

Amendment No. 33 (for drafter's use only)

| | <u>Senate</u> | CHAMBER ACTION | <u>House</u> |
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Representative(s) Farkas offered the following:

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Amendment to Amendment (600753) (with title amendment)

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On page 1, line 17, of the amendment

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insert:

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Section 1. It is the intent of the Legislature that the Medical Quality Assurance Trust Fund should be administered in a fiscally responsible manner. It is also the intent of the Legislature that the Department of Health reduce expenses wherever possible to ensure that the cost of regulation is reasonable and fair and does not serve as a barrier to licensure in this state. The Legislature adopts findings 1, 2, 4, 5, and 8 and the recommendations of the Auditor General's Medical Quality Assurance Operational Audit Report Number 01-063. In addition, the Legislature adopts recommendations 1, 2, 4, 5, and 7 of the Florida Senate Committee on Fiscal Policy Interim Project Report 2001-016.

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Section 2. The Auditor General shall conduct a followup audit to the Medical Quality Assurance Operational Audit Report Number 01-063 to determine if the Department of

1 Health has implemented the recommendations of that report. The
2 Auditor General shall complete the followup audit and issue a
3 report to the President of the Senate and the Speaker of the
4 House of Representatives no later than January 31, 2002.

5 Section 3. The contract between the Department of
6 Health and the Agency for Health Care Administration pursuant
7 to section 20.43(3), Florida Statutes, is not subject to the
8 provisions of section 216.346, Florida Statutes. The
9 Department of Health shall reimburse the Agency for Health
10 Care Administration for the agency's actual direct costs and
11 the agency's indirect costs incurred as a result of the
12 contract, subject to appropriated funds. The agency shall
13 provide to the department documentation, explanation, and
14 justification of all direct and indirect costs incurred, by
15 budget entity.

16 Section 4. The Office of Program Policy Analysis and
17 Government Accountability shall study the feasibility of
18 maintaining the entire Medical Quality Assurance function,
19 including enforcement, within a single department. The study
20 shall be completed and a report issued to the President of the
21 Senate and the Speaker of the House of Representatives no
22 later than November 30, 2001.

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

26 456.004 Department; powers and duties.--The
27 department, for the professions under its jurisdiction, shall:

28 (1) Adopt rules establishing a procedure for the
29 biennial renewal of licenses; however, the department may
30 issue up to a 4-year license to selected licensees
31 notwithstanding any other provisions of law to the contrary.

1 The rules shall specify the expiration dates of licenses and
2 the process for tracking compliance with continuing education
3 requirements, financial responsibility requirements, and any
4 other conditions of renewal set forth in statute or rule. Fees
5 for such renewal shall not exceed the fee caps for individual
6 professions on an annualized basis as authorized by law.

7 (10) Set an examination fee that includes all costs to
8 develop, purchase, validate, administer, and defend the
9 examination and is an amount certain to cover all
10 administrative costs plus the actual per-applicant cost of the
11 examination.

12 Section 6. Section 456.025, Florida Statutes, is
13 amended to read:

14 456.025 Fees; receipts; disposition.--

15 (1) It is the intent of the Legislature that all costs
16 of regulating health care professions and practitioners shall
17 be borne solely by licensees and licensure applicants. It is
18 also the intent of the Legislature that fees should be
19 reasonable and not serve as a barrier to licensure. Moreover,
20 it is the intent of the Legislature that the department
21 operate as efficiently as possible and regularly report to the
22 Legislature additional methods to streamline operational
23 costs. Therefore, the boards in consultation with the
24 department, or the department if there is no board, shall, by
25 rule, set renewal fees which:

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

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

31 (c) Shall be reasonable, fair, and not serve as a

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1 barrier to licensure;

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

4 (e) Shall be similar to fees imposed on similar
5 licensure types;

6 (f) Shall not be more than 10 percent greater than the
7 fee imposed for the previous biennium;

8 (g) Shall not be more than 10 percent greater than the
9 actual cost to regulate that profession for the previous
10 biennium; and

11 (h) Shall be subject to challenge pursuant to chapter
12 120.

13 (2) The chairpersons of the boards and councils listed
14 in s. 20.43(3)(g) shall meet annually at division headquarters
15 to review the long-range policy plan required by s. 456.005
16 and current and proposed fee schedules. The chairpersons
17 shall make recommendations for any necessary statutory changes
18 relating to fees and fee caps. Such recommendations shall be
19 compiled by the Department of Health and be included in the
20 annual report to the Legislature required by s. 456.026 as
21 well as be included in the long-range policy plan required by
22 s. 456.005.

23 (2)(1) Each board within the jurisdiction of the
24 department, or the department when there is no board, shall
25 determine by rule the amount of license fees for the
26 profession it regulates, based upon long-range estimates
27 prepared by the department of the revenue required to
28 implement laws relating to the regulation of professions by
29 the department and the board. Each board, or the department
30 if there is no board, shall ensure that license fees are
31 adequate to cover all anticipated costs and to maintain a

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1 reasonable cash balance, as determined by rule of the agency,
2 with advice of the applicable board. If sufficient action is
3 not taken by a board within 1 year after notification by the
4 department that license fees are projected to be inadequate,
5 the department shall set license fees on behalf of the
6 applicable board to cover anticipated costs and to maintain
7 the required cash balance. The department shall include
8 recommended fee cap increases in its annual report to the
9 Legislature. Further, it is the legislative intent that no
10 regulated profession operate with a negative cash balance. The
11 department may provide by rule for advancing sufficient funds
12 to any profession operating with a negative cash balance. The
13 advancement may be for a period not to exceed 2 consecutive
14 years, and the regulated profession must pay interest.
15 Interest shall be calculated at the current rate earned on
16 investments of a trust fund used by the department to
17 implement this chapter. Interest earned shall be allocated to
18 the various funds in accordance with the allocation of
19 investment earnings during the period of the advance.

20 ~~(3)(2)~~ Each board, or the department if there is no
21 board, may charge a fee not to exceed \$25, as determined by
22 rule, for the issuance of a wall certificate pursuant to s.
23 456.013(2) requested by a licensee who was licensed prior to
24 July 1, 1998, or for the issuance of a duplicate wall
25 certificate requested by any licensee.

26 ~~(4)(3)~~ Each board, or the department if there is no
27 board, may, by rule, assess and collect a one-time fee from
28 each active status licensee and each inactive status licensee
29 in an amount necessary to eliminate a cash deficit or, if
30 there is not a cash deficit, in an amount sufficient to
31 maintain the financial integrity of the professions as

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1 required in this section. Not more than one such assessment
2 may be made in any 4-year period without specific legislative
3 authorization.

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

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

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1 ~~chapter 465.~~
2 (7)(5) All moneys collected by the department from
3 fees or fines or from costs awarded to the agency by a court
4 shall be paid into a trust fund used by the department to
5 implement this chapter. The Legislature shall appropriate
6 funds from this trust fund sufficient to carry out this
7 chapter and the provisions of law with respect to professions
8 regulated by the Division of Medical Quality Assurance within
9 the department and the boards. The department may contract
10 with public and private entities to receive and deposit
11 revenue pursuant to this section. The department shall
12 maintain separate accounts in the trust fund used by the
13 department to implement this chapter for every profession
14 within the department. To the maximum extent possible, the
15 department shall directly charge all expenses to the account
16 of each regulated profession. For the purpose of this
17 subsection, direct charge expenses include, but are not
18 limited to, costs for investigations, examinations, and legal
19 services. For expenses that cannot be charged directly, the
20 department shall provide for the proportionate allocation
21 among the accounts of expenses incurred by the department in
22 the performance of its duties with respect to each regulated
23 profession. The regulation by the department of professions,
24 as defined in this chapter, shall be financed solely from
25 revenue collected by it from fees and other charges and
26 deposited in the Medical Quality Assurance Trust Fund, and all
27 such revenue is hereby appropriated to the department.
28 However, it is legislative intent that each profession shall
29 operate within its anticipated fees. The department may not
30 expend funds from the account of a profession to pay for the
31 expenses incurred on behalf of another profession, except that

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1 the Board of Nursing must pay for any costs incurred in the
2 regulation of certified nursing assistants. The department
3 shall maintain adequate records to support its allocation of
4 agency expenses. The department shall provide any board with
5 reasonable access to these records upon request. On or before
6 October 1 of each year,the department shall provide each
7 board an annual report of revenue and direct and allocated
8 expenses related to the operation of that profession. The
9 board shall use these reports and the department's adopted
10 long-range plan to determine the amount of license fees. A
11 condensed version of this information, with the department's
12 recommendations, shall be included in the annual report to the
13 Legislature prepared under s. 456.026.

14 (8)~~(6)~~ The department shall provide a condensed
15 management report of budgets, finances, performance
16 statistics, and recommendations to each board at least once a
17 quarter. The department shall identify and include in such
18 presentations any changes, or projected changes, made to the
19 board's budget since the last presentation.

20 (9)~~(7)~~ If a duplicate license is required or requested
21 by the licensee, the board or, if there is no board, the
22 department may charge a fee as determined by rule not to
23 exceed \$25 before issuance of the duplicate license.

24 (10)~~(8)~~ The department or the appropriate board shall
25 charge a fee not to exceed \$25 for the certification of a
26 public record. The fee shall be determined by rule of the
27 department. The department or the appropriate board shall
28 assess a fee for duplicating a public record as provided in s.
29 119.07(1)(a) and (b).

30 Section 7. Subsection (1) of section 457.107, Florida
31 Statutes, is amended to read:

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1 457.107 Renewal of licenses; continuing education.--

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

5 Section 8. Section 458.31151, Florida Statutes, is
6 repealed.

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

9 483.807 Fees; establishment; disposition.--

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

23 Section 10. Subsections (1), (3), and (4) of section
24 456.011, Florida Statutes, are amended to read:

25 456.011 Boards; organization; meetings; compensation
26 and travel expenses.--

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

29 (3) The board shall meet at least once annually and
30 may meet as often as is necessary. Meetings shall be conducted
31 through teleconferencing or other technological means, unless

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1 disciplinary hearings involving standard of care, sexual
2 misconduct, fraud, impairment, or felony convictions;
3 licensure denial hearings; or controversial rule hearings are
4 being conducted; or unless otherwise approved in advance of
5 the meeting by the director of the Division of Medical Quality
6 Assurance.The chairperson or a quorum of the board shall have
7 the authority to call ~~other~~ meetings, except as provided above
8 relating to in-person meetings. A quorum shall be necessary
9 for the conduct of official business by the board or any
10 committee thereof. Unless otherwise provided by law, 51
11 percent or more of the appointed members of the board or any
12 committee, when applicable, shall constitute a quorum. The
13 membership of committees of the board, except as otherwise
14 authorized pursuant to this chapter or the applicable practice
15 act, shall be composed of currently appointed members of the
16 board. The vote of a majority of the members of the quorum
17 shall be necessary for any official action by the board or
18 committee. Three consecutive unexcused absences or absences
19 constituting 50 percent or more of the board's meetings within
20 any 12-month period shall cause the board membership of the
21 member in question to become void, and the position shall be
22 considered vacant. The board, or the department when there is
23 no board, shall, by rule, define unexcused absences.

24 (4) Unless otherwise provided by law, a board member
25 or former board member serving on a probable cause panel shall
26 be compensated \$50 for each day in attendance at an official
27 meeting of the board and for each day of participation in any
28 other business involving the board. Each board shall adopt
29 rules defining the phrase "other business involving the
30 board," but the phrase may not routinely be defined to include
31 telephone conference calls that last less than 4 hours. A

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1 board member also shall be entitled to reimbursement for
2 expenses pursuant to s. 112.061. Travel out of state shall
3 require the prior approval of the secretary.

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

6 456.013 Department; general licensing provisions.--

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

23 Section 12. Section 456.017, Florida Statutes, is
24 amended to read:

25 456.017 Department of Health; examinations.--

26 (1)(a) The department shall provide, contract, or
27 approve services for the development, preparation,
28 administration, scoring, score reporting, and evaluation of
29 all examinations, in consultation with the appropriate board.
30 The department shall certify that examinations developed and
31 approved by the department adequately and reliably measure an

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1 applicant's ability to practice the profession regulated by
2 the department. After an examination developed or approved by
3 the department has been administered, the board, or the
4 department when there is no board, may reject any question
5 which does not reliably measure the general areas of
6 competency specified in the rules of the board. The department
7 may contract for the preparation, administration, scoring,
8 score reporting, and evaluation of examinations, when such
9 services are available and approved by the board.

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

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1 appropriate.

2 (c)1. The board, or the department when there is no
3 board, shall ~~may~~ approve by rule the use of one or more ~~any~~
4 national examinations ~~examination~~ which the department has
5 certified as meeting requirements of national examinations and
6 generally accepted testing standards pursuant to department
7 rules. Providers of examinations seeking certification by the
8 department shall pay the actual costs incurred by the
9 department in making a determination regarding the
10 certification. The name and number of a candidate may be
11 provided to a national contractor for the limited purpose of
12 preparing the grade tape and information to be returned to the
13 board or department; or, to the extent otherwise specified by
14 rule, the candidate may apply directly to the vendor of the
15 national examination and supply test score information to the
16 department. The department may delegate to the board the duty
17 to provide and administer the examination. Any national
18 examination approved by a board, or the department when there
19 is no board, prior to October 1, 1997, is deemed certified
20 under this paragraph.

21 2. The board, or the department when there is no
22 board, shall approve and begin administering a national
23 examination no later than December 31, 2001. Neither the board
24 nor the department may administer a state-developed written
25 examination after December 31, 2001, notwithstanding any other
26 provision of law. The examination may be administered
27 electronically if adequate security measures are used, as
28 determined by rule of the department.

29 3. The board, or the department when there is no
30 board, may administer a state-developed practical or clinical
31 examination, as required by the applicable practice act, if

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1 all costs of development, purchase, validation,
2 administration, review, and defense are paid by the
3 examination candidate prior to the administration of the
4 examination. If a national practical or clinical examination
5 is available and certified by the department pursuant to this
6 section, the board, or the department when there is no board,
7 may administer the national examination.

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

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

30 (e) If the professional board with jurisdiction over
31 an examination concurs, the department may, for a fee, share

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

13 (f) The department may adopt rules necessary to
14 administer this subsection.

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

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1 incorrectly or, if not feasible, the parts of the examination
2 failed. Applicants shall bear the actual cost for the
3 department to provide examination review pursuant to this
4 subsection. An applicant may waive in writing the
5 confidentiality of the applicant's examination grades.
6 Notwithstanding any other provision of law, only candidates
7 who fail an examination by less than 10 percent shall be
8 entitled to challenge the validity of the examination at
9 hearing.

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

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

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

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

16 (6) In addition to meeting any other requirements for
17 licensure by examination or by endorsement, and
18 notwithstanding the provisions in paragraph (1)(c), an
19 applicant may be required by a board, or the department when
20 there is no board, to certify competency in state laws and
21 rules relating to the applicable practice act. Beginning
22 October 1, 2001, all laws and rules examinations shall be
23 administered electronically unless the laws and rules
24 examination is administered concurrently with another written
25 examination for that profession or unless the electronic
26 administration would be substantially more expensive.

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

29 456.035 Address of record.--

30 (1) Each licensee of the department is solely
31 responsible for notifying the department in writing of the

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1 licensee's current mailing address and place of practice, as
2 defined by rule of the board or the department if there is no
3 board. Electronic notification shall be allowed by the
4 department; however, it shall be the responsibility of the
5 licensee to ensure that the electronic notification was
6 received by the department. A licensee's failure to notify the
7 department of a change of address constitutes a violation of
8 this section, and the licensee may be disciplined by the board
9 or the department if there is no board.

10 Section 14. Subsections (2), (4), and (10) of section
11 456.073, Florida Statutes, are amended to read:

12 456.073 Disciplinary proceedings.--Disciplinary
13 proceedings for each board shall be within the jurisdiction of
14 the department.

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

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1 department shall prepare and submit to the probable cause
2 panel of the appropriate regulatory board the investigative
3 report of the department. The report shall contain the
4 investigative findings and the recommendations of the
5 department concerning the existence of probable cause. The
6 department shall not recommend a letter of guidance in lieu of
7 finding probable cause if the subject has already been issued
8 a letter of guidance for a related offense.At any time after
9 legal sufficiency is found, the department may dismiss any
10 case, or any part thereof, if the department determines that
11 there is insufficient evidence to support the prosecution of
12 allegations contained therein. The department shall provide a
13 detailed report to the appropriate probable cause panel prior
14 to dismissal of any case or part thereof, and to the subject
15 of the complaint after dismissal of any case or part thereof,
16 under this section. For cases dismissed prior to a finding of
17 probable cause, such report is confidential and exempt from s.
18 119.07(1). The probable cause panel shall have access, upon
19 request, to the investigative files pertaining to a case prior
20 to dismissal of such case. If the department dismisses a case,
21 the probable cause panel may retain independent legal counsel,
22 employ investigators, and continue the investigation and
23 prosecution of the case as it deems necessary.

24 (4) The determination as to whether probable cause
25 exists shall be made by majority vote of a probable cause
26 panel of the board, or by the department, as appropriate. Each
27 regulatory board shall provide by rule that the determination
28 of probable cause shall be made by a panel of its members or
29 by the department. Each board may provide by rule for multiple
30 probable cause panels composed of at least two members. Each
31 board may provide by rule that one or more members of the

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1 panel or panels may be a former board member. The length of
2 term or repetition of service of any such former board member
3 on a probable cause panel may vary according to the direction
4 of the board when authorized by board rule. Any probable cause
5 panel must include one of the board's former or present
6 consumer members, if one is available, is willing to serve,
7 and is authorized to do so by the board chair. Any probable
8 cause panel must include a present board member. Any probable
9 cause panel must include a former or present professional
10 board member. However, any former professional board member
11 serving on the probable cause panel must hold an active valid
12 license for that profession. All proceedings of the panel are
13 exempt from s. 286.011 until 10 days after probable cause has
14 been found to exist by the panel or until the subject of the
15 investigation waives his or her privilege of confidentiality.
16 The probable cause panel may make a reasonable request, and
17 upon such request the department shall provide such additional
18 investigative information as is necessary to the determination
19 of probable cause. A request for additional investigative
20 information shall be made within 15 days from the date of
21 receipt by the probable cause panel of the investigative
22 report of the department or the agency. The probable cause
23 panel or the department, as may be appropriate, shall make its
24 determination of probable cause within 30 days after receipt
25 by it of the final investigative report of the department. The
26 secretary may grant extensions of the 15-day and the 30-day
27 time limits. In lieu of a finding of probable cause, the
28 probable cause panel, or the department if there is no board,
29 may issue a letter of guidance to the subject. If, within the
30 30-day time limit, as may be extended, the probable cause
31 panel does not make a determination regarding the existence of

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

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1 by the department within 1 year after the filing of the
2 complaint. A probable cause panel or a board may retain
3 independent legal counsel, employ investigators, and continue
4 the investigation as it deems necessary; all costs thereof
5 shall be paid from a trust fund used by the department to
6 implement this chapter. All proceedings of the probable cause
7 panel are exempt from s. 120.525.

8 (10) The complaint and all information obtained
9 pursuant to the investigation by the department are
10 confidential and exempt from s. 119.07(1) until 10 days after
11 probable cause has been found to exist by the probable cause
12 panel or by the department, or until the regulated
13 professional or subject of the investigation waives his or her
14 privilege of confidentiality, whichever occurs first. Upon
15 completion of the investigation and a recommendation by the
16 department to find probable cause, and pursuant to a written
17 request by the subject or the subject's attorney, the
18 department shall provide the subject an opportunity to inspect
19 the investigative file or, at the subject's expense, forward
20 to the subject a copy of the investigative file.
21 Notwithstanding s. 456.057, the subject may inspect or receive
22 a copy of any expert witness report or patient record
23 connected with the investigation if the subject agrees in
24 writing to maintain the confidentiality of any information
25 received under this subsection until 10 days after probable
26 cause is found and to maintain the confidentiality of patient
27 records pursuant to s. 456.057. The subject may file a written
28 response to the information contained in the investigative
29 file. Such response must be filed within 20 days of mailing by
30 the department, unless an extension of time has been granted
31 by the department. This subsection does not prohibit the

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1 department from providing such information to any law
2 enforcement agency or to any other regulatory agency.

3 Section 15. Section 456.081, Florida Statutes, is
4 amended to read:

5 456.081 Publication of information.--The department
6 and the boards shall have the authority to advise licensees
7 periodically, through the publication of a newsletter on the
8 department's website, about information that the department or
9 the board determines is of interest to the industry. Unless
10 otherwise prohibited by law, the department and the boards
11 shall publish a summary of final orders resulting in
12 disciplinary action ~~fin~~~~es~~~~,~~ ~~suspensions~~~~,~~ ~~or~~ ~~revocations~~~~,~~ and
13 any other information the department or the board determines
14 is of interest to the public.

15 Section 16. Paragraphs (c) and (q) of subsection (1)
16 of section 456.072, Florida Statutes, are amended, paragraphs
17 (aa), (bb), and (cc) are added to said subsection, paragraphs
18 (c), (d), and (e) of subsection (2) and subsection (4) are
19 amended, and paragraphs (i) and (j) are added to subsection
20 (2) of said section, to read:

21 456.072 Grounds for discipline; penalties;
22 enforcement.--

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

26 (c) Being convicted or found guilty of, or entering a
27 plea of guilty or nolo contendere to, regardless of
28 adjudication, a crime in any jurisdiction which relates to the
29 practice of, or the ability to practice, a licensee's
30 profession.

31 (q) ~~Violating any provision of this chapter, the~~

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1 ~~applicable professional practice act, a rule of the department~~
2 ~~or the board, or a lawful order of the department or the~~
3 board, or failing to comply with a lawfully issued subpoena of
4 the department.

5 (aa) Performing or attempting to perform health care
6 services on the wrong patient, a wrong-site procedure, a wrong
7 procedure, or an unauthorized procedure or a procedure that is
8 medically unnecessary or otherwise unrelated to the patient's
9 diagnosis or medical condition. For the purposes of this
10 paragraph, performing or attempting to perform health care
11 services includes the preparation of the patient.

12 (bb) Leaving a foreign body in a patient, such as a
13 sponge, clamp, forceps, surgical needle, or other
14 paraphernalia commonly used in surgical, examination, or other
15 diagnostic procedures. For the purposes of this paragraph, it
16 shall be legally presumed that retention of a foreign body is
17 not in the best interest of the patient and is not within the
18 standard of care of the profession, regardless of the intent
19 of the professional.

20 (cc) Violating any provision of this chapter, the
21 applicable practice act, or any rules adopted pursuant
22 thereto.

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

31 (c) Restriction of practice or license, including, but

1 not limited to, restricting the licensee from practicing in
2 certain settings, restricting the licensee to work only under
3 designated conditions or in certain settings, restricting the
4 licensee from performing or providing designated clinical and
5 administrative services, restricting the licensee from
6 practicing more than a designated number of hours, or any
7 other restriction found to be necessary for the protection of
8 the public health, safety, and welfare.

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

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

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

17 (j) Requirement that the practitioner undergo remedial
18 education.

19
20 In determining what action is appropriate, the board, or
21 department when there is no board, must first consider what
22 sanctions are necessary to protect the public or to compensate
23 the patient. Only after those sanctions have been imposed may
24 the disciplining authority consider and include in the order
25 requirements designed to rehabilitate the practitioner. All
26 costs associated with compliance with orders issued under this
27 subsection are the obligation of the practitioner.

28 (4) In addition to any other discipline imposed
29 through final order, or citation, entered on or after July 1,
30 2001, pursuant to this section or discipline imposed through
31 final order, or citation, entered on or after July 1, 2001,

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

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

14 456.079 Disciplinary guidelines.--

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

23 Section 18. Subsections (1) and (2) of section
24 457.109, Florida Statutes, are amended to read:

25 457.109 Disciplinary actions; grounds; action by the
26 board.--

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

31 (a) Attempting to obtain, obtaining, or renewing a

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1 license to practice acupuncture by bribery, by fraudulent
2 misrepresentations, or through an error of the department.

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

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

12 (d) False, deceptive, or misleading advertising or
13 advertising which claims that acupuncture is useful in curing
14 any disease.

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

17 (f) Failing to report to the department any person who
18 the licensee knows is in violation of this chapter or of the
19 rules of the department.

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

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

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

31 (j) Exercising influence within a

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1 patient-acupuncturist relationship for purposes of engaging a
2 patient in sexual activity. A patient shall be presumed to be
3 incapable of giving free, full, and informed consent to sexual
4 activity with his or her acupuncturist.

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

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

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

17 (n) Exercising influence on the patient to exploit the
18 patient for the financial gain of the licensee or of a third
19 party.

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

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

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

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

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

29 (s) ~~Violating any provision of this chapter, a rule of~~
30 ~~the department, or a lawful order of the board department~~
31 previously entered in a disciplinary hearing or failing to

1 comply with a lawfully issued subpoena of the department.

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

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

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

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

15 (x) 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 person guilty of any of~~
23 ~~the acts set forth in subsection (1), it may enter an order~~
24 ~~imposing one or more of the following penalties:~~

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

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

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

29 ~~(d) Imposition of an administrative fine not to exceed~~
30 ~~\$1,000 for each count or separate offense.~~

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

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

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

6 458.320 Financial responsibility.--

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

13 Section 20. Subsections (1) and (2) of section
14 458.331, Florida Statutes, are amended to read:

15 458.331 Grounds for disciplinary action; action by the
16 board and department.--

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

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

25 (b) Having a license or the authority to practice
26 medicine revoked, suspended, or otherwise acted against,
27 including the denial of licensure, by the licensing authority
28 of any jurisdiction, including its agencies or subdivisions.
29 The licensing authority's acceptance of a physician's
30 relinquishment of a license, stipulation, consent order, or
31 other settlement, offered in response to or in anticipation of

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1 the filing of administrative charges against the physician's
2 license, shall be construed as action against the physician's
3 license.

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

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

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

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

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

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

26 (i) Paying or receiving any commission, bonus,
27 kickback, or rebate, or engaging in any split-fee arrangement
28 in any form whatsoever with a physician, organization, agency,
29 or person, either directly or indirectly, for patients
30 referred to providers of health care goods and services,
31 including, but not limited to, hospitals, nursing homes,

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

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

10 (k) Making deceptive, untrue, or fraudulent
11 representations in or related to the practice of medicine or
12 employing a trick or scheme in the practice of medicine.

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

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

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

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1 shall include, but not be limited to, the promoting or selling
2 of services, goods, appliances, or drugs.

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

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

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

21 (r) Prescribing, dispensing, or administering any
22 medicinal drug appearing on any schedule set forth in chapter
23 893 by the physician to himself or herself, except one
24 prescribed, dispensed, or administered to the physician by
25 another practitioner authorized to prescribe, dispense, or
26 administer medicinal drugs.

27 (s) Being unable to practice medicine 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 In enforcing this paragraph, the department shall have, upon a

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1 finding of the secretary or the secretary's designee that
2 probable cause exists to believe that the licensee is unable
3 to practice medicine because of the reasons stated in this
4 paragraph, the authority to issue an order to compel a
5 licensee to submit to a mental or physical examination by
6 physicians designated by the department. If the licensee
7 refuses to comply with such order, the department's order
8 directing such examination may be enforced by filing a
9 petition for enforcement in the circuit court where the
10 licensee resides or does business. The licensee against whom
11 the petition is filed may not be named or identified by
12 initials in any public court records or documents, and the
13 proceedings shall be closed to the public. The department
14 shall be entitled to the summary procedure provided in s.
15 51.011. A licensee or certificateholder 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 medicine with reasonable skill and
19 safety to patients.

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

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1 paragraph, "gross malpractice" or "the failure to practice
2 medicine with that level of care, skill, and treatment which
3 is recognized by a reasonably prudent similar physician as
4 being acceptable under similar conditions and circumstances,"
5 shall not be construed so as to require more than one
6 instance, event, or act. Nothing in this paragraph shall be
7 construed to require that a physician be incompetent to
8 practice medicine in order to be disciplined pursuant to this
9 paragraph.

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

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

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

31 (x) ~~Violating any provision of this chapter, a rule of~~

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1 ~~the board or department, or~~ a lawful order of the board or
2 department previously entered in a disciplinary hearing or
3 failing to comply with a lawfully issued subpoena of the
4 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 his or her 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 any medicinal drug appearing on
13 Schedule II in chapter 893 by the physician for office use.

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

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

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

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

31 (dd) Failing to supervise adequately the activities of

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1 those physician assistants, paramedics, emergency medical
2 technicians, or advanced registered nurse practitioners acting
3 under the supervision of the physician.

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

14 (ff) Prescribing, ordering, dispensing, administering,
15 supplying, selling, or giving amygdalin (laetrile) to any
16 person.

17 (gg) Misrepresenting or concealing a material fact at
18 any time during any phase of a licensing or disciplinary
19 process or procedure.

20 (hh) Improperly interfering with an investigation or
21 with any disciplinary proceeding.

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

31 (jj) Being found by any court in this state to have

1 provided corroborating written medical expert opinion attached
2 to any statutorily required notice of claim or intent or to
3 any statutorily required response rejecting a claim, without
4 reasonable investigation.

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

9 (ll) Advertising or holding oneself out as a
10 board-certified specialist, if not qualified under s.
11 458.3312, in violation of this chapter.

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

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

28 ~~(a) Refusal to certify, or certification with~~
29 ~~restrictions, to the department an application for licensure,~~
30 ~~certification, or registration.~~

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

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- 1 ~~(c) Restriction of practice.~~
- 2 ~~(d) Imposition of an administrative fine not to exceed~~
- 3 ~~\$10,000 for each count or separate offense.~~
- 4 ~~(e) Issuance of a reprimand.~~
- 5 ~~(f) Placement of the physician on probation for a~~
- 6 ~~period of time and subject to such conditions as the board may~~
- 7 ~~specify, including, but not limited to, requiring the~~
- 8 ~~physician to submit to treatment, to attend continuing~~
- 9 ~~education courses, to submit to reexamination, or to work~~
- 10 ~~under the supervision of another physician.~~
- 11 ~~(g) Issuance of a letter of concern.~~
- 12 ~~(h) Corrective action.~~
- 13 ~~(i) Refund of fees billed to and collected from the~~
- 14 ~~patient.~~
- 15 ~~(j) Imposition of an administrative fine in accordance~~
- 16 ~~with s. 381.0261 for violations regarding patient rights.~~

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

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

28 458.345 Registration of resident physicians, interns,
29 and fellows; list of hospital employees; prescribing of
30 medicinal drugs; penalty.--

31 (2) The board shall not certify to the department for

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1 registration any applicant who is under investigation in any
2 state or jurisdiction for an act which would constitute
3 grounds the basis for imposing a disciplinary action under
4 ~~penalty specified in s. 458.331(2)(b)~~ until such time as the
5 investigation is completed, at which time the provisions of s.
6 458.331 shall apply.

7 Section 22. Paragraph (g) of subsection (7) of section
8 458.347, Florida Statutes, is amended to read:

9 458.347 Physician assistants.--

10 (7) PHYSICIAN ASSISTANT LICENSURE.--

11 (g) The Board of Medicine may impose any of the
12 penalties authorized under ~~specified in~~ ss. 456.072 and
13 458.331(2) upon a physician assistant if the physician
14 assistant or the supervising physician has been found guilty
15 of or is being investigated for any act that constitutes a
16 violation of this chapter or chapter 456.

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

19 459.0085 Financial responsibility.--

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

26 Section 24. Subsections (1) and (2) of section
27 459.015, Florida Statutes, are amended to read:

28 459.015 Grounds for disciplinary action; action by the
29 board and department.--

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

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

3 (a) Attempting to obtain, obtaining, or renewing a
4 license to practice osteopathic medicine or a certificate
5 issued under this chapter by bribery, by fraudulent
6 misrepresentations, or through an error of the department or
7 the board.

8 (b) Having a license or the authority to practice
9 osteopathic medicine revoked, suspended, or otherwise acted
10 against, including the denial of licensure, by the licensing
11 authority of any jurisdiction, including its agencies or
12 subdivisions. The licensing authority's acceptance of a
13 physician's relinquishment of license, stipulation, consent
14 order, or other settlement offered in response to or in
15 anticipation of the filing of administrative charges against
16 the physician shall be construed as action against the
17 physician's license.

18 (c) Being convicted or found guilty, regardless of
19 adjudication, of a crime in any jurisdiction which directly
20 relates to the practice of osteopathic medicine or to the
21 ability to practice osteopathic medicine. A plea of nolo
22 contendere shall create a rebuttable presumption of guilt to
23 the underlying criminal charges.

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

25 (e) Failing to report to the department or the
26 department's impaired professional consultant any person who
27 the licensee or certificateholder knows is in violation of
28 this chapter or of the rules of the department or the board.
29 A treatment provider, approved pursuant to s. 456.076, shall
30 provide the department or consultant with information in
31 accordance with the requirements of s. 456.076(3), (4), (5),

1 and (6).

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

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

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

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

17 (j) Paying or receiving any commission, bonus,
18 kickback, or rebate, or engaging in any split-fee arrangement
19 in any form whatsoever with a physician, organization, agency,
20 person, partnership, firm, corporation, or other business
21 entity, for patients referred to providers of health care
22 goods and services, including, but not limited to, hospitals,
23 nursing homes, clinical laboratories, ambulatory surgical
24 centers, or pharmacies. The provisions of this paragraph
25 shall not be construed to prevent an osteopathic physician
26 from receiving a fee for professional consultation services.

27 (k) Refusing to provide health care based on a
28 patient's participation in pending or past litigation or
29 participation in any disciplinary action conducted pursuant to
30 this chapter, unless such litigation or disciplinary action
31 directly involves the osteopathic physician requested to

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1 provide services.

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

7 (m) Making deceptive, untrue, or fraudulent
8 representations in or related to the practice of osteopathic
9 medicine or employing a trick or scheme in the practice of
10 osteopathic medicine.

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

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

27 (p) Fraudulently altering or destroying records
28 relating to patient care or treatment, including, but not
29 limited to, patient histories, examination results, and test
30 results.

31 (q) Exercising influence on the patient or client in

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1 such a manner as to exploit the patient or client for
2 financial gain of the licensee or of a third party which shall
3 include, but not be limited to, the promotion or sale of
4 services, goods, appliances, or drugs.

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

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

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

25 (u) Prescribing or dispensing any medicinal drug
26 appearing on any schedule set forth in chapter 893 by the
27 osteopathic physician for himself or herself or administering
28 any such drug by the osteopathic physician to himself or
29 herself unless such drug is prescribed for the osteopathic
30 physician by another practitioner authorized to prescribe
31 medicinal drugs.

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1 (v) Prescribing, ordering, dispensing, administering,
2 supplying, selling, or giving amygdalin (laetrile) to any
3 person.

4 (w) Being unable to practice osteopathic medicine with
5 reasonable skill and safety to patients by reason of illness
6 or use of alcohol, drugs, narcotics, chemicals, or any other
7 type of material or as a result of any mental or physical
8 condition. In enforcing this paragraph, the department shall,
9 upon a finding of the secretary or the secretary's designee
10 that probable cause exists to believe that the licensee is
11 unable to practice medicine because of the reasons stated in
12 this paragraph, have the authority to issue an order to compel
13 a 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 shall 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 (x) Gross or repeated malpractice or the failure to
29 practice osteopathic medicine with that level of care, skill,
30 and treatment which is recognized by a reasonably prudent
31 similar osteopathic physician as being acceptable under

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

27 (y) Performing any procedure or prescribing any
28 therapy which, by the prevailing standards of medical practice
29 in the community, would constitute experimentation on human
30 subjects, without first obtaining full, informed, and written
31 consent.

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

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

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

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

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

28 (ee) Presigning blank prescription forms.

29 (ff) Prescribing any medicinal drug appearing on
30 Schedule II in chapter 893 by the osteopathic physician for
31 office use.

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1 (gg) Prescribing, ordering, dispensing, administering,
2 supplying, selling, or giving any drug which is a Schedule II
3 amphetamine or Schedule II sympathomimetic amine drug or any
4 compound thereof, pursuant to chapter 893, to or for any
5 person except for:

6 1. The treatment of narcolepsy; hyperkinesis;
7 behavioral syndrome characterized by the developmentally
8 inappropriate symptoms of moderate to severe distractability,
9 short attention span, hyperactivity, emotional lability, and
10 impulsivity; or drug-induced brain dysfunction;

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

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

18 (hh) Failing to supervise adequately the activities of
19 those physician assistants, paramedics, emergency medical
20 technicians, advanced registered nurse practitioners, or other
21 persons acting under the supervision of the osteopathic
22 physician.

23 (ii) Prescribing, ordering, dispensing, administering,
24 supplying, selling, or giving growth hormones, testosterone or
25 its analogs, human chorionic gonadotropin (HCG), or other
26 hormones for the purpose of muscle building or to enhance
27 athletic performance. For the purposes of this subsection, the
28 term "muscle building" does not include the treatment of
29 injured muscle. A prescription written for the drug products
30 listed above may be dispensed by the pharmacist with the
31 presumption that the prescription is for legitimate medical

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1 use.

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

5 (kk) Improperly interfering with an investigation or
6 with any disciplinary proceeding.

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

16 (mm) Being found by any court in this state to have
17 provided corroborating written medical expert opinion attached
18 to any statutorily required notice of claim or intent or to
19 any statutorily required response rejecting a claim, without
20 reasonable investigation.

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

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

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

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

1 violating any provision of subsection (1) of this section or
2 who is found guilty of violating any provision of s.
3 456.072(1).When the board finds any person guilty of any of
4 the grounds set forth in subsection (1), it may enter an order
5 imposing one or more of the following penalties:

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

9 (b) ~~Revocation or suspension of a license or~~
10 ~~certificate.~~

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

12 (d) ~~Imposition of an administrative fine not to exceed~~
13 ~~\$10,000 for each count or separate offense.~~

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

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

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

23 (h) ~~Corrective action.~~

24 (i) ~~Refund of fees billed to and collected from the~~
25 ~~patient.~~

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

28
29 In determining what action is appropriate, the board must
30 first consider what sanctions are necessary to protect the
31 public or to compensate the patient. Only after those

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1 sanctions have been imposed may the disciplining authority
2 consider and include in the order requirements designed to
3 rehabilitate the physician. All costs associated with
4 compliance with orders issued under this subsection are the
5 obligation of the physician.

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

8 459.022 Physician assistants.--

9 (7) PHYSICIAN ASSISTANT LICENSURE.--

10 (f) The Board of Osteopathic Medicine may impose any
11 of the penalties authorized under ~~specified in~~ ss. 456.072 and
12 459.015(2) upon a physician assistant if the physician
13 assistant or the supervising physician has been found guilty
14 of or is being investigated for any act that constitutes a
15 violation of this chapter or chapter 456.

16 Section 26. Subsections (1) and (2) of section
17 460.413, Florida Statutes, are amended to read:

18 460.413 Grounds for disciplinary action; action by
19 board or department.--

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

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

28 (b) Having a license to practice chiropractic medicine
29 revoked, suspended, or otherwise acted against, including the
30 denial of licensure, by the licensing authority of another
31 state, territory, or country.

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1 (c) Being convicted or found guilty, regardless of
2 adjudication, of a crime in any jurisdiction which directly
3 relates to the practice of chiropractic medicine or to the
4 ability to practice chiropractic medicine. Any plea of nolo
5 contendere shall be considered a conviction for purposes of
6 this chapter.

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

8 (e) Causing to be advertised, by any means whatsoever,
9 any advertisement which does not contain an assertion or
10 statement which would identify herself or himself as a
11 chiropractic physician or identify such chiropractic clinic or
12 related institution in which she or he practices or in which
13 she or he is owner, in whole or in part, as a chiropractic
14 institution.

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

17 (g) Failing to report to the department any person who
18 the licensee knows is in violation of this chapter or of the
19 rules of the department or the board.

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

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

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

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1 (k) Making misleading, deceptive, untrue, or
2 fraudulent representations in the practice of chiropractic
3 medicine or employing a trick or scheme in the practice of
4 chiropractic medicine when such trick or scheme fails to
5 conform to the generally prevailing standards of treatment in
6 the chiropractic medical community.

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

10 (m) Failing to keep legibly written chiropractic
11 medical records that identify clearly by name and credentials
12 the licensed chiropractic physician rendering, ordering,
13 supervising, or billing for each examination or treatment
14 procedure and that justify the course of treatment of the
15 patient, including, but not limited to, patient histories,
16 examination results, test results, X rays, and diagnosis of a
17 disease, condition, or injury. X rays need not be retained
18 for more than 4 years.

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

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

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

31 (q) Being unable to practice chiropractic medicine

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

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

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1 the licensee was found to have committed "gross malpractice,"
2 "repeated malpractice," or "failure to practice chiropractic
3 medicine with that level of care, skill, and treatment which
4 is recognized as being acceptable under similar conditions and
5 circumstances" or any combination thereof, and any publication
6 by the board shall so specify.

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

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

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

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

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

29 (x) Submitting to any third-party payor a claim for a
30 service or treatment which was not actually provided to a
31 patient.

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1 (y) Failing to preserve identity of funds and property
2 of a patient. As provided by rule of the board, money or other
3 property entrusted to a chiropractic physician for a specific
4 purpose, including advances for costs and expenses of
5 examination or treatment, is to be held in trust and must be
6 applied only to that purpose. Money and other property of
7 patients coming into the hands of a chiropractic physician are
8 not subject to counterclaim or setoff for chiropractic
9 physician's fees, and a refusal to account for and deliver
10 over such money and property upon demand shall be deemed a
11 conversion. This is not to preclude the retention of money or
12 other property upon which the chiropractic physician has a
13 valid lien for services or to preclude the payment of agreed
14 fees from the proceeds of transactions for examinations or
15 treatments. Controversies as to the amount of the fees are
16 not grounds for disciplinary proceedings unless the amount
17 demanded is clearly excessive or extortionate, or the demand
18 is fraudulent. All funds of patients paid to a chiropractic
19 physician, other than advances for costs and expenses, shall
20 be deposited in one or more identifiable bank accounts
21 maintained in the state in which the chiropractic physician's
22 office is situated, and no funds belonging to the chiropractic
23 physician shall be deposited therein except as follows:

24 1. Funds reasonably sufficient to pay bank charges may
25 be deposited therein.

26 2. Funds belonging in part to a patient and in part
27 presently or potentially to the physician must be deposited
28 therein, but the portion belonging to the physician may be
29 withdrawn when due unless the right of the physician to
30 receive it is disputed by the patient, in which event the
31 disputed portion shall not be withdrawn until the dispute is

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1 finally resolved.

2

3 Every chiropractic physician shall maintain complete records
4 of all funds, securities, and other properties of a patient
5 coming into the possession of the physician and render
6 appropriate accounts to the patient regarding them. In
7 addition, every chiropractic physician shall promptly pay or
8 deliver to the patient, as requested by the patient, the
9 funds, securities, or other properties in the possession of
10 the physician which the patient is entitled to receive.

11 (z) Offering to accept or accepting payment for
12 services rendered by assignment from any third-party payor
13 after offering to accept or accepting whatever the third-party
14 payor covers as payment in full, if the effect of the offering
15 or acceptance is to eliminate or give the impression of
16 eliminating the need for payment by an insured of any required
17 deductions applicable in the policy of the insured.

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

21 (bb) Advertising a fee or charge for a service or
22 treatment which is different from the fee or charge the
23 licensee submits to third-party payors for that service or
24 treatment.

25 (cc) Advertising any reduced or discounted fees for
26 services or treatments, or advertising any free services or
27 treatments, without prominently stating in the advertisement
28 the usual fee of the licensee for the service or treatment
29 which is the subject of the discount, rebate, or free
30 offering.

31 (dd) Using acupuncture without being certified

1 pursuant to s. 460.403(9)(f).

2 (ee) Failing to report to the department any licensee
3 under chapter 458 or under chapter 459 who the chiropractic
4 physician or chiropractic physician's assistant knows has
5 violated the grounds for disciplinary action set out in the
6 law under which that person is licensed and who provides
7 health care services in a facility licensed under chapter 395,
8 or a health maintenance organization certificated under part I
9 of chapter 641, in which the chiropractic physician or
10 chiropractic physician's assistant also provides services.

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

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

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

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

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

25 (d) ~~Imposition of an administrative fine not to exceed~~
26 ~~\$10,000 for each count or separate offense.~~

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

28 (f) ~~Placement of the chiropractic physician on~~
29 ~~probation for a period of time and subject to such conditions~~
30 ~~as the board may specify, including requiring the chiropractic~~
31 ~~physician to submit to treatment, to attend continuing~~

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1 ~~education courses, to submit to reexamination, or to work~~
2 ~~under the supervision of another chiropractic physician.~~

3 ~~(g) Imposition of costs of the investigation and~~
4 ~~prosecution.~~

5 ~~(h) Requirement that the chiropractic physician~~
6 ~~undergo remedial education.~~

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

8 ~~(j) Corrective action.~~

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

11

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

20 Section 27. Subsections (1) and (2) of section
21 461.013, Florida Statutes, are amended to read:

22 461.013 Grounds for disciplinary action; action by the
23 board; investigations by 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 podiatric medicine by bribery, by
30 fraudulent misrepresentations, or through an error of the
31 department or the board.

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

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

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

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

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

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

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

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

30 (j) Making misleading, deceptive, untrue, or
31 fraudulent representations in the practice of podiatric

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1 medicine or employing a trick or scheme in the practice of
2 podiatric medicine when such scheme or trick fails to conform
3 to the generally prevailing standards of treatment in the
4 podiatric community.

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

8 (l) Failing to keep written medical records justifying
9 the course of treatment of the patient, including, but not
10 limited to, patient histories, examination results, and test
11 results.

12 (m) Exercising influence on the patient or client in
13 such a manner as to exploit the patient or client for
14 financial gain of the licensee or of a third party which shall
15 include, but not be limited to, the promotion or sale of
16 services, goods, appliances, or drugs and the promoting or
17 advertising on any prescription form of a community pharmacy
18 unless the form shall also state "This prescription may be
19 filled at any pharmacy of your choice."

20 (n) Performing professional services which have not
21 been duly authorized by the patient or client or her or his
22 legal representative except as provided in ss. 743.064,
23 766.103, and 768.13.

24 (o) Prescribing, dispensing, administering, mixing, or
25 otherwise preparing a legend drug, including all controlled
26 substances, other than in the course of the podiatric
27 physician's professional practice. For the purposes of this
28 paragraph, it shall be legally presumed that prescribing,
29 dispensing, administering, mixing, or otherwise preparing
30 legend drugs, including all controlled substances,
31 inappropriately or in excessive or inappropriate quantities is

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1 not in the best interest of the patient and is not in the
2 course of the podiatric physician's professional practice,
3 without regard to her or his intent.

4 (p) Prescribing, dispensing, or administering any
5 medicinal drug appearing on any schedule set forth in chapter
6 893 by the podiatric physician to herself or himself except
7 those prescribed, dispensed, or administered to the podiatric
8 physician by another practitioner authorized to prescribe,
9 dispense, or administer them.

10 (q) Prescribing, ordering, dispensing, administering,
11 supplying, selling, or giving any amphetamine or
12 sympathomimetic amine drug or compound designated as a
13 Schedule II controlled substance pursuant to chapter 893.

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

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

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

24 (u) 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 (v) 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.

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1 (w) ~~Violating any provision of this chapter or chapter~~
2 ~~456, any rule of the board or department, or a lawful order of~~
3 ~~the board or department previously entered in a disciplinary~~
4 ~~hearing or failing to comply with a lawfully issued subpoena~~
5 ~~of the board or department.~~

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

10 (y) 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 any of the drug
17 products listed above may be dispensed by the pharmacist with
18 the presumption that the prescription is for legitimate
19 medical use.

20 (z) Fraud, deceit, or misconduct in the practice of
21 podiatric medicine.

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

30 (bb) Failing to comply with the requirements of ss.
31 381.026 and 381.0261 to provide patients with information

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1 about their patient rights and how to file a patient
2 complaint.

3 (cc) Violating any provision of this chapter or
4 chapter 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 ~~\$10,000 for each count or separate offense.~~

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

20 ~~(f) Placing the podiatric physician on probation for a~~
21 ~~period of time and subject to such conditions as the board may~~
22 ~~specify, including requiring the podiatric physician to submit~~
23 ~~to treatment, to attend continuing education courses, to~~
24 ~~submit to reexamination, and to work under the supervision of~~
25 ~~another podiatric physician.~~

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

28 Section 28. Subsections (1) and (2) of section 462.14,
29 Florida Statutes, are amended to read:

30 462.14 Grounds for disciplinary action; action by the
31 department.--

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1 (1) The following acts constitute grounds for denial
2 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 naturopathic medicine by bribery, by
7 fraudulent misrepresentation, or through an error of the
8 department.

9 (b) Having a license to practice naturopathic 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 naturopathic medicine or to the
16 ability to practice naturopathic 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) Advertising, practicing, or attempting to practice
21 under a name other than one's own.

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

25 (g) Aiding, assisting, procuring, or advising any
26 unlicensed person to practice naturopathic medicine contrary
27 to this chapter or to a rule of the department.

28 (h) Failing to perform any statutory or legal
29 obligation placed upon a licensed naturopathic physician.

30 (i) Making or filing a report which the licensee knows
31 to be false, intentionally or negligently failing to file a

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1 report or record required by state or federal law, willfully
2 impeding or obstructing such filing or inducing another person
3 to do so. Such reports or records shall include only those
4 which are signed in the capacity as a licensed naturopathic
5 physician.

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

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

21 (l) Making deceptive, untrue, or fraudulent
22 representations in the practice of naturopathic medicine or
23 employing a trick or scheme in the practice of naturopathic
24 medicine when such scheme or trick fails to conform to the
25 generally prevailing standards of treatment in the medical
26 community.

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

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1 recipient.

2 (n) Failing to keep written medical records justifying
3 the course of treatment of the patient, including, but not
4 limited to, patient histories, examination results, test
5 results, X rays, and records of the prescribing, dispensing
6 and administering of drugs.

7 (o) Exercising influence on the patient or client in
8 such a manner as to exploit the patient or client for the
9 financial gain of the licensee or of a third party, which
10 shall include, but not be limited to, the promoting or selling
11 of services, goods, appliances, or drugs and the promoting or
12 advertising on any prescription form of a community pharmacy
13 unless the form also states "This prescription may be filled
14 at any pharmacy of your choice."

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

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

30 (r) Prescribing, dispensing, or administering any
31 medicinal drug appearing on any schedule set forth in chapter

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1 893 by the naturopathic physician to herself or himself,
2 except one prescribed, dispensed, or administered to the
3 naturopathic physician by another practitioner authorized to
4 prescribe, dispense, or administer medicinal drugs.

5 (s) Being unable to practice naturopathic medicine
6 with reasonable skill and safety to patients by reason of
7 illness or use of alcohol, drugs, narcotics, chemicals, or any
8 other type of material or as a result of any mental or
9 physical condition. In enforcing this paragraph, the
10 department shall have, upon probable cause, authority to
11 compel a naturopathic physician to submit to a mental or
12 physical examination by physicians designated by the
13 department. The failure of a naturopathic physician to submit
14 to such an examination when so directed shall constitute an
15 admission of the allegations against her or him upon which a
16 default and final order may be entered without the taking of
17 testimony or presentation of evidence, unless the failure was
18 due to circumstances beyond the naturopathic physician's
19 control. A naturopathic physician affected under this
20 paragraph shall at reasonable intervals be afforded an
21 opportunity to demonstrate that she or he can resume the
22 competent practice of naturopathic medicine with reasonable
23 skill and safety to patients. In any proceeding under this
24 paragraph, neither the record of proceedings nor the orders
25 entered by the department may be used against a naturopathic
26 physician in any other proceeding.

27 (t) Gross or repeated malpractice or the failure to
28 practice naturopathic medicine with that level of care, skill,
29 and treatment which is recognized by a reasonably prudent
30 similar physician as being acceptable under similar conditions
31 and circumstances. The department shall give great weight to

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1 the provisions of s. 766.102 when enforcing this paragraph.

2 (u) Performing any procedure or prescribing any
3 therapy which, by the prevailing standards of medical practice
4 in the community, constitutes experimentation on a human
5 subject, without first obtaining full, informed, and written
6 consent.

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

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

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

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

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

25 (aa) Presigning blank prescription forms.

26 (bb) Prescribing by the naturopathic physician for
27 office use any medicinal drug appearing on Schedule II in
28 chapter 893.

29 (cc) Prescribing, ordering, dispensing, administering,
30 supplying, selling, or giving any drug which is an amphetamine
31 or sympathomimetic amine drug, or a compound designated

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1 pursuant to chapter 893 as a Schedule II controlled substance
2 to or for any person except for:

3 1. The treatment of narcolepsy; hyperkinesis;
4 behavioral syndrome in children characterized by the
5 developmentally inappropriate symptoms of moderate to severe
6 distractability, short attention span, hyperactivity,
7 emotional lability, and impulsivity; or drug-induced brain
8 dysfunction.

9 2. The differential diagnostic psychiatric evaluation
10 of depression or the treatment of depression shown to be
11 refractory to other therapeutic modalities.

12 3. The clinical investigation of the effects of such
13 drugs or compounds when an investigative protocol therefor is
14 submitted to, reviewed, and approved by the department before
15 such investigation is begun.

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

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

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

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1 ~~section or who is found guilty of violating any provision of~~
2 ~~s. 456.072(1).When the department finds any person guilty of~~
3 ~~any of the grounds set forth in subsection (1), it may enter~~
4 ~~an order imposing one or more of the following penalties:~~
5 ~~(a) Refusal to certify to the department an~~
6 ~~application for licensure.~~
7 ~~(b) Revocation or suspension of a license.~~
8 ~~(c) Restriction of practice.~~
9 ~~(d) Imposition of an administrative fine not to exceed~~
10 ~~\$1,000 for each count or separate offense.~~
11 ~~(e) Issuance of a reprimand.~~
12 ~~(f) Placement of the naturopathic physician on~~
13 ~~probation for a period of time and subject to such conditions~~
14 ~~as the department may specify, including, but not limited to,~~
15 ~~requiring the naturopathic physician to submit to treatment,~~
16 ~~to attend continuing education courses, to submit to~~
17 ~~reexamination, or to work under the supervision of another~~
18 ~~naturopathic physician.~~

19 Section 29. Subsections (1) and (2) of section
20 463.016, Florida Statutes, are amended to read:

21 463.016 Grounds for disciplinary action; action by the
22 board.--

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

27 (a) Procuring or attempting to procure a license to
28 practice optometry by bribery, by fraudulent
29 misrepresentations, or through an error of the department or
30 board.

31 (b) Procuring or attempting to procure a license for

1 any other person by making or causing to be made any false
2 representation.

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

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

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

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

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

23 (h) A violation or repeated violations of provisions
24 of this chapter, or of chapter 456, and any rules promulgated
25 pursuant thereto.

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

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

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- 1 (k) Failing to keep written optometric records about
2 the examinations, treatments, and prescriptions for patients.
- 3 (l) Willfully failing to report any person who the
4 licensee knows is in violation of this chapter or of rules of
5 the department or the board.
- 6 (m) Gross or repeated malpractice.
- 7 (n) Practicing with a revoked, suspended, inactive, or
8 delinquent license.
- 9 (o) Being unable to practice optometry with reasonable
10 skill and safety to patients by reason of illness or use of
11 alcohol, drugs, narcotics, chemicals, or any other type of
12 material or as a result of any mental or physical condition.
13 A licensed practitioner affected under this paragraph shall at
14 reasonable intervals be afforded an opportunity to demonstrate
15 that she or he can resume the competent practice of optometry
16 with reasonable skill and safety to patients.
- 17 (p) Having been disciplined by a regulatory agency in
18 another state for any offense that would constitute a
19 violation of Florida laws or rules regulating optometry.
- 20 (q) Violating any provision of s. 463.014 or s.
21 463.015.
- 22 (r) Violating any lawful order of the board or
23 department, previously entered in a disciplinary hearing, or
24 failing to comply with a lawfully issued subpoena of the board
25 or department.
- 26 (s) Practicing or offering to practice beyond the
27 scope permitted by law or accepting and performing
28 professional responsibilities which the licensed practitioner
29 knows or has reason to know she or he is not competent to
30 perform.
- 31 (t) Violating any provision of this chapter or chapter

1 456, or any rules adopted pursuant thereto.

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

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

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

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

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

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

21 Section 30. Subsections (1) and (2) of section
22 464.018, Florida Statutes, are amended to read:

23 464.018 Disciplinary actions.--

24 (1) The following acts constitute ~~shall be~~ grounds for
25 denial of a license or disciplinary action, as specified in s.
26 456.072(2)~~disciplinary action set forth in this section:~~

27 (a) Procuring, attempting to procure, or renewing a
28 license to practice nursing by bribery, by knowing
29 misrepresentations, or through an error of the department or
30 the board.

31 (b) Having a license to practice nursing revoked,

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1 suspended, or otherwise acted against, including the denial of
2 licensure, by the licensing authority of another state,
3 territory, or country.

4 (c) Being convicted or found guilty of, or entering a
5 plea of nolo contendere to, regardless of adjudication, a
6 crime in any jurisdiction which directly relates to the
7 practice of nursing or to the ability to practice nursing.

8 (d) Being found guilty, regardless of adjudication, of
9 any of the following offenses:

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

11 2. A violation of chapter 812, relating to theft,
12 robbery, and related crimes.

13 3. A violation of chapter 817, relating to fraudulent
14 practices.

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

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

19 6. A violation of chapter 827, relating to child
20 abuse.

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

23 8. A violation of chapter 39, relating to child abuse,
24 abandonment, and neglect.

25 (e) Having been found guilty of, regardless of
26 adjudication, or entered a plea of nolo contendere or guilty
27 to, any offense prohibited under s. 435.03 or under any
28 similar statute of another jurisdiction; or having committed
29 an act which constitutes domestic violence as defined in s.
30 741.28.

31 (f) Making or filing a false report or record, which

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

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

8 (h) Unprofessional conduct, which shall include, but
9 not be limited to, any departure from, or the failure to
10 conform to, the minimal standards of acceptable and prevailing
11 nursing practice, in which case actual injury need not be
12 established.

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

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

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1 the petition is filed shall not be named or identified by
2 initials in any public court records or documents, and the
3 proceedings shall be closed to the public. The department
4 shall be entitled to the summary procedure provided in s.
5 51.011. A nurse affected by the provisions of this paragraph
6 shall at reasonable intervals be afforded an opportunity to
7 demonstrate that she or he can resume the competent practice
8 of nursing with reasonable skill and safety to patients.

9 (k) Failing to report to the department any person who
10 the licensee knows is in violation of this part or of the
11 rules of the department or the board; however, if the licensee
12 verifies that such person is actively participating in a
13 board-approved program for the treatment of a physical or
14 mental condition, the licensee is required to report such
15 person only to an impaired professionals consultant.

16 (l) Knowingly violating any provision of this part, a
17 rule of the board or the department, or a lawful order of the
18 board or department previously entered in a disciplinary
19 proceeding or failing to comply with a lawfully issued
20 subpoena of the department.

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

28 (n) Violating any provision of this chapter or chapter
29 456, or any rules adopted pursuant thereto.

30 (2) The board may enter an order denying licensure or
31 imposing any of the penalties in s. 456.072(2) against any

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1 applicant for licensure or licensee who is found guilty of
2 violating any provision of subsection (1) of this section or
3 who is found guilty of violating any provision of s.
4 456.072(1).When the board finds any person guilty of any of
5 the grounds set forth in subsection (1), it may enter an order
6 imposing one or more of the following penalties:
7 ~~(a) Refusal to certify to the department an~~
8 ~~application for licensure.~~
9 ~~(b) Revocation or suspension of a license with~~
10 ~~reinstatement subject to the provisions of subsection (3).~~
11 ~~(c) Permanent revocation of a license.~~
12 ~~(d) Restriction of practice.~~
13 ~~(e) Imposition of an administrative fine not to exceed~~
14 ~~\$1,000 for each count or separate offense.~~
15 ~~(f) Issuance of a reprimand.~~
16 ~~(g) Placement of the nurse on probation for a period~~
17 ~~of time and subject to such conditions as the board may~~
18 ~~specify, including requiring the nurse to submit to treatment,~~
19 ~~to attend continuing education courses, to take an~~
20 ~~examination, or to work under the supervision of another~~
21 ~~nurse.~~

22 Section 31. Subsections (3) and (4) of section
23 465.008, Florida Statutes, are amended to read:

24 465.008 Renewal of license.--

25 ~~(3) Sixty days prior to the end of the biennium the~~
26 ~~department shall mail a notice of renewal to the last known~~
27 ~~address of the licensee.~~

28 (3)~~(4)~~ Any person licensed under this chapter for 50
29 years or more is exempt from the payment of the renewal or
30 delinquent fee, and the department shall issue a lifetime
31 license to such a person.

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

3 465.016 Disciplinary actions.--

4 (1) The following acts constitute ~~shall be~~ grounds for
5 denial of a license or disciplinary action, as specified in s.
6 456.072(2)disciplinary action set forth in this section:

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

9 (b) Procuring or attempting to procure a license for
10 any other person by making or causing to be made any false
11 representation.

12 (c) Permitting any person not licensed as a pharmacist
13 in this state or not registered as an intern in this state, or
14 permitting a registered intern who is not acting under the
15 direct and immediate personal supervision of a licensed
16 pharmacist, to fill, compound, or dispense any prescriptions
17 in a pharmacy owned and operated by such pharmacist or in a
18 pharmacy where such pharmacist is employed or on duty.

19 (d) Being unfit or incompetent to practice pharmacy by
20 reason of:

21 1. Habitual intoxication.

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

24 3. Any abnormal physical or mental condition which
25 threatens the safety of persons to whom she or he might sell
26 or dispense prescriptions, drugs, or medical supplies or for
27 whom she or he might manufacture, prepare, or package, or
28 supervise the manufacturing, preparation, or packaging of,
29 prescriptions, drugs, or medical supplies.

30 (e) ~~Violating any of the requirements of this chapter;~~
31 ~~or if licensed as a practitioner in this or any other state,~~

1 ~~violating any of the requirements of their respective practice~~
2 ~~act or violating~~ chapter 499; 21 U.S.C. ss. 301-392, known as
3 the Federal Food, Drug, and Cosmetic Act; 21 U.S.C. ss. 821 et
4 seq., known as the Comprehensive Drug Abuse Prevention and
5 Control Act; or chapter 893.

6 (f) Having been convicted or found guilty, regardless
7 of adjudication, in a court of this state or other
8 jurisdiction, of a crime which directly relates to the ability
9 to practice pharmacy or to the practice of pharmacy. A plea
10 of nolo contendere constitutes a conviction for purposes of
11 this provision.

12 (g) Using in the compounding of a prescription, or
13 furnishing upon prescription, an ingredient or article
14 different in any manner from the ingredient or article
15 prescribed, except as authorized in s. 465.019(6) or s.
16 465.025.

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

20 (i) Compounding, dispensing, or distributing a legend
21 drug, including any controlled substance, other than in the
22 course of the professional practice of pharmacy. For purposes
23 of this paragraph, it shall be legally presumed that the
24 compounding, dispensing, or distributing of legend drugs in
25 excessive or inappropriate quantities is not in the best
26 interests of the patient and is not in the course of the
27 professional practice of pharmacy.

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

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1 inducing another person to do so. Such reports or records
2 include only those which the licensee is required to make or
3 file in her or his capacity as a licensed pharmacist.

4 (k) Failing to make prescription fee or price
5 information readily available by failing to provide such
6 information upon request and upon the presentation of a
7 prescription for pricing or dispensing. Nothing in this
8 section shall be construed to prohibit the quotation of price
9 information on a prescription drug to a potential consumer by
10 telephone.

11 (l) Placing in the stock of any pharmacy any part of
12 any prescription compounded or dispensed which is returned by
13 a patient; however, in a hospital, nursing home, correctional
14 facility, or extended care facility in which unit-dose
15 medication is dispensed to inpatients, each dose being
16 individually sealed and the individual unit dose or unit-dose
17 system labeled with the name of the drug, dosage strength,
18 manufacturer's control number, and expiration date, if any,
19 the unused unit dose of medication may be returned to the
20 pharmacy for redispensing. Each pharmacist shall maintain
21 appropriate records for any unused or returned medicinal
22 drugs.

23 (m) Being unable to practice pharmacy with reasonable
24 skill and safety by reason of illness, use of drugs,
25 narcotics, chemicals, or any other type of material or as a
26 result of any mental or physical condition. A pharmacist
27 affected under this paragraph shall at reasonable intervals be
28 afforded an opportunity to demonstrate that she or he can
29 resume the competent practice of pharmacy with reasonable
30 skill and safety to her or his customers.

31 (n) Violating a rule of the board or department or

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1 violating an order of the board or department previously
2 entered in a disciplinary hearing.

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

11 (p) Failing to notify the Board of Pharmacy in writing
12 within 20 days of the commencement or cessation of the
13 practice of the profession of pharmacy in Florida when such
14 commencement or cessation of the practice of the profession of
15 pharmacy in Florida was a result of a pending or completed
16 disciplinary action or investigation in another jurisdiction.

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

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

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

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

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

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

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

10 Section 33. Subsections (1) and (2) of section
11 466.028, Florida Statutes, are amended to read:

12 466.028 Grounds for disciplinary action; 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 the disciplinary actions specified in~~
17 ~~subsection (2) may be taken:~~

18 (a) Attempting to obtain, obtaining, or renewing a
19 license under this chapter by bribery, fraudulent
20 misrepresentations, or through an error of the department or
21 the board.

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

26 (c) Being convicted or found guilty of or entering a
27 plea of nolo contendere to, regardless of adjudication, a
28 crime in any jurisdiction which relates to the practice of
29 dentistry or dental hygiene. A plea of nolo contendere shall
30 create a rebuttable presumption of guilt to the underlying
31 criminal charges.

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1 (d) Advertising goods or services in a manner which is
2 fraudulent, false, deceptive, or misleading in form or content
3 contrary to s. 466.019 or rules of the board adopted pursuant
4 thereto.

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

7 (f) Failing to report to the department any person who
8 the licensee knows, or has reason to believe, is clearly in
9 violation of this chapter or of the rules of the department or
10 the board.

11 (g) Aiding, assisting, procuring, or advising any
12 unlicensed person to practice dentistry or dental hygiene
13 contrary to this chapter or to a rule of the department or the
14 board.

15 (h) Being employed by any corporation, organization,
16 group, or person other than a dentist or a professional
17 corporation or limited liability company composed of dentists
18 to practice dentistry.

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

21 (j) Making or filing a report which the licensee knows
22 to be false, failing to file a report or record required by
23 state or federal law, knowingly impeding or obstructing such
24 filing or inducing another person to do so. Such reports or
25 records shall include only those which are signed in the
26 capacity as a licensee.

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

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

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

5 (n) Failing to make available to a patient or client,
6 or to her or his legal representative or to the department if
7 authorized in writing by the patient, copies of documents in
8 the possession or under control of the licensee which relate
9 to the patient or client.

10 (o) Performing professional services which have not
11 been duly authorized by the patient or client, or her or his
12 legal representative, except as provided in ss. 766.103 and
13 768.13.

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

25 (q) Prescribing, procuring, dispensing, or
26 administering any medicinal drug appearing on any schedule set
27 forth in chapter 893, by a dentist to herself or himself,
28 except those prescribed, dispensed, or administered to the
29 dentist by another practitioner authorized to prescribe them.

30 (r) Prescribing, procuring, ordering, dispensing,
31 administering, supplying, selling, or giving any drug which is

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1 a Schedule II amphetamine or a Schedule II sympathomimetic
2 amine drug or a compound thereof, pursuant to chapter 893, to
3 or for any person except for the clinical investigation of the
4 effects of such drugs or compounds when an investigative
5 protocol therefor is submitted to, and reviewed and approved
6 by, the board before such investigation is begun.

7 (s) Being unable to practice her or his profession
8 with reasonable skill and safety to patients by reason of
9 illness or use of alcohol, drugs, narcotics, chemicals, or any
10 other type of material or as a result of any mental or
11 physical condition. In enforcing this paragraph, the
12 department shall have, upon a finding of the secretary or her
13 or his designee that probable cause exists to believe that the
14 licensee is unable to practice dentistry or dental hygiene
15 because of the reasons stated in this paragraph, the authority
16 to issue an order to compel a licensee to submit to a mental
17 or physical examination by physicians designated by the
18 department. If the licensee refuses to comply with such
19 order, the department's order directing such examination may
20 be enforced by filing a petition for enforcement in the
21 circuit court where the licensee resides or does business.
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 at reasonable intervals be afforded an
28 opportunity to demonstrate that she or he can resume the
29 competent practice of her or his profession with reasonable
30 skill and safety to patients.

31 (t) Fraud, deceit, or misconduct in the practice of

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1 dentistry or dental hygiene.

2 (u) Failure to provide and maintain reasonable
3 sanitary facilities and conditions.

4 (v) Failure to provide adequate radiation safeguards.

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

10 (x) Being guilty of incompetence or negligence by
11 failing to meet the minimum standards of performance in
12 diagnosis and treatment when measured against generally
13 prevailing peer performance, including, but not limited to,
14 the undertaking of diagnosis and treatment for which the
15 dentist is not qualified by training or experience or being
16 guilty of dental malpractice. For purposes of this paragraph,
17 it shall be legally presumed that a dentist is not guilty of
18 incompetence or negligence by declining to treat an individual
19 if, in the dentist's professional judgment, the dentist or a
20 member of her or his clinical staff is not qualified by
21 training and experience, or the dentist's treatment facility
22 is not clinically satisfactory or properly equipped to treat
23 the unique characteristics and health status of the dental
24 patient, provided the dentist refers the patient to a
25 qualified dentist or facility for appropriate treatment. As
26 used in this paragraph, "dental malpractice" includes, but is
27 not limited to, three or more claims within the previous
28 5-year period which resulted in indemnity being paid, or any
29 single indemnity paid in excess of \$5,000 in a judgment or
30 settlement, as a result of negligent conduct on the part of
31 the dentist.

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

5 (z) Delegating professional responsibilities to a
6 person who is not qualified by training, experience, or
7 licensure to perform them.

8 (aa) ~~The violation or the repeated violation of this~~
9 ~~chapter, chapter 456, or any rule promulgated pursuant to~~
10 ~~chapter 456 or this chapter;~~ the violation of a lawful order
11 of the board or department previously entered in a
12 disciplinary hearing; or failure to comply with a lawfully
13 issued subpoena of the board or department.

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

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

21 (dd) Presigning blank prescription or laboratory work
22 order forms.

23 (ee) Prescribing, ordering, dispensing, administering,
24 supplying, selling, or giving growth hormones, testosterone or
25 its analogs, human chorionic gonadotropin (HCG), or other
26 hormones for the purpose of muscle building or to enhance
27 athletic performance. For the purposes of this subsection, the
28 term "muscle building" does not include the treatment of
29 injured muscle. A prescription written for the drug products
30 listed above may be dispensed by the pharmacist with the
31 presumption that the prescription is for legitimate medical

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1 use.

2 (ff) Operating or causing to be operated a dental
3 office in such a manner as to result in dental treatment that
4 is below minimum acceptable standards of performance for the
5 community. This includes, but is not limited to, the use of
6 substandard materials or equipment, the imposition of time
7 limitations within which dental procedures are to be
8 performed, or the failure to maintain patient records as
9 required by this chapter.

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

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

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

22 (jj) Advertising specialty services in violation of
23 this chapter.

24 (kk) Allowing any person other than another dentist or
25 a professional corporation or limited liability company
26 composed of dentists to direct, control, or interfere with a
27 dentist's clinical judgment; however, this paragraph may not
28 be construed to limit a patient's right of informed consent.
29 To direct, control, or interfere with a dentist's clinical
30 judgment may not be interpreted to mean dental services
31 contractually excluded, the application of alternative

1 benefits that may be appropriate given the dentist's
2 prescribed course of treatment, or the application of
3 contractual provisions and scope of coverage determinations in
4 comparison with a dentist's prescribed treatment on behalf of
5 a covered person by an insurer, health maintenance
6 organization, or a prepaid limited health service
7 organization.

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

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

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

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

21 ~~(c) Imposition of an administrative fine not to exceed~~
22 ~~\$3,000 for each count or separate offense.~~

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

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

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

31 Section 34. Section 466.037, Florida Statutes, is

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1 amended to read:

2 466.037 Suspension and revocation; administrative
3 fine.--The department may suspend or revoke the certificate of
4 any dental laboratory registered under s. 466.032, for failing
5 to comply with the provisions of this chapter or rules adopted
6 by the department under this chapter. The department may
7 impose an administrative fine ~~not to exceed \$500 for each~~
8 ~~count or separate offense.~~

9 Section 35. Subsections (1) and (2) of section
10 467.203, Florida Statutes, are amended to read:

11 467.203 Disciplinary actions; penalties.--

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

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

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

22 (c) Being convicted or found guilty, regardless of
23 adjudication, in any jurisdiction of a crime which directly
24 relates to the practice of midwifery or to the ability to
25 practice midwifery. A plea of nolo contendere shall be
26 considered a conviction for purposes of this provision.

27 (d) Making or filing a false report or record, which
28 the licensee knows to be false; intentionally or negligently
29 failing to file a report or record required by state or
30 federal law; or willfully impeding or obstructing such filing
31 or inducing another to do so. Such reports or records shall

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1 include only those which are signed in the midwife's capacity
2 as a licensed midwife.

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

4 (f) Engaging in unprofessional conduct, which
5 includes, but is not limited to, any departure from, or the
6 failure to conform to, the standards of practice of midwifery
7 as established by the department, in which case actual injury
8 need not be established.

9 (g) Being unable to practice midwifery with reasonable
10 skill and safety to patients by reason of illness;
11 drunkenness; or use of drugs, narcotics, chemicals, or other
12 materials or as a result of any mental or physical condition.
13 A midwife affected under this paragraph shall, at reasonable
14 intervals, be afforded an opportunity to demonstrate that he
15 or she can resume the competent practice of midwifery with
16 reasonable skill and safety.

17 (h) Failing to report to the department any person who
18 the licensee knows is in violation of this chapter or of the
19 rules of the department.

20 (i) ~~Willfully or repeatedly Violating any provision of~~
21 ~~this chapter, any rule of the department, or any lawful order~~
22 ~~of the department previously entered in a disciplinary~~
23 ~~proceeding or failing to comply with a lawfully issued~~
24 ~~subpoena of the department.~~

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

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

1 ~~s. 456.072(1).When the department finds any person guilty of~~
2 ~~any of the grounds set forth in subsection (1), it may enter~~
3 ~~an order imposing one or more of the following penalties:~~
4 ~~(a) Refusal to approve an application for licensure.~~
5 ~~(b) Revocation or suspension of a license.~~
6 ~~(c) Imposition of an administrative fine not to exceed~~
7 ~~\$1,000 for each count or separate offense.~~
8 ~~(d) Issuance of a reprimand.~~
9 ~~(e) Placement of the midwife on probation for such~~
10 ~~period of time and subject to such conditions as the~~
11 ~~department may specify, including requiring the midwife to~~
12 ~~submit to treatment; undertake further relevant education or~~
13 ~~training; take an examination; or work under the supervision~~
14 ~~of another licensed midwife, a physician, or a nurse midwife~~
15 ~~licensed under part I of chapter 464.~~

16 Section 36. Subsections (1) and (2) of section
17 468.1295, Florida Statutes, are amended to read:

18 468.1295 Disciplinary proceedings.--

19 (1) The following acts constitute grounds for denial
20 of a license or disciplinary action, as specified in s.
21 456.072(2)~~both disciplinary actions as set forth in~~
22 ~~subsection (2) and cease and desist or other related actions~~
23 ~~by the department as set forth in s. 456.065:~~

24 (a) Procuring or attempting to procure a license by
25 bribery, by fraudulent misrepresentation, or through an error
26 of the department or the board.

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

30 (c) Being convicted or found guilty of, or entering a
31 plea of nolo contendere to, regardless of adjudication, a

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1 crime in any jurisdiction which directly relates to the
2 practice of speech-language pathology or audiology.

3 (d) Making or filing a report or record which the
4 licensee knows to be false, intentionally or negligently
5 failing to file a report or records required by state or
6 federal law, willfully impeding or obstructing such filing, or
7 inducing another person to impede or obstruct such filing.
8 Such report or record shall include only those reports or
9 records which are signed in one's capacity as a licensed
10 speech-language pathologist or audiologist.

11 (e) Advertising goods or services in a manner which is
12 fraudulent, false, deceptive, or misleading in form or
13 content.

14 (f) Being proven guilty of fraud or deceit or of
15 negligence, incompetency, or misconduct in the practice of
16 speech-language pathology or audiology.

17 (g) Violating a lawful order of the board or
18 department previously entered in a disciplinary hearing, or
19 failing to comply with a lawfully issued subpoena of the board
20 or department.

21 (h) Practicing with a revoked, suspended, inactive, or
22 delinquent license.

23 (i) Using, or causing or promoting the use of, any
24 advertising matter, promotional literature, testimonial,
25 guarantee, warranty, label, brand, insignia, or other
26 representation, however disseminated or published, which is
27 misleading, deceiving, or untruthful.

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

31 (k) Failing to submit to the board on an annual basis,

1 or such other basis as may be provided by rule, certification
2 of testing and calibration of such equipment as designated by
3 the board and on the form approved by the board.

4 (l) Aiding, assisting, procuring, employing, or
5 advising any licensee or business entity to practice
6 speech-language pathology or audiology contrary to this part,
7 chapter 456, or any rule adopted pursuant thereto.

8 ~~(m) Violating any provision of this part or chapter~~
9 ~~456 or any rule adopted pursuant thereto.~~

10 (m)(n) Misrepresenting the professional services
11 available in the fitting, sale, adjustment, service, or repair
12 of a hearing aid, or using any other term or title which might
13 connote the availability of professional services when such
14 use is not accurate.

15 (n)(o) Representing, advertising, or implying that a
16 hearing aid or its repair is guaranteed without providing full
17 disclosure of the identity of the guarantor; the nature,
18 extent, and duration of the guarantee; and the existence of
19 conditions or limitations imposed upon the guarantee.

20 (o)(p) Representing, directly or by implication, that
21 a hearing aid utilizing bone conduction has certain specified
22 features, such as the absence of anything in the ear or
23 leading to the ear, or the like, without disclosing clearly
24 and conspicuously that the instrument operates on the bone
25 conduction principle and that in many cases of hearing loss
26 this type of instrument may not be suitable.

27 (p)(q) Stating or implying that the use of any hearing
28 aid will improve or preserve hearing or prevent or retard the
29 progression of a hearing impairment or that it will have any
30 similar or opposite effect.

31 (q)(r) Making any statement regarding the cure of the

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1 cause of a hearing impairment by the use of a hearing aid.

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

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

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

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

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

19 (w)~~(x)~~ Practicing or offering to practice beyond the
20 scope permitted by law or accepting and performing
21 professional responsibilities the licensee or
22 certificateholder knows, or has reason to know, the licensee
23 or certificateholder is not competent to perform.

24 (x)~~(y)~~ Aiding, assisting, procuring, or employing any
25 unlicensed person to practice speech-language pathology or
26 audiology.

27 (y)~~(z)~~ Delegating or contracting for the performance
28 of professional responsibilities by a person when the licensee
29 delegating or contracting for performance of such
30 responsibilities knows, or has reason to know, such person is
31 not qualified by training, experience, and authorization to

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1 perform them.

2 (z)~~(aa)~~ Committing any act upon a patient or client
3 which would constitute sexual battery or which would
4 constitute sexual misconduct as defined pursuant to s.
5 468.1296.

6 (aa)~~(bb)~~ Being unable to practice the profession for
7 which he or she is licensed or certified under this chapter
8 with reasonable skill or competence as a result of any mental
9 or physical condition or by reason of illness, drunkenness, or
10 use of drugs, narcotics, chemicals, or any other substance. In
11 enforcing this paragraph, upon a finding by the secretary, his
12 or her designee, or the board that probable cause exists to
13 believe that the licensee or certificateholder is unable to
14 practice the profession because of the reasons stated in this
15 paragraph, the department shall have the authority to compel a
16 licensee or certificateholder to submit to a mental or
17 physical examination by a physician, psychologist, clinical
18 social worker, marriage and family therapist, or mental health
19 counselor designated by the department or board. If the
20 licensee or certificateholder refuses to comply with the
21 department's order directing the examination, such order may
22 be enforced by filing a petition for enforcement in the
23 circuit court in the circuit in which the licensee or
24 certificateholder resides or does business. The department
25 shall be entitled to the summary procedure provided in s.
26 51.011. A licensee or certificateholder affected under this
27 paragraph shall at reasonable intervals be afforded an
28 opportunity to demonstrate that he or she can resume the
29 competent practice for which he or she is licensed or
30 certified with reasonable skill and safety to patients.

31 (bb) Violating any provision of this chapter or

1 chapter 456, or any rules adopted pursuant thereto.

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

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

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

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

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

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

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

25 ~~(g) Corrective action.~~

26 Section 37. Subsections (1) and (2) of section
27 468.1755, Florida Statutes, are amended to read:

28 468.1755 Disciplinary proceedings.--

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

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1 ~~may be taken:~~

2 (a) Violation of any provision of s. 456.072(1) or s.
3 468.1745(1).

4 (b) Attempting to procure a license to practice
5 nursing home administration by bribery, by fraudulent
6 misrepresentation, or through an error of the department or
7 the board.

8 (c) Having a license to practice nursing home
9 administration revoked, suspended, or otherwise acted against,
10 including the denial of licensure, by the licensing authority
11 of another state, territory, or country.

12 (d) Being convicted or found guilty, regardless of
13 adjudication, of a crime in any jurisdiction which relates to
14 the practice of nursing home administration or the ability to
15 practice nursing home administration. Any plea of nolo
16 contendere shall be considered a conviction for purposes of
17 this part.

18 (e) Making or filing a report or record which the
19 licensee knows to be false, intentionally 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 impede or obstruct such filing. Such reports or
23 records shall include only those which are signed in the
24 capacity of a licensed nursing home administrator.

25 (f) Authorizing the discharge or transfer of a
26 resident for a reason other than those provided in ss. 400.022
27 and 400.0255.

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

31 (h) Fraud or deceit, negligence, incompetence, or

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1 misconduct in the practice of nursing home administration.

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

4 (i)~~(j)~~ Violation of a lawful order of the board or
5 department previously entered in a disciplinary hearing or
6 failing to comply with a lawfully issued subpoena of the board
7 or department.

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

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

13 (l)~~(m)~~ Being unable to practice nursing home
14 administration with reasonable skill and safety to patients by
15 reason of illness, drunkenness, use of drugs, narcotics,
16 chemicals, or any other material or substance or as a result
17 of any mental or physical condition. In enforcing this
18 paragraph, upon a finding of the secretary or his or her
19 designee that probable cause exists to believe that the
20 licensee is unable to serve as a nursing home administrator
21 due to the reasons stated in this paragraph, the department
22 shall have the authority to issue an order to compel the
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 such order, the department's order
26 directing such examination may be enforced by filing a
27 petition for enforcement in the circuit court where the
28 licensee resides or serves as a nursing home administrator.
29 The licensee against whom the petition is filed shall not be
30 named or identified by initials in any public court records or
31 documents, and the proceedings shall be closed to the public.

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1 The department shall be entitled to the summary procedure
2 provided in s. 51.011. A licensee affected under this
3 paragraph shall have the opportunity, at reasonable intervals,
4 to demonstrate that he or she can resume the competent
5 practice of nursing home administration with reasonable skill
6 and safety to patients.

7 (m)~~(n)~~ Willfully or repeatedly violating any of the
8 provisions of the law, code, or rules of the licensing or
9 supervising authority or agency of the state or political
10 subdivision thereof having jurisdiction of the operation and
11 licensing of nursing homes.

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

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

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

21 (q) 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).When the board finds any nursing home
29 administrator guilty of any of the grounds set forth in
30 subsection (1), it may enter an order imposing one or more of
31 the following penalties:

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- 1 ~~(a) Denial of an application for licensure.~~
- 2 ~~(b) Revocation or suspension of a license.~~
- 3 ~~(c) Imposition of an administrative fine not to exceed~~
- 4 ~~\$1,000 for each count or separate offense.~~
- 5 ~~(d) Issuance of a reprimand.~~
- 6 ~~(e) Placement of the licensee on probation for a~~
- 7 ~~period of time and subject to such conditions as the board may~~
- 8 ~~specify, including requiring the licensee to attend continuing~~
- 9 ~~education courses or to work under the supervision of another~~
- 10 ~~licensee.~~
- 11 ~~(f) Restriction of the authorized scope of practice.~~

12 Section 38. Section 468.217, Florida Statutes, is
13 amended to read:

14 468.217 Denial of or refusal to renew license;
15 suspension and revocation of license and other disciplinary
16 measures.--

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

26 (a) Attempting to obtain, obtaining, or renewing a
27 license to practice occupational therapy by bribery, by
28 fraudulent misrepresentation, or through an error of the
29 department or the board.

30 (b) Having a license to practice occupational therapy
31 revoked, suspended, or otherwise acted against, including the

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

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

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

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

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

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

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

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

28 (j) Paying or receiving any commission, bonus,
29 kickback, or rebate to or from, or engaging in any split-fee
30 arrangement in any form whatsoever with, a physician,
31 organization, agency, or person, either directly or

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

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

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

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

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

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

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1 includes, but is not limited to, the promoting or selling of
2 services, goods, appliances, or drugs.

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

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

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

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

20 (t) Being unable to practice occupational therapy with
21 reasonable skill and safety to patients by reason of illness
22 or use of alcohol, drugs, narcotics, chemicals, or any other
23 type of material or as a result of any mental or physical
24 condition. In enforcing this paragraph, the department shall
25 have, upon probable cause, authority to compel an occupational
26 therapist or occupational therapy assistant to submit to a
27 mental or physical examination by physicians designated by the
28 department. The failure of an occupational therapist or
29 occupational therapy assistant to submit to such examination
30 when so directed constitutes an admission of the allegations
31 against him or her, upon which a default and final order may

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1 be entered without the taking of testimony or presentation of
2 evidence, unless the failure was due to circumstances beyond
3 his or her control. An occupational therapist or occupational
4 therapy assistant affected under this paragraph shall at
5 reasonable intervals be afforded an opportunity to demonstrate
6 that he or she can resume the competent practice of
7 occupational therapy with reasonable skill and safety to
8 patients. In any proceeding under this paragraph, neither the
9 record of proceedings nor the orders entered by the board
10 shall be used against an occupational therapist or
11 occupational therapy assistant in any other proceeding.

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

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

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

26 (x) Violating any provision of this chapter or chapter
27 456, 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).

3 ~~(3)(2)~~ The board may not reinstate the license of an
4 occupational therapist or occupational therapy assistant, or
5 cause a license to be issued to a person it has deemed
6 unqualified, until such time as the board is satisfied that
7 such person has complied with all the terms and conditions set
8 forth in the final order and is capable of safely engaging in
9 the practice of occupational therapy.

10 Section 39. Subsections (1) and (2) of section
11 468.365, Florida Statutes, are amended to read:

12 468.365 Disciplinary grounds and actions.--

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

17 (a) Procuring, attempting to procure, or renewing a
18 license as provided by this part by bribery, by fraudulent
19 misrepresentation, or through an error of the department or
20 the board.

21 (b) Having licensure, certification, registration, or
22 other authority, by whatever name known, to deliver
23 respiratory care services revoked, suspended, or otherwise
24 acted against, including the denial of licensure,
25 certification, registration, or other authority to deliver
26 respiratory care services by the licensing authority of
27 another state, territory, or country.

28 (c) Being convicted or found guilty of, or entering a
29 plea of nolo contendere to, regardless of adjudication, a
30 crime in any jurisdiction which directly relates to
31 respiratory care services or to the ability to deliver such

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1 services.

2 (d) Willfully making or filing a false report or
3 record, willfully failing to file a report or record required
4 by state or federal law, or willfully impeding or obstructing
5 such filing or inducing another person to do so. Such reports
6 or records include only those reports or records which require
7 the signature of a respiratory care practitioner or
8 respiratory therapist licensed pursuant to this part.

9 (e) Circulating false, misleading, or deceptive
10 advertising.

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

16 (g) Engaging or attempting to engage in the
17 possession, sale, or distribution of controlled substances, as
18 set forth by law, for any purpose other than a legitimate
19 purpose.

20 (h) Willfully failing to report any violation of this
21 part.

22 ~~(i) Willfully or repeatedly Violating a rule of the~~
23 ~~board or the department or a lawful order of the board or~~
24 ~~department previously entered in a disciplinary hearing.~~

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

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

29 (k)~~(l)~~ Permitting, aiding, assisting, procuring, or
30 advising any person who is not licensed pursuant to this part,
31 contrary to this part or to any rule of the department or the

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1 board.

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

5 ~~(m)(n)~~ 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)(o)~~ Delegating professional responsibilities to a
9 person when the licensee delegating such responsibilities
10 knows, or has reason to know, that such person is not
11 qualified by training, experience, or licensure to perform
12 them.

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

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

30 ~~(q)(r)~~ Exercising influence within a respiratory care
31 relationship for the purpose of engaging a patient in sexual

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1 activity. A patient is presumed to be incapable of giving
2 free, full, and informed consent to sexual activity with the
3 patient's respiratory care practitioner or respiratory
4 therapist.

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

11 (s)~~(t)~~ Soliciting patients, either personally or
12 through an agent, through the use of fraud, deception, or
13 otherwise misleading statements or through the exercise of
14 intimidation or undue influence.

15 (t)~~(u)~~ Failing to keep written respiratory care
16 records justifying the reason for the action taken by the
17 licensee.

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

23 (v)~~(w)~~ Performing professional services which have not
24 been duly ordered by a physician licensed pursuant to chapter
25 458 or chapter 459 and which are not in accordance with
26 protocols established by the hospital, other health care
27 provider, or the board, except as provided in ss. 743.064,
28 766.103, and 768.13.

29 (w)~~(x)~~ Being unable to deliver respiratory care
30 services with reasonable skill and safety to patients by
31 reason of illness or use of alcohol, drugs, narcotics,

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

23 (x) Violating any provision of this chapter or chapter
24 456, 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).~~If the board finds any person guilty of any of the~~
31 grounds set forth in subsection (1), it may enter an order

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1 ~~imposing one or more of the following penalties:~~
2 ~~(a) Denial of an application for licensure.~~
3 ~~(b) Revocation or suspension of licensure.~~
4 ~~(c) Imposition of an administrative fine not to exceed~~
5 ~~\$1,000 for each count or separate offense.~~
6 ~~(d) Placement of the respiratory care practitioner or~~
7 ~~respiratory therapist on probation for such period of time and~~
8 ~~subject to such conditions as the board may specify,~~
9 ~~including, but not limited to, requiring the respiratory care~~
10 ~~practitioner or respiratory therapist to submit to treatment,~~
11 ~~to attend continuing education courses, or to work under the~~
12 ~~supervision of another respiratory care practitioner or~~
13 ~~respiratory therapist.~~

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

15 Section 40. Subsections (1) and (2) of section
16 468.518, Florida Statutes, are amended to read:

17 468.518 Grounds for disciplinary action.--

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

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

30 (b) Being unable to engage in dietetics and nutrition
31 practice or nutrition counseling with reasonable skill and

1 safety to patients by reason of illness or use of alcohol,
2 drugs, narcotics, chemicals, or any other type of material or
3 as a result of any mental or physical condition.

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

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

12 (c) Attempting to procure or procuring a license to
13 practice dietetics and nutrition or nutrition counseling by
14 fraud or material misrepresentation of material fact.

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

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

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

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1 licensed dietitian/nutritionist or licensed nutrition
2 counselor.

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

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

9 (i) Practicing with a revoked, suspended, inactive, or
10 delinquent license.

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

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

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

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

1 (n) Violating any provision of this chapter or chapter
2 456, or any rules adopted pursuant thereto.

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

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

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

13 ~~(c) Imposition of an administrative fine not to exceed~~
14 ~~\$1,000 for each violation;~~

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

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

22 ~~(f) Restriction of the authorized scope of practice of~~
23 ~~the licensee.~~

24 Section 41. Section 468.719, Florida Statutes, is
25 amended to read:

26 468.719 Disciplinary actions.--

27 (1) The following acts constitute ~~shall be~~ grounds for
28 denial of a license or disciplinary action, as specified in s.
29 456.072(2)~~disciplinary actions provided for in subsection~~

30 ~~(2):~~

31 ~~(a) A violation of any law relating to the practice of~~

1 ~~athletic training, including, but not limited to, any~~
2 ~~violation of this part, s. 456.072, or any rule adopted~~
3 ~~pursuant thereto.~~

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

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

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

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

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

19 (f) 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).~~When the board finds any person guilty of any of~~
27 ~~the acts set forth in subsection (1), the board may enter an~~
28 ~~order imposing one or more of the penalties provided in s.~~
29 ~~456.072.~~

30 Section 42. Section 468.811, Florida Statutes, is
31 amended to read:

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- 1 468.811 Disciplinary proceedings.--
- 2 (1) The following acts constitute ~~are~~ grounds for
- 3 denial of a license or disciplinary action, as specified in s.
- 4 456.072(2):disciplinary action against a licensee and the
- 5 ~~issuance of cease and desist orders or other related action by~~
- 6 ~~the department, pursuant to s. 456.072, against any person who~~
- 7 ~~engages in or aids in a violation.~~
- 8 (a) Attempting to procure a license by fraudulent
- 9 misrepresentation.
- 10 (b) Having a license to practice orthotics,
- 11 prosthetics, or pedorthics revoked, suspended, or otherwise
- 12 acted against, including the denial of licensure in another
- 13 jurisdiction.
- 14 (c) Being convicted or found guilty of or pleading
- 15 nolo contendere to, regardless of adjudication, in any
- 16 jurisdiction, a crime that directly relates to the practice of
- 17 orthotics, prosthetics, or pedorthics, including violations of
- 18 federal laws or regulations regarding orthotics, prosthetics,
- 19 or pedorthics.
- 20 (d) Filing a report or record that the licensee knows
- 21 is false, intentionally or negligently failing to file a
- 22 report or record required by state or federal law, willfully
- 23 impeding or obstructing such filing, or inducing another
- 24 person to impede or obstruct such filing. Such reports or
- 25 records include only reports or records that are signed in a
- 26 person's capacity as a licensee under this act.
- 27 (e) Advertising goods or services in a fraudulent,
- 28 false, deceptive, or misleading manner.
- 29 ~~(f) Violation of this act or chapter 456, or any rules~~
- 30 ~~adopted thereunder.~~
- 31 (f)(g) Violation of an order of the board, agency, or

1 department previously entered in a disciplinary hearing or
2 failure to comply with a subpoena issued by the board, agency,
3 or department.

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

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

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

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

25 Section 43. Subsections (1) and (2) of section 478.52,
26 Florida Statutes, are amended to read:

27 478.52 Disciplinary proceedings.--

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

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- 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 (k) Employing an unlicensed person to practice

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1 electrology.

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

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

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

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

12 (p) Judicially determined mental incompetency.

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

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

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

30 2. A licensee who is disciplined under this paragraph
31 shall, at reasonable intervals, be afforded an opportunity to

1 demonstrate that she or he can resume the practice of
2 electrology with reasonable skill and safety.

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

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

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

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

15 (v) 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 person guilty of any of~~
23 ~~the grounds set forth in subsection (1), including conduct~~
24 ~~that would constitute a substantial violation of subsection~~
25 ~~(1) which occurred prior to licensure, it may enter an order~~
26 ~~imposing one or more of the following penalties:~~

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

28 (b) ~~Revoke or suspend the license.~~

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

31 (d) ~~Place the licensee on probation for a specified~~

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1 ~~time and subject the licensee to such conditions as the board~~
2 ~~determines necessary, including, but not limited to, requiring~~
3 ~~treatment, continuing education courses, reexamination, or~~
4 ~~working under the supervision of another licensee.~~

5 ~~(e) Issue a reprimand to the licensee.~~

6 ~~(f) Restriction of a licensee's practice.~~

7 Section 44. Subsections (1) and (2) of section
8 480.046, Florida Statutes, are amended to read:

9 480.046 Grounds for disciplinary action by the
10 board.--

11 (1) The following acts ~~shall~~ constitute grounds for
12 denial of a license or disciplinary action, as specified in s.
13 456.072(2)~~which disciplinary actions specified in subsection~~
14 ~~(2) may be taken against a massage therapist or massage~~
15 ~~establishment licensed under this act:~~

16 (a) Attempting to procure a license to practice
17 massage by bribery or fraudulent misrepresentation.

18 (b) Having a license to practice massage 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, regardless of
23 adjudication, of a crime in any jurisdiction which directly
24 relates to the practice of massage or to the ability to
25 practice massage. Any plea of nolo contendere shall be
26 considered a conviction for purposes of this chapter.

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

28 (e) Aiding, assisting, procuring, or advising any
29 unlicensed person to practice massage contrary to the
30 provisions of this chapter or to a rule of the department or
31 the board.

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1 (f) Making deceptive, untrue, or fraudulent
2 representations in the practice of massage.

3 (g) Being unable to practice massage with reasonable
4 skill and safety by reason of illness or use of alcohol,
5 drugs, narcotics, chemicals, or any other type of material or
6 as a result of any mental or physical condition. In enforcing
7 this paragraph, the department shall have, upon probable
8 cause, authority to compel a massage therapist to submit to a
9 mental or physical examination by physicians designated by the
10 department. Failure of a massage therapist to submit to such
11 examination when so directed, unless the failure was due to
12 circumstances beyond her or his control, shall constitute an
13 admission of the allegations against her or him, consequent
14 upon which a default and final order may be entered without
15 the taking of testimony or presentation of evidence. A
16 massage therapist affected under this paragraph shall at
17 reasonable intervals be afforded an opportunity to demonstrate
18 that she or he can resume the competent practice of massage
19 with reasonable skill and safety to clients.

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

25 (i) 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 (j) Delegating professional responsibilities to a
30 person when the licensee delegating such responsibilities
31 knows or has reason to know that such person is not qualified

1 by training, experience, or licensure to perform.

2 (k) ~~Violating any provision of this chapter, a rule of~~
3 ~~the board or department, or 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 (l) Refusing to permit the department to inspect the
8 business premises of the licensee during regular business
9 hours.

10 (m) Failing to keep the equipment and premises of the
11 massage establishment in a clean and sanitary condition.

12 (n) Practicing massage at a site, location, or place
13 which is not duly licensed as a massage establishment, except
14 that a massage therapist, as provided by rules adopted by the
15 board, may provide massage services, excluding colonic
16 irrigation, at the residence of a client, at the office of the
17 client, at a sports event, at a convention, or at a trade
18 show.

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

29 ~~(a) Refusal to license an applicant.~~

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

31 ~~(c) Issuance of a reprimand or censure.~~

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

3 Section 45. Section 483.825, Florida Statutes, is
4 amended to read:

5 483.825 Grounds for disciplinary action.--

6 (1) The following acts constitute grounds for denial
7 of a license or disciplinary action, as specified in s.
8 456.072(2) which disciplinary actions specified in s. 483.827
9 may be taken against applicants, registrants, and licensees
10 under this part:

11 (a)(1) Attempting to obtain, obtaining, or renewing a
12 license or registration under this part by bribery, by
13 fraudulent misrepresentation, or through an error of the
14 department or the board.

15 (b)(2) Engaging in or attempting to engage in, or
16 representing herself or himself as entitled to perform, any
17 clinical laboratory procedure or category of procedures not
18 authorized pursuant to her or his license.

19 (c)(3) Demonstrating incompetence or making consistent
20 errors in the performance of clinical laboratory examinations
21 or procedures or erroneous reporting.

22 (d)(4) Performing a test and rendering a report
23 thereon to a person not authorized by law to receive such
24 services.

25 (e)(5) Has been convicted or found guilty of, or
26 entered a plea of nolo contendere to, regardless of
27 adjudication, a crime in any jurisdiction which directly
28 relates to the activities of clinical laboratory personnel or
29 involves moral turpitude or fraudulent or dishonest dealing.
30 The record of a conviction certified or authenticated in such
31 form as to be admissible in evidence under the laws of the

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1 state shall be admissible as prima facie evidence of such
2 guilt.

3 (f)~~(6)~~ Having been adjudged mentally or physically
4 incompetent.

5 (g)~~(7)~~ ~~Violating or~~ Aiding and abetting in the
6 violation of any provision of this part or the rules adopted
7 hereunder.

8 (h)~~(8)~~ Reporting a test result when no laboratory test
9 was performed on a clinical specimen.

10 (i)~~(9)~~ Knowingly advertising false services or
11 credentials.

12 (j)~~(10)~~ Having a license revoked, suspended, or
13 otherwise acted against, including the denial of licensure, by
14 the licensing authority of another jurisdiction. The licensing
15 authority's acceptance of a relinquishment of a license,
16 stipulation, consent order, or other settlement, offered in
17 response to or in anticipation of the filing of administrative
18 charges against the licensee, shall be construed as action
19 against the licensee.

20 (k)~~(11)~~ Failing to report to the board, in writing,
21 within 30 days that an action under subsection (5), subsection
22 (6), or subsection (10) has been taken against the licensee or
23 one's license to practice as clinical laboratory personnel in
24 another state, territory, country, or other jurisdiction.

25 (l)~~(12)~~ Being unable to perform or report clinical
26 laboratory examinations with reasonable skill and safety to
27 patients by reason of illness or use of alcohol, drugs,
28 narcotics, chemicals, or any other type of material or as a
29 result of any mental or physical condition. In enforcing this
30 subsection, the department shall have, upon a finding of the
31 secretary or his or her designee that probable cause exists to

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1 believe that the licensee is unable to practice because of the
2 reasons stated in this subsection, the authority to issue an
3 order to compel a licensee to submit to a mental or physical
4 examination by physicians designated by the department. If
5 the licensee refuses to comply with such order, the
6 department's order directing such examination may be enforced
7 by filing a petition for enforcement in the circuit court
8 where the licensee resides or does business. The department
9 shall be entitled to the summary procedure provided in s.
10 51.011. A licensee affected under this subsection shall at
11 reasonable intervals be afforded an opportunity to demonstrate
12 that he or she can resume competent practice with reasonable
13 skill and safety to patients.

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

19 (n)~~(14)~~ Violating a previous order of the board
20 entered in a disciplinary proceeding.

21 (o)~~(15)~~ Failing to report to the department a person
22 or other licensee who the licensee knows is in violation of
23 this chapter or the rules of the department or board adopted
24 hereunder.

25 (p)~~(16)~~ Making or filing a report which the licensee
26 knows to be false, intentionally or negligently failing to
27 file a report or record required by state or federal law,
28 willfully impeding or obstructing such filing or inducing
29 another person to do so, including, but not limited to,
30 impeding an agent of the state from obtaining a report or
31 record for investigative purposes. Such reports or records

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1 shall include only those generated in the capacity as a
2 licensed clinical laboratory personnel.

3 (q)~~(17)~~ 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 referred
7 to providers of health care goods and services including, but
8 not limited to, hospitals, nursing homes, clinical
9 laboratories, ambulatory surgical centers, or pharmacies. The
10 provisions of this subsection shall not be construed to
11 prevent a clinical laboratory professional from receiving a
12 fee for professional consultation services.

13 (r)~~(18)~~ Exercising influence on a patient or client in
14 such a manner as to exploit the patient or client for the
15 financial gain of the licensee or other third party, which
16 shall include, but not be limited to, the promoting, selling,
17 or withholding of services, goods, appliances, referrals, or
18 drugs.

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

24 (t)~~(20)~~ Misrepresenting or concealing a material fact
25 at any time during any phase of the licensing, investigative,
26 or disciplinary process, procedure, or proceeding.

27 (u)~~(21)~~ Improperly interfering with an investigation
28 or any disciplinary proceeding.

29 (v)~~(22)~~ Engaging in or attempting to engage in sexual
30 misconduct, causing undue embarrassment or using disparaging
31 language or language of a sexual nature towards a patient,

1 exploiting superior/subordinate, professional/patient,
2 instructor/student relationships for personal gain, sexual
3 gratification, or advantage.

4 (w) Violating any provision of this chapter or chapter
5 456, or any rules adopted pursuant thereto.

6 (2) The board may enter an order denying licensure or
7 imposing any of the penalties in s. 456.072(2) against any
8 applicant for licensure or licensee who is found guilty of
9 violating any provision of subsection (1) of this section or
10 who is found guilty of violating any provision of s.
11 456.072(1).

12 (3) In determining the amount of the fine to be levied
13 for a violation, as provided in subsection (1), the following
14 factors shall be considered:

15 (a) The severity of the violation, including the
16 probability that death or serious harm to the health or safety
17 of any person will result or has resulted, the severity of the
18 actual or potential harm, and the extent to which the
19 provisions of this part were violated.

20 (b) Actions taken by the licensee to correct the
21 violation or to remedy complaints.

22 (c) Any previous violation by the licensee.

23 (d) The financial benefit to the licensee of
24 committing or continuing the violation.

25 Section 46. Section 483.827, Florida Statutes, is
26 repealed.

27 Section 47. Subsection (6) of section 483.901, Florida
28 Statutes, is amended to read:

29 483.901 Medical physicists; definitions; licensure.--

30 (6) LICENSE REQUIRED.--An individual may not engage in
31 the practice of medical physics, including the specialties of

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1 diagnostic radiological physics, therapeutic radiological
2 physics, medical nuclear radiological physics, or medical
3 health physics, without a license issued by the department for
4 the appropriate specialty.

5 (a) The department shall adopt rules to administer
6 this section which specify license application and renewal
7 fees, continuing education requirements, and standards for
8 practicing medical physics. The council shall recommend to
9 the department continuing education requirements that shall be
10 a condition of license renewal. The department shall require
11 a minimum of 24 hours per biennium of continuing education
12 offered by an organization recommended by the council and
13 approved by the department. The department, upon
14 recommendation of the council, may adopt rules to specify
15 continuing education requirements for persons who hold a
16 license in more than one specialty.

17 (b) In order to apply for a medical physicist license
18 in one or more specialties, a person must file an individual
19 application for each specialty with the department. The
20 application must be on a form prescribed by the department and
21 must be accompanied by a nonrefundable application fee for
22 each specialty.

23 (c) The department may issue a license to an eligible
24 applicant if the applicant meets all license requirements. At
25 any time before the department issues a license, the applicant
26 may request in writing that the application be withdrawn. To
27 reapply, the applicant must submit a new application and an
28 additional nonrefundable application fee and must meet all
29 current licensure requirements.

30 (d) The department shall review each completed
31 application for a license which the department receives.

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1 (e) On receipt of an application and fee as specified
2 in this section, the department may issue a license to
3 practice medical physics in this state on or after October 1,
4 1997, to a person who is board certified in the medical
5 physics specialty in which the applicant applies to practice
6 by the American Board of Radiology for diagnostic radiological
7 physics, therapeutic radiological physics, or medical nuclear
8 radiological physics; by the American Board of Medical Physics
9 for diagnostic radiological physics, therapeutic radiological
10 physics, or medical nuclear radiological physics; or by the
11 American Board of Health Physics or an equivalent certifying
12 body approved by the department.

13 (f) A licensee shall:

14 1. Display the license in a place accessible to the
15 public; and

16 2. Report immediately any change in the licensee's
17 address or name to the department.

18 (g) The following acts constitute ~~are~~ grounds for
19 denial of a license or disciplinary action, as specified in s.
20 456.072(2)~~which the disciplinary actions in paragraph (h) may~~
21 ~~be taken:~~

22 1. Obtaining or attempting to obtain a license by
23 bribery, fraud, knowing misrepresentation, or concealment of
24 material fact or through an error of the department.

25 2. Having a license denied, revoked, suspended, or
26 otherwise acted against in another jurisdiction.

27 3. Being convicted or found guilty of, or entering a
28 plea of nolo contendere to, regardless of adjudication, a
29 crime in any jurisdiction which relates to the practice of, or
30 the ability to practice, the profession of medical physics.

31 4. Willfully failing to file a report or record

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1 required for medical physics or willfully impeding or
2 obstructing the filing of a report or record required by this
3 section or inducing another person to do so.

4 5. Making misleading, deceptive, or fraudulent
5 representations in or related to the practice of medical
6 physics.

7 6. Willfully failing to report any known violation of
8 this section or any rule adopted thereunder.

9 ~~7. Willfully or repeatedly violating a rule adopted~~
10 ~~under this section or an order of the department.~~

11 ~~7.8.~~ Failing to perform any statutory or legal
12 obligation placed upon a licensee.

13 ~~8.9.~~ Aiding, assisting, procuring, employing, or
14 advising any unlicensed person to practice medical physics
15 contrary to this section or any rule adopted thereunder.

16 ~~9.10.~~ Delegating or contracting for the performance of
17 professional responsibilities by a person when the licensee
18 delegating or contracting such responsibilities knows, or has
19 reason to know, such person is not qualified by training,
20 experience, and authorization to perform them.

21 ~~10.11.~~ Practicing or offering to practice beyond the
22 scope permitted by law or accepting and performing
23 professional responsibilities the licensee knows, or has
24 reason to know, the licensee is not competent to perform.

25 ~~11.12.~~ Gross or repeated malpractice or the inability
26 to practice medical physics with reasonable skill and safety.

27 ~~12.13.~~ Judicially determined mental incompetency.

28 ~~13.14.~~ Being unable to practice medical physics with
29 reasonable skill and safety because of a mental or physical
30 condition or illness or the use of alcohol, controlled
31 substances, or any other substance which impairs one's ability

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1 to practice.

2 a. The department may, upon probable cause, compel a
3 licensee to submit to a mental or physical examination by
4 physicians designated by the department. The cost of an
5 examination shall be borne by the licensee, and the licensee's
6 failure to submit to such an examination constitutes an
7 admission of the allegations against the licensee, consequent
8 upon which a default and a final order may be entered without
9 the taking of testimony or presentation of evidence, unless
10 the failure was due to circumstances beyond the licensee's
11 control.

12 b. A licensee who is disciplined under this
13 subparagraph shall, at reasonable intervals, be afforded an
14 opportunity to demonstrate that the licensee can resume the
15 practice of medical physics with reasonable skill and safety.

16 c. With respect to any proceeding under this
17 subparagraph, the record of proceedings or the orders entered
18 by the department may not be used against a licensee in any
19 other proceeding.

20 14. Violating any provision of this chapter or chapter
21 456, or any rules adopted pursuant thereto.

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

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- 1 ~~1. Deny the application for licensure.~~
2 ~~2. Revoke or suspend the license.~~
3 ~~3. Impose an administrative fine for each count or~~
4 ~~separate offense.~~
5 ~~4. Place the licensee on probation for a specified~~
6 ~~time and subject the licensee to such conditions as the~~
7 ~~department determines necessary, including requiring~~
8 ~~treatment, continuing education courses, or working under the~~
9 ~~monitoring or supervision of another licensee.~~
10 ~~5. Restrict a licensee's practice.~~
11 ~~6. Issue a reprimand to the licensee.~~
12 (i) The department may not issue or reinstate a
13 license to a person it has deemed unqualified until it is
14 satisfied that such person has complied with the terms and
15 conditions of the final order and that the licensee can safely
16 practice medical physics.
17 (j) Upon receipt of a complete application and the fee
18 set forth by rule, the department may issue a
19 physicist-in-training certificate to a person qualified to
20 practice medical physics under direct supervision. The
21 department may establish by rule requirements for initial
22 certification and renewal of a physicist-in-training
23 certificate.
24 Section 48. Subsections (1) and (2) of section
25 484.014, Florida Statutes, are amended to read:
26 484.014 Disciplinary actions.--
27 (1) The following acts constitute ~~relating to the~~
28 ~~practice of opticianry shall be~~ grounds for denial of a
29 license or disciplinary action, as specified in s. 456.072(2)
30 ~~both disciplinary action against an optician as set forth in~~
31 ~~this section and cease and desist or other related action by~~

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1 ~~the department as set forth in s. 456.065 against any person~~
2 ~~operating an optical establishment who engages in, aids, or~~
3 ~~abets any such violation:~~

4 (a) Procuring or attempting to procure a license by
5 misrepresentation, bribery, or fraud or through an error of
6 the department or the board.

7 (b) Procuring or attempting to procure a license for
8 any other person by making or causing to be made any false
9 representation.

10 (c) Making or filing a report or record which the
11 licensee knows to be false, intentionally or negligently
12 failing to file a report or record required by federal or
13 state law, willfully impeding or obstructing such filing, or
14 inducing another person to do so. Such reports or records
15 shall include only those which the person is required to make
16 or file as an optician.

17 (d) Failing to make fee or price information readily
18 available by providing such information upon request or upon
19 the presentation of a prescription.

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

23 (f) Fraud or deceit, or negligence, incompetency, or
24 misconduct, in the authorized practice of opticianry.

25 ~~(g) Violation or repeated violation of this part or of~~
26 ~~chapter 456 or any rules promulgated pursuant thereto.~~

27 ~~(g)(h)~~ Practicing with a revoked, suspended, inactive,
28 or delinquent license.

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

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1 department.

2 (i)~~(j)~~ Violation of any provision of s. 484.012.

3 (j)~~(k)~~ Conspiring with another licensee or with any
4 person to commit an act, or committing an act, which would
5 coerce, intimidate, or preclude another licensee from lawfully
6 advertising her or his services.

7 (k)~~(l)~~ Willfully submitting to any third-party payor a
8 claim for services which were not provided to a patient.

9 (l)~~(m)~~ Failing to keep written prescription files.

10 (m)~~(n)~~ Willfully failing to report any person who the
11 licensee knows is in violation of this part or of rules of the
12 department or the board.

13 (n)~~(o)~~ Exercising influence on a client in such a
14 manner as to exploit the client for financial gain of the
15 licensee or of a third party.

16 (o)~~(p)~~ Gross or repeated malpractice.

17 (p)~~(q)~~ Permitting any person not licensed as an
18 optician in this state to fit or dispense any lenses,
19 spectacles, eyeglasses, or other optical devices which are
20 part of the practice of opticianry.

21 (q)~~(r)~~ Being convicted or found guilty of, or entering
22 a plea of nolo contendere to, regardless of adjudication, in a
23 court of this state or other jurisdiction, a crime which
24 relates to the ability to practice opticianry or to the
25 practice of opticianry.

26 (r)~~(s)~~ Having been disciplined by a regulatory agency
27 in another state for any offense that would constitute a
28 violation of Florida law or rules regulating opticianry.

29 (s)~~(t)~~ Being unable to practice opticianry with
30 reasonable skill and safety by reason of illness or use of
31 drugs, narcotics, chemicals, or any other type of material or

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1 as a result of any mental or physical condition. An optician
2 affected under this paragraph shall at reasonable intervals be
3 afforded an opportunity to demonstrate that she or he can
4 resume the competent practice of opticianry with reasonable
5 skill and safety to her or his customers.

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

8 (2) The board may enter an order denying licensure or
9 imposing any of the penalties in s. 456.072(2) against any
10 applicant for licensure or licensee who is found guilty of
11 violating any provision of subsection (1) of this section or
12 who is found guilty of violating any provision of s.

13 ~~456.072(1). When the board finds any person guilty of any of~~
14 ~~the grounds set forth in subsection (1), it may enter an order~~
15 ~~imposing one or more of the following penalties:~~

16 ~~(a) Refusal to certify to the department an~~
17 ~~application for licensure.~~

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

19 ~~(c) Imposition of an administrative fine not to exceed~~
20 ~~\$1,000 for each count or separate offense.~~

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

22 ~~(e) Placement of the optician on probation for a~~
23 ~~period of time and subject to such conditions as the board may~~
24 ~~specify, including requiring the optician to submit to~~
25 ~~treatment or to work under the supervision of another~~
26 ~~optician.~~

27 Section 49. Subsections (1) and (2) of section
28 484.056, Florida Statutes, are amended to read:

29 484.056 Disciplinary proceedings.--

30 (1) The following acts constitute ~~relating to the~~
31 ~~practice of dispensing hearing aids shall be~~ grounds for

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1 denial of a license or disciplinary action, as specified in s.
2 456.072(2)both disciplinary action against a hearing aid
3 specialist as set forth in this section and cease and desist
4 or other related action by the department as set forth in s.
5 456.065 against any person owning or operating a hearing aid
6 establishment who engages in, aids, or abets any such
7 violation:

8 (a) Violation of any provision of s. 456.072(1), s.
9 484.0512, or s. 484.053.

10 (b) Attempting to procure a license to dispense
11 hearing aids by bribery, by fraudulent misrepresentations, or
12 through an error of the department or the board.

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

17 (d) 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 dispensing hearing aids or the ability to practice
21 dispensing hearing aids, including violations of any federal
22 laws or regulations regarding hearing aids.

23 (e) 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 record 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 reports or records shall include only those reports or
29 records which are signed in one's capacity as a licensed
30 hearing aid specialist.

31 (f) Advertising goods or services in a manner which is

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1 fraudulent, false, deceptive, or misleading in form or
2 content.

3 (g) Proof that the licensee is guilty of fraud or
4 deceit or of negligence, incompetency, or misconduct in the
5 practice of dispensing hearing aids.

6 ~~(h) Violation or repeated violation of this part or of~~
7 ~~chapter 456, or any rules promulgated pursuant thereto.~~

8 (h)(i) Violation of a lawful order of the board or
9 department previously entered in a disciplinary hearing or
10 failure to comply with a lawfully issued subpoena of the board
11 or department.

12 (i)(j) Practicing with a revoked, suspended, inactive,
13 or delinquent license.

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

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

22 (l)(m) Misrepresentation of professional services
23 available in the fitting, sale, adjustment, service, or repair
24 of a hearing aid, or use of the terms "doctor," "clinic,"
25 "clinical," "medical audiologist," "clinical audiologist,"
26 "research audiologist," or "audiologic" or any other term or
27 title which might connote the availability of professional
28 services when such use is not accurate.

29 (m)(n) Representation, advertisement, or implication
30 that a hearing aid or its repair is guaranteed without
31 providing full disclosure of the identity of the guarantor;

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1 the nature, extent, and duration of the guarantee; and the
2 existence of conditions or limitations imposed upon the
3 guarantee.

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

11 (o)~~(p)~~ Making any predictions or prognostications as
12 to the future course of a hearing impairment, either in
13 general terms or with reference to an individual person.

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

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

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

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

29 (t)~~(u)~~ Failure to submit to the board on an annual
30 basis, or such other basis as may be provided by rule,
31 certification of testing and calibration of audiometric

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1 testing equipment on the form approved by the board.

2 ~~(u)(v)~~ Failing to provide all information as described
3 in s. 484.051(1).

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

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

9 (2)(a) The board may enter an order denying licensure
10 or 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).~~Except as provided in paragraph (b), when the~~
15 ~~board finds any hearing aid specialist to be guilty of any of~~
16 ~~the grounds set forth in subsection (1), it may enter an order~~
17 ~~imposing one or more of the following penalties:~~

18 1. ~~Denial of an application for licensure.~~

19 2. ~~Revocation or suspension of a license.~~

20 3. ~~Imposition of an administrative fine not to exceed~~
21 ~~\$1,000 for each count or separate offense.~~

22 4. ~~Issuance of a reprimand.~~

23 5. ~~Placing the hearing aid specialist on probation for~~
24 ~~a period of time and subject to such conditions as the board~~
25 ~~may specify, including requiring the hearing aid specialist to~~
26 ~~attend continuing education courses or to work under the~~
27 ~~supervision of another hearing aid specialist.~~

28 6. ~~Restricting the authorized scope of practice.~~

29 (b) The board shall revoke the license of any hearing
30 aid specialist found guilty of canvassing as described in this
31 section.

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1 Section 50. Subsections (1) and (2) of section
2 486.125, Florida Statutes, are amended to read:

3 486.125 Refusal, revocation, or suspension of license;
4 administrative fines and other disciplinary measures.--

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

9 (a) Being unable to practice physical therapy with
10 reasonable skill and safety to patients by reason of illness
11 or use of alcohol, drugs, narcotics, chemicals, or any other
12 type of material or as a result of any mental or physical
13 condition.

14 1. In enforcing this paragraph, upon a finding of the
15 secretary or the secretary's designee that probable cause
16 exists to believe that the licensee is unable to practice
17 physical therapy due to the reasons stated in this paragraph,
18 the department shall have the authority to compel a physical
19 therapist or physical therapist assistant to submit to a
20 mental or physical examination by a physician designated by
21 the department. If the licensee refuses to comply with such
22 order, the department's order directing such examination may
23 be enforced by filing a petition for enforcement in the
24 circuit court where the licensee resides or serves as a
25 physical therapy practitioner. The licensee against whom the
26 petition is filed shall not be named or identified by initials
27 in any public court records or documents, and the proceedings
28 shall be closed to the public. The department shall be
29 entitled to the summary procedure provided in s. 51.011.

30 2. A physical therapist or physical therapist
31 assistant whose license is suspended or revoked pursuant to

1 this subsection shall, at reasonable intervals, be given an
2 opportunity to demonstrate that she or he can resume the
3 competent practice of physical therapy with reasonable skill
4 and safety to patients.

5 3. Neither the record of proceeding nor the orders
6 entered by the board in any proceeding under this subsection
7 may be used against a physical therapist or physical therapist
8 assistant in any other proceeding.

9 (b) Having committed fraud in the practice of physical
10 therapy or deceit in obtaining a license as a physical
11 therapist or as a physical therapist assistant.

12 (c) Being convicted or found guilty regardless of
13 adjudication, of a crime in any jurisdiction which directly
14 relates to the practice of physical therapy or to the ability
15 to practice physical therapy. The entry of any plea of nolo
16 contendere shall be considered a conviction for purpose of
17 this chapter.

18 (d) Having treated or undertaken to treat human
19 ailments by means other than by physical therapy, as defined
20 in this chapter.

21 (e) Failing to maintain acceptable standards of
22 physical therapy practice as set forth by the board in rules
23 adopted pursuant to this chapter.

24 (f) Engaging directly or indirectly in the dividing,
25 transferring, assigning, rebating, or refunding of fees
26 received for professional services, or having been found to
27 profit by means of a credit or other valuable consideration,
28 such as an unearned commission, discount, or gratuity, with
29 any person referring a patient or with any relative or
30 business associate of the referring person. Nothing in this
31 chapter shall be construed to prohibit the members of any

1 regularly and properly organized business entity which is
2 comprised of physical therapists and which is recognized under
3 the laws of this state from making any division of their total
4 fees among themselves as they determine necessary.

5 (g) Having a license revoked or suspended; having had
6 other disciplinary action taken against her or him; or having
7 had her or his application for a license refused, revoked, or
8 suspended by the licensing authority of another state,
9 territory, or country.

10 (h) ~~Violating any provision of this chapter, a rule of~~
11 ~~the board or department, or~~ a lawful order of the board or
12 department previously entered in a disciplinary hearing.

13 (i) Making or filing a report or record which the
14 licensee knows to be false. Such reports or records shall
15 include only those which are signed in the capacity of a
16 physical therapist.

17 (j) Practicing or offering to practice beyond the
18 scope permitted by law or accepting and performing
19 professional responsibilities which the licensee knows or has
20 reason to know that she or he is not competent to perform,
21 including, but not limited to, specific spinal manipulation.

22 (k) 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 grounds set forth in subsection (1), it may enter an order~~
31 ~~imposing one or more of the following penalties:~~

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

16 ~~(g) Recovery of actual costs of investigation and~~
17 ~~prosecution.~~

18 Section 51. Section 490.009, Florida Statutes, is
19 amended to read:

20 490.009 Discipline.--

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

27 ~~(a) Denial of an application for licensure, either~~
28 ~~temporarily or permanently.~~

29 ~~(b) Revocation of an application for licensure, either~~
30 ~~temporarily or permanently.~~

31 ~~(c) Suspension for a period of up to 5 years or~~

1 ~~revocation of a license, after hearing.~~
2 ~~(d) Immediate suspension of a license pursuant to s.~~
3 ~~120.60(6).~~
4 ~~(e) Imposition of an administrative fine not to exceed~~
5 ~~\$5,000 for each count or separate offense.~~
6 ~~(f) Issuance of a public reprimand.~~
7 ~~(g) Placement of an applicant or licensee on probation~~
8 ~~for a period of time and subject to conditions specified by~~
9 ~~the department or, in the case of psychologists, by the board,~~
10 ~~including, but not limited to, requiring the applicant or~~
11 ~~licensee to submit to treatment, to attend continuing~~
12 ~~education courses, to submit to reexamination, or to work~~
13 ~~under the supervision of a designated licensee.~~
14 ~~(h) Restriction of practice.~~
15 ~~(1)(2) The following acts constitute of a licensee,~~
16 ~~provisional licensee, or applicant are grounds for denial of a~~
17 ~~license or disciplinary action, as specified in s. 456.072(2)~~
18 ~~which the disciplinary actions listed in subsection (1) may be~~
19 ~~taken:~~
20 (a) Attempting to obtain, obtaining, or renewing a
21 license under this chapter by bribery or fraudulent
22 misrepresentation or through an error of the board or
23 department.
24 (b) Having a license to practice a comparable
25 profession revoked, suspended, or otherwise acted against,
26 including the denial of certification or licensure by 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 his or her profession or the
31 ability to practice his or her profession. A plea of nolo

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1 | contendere creates a rebuttable presumption of guilt of the
2 | underlying criminal charges. However, the board shall allow
3 | the person who is the subject of the disciplinary proceeding
4 | to present any evidence relevant to the underlying charges and
5 | circumstances surrounding the plea.

6 | (d) False, deceptive, or misleading advertising or
7 | obtaining a fee or other thing of value on the representation
8 | that beneficial results from any treatment will be guaranteed.

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

11 | (f) Maintaining a professional association with any
12 | person who the applicant or licensee knows, or has reason to
13 | believe, is in violation of this chapter or of a rule of the
14 | department or, in the case of psychologists, of the department
15 | or the board.

16 | (g) Knowingly aiding, assisting, procuring, or
17 | advising any nonlicensed person to hold himself or herself out
18 | as licensed under this chapter.

19 | (h) Failing to perform any statutory or legal
20 | obligation placed upon a person licensed under this chapter.

21 | (i) Willfully making or filing a false report or
22 | record; failing to file a report or record required by state
23 | or federal law; willfully impeding or obstructing the filing
24 | of a report or record; or inducing another person to make or
25 | file a false report or record or to impede or obstruct the
26 | filing of a report or record. Such report or record includes
27 | only a report or record which requires the signature of a
28 | person licensed under this chapter.

29 | (j) Paying a kickback, rebate, bonus, or other
30 | remuneration for receiving a patient or client, or receiving a
31 | kickback, rebate, bonus, or other remuneration for referring a

1 patient or client to another provider of mental health care
2 services or to a provider of health care services or goods;
3 referring a patient or client to oneself for services on a
4 fee-paid basis when those services are already being paid for
5 by some other public or private entity; or entering into a
6 reciprocal referral agreement.

7 (k) Committing any act upon a patient or client which
8 would constitute sexual battery or which would constitute
9 sexual misconduct as defined in s. 490.0111.

10 (l) Making misleading, deceptive, untrue, or
11 fraudulent representations in the practice of any profession
12 licensed under this chapter.

13 (m) Soliciting patients or clients personally, or
14 through an agent, through the use of fraud, intimidation,
15 undue influence, or a form of overreaching or vexatious
16 conduct.

17 (n) Failing to make available to a patient or client,
18 upon written request, copies of test results, reports, or
19 documents in the possession or under the control of the
20 licensee which have been prepared for and paid for by the
21 patient or client.

22 (o) Failing to respond within 30 days to a written
23 communication from the department concerning any investigation
24 by the department or to make available any relevant records
25 with respect to any investigation about the licensee's conduct
26 or background.

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

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1 enforcing this paragraph, upon a finding by the secretary, the
2 secretary's designee, or the board that probable cause exists
3 to believe that the licensee is unable to practice the
4 profession because of the reasons stated in this paragraph,
5 the department shall have the authority to compel a licensee
6 to submit to a mental or physical examination by psychologists
7 or physicians designated by the department or board. If the
8 licensee refuses to comply with the department's order, the
9 department may file a petition for enforcement in the circuit
10 court of the circuit in which the licensee resides or does
11 business. The licensee shall not be named or identified by
12 initials in the petition or in any other public court records
13 or documents, and the enforcement proceedings shall be closed
14 to the public. The department shall be entitled to the
15 summary procedure provided in s. 51.011. A licensee affected
16 under this paragraph shall be afforded an opportunity at
17 reasonable intervals to demonstrate that he or she can resume
18 the competent practice for which he or she is licensed with
19 reasonable skill and safety to patients.

20 ~~(q) Violating provisions of this chapter, or of~~
21 ~~chapter 456, or any rules adopted pursuant thereto.~~

22 (q)~~(r)~~ Performing any treatment or prescribing any
23 therapy which, by the prevailing standards of the mental
24 health professions in the community, would constitute
25 experimentation on human subjects, without first obtaining
26 full, informed, and written consent.

27 (r)~~(s)~~ Failing to meet the minimum standards of
28 performance in professional activities when measured against
29 generally prevailing peer performance, including the
30 undertaking of activities for which the licensee is not
31 qualified by training or experience.

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1 ~~(s)(t)~~ Delegating professional responsibilities to a
2 person whom the licensee knows or has reason to know is not
3 qualified by training or experience to perform such
4 responsibilities.

5 ~~(t)(u)~~ Violating a rule relating to the regulation of
6 the profession or a lawful order of the department previously
7 entered in a disciplinary hearing.

8 ~~(u)(v)~~ Failing to maintain in confidence a
9 communication made by a patient or client in the context of
10 such services, except as provided in s. 490.0147.

11 ~~(v)(w)~~ Making public statements which are derived from
12 test data, client contacts, or behavioral research and which
13 identify or damage research subjects or clients.

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

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

22 Section 52. Section 491.009, Florida Statutes, is
23 amended to read:

24 491.009 Discipline.--

25 ~~(1) When the department or the board finds that an~~
26 ~~applicant, licensee, provisional licensee, registered intern,~~
27 ~~or certificateholder whom it regulates under this chapter has~~
28 ~~committed any of the acts set forth in subsection (2), it may~~
29 ~~issue an order imposing one or more of the following~~
30 ~~penalties:~~

31 ~~(a) Denial of an application for licensure,~~

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1 ~~registration, or certification, either temporarily or~~
2 ~~permanently.~~

3 ~~(b) Revocation of an application for licensure,~~
4 ~~registration, or certification, either temporarily or~~
5 ~~permanently.~~

6 ~~(c) Suspension for a period of up to 5 years or~~
7 ~~revocation of a license, registration, or certificate, after~~
8 ~~hearing.~~

9 ~~(d) Immediate suspension of a license, registration,~~
10 ~~or certificate pursuant to s. 120.60(6).~~

11 ~~(e) Imposition of an administrative fine not to exceed~~
12 ~~\$1,000 for each count or separate offense.~~

13 ~~(f) Issuance of a public reprimand.~~

14 ~~(g) Placement of an applicant, licensee, registered~~
15 ~~intern, or certificateholder on probation for a period of time~~
16 ~~and subject to such conditions as the board may specify,~~
17 ~~including, but not limited to, requiring the applicant,~~
18 ~~licensee, registered intern, or certificateholder to submit to~~
19 ~~treatment, to attend continuing education courses, to submit~~
20 ~~to reexamination, or to work under the supervision of a~~
21 ~~designated licensee or certificateholder.~~

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

23 ~~(1)(2) The following acts constitute of a licensee,~~
24 ~~provisional licensee, registered intern, certificateholder, or~~
25 ~~applicant are grounds for denial of a license or disciplinary~~
26 ~~action, as specified in s. 456.072(2)which the disciplinary~~
27 ~~actions listed in subsection (1) may be taken:~~

28 (a) Attempting to obtain, obtaining, or renewing a
29 license, registration, or certificate under this chapter by
30 bribery or fraudulent misrepresentation or through an error of
31 the board or the department.

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1 (b) Having a license, registration, or certificate to
2 practice a comparable profession revoked, suspended, or
3 otherwise acted against, including the denial of certification
4 or licensure by another state, territory, or country.

5 (c) Being convicted or found guilty of, regardless of
6 adjudication, or having entered a plea of nolo contendere to,
7 a crime in any jurisdiction which directly relates to the
8 practice of his or her profession or the ability to practice
9 his or her profession. However, in the case of a plea of nolo
10 contendere, the board shall allow the person who is the
11 subject of the disciplinary proceeding to present evidence in
12 mitigation relevant to the underlying charges and
13 circumstances surrounding the plea.

14 (d) False, deceptive, or misleading advertising or
15 obtaining a fee or other thing of value on the representation
16 that beneficial results from any treatment will be guaranteed.

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

19 (f) Maintaining a professional association with any
20 person who the applicant, licensee, registered intern, or
21 certificateholder knows, or has reason to believe, is in
22 violation of this chapter or of a rule of the department or
23 the board.

24 (g) Knowingly aiding, assisting, procuring, or
25 advising any nonlicensed, nonregistered, or noncertified
26 person to hold himself or herself out as licensed, registered,
27 or certified under this chapter.

28 (h) Failing to perform any statutory or legal
29 obligation placed upon a person licensed, registered, or
30 certified under this chapter.

31 (i) Willfully making or filing a false report or

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1 record; failing to file a report or record required by state
2 or federal law; willfully impeding or obstructing the filing
3 of a report or record; or inducing another person to make or
4 file a false report or record or to impede or obstruct the
5 filing of a report or record. Such report or record includes
6 only a report or record which requires the signature of a
7 person licensed, registered, or certified under this chapter.

8 (j) Paying a kickback, rebate, bonus, or other
9 remuneration for receiving a patient or client, or receiving a
10 kickback, rebate, bonus, or other remuneration for referring a
11 patient or client to another provider of mental health care
12 services or to a provider of health care services or goods;
13 referring a patient or client to oneself for services on a
14 fee-paid basis when those services are already being paid for
15 by some other public or private entity; or entering into a
16 reciprocal referral agreement.

17 (k) Committing any act upon a patient or client which
18 would constitute sexual battery or which would constitute
19 sexual misconduct as defined pursuant to s. 491.0111.

20 (l) Making misleading, deceptive, untrue, or
21 fraudulent representations in the practice of any profession
22 licensed, registered, or certified under this chapter.

23 (m) Soliciting patients or clients personally, or
24 through an agent, through the use of fraud, intimidation,
25 undue influence, or a form of overreaching or vexatious
26 conduct.

27 (n) Failing to make available to a patient or client,
28 upon written request, copies of tests, reports, or documents
29 in the possession or under the control of the licensee,
30 registered intern, or certificateholder which have been
31 prepared for and paid for by the patient or client.

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1 (o) Failing to respond within 30 days to a written
2 communication from the department or the board concerning any
3 investigation by the department or the board, or failing to
4 make available any relevant records with respect to any
5 investigation about the licensee's, registered intern's, or
6 certificateholder's conduct or background.

7 (p) Being unable to practice the profession for which
8 he or she is licensed, registered, or certified under this
9 chapter with reasonable skill or competence as a result of any
10 mental or physical condition or by reason of illness;
11 drunkenness; or excessive use of drugs, narcotics, chemicals,
12 or any other substance. In enforcing this paragraph, upon a
13 finding by the secretary, the secretary's designee, or the
14 board that probable cause exists to believe that the licensee,
15 registered intern, or certificateholder is unable to practice
16 the profession because of the reasons stated in this
17 paragraph, the department shall have the authority to compel a
18 licensee, registered intern, or certificateholder to submit to
19 a mental or physical examination by psychologists, physicians,
20 or other licensees under this chapter, designated by the
21 department or board. If the licensee, registered intern, or
22 certificateholder refuses to comply with such order, the
23 department's order directing the examination may be enforced
24 by filing a petition for enforcement in the circuit court in
25 the circuit in which the licensee, registered intern, or
26 certificateholder resides or does business. The licensee,
27 registered intern, or certificateholder against whom the
28 petition is filed shall not be named or identified by initials
29 in any public court records or documents, and the proceedings
30 shall be closed to the public. The department shall be
31 entitled to the summary procedure provided in s. 51.011. A

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1 licensee, registered intern, or certificateholder affected
2 under this paragraph shall at reasonable intervals be afforded
3 an opportunity to demonstrate that he or she can resume the
4 competent practice for which he or she is licensed,
5 registered, or certified with reasonable skill and safety to
6 patients.

7 ~~(q) Violating provisions of this chapter, or of~~
8 ~~chapter 456, or any rules adopted pursuant thereto.~~

9 (q)~~(r)~~ Performing any treatment or prescribing any
10 therapy which, by the prevailing standards of the mental
11 health professions in the community, would constitute
12 experimentation on human subjects, without first obtaining
13 full, informed, and written consent.

14 (r)~~(s)~~ Failing to meet the minimum standards of
15 performance in professional activities when measured against
16 generally prevailing peer performance, including the
17 undertaking of activities for which the licensee, registered
18 intern, or certificateholder is not qualified by training or
19 experience.

20 (s)~~(t)~~ Delegating professional responsibilities to a
21 person whom the licensee, registered intern, or
22 certificateholder knows or has reason to know is not qualified
23 by training or experience to perform such responsibilities.

24 (t)~~(u)~~ Violating a rule relating to the regulation of
25 the profession or a lawful order of the department or the
26 board previously entered in a disciplinary hearing.

27 (u)~~(v)~~ Failure of the licensee, registered intern, or
28 certificateholder to maintain in confidence a communication
29 made by a patient or client in the context of such services,
30 except as provided in s. 491.0147.

31 (v)~~(w)~~ Making public statements which are derived from

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1 test data, client contacts, or behavioral research and which
2 identify or damage research subjects or clients.

3 (w) Violating any provision of this chapter or chapter
4 456, or any rules adopted pursuant thereto.

5 (2) The department, or in the case of psychologists,
6 the board, may enter an order denying licensure or imposing
7 any of the penalties in s. 456.072(2) against any applicant
8 for licensure or licensee who is found guilty of violating any
9 provision of subsection (1) of this section or who is found
10 guilty of violating any provision of s. 456.072(1).

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

13 456.065 Unlicensed practice of a health care
14 profession; intent; cease and desist notice; penalties;
15 enforcement; citations; fees; allocation and disposition of
16 moneys collected.--

17 (3) Because all enforcement costs should be covered by
18 professions regulated by the department, the department shall
19 impose, upon initial licensure and each licensure renewal, a
20 special fee of \$5 per licensee to fund efforts to combat
21 unlicensed activity. Such fee shall be in addition to all
22 other fees collected from each licensee. ~~The board, with~~
23 ~~concurrence of the department, or the department when there is~~
24 ~~no board, may earmark \$5 of the current licensure fee for this~~
25 ~~purpose, if such board, or profession regulated by the~~
26 ~~department, is not in a deficit and has a reasonable cash~~
27 ~~balance.~~The department shall make direct charges to the
28 Medical Quality Assurance Trust Fund by profession. The
29 department shall seek board advice regarding enforcement
30 methods and strategies. The department shall directly credit
31 the Medical Quality Assurance Trust Fund, by profession, with

1 the revenues received from the department's efforts to enforce
2 licensure provisions. The department shall include all
3 financial and statistical data resulting from unlicensed
4 activity enforcement as a separate category in the quarterly
5 management report provided for in s. 456.025. For an
6 unlicensed activity account, a balance which remains at the
7 end of a renewal cycle may, with concurrence of the applicable
8 board and the department, be transferred to the operating fund
9 account of that profession. The department shall also use
10 these funds to inform and educate consumers generally on the
11 importance of using licensed health care practitioners.

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

14 456.074 Certain health care practitioners; immediate
15 suspension of license.--

16 (1) The department shall issue an emergency order
17 suspending the license of any person licensed under chapter
18 458, chapter 459, chapter 460, chapter 461, chapter 462,
19 chapter 463, chapter 464, chapter 465, chapter 466, or chapter
20 484 who pleads guilty to, is convicted or found guilty of, or
21 who enters a plea of nolo contendere to, regardless of
22 adjudication, a felony under chapter 409, chapter 817, or
23 chapter 893 or under 21 U.S.C. ss. 801-970 or under 42 U.S.C.
24 ss. 1395-1396.

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

27 464.005 Board headquarters.--The board shall maintain
28 its official headquarters in Tallahassee ~~the city in which it~~
29 ~~has been domiciled for the past 5 years.~~

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

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(Renumber subsequent sections)

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

On page 129, line 17, of the amendment

insert:

providing legislative intent and findings with respect to the Medical Quality Assurance Trust Fund and function administered by the Department of Health; requiring the Auditor General to do a followup Medical Quality Assurance audit and issue a report to the Legislature; requiring the Department of Health to reimburse the Agency for Health Care Administration for certain costs; requiring the Office of Program Policy Analysis and Government Accountability to study the feasibility of maintaining the Medical Quality Assurance function within a single department and issue a report to the Legislature; amending s. 456.004, F.S.; providing requirements for rules relating to biennial renewal of licenses; requiring the department to set an examination fee and providing requirements therefor; amending s. 456.025, F.S.; revising requirements relating to the setting and use of fees for the regulation of health care professions and practitioners,

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1 including continuing education fees; providing
2 for an electronic continuing education tracking
3 system; repealing s. 458.31151, F.S.; relating
4 to development of the examination for
5 foreign-trained physicians and the fees
6 therefor; amending s. 457.107, F.S.; for
7 clarification of acupuncture fees; amending s.
8 483.807, F.S.; relating to clinical laboratory
9 personnel fees; amending s. 456.011, F.S.;
10 requiring board meetings to be conducted
11 through teleconferencing or other technological
12 means except under certain circumstances;
13 amending s. 456.013, F.S.; requiring the
14 department to charge initial license fees;
15 amending s. 456.017, F.S.; providing for
16 administration of national examinations and
17 termination of state-administered written
18 examinations; providing for administration of
19 state-administered practical or clinical
20 examinations if paid for in advance by the
21 examination candidates; providing legislative
22 intent with respect to the use of national
23 examinations and the removal of
24 state-administered examinations as a barrier to
25 licensure; providing for electronic access to
26 and posting of examination scores under certain
27 conditions; providing for the sharing of
28 examinations or examination item banks with
29 certain entities; clarifying circumstances
30 under which candidates may bring a challenge;
31 providing for electronic administration of

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1 certain laws and rules examinations; amending
2 s. 456.035, F.S.; providing for electronic
3 notification of a licensee's current mailing
4 address and place of practice; amending s.
5 456.073, F.S.; authorizing a letter of guidance
6 in lieu of a finding of probable cause under
7 certain conditions; amending s. 456.081, F.S.;
8 providing for the posting of newsletters on the
9 department's website; amending s. 456.072,
10 F.S.; revising and providing grounds for
11 discipline of licensees; revising and providing
12 disciplinary actions; amending s. 456.079,
13 F.S.; requiring mitigating or aggravating
14 circumstances to be in the final order to be
15 considered in the imposition of penalties;
16 amending ss. 457.109, 458.320, 458.331,
17 458.345, 458.347, 459.0085, 459.015, 459.022,
18 460.413, 461.013, 462.14, 463.016, 464.018,
19 465.008, 465.016, 466.028, 466.037, 467.203,
20 468.1295, 468.1755, 468.217, 468.365, 468.518,
21 468.719, 468.811, 478.52, 480.046, 483.825,
22 483.901, 484.014, 484.056, 486.125, 490.009,
23 and 491.009, F.S.; revising and conforming
24 provisions relating to disciplinary grounds and
25 penalties; repealing s. 483.827, F.S.; relating
26 to penalties for clinical laboratory personnel;
27 amending s. 456.065, F.S.; requiring the
28 unlicensed activity fee to be in addition to
29 all other fees collected from each licensee;
30 amending s. 456.074, F.S.; providing for
31 immediate suspension of license for convictions

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1 relating to fraudulent practices; amending s.
2 464.005, F.S.; providing for future relocation
3 of the headquarters of the Board of Nursing;
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