

By the Committee on Health, Aging and Long-Term Care; and
Senator Saunders

317-1694C-01

1 A bill to be entitled
2 An act relating to health care practitioner
3 regulation; providing legislative intent and
4 findings with respect to the Medical Quality
5 Assurance Trust Fund and function administered
6 by the Department of Health; requiring the
7 Auditor General to do a followup Medical
8 Quality Assurance audit and issue a report to
9 the Legislature; requiring the Office of
10 Program Policy Analysis and Government
11 Accountability to study the feasibility of
12 maintaining the Medical Quality Assurance
13 function within a single department and issue a
14 report to the Legislature; requiring the
15 Department of Health to reimburse the Agency
16 for Health Care Administration for certain
17 costs; amending s. 456.004, F.S.; providing
18 requirements for rules relating to biennial
19 renewal of licenses; amending s. 456.025, F.S.;
20 revising requirements relating to the setting
21 and use of fees for the regulation of health
22 care professions and practitioners, including
23 continuing education fees; providing for an
24 electronic continuing-education tracking
25 system; amending ss. 457.107, 483.807, F.S.;
26 conforming provisions relating to fees;
27 repealing s. 458.31151, F.S., relating to
28 development of the examination for
29 foreign-trained physicians and the fees
30 therefor; amending s. 456.011, F.S.; requiring
31 board meetings to be conducted through

1 teleconferencing or other technological means
2 except under certain circumstances; amending s.
3 456.013, F.S.; requiring the department to
4 charge initial license fees; amending s.
5 456.017, F.S.; providing for administration of
6 national examinations and termination of
7 state-administered written examinations;
8 providing for administration of
9 state-administered practical or clinical
10 examinations if paid for in advance by the
11 examination candidates; providing legislative
12 intent with respect to the use of national
13 examinations and the removal of
14 state-administered examinations as a barrier to
15 licensure; providing for electronic access to
16 and posting of examination scores under certain
17 conditions; providing for the sharing of
18 examinations or examination-item banks with
19 certain entities; providing for review of
20 questions by legal counsel under certain
21 circumstances; providing for electronic
22 administration of examinations; amending s.
23 456.035, F.S.; providing for electronic
24 notification of a licensee's current mailing
25 address and place of practice; amending s.
26 456.073, F.S.; prohibiting a letter of guidance
27 in lieu of a finding of probable cause under
28 certain conditions; amending s. 456.081, F.S.;
29 providing for publication of information;
30 amending s. 456.072, F.S.; revising and
31 providing grounds for discipline of licensees;

1 revising provisions governing and providing for
2 disciplinary actions; amending s. 456.079,
3 F.S.; requiring mitigating or aggravating
4 circumstances to be in the final order to be
5 considered in the imposition of penalties;
6 amending ss. 457.109, 458.320, 458.331,
7 459.0085, 459.015, 460.413, 461.013, 462.14,
8 463.016, 464.018, 465.016, 466.028, 466.037,
9 467.203, 468.1295, 468.1755, 468.217, 468.365,
10 468.518, 468.719, 468.811, 478.52, 480.046,
11 483.825, 483.901, 484.014, 484.056, 486.125,
12 490.009, 491.009, F.S.; conforming provisions
13 relating to disciplinary actions; repealing s.
14 483.827, F.S., relating to administrative
15 penalties applicable to clinical laboratory
16 personnel; amending s. 456.074, F.S.; providing
17 for immediate suspension of licenses for
18 violations relating to fraudulent practices;
19 amending s. 464.005, F.S.; providing for future
20 relocation of the headquarters of the Board of
21 Nursing; providing effective dates.

22

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

24

25 Section 1. It is the intent of the Legislature that
26 the Medical Quality Assurance Trust Fund should be
27 administered in a fiscally responsible manner. It is also the
28 intent of the Legislature that the Department of Health reduce
29 expenses wherever possible to ensure that the cost of
30 regulation is reasonable and fair and does not serve as a
31 barrier to licensure in this state. The Legislature adopts

1 findings 1, 2, 4, 5, and 8 and all three recommendations of
2 the Auditor General's Medical Quality Assurance Operational
3 Audit Report Number 01-063. In addition, the Legislature
4 adopts recommendations 1, 2, 4, 5, and 7 of the Florida Senate
5 Committee on Fiscal Policy Interim Project Report 2001-016,
6 except where such recommendations require the fees to be set
7 by the boards.

8 Section 2. The Auditor General shall conduct a
9 followup audit to the Medical Quality Assurance Operational
10 Audit Report Number 01-063 to determine if the Department of
11 Health has implemented the recommendations of that report. The
12 Auditor General shall complete the followup audit and issue a
13 report to the President of the Senate and the Speaker of the
14 House of Representatives no later than January 31, 2002.

15 Section 3. The Office of Program Policy Analysis and
16 Government Accountability shall study the feasibility of
17 maintaining the entire Medical Quality Assurance function,
18 including enforcement, within a single department. The study
19 shall be completed and a report issued to the President of the
20 Senate and the Speaker of the House of Representatives no
21 later than November 30, 2001.

22 Section 4. The contract between the Department of
23 Health and the Agency for Health Care Administration pursuant
24 to section 20.43(3), Florida Statutes, is not subject to the
25 provisions of section 216.346, Florida Statutes. The
26 Department of Health shall reimburse the Agency for Health
27 Care Administration for the agency's actual and direct costs
28 and the agency's appropriate share of indirect and
29 infrastructure costs applicable to the contract, subject to
30 appropriated funds.

31

1 Section 5. Subsection (1) of section 456.004, Florida
2 Statutes, is amended, and subsection (10) is added to that
3 section, to read:

4 456.004 Department; powers and duties.--The
5 department, for the professions under its jurisdiction, shall:

6 (1) Adopt rules establishing a procedure for the
7 biennial renewal of licenses; however, the department may
8 issue up to a 4-year license to selected licensees
9 notwithstanding any other provisions of law to the contrary.
10 The rules shall specify the expiration dates of licenses and
11 the process for tracking compliance with continuing education
12 requirements, financial responsibility requirements, and any
13 other conditions of renewal set forth in statute or rule.Fees
14 for such renewal shall not exceed the fee caps for individual
15 professions on an annualized basis as authorized by law.

16 (10) Set an examination fee that includes all costs to
17 develop, validate, administer, and defend the examination and
18 is an amount certain to cover all administrative costs plus
19 the actual per-applicant cost of the examination.

20 Section 6. Section 456.025, Florida Statutes, is
21 amended to read:

22 456.025 Fees; receipts; disposition.--

23 (1) It is the intent of the Legislature that all costs
24 of regulating health care professions and practitioners shall
25 be borne solely by licensees and licensure applicants. It is
26 also the intent of the Legislature that fees should be
27 reasonable and not serve as a barrier to licensure. Moreover,
28 it is the intent of the Legislature that the department
29 operate as efficiently as possible and regularly report to the
30 Legislature additional methods to streamline operational
31 costs. Therefore, the boards shall set fees in consultation

1 with the department every 2 years for the professions
2 regulated by the Division of Medical Quality Assurance. The
3 fees shall be based on revenue projections prepared by the
4 department using generally accepted accounting procedures and
5 shall be adequate to cover all anticipated costs and to
6 maintain a reasonable cash balance.

7 (2) The chairpersons of the boards and councils listed
8 in s. 20.043(3)(g) shall meet annually at the division
9 headquarters to review the long-range policy plan required by
10 s. 456.005 and current and proposed fee schedules. The
11 chairpersons, upon approval by the board, shall make
12 recommendations for any necessary statutory changes relating
13 to fees and fee caps. Such recommendations shall be compiled
14 by the Department of Health and be included in the annual
15 report to the Legislature required by s. 456.026 and be
16 included in the long-range policy plan required by s. 456.005.

17 (3)~~(1)~~ Each board within the jurisdiction of the
18 department, or the department when there is no board, shall
19 determine by rule the amount of license fees for the
20 profession it regulates, based upon long-range estimates
21 prepared by the department of the revenue required to
22 implement laws relating to the regulation of professions by
23 the department and the board. Each board, or the department
24 if there is no board, shall ensure that license fees are
25 adequate to cover all anticipated costs and to maintain a
26 reasonable cash balance, as determined by rule of the agency,
27 with advice of the applicable board. If sufficient action is
28 not taken by a board within 1 year after notification by the
29 department that license fees are projected to be inadequate,
30 the department shall set license fees on behalf of the
31 applicable board to cover anticipated costs and to maintain

1 the required cash balance. The department shall include
2 recommended fee cap increases in its annual report to the
3 Legislature. Further, it is the legislative intent that no
4 regulated profession operate with a negative cash balance. The
5 department may provide by rule for advancing sufficient funds
6 to any profession operating with a negative cash balance. The
7 advancement may be for a period not to exceed 2 consecutive
8 years, and the regulated profession must pay interest.
9 Interest shall be calculated at the current rate earned on
10 investments of a trust fund used by the department to
11 implement this chapter. Interest earned shall be allocated to
12 the various funds in accordance with the allocation of
13 investment earnings during the period of the advance.

14 (4)~~(2)~~ Each board, or the department if there is no
15 board, may charge a fee not to exceed \$25, as determined by
16 rule, for the issuance of a wall certificate pursuant to s.
17 456.013(2) requested by a licensee who was licensed prior to
18 July 1, 1998, or for the issuance of a duplicate wall
19 certificate requested by any licensee.

20 (5)~~(3)~~ Each board, or the department if there is no
21 board, may, by rule, assess and collect a one-time fee from
22 each active status licensee and each inactive status licensee
23 in an amount necessary to eliminate a cash deficit or, if
24 there is not a cash deficit, in an amount sufficient to
25 maintain the financial integrity of the professions as
26 required in this section. Not more than one such assessment
27 may be made in any 4-year period without specific legislative
28 authorization.

29 (6) If the cash balance of the trust fund at the end
30 of any fiscal year exceeds the total appropriation provided
31 for the regulation of the health care professions in the prior

1 fiscal year, the boards, in consultation with the department,
2 may lower the fees imposed pursuant to this section.

3 (7)(4) Each board authorized to approve continuing
4 education providers, or the department if there is no board,
5 shall may establish, by rule, a fee not to exceed \$250 for
6 anyone seeking approval to provide continuing education
7 courses or programs and shall may establish by rule a biennial
8 renewal fee not to exceed \$250 for the renewal of providership
9 of such courses. The fees collected from continuing education
10 providers shall be used for the purposes of reviewing course
11 provider applications, monitoring the integrity of the courses
12 provided, covering legal expenses incurred as a result of not
13 granting or renewing a providership, and developing and
14 maintaining an electronic continuing education tracking
15 system. The department shall implement an electronic
16 continuing education tracking system for each new biennial
17 renewal cycle for which electronic renewals are implemented
18 after the effective date of this act and shall integrate such
19 system into the licensure and renewal system. All approved
20 continuing education providers shall provide information on
21 course attendance to the department necessary to implement the
22 electronic tracking system. The department shall, by rule,
23 specify the form and procedures by which the information is to
24 be submitted. This subsection does not apply to continuing
25 education courses or providers approved by the board under
26 chapter 465.

27 (8)(5) All moneys collected by the department from
28 fees or fines or from costs awarded to the agency by a court
29 shall be paid into a trust fund used by the department to
30 implement this chapter. The Legislature shall appropriate
31 funds from this trust fund sufficient to carry out this

1 chapter and the provisions of law with respect to professions
2 regulated by the Division of Medical Quality Assurance within
3 the department and the boards. The department may contract
4 with public and private entities to receive and deposit
5 revenue pursuant to this section. The department shall
6 maintain separate accounts in the trust fund used by the
7 department to implement this chapter for every profession
8 within the department. To the maximum extent possible, the
9 department shall directly charge all expenses to the account
10 of each regulated profession. For the purpose of this
11 subsection, direct charge expenses include, but are not
12 limited to, costs for investigations, examinations, and legal
13 services. For expenses that cannot be charged directly, the
14 department shall provide for the proportionate allocation
15 among the accounts of expenses incurred by the department in
16 the performance of its duties with respect to each regulated
17 profession. The regulation by the department of professions,
18 as defined in this chapter, shall be financed solely from
19 revenue collected by it from fees and other charges and
20 deposited in the Medical Quality Assurance Trust Fund, and all
21 such revenue is hereby appropriated to the department.
22 However, it is legislative intent that each profession shall
23 operate within its anticipated fees. The department may not
24 expend funds from the account of a profession to pay for the
25 expenses incurred on behalf of another profession, except that
26 the Board of Nursing must pay for any costs incurred in the
27 regulation of certified nursing assistants. The department
28 shall maintain adequate records to support its allocation of
29 agency expenses. The department shall provide any board with
30 reasonable access to these records upon request. On or before
31 October 1 of each year, the department shall provide each

1 board an annual report of revenue and direct and allocated
2 expenses related to the operation of that profession. The
3 board shall use these reports and the department's adopted
4 long-range plan to determine the amount of license fees. A
5 condensed version of this information, with the department's
6 recommendations, shall be included in the annual report to the
7 Legislature prepared under s. 456.026.

8 (9)~~(6)~~ The department shall provide a condensed
9 management report of budgets, finances, performance
10 statistics, and recommendations to each board at least once a
11 quarter. The department shall identify and include in such
12 presentations any changes, or projected changes, made to the
13 board's budget since the last presentation.

14 (10)~~(7)~~ If a duplicate license is required or
15 requested by the licensee, the board or, if there is no board,
16 the department may charge a fee as determined by rule not to
17 exceed \$25 before issuance of the duplicate license.

18 (11)~~(8)~~ The department or the appropriate board shall
19 charge a fee not to exceed \$25 for the certification of a
20 public record. The fee shall be determined by rule of the
21 department. The department or the appropriate board shall
22 assess a fee for duplicating a public record as provided in s.
23 119.07(1)(a) and (b).

24 Section 7. Subsections (1) of section 457.107, Florida
25 Statutes, is amended to read:

26 457.107 Renewal of licenses; continuing education.--

27 (1) The department shall renew a license upon receipt
28 of the renewal application and the required fee set by the
29 board by rule, not to exceed \$500.

30 Section 8. Section 458.31151, Florida Statutes, is
31 repealed.

1 Section 9. Subsection (1) of section 483.807, Florida
2 Statutes, is amended to read:

3 483.807 Fees; establishment; disposition.--

4 (1) The board, by rule, shall establish fees to be
5 paid for application, examination, reexamination, licensing
6 and renewal, registration, laboratory training program
7 application, reinstatement, and recordmaking and
8 recordkeeping. The board may also establish, by rule, a
9 delinquency fee. The board shall establish fees that are
10 adequate to ensure the continued operation of the board and to
11 fund the proportionate expenses incurred by the department in
12 carrying out its licensure and other related responsibilities
13 under this part. Fees shall be based on departmental estimates
14 of the revenue required to implement this part and the
15 provisions of law with respect to the regulation of clinical
16 laboratory personnel.

17 Section 10. Subsections (1), (3), and (4) of section
18 456.011, Florida Statutes, are amended to read:

19 456.011 Boards; organization; meetings; compensation
20 and travel expenses.--

21 (1) Each board within the department shall comply with
22 the provisions of this chapter section.

23 (3) The board shall meet at least once annually and
24 may meet as often as is necessary. Meetings shall be conducted
25 through teleconferencing or other technological means, unless
26 disciplinary hearings involving standard of care, sexual
27 misconduct, fraud, impairment, or felony convictions;
28 licensure denial hearings; or controversial rule hearings are
29 being conducted or unless otherwise approved in advance of the
30 meeting by the director of the Division of Medical Quality
31 Assurance.The chairperson or a quorum of the board shall have

1 the authority to call ~~other~~ meetings, except as provided above
2 relating to in-person meetings. A quorum shall be necessary
3 for the conduct of official business by the board or any
4 committee thereof. Unless otherwise provided by law, 51
5 percent or more of the appointed members of the board or any
6 committee, when applicable, shall constitute a quorum. The
7 membership of committees of the board, except as otherwise
8 authorized pursuant to this chapter or the applicable practice
9 act, shall be composed of currently appointed members of the
10 board. The vote of a majority of the members of the quorum
11 shall be necessary for any official action by the board or
12 committee. Three consecutive unexcused absences or absences
13 constituting 50 percent or more of the board's meetings within
14 any 12-month period shall cause the board membership of the
15 member in question to become void, and the position shall be
16 considered vacant. The board, or the department when there is
17 no board, shall, by rule, define unexcused absences.

18 (4) Unless otherwise provided by law, a board member
19 or former board member serving on a probable cause panel shall
20 be compensated \$50 for each day in attendance at an official
21 meeting of the board and for each day of participation in any
22 other business involving the board. Each board shall adopt
23 rules defining the phrase "other business involving the
24 board," but the phrase may not routinely be defined to include
25 telephone conference calls that last less than 4 hours. A
26 board member also shall be entitled to reimbursement for
27 expenses pursuant to s. 112.061. Travel out of state shall
28 require the prior approval of the secretary.

29 Section 11. Subsection (2) of section 456.013, Florida
30 Statutes, is amended to read:

31 456.013 Department; general licensing provisions.--

1 (2) Before the issuance of any license, the department
2 shall ~~may~~ charge an initial license fee as determined by rule
3 ~~of~~ the applicable board or, if no such board exists, by rule
4 of the department. Upon receipt of the appropriate license
5 fee, the department shall issue a license to any person
6 certified by the appropriate board, or its designee, as having
7 met the licensure requirements imposed by law or rule. The
8 license shall consist of a wallet-size identification card and
9 a wall card measuring 6 1/2 inches by 5 inches. In addition
10 to the two-part license, the department, at the time of
11 initial licensure, shall issue a wall certificate suitable for
12 conspicuous display, which shall be no smaller than 8 1/2
13 inches by 14 inches. The licensee shall surrender to the
14 department the wallet-size identification card, the wall card,
15 and the wall certificate, if one has been issued by the
16 department, if the licensee's license is revoked.

17 Section 12. Section 456.017, Florida Statutes, is
18 amended to read:

19 456.017 Department of Health; examinations.--

20 (1)(a) The department shall provide, contract, or
21 approve services for the development, preparation,
22 administration, scoring, score reporting, and evaluation of
23 all examinations, in consultation with the appropriate board.
24 The department shall certify that examinations developed and
25 approved by the department adequately and reliably measure an
26 applicant's ability to practice the profession regulated by
27 the department. After an examination developed or approved by
28 the department has been administered, the board, or the
29 department when there is no board, may reject any question
30 which does not reliably measure the general areas of
31 competency specified in the rules of the board. The department

1 may contract for the preparation, administration, scoring,
2 score reporting, and evaluation of examinations, when such
3 services are available and approved by the board.

4 (b) For each examination developed by the department
5 or contracted vendor, to the extent not otherwise specified by
6 statute, the board, or the department when there is no board,
7 shall by rule specify the general areas of competency to be
8 covered by each examination, the relative weight to be
9 assigned in grading each area tested, and the score necessary
10 to achieve a passing grade. The department shall assess, ~~and~~
11 ~~fees, where applicable,~~ to cover the actual cost for any
12 purchase, development, validation, ~~and~~ administration, ~~and~~
13 defense of required examinations. This subsection does not
14 apply to national examinations approved and administered
15 pursuant to paragraph (c). If a practical examination is
16 deemed to be necessary, the rules shall specify the criteria
17 by which examiners are to be selected, the grading criteria to
18 be used by the examiner, the relative weight to be assigned in
19 grading each criterion, and the score necessary to achieve a
20 passing grade. When a mandatory standardization exercise for a
21 practical examination is required by law, the board, or the
22 department when there is no board, may conduct such exercise.
23 Therefore, board members, or employees of the department when
24 there is no board, may serve as examiners at a practical
25 examination with the consent of the board or department, as
26 appropriate.

27 (c)1. The board, or the department when there is no
28 board, shall ~~may~~ approve by rule the use of one or more ~~any~~
29 national examinations ~~examination~~ which the department has
30 certified as meeting requirements of national examinations and
31 generally accepted testing standards pursuant to department

1 rules. Providers of examinations seeking certification by the
2 department shall pay the actual costs incurred by the
3 department in making a determination regarding the
4 certification. The name and number of a candidate may be
5 provided to a national contractor for the limited purpose of
6 preparing the grade tape and information to be returned to the
7 board or department; or, to the extent otherwise specified by
8 rule, the candidate may apply directly to the vendor of the
9 national examination and supply test score information to the
10 department. The department may delegate to the board the duty
11 to provide and administer the examination. Any national
12 examination approved by a board, or the department when there
13 is no board, prior to October 1, 1997, is deemed certified
14 under this paragraph.

15 2. The board, or the department when there is no
16 board, shall approve and begin administering a national
17 examination no later than December 31, 2002. Neither the board
18 nor the department may administer a state-developed written
19 examination after December 31, 2002, notwithstanding any other
20 provision of law. The examination may be administered
21 electronically if adequate security measures are used, as
22 determined by rule of the department.

23 3. The board, or the department when there is no
24 board, may administer a state-developed practical or clinical
25 examination, as required by the applicable practice act, if
26 all costs of development, validation, administration, review,
27 and defense are paid by the examination candidate prior to the
28 administration of the examination. If a national practical or
29 clinical examination is available and certified by the
30 department pursuant to this section, the board, or the

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1 department when there is no board, may administer the national
2 examination.

3 4. It is the intent of the Legislature to reduce the
4 costs associated with state examinations and to encourage the
5 use of national examinations whenever possible.

6 (d) Each board, or the department when there is no
7 board, shall adopt rules regarding the security and monitoring
8 of examinations. The department shall implement those rules
9 adopted by the respective boards. In order to maintain the
10 security of examinations, the department may employ the
11 procedures set forth in s. 456.065 to seek fines and
12 injunctive relief against an examinee who violates the
13 provisions of s. 456.018 or the rules adopted pursuant to this
14 paragraph. The department, or any agent thereof, may, for the
15 purposes of investigation, confiscate any written,
16 photographic, or recording material or device in the
17 possession of the examinee at the examination site which the
18 department deems necessary to enforce such provisions or
19 rules. The scores of state-developed examinations taken by
20 candidates shall be provided to the candidates electronically
21 using a candidate identification number, and the department
22 shall post the aggregate scores on the department's website
23 without identifying the names of the candidates.

24 (e) If the professional board with jurisdiction over
25 an examination concurs, the department may, for a fee, share
26 with any other state's licensing authority or a national
27 testing entity an examination or examination item bank
28 developed by or for the department unless prohibited by a
29 contract entered into by the department for development or
30 purchase of the examination. The department, with the
31 concurrence of the appropriate board, shall establish

1 guidelines that ensure security of a shared exam and shall
2 require that any other state's licensing authority comply with
3 those guidelines. Those guidelines shall be approved by the
4 appropriate professional board. All fees paid by the user
5 shall be applied to the department's examination and
6 development program for professions regulated by this chapter.

7 (f) The department may adopt rules necessary to
8 administer this subsection.

9 (2) For each examination developed by the department
10 or a contracted vendor, the board, or the department when
11 there is no board, shall adopt rules providing for
12 reexamination of any applicants who failed an examination
13 developed by the department or a contracted vendor. If both a
14 written and a practical examination are given, an applicant
15 shall be required to retake only the portion of the
16 examination on which the applicant failed to achieve a passing
17 grade, if the applicant successfully passes that portion
18 within a reasonable time, as determined by rule of the board,
19 or the department when there is no board, of passing the other
20 portion. Except for national examinations approved and
21 administered pursuant to this section, the department shall
22 provide procedures for applicants who fail an examination
23 developed by the department or a contracted vendor to review
24 their examination questions, answers, papers, grades, and
25 grading key for the questions the candidate answered
26 incorrectly or, if not feasible, the parts of the examination
27 failed. Applicants shall bear the actual cost for the
28 department to provide examination review pursuant to this
29 subsection. An applicant may waive in writing the
30 confidentiality of the applicant's examination grades.

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1 (3) For each examination developed or administered by
2 the department or a contracted vendor, an accurate record of
3 each applicant's examination questions, answers, papers,
4 grades, and grading key shall be kept for a period of not less
5 than 2 years immediately following the examination, and such
6 record shall thereafter be maintained or destroyed as provided
7 in chapters 119 and 257. This subsection does not apply to
8 national examinations approved and administered pursuant to
9 this section.

10 (4) Meetings of any member of the department or of any
11 board within the department held for the exclusive purpose of
12 creating or reviewing licensure examination questions or
13 proposed examination questions are exempt from the provisions
14 of s. 286.011 and s. 24(b), Art. I of the State Constitution.
15 Any public records, such as tape recordings, minutes, or
16 notes, generated during or as a result of such meetings are
17 confidential and exempt from the provisions of s. 119.07(1)
18 and s. 24(a), Art. I of the State Constitution. However, these
19 exemptions shall not affect the right of any person to review
20 an examination as provided in subsection (2).

21 (5) For examinations developed by the department or a
22 contracted vendor, each board, or the department when there is
23 no board, may provide licensure examinations in an applicant's
24 native language. Notwithstanding any other provision of law,
25 applicants for examination or reexamination pursuant to this
26 subsection shall bear the full cost for the department's
27 development, preparation, validation, administration, grading,
28 and evaluation of any examination in a language other than
29 English prior to the examination being administered. Requests
30 for translated examinations must be on file in the board
31 office at least 6 months prior to the scheduled examination.

1 When determining whether it is in the public interest to allow
2 the examination to be translated into a language other than
3 English, the board shall consider the percentage of the
4 population who speak the applicant's native language.
5 Applicants must apply for translation to the applicable board
6 at least 6 months prior to the scheduled examination.

7 (6) In addition to meeting any other requirements for
8 licensure by examination or by endorsement, and
9 notwithstanding the provisions in paragraph (1)(c), an
10 applicant may be required by a board, or the department when
11 there is no board, to certify competency in state laws and
12 rules relating to the applicable practice act.

13 Section 13. Subsection (1) of section 456.035, Florida
14 Statutes, is amended to read:

15 456.035 Address of record.--

16 (1) Each licensee of the department is solely
17 responsible for notifying the department in writing of the
18 licensee's current mailing address and place of practice, as
19 defined by rule of the board or the department if there is no
20 board. Electronic notification shall be allowed by the
21 department; however, it shall be the responsibility of the
22 licensee to ensure that the electronic notification was
23 received by the department. A licensee's failure to notify the
24 department of a change of address constitutes a violation of
25 this section, and the licensee may be disciplined by the board
26 or the department if there is no board.

27 Section 14. Subsections (2), (4), and (10) of section
28 456.073, Florida Statutes, are amended to read:

29 456.073 Disciplinary proceedings.--Disciplinary
30 proceedings for each board shall be within the jurisdiction of
31 the department.

1 (2) The department shall allocate sufficient and
2 adequately trained staff to expeditiously and thoroughly
3 determine legal sufficiency and investigate all legally
4 sufficient complaints. For purposes of this section, it is the
5 intent of the Legislature that the term "expeditiously" means
6 that the department complete the report of its initial
7 investigative findings and recommendations concerning the
8 existence of probable cause within 6 months after its receipt
9 of the complaint. The failure of the department, for
10 disciplinary cases under its jurisdiction, to comply with the
11 time limits of this section while investigating a complaint
12 against a licensee constitutes harmless error in any
13 subsequent disciplinary action unless a court finds that
14 either the fairness of the proceeding or the correctness of
15 the action may have been impaired by a material error in
16 procedure or a failure to follow prescribed procedure. When
17 its investigation is complete and legally sufficient, the
18 department shall prepare and submit to the probable cause
19 panel of the appropriate regulatory board the investigative
20 report of the department. The report shall contain the
21 investigative findings and the recommendations of the
22 department concerning the existence of probable cause. The
23 department shall not recommend a letter of guidance in lieu of
24 finding probable cause if the subject has already been issued
25 a letter of guidance for a related offense.At any time after
26 legal sufficiency is found, the department may dismiss any
27 case, or any part thereof, if the department determines that
28 there is insufficient evidence to support the prosecution of
29 allegations contained therein. The department shall provide a
30 detailed report to the appropriate probable cause panel prior
31 to dismissal of any case or part thereof, and to the subject

1 of the complaint after dismissal of any case or part thereof,
2 under this section. For cases dismissed prior to a finding of
3 probable cause, such report is confidential and exempt from s.
4 119.07(1). The probable cause panel shall have access, upon
5 request, to the investigative files pertaining to a case prior
6 to dismissal of such case. If the department dismisses a case,
7 the probable cause panel may retain independent legal counsel,
8 employ investigators, and continue the investigation and
9 prosecution of the case as it deems necessary.

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

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

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

24 (10) The complaint and all information obtained
25 pursuant to the investigation by the department are
26 confidential and exempt from s. 119.07(1) until 10 days after
27 probable cause has been found to exist by the probable cause
28 panel or by the department, or until the regulated
29 professional or subject of the investigation waives his or her
30 privilege of confidentiality, whichever occurs first. Upon
31 completion of the investigation and a recommendation by the

1 department to find probable cause, and pursuant to a written
2 request by the subject or the subject's attorney, the
3 department shall provide the subject an opportunity to inspect
4 the investigative file or, at the subject's expense, forward
5 to the subject a copy of the investigative file.
6 Notwithstanding s. 456.057, the subject may inspect or receive
7 a copy of any expert witness report or patient record
8 connected with the investigation if the subject agrees in
9 writing to maintain the confidentiality of any information
10 received under this subsection until 10 days after probable
11 cause is found and to maintain the confidentiality of patient
12 records pursuant to s. 456.057. The subject may file a written
13 response to the information contained in the investigative
14 file. Such response must be filed within 20 days of mailing by
15 the department, unless an extension of time has been granted
16 by the department. This subsection does not prohibit the
17 department from providing such information to any law
18 enforcement agency or to any other regulatory agency.

19 Section 15. Section 456.081, Florida Statutes, is
20 amended to read:

21 456.081 Publication of information.--The department
22 and the boards shall have the authority to advise licensees
23 periodically, through the publication of a newsletter, about
24 information that the department or the board determines is of
25 interest to the industry. Unless otherwise prohibited by law,
26 the department and the boards shall publish a summary of final
27 orders resulting in disciplinary action ~~fines, suspensions, or~~
28 ~~revocations~~, and any other information the department or the
29 board determines is of interest to the public.

30 Section 16. Subsections (1), (2), and (4) of section
31 456.072, Florida Statutes, are amended to read:

1 456.072 Grounds for discipline; penalties;
2 enforcement.--

3 (1) The following acts shall constitute grounds for
4 which the disciplinary actions specified in subsection (2) may
5 be taken:

6 (a) Making misleading, deceptive, or fraudulent
7 representations in or related to the practice of the
8 licensee's profession.

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

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

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

19 (e) Failing to comply with the educational course
20 requirements for human immunodeficiency virus and acquired
21 immune deficiency syndrome.

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

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

4 (h) Attempting to obtain, obtaining, or renewing a
5 license to practice a profession by bribery, by fraudulent
6 misrepresentation, or through an error of the department or
7 the board.

8 (i) Except as provided in s. 465.016, failing to
9 report to the department any person who the licensee knows is
10 in violation of this chapter, the chapter regulating the
11 alleged violator, or the rules of the department or the board.

12 (j) Aiding, assisting, procuring, employing, or
13 advising any unlicensed person or entity to practice a
14 profession contrary to this chapter, the chapter regulating
15 the profession, or the rules of the department or the board.

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

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

24 (m) Making deceptive, untrue, or fraudulent
25 representations in or related to the practice of a profession
26 or employing a trick or scheme in or related to the practice
27 of a profession.

28 (n) Exercising influence on the patient or client for
29 the purpose of financial gain of the licensee or a third
30 party.

31

1 (o) Practicing or offering to practice beyond the
2 scope permitted by law or accepting and performing
3 professional responsibilities the licensee knows, or has
4 reason to know, the licensee is not competent to perform.

5 (p) Delegating or contracting for the performance of
6 professional responsibilities by a person when the licensee
7 delegating or contracting for performance of such
8 responsibilities knows, or has reason to know, such person is
9 not qualified by training, experience, and authorization when
10 required to perform them.

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

16 (r) Improperly interfering with an investigation or
17 inspection authorized by statute, or with any disciplinary
18 proceeding.

19 (s) Failing to comply with the educational course
20 requirements for domestic violence.

21 (t) Failing to comply with the requirements of ss.
22 381.026 and 381.0261 to provide patients with information
23 about their patient rights and how to file a patient
24 complaint.

25 (u) Engaging or attempting to engage in sexual
26 misconduct as defined and prohibited in s. 456.063(1).

27 (v) Failing to comply with the requirements for
28 profiling and credentialing, including, but not limited to,
29 failing to provide initial information, failing to timely
30 provide updated information, or making misleading, untrue,
31

1 | deceptive, or fraudulent representations on a profile,
2 | credentialing, or initial or renewal licensure application.

3 | (w) Failing to report to the board, or the department
4 | if there is no board, in writing within 30 days after the
5 | licensee has been convicted or found guilty of, or entered a
6 | plea of nolo contendere to, regardless of adjudication, a
7 | crime in any jurisdiction. Convictions, findings,
8 | adjudications, and pleas entered into prior to the enactment
9 | of this paragraph must be reported in writing to the board, or
10 | department if there is no board, on or before October 1, 1999.

11 | (x) Using information about people involved in motor
12 | vehicle accidents which has been derived from accident reports
13 | made by law enforcement officers or persons involved in
14 | accidents pursuant to s. 316.066, or using information
15 | published in a newspaper or other news publication or through
16 | a radio or television broadcast that has used information
17 | gained from such reports, for the purposes of commercial or
18 | any other solicitation whatsoever of the people involved in
19 | such accidents.

20 | (y) Being unable to practice with reasonable skill and
21 | safety to patients by reason of illness or use of alcohol,
22 | drugs, narcotics, chemicals, or any other type of material or
23 | as a result of any mental or physical condition. In enforcing
24 | this paragraph, the department shall have, upon a finding of
25 | the secretary or the secretary's designee that probable cause
26 | exists to believe that the licensee is unable to practice
27 | because of the reasons stated in this paragraph, the authority
28 | to issue an order to compel a licensee to submit to a mental
29 | or physical examination by physicians designated by the
30 | department. If the licensee refuses to comply with such order,
31 | the department's order directing such examination may be

1 enforced by filing a petition for enforcement in the circuit
2 court where the licensee resides or does business. The
3 department shall be entitled to the summary procedure provided
4 in s. 51.011. A licensee or certificateholder affected under
5 this paragraph shall at reasonable intervals be afforded an
6 opportunity to demonstrate that he or she can resume the
7 competent practice of his or her profession with reasonable
8 skill and safety to patients.

9 (z) Testing positive for any drug, as defined in s.
10 112.0455, on any confirmed preemployment or employer-ordered
11 drug screening when the practitioner does not have a lawful
12 prescription and legitimate medical reason for using such
13 drug.

14 (aa) Violating any provision of this chapter or any
15 rules adopted pursuant thereto.

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

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

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

27 (c) Restriction of practice or license, including, but
28 not limited to, restricting the licensee from practicing in
29 certain settings, restricting the licensee to work only under
30 designated conditions or in certain settings, restricting the
31 licensee from performing or providing designated clinical and

1 administrative services, restricting the licensee from
2 practicing more than a designated number of hours, or any
3 other restriction found to be necessary for the protection of
4 the public health, safety, and welfare.

5 (d) Imposition of an administrative fine not to exceed
6 \$10,000 for each count or separate offense.

7 (e) Issuance of a reprimand or letter of concern.

8 (f) Placement of the licensee on probation for a
9 period of time and subject to such conditions as the board, or
10 the department when there is no board, may specify. Those
11 conditions may include, but are not limited to, requiring the
12 licensee to undergo treatment, attend continuing education
13 courses, submit to be reexamined, work under the supervision
14 of another licensee, or satisfy any terms which are reasonably
15 tailored to the violations found.

16 (g) Corrective action.

17 (h) Imposition of an administrative fine in accordance
18 with s. 381.0261 for violations regarding patient rights.

19 (i) Refund of fees billed and collected from the
20 patient or a third party on behalf of the patient.

21 (j) Requirement that the practitioner undergo remedial
22 education.

23
24 In determining what action is appropriate, the board, or
25 department when there is no board, must first consider what
26 sanctions are necessary to protect the public or to compensate
27 the patient. Only after those sanctions have been imposed may
28 the disciplining authority consider and include in the order
29 requirements designed to rehabilitate the practitioner. All
30 costs associated with compliance with orders issued under this
31 subsection are the obligation of the practitioner.

1 (4) In addition to any other discipline imposed
2 pursuant to this section or discipline imposed for a violation
3 of any practice act, the board, or the department when there
4 is no board, shall ~~may~~ assess costs related to the
5 investigation and prosecution of the case. In any case where
6 the board or the department imposes a fine or assessment and
7 the fine or assessment is not paid within a reasonable time,
8 such reasonable time to be prescribed in the rules of the
9 board, or the department when there is no board, or in the
10 order assessing such fines or costs, the department or the
11 Department of Legal Affairs may contract for the collection
12 of, or bring a civil action to recover, the fine or
13 assessment.

14 Section 17. Subsection (3) of section 456.079, Florida
15 Statutes, is amended to read:

16 456.079 Disciplinary guidelines.--

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

25 Section 18. Subsections (1) and (2) of section
26 457.109, Florida Statutes, are amended to read:

27 457.109 Disciplinary actions; grounds; action by the
28 board.--

29 (1) The following acts ~~shall~~ constitute grounds for
30 denial of a license or disciplinary action, as specified in s.
31

1 456.072(2)~~which the disciplinary actions specified in~~
2 ~~subsection (2) may be taken:~~

3 (a) Attempting to obtain, obtaining, or renewing a
4 license to practice acupuncture by bribery, by fraudulent
5 misrepresentations, or through an error of the department.

6 (b) Having a license to practice acupuncture revoked,
7 suspended, or otherwise acted against, including the denial of
8 licensure, by the licensing authority of another state,
9 territory, or country.

10 (c) Being convicted or found guilty, regardless of
11 adjudication, in any jurisdiction of a crime which directly
12 relates to the practice of acupuncture or to the ability to
13 practice acupuncture. Any plea of nolo contendere shall be
14 considered a conviction for purposes of this chapter.

15 (d) False, deceptive, or misleading advertising or
16 advertising which claims that acupuncture is useful in curing
17 any disease.

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

20 (f) Failing to report to the department any person who
21 the licensee knows is in violation of this chapter or of the
22 rules of the department.

23 (g) Aiding, assisting, procuring, employing, or
24 advising any unlicensed person to practice acupuncture
25 contrary to this chapter or to a rule of the department.

26 (h) Failing to perform any statutory or legal
27 obligation placed upon a licensed acupuncturist.

28 (i) Making or filing a report which the licensee knows
29 to be false, intentionally or negligently failing to file a
30 report or record required by state or federal law, willfully
31 impeding or obstructing such filing or inducing another person

1 to do so. Such reports or records shall include only those
2 which are signed in the capacity as a licensed acupuncturist.

3 (j) Exercising influence within a
4 patient-acupuncturist relationship for purposes of engaging a
5 patient in sexual activity. A patient shall be presumed to be
6 incapable of giving free, full, and informed consent to sexual
7 activity with his or her acupuncturist.

8 (k) Making deceptive, untrue, or fraudulent
9 representations in the practice of acupuncture or employing a
10 trick or scheme in the practice of acupuncture when such
11 scheme or trick fails to conform to the generally prevailing
12 standards of treatment in the community.

13 (l) Soliciting patients, either personally or through
14 an agent, through the use of fraud, intimidation, undue
15 influence, or a form of overreaching or vexatious conduct. A
16 solicitation is any communication which directly or implicitly
17 requests an immediate oral response from the recipient.

18 (m) Failing to keep written medical records justifying
19 the course of treatment of the patient.

20 (n) Exercising influence on the patient to exploit the
21 patient for the financial gain of the licensee or of a third
22 party.

23 (o) Being unable to practice acupuncture 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, upon a finding of the
28 secretary or the secretary's designee that probable cause
29 exists to believe that the licensee is unable to serve as an
30 acupuncturist due to the reasons stated in this paragraph, the
31 department shall have the authority to issue an order to

1 compel the licensee to submit to a mental or physical
2 examination by a physician designated by the department. If
3 the licensee refuses to comply with such order, the
4 department's order directing such examination may be enforced
5 by filing a petition for enforcement in the circuit court
6 where the licensee resides or serves as an acupuncturist. The
7 licensee against whom the petition is filed shall not be named
8 or identified by initials in any public court record or
9 document, and the proceedings shall be closed to the public.
10 The department shall be entitled to the summary procedure
11 provided in s. 51.011. An acupuncturist affected under this
12 paragraph shall at reasonable intervals be afforded an
13 opportunity to demonstrate that he or she can resume the
14 competent practice of acupuncture with reasonable skill and
15 safety to patients. In any proceeding under this paragraph,
16 neither the record of proceedings nor the orders entered by
17 the department shall be used against an acupuncturist in any
18 other proceeding.

19 (p) Gross or repeated malpractice or the failure to
20 practice acupuncture with that level of care, skill, and
21 treatment which is recognized by a reasonably prudent similar
22 acupuncturist as being acceptable under similar conditions and
23 circumstances.

24 (q) Practicing or offering to practice beyond the
25 scope permitted by law or accepting and performing
26 professional responsibilities which the licensee knows or has
27 reason to know that he or she is not competent to perform.

28 (r) Delegating professional responsibilities to a
29 person when the licensee delegating such responsibilities
30 knows or has reason to know that such person is not qualified
31 by training, experience, or licensure to perform them.

1 (s) ~~Violating any provision of this chapter, a rule of~~
2 ~~the department, or~~ a lawful order of the board department
3 previously entered in a disciplinary hearing or failing to
4 comply with a lawfully issued subpoena of the department.

5 (t) Conspiring with another to commit an act, or
6 committing an act, which would tend to coerce, intimidate, or
7 preclude another licensee from lawfully advertising his or her
8 services.

9 (u) Fraud or deceit or gross negligence, incompetence,
10 or misconduct in the operation of a course of study.

11 (v) Failing to comply with state, county, or municipal
12 regulations or reporting requirements relating to public
13 health and the control of contagious and infectious diseases.

14 (w) Failing to comply with any rule of the board
15 relating to health and safety, including, but not limited to,
16 the sterilization of needles and equipment and the disposal of
17 potentially infectious materials.

18 (x) Violating any provision of this chapter or chapter
19 456, or any rules adopted pursuant thereto.

20 (2) The board may enter an order denying licensure or
21 imposing any of the penalties in s. 456.072(2) against any
22 applicant for licensure or licensee who is found guilty of
23 violating any provision of subsection (1) of this section or
24 who is found guilty of violating any provision of s.
25 456.072(1).~~When the board finds any person guilty of any of~~
26 ~~the acts set forth in subsection (1), it may enter an order~~
27 ~~imposing one or more of the following penalties:~~

28 ~~(a) Refusal to certify to the department an~~
29 ~~application for licensure.~~

30 ~~(b) Revocation or suspension of a license.~~

31 ~~(c) Restriction of practice.~~

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

3 ~~(e) Issuance of a reprimand.~~

4 ~~(f) Placement of the acupuncturist on probation for a~~
5 ~~period of time and subject to such conditions as the board may~~
6 ~~specify.~~

7 Section 19. Subsection (6) of section 458.320, Florida
8 Statutes, is amended to read:

9 458.320 Financial responsibility.--

10 (6) Any deceptive, untrue, or fraudulent
11 representation by the licensee with respect to any provision
12 of this section shall result in permanent disqualification
13 from any exemption to mandated financial responsibility as
14 provided in this section and shall constitute grounds for
15 disciplinary action under ~~as specified in~~ s. 458.331.

16 Section 20. Subsections (1) and (2) of section
17 458.331, Florida Statutes, are amended to read:

18 458.331 Grounds for disciplinary action; action by the
19 board and department.--

20 (1) The following acts ~~shall~~ constitute grounds for
21 denial of a license or disciplinary action, as specified in s.
22 456.072(2)~~which the disciplinary actions specified in~~
23 ~~subsection (2) may be taken:~~

24 (a) Attempting to obtain, obtaining, or renewing a
25 license to practice medicine by bribery, by fraudulent
26 misrepresentations, or through an error of the department or
27 the board.

28 (b) Having a license or the authority to practice
29 medicine revoked, suspended, or otherwise acted against,
30 including the denial of licensure, by the licensing authority
31 of any jurisdiction, including its agencies or subdivisions.

1 The licensing authority's acceptance of a physician's
2 relinquishment of a license, stipulation, consent order, or
3 other settlement, offered in response to or in anticipation of
4 the filing of administrative charges against the physician's
5 license, shall be construed as action against the physician's
6 license.

7 (c) Being convicted or found guilty of, or entering a
8 plea of nolo contendere to, regardless of adjudication, a
9 crime in any jurisdiction which directly relates to the
10 practice of medicine or to the ability to practice medicine.

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

12 (e) Failing to report to the department any person who
13 the licensee knows is in violation of this chapter or of the
14 rules of the department or the board. A treatment provider
15 approved pursuant to s. 456.076 shall provide the department
16 or consultant with information in accordance with the
17 requirements of s. 456.076(3), (4), (5), and (6).

18 (f) Aiding, assisting, procuring, or advising any
19 unlicensed person to practice medicine contrary to this
20 chapter or to a rule of the department or the board.

21 (g) Failing to perform any statutory or legal
22 obligation placed upon a licensed physician.

23 (h) 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 shall include only those
28 which are signed in the capacity as a licensed physician.

29 (i) Paying or receiving any commission, bonus,
30 kickback, or rebate, or engaging in any split-fee arrangement
31 in any form whatsoever with a physician, organization, agency,

1 or person, either directly or indirectly, for patients
2 referred to providers of health care goods and services,
3 including, but not limited to, hospitals, nursing homes,
4 clinical laboratories, ambulatory surgical centers, or
5 pharmacies. The provisions of this paragraph shall not be
6 construed to prevent a physician from receiving a fee for
7 professional consultation services.

8 (j) Exercising influence within a patient-physician
9 relationship for purposes of engaging a patient in sexual
10 activity. A patient shall be presumed to be incapable of
11 giving free, full, and informed consent to sexual activity
12 with his or her physician.

13 (k) Making deceptive, untrue, or fraudulent
14 representations in or related to the practice of medicine or
15 employing a trick or scheme in the practice of medicine.

16 (l) Soliciting patients, either personally or through
17 an agent, through the use of fraud, intimidation, undue
18 influence, or a form of overreaching or vexatious conduct. A
19 solicitation is any communication which directly or implicitly
20 requests an immediate oral response from the recipient.

21 (m) Failing to keep legible, as defined by department
22 rule in consultation with the board, medical records that
23 identify the licensed physician or the physician extender and
24 supervising physician by name and professional title who is or
25 are responsible for rendering, ordering, supervising, or
26 billing for each diagnostic or treatment procedure and that
27 justify the course of treatment of the patient, including, but
28 not limited to, patient histories; examination results; test
29 results; records of drugs prescribed, dispensed, or
30 administered; and reports of consultations and
31 hospitalizations.

1 (n) 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 shall include, but not be limited to, the promoting or selling
5 of services, goods, appliances, or drugs.

6 (o) Promoting or advertising on any prescription form
7 of a community pharmacy unless the form shall also state "This
8 prescription may be filled at any pharmacy of your choice."

9 (p) Performing professional services which have not
10 been duly authorized by the patient or client, or his or her
11 legal representative, except as provided in s. 743.064, s.
12 766.103, or s. 768.13.

13 (q) Prescribing, dispensing, administering, mixing, or
14 otherwise preparing a legend drug, including any controlled
15 substance, other than in the course of the physician's
16 professional practice. For the purposes of this paragraph, it
17 shall be legally presumed that prescribing, dispensing,
18 administering, mixing, or otherwise preparing legend drugs,
19 including all controlled substances, inappropriately or in
20 excessive or inappropriate quantities is not in the best
21 interest of the patient and is not in the course of the
22 physician's professional practice, without regard to his or
23 her intent.

24 (r) Prescribing, dispensing, or administering any
25 medicinal drug appearing on any schedule set forth in chapter
26 893 by the physician to himself or herself, except one
27 prescribed, dispensed, or administered to the physician by
28 another practitioner authorized to prescribe, dispense, or
29 administer medicinal drugs.

30 (s) Being unable to practice medicine with reasonable
31 skill and safety to patients by reason of illness or use of

1 alcohol, drugs, narcotics, chemicals, or any other type of
2 material or as a result of any mental or physical condition.
3 In enforcing this paragraph, the department shall have, upon a
4 finding of the secretary or the secretary's designee that
5 probable cause exists to believe that the licensee is unable
6 to practice medicine because of the reasons stated in this
7 paragraph, the authority to issue an order to compel a
8 licensee to submit to a mental or physical examination by
9 physicians designated by the department. If the licensee
10 refuses to comply with such order, the department's order
11 directing such examination may be enforced by filing a
12 petition for enforcement in the circuit court where the
13 licensee resides or does business. The licensee against whom
14 the petition is filed may not be named or identified by
15 initials in any public court records or documents, and the
16 proceedings shall be closed to the public. The department
17 shall be entitled to the summary procedure provided in s.
18 51.011. A licensee or certificateholder affected under this
19 paragraph shall at reasonable intervals be afforded an
20 opportunity to demonstrate that he or she can resume the
21 competent practice of medicine with reasonable skill and
22 safety to patients.

23 (t) Gross or repeated malpractice or the failure to
24 practice medicine with that level of care, skill, and
25 treatment which is recognized by a reasonably prudent similar
26 physician as being acceptable under similar conditions and
27 circumstances. The board shall give great weight to the
28 provisions of s. 766.102 when enforcing this paragraph. As
29 used in this paragraph, "repeated malpractice" includes, but
30 is not limited to, three or more claims for medical
31 malpractice within the previous 5-year period resulting in

1 indemnities being paid in excess of \$25,000 each to the
2 claimant in a judgment or settlement and which incidents
3 involved negligent conduct by the physician. As used in this
4 paragraph, "gross malpractice" or "the failure to practice
5 medicine with that level of care, skill, and treatment which
6 is recognized by a reasonably prudent similar physician as
7 being acceptable under similar conditions and circumstances,"
8 shall not be construed so as to require more than one
9 instance, event, or act. Nothing in this paragraph shall be
10 construed to require that a physician be incompetent to
11 practice medicine in order to be disciplined pursuant to this
12 paragraph.

13 (u) Performing any procedure or prescribing any
14 therapy which, by the prevailing standards of medical practice
15 in the community, would constitute experimentation on a human
16 subject, without first obtaining full, informed, and written
17 consent.

18 (v) Practicing or offering to practice beyond the
19 scope permitted by law or accepting and performing
20 professional responsibilities which the licensee knows or has
21 reason to know that he or she is not competent to perform. The
22 board may establish by rule standards of practice and
23 standards of care for particular practice settings, including,
24 but not limited to, education and training, equipment and
25 supplies, medications including anesthetics, assistance of and
26 delegation to other personnel, transfer agreements,
27 sterilization, records, performance of complex or multiple
28 procedures, informed consent, and policy and procedure
29 manuals.

30 (w) Delegating professional responsibilities to a
31 person when the licensee delegating such responsibilities

1 knows or has reason to know that such person is not qualified
2 by training, experience, or licensure to perform them.

3 (x) ~~Violating any provision of this chapter, a rule of~~
4 ~~the board or department, or~~ a lawful order of the board or
5 department previously entered in a disciplinary hearing or
6 failing to comply with a lawfully issued subpoena of the
7 department.

8 (y) Conspiring with another licensee or with any other
9 person to commit an act, or committing an act, which would
10 tend to coerce, intimidate, or preclude another licensee from
11 lawfully advertising his or her services.

12 (z) Procuring, or aiding or abetting in the procuring
13 of, an unlawful termination of pregnancy.

14 (aa) Presigning blank prescription forms.

15 (bb) Prescribing any medicinal drug appearing on
16 Schedule II in chapter 893 by the physician for office use.

17 (cc) Prescribing, ordering, dispensing, administering,
18 supplying, selling, or giving any drug which is a Schedule II
19 amphetamine or a Schedule II sympathomimetic amine drug or any
20 compound thereof, pursuant to chapter 893, to or for any
21 person except for:

22 1. The treatment of narcolepsy; hyperkinesis;
23 behavioral syndrome characterized by the developmentally
24 inappropriate symptoms of moderate to severe distractability,
25 short attention span, hyperactivity, emotional lability, and
26 impulsivity; or drug-induced brain dysfunction;

27 2. The differential diagnostic psychiatric evaluation
28 of depression or the treatment of depression shown to be
29 refractory to other therapeutic modalities; or

30 3. The clinical investigation of the effects of such
31 drugs or compounds when an investigative protocol therefor is

1 submitted to, reviewed, and approved by the board before such
2 investigation is begun.

3 (dd) Failing to supervise adequately the activities of
4 those physician assistants, paramedics, emergency medical
5 technicians, or advanced registered nurse practitioners acting
6 under the supervision of the physician.

7 (ee) Prescribing, ordering, dispensing, administering,
8 supplying, selling, or giving growth hormones, testosterone or
9 its analogs, human chorionic gonadotropin (HCG), or other
10 hormones for the purpose of muscle building or to enhance
11 athletic performance. For the purposes of this subsection, the
12 term "muscle building" does not include the treatment of
13 injured muscle. A prescription written for the drug products
14 listed above may be dispensed by the pharmacist with the
15 presumption that the prescription is for legitimate medical
16 use.

17 (ff) Prescribing, ordering, dispensing, administering,
18 supplying, selling, or giving amygdalin (laetrile) to any
19 person.

20 (gg) Misrepresenting or concealing a material fact at
21 any time during any phase of a licensing or disciplinary
22 process or procedure.

23 (hh) Improperly interfering with an investigation or
24 with any disciplinary proceeding.

25 (ii) Failing to report to the department any licensee
26 under this chapter or under chapter 459 who the physician or
27 physician assistant knows has violated the grounds for
28 disciplinary action set out in the law under which that person
29 is licensed and who provides health care services in a
30 facility licensed under chapter 395, or a health maintenance
31 organization certificated under part I of chapter 641, in

1 | which the physician or physician assistant also provides
2 | services.

3 | (jj) Being found by any court in this state to have
4 | provided corroborating written medical expert opinion attached
5 | to any statutorily required notice of claim or intent or to
6 | any statutorily required response rejecting a claim, without
7 | reasonable investigation.

8 | (kk) Failing to report to the board, in writing,
9 | within 30 days if action as defined in paragraph (b) has been
10 | taken against one's license to practice medicine in another
11 | state, territory, or country.

12 | (ll) Advertising or holding oneself out as a
13 | board-certified specialist, if not qualified under s.
14 | 458.3312, in violation of this chapter.

15 | (mm) Failing to comply with the requirements of ss.
16 | 381.026 and 381.0261 to provide patients with information
17 | about their patient rights and how to file a patient
18 | complaint.

19 | (nn) Violating any provision of this chapter or
20 | chapter 456, or any rules adopted pursuant thereto.

21 | (2) The board may enter an order denying licensure or
22 | imposing any of the penalties in s. 456.072(2) against any
23 | applicant for licensure or licensee who is found guilty of
24 | violating any provision of subsection (1) of this section or
25 | who is found guilty of violating any provision of s.
26 | 456.072(1).~~When the board finds any person guilty of any of~~
27 | ~~the grounds set forth in subsection (1), including conduct~~
28 | ~~that would constitute a substantial violation of subsection~~
29 | ~~(1) which occurred prior to licensure, it may enter an order~~
30 | ~~imposing one or more of the following penalties:~~

31 |

1 ~~(a) Refusal to certify, or certification with~~
2 ~~restrictions, to the department an application for licensure,~~
3 ~~certification, or registration.~~

4 ~~(b) Revocation or suspension of a license.~~

5 ~~(c) Restriction of practice.~~

6 ~~(d) Imposition of an administrative fine not to exceed~~
7 ~~\$10,000 for each count or separate offense.~~

8 ~~(e) Issuance of a reprimand.~~

9 ~~(f) Placement of the physician on probation for a~~
10 ~~period of time and subject to such conditions as the board may~~
11 ~~specify, including, but not limited to, requiring the~~
12 ~~physician to submit to treatment, to attend continuing~~
13 ~~education courses, to submit to reexamination, or to work~~
14 ~~under the supervision of another physician.~~

15 ~~(g) Issuance of a letter of concern.~~

16 ~~(h) Corrective action.~~

17 ~~(i) Refund of fees billed to and collected from the~~
18 ~~patient.~~

19 ~~(j) Imposition of an administrative fine in accordance~~
20 ~~with s. 381.0261 for violations regarding patient rights.~~

21
22 In determining what action is appropriate, the board must
23 first consider what sanctions are necessary to protect the
24 public or to compensate the patient. Only after those
25 sanctions have been imposed may the disciplining authority
26 consider and include in the order requirements designed to
27 rehabilitate the physician. All costs associated with
28 compliance with orders issued under this subsection are the
29 obligation of the physician.

30 Section 21. Subsection (6) of section 459.0085,
31 Florida Statutes, is amended to read:

1 459.0085 Financial responsibility.--

2 (6) Any deceptive, untrue, or fraudulent
3 representation by the licensee with respect to any provision
4 of this section shall result in permanent disqualification
5 from any exemption to mandated financial responsibility as
6 provided in this section and shall constitute grounds for
7 disciplinary action under ~~as specified in~~ s. 459.015.

8 Section 22. Subsections (1) and (2) of section
9 459.015, Florida Statutes, are amended to read:

10 459.015 Grounds for disciplinary action; action by the
11 board and department.--

12 (1) The following acts ~~shall~~ constitute grounds for
13 denial of a license or disciplinary action, as specified in s.
14 ~~456.072(2) which the disciplinary actions specified in~~
15 ~~subsection (2) may be taken:~~

16 (a) Attempting to obtain, obtaining, or renewing a
17 license to practice osteopathic medicine or a certificate
18 issued under this chapter by bribery, by fraudulent
19 misrepresentations, or through an error of the department or
20 the board.

21 (b) Having a license or the authority to practice
22 osteopathic medicine revoked, suspended, or otherwise acted
23 against, including the denial of licensure, by the licensing
24 authority of any jurisdiction, including its agencies or
25 subdivisions. The licensing authority's acceptance of a
26 physician's relinquishment of license, stipulation, consent
27 order, or other settlement offered in response to or in
28 anticipation of the filing of administrative charges against
29 the physician shall be construed as action against the
30 physician's license.

31

1 (c) Being convicted or found guilty, regardless of
2 adjudication, of a crime in any jurisdiction which directly
3 relates to the practice of osteopathic medicine or to the
4 ability to practice osteopathic medicine. A plea of nolo
5 contendere shall create a rebuttable presumption of guilt to
6 the underlying criminal charges.

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

8 (e) Failing to report to the department or the
9 department's impaired professional consultant any person who
10 the licensee or certificateholder knows is in violation of
11 this chapter or of the rules of the department or the board.
12 A treatment provider, approved pursuant to s. 456.076, shall
13 provide the department or consultant with information in
14 accordance with the requirements of s. 456.076(3), (4), (5),
15 and (6).

16 (f) Aiding, assisting, procuring, or advising any
17 unlicensed person to practice osteopathic medicine contrary to
18 this chapter or to a rule of the department or the board.

19 (g) Failing to perform any statutory or legal
20 obligation placed upon a licensed osteopathic physician.

21 (h) Giving false testimony in the course of any legal
22 or administrative proceedings relating to the practice of
23 medicine or the delivery of health care services.

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

31

1 (j) Paying or receiving any commission, bonus,
2 kickback, or rebate, or engaging in any split-fee arrangement
3 in any form whatsoever with a physician, organization, agency,
4 person, partnership, firm, corporation, or other business
5 entity, for patients referred to providers of health care
6 goods and services, including, but not limited to, hospitals,
7 nursing homes, clinical laboratories, ambulatory surgical
8 centers, or pharmacies. The provisions of this paragraph
9 shall not be construed to prevent an osteopathic physician
10 from receiving a fee for professional consultation services.

11 (k) Refusing to provide health care based on a
12 patient's participation in pending or past litigation or
13 participation in any disciplinary action conducted pursuant to
14 this chapter, unless such litigation or disciplinary action
15 directly involves the osteopathic physician requested to
16 provide services.

17 (l) Exercising influence within a patient-physician
18 relationship for purposes of engaging a patient in sexual
19 activity. A patient shall be presumed to be incapable of
20 giving free, full, and informed consent to sexual activity
21 with his or her physician.

22 (m) Making deceptive, untrue, or fraudulent
23 representations in or related to the practice of osteopathic
24 medicine or employing a trick or scheme in the practice of
25 osteopathic medicine.

26 (n) Soliciting patients, either personally or through
27 an agent, through the use of fraud, intimidation, undue
28 influence, or forms of overreaching or vexatious conduct. A
29 solicitation is any communication which directly or implicitly
30 requests an immediate oral response from the recipient.

31

1 (o) Failing to keep legible, as defined by department
2 rule in consultation with the board, medical records that
3 identify the licensed osteopathic physician or the osteopathic
4 physician extender and supervising osteopathic physician by
5 name and professional title who is or are responsible for
6 rendering, ordering, supervising, or billing for each
7 diagnostic or treatment procedure and that justify the course
8 of treatment of the patient, including, but not limited to,
9 patient histories; examination results; test results; records
10 of drugs prescribed, dispensed, or administered; and reports
11 of consultations and hospitalizations.

12 (p) Fraudulently altering or destroying records
13 relating to patient care or treatment, including, but not
14 limited to, patient histories, examination results, and test
15 results.

16 (q) Exercising influence on the patient or client in
17 such a manner as to exploit the patient or client for
18 financial gain of the licensee or of a third party which shall
19 include, but not be limited to, the promotion or sale of
20 services, goods, appliances, or drugs.

21 (r) Promoting or advertising on any prescription form
22 of a community pharmacy, unless the form shall also state
23 "This prescription may be filled at any pharmacy of your
24 choice."

25 (s) Performing professional services which have not
26 been duly authorized by the patient or client or his or her
27 legal representative except as provided in s. 743.064, s.
28 766.103, or s. 768.13.

29 (t) Prescribing, dispensing, administering, supplying,
30 selling, giving, mixing, or otherwise preparing a legend drug,
31 including all controlled substances, other than in the course

1 of the osteopathic physician's professional practice. For the
2 purposes of this paragraph, it shall be legally presumed that
3 prescribing, dispensing, administering, supplying, selling,
4 giving, mixing, or otherwise preparing legend drugs, including
5 all controlled substances, inappropriately or in excessive or
6 inappropriate quantities is not in the best interest of the
7 patient and is not in the course of the osteopathic
8 physician's professional practice, without regard to his or
9 her intent.

10 (u) Prescribing or dispensing any medicinal drug
11 appearing on any schedule set forth in chapter 893 by the
12 osteopathic physician for himself or herself or administering
13 any such drug by the osteopathic physician to himself or
14 herself unless such drug is prescribed for the osteopathic
15 physician by another practitioner authorized to prescribe
16 medicinal drugs.

17 (v) Prescribing, ordering, dispensing, administering,
18 supplying, selling, or giving amygdalin (laetrile) to any
19 person.

20 (w) Being unable to practice osteopathic medicine with
21 reasonable skill and safety to patients by reason of illness
22 or use of alcohol, drugs, narcotics, chemicals, or any other
23 type of material or as a result of any mental or physical
24 condition. In enforcing this paragraph, the department shall,
25 upon a finding of the secretary or the secretary's designee
26 that probable cause exists to believe that the licensee is
27 unable to practice medicine because of the reasons stated in
28 this paragraph, have the authority to issue an order to compel
29 a licensee to submit to a mental or physical examination by
30 physicians designated by the department. If the licensee
31 refuses to comply with such order, the department's order

1 directing such examination may be enforced by filing a
2 petition for enforcement in the circuit court where the
3 licensee resides or does business. The licensee against whom
4 the petition is filed shall not be named or identified by
5 initials in any public court records or documents, and the
6 proceedings shall be closed to the public. The department
7 shall be entitled to the summary procedure provided in s.
8 51.011. A licensee or certificateholder affected under this
9 paragraph shall at reasonable intervals be afforded an
10 opportunity to demonstrate that he or she can resume the
11 competent practice of medicine with reasonable skill and
12 safety to patients.

13 (x) Gross or repeated malpractice or the failure to
14 practice osteopathic medicine with that level of care, skill,
15 and treatment which is recognized by a reasonably prudent
16 similar osteopathic physician as being acceptable under
17 similar conditions and circumstances. The board shall give
18 great weight to the provisions of s. 766.102 when enforcing
19 this paragraph. As used in this paragraph, "repeated
20 malpractice" includes, but is not limited to, three or more
21 claims for medical malpractice within the previous 5-year
22 period resulting in indemnities being paid in excess of
23 \$25,000 each to the claimant in a judgment or settlement and
24 which incidents involved negligent conduct by the osteopathic
25 physician. As used in this paragraph, "gross malpractice" or
26 "the failure to practice osteopathic medicine with that level
27 of care, skill, and treatment which is recognized by a
28 reasonably prudent similar osteopathic physician as being
29 acceptable under similar conditions and circumstances" shall
30 not be construed so as to require more than one instance,
31 event, or act. Nothing in this paragraph shall be construed to

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

12 (y) Performing any procedure or prescribing any
13 therapy which, by the prevailing standards of medical practice
14 in the community, would constitute experimentation on human
15 subjects, without first obtaining full, informed, and written
16 consent.

17 (z) Practicing or offering to practice beyond the
18 scope permitted by law or accepting and performing
19 professional responsibilities which the licensee knows or has
20 reason to know that he or she is not competent to perform. The
21 board may establish by rule standards of practice and
22 standards of care for particular practice settings, including,
23 but not limited to, education and training, equipment and
24 supplies, medications including anesthetics, assistance of and
25 delegation to other personnel, transfer agreements,
26 sterilization, records, performance of complex or multiple
27 procedures, informed consent, and policy and procedure
28 manuals.

29 (aa) Delegating professional responsibilities to a
30 person when the licensee delegating such responsibilities
31

1 knows or has reason to know that such person is not qualified
2 by training, experience, or licensure to perform them.

3 (bb) ~~Violating any provision of this chapter, a rule~~
4 ~~of the board or department, or~~ a lawful order of the board or
5 department previously entered in a disciplinary hearing or
6 failing to comply with a lawfully issued subpoena of the board
7 or department.

8 (cc) Conspiring with another licensee or with any
9 other person to commit an act, or committing an act, which
10 would tend to coerce, intimidate, or preclude another licensee
11 from lawfully advertising his or her services.

12 (dd) Procuring, or aiding or abetting in the procuring
13 of, an unlawful termination of pregnancy.

14 (ee) Presigning blank prescription forms.

15 (ff) Prescribing any medicinal drug appearing on
16 Schedule II in chapter 893 by the osteopathic physician for
17 office use.

18 (gg) Prescribing, ordering, dispensing, administering,
19 supplying, selling, or giving any drug which is a Schedule II
20 amphetamine or Schedule II sympathomimetic amine drug or any
21 compound thereof, pursuant to chapter 893, to or for any
22 person except for:

23 1. The treatment of narcolepsy; hyperkinesia;
24 behavioral syndrome characterized by the developmentally
25 inappropriate symptoms of moderate to severe distractibility,
26 short attention span, hyperactivity, emotional lability, and
27 impulsivity; or drug-induced brain dysfunction;

28 2. The differential diagnostic psychiatric evaluation
29 of depression or the treatment of depression shown to be
30 refractory to other therapeutic modalities; or

31

1 3. The clinical investigation of the effects of such
2 drugs or compounds when an investigative protocol therefor is
3 submitted to, reviewed, and approved by the board before such
4 investigation is begun.

5 (hh) Failing to supervise adequately the activities of
6 those physician assistants, paramedics, emergency medical
7 technicians, advanced registered nurse practitioners, or other
8 persons acting under the supervision of the osteopathic
9 physician.

10 (ii) Prescribing, ordering, dispensing, administering,
11 supplying, selling, or giving growth hormones, testosterone or
12 its analogs, human chorionic gonadotropin (HCG), or other
13 hormones for the purpose of muscle building or to enhance
14 athletic performance. For the purposes of this subsection, the
15 term "muscle building" does not include the treatment of
16 injured muscle. A prescription written for the drug products
17 listed above may be dispensed by the pharmacist with the
18 presumption that the prescription is for legitimate medical
19 use.

20 (jj) Misrepresenting or concealing a material fact at
21 any time during any phase of a licensing or disciplinary
22 process or procedure.

23 (kk) Improperly interfering with an investigation or
24 with any disciplinary proceeding.

25 (ll) Failing to report to the department any licensee
26 under chapter 458 or under this chapter who the osteopathic
27 physician or physician assistant knows has violated the
28 grounds for disciplinary action set out in the law under which
29 that person is licensed and who provides health care services
30 in a facility licensed under chapter 395, or a health
31 maintenance organization certificated under part I of chapter

1 641, in which the osteopathic physician or physician assistant
2 also provides services.

3 (mm) Being found by any court in this state to have
4 provided corroborating written medical expert opinion attached
5 to any statutorily required notice of claim or intent or to
6 any statutorily required response rejecting a claim, without
7 reasonable investigation.

8 (nn) Advertising or holding oneself out as a
9 board-certified specialist in violation of this chapter.

10 (oo) Failing to comply with the requirements of ss.
11 381.026 and 381.0261 to provide patients with information
12 about their patient rights and how to file a patient
13 complaint.

14 (pp) Violating any provision of this chapter or
15 chapter 456, or any rules adopted pursuant thereto.

16 (2) The board may enter an order denying licensure or
17 imposing any of the penalties in s. 456.072(2) against any
18 applicant for licensure or licensee who is found guilty of
19 violating any provision of subsection (1) of this section or
20 who is found guilty of violating any provision of s.

21 ~~456.072(1).When the board finds any person guilty of any of~~
22 ~~the grounds set forth in subsection (1), it may enter an order~~
23 ~~imposing one or more of the following penalties:~~

24 ~~(a) Refusal to certify, or certify with restrictions,~~
25 ~~to the department an application for certification, licensure,~~
26 ~~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 ~~\$10,000 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 board may specify, including, but not limited to,~~
6 ~~requiring the osteopathic physician to submit to treatment,~~
7 ~~attend continuing education courses, submit to reexamination,~~
8 ~~or work under the supervision of another osteopathic~~
9 ~~physician.~~
10 ~~(h) Corrective action.~~
11 ~~(i) Refund of fees billed to and collected from the~~
12 ~~patient.~~
13 ~~(j) Imposition of an administrative fine in accordance~~
14 ~~with s. 381.0261 for violations regarding patient rights.~~

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

24 Section 23. Subsections (1) and (2) of section
25 460.413, Florida Statutes, are amended to read:

26 460.413 Grounds for disciplinary action; action by
27 board or department.--

28 (1) The following acts ~~shall~~ constitute grounds for
29 denial of a license or disciplinary action, as specified in s.
30 456.072(2)~~which the disciplinary actions specified in~~
31 ~~subsection (2) may be taken:~~

1 (a) Attempting to obtain, obtaining, or renewing a
2 license to practice chiropractic medicine by bribery, by
3 fraudulent misrepresentations, or through an error of the
4 department or the board.

5 (b) Having a license to practice chiropractic medicine
6 revoked, suspended, or otherwise acted against, including the
7 denial of licensure, by the licensing authority of another
8 state, territory, or country.

9 (c) Being convicted or found guilty, regardless of
10 adjudication, of a crime in any jurisdiction which directly
11 relates to the practice of chiropractic medicine or to the
12 ability to practice chiropractic medicine. Any plea of nolo
13 contendere shall be considered a conviction for purposes of
14 this chapter.

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

16 (e) Causing to be advertised, by any means whatsoever,
17 any advertisement which does not contain an assertion or
18 statement which would identify herself or himself as a
19 chiropractic physician or identify such chiropractic clinic or
20 related institution in which she or he practices or in which
21 she or he is owner, in whole or in part, as a chiropractic
22 institution.

23 (f) Advertising, practicing, or attempting to practice
24 under a name other than one's own.

25 (g) Failing to report to the department any person who
26 the licensee knows is in violation of this chapter or of the
27 rules of the department or the board.

28 (h) Aiding, assisting, procuring, or advising any
29 unlicensed person to practice chiropractic medicine contrary
30 to this chapter or to a rule of the department or the board.

31

1 (i) Failing to perform any statutory or legal
2 obligation placed upon a licensed chiropractic physician.

3 (j) Making or filing a report which the licensee knows
4 to be false, intentionally or negligently failing to file a
5 report or record required by state or federal law, willfully
6 impeding or obstructing such filing or inducing another person
7 to do so. Such reports or records shall include only those
8 which are signed in the capacity of a licensed chiropractic
9 physician.

10 (k) Making misleading, deceptive, untrue, or
11 fraudulent representations in the practice of chiropractic
12 medicine or employing a trick or scheme in the practice of
13 chiropractic medicine when such trick or scheme fails to
14 conform to the generally prevailing standards of treatment in
15 the chiropractic medical community.

16 (l) Soliciting patients either personally or through
17 an agent, unless such solicitation falls into a category of
18 solicitations approved by rule of the board.

19 (m) Failing to keep legibly written chiropractic
20 medical records that identify clearly by name and credentials
21 the licensed chiropractic physician rendering, ordering,
22 supervising, or billing for each examination or treatment
23 procedure and that justify the course of treatment of the
24 patient, including, but not limited to, patient histories,
25 examination results, test results, X rays, and diagnosis of a
26 disease, condition, or injury. X rays need not be retained
27 for more than 4 years.

28 (n) Exercising influence on the patient or client in
29 such a manner as to exploit the patient or client for
30 financial gain of the licensee or of a third party which shall
31

1 include, but not be limited to, the promotion or sale of
2 services, goods or appliances, or drugs.

3 (o) Performing professional services which have not
4 been duly authorized by the patient or client or her or his
5 legal representative except as provided in ss. 743.064,
6 766.103, and 768.13.

7 (p) Prescribing, dispensing, or administering any
8 medicinal drug except as authorized by s. 460.403(9)(c)2.,
9 performing any surgery, or practicing obstetrics.

10 (q) Being unable to practice chiropractic medicine
11 with reasonable skill and safety to patients by reason of
12 illness or use of alcohol, drugs, narcotics, chemicals, or any
13 other type of material or as a result of any mental or
14 physical condition. In enforcing this paragraph, upon a
15 finding by the secretary of the department, or his or her
16 designee, or the probable cause panel of the board that
17 probable cause exists to believe that the licensee is unable
18 to practice the profession because of reasons stated in this
19 paragraph, the department shall have the authority to compel a
20 licensee to submit to a mental or physical examination by a
21 physician designated by the department. If the licensee
22 refuses to comply with the department's order, the department
23 may file a petition for enforcement in the circuit court of
24 the circuit in which the licensee resides or does business.
25 The department shall be entitled to the summary procedure
26 provided in s. 51.011. The record of proceedings to obtain a
27 compelled mental or physical examination shall not be used
28 against a licensee in any other proceedings. A chiropractic
29 physician affected under this paragraph shall at reasonable
30 intervals be afforded an opportunity to demonstrate that she
31

1 or he can resume the competent practice of chiropractic
2 medicine with reasonable skill and safety to patients.

3 (r) Gross or repeated malpractice or the failure to
4 practice chiropractic medicine at a level of care, skill, and
5 treatment which is recognized by a reasonably prudent
6 chiropractic physician as being acceptable under similar
7 conditions and circumstances. The board shall give great
8 weight to the standards for malpractice in s. 766.102 in
9 interpreting this provision. A recommended order by an
10 administrative law judge, or a final order of the board
11 finding a violation under this section shall specify whether
12 the licensee was found to have committed "gross malpractice,"
13 "repeated malpractice," or "failure to practice chiropractic
14 medicine with that level of care, skill, and treatment which
15 is recognized as being acceptable under similar conditions and
16 circumstances" or any combination thereof, and any publication
17 by the board shall so specify.

18 (s) Performing any procedure or prescribing any
19 therapy which, by the prevailing standards of chiropractic
20 medical practice in the community, would constitute
21 experimentation on human subjects, without first obtaining
22 full, informed, and written consent.

23 (t) Practicing or offering to practice beyond the
24 scope permitted by law or accepting and performing
25 professional responsibilities which the licensee knows or has
26 reason to know that she or he is not competent to perform.

27 (u) Delegating professional responsibilities to a
28 person when the licensee delegating such responsibilities
29 knows or has reason to know that such person is not qualified
30 by training, experience, or licensure to perform them.

31

1 (v) Violating ~~any provision of this chapter, any rule~~
2 ~~of the board or department,~~ or a lawful order of the board or
3 department previously entered in a disciplinary hearing or
4 failing to comply with a lawfully issued subpoena of the
5 department.

6 (w) Conspiring with another licensee or with any other
7 person to commit an act, or committing an act, which would
8 tend to coerce, intimidate, or preclude another licensee from
9 lawfully advertising her or his services.

10 (x) Submitting to any third-party payor a claim for a
11 service or treatment which was not actually provided to a
12 patient.

13 (y) Failing to preserve identity of funds and property
14 of a patient. As provided by rule of the board, money or other
15 property entrusted to a chiropractic physician for a specific
16 purpose, including advances for costs and expenses of
17 examination or treatment, is to be held in trust and must be
18 applied only to that purpose. Money and other property of
19 patients coming into the hands of a chiropractic physician are
20 not subject to counterclaim or setoff for chiropractic
21 physician's fees, and a refusal to account for and deliver
22 over such money and property upon demand shall be deemed a
23 conversion. This is not to preclude the retention of money or
24 other property upon which the chiropractic physician has a
25 valid lien for services or to preclude the payment of agreed
26 fees from the proceeds of transactions for examinations or
27 treatments. Controversies as to the amount of the fees are
28 not grounds for disciplinary proceedings unless the amount
29 demanded is clearly excessive or extortionate, or the demand
30 is fraudulent. All funds of patients paid to a chiropractic
31 physician, other than advances for costs and expenses, shall

1 be deposited in one or more identifiable bank accounts
2 maintained in the state in which the chiropractic physician's
3 office is situated, and no funds belonging to the chiropractic
4 physician shall be deposited therein except as follows:

5 1. Funds reasonably sufficient to pay bank charges may
6 be deposited therein.

7 2. Funds belonging in part to a patient and in part
8 presently or potentially to the physician must be deposited
9 therein, but the portion belonging to the physician may be
10 withdrawn when due unless the right of the physician to
11 receive it is disputed by the patient, in which event the
12 disputed portion shall not be withdrawn until the dispute is
13 finally resolved.

14
15 Every chiropractic physician shall maintain complete records
16 of all funds, securities, and other properties of a patient
17 coming into the possession of the physician and render
18 appropriate accounts to the patient regarding them. In
19 addition, every chiropractic physician shall promptly pay or
20 deliver to the patient, as requested by the patient, the
21 funds, securities, or other properties in the possession of
22 the physician which the patient is entitled to receive.

23 (z) Offering to accept or accepting payment for
24 services rendered by assignment from any third-party payor
25 after offering to accept or accepting whatever the third-party
26 payor covers as payment in full, if the effect of the offering
27 or acceptance is to eliminate or give the impression of
28 eliminating the need for payment by an insured of any required
29 deductions applicable in the policy of the insured.

30
31

1 (aa) Failing to provide, upon request of the insured,
2 a copy of a claim submitted to any third-party payor for
3 service or treatment of the insured.

4 (bb) Advertising a fee or charge for a service or
5 treatment which is different from the fee or charge the
6 licensee submits to third-party payors for that service or
7 treatment.

8 (cc) Advertising any reduced or discounted fees for
9 services or treatments, or advertising any free services or
10 treatments, without prominently stating in the advertisement
11 the usual fee of the licensee for the service or treatment
12 which is the subject of the discount, rebate, or free
13 offering.

14 (dd) Using acupuncture without being certified
15 pursuant to s. 460.403(9)(f).

16 (ee) Failing to report to the department any licensee
17 under chapter 458 or under chapter 459 who the chiropractic
18 physician or chiropractic physician's assistant knows has
19 violated the grounds for disciplinary action set out in the
20 law under which that person is licensed and who provides
21 health care services in a facility licensed under chapter 395,
22 or a health maintenance organization certificated under part I
23 of chapter 641, in which the chiropractic physician or
24 chiropractic physician's assistant also provides services.

25 (ff) Violating any provision of this chapter or
26 chapter 456, or any rules adopted pursuant thereto.

27 (2) The board may enter an order denying licensure or
28 imposing any of the penalties in s. 456.072(2) against any
29 applicant for licensure or licensee who is found guilty of
30 violating any provision of subsection (1) of this section or
31 who is found guilty of violating any provision of s.

1 ~~456.072(1).When the board finds any person guilty of any of~~
2 ~~the grounds set forth in subsection (1), it may enter an order~~
3 ~~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 ~~\$10,000 for each count or separate offense.~~

10 ~~(e) Issuance of a reprimand.~~

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

17 ~~(g) Imposition of costs of the investigation and~~
18 ~~prosecution.~~

19 ~~(h) Requirement that the chiropractic physician~~
20 ~~undergo remedial education.~~

21 ~~(i) Issuance of a letter of concern.~~

22 ~~(j) Corrective action.~~

23 ~~(k) Refund of fees billed to and collected from the~~
24 ~~patient or a third party.~~

25
26 In determining what action is appropriate, the board must
27 first consider what sanctions are necessary to protect the
28 public or to compensate the patient. Only after those
29 sanctions have been imposed may the disciplining authority
30 consider and include in the order requirements designed to
31 rehabilitate the chiropractic physician. All costs associated

1 with compliance with orders issued under this subsection are
2 the obligation of the chiropractic physician.

3 Section 24. Subsections (1) and (2) of section
4 461.013, Florida Statutes, are amended to read:

5 461.013 Grounds for disciplinary action; action by the
6 board; investigations by department.--

7 (1) The following acts ~~shall~~ constitute grounds for
8 denial of a license or disciplinary action, as specified in s.
9 456.072(2)~~which the disciplinary actions specified in~~
10 ~~subsection (2) may be taken:~~

11 (a) Attempting to obtain, obtaining, or renewing a
12 license to practice podiatric medicine by bribery, by
13 fraudulent misrepresentations, or through an error of the
14 department or the board.

15 (b) Having a license to practice podiatric medicine
16 revoked, suspended, or otherwise acted against, including the
17 denial of licensure, by the licensing authority of another
18 state, territory, or country.

19 (c) Being convicted or found guilty, regardless of
20 adjudication, of a crime in any jurisdiction which directly
21 relates to the practice of podiatric medicine or to the
22 ability to practice podiatric medicine. Any plea of nolo
23 contendere shall be considered a conviction for purposes of
24 this chapter.

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

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

28 (f) Failing to report to the department any person who
29 the licensee knows is in violation of this chapter or of the
30 rules of the department or the board.

31

1 (g) Aiding, assisting, procuring, permitting, or
2 advising any unlicensed person to practice podiatric medicine
3 contrary to this chapter or to rule of the department or the
4 board.

5 (h) Failing to perform any statutory or legal
6 obligation placed upon a licensed podiatric physician.

7 (i) Making or filing a report which the licensee knows
8 to be false, intentionally or negligently failing to file a
9 report or record required by state or federal law, willfully
10 impeding or obstructing such filing or inducing another person
11 to do so. Such report or records shall include only those
12 which are signed in the capacity of a licensed podiatric
13 physician.

14 (j) Making misleading, deceptive, untrue, or
15 fraudulent representations in the practice of podiatric
16 medicine or employing a trick or scheme in the practice of
17 podiatric medicine when such scheme or trick fails to conform
18 to the generally prevailing standards of treatment in the
19 podiatric community.

20 (k) Soliciting patients either personally or through
21 an agent, unless such solicitation falls into a category of
22 solicitations approved by rule of the board.

23 (l) Failing to keep written medical records justifying
24 the course of treatment of the patient, including, but not
25 limited to, patient histories, examination results, and test
26 results.

27 (m) Exercising influence on the patient or client in
28 such a manner as to exploit the patient or client for
29 financial gain of the licensee or of a third party which shall
30 include, but not be limited to, the promotion or sale of
31 services, goods, appliances, or drugs and the promoting or

1 advertising on any prescription form of a community pharmacy
2 unless the form shall also state "This prescription may be
3 filled at any pharmacy of your choice."

4 (n) Performing professional services which have not
5 been duly authorized by the patient or client or her or his
6 legal representative except as provided in ss. 743.064,
7 766.103, and 768.13.

8 (o) Prescribing, dispensing, administering, mixing, or
9 otherwise preparing a legend drug, including all controlled
10 substances, other than in the course of the podiatric
11 physician's professional practice. For the purposes of this
12 paragraph, it shall be legally presumed that prescribing,
13 dispensing, administering, mixing, or otherwise preparing
14 legend drugs, including all controlled substances,
15 inappropriately or in excessive or inappropriate quantities is
16 not in the best interest of the patient and is not in the
17 course of the podiatric physician's professional practice,
18 without regard to her or his intent.

19 (p) Prescribing, dispensing, or administering any
20 medicinal drug appearing on any schedule set forth in chapter
21 893 by the podiatric physician to herself or himself except
22 those prescribed, dispensed, or administered to the podiatric
23 physician by another practitioner authorized to prescribe,
24 dispense, or administer them.

25 (q) Prescribing, ordering, dispensing, administering,
26 supplying, selling, or giving any amphetamine or
27 sympathomimetic amine drug or compound designated as a
28 Schedule II controlled substance pursuant to chapter 893.

29 (r) Being unable to practice podiatric medicine with
30 reasonable skill and safety to patients by reason of illness
31 or use of alcohol, drugs, narcotics, chemicals, or any other

1 type of material or as a result of any mental or physical
2 condition. In enforcing this paragraph the department shall,
3 upon probable cause, have authority to compel a podiatric
4 physician to submit to a mental or physical examination by
5 physicians designated by the department. Failure of a
6 podiatric physician to submit to such examination when
7 directed shall constitute an admission of the allegations
8 against her or him, unless the failure was due to
9 circumstances beyond her or his control, consequent upon which
10 a default and final order may be entered without the taking of
11 testimony or presentation of evidence. A podiatric physician
12 affected under this paragraph shall at reasonable intervals be
13 afforded an opportunity to demonstrate that she or he can
14 resume the competent practice of podiatric medicine with
15 reasonable skill and safety to patients.

16 (s) Gross or repeated malpractice or the failure to
17 practice podiatric medicine at a level of care, skill, and
18 treatment which is recognized by a reasonably prudent
19 podiatric physician as being acceptable under similar
20 conditions and circumstances. The board shall give great
21 weight to the standards for malpractice in s. 766.102 in
22 interpreting this section. As used in this paragraph,
23 "repeated malpractice" includes, but is not limited to, three
24 or more claims for medical malpractice within the previous
25 5-year period resulting in indemnities being paid in excess of
26 \$10,000 each to the claimant in a judgment or settlement and
27 which incidents involved negligent conduct by the podiatric
28 physicians. As used in this paragraph, "gross malpractice" or
29 "the failure to practice podiatric medicine with the level of
30 care, skill, and treatment which is recognized by a reasonably
31 prudent similar podiatric physician as being acceptable under

1 similar conditions and circumstances" shall not be construed
2 so as to require more than one instance, event, or act.

3 (t) Performing any procedure or prescribing any
4 therapy which, by the prevailing standards of podiatric
5 medical practice in the community, would constitute
6 experimentation on human subjects without first obtaining
7 full, informed, and written consent.

8 (u) Practicing or offering to practice beyond the
9 scope permitted by law or accepting and performing
10 professional responsibilities which the licensee knows or has
11 reason to know that she or he is not competent to perform.

12 (v) Delegating professional responsibilities to a
13 person when the licensee delegating such responsibilities
14 knows or has reason to know that such person is not qualified
15 by training, experience, or licensure to perform them.

16 (w) ~~Violating any provision of this chapter or chapter~~
17 ~~456, any rule of the board or department, or a lawful order of~~
18 ~~the board or department previously entered in a disciplinary~~
19 ~~hearing or failing to comply with a lawfully issued subpoena~~
20 ~~of the board or department.~~

21 (x) Conspiring with another licensee or with any other
22 person to commit an act, or committing an act, which would
23 tend to coerce, intimidate, or preclude another licensee from
24 lawfully advertising her or his services.

25 (y) Prescribing, ordering, dispensing, administering,
26 supplying, selling, or giving growth hormones, testosterone or
27 its analogs, human chorionic gonadotropin (HCG), or other
28 hormones for the purpose of muscle building or to enhance
29 athletic performance. For the purposes of this subsection, the
30 term "muscle building" does not include the treatment of
31 injured muscle. A prescription written for any of the drug

1 products listed above may be dispensed by the pharmacist with
2 the presumption that the prescription is for legitimate
3 medical use.

4 (z) Fraud, deceit, or misconduct in the practice of
5 podiatric medicine.

6 (aa) Failing to report to the department any licensee
7 under chapter 458 or chapter 459 who the podiatric physician
8 knows has violated the grounds for disciplinary action set out
9 in the law under which that person is licensed and who
10 provides health care services in a facility licensed under
11 chapter 395, or a health maintenance organization certificated
12 under part I of chapter 641, in which the podiatric physician
13 also provides services.

14 (bb) Failing to comply with the requirements of ss.
15 381.026 and 381.0261 to provide patients with information
16 about their patient rights and how to file a patient
17 complaint.

18 (cc) Violating any provision of this chapter or
19 chapter 456, or any rules adopted pursuant thereto.

20 (2) The board may enter an order denying licensure or
21 imposing any of the penalties in s. 456.072(2) against any
22 applicant for licensure or licensee who is found guilty of
23 violating any provision of subsection (1) of this section or
24 who is found guilty of violating any provision of s.
25 456.072(1).~~When the board finds any person guilty of any of~~
26 ~~the grounds set forth in subsection (1), it may enter an order~~
27 ~~imposing one or more of the following penalties:~~

28 ~~(a) Refusal to certify to the department an~~
29 ~~application for licensure.~~

30 ~~(b) Revocation or suspension of a license.~~

31 ~~(c) Restriction of practice.~~

1 ~~(d) Imposition of an administrative fine not to exceed~~
2 ~~\$10,000 for each count or separate offense.~~

3 ~~(e) Issuance of a reprimand.~~

4 ~~(f) Placing the podiatric physician on probation for a~~
5 ~~period of time and subject to such conditions as the board may~~
6 ~~specify, including requiring the podiatric physician to submit~~
7 ~~to treatment, to attend continuing education courses, to~~
8 ~~submit to reexamination, and to work under the supervision of~~
9 ~~another podiatric physician.~~

10 ~~(g) Imposition of an administrative fine in accordance~~
11 ~~with s. 381.0261 for violations regarding patient rights.~~

12 Section 25. Subsections (1) and (2) of section 462.14,
13 Florida Statutes, are amended to read:

14 462.14 Grounds for disciplinary action; action by the
15 department.--

16 (1) The following acts constitute grounds for denial
17 of a license or disciplinary action, as specified in s.
18 456.072(2)~~which the disciplinary actions specified in~~
19 ~~subsection (2) may be taken:~~

20 (a) Attempting to obtain, obtaining, or renewing a
21 license to practice naturopathic medicine by bribery, by
22 fraudulent misrepresentation, or through an error of the
23 department.

24 (b) Having a license to practice naturopathic medicine
25 revoked, suspended, or otherwise acted against, including the
26 denial of licensure, by the licensing authority of another
27 state, territory, or country.

28 (c) Being convicted or found guilty, regardless of
29 adjudication, of a crime in any jurisdiction which directly
30 relates to the practice of naturopathic medicine or to the
31 ability to practice naturopathic medicine. Any plea of nolo

1 | contendere shall be considered a conviction for purposes of
2 | this chapter.

3 | (d) False, deceptive, or misleading advertising.

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

6 | (f) Failing to report to the department any person who
7 | the licensee knows is in violation of this chapter or of the
8 | rules of the department.

9 | (g) Aiding, assisting, procuring, or advising any
10 | unlicensed person to practice naturopathic medicine contrary
11 | to this chapter or to a rule of the department.

12 | (h) Failing to perform any statutory or legal
13 | obligation placed upon a licensed naturopathic physician.

14 | (i) Making or filing a report which the licensee knows
15 | to be false, intentionally or negligently failing to file a
16 | report or record required by state or federal law, willfully
17 | impeding or obstructing such filing or inducing another person
18 | to do so. Such reports or records shall include only those
19 | which are signed in the capacity as a licensed naturopathic
20 | physician.

21 | (j) Paying or receiving any commission, bonus,
22 | kickback, or rebate, or engaging in any split-fee arrangement
23 | in any form whatsoever with a physician, organization, agency,
24 | or person, either directly or indirectly, for patients
25 | referred to providers of health care goods and services,
26 | including, but not limited to, hospitals, nursing homes,
27 | clinical laboratories, ambulatory surgical centers, or
28 | pharmacies. The provisions of this paragraph shall not be
29 | construed to prevent a naturopathic physician from receiving a
30 | fee for professional consultation services.

31 |

1 (k) Exercising influence within a patient-physician
2 relationship for purposes of engaging a patient in sexual
3 activity. A patient shall be presumed to be incapable of
4 giving free, full, and informed consent to sexual activity
5 with her or his physician.

6 (l) Making deceptive, untrue, or fraudulent
7 representations in the practice of naturopathic medicine or
8 employing a trick or scheme in the practice of naturopathic
9 medicine when such scheme or trick fails to conform to the
10 generally prevailing standards of treatment in the medical
11 community.

12 (m) Soliciting patients, either personally or through
13 an agent, through the use of fraud, intimidation, undue
14 influence, or a form of overreaching or vexatious conduct. A
15 "solicitation" is any communication which directly or
16 implicitly requests an immediate oral response from the
17 recipient.

18 (n) Failing to keep written medical records justifying
19 the course of treatment of the patient, including, but not
20 limited to, patient histories, examination results, test
21 results, X rays, and records of the prescribing, dispensing
22 and administering of drugs.

23 (o) Exercising influence on the patient or client in
24 such a manner as to exploit the patient or client for the
25 financial gain of the licensee or of a third party, which
26 shall include, but not be limited to, the promoting or selling
27 of services, goods, appliances, or drugs and the promoting or
28 advertising on any prescription form of a community pharmacy
29 unless the form also states "This prescription may be filled
30 at any pharmacy of your choice."
31

1 (p) Performing professional services which have not
2 been duly authorized by the patient or client, or her or his
3 legal representative, except as provided in s. 743.064, s.
4 766.103, or s. 768.13.

5 (q) Prescribing, dispensing, administering, mixing, or
6 otherwise preparing a legend drug, including any controlled
7 substance, other than in the course of the naturopathic
8 physician's professional practice. For the purposes of this
9 paragraph, it shall be legally presumed that prescribing,
10 dispensing, administering, mixing, or otherwise preparing
11 legend drugs, including all controlled substances,
12 inappropriately or in excessive or inappropriate quantities is
13 not in the best interest of the patient and is not in the
14 course of the naturopathic physician's professional practice,
15 without regard to her or his intent.

16 (r) Prescribing, dispensing, or administering any
17 medicinal drug appearing on any schedule set forth in chapter
18 893 by the naturopathic physician to herself or himself,
19 except one prescribed, dispensed, or administered to the
20 naturopathic physician by another practitioner authorized to
21 prescribe, dispense, or administer medicinal drugs.

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

1 admission of the allegations against her or him upon which a
2 default and final order may be entered without the taking of
3 testimony or presentation of evidence, unless the failure was
4 due to circumstances beyond the naturopathic physician's
5 control. A naturopathic physician affected under this
6 paragraph shall at reasonable intervals be afforded an
7 opportunity to demonstrate that she or he can resume the
8 competent practice of naturopathic medicine with reasonable
9 skill and safety to patients. In any proceeding under this
10 paragraph, neither the record of proceedings nor the orders
11 entered by the department may be used against a naturopathic
12 physician in any other proceeding.

13 (t) Gross or repeated malpractice or the failure to
14 practice naturopathic medicine with that level of care, skill,
15 and treatment which is recognized by a reasonably prudent
16 similar physician as being acceptable under similar conditions
17 and circumstances. The department shall give great weight to
18 the provisions of s. 766.102 when enforcing this paragraph.

19 (u) Performing any procedure or prescribing any
20 therapy which, by the prevailing standards of medical practice
21 in the community, constitutes experimentation on a human
22 subject, without first obtaining full, informed, and written
23 consent.

24 (v) Practicing or offering to practice beyond the
25 scope permitted by law or accepting and performing
26 professional responsibilities which the licensee knows or has
27 reason to know that she or he is not competent to perform.

28 (w) Delegating professional responsibilities to a
29 person when the licensee delegating such responsibilities
30 knows or has reason to know that such person is not qualified
31 by training, experience, or licensure to perform them.

1 (x) Violating ~~any provision of this chapter, any rule~~
2 ~~of the department, or~~ a lawful order of the department
3 previously entered in a disciplinary hearing or failing to
4 comply with a lawfully issued subpoena of the department.

5 (y) Conspiring with another licensee or with any other
6 person to commit an act, or committing an act, which would
7 tend to coerce, intimidate, or preclude another licensee from
8 lawfully advertising her or his services.

9 (z) Procuring, or aiding or abetting in the procuring
10 of, an unlawful termination of pregnancy.

11 (aa) Presigning blank prescription forms.

12 (bb) Prescribing by the naturopathic physician for
13 office use any medicinal drug appearing on Schedule II in
14 chapter 893.

15 (cc) Prescribing, ordering, dispensing, administering,
16 supplying, selling, or giving any drug which is an amphetamine
17 or sympathomimetic amine drug, or a compound designated
18 pursuant to chapter 893 as a Schedule II controlled substance
19 to or for any person except for:

20 1. The treatment of narcolepsy; hyperkinesis;
21 behavioral syndrome in children characterized by the
22 developmentally inappropriate symptoms of moderate to severe
23 distractability, short attention span, hyperactivity,
24 emotional lability, and impulsivity; or drug-induced brain
25 dysfunction.

26 2. The differential diagnostic psychiatric evaluation
27 of depression or the treatment of depression shown to be
28 refractory to other therapeutic modalities.

29 3. The clinical investigation of the effects of such
30 drugs or compounds when an investigative protocol therefor is
31

1 submitted to, reviewed, and approved by the department before
2 such investigation is begun.

3 (dd) Prescribing, ordering, dispensing, administering,
4 supplying, selling, or giving growth hormones, testosterone or
5 its analogs, human chorionic gonadotropin (HCG), or other
6 hormones for the purpose of muscle building or to enhance
7 athletic performance. For the purposes of this subsection, the
8 term "muscle building" does not include the treatment of
9 injured muscle. A prescription written for the drug products
10 listed above may be dispensed by the pharmacist with the
11 presumption that the prescription is for legitimate medical
12 use.

13 (ee) Violating any provision of this chapter or
14 chapter 456, or any rules adopted pursuant thereto.

15 (2) The department may enter an order denying
16 licensure or imposing any of the penalties in s. 456.072(2)
17 against any applicant for licensure or licensee who is found
18 guilty of violating any provision of subsection (1) of this
19 section or who is found guilty of violating any provision of
20 s. 456.072(1).~~When the department finds any person guilty of~~
21 ~~any of the grounds set forth in subsection (1), it may enter~~
22 ~~an order imposing one or more of the following penalties:~~

23 ~~(a) Refusal to certify to the department an~~
24 ~~application for licensure.~~

25 ~~(b) Revocation or suspension of a license.~~

26 ~~(c) Restriction of practice.~~

27 ~~(d) Imposition of an administrative fine not to exceed~~
28 ~~\$1,000 for each count or separate offense.~~

29 ~~(e) Issuance of a reprimand.~~

30 ~~(f) Placement of the naturopathic physician on~~
31 ~~probation for a period of time and subject to such conditions~~

1 ~~as the department may specify, including, but not limited to,~~
2 ~~requiring the naturopathic physician to submit to treatment,~~
3 ~~to attend continuing education courses, to submit to~~
4 ~~reexamination, or to work under the supervision of another~~
5 ~~naturopathic physician.~~

6 Section 26. Subsections (1) and (2) of section
7 463.016, Florida Statutes, are amended to read:

8 463.016 Grounds for disciplinary action; action by the
9 board.--

10 (1) The following acts ~~shall~~ constitute grounds for
11 denial of a license or disciplinary action, as specified in s.
12 456.072(2)~~which the disciplinary actions specified in~~
13 ~~subsection (2) may be taken:~~

14 (a) Procuring or attempting to procure a license to
15 practice optometry by bribery, by fraudulent
16 misrepresentations, or through an error of the department or
17 board.

18 (b) Procuring or attempting to procure a license for
19 any other person by making or causing to be made any false
20 representation.

21 (c) Having a license to practice optometry revoked,
22 suspended, or otherwise acted against, including the denial of
23 licensure, by the licensing authority of another jurisdiction.

24 (d) Being convicted or found guilty, regardless of
25 adjudication, of a crime in any jurisdiction which directly
26 relates to the practice of optometry or to the ability to
27 practice optometry. Any plea of nolo contendere shall be
28 considered a conviction for the purposes of this chapter.

29 (e) Making or filing a report or record which the
30 licensee knows to be false, intentionally or negligently
31 failing to file a report or record required by state or

1 federal law, willfully impeding or obstructing such filing, or
2 inducing another person to do so. Such reports or records
3 shall include only those which are signed by the licensee in
4 her or his capacity as a licensed practitioner.

5 (f) Advertising goods or services in a manner which is
6 fraudulent, false, deceptive, or misleading in form or
7 content.

8 (g) Fraud or deceit, negligence or incompetency, or
9 misconduct in the practice of optometry.

10 (h) A violation or repeated violations of provisions
11 of this chapter, or of chapter 456, and any rules promulgated
12 pursuant thereto.

13 (i) Conspiring with another licensee or with any
14 person to commit an act, or committing an act, which would
15 coerce, intimidate, or preclude another licensee from lawfully
16 advertising her or his services.

17 (j) Willfully submitting to any third-party payor a
18 claim for services which were not provided to a patient.

19 (k) Failing to keep written optometric records about
20 the examinations, treatments, and prescriptions for patients.

21 (l) Willfully failing to report any person who the
22 licensee knows is in violation of this chapter or of rules of
23 the department or the board.

24 (m) Gross or repeated malpractice.

25 (n) Practicing with a revoked, suspended, inactive, or
26 delinquent license.

27 (o) Being unable to practice optometry with reasonable
28 skill and safety to patients by reason of illness or use of
29 alcohol, drugs, narcotics, chemicals, or any other type of
30 material or as a result of any mental or physical condition.

31 A licensed practitioner affected under this paragraph shall at

1 reasonable intervals be afforded an opportunity to demonstrate
2 that she or he can resume the competent practice of optometry
3 with reasonable skill and safety to patients.

4 (p) Having been disciplined by a regulatory agency in
5 another state for any offense that would constitute a
6 violation of Florida laws or rules regulating optometry.

7 (q) Violating any provision of s. 463.014 or s.
8 463.015.

9 (r) Violating any lawful order of the board or
10 department, previously entered in a disciplinary hearing, or
11 failing to comply with a lawfully issued subpoena of the board
12 or department.

13 (s) Practicing or offering to practice beyond the
14 scope permitted by law or accepting and performing
15 professional responsibilities which the licensed practitioner
16 knows or has reason to know she or he is not competent to
17 perform.

18 (t) Violating any provision of this chapter or chapter
19 456, or any rules adopted pursuant thereto.

20 (2) The department may enter an order imposing any of
21 the penalties in s. 456.072(2) against any licensee who is
22 found guilty of violating any provision of subsection (1) of
23 this section or who is found guilty of violating any provision
24 of s. 456.072(1).~~When the board finds any person guilty of~~
25 ~~any of the grounds set forth in subsection (1), it may enter~~
26 ~~an order imposing one or more of the following penalties:~~

27 ~~(a) Refusal to certify to the department an~~
28 ~~application for licensure.~~

29 ~~(b) Revocation or suspension of a license.~~

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

1 ~~(d) Issuance of a reprimand.~~
2 ~~(e) Placement of the licensed practitioner on~~
3 ~~probation for a period of time and subject to such conditions~~
4 ~~as the board may specify, including requiring the licensed~~
5 ~~practitioner to submit to treatment, to attend continuing~~
6 ~~education courses, or to work under the supervision of another~~
7 ~~licensed practitioner.~~

8 Section 27. Subsections (1) and (2) of section
9 464.018, Florida Statutes, are amended to read:

10 464.018 Disciplinary actions.--

11 (1) The following acts constitute ~~shall be~~ grounds for
12 denial of a license or disciplinary action, as specified in s.
13 456.072(2)disciplinary action set forth in this section:

14 (a) Procuring, attempting to procure, or renewing a
15 license to practice nursing by bribery, by knowing
16 misrepresentations, or through an error of the department or
17 the board.

18 (b) Having a license to practice nursing revoked,
19 suspended, or otherwise acted against, including the denial of
20 licensure, by the licensing authority of another state,
21 territory, or country.

22 (c) Being convicted or found guilty of, or entering a
23 plea of nolo contendere to, regardless of adjudication, a
24 crime in any jurisdiction which directly relates to the
25 practice of nursing or to the ability to practice nursing.

26 (d) Being found guilty, regardless of adjudication, of
27 any of the following offenses:

28 1. A forcible felony as defined in chapter 776.

29 2. A violation of chapter 812, relating to theft,
30 robbery, and related crimes.

31

1 3. A violation of chapter 817, relating to fraudulent
2 practices.

3 4. A violation of chapter 800, relating to lewdness
4 and indecent exposure.

5 5. A violation of chapter 784, relating to assault,
6 battery, and culpable negligence.

7 6. A violation of chapter 827, relating to child
8 abuse.

9 7. A violation of chapter 415, relating to protection
10 from abuse, neglect, and exploitation.

11 8. A violation of chapter 39, relating to child abuse,
12 abandonment, and neglect.

13 (e) Having been found guilty of, regardless of
14 adjudication, or entered a plea of nolo contendere or guilty
15 to, any offense prohibited under s. 435.03 or under any
16 similar statute of another jurisdiction; or having committed
17 an act which constitutes domestic violence as defined in s.
18 741.28.

19 (f) Making or filing a false report or record, which
20 the licensee knows to be false, intentionally or negligently
21 failing to file a report or record required by state or
22 federal law, willfully impeding or obstructing such filing or
23 inducing another person to do so. Such reports or records
24 shall include only those which are signed in the nurse's
25 capacity as a licensed nurse.

26 (g) False, misleading, or deceptive advertising.

27 (h) Unprofessional conduct, which shall include, but
28 not be limited to, any departure from, or the failure to
29 conform to, the minimal standards of acceptable and prevailing
30 nursing practice, in which case actual injury need not be
31 established.

1 (i) Engaging or attempting to engage in the
2 possession, sale, or distribution of controlled substances as
3 set forth in chapter 893, for any other than legitimate
4 purposes authorized by this part.

5 (j) Being unable to practice nursing with reasonable
6 skill and safety to patients by reason of illness or use of
7 alcohol, drugs, narcotics, or chemicals or any other type of
8 material or as a result of any mental or physical condition.
9 In enforcing this paragraph, the department shall have, upon a
10 finding of the secretary or the secretary's designee that
11 probable cause exists to believe that the licensee is unable
12 to practice nursing because of the reasons stated in this
13 paragraph, the authority to issue an order to compel a
14 licensee to submit to a mental or physical examination by
15 physicians designated by the department. If the licensee
16 refuses to comply with such order, the department's order
17 directing such examination may be enforced by filing a
18 petition for enforcement in the circuit court where the
19 licensee resides or does business. The licensee against whom
20 the petition is filed shall not be named or identified by
21 initials in any public court records or documents, and the
22 proceedings shall be closed to the public. The department
23 shall be entitled to the summary procedure provided in s.
24 51.011. A nurse affected by the provisions of this paragraph
25 shall at reasonable intervals be afforded an opportunity to
26 demonstrate that she or he can resume the competent practice
27 of nursing with reasonable skill and safety to patients.

28 (k) Failing to report to the department any person who
29 the licensee knows is in violation of this part or of the
30 rules of the department or the board; however, if the licensee
31 verifies that such person is actively participating in a

1 board-approved program for the treatment of a physical or
2 mental condition, the licensee is required to report such
3 person only to an impaired professionals consultant.

4 (1) Knowingly violating any provision of this part, a
5 rule of the board or the department, or a lawful order of the
6 board or department previously entered in a disciplinary
7 proceeding or failing to comply with a lawfully issued
8 subpoena of the department.

9 (m) Failing to report to the department any licensee
10 under chapter 458 or under chapter 459 who the nurse knows has
11 violated the grounds for disciplinary action set out in the
12 law under which that person is licensed and who provides
13 health care services in a facility licensed under chapter 395,
14 or a health maintenance organization certificated under part I
15 of chapter 641, in which the nurse also provides services.

16 (n) Violating any provision of this chapter or chapter
17 456, or any rules adopted pursuant thereto.

18 (2) The board may enter an order denying licensure or
19 imposing any of the penalties in s. 456.072(2) against any
20 applicant for licensure or licensee who is found guilty of
21 violating any provision of subsection (1) of this section or
22 who is found guilty of violating any provision of s.

23 ~~456.072(1).When the board finds any person guilty of any of~~
24 ~~the grounds set forth in subsection (1), it may enter an order~~
25 ~~imposing one or more of the following penalties:~~

26 ~~(a) Refusal to certify to the department an~~
27 ~~application for licensure.~~

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

30 ~~(c) Permanent revocation of a license.~~

31 ~~(d) Restriction of practice.~~

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

3 ~~(f) Issuance of a reprimand.~~

4 ~~(g) Placement of the nurse on probation for a period~~
5 ~~of time and subject to such conditions as the board may~~
6 ~~specify, including requiring the nurse to submit to treatment,~~
7 ~~to attend continuing education courses, to take an~~
8 ~~examination, or to work under the supervision of another~~
9 ~~nurse.~~

10 Section 28. Subsections (1) and (2) of section
11 465.016, Florida Statutes, are amended to read:

12 465.016 Disciplinary actions.--

13 (1) The following acts constitute ~~shall be~~ grounds for
14 denial of a license or disciplinary action, as specified in s.
15 456.072(2)disciplinary action set forth in this section:

16 (a) Obtaining a license by misrepresentation or fraud
17 or through an error of the department or the board.

18 (b) Procuring or attempting to procure a license for
19 any other person by making or causing to be made any false
20 representation.

21 (c) Permitting any person not licensed as a pharmacist
22 in this state or not registered as an intern in this state, or
23 permitting a registered intern who is not acting under the
24 direct and immediate personal supervision of a licensed
25 pharmacist, to fill, compound, or dispense any prescriptions
26 in a pharmacy owned and operated by such pharmacist or in a
27 pharmacy where such pharmacist is employed or on duty.

28 (d) Being unfit or incompetent to practice pharmacy by
29 reason of:

30 1. Habitual intoxication.

31

1 2. The misuse or abuse of any medicinal drug appearing
2 in any schedule set forth in chapter 893.

3 3. Any abnormal physical or mental condition which
4 threatens the safety of persons to whom she or he might sell
5 or dispense prescriptions, drugs, or medical supplies or for
6 whom she or he might manufacture, prepare, or package, or
7 supervise the manufacturing, preparation, or packaging of,
8 prescriptions, drugs, or medical supplies.

9 (e) ~~Violating any of the requirements of this chapter;~~
10 ~~or if licensed as a practitioner in this or any other state,~~
11 ~~violating any of the requirements of their respective practice~~
12 ~~act or violating~~ chapter 499; 21 U.S.C. ss. 301-392, known as
13 the Federal Food, Drug, and Cosmetic Act; 21 U.S.C. ss. 821 et
14 seq., known as the Comprehensive Drug Abuse Prevention and
15 Control Act; or chapter 893.

16 (f) Having been convicted or found guilty, regardless
17 of adjudication, in a court of this state or other
18 jurisdiction, of a crime which directly relates to the ability
19 to practice pharmacy or to the practice of pharmacy. A plea
20 of nolo contendere constitutes a conviction for purposes of
21 this provision.

22 (g) Using in the compounding of a prescription, or
23 furnishing upon prescription, an ingredient or article
24 different in any manner from the ingredient or article
25 prescribed, except as authorized in s. 465.019(6) or s.
26 465.025.

27 (h) Having been disciplined by a regulatory agency in
28 another state for any offense that would constitute a
29 violation of this chapter.

30 (i) Compounding, dispensing, or distributing a legend
31 drug, including any controlled substance, other than in the

1 course of the professional practice of pharmacy. For purposes
2 of this paragraph, it shall be legally presumed that the
3 compounding, dispensing, or distributing of legend drugs in
4 excessive or inappropriate quantities is not in the best
5 interests of the patient and is not in the course of the
6 professional practice of pharmacy.

7 (j) Making or filing a report or record which the
8 licensee knows to be false, intentionally or negligently
9 failing to file a report or record required by federal or
10 state law, willfully impeding or obstructing such filing, or
11 inducing another person to do so. Such reports or records
12 include only those which the licensee is required to make or
13 file in her or his capacity as a licensed pharmacist.

14 (k) Failing to make prescription fee or price
15 information readily available by failing to provide such
16 information upon request and upon the presentation of a
17 prescription for pricing or dispensing. Nothing in this
18 section shall be construed to prohibit the quotation of price
19 information on a prescription drug to a potential consumer by
20 telephone.

21 (l) Placing in the stock of any pharmacy any part of
22 any prescription compounded or dispensed which is returned by
23 a patient; however, in a hospital, nursing home, correctional
24 facility, or extended care facility in which unit-dose
25 medication is dispensed to inpatients, each dose being
26 individually sealed and the individual unit dose or unit-dose
27 system labeled with the name of the drug, dosage strength,
28 manufacturer's control number, and expiration date, if any,
29 the unused unit dose of medication may be returned to the
30 pharmacy for redispensing. Each pharmacist shall maintain
31

1 appropriate records for any unused or returned medicinal
2 drugs.

3 (m) Being unable to practice pharmacy with reasonable
4 skill and safety by reason of illness, use of drugs,
5 narcotics, chemicals, or any other type of material or as a
6 result of any mental or physical condition. A pharmacist
7 affected under this paragraph shall at reasonable intervals be
8 afforded an opportunity to demonstrate that she or he can
9 resume the competent practice of pharmacy with reasonable
10 skill and safety to her or his customers.

11 (n) Violating a rule of the board or department or
12 violating an order of the board or department previously
13 entered in a disciplinary hearing.

14 (o) Failing to report to the department any licensee
15 under chapter 458 or under chapter 459 who the pharmacist
16 knows has violated the grounds for disciplinary action set out
17 in the law under which that person is licensed and who
18 provides health care services in a facility licensed under
19 chapter 395, or a health maintenance organization certificated
20 under part I of chapter 641, in which the pharmacist also
21 provides services.

22 (p) Failing to notify the Board of Pharmacy in writing
23 within 20 days of the commencement or cessation of the
24 practice of the profession of pharmacy in Florida when such
25 commencement or cessation of the practice of the profession of
26 pharmacy in Florida was a result of a pending or completed
27 disciplinary action or investigation in another jurisdiction.

28 (q) Using or releasing a patient's records except as
29 authorized by this chapter and chapter 456.

30 (r) Violating any provision of this chapter or chapter
31 456, or any rules adopted pursuant thereto.

1 (2) The board may enter an order denying licensure or
2 imposing any of the penalties in s. 456.072(2) against any
3 applicant for licensure or licensee who is found guilty of
4 violating any provision of subsection (1) of this section or
5 who is found guilty of violating any provision of s.
6 456.072(1).~~When the board finds any person guilty of any of~~
7 ~~the grounds set forth in subsection (1), it may enter an order~~
8 ~~imposing one or more of the following penalties:~~

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

11 ~~(b) Revocation or suspension of a license.~~

12 ~~(c) Imposition of an administrative fine not to exceed~~
13 ~~\$5,000 for each count or separate offense.~~

14 ~~(d) Issuance of a reprimand.~~

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

21 Section 29. Subsections (1) and (2) of section
22 466.028, Florida Statutes, are amended to read:

23 466.028 Grounds for disciplinary action; action by the
24 board.--

25 (1) The following acts ~~shall~~ constitute grounds for
26 denial of a license or disciplinary action, as specified in s.
27 456.072(2)~~which the disciplinary actions specified in~~
28 ~~subsection (2) may be taken:~~

29 (a) Attempting to obtain, obtaining, or renewing a
30 license under this chapter by bribery, fraudulent
31

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

3 (b) Having a license to practice dentistry or dental
4 hygiene revoked, suspended, or otherwise acted against,
5 including the denial of licensure, by the licensing authority
6 of another state, territory, or country.

7 (c) Being convicted or found guilty of or entering a
8 plea of nolo contendere to, regardless of adjudication, a
9 crime in any jurisdiction which relates to the practice of
10 dentistry or dental hygiene. A plea of nolo contendere shall
11 create a rebuttable presumption of guilt to the underlying
12 criminal charges.

13 (d) Advertising goods or services in a manner which is
14 fraudulent, false, deceptive, or misleading in form or content
15 contrary to s. 466.019 or rules of the board adopted pursuant
16 thereto.

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

19 (f) Failing to report to the department any person who
20 the licensee knows, or has reason to believe, is clearly in
21 violation of this chapter or of the rules of the department or
22 the board.

23 (g) Aiding, assisting, procuring, or advising any
24 unlicensed person to practice dentistry or dental hygiene
25 contrary to this chapter or to a rule of the department or the
26 board.

27 (h) Being employed by any corporation, organization,
28 group, or person other than a dentist or a professional
29 corporation or limited liability company composed of dentists
30 to practice dentistry.

31

1 (i) Failing to perform any statutory or legal
2 obligation placed upon a licensee.

3 (j) Making or filing a report which the licensee knows
4 to be false, failing to file a report or record required by
5 state or federal law, knowingly impeding or obstructing such
6 filing or inducing another person to do so. Such reports or
7 records shall include only those which are signed in the
8 capacity as a licensee.

9 (k) Committing any act which would constitute sexual
10 battery, as defined in chapter 794, upon a patient or
11 intentionally touching the sexual organ of a patient.

12 (l) Making deceptive, untrue, or fraudulent
13 representations in or related to the practice of dentistry.

14 (m) Failing to keep written dental records and medical
15 history records justifying the course of treatment of the
16 patient including, but not limited to, patient histories,
17 examination results, test results, and X rays, if taken.

18 (n) Failing to make available to a patient or client,
19 or to her or his legal representative or to the department if
20 authorized in writing by the patient, copies of documents in
21 the possession or under control of the licensee which relate
22 to the patient or client.

23 (o) Performing professional services which have not
24 been duly authorized by the patient or client, or her or his
25 legal representative, except as provided in ss. 766.103 and
26 768.13.

27 (p) Prescribing, procuring, dispensing, administering,
28 mixing, or otherwise preparing a legend drug, including any
29 controlled substance, other than in the course of the
30 professional practice of the dentist. For the purposes of
31 this paragraph, it shall be legally presumed that prescribing,

1 procuring, dispensing, administering, mixing, or otherwise
2 preparing legend drugs, including all controlled substances,
3 in excessive or inappropriate quantities is not in the best
4 interest of the patient and is not in the course of the
5 professional practice of the dentist, without regard to her or
6 his intent.

7 (q) Prescribing, procuring, dispensing, or
8 administering any medicinal drug appearing on any schedule set
9 forth in chapter 893, by a dentist to herself or himself,
10 except those prescribed, dispensed, or administered to the
11 dentist by another practitioner authorized to prescribe them.

12 (r) Prescribing, procuring, ordering, dispensing,
13 administering, supplying, selling, or giving any drug which is
14 a Schedule II amphetamine or a Schedule II sympathomimetic
15 amine drug or a compound thereof, pursuant to chapter 893, to
16 or for any person except for the clinical investigation of the
17 effects of such drugs or compounds when an investigative
18 protocol therefor is submitted to, and reviewed and approved
19 by, the board before such investigation is begun.

20 (s) Being unable to practice her or his profession
21 with reasonable skill and safety to patients by reason of
22 illness or use of alcohol, drugs, narcotics, chemicals, or any
23 other type of material or as a result of any mental or
24 physical condition. In enforcing this paragraph, the
25 department shall have, upon a finding of the secretary or her
26 or his designee that probable cause exists to believe that the
27 licensee is unable to practice dentistry or dental hygiene
28 because of the reasons stated in this paragraph, the authority
29 to issue an order to compel a licensee to submit to a mental
30 or physical examination by physicians designated by the
31 department. If the licensee refuses to comply with such

1 order, the department's order directing such examination may
2 be enforced by filing a petition for enforcement in the
3 circuit court where the licensee resides or does business.
4 The licensee against whom the petition is filed shall not be
5 named or identified by initials in any public court records or
6 documents, and the proceedings shall be closed to the public.
7 The department shall be entitled to the summary procedure
8 provided in s. 51.011. A licensee affected under this
9 paragraph shall at reasonable intervals be afforded an
10 opportunity to demonstrate that she or he can resume the
11 competent practice of her or his profession with reasonable
12 skill and safety to patients.

13 (t) Fraud, deceit, or misconduct in the practice of
14 dentistry or dental hygiene.

15 (u) Failure to provide and maintain reasonable
16 sanitary facilities and conditions.

17 (v) Failure to provide adequate radiation safeguards.

18 (w) Performing any procedure or prescribing any
19 therapy which, by the prevailing standards of dental practice
20 in the community, would constitute experimentation on human
21 subjects, without first obtaining full, informed, and written
22 consent.

23 (x) Being guilty of incompetence or negligence by
24 failing to meet the minimum standards of performance in
25 diagnosis and treatment when measured against generally
26 prevailing peer performance, including, but not limited to,
27 the undertaking of diagnosis and treatment for which the
28 dentist is not qualified by training or experience or being
29 guilty of dental malpractice. For purposes of this paragraph,
30 it shall be legally presumed that a dentist is not guilty of
31 incompetence or negligence by declining to treat an individual

1 if, in the dentist's professional judgment, the dentist or a
2 member of her or his clinical staff is not qualified by
3 training and experience, or the dentist's treatment facility
4 is not clinically satisfactory or properly equipped to treat
5 the unique characteristics and health status of the dental
6 patient, provided the dentist refers the patient to a
7 qualified dentist or facility for appropriate treatment. As
8 used in this paragraph, "dental malpractice" includes, but is
9 not limited to, three or more claims within the previous
10 5-year period which resulted in indemnity being paid, or any
11 single indemnity paid in excess of \$5,000 in a judgment or
12 settlement, as a result of negligent conduct on the part of
13 the dentist.

14 (y) Practicing or offering to practice beyond the
15 scope permitted by law or accepting and performing
16 professional responsibilities which the licensee knows or has
17 reason to know that she or he is not competent to perform.

18 (z) Delegating professional responsibilities to a
19 person who is not qualified by training, experience, or
20 licensure to perform them.

21 (aa) ~~The violation or the repeated violation of this~~
22 ~~chapter, chapter 456, or any rule promulgated pursuant to~~
23 ~~chapter 456 or this chapter; the violation~~ of a lawful order
24 of the board or department previously entered in a
25 disciplinary hearing; or failure to comply with a lawfully
26 issued subpoena of the board or department.

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

31

1 (cc) Being adjudged mentally incompetent in this or
2 any other state, the discipline for which shall last only so
3 long as the adjudication.

4 (dd) Presigning blank prescription or laboratory work
5 order forms.

6 (ee) Prescribing, ordering, dispensing, administering,
7 supplying, selling, or giving growth hormones, testosterone or
8 its analogs, human chorionic gonadotropin (HCG), or other
9 hormones for the purpose of muscle building or to enhance
10 athletic performance. For the purposes of this subsection, the
11 term "muscle building" does not include the treatment of
12 injured muscle. A prescription written for the drug products
13 listed above may be dispensed by the pharmacist with the
14 presumption that the prescription is for legitimate medical
15 use.

16 (ff) Operating or causing to be operated a dental
17 office in such a manner as to result in dental treatment that
18 is below minimum acceptable standards of performance for the
19 community. This includes, but is not limited to, the use of
20 substandard materials or equipment, the imposition of time
21 limitations within which dental procedures are to be
22 performed, or the failure to maintain patient records as
23 required by this chapter.

24 (gg) Administering anesthesia in a manner which
25 violates rules of the board adopted pursuant to s. 466.017.

26 (hh) Failing to report to the department any licensee
27 under chapter 458 or chapter 459 who the dentist knows has
28 violated the grounds for disciplinary action set out in the
29 law under which that person is licensed and who provides
30 health care services in a facility licensed under chapter 395,
31

1 or a health maintenance organization certificated under part I
2 of chapter 641, in which the dentist also provides services.

3 (ii) Failing to report to the board, in writing,
4 within 30 days if action has been taken against one's license
5 to practice dentistry in another state, territory, or country.

6 (jj) Advertising specialty services in violation of
7 this chapter.

8 (kk) Allowing any person other than another dentist or
9 a professional corporation or limited liability company
10 composed of dentists to direct, control, or interfere with a
11 dentist's clinical judgment; however, this paragraph may not
12 be construed to limit a patient's right of informed consent.
13 To direct, control, or interfere with a dentist's clinical
14 judgment may not be interpreted to mean dental services
15 contractually excluded, the application of alternative
16 benefits that may be appropriate given the dentist's
17 prescribed course of treatment, or the application of
18 contractual provisions and scope of coverage determinations in
19 comparison with a dentist's prescribed treatment on behalf of
20 a covered person by an insurer, health maintenance
21 organization, or a prepaid limited health service
22 organization.

23 (ll) Violating any provision of this chapter or
24 chapter 456, or any rules adopted pursuant thereto.

25 (2) The board may enter an order denying licensure or
26 imposing any of the penalties in s. 456.072(2) against any
27 applicant for licensure or licensee who is found guilty of
28 violating any provision of subsection (1) of this section or
29 who is found guilty of violating any provision of s.
30 456.072(1).~~When the board finds any applicant or licensee~~
31 ~~guilty of any of the grounds set forth in subsection (1), it~~

1 ~~may enter an order imposing one or more of the following~~
2 ~~penalties:~~
3 ~~(a) Denial of an application for licensure.~~
4 ~~(b) Revocation or suspension of a license.~~
5 ~~(c) Imposition of an administrative fine not to exceed~~
6 ~~\$3,000 for each count or separate offense.~~
7 ~~(d) Issuance of a reprimand.~~
8 ~~(e) Placement of the licensee on probation for a~~
9 ~~period of time and subject to such conditions as the board may~~
10 ~~specify, including requiring the licensee to attend continuing~~
11 ~~education courses or demonstrate competency through a written~~
12 ~~or practical examination or to work under the supervision of~~
13 ~~another licensee.~~

14 ~~(f) Restricting the authorized scope of practice.~~

15 Section 30. Section 466.037, Florida Statutes, is
16 amended to read:

17 466.037 Suspension and revocation; administrative
18 fine.--The department may suspend or revoke the certificate of
19 any dental laboratory registered under s. 466.032, for failing
20 to comply with the provisions of this chapter or rules adopted
21 by the department under this chapter. The department may
22 impose an administrative fine ~~not to exceed \$500 for each~~
23 ~~count or separate offense.~~

24 Section 31. Subsections (1) and (2) of section
25 467.203, Florida Statutes, are amended to read:

26 467.203 Disciplinary actions; penalties.--

27 (1) The following acts constitute ~~shall be~~ grounds for
28 denial of a license or disciplinary action, as specified in s.
29 456.072(2)disciplinary action as set forth in this section:

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1 (a) Procuring, attempting to procure, or renewing a
2 license to practice midwifery by bribery, by fraudulent
3 misrepresentation, or through an error of the department.

4 (b) Having a license to practice midwifery revoked,
5 suspended, or otherwise acted against, including being denied
6 licensure, by the licensing authority of another state,
7 territory, or country.

8 (c) Being convicted or found guilty, regardless of
9 adjudication, in any jurisdiction of a crime which directly
10 relates to the practice of midwifery or to the ability to
11 practice midwifery. A plea of nolo contendere shall be
12 considered a conviction for purposes of this provision.

13 (d) Making or filing a false report or record, which
14 the licensee knows to be false; intentionally or negligently
15 failing to file a report or record required by state or
16 federal law; or willfully impeding or obstructing such filing
17 or inducing another to do so. Such reports or records shall
18 include only those which are signed in the midwife's capacity
19 as a licensed midwife.

20 (e) Advertising falsely, misleadingly, or deceptively.

21 (f) Engaging in unprofessional conduct, which
22 includes, but is not limited to, any departure from, or the
23 failure to conform to, the standards of practice of midwifery
24 as established by the department, in which case actual injury
25 need not be established.

26 (g) Being unable to practice midwifery with reasonable
27 skill and safety to patients by reason of illness;
28 drunkenness; or use of drugs, narcotics, chemicals, or other
29 materials or as a result of any mental or physical condition.
30 A midwife affected under this paragraph shall, at reasonable
31 intervals, be afforded an opportunity to demonstrate that he

1 or she can resume the competent practice of midwifery with
2 reasonable skill and safety.

3 (h) Failing to report to the department any person who
4 the licensee knows is in violation of this chapter or of the
5 rules of the department.

6 ~~(i) Willfully or repeatedly Violating any provision of~~
7 ~~this chapter, any rule of the department, or any lawful order~~
8 ~~of the department previously entered in a disciplinary~~
9 ~~proceeding or failing to comply with a lawfully issued~~
10 ~~subpoena of the department.~~

11 (j) Violating any provision of this chapter or chapter
12 456, or any rules adopted pursuant thereto.

13 (2) The department may enter an order denying
14 licensure or imposing any of the penalties in s. 456.072(2)
15 against any applicant for licensure or licensee who is found
16 guilty of violating any provision of subsection (1) of this
17 section or who is found guilty of violating any provision of
18 s. 456.072(1).~~When the department finds any person guilty of~~
19 ~~any of the grounds set forth in subsection (1), it may enter~~
20 ~~an order imposing one or more of the following penalties:~~

21 ~~(a) Refusal to approve an application for licensure.~~

22 ~~(b) Revocation or suspension of a license.~~

23 ~~(c) Imposition of an administrative fine not to exceed~~
24 ~~\$1,000 for each count or separate offense.~~

25 ~~(d) Issuance of a reprimand.~~

26 ~~(e) Placement of the midwife on probation for such~~
27 ~~period of time and subject to such conditions as the~~
28 ~~department may specify, including requiring the midwife to~~
29 ~~submit to treatment; undertake further relevant education or~~
30 ~~training; take an examination; or work under the supervision~~

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1 ~~of another licensed midwife, a physician, or a nurse midwife~~
2 ~~licensed under part I of chapter 464.~~

3 Section 32. Subsections (1) and (2) of section
4 468.1295, Florida Statutes, are amended to read:

5 468.1295 Disciplinary proceedings.--

6 (1) The following acts constitute grounds for denial
7 of a license or disciplinary action, as specified in s.
8 456.072(2)~~both disciplinary actions as set forth in~~
9 ~~subsection (2) and cease and desist or other related actions~~
10 ~~by the department as set forth in s. 456.065:~~

11 (a) Procuring or attempting to procure a license by
12 bribery, by fraudulent misrepresentation, or through an error
13 of the department or the board.

14 (b) Having a license revoked, suspended, or otherwise
15 acted against, including denial of licensure, by the licensing
16 authority of another state, territory, or country.

17 (c) Being convicted or found guilty of, or entering a
18 plea of nolo contendere to, regardless of adjudication, a
19 crime in any jurisdiction which directly relates to the
20 practice of speech-language pathology or audiology.

21 (d) Making or filing a report or record which the
22 licensee knows to be false, intentionally or negligently
23 failing to file a report or records required by state or
24 federal law, willfully impeding or obstructing such filing, or
25 inducing another person to impede or obstruct such filing.
26 Such report or record shall include only those reports or
27 records which are signed in one's capacity as a licensed
28 speech-language pathologist or audiologist.

29 (e) Advertising goods or services in a manner which is
30 fraudulent, false, deceptive, or misleading in form or
31 content.

1 (f) Being proven guilty of fraud or deceit or of
2 negligence, incompetency, or misconduct in the practice of
3 speech-language pathology or audiology.

4 (g) Violating a lawful order of the board or
5 department previously entered in a disciplinary hearing, or
6 failing to comply with a lawfully issued subpoena of the board
7 or department.

8 (h) Practicing with a revoked, suspended, inactive, or
9 delinquent license.

10 (i) Using, or causing or promoting the use of, any
11 advertising matter, promotional literature, testimonial,
12 guarantee, warranty, label, brand, insignia, or other
13 representation, however disseminated or published, which is
14 misleading, deceiving, or untruthful.

15 (j) Showing or demonstrating or, in the event of sale,
16 delivery of a product unusable or impractical for the purpose
17 represented or implied by such action.

18 (k) Failing to submit to the board on an annual basis,
19 or such other basis as may be provided by rule, certification
20 of testing and calibration of such equipment as designated by
21 the board and on the form approved by the board.

22 (l) Aiding, assisting, procuring, employing, or
23 advising any licensee or business entity to practice
24 speech-language pathology or audiology contrary to this part,
25 chapter 456, or any rule adopted pursuant thereto.

26 ~~(m) Violating any provision of this part or chapter~~
27 ~~456 or any rule adopted pursuant thereto.~~

28 (m)~~(n)~~ Misrepresenting the professional services
29 available in the fitting, sale, adjustment, service, or repair
30 of a hearing aid, or using any other term or title which might
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1 connote the availability of professional services when such
2 use is not accurate.

3 (n)~~(o)~~ Representing, advertising, or implying that a
4 hearing aid or its repair is guaranteed without providing full
5 disclosure of the identity of the guarantor; the nature,
6 extent, and duration of the guarantee; and the existence of
7 conditions or limitations imposed upon the guarantee.

8 (o)~~(p)~~ Representing, directly or by implication, that
9 a hearing aid utilizing bone conduction has certain specified
10 features, such as the absence of anything in the ear or
11 leading to the ear, or the like, without disclosing clearly
12 and conspicuously that the instrument operates on the bone
13 conduction principle and that in many cases of hearing loss
14 this type of instrument may not be suitable.

15 (p)~~(q)~~ Stating or implying that the use of any hearing
16 aid will improve or preserve hearing or prevent or retard the
17 progression of a hearing impairment or that it will have any
18 similar or opposite effect.

19 (q)~~(r)~~ Making any statement regarding the cure of the
20 cause of a hearing impairment by the use of a hearing aid.

21 (r)~~(s)~~ Representing or implying that a hearing aid is
22 or will be "custom-made," "made to order," or
23 "prescription-made," or in any other sense specially
24 fabricated for an individual, when such is not the case.

25 (s)~~(t)~~ Canvassing from house to house or by telephone,
26 either in person or by an agent, for the purpose of selling a
27 hearing aid, except that contacting persons who have evidenced
28 an interest in hearing aids, or have been referred as in need
29 of hearing aids, shall not be considered canvassing.

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1 (t)~~(u)~~ Failing to notify the department in writing of
2 a change in current mailing and place-of-practice address
3 within 30 days after such change.

4 (u)~~(v)~~ Failing to provide all information as described
5 in ss. 468.1225(5)(b), 468.1245(1), and 468.1246.

6 (v)~~(w)~~ Exercising influence on a client in such a
7 manner as to exploit the client for financial gain of the
8 licensee or of a third party.

9 (w)~~(x)~~ Practicing or offering to practice beyond the
10 scope permitted by law or accepting and performing
11 professional responsibilities the licensee or
12 certificateholder knows, or has reason to know, the licensee
13 or certificateholder is not competent to perform.

14 (x)~~(y)~~ Aiding, assisting, procuring, or employing any
15 unlicensed person to practice speech-language pathology or
16 audiology.

17 (y)~~(z)~~ Delegating or contracting for the performance
18 of professional responsibilities by a person when the licensee
19 delegating or contracting for performance of such
20 responsibilities knows, or has reason to know, such person is
21 not qualified by training, experience, and authorization to
22 perform them.

23 (z)~~(aa)~~ Committing any act upon a patient or client
24 which would constitute sexual battery or which would
25 constitute sexual misconduct as defined pursuant to s.
26 468.1296.

27 (aa)~~(bb)~~ Being unable to practice the profession for
28 which he or she is licensed or certified under this chapter
29 with reasonable skill or competence as a result of any mental
30 or physical condition or by reason of illness, drunkenness, or
31 use of drugs, narcotics, chemicals, or any other substance. In

1 enforcing this paragraph, upon a finding by the secretary, his
2 or her designee, or the board that probable cause exists to
3 believe that the licensee or certificateholder is unable to
4 practice the profession because of the reasons stated in this
5 paragraph, the department shall have the authority to compel a
6 licensee or certificateholder to submit to a mental or
7 physical examination by a physician, psychologist, clinical
8 social worker, marriage and family therapist, or mental health
9 counselor designated by the department or board. If the
10 licensee or certificateholder refuses to comply with the
11 department's order directing the examination, such order may
12 be enforced by filing a petition for enforcement in the
13 circuit court in the circuit in which the licensee or
14 certificateholder resides or does business. The department
15 shall be entitled to the summary procedure provided in s.
16 51.011. A licensee or certificateholder affected under this
17 paragraph shall at reasonable intervals be afforded an
18 opportunity to demonstrate that he or she can resume the
19 competent practice for which he or she is licensed or
20 certified with reasonable skill and safety to patients.

21 (bb) Violating any provision of this chapter or
22 chapter 456, or any rules adopted pursuant thereto.

23 (2) The board may enter an order denying licensure or
24 imposing any of the penalties in s. 456.072(2) against any
25 applicant for licensure or licensee who is found guilty of
26 violating any provision of subsection (1) of this section or
27 who is found guilty of violating any provision of s.
28 ~~456.072(1). When the board finds any person guilty of any of~~
29 ~~the acts set forth in subsection (1), it may issue an order~~
30 ~~imposing one or more of the following penalties:~~

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1 ~~(a) Refusal to certify, or to certify with~~
2 ~~restrictions, an application for licensure.~~

3 ~~(b) Suspension or permanent revocation of a license.~~

4 ~~(c) Issuance of a reprimand.~~

5 ~~(d) Restriction of the authorized scope of practice.~~

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

8 ~~(f) Placement of the licensee or certificateholder on~~
9 ~~probation for a period of time and subject to such conditions~~
10 ~~as the board may specify. Those conditions may include, but~~
11 ~~are not limited to, requiring the licensee or~~
12 ~~certificateholder to undergo treatment, attend continuing~~
13 ~~education courses, submit to be reexamined, work under the~~
14 ~~supervision of another licensee, or satisfy any terms which~~
15 ~~are reasonably tailored to the violation found.~~

16 ~~(g) Corrective action.~~

17 Section 33. Subsections (1) and (2) of section
18 468.1755, Florida Statutes, are amended to read:

19 468.1755 Disciplinary proceedings.--

20 (1) The following acts ~~shall~~ constitute grounds for
21 denial of a license or disciplinary action, as specified in s.
22 456.072(2),~~which the disciplinary actions in subsection (2)~~
23 ~~may be taken:~~

24 (a) Violation of any provision of s. 456.072(1) or s.
25 468.1745(1).

26 (b) Attempting to procure a license to practice
27 nursing home administration by bribery, by fraudulent
28 misrepresentation, or through an error of the department or
29 the board.

30 (c) Having a license to practice nursing home
31 administration revoked, suspended, or otherwise acted against,

1 including the denial of licensure, by the licensing authority
2 of another state, territory, or country.

3 (d) Being convicted or found guilty, regardless of
4 adjudication, of a crime in any jurisdiction which relates to
5 the practice of nursing home administration or the ability to
6 practice nursing home administration. Any plea of nolo
7 contendere shall be considered a conviction for purposes of
8 this part.

9 (e) Making or filing a report or record which the
10 licensee knows to be false, intentionally failing to file a
11 report or record required by state or federal law, willfully
12 impeding or obstructing such filing, or inducing another
13 person to impede or obstruct such filing. Such reports or
14 records shall include only those which are signed in the
15 capacity of a licensed nursing home administrator.

16 (f) Authorizing the discharge or transfer of a
17 resident for a reason other than those provided in ss. 400.022
18 and 400.0255.

19 (g) Advertising goods or services in a manner which is
20 fraudulent, false, deceptive, or misleading in form or
21 content.

22 (h) Fraud or deceit, negligence, incompetence, or
23 misconduct in the practice of nursing home administration.

24 ~~(i) A violation or repeated violations of this part,~~
25 ~~chapter 456, or any rules promulgated pursuant thereto.~~

26 (i)~~(j)~~ Violation of a lawful order of the board or
27 department previously entered in a disciplinary hearing or
28 failing to comply with a lawfully issued subpoena of the board
29 or department.

30 (j)~~(k)~~ Practicing with a revoked, suspended, inactive,
31 or delinquent license.

1 (k)~~(l)~~ Repeatedly acting in a manner inconsistent with
2 the health, safety, or welfare of the patients of the facility
3 in which he or she is the administrator.

4 (l)~~(m)~~ Being unable to practice nursing home
5 administration with reasonable skill and safety to patients by
6 reason of illness, drunkenness, use of drugs, narcotics,
7 chemicals, or any other material or substance or as a result
8 of any mental or physical condition. In enforcing this
9 paragraph, upon a finding of the secretary or his or her
10 designee that probable cause exists to believe that the
11 licensee is unable to serve as a nursing home administrator
12 due to the reasons stated in this paragraph, the department
13 shall have the authority to issue an order to compel the
14 licensee to submit to a mental or physical examination by a
15 physician designated by the department. If the licensee
16 refuses to comply with such order, the department's order
17 directing such examination may be enforced by filing a
18 petition for enforcement in the circuit court where the
19 licensee resides or serves as a nursing home administrator.
20 The licensee against whom the petition is filed shall not be
21 named or identified by initials in any public court records or
22 documents, and the proceedings shall be closed to the public.
23 The department shall be entitled to the summary procedure
24 provided in s. 51.011. A licensee affected under this
25 paragraph shall have the opportunity, at reasonable intervals,
26 to demonstrate that he or she can resume the competent
27 practice of nursing home administration with reasonable skill
28 and safety to patients.

29 (m)~~(n)~~ Willfully or repeatedly violating any of the
30 provisions of the law, code, or rules of the licensing or
31 supervising authority or agency of the state or political

1 subdivision thereof having jurisdiction of the operation and
2 licensing of nursing homes.

3 (n)~~(o)~~ Paying, giving, causing to be paid or given, or
4 offering to pay or to give to any person a commission or other
5 valuable consideration for the solicitation or procurement,
6 either directly or indirectly, of nursing home usage.

7 (o)~~(p)~~ Willfully permitting unauthorized disclosure of
8 information relating to a patient or his or her records.

9 (p)~~(q)~~ Discriminating with respect to patients,
10 employees, or staff on account of race, religion, color, sex,
11 or national origin.

12 (q) Violating any provision of this chapter or chapter
13 456, or any rules adopted pursuant thereto.

14 (2) The board may enter an order denying licensure or
15 imposing any of the penalties in s. 456.072(2) against any
16 applicant for licensure or licensee who is found guilty of
17 violating any provision of subsection (1) of this section or
18 who is found guilty of violating any provision of s.

19 456.072(1).~~When the board finds any nursing home~~
20 ~~administrator guilty of any of the grounds set forth in~~
21 ~~subsection (1), it may enter an order imposing one or more of~~
22 ~~the following penalties:~~

23 ~~(a) Denial of an application for licensure.~~

24 ~~(b) Revocation or suspension of a license.~~

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

27 ~~(d) Issuance of a reprimand.~~

28 ~~(e) Placement of the licensee on probation for a~~
29 ~~period of time and subject to such conditions as the board may~~
30 ~~specify, including requiring the licensee to attend continuing~~

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1 ~~education courses or to work under the supervision of another~~
2 ~~licensee.~~

3 ~~(f) Restriction of the authorized scope of practice.~~

4 Section 34. Section 468.217, Florida Statutes, is
5 amended to read:

6 468.217 Denial of or refusal to renew license;
7 suspension and revocation of license and other disciplinary
8 measures.--

9 (1) The following acts constitute grounds for denial
10 of a license or disciplinary action, as specified in s.

11 456.072(2)~~The board may deny or refuse to renew a license,~~
12 ~~suspend or revoke a license, issue a reprimand, impose a fine,~~
13 ~~or impose probationary conditions upon a licensee, when the~~
14 ~~licensee or applicant for license has been guilty of~~
15 ~~unprofessional conduct which has endangered, or is likely to~~
16 ~~endanger, the health, welfare, or safety of the public. Such~~
17 ~~unprofessional conduct includes:~~

18 (a) Attempting to obtain, obtaining, or renewing a
19 license to practice occupational therapy by bribery, by
20 fraudulent misrepresentation, or through an error of the
21 department or the board.

22 (b) Having a license to practice occupational therapy
23 revoked, suspended, or otherwise acted against, including the
24 denial of licensure, by the licensing authority of another
25 state, territory, or country.

26 (c) Being convicted or found guilty, regardless of
27 adjudication, of a crime in any jurisdiction which directly
28 relates to the practice of occupational therapy or to the
29 ability to practice occupational therapy. A plea of nolo
30 contendere shall be considered a conviction for the purposes
31 of this part.

- 1 (d) False, deceptive, or misleading advertising.
- 2 (e) Advertising, practicing, or attempting to practice
3 under a name other than one's own name.
- 4 (f) Failing to report to the department any person who
5 the licensee knows is in violation of this part or of the
6 rules of the department or of the board.
- 7 (g) Aiding, assisting, procuring, or advising any
8 unlicensed person to practice occupational therapy contrary to
9 this part or to a rule of the department or the board.
- 10 (h) Failing to perform any statutory or legal
11 obligation placed upon a licensed occupational therapist or
12 occupational therapy assistant.
- 13 (i) Making or filing a report which the licensee knows
14 to be false, intentionally or negligently failing to file a
15 report or record required by state or federal law, willfully
16 impeding or obstructing such filing or inducing another person
17 to do so. Such reports or records include only those which
18 are signed in the capacity as a licensed occupational
19 therapist or occupational therapy assistant.
- 20 (j) Paying or receiving any commission, bonus,
21 kickback, or rebate to or from, or engaging in any split-fee
22 arrangement in any form whatsoever with, a physician,
23 organization, agency, or person, either directly or
24 indirectly, for patients referred to providers of health care
25 goods and services, including, but not limited to, hospitals,
26 nursing homes, clinical laboratories, ambulatory surgical
27 centers, or pharmacies. The provisions of this paragraph
28 shall not be construed to prevent an occupational therapist or
29 occupational therapy assistant from receiving a fee for
30 professional consultation services.
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1 (k) Exercising influence within a patient-therapist
2 relationship for purposes of engaging a patient in sexual
3 activity. A patient is presumed to be incapable of giving
4 free, full, and informed consent to sexual activity with the
5 patient's occupational therapist or occupational therapy
6 assistant.

7 (l) Making deceptive, untrue, or fraudulent
8 representations in the practice of occupational therapy or
9 employing a trick or scheme in the practice of occupational
10 therapy if such scheme or trick fails to conform to the
11 generally prevailing standards of treatment in the
12 occupational therapy community.

13 (m) Soliciting patients, either personally or through
14 an agent, through the use of fraud, intimidation, undue
15 influence, or a form of overreaching or vexatious conduct. A
16 "solicitation" is any communication which directly or
17 implicitly requests an immediate oral response from the
18 recipient.

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

22 (o) Exercising influence on the patient or client in
23 such a manner as to exploit the patient or client for
24 financial gain of the licensee or of a third party which
25 includes, but is not limited to, the promoting or selling of
26 services, goods, appliances, or drugs.

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

30 (q) Gross or repeated malpractice or the failure to
31 practice occupational therapy with that level of care, skill,

1 and treatment which is recognized by a reasonably prudent
2 similar occupational therapist or occupational therapy
3 assistant as being acceptable under similar conditions and
4 circumstances.

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

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

13 (t) Being unable to practice occupational therapy with
14 reasonable skill and safety to patients by reason of illness
15 or use of alcohol, drugs, narcotics, chemicals, or any other
16 type of material or as a result of any mental or physical
17 condition. In enforcing this paragraph, the department shall
18 have, upon probable cause, authority to compel an occupational
19 therapist or occupational therapy assistant to submit to a
20 mental or physical examination by physicians designated by the
21 department. The failure of an occupational therapist or
22 occupational therapy assistant to submit to such examination
23 when so directed constitutes an admission of the allegations
24 against him or her, upon which a default and final order may
25 be entered without the taking of testimony or presentation of
26 evidence, unless the failure was due to circumstances beyond
27 his or her control. An occupational therapist or occupational
28 therapy assistant affected under this paragraph shall at
29 reasonable intervals be afforded an opportunity to demonstrate
30 that he or she can resume the competent practice of
31 occupational therapy with reasonable skill and safety to

1 patients. In any proceeding under this paragraph, neither the
2 record of proceedings nor the orders entered by the board
3 shall be used against an occupational therapist or
4 occupational therapy assistant in any other proceeding.

5 (u) Delegating professional responsibilities to a
6 person when the licensee who is delegating such
7 responsibilities knows or has reason to know that such person
8 is not qualified by training, experience, or licensure to
9 perform them.

10 (v) ~~Violating any provision of this part, a rule of~~
11 ~~the board or department, or~~ a lawful order of the board or
12 department previously entered in a disciplinary hearing or
13 failing to comply with a lawfully issued subpoena of the
14 department.

15 (w) Conspiring with another licensee or with any other
16 person to commit an act, or committing an act, which would
17 tend to coerce, intimidate, or preclude another licensee from
18 lawfully advertising his or her services.

19 (x) Violating any provision of this chapter or chapter
20 456, or any rules adopted pursuant thereto.

21 (2) The board may enter an order denying licensure or
22 imposing any of the penalties in s. 456.072(2) against any
23 applicant for licensure or licensee who is found guilty of
24 violating any provision of subsection (1) of this section or
25 who is found guilty of violating any provision of s.
26 456.072(1).

27 (3)~~(2)~~ The board may not reinstate the license of an
28 occupational therapist or occupational therapy assistant, or
29 cause a license to be issued to a person it has deemed
30 unqualified, until such time as the board is satisfied that
31 such person has complied with all the terms and conditions set

1 | forth in the final order and is capable of safely engaging in
2 | the practice of occupational therapy.

3 | Section 35. Subsections (1) and (2) of section
4 | 468.365, Florida Statutes, are amended to read:

5 | 468.365 Disciplinary grounds and actions.--

6 | (1) The following acts constitute grounds for denial
7 | of a license or disciplinary action, as specified in s.
8 | 456.072(2)~~which the disciplinary actions in subsection (2)~~
9 | ~~may be taken:~~

10 | (a) Procuring, attempting to procure, or renewing a
11 | license as provided by this part by bribery, by fraudulent
12 | misrepresentation, or through an error of the department or
13 | the board.

14 | (b) Having licensure, certification, registration, or
15 | other authority, by whatever name known, to deliver
16 | respiratory care services revoked, suspended, or otherwise
17 | acted against, including the denial of licensure,
18 | certification, registration, or other authority to deliver
19 | respiratory care services by the licensing authority of
20 | another state, territory, or country.

21 | (c) Being convicted or found guilty of, or entering a
22 | plea of nolo contendere to, regardless of adjudication, a
23 | crime in any jurisdiction which directly relates to
24 | respiratory care services or to the ability to deliver such
25 | services.

26 | (d) Willfully making or filing a false report or
27 | record, willfully failing to file a report or record required
28 | by state or federal law, or willfully impeding or obstructing
29 | such filing or inducing another person to do so. Such reports
30 | or records include only those reports or records which require
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1 the signature of a respiratory care practitioner or
2 respiratory therapist licensed pursuant to this part.

3 (e) Circulating false, misleading, or deceptive
4 advertising.

5 (f) Unprofessional conduct, which includes, but is not
6 limited to, any departure from, or failure to conform to,
7 acceptable standards related to the delivery of respiratory
8 care services, as set forth by the board in rules adopted
9 pursuant to this part.

10 (g) Engaging or attempting to engage in the
11 possession, sale, or distribution of controlled substances, as
12 set forth by law, for any purpose other than a legitimate
13 purpose.

14 (h) Willfully failing to report any violation of this
15 part.

16 (i) ~~Willfully or repeatedly~~ Violating ~~a rule of the~~
17 ~~board or the department or~~ a lawful order of the board or
18 department previously entered in a disciplinary hearing.

19 ~~(j) Violation of any rule adopted pursuant to this~~
20 ~~part or chapter 456.~~

21 (j)~~(k)~~ Engaging in the delivery of respiratory care
22 services with a revoked, suspended, or inactive license.

23 (k)~~(l)~~ Permitting, aiding, assisting, procuring, or
24 advising any person who is not licensed pursuant to this part,
25 contrary to this part or to any rule of the department or the
26 board.

27 (l)~~(m)~~ Failing to perform any statutory or legal
28 obligation placed upon a respiratory care practitioner or
29 respiratory therapist licensed pursuant to this part.

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1 (m)~~(n)~~ Accepting and performing professional
2 responsibilities which the licensee knows, or has reason to
3 know, she or he is not competent to perform.

4 (n)~~(o)~~ Delegating professional responsibilities to a
5 person when the licensee delegating such responsibilities
6 knows, or has reason to know, that such person is not
7 qualified by training, experience, or licensure to perform
8 them.

9 (o)~~(p)~~ Gross or repeated malpractice or the failure to
10 deliver respiratory care services with that level of care,
11 skill, and treatment which is recognized by a reasonably
12 prudent respiratory care practitioner or respiratory therapist
13 with similar professional training as being acceptable under
14 similar conditions and circumstances.

15 (p)~~(q)~~ Paying or receiving any commission, bonus,
16 kickback, or rebate to or from, or engaging in any split-fee
17 arrangement in any form whatsoever with, a person,
18 organization, or agency, either directly or indirectly, for
19 goods or services rendered to patients referred by or to
20 providers of health care goods and services, including, but
21 not limited to, hospitals, nursing homes, clinical
22 laboratories, ambulatory surgical centers, or pharmacies. The
23 provisions of this paragraph shall not be construed to prevent
24 the licensee from receiving a fee for professional
25 consultation services.

26 (q)~~(r)~~ Exercising influence within a respiratory care
27 relationship for the purpose of engaging a patient in sexual
28 activity. A patient is presumed to be incapable of giving
29 free, full, and informed consent to sexual activity with the
30 patient's respiratory care practitioner or respiratory
31 therapist.

1 (r)~~(s)~~ Making deceptive, untrue, or fraudulent
2 representations in the delivery of respiratory care services
3 or employing a trick or scheme in the delivery of respiratory
4 care services if such a scheme or trick fails to conform to
5 the generally prevailing standards of other licensees within
6 the community.

7 (s)~~(t)~~ Soliciting patients, either personally or
8 through an agent, through the use of fraud, deception, or
9 otherwise misleading statements or through the exercise of
10 intimidation or undue influence.

11 (t)~~(u)~~ Failing to keep written respiratory care
12 records justifying the reason for the action taken by the
13 licensee.

14 (u)~~(v)~~ Exercising influence on the patient in such a
15 manner as to exploit the patient for the financial gain of the
16 licensee or a third party, which includes, but is not limited
17 to, the promoting or selling of services, goods, appliances,
18 or drugs.

19 (v)~~(w)~~ Performing professional services which have not
20 been duly ordered by a physician licensed pursuant to chapter
21 458 or chapter 459 and which are not in accordance with
22 protocols established by the hospital, other health care
23 provider, or the board, except as provided in ss. 743.064,
24 766.103, and 768.13.

25 (w)~~(x)~~ Being unable to deliver respiratory care
26 services with reasonable skill and safety to patients by
27 reason of illness or use of alcohol, drugs, narcotics,
28 chemicals, or any other type of material as a result of any
29 mental or physical condition. In enforcing this paragraph,
30 the department shall, upon probable cause, have authority to
31 compel a respiratory care practitioner or respiratory

1 therapist to submit to a mental or physical examination by
2 physicians designated by the department. The cost of
3 examination shall be borne by the licensee being examined.
4 The failure of a respiratory care practitioner or respiratory
5 therapist to submit to such an examination when so directed
6 constitutes an admission of the allegations against her or
7 him, upon which a default and a final order may be entered
8 without the taking of testimony or presentation of evidence,
9 unless the failure was due to circumstances beyond her or his
10 control. A respiratory care practitioner or respiratory
11 therapist affected under this paragraph shall at reasonable
12 intervals be afforded an opportunity to demonstrate that she
13 or he can resume the competent delivery of respiratory care
14 services with reasonable skill and safety to her or his
15 patients. In any proceeding under this paragraph, neither the
16 record of proceedings nor the orders entered by the board
17 shall be used against a respiratory care practitioner or
18 respiratory therapist in any other proceeding.

19 (x) Violating any provision of this chapter or chapter
20 456, or any rules adopted pursuant thereto.

21 (2) The board may enter an order denying licensure or
22 imposing any of the penalties in s. 456.072(2) against any
23 applicant for licensure or licensee who is found guilty of
24 violating any provision of subsection (1) of this section or
25 who is found guilty of violating any provision of s.

26 ~~456.072(1). If the board finds any person guilty of any of the~~
27 ~~grounds set forth in subsection (1), it may enter an order~~
28 ~~imposing one or more of the following penalties:~~

29 ~~(a) Denial of an application for licensure.~~

30 ~~(b) Revocation or suspension of licensure.~~

31

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

3 ~~(d) Placement of the respiratory care practitioner or~~
4 ~~respiratory therapist on probation for such period of time and~~
5 ~~subject to such conditions as the board may specify,~~
6 ~~including, but not limited to, requiring the respiratory care~~
7 ~~practitioner or respiratory therapist to submit to treatment,~~
8 ~~to attend continuing education courses, or to work under the~~
9 ~~supervision of another respiratory care practitioner or~~
10 ~~respiratory therapist.~~

11 ~~(e) Issuance of a reprimand.~~

12 Section 36. Subsections (1) and (2) of section
13 468.518, Florida Statutes, are amended to read:

14 468.518 Grounds for disciplinary action.--

15 (1) The following acts constitute grounds for denial
16 of a license or disciplinary action, as specified in s.
17 456.072(2)~~which the disciplinary actions in subsection (2)~~
18 ~~may be taken:~~

19 (a) Violating any provision of this part, any board or
20 agency rule adopted pursuant thereto, or any lawful order of
21 the board or agency previously entered in a disciplinary
22 hearing held pursuant to this part, or failing to comply with
23 a lawfully issued subpoena of the agency. The provisions of
24 this paragraph also apply to any order or subpoena previously
25 issued by the Department of Health during its period of
26 regulatory control over this part.

27 (b) Being unable to engage in dietetics and nutrition
28 practice or nutrition counseling with reasonable skill and
29 safety to patients by reason of illness or use of alcohol,
30 drugs, narcotics, chemicals, or any other type of material or
31 as a result of any mental or physical condition.

1 1. A licensee whose license is suspended or revoked
2 pursuant to this paragraph shall, at reasonable intervals, be
3 given an opportunity to demonstrate that he or she can resume
4 the competent practice of dietetics and nutrition or nutrition
5 counseling with reasonable skill and safety to patients.

6 2. Neither the record of the proceeding nor the orders
7 entered by the board in any proceeding under this paragraph
8 may be used against a licensee in any other proceeding.

9 (c) Attempting to procure or procuring a license to
10 practice dietetics and nutrition or nutrition counseling by
11 fraud or material misrepresentation of material fact.

12 (d) Having a license to practice dietetics and
13 nutrition or nutrition counseling revoked, suspended, or
14 otherwise acted against, including the denial of licensure by
15 the licensing authority of another state, district, territory,
16 or country.

17 (e) Being convicted or found guilty of, or entering a
18 plea of nolo contendere to, regardless of adjudication, a
19 crime in any jurisdiction which directly relates to the
20 practice of dietetics and nutrition or nutrition counseling or
21 the ability to practice dietetics and nutrition or nutrition
22 counseling.

23 (f) Making or filing a report or record that the
24 licensee knows to be false, willfully failing to file a report
25 or record required by state or federal law, willfully impeding
26 or obstructing such filing, or inducing another person to
27 impede or obstruct such filing. Such reports or records
28 include only those that are signed in the capacity of a
29 licensed dietitian/nutritionist or licensed nutrition
30 counselor.

31

1 (g) Advertising goods or services in a manner that is
2 fraudulent, false, deceptive, or misleading in form or
3 content.

4 (h) Committing an act of fraud or deceit, or of
5 negligence, incompetency, or misconduct in the practice of
6 dietetics and nutrition or nutrition counseling.

7 (i) Practicing with a revoked, suspended, inactive, or
8 delinquent license.

9 (j) Treating or undertaking to treat human ailments by
10 means other than by dietetics and nutrition practice or
11 nutrition counseling.

12 (k) Failing to maintain acceptable standards of
13 practice as set forth by the board and the council in rules
14 adopted pursuant to this part.

15 (l) Engaging directly or indirectly in the dividing,
16 transferring, assigning, rebating, or refunding of fees
17 received for professional services, or profiting by means of a
18 credit or other valuable consideration, such as an unearned
19 commission, discount, or gratuity, with any person referring a
20 patient or with any relative or business associate of the
21 referring person. Nothing in this part prohibits the members
22 of any regularly and properly organized business entity that
23 is composed of licensees under this part and recognized under
24 the laws of this state from making any division of their total
25 fees among themselves as they determine necessary.

26 (m) Advertising, by or on behalf of a licensee under
27 this part, any method of assessment or treatment which is
28 experimental or without generally accepted scientific
29 validation.

30 (n) Violating any provision of this chapter or chapter
31 456, or any rules adopted pursuant thereto.

1 (2) The board may enter an order denying licensure or
2 imposing any of the penalties in s. 456.072(2) against any
3 applicant for licensure or licensee who is found guilty of
4 violating any provision of subsection (1) of this section or
5 who is found guilty of violating any provision of s.
6 ~~456.072(1).When the board finds any licensee guilty of any of~~
7 ~~the grounds set forth in subsection (1), it may enter an order~~
8 ~~imposing one or more of the following penalties:~~

9 ~~(a) Denial of an application for licensure;~~

10 ~~(b) Revocation or suspension of a license;~~

11 ~~(c) Imposition of an administrative fine not to exceed~~
12 ~~\$1,000 for each violation;~~

13 ~~(d) Issuance of a reprimand or letter of guidance;~~

14 ~~(e) Placement of the licensee on probation for a~~
15 ~~period of time and subject to such conditions as the board may~~
16 ~~specify, including requiring the licensee to attend continuing~~
17 ~~education courses or to work under the supervision of a~~
18 ~~licensed dietitian/nutritionist or licensed nutrition~~
19 ~~counselor; or~~

20 ~~(f) Restriction of the authorized scope of practice of~~
21 ~~the licensee.~~

22 Section 37. Section 468.719, Florida Statutes, is
23 amended to read:

24 468.719 Disciplinary actions.--

25 (1) The following acts constitute ~~shall be~~ grounds for
26 denial of a license or disciplinary action, as specified in s.
27 456.072(2)disciplinary actions provided for in subsection
28 ~~(2):~~

29 ~~(a) A violation of any law relating to the practice of~~
30 ~~athletic training, including, but not limited to, any~~

31

1 ~~violation of this part, s. 456.072, or any rule adopted~~
2 ~~pursuant thereto.~~

3 (a)~~(b)~~ Failing to include the athletic trainer's name
4 and license number in any advertising, including, but not
5 limited to, business cards and letterhead, related to the
6 practice of athletic training. Advertising shall not include
7 clothing or other novelty items.

8 (b)~~(c)~~ Committing incompetency or misconduct in the
9 practice of athletic training.

10 (c)~~(d)~~ Committing fraud or deceit in the practice of
11 athletic training.

12 (d)~~(e)~~ Committing negligence, gross negligence, or
13 repeated negligence in the practice of athletic training.

14 (e)~~(f)~~ While practicing athletic training, being
15 unable to practice athletic training with reasonable skill and
16 safety to athletes by reason of illness or use of alcohol or
17 drugs or as a result of any mental or physical condition.

18 (f) Violating any provision of this chapter or chapter
19 456, or any rules adopted pursuant thereto.

20 (2) The board may enter an order denying licensure or
21 imposing any of the penalties in s. 456.072(2) against any
22 applicant for licensure or licensee who is found guilty of
23 violating any provision of subsection (1) of this section or
24 who is found guilty of violating any provision of s.
25 456.072(1).~~When the board finds any person guilty of any of~~
26 ~~the acts set forth in subsection (1), the board may enter an~~
27 ~~order imposing one or more of the penalties provided in s.~~
28 ~~456.072.~~

29 Section 38. Section 468.811, Florida Statutes, is
30 amended to read:

31 468.811 Disciplinary proceedings.--

1 (1) The following acts constitute ~~are~~ grounds for
2 denial of a license or disciplinary action, as specified in s.
3 456.072(2):disciplinary action against a licensee and the
4 ~~issuance of cease and desist orders or other related action by~~
5 ~~the department, pursuant to s. 456.072, against any person who~~
6 ~~engages in or aids in a violation.~~

7 (a) Attempting to procure a license by fraudulent
8 misrepresentation.

9 (b) Having a license to practice orthotics,
10 prosthetics, or pedorthics revoked, suspended, or otherwise
11 acted against, including the denial of licensure in another
12 jurisdiction.

13 (c) Being convicted or found guilty of or pleading
14 nolo contendere to, regardless of adjudication, in any
15 jurisdiction, a crime that directly relates to the practice of
16 orthotics, prosthetics, or pedorthics, including violations of
17 federal laws or regulations regarding orthotics, prosthetics,
18 or pedorthics.

19 (d) Filing a report or record that the licensee knows
20 is false, intentionally or negligently failing to file a
21 report or record required by state or federal law, willfully
22 impeding or obstructing such filing, or inducing another
23 person to impede or obstruct such filing. Such reports or
24 records include only reports or records that are signed in a
25 person's capacity as a licensee under this act.

26 (e) Advertising goods or services in a fraudulent,
27 false, deceptive, or misleading manner.

28 ~~(f) Violation of this act or chapter 456, or any rules~~
29 ~~adopted thereunder.~~

30 (f)(g) Violation of an order of the board, agency, or
31 department previously entered in a disciplinary hearing or

1 failure to comply with a subpoena issued by the board, agency,
2 or department.

3 (g)~~(h)~~ Practicing with a revoked, suspended, or
4 inactive license.

5 (h)~~(i)~~ Gross or repeated malpractice or the failure to
6 deliver orthotic, prosthetic, or pedorthic services with that
7 level of care and skill which is recognized by a reasonably
8 prudent licensed practitioner with similar professional
9 training as being acceptable under similar conditions and
10 circumstances.

11 (i)~~(j)~~ Failing to provide written notice of any
12 applicable warranty for an orthosis, prosthesis, or pedorthic
13 device that is provided to a patient.

14 (j) Violating any provision of this chapter or chapter
15 456, or any rules adopted pursuant thereto.

16 (2) The board may enter an order denying licensure or
17 imposing any of the penalties in s. 456.072(2) against any
18 applicant for licensure or licensee who is found guilty of
19 violating any provision of subsection (1) of this section or
20 who is found guilty of violating any provision of s.

21 ~~456.072(1).The board may enter an order imposing one or more~~
22 ~~of the penalties in s. 456.072(2) against any person who~~
23 ~~violates any provision of subsection (1).~~

24 Section 39. Subsections (1) and (2) of section 478.52,
25 Florida Statutes, are amended to read:

26 478.52 Disciplinary proceedings.--

27 (1) The following acts constitute ~~are~~ grounds for
28 denial of a license or disciplinary action, as specified in s.
29 456.072(2)which the disciplinary actions in subsection (2)
30 may be taken:

31

1 (a) Obtaining or attempting to obtain a license by
2 bribery, fraud, or knowing misrepresentation.

3 (b) Having a license or other authority to deliver
4 electrolysis services revoked, suspended, or otherwise acted
5 against, including denial of licensure, in another
6 jurisdiction.

7 (c) Being convicted or found guilty of, or entering a
8 plea of nolo contendere to, regardless of adjudication, a
9 crime, in any jurisdiction, which directly relates to the
10 practice of electrology.

11 (d) Willfully making or filing a false report or
12 record, willfully failing to file a report or record required
13 for electrologists, or willfully impeding or obstructing the
14 filing of a report or record required by this act or inducing
15 another person to do so.

16 (e) Circulating false, misleading, or deceptive
17 advertising.

18 (f) Unprofessional conduct, including any departure
19 from, or failure to conform to, acceptable standards related
20 to the delivery of electrolysis services.

21 (g) Engaging or attempting to engage in the illegal
22 possession, sale, or distribution of any illegal or controlled
23 substance.

24 (h) Willfully failing to report any known violation of
25 this chapter.

26 (i) Willfully or repeatedly violating a rule adopted
27 under this chapter, or an order of the board or department
28 previously entered in a disciplinary hearing.

29 (j) Engaging in the delivery of electrolysis services
30 without an active license.

31

1 (k) Employing an unlicensed person to practice
2 electrology.

3 (l) Failing to perform any statutory or legal
4 obligation placed upon an electrologist.

5 (m) Accepting and performing professional
6 responsibilities which the licensee knows, or has reason to
7 know, she or he is not competent to perform.

8 (n) Delegating professional responsibilities to a
9 person the licensee knows, or has reason to know, is
10 unqualified by training, experience, or licensure to perform.

11 (o) Gross or repeated malpractice or the inability to
12 practice electrology with reasonable skill and safety.

13 (p) Judicially determined mental incompetency.

14 (q) Practicing or attempting to practice electrology
15 under a name other than her or his own.

16 (r) Being unable to practice electrology with
17 reasonable skill and safety because of a mental or physical
18 condition or illness, or the use of alcohol, controlled
19 substances, or any other substance which impairs one's ability
20 to practice.

21 1. The department may, upon probable cause, compel a
22 licensee to submit to a mental or physical examination by
23 physicians designated by the department. The cost of an
24 examination shall be borne by the licensee, and her or his
25 failure to submit to such an examination constitutes an
26 admission of the allegations against her or him, consequent
27 upon which a default and a final order may be entered without
28 the taking of testimony or presentation of evidence, unless
29 the failure was due to circumstances beyond her or his
30 control.

31

1 2. A licensee who is disciplined under this paragraph
2 shall, at reasonable intervals, be afforded an opportunity to
3 demonstrate that she or he can resume the practice of
4 electrology with reasonable skill and safety.

5 3. In any proceeding under this paragraph, the record
6 of proceedings or the orders entered by the board may not be
7 used against a licensee in any other proceeding.

8 (s) Disclosing the identity of or information about a
9 patient without written permission, except for information
10 which does not identify a patient and which is used for
11 training purposes in an approved electrolysis training
12 program.

13 (t) Practicing or attempting to practice any permanent
14 hair removal except as described in s. 478.42(5).

15 (u) Operating any electrolysis facility unless it has
16 been duly licensed as provided in this chapter.

17 (v) Violating any provision of this chapter or chapter
18 456, or any rules adopted pursuant thereto.

19 (2) The board may enter an order denying licensure or
20 imposing any of the penalties in s. 456.072(2) against any
21 applicant for licensure or licensee who is found guilty of
22 violating any provision of subsection (1) of this section or
23 who is found guilty of violating any provision of s.
24 456.072(1).~~When the board finds any person guilty of any of~~
25 ~~the grounds set forth in subsection (1), including conduct~~
26 ~~that would constitute a substantial violation of subsection~~
27 ~~(1) which occurred prior to licensure, it may enter an order~~
28 ~~imposing one or more of the following penalties:~~

29 ~~(a) Deny the application for licensure.~~

30 ~~(b) Revoke or suspend the license.~~

31

1 ~~(c) Impose an administrative fine not to exceed \$5,000~~
2 ~~for each count or separate offense.~~

3 ~~(d) Place the licensee on probation for a specified~~
4 ~~time and subject the licensee to such conditions as the board~~
5 ~~determines necessary, including, but not limited to, requiring~~
6 ~~treatment, continuing education courses, reexamination, or~~
7 ~~working under the supervision of another licensee.~~

8 ~~(e) Issue a reprimand to the licensee.~~

9 ~~(f) Restriction of a licensee's practice.~~

10 Section 40. Subsections (1) and (2) of section
11 480.046, Florida Statutes, are amended to read:

12 480.046 Grounds for disciplinary action by the
13 board.--

14 (1) The following acts ~~shall~~ constitute grounds for
15 denial of a license or disciplinary action, as specified in s.
16 456.072(2)~~which disciplinary actions specified in subsection~~
17 ~~(2) may be taken against a massage therapist or massage~~
18 ~~establishment licensed under this act:~~

19 (a) Attempting to procure a license to practice
20 massage by bribery or fraudulent misrepresentation.

21 (b) Having a license to practice massage revoked,
22 suspended, or otherwise acted against, including the denial of
23 licensure, by the licensing authority of another state,
24 territory, or country.

25 (c) Being convicted or found guilty, regardless of
26 adjudication, of a crime in any jurisdiction which directly
27 relates to the practice of massage or to the ability to
28 practice massage. Any plea of nolo contendere shall be
29 considered a conviction for purposes of this chapter.

30 (d) False, deceptive, or misleading advertising.
31

1 (e) Aiding, assisting, procuring, or advising any
2 unlicensed person to practice massage contrary to the
3 provisions of this chapter or to a rule of the department or
4 the board.

5 (f) Making deceptive, untrue, or fraudulent
6 representations in the practice of massage.

7 (g) Being unable to practice massage with reasonable
8 skill and safety by reason of illness or use of alcohol,
9 drugs, narcotics, chemicals, or any other type of material or
10 as a result of any mental or physical condition. In enforcing
11 this paragraph, the department shall have, upon probable
12 cause, authority to compel a massage therapist to submit to a
13 mental or physical examination by physicians designated by the
14 department. Failure of a massage therapist to submit to such
15 examination when so directed, unless the failure was due to
16 circumstances beyond her or his control, shall constitute an
17 admission of the allegations against her or him, consequent
18 upon which a default and final order may be entered without
19 the taking of testimony or presentation of evidence. A
20 massage therapist affected under this paragraph shall at
21 reasonable intervals be afforded an opportunity to demonstrate
22 that she or he can resume the competent practice of massage
23 with reasonable skill and safety to clients.

24 (h) Gross or repeated malpractice or the failure to
25 practice massage with that level of care, skill, and treatment
26 which is recognized by a reasonably prudent massage therapist
27 as being acceptable under similar conditions and
28 circumstances.

29 (i) Practicing or offering to practice beyond the
30 scope permitted by law or accepting and performing
31

1 professional responsibilities which the licensee knows or has
2 reason to know that she or he is not competent to perform.

3 (j) Delegating professional responsibilities to a
4 person when the licensee delegating such responsibilities
5 knows or has reason to know that such person is not qualified
6 by training, experience, or licensure to perform.

7 (k) ~~Violating any provision of this chapter, a rule of~~
8 ~~the board or department, or a lawful order of the board or~~
9 department previously entered in a disciplinary hearing, or
10 failing to comply with a lawfully issued subpoena of the
11 department.

12 (l) Refusing to permit the department to inspect the
13 business premises of the licensee during regular business
14 hours.

15 (m) Failing to keep the equipment and premises of the
16 massage establishment in a clean and sanitary condition.

17 (n) Practicing massage at a site, location, or place
18 which is not duly licensed as a massage establishment, except
19 that a massage therapist, as provided by rules adopted by the
20 board, may provide massage services, excluding colonic
21 irrigation, at the residence of a client, at the office of the
22 client, at a sports event, at a convention, or at a trade
23 show.

24 (o) Violating any provision of this chapter or chapter
25 456, or any rules adopted pursuant thereto.

26 (2) The board may enter an order denying licensure or
27 imposing any of the penalties in s. 456.072(2) against any
28 applicant for licensure or licensee who is found guilty of
29 violating any provision of subsection (1) of this section or
30 who is found guilty of violating any provision of s.
31 456.072(1).~~When the board finds any person guilty of any of~~

1 ~~the grounds set forth in subsection (1), it may enter an order~~
2 ~~imposing one or more of the following penalties:~~

- 3 ~~(a) Refusal to license an applicant.~~
4 ~~(b) Revocation or suspension of a license.~~
5 ~~(c) Issuance of a reprimand or censure.~~
6 ~~(d) Imposition of an administrative fine not to exceed~~
7 ~~\$1,000 for each count or separate offense.~~

8 Section 41. Section 483.825, Florida Statutes, is
9 amended to read:

10 483.825 Grounds for disciplinary action.--

11 (1) The following acts constitute grounds for denial
12 of a license or disciplinary action, as specified in s.
13 456.072(2)~~which disciplinary actions specified in s. 483.827~~
14 ~~may be taken against applicants, registrants, and licensees~~
15 ~~under this part:~~

16 (a)~~(1)~~ Attempting to obtain, obtaining, or renewing a
17 license or registration under this part by bribery, by
18 fraudulent misrepresentation, or through an error of the
19 department or the board.

20 (b)~~(2)~~ Engaging in or attempting to engage in, or
21 representing herself or himself as entitled to perform, any
22 clinical laboratory procedure or category of procedures not
23 authorized pursuant to her or his license.

24 (c)~~(3)~~ Demonstrating incompetence or making consistent
25 errors in the performance of clinical laboratory examinations
26 or procedures or erroneous reporting.

27 (d)~~(4)~~ Performing a test and rendering a report
28 thereon to a person not authorized by law to receive such
29 services.

30 (e)~~(5)~~ Has been convicted or found guilty of, or
31 entered a plea of nolo contendere to, regardless of

1 adjudication, a crime in any jurisdiction which directly
2 relates to the activities of clinical laboratory personnel or
3 involves moral turpitude or fraudulent or dishonest dealing.
4 The record of a conviction certified or authenticated in such
5 form as to be admissible in evidence under the laws of the
6 state shall be admissible as prima facie evidence of such
7 guilt.

8 (f)~~(6)~~ Having been adjudged mentally or physically
9 incompetent.

10 (g)~~(7)~~ ~~Violating or~~ Aiding and abetting in the
11 violation of any provision of this part or the rules adopted
12 hereunder.

13 (h)~~(8)~~ Reporting a test result when no laboratory test
14 was performed on a clinical specimen.

15 (i)~~(9)~~ Knowingly advertising false services or
16 credentials.

17 (j)~~(10)~~ Having a license revoked, suspended, or
18 otherwise acted against, including the denial of licensure, by
19 the licensing authority of another jurisdiction. The licensing
20 authority's acceptance of a relinquishment of a license,
21 stipulation, consent order, or other settlement, offered in
22 response to or in anticipation of the filing of administrative
23 charges against the licensee, shall be construed as action
24 against the licensee.

25 (k)~~(11)~~ Failing to report to the board, in writing,
26 within 30 days that an action under subsection (5), subsection
27 (6), or subsection (10) has been taken against the licensee or
28 one's license to practice as clinical laboratory personnel in
29 another state, territory, country, or other jurisdiction.

30 (l)~~(12)~~ Being unable to perform or report clinical
31 laboratory examinations with reasonable skill and safety to

1 patients by reason of illness or use of alcohol, drugs,
2 narcotics, chemicals, or any other type of material or as a
3 result of any mental or physical condition. In enforcing this
4 subsection, the department shall have, upon a finding of the
5 secretary or his or her designee that probable cause exists to
6 believe that the licensee is unable to practice because of the
7 reasons stated in this subsection, the authority to issue an
8 order to compel a licensee to submit to a mental or physical
9 examination by physicians designated by the department. If
10 the licensee refuses to comply with such order, the
11 department's order directing such examination may be enforced
12 by filing a petition for enforcement in the circuit court
13 where the licensee resides or does business. The department
14 shall be entitled to the summary procedure provided in s.
15 51.011. A licensee affected under this subsection shall at
16 reasonable intervals be afforded an opportunity to demonstrate
17 that he or she can resume competent practice with reasonable
18 skill and safety to patients.

19 (m)~~(13)~~ Delegating professional responsibilities to a
20 person when the licensee delegating such responsibilities
21 knows, or has reason to know, that such person is not
22 qualified by training, experience, or licensure to perform
23 them.

24 (n)~~(14)~~ Violating a previous order of the board
25 entered in a disciplinary proceeding.

26 (o)~~(15)~~ Failing to report to the department a person
27 or other licensee who the licensee knows is in violation of
28 this chapter or the rules of the department or board adopted
29 hereunder.

30 (p)~~(16)~~ Making or filing a report which the licensee
31 knows to be false, intentionally or negligently failing to

1 file a report or record required by state or federal law,
2 willfully impeding or obstructing such filing or inducing
3 another person to do so, including, but not limited to,
4 impeding an agent of the state from obtaining a report or
5 record for investigative purposes. Such reports or records
6 shall include only those generated in the capacity as a
7 licensed clinical laboratory personnel.

8 (q)~~(17)~~ Paying or receiving any commission, bonus,
9 kickback, or rebate, or engaging in any split-fee arrangement
10 in any form whatsoever with a physician, organization, agency,
11 or person, either directly or indirectly for patients referred
12 to providers of health care goods and services including, but
13 not limited to, hospitals, nursing homes, clinical
14 laboratories, ambulatory surgical centers, or pharmacies. The
15 provisions of this subsection shall not be construed to
16 prevent a clinical laboratory professional from receiving a
17 fee for professional consultation services.

18 (r)~~(18)~~ Exercising influence on a patient or client in
19 such a manner as to exploit the patient or client for the
20 financial gain of the licensee or other third party, which
21 shall include, but not be limited to, the promoting, selling,
22 or withholding of services, goods, appliances, referrals, or
23 drugs.

24 (s)~~(19)~~ Practicing or offering to practice beyond the
25 scope permitted by law or rule, or accepting or performing
26 professional services or responsibilities which the licensee
27 knows or has reason to know that he or she is not competent to
28 perform.

29 (t)~~(20)~~ Misrepresenting or concealing a material fact
30 at any time during any phase of the licensing, investigative,
31 or disciplinary process, procedure, or proceeding.

1 (u)~~(21)~~ Improperly interfering with an investigation
2 or any disciplinary proceeding.

3 (v)~~(22)~~ Engaging in or attempting to engage in sexual
4 misconduct, causing undue embarrassment or using disparaging
5 language or language of a sexual nature towards a patient,
6 exploiting superior/subordinate, professional/patient,
7 instructor/student relationships for personal gain, sexual
8 gratification, or advantage.

9 (w) Violating any provision of this chapter or chapter
10 456, or any rules adopted pursuant thereto.

11 (2) The board may enter an order denying licensure or
12 imposing any of the penalties in s. 456.072(2) against any
13 applicant for licensure or licensee who is found guilty of
14 violating any provision of subsection (1) of this section or
15 who is found guilty of violating any provision of s.
16 456.072(1).

17 (3) In determining the amount of the fine to be levied
18 for a violation, as provided in subsection (1), the following
19 factors shall be considered:

20 (a) The severity of the violation, including the
21 probability that death or serious harm to the health or safety
22 of any person will result or has resulted, the severity of the
23 actual or potential harm, and the extent to which the
24 provisions of this part were violated.

25 (b) Actions taken by the licensee to correct the
26 violation or to remedy complaints.

27 (c) Any previous violation by the licensee.

28 (d) The financial benefit to the licensee of
29 committing or continuing the violation.

30 Section 42. Section 483.827, Florida Statutes, is
31 repealed.

1 Section 43. Subsection (6) of section 483.901, Florida
2 Statutes, is amended to read:

3 483.901 Medical physicists; definitions; licensure.--

4 (6) LICENSE REQUIRED.--An individual may not engage in
5 the practice of medical physics, including the specialties of
6 diagnostic radiological physics, therapeutic radiological
7 physics, medical nuclear radiological physics, or medical
8 health physics, without a license issued by the department for
9 the appropriate specialty.

10 (a) The department shall adopt rules to administer
11 this section which specify license application and renewal
12 fees, continuing education requirements, and standards for
13 practicing medical physics. The council shall recommend to
14 the department continuing education requirements that shall be
15 a condition of license renewal. The department shall require
16 a minimum of 24 hours per biennium of continuing education
17 offered by an organization recommended by the council and
18 approved by the department. The department, upon
19 recommendation of the council, may adopt rules to specify
20 continuing education requirements for persons who hold a
21 license in more than one specialty.

22 (b) In order to apply for a medical physicist license
23 in one or more specialties, a person must file an individual
24 application for each specialty with the department. The
25 application must be on a form prescribed by the department and
26 must be accompanied by a nonrefundable application fee for
27 each specialty.

28 (c) The department may issue a license to an eligible
29 applicant if the applicant meets all license requirements. At
30 any time before the department issues a license, the applicant
31 may request in writing that the application be withdrawn. To

1 reapply, the applicant must submit a new application and an
2 additional nonrefundable application fee and must meet all
3 current licensure requirements.

4 (d) The department shall review each completed
5 application for a license which the department receives.

6 (e) On receipt of an application and fee as specified
7 in this section, the department may issue a license to
8 practice medical physics in this state on or after October 1,
9 1997, to a person who is board certified in the medical
10 physics specialty in which the applicant applies to practice
11 by the American Board of Radiology for diagnostic radiological
12 physics, therapeutic radiological physics, or medical nuclear
13 radiological physics; by the American Board of Medical Physics
14 for diagnostic radiological physics, therapeutic radiological
15 physics, or medical nuclear radiological physics; or by the
16 American Board of Health Physics or an equivalent certifying
17 body approved by the department.

18 (f) A licensee shall:

19 1. Display the license in a place accessible to the
20 public; and

21 2. Report immediately any change in the licensee's
22 address or name to the department.

23 (g) The following acts constitute ~~are~~ grounds for
24 denial of a license or disciplinary action, as specified in s.
25 456.072(2)~~which the disciplinary actions in paragraph (h) may~~
26 ~~be taken:~~

27 1. Obtaining or attempting to obtain a license by
28 bribery, fraud, knowing misrepresentation, or concealment of
29 material fact or through an error of the department.

30 2. Having a license denied, revoked, suspended, or
31 otherwise acted against in another jurisdiction.

1 3. Being convicted or found guilty of, or entering a
2 plea of nolo contendere to, regardless of adjudication, a
3 crime in any jurisdiction which relates to the practice of, or
4 the ability to practice, the profession of medical physics.

5 4. Willfully failing to file a report or record
6 required for medical physics or willfully impeding or
7 obstructing the filing of a report or record required by this
8 section or inducing another person to do so.

9 5. Making misleading, deceptive, or fraudulent
10 representations in or related to the practice of medical
11 physics.

12 6. Willfully failing to report any known violation of
13 this section or any rule adopted thereunder.

14 ~~7. Willfully or repeatedly violating a rule adopted~~
15 ~~under this section or an order of the department.~~

16 7.8. Failing to perform any statutory or legal
17 obligation placed upon a licensee.

18 8.9. Aiding, assisting, procuring, employing, or
19 advising any unlicensed person to practice medical physics
20 contrary to this section or any rule adopted thereunder.

21 9.10. Delegating or contracting for the performance of
22 professional responsibilities by a person when the licensee
23 delegating or contracting such responsibilities knows, or has
24 reason to know, such person is not qualified by training,
25 experience, and authorization to perform them.

26 10.11. Practicing or offering to practice beyond the
27 scope permitted by law or accepting and performing
28 professional responsibilities the licensee knows, or has
29 reason to know, the licensee is not competent to perform.

30 11.12. Gross or repeated malpractice or the inability
31 to practice medical physics with reasonable skill and safety.

1 ~~12.13.~~ Judicially determined mental incompetency.

2 ~~13.14.~~ Being unable to practice medical physics with
3 reasonable skill and safety because of a mental or physical
4 condition or illness or the use of alcohol, controlled
5 substances, or any other substance which impairs one's ability
6 to practice.

7 a. The department may, upon probable cause, compel a
8 licensee to submit to a mental or physical examination by
9 physicians designated by the department. The cost of an
10 examination shall be borne by the licensee, and the licensee's
11 failure to submit to such an examination constitutes an
12 admission of the allegations against the licensee, consequent
13 upon which a default and a final order may be entered without
14 the taking of testimony or presentation of evidence, unless
15 the failure was due to circumstances beyond the licensee's
16 control.

17 b. A licensee who is disciplined under this
18 subparagraph shall, at reasonable intervals, be afforded an
19 opportunity to demonstrate that the licensee can resume the
20 practice of medical physics with reasonable skill and safety.

21 c. With respect to any proceeding under this
22 subparagraph, the record of proceedings or the orders entered
23 by the department may not be used against a licensee in any
24 other proceeding.

25 14. Violating any provision of this chapter or chapter
26 456, or any rules adopted pursuant thereto.

27 (h) The board may enter an order denying licensure or
28 imposing any of the penalties in s. 456.072(2) against any
29 applicant for licensure or licensee who is found guilty of
30 violating any provision of subsection (1) of this section or
31 who is found guilty of violating any provision of s.

1 ~~456.072(1).When the department finds any person guilty of any~~
2 ~~of the grounds set forth in paragraph (g), including conduct~~
3 ~~that would constitute a substantial violation of paragraph (g)~~
4 ~~which occurred prior to licensure, it may enter an order~~
5 ~~imposing one or more of the following penalties:~~

6 ~~1. Deny the application for licensure.~~

7 ~~2. Revoke or suspend the license.~~

8 ~~3. Impose an administrative fine for each count or~~
9 ~~separate offense.~~

10 ~~4. Place the licensee on probation for a specified~~
11 ~~time and subject the licensee to such conditions as the~~
12 ~~department determines necessary, including requiring~~
13 ~~treatment, continuing education courses, or working under the~~
14 ~~monitoring or supervision of another licensee.~~

15 ~~5. Restrict a licensee's practice.~~

16 ~~6. Issue a reprimand to the licensee.~~

17 (i) The department may not issue or reinstate a
18 license to a person it has deemed unqualified until it is
19 satisfied that such person has complied with the terms and
20 conditions of the final order and that the licensee can safely
21 practice medical physics.

22 (j) Upon receipt of a complete application and the fee
23 set forth by rule, the department may issue a
24 physicist-in-training certificate to a person qualified to
25 practice medical physics under direct supervision. The
26 department may establish by rule requirements for initial
27 certification and renewal of a physicist-in-training
28 certificate.

29 Section 44. Subsections (1) and (2) of section
30 484.014, Florida Statutes, are amended to read:

31 484.014 Disciplinary actions.--

1 (1) The following acts constitute ~~relating to the~~
2 ~~practice of opticianry shall be~~ grounds for denial of a
3 license or disciplinary action, as specified in s. 456.072(2)
4 ~~both disciplinary action against an optician as set forth in~~
5 ~~this section and cease and desist or other related action by~~
6 ~~the department as set forth in s. 456.065 against any person~~
7 ~~operating an optical establishment who engages in, aids, or~~
8 ~~abets any such violation:~~

9 (a) Procuring or attempting to procure a license by
10 misrepresentation, bribery, or fraud or through an error of
11 the department or the board.

12 (b) Procuring or attempting to procure a license for
13 any other person by making or causing to be made any false
14 representation.

15 (c) Making or filing a report or record which the
16 licensee knows to be false, intentionally or negligently
17 failing to file a report or record required by federal or
18 state law, willfully impeding or obstructing such filing, or
19 inducing another person to do so. Such reports or records
20 shall include only those which the person is required to make
21 or file as an optician.

22 (d) Failing to make fee or price information readily
23 available by providing such information upon request or upon
24 the presentation of a prescription.

25 (e) Advertising goods or services in a manner which is
26 fraudulent, false, deceptive, or misleading in form or
27 content.

28 (f) Fraud or deceit, or negligence, incompetency, or
29 misconduct, in the authorized practice of opticianry.

30 ~~(g) Violation or repeated violation of this part or of~~
31 ~~chapter 456 or any rules promulgated pursuant thereto.~~

- 1 (g)~~(h)~~ Practicing with a revoked, suspended, inactive,
2 or delinquent license.
- 3 (h)~~(i)~~ Violation of a lawful order of the board or
4 department previously entered in a disciplinary hearing or
5 failing to comply with a lawfully issued subpoena of the
6 department.
- 7 (i)~~(j)~~ Violation of any provision of s. 484.012.
- 8 (j)~~(k)~~ Conspiring with another licensee or with any
9 person to commit an act, or committing an act, which would
10 coerce, intimidate, or preclude another licensee from lawfully
11 advertising her or his services.
- 12 (k)~~(l)~~ Willfully submitting to any third-party payor a
13 claim for services which were not provided to a patient.
- 14 (l)~~(m)~~ Failing to keep written prescription files.
- 15 (m)~~(n)~~ Willfully failing to report any person who the
16 licensee knows is in violation of this part or of rules of the
17 department or the board.
- 18 (n)~~(o)~~ Exercising influence on a client in such a
19 manner as to exploit the client for financial gain of the
20 licensee or of a third party.
- 21 (o)~~(p)~~ Gross or repeated malpractice.
- 22 (p)~~(q)~~ Permitting any person not licensed as an
23 optician in this state to fit or dispense any lenses,
24 spectacles, eyeglasses, or other optical devices which are
25 part of the practice of opticianry.
- 26 (q)~~(r)~~ Being convicted or found guilty of, or entering
27 a plea of nolo contendere to, regardless of adjudication, in a
28 court of this state or other jurisdiction, a crime which
29 relates to the ability to practice opticianry or to the
30 practice of opticianry.
- 31

1 ~~(r)(s)~~ Having been disciplined by a regulatory agency
2 in another state for any offense that would constitute a
3 violation of Florida law or rules regulating opticianry.

4 ~~(s)(t)~~ Being unable to practice opticianry with
5 reasonable skill and safety by reason of illness or use of
6 drugs, narcotics, chemicals, or any other type of material or
7 as a result of any mental or physical condition. An optician
8 affected under this paragraph shall at reasonable intervals be
9 afforded an opportunity to demonstrate that she or he can
10 resume the competent practice of opticianry with reasonable
11 skill and safety to her or his customers.

12 ~~(t)~~ Violating any provision of this chapter or chapter
13 456, or any rules adopted pursuant thereto.

14 (2) The board may enter an order denying licensure or
15 imposing any of the penalties in s. 456.072(2) against any
16 applicant for licensure or licensee who is found guilty of
17 violating any provision of subsection (1) of this section or
18 who is found guilty of violating any provision of s.

19 456.072(1).~~When the board finds any person guilty of any of~~
20 ~~the grounds set forth in subsection (1), it may enter an order~~
21 ~~imposing one or more of the following penalties:~~

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

24 ~~(b) Revocation or suspension of a license.~~

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

27 ~~(d) Issuance of a reprimand.~~

28 ~~(e) Placement of the optician on probation for a~~
29 ~~period of time and subject to such conditions as the board may~~
30 ~~specify, including requiring the optician to submit to~~

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1 ~~treatment or to work under the supervision of another~~
2 ~~optician.~~

3 Section 45. Subsections (1) and (2) of section
4 484.056, Florida Statutes, are amended to read:

5 484.056 Disciplinary proceedings.--

6 (1) The following acts constitute ~~relating to the~~
7 ~~practice of dispensing hearing aids shall be~~ grounds for
8 denial of a license or disciplinary action, as specified in s.
9 456.072(2)~~both disciplinary action against a hearing aid~~
10 ~~specialist as set forth in this section and cease and desist~~
11 ~~or other related action by the department as set forth in s.~~
12 ~~456.065 against any person owning or operating a hearing aid~~
13 ~~establishment who engages in, aids, or abets any such~~
14 ~~violation:~~

15 (a) Violation of any provision of s. 456.072(1), s.
16 484.0512, or s. 484.053.

17 (b) Attempting to procure a license to dispense
18 hearing aids by bribery, by fraudulent misrepresentations, or
19 through an error of the department or the board.

20 (c) Having a license to dispense hearing aids revoked,
21 suspended, or otherwise acted against, including the denial of
22 licensure, by the licensing authority of another state,
23 territory, or country.

24 (d) Being convicted or found guilty of, or entering a
25 plea of nolo contendere to, regardless of adjudication, a
26 crime in any jurisdiction which directly relates to the
27 practice of dispensing hearing aids or the ability to practice
28 dispensing hearing aids, including violations of any federal
29 laws or regulations regarding hearing aids.

30 (e) Making or filing a report or record which the
31 licensee knows to be false, intentionally or negligently

1 failing to file a report or record required by state or
2 federal law, willfully impeding or obstructing such filing, or
3 inducing another person to impede or obstruct such filing.

4 Such reports or records shall include only those reports or
5 records which are signed in one's capacity as a licensed
6 hearing aid specialist.

7 (f) Advertising goods or services in a manner which is
8 fraudulent, false, deceptive, or misleading in form or
9 content.

10 (g) Proof that the licensee is guilty of fraud or
11 deceit or of negligence, incompetency, or misconduct in the
12 practice of dispensing hearing aids.

13 ~~(h) Violation or repeated violation of this part or of~~
14 ~~chapter 456, or any rules promulgated pursuant thereto.~~

15 (h)(i) Violation of a lawful order of the board or
16 department previously entered in a disciplinary hearing or
17 failure to comply with a lawfully issued subpoena of the board
18 or department.

19 (i)(j) Practicing with a revoked, suspended, inactive,
20 or delinquent license.

21 (j)(k) Using, or causing or promoting the use of, any
22 advertising matter, promotional literature, testimonial,
23 guarantee, warranty, label, brand, insignia, or other
24 representation, however disseminated or published, which is
25 misleading, deceiving, or untruthful.

26 (k)(l) Showing or demonstrating, or, in the event of
27 sale, delivery of, a product unusable or impractical for the
28 purpose represented or implied by such action.

29 (l)(m) Misrepresentation of professional services
30 available in the fitting, sale, adjustment, service, or repair
31 of a hearing aid, or use of the terms "doctor," "clinic,"

1 "clinical," "medical audiologist," "clinical audiologist,"
2 "research audiologist," or "audiologic" or any other term or
3 title which might connote the availability of professional
4 services when such use is not accurate.

5 (m)~~(n)~~ Representation, advertisement, or implication
6 that a hearing aid or its repair is guaranteed without
7 providing full disclosure of the identity of the guarantor;
8 the nature, extent, and duration of the guarantee; and the
9 existence of conditions or limitations imposed upon the
10 guarantee.

11 (n)~~(o)~~ Representing, directly or by implication, that
12 a hearing aid utilizing bone conduction has certain specified
13 features, such as the absence of anything in the ear or
14 leading to the ear, or the like, without disclosing clearly
15 and conspicuously that the instrument operates on the bone
16 conduction principle and that in many cases of hearing loss
17 this type of instrument may not be suitable.

18 (o)~~(p)~~ Making any predictions or prognostications as
19 to the future course of a hearing impairment, either in
20 general terms or with reference to an individual person.

21 (p)~~(q)~~ Stating or implying that the use of any hearing
22 aid will improve or preserve hearing or prevent or retard the
23 progression of a hearing impairment or that it will have any
24 similar or opposite effect.

25 (q)~~(r)~~ Making any statement regarding the cure of the
26 cause of a hearing impairment by the use of a hearing aid.

27 (r)~~(s)~~ Representing or implying that a hearing aid is
28 or will be "custom-made," "made to order," or
29 "prescription-made" or in any other sense specially fabricated
30 for an individual person when such is not the case.

31

1 (s)~~(t)~~ Canvassing from house to house or by telephone
2 either in person or by an agent for the purpose of selling a
3 hearing aid, except that contacting persons who have evidenced
4 an interest in hearing aids, or have been referred as in need
5 of hearing aids, shall not be considered canvassing.

6 (t)~~(u)~~ Failure to submit to the board on an annual
7 basis, or such other basis as may be provided by rule,
8 certification of testing and calibration of audiometric
9 testing equipment on the form approved by the board.

10 (u)~~(v)~~ Failing to provide all information as described
11 in s. 484.051(1).

12 (v)~~(w)~~ Exercising influence on a client in such a
13 manner as to exploit the client for financial gain of the
14 licensee or of a third party.

15 (w) Violating any provision of this chapter or chapter
16 456, or any rules adopted pursuant thereto.

17 (2)(a) The board may enter an order denying licensure
18 or imposing any of the penalties in s. 456.072(2) against any
19 applicant for licensure or licensee who is found guilty of
20 violating any provision of subsection (1) of this section or
21 who is found guilty of violating any provision of s.
22 ~~456.072(1). Except as provided in paragraph (b), when the~~
23 ~~board finds any hearing aid specialist to be guilty of any of~~
24 ~~the grounds set forth in subsection (1), it may enter an order~~
25 ~~imposing one or more of the following penalties:~~

26 1. ~~Denial of an application for licensure.~~

27 2. ~~Revocation or suspension of a license.~~

28 3. ~~Imposition of an administrative fine not to exceed~~
29 ~~\$1,000 for each count or separate offense.~~

30 4. ~~Issuance of a reprimand.~~

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1 ~~5. Placing the hearing aid specialist on probation for~~
2 ~~a period of time and subject to such conditions as the board~~
3 ~~may specify, including requiring the hearing aid specialist to~~
4 ~~attend continuing education courses or to work under the~~
5 ~~supervision of another hearing aid specialist.~~

6 ~~6. Restricting the authorized scope of practice.~~

7 (b) The board shall revoke the license of any hearing
8 aid specialist found guilty of canvassing as described in this
9 section.

10 Section 46. Subsections (1) and (2) of section
11 486.125, Florida Statutes, 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 denial of a license or disciplinary action, as specified in s.
16 456.072(2)~~which the disciplinary actions specified in~~
17 ~~subsection (2) may be taken:~~

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

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

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

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

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

18 (b) Having committed fraud in the practice of physical
19 therapy or deceit in obtaining a license as a physical
20 therapist or as a physical therapist assistant.

21 (c) Being convicted or found guilty regardless of
22 adjudication, of a crime in any jurisdiction which directly
23 relates to the practice of physical therapy or to the ability
24 to practice physical therapy. The entry of any plea of nolo
25 contendere shall be considered a conviction for purpose of
26 this chapter.

27 (d) Having treated or undertaken to treat human
28 ailments by means other than by physical therapy, as defined
29 in this chapter.

30
31

1 (e) Failing to maintain acceptable standards of
2 physical therapy practice as set forth by the board in rules
3 adopted pursuant to this chapter.

4 (f) Engaging directly or indirectly in the dividing,
5 transferring, assigning, rebating, or refunding of fees
6 received for professional services, or having been found to
7 profit by means of a credit or other valuable consideration,
8 such as an unearned commission, discount, or gratuity, with
9 any person referring a patient or with any relative or
10 business associate of the referring person. Nothing in this
11 chapter shall be construed to prohibit the members of any
12 regularly and properly organized business entity which is
13 comprised of physical therapists and which is recognized under
14 the laws of this state from making any division of their total
15 fees among themselves as they determine necessary.

16 (g) Having a license revoked or suspended; having had
17 other disciplinary action taken against her or him; or having
18 had her or his application for a license refused, revoked, or
19 suspended by the licensing authority of another state,
20 territory, or country.

21 (h) ~~Violating any provision of this chapter, a rule of~~
22 ~~the board or department, or a lawful order of the board or~~
23 ~~department previously entered in a disciplinary hearing.~~

24 (i) Making or filing a report or record which the
25 licensee knows to be false. Such reports or records shall
26 include only those which are signed in the capacity of a
27 physical therapist.

28 (j) Practicing or offering to practice beyond the
29 scope permitted by law or accepting and performing
30 professional responsibilities which the licensee knows or has
31

1 reason to know that she or he is not competent to perform,
2 including, but not limited to, specific spinal manipulation.

3 (k) Violating any provision of this chapter or chapter
4 456, or any rules adopted pursuant thereto.

5 (2) The board may enter an order denying licensure or
6 imposing any of the penalties in s. 456.072(2) against any
7 applicant for licensure or licensee who is found guilty of
8 violating any provision of subsection (1) of this section or
9 who is found guilty of violating any provision of s.
10 456.072(1).~~When the board finds any person guilty of any of~~
11 ~~the grounds set forth in subsection (1), it may enter an order~~
12 ~~imposing one or more of the following penalties:~~

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

15 ~~(b) Revocation or suspension of a license.~~

16 ~~(c) Restriction of practice.~~

17 ~~(d) Imposition of an administrative fine not to exceed~~
18 ~~\$1,000 for each count or separate offense.~~

19 ~~(e) Issuance of a reprimand.~~

20 ~~(f) Placement of the physical therapist or physical~~
21 ~~therapist assistant on probation for a period of time and~~
22 ~~subject to such conditions as the board may specify,~~
23 ~~including, but not limited to, requiring the physical~~
24 ~~therapist or physical therapist assistant to submit to~~
25 ~~treatment, to attend continuing education courses, to submit~~
26 ~~to reexamination, or to work under the supervision of another~~
27 ~~physical therapist.~~

28 ~~(g) Recovery of actual costs of investigation and~~
29 ~~prosecution.~~

30 Section 47. Section 490.009, Florida Statutes, is
31 amended to read:

1 490.009 Discipline.--
2 ~~(1) When the department or, in the case of~~
3 ~~psychologists, the board finds that an applicant, provisional~~
4 ~~licensee, or licensee whom it regulates under this chapter has~~
5 ~~committed any of the acts set forth in subsection (2), it may~~
6 ~~issue an order imposing one or more of the following~~
7 ~~penalties:~~
8 ~~(a) Denial of an application for licensure, either~~
9 ~~temporarily or permanently.~~
10 ~~(b) Revocation of an application for licensure, either~~
11 ~~temporarily or permanently.~~
12 ~~(c) Suspension for a period of up to 5 years or~~
13 ~~revocation of a license, after hearing.~~
14 ~~(d) Immediate suspension of a license pursuant to s.~~
15 ~~120.60(6).~~
16 ~~(e) Imposition of an administrative fine not to exceed~~
17 ~~\$5,000 for each count or separate offense.~~
18 ~~(f) Issuance of a public reprimand.~~
19 ~~(g) Placement of an applicant or licensee on probation~~
20 ~~for a period of time and subject to conditions specified by~~
21 ~~the department or, in the case of psychologists, by the board,~~
22 ~~including, but not limited to, requiring the applicant or~~
23 ~~licensee to submit to treatment, to attend continuing~~
24 ~~education courses, to submit to reexamination, or to work~~
25 ~~under the supervision of a designated licensee.~~
26 ~~(h) Restriction of practice.~~
27 (1)(2) The following acts constitute of a licensee,
28 provisional licensee, or applicant are grounds for denial of a
29 license or disciplinary action, as specified in s. 456.072(2)
30 which the disciplinary actions listed in subsection (1) may be
31 taken:

1 (a) Attempting to obtain, obtaining, or renewing a
2 license under this chapter by bribery or fraudulent
3 misrepresentation or through an error of the board or
4 department.

5 (b) Having a license to practice a comparable
6 profession revoked, suspended, or otherwise acted against,
7 including the denial of certification or licensure by another
8 state, territory, or country.

9 (c) Being convicted or found guilty, regardless of
10 adjudication, of a crime in any jurisdiction which directly
11 relates to the practice of his or her profession or the
12 ability to practice his or her profession. A plea of nolo
13 contendere creates a rebuttable presumption of guilt of the
14 underlying criminal charges. However, the board shall allow
15 the person who is the subject of the disciplinary proceeding
16 to present any evidence relevant to the underlying charges and
17 circumstances surrounding the plea.

18 (d) False, deceptive, or misleading advertising or
19 obtaining a fee or other thing of value on the representation
20 that beneficial results from any treatment will be guaranteed.

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

23 (f) Maintaining a professional association with any
24 person who the applicant or licensee knows, or has reason to
25 believe, is in violation of this chapter or of a rule of the
26 department or, in the case of psychologists, of the department
27 or the board.

28 (g) Knowingly aiding, assisting, procuring, or
29 advising any nonlicensed person to hold himself or herself out
30 as licensed under this chapter.

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1 (h) Failing to perform any statutory or legal
2 obligation placed upon a person licensed under this chapter.

3 (i) Willfully making or filing a false report or
4 record; failing to file a report or record required by state
5 or federal law; willfully impeding or obstructing the filing
6 of a report or record; or inducing another person to make or
7 file a false report or record or to impede or obstruct the
8 filing of a report or record. Such report or record includes
9 only a report or record which requires the signature of a
10 person licensed under this chapter.

11 (j) Paying a kickback, rebate, bonus, or other
12 remuneration for receiving a patient or client, or receiving a
13 kickback, rebate, bonus, or other remuneration for referring a
14 patient or client to another provider of mental health care
15 services or to a provider of health care services or goods;
16 referring a patient or client to oneself for services on a
17 fee-paid basis when those services are already being paid for
18 by some other public or private entity; or entering into a
19 reciprocal referral agreement.

20 (k) Committing any act upon a patient or client which
21 would constitute sexual battery or which would constitute
22 sexual misconduct as defined in s. 490.0111.

23 (l) Making misleading, deceptive, untrue, or
24 fraudulent representations in the practice of any profession
25 licensed under this chapter.

26 (m) Soliciting patients or clients personally, or
27 through an agent, through the use of fraud, intimidation,
28 undue influence, or a form of overreaching or vexatious
29 conduct.

30 (n) Failing to make available to a patient or client,
31 upon written request, copies of test results, reports, or

1 documents in the possession or under the control of the
2 licensee which have been prepared for and paid for by the
3 patient or client.

4 (o) Failing to respond within 30 days to a written
5 communication from the department concerning any investigation
6 by the department or to make available any relevant records
7 with respect to any investigation about the licensee's conduct
8 or background.

9 (p) Being unable to practice the profession for which
10 he or she is licensed under this chapter with reasonable skill
11 or competence as a result of any mental or physical condition
12 or by reason of illness; drunkenness; or excessive use of
13 drugs, narcotics, chemicals, or any other substance. In
14 enforcing this paragraph, upon a finding by the secretary, the
15 secretary's designee, or the board that probable cause exists
16 to believe that the licensee is unable to practice the
17 profession because of the reasons stated in this paragraph,
18 the department shall have the authority to compel a licensee
19 to submit to a mental or physical examination by psychologists
20 or physicians designated by the department or board. If the
21 licensee refuses to comply with the department's order, the
22 department may file a petition for enforcement in the circuit
23 court of the circuit in which the licensee resides or does
24 business. The licensee shall not be named or identified by
25 initials in the petition or in any other public court records
26 or documents, and the enforcement proceedings shall be closed
27 to the public. The department shall be entitled to the
28 summary procedure provided in s. 51.011. A licensee affected
29 under this paragraph shall be afforded an opportunity at
30 reasonable intervals to demonstrate that he or she can resume
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1 the competent practice for which he or she is licensed with
2 reasonable skill and safety to patients.

3 ~~(q) Violating provisions of this chapter, or of~~
4 ~~chapter 456, or any rules adopted pursuant thereto.~~

5 (g)(r) Performing any treatment or prescribing any
6 therapy which, by the prevailing standards of the mental
7 health professions in the community, would constitute
8 experimentation on human subjects, without first obtaining
9 full, informed, and written consent.

10 (r)(s) Failing to meet the minimum standards of
11 performance in professional activities when measured against
12 generally prevailing peer performance, including the
13 undertaking of activities for which the licensee is not
14 qualified by training or experience.

15 (s)(t) Delegating professional responsibilities to a
16 person whom the licensee knows or has reason to know is not
17 qualified by training or experience to perform such
18 responsibilities.

19 (t)(u) Violating a rule relating to the regulation of
20 the profession or a lawful order of the department previously
21 entered in a disciplinary hearing.

22 (u)(v) Failing to maintain in confidence a
23 communication made by a patient or client in the context of
24 such services, except as provided in s. 490.0147.

25 (v)(w) Making public statements which are derived from
26 test data, client contacts, or behavioral research and which
27 identify or damage research subjects or clients.

28 (w) Violating any provision of this chapter or chapter
29 456, or any rules adopted pursuant thereto.

30 (2) The department or, in the case of psychologists,
31 the board may enter an order denying licensure or imposing any

1 of the penalties in s. 456.072(2) against any applicant for
2 licensure or licensee who is found guilty of violating any
3 provision of subsection (1) of this section or who is found
4 guilty of violating any provision of s. 456.072(1).

5 Section 48. Section 491.009, Florida Statutes, is
6 amended to read:

7 491.009 Discipline.--

8 ~~(1) When the department or the board finds that an~~
9 ~~applicant, licensee, provisional licensee, registered intern,~~
10 ~~or certificateholder whom it regulates under this chapter has~~
11 ~~committed any of the acts set forth in subsection (2), it may~~
12 ~~issue an order imposing one or more of the following~~
13 ~~penalties:~~

14 ~~(a) Denial of an application for licensure,~~
15 ~~registration, or certification, either temporarily or~~
16 ~~permanently.~~

17 ~~(b) Revocation of an application for licensure,~~
18 ~~registration, or certification, either temporarily or~~
19 ~~permanently.~~

20 ~~(c) Suspension for a period of up to 5 years or~~
21 ~~revocation of a license, registration, or certificate, after~~
22 ~~hearing.~~

23 ~~(d) Immediate suspension of a license, registration,~~
24 ~~or certificate pursuant to s. 120.60(6).~~

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

27 ~~(f) Issuance of a public reprimand.~~

28 ~~(g) Placement of an applicant, licensee, registered~~
29 ~~intern, or certificateholder on probation for a period of time~~
30 ~~and subject to such conditions as the board may specify,~~
31 ~~including, but not limited to, requiring the applicant,~~

1 ~~licensee, registered intern, or certificateholder to submit to~~
2 ~~treatment, to attend continuing education courses, to submit~~
3 ~~to reexamination, or to work under the supervision of a~~
4 ~~designated licensee or certificateholder.~~

5 ~~(h) Restriction of practice.~~

6 (1)~~(2)~~ The following acts constitute of a licensee,
7 ~~provisional licensee, registered intern, certificateholder, or~~
8 ~~applicant are grounds for denial of a license or disciplinary~~
9 ~~action, as specified in s. 456.072(2) which the disciplinary~~
10 ~~actions listed in subsection (1) may be taken:~~

11 (a) Attempting to obtain, obtaining, or renewing a
12 license, registration, or certificate under this chapter by
13 bribery or fraudulent misrepresentation or through an error of
14 the board or the department.

15 (b) Having a license, registration, or certificate to
16 practice a comparable profession revoked, suspended, or
17 otherwise acted against, including the denial of certification
18 or licensure by another state, territory, or country.

19 (c) Being convicted or found guilty of, regardless of
20 adjudication, or having entered a plea of nolo contendere to,
21 a crime in any jurisdiction which directly relates to the
22 practice of his or her profession or the ability to practice
23 his or her profession. However, in the case of a plea of nolo
24 contendere, the board shall allow the person who is the
25 subject of the disciplinary proceeding to present evidence in
26 mitigation relevant to the underlying charges and
27 circumstances surrounding the plea.

28 (d) False, deceptive, or misleading advertising or
29 obtaining a fee or other thing of value on the representation
30 that beneficial results from any treatment will be guaranteed.

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

3 (f) Maintaining a professional association with any
4 person who the applicant, licensee, registered intern, or
5 certificateholder knows, or has reason to believe, is in
6 violation of this chapter or of a rule of the department or
7 the board.

8 (g) Knowingly aiding, assisting, procuring, or
9 advising any nonlicensed, nonregistered, or noncertified
10 person to hold himself or herself out as licensed, registered,
11 or certified under this chapter.

12 (h) Failing to perform any statutory or legal
13 obligation placed upon a person licensed, registered, or
14 certified under this chapter.

15 (i) Willfully making or filing a false report or
16 record; failing to file a report or record required by state
17 or federal law; willfully impeding or obstructing the filing
18 of a report or record; or inducing another person to make or
19 file a false report or record or to impede or obstruct the
20 filing of a report or record. Such report or record includes
21 only a report or record which requires the signature of a
22 person licensed, registered, or certified under this chapter.

23 (j) Paying a kickback, rebate, bonus, or other
24 remuneration for receiving a patient or client, or receiving a
25 kickback, rebate, bonus, or other remuneration for referring a
26 patient or client to another provider of mental health care
27 services or to a provider of health care services or goods;
28 referring a patient or client to oneself for services on a
29 fee-paid basis when those services are already being paid for
30 by some other public or private entity; or entering into a
31 reciprocal referral agreement.

1 (k) Committing any act upon a patient or client which
2 would constitute sexual battery or which would constitute
3 sexual misconduct as defined pursuant to s. 491.0111.

4 (l) Making misleading, deceptive, untrue, or
5 fraudulent representations in the practice of any profession
6 licensed, registered, or certified under this chapter.

7 (m) Soliciting patients or clients personally, or
8 through an agent, through the use of fraud, intimidation,
9 undue influence, or a form of overreaching or vexatious
10 conduct.

11 (n) Failing to make available to a patient or client,
12 upon written request, copies of tests, reports, or documents
13 in the possession or under the control of the licensee,
14 registered intern, or certificateholder which have been
15 prepared for and paid for by the patient or client.

16 (o) Failing to respond within 30 days to a written
17 communication from the department or the board concerning any
18 investigation by the department or the board, or failing to
19 make available any relevant records with respect to any
20 investigation about the licensee's, registered intern's, or
21 certificateholder's conduct or background.

22 (p) Being unable to practice the profession for which
23 he or she is licensed, registered, or certified under this
24 chapter with reasonable skill or competence as a result of any
25 mental or physical condition or by reason of illness;
26 drunkenness; or excessive use of drugs, narcotics, chemicals,
27 or any other substance. In enforcing this paragraph, upon a
28 finding by the secretary, the secretary's designee, or the
29 board that probable cause exists to believe that the licensee,
30 registered intern, or certificateholder is unable to practice
31 the profession because of the reasons stated in this

1 paragraph, the department shall have the authority to compel a
2 licensee, registered intern, or certificateholder to submit to
3 a mental or physical examination by psychologists, physicians,
4 or other licensees under this chapter, designated by the
5 department or board. If the licensee, registered intern, or
6 certificateholder refuses to comply with such order, the
7 department's order directing the examination may be enforced
8 by filing a petition for enforcement in the circuit court in
9 the circuit in which the licensee, registered intern, or
10 certificateholder resides or does business. The licensee,
11 registered intern, or certificateholder against whom the
12 petition is filed shall not be named or identified by initials
13 in any public court records or documents, and the proceedings
14 shall be closed to the public. The department shall be
15 entitled to the summary procedure provided in s. 51.011. A
16 licensee, registered intern, or certificateholder affected
17 under this paragraph shall at reasonable intervals be afforded
18 an opportunity to demonstrate that he or she can resume the
19 competent practice for which he or she is licensed,
20 registered, or certified with reasonable skill and safety to
21 patients.

22 ~~(q) Violating provisions of this chapter, or of~~
23 ~~chapter 456, or any rules adopted pursuant thereto.~~

24 (q)(r) Performing any treatment or prescribing any
25 therapy which, by the prevailing standards of the mental
26 health professions in the community, would constitute
27 experimentation on human subjects, without first obtaining
28 full, informed, and written consent.

29 (r)(s) Failing to meet the minimum standards of
30 performance in professional activities when measured against
31 generally prevailing peer performance, including the

1 undertaking of activities for which the licensee, registered
2 intern, or certificateholder is not qualified by training or
3 experience.

4 (s)~~(t)~~ Delegating professional responsibilities to a
5 person whom the licensee, registered intern, or
6 certificateholder knows or has reason to know is not qualified
7 by training or experience to perform such responsibilities.

8 (t)~~(u)~~ Violating a rule relating to the regulation of
9 the profession or a lawful order of the department or the
10 board previously entered in a disciplinary hearing.

11 (u)~~(v)~~ Failure of the licensee, registered intern, or
12 certificateholder to maintain in confidence a communication
13 made by a patient or client in the context of such services,
14 except as provided in s. 491.0147.

15 (v)~~(w)~~ Making public statements which are derived from
16 test data, client contacts, or behavioral research and which
17 identify or damage research subjects or clients.

18 (w) Violating any provision of this chapter or chapter
19 456, or any rules adopted pursuant thereto.

20 (2) The board may enter an order denying licensure or
21 imposing any of the penalties in s. 456.072(2) against any
22 applicant for licensure or licensee who is found guilty of
23 violating any provision of subsection (1) of this section or
24 who is found guilty of violating any provision of s.
25 456.072(1).

26 Section 49. Subsection (1) of section 456.074, Florida
27 Statutes, is amended to read:

28 456.074 Certain health care practitioners; immediate
29 suspension of license.--

30 (1) The department shall issue an emergency order
31 suspending the license of any person licensed under chapter

1 458, chapter 459, chapter 460, chapter 461, chapter 462,
2 chapter 463, chapter 464, chapter 465, chapter 466, or chapter
3 484 who pleads guilty to, is convicted or found guilty of, or
4 who enters a plea of nolo contendere to, regardless of
5 adjudication, a felony under chapter 409, chapter 817, or
6 chapter 893 or under 21 U.S.C. ss. 801-970 or under 42 U.S.C.
7 ss. 1395-1396.

8 Section 50. Effective July 1, 2003, section 464.005,
9 Florida Statutes, is amended to read:

10 464.005 Board headquarters.--The board shall maintain
11 its official headquarters in Tallahassee ~~the city in which it~~
12 ~~has been domiciled for the past 5 years.~~

13 Section 51. Except as otherwise expressly provided in
14 this act, this act shall take effect July 1, 2001.

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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 Senate Bill 1558

4 The bill provides legislative intent and findings with respect
5 to the Medical Quality Assurance Trust Fund (MQATF) and the
6 Department of Health. The Auditor General is required to
7 complete a follow-up audit of the MQATF and to issue a report
8 to the Legislature; the Office of Program Policy Analysis and
9 Government Accountability must complete a study on the
10 feasibility of maintaining the Medical Quality Assurance
11 function within a single department and to issue a report to
12 the Legislature; and the Department of Health must reimburse
13 the Agency for Health Care Administration for the agency's
14 actual and direct costs and the agency's appropriate share of
15 indirect and infrastructure costs applicable to the contract
16 to provide disciplinary investigation and prosecution for
17 licensed health care professionals, subject to appropriated
18 funds. The department's rulemaking authority for professions
19 it regulates is expanded to specify the expiration dates of
20 licenses and the process for tracking compliance with
21 continuing education requirements, financial responsibility
22 requirements, and any other conditions of renewal established
23 in statute or in rule. For professions under the Department of
24 Health's jurisdiction, the examination fee must include all
25 costs to develop, validate, administer, and defend the
26 examination and the examination fee is defined as an amount
27 certain to cover all administrative costs plus the actual
28 per-applicant cost of the examination.

17 Additionally, the bill: provides legislative intent and
18 requires the boards to set fees in consultation with the
19 Department of Health every two years for the professions
20 regulated by the Division of Medical Quality Assurance;
21 provides that, if the cash balance of the trust fund at the
22 end of any fiscal year exceeds the total appropriation for
23 regulation of the health care professions in the prior fiscal
24 year, the boards, in consultation with the department may
25 lower the fees; requires each board or the department, if
26 there is no board, to set a fee, not to exceed \$250, for
27 approval of continuing education providers and a biennial
28 renewal fee; specifies how the continuing education provider
29 fees are to be used; requires the department to implement an
30 electronic continuing education tracking system, for which
31 electronic renewals are implemented, and requires continuing
education providers to provide information on course
attendance to the department; requires board chairpersons to
annually review the departments' long-range plan and proposed
fee schedules, and make recommendations for statutory changes;
requires the department to provide each board an annual report
of revenue and direct and allocated expenses related to the
operation of that profession on or before October 1 of each
year; revises and streamlines the penalties that each board
and the department may impose on licensed health care
professionals; repeals s. 458.31151, F.S., which provided
limits on fees for a special examination for foreign licensed
physicians; and transfers the Board of Nursing from
Jacksonville to Tallahassee, effective July 1, 2003.