

By Senator Saunders

37-1688-03

See HB 1477

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

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

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

21 456.076 Treatment programs for impaired
22 practitioners.--

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

1 the continued care and monitoring of a professional by the
2 consultant by an approved treatment provider.

3 (2) The department shall retain one or more impaired
4 practitioner consultants. A consultant shall be a licensee
5 under the jurisdiction of the Division of Medical Quality
6 Assurance within the department, and at least one consultant
7 must be a practitioner or recovered practitioner licensed
8 under chapter 458, chapter 459, or part I of chapter 464. The
9 consultant shall assist the probable cause panel and
10 department in carrying out the responsibilities of this
11 section. This shall include working with department
12 investigators to determine whether a practitioner is, in fact,
13 impaired.

14 (3)(a) Whenever the department receives a ~~written or~~
15 ~~oral~~ legally sufficient complaint alleging that a licensee
16 under the jurisdiction of the Division of Medical Quality
17 Assurance within the department is impaired as a result of the
18 misuse or abuse of alcohol or drugs, or both, or due to a
19 mental or physical condition which could affect the licensee's
20 ability to practice with skill and safety, and no complaint
21 against the licensee other than impairment exists, the
22 reporting of such information shall not constitute grounds for
23 discipline pursuant to s. 456.072 or the corresponding grounds
24 for discipline within the applicable practice act ~~if the~~
25 ~~probable cause panel of the appropriate board, or the~~
26 ~~department when there is no board, finds:~~

27 1. ~~The licensee has acknowledged the impairment~~
28 ~~problem.~~

29 2. ~~The licensee has voluntarily enrolled in an~~
30 ~~appropriate, approved treatment program.~~

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1 ~~3. The licensee has voluntarily withdrawn from~~
2 ~~practice or limited the scope of practice as required by the~~
3 ~~consultant, in each case, until such time as the panel, or the~~
4 ~~department when there is no board, is satisfied the licensee~~
5 ~~has successfully completed an approved treatment program.~~

6 ~~4. The licensee has executed releases for medical~~
7 ~~records, authorizing the release of all records of~~
8 ~~evaluations, diagnoses, and treatment of the licensee,~~
9 ~~including records of treatment for emotional or mental~~
10 ~~conditions, to the consultant. The consultant shall make no~~
11 ~~copies or reports of records that do not regard the issue of~~
12 ~~the licensee's impairment and his or her participation in a~~
13 ~~treatment program.~~

14 (b) Whenever the department receives a legally
15 sufficient complaint alleging that a licensee under the
16 jurisdiction of the Division of Medical Quality Assurance
17 within the department is impaired as a result of the misuse or
18 abuse of alcohol or drugs, or both, or due to a mental or
19 physical condition which could affect the licensee's ability
20 to practice with skill and safety, the department shall
21 promptly furnish to the licensee or the licensee's attorney a
22 copy of the complaint that resulted in the initiation of the
23 investigation and a copy of all evidence upon which the
24 complaint is based. If the secretary of the department, or the
25 secretary's designee, and the chair of the respective board or
26 the chair of its probable cause panel agree in writing that
27 such notification would be detrimental to the investigation,
28 the department may withhold notification pending a finding of
29 probable cause. Once probable cause has been found to warrant
30 further action by the board, or department if there is no

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1 board, the department shall notify the licensee as set forth
2 in this paragraph.

3 (c)~~(b)~~ If, however, the department has not received a
4 legally sufficient complaint and the licensee agrees to
5 withdraw from practice until such time as the consultant
6 determines the licensee has satisfactorily completed an
7 approved treatment program or evaluation, the probable cause
8 panel, or the department when there is no board, shall not
9 become involved in the licensee's case.

10 (d)~~(e)~~ Inquiries related to impairment treatment
11 programs designed to provide information to the licensee and
12 others and which do not indicate that the licensee presents a
13 danger to the public shall not constitute a complaint within
14 the meaning of s. 456.073 and shall be exempt from the
15 provisions of this subsection.

16 (e)~~(d)~~ Whenever the department receives a legally
17 sufficient complaint alleging that a licensee is impaired as
18 described in paragraph (a) and no complaint against the
19 licensee other than impairment exists, the department shall
20 forward all information in its possession regarding the
21 impaired licensee to the consultant. For the purposes of this
22 section, a suspension from hospital staff privileges due to
23 the impairment does not constitute a complaint.

24 (f)~~(e)~~ The probable cause panel, or the department
25 when there is no board, shall work directly with the
26 consultant, and all information concerning a practitioner
27 obtained from the consultant by the panel, or the department
28 when there is no board, shall remain confidential and exempt
29 from the provisions of s. 119.07(1), subject to the provisions
30 of subsections (5) and (6).

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1 ~~(g)(f)~~ A finding of probable cause shall not be made
2 ~~when as long as the panel, or the department when there is no~~
3 ~~board, is satisfied, based upon information it receives from~~
4 ~~the consultant and the department, that the licensee is~~
5 ~~progressing satisfactorily in an approved impaired~~
6 ~~practitioner program and no other complaint against the~~
7 ~~licensee exists and the licensee has:~~

8 1. Acknowledged the impairment problem.

9 2. Voluntarily enrolled in an appropriate, approved
10 treatment program.

11 3. Voluntarily withdrawn from practice or limited the
12 scope of practice as required by the consultant, in each case,
13 until such time as the panel, or the department when there is
14 no board, is satisfied the licensee has successfully completed
15 an approved treatment program.

16 4. Executed releases for medical records, authorizing
17 the release of all records of evaluations, diagnoses, and
18 treatment of the licensee, including records of treatment for
19 emotional or mental conditions, to the consultant. The
20 consultant shall make no copies or reports of records that do
21 not regard the issue of the licensee's impairment and his or
22 her participation in a treatment program.

23 (4) In any disciplinary action for a violation other
24 than impairment in which a licensee establishes the violation
25 for which the licensee is being prosecuted was due to or
26 connected with impairment and further establishes the licensee
27 is satisfactorily progressing through or has successfully
28 completed an approved treatment program pursuant to this
29 section, such information may be considered by the board, or
30 the department when there is no board, as a mitigating factor
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1 in determining the appropriate penalty. This subsection does
2 not limit mitigating factors the board may consider.

3 (5)(a) An approved treatment provider shall, upon
4 request, disclose to the consultant all information in its
5 possession regarding the issue of a licensee's impairment and
6 participation in the treatment program. All information
7 obtained by the consultant and department pursuant to this
8 section is confidential and exempt from the provisions of s.
9 119.07(1), subject to the provisions of this subsection and
10 subsection (6). Failure to provide such information to the
11 consultant is grounds for withdrawal of approval of such
12 program or provider.

13 (b) If in the opinion of the consultant, after
14 consultation with the treatment provider, an impaired licensee
15 has not progressed satisfactorily in a treatment program, all
16 information regarding the issue of a licensee's impairment
17 and participation in a treatment program in the consultant's
18 possession shall be disclosed to the department. Such
19 disclosure shall constitute a complaint pursuant to the
20 general provisions of s. 456.073. Whenever the consultant
21 concludes that impairment affects a licensee's practice and
22 constitutes an immediate, serious danger to the public health,
23 safety, or welfare, that conclusion shall be communicated to
24 the secretary of the department.

25 (6) A consultant, licensee, or approved treatment
26 provider who makes a disclosure pursuant to this section is
27 not subject to civil liability for such disclosure or its
28 consequences. The provisions of s. 766.101 apply to any
29 officer, employee, or agent of the department or the board and
30 to any officer, employee, or agent of any entity with which
31 the department has contracted pursuant to this section.

1 (7) Neither the board, or department when there is no
2 board, nor the consultant, retained as set forth in subsection
3 (2), may limit a licensee's practice or suspend a licensee
4 from practice while the consultant, board, or department
5 investigates the complaint, unless one of the following
6 conditions is met:
7 (a) The licensee waives his or her right under
8 subsection (8) to contest the complaint;
9 (b) A probable cause panel has issued a summary
10 emergency order under subsection (9); or
11 (c) A probable cause panel, after conducting a
12 hearing, has determined that sufficient evidence exists that
13 the licensee presents a clear and present danger to society if
14 he or she continues to practice.
15 (8)(a) A licensee against whom a complaint is filed
16 may elect to contest the complaint by:
17 1. Submitting a written response to the information
18 contained in the complaint within 20 days after service to the
19 licensee of the complaint; or
20 2. Requesting a hearing within 20 days after service
21 to the licensee of the complaint at which he or she may
22 present evidence or testimony and cross-examine any person
23 offering testimony or sworn statements as part of the
24 investigation.
25 (b) The licensee's written response and any evidence
26 presented at a hearing shall be considered by the probable
27 cause panel.
28 (9)(a) The right to contest a complaint does not
29 prohibit the issuance of a summary emergency order if
30 necessary to protect the public. Such emergency order must be
31 delivered in writing to the licensee prior to taking effect.

1 For the purposes of this paragraph, a facsimile copy of the
2 order shall be sufficient. The order shall be accompanied by a
3 copy of all evidence upon which it is based.

4 (b) Upon receipt of the order, the licensee shall
5 immediately cease and desist practicing under his or her
6 license.

7 (c) The licensee shall be entitled to an emergency
8 hearing in front of the probable cause panel, within 72 hours
9 after receipt of the order, to present rebuttal evidence and
10 cross-examine witnesses. A written decision by the panel shall
11 be issued within 24 hours after the emergency hearing ends
12 stating findings of whether the licensee poses a clear and
13 present danger to the safety of the public if not otherwise
14 suspended from practice during the pending investigation as
15 set forth in this section.

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

19 1. The right to review a copy of all accusations
20 against him or her. The department may withhold the name of
21 the complainant when applicable.

22 2. The right to review all evidence obtained during
23 the investigation.

24 3. The right to rebut the accusations in a hearing or
25 the right to waive his or her right to a hearing and instead
26 submit a written rebuttal.

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

29 5. The right to record, via audiorecorder,
30 videorecorder, or a court reporter, any investigative meeting,
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1 interview, hearing, or counseling session in which the
2 licensee participates.

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

5 (b) When the department initiates an investigation
6 concerning impairment of a licensee, the department shall
7 provide the licensee in writing a detailed summary of all of
8 his or her rights provided by law.

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

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