

By the Committee on Health Care

317-375A-98

1 A bill to be entitled
2 An act relating to regulation of health care
3 professions; creating boards within the
4 Department of Health to function as
5 multidisciplinary probable cause panels to
6 assist the Secretary of the Department of
7 Health in disciplining health care
8 professionals under the department's
9 jurisdiction; providing requirements for the
10 appointment of board members; providing terms
11 of appointment; providing requirements for the
12 boards to assist the Department of Health in
13 the regulation of health care professionals;
14 providing for the applicability of part II of
15 chapter 455, F.S., to the activities of the
16 disciplinary boards; providing for a training
17 program for board members; providing the
18 Secretary of the Department of Health with the
19 authority to take final agency action with
20 respect to all disciplinary cases involving
21 health practitioners within the department;
22 revising requirements for existing boards
23 within the Department of Health to discipline
24 health care professionals; amending ss.
25 455.614, 455.617, 455.621, 455.624, 455.627,
26 455.707, F.S.; conforming those sections to the
27 revision of the disciplinary system for health
28 care professionals within the Department of
29 Health; amending s. 455.644, F.S.; revising
30 requirements for an annual report; amending ss.
31 457.109, 458.331, 459.015, 460.413, 461.004,

1 461.013, 463.016, 464.018, 465.016, 466.028,
2 468.1295, 468.1685, 468.1755, 468.217, 468.365,
3 468.518, 468.811, 480.046, 484.014, 484.042,
4 484.056, 486.125, 490.009, 491.009, F.S.;
5 conforming those sections to the revision of
6 the disciplinary system used for health care
7 professionals within the Department of Health;
8 correcting terminology; providing for
9 appointment of a task force to develop
10 procedures to ensure uniformity and
11 accountability in the implementation and
12 enforcement of the disciplinary process among
13 health care professionals within the Department
14 of Health; repealing s. 458.307(4) and (5),
15 F.S., which provide training requirements for
16 the Board of Medicine members who participate
17 in disciplinary proceedings and provide
18 requirements for members of the Board of
19 Medicine who are appointed to probable cause
20 panels; providing an effective date.

21
22 Be It Enacted by the Legislature of the State of Florida:
23

24 Section 1. (1) The Medical/Nursing Disciplinary Board
25 is created within the Division of Medical Quality Assurance
26 within the Department of Health and shall consist of eleven
27 members appointed by the Governor and confirmed by the Senate.
28 The chairman of the appropriate regulatory board may recommend
29 a list of professional members for appointment by the Governor
30 to the disciplinary board. The membership of each disciplinary
31 board may include former board members. When the Governor

1 considers the appointment of any candidate to serve on the
2 board who is not a health care practitioner, the Governor must
3 give consideration to the candidate's knowledge of and
4 advocacy concerning health care consumer issues.

5 (2) The members of the disciplinary board must be
6 residents of this state. One member must be a physician
7 licensed under chapter 458, Florida Statutes. One member must
8 be a physician licensed under chapter 459, Florida Statutes.
9 One member must be a physician assistant licensed under
10 chapter 458 or chapter 459, Florida Statutes. One member must
11 be a physician licensed under chapter 461, Florida Statutes.
12 One member must be a nurse licensed under chapter 464, Florida
13 Statutes. One member must be a pharmacist licensed under
14 chapter 465, Florida Statutes. One member must be a dentist
15 licensed under chapter 466, Florida Statutes. Four members
16 must be consumers who have never been medical physicians,
17 osteopathic physicians, physician assistants, podiatric
18 physicians, nurses, pharmacists, dentists, or members of a
19 closely related profession.

20 (3) Members of the disciplinary board shall be
21 appointed for terms of 4 years each and shall serve until
22 their successors are appointed. However, for the purpose of
23 staggering terms, three of the original board members shall
24 serve terms of 4 years each, three shall serve terms of 3
25 years each, three shall serve terms of 2 years each, and two
26 shall serve terms of 1 year each, as designated by the
27 Governor. Members may be reappointed for additional terms.

28 (4) The Medical/Nursing Disciplinary Board shall
29 determine whether probable cause exists that a violation of
30 the provisions of part II, chapter 455, Florida Statutes, the
31 applicable practice acts for persons licensed under chapter

1 458, chapter 459, chapter 461, chapter 464, chapter 465, or
2 chapter 466, Florida Statutes, or the rules adopted pursuant
3 thereto, has occurred. In the event that consideration of a
4 case is begun but not completed during the term of a sitting
5 disciplinary board, these members may reconvene for the
6 purpose of completing their deliberations on that case. The
7 disciplinary board, in conjunction with the Department of
8 Health, shall establish a training program for disciplinary
9 board members. The program shall provide for initial and
10 periodic training in the grounds for disciplinary action, the
11 actions that may be taken by the disciplinary board and the
12 department, changes in relevant statutes and rules, and any
13 relevant judicial and administrative decisions. After January
14 1, 2000, a member of the disciplinary board may not
15 participate in making a determination regarding probable cause
16 or any other disciplinary decision unless the board member has
17 completed the disciplinary training program.

18 (5) All provisions of part II, chapter 455, Florida
19 Statutes, relating to activities of the disciplinary board
20 shall apply.

21 Section 2. (1) The Rehabilitation Disciplinary Board
22 is created within the Division of Medical Quality Assurance
23 within the Department of Health and shall consist of nine
24 members appointed by the Governor and confirmed by the Senate.
25 The chairman of the appropriate regulatory board may recommend
26 a list of professional members for appointment by the Governor
27 to the disciplinary board. The membership of each disciplinary
28 board may include former board members. When the Governor
29 considers the appointment of any candidate to serve on the
30 board who is not a health care practitioner, the Governor must

31

1 give consideration to the candidate's knowledge of and
2 advocacy concerning health care consumer issues.

3 (2) The members of the disciplinary board must be
4 residents of the state. One member must be an acupuncturist
5 licensed under chapter 457, Florida Statutes. One member must
6 be a chiropractor licensed under chapter 460, Florida
7 Statutes. One member must be an occupational therapist
8 licensed under part III of chapter 468, Florida Statutes. One
9 member must be a physical therapist licensed under chapter
10 486, Florida Statutes. One member must be a prosthetist,
11 orthotist, or pedorthotist licensed under part XIV of chapter
12 468, Florida Statutes. One member must be a massage therapist
13 licensed under chapter 480, Florida Statutes. Three members
14 must be consumers who have never been acupuncturists,
15 chiropractors, occupational therapists, physical therapists,
16 prosthetists, orthotists, pedorthotists, massage therapists,
17 or members of a closely related profession.

18 (3) Members of the disciplinary board shall be
19 appointed for terms of 4 years each and shall serve until
20 their successors are appointed. However, for the purpose of
21 staggering terms, three of the original board members shall
22 serve terms of 4 years each, two shall serve terms of 3 years,
23 two shall serve terms of 2 years each, and two shall serve
24 terms of 1 year each, as designated by the Governor.

25 (4) The Rehabilitation Disciplinary Board shall
26 determine whether probable cause exists that a violation of
27 the provisions of part II, chapter 455, Florida Statutes, the
28 applicable practice acts for persons licensed under chapter
29 457, chapter 460, part III of chapter 468, chapter 486, part
30 XIV of chapter 468, or chapter 480, Florida Statutes, or the
31 rules adopted pursuant thereto, has occurred. If consideration

1 of a case is begun but not completed during the term of a
2 sitting disciplinary board, those members may reconvene for
3 the purpose of completing their deliberations on that case.
4 The disciplinary board, in conjunction with the Department of
5 Health, shall establish a disciplinary training program for
6 disciplinary board members. The program shall provide for
7 initial and periodic training in the grounds for disciplinary
8 action, the actions that may be taken by the disciplinary
9 board and the department, changes in relevant statutes and
10 rules, and any relevant judicial and administrative decisions.
11 After January 1, 2000, no member of the disciplinary board
12 shall participate in making a determination regarding probable
13 cause or any other disciplinary decision unless the board
14 member has completed the disciplinary training program.

15 (5) All provisions of part II, chapter 455, Florida
16 Statutes, relating to activities of the disciplinary board
17 shall apply.

18 Section 3. (1) The Vision, Speech, and Hearing Care
19 Disciplinary Board is created within the Division of Medical
20 Quality Assurance within the Department of Health and shall
21 consist of nine members appointed by the Governor and
22 confirmed by the Senate. The chairman of the appropriate
23 regulatory board may recommend a list of professional members
24 for appointment by the Governor to the disciplinary board. The
25 membership of each disciplinary board may include former board
26 members. When the Governor considers the appointment of any
27 candidate to serve on the board who is not a health care
28 practitioner, the Governor must give consideration to the
29 candidate's knowledge of and advocacy concerning health care
30 consumer issues.

31

1 (2) The members of the disciplinary board must be
2 residents of this state. One member must be a physician
3 licensed under chapter 458 or chapter 459, Florida Statutes,
4 whose specialty practice area is ophthalmology or
5 otolaryngology. One member must be an optometrist licensed
6 under chapter 463, Florida Statutes. One member must be a
7 speech-language pathologist or audiologist licensed under part
8 I of chapter 468, Florida Statutes. One member must be an
9 optician licensed under part I of chapter 484, Florida
10 Statutes. One member must be a hearing aid specialist licensed
11 under part II of chapter 484, Florida Statutes. Four members
12 must be consumers who have never been medical physicians,
13 osteopathic physicians, optometrists, speech-language
14 pathologists, audiologists, opticians, hearing aid
15 specialists, or members of a closely related profession.

16 (3) Members of the disciplinary board shall be
17 appointed for terms of 4 years each and shall serve until
18 their successors are appointed. However, for the purpose of
19 staggering terms, three of the original board members shall
20 serve terms of 4 years each, two shall serve terms of 3 years
21 each, two shall serve terms of 2 years each, and two shall
22 serve terms of 1 year each, as designated by the Governor.

23 (4) The Vision, Speech, and Hearing Care Disciplinary
24 Board shall determine whether probable cause exists that a
25 violation of the provisions of part II, chapter 455, Florida
26 Statutes, the applicable practice acts for persons licensed
27 under chapter 463, part I of chapter 468, or chapter 484,
28 Florida Statutes, or the rules adopted pursuant thereto, has
29 occurred. If consideration of a case is begun but not
30 completed during the term of a sitting disciplinary board,
31 those members may reconvene for the purpose of completing

1 their deliberations on that case. The disciplinary board, in
2 conjunction with the Department of Health, shall establish a
3 disciplinary training program for disciplinary board members.
4 The program shall provide for initial and periodic training in
5 the grounds for disciplinary action, the actions that may be
6 taken by the disciplinary board and the department, changes in
7 relevant statutes and rules, and any relevant judicial and
8 administrative decisions. After January 1, 2000, a member of
9 the disciplinary board may not participate in making a
10 determination regarding probable cause or any other
11 disciplinary decision unless the board member has completed
12 the disciplinary training program.

13 (5) All provisions of part II, chapter 455, Florida
14 Statutes, relating to activities of the disciplinary board
15 shall apply.

16 Section 4. (1) The Behavioral Health Disciplinary
17 Board is created within the Division of Medical Quality
18 Assurance within the Department of Health and shall consist of
19 nine members appointed by the Governor and confirmed by the
20 Senate. The chairman of the appropriate regulatory board may
21 recommend a list of professional members for appointment by
22 the Governor to the disciplinary board. The membership of each
23 disciplinary board may include former board members. When the
24 Governor considers the appointment of any candidate to serve
25 on the board who is not a health care practitioner, the
26 Governor must give consideration to the candidate's knowledge
27 of and advocacy concerning health care consumer issues.

28 (2) The members of the disciplinary board must be
29 residents of this state. One member must be a physician
30 licensed under chapter 458 or chapter 459, Florida Statutes,
31 whose specialty practice area is psychiatry. One member must

1 be a psychologist licensed under chapter 490, Florida
2 Statutes. One member must be a clinical social worker licensed
3 under chapter 491, Florida Statutes. One member must be a
4 marriage and family therapist licensed under chapter 491,
5 Florida Statutes. One member must be a mental health counselor
6 licensed under chapter 491, Florida Statutes. Four members
7 must be consumers who have never been medical physicians,
8 osteopathic physicians, psychologists, clinical social
9 workers, marriage and family therapists, mental health
10 counselors, or members of a closely related profession.

11 (3) Members of the disciplinary board shall be
12 appointed for terms of 4 years each and shall serve until
13 their successors are appointed. However, for the purpose of
14 staggering terms, three of the original board members shall
15 serve terms of 4 years each, two shall serve terms of 3 years
16 each, two shall serve terms of 2 years each, and two shall
17 serve terms of 1 year each, as designated by the Governor.

18 (4) The Behavioral Health Disciplinary Board shall
19 determine whether probable cause exists that a violation of
20 the provisions of part II, chapter 455, Florida Statutes, the
21 applicable practice acts for psychologists licensed under
22 chapter 490, Florida Statutes, and chapter 491, Florida
23 Statutes, or the rules adopted pursuant thereto, has occurred
24 except that in any disciplinary case involving a school
25 psychologist, the Department of Health shall make the
26 determination regarding the existence of probable cause. If
27 consideration of a case is begun but not completed during the
28 term of a sitting disciplinary board, those members may
29 reconvene for the purpose of completing their deliberations on
30 that case. The disciplinary board, in conjunction with the
31 Department of Health, shall establish a disciplinary training

1 program for disciplinary board members. The program shall
2 provide for initial and periodic training in the grounds for
3 disciplinary action, the actions that may be taken by the
4 disciplinary board and the department, changes in relevant
5 statutes and rules, and any relevant judicial and
6 administrative decisions. After January 1, 2000, a member of
7 the disciplinary board may not participate in making a
8 determination regarding probable cause or any other
9 disciplinary decision unless the board member has completed
10 the disciplinary training program.

11 (5) All provisions of part II, chapter 455, Florida
12 Statutes, relating to activities of the disciplinary board
13 shall apply.

14 Section 5. (1) The Allied Health Disciplinary Board
15 is created within the Division of Medical Quality Assurance
16 within the Department of Health and shall consist of nine
17 members appointed by the Governor and confirmed by the Senate.
18 The chairman of the appropriate regulatory board may recommend
19 a list of professional members for appointment by the Governor
20 to the disciplinary board. The membership of each disciplinary
21 board may include former board members. When the Governor
22 considers the appointment of any candidate to serve on the
23 board who is not a health care practitioner, the Governor must
24 give consideration to the candidate's knowledge of and
25 advocacy concerning health care consumer issues.

26 (2) The members of the disciplinary board must be
27 residents of the state. One member must be a physician
28 licensed under chapter 458 or chapter 459, Florida Statutes,
29 who is a general practitioner. One member must be a nursing
30 home administrator licensed under part II of chapter 468,
31 Florida Statutes. One member must be a respiratory therapist

1 licensed under part V of chapter 468, Florida Statutes. One
2 member must be a dietitian/nutritionist licensed under part X
3 of chapter 468, Florida Statutes. One member must be an
4 electrologist licensed under chapter 478, Florida Statutes.
5 One member must be licensed as clinical laboratory personnel
6 under part IV of chapter 483, Florida Statutes. Three members
7 must be consumers who have never been medical physicians,
8 osteopathic physicians, nursing home administrators,
9 respiratory therapists, dietitian/nutritionists,
10 electrologists, clinical laboratory personnel, or members of a
11 closely related profession.

12 (3) Members of the disciplinary board shall be
13 appointed for terms of 4 years each and shall serve until
14 their successors are appointed. However, for the purpose of
15 staggering terms, three of the original board members shall
16 serve terms of 4 years each, two shall serve terms of 3 years
17 each, two shall serve terms of 2 years each, and two shall
18 serve terms of 1 year, as designated by the Governor.

19 (4) The Allied Health Disciplinary Board shall
20 determine whether probable cause exists that a violation of
21 the provisions of part II, chapter 455, Florida Statutes, the
22 applicable practice acts for persons licensed under part II of
23 chapter 468, part V of chapter 468, part X of chapter 468,
24 chapter 478, or part IV of chapter 483, Florida Statutes, or
25 the rules adopted pursuant thereto, has occurred. If
26 consideration of a case is begun but not completed during the
27 term of a sitting disciplinary board, those members may
28 reconvene for the purpose of completing their deliberations on
29 that case. The disciplinary board, in conjunction with the
30 Department of Health, shall establish a disciplinary training
31 program for disciplinary board members. The program shall

1 provide for initial and periodic training in the grounds for
2 disciplinary action, the actions that may be taken by the
3 disciplinary board and the department, changes in relevant
4 statutes and rules, and any relevant judicial and
5 administrative decisions. After January 1, 2000, a member of
6 the disciplinary board may not participate in making a
7 determination regarding probable cause or any other
8 disciplinary decision unless the board member has completed
9 the disciplinary training program.

10 (5) All provisions of part II, chapter 455, Florida
11 Statutes, relating to activities of the disciplinary board
12 shall apply.

13 Section 6. Subsections (1), (2), and (5) of section
14 455.614, Florida Statutes, are amended to read:

15 455.614 Mediation.--

16 (1) Notwithstanding the provisions of s. 455.621,
17 effective July 1, 2001 ~~the board, or the department when there~~
18 ~~is no board,~~ shall adopt rules to designate which violations
19 of the applicable professional practice act of professions
20 within the department are appropriate for mediation. The
21 ~~board, or the department when there is no board,~~ may designate
22 as mediation offenses those complaints where harm caused by
23 the licensee is economic in nature or can be remedied by the
24 licensee.

25 (2) After the department determines a complaint is
26 legally sufficient and the alleged violations are defined as
27 mediation offenses, the department or any agent of the
28 department may conduct informal mediation to resolve the
29 complaint. If the complainant and the subject of the complaint
30 agree to a resolution of a complaint within 14 days after
31 contact by the mediator, the mediator shall notify the

1 department of the terms of the resolution. The department ~~or~~
2 ~~board~~ shall take no further action unless the complainant and
3 the subject each fail to record with the department an
4 acknowledgment of satisfaction of the terms of mediation
5 within 60 days of the mediator's notification to the
6 department. In the event the complainant and subject fail to
7 reach settlement terms or to record the required
8 acknowledgment, the department shall process the complaint
9 according to the provisions of s. 455.621.

10 (5) The department ~~Any board created on or after~~
11 ~~January 1, 1995, shall have 6 months to adopt rules~~
12 ~~designating which violations are appropriate for mediation,~~
13 ~~after which time the department shall have exclusive authority~~
14 ~~to adopt rules pursuant to this section. A board shall have~~
15 continuing authority to amend its rules adopted pursuant to
16 this section.

17 Section 7. Subsections (1), (2), (3), and (6) of
18 section 455.617, Florida Statutes, are amended to read:

19 455.617 Authority to issue citations.--

20 (1) Notwithstanding s. 455.621, the ~~board, or the~~
21 department ~~if there is no board,~~ shall adopt rules to permit
22 the issuance of citations. The citation shall be issued to the
23 subject and shall contain the subject's name and address, the
24 subject's license number if applicable, a brief factual
25 statement, the sections of the law allegedly violated, and the
26 penalty imposed. The citation must clearly state that the
27 subject may choose, in lieu of accepting the citation, to
28 follow the procedure under s. 455.621. If the subject disputes
29 the matter in the citation, the procedures set forth in s.
30 455.621 must be followed. However, if the subject does not
31 dispute the matter in the citation with the department within

1 30 days after the citation is served, the citation becomes a
2 final order and constitutes discipline. The penalty shall be a
3 fine or other conditions as established by rule.

4 (2) Effective July 1, 2001,~~The board, or the~~
5 department ~~if there is no board,~~ shall adopt rules designating
6 violations for which a citation may be issued. Such rules
7 shall designate as citation violations those violations for
8 which there is no substantial threat to the public health,
9 safety, and welfare.

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

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

21 Section 8. Section 455.621, Florida Statutes, is
22 amended to read:

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

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

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

1 by the appropriate disciplinary board ~~probable cause panel~~.
2 The right to respond does not prohibit the issuance of a
3 summary emergency order if necessary to protect the public.
4 However, if the secretary, or the secretary's designee, and
5 the chairman of the respective disciplinary board ~~or the~~
6 ~~chairman of its probable cause panel~~ agree in writing that
7 such notification would be detrimental to the investigation,
8 the department may withhold notification. The department may
9 conduct an investigation without notification to any subject
10 if the act under investigation is a criminal offense.

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

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

19 (3) As an alternative to the provisions of subsections
20 (1) and (2), when a complaint is received, the department may
21 provide a licensee with a notice of noncompliance for an
22 initial offense of a minor violation. Effective July 1, 2001,
23 ~~Each board, or the department, with the advice of the~~
24 appropriate disciplinary board and board if there is no board,
25 shall establish by rule those minor violations under this
26 provision which do not endanger the public health, safety, and
27 welfare and which do not demonstrate a serious inability to
28 practice the profession. Failure of a licensee to take action
29 in correcting the violation within 15 days after notice may
30 result in the institution of regular disciplinary proceedings.

31

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

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

1 department shall also refer to the disciplinary board any
2 investigation or disciplinary proceeding not before the
3 Division of Administrative Hearings pursuant to chapter 120 or
4 otherwise completed by the department within 1 year after the
5 filing of a complaint. The department, for disciplinary cases
6 under its jurisdiction, must establish a uniform reporting
7 system to quarterly refer to each disciplinary board the
8 status of any investigation or disciplinary proceeding that is
9 not before the Division of Administrative Hearings or
10 otherwise completed by the department within 1 year after the
11 filing of the complaint. Annually, the department ~~if there is~~
12 ~~no board,~~ or each disciplinary board must establish a plan to
13 reduce or otherwise close any investigation or disciplinary
14 proceeding that is not before the Division of Administrative
15 Hearings or otherwise completed by the department within 1
16 year after the filing of the complaint. ~~A probable cause~~
17 ~~panel or a board may retain independent legal counsel, employ~~
18 ~~investigators, and continue the investigation as it deems~~
19 ~~necessary; all costs thereof shall be paid from a trust fund~~
20 ~~used by the department to implement this part.~~ All
21 proceedings of the disciplinary board ~~probable cause panel~~ are
22 exempt from s. 120.525.

23 (5) A formal hearing before an administrative law
24 judge from the Division of Administrative Hearings shall be
25 held pursuant to chapter 120 if there are any disputed issues
26 of material fact. The administrative law judge shall issue a
27 recommended order pursuant to chapter 120. If any party raises
28 an issue of disputed fact during an informal hearing, the
29 hearing shall be terminated and a formal hearing pursuant to
30 chapter 120 shall be held.

31

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

8 ~~(7) The department shall have standing to seek~~
9 ~~judicial review of any final order of the board, pursuant to~~
10 ~~s. 120.68.~~

11 (7)~~(8)~~ Any proceeding for the purpose of summary
12 suspension of a license, or for the restriction of the
13 license, of a licensee pursuant to s. 120.60(6) shall be
14 conducted by the secretary of the Department of Health or his
15 or her designee, as appropriate, who shall issue the final
16 summary order.

17 (8)~~(9)~~(a) The department shall periodically notify the
18 person who filed the complaint of the status of the
19 investigation, indicating whether probable cause has been
20 found and the status of any civil action or administrative
21 proceeding or appeal.

22 (b) In any disciplinary case for which probable cause
23 has been found, the department shall provide to the person who
24 filed the complaint a copy of the administrative complaint
25 and:

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

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

30
31

1 3. A written notice of any hearing before the Division
2 of Administrative Hearings or the department ~~regulatory board~~
3 at which final agency action may be taken.

4 (c) In any disciplinary case for which probable cause
5 is not found, the department shall so inform the person who
6 filed the complaint and notify that person that he or she may,
7 within 60 days, provide any additional information to the
8 disciplinary board or department ~~probable cause panel~~ which
9 may be relevant to the decision. In any administrative
10 proceeding under s. 120.57, the person who filed the
11 disciplinary complaint shall have the right to present oral or
12 written communication relating to the alleged disciplinary
13 violations or to the appropriate penalty.

14 (9)~~(10)~~ The complaint and all information obtained
15 pursuant to the investigation by the department are
16 confidential and exempt from s. 119.07(1) until 10 days after
17 probable cause has been found to exist by the disciplinary
18 board ~~probable cause panel~~ or by the department, or until the
19 regulated professional or subject of the investigation waives
20 his privilege of confidentiality, whichever occurs first. Upon
21 completion of the investigation and pursuant to a written
22 request by the subject, the department shall provide the
23 subject an opportunity to inspect the investigative file or,
24 at the subject's expense, forward to the subject a copy of the
25 investigative file. Notwithstanding s. 455.667, the subject
26 may inspect or receive a copy of any expert witness report or
27 patient record connected with the investigation if the subject
28 agrees in writing to maintain the confidentiality of any
29 information received under this subsection until 10 days after
30 probable cause is found and to maintain the confidentiality of
31 patient records pursuant to s. 455.667. The subject may file a

1 written response to the information contained in the
2 investigative file. Such response must be filed within 20
3 days, unless an extension of time has been granted by the
4 department. This subsection does not prohibit the department
5 from providing such information to any law enforcement agency
6 or to any other regulatory agency.

7 (10)~~(11)~~ A privilege against civil liability is hereby
8 granted to any complainant or any witness with regard to
9 information furnished with respect to any investigation or
10 proceeding pursuant to this section, unless the complainant or
11 witness acted in bad faith or with malice in providing such
12 information.

13 (11)~~(12)~~(a) No person who reports in any capacity,
14 whether or not required by law, information to the department
15 with regard to the incompetence, impairment, or unprofessional
16 conduct of any health care provider licensed under chapter
17 458, chapter 459, chapter 460, chapter 461, chapter 462,
18 chapter 463, chapter 464, chapter 465, or chapter 466 shall be
19 held liable in any civil action for reporting against such
20 health care provider if such person acts without intentional
21 fraud or malice.

22 (b) No facility licensed under chapter 395, health
23 maintenance organization certificated under part I of chapter
24 641, physician licensed under chapter 458, or osteopathic
25 physician licensed under chapter 459 shall discharge, threaten
26 to discharge, intimidate, or coerce any employee or staff
27 member by reason of such employee's or staff member's report
28 to the department about a physician licensed under chapter
29 458, chapter 459, chapter 460, chapter 461, or chapter 466 who
30 may be guilty of incompetence, impairment, or unprofessional
31

1 conduct so long as such report is given without intentional
2 fraud or malice.

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

9 Section 9. Subsections (2), (3), and (5) of section
10 455.624, Florida Statutes, are amended to read:

11 455.624 Grounds for discipline; penalties;
12 enforcement.--

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

21 (a) Refusal to certify, or to certify with
22 restrictions, an application for a license.

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

24 (c) Restriction of practice.

25 (d) Imposition of an administrative fine not to exceed
26 \$5,000 for each count or separate offense.

27 (e) Issuance of a reprimand.

28 (f) Placement of the licensee on probation for a
29 period of time and subject to such conditions as the ~~board, or~~
30 ~~the department when there is no board,~~ may specify. Those
31 conditions may include, but are not limited to, requiring the

1 licensee to undergo treatment, attend continuing education
2 courses, submit to be reexamined, work under the supervision
3 of another licensee, or satisfy any terms which are reasonably
4 tailored to the violations found.

5 (g) Corrective action.

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

20 (5) If ~~In the event the board, or the department when~~
21 ~~there is no board,~~ determines that revocation of a license is
22 the appropriate penalty, the revocation shall be permanent.
23 However, the board may establish by rule requirements for
24 reapplication by applicants whose licenses have been
25 permanently revoked. Such requirements may include, but shall
26 not be limited to, satisfying current requirements for an
27 initial license.

28 Section 10. Section 455.627, Florida Statutes, is
29 amended to read:

30 455.627 Disciplinary guidelines.--

31

1 (1) ~~Each board, or~~ The department, with the advice of
2 the appropriate disciplinary board and if there is no board,
3 shall adopt by rule and periodically review the disciplinary
4 guidelines applicable to each ground for disciplinary action
5 which may be imposed by ~~the board, or~~ the department ~~if there~~
6 ~~is no board,~~ pursuant to this part, the respective practice
7 acts, and any rule of the board or department.

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

17 (3) A specific finding of mitigating or aggravating
18 circumstances shall allow the department ~~board~~ to impose a
19 penalty other than that provided for in such guidelines. If
20 applicable, ~~the board, or the department if there is no board,~~
21 shall adopt by rule disciplinary guidelines to designate
22 possible mitigating and aggravating circumstances and the
23 variation and range of penalties permitted for such
24 circumstances.

25 (4) The department must review such disciplinary
26 guidelines for compliance with the legislative intent as set
27 forth herein to determine whether the guidelines establish a
28 meaningful range of penalties ~~and may also challenge such~~
29 ~~rules pursuant to s. 120.56.~~

30 (5) The administrative law judge, in recommending
31 penalties in any recommended order, must follow the penalty

1 guidelines established by the ~~board or~~ department and must
2 state in writing the mitigating or aggravating circumstances
3 upon which the recommended penalty is based.

4 Section 11. Present subsections (4), (5), (6), (7),
5 (8), (9), and (10) of section 455.644, Florida Statutes, are
6 renumbered as subsections (5), (6), (7), (8), (9), (10), and
7 (11), respectively, and a new subsection (4) is added to that
8 section, to read:

9 455.644 Annual report concerning finances,
10 administrative complaints, disciplinary actions, and
11 recommendations.--The department is directed to prepare and
12 submit a report to the President of the Senate and the Speaker
13 of the House of Representatives by November 1 of each year. In
14 addition to finances and any other information the Legislature
15 may require, the report shall include statistics and relevant
16 information, profession by profession, detailing:

17 (4) The number of letters of guidance issued, with a
18 summary of the alleged disciplinary violation involved in the
19 disciplinary case.

20 Section 12. Subsections (2), (3), (4), and (6) of
21 section 455.707, Florida Statutes, are amended to read:

22 455.707 Treatment programs for impaired
23 practitioners.--

24 (2) The department shall retain one or more impaired
25 practitioner consultants as recommended by the committee. A
26 consultant shall be a licensee or recovered licensee under the
27 jurisdiction of the Division of Medical Quality Assurance
28 within the department, and at least one consultant must be a
29 practitioner or recovered practitioner licensed under chapter
30 458, chapter 459, or chapter 464. The consultant shall assist
31 the disciplinary board ~~probable cause panel~~ and department in

1 carrying out the responsibilities of this section. This shall
2 include working with department investigators to determine
3 whether a practitioner is, in fact, impaired.

4 (3)(a) Whenever the department receives a written or
5 oral legally sufficient complaint alleging that a licensee
6 under the jurisdiction of the Division of Medical Quality
7 Assurance within the department is impaired as a result of the
8 misuse or abuse of alcohol or drugs, or both, or due to a
9 mental or physical condition that ~~which~~ could affect the
10 licensee's ability to practice with skill and safety, and no
11 complaint against the licensee other than impairment exists,
12 the reporting of such information shall not constitute a
13 complaint within the meaning of s. 455.621 if the ~~probable~~
14 ~~cause panel of the~~ appropriate disciplinary board, or the
15 department ~~when there is no board~~, finds that:

16 1. The licensee has acknowledged the impairment
17 problem.

18 2. The licensee has voluntarily enrolled in an
19 appropriate, approved treatment program.

20 3. The licensee has voluntarily withdrawn from
21 practice or limited the scope of practice as determined by the
22 disciplinary board panel, or the department ~~when there is no~~
23 ~~board~~, in each case, until such time as the disciplinary board
24 ~~panel~~, or the department ~~when there is no board~~, is satisfied
25 that the licensee has successfully completed an approved
26 treatment program.

27 4. The licensee has executed releases for medical
28 records, authorizing the release of all records of
29 evaluations, diagnoses, and treatment of the licensee,
30 including records of treatment for emotional or mental
31 conditions, to the consultant. The consultant shall make no

1 copies or reports of records that do not regard the issue of
2 the licensee's impairment and his or her participation in a
3 treatment program.

4 (b) If, however, the licensee agrees to withdraw from
5 practice until such time as the consultant determines that the
6 licensee has satisfactorily completed an approved treatment
7 program or evaluation, the disciplinary board ~~probable cause~~
8 ~~panel~~, or the department ~~when there is no board~~, shall not
9 become involved in the licensee's case.

10 (c) Inquiries related to impairment treatment programs
11 designed to provide information to the licensee and others and
12 which do not indicate that the licensee presents a danger to
13 the public shall not constitute a complaint within the meaning
14 of s. 455.621 and shall be exempt from the provisions of this
15 subsection.

16 (d) Whenever the department receives a legally
17 sufficient complaint alleging that a licensee is impaired as
18 described in paragraph (a) and no complaint against the
19 licensee other than impairment exists, the department shall
20 forward all information in its possession regarding the
21 impaired licensee to the consultant. For the purposes of this
22 section, a suspension from hospital staff privileges due to
23 the impairment does not constitute a complaint.

24 (e) The disciplinary board ~~probable cause panel~~, or
25 the department ~~when there is no board~~, shall work directly
26 with the consultant, and all information concerning a
27 practitioner obtained from the consultant by the disciplinary
28 board panel, or the department ~~when there is no board~~, shall
29 remain confidential and exempt from the provisions of s.
30 119.07(1), subject to the provisions of subsections (5) and
31 (6).

1 (f) A finding of probable cause shall not be made as
2 long as the disciplinary board ~~panel~~, or the department ~~when~~
3 ~~there is no board~~, is satisfied, based upon information it
4 receives from the consultant and the department, that the
5 licensee is progressing satisfactorily in an approved
6 treatment program.

7 (4) In any disciplinary action for a violation other
8 than impairment in which a licensee establishes that the
9 violation for which the licensee is being prosecuted was due
10 to or connected with impairment and further establishes that
11 the licensee is satisfactorily progressing through or has
12 successfully completed an approved treatment program pursuant
13 to this section, such information may be considered by ~~the~~
14 ~~board~~, or the department ~~when there is no board~~, as a
15 mitigating factor in determining the appropriate penalty. This
16 subsection does not limit the nature of the mitigating factors
17 the department ~~board~~ may consider.

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

26 Section 13. Subsections (2) and (3) of section
27 457.109, Florida Statutes, are amended to read:

28 457.109 Disciplinary actions; grounds; action by the
29 board.--

30
31

1 (2) When the department ~~board~~ finds any person guilty
2 of any of the acts set forth in subsection (1), it may enter
3 an order imposing one or more of the following penalties:

4 (a) Refusal to certify to the department an
5 application for licensure.

6 (b) Revocation or suspension of a license.

7 (c) Restriction of practice.

8 (d) Imposition of an administrative fine not to exceed
9 \$1,000 for each count or separate offense.

10 (e) Issuance of a reprimand.

11 (f) Placement of the acupuncturist on probation for a
12 period of time and subject to such conditions as the
13 department ~~board~~ may specify.

14 (3) The department shall not reinstate the license of
15 an acupuncturist, or cause a license to be issued to a person
16 whom it has deemed to be unqualified, until such time as the
17 department ~~board~~ is satisfied that he or she has complied with
18 all the terms and conditions set forth in the final order and
19 is capable of safely engaging in the practice of acupuncture.

20 Section 14. Paragraph (t) of subsection (1) and
21 subsections (2), (4), (5), (9), and (10), of section 458.331,
22 Florida Statutes, are amended to read:

23 458.331 Grounds for disciplinary action; action by the
24 board and department.--

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

28 (t) Gross or repeated malpractice or the failure to
29 practice medicine with that level of care, skill, and
30 treatment which is recognized by a reasonably prudent similar
31 physician as being acceptable under similar conditions and

1 | circumstances. The department ~~board~~ shall give great weight
2 | to the provisions of s. 766.102 when enforcing this paragraph.
3 | As used in this paragraph, "repeated malpractice" includes,
4 | but is not limited to, three or more claims for medical
5 | malpractice within the previous 5-year period resulting in
6 | indemnities being paid in excess of \$25,000 each to the
7 | claimant in a judgment or settlement and which incidents
8 | involved negligent conduct by the physician. As used in this
9 | paragraph, "gross malpractice" or "the failure to practice
10 | medicine with that level of care, skill, and treatment which
11 | is recognized by a reasonably prudent similar physician as
12 | being acceptable under similar conditions and circumstances,"
13 | shall not be construed so as to require more than one
14 | instance, event, or act. Nothing in this paragraph shall be
15 | construed to require that a physician be incompetent to
16 | practice medicine in order to be disciplined pursuant to this
17 | paragraph.

18 | (2) When the department ~~board~~ finds any person guilty
19 | on ~~of~~ any of the grounds set forth in subsection (1),
20 | including conduct that would constitute a substantial
21 | violation of subsection (1) which occurred prior to licensure,
22 | it may enter an order imposing one or more of the following
23 | penalties:

24 | (a) Refusal to certify, or certification with
25 | restrictions, to the department an application for licensure,
26 | certification, or registration.

27 | (b) Revocation or suspension of a license.

28 | (c) Restriction of practice.

29 | (d) Imposition of an administrative fine not to exceed
30 | \$5,000 for each count or separate offense.

31 | (e) Issuance of a reprimand.

1 (f) Placement of the physician on probation for a
2 period of time and subject to such conditions as the
3 department board may specify, including, but not limited to,
4 requiring the physician to submit to treatment, to attend
5 continuing education courses, to submit to reexamination, or
6 to work under the supervision of another physician.

7 (g) Issuance of a letter of concern.

8 (h) Corrective action.

9 (i) Refund of fees billed to and collected from the
10 patient.

11
12 In determining what action is appropriate, the department
13 ~~board~~ must first consider what sanctions are necessary to
14 protect the public or to compensate the patient. Only after
15 those sanctions have been imposed may the disciplining
16 authority consider and include in the order requirements
17 designed to rehabilitate the physician. All costs associated
18 with compliance with orders issued under this subsection are
19 the obligation of the physician.

20 (4) The department board shall not reinstate the
21 license of a physician, or cause a license to be issued to a
22 person whom it deems or has deemed to be unqualified, until
23 such time as it is satisfied that he or she has complied with
24 all the terms and conditions set forth in the final order and
25 that such person is capable of safely engaging in the practice
26 of medicine.

27 (5) The department, with the advice of the appropriate
28 disciplinary board and board, shall by rule establish
29 guidelines for the disposition of disciplinary cases involving
30 specific types of violations. Such guidelines may include
31 minimum and maximum fines, periods of supervision or

1 | probation, and ~~or~~ conditions of probation or reissuance of a
2 | license. "Gross malpractice," "repeated malpractice," and
3 | "failure to practice medicine with that level of care, skill,
4 | and treatment which is recognized as being acceptable under
5 | similar circumstances" under subsection (10) shall each be
6 | considered distinct types of violations requiring specific
7 | individual guidelines.

8 | (9) When an investigation of a physician is
9 | undertaken, the department shall promptly furnish to the
10 | physician or the physician's attorney a copy of the complaint
11 | or document that ~~which~~ resulted in the initiation of the
12 | investigation. For purposes of this subsection, such
13 | documents include, but are not limited to: the pertinent
14 | portions of an annual report submitted to the department
15 | pursuant to s. 395.0197(5)(b); a report of an adverse or
16 | untoward incident which is provided to the department pursuant
17 | to the provisions of s. 395.0197(6); a report of peer review
18 | disciplinary action submitted to the department pursuant to
19 | the provisions of s. 395.0193(4) or s. 458.337, providing that
20 | the investigations, proceedings, and records relating to such
21 | peer review disciplinary action shall continue to retain their
22 | privileged status even as to the licensee who is the subject
23 | of the investigation, as provided by ss. 395.0193(7) and
24 | 458.337(3); a report of a closed claim submitted pursuant to
25 | s. 627.912; a presuit notice submitted pursuant to s.
26 | 766.106(2); and a petition brought under the Florida
27 | Birth-Related Neurological Injury Compensation Plan, pursuant
28 | to s. 766.305(2). The physician may submit a written response
29 | to the information contained in the complaint or document that
30 | ~~which~~ resulted in the initiation of the investigation within
31 | 45 days after service to the physician of the complaint or

1 document. The physician's written response shall be considered
2 by the appropriate disciplinary board ~~probable cause panel~~.

3 (10) A recommended order by an administrative law
4 judge, or a final order of the department board finding a
5 violation under this section, shall specify whether the
6 licensee was found to have committed "gross malpractice,"
7 "repeated malpractice," or "failure to practice medicine with
8 that level of care, skill, and treatment which is recognized
9 as being acceptable under similar conditions and
10 circumstances," or any combination thereof, and any
11 publication by the board shall so specify.

12 Section 15. Paragraph (x) of subsection (1) and
13 subsections (2), (4), (5), and (9) of section 459.015, Florida
14 Statutes, are amended to read:

15 459.015 Grounds for disciplinary action by the
16 board.--

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

20 (x) Gross or repeated malpractice or the failure to
21 practice osteopathic medicine with that level of care, skill,
22 and treatment which is recognized by a reasonably prudent
23 similar osteopathic physician as being acceptable under
24 similar conditions and circumstances. The department board
25 shall give great weight to the provisions of s. 766.102 when
26 enforcing this paragraph. As used in this paragraph, "repeated
27 malpractice" includes, but is not limited to, three or more
28 claims for medical malpractice within the previous 5-year
29 period resulting in indemnities being paid in excess of
30 \$25,000 each to the claimant in a judgment or settlement and
31 which incidents involved negligent conduct by the osteopathic

1 physician. As used in this paragraph, "gross malpractice" or
2 "the failure to practice osteopathic medicine with that level
3 of care, skill, and treatment which is recognized by a
4 reasonably prudent similar osteopathic physician as being
5 acceptable under similar conditions and circumstances" shall
6 not be construed so as to require more than one instance,
7 event, or act. Nothing in this paragraph shall be construed to
8 require that an osteopathic physician be incompetent to
9 practice osteopathic medicine in order to be disciplined
10 pursuant to this paragraph. A recommended order by an
11 administrative law judge or a final order of the department
12 ~~board~~ finding a violation under this paragraph shall specify
13 whether the licensee was found to have committed "gross
14 malpractice," "repeated malpractice," or "failure to practice
15 osteopathic medicine with that level of care, skill, and
16 treatment which is recognized as being acceptable under
17 similar conditions and circumstances," or any combination
18 thereof, and any publication by the department ~~board~~ shall so
19 specify.

20 (2) When the department ~~board~~ finds any person guilty
21 on ~~of~~ any of the grounds set forth in subsection (1), it may
22 enter an order imposing one or more of the following
23 penalties:

24 (a) Refusal to certify, or to certify with
25 restrictions, to the department an application for
26 certification, licensure, renewal, or reactivation.

27 (b) Revocation or suspension of a license or
28 certificate.

29 (c) Restriction of practice.

30 (d) Imposition of an administrative fine not to exceed
31 \$5,000 for each count or separate offense.

1 (e) Issuance of a reprimand.

2 (f) Issuance of a letter of concern.

3 (g) Placement of the osteopathic physician on
4 probation for a period of time and subject to such conditions
5 as the department ~~board~~ may specify, including, but not
6 limited to, requiring the osteopathic physician to submit to
7 treatment, attend continuing education courses, submit to
8 reexamination, or work under the supervision of another
9 osteopathic physician.

10 (h) Corrective action.

11 (i) Refund of fees billed to and collected from the
12 patient.

13

14 In determining what action is appropriate, the department
15 ~~board~~ must first consider what sanctions are necessary to
16 protect the public or to compensate the patient. Only after
17 those sanctions have been imposed may the disciplining
18 authority consider and include in the order requirements
19 designed to rehabilitate the physician. All costs associated
20 with compliance with orders issued under this subsection are
21 the obligation of the physician.

22 (4) The department ~~board~~ shall not reinstate the
23 license or certificate of an osteopathic physician, or cause a
24 license or certificate to be issued to a person whom it has
25 deemed to be unqualified, until such time as it is satisfied
26 that he or she has complied with all the terms and conditions
27 set forth in the final order and that such person is capable
28 of safely engaging in the practice of osteopathic medicine.

29 (5) The department, with the advice of the appropriate
30 disciplinary board and board, shall, by rule, establish
31 comprehensive guidelines for the disposition of disciplinary

1 cases involving specific types of violations. Such guidelines
2 shall establish offenses and circumstances for which
3 revocation will be presumed to be appropriate, as well as
4 offenses and circumstances for which suspension for particular
5 periods of time will be presumed to be appropriate. The
6 guidelines shall also establish minimum and maximum fines,
7 periods of supervision or probation, and ~~or~~ conditions of
8 probation and conditions for reissuance of a license with
9 respect to particular circumstances and offenses. "Gross
10 malpractice," "repeated malpractice," and "failure to practice
11 osteopathic medicine with that level of care, skill, and
12 treatment which is recognized as being acceptable under
13 similar conditions and circumstances" under paragraph (1)(x)
14 shall each be considered distinct types of violations
15 requiring specific individual guidelines.

16 (9) When an investigation of an osteopathic physician
17 is undertaken, the department shall promptly furnish to the
18 osteopathic physician or his or her attorney a copy of the
19 complaint or document that ~~which~~ resulted in the initiation of
20 the investigation. For purposes of this subsection, such
21 documents include, but are not limited to: the pertinent
22 portions of an annual report submitted to the department
23 pursuant to s. 395.0197(5)(b); a report of an adverse or
24 untoward incident which is provided to the department pursuant
25 to the provisions of s. 395.0197(6); a report of peer review
26 disciplinary action submitted to the department pursuant to
27 the provisions of s. 395.0193(4) or s. 459.016, provided that
28 the investigations, proceedings, and records relating to such
29 peer review disciplinary action shall continue to retain their
30 privileged status even as to the licensee who is the subject
31 of the investigation, as provided by ss. 395.0193(7) and

1 459.016(3); a report of a closed claim submitted pursuant to
2 s. 627.912; a presuit notice submitted pursuant to s.
3 766.106(2); and a petition brought under the Florida
4 Birth-Related Neurological Injury Compensation Plan, pursuant
5 to s. 766.305(2). The osteopathic physician may submit a
6 written response to the information contained in the complaint
7 or document that ~~which~~ resulted in the initiation of the
8 investigation within 45 days after service to the osteopathic
9 physician of the complaint or document. The osteopathic
10 physician's written response shall be considered by the
11 appropriate disciplinary board ~~probable-cause panel~~.

12 Section 16. Paragraph (r) of subsection (1) and
13 subsections (2), (3), (4), and (5) of section 460.413, Florida
14 Statutes, are amended to read:

15 460.413 Grounds for disciplinary action; action by the
16 board.--

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

20 (r) Gross or repeated malpractice or the failure to
21 practice chiropractic medicine at a level of care, skill, and
22 treatment which is recognized by a reasonably prudent
23 chiropractic physician as being acceptable under similar
24 conditions and circumstances. The board shall give great
25 weight to the standards for malpractice in s. 766.102 in
26 interpreting this provision. A recommended order by an
27 administrative law judge, or a final order of the department
28 ~~board~~ finding a violation under this section, shall specify
29 whether the licensee was found to have committed "gross
30 malpractice," "repeated malpractice," or "failure to practice
31 chiropractic medicine with that level of care, skill, and

1 treatment which is recognized as being acceptable under
2 similar conditions and circumstances," or any combination
3 thereof, and any publication by the department ~~board~~ shall so
4 specify.

5 (2) When the department ~~board~~ finds any person guilty
6 on ~~of~~ any of the grounds set forth in subsection (1), it may
7 enter an order imposing one or more of the following
8 penalties:

9 (a) Refusal to certify to the department an
10 application for licensure.

11 (b) Revocation or suspension of a license.

12 (c) Restriction of practice.

13 (d) Imposition of an administrative fine not to exceed
14 \$2,000 for each count or separate offense.

15 (e) Issuance of a reprimand.

16 (f) Placement of the chiropractic physician on
17 probation for a period of time and subject to such conditions
18 as the department ~~board~~ may specify, including requiring the
19 chiropractic physician to submit to treatment, to attend
20 continuing education courses, to submit to reexamination, or
21 to work under the supervision of another chiropractic
22 physician.

23 (g) Imposition of costs of the investigation and
24 prosecution.

25 (h) Requirement that the chiropractic physician
26 undergo remedial education.

27 (i) Issuance of a letter of concern.

28 (j) Corrective action.

29 (k) Refund of fees billed to and collected from the
30 patient or a third party.

31

1 In determining what action is appropriate, the department
2 ~~board~~ must first consider what sanctions are necessary to
3 protect the public or to compensate the patient. Only after
4 those sanctions have been imposed may the disciplining
5 authority consider and include in the order requirements
6 designed to rehabilitate the chiropractic physician. All costs
7 associated with compliance with orders issued under this
8 subsection are the obligation of the chiropractic physician.

9 (3) The department shall not reinstate the license of
10 a chiropractic physician, or cause a license to be issued to a
11 person whom the board has deemed to be unqualified, until such
12 time as the department board is satisfied that she or he has
13 complied with all the terms and conditions set forth in the
14 final order and that such person is capable of safely engaging
15 in the practice of chiropractic medicine.

16 (4) The department, with the advice of the appropriate
17 disciplinary board and board, shall by rule establish
18 guidelines for the disposition of disciplinary cases involving
19 specific types of violations. Such guidelines may include
20 minimum and maximum fines, periods of supervision or
21 probation, and ~~or~~ conditions of probation or reissuance of a
22 license. "Gross malpractice," "repeated malpractice," and
23 "failure to practice chiropractic medicine with that level of
24 care, skill, and treatment which is recognized as being
25 acceptable under similar circumstances" under paragraph (1)(r)
26 shall each be considered distinct types of violations
27 requiring specific individual guidelines.

28 (5) When an investigation of a chiropractic physician
29 is undertaken, the department shall promptly furnish to the
30 chiropractic physician or her or his attorney a copy of the
31 complaint or document that ~~which~~ resulted in the initiation of

1 the investigation. The chiropractic physician may submit a
2 written response to the information contained in such
3 complaint or document within 45 days after service to the
4 chiropractic physician of the complaint or document. The
5 chiropractic physician's written response shall be considered
6 by the appropriate disciplinary board ~~probable cause panel~~.

7 Section 17. Subsection (4) of section 461.004, Florida
8 Statutes, is amended to read:

9 461.004 Board of Podiatric Medicine; membership;
10 appointment; terms.--

11 (4) All provisions of chapter 455 relating to the
12 board shall apply. ~~However, notwithstanding the requirement of~~
13 ~~s. 455.225(4) that the board provide by rule for the~~
14 ~~determination of probable cause by a panel composed of its~~
15 ~~members or by the department, the board may provide by rule~~
16 ~~that its probable cause panel may be composed of one current~~
17 ~~member of the board and one past member of the board, as long~~
18 ~~as the past member is a licensed podiatrist in good standing.~~
19 ~~The past board member must be appointed to the panel by the~~
20 ~~chair of the board with the approval of the secretary for a~~
21 ~~maximum of 2 years.~~

22 Section 18. Paragraph (s) of subsection (1) and
23 subsections (2), (3), (4), and (6) of section 461.013, Florida
24 Statutes, are amended to read:

25 461.013 Grounds for disciplinary action; action by the
26 board; investigations by department.--

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

30 (s) Gross or repeated malpractice or the failure to
31 practice podiatric medicine at a level of care, skill, and

1 treatment which is recognized by a reasonably prudent
2 podiatrist as being acceptable under similar conditions and
3 circumstances. The department board shall give great weight
4 to the standards for malpractice in s. 766.102 in interpreting
5 this section. As used in this paragraph, "repeated
6 malpractice" includes, but is not limited to, three or more
7 claims for medical malpractice within the previous 5-year
8 period resulting in indemnities being paid in excess of
9 \$10,000 each to the claimant in a judgment or settlement and
10 which incidents involved negligent conduct by the podiatrists.
11 As used in this paragraph, "gross malpractice" or "the failure
12 to practice podiatry with the level of care, skill, and
13 treatment which is recognized by a reasonably prudent similar
14 podiatrist as being acceptable under similar conditions and
15 circumstances" shall not be construed so as to require more
16 than one instance, event, or act.

17 (2) When the department board finds any person guilty
18 on ~~of~~ any of the grounds set forth in subsection (1), it may
19 enter an order imposing one or more of the following
20 penalties:

21 (a) Refusal to certify to the department an
22 application for licensure.

23 (b) Revocation or suspension of a license.

24 (c) Restriction of practice.

25 (d) Imposition of an administrative fine not to exceed
26 \$1,000 for each count or separate offense.

27 (e) Issuance of a reprimand.

28 (f) Placing the podiatrist on probation for a period
29 of time and subject to such conditions as the department board
30 may specify, including requiring the podiatrist to submit to
31 treatment, to attend continuing education courses, to submit

1 to reexamination, and to work under the supervision of another
2 podiatrist.

3 (3) The department shall not reinstate the license of
4 a podiatrist, or cause a license to be issued to a person whom
5 the board has deemed to be unqualified, until such time as the
6 department board is satisfied that she or he has complied with
7 all the terms and conditions set forth in the final order and
8 that such person is capable of safely engaging in the practice
9 of podiatric medicine.

10 (4) The department, with the advice of the appropriate
11 disciplinary board and board, shall by rule establish
12 guidelines for the disposition of disciplinary cases involving
13 specific types of violations. Such guidelines may include
14 minimum and maximum fines, periods of supervision or
15 probation, and ~~or~~ conditions of probation or reissuance of a
16 license.

17 (6) When an investigation of a podiatrist is
18 undertaken, the department shall promptly furnish to the
19 podiatrist or her or his attorney a copy of the complaint or
20 document that ~~which~~ resulted in the initiation of the
21 investigation. The podiatrist may submit a written response
22 to the information contained in such complaint or document
23 within 45 days after service to the podiatrist of the
24 complaint or document. The podiatrist's written response
25 shall be considered by the appropriate disciplinary board
26 ~~probable cause panel~~.

27 Section 19. Subsections (2) and (3) of section
28 463.016, Florida Statutes, are amended to read:

29 463.016 Grounds for disciplinary action; action by the
30 board.--

31

1 (2) When the department board finds any person guilty
2 on of any of the grounds set forth in subsection (1), it may
3 enter an order imposing one or more of the following
4 penalties:

5 (a) Refusal to certify to the department an
6 application for licensure.

7 (b) Revocation or suspension of a license.

8 (c) Imposition of an administrative fine not to exceed
9 \$5,000 for each count or separate offense.

10 (d) Issuance of a reprimand.

11 (e) Placement of the licensed practitioner on
12 probation for a period of time and subject to such conditions
13 as the department board may specify, including requiring the
14 licensed practitioner to submit to treatment, to attend
15 continuing education courses, or to work under the supervision
16 of another licensed practitioner.

17 (3) The department board shall not reinstate the
18 license of an optometrist a person, or cause a license to be
19 issued to a person whom it has deemed to be unqualified, until
20 such time as it is satisfied that she or he has complied with
21 all the terms and conditions set forth in the final order and
22 that such person is capable of safely engaging in the practice
23 of optometry.

24 Section 20. Subsections (2), (3), (4), and (5) of
25 section 464.018, Florida Statutes, are amended to read:

26 464.018 Disciplinary actions.--

27 (2) When the department board finds any person guilty
28 on of any of the grounds set forth in subsection (1), it may
29 enter an order imposing one or more of the following
30 penalties:

31

1 (a) Refusal to certify to the department an
2 application for licensure.

3 (b) Revocation or suspension of a license with
4 reinstatement subject to the provisions of subsection (3).

5 (c) Permanent revocation of a license.

6 (d) Restriction of practice.

7 (e) Imposition of an administrative fine not to exceed
8 \$1,000 for each count or separate offense.

9 (f) Issuance of a reprimand.

10 (g) Placement of the nurse on probation for a period
11 of time and subject to such conditions as the department board
12 may specify, including requiring the nurse to submit to
13 treatment, to attend continuing education courses, to take an
14 examination, or to work under the supervision of another
15 nurse.

16 (3) The department board shall not reinstate the
17 license of a nurse, or cause a license to be issued to a
18 person whom it has deemed to be unqualified, until such time
19 as it is satisfied that such person has complied with all the
20 terms and conditions set forth in the final order and that
21 such person is capable of safely engaging in the practice of
22 nursing.

23 (4) The department board shall not reinstate the
24 license of a nurse who has been found guilty by the department
25 board on three separate occasions of violations of this
26 chapter relating to the use of drugs or narcotics, which
27 offenses involved the diversion of drugs or narcotics from
28 patients to personal use or sale.

29 (5) The department, with the advice of the appropriate
30 disciplinary board and board, shall by rule establish
31 guidelines for the disposition of disciplinary cases involving

1 specific types of violations. Such guidelines may include
2 minimum and maximum fines, periods of supervision or
3 probation, and ~~or~~ conditions of probation or reissuance of a
4 license.

5 Section 21. Subsections (2), (3), and (4) of section
6 465.016, Florida Statutes, are amended to read:

7 465.016 Disciplinary actions.--

8 (2) When the department ~~board~~ finds any person guilty
9 on ~~of~~ any of the grounds set forth in subsection (1), it may
10 enter an order imposing one or more of the following
11 penalties:

12 (a) Refusal to certify to the department an
13 application for licensure.

14 (b) Revocation or suspension of a license.

15 (c) Imposition of an administrative fine not to exceed
16 \$1,000 for each count or separate offense.

17 (d) Issuance of a reprimand.

18 (e) Placement of the pharmacist on probation for a
19 period of time and subject to such conditions as the
20 department ~~board~~ may specify, including, but not limited to,
21 requiring the pharmacist to submit to treatment, to attend
22 continuing education courses, to submit to reexamination, or
23 to work under the supervision of another pharmacist.

24 (3) The department ~~board~~ shall not reinstate the
25 license of a pharmacist, or cause a license to be issued to a
26 person whom it has deemed to be unqualified, until such time
27 as it is satisfied that she or he has complied with all the
28 terms and conditions set forth in the final order and that
29 such person is capable of safely engaging in the practice of
30 pharmacy.

31

1 (4) The department, with the advice of the appropriate
2 disciplinary board and board, shall by rule establish
3 guidelines for the disposition of disciplinary cases involving
4 specific types of violations. Such guidelines may include
5 minimum and maximum fines, periods of supervision or
6 probation, and ~~or~~ conditions of probation or reissuance of a
7 license.

8 Section 22. Subsections (2), (4), and (7) of section
9 466.028, Florida Statutes, are amended to read:

10 466.028 Grounds for disciplinary action; action by the
11 board.--

12 (2) When the department ~~board~~ finds any applicant or
13 licensee guilty on ~~of~~ any of the grounds set forth in
14 subsection (1), it may enter an order imposing one or more of
15 the following penalties:

16 (a) Denial of an application for licensure.

17 (b) Revocation or suspension of a license.

18 (c) Imposition of an administrative fine not to exceed
19 \$3,000 for each count or separate offense.

20 (d) Issuance of a reprimand.

21 (e) Placement of the licensee on probation for a
22 period of time and subject to such conditions as the
23 department ~~board~~ may specify, including requiring the licensee
24 to attend continuing education courses or demonstrate
25 competency through a written or practical examination or to
26 work under the supervision of another licensee.

27 (f) Restricting the authorized scope of practice.

28 (4) The department shall reissue the license of a
29 disciplined licensee upon certification by the department
30 ~~board~~ that the disciplined licensee has complied with all of
31 the terms and conditions set forth in the final order.

1 (7) Subject to the authority and conditions
2 established in s. 455.621 ~~s. 455.225~~, the appropriate
3 disciplinary probable cause panel of the board may recommend
4 that the department seek a specified penalty in cases in which
5 probable cause has been found and the disciplinary board panel
6 has directed that an administrative complaint be filed. If the
7 department seeks a penalty other than that recommended by the
8 disciplinary board ~~probable cause panel~~, the department shall
9 provide the disciplinary board with a written statement that
10 ~~which~~ sets forth the reasons therefor. Nothing in this
11 subsection shall preclude a disciplinary ~~probable cause panel~~
12 ~~of any other~~ board under the jurisdiction of the department
13 from making similar recommendations as penalties.

14 Section 23. Subsections (2) and (3) of section
15 468.1295, Florida Statutes, are amended to read:

16 468.1295 Disciplinary proceedings.--

17 (2) When the department board finds any person guilty
18 of any of the acts set forth in subsection (1), it may issue
19 an order imposing one or more of the following penalties:

20 (a) Refusal to certify, or to certify with
21 restrictions, an application for licensure.

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

23 (c) Issuance of a reprimand.

24 (d) Restriction of the authorized scope of practice.

25 (e) Imposition of an administrative fine not to exceed
26 \$1,000 for each count or separate offense.

27 (f) Placement of the licensee or certificateholder on
28 probation for a period of time and subject to such conditions
29 as the department board may specify. Those conditions may
30 include, but are not limited to, requiring the licensee or
31 certificateholder to undergo treatment, attend continuing

1 education courses, submit to be reexamined, work under the
2 supervision of another licensee, or satisfy any terms that
3 ~~which~~ are reasonably tailored to the violation found.

4 (g) Corrective action.

5 (3) The department shall reissue the license or
6 certificate that ~~which~~ has been suspended or revoked upon
7 certification by the department ~~board~~ that the licensee or
8 certificateholder has complied with all of the terms and
9 conditions set forth in the final order.

10 Section 24. Section 468.1685, Florida Statutes, is
11 amended to read:

12 468.1685 Powers and duties of board and
13 department.--It is the function and duty of the board,
14 together with the department, to:

15 (1) Make such rules not inconsistent with law as are
16 necessary to carry out the duties and authority conferred upon
17 the board by this part.

18 (2) Develop, impose, and enforce specific standards
19 within the scope of the general qualifications established by
20 this part which must be met by individuals in order to receive
21 licenses as nursing home administrators. These standards shall
22 be designed to ensure that nursing home administrators are
23 individuals of good character and otherwise suitable and, by
24 training or experience in the field of institutional
25 administration, qualified to serve as nursing home
26 administrators.

27 (3) Develop by appropriate techniques, including
28 examinations and investigations, a method for determining
29 whether an individual meets such standards.

30 (4) Issue licenses to qualified individuals meeting
31 the standards of the board ~~and revoke or suspend licenses~~

1 ~~previously issued by the board when the individual holding~~
2 ~~such license is determined to have failed to conform~~
3 ~~substantially to the requirements of such standards.~~

4 (5) Establish and carry out procedures, by rule,
5 designed to ensure that licensed nursing home administrators
6 will comply with standards adopted by the board.

7 ~~(6) Receive, investigate, and take appropriate action~~
8 ~~with respect to any charge or complaint filed with the~~
9 ~~department to the effect that a licensed nursing home~~
10 ~~administrator has failed to comply with the requirements or~~
11 ~~standards adopted by the board.~~

12 (6)(7) Conduct a continuing study and investigation of
13 nursing homes and administrators of nursing homes in order to
14 improve the standards imposed for the licensing of such
15 administrators and the procedures and methods for enforcing
16 such standards with respect to administrators of nursing homes
17 who have been licensed as such.

18 (7)(8) Set up procedures by rule for advising and
19 acting together with the Department of Health ~~and~~
20 ~~Rehabilitative Services~~ and other boards of other health
21 professions in matters affecting procedures and methods for
22 effectively enforcing the purpose of this part and the
23 administration of chapter 400.

24 Section 25. Subsections (2) and (3) of section
25 468.1755, Florida Statutes, are amended to read:

26 468.1755 Disciplinary proceedings.--

27 (2) When the department ~~board~~ finds any nursing home
28 administrator guilty on ~~of~~ any of the grounds set forth in
29 subsection (1), it may enter an order imposing one or more of
30 the following penalties:

31 (a) Denial of an application for licensure.

- 1 (b) Revocation or suspension of a license.
- 2 (c) Imposition of an administrative fine not to exceed
3 \$1,000 for each count or separate offense.
- 4 (d) Issuance of a reprimand.
- 5 (e) Placement of the licensee on probation for a
6 period of time and subject to such conditions as the
7 department board may specify, including requiring the licensee
8 to attend continuing education courses or to work under the
9 supervision of another licensee.
- 10 (f) Restriction of the authorized scope of practice.
- 11 (3) The department shall reissue the license of a
12 disciplined licensee upon certification by the department
13 ~~board~~ that the disciplined licensee has complied with all of
14 the terms and conditions set forth in the final order.
- 15 Section 26. Section 468.217, Florida Statutes, is
16 amended to read:
- 17 468.217 Denial of or refusal to renew license;
18 suspension and revocation of license and other disciplinary
19 measures.--
- 20 (1) The department board may deny or refuse to renew a
21 license, suspend or revoke a license, issue a reprimand,
22 impose a fine, or impose probationary conditions upon a
23 licensee, when the licensee or applicant for license has been
24 guilty of unprofessional conduct which has endangered, or is
25 likely to endanger, the health, welfare, or safety of the
26 public. Such unprofessional conduct includes:
- 27 (a) Attempting to obtain, obtaining, or renewing a
28 license to practice occupational therapy by bribery, by
29 fraudulent misrepresentation, or through an error of the
30 department or the board.
- 31

1 (b) Having a license to practice occupational therapy
2 revoked, suspended, or otherwise acted against, including the
3 denial of licensure, by the licensing authority of another
4 state, territory, or country.

5 (c) Being convicted or found guilty, regardless of
6 adjudication, of a crime in any jurisdiction which directly
7 relates to the practice of occupational therapy or to the
8 ability to practice occupational therapy. A plea of nolo
9 contendere shall be considered a conviction for the purposes
10 of this part.

11 (d) False, deceptive, or misleading advertising.

12 (e) Advertising, practicing, or attempting to practice
13 under a name other than one's own name.

14 (f) Failing to report to the department any person who
15 the licensee knows is in violation of this part or of the
16 rules of the department or of the board.

17 (g) Aiding, assisting, procuring, or advising any
18 unlicensed person to practice occupational therapy contrary to
19 this part or to a rule of the department or the board.

20 (h) Failing to perform any statutory or legal
21 obligation placed upon a licensed occupational therapist or
22 occupational therapy assistant.

23 (i) Making or filing a report which the licensee knows
24 to be false, intentionally or negligently failing to file a
25 report or record required by state or federal law, willfully
26 impeding or obstructing such filing or inducing another person
27 to do so. Such reports or records include only those which
28 are signed in the capacity as a licensed occupational
29 therapist or occupational therapy assistant.

30 (j) Paying or receiving any commission, bonus,
31 kickback, or rebate to or from, or engaging in any split-fee

1 arrangement in any form whatsoever with, a physician,
2 organization, agency, or person, either directly or
3 indirectly, for patients referred to providers of health care
4 goods and services, including, but not limited to, hospitals,
5 nursing homes, clinical laboratories, ambulatory surgical
6 centers, or pharmacies. The provisions of this paragraph
7 shall not be construed to prevent an occupational therapist or
8 occupational therapy assistant from receiving a fee for
9 professional consultation services.

10 (k) Exercising influence within a patient-therapist
11 relationship for purposes of engaging a patient in sexual
12 activity. A patient is presumed to be incapable of giving
13 free, full, and informed consent to sexual activity with the
14 patient's occupational therapist or occupational therapy
15 assistant.

16 (l) Making deceptive, untrue, or fraudulent
17 representations in the practice of occupational therapy or
18 employing a trick or scheme in the practice of occupational
19 therapy if such scheme or trick fails to conform to the
20 generally prevailing standards of treatment in the
21 occupational therapy community.

22 (m) Soliciting patients, either personally or through
23 an agent, through the use of fraud, intimidation, undue
24 influence, or a form of overreaching or vexatious conduct. A
25 "solicitation" is any communication which directly or
26 implicitly requests an immediate oral response from the
27 recipient.

28 (n) Failing to keep written records justifying the
29 course of treatment of the patient, including, but not limited
30 to, patient histories, examination results, and test results.

31

1 (o) Exercising influence on the patient or client in
2 such a manner as to exploit the patient or client for
3 financial gain of the licensee or of a third party which
4 includes, but is not limited to, the promoting or selling of
5 services, goods, appliances, or drugs.

6 (p) Performing professional services which have not
7 been duly authorized by the patient or client, or his or her
8 legal representative, except as provided in s. 768.13.

9 (q) Gross or repeated malpractice or the failure to
10 practice occupational therapy with that level of care, skill,
11 and treatment which is recognized by a reasonably prudent
12 similar occupational therapist or occupational therapy
13 assistant as being acceptable under similar conditions and
14 circumstances.

15 (r) Performing any procedure which, by the prevailing
16 standards of occupational therapy practice in the community,
17 would constitute experimentation on a human subject without
18 first obtaining full, informed, and written consent.

19 (s) Practicing or offering to practice beyond the
20 scope permitted by law or accepting and performing
21 professional responsibilities which the licensee knows or has
22 reason to know that he or she is not competent to perform.

23 (t) Being unable to practice occupational therapy with
24 reasonable skill and safety to patients by reason of illness
25 or use of alcohol, drugs, narcotics, chemicals, or any other
26 type of material or as a result of any mental or physical
27 condition. In enforcing this paragraph, the department shall
28 have, upon probable cause, authority to compel an occupational
29 therapist or occupational therapy assistant to submit to a
30 mental or physical examination by physicians designated by the
31 department. The failure of an occupational therapist or

1 occupational therapy assistant to submit to such examination
2 when so directed constitutes an admission of the allegations
3 against him or her, upon which a default and final order may
4 be entered without the taking of testimony or presentation of
5 evidence, unless the failure was due to circumstances beyond
6 his or her control. An occupational therapist or occupational
7 therapy assistant affected under this paragraph shall at
8 reasonable intervals be afforded an opportunity to demonstrate
9 that he or she can resume the competent practice of
10 occupational therapy with reasonable skill and safety to
11 patients. In any proceeding under this paragraph, neither the
12 record of proceedings nor the orders entered by the board
13 shall be used against an occupational therapist or
14 occupational therapy assistant in any other proceeding.

15 (u) Delegating professional responsibilities to a
16 person when the licensee who is delegating such
17 responsibilities knows or has reason to know that such person
18 is not qualified by training, experience, or licensure to
19 perform them.

20 (v) Violating any provision of this part, a rule of
21 the board or department, or a lawful order of the board or
22 department previously entered in a disciplinary hearing or
23 failing to comply with a lawfully issued subpoena of the
24 department.

25 (w) Conspiring with another licensee or with any other
26 person to commit an act, or committing an act, which would
27 tend to coerce, intimidate, or preclude another licensee from
28 lawfully advertising his or her services.

29 (2) The department ~~board~~ may not reinstate the license
30 of an occupational therapist or occupational therapy
31 assistant, or cause a license to be issued to a person whom it

1 has deemed to be unqualified, until such time as the
2 department board is satisfied that such person has complied
3 with all the terms and conditions set forth in the final order
4 and is capable of safely engaging in the practice of
5 occupational therapy.

6 Section 27. Subsections (2), (3), and (4) of section
7 468.365, Florida Statutes, are amended to read:

8 468.365 Disciplinary grounds and actions.--

9 (2) If the department board finds any person guilty on
10 ~~of~~ any of the grounds set forth in subsection (1), it may
11 enter an order imposing one or more of the following
12 penalties:

13 (a) Denial of an application for licensure.

14 (b) Revocation or suspension of licensure.

15 (c) Imposition of an administrative fine not to exceed
16 \$1,000 for each count or separate offense.

17 (d) Placement of the respiratory care practitioner or
18 respiratory therapist on probation for such period of time and
19 subject to such conditions as the department board may
20 specify, including, but not limited to, requiring the
21 respiratory care practitioner or respiratory therapist to
22 submit to treatment, to attend continuing education courses,
23 or to work under the supervision of another respiratory care
24 practitioner or respiratory therapist.

25 (e) Issuance of a reprimand.

26 (3) The department board shall not reinstate
27 licensure, or cause a license to be issued to a person it has
28 deemed unqualified, until such time as it is satisfied that
29 such person has complied with all the terms and conditions set
30 forth in the final order and that the respiratory care
31

1 practitioner or respiratory therapist is capable of safely
2 engaging in the delivery of respiratory care services.

3 (4) The department board may, by rule, establish
4 guidelines for the disposition of disciplinary cases involving
5 specific types of violations. Such guidelines may include
6 minimum and maximum fines, periods of supervision on
7 probation, and ~~or~~ conditions upon probation or reissuance of a
8 license.

9 Section 28. Subsections (2) and (3) of section
10 468.518, Florida Statutes, are amended to read:

11 468.518 Grounds for disciplinary action.--

12 (2) When the Department of Health board finds any
13 licensee guilty on ~~of~~ any of the grounds set forth in
14 subsection (1), it may enter an order imposing one or more of
15 the following penalties:

16 (a) Denial of an application for licensure;

17 (b) Revocation or suspension of a license;

18 (c) Imposition of an administrative fine not to exceed
19 \$1,000 for each violation;

20 (d) Issuance of a reprimand or letter of guidance;

21 (e) Placement of the licensee on probation for a
22 period of time and subject to such conditions as the
23 Department of Health board may specify, including requiring
24 the licensee to attend continuing education courses or to work
25 under the supervision of a licensed dietitian/nutritionist or
26 licensed nutrition counselor; or

27 (f) Restriction of the authorized scope of practice of
28 the licensee.

29 (3) The Department of Health agency shall reissue the
30 license of a disciplined dietitian/nutritionist or nutrition
31 counselor upon certification by the department board that the

1 | disciplined dietitian/nutritionist or nutrition counselor has
2 | complied with all of the terms and conditions set forth in the
3 | final order.

4 | Section 29. Subsection (2) of section 468.811, Florida
5 | Statutes, is amended to read:

6 | 468.811 Disciplinary proceedings.--

7 | (2) The department ~~board~~ may enter an order imposing
8 | one or more of the penalties in s. 455.627(2)~~s. 455.227(2)~~
9 | against any person who violates any provision of subsection
10 | (1).

11 | Section 30. Subsections (2) and (3) of section
12 | 480.046, Florida Statutes, are amended to read:

13 | 480.046 Grounds for disciplinary action by the
14 | board.--

15 | (2) When the department ~~board~~ finds any person guilty
16 | on ~~of~~ any of the grounds set forth in subsection (1), it may
17 | enter an order imposing one or more of the following
18 | penalties:

19 | (a) Refusal to license an applicant.

20 | (b) Revocation or suspension of a license.

21 | (c) Issuance of a reprimand or censure.

22 | (d) Imposition of an administrative fine not to exceed
23 | \$1,000 for each count or separate offense.

24 | (3) The department ~~board~~ shall have the power to
25 | revoke or suspend the license of a massage establishment
26 | licensed under this act, or to deny subsequent licensure of
27 | such an establishment, in either of the following cases:

28 | (a) Upon proof that a license has been obtained by
29 | fraud or misrepresentation.

30 |
31 |

1 (b) Upon proof that the holder of a license is guilty
2 of fraud or deceit or of gross negligence, incompetency, or
3 misconduct in the operation of the establishment so licensed.

4 Section 31. Subsections (2) and (3) of section
5 484.014, Florida Statutes, are amended to read:

6 484.014 Disciplinary actions.--

7 (2) When the department ~~board~~ finds any person guilty
8 on ~~of~~ any of the grounds set forth in subsection (1), it may
9 enter an order imposing one or more of the following
10 penalties:

11 (a) Refusal to certify to the department an
12 application for licensure.

13 (b) Revocation or suspension of a license.

14 (c) Imposition of an administrative fine not to exceed
15 \$1,000 for each count or separate offense.

16 (d) Issuance of a reprimand.

17 (e) Placement of the optician on probation for a
18 period of time and subject to such conditions as the
19 department ~~board~~ may specify, including requiring the optician
20 to submit to treatment or to work under the supervision of
21 another optician.

22 (3) The department ~~board~~ shall not reinstate the
23 license of an optician it has deemed unqualified until such
24 time as it is satisfied that the optician has complied with
25 all the terms and conditions set forth in the final order and
26 that such person is capable of safely engaging in the practice
27 of opticianry.

28 Section 32. Subsection (4) of section 484.042, Florida
29 Statutes, is amended to read:

30 484.042 Board of Hearing Aid Specialists; membership,
31 appointment, terms.--

1 (4) All provisions of chapter 455 relating to
2 activities of regulatory boards apply to the board. ~~However,~~
3 ~~notwithstanding the requirement of s. 455.225(4) that the~~
4 ~~board provide by rule for the determination of probable cause~~
5 ~~by a panel composed of its members or by the department, the~~
6 ~~board may provide by rule that its probable cause panel may be~~
7 ~~composed of one current member of the board and one past~~
8 ~~member of the board, as long as the past member is a licensed~~
9 ~~hearing aid specialist in good standing. The past board~~
10 ~~member shall be appointed to the panel for a maximum of 2~~
11 ~~years by the chair of the board with the approval of the~~
12 ~~secretary.~~

13 Section 33. Subsections (2) and (3) of section
14 484.056, Florida Statutes, are amended to read:

15 484.056 Disciplinary proceedings.--

16 (2)(a) Except as provided in paragraph (b), when the
17 department board finds any hearing aid specialist to be guilty
18 on ~~of~~ any of the grounds set forth in subsection (1), it may
19 enter an order imposing one or more of the following
20 penalties:

- 21 1. Denial of an application for licensure.
- 22 2. Revocation or suspension of a license.
- 23 3. Imposition of an administrative fine not to exceed
24 \$1,000 for each count or separate offense.
- 25 4. Issuance of a reprimand.
- 26 5. Placing the hearing aid specialist on probation for
27 a period of time and subject to such conditions as the
28 department board may specify, including requiring the hearing
29 aid specialist to attend continuing education courses or to
30 work under the supervision of another hearing aid specialist.
- 31 6. Restricting the authorized scope of practice.

1 (b) The department ~~board~~ shall revoke the license of
2 any hearing aid specialist found guilty of canvassing as
3 described in this section.

4 (3) The department shall reissue the license of a
5 hearing aid specialist who has been disciplined upon
6 certification by the department ~~board~~ that the hearing aid
7 specialist has complied with all of the terms and conditions
8 set forth in the final order.

9 Section 34. Paragraph (a) of subsection (1) and
10 subsections (2) and (3) of section 486.125, Florida Statutes,
11 are amended to read:

12 486.125 Refusal, revocation, or suspension of license;
13 administrative fines and other disciplinary measures.--

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

17 (a) Being unable to practice physical therapy with
18 reasonable skill and safety to patients by reason of illness
19 or use of alcohol, drugs, narcotics, chemicals, or any other
20 type of material or as a result of any mental or physical
21 condition.

22 1. In enforcing this paragraph, upon a finding of the
23 secretary or the secretary's designee that probable cause
24 exists to believe that the licensee is unable to practice
25 physical therapy due to the reasons stated in this paragraph,
26 the department shall have the authority to compel a physical
27 therapist or physical therapist assistant to submit to a
28 mental or physical examination by a physician designated by
29 the department. If the licensee refuses to comply with such
30 order, the department's order directing such examination may
31 be enforced by filing a petition for enforcement in the

1 circuit court where the licensee resides or serves as a
2 physical therapy practitioner. The licensee against whom the
3 petition is filed shall not be named or identified by initials
4 in any public court records or documents, and the proceedings
5 shall be closed to the public. The department shall be
6 entitled to the summary procedure provided in s. 51.011.

7 2. A physical therapist or physical therapist
8 assistant whose license is suspended or revoked pursuant to
9 this subsection shall, at reasonable intervals, be given an
10 opportunity to demonstrate that she or he can resume the
11 competent practice of physical therapy with reasonable skill
12 and safety to patients.

13 3. Neither the record of proceeding nor the orders
14 entered by the department ~~board~~ in any proceeding under this
15 subsection may be used against a physical therapist or
16 physical therapist assistant in any other proceeding.

17 (2) When the department ~~board~~ finds any person guilty
18 on ~~of~~ any of the grounds set forth in subsection (1), it may
19 enter an order imposing one or more of the following
20 penalties:

21 (a) Refusal to certify to the department an
22 application for licensure.

23 (b) Revocation or suspension of a license.

24 (c) Restriction of practice.

25 (d) Imposition of an administrative fine not to exceed
26 \$1,000 for each count or separate offense.

27 (e) Issuance of a reprimand.

28 (f) Placement of the physical therapist or physical
29 therapist assistant on probation for a period of time and
30 subject to such conditions as the department ~~board~~ may
31 specify, including, but not limited to, requiring the physical

1 therapist or physical therapist assistant to submit to
2 treatment, to attend continuing education courses, to submit
3 to reexamination, or to work under the supervision of another
4 physical therapist.

5 (g) Recovery of actual costs of investigation and
6 prosecution.

7 (3) The department ~~board~~ shall not reinstate the
8 license of a physical therapist or physical therapist
9 assistant or cause a license to be issued to a person whom it
10 has deemed to be unqualified until such time as it is
11 satisfied that she or he has complied with all the terms and
12 conditions set forth in the final order and that such person
13 is capable of safely engaging in the practice of physical
14 therapy.

15 Section 35. Subsection (1) of section 490.009, Florida
16 Statutes, is amended to read:

17 490.009 Discipline.--

18 (1) When the department ~~or, in the case of~~
19 ~~psychologists, the board~~ finds that an applicant, provisional
20 licensee, or licensee whom it regulates under this chapter has
21 committed any of the acts set forth in subsection (2), it may
22 issue an order imposing one or more of the following
23 penalties:

24 (a) Denial of an application for licensure, either
25 temporarily or permanently.

26 (b) Revocation of an application for licensure, either
27 temporarily or permanently.

28 (c) Suspension for a period of up to 5 years or
29 revocation of a license, after hearing.

30 (d) Immediate suspension of a license pursuant to s.
31 120.60(6).

1 (e) Imposition of an administrative fine not to exceed
2 \$5,000 for each count or separate offense.

3 (f) Issuance of a public reprimand.

4 (g) Placement of an applicant or licensee on probation
5 for a period of time and subject to conditions specified by
6 the department ~~or, in the case of psychologists, by the board,~~
7 including, but not limited to, requiring the applicant or
8 licensee to submit to treatment, to attend continuing
9 education courses, to submit to reexamination, or to work
10 under the supervision of a designated licensee.

11 (h) Restriction of practice.

12 Section 36. Subsection (1) of section 491.009, Florida
13 Statutes, is amended to read:

14 491.009 Discipline.--

15 (1) When the department ~~or the board~~ finds that an
16 applicant, licensee, provisional licensee, registered intern,
17 or certificateholder whom it regulates under this chapter has
18 committed any of the acts set forth in subsection (2), it may
19 issue an order imposing one or more of the following
20 penalties:

21 (a) Denial of an application for licensure,
22 registration, or certification, either temporarily or
23 permanently.

24 (b) Revocation of an application for licensure,
25 registration, or certification, either temporarily or
26 permanently.

27 (c) Suspension for a period of up to 5 years or
28 revocation of a license, registration, or certificate, after
29 hearing.

30 (d) Immediate suspension of a license, registration,
31 or certificate pursuant to s. 120.60(6).

1 (e) Imposition of an administrative fine not to exceed
2 \$1,000 for each count or separate offense.

3 (f) Issuance of a public reprimand.

4 (g) Placement of an applicant, licensee, registered
5 intern, or certificateholder on probation for a period of time
6 and subject to such conditions as the department board may
7 specify, including, but not limited to, requiring the
8 applicant, licensee, registered intern, or certificateholder
9 to submit to treatment, to attend continuing education
10 courses, to submit to reexamination, or to work under the
11 supervision of a designated licensee or certificateholder.

12 (h) Restriction of practice.

13 Section 37. The Secretary of the Department of Health
14 must appoint a task force by July 1, 1999, to develop
15 procedures to ensure uniformity and accountability in the
16 implementation and enforcement of the disciplinary process
17 among health care professions. The task force shall include
18 representatives of each disciplinary board. The task force
19 must review the effectiveness of the disciplinary boards'
20 function in determining probable cause in disciplinary cases
21 involving health care professionals, the department's
22 implementation and compliance with disciplinary guidelines
23 applicable to each ground for disciplinary action which may be
24 imposed by the department, and the effectiveness of
25 alternatives to the regular disciplinary process. The task
26 force shall report its findings to the Secretary of the
27 Department of Health by July 1, 2000.

28 Section 38. Subsections (4) and (5) of section
29 458.307, Florida Statutes, are repealed.

30 Section 39. This act shall take effect January 15,
31 1999.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

SENATE SUMMARY

Creates boards within the Department of Health to serve as probable cause panels for the discipline of health care professionals. Provides for board member qualifications, terms, training, and duties. Provides that chapter 455, F.S., applies to such boards. Revises provisions relating to the discipline of health care professionals. Revises existing provisions relating to the discipline of specific health care professionals to conform to such changes. Provides for the creation of a task force to develop procedures to ensure uniformity and accountability in the disciplinary process among the professions regulated by the Department of Health. (See bill for details.)