



587390

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/14/2013	.	
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The Committee on Health Policy (Bean) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

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



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14 consultant, retained as set forth in subsection (2), works with  
15 the department in intervention, requirements for evaluating and  
16 treating a professional, requirements for continued care of  
17 impaired professionals by approved treatment providers,  
18 continued monitoring by the consultant of the care provided by  
19 approved treatment providers regarding the professionals under  
20 their care, and requirements related to the consultant's  
21 expulsion of professionals from the program.

22 (2) (a) The department shall retain one or more impaired  
23 practitioner consultants who are each licensees. ~~The consultant~~  
24 ~~shall be a licensee~~ under the jurisdiction of the Division of  
25 Medical Quality Assurance within the department and who must be:

26 1. A practitioner or recovered practitioner licensed under  
27 chapter 458, chapter 459, or part I of chapter 464; ~~or~~

28 2. An entity that employs: ~~employing~~

29 a. A medical director who must be a practitioner or  
30 recovered practitioner licensed under chapter 458 or ~~or~~ chapter  
31 459; ~~or~~

32 b. An executive director who must be a registered nurse or  
33 a recovered registered nurse licensed under part I of chapter  
34 464.

35 (b) An entity retained as an impaired practitioner  
36 consultant under this section which employs a medical director  
37 or an executive director is not required to be licensed as a  
38 substance abuse provider or mental health treatment provider  
39 under chapter 394, chapter 395, or chapter 397 for purposes of  
40 providing services under this program.

41 (c)1. The consultant shall assist the probable cause panel  
42 and the department in carrying out the responsibilities of this



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43 section. This includes ~~shall include~~ working with department  
44 investigators to determine whether a practitioner is, in fact,  
45 impaired.

46 2. The consultant may contract with a school or program to  
47 provide for services to a student be provided, for appropriate  
48 compensation, if requested by the school, for students enrolled  
49 for the purpose of preparing in schools for licensure as a  
50 health care practitioner as defined in this chapter or as a  
51 veterinarian under chapter 474 if the student is allegedly  
52 allopathic physicians or physician assistants under chapter 458,  
53 osteopathic physicians or physician assistants under chapter  
54 459, nurses under chapter 464, or pharmacists under chapter 465  
55 who are alleged to be impaired as a result of the misuse or  
56 abuse of alcohol or drugs, or both, or due to a mental or  
57 physical condition. The department is not responsible under any  
58 circumstances for paying for the costs of care provided by  
59 approved treatment providers or a consultant, and the department  
60 is not responsible for paying the costs of consultants' services  
61 provided for students.

62 (d) A medical school accredited by the Liaison Committee on  
63 Medical Education or of the Commission on Osteopathic College  
64 Accreditation, or another ~~other~~ school providing for the  
65 education of students enrolled in preparation for licensure as a  
66 health care practitioner as defined in this chapter or a  
67 veterinarian under chapter 474 ~~allopathic physicians under~~  
68 ~~chapter 458 or osteopathic physicians under chapter 459,~~ which  
69 is governed by accreditation standards requiring notice and the  
70 provision of due process procedures to students, is not liable  
71 in any civil action for referring a student to the consultant



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72 retained by the department or for disciplinary actions that  
73 adversely affect the status of a student when the disciplinary  
74 actions are instituted in reasonable reliance on the  
75 recommendations, reports, or conclusions provided by such  
76 consultant, if the school, in referring the student or taking  
77 disciplinary action, adheres to the due process procedures  
78 adopted by the applicable accreditation entities and if the  
79 school committed no intentional fraud in carrying out the  
80 provisions of this section.

81 (3) Each board and profession within the Division of  
82 Medical Quality Assurance may delegate to its chair or other  
83 designee its authority to determine, before certifying or  
84 declining to certify an application for licensure to the  
85 department, that an applicant for licensure under its  
86 jurisdiction may be impaired as a result of the misuse or abuse  
87 of alcohol or drugs, or both, or due to a mental or physical  
88 condition that could affect the applicant's ability to practice  
89 with skill and safety. Upon such determination, the chair or  
90 other designee may refer the applicant to the consultant for an  
91 evaluation before the board certifies or declines to certify his  
92 or her application to the department. If the applicant agrees to  
93 be evaluated by the consultant, the department's deadline for  
94 approving or denying the application pursuant to s. 120.60(1) is  
95 tolled until the evaluation is completed and the result of the  
96 evaluation and recommendation by the consultant is communicated  
97 to the board by the consultant. If the applicant declines to be  
98 evaluated by the consultant, the board shall certify or decline  
99 to certify the applicant's application to the department  
100 notwithstanding the lack of an evaluation and recommendation by



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101 the consultant.

102 (4)~~(3)~~(a) Whenever the department receives a written or  
103 oral legally sufficient complaint alleging that a licensee under  
104 the jurisdiction of the Division of Medical Quality Assurance  
105 within the department is impaired as a result of the misuse or  
106 abuse of alcohol or drugs, or both, or due to a mental or  
107 physical condition which could affect the licensee's ability to  
108 practice with skill and safety, and no complaint against the  
109 licensee other than impairment exists, the reporting of such  
110 information shall not constitute grounds for discipline pursuant  
111 to s. 456.072 or the corresponding grounds for discipline within  
112 the applicable practice act if the probable cause panel of the  
113 appropriate board, or the department when there is no board,  
114 finds:

115 1. The licensee has acknowledged the impairment problem.

116 2. The licensee has voluntarily enrolled in an appropriate,  
117 approved treatment program.

118 3. The licensee has voluntarily withdrawn from practice or  
119 limited the scope of practice as required by the consultant, in  
120 each case, until such time as the panel, or the department when  
121 there is no board, is satisfied the licensee has successfully  
122 completed an approved treatment program.

123 4. The licensee has executed releases for medical records,  
124 authorizing the release of all records of evaluations,  
125 diagnoses, and treatment of the licensee, including records of  
126 treatment for emotional or mental conditions, to the consultant.  
127 The consultant shall make no copies or reports of records that  
128 do not regard the issue of the licensee's impairment and his or  
129 her participation in a treatment program.



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130 (b) If, however, the department has not received a legally  
131 sufficient complaint and the licensee agrees to withdraw from  
132 practice until such time as the consultant determines the  
133 licensee has satisfactorily completed an approved treatment  
134 program or evaluation, the probable cause panel, or the  
135 department when there is no board, shall not become involved in  
136 the licensee's case.

137 (c) Inquiries related to impairment treatment programs  
138 designed to provide information to the licensee and others and  
139 which do not indicate that the licensee presents a danger to the  
140 public shall not constitute a complaint within the meaning of s.  
141 456.073 and shall be exempt from the provisions of this  
142 subsection.

143 (d) Whenever the department receives a legally sufficient  
144 complaint alleging that a licensee is impaired as described in  
145 paragraph (a) and no complaint against the licensee other than  
146 impairment exists, the department shall forward all information  
147 in its possession regarding the impaired licensee to the  
148 consultant. For the purposes of this section, a suspension from  
149 hospital staff privileges due to the impairment does not  
150 constitute a complaint.

151 (e) The probable cause panel, or the department when there  
152 is no board, shall work directly with the consultant, and all  
153 information concerning a practitioner obtained from the  
154 consultant by the panel, or the department when there is no  
155 board, shall remain confidential and exempt from the provisions  
156 of s. 119.07(1), subject to the provisions of subsections ~~(5)~~  
157 ~~and~~ (6) and (7).

158 (f) A finding of probable cause shall not be made as long



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159 as the panel, or the department when there is no board, is  
160 satisfied, based upon information it receives from the  
161 consultant and the department, that the licensee is progressing  
162 satisfactorily in an approved impaired practitioner program and  
163 no other complaint against the licensee exists.

164 (5)~~(4)~~ In any disciplinary action for a violation other  
165 than impairment in which a licensee establishes the violation  
166 for which the licensee is being prosecuted was due to or  
167 connected with impairment and further establishes the licensee  
168 is satisfactorily progressing through or has successfully  
169 completed an approved treatment program pursuant to this  
170 section, such information may be considered by the board, or the  
171 department when there is no board, as a mitigating factor in  
172 determining the appropriate penalty. This subsection does not  
173 limit mitigating factors the board may consider.

174 (6)~~(5)~~(a) An approved treatment provider shall, upon  
175 request, disclose to the consultant all information in its  
176 possession regarding the issue of a licensee's impairment and  
177 participation in the treatment program. All information obtained  
178 by the consultant and department pursuant to this section is  
179 confidential and exempt from the provisions of s. 119.07(1),  
180 subject to the provisions of this subsection and subsection  
181 (7)~~(6)~~. Failure to provide such information to the consultant is  
182 grounds for withdrawal of approval of such program or provider.

183 (b) If in the opinion of the consultant, after consultation  
184 with the treatment provider, an impaired licensee has not  
185 progressed satisfactorily in a treatment program, all  
186 information regarding the issue of a licensee's impairment and  
187 participation in a treatment program in the consultant's



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188 possession shall be disclosed to the department. Such disclosure  
189 shall constitute a complaint pursuant to the general provisions  
190 of s. 456.073. Whenever the consultant concludes that impairment  
191 affects a licensee's practice and constitutes an immediate,  
192 serious danger to the public health, safety, or welfare, that  
193 conclusion shall be communicated to the State Surgeon General.

194 ~~(7)~~<sup>(6)</sup> A consultant, licensee, or approved treatment  
195 provider who makes a disclosure pursuant to this section is not  
196 subject to civil liability for such disclosure or its  
197 consequences. The provisions of s. 766.101 apply to any officer,  
198 employee, or agent of the department or the board and to any  
199 officer, employee, or agent of any entity with which the  
200 department has contracted pursuant to this section.

201 ~~(8)~~<sup>(7)</sup>(a) A consultant retained pursuant to subsection (2),  
202 a consultant's officers and employees, and those acting at the  
203 direction of the consultant for the limited purpose of an  
204 emergency intervention on behalf of a licensee or student as  
205 described in subsection (2) when the consultant is unable to  
206 perform such intervention shall be considered agents of the  
207 department for purposes of s. 768.28 while acting within the  
208 scope of the consultant's duties under the contract with the  
209 department if the contract complies with the requirements of  
210 this section. The contract must require that:

211 1. The consultant indemnify the state for any liabilities  
212 incurred up to the limits set out in chapter 768.

213 2. The consultant establish a quality assurance program to  
214 monitor services delivered under the contract.

215 3. The consultant's quality assurance program, treatment,  
216 and monitoring records be evaluated quarterly.





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217 4. The consultant's quality assurance program be subject to  
218 review and approval by the department.

219 5. The consultant operate under policies and procedures  
220 approved by the department.

221 6. The consultant provide to the department for approval a  
222 policy and procedure manual that comports with all statutes,  
223 rules, and contract provisions approved by the department.

224 7. The department be entitled to review the records  
225 relating to the consultant's performance under the contract for  
226 the purpose of management audits, financial audits, or program  
227 evaluation.

228 8. All performance measures and standards be subject to  
229 verification and approval by the department.

230 9. The department be entitled to terminate the contract  
231 with the consultant for noncompliance with the contract.

232 (b) In accordance with s. 284.385, the Department of  
233 Financial Services shall defend any claim, suit, action, or  
234 proceeding against the consultant, the consultant's officers or  
235 employees, or those acting at the direction of the consultant  
236 for the limited purpose of an emergency intervention on behalf  
237 of a licensee or student as described in subsection (2) when the  
238 consultant is unable to perform such intervention which is  
239 brought as a result of any act or omission by any of the  
240 consultant's officers and employees and those acting under the  
241 direction of the consultant for the limited purpose of an  
242 emergency intervention on behalf of a licensee or student as  
243 described in subsection (2) when the consultant is unable to  
244 perform such intervention when such act or omission arises out  
245 of and in the scope of the consultant's duties under its



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246 contract with the department.

247 (c) If the consultant retained pursuant to subsection (2)  
248 is retained by any other state agency, and if the contract  
249 between such state agency and the consultant complies with the  
250 requirements of this section, the consultant, the consultant's  
251 officers and employees, and those acting under the direction of  
252 the consultant for the limited purpose of an emergency  
253 intervention on behalf of a licensee or student as described in  
254 subsection (2) when the consultant is unable to perform such  
255 intervention shall be considered agents of the state for the  
256 purposes of this section while acting within the scope of and  
257 pursuant to guidelines established in the contract between such  
258 state agency and the consultant.

259 (9) An impaired practitioner consultant is the official  
260 custodian of records relating to the referral of an impaired  
261 licensee or applicant to that consultant and any other  
262 interaction between the licensee or applicant and the  
263 consultant. The consultant may disclose to the impaired licensee  
264 or applicant or his or her designee any information that is  
265 disclosed to or obtained by the consultant or that is  
266 confidential under paragraph (6) (a), but only to the extent that  
267 it is necessary to do so to carry out the consultant's duties  
268 under this section. The department, and any other entity that  
269 enters into a contract with the consultant to receive the  
270 services of the consultant, has direct administrative control  
271 over the consultant to the extent necessary to receive  
272 disclosures from the consultant as allowed by federal law. If a  
273 disciplinary proceeding is pending, an impaired licensee may  
274 obtain such information from the department under s. 456.073.



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275 Section 2. Paragraph (e) of subsection (1) of section  
276 458.331, Florida Statutes, is amended to read:

277 458.331 Grounds for disciplinary action; action by the  
278 board and department.—

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

281 (e) Failing to report to the department any person who the  
282 licensee knows is in violation of this chapter or of the rules  
283 of the department or the board. A treatment provider approved  
284 pursuant to s. 456.076 shall provide the department or  
285 consultant with information in accordance with the requirements  
286 of s. 456.076(4), (5), (6), (7), and (9) ~~s. 456.076(3), (4),~~  
287 ~~(5), and (6)~~.

288 Section 3. Paragraph (e) of subsection (1) of section  
289 459.015, Florida Statutes, is amended to read:

290 459.015 Grounds for disciplinary action; action by the  
291 board and department.—

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

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

302 Section 4. Section 468.315, Florida Statutes, is created to  
303 read:



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304           468.315 Treatment program for impaired radiological  
305 personnel.—Radiological personnel who are subject to  
306 certification under this part are governed by s. 456.076 as if  
307 they were under the jurisdiction of the Division of Medical  
308 Quality Assurance.

309 Section 5. This act shall take effect July 1, 2013.

310  
311 ===== T I T L E   A M E N D M E N T =====

312 And the title is amended as follows:

313           Delete everything before the enacting clause  
314 and insert:

315 A bill to be entitled

316           An act relating to treatment programs for impaired  
317           licensees and applicants; amending s. 456.076, F.S.;  
318           exempting an entity retained by the Department of  
319           Health as an impaired practitioner consultant from  
320           certain licensure requirements; authorizing impaired  
321           practitioner consultants to contract with schools or  
322           programs to provide services to impaired students who  
323           are enrolled for the purpose of preparing for  
324           licensure as a specified health care practitioner or  
325           as a veterinarian; limiting the liability of those  
326           schools or programs when they refer a student to an  
327           impaired practitioner consultant; authorizing each  
328           board and profession within the division to delegate  
329           to its chair or other designee the authority to  
330           determine that an applicant for licensure under its  
331           jurisdiction may be impaired before certifying or  
332           declining to certify an application for licensure;



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333 authorizing the chair or other designee to refer the  
334 applicant to the consultant for an evaluation before  
335 the board certifies or declines to certify the  
336 applicant's application to the department; tolling the  
337 department's deadline for approving or denying the  
338 application until the evaluation is completed and the  
339 result of the evaluation and recommendation by the  
340 consultant is communicated to the board by the  
341 consultant if the applicant agrees to be evaluated by  
342 the consultant; requiring the board to certify or  
343 decline to certify the applicant's application to the  
344 department notwithstanding the lack of an evaluation  
345 and recommendation by the consultant if the applicant  
346 declines to be evaluated by the consultant; providing  
347 that the impaired practitioner consultant is the  
348 official custodian of records relating to the referral  
349 of the licensee or applicant to the consultant and any  
350 other interaction between them; clarifying the  
351 circumstances under which an impaired practitioner  
352 consultant may disclose certain information concerning  
353 an impaired licensee or applicant; authorizing the  
354 Department of Health and others that contract with an  
355 impaired practitioner consultant to have  
356 administrative control over the consultant to the  
357 extent necessary to receive disclosures allowed under  
358 federal law; authorizing an impaired licensee to  
359 obtain confidential information from the department  
360 regarding a pending disciplinary proceeding; amending  
361 ss. 458.331 and 459.015, F.S.; conforming cross-



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362 references; creating s. 468.315, F.S.; providing that  
363 radiological personnel are subject to a treatment  
364 program for impaired licensees; providing an effective  
365 date.  
366