate inefficiencies.

10 Section 39. Section 455.521, Florida Statutes, is
11 created to read:

12 455.521 Department; powers and duties.--The
13 department, for the boards under its jurisdiction, shall:

14 (1) Adopt rules establishing a procedure for the
15 biennial renewal of licenses; however, the department may
16 issue up to a 4-year license to selected licensees
17 notwithstanding any other provisions of law to the contrary.
18 Fees for such renewal shall not exceed the fee caps for
19 individual professions on an annualized basis as authorized by
20 law.

21 (2) Appoint the executive director of each board,
22 subject to the approval of the board.

23 (3) Submit an annual budget to the Legislature at a
24 time and in the manner provided by law.

25 (4) Develop a training program for persons newly
26 appointed to membership on any board. The program shall
27 familiarize such persons with the substantive and procedural
28 laws and rules and fiscal information relating to the
29 regulation of the appropriate profession and with the
30 structure of the department.

31 (5) Adopt all rules necessary to administer this part.

1 (6) Establish by rules procedures by which the
2 department shall use the expert or technical advice of the
3 appropriate board for the purposes of investigation,
4 inspection, evaluation of applications, other duties of the
5 department, or any other areas the department may deem
6 appropriate.

7 (7) Require all proceedings of any board or panel
8 thereof and all formal or informal proceedings conducted by
9 the department, an administrative law judge, or a hearing
10 officer with respect to licensing or discipline to be
11 electronically recorded in a manner sufficient to assure the
12 accurate transcription of all matters so recorded.

13 (8) Select only those investigators, or consultants
14 who undertake investigations, who meet criteria established
15 with the advice of the respective boards.

16 (9) Allow applicants for new or renewal licenses and
17 current licensees to be screened by the Title IV-D child
18 support agency pursuant to s. 409.2598 to assure compliance
19 with a support obligation. The purpose of this subsection is
20 to promote the public policy of this state as established in
21 s. 409.2551. The department shall, when directed by the court,
22 suspend or deny the license of any licensee found to have a
23 delinquent support obligation. The department shall issue or
24 reinstate the license without additional charge to the
25 licensee when notified by the court that the licensee has
26 complied with the terms of the court order. The department
27 shall not be held liable for any license denial or suspension
28 resulting from the discharge of its duties under this
29 subsection.

30 Section 40. Section 455.524, Florida Statutes, is
31 created to read:

1 455.524 Long-range policy planning; plans, reports,
2 and recommendations.--To facilitate efficient and
3 cost-effective regulation, the department and the board, where
4 appropriate, shall develop and implement a long-range policy
5 planning and monitoring process to include recommendations
6 specific to each profession. Such process shall include
7 estimates of revenues, expenditures, cash balances, and
8 performance statistics for each profession. The period
9 covered shall not be less than 5 years. The department, with
10 input from the boards, shall develop the long-range plan and
11 must obtain the approval of the secretary. The department
12 shall monitor compliance with the approved long-range plan
13 and, with input from the boards, shall annually update the
14 plans for approval by the secretary. The department shall
15 provide concise management reports to the boards quarterly.
16 As part of the review process, the department shall evaluate:
17 (1) Whether the department, including the boards and
18 the various functions performed by the department, is
19 operating efficiently and effectively and if there is a need
20 for a board or council to assist in cost-effective regulation.
21 (2) How and why the various professions are regulated.
22 (3) Whether there is a need to continue regulation,
23 and to what degree.
24 (4) Whether or not consumer protection is adequate,
25 and how it can be improved.
26 (5) Whether there is consistency between the various
27 practice acts.
28 (6) Whether unlicensed activity is adequately
29 enforced.
30
31

1 Such plans should include conclusions and recommendations on
2 these and other issues as appropriate. Such plans shall be
3 provided to the Governor and the Legislature by November 1 of
4 each year.

5 Section 41. Section 455.527, Florida Statutes, is
6 created to read:

7 455.527 Contacting boards through department.--Each
8 board under the jurisdiction of the department may be
9 contacted through the headquarters of the department in the
10 City of Tallahassee.

11 Section 42. Section 455.206, Florida Statutes, is
12 transferred and renumbered as section 455.531, Florida
13 Statutes.

14 Section 43. Section 455.534, Florida Statutes, is
15 created to read:

16 455.534 Boards; organization; meetings; compensation
17 and travel expenses.--

18 (1) Each board within the department shall comply with
19 the provisions of this section.

20 (2) The board shall annually elect from among its
21 number a chairperson and vice chairperson.

22 (3) The board shall meet at least once annually and
23 may meet as often as is necessary. The chairperson or a quorum
24 of the board shall have the authority to call other meetings.
25 A quorum shall be necessary for the conduct of official
26 business by the board or any committee thereof. Unless
27 otherwise provided by law, 51 percent or more of the appointed
28 members of the board or any committee, when applicable, shall
29 constitute a quorum. The membership of committees of the
30 board, except as otherwise authorized pursuant to this part or
31 the applicable practice act, shall be composed of currently

1 appointed members of the board. The vote of a majority of the
2 members of the quorum shall be necessary for any official
3 action by the board or committee. Three consecutive unexcused
4 absences or absences constituting 50 percent or more of the
5 board's meetings within any 12-month period shall cause the
6 board membership of the member in question to become void, and
7 the position shall be considered vacant. The board, or the
8 department when there is no board, shall, by rule, define
9 unexcused absences.

10 (4) Unless otherwise provided by law, a board member
11 or former board member serving on a probable cause panel shall
12 be compensated \$50 for each day in attendance at an official
13 meeting of the board and for each day of participation in any
14 other business involving the board. Each board shall adopt
15 rules defining the phrase "other business involving the
16 board," but the phrase may not routinely be defined to include
17 telephone conference calls. A board member also shall be
18 entitled to reimbursement for expenses pursuant to s. 112.061.
19 Travel out of state shall require the prior approval of the
20 secretary.

21 (5) When two or more boards have differences between
22 them, the boards may elect to, or the secretary may request
23 that the boards, establish a special committee to settle those
24 differences. The special committee shall consist of three
25 members designated by each board, who may be members of the
26 designating board or other experts designated by the board,
27 and of one additional person designated and agreed to by the
28 members of the special committee. In the event the special
29 committee cannot agree on the additional designee, upon
30 request of the special committee, the secretary may select the
31 designee. The committee shall recommend rules necessary to

1 resolve the differences. If a rule adopted pursuant to this
2 provision is challenged, the participating boards shall share
3 the costs associated with defending the rule or rules. The
4 department shall provide legal representation for any special
5 committee established pursuant to this section.

6 Section 44. Section 455.537, Florida Statutes, is
7 created to read:

8 455.537 Publication of information.--The department
9 and the boards shall have the authority to advise licensees
10 periodically, through the publication of a newsletter, about
11 information that the department or the board determines is of
12 interest to the industry. Unless otherwise prohibited by law,
13 the department and the boards shall publish a summary of final
14 orders resulting in fines, suspensions, or revocations, and
15 any other information the department or the board determines
16 is of interest to the public.

17 Section 45. Section 455.541, Florida Statutes, is
18 created to read:

19 455.541 Accountability and liability of board
20 members.--

21 (1) Each board member shall be accountable to the
22 Governor for the proper performance of duties as a member of
23 the board. The Governor shall investigate any legally
24 sufficient complaint or unfavorable written report received by
25 the Governor or by the department or a board concerning the
26 actions of the board or its individual members. The Governor
27 may suspend from office any board member for malfeasance,
28 misfeasance, neglect of duty, drunkenness, incompetence,
29 permanent inability to perform his official duties, or
30 commission of a felony.

31

1 (2) Each board member and each former board member
2 serving on a probable cause panel shall be exempt from civil
3 liability for any act or omission when acting in the member's
4 official capacity, and the department or the Department of
5 Legal Affairs shall defend any such member in any action
6 against any board or member of a board arising from any such
7 act or omission. In addition, the department or the Department
8 of Legal Affairs may defend the member's company or business
9 in any action against the company or business if the
10 department or the Department of Legal Affairs determines that
11 the actions from which the suit arises are actions taken by
12 the member in the member's official capacity and were not
13 beyond the member's statutory authority. In providing such
14 defense, the department or the Department of Legal Affairs may
15 employ or utilize the legal services of outside counsel.

16 Section 46. Section 455.544, Florida Statutes, is
17 created to read:

18 455.544 Board rules; final agency action;
19 challenges.--

20 (1) The secretary of the department shall have
21 standing to challenge any rule or proposed rule of a board
22 under its jurisdiction pursuant to s. 120.56. In addition to
23 challenges for any invalid exercise of delegated legislative
24 authority, the administrative law judge, upon such a challenge
25 by the secretary, may declare all or part of a rule or
26 proposed rule invalid if it:

27 (a) Does not protect the public from any significant
28 and discernible harm or damages;

29 (b) Unreasonably restricts competition or the
30 availability of professional services in the state or in a
31 significant part of the state; or

1 (c) Unnecessarily increases the cost of professional
2 services without a corresponding or equivalent public benefit.

3
4 However, there shall not be created a presumption of the
5 existence of any of the conditions cited in this subsection in
6 the event that the rule or proposed rule is challenged.

7 (2) In addition, either the secretary or the board
8 shall be a substantially interested party for purposes of s.
9 120.54(7). The board may, as an adversely affected party,
10 initiate and maintain an action pursuant to s. 120.68
11 challenging the final agency action.

12 (3) No board created within the department shall have
13 standing to challenge a rule or proposed rule of another
14 board. However, if there is a dispute between boards
15 concerning a rule or proposed rule, the boards may avail
16 themselves of the provisions of s. 455.534(5).

17 Section 47. Section 455.547, Florida Statutes, is
18 created to read:

19 455.547 Education; substituting demonstration of
20 competency for clock-hour requirements.--Any board, or the
21 department when there is no board, that requires student
22 completion of a specific number of clock hours of classroom
23 instruction for initial licensure purposes shall establish the
24 minimal competencies that such students must demonstrate in
25 order to be licensed. The demonstration of such competencies
26 may be substituted for specific classroom clock-hour
27 requirements established in statute or rule which are related
28 to instructional programs for licensure purposes. Student
29 demonstration of the established minimum competencies shall be
30 certified by the educational institution. The provisions of
31 this section shall not apply to boards for which federal

1 licensure standards are more restrictive or stringent than the
2 standards prescribed in statute.

3 Section 48. Section 455.551, Florida Statutes, is
4 created to read:

5 455.551 Education; accreditation.--Notwithstanding any
6 other provision of law, educational programs and institutions
7 which are required by statute to be accredited, but which were
8 accredited by an agency that has since ceased to perform an
9 accrediting function, shall be recognized until such programs
10 and institutions are accredited by a qualified successor to
11 the original accrediting agency, an accrediting agency
12 recognized by the United States Department of Education, or an
13 accrediting agency recognized by the board, or the department
14 when there is no board.

15 Section 49. Section 455.554, Florida Statutes, is
16 created to read:

17 455.554 Consultation with postsecondary education
18 boards prior to adoption of changes to training
19 requirements.--Any state agency or board that has jurisdiction
20 over the regulation of a profession or occupation shall
21 consult with the State Board of Independent Colleges and
22 Universities; the State Board of Independent Postsecondary
23 Vocational, Technical, Trade, and Business Schools; the Board
24 of Regents; and the State Board of Community Colleges prior to
25 adopting any changes to training requirements relating to
26 entry into the profession or occupation. This consultation
27 must allow the educational board to provide advice regarding
28 the impact of the proposed changes in terms of the length of
29 time necessary to complete the training program and the fiscal
30 impact of the changes. The educational board must be consulted

31

1 only when an institution offering the training program falls
2 under its jurisdiction.

3 Section 50. Section 455.561, Florida Statutes, is
4 created to read:

5 455.561 Limited licenses.--

6 (1) It is the intent of the Legislature that, absent a
7 threat to the health, safety, and welfare of the public, the
8 use of retired professionals in good standing to serve the
9 indigent, underserved, or critical need populations of this
10 state should be encouraged. To that end, the board, or the
11 department when there is no board, may adopt rules to permit
12 practice by retired professionals as limited licensees under
13 this section.

14 (2) Any person desiring to obtain a limited license,
15 when permitted by rule, shall submit to the board, or the
16 department when there is no board, an application and fee, not
17 to exceed \$300, and an affidavit stating that the applicant
18 has been licensed to practice in any jurisdiction in the
19 United States for at least 10 years in the profession for
20 which the applicant seeks a limited license. The affidavit
21 shall also state that the applicant has retired or intends to
22 retire from the practice of that profession and intends to
23 practice only pursuant to the restrictions of the limited
24 license granted pursuant to this section. If the applicant
25 for a limited license submits a notarized statement from the
26 employer stating that the applicant will not receive monetary
27 compensation for any service involving the practice of his
28 profession, the application and all licensure fees shall be
29 waived.

30 (3) The board, or the department when there is no
31 board, may deny limited licensure to an applicant who has

1 committed, or is under investigation or prosecution for, any
2 act which would constitute the basis for discipline pursuant
3 to the provisions of this part or the applicable practice act.

4 (4) The recipient of a limited license may practice
5 only in the employ of public agencies or institutions or
6 nonprofit agencies or institutions which meet the requirements
7 of s. 501(c)(3) of the Internal Revenue Code, and which
8 provide professional liability coverage for acts or omissions
9 of the limited licensee. A limited licensee may provide
10 services only to the indigent, underserved, or critical need
11 populations within the state. The standard for determining
12 indigency shall be that recognized by the Federal Poverty
13 Income Guidelines produced by the United States Department of
14 Health and Human Services. The board, or the department when
15 there is no board, may adopt rules to define underserved and
16 critical need areas and to ensure implementation of this
17 section.

18 (5) A board, or the department when there is no board,
19 may provide by rule for supervision of limited licensees to
20 protect the health, safety, and welfare of the public.

21 (6) Each applicant granted a limited license is
22 subject to all the provisions of this part and the respective
23 practice act under which the limited license is issued which
24 are not in conflict with this section.

25 (7) This section does not apply to chapter 458 or
26 chapter 459.

27 Section 51. Section 455.2141, Florida Statutes, 1996
28 Supplement, is transferred, renumbered as section 455.564,
29 Florida Statutes, and amended to read:

30 455.564 ~~455.2141~~ Department Agency for Health Care
31 Administration; general licensing provisions.--

1 (1) Any person desiring to be licensed in a profession
2 within the jurisdiction of the department ~~Agency for Health~~
3 ~~Care Administration~~ shall apply to the department ~~agency~~ in
4 writing to take the licensure examination. The application
5 shall be made on a form prepared and furnished by the
6 department ~~agency~~ and shall be supplemented as needed to
7 reflect any material change in any circumstance or condition
8 stated in the application which takes place between the
9 initial filing of the application and the final grant or
10 denial of the license and which might affect the decision of
11 the department ~~agency~~.

12 (2) Before the issuance of any license, the department
13 ~~<O>Agency for Health Care Administration~~ may charge an initial
14 license fee as determined by rule of the applicable board or,
15 if no such board exists, by rule of the department ~~agency~~.
16 Upon receipt of the appropriate license fee, the department
17 ~~agency~~ shall issue a license to any person certified by the
18 appropriate board, or its designee, as having met the
19 licensure requirements imposed by law or rule.

20 (3) When any administrative law judge conducts a
21 hearing pursuant to the provisions of chapter 120 with respect
22 to the issuance of a license by the department ~~Agency for~~
23 ~~Health Care Administration~~, the administrative law judge shall
24 submit his recommended order to the appropriate board, which
25 shall thereupon issue a final order. The applicant for
26 licensure may appeal the final order of the board in
27 accordance with the provisions of chapter 120.

28 (4) A privilege against civil liability is hereby
29 granted to any witness for any information furnished by the
30 witness in any proceeding pursuant to this section, unless the
31

1 witness acted in bad faith or with malice in providing such
2 information.

3 (5) As a condition of renewal of a license, the Board
4 of Medicine, the Board of Osteopathic Medicine, the Board of
5 Chiropractic, and the Board of Podiatric Medicine shall each
6 require licensees which they respectively regulate to
7 periodically demonstrate their professional competency by
8 completing at least 40 hours of continuing education every 2
9 years, which may include up to 1 hour of risk management or
10 cost containment and up to 2 hours of other topics related to
11 the applicable medical specialty, if required by board rule.
12 Each of such boards shall determine whether any specific
13 course requirements not otherwise mandated by law shall be
14 mandated and shall approve criteria for, and the content of,
15 any course mandated by such board.

16 (6) The respective boards within the jurisdiction of
17 the department ~~Agency for Health Care Administration~~ may adopt
18 rules to provide for the use of approved videocassette
19 courses, not to exceed 5 hours per subject, to fulfill the
20 continuing education requirements of the professions they
21 regulate. Such rules shall provide for prior board approval
22 of the criteria for and content of such courses and shall
23 provide for a videocassette course validation form to be
24 signed by the vendor and the licensee and submitted to the
25 department ~~Agency for Health Care Administration~~, along with
26 the license renewal application, for continuing education
27 credit.

28 (7) Any board that currently requires continuing
29 education for renewal of a license shall adopt rules to
30 establish the criteria for continuing education courses. The
31 rules may provide that up to a maximum of 25 percent of the

1 required continuing education hours can be fulfilled by the
2 performance of pro bono services to the indigent or to
3 underserved populations or in areas of critical need within
4 the state where the licensee practices. The board, or the
5 department if there is no board, must require that any pro
6 bono services be approved in advance in order to receive
7 credit for continuing education under this subsection. The
8 standard for determining indigency shall be that recognized by
9 the Federal Poverty Income Guidelines produced by the United
10 States Department of Health and Human Services. The rules may
11 provide for approval by the board, or the department if there
12 is no board, that a part of the continuing education hours can
13 be fulfilled by performing research in critical-need areas or
14 for training leading to advanced professional certification.
15 The board, or the department if there is no board, may make
16 rules to define underserved and critical-need areas. The
17 department shall adopt rules for administering continuing
18 education requirements adopted by the boards or the department
19 if there is no board.

20 (8) Notwithstanding any law to the contrary, an
21 elected official who is licensed under a practice act
22 administered by the Division of Health Quality Assurance may
23 hold employment for compensation with any public agency
24 concurrent with such public service. Such dual service must
25 be disclosed according to any disclosure required by
26 applicable law.

27 (9) In any instance in which a licensee or applicant
28 to the department is required to be in compliance with a
29 particular provision by, on, or before a certain date, and if
30 that date occurs on a Saturday, Sunday, or a legal holiday,
31 then the licensee or applicant is deemed to be in compliance

1 with the specific date requirement if the required action
2 occurs on the first succeeding day which is not a Saturday,
3 Sunday, or legal holiday.

4 Section 52. Section 455.2142, Florida Statutes, is
5 transferred, renumbered as section 455.567, Florida Statutes,
6 and amended to read:

7 455.567 ~~455.2142~~ Sexual misconduct; disqualification
8 for license, certificate, or registration.--Each board within
9 the jurisdiction of the department ~~Agency for Health Care~~
10 ~~Administration~~, or the department ~~agency~~ if there is no board,
11 shall refuse to admit a candidate to any examination and
12 refuse to issue a license, certificate, or registration to any
13 applicant if the candidate or applicant has:

14 (1) Had any license, certificate, or registration to
15 practice any profession or occupation revoked or surrendered
16 based on a violation of sexual misconduct in the practice of
17 that profession under the laws of any other state or any
18 territory or possession of the United States and has not had
19 that license, certificate, or registration reinstated by the
20 licensing authority of the jurisdiction that revoked the
21 license, certificate, or registration; or

22 (2) Committed any act in any other state or any
23 territory or possession of the United States which if
24 committed in this state would constitute sexual misconduct.

25
26 A licensing authority's acceptance of a candidate's
27 relinquishment of a license which is offered in response to or
28 in anticipation of the filing of administrative charges
29 against the candidate's license constitutes the surrender of
30 the license.

31

1 Section 53. Section 455.571, Florida Statutes, is
2 created to read:

3 455.571 Use of professional testing
4 services.--Notwithstanding any other provision of law to the
5 contrary, the department may use a professional testing
6 service to prepare, administer, grade, and evaluate any
7 computerized examination, when that service is available and
8 approved by the board, or the department if there is no board.

9 Section 54. Section 455.2173, Florida Statutes, 1996
10 Supplement, is transferred, renumbered as section 455.574,
11 Florida Statutes, and amended to read:

12 455.574 ~~455.2173~~ Department of Health Agency for
13 ~~Health Care Administration~~; examinations.--

14 (1)(a) The department ~~Agency for Health Care~~
15 ~~Administration~~ shall provide, contract, or approve services
16 for the development, preparation, and administration, scoring,
17 score reporting, and evaluation of all examinations, in
18 consultation with the appropriate board. The department
19 ~~agency~~ shall certify ~~ensure~~ that the examinations developed
20 and approved by the department adequately and reliably measure
21 an applicant's ability to practice the profession regulated by
22 the department ~~agency~~ and shall ~~seek the advice of the~~
23 ~~appropriate board in the preparation and administration of the~~
24 ~~examinations.~~ After an examination developed or approved by
25 the department has been administered, the board, or the
26 department when there is no board, may reject any question
27 which does not reliably measure the general areas of
28 competency specified in the rules of the board. The
29 department may contract for the preparation, administration,
30 scoring, score reporting, and evaluation of ~~agency shall use~~
31 ~~professional testing services to prepare, administer, grade,~~

1 ~~and evaluate the~~ examinations, when such services are
2 available and approved by the board.

3 (b) For each examination developed by the department
4 or contracted vendor, to the extent not otherwise specified by
5 statute, the board, or the department, when there is no board,
6 ~~the Agency for Health Care Administration,~~ shall by rule
7 specify the general areas of competency to be covered by each
8 examination, the relative weight to be assigned in grading
9 each area tested, and the score necessary to achieve a passing
10 grade, and fees, where applicable, to cover the actual cost
11 for any purchase, development, and administration of required
12 examinations. This subsection does not apply to national
13 examinations approved and administered pursuant to paragraph

14 (c). If a practical examination is deemed to be necessary,
15 the rules shall specify the criteria by which examiners are to
16 be selected, the grading criteria to be used by the examiner,
17 the relative weight to be assigned in grading each criterion,
18 and the score necessary to achieve a passing grade. When a
19 mandatory standardization exercise for a practical examination
20 is required by law, the board, or the department when there is
21 no board, may conduct such exercise. Therefore, board
22 members, or employees of the department when there is no
23 board, may serve as examiners at a practical examination with
24 the consent of the board or department, as appropriate.

25 (c) The board, or the department when there is no
26 board, may approve by rule the use of any national examination
27 which the department has certified as meeting requirements of
28 national examinations and generally accepted testing standards
29 pursuant to department rules. Providers of examinations
30 seeking certification by the department shall pay the actual
31 costs incurred by the department in making a determination

1 regarding the certification Agency for Health Care
2 ~~Administration shall use any national examination which is~~
3 ~~available and which is approved by the board.~~ The name and
4 number of a candidate may be provided to a national contractor
5 for the limited purpose of preparing the grade tape and
6 information to be returned to the board or department; or, to
7 the extent otherwise specified by rule, the candidate may
8 apply directly to the vendor of the national examination and
9 supply test score information to the department agency. The
10 department agency may delegate to the board the duty to
11 provide and administer the examination. Any national
12 examination approved by a board, or the department when there
13 is no board, prior to October 1, 1997, is deemed certified
14 under this paragraph.

15 (d) Each board, or the department, when there is no
16 board, ~~the Agency for Health Care Administration~~ shall adopt
17 rules regarding the security and monitoring of examinations.
18 The department agency shall implement those rules adopted by
19 the respective boards. In order to maintain the security of
20 examinations, the department may employ the procedures set
21 forth in s. 455.637 to seek fines and injunctive relief
22 against an examinee who violates the provisions of s. 455.577
23 or the rules adopted pursuant to this paragraph. The
24 department, or any agent thereof, may, for the purposes of
25 investigation, confiscate any written, photographic, or
26 recording material or device in the possession of the examinee
27 at the examination site which the department deems necessary
28 to enforce such provisions or rules.

29 (e) If the professional board with jurisdiction over
30 an examination concurs, the department may, for a fee, share
31 with any other state's licensing authority an examination

1 developed by or for the department unless prohibited by a
2 contract entered into by the department for development or
3 purchase of the examination. The department, with the
4 concurrence of the appropriate board, shall establish
5 guidelines that ensure security of a shared exam and shall
6 require that any other state's licensing authority comply with
7 those guidelines. Those guidelines shall be approved by the
8 appropriate professional board. All fees paid by the user
9 shall be applied to the department's examination and
10 development program for professions regulated by this part.

11 (2) For each examination developed by the department
12 or a contracted vendor, the board, or the department, when
13 there is no board, the Agency for Health Care Administration
14 shall adopt rules providing for reexamination of any
15 applicants who have failed an the examination developed by the
16 department or a contracted vendor. If both a written and a
17 practical examination are given, an applicant shall be
18 required to retake only the portion of the examination on
19 which the applicant he failed to achieve a passing grade, if
20 the applicant he successfully passes that portion within a
21 reasonable time, as determined by rule of the board, or the
22 department when there is no board, of his passing the other
23 portion. Except for national examinations approved and
24 administered pursuant to this section, the department shall
25 provide procedures for applicants who fail an examination
26 developed by the department or a contracted vendor to review
27 their examination questions, answers, papers, grades, and
28 grading key. Applicants shall bear the actual cost for the
29 department to provide examination review pursuant to this
30 subsection. The board or, when there is no board, the agency
31 shall make available an examination review procedure for

1 ~~applicants and charge an examination review fee not to exceed~~
2 ~~\$75 per review. Unless prohibited or limited by rules~~
3 ~~implementing security or access guidelines of national~~
4 ~~examinations, the applicant is entitled to review his~~
5 ~~examination questions, answers, papers, grades, and grading~~
6 ~~key. An applicant may waive in writing the confidentiality of~~
7 ~~<U>the applicant's his examination grades.~~

8 (3) For each examination developed or administered by
9 the department or a contracted vendor,~~The Agency for Health~~
10 ~~Care Administration shall make~~ an accurate record of each
11 applicant's examination questions, answers, papers, grades,
12 and grading key. ~~The agency shall be kept~~ keep such record
13 for a period of not less than 2 years immediately following
14 the examination, and such record shall thereafter be
15 maintained or destroyed as provided in chapters 119 and 257
16 267. This subsection does not apply to national examinations
17 approved and administered pursuant to this section.

18 (4) Meetings of any member of the department ~~Agency~~
19 ~~for Health Care Administration~~ or of any board within the
20 department ~~agency~~ held for the exclusive purpose of creating
21 or reviewing licensure examination questions or proposed
22 examination questions are exempt from the provisions of s.
23 286.011 and s. 24(b), Art. I of the State Constitution. Any
24 public records, such as tape recordings, minutes, or notes,
25 generated during or as a result of such meetings are
26 confidential and exempt from the provisions of s. 119.07(1)
27 and s. 24(a), Art. I of the State Constitution. However, these
28 exemptions shall not affect the right of any person to review
29 an examination as provided in subsection (2).

30 (5) For examinations developed by the department or a
31 contracted vendor, each board, or the department when there is

1 no board, may provide licensure examinations in an applicant's
2 native language. Applicants for examination or reexamination
3 pursuant to this subsection shall bear the full cost for the
4 department's development, preparation, administration,
5 grading, and evaluation of any examination in a language other
6 than English. Requests for translated examinations must be on
7 file in the board office at least 6 months prior to the
8 scheduled examination. When determining whether it is in the
9 public interest to allow the examination to be translated into
10 a language other than English, the board shall consider the
11 percentage of the population who speak the applicant's native
12 language. Applicants must apply for translation to the
13 applicable board at least 6 months prior to the scheduled
14 examination.

15 (6) In addition to meeting any other requirements for
16 licensure by examination or by endorsement, an applicant may
17 be required by a board, or the department when there is no
18 board, to certify competency in state laws and rules relating
19 to the applicable practice act.

20 Section 55. Section 455.577, Florida Statutes, is
21 created to read:

22 455.577 Penalty for theft or reproduction of an
23 examination.--In addition to, or in lieu of, any other
24 discipline imposed pursuant to s. 455.624, the theft of an
25 examination in whole or in part or the act of reproducing or
26 copying any examination administered by the department,
27 whether such examination is reproduced or copied in part or in
28 whole and by any means, constitutes a felony of the third
29 degree, punishable as provided in s. 775.082, s. 775.083, or
30 s. 775.084.

31

1 Section 56. Section 455.581, Florida Statutes, is
2 created to read:

3 455.581 Foreign-trained professionals; special
4 examination and license provisions.--

5 (1) When not otherwise provided by law, within its
6 jurisdiction, the department shall by rule provide procedures
7 under which exiled professionals may be examined within each
8 practice act. A person shall be eligible for such examination
9 if the person:

10 (a) Immigrated to the United States after leaving the
11 person's home country because of political reasons, provided
12 such country is located in the Western Hemisphere and lacks
13 diplomatic relations with the United States;

14 (b) Applies to the department and submits a fee;

15 (c) Was a Florida resident immediately preceding the
16 person's application;

17 (d) Demonstrates to the department, through submission
18 of documentation verified by the applicant's respective
19 professional association in exile, that the applicant was
20 graduated with an appropriate professional or occupational
21 degree from a college or university; however, the department
22 may not require receipt of any documentation from the Republic
23 of Cuba as a condition of eligibility under this section;

24 (e) Lawfully practiced the profession for at least 3
25 years;

26 (f) Prior to 1980, successfully completed an approved
27 course of study pursuant to chapters 74-105 and 75-177, Laws
28 of Florida; and

29 (g) Presents a certificate demonstrating the
30 successful completion of a continuing education program which
31 offers a course of study that will prepare the applicant for

1 the examination offered under subsection (2). The department
2 shall develop rules for the approval of such programs for its
3 boards.

4 (2) Upon request of a person who meets the
5 requirements of subsection (1) and submits an examination fee,
6 the department, for its boards, shall provide a written
7 practical examination which tests the person's current ability
8 to practice the profession competently in accordance with the
9 actual practice of the profession. Evidence of meeting the
10 requirements of subsection (1) shall be treated by the
11 department as evidence of the applicant's preparation in the
12 academic and preprofessional fundamentals necessary for
13 successful professional practice, and the applicant shall not
14 be examined by the department on such fundamentals.

15 (3) The fees charged for the examinations offered
16 under subsection (2) shall be established by the department,
17 for its boards, by rule and shall be sufficient to develop or
18 to contract for the development of the examination and its
19 administration, grading, and grade reviews.

20 (4) The department shall examine any applicant who
21 meets the requirements of subsections (1) and (2). Upon
22 passing the examination and the issuance of the license, a
23 licensee is subject to the administrative requirements of this
24 part and the respective practice act under which the license
25 is issued. Each applicant so licensed is subject to all
26 provisions of this part and the respective practice act under
27 which the license was issued.

28 (5) Upon a request by an applicant otherwise qualified
29 under this section, the examinations offered under subsection
30 (2) may be given in the applicant's native language, provided
31 that any translation costs are borne by the applicant.

1 (6) The department, for its boards, shall not issue an
2 initial license to, or renew a license of, any applicant or
3 licensee who is under investigation or prosecution in any
4 jurisdiction for an action which would constitute a violation
5 of this part or the professional practice acts administered by
6 the department and the boards until such time as the
7 investigation or prosecution is complete, at which time the
8 provisions of the professional practice acts shall apply.

9 Section 57. Section 455.584, Florida Statutes, is
10 created to read:

11 455.584 Exemption for certain out-of-state or foreign
12 professionals; limited practice permitted.--

13 (1) A professional of any other state or of any
14 territory or other jurisdiction of the United States or of any
15 other nation or foreign jurisdiction is exempt from the
16 requirements of licensure under this part and the applicable
17 professional practice act under the agency with regulatory
18 jurisdiction over the profession if that profession is
19 regulated in this state under the agency with regulatory
20 jurisdiction over the profession and if that person:

21 (a) Holds, if so required in the jurisdiction in which
22 that person practices, an active license to practice that
23 profession.

24 (b) Engages in the active practice of that profession
25 outside the state.

26 (c) Is employed or designated in that professional
27 capacity by a sports entity visiting the state for a specific
28 sporting event.

29 (2) A professional's practice under this section is
30 limited to the members, coaches, and staff of the team for
31 which that professional is employed or designated and to any

1 animals used if the sporting event for which that professional
2 is employed or designated involves animals. A professional
3 practicing under authority of this section shall not have
4 practice privileges in any licensed health care facility or
5 veterinary facility without the approval of that facility.

6 Section 58. Section 455.220, Florida Statutes, is
7 transferred, renumbered as section 455.587, Florida Statutes,
8 and amended to read:

9 455.587 ~~455.220~~ Fees; receipts; disposition for boards
10 within the department ~~Agency for Health Care Administration.~~--

11 (1) Each board within the jurisdiction of the
12 department ~~Agency for Health Care Administration~~ shall
13 determine by rule the amount of license ~~licensing~~ fees for its
14 profession, based upon long-range estimates prepared by the
15 department ~~agency~~ of the revenue required to implement laws
16 relating this part and the provisions of law with respect to
17 the regulation of professions by the department ~~agency~~ and the
18 any board within the agency. Each board, or the department if
19 there is no board, shall ensure that license fees are adequate
20 to cover all anticipated costs and to maintain a reasonable
21 cash balance, as determined by rule of the agency, with advice
22 of the applicable board. If sufficient action is not taken by
23 a board within 1 year after notification by the department
24 that license fees are projected to be inadequate, the
25 department shall set license fees on behalf of the applicable
26 board to cover anticipated costs and to maintain the required
27 cash balance. The department shall include recommended fee cap
28 increases in its annual report to the Legislature. Further,
29 it is the legislative intent that no regulated profession
30 operate with a negative cash balance. The department may
31 provide by rule for advancing sufficient funds to any

1 profession operating with a negative cash balance. The
2 advancement may be for a period not to exceed 2 consecutive
3 years, and the regulated profession must pay interest.
4 Interest shall be calculated at the current rate earned on
5 investments of a trust fund used by the department to
6 implement this part. Interest earned shall be allocated to the
7 various funds in accordance with the allocation of investment
8 earnings during the period of the advance.

9 (2) Each board, or the department if there is no
10 board, may, by rule, assess and collect a one-time fee from
11 each active and each voluntary inactive licensee in an amount
12 necessary to eliminate a cash deficit or, if there is not a
13 cash deficit, in an amount sufficient to maintain the
14 financial integrity of the professions as required in this
15 section. Not more than one such assessment may be made in any
16 4-year period without specific legislative authorization.

17 (3) Each board authorized to approve continuing
18 education providers, or the department if there is no board,
19 may establish, by rule, a fee not to exceed \$250 for anyone
20 seeking approval to provide continuing education courses and
21 may establish by rule a biennial renewal fee not to exceed
22 \$250 for the renewal of providership of such courses. This
23 subsection does not apply to continuing education courses or
24 providers approved by the board under chapter 465.

25 (4)~~(2)~~ All moneys collected by the department ~~Agency~~
26 ~~for Health Care Administration~~ from fees or fines or from
27 costs awarded to the agency by a court shall be paid into a
28 trust fund used by the department to implement this part ~~the~~
29 ~~Health Care Trust Fund~~. The Legislature shall appropriate
30 funds from this trust fund sufficient to carry out ~~the~~
31 ~~provisions of~~ this part and the provisions of law with respect

1 to professions regulated by the Division of Medical Quality
2 Assurance within the department ~~Agency for Health Care~~
3 ~~Administration and the boards~~ any board within the agency.
4 The department may contract with public and private entities
5 to receive and deposit revenue pursuant to this section. The
6 department shall maintain separate accounts in the trust fund
7 used by the department to implement this part for every
8 profession within the department. To the maximum extent
9 possible, the department shall directly charge all expenses to
10 the account of each regulated profession. For the purpose of
11 this subsection, direct charge expenses include, but are not
12 limited to, costs for investigations, examinations, and legal
13 services. For expenses that cannot be charged directly, the
14 department shall provide for the proportionate allocation
15 among the accounts of expenses incurred by the department in
16 the performance of its duties with respect to each regulated
17 profession. The department may not expend funds from the
18 account of a profession to pay for the expenses incurred on
19 behalf of another profession. The department shall maintain
20 adequate records to support its allocation of agency expenses.
21 The department shall provide any board with reasonable access
22 to these records upon request. The department shall provide
23 each board an annual report of revenue and direct and
24 allocated expenses related to the operation of that
25 profession. The board shall use these reports and the
26 department's adopted long-range plan to determine the amount
27 of license fees. A condensed version of this information,
28 with the department's recommendations, shall be included in
29 the annual report to the Legislature prepared under s.
30 455.644.
31

1 (5) The department shall provide a condensed
2 management report of budgets, finances, performance
3 statistics, and recommendations to each board at least once a
4 quarter. The department shall identify and include in such
5 presentations any changes, or projected changes, made to the
6 board's budget since the last presentation.

7 (6) If a duplicate license is required or requested by
8 the licensee, the board or, if there is no board, the
9 department may charge a fee as determined by rule not to
10 exceed \$25 before issuance of the duplicate license.

11 (7) The department or the appropriate board shall
12 charge a fee not to exceed \$25 for the certification of a
13 public record. The fee shall be determined by rule of the
14 department. The department or the appropriate board shall
15 assess a fee for duplicating a public record as provided in s.
16 119.07(1)(a) and (b).

17 Section 59. Section 455.2205, Florida Statutes, 1996
18 Supplement, is transferred and renumbered as section 408.16,
19 Florida Statutes, and amended to read:

20 408.16 ~~455.2205~~ Health Care Trust Fund; moneys to be
21 deposited therein.--

22 (1) There is ~~hereby~~ created in the State Treasury a
23 special fund to be designated as the Health Care Trust Fund,
24 which shall be used in the operation of the Agency for Health
25 Care Administration in the performance of the various
26 functions and duties required of it by law.

27 (2) All fees, license fees, and other charges
28 collected by the agency shall be deposited in the State
29 Treasury to the credit of the Health Care Trust Fund, to be
30 used in the operation of the agency as authorized by the
31 Legislature. However, penalties and interest assessed and

1 collected by the agency shall not be deposited in the trust
2 fund but shall be deposited in the General Revenue Fund. The
3 Health Care Trust Fund shall be subject to the service charge
4 imposed pursuant to chapter 215.

5 (3) The agency shall maintain separate revenue and
6 expenditure accounts in the Health Care Trust Fund for every
7 ~~profession regulated and provider licensed by the agency.~~

8 ~~(4) The agency shall, to the extent practicable,~~
9 ~~provide for the proportionate allocation among the accounts of~~
10 ~~expenses incurred by the agency in the performance of its~~
11 ~~duties with respect to each regulated profession. The agency~~
12 ~~shall provide each board with an annual report of revenue~~
13 ~~expenditures and allocated expenses related to the regulation~~
14 ~~of that profession, and these reports shall be used by the~~
15 ~~board to determine the amount of licensing fees for each~~
16 ~~profession regulated by the agency.~~

17 ~~(4)(5)~~ All other moneys in the Health Care Trust Fund
18 shall be for the use of the agency in the performance of its
19 functions and duties as provided by law, subject to the fiscal
20 and budgetary provisions of general law and the General
21 Appropriations Act.

22 Section 60. Section 455.594, Florida Statutes, is
23 created to read:

24 455.594 Legal and investigative services.--

25 (1) A board shall retain, through the department's
26 contract procedures, board counsel from the Department of
27 Legal Affairs. The Department of Legal Affairs shall provide
28 legal services to each board within the Department of Health,
29 but the primary responsibility of the Department of Legal
30 Affairs shall be to represent the interests of the citizens of
31 the state by vigorously counseling the boards with respect to

1 their obligations under the laws of the state. A board shall
2 provide for the periodic review and evaluation of the services
3 provided by its board counsel. Subject to the prior approval
4 of the Attorney General, any board may retain, through the
5 department's contract procedures, independent legal counsel to
6 provide legal advice to the board on a specific matter. Fees
7 and costs of such counsel by the Department of Legal Affairs
8 or independent legal counsel approved by the Attorney General
9 shall be paid from a trust fund used by the department to
10 implement this part. All contracts for independent counsel
11 shall provide for periodic review and evaluation by the board
12 and the department of services provided.

13 (2) The department may employ or use the legal
14 services of outside counsel and the investigative services of
15 outside personnel. However, no attorney employed or utilized
16 by the department shall prosecute a matter and provide legal
17 services to the board with respect to the same matter.

18 (3) Any person retained by the department under
19 contract to review materials, make site visits, or provide
20 expert testimony regarding any complaint or application filed
21 with the department relating to a profession under the
22 jurisdiction of the department shall be considered an agent of
23 the department in determining the state insurance coverage and
24 sovereign immunity protection applicability of ss. 284.31 and
25 768.28.

26 Section 61. Section 455.222, Florida Statutes, is
27 transferred, renumbered as section 455.597, Florida Statutes,
28 and amended to read:

29 455.597 ~~455.222~~ Requirement for instruction on
30 domestic violence.--

31

1 (1)(a) ~~As of July 1, 1995,~~The appropriate board shall
2 require each person licensed or certified under chapter 458,
3 chapter 459, chapter 464, chapter 466, chapter 467, chapter
4 490, or chapter 491 to complete a 1-hour continuing education
5 course, approved by the board, on domestic violence, as
6 defined in s. 741.28 ~~s. 741.30~~, as part of biennial
7 relicensure or recertification. The course shall consist of
8 information on the number of patients in that professional's
9 practice who are likely to be victims of domestic violence and
10 the number who are likely to be perpetrators of domestic
11 violence, screening procedures for determining whether a
12 patient has any history of being either a victim or a
13 perpetrator of domestic violence, and instruction on how to
14 provide such patients with information on, or how to refer
15 such patients to, resources in the local community, such as
16 domestic violence centers and other advocacy groups, that
17 provide legal aid, shelter, victim counseling, batterer
18 counseling, or child protection services.

19 (b) Each such licensee or certificateholder shall
20 submit confirmation of having completed such course, on a form
21 provided by the board, when submitting fees for each biennial
22 renewal.

23 (c) The board may approve additional equivalent
24 courses that may be used to satisfy the requirements of
25 paragraph (a). Each licensing board that requires a licensee
26 to complete an educational course pursuant to this subsection
27 may include the hour required for completion of the course in
28 the total hours of continuing education required by law for
29 such profession unless the continuing education requirements
30 for such profession consist of fewer than 30 hours biennially.

31

1 (d) Any person holding two or more licenses subject to
2 the provisions of this subsection shall be permitted to show
3 proof of having taken one board-approved course on domestic
4 violence, for purposes of relicensure or recertification for
5 additional licenses.

6 (e) Failure to comply with the requirements of this
7 subsection shall constitute grounds for disciplinary action
8 under each respective practice act and under s. 455.624(1)(k)
9 ~~s. 455.227(1)(g)~~. In addition to discipline by the board, the
10 licensee shall be required to complete such course.

11 (2) The board shall also require, as a condition of
12 granting a license under any chapter specified in paragraph
13 (1)(a), that each applicant for initial licensure under the
14 appropriate chapter complete an educational course acceptable
15 to the board on domestic violence which is substantially
16 equivalent to the course required in subsection (1). An
17 applicant who has not taken such course at the time of
18 licensure shall, upon submission of an affidavit showing good
19 cause, be allowed 6 months to complete such requirement.

20 (3) Each board may adopt rules to carry out the
21 provisions of this section.

22 (4) Each board shall report to the President of the
23 Senate, the Speaker of the House of Representatives, and the
24 chairs of the appropriate substantive committees of the
25 Legislature by March 1 of each year as to the implementation
26 of and compliance with the requirements of this section.

27 Section 62. Section 455.2224, Florida Statutes, is
28 transferred and renumbered as section 455.601, Florida
29 Statutes.

30 Section 63. Section 455.604, Florida Statutes, is
31 created to read:

1 455.604 Requirement for instruction on human
2 immunodeficiency virus and acquired immune deficiency
3 syndrome.--

4 (1) The appropriate board shall require each person
5 licensed or certified under chapter 457; chapter 458; chapter
6 459; chapter 460; chapter 461; chapter 463; chapter 464;
7 chapter 465; chapter 466; part II, part III, or part V of
8 chapter 468; or chapter 486 to complete a continuing
9 educational course, approved by the board, on human
10 immunodeficiency virus and acquired immune deficiency syndrome
11 as part of biennial relicensure or recertification. The
12 course shall consist of education on the modes of
13 transmission, infection control procedures, clinical
14 management, and prevention of human immunodeficiency virus and
15 acquired immune deficiency syndrome. Such course shall include
16 information on current Florida law on acquired immune
17 deficiency syndrome and its impact on testing, confidentiality
18 of test results, and treatment of patients.

19 (2) Each such licensee or certificateholder shall
20 submit confirmation of having completed said course, on a form
21 as provided by the board, when submitting fees for each
22 biennial renewal.

23 (3) The board shall have the authority to approve
24 additional equivalent courses that may be used to satisfy the
25 requirements in subsection (1). Each licensing board that
26 requires a licensee to complete an educational course pursuant
27 to this section may count the hours required for completion of
28 the course included in the total continuing educational
29 requirements as required by law.

30 (4) Any person holding two or more licenses subject to
31 the provisions of this section shall be permitted to show

1 proof of having taken one board-approved course on human
2 immunodeficiency virus and acquired immune deficiency
3 syndrome, for purposes of relicensure or recertification for
4 additional licenses.

5 (5) Failure to comply with the above requirements
6 shall constitute grounds for disciplinary action under each
7 respective licensing chapter and s. 455.624(1)(e). In addition
8 to discipline by the board, the licensee shall be required to
9 complete the course.

10 (6) The board shall require as a condition of granting
11 a license under the chapters specified in subsection (1) that
12 an applicant making initial application for licensure complete
13 an educational course acceptable to the board on human
14 immunodeficiency virus and acquired immune deficiency
15 syndrome. An applicant who has not taken a course at the time
16 of licensure shall, upon an affidavit showing good cause, be
17 allowed 6 months to complete this requirement.

18 (7) The board shall have the authority to adopt rules
19 to carry out the provisions of this section.

20 (8) The board shall report to the Legislature by March
21 1 of each year as to the implementation and compliance with
22 the requirements of this section.

23 Section 64. Section 455.607, Florida Statutes, is
24 created to read:

25 455.607 Requirement for instruction on human
26 immunodeficiency virus and acquired immune deficiency
27 syndrome.--

28 (1) The board, or the department where there is no
29 board, shall require each person licensed or certified under
30 chapter 480 or part XIV of chapter 468 to complete a
31 continuing educational course approved by the board, or the

1 department where there is no board, on human immunodeficiency
2 virus and acquired immune deficiency syndrome as part of
3 biennial relicensure or recertification. The course shall
4 consist of education on modes of transmission, infection
5 control procedures, clinical management, and prevention of
6 human immunodeficiency virus and acquired immune deficiency
7 syndrome, with an emphasis on appropriate behavior and
8 attitude change.

9 (2) When filing fees for each biennial renewal, each
10 licensee shall submit confirmation of having completed the
11 course, on a form provided by the board or by the department
12 if there is no board. At the time of the subsequent biennial
13 renewal when coursework is to be completed, if the licensee
14 has not submitted confirmation which has been received and
15 recorded by the board, or department if there is no board, the
16 department shall not renew the license.

17 (3) The board, or the department where there is no
18 board, shall have the authority to approve additional
19 equivalent courses that may be used to satisfy the
20 requirements in subsection (1).

21 (4) The board, or the department where there is no
22 board, shall require, as a condition of granting a license
23 under any of the chapters or parts thereof specified in
24 subsection (1), that an applicant making initial application
25 for licensure complete an educational course acceptable to the
26 board, or the department where there is no board, on human
27 immunodeficiency virus and acquired immune deficiency
28 syndrome. An applicant who has not taken a course at the time
29 of licensure shall, upon an affidavit showing good cause, be
30 allowed 6 months to complete this requirement.

31

1 (5) The board, or the department where there is no
2 board, shall have the authority to adopt rules to carry out
3 the provisions of this section.

4 (6) The board, or the department where there is no
5 board, shall report to the Legislature by March 1 of each year
6 as to the implementation and compliance with the requirements
7 of this section.

8 (7) Any professional holding two or more licenses
9 subject to the provisions of this section shall be permitted
10 to show proof of having taken one board-approved course, or
11 one department-approved course where there is no board, on
12 human immunodeficiency virus and acquired immune deficiency
13 syndrome, for purposes of relicensure or recertification for
14 additional licenses.

15 Section 65. Section 455.611, Florida Statutes, is
16 created to read:

17 455.611 Power to administer oaths, take depositions,
18 and issue subpoenas.--For the purpose of any investigation or
19 proceeding conducted by the department, the department shall
20 have the power to administer oaths, take depositions, make
21 inspections when authorized by statute, issue subpoenas which
22 shall be supported by affidavit, serve subpoenas and other
23 process, and compel the attendance of witnesses and the
24 production of books, papers, documents, and other evidence.
25 The department shall exercise this power on its own initiative
26 or whenever requested by a board or the probable cause panel
27 of any board. Challenges to, and enforcement of, the subpoenas
28 and orders shall be handled as provided in s. 120.569.

29 Section 66. Section 455.614, Florida Statutes, is
30 created to read:

31 455.614 Mediation.--

1 (1) Notwithstanding the provisions of s. 455.621, the
2 board, or the department when there is no board, shall adopt
3 rules to designate which violations of the applicable
4 professional practice act are appropriate for mediation. The
5 board, or the department when there is no board, may designate
6 as mediation offenses those complaints where harm caused by
7 the licensee is economic in nature or can be remedied by the
8 licensee.

9 (2) After the department determines a complaint is
10 legally sufficient and the alleged violations are defined as
11 mediation offenses, the department or any agent of the
12 department may conduct informal mediation to resolve the
13 complaint. If the complainant and the subject of the complaint
14 agree to a resolution of a complaint within 14 days after
15 contact by the mediator, the mediator shall notify the
16 department of the terms of the resolution. The department or
17 board shall take no further action unless the complainant and
18 the subject each fail to record with the department an
19 acknowledgment of satisfaction of the terms of mediation
20 within 60 days of the mediator's notification to the
21 department. In the event the complainant and subject fail to
22 reach settlement terms or to record the required
23 acknowledgment, the department shall process the complaint
24 according to the provisions of s. 455.621.

25 (3) Conduct or statements made during mediation are
26 inadmissible in any proceeding pursuant to s. 455.621.
27 Further, any information relating to the mediation of a case
28 shall be subject to the confidentiality provisions of s.
29 455.621.

30 (4) No licensee shall go through the mediation process
31 more than three times without approval of the department. The

1 department may consider the subject and dates of the earlier
2 complaints in rendering its decision. Such decision shall not
3 be considered a final agency action for purposes of chapter
4 120.

5 (5) Any board created on or after January 1, 1995,
6 shall have 6 months to adopt rules designating which
7 violations are appropriate for mediation, after which time the
8 department shall have exclusive authority to adopt rules
9 pursuant to this section. A board shall have continuing
10 authority to amend its rules adopted pursuant to this section.

11 Section 67. Section 455.617, Florida Statutes, is
12 created to read:

13 455.617 Authority to issue citations.--

14 (1) Notwithstanding s. 455.621, the board, or the
15 department if there is no board, shall adopt rules to permit
16 the issuance of citations. The citation shall be issued to the
17 subject and shall contain the subject's name and address, the
18 subject's license number if applicable, a brief factual
19 statement, the sections of the law allegedly violated, and the
20 penalty imposed. The citation must clearly state that the
21 subject may choose, in lieu of accepting the citation, to
22 follow the procedure under s. 455.621. If the subject disputes
23 the matter in the citation, the procedures set forth in s.
24 455.621 must be followed. However, if the subject does not
25 dispute the matter in the citation with the department within
26 30 days after the citation is served, the citation becomes a
27 final order and constitutes discipline. The penalty shall be a
28 fine or other conditions as established by rule.

29 (2) The board, or the department if there is no board,
30 shall adopt rules designating violations for which a citation
31 may be issued. Such rules shall designate as citation

1 violations those violations for which there is no substantial
2 threat to the public health, safety, and welfare.

3 (3) The department shall be entitled to recover the
4 costs of investigation, in addition to any penalty provided
5 according to board or department rule, as part of the penalty
6 levied pursuant to the citation.

7 (4) A citation must be issued within 6 months after
8 the filing of the complaint that is the basis for the
9 citation.

10 (5) Service of a citation may be made by personal
11 service or certified mail, restricted delivery, to the subject
12 at the subject's last known address.

13 (6) A board created on or after January 1, 1992, has 6
14 months in which to enact rules designating violations and
15 penalties appropriate for citation offenses. Failure to enact
16 such rules gives the department exclusive authority to adopt
17 rules as required for implementing this section. A board has
18 continuous authority to amend its rules adopted pursuant to
19 this section.

20 Section 68. Section 455.621, Florida Statutes, is
21 created to read:

22 455.621 Disciplinary proceedings.--Disciplinary
23 proceedings for each board shall be within the jurisdiction of
24 the department.

25 (1) The department, for the boards under its
26 jurisdiction, shall cause to be investigated any complaint
27 that is filed before it if the complaint is in writing, signed
28 by the complainant, and legally sufficient. A complaint is
29 legally sufficient if it contains ultimate facts that show
30 that a violation of this part, of any of the practice acts
31 relating to the professions regulated by the department, or of

1 any rule adopted by the department or a regulatory board in
2 the department has occurred. In order to determine legal
3 sufficiency, the department may require supporting information
4 or documentation. The department may investigate, and the
5 department or the appropriate board may take appropriate final
6 action on, a complaint even though the original complainant
7 withdraws it or otherwise indicates a desire not to cause the
8 complaint to be investigated or prosecuted to completion. The
9 department may investigate an anonymous complaint if the
10 complaint is in writing and is legally sufficient, if the
11 alleged violation of law or rules is substantial, and if the
12 department has reason to believe, after preliminary inquiry,
13 that the violations alleged in the complaint are true. The
14 department may investigate a complaint made by a confidential
15 informant if the complaint is legally sufficient, if the
16 alleged violation of law or rule is substantial, and if the
17 department has reason to believe, after preliminary inquiry,
18 that the allegations of the complainant are true. The
19 department may initiate an investigation if it has reasonable
20 cause to believe that a licensee or a group of licensees has
21 violated a Florida statute, a rule of the department, or a
22 rule of a board. Except as provided in ss. 458.331(9),
23 459.015(9), 460.413(5), and 461.013(6), when an investigation
24 of any subject is undertaken, the department shall promptly
25 furnish to the subject or the subject's attorney a copy of the
26 complaint or document that resulted in the initiation of the
27 investigation. The subject may submit a written response to
28 the information contained in such complaint or document within
29 20 days after service to the subject of the complaint or
30 document. The subject's written response shall be considered
31 by the probable cause panel. The right to respond does not

1 prohibit the issuance of a summary emergency order if
2 necessary to protect the public. However, if the secretary, or
3 the secretary's designee, and the chairman of the respective
4 board or the chairman of its probable cause panel agree in
5 writing that such notification would be detrimental to the
6 investigation, the department may withhold notification. The
7 department may conduct an investigation without notification
8 to any subject if the act under investigation is a criminal
9 offense.

10 (2) The department shall allocate sufficient and
11 adequately trained staff to expeditiously and thoroughly
12 determine legal sufficiency and investigate all legally
13 sufficient complaints. For purposes of this section, it is the
14 intent of the Legislature that the term "expeditiously" means
15 that the department complete the report of its initial
16 investigative findings and recommendations concerning the
17 existence of probable cause within 6 months after its receipt
18 of the complaint. The failure of the department, for
19 disciplinary cases under its jurisdiction, to comply with the
20 time limits of this section while investigating a complaint
21 against a licensee constitutes harmless error in any
22 subsequent disciplinary action unless a court finds that
23 either the fairness of the proceeding or the correctness of
24 the action may have been impaired by a material error in
25 procedure or a failure to follow prescribed procedure. When
26 its investigation is complete and legally sufficient, the
27 department shall prepare and submit to the probable cause
28 panel of the appropriate regulatory board the investigative
29 report of the department. The report shall contain the
30 investigative findings and the recommendations of the
31 department concerning the existence of probable cause. At any

1 time after legal sufficiency is found, the department may
2 dismiss any case, or any part thereof, if the department
3 determines that there is insufficient evidence to support the
4 prosecution of allegations contained therein. The department
5 shall provide a detailed report to the appropriate probable
6 cause panel prior to dismissal of any case or part thereof,
7 and to the subject of the complaint after dismissal of any
8 case or part thereof, under this section. For cases dismissed
9 prior to a finding of probable cause, such report is
10 confidential and exempt from s. 119.07(1). The probable cause
11 panel shall have access, upon request, to the investigative
12 files pertaining to a case prior to dismissal of such case. If
13 the department dismisses a case, the probable cause panel may
14 retain independent legal counsel, employ investigators, and
15 continue the investigation and prosecution of the case as it
16 deems necessary.

17 (3) As an alternative to the provisions of subsections
18 (1) and (2), when a complaint is received, the department may
19 provide a licensee with a notice of noncompliance for an
20 initial offense of a minor violation. Each board, or the
21 department if there is no board, shall establish by rule those
22 minor violations under this provision which do not endanger
23 the public health, safety, and welfare and which do not
24 demonstrate a serious inability to practice the profession.
25 Failure of a licensee to take action in correcting the
26 violation within 15 days after notice may result in the
27 institution of regular disciplinary proceedings.

28 (4) The determination as to whether probable cause
29 exists shall be made by majority vote of a probable cause
30 panel of the board, or by the department, as appropriate. Each
31 regulatory board shall provide by rule that the determination

1 of probable cause shall be made by a panel of its members or
2 by the department. Each board may provide by rule for multiple
3 probable cause panels composed of at least two members. Each
4 board may provide by rule that one or more members of the
5 panel or panels may be a former board member. The length of
6 term or repetition of service of any such former board member
7 on a probable cause panel may vary according to the direction
8 of the board when authorized by board rule. Any probable cause
9 panel must include one of the board's former or present
10 consumer members, if one is available, is willing to serve,
11 and is authorized to do so by the board chairman. Any probable
12 cause panel must include a present board member. Any probable
13 cause panel must include a former or present professional
14 board member. However, any former professional board member
15 serving on the probable cause panel must hold an active valid
16 license for that profession. All proceedings of the panel are
17 exempt from s. 286.011 until 10 days after probable cause has
18 been found to exist by the panel or until the subject of the
19 investigation waives his privilege of confidentiality. The
20 probable cause panel may make a reasonable request, and upon
21 such request the department shall provide such additional
22 investigative information as is necessary to the determination
23 of probable cause. A request for additional investigative
24 information shall be made within 15 days from the date of
25 receipt by the probable cause panel of the investigative
26 report of the department or the agency. The probable cause
27 panel or the department, as may be appropriate, shall make its
28 determination of probable cause within 30 days after receipt
29 by it of the final investigative report of the department. The
30 secretary may grant extensions of the 15-day and the 30-day
31 time limits. In lieu of a finding of probable cause, the

1 probable cause panel, or the department if there is no board,
2 may issue a letter of guidance to the subject. If, within the
3 30-day time limit, as may be extended, the probable cause
4 panel does not make a determination regarding the existence of
5 probable cause or does not issue a letter of guidance in lieu
6 of a finding of probable cause, the department must make a
7 determination regarding the existence of probable cause within
8 10 days after the expiration of the time limit. If the
9 probable cause panel finds that probable cause exists, it
10 shall direct the department to file a formal complaint against
11 the licensee. The department shall follow the directions of
12 the probable cause panel regarding the filing of a formal
13 complaint. If directed to do so, the department shall file a
14 formal complaint against the subject of the investigation and
15 prosecute that complaint pursuant to chapter 120. However, the
16 department may decide not to prosecute the complaint if it
17 finds that probable cause has been improvidently found by the
18 panel. In such cases, the department shall refer the matter to
19 the board. The board may then file a formal complaint and
20 prosecute the complaint pursuant to chapter 120. The
21 department shall also refer to the board any investigation or
22 disciplinary proceeding not before the Division of
23 Administrative Hearings pursuant to chapter 120 or otherwise
24 completed by the department within 1 year after the filing of
25 a complaint. The department, for disciplinary cases under its
26 jurisdiction, must establish a uniform reporting system to
27 quarterly refer to each board the status of any investigation
28 or disciplinary proceeding that is not before the Division of
29 Administrative Hearings or otherwise completed by the
30 department within 1 year after the filing of the complaint.
31 Annually, the department if there is no board, or each board

1 must establish a plan to reduce or otherwise close any
2 investigation or disciplinary proceeding that is not before
3 the Division of Administrative Hearings or otherwise completed
4 by the department within 1 year after the filing of the
5 complaint. A probable cause panel or a board may retain
6 independent legal counsel, employ investigators, and continue
7 the investigation as it deems necessary; all costs thereof
8 shall be paid from a trust fund used by the department to
9 implement this part. All proceedings of the probable cause
10 panel are exempt from s. 120.525.

11 (5) A formal hearing before an administrative law
12 judge from the Division of Administrative Hearings shall be
13 held pursuant to chapter 120 if there are any disputed issues
14 of material fact. The administrative law judge shall issue a
15 recommended order pursuant to chapter 120. If any party raises
16 an issue of disputed fact during an informal hearing, the
17 hearing shall be terminated and a formal hearing pursuant to
18 chapter 120 shall be held.

19 (6) The appropriate board, with those members of the
20 panel, if any, who reviewed the investigation pursuant to
21 subsection (5) being excused, or the department when there is
22 no board, shall determine and issue the final order in each
23 disciplinary case. Such order shall constitute final agency
24 action. Any consent order or agreed-upon settlement shall be
25 subject to the approval of the department.

26 (7) The department shall have standing to seek
27 judicial review of any final order of the board, pursuant to
28 s. 120.68.

29 (8) Any proceeding for the purpose of summary
30 suspension of a license, or for the restriction of the
31 license, of a licensee pursuant to s. 120.60(6) shall be

1 conducted by the Secretary of the Department of Health or his
2 or her designee, as appropriate, who shall issue the final
3 summary order.

4 (9)(a) The department shall periodically notify the
5 person who filed the complaint of the status of the
6 investigation, indicating whether probable cause has been
7 found and the status of any civil action or administrative
8 proceeding or appeal.

9 (b) In any disciplinary case for which probable cause
10 has been found, the department shall provide to the person who
11 filed the complaint a copy of the administrative complaint
12 and:

13 1. A written explanation of how an administrative
14 complaint is resolved by the disciplinary process.

15 2. A written explanation of how and when the person
16 may participate in the disciplinary process.

17 3. A written notice of any hearing before the Division
18 of Administrative Hearings or the regulatory board at which
19 final agency action may be taken.

20 (c) In any disciplinary case for which probable cause
21 is not found, the department shall so inform the person who
22 filed the complaint and notify that person that he or she may,
23 within 60 days, provide any additional information to the
24 probable cause panel which may be relevant to the decision. In
25 any administrative proceeding under s. 120.57, the person who
26 filed the disciplinary complaint shall have the right to
27 present oral or written communication relating to the alleged
28 disciplinary violations or to the appropriate penalty.

29 (10) The complaint and all information obtained
30 pursuant to the investigation by the department are
31 confidential and exempt from s. 119.07(1) until 10 days after

1 probable cause has been found to exist by the probable cause
2 panel or by the department, or until the regulated
3 professional or subject of the investigation waives his
4 privilege of confidentiality, whichever occurs first. Upon
5 completion of the investigation and pursuant to a written
6 request by the subject, the department shall provide the
7 subject an opportunity to inspect the investigative file or,
8 at the subject's expense, forward to the subject a copy of the
9 investigative file. Notwithstanding s. 455.667, the subject
10 may inspect or receive a copy of any expert witness report or
11 patient record connected with the investigation if the subject
12 agrees in writing to maintain the confidentiality of any
13 information received under this subsection until 10 days after
14 probable cause is found and to maintain the confidentiality of
15 patient records pursuant to s. 455.667. The subject may file a
16 written response to the information contained in the
17 investigative file. Such response must be filed within 20
18 days, unless an extension of time has been granted by the
19 department. This subsection does not prohibit the department
20 from providing such information to any law enforcement agency
21 or to any other regulatory agency.

22 (11) A privilege against civil liability is hereby
23 granted to any complainant or any witness with regard to
24 information furnished with respect to any investigation or
25 proceeding pursuant to this section, unless the complainant or
26 witness acted in bad faith or with malice in providing such
27 information.

28 (12)(a) No person who reports in any capacity, whether
29 or not required by law, information to the department with
30 regard to the incompetence, impairment, or unprofessional
31 conduct of any health care provider licensed under chapter

1 458, chapter 459, chapter 460, chapter 461, chapter 462,
2 chapter 463, chapter 464, chapter 465, or chapter 466 shall be
3 held liable in any civil action for reporting against such
4 health care provider if such person acts without intentional
5 fraud or malice.

6 (b) No facility licensed under chapter 395, health
7 maintenance organization certificated under part I of chapter
8 641, physician licensed under chapter 458, or osteopathic
9 physician licensed under chapter 459 shall discharge, threaten
10 to discharge, intimidate, or coerce any employee or staff
11 member by reason of such employee's or staff member's report
12 to the department about a physician licensed under chapter
13 458, chapter 459, chapter 460, chapter 461, or chapter 466 who
14 may be guilty of incompetence, impairment, or unprofessional
15 conduct so long as such report is given without intentional
16 fraud or malice.

17 (c) In any civil suit brought outside the protections
18 of paragraphs (a) and (b) in which intentional fraud or malice
19 is alleged, the person alleging intentional fraud or malice
20 shall be liable for all court costs and for the other party's
21 reasonable attorney's fees if intentional fraud or malice is
22 not proved.

23 Section 69. Section 455.624, Florida Statutes, is
24 created to read:

25 455.624 Grounds for discipline; penalties;
26 enforcement.--

27 (1) The following acts shall constitute grounds for
28 which the disciplinary actions specified in subsection (2) may
29 be taken:

30
31

1 (a) Making misleading, deceptive, or fraudulent
2 representations in or related to the practice of the
3 licensee's profession.

4 (b) Intentionally violating any rule adopted by the
5 board or the department, as appropriate.

6 (c) Being convicted or found guilty of, or entering a
7 plea of nolo contendere to, regardless of adjudication, a
8 crime in any jurisdiction which relates to the practice of, or
9 the ability to practice, a licensee's profession.

10 (d) Using a Class III or a Class IV laser device or
11 product, as defined by federal regulations, without having
12 complied with the rules adopted pursuant to s. 501.122(2)
13 governing the registration of such devices.

14 (e) Failing to comply with the educational course
15 requirements for human immunodeficiency virus and acquired
16 immune deficiency syndrome.

17 (f) Having a license or the authority to practice the
18 regulated profession revoked, suspended, or otherwise acted
19 against, including the denial of licensure, by the licensing
20 authority of any jurisdiction, including its agencies or
21 subdivisions, for a violation that would constitute a
22 violation under Florida law. The licensing authority's
23 acceptance of a relinquishment of licensure, stipulation,
24 consent order, or other settlement, offered in response to or
25 in anticipation of the filing of charges against the license,
26 shall be construed as action against the license.

27 (g) Having been found liable in a civil proceeding for
28 knowingly filing a false report or complaint with the
29 department against another licensee.

30 (h) Attempting to obtain, obtaining, or renewing a
31 license to practice a profession by bribery, by fraudulent

1 misrepresentation, or through an error of the department or
2 the board.

3 (i) Except as provided in s. 465.016, failing to
4 report to the department any person who the licensee knows is
5 in violation of this part, the chapter regulating the alleged
6 violator, or the rules of the department or the board.

7 (j) Aiding, assisting, procuring, employing, or
8 advising any unlicensed person or entity to practice a
9 profession contrary to this part, the chapter regulating the
10 profession, or the rules of the department or the board.

11 (k) Failing to perform any statutory or legal
12 obligation placed upon a licensee.

13 (l) Making or filing a report which the licensee knows
14 to be false, intentionally or negligently failing to file a
15 report or record required by state or federal law, or
16 willfully impeding or obstructing another person to do so.
17 Such reports or records shall include only those that are
18 signed in the capacity of a licensee.

19 (m) Making deceptive, untrue, or fraudulent
20 representations in or related to the practice of a profession
21 or employing a trick or scheme in or related to the practice
22 of a profession.

23 (n) Exercising influence on the patient or client for
24 the purpose of financial gain of the licensee or a third
25 party.

26 (o) Practicing or offering to practice beyond the
27 scope permitted by law or accepting and performing
28 professional responsibilities the licensee knows, or has
29 reason to know, the licensee is not competent to perform.

30 (p) Delegating or contracting for the performance of
31 professional responsibilities by a person when the licensee

1 delegating or contracting for performance of such
2 responsibilities knows, or has reason to know, such person is
3 not qualified by training, experience, and authorization when
4 required to perform them.

5 (q) Violating any provision of this part, the
6 applicable professional practice act, a rule of the department
7 or the board, or a lawful order of the department or the
8 board, or failing to comply with a lawfully issued subpoena of
9 the department.

10 (r) Improperly interfering with an investigation or
11 inspection authorized by statute, or with any disciplinary
12 proceeding.

13 (s) Failing to comply with the educational course
14 requirements for domestic violence.

15 (2) When the board, or the department when there is no
16 board, finds any person guilty of the grounds set forth in
17 subsection (1) or of any grounds set forth in the applicable
18 practice act, including conduct constituting a substantial
19 violation of subsection (1) or a violation of the applicable
20 practice act which occurred prior to obtaining a license, it
21 may enter an order imposing one or more of the following
22 penalties:

23 (a) Refusal to certify, or to certify with
24 restrictions, an application for a license.

25 (b) Suspension or permanent revocation of a license.

26 (c) Restriction of practice.

27 (d) Imposition of an administrative fine not to exceed
28 \$5,000 for each count or separate offense.

29 (e) Issuance of a reprimand.

30 (f) Placement of the licensee on probation for a
31 period of time and subject to such conditions as the board, or

1 the department when there is no board, may specify. Those
2 conditions may include, but are not limited to, requiring the
3 licensee to undergo treatment, attend continuing education
4 courses, submit to be reexamined, work under the supervision
5 of another licensee, or satisfy any terms which are reasonably
6 tailored to the violations found.

7 (g) Corrective action.

8 (3) In addition to any other discipline imposed
9 pursuant to this section or discipline imposed for a violation
10 of any practice act, the board, or the department when there
11 is no board, may assess costs related to the investigation and
12 prosecution of the case excluding costs associated with an
13 attorney's time. In any case where the board or the department
14 imposes a fine or assessment and the fine or assessment is not
15 paid within a reasonable time, such reasonable time to be
16 prescribed in the rules of the board, or the department when
17 there is no board, or in the order assessing such fines or
18 costs, the department or the Department of Legal Affairs may
19 contract for the collection of, or bring a civil action to
20 recover, the fine or assessment.

21 (4) In addition to, or in lieu of, any other remedy or
22 criminal prosecution, the department may file a proceeding in
23 the name of the state seeking issuance of an injunction or a
24 writ of mandamus against any person who violates any of the
25 provisions of this part, or any provision of law with respect
26 to professions regulated by the department, or any board
27 therein, or the rules adopted pursuant thereto.

28 (5) In the event the board, or the department when
29 there is no board, determines that revocation of a license is
30 the appropriate penalty, the revocation shall be permanent.
31 However, the board may establish by rule requirements for

1 reapplication by applicants whose licenses have been
2 permanently revoked. Such requirements may include, but shall
3 not be limited to, satisfying current requirements for an
4 initial license.

5 Section 70. Section 455.627, Florida Statutes, is
6 created to read:

7 455.627 Disciplinary guidelines.--

8 (1) Each board, or the department if there is no
9 board, shall adopt by rule and periodically review the
10 disciplinary guidelines applicable to each ground for
11 disciplinary action which may be imposed by the board, or the
12 department if there is no board, pursuant to this part, the
13 respective practice acts, and any rule of the board or
14 department.

15 (2) The disciplinary guidelines shall specify a
16 meaningful range of designated penalties based upon the
17 severity and repetition of specific offenses, it being the
18 legislative intent that minor violations be distinguished from
19 those which endanger the public health, safety, or welfare;
20 that such guidelines provide reasonable and meaningful notice
21 to the public of likely penalties which may be imposed for
22 proscribed conduct; and that such penalties be consistently
23 applied by the board.

24 (3) A specific finding of mitigating or aggravating
25 circumstances shall allow the board to impose a penalty other
26 than that provided for in such guidelines. If applicable, the
27 board, or the department if there is no board, shall adopt by
28 rule disciplinary guidelines to designate possible mitigating
29 and aggravating circumstances and the variation and range of
30 penalties permitted for such circumstances.

31

1 (4) The department must review such disciplinary
2 guidelines for compliance with the legislative intent as set
3 forth herein to determine whether the guidelines establish a
4 meaningful range of penalties and may also challenge such
5 rules pursuant to s. 120.56.

6 (5) The administrative law judge, in recommending
7 penalties in any recommended order, must follow the penalty
8 guidelines established by the board or department and must
9 state in writing the mitigating or aggravating circumstances
10 upon which the recommended penalty is based.

11 Section 71. Section 455.631, Florida Statutes, is
12 created to read:

13 455.631 Penalty for giving false information.--In
14 addition to, or in lieu of, any other discipline imposed
15 pursuant to s. 455.624, the act of knowingly giving false
16 information in the course of applying for or obtaining a
17 license from the department, or any board thereunder, with
18 intent to mislead a public servant in the performance of his
19 official duties, or the act of attempting to obtain or
20 obtaining a license from the department, or any board
21 thereunder, to practice a profession by knowingly misleading
22 statements or knowing misrepresentations constitutes a felony
23 of the third degree, punishable as provided in s. 775.082, s.
24 775.083, or s. 775.084.

25 Section 72. Section 455.634, Florida Statutes, is
26 created to read:

27 455.634 Prosecution of criminal violations.--The
28 department or the appropriate board shall report any criminal
29 violation of any statute relating to the practice of a
30 profession regulated by the department or appropriate board to
31 the proper prosecuting authority for prompt prosecution.

1 Section 73. Section 455.637, Florida Statutes, is
2 created to read:

3 455.637 Unlicensed practice of a profession; cease and
4 desist notice; civil penalty; enforcement; citations;
5 allocation of moneys collected.--

6 (1) When the department has probable cause to believe
7 that any person not licensed by the department, or the
8 appropriate regulatory board within the department, has
9 violated any provision of this part or any statute that
10 relates to the practice of a profession regulated by the
11 department, or any rule adopted pursuant thereto, the
12 department may issue and deliver to such person a notice to
13 cease and desist from such violation. In addition, the
14 department may issue and deliver a notice to cease and desist
15 to any person who aids and abets the unlicensed practice of a
16 profession by employing such unlicensed person. The issuance
17 of a notice to cease and desist shall not constitute agency
18 action for which a hearing under ss. 120.569 and 120.57 may be
19 sought. For the purpose of enforcing a cease and desist order,
20 the department may file a proceeding in the name of the state
21 seeking issuance of an injunction or a writ of mandamus
22 against any person who violates any provisions of such order.
23 In addition to the foregoing remedies, the department may
24 impose an administrative penalty not to exceed \$5,000 per
25 incident pursuant to the provisions of chapter 120 or may
26 issue a citation pursuant to the provisions of subsection (3).
27 If the department is required to seek enforcement of the
28 agency order for a penalty pursuant to s. 120.569, it shall be
29 entitled to collect its attorney's fees and costs, together
30 with any cost of collection.

31

1 (2) In addition to or in lieu of any remedy provided
2 in subsection (1), the department may seek the imposition of a
3 civil penalty through the circuit court for any violation for
4 which the department may issue a notice to cease and desist
5 under subsection (1). The civil penalty shall be no less than
6 \$500 and no more than \$5,000 for each offense. The court may
7 also award to the prevailing party court costs and reasonable
8 attorney fees and, in the event the department prevails, may
9 also award reasonable costs of investigation.

10 (3)(a) Notwithstanding the provisions of s. 455.621,
11 the department shall adopt rules to permit the issuance of
12 citations for unlicensed practice of a profession. The
13 citation shall be issued to the subject and shall contain the
14 subject's name and any other information the department
15 determines to be necessary to identify the subject, a brief
16 factual statement, the sections of the law allegedly violated,
17 and the penalty imposed. The citation must clearly state that
18 the subject may choose, in lieu of accepting the citation, to
19 follow the procedure under s. 455.621. If the subject disputes
20 the matter in the citation, the procedures set forth in s.
21 455.621 must be followed. However, if the subject does not
22 dispute the matter in the citation with the department within
23 30 days after the citation is served, the citation shall
24 become a final order of the department. The penalty shall be a
25 fine of not less than \$500 or more than \$5,000 or other
26 conditions as established by rule.

27 (b) Each day that the unlicensed practice continues
28 after issuance of a citation constitutes a separate violation.

29 (c) The department shall be entitled to recover the
30 costs of investigation, in addition to any penalty provided
31

1 according to department rule as part of the penalty levied
2 pursuant to the citation.

3 (d) Service of a citation may be made by personal
4 service or certified mail, restricted delivery, to the subject
5 at the subject's last known address.

6 (4) All fines, fees, and costs collected through the
7 procedures set forth in this section shall be allocated to the
8 professions in the manner provided for in s. 455.641 for the
9 allocation of the fees assessed and collected to combat
10 unlicensed practice of a profession.

11 (5) The provisions of this section apply only to the
12 professional practice acts administered by the department.

13 Section 74. Section 455.641, Florida Statutes, is
14 created to read:

15 455.641 Unlicensed activities; fees; disposition.--In
16 order to protect the public and to ensure a consumer-oriented
17 department, it is the intent of the Legislature that vigorous
18 enforcement of regulation for all professional activities is a
19 state priority. All enforcement costs should be covered by
20 professions regulated by the department. Therefore, the
21 department shall impose, upon initial licensure and each
22 renewal thereof, a special fee of \$5 per licensee. Such fee
23 shall be in addition to all other fees collected from each
24 licensee and shall fund efforts to combat unlicensed activity.
25 The board with concurrence of the department, or the
26 department when there is no board, may earmark \$5 of the
27 current licensure fee for this purpose, if such board, or
28 profession regulated by the department, is not in a deficit
29 and has a reasonable cash balance. The department shall make
30 direct charges to this fund by profession and shall not
31 allocate indirect overhead. The department shall seek board

1 advice regarding enforcement methods and strategies prior to
2 expenditure of funds. The department shall directly credit, by
3 profession, revenues received from the department's efforts to
4 enforce licensure provisions. The department shall include all
5 financial and statistical data resulting from unlicensed
6 activity enforcement as a separate category in the quarterly
7 management report provided for in s. 455.219. The department
8 shall not charge the account of any profession for the costs
9 incurred on behalf of any other profession. For an unlicensed
10 activity account, a balance which remains at the end of a
11 renewal cycle may, with concurrence of the applicable board
12 and the department, be transferred to the operating fund
13 account of that profession.

14 Section 75. Section 455.644, Florida Statutes, is
15 created to read:

16 455.644 Annual report concerning finances,
17 administrative complaints, disciplinary actions, and
18 recommendations.--The department is directed to prepare and
19 submit a report to the President of the Senate and Speaker of
20 the House of Representatives by November 1 of each year. In
21 addition to finances and any other information the Legislature
22 may require, the report shall include statistics and relevant
23 information, profession by profession, detailing:

24 (1) The revenues, expenditures, and cash balances for
25 the prior year, and a review of the adequacy of existing fees.

26 (2) The number of complaints received and
27 investigated.

28 (3) The number of findings of probable cause made.

29 (4) The number of findings of no probable cause made.

30 (5) The number of administrative complaints filed.

31 (6) The disposition of all administrative complaints.

1 (7) A description of disciplinary actions taken.

2 (8) A description of any effort by the department to
3 reduce or otherwise close any investigation or disciplinary
4 proceeding not before the Division of Administrative Hearings
5 under chapter 120 or otherwise not completed within 1 year
6 after the initial filing of a complaint under this part.

7 (9) The status of the development and implementation
8 of rules providing for disciplinary guidelines pursuant to s.
9 455.627.

10 (10) Such recommendations for administrative and
11 statutory changes necessary to facilitate efficient and
12 cost-effective operation of the department and the various
13 boards.

14 Section 76. Section 455.647, Florida Statutes, is
15 created to read:

16 455.647 Public inspection of information required from
17 applicants; exceptions; examination hearing.--

18 (1) All information required by the department of any
19 applicant shall be a public record and shall be open to public
20 inspection pursuant to s. 119.07, except financial
21 information, medical information, school transcripts,
22 examination questions, answers, papers, grades, and grading
23 keys, which are confidential and exempt from s. 119.07(1) and
24 shall not be discussed with or made accessible to anyone
25 except members of the board, the department, and staff
26 thereof, who have a bona fide need to know such information.
27 Any information supplied to the department by any other agency
28 which is exempt from the provisions of chapter 119 or is
29 confidential shall remain exempt or confidential pursuant to
30 applicable law while in the custody of the department or the
31 agency.

1 (2) The department shall establish by rule the
2 procedure by which an applicant, and the applicant's attorney,
3 may review examination questions and answers. Examination
4 questions and answers are not subject to discovery but may be
5 introduced into evidence and considered only in camera in any
6 administrative proceeding under chapter 120. If an
7 administrative hearing is held, the department shall provide
8 challenged examination questions and answers to the
9 administrative law judge. The examination questions and
10 answers provided at the hearing are confidential and exempt
11 from s. 119.07(1), unless invalidated by the administrative
12 law judge.

13 (3) Unless an applicant notifies the department at
14 least 5 days prior to an examination hearing of the
15 applicant's inability to attend, or unless an applicant can
16 demonstrate an extreme emergency for failing to attend, the
17 department may require an applicant who fails to attend to pay
18 reasonable attorney's fees, costs, and court costs of the
19 department for the examination hearing.

20 Section 77. Section 455.651, Florida Statutes, is
21 created to read:

22 455.651 Disclosure of confidential information.--

23 (1) No officer, employee, or person under contract
24 with the department, or any board therein, or any subject of
25 an investigation shall convey knowledge or information to any
26 person who is not lawfully entitled to such knowledge or
27 information about any public meeting or public record, which
28 at the time such knowledge or information is conveyed is
29 exempt from the provisions of s. 119.01, s. 119.07(1), or s.
30 286.011.

31

1 (2) Any person who willfully violates any provision of
2 this section is guilty of a misdemeanor of the first degree,
3 punishable as provided in s. 775.082 or s. 775.083, and may be
4 subject to discipline pursuant to s. 455.227, and, if
5 applicable, shall be removed from office, employment, or the
6 contractual relationship.

7 Section 78. Section 455.236, Florida Statutes, 1996
8 Supplement, is transferred, renumbered as section 455.654,
9 Florida Statutes, and amended to read:

10 455.654 ~~455.236~~ Financial arrangements between
11 referring health care providers and providers of health care
12 services.--

13 (1) SHORT TITLE.--This section ~~shall be known and~~ may
14 be cited as the "Patient Self-Referral Act of 1992."

15 (2) LEGISLATIVE INTENT.--It is recognized by the
16 Legislature that the referral of a patient by a health care
17 provider to a provider of health care services in which the
18 referring health care provider has an investment interest
19 represents a potential conflict of interest. The Legislature
20 finds these referral practices may limit or eliminate
21 competitive alternatives in the health care services market,
22 may result in overutilization of health care services, may
23 increase costs to the health care system, and may adversely
24 affect the quality of health care. The Legislature also
25 recognizes, however, that it may be appropriate for providers
26 to own entities providing health care services, and to refer
27 patients to such entities, as long as certain safeguards are
28 present in the arrangement. It is the intent of the
29 Legislature to provide guidance to health care providers
30 regarding prohibited patient referrals between health care
31 providers and entities providing health care services and to

1 protect the people ~~citizens~~ of Florida from unnecessary and
2 costly health care expenditures.

3 (3) DEFINITIONS.--For the purpose of this section, the
4 word, phrase, or term:

5 (a) "Board" means any of the following boards relating
6 to the respective professions: the Board of Medicine as
7 created in s. 458.307; the Board of Osteopathic Medicine as
8 created in s. 459.004; the Board of Chiropractic as created in
9 s. 460.404; the Board of Podiatric Medicine as created in s.
10 461.004; the Board of Optometry as created in s. 463.003; the
11 Board of Pharmacy as created in s. 465.004; and the Board of
12 Dentistry as created in s. 466.004.

13 (b) "Comprehensive rehabilitation services" means
14 services that are provided by health care professionals
15 licensed under part I or part III of chapter 468 or chapter
16 486 to provide speech, occupational, or physical therapy
17 services on an outpatient or ambulatory basis.

18 (c) "Designated health services" means, for purposes
19 of this section, clinical laboratory services, physical
20 therapy services, comprehensive rehabilitative services,
21 diagnostic-imaging services, and radiation therapy services.

22 (d) "Entity" means any individual, partnership, firm,
23 corporation, or other business entity.

24 (e) "Fair market value" means value in arms length
25 transactions, consistent with the general market value, and,
26 with respect to rentals or leases, the value of rental
27 property for general commercial purposes, not taking into
28 account its intended use, and, in the case of a lease of
29 space, not adjusted to reflect the additional value the
30 prospective lessee or lessor would attribute to the proximity
31

1 or convenience to the lessor where the lessor is a potential
2 source of patient referrals to the lessee.

3 (f) "Group practice" means a group of two or more
4 health care providers legally organized as a partnership,
5 professional corporation, or similar association:

6 1. In which each health care provider who is a member
7 of the group provides substantially the full range of services
8 which the health care provider routinely provides, including
9 medical care, consultation, diagnosis, or treatment, through
10 the joint use of shared office space, facilities, equipment,
11 and personnel;

12 2. For which substantially all of the services of the
13 health care providers who are members of the group are
14 provided through the group and are billed in the name of the
15 group and amounts so received are treated as receipts of the
16 group; and

17 3. In which the overhead expenses of and the income
18 from the practice are distributed in accordance with methods
19 previously determined by members of the group.

20 (g) "Health care provider" means any physician
21 licensed under chapter 458, chapter 459, chapter 460, or
22 chapter 461, or any health care provider licensed under
23 chapter 463 or chapter 466.

24 (h) "Immediate family member" means a health care
25 provider's spouse, child, child's spouse, grandchild,
26 grandchild's spouse, parent, parent-in-law, or sibling.

27 (i) "Investment interest" means an equity or debt
28 security issued by an entity, including, without limitation,
29 shares of stock in a corporation, units or other interests in
30 a partnership, bonds, debentures, notes, or other equity
31 interests or debt instruments. Except for purposes of s.

1 455.661 ~~s. 455.239~~, the following investment interests shall
2 be excepted from this definition:

3 1. An investment interest in an entity that is the
4 sole provider of designated health services in a rural area;

5 2. An investment interest in notes, bonds, debentures,
6 or other debt instruments issued by an entity which provides
7 designated health services, as an integral part of a plan by
8 such entity to acquire such investor's equity investment
9 interest in the entity, provided that the interest rate is
10 consistent with fair market value, and that the maturity date
11 of the notes, bonds, debentures, or other debt instruments
12 issued by the entity to the investor is not later than October
13 1, 1996.

14 3. An investment interest in real property resulting
15 in a landlord-tenant relationship between the health care
16 provider and the entity in which the equity interest is held,
17 unless the rent is determined, in whole or in part, by the
18 business volume or profitability of the tenant or exceeds fair
19 market value; or

20 4. An investment interest in an entity which owns or
21 leases and operates a hospital licensed under chapter 395 or a
22 nursing home facility licensed under chapter 400.

23 (j) "Investor" means a person or entity owning a legal
24 or beneficial ownership or investment interest, directly or
25 indirectly, including, without limitation, through an
26 immediate family member, trust, or another entity related to
27 the investor within the meaning of 42 C.F.R. s. 413.17, in an
28 entity.

29 (k) "Referral" means any referral of a patient by a
30 health care provider for health care services, including,
31 without limitation:

- 1 1. The forwarding of a patient by a health care
2 provider to another health care provider or to an entity which
3 provides or supplies designated health services or any other
4 health care item or service; or
- 5 2. The request or establishment of a plan of care by a
6 health care provider, which includes the provision of
7 designated health services or other health care item or
8 service.
- 9 3. Except for the purposes of s. 455.661 ~~s. 455.239~~,
10 the following orders, recommendations, or plans of care shall
11 not constitute a referral by a health care provider:
- 12 a. By a radiologist for diagnostic-imaging services.
13 b. By a physician specializing in the provision of
14 radiation therapy services for such services.
- 15 c. By a medical oncologist for drugs and solutions to
16 be prepared and administered intravenously to such
17 oncologist's patient, as well as for the supplies and
18 equipment used in connection therewith to treat such patient
19 for cancer and the complications thereof.
- 20 d. By a cardiologist for cardiac catheterization
21 services.
- 22 e. By a pathologist for diagnostic clinical laboratory
23 tests and pathological examination services, if furnished by
24 or under the supervision of such pathologist pursuant to a
25 consultation requested by another physician.
- 26 f. By a health care provider who is the sole provider
27 or member of a group practice for designated health services
28 or other health care items or services that are prescribed or
29 provided solely for such referring health care provider's or
30 group practice's own patients, and that are provided or
31

1 performed by or under the direct supervision of such referring
2 health care provider or group practice.

3 g. By a health care provider for services provided by
4 an ambulatory surgical center licensed under chapter 395.

5 h. By a health care provider for diagnostic clinical
6 laboratory services where such services are directly related
7 to renal dialysis.

8 i. By a urologist for lithotripsy services.

9 j. By a dentist for dental services performed by an
10 employee of or health care provider who is an independent
11 contractor with the dentist or group practice of which the
12 dentist is a member.

13 k. By a physician for infusion therapy services to a
14 patient of that physician or a member of that physician's
15 group practice.

16 l. By a nephrologist for renal dialysis services and
17 supplies.

18 (1) "Rural area" means a county with a population
19 density of no greater than 100 persons per square mile, as
20 defined by the United States Census.

21 (4) PROHIBITED REFERRALS AND CLAIMS FOR
22 PAYMENT.--Except as provided in this section:

23 (a) A health care provider may not refer a patient for
24 the provision of designated health services to an entity in
25 which the health care provider is an investor or has an
26 investment interest.

27 (b) A health care provider may not refer a patient for
28 the provision of any other health care item or service to an
29 entity in which the health care provider is an investor
30 unless:

31

1 1. The provider's investment interest is in registered
2 securities purchased on a national exchange or
3 over-the-counter market and issued by a publicly held
4 corporation:

5 a. Whose shares are traded on a national exchange or
6 on the over-the-counter market; and

7 b. Whose total assets at the end of the corporation's
8 most recent fiscal quarter exceeded \$50 million; or

9 2. With respect to an entity other than a publicly
10 held corporation described in subparagraph 1., and a referring
11 provider's investment interest in such entity, each of the
12 following requirements are met:

13 a. No more than 50 percent of the value of the
14 investment interests are held by investors who are in a
15 position to make referrals to the entity.

16 b. The terms under which an investment interest is
17 offered to an investor who is in a position to make referrals
18 to the entity are no different from the terms offered to
19 investors who are not in a position to make such referrals.

20 c. The terms under which an investment interest is
21 offered to an investor who is in a position to make referrals
22 to the entity are not related to the previous or expected
23 volume of referrals from that investor to the entity.

24 d. There is no requirement that an investor make
25 referrals or be in a position to make referrals to the entity
26 as a condition for becoming or remaining an investor.

27 3. With respect to either such entity or publicly held
28 corporation:

29 a. The entity or corporation does not loan funds to or
30 guarantee a loan for an investor who is in a position to make
31

1 referrals to the entity or corporation if the investor uses
2 any part of such loan to obtain the investment interest.

3 b. The amount distributed to an investor representing
4 a return on the investment interest is directly proportional
5 to the amount of the capital investment, including the fair
6 market value of any preoperational services rendered, invested
7 in the entity or corporation by that investor.

8 4. Each board and, in the case of hospitals, the
9 Agency for Health Care Administration ~~Department of Health and~~
10 ~~Rehabilitative Services~~, shall encourage the use by licensees
11 of the declaratory statement procedure to determine the
12 applicability of this section or any rule adopted pursuant to
13 this section as it applies solely to the licensee. Boards
14 shall submit to the Agency for Health Care Administration
15 ~~Department of Health and Rehabilitative Services~~ the name of
16 any entity in which a provider investment interest has been
17 approved pursuant to this section, and the Agency for Health
18 Care Administration ~~Department of Health and Rehabilitative~~
19 ~~Services~~ shall adopt rules providing for periodic quality
20 assurance and utilization review of such entities.

21 (c) No claim for payment may be presented by an entity
22 to any individual, third-party payor, or other entity for a
23 service furnished pursuant to a referral prohibited under this
24 section.

25 (d) If an entity collects any amount that was billed
26 in violation of this section, the entity shall refund such
27 amount on a timely basis to the payor or individual, whichever
28 is applicable.

29 (e) Any person that presents or causes to be presented
30 a bill or a claim for service that such person knows or should
31 know is for a service for which payment may not be made under

1 paragraph (c), or for which a refund has not been made under
2 paragraph (d), shall be subject to a civil penalty of not more
3 than \$15,000 for each such service to be imposed and collected
4 by the appropriate board.

5 (f) Any health care provider or other entity that
6 enters into an arrangement or scheme, such as a cross-referral
7 arrangement, which the physician or entity knows or should
8 know has a principal purpose of assuring referrals by the
9 physician to a particular entity which, if the physician
10 directly made referrals to such entity, would be in violation
11 of this section, shall be subject to a civil penalty of not
12 more than \$100,000 for each such circumvention arrangement or
13 scheme to be imposed and collected by the appropriate board.

14 (g) A violation of this section by a health care
15 provider shall constitute grounds for disciplinary action to
16 be taken by the applicable board pursuant to s. 458.331(2), s.
17 459.015(2), s. 460.413(2), s. 461.013(2), s. 463.016(2), or s.
18 466.028(2). Any hospital licensed under chapter 395 found in
19 violation of this section shall be subject to the rules
20 adopted by the Agency for Health Care Administration
21 ~~Department of Health and Rehabilitative Services~~ pursuant to
22 s. 395.0185(2).

23 (h) Any hospital licensed under chapter 395 that
24 discriminates against or otherwise penalizes a health care
25 provider for compliance with this act.

26 (i) The provision of paragraph (a) shall not apply to
27 referrals to the offices of radiation therapy centers managed
28 by an entity or subsidiary or general partner thereof, which
29 performed radiation therapy services at those same offices
30 prior to April 1, 1991, and shall not apply also to referrals
31 for radiation therapy to be performed at no more than one

1 additional office of any entity qualifying for the foregoing
2 exception which, prior to February 1, 1992, had a binding
3 purchase contract on and a nonrefundable deposit paid for a
4 linear accelerator to be used at the additional office. The
5 physical site of the radiation treatment centers affected by
6 this provision may be relocated as a result of the following
7 factors: acts of God; fire; strike; accident; war; eminent
8 domain actions by any governmental body; or refusal by the
9 lessor to renew a lease. A relocation for the foregoing
10 reasons is limited to relocation of an existing facility to a
11 replacement location within the county of the existing
12 facility upon written notification to the Office of Licensure
13 and Certification.

14 (j) A health care provider who meets the requirements
15 of paragraphs (b) and (i) must disclose his investment
16 interest to his patients as provided in s. 455.701 ~~s. 455.25.~~

17 Section 79. Section 455.237, Florida Statutes, 1996
18 Supplement, is transferred and renumbered as section 455.657,
19 Florida Statutes.

20 Section 80. Section 455.239, Florida Statutes, is
21 transferred, renumbered as section 455.661, Florida Statutes,
22 and amended to read:

23 455.661 ~~455.239~~ Designated health care services;
24 licensure required.--

25 (1) An entity, as defined in s. 455.654 ~~s. 455.236~~,
26 which furnishes designated health care services may not
27 operate in this state unless licensed by the Agency for Health
28 Care Administration ~~Department of Health and Rehabilitative~~
29 ~~Services~~ pursuant to subsection (2).

30
31

1 (2) The agency ~~department~~ shall adopt rules for
2 licensing requirements for designated health care services
3 including, but not limited to, rules providing for:

4 (a) A licensure fee of not less than \$400 and not more
5 than \$1,500 to be assessed annually;

6 (b) Parameters of quality with respect to the
7 provision of ancillary services by respective entities;

8 (c) Periodic inspection of the facilities of an entity
9 for the purpose of evaluating the premises, operation,
10 supervision, and procedures of the entity to ensure compliance
11 with quality parameters as established in department rules;
12 and

13 (d) The submission by an entity of information on its
14 ownership, including identification of the owners who are
15 health care providers, as defined in s. 455.654 ~~s. 455.251~~,
16 and each investor's percentage of ownership.

17 Section 81. Section 455.664, Florida Statutes, is
18 created to read:

19 455.664 Advertisement by a health care provider of
20 free or discounted services; required statement.--In any
21 advertisement for a free, discounted fee, or reduced fee
22 service, examination, or treatment by a health care provider
23 licensed under chapter 458, chapter 459, chapter 460, chapter
24 461, chapter 462, chapter 463, chapter 464, chapter 466, or
25 chapter 486, the following statement shall appear in capital
26 letters clearly distinguishable from the rest of the text:
27 THE PATIENT AND ANY OTHER PERSON RESPONSIBLE FOR PAYMENT HAS A
28 RIGHT TO REFUSE TO PAY, CANCEL PAYMENT, OR BE REIMBURSED FOR
29 PAYMENT FOR ANY OTHER SERVICE, EXAMINATION, OR TREATMENT THAT
30 IS PERFORMED AS A RESULT OF AND WITHIN 72 HOURS OF RESPONDING
31 TO THE ADVERTISEMENT FOR THE FREE, DISCOUNTED FEE, OR REDUCED

1 FEE SERVICE, EXAMINATION, OR TREATMENT. However, the required
2 statement shall not be necessary as an accompaniment to an
3 advertisement of a licensed health care provider defined by
4 this section if the advertisement appears in a classified
5 directory the primary purpose of which is to provide products
6 and services at free, reduced, or discounted prices to
7 consumers and in which the statement prominently appears in at
8 least one place.

9 Section 82. Section 455.241, Florida Statutes, 1996
10 Supplement, is transferred, renumbered as section 455.667,
11 Florida Statutes, and amended to read:

12 455.667 ~~455.241~~ Ownership and control of patient
13 records; report or copies of records to be furnished.--

14 (1) As used in this section, the term "records owner"
15 means any health care practitioner who generates a medical
16 record after making a physical or mental examination of, or
17 administering treatment or dispensing legend drugs to, any
18 person; any health care practitioner to whom records are
19 transferred by a previous records owner; or any health care
20 practitioner's employer, including, but not limited to, group
21 practices and staff-model health maintenance organizations,
22 provided the employment contract or agreement between the
23 employer and the health care practitioner designates the
24 employer as the records owner.

25 (2) As used in this section, the terms "records
26 owner," "health care practitioner," and "health care
27 practitioner's employer" do not include any of the following
28 persons or entities; furthermore, the following persons or
29 entities are not authorized to acquire or own medical records,
30 but are authorized to maintain those documents required by the
31 part or chapter under which they are licensed or regulated:

- 1 (a) Certified nursing assistants regulated under s.
2 400.211.
- 3 (b) Pharmacists and pharmacies licensed under chapter
4 465.
- 5 (c) Dental hygienists licensed under s. 466.023.
- 6 (d) Nursing home administrators licensed under part II
7 of chapter 468.
- 8 (e) Respiratory therapists regulated under part V of
9 chapter 468.
- 10 (f) Athletic trainers licensed under part XIV of
11 chapter 468.
- 12 (g) Electrolysisists licensed under chapter 478.
- 13 (h) Clinical laboratory personnel licensed under part
14 III of chapter 483.
- 15 (i) Medical physicists licensed under part IV of
16 chapter 483.
- 17 (j) Opticians and optical establishments licensed or
18 permitted under part I of chapter 484.
- 19 (k) Persons or entities practicing under s.
20 627.736(7).
- 21 (3) This section does not apply to facilities licensed
22 under chapter 395.
- 23 (4)~~(1)~~ Any health care practitioner licensed by the
24 department or a board within the department who makes a
25 physical or mental examination of, or administers treatment or
26 dispenses legend drugs to, any person shall, upon request of
27 such person or the person's legal representative, furnish, in
28 a timely manner, without delays for legal review, copies of
29 all reports and records relating to such examination or
30 treatment, including X rays and insurance information.
31 However, when a patient's psychiatric, chapter 490

1 psychological, or chapter 491 psychotherapeutic records are
2 requested by the patient or the patient's legal
3 representative, the health care practitioner may provide a
4 report of examination and treatment in lieu of copies of
5 records. Upon a patient's written request, complete copies of
6 the patient's psychiatric records shall be provided directly
7 to a subsequent treating psychiatrist. The furnishing of such
8 report or copies shall not be conditioned upon payment of a
9 fee for services rendered.

10 (5)(2) Except as otherwise provided in this section
11 and in s. 440.13(4)(c)(2), such records may not be furnished
12 to, and the medical condition of a patient may not be
13 discussed with, any person other than the patient or the
14 patient's legal representative or other health care
15 practitioners and providers involved in the care or treatment
16 of the patient, except upon written authorization of the
17 patient. However, such records may be furnished without
18 written authorization under the following circumstances:

19 (a) To any person, firm, or corporation that has
20 procured or furnished such examination or treatment with the
21 patient's consent.

22 (b) ~~or~~ When compulsory physical examination is made
23 pursuant to Rule 1.360, Florida Rules of Civil Procedure, in
24 which case copies of the medical records shall be furnished to
25 both the defendant and the plaintiff.

26 (c) ~~Such records may be furnished~~ In any civil or
27 criminal action, unless otherwise prohibited by law, upon the
28 issuance of a subpoena from a court of competent jurisdiction
29 and proper notice to the patient or the patient's legal
30 representative by the party seeking such records.

31

1 (d) For statistical and scientific research, provided
2 the information is abstracted in such a way as to protect the
3 identity of the patient or provided written permission is
4 received from the patient or the patient's legal
5 representative.

6 (6) Except in a medical negligence action or
7 administrative proceeding when a health care practitioner or
8 provider is or reasonably expects to be named as a defendant,
9 information disclosed to a health care practitioner by a
10 patient in the course of the care and treatment of such
11 patient is confidential and may be disclosed only to other
12 health care practitioners and providers involved in the care
13 or treatment of the patient, or if permitted by written
14 authorization from the patient or compelled by subpoena at a
15 deposition, evidentiary hearing, or trial for which proper
16 notice has been given.

17 (7) The department ~~or the Agency for Health Care~~
18 Administration, as appropriate, may obtain patient records and
19 insurance information, if the complaint being investigated
20 alleges inadequate medical care based on termination of
21 insurance. The department may access these records pursuant
22 to a subpoena without written authorization from the patient
23 if the department ~~or the Agency for Health Care Administration~~
24 and the probable cause panel of the appropriate board, if any,
25 find reasonable cause to believe that a health care
26 practitioner has excessively or inappropriately prescribed any
27 controlled substance specified in chapter 893 in violation of
28 this ~~part chapter~~ or any professional practice act or that a
29 health care practitioner has practiced his profession below
30 that level of care, skill, and treatment required as defined
31 by this ~~part chapter~~ or any professional practice act;

1 provided, however, the patient record obtained by the
2 department ~~or the agency~~ pursuant to this subsection shall be
3 used solely for the purpose of the department ~~or the agency~~
4 and the appropriate regulatory board in disciplinary
5 proceedings. The records ~~record~~ shall otherwise be
6 confidential and exempt from s. 119.07(1). This section does
7 not limit the assertion of the psychotherapist-patient
8 privilege under s. 90.503 in regard to records of treatment
9 for mental or nervous disorders by a medical practitioner
10 licensed pursuant to chapter 458 or chapter 459 who has
11 primarily diagnosed and treated mental and nervous disorders
12 for a period of not less than 3 years, inclusive of
13 psychiatric residency. However, the health care practitioner
14 shall release records of treatment for medical conditions even
15 if the health care practitioner has also treated the patient
16 for mental or nervous disorders. If the department ~~or the~~
17 ~~agency~~ has found reasonable cause under this section and the
18 psychotherapist-patient privilege is asserted, the department
19 ~~or the agency~~ may petition the circuit court for an in camera
20 review of the records by expert medical practitioners
21 appointed by the court to determine if the records or any part
22 thereof are protected under the psychotherapist-patient
23 privilege.

24 (8)~~(3)~~ All patient records obtained by the department
25 ~~or the Agency for Health Care Administration~~ and any other
26 documents maintained by the department ~~or the agency~~ which
27 identify the patient by name are confidential and exempt from
28 s. 119.07(1) and shall be used solely for the purpose of the
29 department ~~or the Agency for Health Care Administration~~ and
30 the appropriate regulatory board in its investigation,
31 prosecution, and appeal of disciplinary proceedings. The

1 records shall not be available to the public as part of the
2 record of investigation for and prosecution in disciplinary
3 proceedings made available to the public by the department ~~or~~
4 ~~the Agency for Health Care Administration~~ or the appropriate
5 board.

6 (9) All records owners shall develop and implement
7 policies, standards, and procedures to protect the
8 confidentiality and security of the medical record. Employees
9 of records owners shall be trained in these policies,
10 standards, and procedures.

11 (10) Records owners are responsible for maintaining a
12 record of all disclosures of information contained in the
13 medical record to a third party, including the purpose of the
14 disclosure request. The record of disclosure may be
15 maintained in the medical record. The third party to whom
16 information is disclosed is prohibited from further disclosing
17 any information in the medical record without the expressed
18 written consent of the patient or the patient's legal
19 representative.

20 (11) Notwithstanding the provisions of s. 455.677,
21 records owners shall place an advertisement in the local
22 newspaper or notify patients, in writing, when they are
23 terminating practice, retiring, or relocating, and no longer
24 available to patients, and offer patients the opportunity to
25 obtain a copy of their medical record.

26 (12) Notwithstanding the provisions of s. 455.677,
27 records owners shall notify the appropriate board office when
28 they are terminating practice, retiring, or relocating, and no
29 longer available to patients, specifying who the new records
30 owner is and where medical records can be found.

31

1 (13) Whenever a records owner has turned records over
2 to a new records owner, the new records owner shall be
3 responsible for providing a copy of the complete medical
4 record, upon written request, of the patient or the patient's
5 legal representative.

6 (14) Licensees in violation of the provisions of this
7 section shall be disciplined by the appropriate licensing
8 authority.

9 (15) The Attorney General is authorized to enforce the
10 provisions of this section for records owners not otherwise
11 licensed by the state, through injunctive relief and fines not
12 to exceed \$5,000 per violation.

13 (16)(4) A health care practitioner or records owner
14 furnishing copies of reports or records pursuant to this
15 section shall charge no more than the actual cost of copying,
16 including reasonable staff time, or the amount specified in
17 administrative rule by the appropriate board, or the
18 department when there is no board.

19 (17) Nothing in this section shall be construed to
20 limit health care practitioner consultations, as necessary.

21 (18) A records owner shall release to a health care
22 practitioner who, as an employee of the records owner,
23 previously provided treatment to a patient, those records that
24 the health care practitioner actually created or generated
25 when the health care practitioner treated the patient.
26 Records released pursuant to this subsection shall be released
27 only upon written request of the health care practitioner and
28 shall be limited to the notes, plans of care, and orders and
29 summaries that were actually generated by the health care
30 practitioner requesting the record.

31

1 Section 83. Section 455.2415, Florida Statutes, 1996
2 Supplement, is transferred, renumbered as section 455.671,
3 Florida Statutes, and amended to read:

4 455.671 ~~455.2415~~ Communications confidential;
5 exceptions.--Communications between a patient and a
6 psychiatrist, as defined in s. 394.455 ~~s. 394.455(23)~~, shall
7 be held confidential and shall not be disclosed except upon
8 the request of the patient or the patient's legal
9 representative. Provision of psychiatric records and reports
10 shall be governed by s. 455.667 ~~s. 455.241~~. Notwithstanding
11 any other provision ~~provisions~~ of this section or s. 90.503,
12 where:

13 (1) A patient is engaged in a treatment relationship
14 with a psychiatrist;

15 (2) Such patient has made an actual threat to
16 physically harm an identifiable victim or victims; and

17 (3) The treating psychiatrist makes a clinical
18 judgment that the patient has the apparent capability to
19 commit such an act and that it is more likely than not that in
20 the near future the patient will carry out that threat,

21
22 the psychiatrist may disclose patient communications to the
23 extent necessary to warn any potential victim or to
24 communicate the threat to a law enforcement agency. No civil
25 or criminal action shall be instituted, and there shall be no
26 liability on account of disclosure of otherwise confidential
27 communications by a psychiatrist in disclosing a threat
28 pursuant to this section.

29 Section 84. Section 455.2416, Florida Statutes, is
30 transferred and renumbered as section 455.674, Florida
31 Statutes.

1 Section 85. Section 455.677, Florida Statutes, is
2 created to read:

3 455.677 Disposition of records of deceased
4 practitioners or practitioners relocating or terminating
5 practice.--Each board created under the provisions of chapter
6 457, chapter 458, chapter 459, chapter 460, chapter 461,
7 chapter 463, chapter 464, chapter 465, chapter 466, part I of
8 chapter 484, chapter 486, chapter 490, or chapter 491, and the
9 department under the provisions of chapter 462, shall provide
10 by rule for the disposition, under that chapter, of the
11 medical records or records of a psychological nature of
12 practitioners which are in existence at the time the
13 practitioner dies, terminates practice, or relocates and is no
14 longer available to patients and which records pertain to the
15 practitioner's patients. The rules shall provide that the
16 records be retained for at least 2 years after the
17 practitioner's death, termination of practice, or relocation.
18 In the case of the death of the practitioner, the rules shall
19 provide for the disposition of such records by the estate of
20 the practitioner.

21 Section 86. Section 455.681, Florida Statutes, is
22 created to read:

23 455.681 Authority to inspect.--In addition to the
24 authority specified in s. 465.017, duly authorized agents and
25 employees of the department shall have the power to inspect in
26 a lawful manner at all reasonable hours:

- 27 (1) Any pharmacy; or
28 (2) Any establishment at which the services of a
29 licensee authorized to prescribe controlled substances
30 specified in chapter 893 are offered,
31

1 for the purpose of determining if any of the provisions of
2 this part or any practice act of a profession or any rule
3 adopted thereunder is being violated; or for the purpose of
4 securing such other evidence as may be needed for prosecution.

5 Section 87. Section 455.244, Florida Statutes, is
6 transferred and renumbered as section 455.684, Florida
7 Statutes.

8 Section 88. Section 455.687, Florida Statutes, is
9 created to read:

10 455.687 Certain health care practitioners; immediate
11 suspension of license.--

12 (1) The department shall issue an emergency order
13 suspending the license of any person licensed under chapter
14 458, chapter 459, chapter 460, chapter 461, chapter 462,
15 chapter 463, chapter 464, chapter 465, chapter 466, or chapter
16 484 who pleads guilty to, is convicted or found guilty of, or
17 who enters a plea of nolo contendere to, regardless of
18 adjudication, a felony under chapter 409 or chapter 893 or
19 under 21 U.S.C. ss. 801-970 or under 42 U.S.C. ss. 1395-1396.

20 (2) If the board has previously found any physician or
21 osteopathic physician in violation of the provisions of s.
22 458.331(1)(t) or s. 459.015(1)(x), in regard to his treatment
23 of three or more patients, and the probable cause panel of the
24 board finds probable cause of an additional violation of that
25 section, then the Secretary of Health shall review the matter
26 to determine if an emergency suspension or restriction order
27 is warranted. Nothing in this section shall be construed so as
28 to limit the authority of the secretary of the department to
29 issue an emergency order.

30
31

1 Section 89. Section 455.2455, Florida Statutes, is
2 transferred and renumbered as section 455.691, Florida
3 Statutes.

4 Section 90. Section 455.2456, Florida Statutes, is
5 transferred, renumbered as section 455.694, Florida Statutes,
6 and amended to read:

7 455.694 ~~455.2456~~ Boards regulating certain health care
8 practitioners.--

9 (1) As a prerequisite for licensure or license
10 renewal, the Board of Acupuncture, the Board of Chiropractic,
11 the Board of Podiatric Medicine, and the Board of Dentistry
12 shall, by rule, require that all health care practitioners
13 licensed under the respective board, and the Board of Nursing
14 shall, by rule, require that advanced registered nurse
15 practitioners certified under s. 464.012, maintain medical
16 malpractice insurance or provide proof of financial
17 responsibility in an amount and in a manner determined by the
18 board to be sufficient to cover claims arising out of the
19 rendering of or failure to render professional care and
20 services in this state.

21 (2) The board may grant exemptions upon application by
22 practitioners meeting any of the following criteria:

23 (a) Any person licensed under chapter 457, chapter
24 460, chapter 461, s. 464.012, or chapter 466 who practices
25 exclusively as an officer, employee, or agent of the Federal
26 Government or of the state or its agencies or its
27 subdivisions. For the purposes of this subsection, an agent
28 of the state, its agencies, or its subdivisions is a person
29 who is eligible for coverage under any self-insurance or
30 insurance program authorized by the provisions of s.

31

1 768.28(15)~~s. 768.28(14)~~ or who is a volunteer under s.
2 110.501(1).

3 (b) Any person whose license or certification has
4 become inactive under chapter 457, chapter 460, chapter 461,
5 chapter 464, or chapter 466 and who is not practicing in this
6 state. Any person applying for reactivation of a license must
7 show either that such licensee maintained tail insurance
8 coverage which provided liability coverage for incidents that
9 occurred on or after October 1, 1993, or the initial date of
10 licensure in this state, whichever is later, and incidents
11 that occurred before the date on which the license became
12 inactive; or such licensee must submit an affidavit stating
13 that such licensee has no unsatisfied medical malpractice
14 judgments or settlements at the time of application for
15 reactivation.

16 (c) Any person holding a limited license pursuant to
17 s. 455.561 ~~s. 455.214~~, and practicing under the scope of such
18 limited license.

19 (d) Any person licensed or certified under chapter
20 457, chapter 460, chapter 461, s. 464.012, or chapter 466 who
21 practices only in conjunction with his teaching duties at an
22 accredited school or in its main teaching hospitals. Such
23 person may engage in the practice of medicine to the extent
24 that such practice is incidental to and a necessary part of
25 duties in connection with the teaching position in the school.

26 (e) Any person holding an active license or
27 certification under chapter 457, chapter 460, chapter 461, s.
28 464.012, or chapter 466 who is not practicing in this state.
29 If such person initiates or resumes practice in this state, he
30 must notify the department of such activity.

31

1 (f) Any person who can demonstrate to the board that
2 he has no malpractice exposure in the state.

3 (3) Notwithstanding the provisions of this section,
4 the financial responsibility requirements of ss. 458.320 and
5 459.0085 shall continue to apply to practitioners licensed
6 under those chapters.

7 Section 91. Section 455.247, Florida Statutes, 1996
8 Supplement, is transferred and renumbered as section 455.697,
9 Florida Statutes.

10 Section 92. Section 455.25, Florida Statutes, is
11 transferred and renumbered as section 455.701, Florida
12 Statutes, and is amended to read:

13 455.701 ~~455.25~~ Disclosure of financial interest by
14 production.--

15 (1) A health care provider shall not refer a patient
16 to an entity in which such provider is an investor unless,
17 prior to the referral, the provider furnishes the patient with
18 a written disclosure form, informing the patient of:

19 (a) The existence of the investment interest.

20 (b) The name and address of each applicable entity in
21 which the referring health care provider is an investor.

22 (c) The patient's right to obtain the items or
23 services for which the patient has been referred at the
24 location or from the provider or supplier of the patient's
25 choice, including the entity in which the referring provider
26 is an investor.

27 (d) The names and addresses of at least two
28 alternative sources of such items or services available to the
29 patient.

30 ~~(2) An entity may not provide items or services to a~~
31 ~~patient unless, before providing the item or service, the~~

1 ~~entity obtains the signature of the patient on a written~~
2 ~~disclosure form informing the patient of:~~

3 ~~(a) The existence or nonexistence of any financial~~
4 ~~relationship with the health care provider who referred the~~
5 ~~patient;~~

6 ~~(b) A schedule of typical fees for items or services~~
7 ~~usually provided by the entity or, if impracticable because of~~
8 ~~the nature of the treatment, a written estimate specific to~~
9 ~~the patient;~~

10 ~~(c) The patient's right to obtain the items or~~
11 ~~services for which the patient has been referred at a location~~
12 ~~or from a supplier of the patient's choice, including an~~
13 ~~entity with which the referring health care provider may have~~
14 ~~a financial relationship; and~~

15 ~~(d) The names, addresses, and telephone numbers of at~~
16 ~~least two reasonable alternative sources of such items or~~
17 ~~services available to the patient.~~

18 ~~(2)(3)~~ The physician or health care provider ~~and the~~
19 ~~entity~~ shall post a copy of the ~~their respective~~ disclosure
20 forms in a conspicuous public place ~~places~~ in his or her
21 office ~~the offices~~.

22 ~~(3)(4)~~ A violation of this section shall constitute a
23 misdemeanor of the first degree, punishable as provided in s.
24 775.082 or s. 775.083. In addition to any other penalties or
25 remedies provided, a violation of this section shall be
26 grounds for disciplinary action by the respective board.

27 Section 93. Section 455.26, Florida Statutes, is
28 transferred, renumbered as section 455.704, Florida Statutes,
29 and amended to read:

30 455.704 ~~455.26~~ Impaired Practitioners Committee;
31 duties.--

1 (1) There is created the Impaired Practitioners
2 Committee to be composed of one representative appointed by
3 each board under the jurisdiction of the Division of Medical
4 Quality Assurance, of one addictionologist, and one lay member
5 having an appropriate background in the area of impairment,
6 each to be appointed by the agency head of the agency having
7 jurisdiction over the professions, ~~one representative of the~~
8 ~~Agency for Health Care Administration, to be appointed by the~~
9 ~~Director of Health Care Administration~~ and of one
10 representative of the department appointed by the secretary of
11 the department. Section 455.534 ~~455.207~~ applies to the
12 activities of the committee.

13 (2) The committee shall:

14 (a) Establish policies and guidelines to be used in
15 approving treatment providers for preventive and
16 rehabilitative programs directed to impaired practitioners;

17 (b) Act as liaison between approved treatment
18 providers and the department ~~and the Agency for Health Care~~
19 ~~Administration~~;

20 (c) Advise the department ~~and the agency~~ on the
21 continuation and expansion of treatment programs for impaired
22 practitioners; and

23 (d) Disseminate information concerning the impairment
24 program.

25 Section 94. Section 455.261, Florida Statutes, 1996
26 Supplement, is transferred, renumbered as section 455.707,
27 Florida Statutes, and amended to read:

28 455.707 ~~455.261~~ Treatment programs for impaired
29 practitioners.--

30 (1) For professions that ~~which~~ do not have impaired
31 practitioner programs provided for in their practice acts, the

1 department shall, by rule, designate approved treatment
2 programs under this section. The department may adopt rules
3 setting forth appropriate criteria for approval of treatment
4 providers based on the policies and guidelines established by
5 the Impaired Practitioners Committee. The department shall
6 not compel any impaired practitioner program in existence on
7 October 1, 1992, to serve additional professions.

8 (2) The department shall retain one or more impaired
9 practitioner consultants as recommended by the committee. A
10 consultant shall be a licensee or recovered licensee under the
11 jurisdiction of the Division of Medical Quality Assurance
12 within the department, and at least one consultant must be a
13 practitioner or recovered practitioner licensed under chapter
14 458, chapter 459, or chapter 464. The consultant shall assist
15 the probable cause panel and department in carrying out the
16 responsibilities of this section. This shall include working
17 with department investigators to determine whether a
18 practitioner is, in fact, impaired.

19 (3)(a) Whenever the department receives a written or
20 oral legally sufficient complaint alleging that a licensee
21 under the jurisdiction of the Division of Medical Quality
22 Assurance within the department is impaired as a result of the
23 misuse or abuse of alcohol or drugs, or both, or due to a
24 mental or physical condition which could affect the licensee's
25 ability to practice with skill and safety, and no complaint
26 against the licensee other than impairment exists, the
27 reporting of such information shall not constitute a complaint
28 within the meaning of s. 455.621 ~~s. 455.225~~ if the probable
29 cause panel of the appropriate board, or the department when
30 there is no board, finds:

31

- 1 1. The licensee has acknowledged the impairment
2 problem.
- 3 2. The licensee has voluntarily enrolled in an
4 appropriate, approved treatment program.
- 5 3. The licensee has voluntarily withdrawn from
6 practice or limited the scope of practice as determined by the
7 panel, or the department when there is no board, in each case,
8 until such time as the panel, or the department when there is
9 no board, is satisfied the licensee has successfully completed
10 an approved treatment program.
- 11 4. The licensee has executed releases for medical
12 records, authorizing the release of all records of
13 evaluations, diagnoses, and treatment of the licensee,
14 including records of treatment for emotional or mental
15 conditions, to the consultant. The consultant shall make no
16 copies or reports of records that do not regard the issue of
17 the licensee's impairment and his participation in a treatment
18 program.
- 19 (b) If, however, the licensee agrees to withdraw from
20 practice until such time as the consultant determines the
21 licensee has satisfactorily completed an approved treatment
22 program or evaluation, the probable cause panel, or the
23 department when there is no board, shall not become involved
24 in the licensee's case.
- 25 (c) Inquiries related to impairment treatment programs
26 designed to provide information to the licensee and others and
27 which do not indicate that the licensee presents a danger to
28 the public shall not constitute a complaint within the meaning
29 of s. 455.621 ~~s. 455.225~~ and shall be exempt from the
30 provisions of this subsection.
- 31

1 (d) Whenever the department receives a legally
2 sufficient complaint alleging that a licensee is impaired as
3 described in paragraph (a) and no complaint against the
4 licensee other than impairment exists, the department shall
5 forward all information in its possession regarding the
6 impaired licensee to the consultant. For the purposes of this
7 section, a suspension from hospital staff privileges due to
8 the impairment does not constitute a complaint.

9 (e) The probable cause panel, or the department when
10 there is no board, shall work directly with the consultant,
11 and all information concerning a practitioner obtained from
12 the consultant by the panel, or the department when there is
13 no board, shall remain confidential and exempt from the
14 provisions of s. 119.07(1), subject to the provisions of
15 subsections (5) and (6).

16 (f) A finding of probable cause shall not be made as
17 long as the panel, or the department when there is no board,
18 is satisfied, based upon information it receives from the
19 consultant and the department, that the licensee is
20 progressing satisfactorily in an approved treatment program.

21 (4) In any disciplinary action for a violation other
22 than impairment in which a licensee establishes the violation
23 for which the licensee is being prosecuted was due to or
24 connected with impairment and further establishes the licensee
25 is satisfactorily progressing through or has successfully
26 completed an approved treatment program pursuant to this
27 section, such information may be considered by the board, or
28 the department when there is no board, as a mitigating factor
29 in determining the appropriate penalty. This subsection does
30 not limit mitigating factors the board may consider.

31

1 (5)(a) An approved treatment provider shall, upon
2 request, disclose to the consultant all information in its
3 possession regarding the issue of a licensee's impairment and
4 participation in the treatment program. All information
5 obtained by the consultant and department pursuant to this
6 section is confidential and exempt from the provisions of s.
7 119.07(1), subject to the provisions of this subsection and
8 subsection (6). Failure to provide such information to the
9 consultant is grounds for withdrawal of approval of such
10 program or provider.

11 (b) If in the opinion of the consultant, after
12 consultation with the treatment provider, an impaired licensee
13 has not progressed satisfactorily in a treatment program, all
14 information regarding the issue of a licensee's impairment and
15 participation in a treatment program in the consultant's
16 possession shall be disclosed to the department. Such
17 disclosure shall constitute a complaint pursuant to the
18 general provisions of s. 455.621 ~~s. 455.225~~. Whenever the
19 consultant concludes that impairment affects a licensee's
20 practice and constitutes an immediate, serious danger to the
21 public health, safety, or welfare, that conclusion shall be
22 communicated to the secretary of the department.

23 (6) A consultant, licensee, or approved treatment
24 provider who makes a disclosure pursuant to this section is
25 not subject to civil liability for such disclosure or its
26 consequences. The provisions of s. 766.101 apply to any
27 officer, employee, or agent of the department or the board and
28 to any officer, employee, or agent of any entity with which
29 the department has contracted pursuant to this section.

30 Section 95. Section 455.711, Florida Statutes, is
31 created to read:

- 1 455.711 Inactive and delinquent status.--
2 (1) A licensee may practice a profession only if the
3 licensee has an active-status license. A licensee who
4 practices a profession without an active-status license is in
5 violation of this section and s. 455.624, and the board, or
6 the department if there is no board, may impose discipline on
7 the licensee.
- 8 (2) Each board, or the department if there is no
9 board, shall permit a licensee to choose, at the time of
10 licensure renewal, an active or inactive status. However, a
11 licensee who changes from inactive to active status is not
12 eligible to return to inactive status until the licensee
13 thereafter completes a licensure cycle on active status.
- 14 (3) Each board, or the department if there is no
15 board, shall by rule impose a fee for an inactive-status
16 license which is no greater than the fee for an active-status
17 license.
- 18 (4) An inactive-status licensee may change to active
19 status at any time, if the licensee meets all requirements for
20 active status, pays any additional licensure fees necessary to
21 equal those imposed on an active-status licensee, pays any
22 applicable reactivation fees as set by the board, or the
23 department if there is no board, and meets all continuing
24 education requirements as specified in this section.
- 25 (5) A licensee must apply with a complete application,
26 as defined by rule of the board, or the department if there is
27 no board, to renew an active-status or inactive-status license
28 before the license expires. If a licensee fails to renew
29 before the license expires, the license becomes delinquent in
30 the license cycle following expiration.
31

1 (6) A delinquent-status licensee must affirmatively
2 apply with a complete application, as defined by rule of the
3 board, or the department if there is no board, for active or
4 inactive status during the licensure cycle in which a licensee
5 becomes delinquent. Failure by a delinquent-status licensee to
6 become active or inactive before the expiration of the current
7 licensure cycle renders the license null without any further
8 action by the board or the department. Any subsequent
9 licensure shall be as a result of applying for and meeting all
10 requirements imposed on an applicant for new licensure.

11 (7) Each board, or the department if there is no
12 board, shall by rule impose an additional delinquency fee, not
13 to exceed the biennial renewal fee for an active-status
14 license, on a delinquent-status licensee when such licensee
15 applies for active or inactive status.

16 (8) Each board, or the department if there is no
17 board, shall by rule impose an additional fee, not to exceed
18 the biennial renewal fee for an active-status license, for
19 processing a licensee's request to change licensure status at
20 any time other than at the beginning of a licensure cycle.

21 (9) Each board, or the department if there is no
22 board, may by rule impose reasonable conditions, excluding
23 full reexamination but including part of a national
24 examination or a special purpose examination to assess current
25 competency, necessary to ensure that a licensee who has been
26 on inactive status for more than two consecutive biennial
27 licensure cycles and who applies for active status can
28 practice with the care and skill sufficient to protect the
29 health, safety, and welfare of the public. Reactivation
30 requirements may differ depending on the length of time
31 licensees are inactive. The costs to meet reactivation

1 requirements shall be borne by licensees requesting
2 reactivation.

3 (10) Before reactivation, an inactive or delinquent
4 licensee must meet the same continuing education requirements,
5 if any, imposed on an active-status licensee for all biennial
6 licensure periods in which the licensee was inactive or
7 delinquent.

8 (11) The status or a change in status of a licensee
9 does not alter in any way the right of the board, or of the
10 department if there is no board, to impose discipline or to
11 enforce discipline previously imposed on a licensee for acts
12 or omissions committed by the licensee while holding a
13 license, whether active, inactive, or delinquent.

14 (12) This section does not apply to a business
15 establishment registered, permitted, or licensed by the
16 department to do business.

17 Section 96. Section 455.714, Florida Statutes, is
18 created to read:

19 455.714 Renewal and cancellation notices.--

20 (1) At least 90 days before the end of a licensure
21 cycle, the department shall:

22 (a) Forward a licensure renewal notification to an
23 active or inactive licensee at the licensee's last known
24 address of record with the department.

25 (b) Forward a notice of pending cancellation of
26 licensure to a delinquent-status licensee at the licensee's
27 last known address of record with the department.

28 (2) Each licensure renewal notification and each
29 notice of pending cancellation of licensure must state
30 conspicuously that a licensee who remains on inactive status
31 for more than two consecutive biennial licensure cycles and

1 who wishes to reactivate the license may be required to
2 demonstrate the competency to resume active practice by
3 sitting for a special purpose examination or by completing
4 other reactivation requirements, as defined by rule of the
5 board or the department if there is no board.

6 Section 97. Section 455.717, Florida Statutes, is
7 created to read:

8 455.717 Address of record.--

9 (1) Each licensee of the department is solely
10 responsible for notifying the department in writing of the
11 licensee's current mailing address and place of practice, as
12 defined by rule of the board or the department if there is no
13 board. A licensee's failure to notify the department of a
14 change of address constitutes a violation of this section, and
15 the licensee may be disciplined by the board or the department
16 if there is no board.

17 (2) Notwithstanding any other law, service by regular
18 mail to a licensee's last known address of record with the
19 department constitutes adequate and sufficient notice to the
20 licensee for any official communication to the licensee by the
21 board or the department except when other service is required
22 under s. 455.261.

23 Section 98. Section 455.277, Florida Statutes, 1996
24 Supplement, is transferred, renumbered as section 408.18,
25 Florida Statutes, and amended to read:

26 408.18 ~~455.277~~ Health Care Community Antitrust

27 Guidance Act; antitrust no-action letter; market-information
28 collection and education.--

29 (1) This section may be cited as the "Florida Health
30 Care Community Antitrust Guidance Act."

31

1 (2) This section is created to provide instruction to
2 the health care community in a time of tremendous change, and
3 to resolve, as completely as possible, the problem of
4 antitrust uncertainty that may deter mergers, joint ventures,
5 or other business activities that can improve the delivery of
6 health care, without creating costly, time-consuming
7 regulations that can lead to more litigation and delay.

8 (3) For purposes of this section, the term:

9 (a) "Health care community" means all licensed health
10 care providers, insurers, networks, purchasers, and other
11 participants in the health care system.

12 (b) "Antitrust no-action letter" means a letter that
13 states the intention of the Attorney General's office not to
14 take antitrust enforcement actions with respect to the
15 requesting party, based on the specific facts then presented,
16 as of the date the letter is issued.

17 (4)(a) Members of the health care community who seek
18 antitrust guidance may request a review of their proposed
19 business activity by the Attorney General's office. In
20 conducting its review, the Attorney General's office may seek
21 whatever documentation, data, or other material it deems
22 necessary from the Agency for Health Care Administration, the
23 State Center for Health Statistics, and the Department of
24 Insurance.

25 (b) In order to receive an antitrust no-action letter,
26 a member of the health care community must submit in writing
27 to the Attorney General's office a request for an antitrust
28 no-action letter.

29 (c) The requesting parties are under an affirmative
30 obligation to make full, true, and accurate disclosure with
31 respect to the activities for which the antitrust no-action

1 letter is requested. Requests relating to unnamed persons or
2 companies may not be answered. Each request must be
3 accompanied by all relevant material information; relevant
4 data, including background information; complete copies of all
5 operative documents; the provisions of law under which the
6 request arises; and detailed statements of all collateral oral
7 understandings, if any.

8 (d) All parties requesting the antitrust no-action
9 letter must provide the Attorney General's office with
10 whatever additional information or documents the Attorney
11 General's office requests for its review of the matter.

12 (5) The Attorney General's office shall act on the
13 no-action letter request within 90 days after it receives all
14 information necessary to complete its review.

15 (6) At the completion of its review of a request for
16 an antitrust no-action letter, the Attorney General's office
17 shall do one of the following:

18 (a) Issue the antitrust no-action letter;

19 (b) Decline to issue any type of letter; or

20 (c) Take such other position or action as it considers
21 appropriate.

22 (7) The recipient of a no-action letter must annually
23 file with the Attorney General's office an affidavit stating
24 that there has been no change in the facts the recipient has
25 presented, at which time the Attorney General may renew the
26 no-action letter. As long as there is no change in any
27 material fact, the Attorney General's office is estopped from
28 bringing any action pursuant to the antitrust laws concerning
29 any specific conduct that is the subject of the no-action
30 letter. Further, the no-action letter, if it meets the
31 requirements of the Florida Evidence Code, is admissible in

1 any court proceeding in this state. The Attorney General's
2 office remains free to bring an action or proceeding based on
3 a different set of facts presented.

4 (8) The Agency for Health Care Administration shall
5 coordinate all existing data received, such as the hospital
6 patient discharge database, ambulatory patient database,
7 ambulatory facilities' financial data, health facility
8 licensure and certification tracking system, health facility
9 plans and construction data, local health council data,
10 Medicaid data, provider claims data, psychiatric hospital
11 discharge data, pharmaceutical data, licensure data of health
12 maintenance organizations, licensure data of health insurers,
13 health care practitioner licensure data, hospital financial
14 database, health facility utilization and projected need data,
15 nursing home financial database, nursing home patient
16 database, and joint venture database. This information shall
17 be made available to the Attorney General's office, as needed.

18 (9) When the member of the health care community
19 seeking the no-action letter is regulated by the Department of
20 Insurance, the Department of Insurance shall make available to
21 the Attorney General's office, as needed, any information it
22 maintains in its regulatory capacity.

23 ~~(10) The Agency for Health Care Administration is~~
24 ~~appropriated \$142,487 in nonoperating transfer authority from~~
25 ~~the Health Care Trust Fund to be transferred to the Department~~
26 ~~of Legal Affairs to implement the provisions of this act.~~
27 ~~Transferred funds shall be taken from the unappropriated cash~~
28 ~~balance available from licensure and renewal fees assessed on~~
29 ~~physicians regulated by the Division of Medical Quality~~
30 ~~Assurance.~~

31

1 ~~(11) There is appropriated to the Department of Legal~~
2 ~~Affairs, Office of the Attorney General, \$142,487 from the~~
3 ~~Legal Services Trust Fund and two full-time equivalent~~
4 ~~positions to implement the provisions of this act.~~

5 Section 99. Section 455.2775, Florida Statutes, 1996
6 Supplement, is transferred and renumbered as section 408.185,
7 Florida Statutes.

8 Section 100. Section 455.2055, Florida Statutes, as
9 created by section 13 of chapter 96-403, Laws of Florida, is
10 repealed.

11 Section 101. Sections 455.01-455.275, Florida
12 Statutes, are designated as part I of that chapter, and the
13 Division of Statutory Revision is requested to title that
14 part: "Department of Business and Professional Regulation."
15 Sections 455.501-455.724, Florida Statutes, are designated as
16 part II of that chapter, and the Division of Statutory
17 Revision is requested to title that part: "Department of
18 Health."

19 Section 102. Paragraphs (f) and (g) of subsection (5)
20 of section 459.0085, Florida Statutes, 1996 Supplement, are
21 amended to read:

22 459.0085 Financial responsibility.--

23 (5) The requirements of subsections (1), (2), and (3)
24 shall not apply to:

25 (f) Any person holding an active license under this
26 chapter who meets all of the following criteria:

27 1. The licensee has held an active license to practice
28 in this state or another state or some combination thereof for
29 more than 15 years.

30 2. The licensee has either retired from the practice
31 of osteopathic medicine or maintains a part-time practice of

1 osteopathic medicine of no more than 1,000 patient contact
2 hours per year.

3 3. The licensee has had no more than two claims for
4 medical malpractice resulting in an indemnity exceeding
5 \$25,000~~\$10,000~~ within the previous 5-year period.

6 4. The licensee has not been convicted of, or pled
7 guilty or nolo contendere to, any criminal violation specified
8 in this chapter or the practice act of any other state.

9 5. The licensee has not been subject within the last
10 10 years of practice to license revocation or suspension for
11 any period of time, probation for a period of 3 years or
12 longer, or a fine of \$500 or more for a violation of this
13 chapter or the medical practice act of another jurisdiction.
14 The regulatory agency's acceptance of an osteopathic
15 physician's relinquishment of a license, stipulation, consent
16 order, or other settlement, offered in response to or in
17 anticipation of the filing of administrative charges against
18 the osteopathic physician's license, shall be construed as
19 action against the physician's license for the purposes of
20 this paragraph.

21 6. The licensee has submitted a form supplying
22 necessary information as required by the department and an
23 affidavit affirming compliance with the provisions of this
24 paragraph.

25 7. The licensee shall submit biennially to the
26 department a certification stating compliance with the
27 provisions of this paragraph. The licensee shall, upon
28 request, demonstrate to the department information verifying
29 compliance with this paragraph.

30
31

1 A licensee who meets the requirements of this paragraph shall
2 be required either to post notice in the form of a sign
3 prominently displayed in the reception area and clearly
4 noticeable by all patients or to provide a written statement
5 to any person to whom medical services are being provided.
6 Such sign or statement shall state that: Under Florida law,
7 osteopathic physicians are generally required to carry medical
8 malpractice insurance or otherwise demonstrate financial
9 responsibility to cover potential claims for medical
10 malpractice. However, certain part-time osteopathic
11 physicians who meet state requirements are exempt from the
12 financial responsibility law. YOUR OSTEOPATHIC PHYSICIAN MEETS
13 THESE REQUIREMENTS AND HAS DECIDED NOT TO CARRY MEDICAL
14 MALPRACTICE INSURANCE. This notice is provided pursuant to
15 Florida law.

16 (g) Any person holding an active license under this
17 chapter who agrees to meet all of the following criteria:

18 1. Upon the entry of an adverse final judgment arising
19 from a medical malpractice arbitration award, from a claim of
20 medical malpractice either in contract or tort, or from
21 noncompliance with the terms of a settlement agreement arising
22 from a claim of medical malpractice either in contract or
23 tort, the licensee shall pay the judgment creditor the lesser
24 of the entire amount of the judgment with all accrued interest
25 or either \$100,000, if the osteopathic physician is licensed
26 pursuant to this chapter but does not maintain hospital staff
27 privileges, or \$250,000, if the osteopathic physician is
28 licensed pursuant to this chapter and maintains hospital staff
29 privileges, within 60 days after the date such judgment became
30 final and subject to execution, unless otherwise mutually
31 agreed to in writing by the parties. Such adverse final

1 judgment shall include any cross-claim, counterclaim, or claim
2 for indemnity or contribution arising from the claim of
3 medical malpractice. Upon notification of the existence of an
4 unsatisfied judgment or payment pursuant to this subparagraph,
5 the department shall notify the licensee by certified mail
6 that he shall be subject to disciplinary action unless, within
7 30 days from the date of mailing, he either:

8 a. Shows proof that the unsatisfied judgment has been
9 paid in the amount specified in this subparagraph; or

10 b. Furnishes the department with a copy of a timely
11 filed notice of appeal and either:

12 (I) A copy of a supersedeas bond properly posted in
13 the amount required by law; or

14 (II) An order from a court of competent jurisdiction
15 staying execution on the final judgment, pending disposition
16 of the appeal.

17 2. Upon the next meeting of the probable cause panel
18 of the board following 30 days after the date of mailing the
19 notice of disciplinary action to the licensee, the panel shall
20 make a determination of whether probable cause exists to take
21 disciplinary action against the licensee pursuant to
22 subparagraph 1.

23 3. If the board determines that the factual
24 requirements of subparagraph 1. are met, it shall take
25 disciplinary action as it deems appropriate against the
26 licensee. Such disciplinary action shall include, at a
27 minimum, probation of the license with the restriction that
28 the licensee must make payments to the judgment creditor on a
29 schedule determined by the board to be reasonable and within
30 the financial capability of the osteopathic physician.
31 Notwithstanding any other disciplinary penalty imposed, the

1 disciplinary penalty may include suspension of the license for
2 a period not to exceed 5 years. In the event that an
3 agreement to satisfy a judgment has been met, the board shall
4 remove any restriction on the license.

5 4. The licensee has completed a form supplying
6 necessary information as required by the department.

7
8 A licensee who meets the requirements of this paragraph shall
9 be required to either post notice in the form of a sign
10 prominently displayed in the reception area and clearly
11 noticeable by all patients or provide a written statement to
12 any person to whom medical services are being provided. Such
13 sign or statement shall state that: Under Florida law,
14 osteopathic physicians are generally required to carry medical
15 malpractice insurance or otherwise demonstrate financial
16 responsibility to cover potential claims for medical
17 malpractice. YOUR OSTEOPATHIC PHYSICIAN HAS DECIDED NOT TO
18 CARRY MEDICAL MALPRACTICE INSURANCE. This is permitted under
19 Florida law subject to certain conditions. Florida law
20 imposes strict penalties against noninsured osteopathic
21 physicians who fail to satisfy adverse judgments arising from
22 claims of medical malpractice. This notice is provided
23 pursuant to Florida law.

24 5. The Department of Health shall issue an emergency
25 order suspending the license of any licensee who fails after
26 30 days after receipt of notice from the department to satisfy
27 a medical malpractice claim against him or her; furnish the
28 department a copy of a timely filed notice of appeal; furnish
29 the department a copy of a supercedeas bond properly posted in
30 the amount required by law; or furnish the department an order

31

1 from a court of competent jurisdiction staying execution on
2 the final judgment pending disposition of the appeal.

3 Section 103. The Secretary of Health shall appoint a
4 task force to develop uniform procedures to standardize the
5 validation of health care practitioner credentials in order to
6 ensure that once credentials are validated they can be
7 accepted by licensed health care providers and facilities
8 throughout the state. The task force shall include, but not be
9 limited to, representatives from the Florida Hospital
10 Association, the Florida League of Hospitals, the Florida
11 Medical Association, the Florida Osteopathic Medical
12 Association, the Florida Dental Association, the Florida
13 Health Care Association, the Florida Association for the Homes
14 for the Aging, the Florida Association of Health Maintenance
15 Organizations, and the Florida Association of Managed Care
16 Organizations.

17 Section 104. Subsection (5) of section 458.320,
18 Florida Statutes, is amended to read:

19 458.320 Financial responsibility.--

20 (5) The requirements of subsections (1), (2), and (3)
21 shall not apply to:

22 (a) Any person licensed under this chapter who
23 practices medicine exclusively as an officer, employee, or
24 agent of the Federal Government or of the state or its
25 agencies or its subdivisions. For the purposes of this
26 subsection, an agent of the state, its agencies, or its
27 subdivisions is a person who is eligible for coverage under
28 any self-insurance or insurance program authorized by the
29 provisions of s. 768.28(14).

30 (b) Any person whose license has become inactive under
31 this chapter and who is not practicing medicine in this state.

1 Any person applying for reactivation of a license must show
2 either that such licensee maintained tail insurance coverage
3 which provided liability coverage for incidents that occurred
4 on or after January 1, 1987, or the initial date of licensure
5 in this state, whichever is later, and incidents that occurred
6 before the date on which the license became inactive; or such
7 licensee must submit an affidavit stating that such licensee
8 has no unsatisfied medical malpractice judgments or
9 settlements at the time of application for reactivation.

10 (c) Any person holding a limited license pursuant to
11 s. 458.317 and practicing under the scope of such limited
12 license.

13 (d) Any person licensed or certified under this
14 chapter who practices only in conjunction with his teaching
15 duties at an accredited medical school or in its main teaching
16 hospitals. Such person may engage in the practice of medicine
17 to the extent that such practice is incidental to and a
18 necessary part of duties in connection with the teaching
19 position in the medical school.

20 (e) Any person holding an active license under this
21 chapter who is not practicing medicine in this state. If such
22 person initiates or resumes any practice of medicine in this
23 state, he must notify the department of such activity.

24 (f) Any person holding an active license under this
25 chapter who meets all of the following criteria:

26 1. The licensee has held an active license to practice
27 in this state or another state or some combination thereof for
28 more than 15 years.

29 2. The licensee has either retired from the practice
30 of medicine or maintains a part-time practice of no more than
31 1,000 patient contact hours per year.

1 3. The licensee has had no more than two claims for
2 medical malpractice resulting in an indemnity exceeding
3 \$25,000~~\$10,000~~ within the previous 5-year period.

4 4. The licensee has not been convicted of, or pled
5 guilty or nolo contendere to, any criminal violation specified
6 in this chapter or the medical practice act of any other
7 state.

8 5. The licensee has not been subject within the last
9 10 years of practice to license revocation or suspension for
10 any period of time; probation for a period of 3 years or
11 longer; or a fine of \$500 or more for a violation of this
12 chapter or the medical practice act of another jurisdiction.
13 The regulatory agency's acceptance of a physician's
14 relinquishment of a license, stipulation, consent order, or
15 other settlement, offered in response to or in anticipation of
16 the filing of administrative charges against the physician's
17 license, shall be construed as action against the physician's
18 license for the purposes of this paragraph.

19 6. The licensee has submitted a form supplying
20 necessary information as required by the department and an
21 affidavit affirming compliance with the provisions of this
22 paragraph.

23 7. The licensee shall submit biennially to the
24 department certification stating compliance with the
25 provisions of this paragraph. The licensee shall, upon
26 request, demonstrate to the department information verifying
27 compliance with this paragraph.

28
29 A licensee who meets the requirements of this paragraph shall
30 be required either to post notice in the form of a sign
31 prominently displayed in the reception area and clearly

1 | noticeable by all patients or provide a written statement to
2 | any person to whom medical services are being provided. Such
3 | sign or statement shall state that: Under Florida law,
4 | physicians are generally required to carry medical malpractice
5 | insurance or otherwise demonstrate financial responsibility to
6 | cover potential claims for medical malpractice. However,
7 | certain part-time physicians who meet state requirements are
8 | exempt from the financial responsibility law. YOUR DOCTOR
9 | MEETS THESE REQUIREMENTS AND HAS DECIDED NOT TO CARRY MEDICAL
10 | MALPRACTICE INSURANCE. This notice is provided pursuant to
11 | Florida law.

12 | (g) Any person holding an active license under this
13 | chapter who agrees to meet all of the following criteria:

14 | 1. Upon the entry of an adverse final judgment arising
15 | from a medical malpractice arbitration award, from a claim of
16 | medical malpractice either in contract or tort, or from
17 | noncompliance with the terms of a settlement agreement arising
18 | from a claim of medical malpractice either in contract or
19 | tort, the licensee shall pay the judgment creditor the lesser
20 | of the entire amount of the judgment with all accrued interest
21 | or either \$100,000, if the physician is licensed pursuant to
22 | this chapter but does not maintain hospital staff privileges,
23 | or \$250,000, if the physician is licensed pursuant to this
24 | chapter and maintains hospital staff privileges, within 60
25 | days after the date such judgment became final and subject to
26 | execution, unless otherwise mutually agreed to in writing by
27 | the parties. Such adverse final judgment shall include any
28 | cross-claim, counterclaim, or claim for indemnity or
29 | contribution arising from the claim of medical malpractice.
30 | Upon notification of the existence of an unsatisfied judgment
31 | or payment pursuant to this subparagraph, the department shall

1 notify the licensee by certified mail that he shall be subject
2 to disciplinary action unless, within 30 days from the date of
3 mailing, he either:

4 a. Shows proof that the unsatisfied judgment has been
5 paid in the amount specified in this subparagraph; or

6 b. Furnishes the department with a copy of a timely
7 filed notice of appeal and either:

8 (I) A copy of a supersedeas bond properly posted in
9 the amount required by law; or

10 (II) An order from a court of competent jurisdiction
11 staying execution on the final judgment pending disposition of
12 the appeal.

13 2. Upon the next meeting of the probable cause panel
14 of the board following 30 days after the date of mailing the
15 notice of disciplinary action to the licensee, the panel shall
16 make a determination of whether probable cause exists to take
17 disciplinary action against the licensee pursuant to
18 subparagraph 1.

19 3. If the board determines that the factual
20 requirements of subparagraph 1. are met, it shall take
21 disciplinary action as it deems appropriate against the
22 licensee. Such disciplinary action shall include, at a
23 minimum, probation of the license with the restriction that
24 the licensee must make payments to the judgment creditor on a
25 schedule determined by the board to be reasonable and within
26 the financial capability of the physician. Notwithstanding any
27 other disciplinary penalty imposed, the disciplinary penalty
28 may include suspension of the license for a period not to
29 exceed 5 years. In the event that an agreement to satisfy a
30 judgment has been met, the board shall remove any restriction
31 on the license.

1 4. The licensee has completed a form supplying
2 necessary information as required by the department.

3 5. The Department of Health shall issue an emergency
4 order suspending the license of any licensee who fails, after
5 30 days after receipt of notice from the department, to:
6 satisfy a medical malpractice claim against him or her;
7 furnish the department a copy of a timely filed notice of
8 appeal; furnish the department a copy of a supersedeas bond
9 properly posted in the amount required by law; or furnish the
10 department an order from a court of competent jurisdiction
11 staying execution on the final judgment pending disposition of
12 the appeal.

13
14 A licensee who meets the requirements of this paragraph shall
15 be required to either post notice in the form of a sign
16 prominently displayed in the reception area and clearly
17 noticeable by all patients or provide a written statement to
18 any person to whom medical services are being provided. Such
19 sign or statement shall state that: Under Florida law,
20 physicians are generally required to carry medical malpractice
21 insurance or otherwise demonstrate financial responsibility to
22 cover potential claims for medical malpractice. YOUR DOCTOR
23 HAS DECIDED NOT TO CARRY MEDICAL MALPRACTICE INSURANCE. This
24 is permitted under Florida law subject to certain conditions.
25 Florida law imposes penalties against noninsured physicians
26 who fail to satisfy adverse judgments arising from claims of
27 medical malpractice. This notice is provided pursuant to
28 Florida law.

29 Section 105. Section 627.912, Florida Statutes, 1996
30 Supplement, is amended to read:

31

1 627.912 Professional liability claims and actions;
2 reports by insurers.--

3 (1) Each self-insurer authorized under s. 627.357 and
4 each insurer or joint underwriting association providing
5 professional liability insurance to a practitioner of medicine
6 licensed under ~~pursuant to the provisions of~~ chapter 458, to a
7 practitioner of osteopathic medicine licensed under ~~pursuant~~
8 ~~to the provisions of~~ chapter 459, to a podiatrist licensed
9 under ~~pursuant to the provisions of~~ chapter 461, to a dentist
10 licensed under ~~pursuant to the provisions of~~ chapter 466, to a
11 hospital licensed under ~~pursuant to the provisions of~~ chapter
12 395, to a crisis stabilization unit licensed under part IV of
13 chapter 394, to a health maintenance organization certificated
14 under part I of chapter 641, to clinics included in chapter
15 390, to an ambulatory surgical center as defined in s.

16 395.002, or to a member of The Florida Bar shall report in
17 duplicate to the Department of Insurance any claim or action
18 for damages for personal injuries claimed to have been caused
19 by error, omission, or negligence in the performance of such
20 insured's professional services or based on a claimed
21 performance of professional services without consent, if the
22 claim resulted in:

23 (a) A final judgment in any amount.

24 (b) A settlement in any amount.

25 (c) A final disposition not resulting in payment on
26 behalf of the insured.

27

28 Reports shall be filed with the department and, if the insured
29 party is licensed under ~~pursuant to~~ chapter 458, chapter 459,
30 chapter 461, or chapter 466, with the Agency for Health Care
31 Administration ~~Department of Business and Professional~~

1 ~~Regulation~~, no later than 30 ~~60~~ days following the occurrence
2 of any event listed in paragraph (a), paragraph (b), or
3 paragraph (c). The Agency for Health Care Administration
4 ~~Department of Business and Professional Regulation~~ shall
5 review each report and determine whether any of the incidents
6 that resulted in the claim potentially involved conduct by the
7 licensee that is subject to disciplinary action, in which case
8 the provisions of s. 455.225 shall apply. The Agency for
9 Health Care Administration ~~Department of Business and~~
10 ~~Professional Regulation~~, as part of the annual report required
11 by s. 455.2285, shall publish annual statistics, without
12 identifying licensees, on the reports it receives, including
13 final action taken on such reports by the agency ~~Department of~~
14 ~~Business and Professional Regulation~~ or the appropriate
15 regulatory board.

16 (2) The reports required by subsection (1) shall
17 contain:

18 (a) The name, address, and specialty coverage of the
19 insured.

20 (b) The insured's policy number.

21 (c) The date of the occurrence which created the
22 claim.

23 (d) The date the claim was reported to the insurer or
24 self-insurer.

25 (e) The name and address of the injured person. This
26 information is confidential and exempt from the provisions of
27 s. 119.07(1), and must not be disclosed by the department
28 without the injured person's consent, except for disclosure by
29 the department to the Agency for Health Care Administration
30 ~~Department of Business and Professional Regulation~~. This
31 information may be used by the department for purposes of

- 1 identifying multiple or duplicate claims arising out of the
2 same occurrence.
- 3 (f) The date of suit, if filed.
- 4 (g) The injured person's age and sex.
- 5 (h) The total number and names of all defendants
6 involved in the claim.
- 7 (i) The date and amount of judgment or settlement, if
8 any, including the itemization of the verdict ~~as required~~
9 ~~under s. 768.48~~, together with a copy of the settlement or
10 judgment.
- 11 (j) In the case of a settlement, such information as
12 the department may require with regard to the injured person's
13 incurred and anticipated medical expense, wage loss, and other
14 expenses.
- 15 (k) The loss adjustment expense paid to defense
16 counsel, and all other allocated loss adjustment expense paid.
- 17 (l) The date and reason for final disposition, if no
18 judgment or settlement.
- 19 (m) A summary of the occurrence which created the
20 claim, which shall include:
- 21 1. The name of the institution, if any, and the
22 location within the institution at which the injury occurred.
- 23 2. The final diagnosis for which treatment was sought
24 or rendered, including the patient's actual condition.
- 25 3. A description of the misdiagnosis made, if any, of
26 the patient's actual condition.
- 27 4. The operation, diagnostic, or treatment procedure
28 causing the injury.
- 29 5. A description of the principal injury giving rise
30 to the claim.
- 31

1 6. The safety management steps that have been taken by
2 the insured to make similar occurrences or injuries less
3 likely in the future.

4 (n) Any other information required by the department
5 to analyze and evaluate the nature, causes, location, cost,
6 and damages involved in professional liability cases.

7 (3) Upon request by the Agency for Health Care
8 Administration ~~Department of Business and Professional~~
9 ~~Regulation~~, the department shall provide the that agency
10 ~~department~~ with any information received under pursuant to
11 this section related to persons licensed under chapter 458,
12 chapter 459, chapter 461, or chapter 466. For purposes of
13 safety management, the department shall annually provide the
14 Department of Health ~~and Rehabilitative Services~~ with copies
15 of the reports in cases resulting in an indemnity being paid
16 to the claimants.

17 (4) There shall be no liability on the part of, and no
18 cause of action of any nature shall arise against, any insurer
19 reporting hereunder or its agents or employees or the
20 department or its employees for any action taken by them under
21 pursuant to this section. The department may impose a fine of
22 \$250 per day per case, not to exceed \$1,000 per case, against
23 an insurer that violates the requirements of this section.
24 This subsection applies to claims accruing on or after October
25 1, 1997.

26 Section 106. Paragraph (t) of subsection (1) of
27 section 458.331, Florida Statutes, 1996 Supplement, is amended
28 to read:

29 458.331 Grounds for disciplinary action; action by the
30 board and department.--

31

1 (1) The following acts shall constitute grounds for
2 which the disciplinary actions specified in subsection (2) may
3 be taken:

4 (t) Gross or repeated malpractice or the failure to
5 practice medicine with that level of care, skill, and
6 treatment which is recognized by a reasonably prudent similar
7 physician as being acceptable under similar conditions and
8 circumstances. The board shall give great weight to the
9 provisions of s. 766.102 when enforcing this paragraph. As
10 used in this paragraph, "repeated malpractice" includes, but
11 is not limited to, three or more claims for medical
12 malpractice within the previous 5-year period resulting in
13 indemnities being paid in excess of \$25,000~~\$10,000~~ each to
14 the claimant in a judgment or settlement and which incidents
15 involved negligent conduct by the physician. As used in this
16 paragraph, "gross malpractice" or "the failure to practice
17 medicine with that level of care, skill, and treatment which
18 is recognized by a reasonably prudent similar physician as
19 being acceptable under similar conditions and circumstances,"
20 shall not be construed so as to require more than one
21 instance, event, or act. Nothing in this paragraph shall be
22 construed to require that a physician be incompetent to
23 practice medicine in order to be disciplined pursuant to this
24 paragraph.

25 Section 107. Paragraph (x) of subsection (1) of
26 section 459.015, Florida Statutes, 1996 Supplement, is amended
27 to read:

28 459.015 Grounds for disciplinary action by the
29 board.--
30
31

1 (1) The following acts shall constitute grounds for
2 which the disciplinary actions specified in subsection (2) may
3 be taken:

4 (x) Gross or repeated malpractice or the failure to
5 practice osteopathic medicine with that level of care, skill,
6 and treatment which is recognized by a reasonably prudent
7 similar osteopathic physician as being acceptable under
8 similar conditions and circumstances. The board shall give
9 great weight to the provisions of s. 766.102 when enforcing
10 this paragraph. As used in this paragraph, "repeated
11 malpractice" includes, but is not limited to, three or more
12 claims for medical malpractice within the previous 5-year
13 period resulting in indemnities being paid in excess of
14 \$25,000~~\$10,000~~ each to the claimant in a judgment or
15 settlement and which incidents involved negligent conduct by
16 the osteopathic physician. As used in this paragraph, "gross
17 malpractice" or "the failure to practice osteopathic medicine
18 with that level of care, skill, and treatment which is
19 recognized by a reasonably prudent similar osteopathic
20 physician as being acceptable under similar conditions and
21 circumstances" shall not be construed so as to require more
22 than one instance, event, or act. Nothing in this paragraph
23 shall be construed to require that an osteopathic physician be
24 incompetent to practice osteopathic medicine in order to be
25 disciplined pursuant to this paragraph. A recommended order
26 by an administrative law judge or a final order of the board
27 finding a violation under this paragraph shall specify whether
28 the licensee was found to have committed "gross malpractice,"
29 "repeated malpractice," or "failure to practice osteopathic
30 medicine with that level of care, skill, and treatment which
31 is recognized as being acceptable under similar conditions and

1 circumstances," or any combination thereof, and any
2 publication by the board shall so specify.

3 Section 108. Subsection (2) of section 468.1645,
4 Florida Statutes, is amended to read:

5 468.1645 Administrator license required.--

6 (2) Nothing in this part or in the rules adopted
7 hereunder shall require an administrator of any facility or
8 institution operated by and ~~a recognized church or religious~~
9 ~~denomination~~ for persons who rely exclusively upon treatment
10 by spiritual means through prayer, in accordance with the
11 creed or tenets of any organized church or religious
12 denomination, to be licensed as a nursing home administrator
13 if the administrator ~~who~~ is employed only to administer in
14 such facilities or institutions ~~accredited by such church or~~
15 ~~denomination~~ for the care and treatment of the sick ~~in~~
16 ~~accordance with its teachings, to be licensed as a nursing~~
17 ~~home administrator.~~

18 Section 109. Effective upon this act becoming a law,
19 paragraphs (a) and (c) of subsection (1) of section 458.3115,
20 Florida Statutes, 1996 Supplement, are amended to read:

21 458.3115 Restricted license; certain foreign-licensed
22 physicians; United States Medical Licensing Examination
23 (USMLE) or agency-developed examination; restrictions on
24 practice; full licensure.--

25 (1)

26 (a) Notwithstanding any other provision of law, the
27 agency shall provide procedures under which certain physicians
28 who are or were foreign-licensed and have practiced medicine
29 no less than 2 years may take the USMLE or an agency-developed
30 examination to qualify for a restricted license to practice
31 medicine in this state. The agency and board-developed

1 examination shall test the same areas of medical knowledge as
2 the Federation of State Medical Boards of the United States,
3 Inc. (FLEX) previously administered by the Florida Board of
4 Medicine to grant medical licensure in Florida. Said
5 examination shall be in the same form and content and shall be
6 administered in the same manner as the FLEX. The
7 agency-developed examination must be made available no later
8 than September 1, 1998, to a physician who qualifies for
9 licensure. A person who is eligible to take and elects to take
10 the agency and board-developed examination, who has previously
11 passed part 1 or part 2 of the previously administered FLEX
12 shall not be required to retake or pass the equivalent parts
13 of the agency-developed examination, and may sit for the
14 agency and board-developed examination five times within 5
15 years.

16 (c) A person shall be eligible to take such
17 examination for restricted licensure if the person:

18 1. Has taken, upon approval by the board, and
19 completed, in November 1990 or November 1992, one of the
20 special preparatory medical update courses authorized by the
21 board and the University of Miami Medical School and
22 subsequently passed the final course examination; ~~or~~ upon
23 approval by the board to take the course completed in 1990 or
24 in 1992, has a certificate of successful completion of that
25 course from the University of Miami or the Stanley H. Kaplan
26 course; or can document to the department that he or she was
27 one of the persons who took and successfully completed the
28 Stanley H. Kaplan course that was approved by the Board of
29 Medicine and supervised by the University of Miami. At a
30 minimum, the documentation must include class attendance
31 records and the test score on the final course examination;

1 2. Applies to the agency and submits an application
2 fee that is nonrefundable and equivalent to the fee required
3 for full licensure;

4 3. Documents no less than 2 years of the active
5 practice of medicine in another jurisdiction;

6 4. Submits an examination fee that is nonrefundable
7 and equivalent to the fee required for full licensure plus the
8 actual per-applicant cost to the agency to provide either
9 examination described in this section;

10 5. Has not committed any act or offense in this or any
11 other jurisdiction that would constitute a substantial basis
12 for disciplining a physician under this chapter or chapter
13 455; and

14 6. Is not under discipline, investigation, or
15 prosecution in this or any other jurisdiction for an act that
16 would constitute a violation of this chapter or chapter 455
17 and that substantially threatened or threatens the public
18 health, safety, or welfare.

19 Section 110. Section 458.3124, Florida Statutes, is
20 created to read:

21 458.3124 Restricted license; certain experienced
22 foreign-trained physicians.--

23 (1) A person who was trained in a medical school that
24 is listed in the World Directory of Medical Schools published
25 by the World Health Organization and is located in a country
26 other than the United States, Canada, or Puerto Rico may apply
27 to take Step III of the United States Medical Licensing
28 Examination, if the person:

29 (a) Legally practiced medicine for at least 5 years in
30 the country in which the school is located;

31

1 (b) Has passed Steps I and II of the United States
2 Medical Licensing Examination;

3 (c) Is certified by the Education Commission for
4 Foreign Medical Graduates as qualified for a restricted
5 license to practice medicine;

6 (d) Is not subject to discipline, investigation, or
7 prosecution in any jurisdiction for acts that threaten the
8 public health, safety, or welfare or violate chapters 455 or
9 458; and

10 (e) Has been a resident of this state since July 1,
11 1996.

12 (2) A person applying for licensure under this section
13 must submit to the Department of Health on or before December
14 31, 1998:

15 (a) A completed application and documentation required
16 by the Board of Medicine to prove compliance with subsection
17 (1); and

18 (b) A nonrefundable application fee not to exceed \$500
19 and a nonrefundable examination fee not to exceed \$300 plus
20 the actual cost to purchase and administer the examination.

21 (3) A person applying under this section may take the
22 examination a maximum of 5 times within 5 years.

23 (4) A restricted licensee under this section must
24 practice under the supervision of a licensee approved by the
25 board, with the first year of licensure under direct
26 supervision and the second year in community service under
27 indirect supervision, including practicing with organizations
28 that serve indigent populations, such as section 501(c)(3)
29 agencies, public health units, prisons, or other organizations
30 approved by the board.

31

1 (5) Notwithstanding s. 458.311(1)(f), a person who
2 successfully meets the requirements of this section and who
3 successfully passes Step III of the United States Medical
4 Licensing Examination is eligible for full licensure as a
5 physician.

6 (6) The board shall adopt rules to implement this
7 section.

8 Section 111. Except as otherwise provided in this act,
9 this act shall take effect July 1, 1997.

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