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A bill to be entitled
 An act relating to health care practitioners; amending s.
 456.076, F.S., relating to treatment programs for impaired
 practitioners; providing certain rights of a licensee
 against whom a legally sufficient complaint involving
 impairment has been filed with the Department of Health;
 authorizing the licensee to review the complaint and
 evidence and to contest the complaint in writing or at a
 hearing in person; providing conditions on the limiting or
 suspension of the licensee from practice; requiring notice
 of such rights to licensees subject to investigations
 initiated by the department; providing an effective date.

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

Section 1. Section 456.076, Florida Statutes, is amended
 to read:

456.076 Treatment programs for impaired practitioners.--

(1) For professions that do not have impaired practitioner
 programs provided for in their practice acts, the department
 shall, by rule, designate approved impaired practitioner
 programs under this section. The department may adopt rules
 setting forth appropriate criteria for approval of treatment
 providers. The rules may specify the manner in which the
 consultant, retained as set forth in subsection (2), works with
 the department in intervention, requirements for evaluating and
 treating a professional, and requirements for the continued care
 and monitoring of a professional by the consultant by an
 approved treatment provider.



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30 (2) The department shall retain one or more impaired
 31 practitioner consultants. A consultant shall be a licensee under
 32 the jurisdiction of the Division of Medical Quality Assurance
 33 within the department, and at least one consultant must be a
 34 practitioner or recovered practitioner licensed under chapter
 35 458, chapter 459, or part I of chapter 464. The consultant shall
 36 assist the probable cause panel and department in carrying out
 37 the responsibilities of this section. This shall include working
 38 with department investigators to determine whether a
 39 practitioner is, in fact, impaired.

40 (3)(a) Whenever the department receives a ~~written or oral~~
 41 legally sufficient complaint alleging that a licensee under the
 42 jurisdiction of the Division of Medical Quality Assurance within
 43 the department is impaired as a result of the misuse or abuse of
 44 alcohol or drugs, or both, or due to a mental or physical
 45 condition which could affect the licensee's ability to practice
 46 with skill and safety, and no complaint against the licensee
 47 other than impairment exists, the reporting of such information
 48 shall not constitute grounds for discipline pursuant to s.
 49 456.072 or the corresponding grounds for discipline within the
 50 applicable practice act ~~if the probable cause panel of the~~
 51 ~~appropriate board, or the department when there is no board,~~
 52 ~~finds:~~

- 53 ~~1. The licensee has acknowledged the impairment problem.~~
- 54 ~~2. The licensee has voluntarily enrolled in an~~
 55 ~~appropriate, approved treatment program.~~
- 56 ~~3. The licensee has voluntarily withdrawn from practice or~~
 57 ~~limited the scope of practice as required by the consultant, in~~
 58 ~~each case, until such time as the panel, or the department when~~



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59 ~~there is no board, is satisfied the licensee has successfully~~
60 ~~completed an approved treatment program.~~

61 ~~4. The licensee has executed releases for medical records,~~
62 ~~authorizing the release of all records of evaluations,~~
63 ~~diagnoses, and treatment of the licensee, including records of~~
64 ~~treatment for emotional or mental conditions, to the consultant.~~
65 ~~The consultant shall make no copies or reports of records that~~
66 ~~do not regard the issue of the licensee's impairment and his or~~
67 ~~her participation in a treatment program.~~

68 (b) Whenever the department receives a legally sufficient
69 complaint alleging that a licensee under the jurisdiction of the
70 Division of Medical Quality Assurance within the department is
71 impaired as a result of the misuse or abuse of alcohol or drugs,
72 or both, or due to a mental or physical condition which could
73 affect the licensee's ability to practice with skill and safety,
74 the department shall promptly furnish to the licensee or the
75 licensee's attorney a copy of the complaint that resulted in the
76 initiation of the investigation and a copy of all evidence upon
77 which the complaint is based. If the secretary of the
78 department, or the secretary's designee, and the chair of the
79 respective board or the chair of its probable cause panel agree
80 in writing that such notification would be detrimental to the
81 investigation, the department may withhold notification pending
82 a finding of probable cause. Once probable cause has been found
83 to warrant further action by the board, or department if there
84 is no board, the department shall notify the licensee as set
85 forth in this paragraph.

86 (c)~~(b)~~ If, however, the department has not received a
87 legally sufficient complaint and the licensee agrees to withdraw
88 from practice until such time as the consultant determines the



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89 licensee has satisfactorily completed an approved treatment
90 program or evaluation, the probable cause panel, or the
91 department when there is no board, shall not become involved in
92 the licensee's case.

93 (d)~~(e)~~ Inquiries related to impairment treatment programs
94 designed to provide information to the licensee and others and
95 which do not indicate that the licensee presents a danger to the
96 public shall not constitute a complaint within the meaning of s.
97 456.073 and shall be exempt from the provisions of this
98 subsection.

99 (e)~~(d)~~ Whenever the department receives a legally
100 sufficient complaint alleging that a licensee is impaired as
101 described in paragraph (a) and no complaint against the licensee
102 other than impairment exists, the department shall forward all
103 information in its possession regarding the impaired licensee to
104 the consultant. For the purposes of this section, a suspension
105 from hospital staff privileges due to the impairment does not
106 constitute a complaint.

107 (f)~~(e)~~ The probable cause panel, or the department when
108 there is no board, shall work directly with the consultant, and
109 all information concerning a practitioner obtained from the
110 consultant by the panel, or the department when there is no
111 board, shall remain confidential and exempt from the provisions
112 of s. 119.07(1), subject to the provisions of subsections (5)
113 and (6).

114 (g)~~(f)~~ A finding of probable cause shall not be made when
115 ~~as long as the panel, or the department when there is no board,~~
116 ~~is satisfied, based upon information it receives from the~~
117 ~~consultant and the department, that the licensee is progressing~~
118 ~~satisfactorily in an approved impaired practitioner program and~~



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119 no other complaint against the licensee exists and the licensee
120 has:

121 1. Acknowledged the impairment problem.

122 2. Voluntarily enrolled in an appropriate, approved
123 treatment program.

124 3. Voluntarily withdrawn from practice or limited the
125 scope of practice as required by the consultant, in each case,
126 until such time as the panel, or the department when there is no
127 board, is satisfied the licensee has successfully completed an
128 approved treatment program.

129 4. Executed releases for medical records, authorizing the
130 release of all records of evaluations, diagnoses, and treatment
131 of the licensee, including records of treatment for emotional or
132 mental conditions, to the consultant. The consultant shall make
133 no copies or reports of records that do not regard the issue of
134 the licensee's impairment and his or her participation in a
135 treatment program.

136 (4) In any disciplinary action for a violation other than
137 impairment in which a licensee establishes the violation for
138 which the licensee is being prosecuted was due to or connected
139 with impairment and further establishes the licensee is
140 satisfactorily progressing through or has successfully completed
141 an approved treatment program pursuant to this section, such
142 information may be considered by the board, or the department
143 when there is no board, as a mitigating factor in determining
144 the appropriate penalty. This subsection does not limit
145 mitigating factors the board may consider.

146 (5)(a) An approved treatment provider shall, upon request,
147 disclose to the consultant all information in its possession
148 regarding the issue of a licensee's impairment and participation



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149 in the treatment program. All information obtained by the
150 consultant and department pursuant to this section is
151 confidential and exempt from the provisions of s. 119.07(1),
152 subject to the provisions of this subsection and subsection (6).
153 Failure to provide such information to the consultant is grounds
154 for withdrawal of approval of such program or provider.

155 (b) If in the opinion of the consultant, after
156 consultation with the treatment provider, an impaired licensee
157 has not progressed satisfactorily in a treatment program, all
158 information regarding the issue of a licensee's impairment and
159 participation in a treatment program in the consultant's
160 possession shall be disclosed to the department. Such disclosure
161 shall constitute a complaint pursuant to the general provisions
162 of s. 456.073. Whenever the consultant concludes that impairment
163 affects a licensee's practice and constitutes an immediate,
164 serious danger to the public health, safety, or welfare, that
165 conclusion shall be communicated to the secretary of the
166 department.

167 (6) A consultant, licensee, or approved treatment provider
168 who makes a disclosure pursuant to this section is not subject
169 to civil liability for such disclosure or its consequences. The
170 provisions of s. 766.101 apply to any officer, employee, or
171 agent of the department or the board and to any officer,
172 employee, or agent of any entity with which the department has
173 contracted pursuant to this section.

174 (7) Neither the board, or department when there is no
175 board, nor the consultant, retained as set forth in subsection
176 (2), may limit a licensee's practice or suspend a licensee from
177 practice while the consultant, board, or department investigates
178 the complaint, unless one of the following conditions is met:



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179 (a) The licensee waives his or her right under subsection
 180 (8) to contest the complaint;

181 (b) A probable cause panel has issued a summary emergency
 182 order under subsection (9); or

183 (c) A probable cause panel, after conducting a hearing,
 184 has determined that sufficient evidence exists that the licensee
 185 presents a clear and present danger to society if he or she
 186 continues to practice.

187 (8)(a) A licensee against whom a complaint is filed may
 188 elect to contest the complaint by:

189 1. Submitting a written response to the information
 190 contained in the complaint within 20 days after service to the
 191 licensee of the complaint; or

192 2. Requesting a hearing within 20 days after service to
 193 the licensee of the complaint at which he or she may present
 194 evidence or testimony and cross-examine any person offering
 195 testimony or sworn statements as part of the investigation.

196 (b) The licensee's written response and any evidence
 197 presented at a hearing shall be considered by the probable cause
 198 panel.

199 (9)(a) The right to contest a complaint does not prohibit
 200 the issuance of a summary emergency order if necessary to
 201 protect the public. Such emergency order must be delivered in
 202 writing to the licensee prior to taking effect. For the purposes
 203 of this paragraph, a facsimile copy of the order shall be
 204 sufficient. The order shall be accompanied by a copy of all
 205 evidence upon which it is based.

206 (b) Upon receipt of the order, the licensee shall
 207 immediately cease and desist practicing under his or her
 208 license.



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209 (c) The licensee shall be entitled to an emergency hearing
210 in front of the probable cause panel, within 72 hours after
211 receipt of the order, to present rebuttal evidence and cross-
212 examine witnesses. A written decision by the panel shall be
213 issued within 24 hours after the emergency hearing ends stating
214 findings of whether the licensee poses a clear and present
215 danger to the safety of the public if not otherwise suspended
216 from practice during the pending investigation as set forth in
217 this section.

218 (10)(a) The licensee against whom a complaint was made
219 shall, prior to a final judgment of impairment by the
220 consultant, board, or department, have the following rights:

221 1. The right to review a copy of all accusations against
222 him or her. The department may withhold the name of the
223 complainant when applicable.

224 2. The right to review all evidence obtained during the
225 investigation.

226 3. The right to rebut the accusations in a hearing or the
227 right to waive his or her right to a hearing and instead submit
228 a written rebuttal.

229 4. The right to depose under oath any person offering
230 testimony or sworn statements as part of the investigation.

231 5. The right to record, via audiorecorder, videorecorder,
232 or a court reporter, any investigative meeting, interview,
233 hearing, or counseling session in which the licensee
234 participates.

235 6. The right to be represented by competent counsel during
236 all portions of the investigation.

237 (b) When the department initiates an investigation
238 concerning impairment of a licensee, the department shall



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239 provide the licensee in writing a detailed summary of all of his
240 or her rights provided by law.

241 Section 2. This act shall take effect July 1, 2003.