

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 Department of
10 Health to reimburse the Agency for Health Care
11 Administration for certain costs; requiring the
12 Office of Program Policy Analysis and
13 Government Accountability to study the
14 feasibility of maintaining the Medical Quality
15 Assurance function within a single department
16 and issue a report to the Legislature;
17 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; repealing s. 458.31151, F.S.; relating
26 to development of the examination for
27 foreign-trained physicians and the fees
28 therefor; amending s. 457.107, F.S.; for
29 clarification of acupuncture fees; amending s.
30 483.807, F.S.; relating to clinical laboratory
31 personnel fees; amending s. 456.011, F.S.;

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

1 F.S.; revising and providing grounds for
 2 discipline of licensees; revising and providing
 3 disciplinary actions; amending s. 456.079,
 4 F.S.; requiring mitigating or aggravating
 5 circumstances to be in the final order to be
 6 considered in the imposition of penalties;
 7 amending ss. 457.109, 458.320, 458.331,
 8 458.345, 458.347, 459.0085, 459.015, 459.022,
 9 460.413, 461.013, 462.14, 463.016, 464.018,
 10 465.008, 465.016, 466.028, 466.037, 467.203,
 11 468.1295, 468.1755, 468.217, 468.365, 468.518,
 12 468.719, 468.811, 478.52, 480.046, 483.825,
 13 483.901, 484.014, 484.056, 486.125, 490.009,
 14 and 491.009, F.S.; revising and conforming
 15 provisions relating to disciplinary grounds and
 16 penalties; amending s. 456.065, F.S.; requiring
 17 the unlicensed activity fee to be in addition
 18 to all other fees collected from each licensee;
 19 amending s. 456.074, F.S.; providing for
 20 immediate suspension of license for convictions
 21 relating to fraudulent practices; amending s.
 22 464.005, F.S.; providing for future relocation
 23 of the headquarters of the Board of Nursing;
 24 providing effective dates.

25
 26 Be It Enacted by the Legislature of the State of Florida:

27
 28 Section 1. It is the intent of the Legislature that
 29 the Medical Quality Assurance Trust Fund should be
 30 administered in a fiscally responsible manner. It is also the
 31 intent of the Legislature that the Department of Health reduce

1 expenses wherever possible to ensure that the cost of
2 regulation is reasonable and fair and does not serve as a
3 barrier to licensure in this state. The Legislature adopts
4 findings 1, 2, 4, 5, and 8 and the recommendations of the
5 Auditor General's Medical Quality Assurance Operational Audit
6 Report Number 01-063. In addition, the Legislature adopts
7 recommendations 1, 2, 4, 5, and 7 of the Florida Senate
8 Committee on Fiscal Policy Interim Project Report 2001-016.

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

16 Section 3. The contract between the Department of
17 Health and the Agency for Health Care Administration pursuant
18 to section 20.43(3), Florida Statutes, is not subject to the
19 provisions of section 216.346, Florida Statutes. The
20 Department of Health shall reimburse the Agency for Health
21 Care Administration for the agency's actual direct costs and
22 the agency's indirect costs incurred as a result of the
23 contract, subject to appropriated funds. The agency shall
24 provide to the department documentation, explanation, and
25 justification of all direct and indirect costs incurred, by
26 budget entity.

27 Section 4. The Office of Program Policy Analysis and
28 Government Accountability shall study the feasibility of
29 maintaining the entire Medical Quality Assurance function,
30 including enforcement, within a single department. The study
31 shall be completed and a report issued to the President of the

1 Senate and the Speaker of the House of Representatives no
2 later than November 30, 2001.

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

6 456.004 Department; powers and duties.--The
7 department, for the professions under its jurisdiction, shall:

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

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

23 Section 6. Section 456.025, Florida Statutes, is
24 amended to read:

25 456.025 Fees; receipts; disposition.--

26 (1) It is the intent of the Legislature that all costs
27 of regulating health care professions and practitioners shall
28 be borne solely by licensees and licensure applicants. It is
29 also the intent of the Legislature that fees should be
30 reasonable and not serve as a barrier to licensure. Moreover,
31 it is the intent of the Legislature that the department

1 operate as efficiently as possible and regularly report to the
2 Legislature additional methods to streamline operational
3 costs. Therefore, the boards in consultation with the
4 department, or the department if there is no board, shall, by
5 rule, set renewal fees which:

6 (a) Shall be based on revenue projections prepared
7 using generally accepted accounting procedures;

8 (b) Shall be adequate to cover all expenses relating
9 to that board identified in the department's long-range policy
10 plan, as required by s. 456.005;

11 (c) Shall be reasonable, fair, and not serve as a
12 barrier to licensure;

13 (d) Shall be based on potential earnings from working
14 under the scope of the license;

15 (e) Shall be similar to fees imposed on similar
16 licensure types;

17 (f) Shall not be more than 10% greater than the fee
18 imposed for the previous biennium;

19 (g) Shall not be more than 10% greater than the actual
20 cost to regulate that profession for the previous biennium;
21 and

22 (h) Shall be subject to challenge pursuant to chapter
23 120.

24 (2) The chairpersons of the boards and councils listed
25 in s. 20.43(3)(g), shall meet annually at division
26 headquarters to review the long-range policy plan required by
27 s. 456.005 and current and proposed fee schedules. The
28 chairpersons shall make recommendations for any necessary
29 statutory changes relating to fees and fee caps. Such
30 recommendations shall be compiled by the Department of Health
31 and be included in the annual report to the Legislature

1 required by s. 456.026 as well as be included in the
2 long-range policy plan required by s. 456.005.

3 (2)~~(1)~~ Each board within the jurisdiction of the
4 department, or the department when there is no board, shall
5 determine by rule the amount of license fees for the
6 profession it regulates, based upon long-range estimates
7 prepared by the department of the revenue required to
8 implement laws relating to the regulation of professions by
9 the department and the board. Each board, or the department
10 if there is no board, shall ensure that license fees are
11 adequate to cover all anticipated costs and to maintain a
12 reasonable cash balance, as determined by rule of the agency,
13 with advice of the applicable board. If sufficient action is
14 not taken by a board within 1 year after notification by the
15 department that license fees are projected to be inadequate,
16 the department shall set license fees on behalf of the
17 applicable board to cover anticipated costs and to maintain
18 the required cash balance. The department shall include
19 recommended fee cap increases in its annual report to the
20 Legislature. Further, it is the legislative intent that no
21 regulated profession operate with a negative cash balance. The
22 department may provide by rule for advancing sufficient funds
23 to any profession operating with a negative cash balance. The
24 advancement may be for a period not to exceed 2 consecutive
25 years, and the regulated profession must pay interest.
26 Interest shall be calculated at the current rate earned on
27 investments of a trust fund used by the department to
28 implement this chapter. Interest earned shall be allocated to
29 the various funds in accordance with the allocation of
30 investment earnings during the period of the advance.

31

1 ~~(3)(2)~~ Each board, or the department if there is no
2 board, may charge a fee not to exceed \$25, as determined by
3 rule, for the issuance of a wall certificate pursuant to s.
4 456.013(2) requested by a licensee who was licensed prior to
5 July 1, 1998, or for the issuance of a duplicate wall
6 certificate requested by any licensee.

7 ~~(4)(3)~~ Each board, or the department if there is no
8 board, may, by rule, assess and collect a one-time fee from
9 each active status licensee and each inactive status licensee
10 in an amount necessary to eliminate a cash deficit or, if
11 there is not a cash deficit, in an amount sufficient to
12 maintain the financial integrity of the professions as
13 required in this section. Not more than one such assessment
14 may be made in any 4-year period without specific legislative
15 authorization.

16 (5) If the cash balance of the trust fund at the end
17 of any fiscal year exceeds the total appropriation provided
18 for the regulation of the health care professions in the prior
19 fiscal year, the boards, in consultation with the department,
20 may lower the license renewal fees.

21 ~~(6)(4)~~ Each board ~~authorized to approve continuing~~
22 ~~education providers~~, or the department if there is no board,
23 shall may establish, by rule, a fee not to exceed \$250 for
24 anyone seeking approval to provide continuing education
25 courses or programs and shall may establish by rule a biennial
26 renewal fee not to exceed \$250 for the renewal of providership
27 of such courses. The fees collected from continuing education
28 providers shall be used for the purposes of reviewing course
29 provider applications, monitoring the integrity of the courses
30 provided, covering legal expenses incurred as a result of not
31 granting or renewing a providership, and developing and

1 maintaining an electronic continuing education tracking
 2 system. The department shall implement an electronic
 3 continuing education tracking system for each new biennial
 4 renewal cycle for which electronic renewals are implemented
 5 after the effective date of this act and shall integrate such
 6 system into the licensure and renewal system. All approved
 7 continuing education providers shall provide information on
 8 course attendance to the department necessary to implement the
 9 electronic tracking system. The department shall, by rule,
 10 specify the form and procedures by which the information is to
 11 be submitted.~~This subsection does not apply to continuing~~
 12 ~~education courses or providers approved by the board under~~
 13 ~~chapter 465.~~

14 (7)~~(5)~~ All moneys collected by the department from
 15 fees or fines or from costs awarded to the agency by a court
 16 shall be paid into a trust fund used by the department to
 17 implement this chapter. The Legislature shall appropriate
 18 funds from this trust fund sufficient to carry out this
 19 chapter and the provisions of law with respect to professions
 20 regulated by the Division of Medical Quality Assurance within
 21 the department and the boards. The department may contract
 22 with public and private entities to receive and deposit
 23 revenue pursuant to this section. The department shall
 24 maintain separate accounts in the trust fund used by the
 25 department to implement this chapter for every profession
 26 within the department. To the maximum extent possible, the
 27 department shall directly charge all expenses to the account
 28 of each regulated profession. For the purpose of this
 29 subsection, direct charge expenses include, but are not
 30 limited to, costs for investigations, examinations, and legal
 31 services. For expenses that cannot be charged directly, the

1 department shall provide for the proportionate allocation
2 among the accounts of expenses incurred by the department in
3 the performance of its duties with respect to each regulated
4 profession. The regulation by the department of professions,
5 as defined in this chapter, shall be financed solely from
6 revenue collected by it from fees and other charges and
7 deposited in the Medical Quality Assurance Trust Fund, and all
8 such revenue is hereby appropriated to the department.
9 However, it is legislative intent that each profession shall
10 operate within its anticipated fees. The department may not
11 expend funds from the account of a profession to pay for the
12 expenses incurred on behalf of another profession, except that
13 the Board of Nursing must pay for any costs incurred in the
14 regulation of certified nursing assistants. The department
15 shall maintain adequate records to support its allocation of
16 agency expenses. The department shall provide any board with
17 reasonable access to these records upon request. On or before
18 October 1 of each year, the department shall provide each
19 board an annual report of revenue and direct and allocated
20 expenses related to the operation of that profession. The
21 board shall use these reports and the department's adopted
22 long-range plan to determine the amount of license fees. A
23 condensed version of this information, with the department's
24 recommendations, shall be included in the annual report to the
25 Legislature prepared under s. 456.026.

26 (8)~~(6)~~ The department shall provide a condensed
27 management report of budgets, finances, performance
28 statistics, and recommendations to each board at least once a
29 quarter. The department shall identify and include in such
30 presentations any changes, or projected changes, made to the
31 board's budget since the last presentation.

1 ~~(9)(7)~~ If a duplicate license is required or requested
2 by the licensee, the board or, if there is no board, the
3 department may charge a fee as determined by rule not to
4 exceed \$25 before issuance of the duplicate license.

5 ~~(10)(8)~~ The department or the appropriate board shall
6 charge a fee not to exceed \$25 for the certification of a
7 public record. The fee shall be determined by rule of the
8 department. The department or the appropriate board shall
9 assess a fee for duplicating a public record as provided in s.
10 119.07(1)(a) and (b).

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

13 457.107 Renewal of licenses; continuing education.--

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

17 Section 8. Section 458.31151, Florida Statutes, is
18 repealed.

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

21 483.807 Fees; establishment; disposition.--

22 (1) The board, by rule, shall establish fees to be
23 paid for application, examination, reexamination, licensing
24 and renewal, registration, laboratory training program
25 application, reinstatement, and recordmaking and
26 recordkeeping. The board may also establish, by rule, a
27 delinquency fee. The board shall establish fees that are
28 adequate to ensure the continued operation of the board and to
29 fund the proportionate expenses incurred by the department in
30 carrying out its licensure and other related responsibilities
31 under this part. Fees shall be based on departmental estimates

1 of the revenue required to implement this part and the
2 provisions of law with respect to the regulation of clinical
3 laboratory personnel.

4 Section 10. Subsections (1), (3), and (4) of section
5 456.011, Florida Statutes, are amended to read:

6 456.011 Boards; organization; meetings; compensation
7 and travel expenses.--

8 (1) Each board within the department shall comply with
9 the provisions of this chapter ~~section~~.

10 (3) The board shall meet at least once annually and
11 may meet as often as is necessary. Meetings shall be conducted
12 through teleconferencing or other technological means, unless
13 disciplinary hearings involving standard of care, sexual
14 misconduct, fraud, impairment, or felony convictions;
15 licensure denial hearings; or controversial rule hearings are
16 being conducted; or unless otherwise approved in advance of
17 the meeting by the director of the Division of Medical Quality
18 Assurance.The chairperson or a quorum of the board shall have
19 the authority to call ~~other~~ meetings, except as provided above
20 relating to in-person meetings. A quorum shall be necessary
21 for the conduct of official business by the board or any
22 committee thereof. Unless otherwise provided by law, 51
23 percent or more of the appointed members of the board or any
24 committee, when applicable, shall constitute a quorum. The
25 membership of committees of the board, except as otherwise
26 authorized pursuant to this chapter or the applicable practice
27 act, shall be composed of currently appointed members of the
28 board. The vote of a majority of the members of the quorum
29 shall be necessary for any official action by the board or
30 committee. Three consecutive unexcused absences or absences
31 constituting 50 percent or more of the board's meetings within

1 any 12-month period shall cause the board membership of the
2 member in question to become void, and the position shall be
3 considered vacant. The board, or the department when there is
4 no board, shall, by rule, define unexcused absences.

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

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

18 456.013 Department; general licensing provisions.--

19 (2) Before the issuance of any license, the department
20 shall ~~may~~ charge an initial license fee as determined by ~~rule~~
21 ~~of~~ the applicable board or, if no such board exists, by rule
22 of the department. Upon receipt of the appropriate license
23 fee, the department shall issue a license to any person
24 certified by the appropriate board, or its designee, as having
25 met the licensure requirements imposed by law or rule. The
26 license shall consist of a wallet-size identification card and
27 a wall card measuring 6 1/2 inches by 5 inches. In addition
28 to the two-part license, the department, at the time of
29 initial licensure, shall issue a wall certificate suitable for
30 conspicuous display, which shall be no smaller than 8 1/2
31 inches by 14 inches. The licensee shall surrender to the

1 department the wallet-size identification card, the wall card,
2 and the wall certificate, if one has been issued by the
3 department, if the licensee's license is revoked.

4 Section 12. Section 456.017, Florida Statutes, is
5 amended to read:

6 456.017 Department of Health; examinations.--

7 (1)(a) The department shall provide, contract, or
8 approve services for the development, preparation,
9 administration, scoring, score reporting, and evaluation of
10 all examinations, in consultation with the appropriate board.
11 The department shall certify that examinations developed and
12 approved by the department adequately and reliably measure an
13 applicant's ability to practice the profession regulated by
14 the department. After an examination developed or approved by
15 the department has been administered, the board, or the
16 department when there is no board, may reject any question
17 which does not reliably measure the general areas of
18 competency specified in the rules of the board. The department
19 may contract for the preparation, administration, scoring,
20 score reporting, and evaluation of examinations, when such
21 services are available and approved by the board.

22 (b) For each examination developed by the department
23 or contracted vendor, to the extent not otherwise specified by
24 statute, the board, or the department when there is no board,
25 shall by rule specify the general areas of competency to be
26 covered by each examination, the relative weight to be
27 assigned in grading each area tested, and the score necessary
28 to achieve a passing grade. The department shall assess, and
29 fees, where applicable, to cover the actual cost for any
30 purchase, development, validation, and administration, and
31 defense of required examinations. This subsection does not

1 apply to national examinations approved and administered
2 pursuant to paragraph (c). If a practical examination is
3 deemed to be necessary, the rules shall specify the criteria
4 by which examiners are to be selected, the grading criteria to
5 be used by the examiner, the relative weight to be assigned in
6 grading each criterion, and the score necessary to achieve a
7 passing grade. When a mandatory standardization exercise for a
8 practical examination is required by law, the board, or the
9 department when there is no board, may conduct such exercise.
10 Therefore, board members, or employees of the department when
11 there is no board, may serve as examiners at a practical
12 examination with the consent of the board or department, as
13 appropriate.

14 (c)1. The board, or the department when there is no
15 board, shall ~~may~~ approve by rule the use of one or more ~~any~~
16 national examinations ~~examination~~ which the department has
17 certified as meeting requirements of national examinations and
18 generally accepted testing standards pursuant to department
19 rules. Providers of examinations seeking certification by the
20 department shall pay the actual costs incurred by the
21 department in making a determination regarding the
22 certification. The name and number of a candidate may be
23 provided to a national contractor for the limited purpose of
24 preparing the grade tape and information to be returned to the
25 board or department; or, to the extent otherwise specified by
26 rule, the candidate may apply directly to the vendor of the
27 national examination and supply test score information to the
28 department. The department may delegate to the board the duty
29 to provide and administer the examination. Any national
30 examination approved by a board, or the department when there
31

1 is no board, prior to October 1, 1997, is deemed certified
2 under this paragraph.

3 2. The board, or the department when there is no
4 board, shall approve and begin administering a national
5 examination no later than December 31, 2001. Neither the board
6 nor the department may administer a state-developed written
7 examination after December 31, 2001, notwithstanding any other
8 provision of law. The examination may be administered
9 electronically if adequate security measures are used, as
10 determined by rule of the department.

11 3. The board, or the department when there is no
12 board, may administer a state-developed practical or clinical
13 examination, as required by the applicable practice act, if
14 all costs of development, purchase, validation,
15 administration, review, and defense are paid by the
16 examination candidate prior to the administration of the
17 examination. If a national practical or clinical examination
18 is available and certified by the department pursuant to this
19 section, the board, or the department when there is no board,
20 may administer the national examination.

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

24 (d) Each board, or the department when there is no
25 board, shall adopt rules regarding the security and monitoring
26 of examinations. The department shall implement those rules
27 adopted by the respective boards. In order to maintain the
28 security of examinations, the department may employ the
29 procedures set forth in s. 456.065 to seek fines and
30 injunctive relief against an examinee who violates the
31 provisions of s. 456.018 or the rules adopted pursuant to this

1 paragraph. The department, or any agent thereof, may, for the
 2 purposes of investigation, confiscate any written,
 3 photographic, or recording material or device in the
 4 possession of the examinee at the examination site which the
 5 department deems necessary to enforce such provisions or
 6 rules. The scores of candidates who have taken state-developed
 7 examinations shall be provided to the candidates
 8 electronically using a candidate identification number, and
 9 the department shall post the aggregate scores on the
 10 department's website without identifying the names of the
 11 candidates.

12 (e) If the professional board with jurisdiction over
 13 an examination concurs, the department may, for a fee, share
 14 with any other state's licensing authority or a national
 15 testing entity an examination or examination item bank
 16 developed by or for the department unless prohibited by a
 17 contract entered into by the department for development or
 18 purchase of the examination. The department, with the
 19 concurrence of the appropriate board, shall establish
 20 guidelines that ensure security of a shared exam and shall
 21 require that any other state's licensing authority comply with
 22 those guidelines. Those guidelines shall be approved by the
 23 appropriate professional board. All fees paid by the user
 24 shall be applied to the department's examination and
 25 development program for professions regulated by this chapter.

26 (f) The department may adopt rules necessary to
 27 administer this subsection.

28 (2) For each examination developed by the department
 29 or a contracted vendor, the board, or the department when
 30 there is no board, shall adopt rules providing for
 31 reexamination of any applicants who failed an examination

1 developed by the department or a contracted vendor. If both a
2 written and a practical examination are given, an applicant
3 shall be required to retake only the portion of the
4 examination on which the applicant failed to achieve a passing
5 grade, if the applicant successfully passes that portion
6 within a reasonable time, as determined by rule of the board,
7 or the department when there is no board, of passing the other
8 portion. Except for national examinations approved and
9 administered pursuant to this section, the department shall
10 provide procedures for applicants who fail an examination
11 developed by the department or a contracted vendor to review
12 their examination questions, answers, papers, grades, and
13 grading key for the questions the candidate answered
14 incorrectly or, if not feasible, the parts of the examination
15 failed. Applicants shall bear the actual cost for the
16 department to provide examination review pursuant to this
17 subsection. An applicant may waive in writing the
18 confidentiality of the applicant's examination grades.
19 Notwithstanding any other provisions, only candidates who fail
20 an examination by less than ten percent shall be entitled to
21 challenge the validity of the examination at hearing.

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

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

12 (5) For examinations developed by the department or a
 13 contracted vendor, each board, or the department when there is
 14 no board, may provide licensure examinations in an applicant's
 15 native language. Notwithstanding any other provision of law,
 16 applicants for examination or reexamination pursuant to this
 17 subsection shall bear the full cost for the department's
 18 development, preparation, validation, administration, grading,
 19 and evaluation of any examination in a language other than
 20 English prior to the examination being administered. Requests
 21 for translated examinations must be on file in the board
 22 office at least 6 months prior to the scheduled examination.
 23 When determining whether it is in the public interest to allow
 24 the examination to be translated into a language other than
 25 English, the board shall consider the percentage of the
 26 population who speak the applicant's native language.
 27 Applicants must apply for translation to the applicable board
 28 at least 6 months prior to the scheduled examination.

29 (6) In addition to meeting any other requirements for
 30 licensure by examination or by endorsement, and
 31 notwithstanding the provisions in paragraph (1)(c), an

1 applicant may be required by a board, or the department when
2 there is no board, to certify competency in state laws and
3 rules relating to the applicable practice act. Beginning
4 October 1, 2001, all laws and rules examinations shall be
5 administered electronically unless the laws and rules
6 examination is administered concurrently with another written
7 examination for that profession or unless the electronic
8 administration would be substantially more expensive.

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

11 456.035 Address of record.--

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

23 Section 14. Subsections (2), (4), and (10) of section
24 456.073, Florida Statutes, are amended to read:

25 456.073 Disciplinary proceedings.--Disciplinary
26 proceedings for each board shall be within the jurisdiction of
27 the department.

28 (2) The department shall allocate sufficient and
29 adequately trained staff to expeditiously and thoroughly
30 determine legal sufficiency and investigate all legally
31 sufficient complaints. For purposes of this section, it is the

1 intent of the Legislature that the term "expeditiously" means
2 that the department complete the report of its initial
3 investigative findings and recommendations concerning the
4 existence of probable cause within 6 months after its receipt
5 of the complaint. The failure of the department, for
6 disciplinary cases under its jurisdiction, to comply with the
7 time limits of this section while investigating a complaint
8 against a licensee constitutes harmless error in any
9 subsequent disciplinary action unless a court finds that
10 either the fairness of the proceeding or the correctness of
11 the action may have been impaired by a material error in
12 procedure or a failure to follow prescribed procedure. When
13 its investigation is complete and legally sufficient, the
14 department shall prepare and submit to the probable cause
15 panel of the appropriate regulatory board the investigative
16 report of the department. The report shall contain the
17 investigative findings and the recommendations of the
18 department concerning the existence of probable cause. The
19 department shall not recommend a letter of guidance in lieu of
20 finding probable cause if the subject has already been issued
21 a letter of guidance for a related offense.At any time after
22 legal sufficiency is found, the department may dismiss any
23 case, or any part thereof, if the department determines that
24 there is insufficient evidence to support the prosecution of
25 allegations contained therein. The department shall provide a
26 detailed report to the appropriate probable cause panel prior
27 to dismissal of any case or part thereof, and to the subject
28 of the complaint after dismissal of any case or part thereof,
29 under this section. For cases dismissed prior to a finding of
30 probable cause, such report is confidential and exempt from s.
31 119.07(1). The probable cause panel shall have access, upon

1 request, to the investigative files pertaining to a case prior
 2 to dismissal of such case. If the department dismisses a case,
 3 the probable cause panel may retain independent legal counsel,
 4 employ investigators, and continue the investigation and
 5 prosecution of the case as it deems necessary.

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

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

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

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

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

16 Section 15. Section 456.081, Florida Statutes, is
17 amended to read:

18 456.081 Publication of information.--The department
19 and the boards shall have the authority to advise licensees
20 periodically, through the publication of a newsletter on the
21 department's website, about information that the department or
22 the board determines is of interest to the industry. Unless
23 otherwise prohibited by law, the department and the boards
24 shall publish a summary of final orders resulting in
25 disciplinary action ~~finances, suspensions, or revocations,~~ and
26 any other information the department or the board determines
27 is of interest to the public.

28 Section 16. Subsections (1), (2), and (4) of section
29 456.072, Florida Statutes, are amended to read:

30 456.072 Grounds for discipline; penalties;
31 enforcement.--

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

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

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

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

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

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

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

30
31

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, the
15 applicable practice act, or any rules adopted pursuant
16 thereto.

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

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

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

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

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

6 (d) Imposition of an administrative fine not to exceed
7 \$10,000 for each count or separate offense. If the violation
8 is for fraud or making a false or fraudulent representation,
9 the board, or department if there is no board, shall impose a
10 fine of \$10,000 per count or offense.

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

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

20 (g) Corrective action.

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

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

25 (j) Requirement that the practitioner undergo remedial
26 education.

27
28 In determining what action is appropriate, the board, or
29 department when there is no board, must first consider what
30 sanctions are necessary to protect the public or to compensate
31 the patient. Only after those sanctions have been imposed may

1 the disciplining authority consider and include in the order
2 requirements designed to rehabilitate the practitioner. All
3 costs associated with compliance with orders issued under this
4 subsection are the obligation of the practitioner.

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

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

20 456.079 Disciplinary guidelines.--

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

29 Section 18. Subsections (1) and (2) of section
30 457.109, Florida Statutes, are amended to read:

31

1 457.109 Disciplinary actions; grounds; action by the
2 board.--

3 (1) The following acts ~~shall~~ constitute grounds for
4 denial of a license or disciplinary action, as specified in s.
5 456.072(2)~~which the disciplinary actions specified in~~
6 ~~subsection (2) may be taken:~~

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

10 (b) Having a license to practice acupuncture revoked,
11 suspended, or otherwise acted against, including the denial of
12 licensure, by the licensing authority of another state,
13 territory, or country.

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

19 (d) False, deceptive, or misleading advertising or
20 advertising which claims that acupuncture is useful in curing
21 any disease.

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

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

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

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

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

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

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

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

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

24 (n) Exercising influence on the patient to exploit the
25 patient for the financial gain of the licensee or of a third
26 party.

27 (o) Being unable to practice acupuncture with
28 reasonable skill and safety to patients by reason of illness
29 or use of alcohol, drugs, narcotics, chemicals, or any other
30 type of material or as a result of any mental or physical
31 condition. In enforcing this paragraph, upon a finding of the

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

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

28 (q) 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 reason to know that he or she is not competent to perform.

1 (r) Delegating professional responsibilities to a
2 person when the licensee delegating such responsibilities
3 knows or has reason to know that such person is not qualified
4 by training, experience, or licensure to perform them.

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

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

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

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

18 (w) Failing to comply with any rule of the board
19 relating to health and safety, including, but not limited to,
20 the sterilization of needles and equipment and the disposal of
21 potentially infectious materials.

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

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

29 ~~456.072(1).When the board finds any person guilty of any of~~
30 ~~the acts set forth in subsection (1), it may enter an order~~
31 ~~imposing one or more of the following penalties:~~

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

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

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

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

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

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

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

13 458.320 Financial responsibility.--

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

20 Section 20. Subsections (1) and (2) of section
21 458.331, Florida Statutes, are amended to read:

22 458.331 Grounds for disciplinary action; action by the
23 board and department.--

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

28 (a) Attempting to obtain, obtaining, or renewing a
29 license to practice medicine by bribery, by fraudulent
30 misrepresentations, or through an error of the department or
31 the board.

1 (b) Having a license or the authority to practice
2 medicine revoked, suspended, or otherwise acted against,
3 including the denial of licensure, by the licensing authority
4 of any jurisdiction, including its agencies or subdivisions.
5 The licensing authority's acceptance of a physician's
6 relinquishment of a license, stipulation, consent order, or
7 other settlement, offered in response to or in anticipation of
8 the filing of administrative charges against the physician's
9 license, shall be construed as action against the physician's
10 license.

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 directly relates to the
14 practice of medicine or to the ability to practice medicine.

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

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

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

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

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

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

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

13 (j) Exercising influence within a patient-physician
14 relationship for purposes of engaging a patient in sexual
15 activity. A patient shall be presumed to be incapable of
16 giving free, full, and informed consent to sexual activity
17 with his or her physician.

18 (k) Making deceptive, untrue, or fraudulent
19 representations in or related to the practice of medicine or
20 employing a trick or scheme in the practice of medicine.

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

26 (m) Failing to keep legible, as defined by department
27 rule in consultation with the board, medical records that
28 identify the licensed physician or the physician extender and
29 supervising physician by name and professional title who is or
30 are responsible for rendering, ordering, supervising, or
31 billing for each diagnostic or treatment procedure and that

1 justify the course of treatment of the patient, including, but
2 not limited to, patient histories; examination results; test
3 results; records of drugs prescribed, dispensed, or
4 administered; and reports of consultations and
5 hospitalizations.

6 (n) Exercising influence on the patient or client in
7 such a manner as to exploit the patient or client for
8 financial gain of the licensee or of a third party, which
9 shall include, but not be limited to, the promoting or selling
10 of services, goods, appliances, or drugs.

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

14 (p) Performing professional services which have not
15 been duly authorized by the patient or client, or his or her
16 legal representative, except as provided in s. 743.064, s.
17 766.103, or s. 768.13.

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

29 (r) Prescribing, dispensing, or administering any
30 medicinal drug appearing on any schedule set forth in chapter
31 893 by the physician to himself or herself, except one

1 prescribed, dispensed, or administered to the physician by
2 another practitioner authorized to prescribe, dispense, or
3 administer medicinal drugs.

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

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

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

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

23 (v) 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 he or she is not competent to perform. The
27 board may establish by rule standards of practice and
28 standards of care for particular practice settings, including,
29 but not limited to, education and training, equipment and
30 supplies, medications including anesthetics, assistance of and
31 delegation to other personnel, transfer agreements,

1 sterilization, records, performance of complex or multiple
2 procedures, informed consent, and policy and procedure
3 manuals.

4 (w) 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 qualified
7 by training, experience, or licensure to perform them.

8 (x) Violating ~~any provision of this chapter, a rule of~~
9 ~~the board or department, or~~ a 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
12 department.

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

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

19 (aa) Presigning blank prescription forms.

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

22 (cc) Prescribing, ordering, dispensing, administering,
23 supplying, selling, or giving any drug which is a Schedule II
24 amphetamine or a Schedule II sympathomimetic amine drug or any
25 compound thereof, pursuant to chapter 893, to or for any
26 person except for:

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

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

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

8 (dd) Failing to supervise adequately the activities of
9 those physician assistants, paramedics, emergency medical
10 technicians, or advanced registered nurse practitioners acting
11 under the supervision of the physician.

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

22 (ff) Prescribing, ordering, dispensing, administering,
23 supplying, selling, or giving amygdalin (laetrile) to any
24 person.

25 (gg) Misrepresenting or concealing a material fact at
26 any time during any phase of a licensing or disciplinary
27 process or procedure.

28 (hh) Improperly interfering with an investigation or
29 with any disciplinary proceeding.

30 (ii) Failing to report to the department any licensee
31 under this chapter or under chapter 459 who the physician or

1 physician assistant knows has violated the grounds for
2 disciplinary action set out in the law under which that person
3 is licensed and who provides health care services in a
4 facility licensed under chapter 395, or a health maintenance
5 organization certificated under part I of chapter 641, in
6 which the physician or physician assistant also provides
7 services.

8 (jj) Being found by any court in this state to have
9 provided corroborating written medical expert opinion attached
10 to any statutorily required notice of claim or intent or to
11 any statutorily required response rejecting a claim, without
12 reasonable investigation.

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

17 (ll) Advertising or holding oneself out as a
18 board-certified specialist, if not qualified under s.
19 458.3312, in violation of this chapter.

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

24 (nn) Violating any provision of this chapter or
25 chapter 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), including conduct~~
2 ~~that would constitute a substantial violation of subsection~~
3 ~~(1) which occurred prior to licensure, it may enter an order~~
4 ~~imposing one or more of the following penalties:~~

5 ~~(a) Refusal to certify, or certification with~~
6 ~~restrictions, to the department an application for licensure,~~
7 ~~certification, or registration.~~

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

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

10 ~~(d) Imposition of an administrative fine not to exceed~~
11 ~~\$10,000 for each count or separate offense.~~

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

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

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

20 ~~(h) Corrective action.~~

21 ~~(i) Refund of fees billed to and collected from the~~
22 ~~patient.~~

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

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 physician. All costs associated with

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

3 Section 21. Subsection (2) of section 458.345, Florida
4 Statutes, is amended to read:

5 458.345 Registration of resident physicians, interns,
6 and fellows; list of hospital employees; prescribing of
7 medicinal drugs; penalty.--

8 (2) The board shall not certify to the department for
9 registration any applicant who is under investigation in any
10 state or jurisdiction for an act which would constitute
11 grounds the basis for imposing a disciplinary action under
12 penalty specified in s. 458.331(2)(b) until such time as the
13 investigation is completed, at which time the provisions of s.
14 458.331 shall apply.

15 Section 22. Subsection (7) of section 458.347, Florida
16 Statutes, is amended to read:

17 458.347 Physician assistants.--

18 (7) PHYSICIAN ASSISTANT LICENSURE.--

19 (g) The Board of Medicine may impose any of the
20 penalties authorized under ~~specified in~~ ss. 456.072 and
21 458.331(2) upon a physician assistant if the physician
22 assistant or the supervising physician has been found guilty
23 of or is being investigated for any act that constitutes a
24 violation of this chapter or chapter 456.

25 Section 23. Subsection (6) of section 459.0085,
26 Florida Statutes, is amended to read:

27 459.0085 Financial responsibility.--

28 (6) Any deceptive, untrue, or fraudulent
29 representation by the licensee with respect to any provision
30 of this section shall result in permanent disqualification
31 from any exemption to mandated financial responsibility as

1 provided in this section and shall constitute grounds for
2 disciplinary action under ~~as specified in~~ s. 459.015.

3 Section 24. Subsections (1) and (2) of section
4 459.015, Florida Statutes, are amended to read:

5 459.015 Grounds for disciplinary action; action by the
6 board and 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 osteopathic medicine or a certificate
13 issued under this chapter by bribery, by fraudulent
14 misrepresentations, or through an error of the department or
15 the board.

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

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 osteopathic medicine or to the
29 ability to practice osteopathic medicine. A plea of nolo
30 contendere shall create a rebuttable presumption of guilt to
31 the underlying criminal charges.

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

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

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

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

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

18 (i) 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, willfully
21 impeding or obstructing such filing, or inducing another
22 person to do so. Such reports or records shall include only
23 those which are signed in the capacity as a licensed
24 osteopathic physician.

25 (j) Paying or receiving any commission, bonus,
26 kickback, or rebate, or engaging in any split-fee arrangement
27 in any form whatsoever with a physician, organization, agency,
28 person, partnership, firm, corporation, or other business
29 entity, for patients referred to providers of health care
30 goods and services, including, but not limited to, hospitals,
31 nursing homes, clinical laboratories, ambulatory surgical

1 centers, or pharmacies. The provisions of this paragraph
2 shall not be construed to prevent an osteopathic physician
3 from receiving a fee for professional consultation services.

4 (k) Refusing to provide health care based on a
5 patient's participation in pending or past litigation or
6 participation in any disciplinary action conducted pursuant to
7 this chapter, unless such litigation or disciplinary action
8 directly involves the osteopathic physician requested to
9 provide services.

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

15 (m) Making deceptive, untrue, or fraudulent
16 representations in or related to the practice of osteopathic
17 medicine or employing a trick or scheme in the practice of
18 osteopathic medicine.

19 (n) Soliciting patients, either personally or through
20 an agent, through the use of fraud, intimidation, undue
21 influence, or forms of overreaching or vexatious conduct. A
22 solicitation is any communication which directly or implicitly
23 requests an immediate oral response from the recipient.

24 (o) Failing to keep legible, as defined by department
25 rule in consultation with the board, medical records that
26 identify the licensed osteopathic physician or the osteopathic
27 physician extender and supervising osteopathic physician by
28 name and professional title who is or are responsible for
29 rendering, ordering, supervising, or billing for each
30 diagnostic or treatment procedure and that justify the course
31 of treatment of the patient, including, but not limited to,

1 patient histories; examination results; test results; records
2 of drugs prescribed, dispensed, or administered; and reports
3 of consultations and hospitalizations.

4 (p) Fraudulently altering or destroying records
5 relating to patient care or treatment, including, but not
6 limited to, patient histories, examination results, and test
7 results.

8 (q) Exercising influence on the patient or client in
9 such a manner as to exploit the patient or client for
10 financial gain of the licensee or of a third party which shall
11 include, but not be limited to, the promotion or sale of
12 services, goods, appliances, or drugs.

13 (r) Promoting or advertising on any prescription form
14 of a community pharmacy, unless the form shall also state
15 "This prescription may be filled at any pharmacy of your
16 choice."

17 (s) Performing professional services which have not
18 been duly authorized by the patient or client or his or her
19 legal representative except as provided in s. 743.064, s.
20 766.103, or s. 768.13.

21 (t) Prescribing, dispensing, administering, supplying,
22 selling, giving, mixing, or otherwise preparing a legend drug,
23 including all controlled substances, other than in the course
24 of the osteopathic physician's professional practice. For the
25 purposes of this paragraph, it shall be legally presumed that
26 prescribing, dispensing, administering, supplying, selling,
27 giving, mixing, or otherwise preparing legend drugs, including
28 all controlled substances, inappropriately or in excessive or
29 inappropriate quantities is not in the best interest of the
30 patient and is not in the course of the osteopathic
31

1 physician's professional practice, without regard to his or
2 her intent.

3 (u) Prescribing or dispensing any medicinal drug
4 appearing on any schedule set forth in chapter 893 by the
5 osteopathic physician for himself or herself or administering
6 any such drug by the osteopathic physician to himself or
7 herself unless such drug is prescribed for the osteopathic
8 physician by another practitioner authorized to prescribe
9 medicinal drugs.

10 (v) Prescribing, ordering, dispensing, administering,
11 supplying, selling, or giving amygdalin (laetrile) to any
12 person.

13 (w) Being unable to practice osteopathic medicine 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 upon a finding of the secretary or the secretary's designee
19 that probable cause exists to believe that the licensee is
20 unable to practice medicine because of the reasons stated in
21 this paragraph, have the authority to issue an order to compel
22 a licensee to submit to a mental or physical examination by
23 physicians designated by the department. If the licensee
24 refuses to comply with such order, the department's order
25 directing such examination may be enforced by filing a
26 petition for enforcement in the circuit court where the
27 licensee resides or does business. The licensee against whom
28 the petition is filed shall not be named or identified by
29 initials in any public court records or documents, and the
30 proceedings shall be closed to the public. The department
31 shall be entitled to the summary procedure provided in s.

1 51.011. A licensee or certificateholder affected under this
2 paragraph shall at reasonable intervals be afforded an
3 opportunity to demonstrate that he or she can resume the
4 competent practice of medicine with reasonable skill and
5 safety to patients.

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

1 medicine with that level of care, skill, and treatment which
2 is recognized as being acceptable under similar conditions and
3 circumstances," or any combination thereof, and any
4 publication by the board shall so specify.

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

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

22 (aa) Delegating professional responsibilities to a
23 person when the licensee delegating such responsibilities
24 knows or has reason to know that such person is not qualified
25 by training, experience, or licensure to perform them.

26 (bb) ~~Violating any provision of this chapter, a rule~~
27 ~~of the board or department, or~~ a lawful order of the board or
28 department previously entered in a disciplinary hearing or
29 failing to comply with a lawfully issued subpoena of the board
30 or department.

31

1 (cc) Conspiring with another licensee or with any
2 other person to commit an act, or committing an act, which
3 would tend to coerce, intimidate, or preclude another licensee
4 from lawfully advertising his or her services.

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

7 (ee) Presigning blank prescription forms.

8 (ff) Prescribing any medicinal drug appearing on
9 Schedule II in chapter 893 by the osteopathic physician for
10 office use.

11 (gg) Prescribing, ordering, dispensing, administering,
12 supplying, selling, or giving any drug which is a Schedule II
13 amphetamine or Schedule II sympathomimetic amine drug or any
14 compound thereof, pursuant to chapter 893, to or for any
15 person except for:

16 1. The treatment of narcolepsy; hyperkinesis;
17 behavioral syndrome characterized by the developmentally
18 inappropriate symptoms of moderate to severe distractability,
19 short attention span, hyperactivity, emotional lability, and
20 impulsivity; or drug-induced brain dysfunction;

21 2. The differential diagnostic psychiatric evaluation
22 of depression or the treatment of depression shown to be
23 refractory to other therapeutic modalities; or

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

28 (hh) Failing to supervise adequately the activities of
29 those physician assistants, paramedics, emergency medical
30 technicians, advanced registered nurse practitioners, or other
31

1 persons acting under the supervision of the osteopathic
2 physician.

3 (ii) 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 (jj) Misrepresenting or concealing a material fact at
14 any time during any phase of a licensing or disciplinary
15 process or procedure.

16 (kk) Improperly interfering with an investigation or
17 with any disciplinary proceeding.

18 (ll) Failing to report to the department any licensee
19 under chapter 458 or under this chapter who the osteopathic
20 physician or physician assistant knows has violated the
21 grounds for disciplinary action set out in the law under which
22 that person is licensed and who provides health care services
23 in a facility licensed under chapter 395, or a health
24 maintenance organization certificated under part I of chapter
25 641, in which the osteopathic physician or physician assistant
26 also provides services.

27 (mm) Being found by any court in this state to have
28 provided corroborating written medical expert opinion attached
29 to any statutorily required notice of claim or intent or to
30 any statutorily required response rejecting a claim, without
31 reasonable investigation.

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

3 (oo) Failing to comply with the requirements of ss.
4 381.026 and 381.0261 to provide patients with information
5 about their patient rights and how to file a patient
6 complaint.

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

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

17 ~~(a) Refusal to certify, or certify with restrictions,~~
18 ~~to the department an application for certification, licensure,~~
19 ~~renewal, or reactivation.~~

20 ~~(b) Revocation or suspension of a license or~~
21 ~~certificate.~~

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

23 ~~(d) Imposition of an administrative fine not to exceed~~
24 ~~\$10,000 for each count or separate offense.~~

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

26 ~~(f) Issuance of a letter of concern.~~

27 ~~(g) Placement of the osteopathic physician on~~
28 ~~probation for a period of time and subject to such conditions~~
29 ~~as the board may specify, including, but not limited to,~~
30 ~~requiring the osteopathic physician to submit to treatment,~~
31 ~~attend continuing education courses, submit to reexamination,~~

1 ~~or work under the supervision of another osteopathic~~
2 ~~physician.~~

3 ~~(h) Corrective action.~~

4 ~~(i) Refund of fees billed to and collected from the~~
5 ~~patient.~~

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

8
9 In determining what action is appropriate, the board must
10 first consider what sanctions are necessary to protect the
11 public or to compensate the patient. Only after those
12 sanctions have been imposed may the disciplining authority
13 consider and include in the order requirements designed to
14 rehabilitate the physician. All costs associated with
15 compliance with orders issued under this subsection are the
16 obligation of the physician.

17 Section 25. Paragraph (f) of subsection (7) of section
18 459.022, Florida Statutes, is amended to read:

19 459.022 Physician assistants.--

20 (7) PHYSICIAN ASSISTANT LICENSURE.--

21 (f) The Board of Osteopathic Medicine may impose any
22 of the penalties authorized under ~~specified in~~ ss. 456.072 and
23 459.015(2) upon a physician assistant if the physician
24 assistant or the supervising physician has been found guilty
25 of or is being investigated for any act that constitutes a
26 violation of this chapter or chapter 456.

27 Section 26. Subsections (1) and (2) of section
28 460.413, Florida Statutes, are amended to read:

29 460.413 Grounds for disciplinary action; action by
30 board or department.--

31

1 (1) The following acts ~~shall~~ constitute grounds for
2 denial of a license or disciplinary action, as specified in s.
3 456.072(2)~~which the disciplinary actions specified in~~
4 ~~subsection (2) may be taken:~~

5 (a) Attempting to obtain, obtaining, or renewing a
6 license to practice chiropractic medicine by bribery, by
7 fraudulent misrepresentations, or through an error of the
8 department or the board.

9 (b) Having a license to practice chiropractic medicine
10 revoked, suspended, or otherwise acted against, including the
11 denial of licensure, by the licensing authority of another
12 state, territory, or country.

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

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

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

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

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

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

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

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

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

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

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

31

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 shall
4 include, but not be limited to, the promotion or sale of
5 services, goods or appliances, or drugs.

6 (o) Performing professional services which have not
7 been duly authorized by the patient or client or her or his
8 legal representative except as provided in ss. 743.064,
9 766.103, and 768.13.

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

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

1 physician affected under this paragraph shall at reasonable
2 intervals be afforded an opportunity to demonstrate that she
3 or he can resume the competent practice of chiropractic
4 medicine with reasonable skill and safety to patients.

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

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

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

29 (u) 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 (v) ~~Violating any provision of this chapter, any 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
7 department.

8 (w) 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 her or his services.

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

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

1 is fraudulent. All funds of patients paid to a chiropractic
2 physician, other than advances for costs and expenses, shall
3 be deposited in one or more identifiable bank accounts
4 maintained in the state in which the chiropractic physician's
5 office is situated, and no funds belonging to the chiropractic
6 physician shall be deposited therein except as follows:

7 1. Funds reasonably sufficient to pay bank charges may
8 be deposited therein.

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

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

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

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 27. 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 28. 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 29. 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 30. 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 (l) 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 31. Subsection (3) of section 465.008, Florida
11 Statutes, is amended to read:

12 465.008 Renewal of license.--

13 ~~(3) Sixty days prior to the end of the biennium the~~
14 ~~department shall mail a notice of renewal to the last known~~
15 ~~address of the licensee.~~

16 Section 32. Subsections (1) and (2) of section
17 465.016, Florida Statutes, are amended to read:

18 465.016 Disciplinary actions.--

19 (1) The following acts constitute ~~shall be~~ grounds for
20 denial of a license or disciplinary action, as specified in s.
21 456.072(2)disciplinary action set forth in this section:

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

24 (b) Procuring or attempting to procure a license for
25 any other person by making or causing to be made any false
26 representation.

27 (c) Permitting any person not licensed as a pharmacist
28 in this state or not registered as an intern in this state, or
29 permitting a registered intern who is not acting under the
30 direct and immediate personal supervision of a licensed
31 pharmacist, to fill, compound, or dispense any prescriptions

1 in a pharmacy owned and operated by such pharmacist or in a
2 pharmacy where such pharmacist is employed or on duty.

3 (d) Being unfit or incompetent to practice pharmacy by
4 reason of:

5 1. Habitual intoxication.

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

8 3. Any abnormal physical or mental condition which
9 threatens the safety of persons to whom she or he might sell
10 or dispense prescriptions, drugs, or medical supplies or for
11 whom she or he might manufacture, prepare, or package, or
12 supervise the manufacturing, preparation, or packaging of,
13 prescriptions, drugs, or medical supplies.

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

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

27 (g) Using in the compounding of a prescription, or
28 furnishing upon prescription, an ingredient or article
29 different in any manner from the ingredient or article
30 prescribed, except as authorized in s. 465.019(6) or s.
31 465.025.

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

4 (i) Compounding, dispensing, or distributing a legend
5 drug, including any controlled substance, other than in the
6 course of the professional practice of pharmacy. For purposes
7 of this paragraph, it shall be legally presumed that the
8 compounding, dispensing, or distributing of legend drugs in
9 excessive or inappropriate quantities is not in the best
10 interests of the patient and is not in the course of the
11 professional practice of pharmacy.

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

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

26 (l) Placing in the stock of any pharmacy any part of
27 any prescription compounded or dispensed which is returned by
28 a patient; however, in a hospital, nursing home, correctional
29 facility, or extended care facility in which unit-dose
30 medication is dispensed to inpatients, each dose being
31 individually sealed and the individual unit dose or unit-dose

1 system labeled with the name of the drug, dosage strength,
2 manufacturer's control number, and expiration date, if any,
3 the unused unit dose of medication may be returned to the
4 pharmacy for redispensing. Each pharmacist shall maintain
5 appropriate records for any unused or returned medicinal
6 drugs.

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

15 (n) Violating a rule of the board or department or
16 violating an order of the board or department previously
17 entered in a disciplinary hearing.

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

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

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

3 (r) 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) Imposition of an administrative fine not to exceed~~
17 ~~\$5,000 for each count or separate offense.~~

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

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

25 Section 33. Subsections (1) and (2) of section
26 466.028, Florida Statutes, are amended to read:

27 466.028 Grounds for disciplinary action; 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 under this chapter by bribery, fraudulent
5 misrepresentations, or through an error of the department or
6 the board.

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

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
14 dentistry or dental hygiene. A plea of nolo contendere shall
15 create a rebuttable presumption of guilt to the underlying
16 criminal charges.

17 (d) Advertising goods or services in a manner which is
18 fraudulent, false, deceptive, or misleading in form or content
19 contrary to s. 466.019 or rules of the board adopted pursuant
20 thereto.

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

23 (f) Failing to report to the department any person who
24 the licensee knows, or has reason to believe, is clearly in
25 violation of this chapter or of the rules of the department or
26 the board.

27 (g) Aiding, assisting, procuring, or advising any
28 unlicensed person to practice dentistry or dental hygiene
29 contrary to this chapter or to a rule of the department or the
30 board.

31

1 (h) Being employed by any corporation, organization,
2 group, or person other than a dentist or a professional
3 corporation or limited liability company composed of dentists
4 to practice dentistry.

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

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

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

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

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

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

27 (o) Performing professional services which have not
28 been duly authorized by the patient or client, or her or his
29 legal representative, except as provided in ss. 766.103 and
30 768.13.

31

1 (p) Prescribing, procuring, dispensing, administering,
2 mixing, or otherwise preparing a legend drug, including any
3 controlled substance, other than in the course of the
4 professional practice of the dentist. For the purposes of
5 this paragraph, it shall be legally presumed that prescribing,
6 procuring, dispensing, administering, mixing, or otherwise
7 preparing legend drugs, including all controlled substances,
8 in excessive or inappropriate quantities is not in the best
9 interest of the patient and is not in the course of the
10 professional practice of the dentist, without regard to her or
11 his intent.

12 (q) Prescribing, procuring, dispensing, or
13 administering any medicinal drug appearing on any schedule set
14 forth in chapter 893, by a dentist to herself or himself,
15 except those prescribed, dispensed, or administered to the
16 dentist by another practitioner authorized to prescribe them.

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

25 (s) Being unable to practice her or his profession
26 with reasonable skill and safety to patients by reason of
27 illness or use of alcohol, drugs, narcotics, chemicals, or any
28 other type of material or as a result of any mental or
29 physical condition. In enforcing this paragraph, the
30 department shall have, upon a finding of the secretary or her
31 or his designee that probable cause exists to believe that the

1 licensee is unable to practice dentistry or dental hygiene
2 because of the reasons stated in this paragraph, the authority
3 to issue an order to compel a licensee to submit to a mental
4 or physical examination by physicians designated by the
5 department. If the licensee refuses to comply with such
6 order, the department's order directing such examination may
7 be enforced by filing a petition for enforcement in the
8 circuit court where the licensee resides or does business.
9 The licensee against whom the petition is filed shall not be
10 named or identified by initials in any public court records or
11 documents, and the proceedings shall be closed to the public.
12 The department shall be entitled to the summary procedure
13 provided in s. 51.011. A licensee affected under this
14 paragraph shall at reasonable intervals be afforded an
15 opportunity to demonstrate that she or he can resume the
16 competent practice of her or his profession with reasonable
17 skill and safety to patients.

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

20 (u) Failure to provide and maintain reasonable
21 sanitary facilities and conditions.

22 (v) Failure to provide adequate radiation safeguards.

23 (w) Performing any procedure or prescribing any
24 therapy which, by the prevailing standards of dental practice
25 in the community, would constitute experimentation on human
26 subjects, without first obtaining full, informed, and written
27 consent.

28 (x) Being guilty of incompetence or negligence by
29 failing to meet the minimum standards of performance in
30 diagnosis and treatment when measured against generally
31 prevailing peer performance, including, but not limited to,

1 the undertaking of diagnosis and treatment for which the
 2 dentist is not qualified by training or experience or being
 3 guilty of dental malpractice. For purposes of this paragraph,
 4 it shall be legally presumed that a dentist is not guilty of
 5 incompetence or negligence by declining to treat an individual
 6 if, in the dentist's professional judgment, the dentist or a
 7 member of her or his clinical staff is not qualified by
 8 training and experience, or the dentist's treatment facility
 9 is not clinically satisfactory or properly equipped to treat
 10 the unique characteristics and health status of the dental
 11 patient, provided the dentist refers the patient to a
 12 qualified dentist or facility for appropriate treatment. As
 13 used in this paragraph, "dental malpractice" includes, but is
 14 not limited to, three or more claims within the previous
 15 5-year period which resulted in indemnity being paid, or any
 16 single indemnity paid in excess of \$5,000 in a judgment or
 17 settlement, as a result of negligent conduct on the part of
 18 the dentist.

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

23 (z) Delegating professional responsibilities to a
 24 person who is not qualified by training, experience, or
 25 licensure to perform them.

26 (aa) ~~The violation or the repeated violation of this~~
 27 ~~chapter, chapter 456, or any rule promulgated pursuant to~~
 28 ~~chapter 456 or this chapter; the violation~~ of a lawful order
 29 of the board or department previously entered in a
 30 disciplinary hearing; or failure to comply with a lawfully
 31 issued subpoena of the board or department.

1 (bb) Conspiring with another licensee or with any
2 person to commit an act, or committing an act, which would
3 tend to coerce, intimidate, or preclude another licensee from
4 lawfully advertising her or his services.

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

8 (dd) Presigning blank prescription or laboratory work
9 order forms.

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

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

30 (hh) Failing to report to the department any licensee
31 under chapter 458 or chapter 459 who the dentist knows has

1 violated the grounds for disciplinary action set out in the
2 law under which that person is licensed and who provides
3 health care services in a facility licensed under chapter 395,
4 or a health maintenance organization certificated under part I
5 of chapter 641, in which the dentist also provides services.

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

9 (jj) Advertising specialty services in violation of
10 this chapter.

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

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

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

1 who is found guilty of violating any provision of s.
2 456.072(1).~~When the board finds any applicant or licensee~~
3 ~~guilty of any of the grounds set forth in subsection (1), it~~
4 ~~may enter an order imposing one or more of the following~~
5 ~~penalties:~~
6 ~~(a) Denial of an application for licensure.~~
7 ~~(b) Revocation or suspension of a license.~~
8 ~~(c) Imposition of an administrative fine not to exceed~~
9 ~~\$3,000 for each count or separate offense.~~
10 ~~(d) Issuance of a reprimand.~~
11 ~~(e) Placement of the licensee on probation for a~~
12 ~~period of time and subject to such conditions as the board may~~
13 ~~specify, including requiring the licensee to attend continuing~~
14 ~~education courses or demonstrate competency through a written~~
15 ~~or practical examination or to work under the supervision of~~
16 ~~another licensee.~~
17 ~~(f) Restricting the authorized scope of practice.~~
18 Section 34. Section 466.037, Florida Statutes, is
19 amended to read:
20 466.037 Suspension and revocation; administrative
21 fine.--The department may suspend or revoke the certificate of
22 any dental laboratory registered under s. 466.032, for failing
23 to comply with the provisions of this chapter or rules adopted
24 by the department under this chapter. The department may
25 impose an administrative fine ~~not to exceed \$500 for each~~
26 ~~count or separate offense.~~
27 Section 35. Subsections (1) and (2) of section
28 467.203, Florida Statutes, are amended to read:
29 467.203 Disciplinary actions; penalties.--
30
31

1 (1) The following acts constitute ~~shall be~~ grounds for
2 denial of a license or disciplinary action, as specified in s.
3 456.072(2)disciplinary action as set forth in this section:

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

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

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

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

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

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

29 (g) Being unable to practice midwifery with reasonable
30 skill and safety to patients by reason of illness;
31 drunkenness; or use of drugs, narcotics, chemicals, or other

1 materials or as a result of any mental or physical condition.
2 A midwife affected under this paragraph shall, at reasonable
3 intervals, be afforded an opportunity to demonstrate that he
4 or she can resume the competent practice of midwifery with
5 reasonable skill and safety.

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

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

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

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

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

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

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

29 ~~(e) Placement of the midwife on probation for such~~
30 ~~period of time and subject to such conditions as the~~
31 ~~department may specify, including requiring the midwife to~~

1 ~~submit to treatment; undertake further relevant education or~~
2 ~~training; take an examination; or work under the supervision~~
3 ~~of another licensed midwife, a physician, or a nurse midwife~~
4 ~~licensed under part I of chapter 464.~~

5 Section 36. Subsections (1) and (2) of section
6 468.1295, Florida Statutes, are amended to read:

7 468.1295 Disciplinary proceedings.--

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

10 456.072(2)both disciplinary actions as set forth in
11 ~~subsection (2) and cease and desist or other related actions~~
12 ~~by the department as set forth in s. 456.065:~~

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

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

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

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

31

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

4 (f) Being proven guilty of fraud or deceit or of
5 negligence, incompetency, or misconduct in the practice of
6 speech-language pathology or audiology.

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

11 (h) Practicing with a revoked, suspended, inactive, or
12 delinquent license.

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

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

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

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

29 ~~(m) Violating any provision of this part or chapter~~
30 ~~456 or any rule adopted pursuant thereto.~~

31

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

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

11 (o)~~(p)~~ 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 (p)~~(q)~~ Stating or implying that the use of any hearing
19 aid will improve or preserve hearing or prevent or retard the
20 progression of a hearing impairment or that it will have any
21 similar or opposite effect.

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

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

28 (s)~~(t)~~ Canvassing from house to house or by telephone,
29 either in person or by an agent, for the purpose of selling a
30 hearing aid, except that contacting persons who have evidenced
31

1 an interest in hearing aids, or have been referred as in need
2 of hearing aids, shall not be considered canvassing.

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

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

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

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

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

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

25 (z)~~(aa)~~ Committing any act upon a patient or client
26 which would constitute sexual battery or which would
27 constitute sexual misconduct as defined pursuant to s.
28 468.1296.

29 (aa)~~(bb)~~ Being unable to practice the profession for
30 which he or she is licensed or certified under this chapter
31 with reasonable skill or competence as a result of any mental

1 or physical condition or by reason of illness, drunkenness, or
 2 use of drugs, narcotics, chemicals, or any other substance. In
 3 enforcing this paragraph, upon a finding by the secretary, his
 4 or her designee, or the board that probable cause exists to
 5 believe that the licensee or certificateholder is unable to
 6 practice the profession because of the reasons stated in this
 7 paragraph, the department shall have the authority to compel a
 8 licensee or certificateholder to submit to a mental or
 9 physical examination by a physician, psychologist, clinical
 10 social worker, marriage and family therapist, or mental health
 11 counselor designated by the department or board. If the
 12 licensee or certificateholder refuses to comply with the
 13 department's order directing the examination, such order may
 14 be enforced by filing a petition for enforcement in the
 15 circuit court in the circuit in which the licensee or
 16 certificateholder resides or does business. 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 for which he or she is licensed or
 22 certified with reasonable skill and safety to patients.

23 (bb) 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 person guilty of any of~~
 31

1 ~~the acts set forth in subsection (1), it may issue an order~~
2 ~~imposing one or more of the following penalties:~~

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

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

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

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

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

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

18 ~~(g) Corrective action.~~

19 Section 37. Subsections (1) and (2) of section
20 468.1755, Florida Statutes, are amended to read:

21 468.1755 Disciplinary proceedings.--

22 (1) The following acts ~~shall~~ constitute grounds for
23 denial of a license or disciplinary action, as specified in s.
24 456.072(2)~~which the disciplinary actions in subsection (2)~~
25 ~~may be taken:~~

26 (a) Violation of any provision of s. 456.072(1) or s.
27 468.1745(1).

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

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

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

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

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

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

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

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

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

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

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

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

31

1 ~~(m)(n)~~ Willfully or repeatedly violating any of the
2 provisions of the law, code, or rules of the licensing or
3 supervising authority or agency of the state or political
4 subdivision thereof having jurisdiction of the operation and
5 licensing of nursing homes.

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

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

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

15 ~~(q)~~ Violating any provision of this chapter or chapter
16 456, or any rules adopted pursuant thereto.

17 ~~(2)~~ The board may enter an order denying licensure or
18 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).When the board finds any nursing home~~
23 ~~administrator guilty of any of the grounds set forth in~~
24 ~~subsection (1), it may enter an order imposing one or more of~~
25 ~~the following penalties:~~

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

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

28 ~~(c) Imposition of an administrative fine not to exceed~~
29 ~~\$1,000 for each count or separate offense.~~

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

31

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

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

7 Section 38. Section 468.217, Florida Statutes, is
8 amended to read:

9 468.217 Denial of or refusal to renew license;
10 suspension and revocation of license and other disciplinary
11 measures.--

12 (1) The following acts constitute grounds for denial
13 of a license or disciplinary action, as specified in s.
14 456.072(2)~~The board may deny or refuse to renew a license,~~
15 ~~suspend or revoke a license, issue a reprimand, impose a fine,~~
16 ~~or impose probationary conditions upon a licensee, when the~~
17 ~~licensee or applicant for license has been guilty of~~
18 ~~unprofessional conduct which has endangered, or is likely to~~
19 ~~endanger, the health, welfare, or safety of the public. Such~~
20 ~~unprofessional conduct includes:~~

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

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

29 (c) Being convicted or found guilty, regardless of
30 adjudication, of a crime in any jurisdiction which directly
31 relates to the practice of occupational therapy or to the

1 ability to practice occupational therapy. A plea of nolo
2 contendere shall be considered a conviction for the purposes
3 of this part.

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

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

7 (f) Failing to report to the department any person who
8 the licensee knows is in violation of this part or of the
9 rules of the department or of the board.

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

13 (h) Failing to perform any statutory or legal
14 obligation placed upon a licensed occupational therapist or
15 occupational therapy assistant.

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

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

1 occupational therapy assistant from receiving a fee for
2 professional consultation services.

3 (k) Exercising influence within a patient-therapist
4 relationship for purposes of engaging a patient in sexual
5 activity. A patient is presumed to be incapable of giving
6 free, full, and informed consent to sexual activity with the
7 patient's occupational therapist or occupational therapy
8 assistant.

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

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

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

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

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

1 (q) Gross or repeated malpractice or the failure to
2 practice occupational therapy with that level of care, skill,
3 and treatment which is recognized by a reasonably prudent
4 similar occupational therapist or occupational therapy
5 assistant as being acceptable under similar conditions and
6 circumstances.

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

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

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

1 that he or she can resume the competent practice of
2 occupational therapy with reasonable skill and safety to
3 patients. In any proceeding under this paragraph, neither the
4 record of proceedings nor the orders entered by the board
5 shall be used against an occupational therapist or
6 occupational therapy assistant in any other proceeding.

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

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

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

21 (x) Violating any provision of this chapter or chapter
22 456, 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).

29 (3)~~(2)~~ The board may not reinstate the license of an
30 occupational therapist or occupational therapy assistant, or
31 cause a license to be issued to a person it has deemed

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

5 Section 39. Subsections (1) and (2) of section
6 468.365, Florida Statutes, are amended to read:

7 468.365 Disciplinary grounds and actions.--

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

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

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

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

28 (d) Willfully making or filing a false report or
29 record, willfully failing to file a report or record required
30 by state or federal law, or willfully impeding or obstructing
31 such filing or inducing another person to do so. Such reports

1 or records include only those reports or records which require
2 the signature of a respiratory care practitioner or
3 respiratory therapist licensed pursuant to this part.

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

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

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

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

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

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

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

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

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

31

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 40. 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 41. 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 42. 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 43. 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 44. 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 45. 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 46. Section 483.827, Florida Statutes, is
31 repealed.

1 Section 47. 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 48. 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~~
31

1 ~~treatment or to work under the supervision of another~~
2 ~~optician.~~

3 Section 49. 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.~~

31

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 50. 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 51. 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.

31

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
31

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 (q)~~(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

1 any of the penalties in s. 456.072(2) against any applicant
2 for 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 52. 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.

31

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

26 Section 53. Subsection (3) of section 456.065, Florida
27 Statutes, is amended to read:

28 456.065 Unlicensed practice of a health care
29 profession; intent; cease and desist notice; penalties;
30 enforcement; citations; fees; allocation and disposition of
31 moneys collected.--

1 (3) Because all enforcement costs should be covered by
 2 professions regulated by the department, the department shall
 3 impose, upon initial licensure and each licensure renewal, a
 4 special fee of \$5 per licensee to fund efforts to combat
 5 unlicensed activity. Such fee shall be in addition to all
 6 other fees collected from each licensee. ~~The board, with~~
 7 ~~concurrence of the department, or the department when there is~~
 8 ~~no board, may earmark \$5 of the current licensure fee for this~~
 9 ~~purpose, if such board, or profession regulated by the~~
 10 ~~department, is not in a deficit and has a reasonable cash~~
 11 ~~balance.~~The department shall make direct charges to the
 12 Medical Quality Assurance Trust Fund by profession. The
 13 department shall seek board advice regarding enforcement
 14 methods and strategies. The department shall directly credit
 15 the Medical Quality Assurance Trust Fund, by profession, with
 16 the revenues received from the department's efforts to enforce
 17 licensure provisions. The department shall include all
 18 financial and statistical data resulting from unlicensed
 19 activity enforcement as a separate category in the quarterly
 20 management report provided for in s. 456.025. For an
 21 unlicensed activity account, a balance which remains at the
 22 end of a renewal cycle may, with concurrence of the applicable
 23 board and the department, be transferred to the operating fund
 24 account of that profession. The department shall also use
 25 these funds to inform and educate consumers generally on the
 26 importance of using licensed health care practitioners.

27 Section 54. Subsection (1) of section 456.074, Florida
 28 Statutes, is amended to read:

29 456.074 Certain health care practitioners; immediate
 30 suspension of license.--

31

1 (1) The department shall issue an emergency order
2 suspending the license of any person licensed under chapter
3 458, chapter 459, chapter 460, chapter 461, chapter 462,
4 chapter 463, chapter 464, chapter 465, chapter 466, or chapter
5 484 who pleads guilty to, is convicted or found guilty of, or
6 who enters a plea of nolo contendere to, regardless of
7 adjudication, a felony under chapter 409, chapter 817, or
8 chapter 893 or under 21 U.S.C. ss. 801-970 or under 42 U.S.C.
9 ss. 1395-1396.

10 Section 55. Effective July 1, 2003, section 464.005,
11 Florida Statutes, is amended to read:

12 464.005 Board headquarters.--The board shall maintain
13 its official headquarters in Tallahassee ~~the city in which it~~
14 ~~has been domiciled for the past 5 years.~~

15 Section 56. Except as otherwise expressly provided in
16 this act, this act shall take effect July 1, 2001.

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