

By Senator Thrasher

6-00153A-13

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1 A bill to be entitled
2 An act relating to treatment programs for impaired
3 licensees and applicants; amending s. 20.165, F.S.;
4 authorizing the Department of Business and
5 Professional Regulation to require a person licensed
6 by or applying for a license from the department to
7 comply with provisions governing treatment programs
8 for impaired practitioners as if the licensee or
9 applicant were under the jurisdiction of the Division
10 of Medical Quality Assurance within the Department of
11 Health; authorizing the Department of Business and
12 Professional Regulation to exercise the powers granted
13 to the Department of Health with respect to such
14 programs; amending s. 456.076, F.S.; exempting an
15 entity retained by the Department of Health as an
16 impaired practitioner consultant from certain
17 licensure requirements; authorizing impaired
18 practitioner consultants to contract with schools or
19 programs to provide services to impaired students who
20 are enrolled for the purpose of preparing for
21 licensure as a specified health care practitioner or
22 as a veterinarian; limiting the liability of those
23 schools or programs when they refer a student to an
24 impaired practitioner consultant; providing that if
25 the Department of Health receives a complaint alleging
26 that an applicant is impaired, such information does
27 not constitute grounds for discipline under certain
28 circumstances; providing that if the department does
29 not receive a legally sufficient complaint and the

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30 applicant agrees to withdraw his or her application
31 until the applicant has completed a treatment program,
32 the probable cause panel or the department is
33 prohibited from becoming involved in the applicant's
34 case; providing that certain inquiries against an
35 applicant do not constitute a complaint; providing
36 procedures for when the department receives a legally
37 sufficient complaint alleging that an applicant is
38 impaired; providing that the impaired practitioner
39 consultant is the official custodian of records
40 relating to the referral of the licensee or applicant
41 to the consultant and any other interaction between
42 them; clarifying the circumstances under which an
43 impaired practitioner consultant may disclose certain
44 information concerning an impaired licensee or
45 applicant; authorizing the Department of Health and
46 others that contract with an impaired practitioner
47 consultant to have administrative control over the
48 consultant to the extent necessary to receive
49 disclosures allowed under federal law; authorizing an
50 impaired licensee or applicant to obtain confidential
51 information from the department regarding a pending
52 disciplinary proceeding; amending ss. 458.331 and
53 459.015, F.S.; conforming cross-references; creating
54 s. 468.315, F.S.; providing that radiological
55 personnel are subject to a treatment program for
56 impaired licensees; providing an effective date.

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

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Section 1. Subsection (10) is added to section 20.165, Florida Statutes, to read:

20.165 Department of Business and Professional Regulation.— There is created a Department of Business and Professional Regulation.

(10) The Department of Business and Professional Regulation may require that a person licensed by or applying for a license from the department comply with s. 456.076 as if the licensee or applicant were under the jurisdiction of the Division of Medical Quality Assurance. The Department of Business and Professional Regulation, and the board from which the license was granted or is sought, may exercise any of the powers granted to the Department of Health and its boards by s. 456.076.

Section 2. Subsections (2) and (3) of section 456.076, Florida Statutes, are amended, and subsection (8) is added to that section, to read:

456.076 Treatment programs for impaired practitioners.—

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

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

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

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

b. An executive director who must be a registered nurse or

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88 a recovered registered nurse licensed under part I of chapter
89 464.

90 (b) An entity retained as an impaired practitioner
91 consultant under this section which employs a medical director
92 or an executive director is not required to be licensed as a
93 substance abuse provider or mental health treatment provider
94 under chapter 394, chapter 395, or chapter 397.

95 (c)1. The consultant shall assist the probable cause panel
96 and the department in carrying out the responsibilities of this
97 section. This includes ~~shall include~~ working with department
98 investigators to determine whether a practitioner is, in fact,
99 impaired.

100 2. The consultant may contract with a school or program to
101 provide for services to a student ~~be provided, for appropriate~~
102 ~~compensation, if requested by the school, for students enrolled~~
103 for the purpose of preparing in schools for licensure as a
104 health care practitioner under chapter 456 or as a veterinarian
105 under chapter 474 if the student is allegedly allopathic
106 ~~physicians or physician assistants under chapter 458,~~
107 ~~osteopathic physicians or physician assistants under chapter~~
108 ~~459, nurses under chapter 464, or pharmacists under chapter 465~~
109 ~~who are alleged to be~~ impaired as a result of the misuse or
110 abuse of alcohol or drugs, or both, or due to a mental or
111 physical condition. The department is not responsible ~~under any~~
112 ~~circumstances~~ for paying for the ~~costs of~~ care provided by
113 approved treatment providers or a consultant, ~~and the department~~
114 ~~is not responsible for paying the costs of consultants' services~~
115 ~~provided for students.~~

116 (d) A medical school accredited by the Liaison Committee on

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117 Medical Education or ~~of~~ the Commission on Osteopathic College
118 Accreditation, or another ~~other~~ school providing for the
119 education of students enrolled in preparation for licensure as a
120 health care practitioner under chapter 456 or a veterinarian
121 under chapter 474 ~~allopathic physicians under chapter 458 or~~
122 ~~osteopathic physicians under chapter 459~~, which is governed by
123 accreditation standards requiring notice and the provision of
124 due process procedures to students, is not liable in any civil
125 action for referring a student to the consultant retained by the
126 department or for disciplinary actions that adversely affect the
127 status of a student when the disciplinary actions are instituted
128 in reasonable reliance on the recommendations, reports, or
129 conclusions provided by such consultant, if the school, in
130 referring the student or taking disciplinary action, adheres to
131 the due process procedures adopted by the applicable
132 accreditation entities and if the school committed no
133 intentional fraud in carrying out the provisions of this
134 section.

135 (3) (a) Whenever the department receives a written or oral
136 legally sufficient complaint alleging that an applicant or a
137 licensee under the jurisdiction of the Division of Medical
138 Quality Assurance within the department is impaired as a result
139 of the misuse or abuse of alcohol or drugs, or both, or due to a
140 mental or physical condition that ~~which~~ could affect the
141 licensee's ability to practice with skill and safety or the
142 applicant's potential to practice with skill or safety, and no
143 complaint against the licensee or applicant other than
144 impairment exists, the reporting of such information does ~~shall~~
145 not constitute grounds for discipline pursuant to s. 456.072 or

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146 the corresponding grounds for discipline within the applicable
147 practice act if the probable cause panel of the appropriate
148 board, or the department when there is no board, finds:

149 1. The licensee or applicant has acknowledged the
150 impairment problem.

151 2. The licensee or applicant has voluntarily enrolled in an
152 appropriate, approved treatment program.

153 3. The licensee has voluntarily withdrawn from practice or
154 limited the scope of practice as required by the consultant, in
155 each case, until such time as the panel, or the department when
156 there is no board, is satisfied the licensee has successfully
157 completed an approved treatment program.

158 4. The licensee or applicant has executed releases for
159 medical records, authorizing the release of all records of
160 evaluations, diagnoses, and treatment of the licensee or
161 applicant, including records of treatment for emotional or
162 mental conditions, to the consultant. The consultant may not
163 ~~shall~~ make ~~no~~ copies or reports of records that do not regard
164 the issue of the licensee's or applicant's impairment and his or
165 her participation in a treatment program.

166 (b) If, however, the department has not received a legally
167 sufficient complaint and the applicant agrees to withdraw his or
168 her application or the licensee agrees to withdraw from practice
169 until such time as the consultant determines the licensee or
170 applicant has satisfactorily completed an approved treatment
171 program or evaluation, the probable cause panel, or the
172 department when there is no board, may ~~shall~~ not become involved
173 in the licensee's or applicant's case.

174 (c) Inquiries related to impairment treatment programs

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175 designed to provide information to the licensee, applicant, and
176 others and which do not indicate that the licensee or applicant
177 presents a danger to the public does ~~shall~~ not constitute a
178 complaint within the meaning of s. 456.073 and are ~~shall be~~
179 exempt from the provisions of this subsection.

180 (d) Whenever the department receives a legally sufficient
181 complaint alleging that a licensee or applicant is impaired as
182 described in paragraph (a) and no complaint against the licensee
183 or applicant other than impairment exists, the appropriate
184 board, the board's designee, or the department shall forward to
185 the consultant all information in its possession regarding the
186 impaired licensee or applicant ~~to the consultant~~. For the
187 purposes of this section, a suspension from hospital staff
188 privileges due to the impairment does not constitute a
189 complaint.

190 (e) The probable cause panel, or the department when there
191 is no board, shall work directly with the consultant, and all
192 information concerning a licensee or applicant ~~practitioner~~
193 obtained from the consultant by the panel, or the department
194 when there is no board, shall remain confidential and exempt
195 from the provisions of s. 119.07(1), subject to the provisions
196 of subsections (5) and (6).

197 (f) A finding of probable cause shall not be made as long
198 as the panel, or the department when there is no board, is
199 satisfied, based upon information it receives from the
200 consultant and the department, that the licensee or applicant is
201 progressing satisfactorily in an approved impaired practitioner
202 program and no other complaint against the licensee or applicant
203 exists.

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204 (8) An impaired practitioner consultant is the official
205 custodian of records relating to the referral of an impaired
206 licensee or applicant to that consultant and any other
207 interaction between the licensee or applicant and the
208 consultant. The consultant may disclose to the impaired licensee
209 or applicant or his or her designee any information that is
210 disclosed to or obtained by the consultant or that is
211 confidential under paragraph (5) (a), but only to the extent that
212 it is necessary to do so to carry out the consultant's duties
213 under this section. The department, and any other entity that
214 enters into a contract with the consultant to receive the
215 services of the consultant, has direct administrative control
216 over the consultant to the extent necessary to receive
217 disclosures from the consultant as allowed by federal law. If a
218 disciplinary proceeding is pending, an impaired licensee or
219 applicant may obtain such information from the department under
220 s. 456.073.

221 Section 3. Paragraph (e) of subsection (1) of section
222 458.331, Florida Statutes, is amended to read:

223 458.331 Grounds for disciplinary action; action by the
224 board and department.—

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

227 (e) Failing to report to the department any person who the
228 licensee knows is in violation of this chapter or of the rules
229 of the department or the board. A treatment provider approved
230 pursuant to s. 456.076 shall provide the department or
231 consultant with information in accordance with the requirements
232 of s. 456.076(3), (4), (5), ~~and~~ (6), and (8).

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233 Section 4. Paragraph (e) of subsection (1) of section
234 459.015, Florida Statutes, is amended to read:

235 459.015 Grounds for disciplinary action; action by the
236 board and department.—

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

239 (e) Failing to report to the department or the department's
240 impaired professional consultant any person who the licensee or
241 certificateholder knows is in violation of this chapter or of
242 the rules of the department or the board. A treatment provider,
243 approved pursuant to s. 456.076, shall provide the department or
244 consultant with information in accordance with the requirements
245 of s. 456.076(3), (4), (5), ~~and~~ (6), and (8).

246 Section 5. Section 468.315, Florida Statutes, is created to
247 read:

248 468.315 Treatment program for impaired radiological
249 personnel.—Radiological personnel who are subject to
250 certification under this part are governed by s. 456.076 as if
251 they were under the jurisdiction of the Division of Medical
252 Quality Assurance.

253 Section 6. This act shall take effect July 1, 2013.