

By Senator Burt

16-2411-02

1 A bill to be entitled
2 An act relating to health care; providing for
3 specified licensing boards to adopt rules
4 governing the prescribing of controlled
5 substances; requiring certain health care
6 providers to complete education courses
7 relating to the prescription of controlled
8 substances; providing penalties; providing for
9 the emergency suspension of certain licenses
10 for prescribing violations; requiring the
11 Department of Health, the Department of Law
12 Enforcement, the Statewide Prosecutor, and
13 State Attorneys to share certain information
14 regarding health care practitioners; requiring
15 a report; requiring the Bureau of Pharmacy
16 Services of the Department of Health to
17 establish an electronic system for identifying
18 licensees and patients who engage in certain
19 fraudulent or illegal practices; authorizing
20 the Bureau of Pharmacy Services to contract for
21 the administration of the electronic monitoring
22 system for certain controlled substances;
23 establishing an advisory council and providing
24 for its membership, duties, staff, and
25 compensation; requiring the Bureau of Pharmacy
26 Services of the Department of Health to
27 recommend performance-based measures to the
28 Legislature for the electronic monitoring
29 system; requiring that the Bureau of Pharmacy
30 Services report to the Legislature on
31 implementation of the electronic monitoring

1 system; providing requirements for the report;
2 providing duties of the Bureau of Pharmacy
3 Services with respect to the purposes and use
4 of the electronic monitoring system;
5 prohibiting the use of specified funds for the
6 electronic monitoring system; amending s.
7 456.033, F.S.; eliminating certain requirements
8 for HIV and AIDS education courses; amending s.
9 456.072, F.S.; revising disciplinary penalties
10 applicable to health care practitioners;
11 reenacting ss. 456.082(2), 457.109(1) and (2),
12 458.331(1) and (2), 458.347(7)(g), 459.015(1)
13 and (2), 459.022(7)(f), 460.413(1) and (2),
14 461.013(1) and (2), 462.14(1) and (2),
15 463.016(1) and (2), 464.018(1) and (2),
16 465.016(1) and (2), 466.028(1) and (2),
17 467.203(1) and (2), 468.1295(1) and (2),
18 468.1755(1) and (2), 468.217(1) and (2),
19 468.365(1) and (2), 468.518(1) and (2),
20 468.719, 468.811, 478.52(1) and (2), 480.046(1)
21 and (2), 483.825(1) and (2), 483.901(6)(g) and
22 (h), 484.014(1) and (2), 484.056(1) and (2)(a),
23 486.125(1) and (2), 490.009, and 491.009, F.S.,
24 relating to grounds for disciplinary action
25 applicable to persons involved in health care
26 practice, including acupuncture, medical
27 practice, osteopathic medicine, chiropractic
28 medicine, podiatric medicine, naturopathy,
29 optometry, nursing, pharmacy, dentistry,
30 midwifery, speech-language pathology and
31 audiology, nursing home administration,

1 occupational therapy, respiratory therapy,
2 dietetics and nutrition practice, athletic
3 trainers, orthotics, prosthetics, and
4 pedorthics, electrolysis, massage practice,
5 clinical laboratory personnel, medical
6 physicists, dispensing of optical devices and
7 hearing aids, physical therapy practice,
8 psychological services, and clinical,
9 counseling, and psychotherapy services, to
10 incorporate the amendment to s. 456.072, F.S.,
11 in references thereto; amending s. 458.345,
12 F.S.; requiring certain resident physicians,
13 interns, and fellows to complete an educational
14 course in prescribing controlled substances;
15 amending s. 461.013, F.S.; prohibiting the
16 presigning of blank prescription forms and
17 providing penalties; amending s. 893.04, F.S.;
18 providing additional requirements for
19 pharmacists regarding the identification of
20 persons to whom controlled substances are
21 dispensed; prohibiting certain prescribing
22 practitioners from possessing, administering,
23 dispensing, or prescribing controlled
24 substances; directing local and regional boards
25 of education to prohibit personnel from
26 recommending use of psychotropic drugs on a
27 child; providing for construction of the act in
28 pari materia with laws enacted during the
29 Regular Session of the Legislature; providing
30 an appropriation; providing an effective date.
31

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

2
3 Section 1. Physicians; rules establishing prescribing
4 guidelines.--To minimize the diversion and resultant abuse of
5 controlled substances, the Board of Medicine and the Board of
6 Osteopathic Medicine shall adopt rules to establish guidelines
7 for prescribing controlled substances to patients in
8 emergency-department settings. Such guidelines must allow
9 physicians to provide legitimate medical treatment of acute
10 and chronic pain and require them to recognize and prevent
11 abuse of pain medications prescribed in emergency-department
12 settings. The guidelines must also consider requirements of
13 state and federal law and of the Joint Commission on the
14 Accreditation of Healthcare Organizations. Each board shall
15 consult with the Florida College of Emergency Physicians in
16 developing these guidelines.

17 Section 2. Instruction required for certain licensees
18 in prescribing and pharmacology.--

19 (1) The appropriate professional licensing board shall
20 require each person licensed under chapter 458, chapter 459,
21 chapter 461, chapter 462, part I of chapter 464, or chapter
22 466, Florida Statutes, to complete a 1-hour educational
23 course, approved by the board, on appropriate prescribing and
24 pharmacology of controlled substances, as part of the
25 licensee's initial license renewal after January 1, 2003. The
26 course shall provide education in the state and federal laws
27 and rules governing the prescribing and dispensing of
28 controlled substances; in appropriate evaluation of patients
29 for any risk of drug diversion and the resulting abuse of
30 controlled substances; in the use of informed consent and
31 other protocols, such as discussing the risks and benefits of

1 using controlled substances with patients, to prevent drug
2 diversion; in the need to keep accurate and complete medical
3 records to justify treatment with controlled substances; in
4 addiction and substance-abuse issues with respect to patients;
5 in the appropriate use of recognized pain-management
6 guidelines; and in the need for consultation and referral of
7 patients who are at risk for misuse of medication or diversion
8 of controlled substances, when appropriate.

9 (2) The board may approve additional equivalent
10 courses that satisfy the requirements of subsection (1). Each
11 licensing board that requires a licensee to complete an
12 educational course pursuant to this section shall include the
13 hours required to complete the course in the total required
14 continuing educational requirements.

15 (3) Any person who holds two or more licenses subject
16 to this section may satisfy the requirements of this section
17 by taking only one such board-approved course for relicensure
18 of all such licenses.

19 (4) A licensee who fails to comply with this section
20 is subject to disciplinary action under each respective
21 practice act and section 456.072(1)(k), Florida Statutes. In
22 addition to disciplinary action by the board, the licensee
23 must complete the course no later than 1 year first receiving
24 notice of disciplinary action pursuant to this section. Unless
25 the board grants the licensee a waiver for good cause shown,
26 the licensee forfeits the privilege to prescribe or dispense
27 controlled substances until the licensee completes the course.

28 (5) The board shall require, as a condition of
29 granting a license under the chapter specified in subsection
30 (1), that an applicant for initial licensure complete an
31 educational course set forth in subsection (1). An applicant

1 who has not taken a course at the time of licensure shall be
2 allowed 6 months within which to complete this requirement.

3 (6) The board may adopt rules necessary to administer
4 this section.

5 Section 3. Emergency suspension orders; controlled
6 substances.--Upon receipt of sufficient evidence from any
7 agency authorized to enforce chapter 893, Florida Statutes,
8 regarding a violation of section 458.331(1)(q), section
9 458.331(1)(r), section 458.331(1)(aa), section 459.015(1)(t),
10 section 459.015(1)(u), section 459.015(1)(ee), section
11 461.013(1)(o), section 461.013(1)(p), section 461.013(1)(dd),
12 section 462.14(1)(q), section 462.14(1)(r), section
13 462.14(1)(aa), section 464.018(1)(i), section 465.016(1)(e),
14 section 465.016(1)(i), section 466.028(1)(p), section
15 466.028(1)(q), section 466.028(1)(r), or section
16 466.028(1)(dd), Florida Statutes, or of chapter 893, Florida
17 Statutes, by a licensed health care practitioner who is
18 authorized to prescribe, dispense, or administer controlled
19 substances, the Department of Health shall review the case and
20 if there is a reason to believe that the practitioner is a
21 danger to the public health, safety, or welfare as set forth
22 in section 120.60(6), Florida Statutes, shall recommend the
23 suspension or restriction of the practitioner's license to the
24 Secretary of Health within 10 working days after receiving
25 such evidence. If a sufficient basis is found to exist, the
26 Secretary of Health must suspend or restrict the license of
27 the practitioner in accordance with section 120.60(6), Florida
28 Statutes.

29 Section 4. Sharing of arrest, formal-charging, and
30 other information regarding health care practitioners.--
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1 (1) In order to facilitate the efficiency of the
2 Department of Health's investigation of applicable violations
3 involving the diversion of controlled substances by such
4 practitioners, or other violations of criminal law that may
5 adversely affect a practitioner's licensed practice, any law
6 enforcement agency that arrests a person known or suspected to
7 be a health care practitioner licensed by the state shall
8 promptly notify the Department of Health and provide it with:

9 (a) Notice of the arrest, including the name of the
10 arresting agency and lead investigator, detective, or officer
11 in the case;

12 (b) The name of the person charged;

13 (c) All known personal identifying information related
14 to the person arrested;

15 (d) The date of the arrest;

16 (e) The charges for which the person is arrested;

17 (f) The agency case number assigned to the arrest; and

18 (g) The arrest report, investigative report, or
19 statement of the allegations supporting the arrest.

20 (2) A state attorney or the Statewide Prosecutor, upon
21 the filing of an indictment or information against a person
22 known or suspected to be a health care practitioner licensed
23 by the state, shall forward a copy of the indictment or
24 information to the Department of Health.

25 (3) The Medical Examiners Commission within the
26 Department of Law Enforcement shall report to the Department
27 of Health quarterly any information, including the medical
28 history and medical care at the time of death, which is in its
29 possession regarding the deaths of persons whose proximate
30 cause of death was lethal levels of controlled substances in
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1 their bodies as such information has been reported to the
2 commission by the medical examiners within the state.

3 (4) Upon receipt of arrest information from a law
4 enforcement agency or notice of formal charging by a
5 prosecuting entity, the Department of Health or the board
6 having regulatory authority over the practitioner shall
7 investigate any information received and determine whether it
8 has reasonable grounds to believe that the practitioner has
9 violated any law or rule relating to the practitioner's
10 practice and shall take appropriate licensure action as
11 provided by law or rule. If the Department of Health receives
12 information pursuant to this section which suggests that the
13 person arrested or charged is also licensed by the state in
14 another field or profession, the Department of Health shall
15 forward such information to the appropriate licensing entity
16 for review and appropriate licensure action as provided by law
17 or rule.

18 (5) To help the Department of Health and regulatory
19 boards control the diversion and resultant abuse of controlled
20 substances, the Department of Health and the Department of Law
21 Enforcement shall study the feasibility of expanding the
22 electronic exchange of information to facilitate the transfer
23 to the Department of Health of criminal-history information
24 involving licensed health care practitioners who are
25 authorized to prescribe, administer, or dispense controlled
26 substances. The study must address whether the collection and
27 retention of fingerprint information concerning licensed
28 health care practitioners subject to the profiling provisions
29 of sections 456.039 and 456.0391, Florida Statutes, is
30 advisable as a means of better regulating such practitioners
31 and guarding against abuse of the privileges of such licensure

1 with respect to controlling the diversion and resultant abuse
2 of controlled substances. The Department of Law Enforcement
3 shall investigate the feasibility of the electronic
4 transmission of information from medical examiners within this
5 state to the Department of Health regarding autopsies and
6 other public reports that attribute death to
7 controlled-substance abuse. The Department of Law Enforcement,
8 in consultation with the Department of Health, must submit a
9 report of its findings to the Legislature by November 1, 2002.

10 Section 5. Electronic monitoring system for
11 prescriptions.--

12 (1) By July 1, 2003, the Bureau of Pharmacy Services
13 of the Department of Health shall design and establish an
14 electronic system consistent with the National Council of
15 Prescription Drug Programs (NCPDP) standards or the American
16 Society for Automation in Pharmacy (ASAP) standards to monitor
17 the prescribing of Schedule II controlled substances; other
18 drugs designated by rule by the Secretary of Health under this
19 section; and codeine, hydrocodone, dihydrocodeine,
20 ethylmorphine, and morphine, as scheduled in Schedule II and
21 Schedule III, by health care practitioners within the state or
22 the dispensing of such controlled substances to an address
23 within the state by a pharmacy permitted or registered by the
24 Board of Pharmacy. The Bureau of Pharmacy Services of the
25 Department of Health may administer or contract for the
26 administration of the electronic monitoring system established
27 under this section.

28 (2) All Schedule II controlled substances; codeine,
29 hydrocodone, dihydrocodeine, ethylmorphine, and morphine as
30 scheduled in Schedule II and Schedule III; and any other drug
31 designated by the Secretary of Health under this section shall

1 be included in the electronic monitoring system. The Secretary
2 of Health may, by rule, designate any other drug for inclusion
3 in such system after consideration of the following:

4 (a) Whether the substance has been rescheduled by rule
5 adopted by the United States Attorney General pursuant to s.
6 201 of the Comprehensive Drug Abuse Prevention and Control Act
7 of 1970, 21 U.S.C. s. 811.

8 (b) The substance's actual or relative potential for
9 abuse as defined in chapter 893, Florida Statutes.

10 (c) Scientific evidence of the substance's
11 pharmacological effect, if known.

12 (d) The state of current scientific knowledge
13 regarding the substance.

14 (e) The substance's history and current pattern of
15 abuse.

16 (f) The scope, duration, and significance of abuse.

17 (g) What, if any, risk there is to the public health.

18 (h) The substance's psychic or physiological
19 dependence liability.

20 (i) The recommendations of the prescription monitoring
21 advisory council.

22 (3) Beginning September 1, 2002, or upon the effective
23 date of the rule prescribing the format for the electronic
24 monitoring system, whichever occurs later, each controlled
25 substance or drug subject to this section which is dispensed
26 in this state must be timely reported to the Bureau of
27 Pharmacy Services of the Department of Health. Such data must
28 be reported each time that:

29 (a) A Schedule II controlled substance is dispensed;

30 (b) A drug that is designated by the Secretary of
31 Health under subsection (2) is dispensed; or

1 (c) Codeine, hydrocodone, dihydrocodeine,
2 ethylmorphine, or morphine as scheduled in Schedule II and
3 Schedule III is dispensed.

4 (4) This section does not apply to controlled
5 substances or drugs:

6 (a) Ordered from an institutional pharmacy licensed
7 under section 465.019(2), Florida Statutes, in accordance with
8 the institutional policy for such controlled substances or
9 drugs; or

10 (b) Administered or prescribed by a health care
11 practitioner to a patient or resident receiving care from a
12 hospital, nursing home, assisted living facility, home health
13 agency, hospice, or intermediate care facility for the
14 developmentally disabled which is licensed in this state.

15 (5) The data required under this section includes:

16 (a) The patient's name.

17 (b) The patient's address.

18 (c) The national drug code number of the substance
19 dispensed.

20 (d) The date that the substance is dispensed.

21 (e) The quantity of substance dispensed.

22 (f) The dispenser's National Association of Board's of
23 Pharmacy (NABP) number.

24 (g) The prescribing practitioner's United States Drug
25 Enforcement Administration Number.

26 (6) The information must be reported within 30 days
27 after the date the controlled substance or drug is dispensed.

28 (7) A dispenser must transmit the information required
29 by this section in an electronic format approved by rule of
30 the Board of Pharmacy after consultation with the advisory
31 council and the Bureau of Pharmacy Services of the Department

1 of Health unless a specific waiver is granted to that
2 dispenser by the Bureau of Pharmacy Services. The information
3 transmitted may be maintained by any department receiving it
4 for up to 12 months. However, any department receiving such
5 information may maintain it longer than 12 months if the
6 information is pertinent to an ongoing investigation arising
7 under this act. Notwithstanding section 119.041, Florida
8 Statutes, the information transmitted under this section for
9 each prescription dispensed must be purged from the electronic
10 monitoring system within 2 years after the date of the
11 prescription. For purposes of this subsection, a refill of a
12 prescription is a new prescription.

13 (8) The Bureau of Pharmacy Services of the Department
14 of Health shall establish a 17-member prescription-monitoring
15 advisory council to assist it in identifying drugs of abuse to
16 be recommended to the Secretary of Health and annually to the
17 Legislature for inclusion in the monitoring system and in
18 implementing the system.

19 (a) The Governor shall appoint members to serve on the
20 advisory council. The members of the council shall include the
21 Secretary of Health or his or her designee, who shall serve as
22 the chairperson; the Attorney General or his or her designee;
23 the executive director of the Department of Law Enforcement or
24 his or her designee; the director of the Office of Drug
25 Control within the Executive Office of Governor or his or her
26 designee; a physician who is licensed in this state under
27 chapter 458, Florida Statutes, who is recommended by the
28 Florida Medical Association; a physician who is licensed in
29 this state under chapter 458 or chapter 459, Florida Statutes,
30 who is recommended by the Florida Academy of Pain Medicine; a
31 physician who is licensed in this state under chapter 459,

1 Florida Statutes, who is recommended by the Florida
2 Osteopathic Medical Association; a physician who is licensed
3 in this state under chapter 458 or chapter 459, Florida
4 Statutes, who is recommended by the Florida Academy of Family
5 Physicians; a podiatric physician who is licensed in this
6 state under chapter 461, Florida Statutes, who is recommended
7 by the Florida Podiatric Medical Association; a pharmacist who
8 is licensed in this state under chapter 465, Florida Statutes,
9 and who is recommended by the Florida Society of Health-System
10 Pharmacists; a pharmacist who is licensed in this state under
11 chapter 465, Florida Statutes, who is recommended by the
12 Florida Pharmacy Association; a pharmacist who is licensed in
13 this state under chapter 465, Florida Statutes, who is
14 recommended by the Florida Retail Federation; a pharmacist who
15 is licensed in this state under chapter 465, Florida Statutes,
16 who is recommended by the National Community Pharmacy
17 Association; a dentist who is licensed in this state under
18 chapter 466, Florida Statutes, who is recommended by the
19 Florida Dental Association; a veterinarian who is licensed in
20 this state under chapter 474, Florida Statutes, who is
21 recommended by the Florida Veterinary Medical Association; a
22 designee of the Florida Chapter of the National Association of
23 Drug Diversion Investigators who has expertise in the
24 investigation of drug-diversion cases; and a prosecutor who
25 has expertise in the criminal prosecution of drug-diversion
26 cases. At least one physician licensed under chapter 458 or
27 chapter 459, Florida Statutes, must specialize in or have
28 expertise in psychiatry, addiction, and substance abuse. At
29 least one physician licensed under chapter 458 or chapter 459,
30 Florida Statutes, must specialize in or have expertise in
31 hospice care and geriatrics.

1 (b) The advisory council members shall meet no more
2 often than quarterly at the call of the chairperson and shall
3 serve without compensation. However, such members may receive
4 reimbursement, as provided in section 112.061, Florida
5 Statutes, for per diem and travel expenses incurred in the
6 performance of their official duties.

7 (c) The Bureau of Pharmacy Services of the Department
8 of Health shall provide staff and other administrative
9 assistance that is reasonably necessary to assist the advisory
10 council in carrying out its responsibilities.

11 (9) The Bureau of Pharmacy Services of the Department
12 of Health shall use the electronic system established under
13 this section for the purpose of identifying licensees and
14 patients who engage in fraudulent or illegal practices
15 relating to the use or prescribing of controlled substances.
16 Cases may be referred to the appropriate licensing board or to
17 an appropriate law enforcement agency for investigation if a
18 physician or dentist licensed under chapter 458, chapter 459,
19 chapter 461, or chapter 466 and an attorney for the state
20 determine that reasonable cause exists to believe that the
21 patient or licensee has engaged in fraudulent or illegal
22 activity. If the licensee holds a license under chapter 458,
23 chapter 459, chapter 461, or chapter 466, the consulting
24 physician or dentist must hold a license under the same
25 chapter as the licensee. The Bureau of Pharmacy Services may
26 provide information contained in the electronic monitoring
27 system to a licensed health care practitioner for the purpose
28 of providing diagnostic or treatment services to an individual
29 patient or consumer under the practitioner's care.

30 (10) The Bureau of Pharmacy Services of the Department
31 of Health shall submit a report to the President of the Senate

1 and the Speaker of the House of Representatives by March 1,
2 2003, which recommends performance-based measures for the
3 electronic monitoring system established under this section
4 and provides the status of implementation of the system. By
5 July 1 of each year, beginning in 2004, the Bureau of Pharmacy
6 Services shall report to the President of the Senate and the
7 Speaker of the House of Representatives on the status of
8 implementation of the electronic monitoring system. The annual
9 report must include a report of the Bureau of Pharmacy
10 Services' compliance with any performance-based measures
11 established by the Legislature for the electronic monitoring
12 system and other relevant statistics and information.

13 (11) Funds from the Medical Quality Assurance Trust
14 Fund may not be used to establish, use, or maintain the
15 electronic monitoring system.

16 (12) The Bureau of Pharmacy Services of the Department
17 of Health shall adopt rules pursuant to section 120.536(1) and
18 section 120.574, Florida Statutes, necessary to administer
19 this section.

20 Section 6. Subsections (1) and (9) of section 456.033,
21 Florida Statutes, are amended to read:

22 456.033 Requirement for instruction for certain
23 licensees on HIV and AIDS.--

24 (1) The appropriate board shall require each person
25 licensed or certified under chapter 457; ~~chapter 458; chapter~~
26 ~~459; chapter 460; chapter 461; chapter 463; part I of chapter~~
27 464; chapter 465; ~~chapter 466;~~ part II, part III, part V, or
28 part X of chapter 468; or chapter 486 to complete a continuing
29 educational course, approved by the board, on human
30 immunodeficiency virus and acquired immune deficiency syndrome
31 as part of biennial relicensure or recertification. The course

1 shall consist of education on the modes of transmission,
2 infection control procedures, clinical management, and
3 prevention of human immunodeficiency virus and acquired immune
4 deficiency syndrome. Such course shall include information on
5 current Florida law on acquired immune deficiency syndrome and
6 its impact on testing, confidentiality of test results,
7 treatment of patients, and any protocols and procedures
8 applicable to human immunodeficiency virus counseling and
9 testing, reporting, the offering of HIV testing to pregnant
10 women, and partner notification issues pursuant to ss. 381.004
11 and 384.25.

12 (9)(a) In lieu of completing a course as required in
13 subsection (1), the licensee may complete a course in
14 end-of-life care and palliative health care, so long as the
15 licensee completed an approved AIDS/HIV course in the
16 immediately preceding biennium.

17 ~~(b) In lieu of completing a course as required by~~
18 ~~subsection (1), a person licensed under chapter 466 who has~~
19 ~~completed an approved AIDS/HIV course in the immediately~~
20 ~~preceding 2 years may complete a course approved by the Board~~
21 ~~of Dentistry.~~

22 Section 7. Paragraph (d) of subsection (2) of section
23 456.072, Florida Statutes, is amended to read:

24 456.072 Grounds for discipline; penalties;
25 enforcement.--

26 (2) When the board, or the department when there is no
27 board, finds any person guilty of the grounds set forth in
28 subsection (1) or of any grounds set forth in the applicable
29 practice act, including conduct constituting a substantial
30 violation of subsection (1) or a violation of the applicable
31 practice act which occurred prior to obtaining a license, it

1 may enter an order imposing one or more of the following
2 penalties:

3 (d) Imposition of an administrative fine not to exceed
4 \$25,000~~\$10,000~~ for each count or separate offense. If the
5 violation is for fraud or making a false or fraudulent
6 representation, the board, or the department if there is no
7 board, must impose a fine of \$10,000 per count or offense.

8
9 In determining what action is appropriate, the board, or
10 department when there is no board, must first consider what
11 sanctions are necessary to protect the public or to compensate
12 the patient. Only after those sanctions have been imposed may
13 the disciplining authority consider and include in the order
14 requirements designed to rehabilitate the practitioner. All
15 costs associated with compliance with orders issued under this
16 subsection are the obligation of the practitioner.

17 Section 8. For the purpose of incorporating the
18 amendment to section 456.072, Florida Statutes, in a reference
19 thereto, subsection (2) of section 456.082, Florida Statutes,
20 is reenacted to read:

21 456.082 Disclosure of confidential information.--
22 (2) Any person who willfully violates any provision of
23 this section is guilty of a misdemeanor of the first degree,
24 punishable as provided in s. 775.082 or s. 775.083, and may be
25 subject to discipline pursuant to s. 456.072, and, if
26 applicable, shall be removed from office, employment, or the
27 contractual relationship.

28 Section 9. For the purpose of incorporating the
29 amendment to section 456.072, Florida Statutes, in references
30 thereto, subsections (1) and (2) of section 457.109, Florida
31 Statutes, are reenacted to read:

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

3 (1) The following acts constitute grounds for denial
4 of a license or disciplinary action, as specified in s.
5 456.072(2):

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

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

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

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

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

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

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

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

31

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 Section 10. For the purpose of incorporating the
30 amendment to section 456.072, Florida Statutes, in references
31

1 thereto, subsections (1) and (2) of section 458.331, Florida
2 Statutes, are reenacted to read:

3 458.331 Grounds for disciplinary action; action by the
4 board and department.--

5 (1) The following acts constitute grounds for denial
6 of a license or disciplinary action, as specified in s.
7 456.072(2):

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

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

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

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

27 (e) Failing to report to the department any person who
28 the licensee knows is in violation of this chapter or of the
29 rules of the department or the board. A treatment provider
30 approved pursuant to s. 456.076 shall provide the department
31

1 or consultant with information in accordance with the
2 requirements of s. 456.076(3), (4), (5), and (6).

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

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

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

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

24 (j) Exercising influence within a patient-physician
25 relationship for purposes of engaging a patient in sexual
26 activity. A patient shall be presumed to be incapable of
27 giving free, full, and informed consent to sexual activity
28 with his or her physician.

29 (k) Making deceptive, untrue, or fraudulent
30 representations in or related to the practice of medicine or
31 employing a trick or scheme in the practice of medicine.

1 (1) Soliciting patients, either personally or through
2 an agent, through the use of fraud, intimidation, undue
3 influence, or a form of overreaching or vexatious conduct. A
4 solicitation is any communication which directly or implicitly
5 requests an immediate oral response from the recipient.

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

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

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

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

29 (q) Prescribing, dispensing, administering, mixing, or
30 otherwise preparing a legend drug, including any controlled
31 substance, other than in the course of the physician's

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

9 (r) Prescribing, dispensing, or administering any
10 medicinal drug appearing on any schedule set forth in chapter
11 893 by the physician to himself or herself, except one
12 prescribed, dispensed, or administered to the physician by
13 another practitioner authorized to prescribe, dispense, or
14 administer medicinal drugs.

15 (s) Being unable to practice medicine with reasonable
16 skill and safety to patients by reason of illness or use of
17 alcohol, drugs, narcotics, chemicals, or any other type of
18 material or as a result of any mental or physical condition.
19 In enforcing this paragraph, the department shall have, upon a
20 finding of the secretary or the secretary's designee that
21 probable cause exists to believe that the licensee is unable
22 to practice medicine because of the reasons stated in this
23 paragraph, the authority to issue an order to compel a
24 licensee to submit to a mental or physical examination by
25 physicians designated by the department. If the licensee
26 refuses to comply with such order, the department's order
27 directing such examination may be enforced by filing a
28 petition for enforcement in the circuit court where the
29 licensee resides or does business. The licensee against whom
30 the petition is filed may not be named or identified by
31 initials in any public court records or documents, and the

1 proceedings shall be closed to the public. The department
2 shall be entitled to the summary procedure provided in s.
3 51.011. A licensee or certificateholder affected under this
4 paragraph shall at reasonable intervals be afforded an
5 opportunity to demonstrate that he or she can resume the
6 competent practice of medicine with reasonable skill and
7 safety to patients.

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

29 (u) Performing any procedure or prescribing any
30 therapy which, by the prevailing standards of medical practice
31 in the community, would constitute experimentation on a human

1 subject, without first obtaining full, informed, and written
2 consent.

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

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

19 (x) Violating a lawful order of the board or
20 department previously entered in a disciplinary hearing or
21 failing to comply with a lawfully issued subpoena of the
22 department.

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

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

29 (aa) Presigning blank prescription forms.

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

1 (cc) Prescribing, ordering, dispensing, administering,
2 supplying, selling, or giving any drug which is a Schedule II
3 amphetamine or a 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 (dd) Failing to supervise adequately the activities of
19 those physician assistants, paramedics, emergency medical
20 technicians, or advanced registered nurse practitioners acting
21 under the supervision of the physician.

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

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

4 (gg) Misrepresenting or concealing a material fact at
5 any time during any phase of a licensing or disciplinary
6 process or procedure.

7 (hh) Improperly interfering with an investigation or
8 with any disciplinary proceeding.

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

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

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

27 (ll) Advertising or holding oneself out as a
28 board-certified specialist, if not qualified under s.
29 458.3312, in violation of this chapter.

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

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

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

18 Section 11. For the purpose of incorporating the
19 amendment to section 456.072, Florida Statutes, in a reference
20 thereto, paragraph (g) of subsection (7) of section 458.347,
21 Florida Statutes, is reenacted to read:

22 458.347 Physician assistants.--

23 (7) PHYSICIAN ASSISTANT LICENSURE.--

24 (g) The Board of Medicine may impose any of the
25 penalties authorized under ss. 456.072 and 458.331(2) upon a
26 physician assistant if the physician assistant or the
27 supervising physician has been found guilty of or is being
28 investigated for any act that constitutes a violation of this
29 chapter or chapter 456.

30 Section 12. For the purpose of incorporating the
31 amendment to section 456.072, Florida Statutes, in references

1 thereto, subsections (1) and (2) of section 459.015, Florida
2 Statutes, are reenacted to read:

3 459.015 Grounds for disciplinary action; action by the
4 board and department.--

5 (1) The following acts constitute grounds for denial
6 of a license or disciplinary action, as specified in s.
7 456.072(2):

8 (a) Attempting to obtain, obtaining, or renewing a
9 license to practice osteopathic medicine or a certificate
10 issued under this chapter by bribery, by fraudulent
11 misrepresentations, or through an error of the department or
12 the board.

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

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

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

30 (e) Failing to report to the department or the
31 department's impaired professional consultant any person who

1 the licensee or certificateholder knows is in violation of
2 this chapter or of the rules of the department or the board.
3 A treatment provider, approved pursuant to s. 456.076, shall
4 provide the department or consultant with information in
5 accordance with the requirements of s. 456.076(3), (4), (5),
6 and (6).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (u) Prescribing or dispensing any medicinal drug
31 appearing on any schedule set forth in chapter 893 by the

1 osteopathic physician for himself or herself or administering
2 any such drug by the osteopathic physician to himself or
3 herself unless such drug is prescribed for the osteopathic
4 physician by another practitioner authorized to prescribe
5 medicinal drugs.

6 (v) Prescribing, ordering, dispensing, administering,
7 supplying, selling, or giving amygdalin (laetrile) to any
8 person.

9 (w) Being unable to practice osteopathic medicine 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. In enforcing this paragraph, the department shall,
14 upon a finding of the secretary or the secretary's designee
15 that probable cause exists to believe that the licensee is
16 unable to practice medicine because of the reasons stated in
17 this paragraph, have the authority to issue an order to compel
18 a licensee to submit to a mental or physical examination by
19 physicians designated by the department. If the licensee
20 refuses to comply with such order, the department's order
21 directing such examination may be enforced by filing a
22 petition for enforcement in the circuit court where the
23 licensee resides or does business. The licensee against whom
24 the petition is filed shall not be named or identified by
25 initials in any public court records or documents, and the
26 proceedings shall be closed to the public. The department
27 shall be entitled to the summary procedure provided in s.
28 51.011. A licensee or certificateholder affected under this
29 paragraph shall at reasonable intervals be afforded an
30 opportunity to demonstrate that he or she can resume the
31

1 competent practice of medicine with reasonable skill and
2 safety to patients.

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

1 | circumstances," or any combination thereof, and any
2 | publication by the board shall so specify.

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

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

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

24 | (bb) Violating a lawful order of the board or
25 | department previously entered in a disciplinary hearing or
26 | failing to comply with a lawfully issued subpoena of the board
27 | or department.

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

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

3 (ee) Presigning blank prescription forms.

4 (ff) Prescribing any medicinal drug appearing on
5 Schedule II in chapter 893 by the osteopathic physician for
6 office use.

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

12 1. The treatment of narcolepsy; hyperkinesia;
13 behavioral syndrome characterized by the developmentally
14 inappropriate symptoms of moderate to severe distractibility,
15 short attention span, hyperactivity, emotional lability, and
16 impulsivity; or drug-induced brain dysfunction;

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

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

24 (hh) Failing to supervise adequately the activities of
25 those physician assistants, paramedics, emergency medical
26 technicians, advanced registered nurse practitioners, or other
27 persons acting under the supervision of the osteopathic
28 physician.

29 (ii) Prescribing, ordering, dispensing, administering,
30 supplying, selling, or giving growth hormones, testosterone or
31 its analogs, human chorionic gonadotropin (HCG), or other

1 hormones for the purpose of muscle building or to enhance
2 athletic performance. For the purposes of this subsection, the
3 term "muscle building" does not include the treatment of
4 injured muscle. A prescription written for the drug products
5 listed above may be dispensed by the pharmacist with the
6 presumption that the prescription is for legitimate medical
7 use.

8 (jj) Misrepresenting or concealing a material fact at
9 any time during any phase of a licensing or disciplinary
10 process or procedure.

11 (kk) Improperly interfering with an investigation or
12 with any disciplinary proceeding.

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

22 (mm) Being found by any court in this state to have
23 provided corroborating written medical expert opinion attached
24 to any statutorily required notice of claim or intent or to
25 any statutorily required response rejecting a claim, without
26 reasonable investigation.

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

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

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

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

18 Section 13. For the purpose of incorporating the
19 amendment to section 456.072, Florida Statutes, in a reference
20 thereto, paragraph (f) of subsection (7) of section 459.022,
21 Florida Statutes, is reenacted to read:

22 459.022 Physician assistants.--

23 (7) PHYSICIAN ASSISTANT LICENSURE.--

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

30 Section 14. For the purpose of incorporating the
31 amendment to section 456.072, Florida Statutes, in references

1 thereto, subsections (1) and (2) of section 460.413, Florida
2 Statutes, are reenacted to read:

3 460.413 Grounds for disciplinary action; action by
4 board or department.--

5 (1) The following acts constitute grounds for denial
6 of a license or disciplinary action, as specified in s.
7 456.072(2):

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

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

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

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

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

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

1 (g) Failing to report to the department any person who
2 the licensee knows is in violation of this chapter or of the
3 rules of the department or the board.

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

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

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

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

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

25 (m) Failing to keep legibly written chiropractic
26 medical records that identify clearly by name and credentials
27 the licensed chiropractic physician rendering, ordering,
28 supervising, or billing for each examination or treatment
29 procedure and that justify the course of treatment of the
30 patient, including, but not limited to, patient histories,
31 examination results, test results, X rays, and diagnosis of a

1 disease, condition, or injury. X rays need not be retained
2 for more than 4 years.

3 (n) Exercising influence on the patient or client in
4 such a manner as to exploit the patient or client for
5 financial gain of the licensee or of a third party which shall
6 include, but not be limited to, the promotion or sale of
7 services, goods or appliances, or drugs.

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

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

15 (q) Being unable to practice chiropractic medicine
16 with reasonable skill and safety to patients by reason of
17 illness or use of alcohol, drugs, narcotics, chemicals, or any
18 other type of material or as a result of any mental or
19 physical condition. In enforcing this paragraph, upon a
20 finding by the secretary of the department, or his or her
21 designee, or the probable cause panel of the board that
22 probable cause exists to believe that the licensee is unable
23 to practice the profession because of reasons stated in this
24 paragraph, the department shall have the authority to compel a
25 licensee to submit to a mental or physical examination by a
26 physician designated by the department. If the licensee
27 refuses to comply with the department's order, the department
28 may file a petition for enforcement in the circuit court of
29 the circuit in which the licensee resides or does business.
30 The department shall be entitled to the summary procedure
31 provided in s. 51.011. The record of proceedings to obtain a

1 compelled mental or physical examination shall not be used
2 against a licensee in any other proceedings. A chiropractic
3 physician affected under this paragraph shall at reasonable
4 intervals be afforded an opportunity to demonstrate that she
5 or he can resume the competent practice of chiropractic
6 medicine with reasonable skill and safety to patients.

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

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

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

31

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

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

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

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

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

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

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

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

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

26 (z) Offering to accept or accepting payment for
27 services rendered by assignment from any third-party payor
28 after offering to accept or accepting whatever the third-party
29 payor covers as payment in full, if the effect of the offering
30 or acceptance is to eliminate or give the impression of

31

1 eliminating the need for payment by an insured of any required
2 deductions applicable in the policy of the insured.

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

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

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

16 (dd) Using acupuncture without being certified
17 pursuant to s. 460.403(9)(f).

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

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

11 Section 15. For the purpose of incorporating the
12 amendment to section 456.072, Florida Statutes, in references
13 thereto, subsections (1) and (2) of section 462.14, Florida
14 Statutes, are reenacted to read:

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

17 (1) The following acts constitute grounds for denial
18 of a license or disciplinary action, as specified in s.
19 456.072(2):

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

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

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

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

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

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

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

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

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

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

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

31 |

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (x) Violating a lawful order of the department
2 previously entered in a disciplinary hearing or failing to
3 comply with a lawfully issued subpoena of the department.

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

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

10 (aa) Presigning blank prescription forms.

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

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

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

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

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

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

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

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

19 Section 16. For the purpose of incorporating the
20 amendment to section 456.072, Florida Statutes, in references
21 thereto, subsections (1) and (2) of section 463.016, Florida
22 Statutes, are reenacted to read:

23 463.016 Grounds for disciplinary action; action by the
24 board.--

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

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

1 (b) Procuring or attempting to procure a license for
2 any other person by making or causing to be made any false
3 representation.

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

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

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

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

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

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

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

31

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

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

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

8 (m) Gross or repeated malpractice.

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

11 (o) Being unable to practice optometry with reasonable
12 skill and safety to patients by reason of illness or use of
13 alcohol, drugs, narcotics, chemicals, or any other type of
14 material or as a result of any mental or physical condition.
15 A licensed practitioner affected under this paragraph shall at
16 reasonable intervals be afforded an opportunity to demonstrate
17 that she or he can resume the competent practice of optometry
18 with reasonable skill and safety to patients.

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

22 (q) Violating any provision of s. 463.014 or s.
23 463.015.

24 (r) Violating any lawful order of the board or
25 department, previously entered in a disciplinary hearing, or
26 failing to comply with a lawfully issued subpoena of the board
27 or department.

28 (s) Practicing or offering to practice beyond the
29 scope permitted by law or accepting and performing
30 professional responsibilities which the licensed practitioner
31

1 knows or has reason to know she or he is not competent to
2 perform.

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

5 (2) The department may enter an order imposing any of
6 the penalties in s. 456.072(2) against any licensee who is
7 found guilty of violating any provision of subsection (1) of
8 this section or who is found guilty of violating any provision
9 of s. 456.072(1).

10 Section 17. For the purpose of incorporating the
11 amendment to section 456.072, Florida Statutes, in references
12 thereto, subsections (1) and (2) of section 464.018, Florida
13 Statutes, are reenacted to read:

14 464.018 Disciplinary actions.--

15 (1) The following acts constitute grounds for denial
16 of a license or disciplinary action, as specified in s.
17 456.072(2):

18 (a) Procuring, attempting to procure, or renewing a
19 license to practice nursing by bribery, by knowing
20 misrepresentations, or through an error of the department or
21 the board.

22 (b) Having a license to practice nursing revoked,
23 suspended, or otherwise acted against, including the denial of
24 licensure, by the licensing authority of another state,
25 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 directly relates to the
29 practice of nursing or to the ability to practice nursing.

30 (d) Being found guilty, regardless of adjudication, of
31 any of the following offenses:

- 1 1. A forcible felony as defined in chapter 776.
- 2 2. A violation of chapter 812, relating to theft,
- 3 robbery, and related crimes.
- 4 3. A violation of chapter 817, relating to fraudulent
- 5 practices.
- 6 4. A violation of chapter 800, relating to lewdness
- 7 and indecent exposure.
- 8 5. A violation of chapter 784, relating to assault,
- 9 battery, and culpable negligence.
- 10 6. A violation of chapter 827, relating to child
- 11 abuse.
- 12 7. A violation of chapter 415, relating to protection
- 13 from abuse, neglect, and exploitation.
- 14 8. A violation of chapter 39, relating to child abuse,
- 15 abandonment, and neglect.
- 16 (e) Having been found guilty of, regardless of
- 17 adjudication, or entered a plea of nolo contendere or guilty
- 18 to, any offense prohibited under s. 435.03 or under any
- 19 similar statute of another jurisdiction; or having committed
- 20 an act which constitutes domestic violence as defined in s.
- 21 741.28.
- 22 (f) Making or filing a false report or record, which
- 23 the licensee knows to be false, intentionally or negligently
- 24 failing to file a report or record required by state or
- 25 federal law, willfully impeding or obstructing such filing or
- 26 inducing another person to do so. Such reports or records
- 27 shall include only those which are signed in the nurse's
- 28 capacity as a licensed nurse.
- 29 (g) False, misleading, or deceptive advertising.
- 30 (h) Unprofessional conduct, which shall include, but
- 31 not be limited to, any departure from, or the failure to

1 conform to, the minimal standards of acceptable and prevailing
2 nursing practice, in which case actual injury need not be
3 established.

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

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

31

1 (k) Failing to report to the department any person who
2 the licensee knows is in violation of this part or of the
3 rules of the department or the board; however, if the licensee
4 verifies that such person is actively participating in a
5 board-approved program for the treatment of a physical or
6 mental condition, the licensee is required to report such
7 person only to an impaired professionals consultant.

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

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

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

22 (2) 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).

28 Section 18. For the purpose of incorporating the
29 amendment to section 456.072, Florida Statutes, in references
30 thereto, subsections (1) and (2) of section 465.016, Florida
31 Statutes, are reenacted to read:

1 465.016 Disciplinary actions.--

2 (1) The following acts constitute grounds for denial
3 of a license or disciplinary action, as specified in s.
4 456.072(2):

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

17 (d) Being unfit or incompetent to practice pharmacy by
18 reason of:

19 1. Habitual intoxication.

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

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

28 (e) Violating chapter 499; 21 U.S.C. ss. 301-392,
29 known as the Federal Food, Drug, and Cosmetic Act; 21 U.S.C.
30 ss. 821 et seq., known as the Comprehensive Drug Abuse
31 Prevention and Control Act; or chapter 893.

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

7 (g) Using in the compounding of a prescription, or
8 furnishing upon prescription, an ingredient or article
9 different in any manner from the ingredient or article
10 prescribed, except as authorized in s. 465.019(6) or s.
11 465.025.

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

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

23 (j) 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 federal or
26 state law, willfully impeding or obstructing such filing, or
27 inducing another person to do so. Such reports or records
28 include only those which the licensee is required to make or
29 file in her or his capacity as a licensed pharmacist.

30 (k) Failing to make prescription fee or price
31 information readily available by failing to provide such

1 information upon request and upon the presentation of a
2 prescription for pricing or dispensing. Nothing in this
3 section shall be construed to prohibit the quotation of price
4 information on a prescription drug to a potential consumer by
5 telephone.

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

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

26 (n) Violating a rule of the board or department or
27 violating an order of the board or department previously
28 entered in a disciplinary hearing.

29 (o) Failing to report to the department any licensee
30 under chapter 458 or under chapter 459 who the pharmacist
31 knows has violated the grounds for disciplinary action set out

1 in the law under which that person is licensed and who
2 provides health care services in a facility licensed under
3 chapter 395, or a health maintenance organization certificated
4 under part I of chapter 641, in which the pharmacist also
5 provides services.

6 (p) Failing to notify the Board of Pharmacy in writing
7 within 20 days of the commencement or cessation of the
8 practice of the profession of pharmacy in Florida when such
9 commencement or cessation of the practice of the profession of
10 pharmacy in Florida was a result of a pending or completed
11 disciplinary action or investigation in another jurisdiction.

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

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

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

22 Section 19. For the purpose of incorporating the
23 amendment to section 456.072, Florida Statutes, in references
24 thereto, subsections (1) and (2) of section 466.028, Florida
25 Statutes, are reenacted to read:

26 466.028 Grounds for disciplinary action; action by the
27 board.--

28 (1) The following acts constitute grounds for denial
29 of a license or disciplinary action, as specified in s.
30 456.072(2):

31

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

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

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

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

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

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

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

29 (h) Being employed by any corporation, organization,
30 group, or person other than a dentist or a professional
31

1 corporation or limited liability company composed of dentists
2 to practice dentistry.

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

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

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

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

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

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

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

29 (p) Prescribing, procuring, dispensing, administering,
30 mixing, or otherwise preparing a legend drug, including any
31 controlled substance, other than in the course of the

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

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

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

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

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

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

17 (u) Failure to provide and maintain reasonable
18 sanitary facilities and conditions.

19 (v) Failure to provide adequate radiation safeguards.

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

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

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

16 | (y) 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 she or he is not competent to perform.

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

23 | (aa) The violation of a lawful order of the board or
24 | department previously entered in a disciplinary hearing; or
25 | failure to comply with a lawfully issued subpoena of the board
26 | or department.

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

31 |

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

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

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

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

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

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

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

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

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

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

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

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

31

1 Section 20. For the purpose of incorporating the
2 amendment to section 456.072, Florida Statutes, in references
3 thereto, subsections (1) and (2) of section 467.203, Florida
4 Statutes, are reenacted to read:

5 467.203 Disciplinary actions; penalties.--

6 (1) The following acts constitute grounds for denial
7 of a license or disciplinary action, as specified in s.
8 456.072(2):

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

12 (b) Having a license to practice midwifery revoked,
13 suspended, or otherwise acted against, including being denied
14 licensure, by the licensing authority of another state,
15 territory, or country.

16 (c) Being convicted or found guilty, regardless of
17 adjudication, in any jurisdiction of a crime which directly
18 relates to the practice of midwifery or to the ability to
19 practice midwifery. A plea of nolo contendere shall be
20 considered a conviction for purposes of this provision.

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

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

29 (f) Engaging in unprofessional conduct, which
30 includes, but is not limited to, any departure from, or the
31 failure to conform to, the standards of practice of midwifery

1 as established by the department, in which case actual injury
2 need not be established.

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

11 (h) Failing to report to the department any person who
12 the licensee knows is in violation of this chapter or of the
13 rules of the department.

14 (i) Violating any lawful order of the department
15 previously entered in a disciplinary proceeding or failing to
16 comply with a lawfully issued subpoena of the department.

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

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

25 Section 21. For the purpose of incorporating the
26 amendment to section 456.072, Florida Statutes, in references
27 thereto, subsections (1) and (2) of section 468.1295, Florida
28 Statutes, are reenacted to read:

29 468.1295 Disciplinary proceedings.--
30
31

1 (1) The following acts constitute grounds for denial
2 of a license or disciplinary action, as specified in s.
3 456.072(2):

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

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

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

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

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

25 (f) Being proven guilty of fraud or deceit or of
26 negligence, incompetency, or misconduct in the practice of
27 speech-language pathology or audiology.

28 (g) Violating a lawful order of the board or
29 department previously entered in a disciplinary hearing, or
30 failing to comply with a lawfully issued subpoena of the board
31 or department.

1 (h) Practicing with a revoked, suspended, inactive, or
2 delinquent license.

3 (i) Using, or causing or promoting the use of, any
4 advertising matter, promotional literature, testimonial,
5 guarantee, warranty, label, brand, insignia, or other
6 representation, however disseminated or published, which is
7 misleading, deceiving, or untruthful.

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

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

15 (l) Aiding, assisting, procuring, employing, or
16 advising any licensee or business entity to practice
17 speech-language pathology or audiology contrary to this part,
18 chapter 456, or any rule adopted pursuant thereto.

19 (m) Misrepresenting the professional services
20 available in the fitting, sale, adjustment, service, or repair
21 of a hearing aid, or using any other term or title which might
22 connote the availability of professional services when such
23 use is not accurate.

24 (n) Representing, advertising, or implying that a
25 hearing aid or its repair is guaranteed without providing full
26 disclosure of the identity of the guarantor; the nature,
27 extent, and duration of the guarantee; and the existence of
28 conditions or limitations imposed upon the guarantee.

29 (o) Representing, directly or by implication, that a
30 hearing aid utilizing bone conduction has certain specified
31 features, such as the absence of anything in the ear or

1 leading to the ear, or the like, without disclosing clearly
2 and conspicuously that the instrument operates on the bone
3 conduction principle and that in many cases of hearing loss
4 this type of instrument may not be suitable.

5 (p) Stating or implying that the use of any hearing
6 aid will improve or preserve hearing or prevent or retard the
7 progression of a hearing impairment or that it will have any
8 similar or opposite effect.

9 (q) Making any statement regarding the cure of the
10 cause of a hearing impairment by the use of a hearing aid.

11 (r) Representing or implying that a hearing aid is or
12 will be "custom-made," "made to order," or
13 "prescription-made," or in any other sense specially
14 fabricated for an individual, when such is not the case.

15 (s) Canvassing from house to house or by telephone,
16 either in person or by an agent, for the purpose of selling a
17 hearing aid, except that contacting persons who have evidenced
18 an interest in hearing aids, or have been referred as in need
19 of hearing aids, shall not be considered canvassing.

20 (t) Failing to notify the department in writing of a
21 change in current mailing and place-of-practice address within
22 30 days after such change.

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

25 (v) Exercising influence on a client in such a manner
26 as to exploit the client for financial gain of the licensee or
27 of a third party.

28 (w) Practicing or offering to practice beyond the
29 scope permitted by law or accepting and performing
30 professional responsibilities the licensee or
31

1 certificateholder knows, or has reason to know, the licensee
2 or certificateholder is not competent to perform.

3 (x) Aiding, assisting, procuring, or employing any
4 unlicensed person to practice speech-language pathology or
5 audiology.

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

12 (z) Committing any act upon a patient or client which
13 would constitute sexual battery or which would constitute
14 sexual misconduct as defined pursuant to s. 468.1296.

15 (aa) Being unable to practice the profession for which
16 he or she is licensed or certified under this chapter with
17 reasonable skill or competence as a result of any mental or
18 physical condition or by reason of illness, drunkenness, or
19 use of drugs, narcotics, chemicals, or any other substance. In
20 enforcing this paragraph, upon a finding by the secretary, his
21 or her designee, or the board that probable cause exists to
22 believe that the licensee or certificateholder is unable to
23 practice the profession because of the reasons stated in this
24 paragraph, the department shall have the authority to compel a
25 licensee or certificateholder to submit to a mental or
26 physical examination by a physician, psychologist, clinical
27 social worker, marriage and family therapist, or mental health
28 counselor designated by the department or board. If the
29 licensee or certificateholder refuses to comply with the
30 department's order directing the examination, such order may
31 be enforced by filing a petition for enforcement in the

1 circuit court in the circuit in which the licensee or
2 certificateholder resides or does business. The department
3 shall be entitled to the summary procedure provided in s.
4 51.011. A licensee or certificateholder affected under this
5 paragraph shall at reasonable intervals be afforded an
6 opportunity to demonstrate that he or she can resume the
7 competent practice for which he or she is licensed or
8 certified with reasonable skill and safety to patients.

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

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

17 Section 22. For the purpose of incorporating the
18 amendment to section 456.072, Florida Statutes, in references
19 thereto, subsections (1) and (2) of section 468.1755, Florida
20 Statutes, are reenacted to read:

21 468.1755 Disciplinary proceedings.--

22 (1) The following acts constitute grounds for denial
23 of a license or disciplinary action, as specified in s.
24 456.072(2):

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

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

31

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 (q) Failing to implement an ongoing quality assurance
13 program directed by an interdisciplinary team that meets at
14 least every other month.

15 (r) 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).

23 Section 23. For the purpose of incorporating the
24 amendment to section 456.072, Florida Statutes, in references
25 thereto, subsections (1) and (2) of section 468.217, Florida
26 Statutes, are reenacted to read:

27 468.217 Denial of or refusal to renew license;
28 suspension and revocation of license and other disciplinary
29 measures.--

30
31

1 (1) The following acts constitute grounds for denial
2 of a license or disciplinary action, as specified in s.
3 456.072(2):

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

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

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 occupational therapy or to the
15 ability to practice occupational therapy. A plea of nolo
16 contendere shall be considered a conviction for the purposes
17 of this part.

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

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

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

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

27 (h) Failing to perform any statutory or legal
28 obligation placed upon a licensed occupational therapist or
29 occupational therapy assistant.

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

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 include only those which
4 are signed in the capacity as a licensed occupational
5 therapist or occupational therapy assistant.

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

17 (k) Exercising influence within a patient-therapist
18 relationship for purposes of engaging a patient in sexual
19 activity. A patient is presumed to be incapable of giving
20 free, full, and informed consent to sexual activity with the
21 patient's occupational therapist or occupational therapy
22 assistant.

23 (l) Making deceptive, untrue, or fraudulent
24 representations in the practice of occupational therapy or
25 employing a trick or scheme in the practice of occupational
26 therapy if such scheme or trick fails to conform to the
27 generally prevailing standards of treatment in the
28 occupational therapy community.

29 (m) Soliciting patients, either personally or through
30 an agent, through the use of fraud, intimidation, undue
31 influence, or a form of overreaching or vexatious conduct. A

1 "solicitation" is any communication which directly or
2 implicitly requests an immediate oral response from the
3 recipient.

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

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

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

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

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

25 (s) 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 he or she is not competent to perform.

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

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

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

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

30 (w) Conspiring with another licensee or with any other
31 person to commit an act, or committing an act, which would

1 tend to coerce, intimidate, or preclude another licensee from
2 lawfully advertising his or her services.

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

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

11 Section 24. For the purpose of incorporating the
12 amendment to section 456.072, Florida Statutes, in references
13 thereto, subsections (1) and (2) of section 468.365, Florida
14 Statutes, are reenacted to read:

15 468.365 Disciplinary grounds and actions.--

16 (1) The following acts constitute grounds for denial
17 of a license or disciplinary action, as specified in s.
18 456.072(2):

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

23 (b) Having licensure, certification, registration, or
24 other authority, by whatever name known, to deliver
25 respiratory care services revoked, suspended, or otherwise
26 acted against, including the denial of licensure,
27 certification, registration, or other authority to deliver
28 respiratory care services by the licensing authority of
29 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

1 crime in any jurisdiction which directly relates to
2 respiratory care services or to the ability to deliver such
3 services.

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

11 (e) Circulating false, misleading, or deceptive
12 advertising.

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

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

22 (h) Willfully failing to report any violation of this
23 part.

24 (i) Violating a lawful order of the board or
25 department previously entered in a disciplinary hearing.

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

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

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

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 when the licensee delegating such responsibilities
9 knows, or has reason to know, that such person is not
10 qualified by training, experience, or licensure to perform
11 them.

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

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

29 (q) Exercising influence within a respiratory care
30 relationship for the purpose of engaging a patient in sexual
31 activity. A patient is presumed to be incapable of giving

1 free, full, and informed consent to sexual activity with the
2 patient's respiratory care practitioner or respiratory
3 therapist.

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

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

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

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

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

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

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

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

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

29 Section 25. For the purpose of incorporating the
30 amendment to section 456.072, Florida Statutes, in references
31

1 thereto, subsections (1) and (2) of section 468.518, Florida
2 Statutes, are reenacted to read:

3 468.518 Grounds for disciplinary action.--

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

7 (a) Violating any provision of this part, any board or
8 agency rule adopted pursuant thereto, or any lawful order of
9 the board or agency previously entered in a disciplinary
10 hearing held pursuant to this part, or failing to comply with
11 a lawfully issued subpoena of the agency. The provisions of
12 this paragraph also apply to any order or subpoena previously
13 issued by the Department of Health during its period of
14 regulatory control over this part.

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

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

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

28 (c) Attempting to procure or procuring a license to
29 practice dietetics and nutrition or nutrition counseling by
30 fraud or material misrepresentation of material fact.

31

1 (d) Having a license to practice dietetics and
2 nutrition or nutrition counseling revoked, suspended, or
3 otherwise acted against, including the denial of licensure by
4 the licensing authority of another state, district, territory,
5 or country.

6 (e) Being convicted or found guilty of, or entering a
7 plea of nolo contendere to, regardless of adjudication, a
8 crime in any jurisdiction which directly relates to the
9 practice of dietetics and nutrition or nutrition counseling or
10 the ability to practice dietetics and nutrition or nutrition
11 counseling.

12 (f) Making or filing a report or record that the
13 licensee knows to be false, willfully failing to file a report
14 or record required by state or federal law, willfully impeding
15 or obstructing such filing, or inducing another person to
16 impede or obstruct such filing. Such reports or records
17 include only those that are signed in the capacity of a
18 licensed dietitian/nutritionist or licensed nutrition
19 counselor.

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

23 (h) Committing an act of fraud or deceit, or of
24 negligence, incompetency, or misconduct in the practice of
25 dietetics and nutrition or nutrition counseling.

26 (i) Practicing with a revoked, suspended, inactive, or
27 delinquent license.

28 (j) Treating or undertaking to treat human ailments by
29 means other than by dietetics and nutrition practice or
30 nutrition counseling.

31

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

4 (1) Engaging directly or indirectly in the dividing,
5 transferring, assigning, rebating, or refunding of fees
6 received for professional services, or profiting by means of a
7 credit or other valuable consideration, such as an unearned
8 commission, discount, or gratuity, with any person referring a
9 patient or with any relative or business associate of the
10 referring person. Nothing in this part prohibits the members
11 of any regularly and properly organized business entity that
12 is composed of licensees under this part and recognized under
13 the laws of this state from making any division of their total
14 fees among themselves as they determine necessary.

15 (m) Advertising, by or on behalf of a licensee under
16 this part, any method of assessment or treatment which is
17 experimental or without generally accepted scientific
18 validation.

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

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

27 Section 26. For the purpose of incorporating the
28 amendment to section 456.072, Florida Statutes, in references
29 thereto, section 468.719, Florida Statutes, is reenacted to
30 read:

31 468.719 Disciplinary actions.--

1 (1) The following acts constitute grounds for denial
2 of a license or disciplinary action, as specified in s.
3 456.072(2):

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

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

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

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

15 (e) While practicing athletic training, being unable
16 to practice athletic training with reasonable skill and safety
17 to athletes by reason of illness or use of alcohol or drugs or
18 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).

27 Section 27. For the purpose of incorporating the
28 amendment to section 456.072, Florida Statutes, in references
29 thereto, section 468.811, Florida Statutes, is reenacted to
30 read:

31 468.811 Disciplinary proceedings.--

1 (1) The following acts constitute grounds for denial
2 of a license or disciplinary action, as specified in s.
3 456.072(2):

4 (a) Attempting to procure a license by fraudulent
5 misrepresentation.

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

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

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

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

25 (f) Violation of an order of the board, agency, or
26 department previously entered in a disciplinary hearing or
27 failure to comply with a subpoena issued by the board, agency,
28 or department.

29 (g) Practicing with a revoked, suspended, or inactive
30 license.

31

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

7 (i) Failing to provide written notice of any
8 applicable warranty for an orthosis, prosthesis, or pedorthic
9 device that is provided to a patient.

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

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

18 Section 28. For the purpose of incorporating the
19 amendment to section 456.072, Florida Statutes, in references
20 thereto, subsections (1) and (2) of section 478.52, Florida
21 Statutes, are reenacted to read:

22 478.52 Disciplinary proceedings.--

23 (1) The following acts constitute grounds for denial
24 of a license or disciplinary action, as specified in s.
25 456.072(2):

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

28 (b) Having a license or other authority to deliver
29 electrolysis services revoked, suspended, or otherwise acted
30 against, including denial of licensure, in another
31 jurisdiction.

1 (c) Being convicted or found guilty of, or entering a
2 plea of nolo contendere to, regardless of adjudication, a
3 crime, in any jurisdiction, which directly relates to the
4 practice of electrology.

5 (d) Willfully making or filing a false report or
6 record, willfully failing to file a report or record required
7 for electrologists, or willfully impeding or obstructing the
8 filing of a report or record required by this act or inducing
9 another person to do so.

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

12 (f) Unprofessional conduct, including any departure
13 from, or failure to conform to, acceptable standards related
14 to the delivery of electrolysis services.

15 (g) Engaging or attempting to engage in the illegal
16 possession, sale, or distribution of any illegal or controlled
17 substance.

18 (h) Willfully failing to report any known violation of
19 this chapter.

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

23 (j) Engaging in the delivery of electrolysis services
24 without an active license.

25 (k) Employing an unlicensed person to practice
26 electrology.

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

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

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

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

6 (p) Judicially determined mental incompetency.

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

9 (r) Being unable to practice electrology with
10 reasonable skill and safety because of a mental or physical
11 condition or illness, or the use of alcohol, controlled
12 substances, or any other substance which impairs one's ability
13 to practice.

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

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

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

31

1 (s) Disclosing the identity of or information about a
2 patient without written permission, except for information
3 which does not identify a patient and which is used for
4 training purposes in an approved electrolysis training
5 program.

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

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

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

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

18 Section 29. For the purpose of incorporating the
19 amendment to section 456.072, Florida Statutes, in references
20 thereto, subsections (1) and (2) of section 480.046, Florida
21 Statutes, are reenacted to read:

22 480.046 Grounds for disciplinary action by the
23 board.--

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

27 (a) Attempting to procure a license to practice
28 massage by bribery or fraudulent misrepresentation.

29 (b) Having a license to practice massage revoked,
30 suspended, or otherwise acted against, including the denial of
31

1 licensure, by the licensing authority of another state,
2 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 massage or to the ability to
6 practice massage. Any plea of nolo contendere shall be
7 considered a conviction for purposes of this chapter.

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

9 (e) Aiding, assisting, procuring, or advising any
10 unlicensed person to practice massage contrary to the
11 provisions of this chapter or to a rule of the department or
12 the board.

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

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

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

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

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

14 (k) Violating a lawful order of the board or
15 department previously entered in a disciplinary hearing, or
16 failing to comply with a lawfully issued subpoena of the
17 department.

18 (l) Refusing to permit the department to inspect the
19 business premises of the licensee during regular business
20 hours.

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

23 (n) Practicing massage at a site, location, or place
24 which is not duly licensed as a massage establishment, except
25 that a massage therapist, as provided by rules adopted by the
26 board, may provide massage services, excluding colonic
27 irrigation, at the residence of a client, at the office of the
28 client, at a sports event, at a convention, or at a trade
29 show.

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

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

7 Section 30. For the purpose of incorporating the
8 amendment to section 456.072, Florida Statutes, in references
9 thereto, subsections (1) and (2) of section 483.825, Florida
10 Statutes, are reenacted to read:

11 483.825 Grounds for disciplinary action.--

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

15 (a) Attempting to obtain, obtaining, or renewing a
16 license or registration under this part by bribery, by
17 fraudulent misrepresentation, or through an error of the
18 department or the board.

19 (b) Engaging in or attempting to engage in, or
20 representing herself or himself as entitled to perform, any
21 clinical laboratory procedure or category of procedures not
22 authorized pursuant to her or his license.

23 (c) Demonstrating incompetence or making consistent
24 errors in the performance of clinical laboratory examinations
25 or procedures or erroneous reporting.

26 (d) Performing a test and rendering a report thereon
27 to a person not authorized by law to receive such services.

28 (e) Has been convicted or found guilty of, or entered
29 a plea of nolo contendere to, regardless of adjudication, a
30 crime in any jurisdiction which directly relates to the
31 activities of clinical laboratory personnel or involves moral

1 turpitude or fraudulent or dishonest dealing. The record of a
2 conviction certified or authenticated in such form as to be
3 admissible in evidence under the laws of the state shall be
4 admissible as prima facie evidence of such guilt.

5 (f) Having been adjudged mentally or physically
6 incompetent.

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

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

11 (i) Knowingly advertising false services or
12 credentials.

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

21 (k) Failing to report to the board, in writing, within
22 30 days that an action under paragraph (e), paragraph (f), or
23 paragraph (j) has been taken against the licensee or one's
24 license to practice as clinical laboratory personnel in
25 another state, territory, country, or other jurisdiction.

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

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

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

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

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

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

1 purposes. Such reports or records shall include only those
2 generated in the capacity as a licensed clinical laboratory
3 personnel.

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

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

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

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

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

30 (v) Engaging in or attempting to engage in sexual
31 misconduct, causing undue embarrassment or using disparaging

1 language or language of a sexual nature towards a patient,
2 exploiting superior/subordinate, professional/patient,
3 instructor/student relationships for personal gain, sexual
4 gratification, or advantage.

5 (w) Violating any provision of this chapter or chapter
6 456, or any rules adopted pursuant thereto.

7 (2) The board may enter an order denying licensure or
8 imposing any of the penalties in s. 456.072(2) against any
9 applicant for licensure or licensee who is found guilty of
10 violating any provision of subsection (1) of this section or
11 who is found guilty of violating any provision of s.
12 456.072(1).

13 Section 31. For the purpose of incorporating the
14 amendment to section 456.072, Florida Statutes, in references
15 thereto, paragraphs (g) and (h) of subsection (6) of section
16 483.901, Florida Statutes, are reenacted to read:

17 483.901 Medical physicists; definitions; licensure.--

18 (6) LICENSE REQUIRED.--An individual may not engage in
19 the practice of medical physics, including the specialties of
20 diagnostic radiological physics, therapeutic radiological
21 physics, medical nuclear radiological physics, or medical
22 health physics, without a license issued by the department for
23 the appropriate specialty.

24 (g) The following acts constitute grounds for denial
25 of a license or disciplinary action, as specified in s.
26 456.072(2):

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

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

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

5 4. Willfully failing to file a report or record
6 required for medical physics or willfully impeding or
7 obstructing the filing of a report or record required by this
8 section or inducing another person to do so.

9 5. Making misleading, deceptive, or fraudulent
10 representations in or related to the practice of medical
11 physics.

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

14 7. Failing to perform any statutory or legal
15 obligation placed upon a licensee.

16 8. Aiding, assisting, procuring, employing, or
17 advising any unlicensed person to practice medical physics
18 contrary to this section or any rule adopted thereunder.

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

24 10. Practicing or offering to practice beyond the
25 scope permitted by law or accepting and performing
26 professional responsibilities the licensee knows, or has
27 reason to know, the licensee is not competent to perform.

28 11. Gross or repeated malpractice or the inability to
29 practice medical physics with reasonable skill and safety.

30 12. Judicially determined mental incompetency.

31

1 13. Being unable to practice medical physics with
2 reasonable skill and safety because of a mental or physical
3 condition or illness or the use of alcohol, controlled
4 substances, or any other substance which impairs one's ability
5 to practice.

6 a. The department may, upon probable cause, compel a
7 licensee to submit to a mental or physical examination by
8 physicians designated by the department. The cost of an
9 examination shall be borne by the licensee, and the licensee's
10 failure to submit to such an examination constitutes an
11 admission of the allegations against the licensee, consequent
12 upon which a default and a final order may be entered without
13 the taking of testimony or presentation of evidence, unless
14 the failure was due to circumstances beyond the licensee's
15 control.

16 b. A licensee who is disciplined under this
17 subparagraph shall, at reasonable intervals, be afforded an
18 opportunity to demonstrate that the licensee can resume the
19 practice of medical physics with reasonable skill and safety.

20 c. With respect to any proceeding under this
21 subparagraph, the record of proceedings or the orders entered
22 by the department may not be used against a licensee in any
23 other proceeding.

24 14. Violating any provision of this chapter or chapter
25 456, or any rules adopted pursuant thereto.

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

1 Section 32. For the purpose of incorporating the
2 amendment to section 456.072, Florida Statutes, in references
3 thereto, subsections (1) and (2) of section 484.014, Florida
4 Statutes, are reenacted to read:

5 484.014 Disciplinary actions.--

6 (1) The following acts constitute grounds for denial
7 of a license or disciplinary action, as specified in s.
8 456.072(2):

9 (a) Procuring or attempting to procure a license by
10 misrepresentation, bribery, or fraud or through an error of
11 the department or the board.

12 (b) Procuring or attempting to procure a license for
13 any other person by making or causing to be made any false
14 representation.

15 (c) Making or filing a report or record which the
16 licensee knows to be false, intentionally or negligently
17 failing to file a report or record required by federal or
18 state law, willfully impeding or obstructing such filing, or
19 inducing another person to do so. Such reports or records
20 shall include only those which the person is required to make
21 or file as an optician.

22 (d) Failing to make fee or price information readily
23 available by providing such information upon request or upon
24 the presentation of a prescription.

25 (e) Advertising goods or services in a manner which is
26 fraudulent, false, deceptive, or misleading in form or
27 content.

28 (f) Fraud or deceit, or negligence, incompetency, or
29 misconduct, in the authorized practice of opticianry.

30 (g) Practicing with a revoked, suspended, inactive, or
31 delinquent license.

1 (h) Violation of 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 (i) Violation of any provision of s. 484.012.

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

10 (k) Willfully submitting to any third-party payor a
11 claim for services which were not provided to a patient.

12 (l) Failing to keep written prescription files.

13 (m) Willfully failing to report any person who the
14 licensee knows is in violation of this part or of rules of the
15 department or the board.

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

19 (o) Gross or repeated malpractice.

20 (p) Permitting any person not licensed as an optician
21 in this state to fit or dispense any lenses, spectacles,
22 eyeglasses, or other optical devices which are part of the
23 practice of opticianry.

24 (q) Being convicted or found guilty of, or entering a
25 plea of nolo contendere to, regardless of adjudication, in a
26 court of this state or other jurisdiction, a crime which
27 relates to the ability to practice opticianry or to the
28 practice of opticianry.

29 (r) Having been disciplined by a regulatory agency in
30 another state for any offense that would constitute a
31 violation of Florida law or rules regulating opticianry.

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

9 (t) Violating any provision of this chapter or chapter
10 456, or any rules adopted pursuant thereto.

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

17 Section 33. For the purpose of incorporating the
18 amendment to section 456.072, Florida Statutes, in references
19 thereto, subsection (1) and paragraph (a) of subsection (2) of
20 section 484.056, Florida Statutes, are reenacted to read:

21 484.056 Disciplinary proceedings.--

22 (1) The following acts constitute grounds for denial
23 of a license or disciplinary action, as specified in s.
24 456.072(2):

25 (a) Violation of any provision of s. 456.072(1), s.
26 484.0512, or s. 484.053.

27 (b) Attempting to procure a license to dispense
28 hearing aids by bribery, by fraudulent misrepresentations, or
29 through an error of the department or the board.

30 (c) Having a license to dispense hearing aids revoked,
31 suspended, or otherwise acted against, including the denial of

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

3 (d) Being convicted or found guilty of, or entering a
4 plea of nolo contendere to, regardless of adjudication, a
5 crime in any jurisdiction which directly relates to the
6 practice of dispensing hearing aids or the ability to practice
7 dispensing hearing aids, including violations of any federal
8 laws or regulations regarding hearing aids.

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

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

20 (g) Proof that the licensee is guilty of fraud or
21 deceit or of negligence, incompetency, or misconduct in the
22 practice of dispensing hearing aids.

23 (h) Violation of a lawful order of the board or
24 department previously entered in a disciplinary hearing or
25 failure to comply with a lawfully issued subpoena of the board
26 or department.

27 (i) Practicing with a revoked, suspended, inactive, or
28 delinquent license.

29 (j) Using, or causing or promoting the use of, any
30 advertising matter, promotional literature, testimonial,
31 guarantee, warranty, label, brand, insignia, or other

1 representation, however disseminated or published, which is
2 misleading, deceiving, or untruthful.

3 (k) Showing or demonstrating, or, in the event of
4 sale, delivery of, a product unusable or impractical for the
5 purpose represented or implied by such action.

6 (l) Misrepresentation of professional services
7 available in the fitting, sale, adjustment, service, or repair
8 of a hearing aid, or use of the terms "doctor," "clinic,"
9 "clinical," "medical audiologist," "clinical audiologist,"
10 "research audiologist," or "audiologic" or any other term or
11 title which might connote the availability of professional
12 services when such use is not accurate.

13 (m) Representation, advertisement, or implication that
14 a hearing aid or its repair is guaranteed without providing
15 full disclosure of the identity of the guarantor; the nature,
16 extent, and duration of the guarantee; and the existence of
17 conditions or limitations imposed upon the guarantee.

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

25 (o) Making any predictions or prognostications as to
26 the future course of a hearing impairment, either in general
27 terms or with reference to an individual person.

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

1 (q) Making any statement regarding the cure of the
2 cause of a hearing impairment by the use of a hearing aid.

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

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

12 (t) Failure to submit to the board on an annual basis,
13 or such other basis as may be provided by rule, certification
14 of testing and calibration of audiometric testing equipment on
15 the form approved by the board.

16 (u) Failing to provide all information as described in
17 s. 484.051(1).

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

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

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

29 Section 34. For the purpose of incorporating the
30 amendment to section 456.072, Florida Statutes, in references
31

1 thereto, subsections (1) and (2) of section 486.125, Florida
2 Statutes, are reenacted to read:

3 486.125 Refusal, revocation, or suspension of license;
4 administrative fines and other disciplinary measures.--

5 (1) The following acts constitute grounds for denial
6 of a license or disciplinary action, as specified in s.
7 456.072(2):

8 (a) Being unable to practice physical therapy with
9 reasonable skill and safety to patients by reason of illness
10 or use of alcohol, drugs, narcotics, chemicals, or any other
11 type of material or as a result of any mental or physical
12 condition.

13 1. In enforcing this paragraph, upon a finding of the
14 secretary or the secretary's designee that probable cause
15 exists to believe that the licensee is unable to practice
16 physical therapy due to the reasons stated in this paragraph,
17 the department shall have the authority to compel a physical
18 therapist or physical therapist assistant to submit to a
19 mental or physical examination by a physician designated by
20 the department. If the licensee refuses to comply with such
21 order, the department's order directing such examination may
22 be enforced by filing a petition for enforcement in the
23 circuit court where the licensee resides or serves as a
24 physical therapy practitioner. The licensee against whom the
25 petition is filed shall not be named or identified by initials
26 in any public court records or documents, and the proceedings
27 shall be closed to the public. The department shall be
28 entitled to the summary procedure provided in s. 51.011.

29 2. A physical therapist or physical therapist
30 assistant whose license is suspended or revoked pursuant to
31 this subsection shall, at reasonable intervals, be given an

1 opportunity to demonstrate that she or he can resume the
2 competent practice of physical therapy with reasonable skill
3 and safety to patients.

4 3. Neither the record of proceeding nor the orders
5 entered by the board in any proceeding under this subsection
6 may be used against a physical therapist or physical therapist
7 assistant in any other proceeding.

8 (b) Having committed fraud in the practice of physical
9 therapy or deceit in obtaining a license as a physical
10 therapist or as a physical therapist assistant.

11 (c) Being convicted or found guilty regardless of
12 adjudication, of a crime in any jurisdiction which directly
13 relates to the practice of physical therapy or to the ability
14 to practice physical therapy. The entry of any plea of nolo
15 contendere shall be considered a conviction for purpose of
16 this chapter.

17 (d) Having treated or undertaken to treat human
18 ailments by means other than by physical therapy, as defined
19 in this chapter.

20 (e) Failing to maintain acceptable standards of
21 physical therapy practice as set forth by the board in rules
22 adopted pursuant to this chapter.

23 (f) Engaging directly or indirectly in the dividing,
24 transferring, assigning, rebating, or refunding of fees
25 received for professional services, or having been found to
26 profit by means of a credit or other valuable consideration,
27 such as an unearned commission, discount, or gratuity, with
28 any person referring a patient or with any relative or
29 business associate of the referring person. Nothing in this
30 chapter shall be construed to prohibit the members of any
31 regularly and properly organized business entity which is

1 comprised of physical therapists and which is recognized under
2 the laws of this state from making any division of their total
3 fees among themselves as they determine necessary.

4 (g) Having a license revoked or suspended; having had
5 other disciplinary action taken against her or him; or having
6 had her or his application for a license refused, revoked, or
7 suspended by the licensing authority of another state,
8 territory, or country.

9 (h) Violating a lawful order of the board or
10 department previously entered in a disciplinary hearing.

11 (i) Making or filing a report or record which the
12 licensee knows to be false. Such reports or records shall
13 include only those which are signed in the capacity of a
14 physical therapist.

15 (j) 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 she or he is not competent to perform,
19 including, but not limited to, specific spinal manipulation.

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

22 (2) 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).

28 Section 35. For the purpose of incorporating the
29 amendment to section 456.072, Florida Statutes, in references
30 thereto, section 490.009, Florida Statutes, is reenacted to
31 read:

1 490.009 Discipline.--

2 (1) The following acts constitute grounds for denial
3 of a license or disciplinary action, as specified in s.
4 456.072(2):

5 (a) Attempting to obtain, obtaining, or renewing a
6 license under this chapter by bribery or fraudulent
7 misrepresentation or through an error of the board or
8 department.

9 (b) Having a license to practice a comparable
10 profession revoked, suspended, or otherwise acted against,
11 including the denial of certification or licensure by 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 his or her profession or the
16 ability to practice his or her profession. A plea of nolo
17 contendere creates a rebuttable presumption of guilt of the
18 underlying criminal charges. However, the board shall allow
19 the person who is the subject of the disciplinary proceeding
20 to present any evidence relevant to the underlying charges and
21 circumstances surrounding the plea.

22 (d) False, deceptive, or misleading advertising or
23 obtaining a fee or other thing of value on the representation
24 that beneficial results from any treatment will be guaranteed.

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

27 (f) Maintaining a professional association with any
28 person who the applicant or licensee knows, or has reason to
29 believe, is in violation of this chapter or of a rule of the
30 department or, in the case of psychologists, of the department
31 or the board.

1 (g) Knowingly aiding, assisting, procuring, or
2 advising any nonlicensed person to hold himself or herself out
3 as licensed under this chapter.

4 (h) Failing to perform any statutory or legal
5 obligation placed upon a person licensed under this chapter.

6 (i) Willfully making or filing a false report or
7 record; failing to file a report or record required by state
8 or federal law; willfully impeding or obstructing the filing
9 of a report or record; or inducing another person to make or
10 file a false report or record or to impede or obstruct the
11 filing of a report or record. Such report or record includes
12 only a report or record which requires the signature of a
13 person licensed under this chapter.

14 (j) Paying a kickback, rebate, bonus, or other
15 remuneration for receiving a patient or client, or receiving a
16 kickback, rebate, bonus, or other remuneration for referring a
17 patient or client to another provider of mental health care
18 services or to a provider of health care services or goods;
19 referring a patient or client to oneself for services on a
20 fee-paid basis when those services are already being paid for
21 by some other public or private entity; or entering into a
22 reciprocal referral agreement.

23 (k) Committing any act upon a patient or client which
24 would constitute sexual battery or which would constitute
25 sexual misconduct as defined in s. 490.0111.

26 (l) Making misleading, deceptive, untrue, or
27 fraudulent representations in the practice of any profession
28 licensed under this chapter.

29 (m) Soliciting patients or clients personally, or
30 through an agent, through the use of fraud, intimidation,
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1 undue influence, or a form of overreaching or vexatious
2 conduct.

3 (n) Failing to make available to a patient or client,
4 upon written request, copies of test results, reports, or
5 documents in the possession or under the control of the
6 licensee which have been prepared for and paid for by the
7 patient or client.

8 (o) Failing to respond within 30 days to a written
9 communication from the department concerning any investigation
10 by the department or to make available any relevant records
11 with respect to any investigation about the licensee's conduct
12 or background.

13 (p) Being unable to practice the profession for which
14 he or she is licensed under this chapter with reasonable skill
15 or competence as a result of any mental or physical condition
16 or by reason of illness; drunkenness; or excessive use of
17 drugs, narcotics, chemicals, or any other substance. In
18 enforcing this paragraph, upon a finding by the secretary, the
19 secretary's designee, or the board that probable cause exists
20 to believe that the licensee is unable to practice the
21 profession because of the reasons stated in this paragraph,
22 the department shall have the authority to compel a licensee
23 to submit to a mental or physical examination by psychologists
24 or physicians designated by the department or board. If the
25 licensee refuses to comply with the department's order, the
26 department may file a petition for enforcement in the circuit
27 court of the circuit in which the licensee resides or does
28 business. The licensee shall not be named or identified by
29 initials in the petition or in any other public court records
30 or documents, and the enforcement proceedings shall be closed
31 to the public. The department shall be entitled to the

1 summary procedure provided in s. 51.011. A licensee affected
2 under this paragraph shall be afforded an opportunity at
3 reasonable intervals to demonstrate that he or she can resume
4 the competent practice for which he or she is licensed with
5 reasonable skill and safety to patients.

6 (q) Performing any treatment or prescribing any
7 therapy which, by the prevailing standards of the mental
8 health professions in the community, would constitute
9 experimentation on human subjects, without first obtaining
10 full, informed, and written consent.

11 (r) Failing to meet the minimum standards of
12 performance in professional activities when measured against
13 generally prevailing peer performance, including the
14 undertaking of activities for which the licensee is not
15 qualified by training or experience.

16 (s) Delegating professional responsibilities to a
17 person whom the licensee knows or has reason to know is not
18 qualified by training or experience to perform such
19 responsibilities.

20 (t) Violating a rule relating to the regulation of the
21 profession or a lawful order of the department previously
22 entered in a disciplinary hearing.

23 (u) Failing to maintain in confidence a communication
24 made by a patient or client in the context of such services,
25 except as provided in s. 490.0147.

26 (v) Making public statements which are derived from
27 test data, client contacts, or behavioral research and which
28 identify or damage research subjects or clients.

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

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1 (2) The department, or in the case of psychologists,
2 the board, may enter an order denying licensure or imposing
3 any of the penalties in s. 456.072(2) against any applicant
4 for licensure or licensee who is found guilty of violating any
5 provision of subsection (1) of this section or who is found
6 guilty of violating any provision of s. 456.072(1).

7 Section 36. For the purpose of incorporating the
8 amendment to section 456.072, Florida Statutes, in references
9 thereto, section 491.009, Florida Statutes, is reenacted to
10 read:

11 491.009 Discipline.--

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

15 (a) Attempting to obtain, obtaining, or renewing a
16 license, registration, or certificate under this chapter by
17 bribery or fraudulent misrepresentation or through an error of
18 the board or the department.

19 (b) Having a license, registration, or certificate to
20 practice a comparable profession revoked, suspended, or
21 otherwise acted against, including the denial of certification
22 or licensure by another state, territory, or country.

23 (c) Being convicted or found guilty of, regardless of
24 adjudication, or having entered a plea of nolo contendere to,
25 a crime in any jurisdiction which directly relates to the
26 practice of his or her profession or the ability to practice
27 his or her profession. However, in the case of a plea of nolo
28 contendere, the board shall allow the person who is the
29 subject of the disciplinary proceeding to present evidence in
30 mitigation relevant to the underlying charges and
31 circumstances surrounding the plea.

1 (d) False, deceptive, or misleading advertising or
2 obtaining a fee or other thing of value on the representation
3 that beneficial results from any treatment will be guaranteed.

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

6 (f) Maintaining a professional association with any
7 person who the applicant, licensee, registered intern, or
8 certificateholder knows, or has reason to believe, is in
9 violation of this chapter or of a rule of the department or
10 the board.

11 (g) Knowingly aiding, assisting, procuring, or
12 advising any nonlicensed, nonregistered, or noncertified
13 person to hold himself or herself out as licensed, registered,
14 or certified under this chapter.

15 (h) Failing to perform any statutory or legal
16 obligation placed upon a person licensed, registered, or
17 certified under this chapter.

18 (i) Willfully making or filing a false report or
19 record; failing to file a report or record required by state
20 or federal law; willfully impeding or obstructing the filing
21 of a report or record; or inducing another person to make or
22 file a false report or record or to impede or obstruct the
23 filing of a report or record. Such report or record includes
24 only a report or record which requires the signature of a
25 person licensed, registered, or certified under this chapter.

26 (j) Paying a kickback, rebate, bonus, or other
27 remuneration for receiving a patient or client, or receiving a
28 kickback, rebate, bonus, or other remuneration for referring a
29 patient or client to another provider of mental health care
30 services or to a provider of health care services or goods;
31 referring a patient or client to oneself for services on a

1 fee-paid basis when those services are already being paid for
2 by some other public or private entity; or entering into a
3 reciprocal referral agreement.

4 (k) Committing any act upon a patient or client which
5 would constitute sexual battery or which would constitute
6 sexual misconduct as defined pursuant to s. 491.0111.

7 (l) Making misleading, deceptive, untrue, or
8 fraudulent representations in the practice of any profession
9 licensed, registered, or certified under this chapter.

10 (m) Soliciting patients or clients personally, or
11 through an agent, through the use of fraud, intimidation,
12 undue influence, or a form of overreaching or vexatious
13 conduct.

14 (n) Failing to make available to a patient or client,
15 upon written request, copies of tests, reports, or documents
16 in the possession or under the control of the licensee,
17 registered intern, or certificateholder which have been
18 prepared for and paid for by the patient or client.

19 (o) Failing to respond within 30 days to a written
20 communication from the department or the board concerning any
21 investigation by the department or the board, or failing to
22 make available any relevant records with respect to any
23 investigation about the licensee's, registered intern's, or
24 certificateholder's conduct or background.

25 (p) Being unable to practice the profession for which
26 he or she is licensed, registered, or certified under this
27 chapter with reasonable skill or competence as a result of any
28 mental or physical condition or by reason of illness;
29 drunkenness; or excessive use of drugs, narcotics, chemicals,
30 or any other substance. In enforcing this paragraph, upon a
31 finding by the secretary, the secretary's designee, or the

1 board that probable cause exists to believe that the licensee,
2 registered intern, or certificateholder is unable to practice
3 the profession because of the reasons stated in this
4 paragraph, the department shall have the authority to compel a
5 licensee, registered intern, or certificateholder to submit to
6 a mental or physical examination by psychologists, physicians,
7 or other licensees under this chapter, designated by the
8 department or board. If the licensee, registered intern, or
9 certificateholder refuses to comply with such order, the
10 department's order directing the examination may be enforced
11 by filing a petition for enforcement in the circuit court in
12 the circuit in which the licensee, registered intern, or
13 certificateholder resides or does business. The licensee,
14 registered intern, or certificateholder against whom the
15 petition is filed shall not be named or identified by initials
16 in any public court records or documents, and the proceedings
17 shall be closed to the public. The department shall be
18 entitled to the summary procedure provided in s. 51.011. A
19 licensee, registered intern, or certificateholder affected
20 under this paragraph shall at reasonable intervals be afforded
21 an opportunity to demonstrate that he or she can resume the
22 competent practice for which he or she is licensed,
23 registered, or certified with reasonable skill and safety to
24 patients.

25 (q) Performing any treatment or prescribing any
26 therapy which, by the prevailing standards of the mental
27 health professions in the community, would constitute
28 experimentation on human subjects, without first obtaining
29 full, informed, and written consent.

30 (r) Failing to meet the minimum standards of
31 performance in professional activities when measured against

1 generally prevailing peer performance, including the
2 undertaking of activities for which the licensee, registered
3 intern, or certificateholder is not qualified by training or
4 experience.

5 (s) Delegating professional responsibilities to a
6 person whom the licensee, registered intern, or
7 certificateholder knows or has reason to know is not qualified
8 by training or experience to perform such responsibilities.

9 (t) Violating a rule relating to the regulation of the
10 profession or a lawful order of the department or the board
11 previously entered in a disciplinary hearing.

12 (u) Failure of the licensee, registered intern, or
13 certificateholder to maintain in confidence a communication
14 made by a patient or client in the context of such services,
15 except as provided in s. 491.0147.

16 (v) Making public statements which are derived from
17 test data, client contacts, or behavioral research and which
18 identify or damage research subjects or clients.

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

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

27 Section 37. Paragraph (d) is added to subsection (1)
28 of section 458.345, Florida Statutes, to read:

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

1 (1) Any person desiring to practice as a resident
2 physician, assistant resident physician, house physician,
3 intern, or fellow in fellowship training which leads to
4 subspecialty board certification in this state, or any person
5 desiring to practice as a resident physician, assistant
6 resident physician, house physician, intern, or fellow in
7 fellowship training in a teaching hospital in this state as
8 defined in s. 408.07(44) or s. 395.805(2), who does not hold a
9 valid, active license issued under this chapter shall apply to
10 the department to be registered and shall remit a fee not to
11 exceed \$300 as set by the board. The department shall
12 register any applicant the board certifies has met the
13 following requirements:

14 (d) Has completed, upon initial registration, the
15 1-hour educational course in the prescribing of controlled
16 substances as set forth in section 2 of this act. An applicant
17 who has not taken a course at the time of registration shall
18 be allowed up to 6 months within which to complete this
19 requirement.

20 Section 38. Paragraph (dd) is added to subsection (1)
21 of section 461.013, Florida Statutes, to read:

22 461.013 Grounds for disciplinary action; action by the
23 board; investigations by department.--

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

27 (dd) Presigning blank prescription forms.

28 Section 39. Paragraphs (h), (i), (j), (k), and (l) are
29 added to subsection (1) of section 893.04, Florida Statutes,
30 to read:

31 893.04 Pharmacist and practitioner.--

1 (1) A pharmacist, in good faith and in the course of
2 professional practice only, may dispense controlled substances
3 upon a written or oral prescription of a practitioner, under
4 the following conditions:

5 (h) A pharmacist may not dispense a Schedule II
6 controlled substance; codeine, hydrocodone, dihydrocodeine,
7 ethylmorphine, or morphine as scheduled in Schedule II and
8 Schedule III; or a drug of abuse designated by the Secretary
9 of Health by rule under the prescription-monitoring system to
10 any individual not personally known to the pharmacist without
11 first obtaining suitable identification and documenting, in a
12 log book kept by the pharmacist, the identity of the
13 individual obtaining the controlled substance. The log book
14 entry must contain the printed name, address, telephone number
15 if available, driver's license number or other suitable
16 identification number, and signature of the person obtaining
17 the controlled substance or drug. If the individual does not
18 have suitable identification or it is impracticable to obtain
19 such identification, the pharmacist may dispense the
20 controlled substance or drug only when the pharmacist
21 determines, in the exercise of her or his professional
22 judgment, that the order is valid and necessary for treatment.
23 In such a case, the pharmacist or his or her designee must
24 obtain the other information required under this paragraph,
25 and the pharmacist or pharmacist's designee must sign the log
26 to indicate that suitable identification was not available and
27 that the pharmacist's professional judgment was exercised
28 prior to dispensing the controlled substance or drug. The
29 Board of Pharmacy may adopt, by rule, procedures by which a
30 pharmacist must verify the validity of a prescription for a
31 Schedule II controlled substance; other drug designated by the

1 Secretary of Health under this section; or codeine,
2 hydrocodone, dihydrocodeine, ethylmorphine, or morphine as
3 scheduled in Schedule II and Schedule III, for circumstances
4 when it is otherwise impracticable for the pharmacist or
5 dispensing practitioner to obtain suitable identification from
6 the patient or the patient's agent. For purposes of this
7 section, identification is suitable only if it contains the
8 photograph, the printed name, and the signature of the
9 individual obtaining the Schedule II controlled substance or
10 drug of abuse under the prescription-monitoring system.

11 (i) Any pharmacist that dispenses a Schedule II
12 controlled substance or drug subject to the requirements of
13 this section when dispensed by mail shall be exempt from the
14 requirements to obtain suitable identification.

15 (j) All prescriptions issued for a Schedule II
16 controlled substance; codeine, hydrocodone, dihydrocodeine,
17 ethylmorphine, or morphine as scheduled in Schedule II and
18 Schedule III; or a drug of abuse under the
19 prescription-monitoring system which has been designated by
20 the Secretary of Health by rule, must include both a written
21 and numerical notation of quantity on the face of the
22 prescription.

23 (k) A pharmacist may not dispense more than a 30-day
24 supply of a controlled substance listed in Schedule III upon
25 an oral prescription.

26 (l) A pharmacist may not knowingly fill a prescription
27 that has been mutilated or forged for a Schedule II controlled
28 substance; codeine, hydrocodone, dihydrocodeine,
29 ethylmorphine, and morphine as scheduled in Schedule II and
30 Schedule III; or a drug of abuse under the

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1 prescription-monitoring system which has been designated by
2 the Secretary of Health by rule.

3 Section 40. Each local and regional board of education
4 shall adopt and implement policies prohibiting any school
5 personnel from recommending the use of psychotropic drugs for
6 any child. The provisions of this section shall not prohibit
7 school medical staff from recommending that a child be
8 evaluated by a medical practitioner.

9 Section 41. If any law that is amended by this act was
10 also amended by a law enacted at the 2002 Regular Session of
11 the Legislature, such laws shall be construed as if they had
12 been enacted at the same session of the Legislature, and full
13 effect should be given to each if that is possible.

14 Section 42. For Fiscal Year 2002-2003, the lump sum of
15 \$1,050,000 from nonrecurring General Revenue is appropriated
16 to the Department of Health for the purpose of implementing
17 the provisions of this act.

18 Section 43. This act shall take effect July 1, 2002.

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21 SENATE SUMMARY

22 Requires the Board of Medicine and the Board of
23 Osteopathic Medicine to adopt rules governing the
24 prescribing of controlled substances in
25 emergency-department settings. Requires health care
26 providers to complete an educational course on
27 prescribing and pharmacology. Authorizes the Department
28 of Health to suspend or restrict the license of a health
29 care professional for a prescribing violation. Requires
30 that the Department of Health and the Department of Law
31 Enforcement, the Statewide Prosecutor, and State
Attorneys share certain information regarding health care
practitioners. Requires that the Bureau of Pharmacy
Services of the Department of Health establish an
electronic monitoring system to monitor the prescribing
of certain controlled substances and drugs. (See bill for
details.)