

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u> </u>	(Y/N)
ADOPTED AS AMENDED	<u> </u>	(Y/N)
ADOPTED W/O OBJECTION	<u> </u>	(Y/N)
FAILED TO ADOPT	<u> </u>	(Y/N)
WITHDRAWN	<u> </u>	(Y/N)
OTHER	<u> </u>	

1 Committee/Subcommittee hearing bill: Health & Human Services
2 Committee

3 Representative Byrd offered the following:

4

5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Paragraph (u) of subsection (1) of section
8 455.227, Florida Statutes, is amended to read:

9 455.227 Grounds for discipline; penalties; enforcement.—

10 (1) The following acts shall constitute grounds for which
11 the disciplinary actions specified in subsection (2) may be
12 taken:

13 (u) Termination from an impaired practitioner program a
14 ~~treatment program for impaired practitioners~~ as described in s.
15 456.076 for failure to comply, without good cause, with the
16 terms of the monitoring or participant ~~treatment~~ contract

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17 entered into by the licensee or failing to successfully complete
18 a drug or alcohol treatment program.

19 Section 2. Section 456.076, Florida Statutes, is amended
20 to read:

21 456.076 Impaired practitioner programs ~~Treatment programs~~
22 ~~for impaired practitioners.~~

23 (1) As used in this section, the term:

24 (a) "Consultant" means the individual or entity who
25 operates an approved impaired practitioner program pursuant to a
26 contract with the department and who is retained by the
27 department as provided in subsection (2).

28 (b) "Evaluator" means a state-licensed or nationally
29 certified individual who has been approved by a consultant or
30 the department, who has completed an evaluator training program
31 established by the consultant, and who is therefore authorized
32 to evaluate practitioners as part of an impaired practitioner
33 program.

34 (c) "Impaired practitioner" means a practitioner with an
35 impairment.

36 (d) "Impaired practitioner program" means a program
37 established by the department by contract with one or more
38 consultants to serve impaired and potentially impaired
39 practitioners for the protection of the health, safety, and
40 welfare of the public.

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41 (e) "Impairment" means a potentially impairing health
42 condition that is the result of the misuse or abuse of alcohol,
43 drugs, or both, or a mental or physical condition that could
44 affect a practitioner's ability to practice with skill and
45 safety.

46 (f) "Inability to progress" means a determination by a
47 consultant based on a participant's response to treatment and
48 prognosis that the participant is unable to safely practice
49 despite compliance with treatment requirements and his or her
50 participant contract.

51 (g) "Material noncompliance" means an act or omission by a
52 participant in violation of his or her participant contract as
53 determined by the department or consultant.

54 (h) "Participant" means a practitioner who is
55 participating in the impaired practitioner program by having
56 entered into a participant contract. A practitioner ceases to be
57 a participant when the participant contract is successfully
58 completed or is terminated for any reason.

59 (i) "Participant contract" means a formal written document
60 outlining the requirements established by a consultant for a
61 participant to successfully complete the impaired practitioner
62 program, including the participant's monitoring plan.

63 (j) "Practitioner" means a person licensed, registered,
64 certified, or regulated by the department under part III of
65 chapter 401; chapter 457; chapter 458; chapter 459; chapter 460;

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66 chapter 461; chapter 462; chapter 463; chapter 464; chapter 465;
67 chapter 466; chapter 467; part I, part II, part III, part V,
68 part X, part XIII, or part XIV of chapter 468; chapter 478;
69 chapter 480; part III or part IV of chapter 483; chapter 484;
70 chapter 486; chapter 490; or chapter 491; or an applicant for a
71 license, registration, or certification under the same laws.

72 (k) "Referral" means a practitioner who has been referred,
73 either as a self-referral or otherwise, or reported to a
74 consultant for impaired practitioner program services, but who
75 is not under a participant contract.

76 (l) "Treatment program" means a department- or consultant-
77 approved residential, intensive outpatient, partial
78 hospitalization or other program through which an impaired
79 practitioner is treated based on the impaired practitioner's
80 diagnosis and the treatment plan approved by the consultant.

81 (m) "Treatment provider" means a department- or
82 consultant-approved state-licensed or nationally certified
83 individual who provides treatment to an impaired practitioner
84 based on the practitioner's individual diagnosis and a treatment
85 plan approved by the consultant ~~For professions that do not have~~
86 ~~impaired practitioner programs provided for in their practice~~
87 ~~acts, the department shall, by rule, designate approved impaired~~
88 ~~practitioner programs under this section. The department may~~
89 ~~adopt rules setting forth appropriate criteria for approval of~~
90 ~~treatment providers. The rules may specify the manner in which~~

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91 ~~the consultant, retained as set forth in subsection (2), works~~
92 ~~with the department in intervention, requirements for evaluating~~
93 ~~and treating a professional, requirements for continued care of~~
94 ~~impaired professionals by approved treatment providers,~~
95 ~~continued monitoring by the consultant of the care provided by~~
96 ~~approved treatment providers regarding the professionals under~~
97 ~~their care, and requirements related to the consultant's~~
98 ~~expulsion of professionals from the program.~~

99 (2) ~~(a)~~ The department may ~~shall~~ retain one or more
100 ~~impaired practitioner consultants to operate its impaired~~
101 ~~practitioner program. Each consultant who are each licensees~~
102 ~~under the jurisdiction of the Division of Medical Quality~~
103 ~~Assurance within the department and who must be:~~

104 (a)1. A practitioner ~~or recovered practitioner~~ licensed
105 under chapter 458, chapter 459, or part I of chapter 464; or

106 (b)2. An entity that employs:

107 1.a. A medical director who is ~~must be a practitioner or~~
108 ~~recovered practitioner~~ licensed under chapter 458 or chapter
109 459; or

110 2.b. An executive director who is ~~must be a registered~~
111 ~~nurse or a recovered registered nurse~~ licensed under part I of
112 chapter 464.

113 (3) The terms and conditions of the impaired practitioner
114 program must be established by the department by contract with a
115 consultant for the protection of the health, safety, and welfare

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116 of the public and must provide, at a minimum, that the
117 consultant:

118 (a) Accepts referrals;

119 (b) Arranges for the evaluation and treatment of impaired
120 practitioners by a treatment provider, when the consultant deems
121 the evaluation and treatment necessary;

122 (c) Monitors the recovery progress and status of impaired
123 practitioners to ensure that such practitioners are able to
124 practice their profession with skill and safety. Such monitoring
125 must continue until the consultant or department concludes that
126 monitoring by the consultant is no longer required for the
127 protection of the public or until the practitioner's
128 participation in the program is terminated for material
129 noncompliance or inability to progress; and

130 (d) Does not directly evaluate, treat, or otherwise
131 provide patient care to a practitioner in the operation of the
132 impaired practitioner program.

133 (4) The department shall specify, in its contract with
134 each consultant, the types of licenses, registrations, or
135 certifications of the practitioners to be served by that
136 consultant.

137 (5) A consultant shall enter into a participant contract
138 with an impaired practitioner and shall establish the terms of
139 monitoring and shall include the terms in a participant
140 contract. In establishing the terms of monitoring, the

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141 consultant may consider the recommendations of one or more
142 approved evaluators, treatment programs, or treatment providers.
143 A consultant may modify the terms of monitoring if the
144 consultant concludes, through the course of monitoring, that
145 extended, additional, or amended terms of monitoring are
146 required for the protection of the health, safety, and welfare
147 of the public.

148 ~~(6)(b) A An entity retained as an impaired practitioner~~
149 ~~consultant under this section which employs a medical director~~
150 ~~or an executive director is not required to be licensed as a~~
151 ~~substance abuse provider or mental health treatment provider~~
152 ~~under chapter 394, chapter 395, or chapter 397 for purposes of~~
153 ~~providing services under this program.~~

154 ~~(7)(e)1. Each~~ The consultant shall assist the department
155 and licensure boards on matters of impaired practitioners,
156 including the determination of probable cause panel and the
157 ~~department in carrying out the responsibilities of this section.~~
158 ~~This includes working with department investigators to determine~~
159 ~~whether a practitioner is, in fact, impaired, as specified in~~
160 the consultant's contract with the department.

161 ~~2. The consultant may contract with a school or program to~~
162 ~~provide services to a student enrolled for the purpose of~~
163 ~~preparing for licensure as a health care practitioner as defined~~
164 ~~in this chapter or as a veterinarian under chapter 474 if the~~
165 ~~student is allegedly impaired as a result of the misuse or abuse~~

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166 ~~of alcohol or drugs, or both, or due to a mental or physical~~
167 ~~condition. The department is not responsible for paying for the~~
168 ~~care provided by approved treatment providers or a consultant.~~

169 ~~(d) A medical school accredited by the Liaison Committee~~
170 ~~on Medical Education or the Commission on Osteopathic College~~
171 ~~Accreditation, or another school providing for the education of~~
172 ~~students enrolled in preparation for licensure as a health care~~
173 ~~practitioner as defined in this chapter or a veterinarian under~~
174 ~~chapter 474 which is governed by accreditation standards~~
175 ~~requiring notice and the provision of due process procedures to~~
176 ~~students, is not liable in any civil action for referring a~~
177 ~~student to the consultant retained by the department or for~~
178 ~~disciplinary actions that adversely affect the status of a~~
179 ~~student when the disciplinary actions are instituted in~~
180 ~~reasonable reliance on the recommendations, reports, or~~
181 ~~conclusions provided by such consultant, if the school, in~~
182 ~~referring the student or taking disciplinary action, adheres to~~
183 ~~the due process procedures adopted by the applicable~~
184 ~~accreditation entities and if the school committed no~~
185 ~~intentional fraud in carrying out the provisions of this~~
186 ~~section.~~

187 (8)(3) Before issuing an approval of, or intent to deny,
188 an application for licensure, each board and profession within
189 the Division of Medical Quality Assurance may delegate to its
190 chair or other designee its authority to determine, before

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191 ~~certifying or declining to certify an application for licensure~~
192 ~~to the department,~~ that an applicant for licensure under its
193 jurisdiction may have an impairment ~~be impaired as a result of~~
194 ~~the misuse or abuse of alcohol or drugs, or both, or due to a~~
195 ~~mental or physical condition that could affect the applicant's~~
196 ~~ability to practice with skill and safety.~~ Upon such
197 determination, the chair or other designee may refer the
198 applicant to the consultant to facilitate ~~for~~ an evaluation
199 before the board issues an approval of, ~~certifies or intent to~~
200 deny, ~~declines to certify~~ his or her application ~~to the~~
201 ~~department.~~ If the applicant agrees to be evaluated ~~by the~~
202 ~~consultant,~~ the department's deadline for approving or denying
203 the application pursuant to s. 120.60(1) is tolled until the
204 evaluation is completed and the result of the evaluation and
205 recommendation ~~by the consultant~~ is communicated to the board by
206 the consultant. If the applicant declines to be evaluated ~~by the~~
207 ~~consultant,~~ the board shall issue an approval of, or intent to
208 deny, ~~certify or decline to certify~~ the applicant's application
209 ~~to the department~~ notwithstanding the lack of an evaluation and
210 recommendation by the consultant.

211 (9) (a) (4) (a) ~~When~~ Whenever the department receives a
212 ~~written or oral~~ legally sufficient complaint alleging that a
213 practitioner has an impairment ~~licensee under the jurisdiction~~
214 ~~of the Division of Medical Quality Assurance within the~~
215 ~~department is impaired as a result of the misuse or abuse of~~

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216 ~~alcohol or drugs, or both, or due to a mental or physical~~
217 ~~condition which could affect the licensee's ability to practice~~
218 ~~with skill and safety,~~ and no complaint exists against the
219 practitioner licensee other than impairment ~~exists,~~ the
220 department shall refer the practitioner to the consultant, along
221 with all information in the department's possession relating to
222 the impairment. The impairment does reporting of such
223 ~~information shall~~ not constitute grounds for discipline pursuant
224 to s. 456.072 or ~~the corresponding grounds for discipline within~~
225 the applicable practice act if ~~the probable cause panel of the~~
226 ~~appropriate board, or the department when there is no board,~~
227 ~~finds:~~

228 1. The practitioner licensee has acknowledged the
229 ~~impairment; problem.~~

230 2. The practitioner becomes a participant licensee ~~has~~
231 ~~voluntarily enrolled~~ in an impaired practitioner program and
232 successfully completes a participant contract under terms
233 established by the consultant; appropriate, approved treatment
234 ~~program.~~

235 3. The practitioner licensee has voluntarily withdrawn
236 from practice or has limited the scope of his or her practice if
237 ~~as required by the consultant;~~ in each case, until such time as
238 ~~the panel, or the department when there is no board, is~~
239 ~~satisfied the licensee has successfully completed an approved~~
240 ~~treatment program.~~

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241 4. The practitioner licensee has provided to the
242 consultant, or has authorized the consultant to obtain, all
243 records and information relating to the impairment from any
244 source and all other medical records of the practitioner
245 requested by the consultant; and ~~executed releases for medical~~
246 ~~records, authorizing the release of all records of evaluations,~~
247 ~~diagnoses, and treatment of the licensee, including records of~~
248 ~~treatment for emotional or mental conditions, to the consultant.~~
249 The consultant shall make no copies or reports of records that
250 do not regard the issue of the licensee's impairment and his or
251 her participation in a treatment program.

252 5. The practitioner has authorized the consultant, in the
253 event of the practitioner's termination from the impaired
254 practitioner program, to report the termination to the
255 department and provide the department with copies of all
256 information in the consultant's possession relating to the
257 practitioner.

258 (b) To encourage practitioners who are or may be impaired
259 to voluntarily self-refer to a consultant, the consultant may
260 not provide information to the department relating to a self-
261 referring participant if the consultant has no knowledge of a
262 pending department investigation, complaint, or disciplinary
263 action against the participant and if the participant is in
264 compliance and making progress with the terms of the impaired
265 practitioner program and contract, unless authorized by the

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266 ~~participant If, however, the department has not received a~~
267 ~~legally sufficient complaint and the licensee agrees to withdraw~~
268 ~~from practice until such time as the consultant determines the~~
269 ~~licensee has satisfactorily completed an approved treatment~~
270 ~~program or evaluation, the probable cause panel, or the~~
271 ~~department when there is no board, shall not become involved in~~
272 ~~the licensee's case.~~

273 ~~(c) Inquiries related to impairment treatment programs~~
274 ~~designed to provide information to the licensee and others and~~
275 ~~which do not indicate that the licensee presents a danger to the~~
276 ~~public shall not constitute a complaint within the meaning of s.~~
277 ~~456.073 and shall be exempt from the provisions of this~~
278 ~~subsection.~~

279 ~~(d) Whenever the department receives a legally sufficient~~
280 ~~complaint alleging that a licensee is impaired as described in~~
281 ~~paragraph (a) and no complaint against the licensee other than~~
282 ~~impairment exists, the department shall forward all information~~
283 ~~in its possession regarding the impaired licensee to the~~
284 ~~consultant. For the purposes of this section, a suspension from~~
285 ~~hospital staff privileges due to the impairment does not~~
286 ~~constitute a complaint.~~

287 ~~(e) The probable cause panel, or the department when there~~
288 ~~is no board, shall work directly with the consultant, and all~~
289 ~~information concerning a practitioner obtained from the~~
290 ~~consultant by the panel, or the department when there is no~~

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291 ~~board, shall remain confidential and exempt from the provisions~~
292 ~~of s. 119.07(1), subject to the provisions of subsections (6)~~
293 ~~and (7).~~

294 ~~(f) A finding of probable cause shall not be made as long~~
295 ~~as the panel, or the department when there is no board, is~~
296 ~~satisfied, based upon information it receives from the~~
297 ~~consultant and the department, that the licensee is progressing~~
298 ~~satisfactorily in an approved impaired practitioner program and~~
299 ~~no other complaint against the licensee exists.~~

300 ~~(10)(5)~~ In any disciplinary action for a violation other
301 than impairment in which a practitioner licensee establishes the
302 violation for which the practitioner licensee is being
303 prosecuted was due to or connected with impairment and further
304 establishes the practitioner licensee is satisfactorily
305 progressing through or has successfully completed an impaired
306 practitioner program ~~approved treatment program~~ pursuant to this
307 section, such information may be considered by the board, or the
308 department when there is no board, as a mitigating factor in
309 determining the appropriate penalty. This subsection does not
310 limit mitigating factors the board may consider.

311 ~~(11)(a)(6)(a)~~ Upon request by the consultant, and with the
312 authorization of the practitioner when required by law, an
313 approved evaluator, treatment program, or treatment provider
314 ~~shall, upon request,~~ disclose to the consultant all information
315 in its possession regarding a referral or participant ~~the issue~~

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316 ~~of a licensee's impairment and participation in the treatment~~
317 ~~program. All information obtained by the consultant and~~
318 ~~department pursuant to this section is confidential and exempt~~
319 ~~from the provisions of s. 119.07(1), subject to the provisions~~
320 ~~of this subsection and subsection (7). Failure to provide such~~
321 ~~information to the consultant is grounds for withdrawal of~~
322 ~~approval of such evaluator, treatment program, or treatment~~
323 ~~provider.~~

324 (b) When a referral or participant is terminated from the
325 impaired practitioner program for material noncompliance with a
326 participant contract, inability to progress, or any other reason
327 than completion, the consultant shall disclose ~~If in the opinion~~
328 ~~of the consultant, after consultation with the treatment~~
329 ~~provider, an impaired licensee has not progressed satisfactorily~~
330 ~~in a treatment program, all information regarding the issue of a~~
331 ~~licensee's impairment and participation in a treatment program~~
332 ~~in the consultant's possession relating to the practitioner~~
333 ~~shall be disclosed to the department. Such disclosure shall~~
334 ~~constitute a complaint pursuant to the general provisions of s.~~
335 ~~456.073. In addition, whenever the consultant concludes that~~
336 ~~impairment affects a practitioner's licensee's practice and~~
337 ~~constitutes an immediate, serious danger to the public health,~~
338 ~~safety, or welfare, the consultant shall immediately communicate~~
339 ~~such that conclusion ~~shall be communicated~~ to the department and~~

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340 disclose all information in the consultant's possession relating
341 to the practitioner to the department State Surgeon General.

342 (12) All information obtained by the consultant pursuant
343 to this section is confidential and exempt from s. 119.07(1) and
344 s. 24(a), Art. I of the State Constitution.

345 ~~(7) A consultant, licensee, or approved treatment provider~~
346 ~~who makes a disclosure pursuant to this section is not subject~~
347 ~~to civil liability for such disclosure or its consequences.~~

348 (13) The provisions of s. 766.101 apply to any consultant
349 and the consultant's directors, officers, employees, or agents
350 in regards to providing information relating to a participant to
351 a medical review committee if the participant authorizes such
352 disclosure officer, employee, or agent of the department or the
353 board and to any officer, employee, or agent of any entity with
354 which the department has contracted pursuant to this section.

355 (14) (a) ~~(8) (a)~~ A consultant retained pursuant to this
356 section and subsection (2), a consultant's directors, officers,
357 and employees, or agents and those acting at the direction of
358 the consultant for the limited purpose of an emergency
359 intervention on behalf of a licensee or student as described in
360 subsection (2) when the consultant is unable to perform such
361 intervention shall be considered agents of the department for
362 purposes of s. 768.28 while acting within the scope of the
363 consultant's duties under the contract with the department if

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364 ~~the contract complies with the requirements of this section. The~~
365 ~~contract must require that:~~

366 ~~1. The consultant indemnify the state for any liabilities~~
367 ~~incurred up to the limits set out in chapter 768.~~

368 ~~2. The consultant establish a quality assurance program to~~
369 ~~monitor services delivered under the contract.~~

370 ~~3. The consultant's quality assurance program, treatment,~~
371 ~~and monitoring records be evaluated quarterly.~~

372 ~~4. The consultant's quality assurance program be subject~~
373 ~~to review and approval by the department.~~

374 ~~5. The consultant operate under policies and procedures~~
375 ~~approved by the department.~~

376 ~~6. The consultant provide to the department for approval a~~
377 ~~policy and procedure manual that comports with all statutes,~~
378 ~~rules, and contract provisions approved by the department.~~

379 ~~7. The department be entitled to review the records~~
380 ~~relating to the consultant's performance under the contract for~~
381 ~~the purpose of management audits, financial audits, or program~~
382 ~~evaluation.~~

383 ~~8. All performance measures and standards be subject to~~
384 ~~verification and approval by the department.~~

385 ~~9. The department be entitled to terminate the contract~~
386 ~~with the consultant for noncompliance with the contract.~~

387 (b) In accordance with s. 284.385, the Department of
388 Financial Services shall defend any claim, suit, action, or

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389 proceeding, including a claim, suit, action, or proceeding for
390 injunctive, affirmative, or declaratory relief, against the
391 consultant, or the consultant's directors, officers, or
392 employees, and agents brought as the result of any action or
393 omission relating to the impaired practitioner program or those
394 acting at the direction of the consultant for the limited
395 purpose of an emergency intervention on behalf of a licensee or
396 student as described in subsection (2) when the consultant is
397 unable to perform such intervention, which claim, suit, action,
398 or proceeding is brought as a result of an act or omission by
399 any of the consultant's officers and employees and those acting
400 under the direction of the consultant for the limited purpose of
401 an emergency intervention on behalf of the licensee or student
402 when the consultant is unable to perform such intervention, if
403 the act or omission arises out of and is in the scope of the
404 consultant's duties under its contract with the department.

405 (15)(e) If a the consultant retained by the department
406 pursuant to this section subsection (2) is also retained by
407 another any other state agency to operate an impaired
408 practitioner program for that agency, this section also applies
409 to the consultant's operation of an impaired practitioner
410 program for that agency, and if the contract between such state
411 agency and the consultant complies with the requirements of this
412 section, the consultant, the consultant's officers and
413 employees, and those acting under the direction of the

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414 ~~consultant for the limited purpose of an emergency intervention~~
415 ~~on behalf of a licensee or student as described in subsection~~
416 ~~(2) when the consultant is unable to perform such intervention~~
417 ~~shall be considered agents of the state for the purposes of this~~
418 ~~section while acting within the scope of and pursuant to~~
419 ~~guidelines established in the contract between such state agency~~
420 ~~and the consultant.~~

421 (16)(9) A An impaired practitioner consultant is the
422 official custodian of records relating to the referral of an
423 impaired licensee or applicant to that consultant and any other
424 interaction between the licensee or applicant and the
425 consultant. The consultant may disclose to a referral or
426 participant, or to the legal representative of the referral or
427 participant, the documents, records, or other information from
428 the consultant's file, including information received by the
429 consultant from other sources, and information on the terms
430 required for the referral's or participant's monitoring
431 contract, the referral's or participant's progress or inability
432 to progress, the referral's or participant's discharge or
433 termination, information supporting the conclusion of material
434 noncompliance, or any other information required by law the
435 impaired licensee or applicant or his or her designee any
436 information that is disclosed to or obtained by the consultant
437 or that is confidential under paragraph (6)(a), but only to the
438 extent that it is necessary to do so to carry out the

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439 ~~consultant's duties under this section. The department, and any~~
440 ~~other entity that enters into a contract with the consultant to~~
441 ~~receive the services of the consultant, has direct~~
442 ~~administrative control over the consultant to the extent~~
443 ~~necessary to receive disclosures from the consultant as allowed~~
444 ~~by federal law. If a consultant discloses information to the~~
445 ~~department in accordance with this part, a referral or~~
446 ~~participant, or his or her legal representative, may obtain a~~
447 ~~complete copy of the consultant's file from the consultant or~~
448 ~~disciplinary proceeding is pending, an impaired licensee may~~
449 ~~obtain such information from the department under s. 456.073.~~

450 (17) (a) The consultant may contract with a school or
451 program to provide impaired practitioner program services to a
452 student enrolled for the purpose of preparing for licensure as a
453 health care practitioner as defined in this chapter or as a
454 veterinarian under chapter 474 if the student has or is
455 suspected of having an impairment. The department is not
456 responsible for paying for the care provided by approved
457 treatment providers or approved treatment programs or for the
458 services provided by a consultant to a student.

459 (b) A medical school accredited by the Liaison Committee
460 on Medical Education or the Commission on Osteopathic College
461 Accreditation, or another school providing for the education of
462 students enrolled in preparation for licensure as a health care
463 practitioner as defined in this chapter, or a veterinarian under

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464 chapter 474, which is governed by accreditation standards
465 requiring notice and the provision of due process procedures to
466 students, is not liable in any civil action for referring a
467 student to the consultant retained by the department or for
468 disciplinary actions that adversely affect the status of a
469 student when the disciplinary actions are instituted in
470 reasonable reliance on the recommendations, reports, or
471 conclusions provided by such consultant, if the school, in
472 referring the student or taking disciplinary action, adheres to
473 the due process procedures adopted by the applicable
474 accreditation entities and if the school committed no
475 intentional fraud in carrying out the provisions of this
476 section.

477 Section 3. Effective December 31, 2018, or upon enactment
478 of the Nurse Licensure Compact into law by 26 states, whichever
479 occurs first, subsection (9) of section 456.076, Florida
480 Statutes, as amended by section 2 of chapter 2016-139, Laws of
481 Florida, is amended to read:

482 456.076 Treatment programs for impaired practitioners.-
483 ~~(17)(9) A An impaired practitioner consultant is the~~
484 ~~official custodian of records relating to the referral of an~~
485 ~~impaired licensee or applicant to that consultant and any other~~
486 ~~interaction between the licensee or applicant and the~~
487 ~~consultant. The consultant may disclose to a referral or~~
488 participant documents, records, or other information from the

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489 consultant's file on the referral or participant ~~the impaired~~
490 ~~licensee or applicant or his or her designee any information~~
491 ~~that is disclosed to or obtained by the consultant or that is~~
492 ~~confidential under paragraph (6) (a), but only~~ to the extent that
493 it is necessary to do so to carry out the consultant's duties
494 under the impaired practitioner program and this section, or as
495 otherwise required by law. ~~The department, and any other entity~~
496 ~~that enters into a contract with the consultant to receive the~~
497 ~~services of the consultant, has direct administrative control~~
498 ~~over the consultant to the extent necessary to receive~~
499 ~~disclosures from the consultant as allowed by federal law.~~ The
500 consultant must disclose to the department, upon the
501 department's request, whether an applicant for a multistate
502 license under s. 464.0095 is participating in a treatment
503 program and must report to the department when a nurse holding a
504 multistate license under s. 464.0095 enters a treatment program.
505 A nurse holding a multistate license pursuant to s. 464.0095
506 must report to the department within 2 business days after
507 entering a treatment program pursuant to this section. If a
508 disciplinary proceeding is pending, a referral or participant
509 may obtain a complete copy of the consultant's file from the
510 department as provided by ~~an impaired licensee may obtain such~~
511 ~~information from the department under s. 456.073.~~

512 Section 4. Paragraph (1) of subsection (1) of section
513 401.411, Florida Statutes, is amended to read:

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514 401.411 Disciplinary action; penalties.—

515 (1) The department may deny, suspend, or revoke a license,
516 certificate, or permit or may reprimand or fine any licensee,
517 certificateholder, or other person operating under this part for
518 any of the following grounds:

519 (1) The failure to report to the department any person
520 known to be in violation of this part. However, a professional
521 known to be operating under this part without reasonable skill
522 and without regard for the safety of the public by reason of
523 illness, drunkenness, or the use of drugs, narcotics, chemicals,
524 or any other type of material, or as a result of a mental or
525 physical condition, may be reported to a consultant operating an
526 impaired practitioner program as described in s. 456.076 rather
527 than to the department.

528 Section 5. Subsections (2) and (3) of section 456.0635,
529 Florida Statutes, are amended to read:

530 456.0635 Health care fraud; disqualification for license,
531 certificate, or registration.—

532 (2) Each board within the jurisdiction of the department,
533 or the department if there is no board, shall refuse to admit a
534 candidate to any examination and refuse to issue a license,
535 certificate, or registration to any applicant if the candidate
536 or applicant or any principal, officer, agent, managing
537 employee, or affiliated person of the candidate or applicant:

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538 (a) Has been convicted of, or entered a plea of guilty or
539 nolo contendere to, regardless of adjudication, a felony under
540 chapter 409, chapter 817, or chapter 893, or a similar felony
541 offense committed in another state or jurisdiction, unless the
542 candidate or applicant has successfully completed a pretrial
543 diversion or drug court program for that felony and provides
544 proof that the plea has been withdrawn or the charges have been
545 dismissed. Any such conviction or plea shall exclude the
546 applicant or candidate from licensure, examination,
547 certification, or registration unless the sentence and any
548 subsequent period of probation for such conviction or plea
549 ended:

550 1. For felonies of the first or second degree, more than
551 15 years before the date of application.

552 2. For felonies of the third degree, more than 10 years
553 before the date of application, except for felonies of the third
554 degree under s. 893.13(6) (a).

555 3. For felonies of the third degree under s. 893.13(6) (a),
556 more than 5 years before the date of application;

557 (b) Has been convicted of, or entered a plea of guilty or
558 nolo contendere to, regardless of adjudication, a felony under
559 21 U.S.C. ss. 801-970, or 42 U.S.C. ss. 1395-1396, unless the
560 sentence and any subsequent period of probation for such
561 conviction or plea ended more than 15 years before the date of
562 the application;

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563 (c) Has been terminated for cause from the Florida
564 Medicaid program pursuant to s. 409.913, unless the candidate or
565 applicant has been in good standing with the Florida Medicaid
566 program for the most recent 5 years;

567 (d) Has been terminated for cause, pursuant to the appeals
568 procedures established by the state, from any other state
569 Medicaid program, unless the candidate or applicant has been in
570 good standing with a state Medicaid program for the most recent
571 5 years and the termination occurred at least 20 years before
572 the date of the application; or

573 (e) Is currently listed on the United States Department of
574 Health and Human Services Office of Inspector General's List of
575 Excluded Individuals and Entities.

576 (f) This subsection does not apply to an applicant for
577 initial licensure, certification, or registration who was
578 arrested or charged with a felony specified in paragraph (a) or
579 paragraph (b) before July 1, 2009.

580 (3) The department shall refuse to renew a license,
581 certificate, or registration of any applicant if the applicant
582 or any principal, officer, agent, managing employee, or
583 affiliated person of the applicant:

584 (a) Has been convicted of, or entered a plea of guilty or
585 nolo contendere to, regardless of adjudication, a felony under
586 chapter 409, chapter 817, or chapter 893, or a similar felony
587 offense committed in another state or jurisdiction, unless the

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588 applicant is currently enrolled in a pretrial diversion or drug
589 court program that allows the withdrawal of the plea for that
590 felony upon successful completion of that program. Any such
591 conviction or plea excludes the applicant from licensure renewal
592 unless the sentence and any subsequent period of probation for
593 such conviction or plea ended:

594 1. For felonies of the first or second degree, more than
595 15 years before the date of application.

596 2. For felonies of the third degree, more than 10 years
597 before the date of application, except for felonies of the third
598 degree under s. 893.13(6)(a).

599 3. For felonies of the third degree under s. 893.13(6)(a),
600 more than 5 years before the date of application.

601 (b) Has been convicted of, or entered a plea of guilty or
602 nolo contendere to, regardless of adjudication, a felony under
603 21 U.S.C. ss. 801-970, or 42 U.S.C. ss. 1395-1396 since July 1,
604 2009, unless the sentence and any subsequent period of probation
605 for such conviction or plea ended more than 15 years before the
606 date of the application.

607 (c) Has been terminated for cause from the Florida
608 Medicaid program pursuant to s. 409.913, unless the applicant
609 has been in good standing with the Florida Medicaid program for
610 the most recent 5 years.

611 (d) Has been terminated for cause, pursuant to the appeals
612 procedures established by the state, from any other state

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613 Medicaid program, unless the applicant has been in good standing
614 with a state Medicaid program for the most recent 5 years and
615 the termination occurred at least 20 years before the date of
616 the application.

617 (e) Is currently listed on the United States Department of
618 Health and Human Services Office of Inspector General's List of
619 Excluded Individuals and Entities.

620 (f) This subsection does not apply to an applicant for
621 initial licensure, certification, or registration who was
622 arrested or charged with a felony specified in paragraph (a) or
623 paragraph (b) before July 1, 2009.

624 Section 6. Paragraphs (i) and (hh) of subsection (1) of
625 section 456.072, Florida Statutes, are amended to read:

626 456.072 Grounds for discipline; penalties; enforcement.—

627 (1) The following acts shall constitute grounds for which
628 the disciplinary actions specified in subsection (2) may be
629 taken:

630 (i) Except as provided in s. 465.016, failing to report to
631 the department any person who the licensee knows is in violation
632 of this chapter, the chapter regulating the alleged violator, or
633 the rules of the department or the board. However, a person who
634 the licensee knows is unable to practice with reasonable skill
635 and safety to patients by reason of illness or use of alcohol,
636 drugs, narcotics, chemicals, or any other type of material, or
637 as a result of a mental or physical condition, may be reported

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638 to a consultant operating an impaired practitioner program as
639 described in s. 456.076 rather than to the department.

640 (hh) Being terminated from an impaired practitioner
641 program that a treatment program for impaired practitioners,
642 which is overseen by a an impaired practitioner consultant as
643 described in s. 456.076, for failure to comply, without good
644 cause, with the terms of the monitoring or participant treatment
645 contract entered into by the licensee, or for not successfully
646 completing any drug treatment or alcohol treatment program.

647 Section 7. Paragraph (f) of subsection (1) of section
648 457.109, Florida Statutes, is amended to read:

649 457.109 Disciplinary actions; grounds; action by the
650 board.-

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

653 (f) Failing to report to the department any person who the
654 licensee knows is in violation of this chapter or of the rules
655 of the department. However, a person who the licensee knows is
656 unable to practice acupuncture with reasonable skill and safety
657 to patients by reason of illness or use of alcohol, drugs,
658 narcotics, chemicals, or any other type of material, or as a
659 result of a mental or physical condition, may be reported to a
660 consultant operating an impaired practitioner program as
661 described in s. 456.076 rather than to the department.

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662 Section 8. Paragraph (e) of subsection (1) of section
663 458.331, Florida Statutes, is amended to read:

664 458.331 Grounds for disciplinary action; action by the
665 board and department.—

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

668 (e) Failing to report to the department any person who the
669 licensee knows is in violation of this chapter or of the rules
670 of the department or the board. However, a person who the
671 licensee knows is unable to practice medicine with reasonable
672 skill and safety to patients by reason of illness or use of
673 alcohol, drugs, narcotics, chemicals, or any other type of
674 material, or as a result of a mental or physical condition, may
675 be reported to a consultant operating an impaired practitioner
676 program as described in s. 456.076 rather than to the department
677 ~~A treatment provider approved pursuant to s. 456.076 shall~~
678 ~~provide the department or consultant with information in~~
679 ~~accordance with the requirements of s. 456.076(4), (5), (6),~~
680 ~~(7), and (9).~~

681 Section 9. Paragraph (e) of subsection (1) of section
682 459.015, Florida Statutes, is amended to read:

683 459.015 Grounds for disciplinary action; action by the
684 board and department.—

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

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687 (e) Failing to report to the department or the
688 department's impaired professional consultant any person who the
689 licensee or certificateholder knows is in violation of this
690 chapter or of the rules of the department or the board. However,
691 a person who the licensee knows is unable to practice
692 osteopathic medicine with reasonable skill and safety to
693 patients by reason of illness or use of alcohol, drugs,
694 narcotics, chemicals, or any other type of material, or as a
695 result of a mental or physical condition, may be reported to a
696 consultant operating an impaired practitioner program as
697 described in s. 456.076 rather than to the department ~~A~~
698 ~~treatment provider, approved pursuant to s. 456.076, shall~~
699 ~~provide the department or consultant with information in~~
700 ~~accordance with the requirements of s. 456.076(4), (5), (6),~~
701 ~~(7), and (9).~~

702 Section 10. Paragraph (g) of subsection (1) of section
703 460.413, Florida Statutes, is amended to read:

704 460.413 Grounds for disciplinary action; action by board
705 or department.—

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

708 (g) Failing to report to the department any person who the
709 licensee knows is in violation of this chapter or of the rules
710 of the department or the board. However, a person who the
711 licensee knows is unable to practice chiropractic medicine with

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712 reasonable skill and safety to patients by reason of illness or
713 use of alcohol, drugs, narcotics, chemicals, or any other type
714 of material, or as a result of a mental or physical condition,
715 may be reported to a consultant operating an impaired
716 practitioner program as described in s. 456.076 rather than to
717 the department.

718 Section 11. Paragraph (f) of subsection (1) of section
719 461.013, Florida Statutes, is amended to read:

720 461.013 Grounds for disciplinary action; action by the
721 board; investigations by department.—

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

724 (f) Failing to report to the department any person who the
725 licensee knows is in violation of this chapter or of the rules
726 of the department or the board. However, a person who the
727 licensee knows is unable to practice podiatric medicine with
728 reasonable skill and safety to patients by reason of illness or
729 use of alcohol, drugs, narcotics, chemicals, or any other type
730 of material, or as a result of a mental or physical condition,
731 may be reported to a consultant operating an impaired
732 practitioner program as described in s. 456.076 rather than to
733 the department.

734 Section 12. Paragraph (f) of subsection (1) of section
735 462.14, Florida Statutes, is amended to read:

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736 462.14 Grounds for disciplinary action; action by the
737 department.—

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

740 (f) Failing to report to the department any person who the
741 licensee knows is in violation of this chapter or of the rules
742 of the department. However, a person who the licensee knows is
743 unable to practice naturopathic medicine with reasonable skill
744 and safety to patients by reason of illness or use of alcohol,
745 drugs, narcotics, chemicals, or any other type of material, or
746 as a result of a mental or physical condition, may be reported
747 to a consultant operating an impaired practitioner program as
748 described in s. 456.076 rather than to the department.

749 Section 13. Paragraph (1) of subsection (1) of section
750 463.016, Florida Statutes, is amended to read:

751 463.016 Grounds for disciplinary action; action by the
752 board.—

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

755 (1) Willfully failing to report any person who the
756 licensee knows is in violation of this chapter or of rules of
757 the department or the board. However, a person who the licensee
758 knows is unable to practice optometry with reasonable skill and
759 safety to patients by reason of illness or use of alcohol,
760 drugs, narcotics, chemicals, or any other type of material, or

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761 as a result of a mental or physical condition, may be reported
762 to a consultant operating an impaired practitioner program as
763 described in s. 456.076 rather than to the department.

764 Section 14. Paragraph (k) of subsection (1) of section
765 464.018, Florida Statutes, is amended to read:

766 464.018 Disciplinary actions.—

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

769 (k) Failing to report to the department any person who the
770 licensee knows is in violation of this part or of the rules of
771 the department or the board. However, a person who the licensee
772 knows is unable to practice nursing with reasonable skill and
773 safety to patients by reason of illness or use of alcohol,
774 drugs, narcotics, chemicals, or any other type of material, or
775 as a result of a mental or physical condition, may be reported
776 to a consultant operating an impaired practitioner program as
777 described in s. 456.076 rather than to the department; however,
778 ~~if the licensee verifies that such person is actively~~
779 ~~participating in a board-approved program for the treatment of a~~
780 ~~physical or mental condition, the licensee is required to report~~
781 ~~such person only to an impaired professionals consultant.~~

782 Section 15. Paragraph (c) of subsection (2) of section
783 464.204, Florida Statutes, is amended to read:

784 464.204 Denial, suspension, or revocation of
785 certification; disciplinary actions.—

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786 (2) When the board finds any person guilty of any of the
787 grounds set forth in subsection (1), it may enter an order
788 imposing one or more of the following penalties:

789 (c) Imposition of probation or restriction of
790 certification, including conditions such as corrective actions
791 as retraining or compliance with the department's impaired
792 practitioner program operated by a consultant as described in s.
793 456.076 ~~an approved treatment program for impaired~~
794 ~~practitioners.~~

795 Section 16. Paragraph (o) of subsection (1) of section
796 465.016, Florida Statutes, is amended to read:

797 465.016 Disciplinary actions.—

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

800 (o) Failing to report to the department any licensee under
801 chapter 458 or under chapter 459 who the pharmacist knows has
802 violated the grounds for disciplinary action set out in the law
803 under which that person is licensed and who provides health care
804 services in a facility licensed under chapter 395, or a health
805 maintenance organization certificated under part I of chapter
806 641, in which the pharmacist also provides services. However, a
807 person who the licensee knows is unable to practice medicine or
808 osteopathic medicine with reasonable skill and safety to
809 patients by reason of illness or use of alcohol, drugs,
810 narcotics, chemicals, or any other type of material, or as a

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811 result of a mental or physical condition, may be reported to a
812 consultant operating an impaired practitioner program as
813 described in s. 456.076 rather than to the department.

814 Section 17. Paragraph (f) of subsection (1) of section
815 466.028, Florida Statutes, is amended to read:

816 466.028 Grounds for disciplinary action; action by the
817 board.—

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

820 (f) Failing to report to the department any person who the
821 licensee knows, or has reason to believe, is clearly in
822 violation of this chapter or of the rules of the department or
823 the board. However, a person who the licensee knows, or has
824 reason to believe, is clearly unable to practice her or his
825 profession with reasonable skill and safety to patients by
826 reason of illness or use of alcohol, drugs, narcotics,
827 chemicals, or any other type of material, or as a result of a
828 mental or physical condition, may be reported to a consultant
829 operating an impaired practitioner program as described in s.
830 456.076 rather than to the department.

831 Section 18. Paragraph (h) of subsection (1) of section
832 467.203, Florida Statutes, is amended to read:

833 467.203 Disciplinary actions; penalties.—

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

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836 (h) Failing to report to the department any person who the
837 licensee knows is in violation of this chapter or of the rules
838 of the department. However, a person who the licensee knows is
839 unable to practice midwifery with reasonable skill and safety to
840 patients by reason of illness or use of alcohol, drugs,
841 narcotics, chemicals, or any other type of material, or as a
842 result of a mental or physical condition, may be reported to a
843 consultant operating an impaired practitioner program as
844 described in s. 456.076 rather than to the department.

845 Section 19. Paragraph (f) of subsection (1) of section
846 468.217, Florida Statutes, is amended to read:

847 468.217 Denial of or refusal to renew license; suspension
848 and revocation of license and other disciplinary measures.—

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

851 (f) Failing to report to the department any person who the
852 licensee knows is in violation of this part or of the rules of
853 the department or of the board. However, a person who the
854 licensee knows is unable to practice occupational therapy with
855 reasonable skill and safety to patients by reason of illness or
856 use of alcohol, drugs, narcotics, chemicals, or any other type
857 of material, or as a result of a mental or physical condition,
858 may be reported to a consultant operating an impaired
859 practitioner program as described in s. 456.076 rather than to
860 the department.

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861 Section 20. Paragraph (n) of subsection (1) of section
862 468.3101, Florida Statutes, is amended to read:

863 468.3101 Disciplinary grounds and actions.-

864 (1) The department may make or require to be made any
865 investigations, inspections, evaluations, and tests, and require
866 the submission of any documents and statements, which it
867 considers necessary to determine whether a violation of this
868 part has occurred. The following acts shall be grounds for
869 disciplinary action as set forth in this section:

870 (n) Being terminated from an impaired practitioner program
871 operated by a consultant as described in s. 456.076 for failure
872 to comply, without good cause, with the terms of monitoring or a
873 participant contract entered into by the licensee, or for not
874 successfully completing a drug treatment or alcohol treatment
875 program ~~Failing to comply with the recommendations of the~~
876 ~~department's impaired practitioner program for treatment,~~
877 ~~evaluation, or monitoring. A letter from the director of the~~
878 ~~impaired practitioner program that the certificateholder is not~~
879 ~~in compliance shall be considered conclusive proof under this~~
880 ~~part.~~

881 Section 21. Section 474.221, Florida Statutes, is amended
882 to read:

883 474.221 Impaired practitioner provisions; applicability.-
884 Notwithstanding the transfer of the Division of Medical Quality
885 Assurance to the Department of Health or any other provision of

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886 law to the contrary, veterinarians licensed under this chapter
887 shall be governed by the ~~treatment of~~ impaired practitioner
888 program provisions of s. 456.076 as if they were under the
889 jurisdiction of the Division of Medical Quality Assurance,
890 except that for veterinarians the Department of Business and
891 Professional Regulation shall, at its option, exercise any of
892 the powers granted to the Department of Health by that section,
893 and "board" shall mean board as defined in this chapter.

894 Section 22. Paragraph (o) of subsection (1) of section
895 483.825, Florida Statutes, is amended to read:

896 483.825 Grounds for disciplinary action.—

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

899 (o) Failing to report to the department a person or other
900 licensee who the licensee knows is in violation of this chapter
901 or the rules of the department or board adopted hereunder.
902 However, a person or other licensee who the licensee knows is
903 unable to perform or report on clinical laboratory examinations
904 with reasonable skill and safety to patients by reason of
905 illness or use of alcohol, drugs, narcotics, chemicals, or any
906 other type of material, or as a result of a mental or physical
907 condition, may be reported to a consultant operating an impaired
908 practitioner program as described in s. 456.076 rather than to
909 the department.

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910 Section 23. This act shall take effect upon becoming a
911 law.

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T I T L E A M E N D M E N T

916

Remove everything before the enacting clause and insert:

917

A bill to be entitled

918

An act relating to programs for impaired health care

919

practitioners; amending s. 456.076, F.S.; revising

920

provisions related to impaired practitioner programs;

921

providing definitions; deleting a requirement that the

922

Department of Health designate approved programs by

923

rule; deleting a requirement authorizing the

924

department to adopt by rule the manner in which

925

consultants work with the department in intervention,

926

in evaluating and treating professionals, in providing

927

and monitoring continued care of impaired

928

professionals, and in expelling professionals from the

929

program; authorizing, instead of requiring, the

930

department to retain one or more consultants to

931

operate its impaired practitioner program; requiring

932

the department to establish the terms and conditions

933

of the program by contract; providing contract terms;

934

requiring consultants to establish the terms of

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935 monitoring impaired practitioners; authorizing
936 consultants to consider the recommendations of certain
937 persons in establishing the terms of monitoring;
938 authorizing consultants to modify monitoring terms to
939 protect the health, safety, and welfare of the public;
940 requiring consultants to assist the department and
941 licensure boards on matters relating to impaired
942 practitioners; making technical changes; requiring the
943 department to refer practitioners to consultants under
944 certain circumstances; authorizing consultants to
945 withhold certain information about self-reporting
946 participants from the department under certain
947 circumstances to encourage self-reporting; requiring
948 consultants to disclose all information relating to
949 practitioners who are terminated from the program for
950 material noncompliance; providing that all information
951 obtained by a consultant retains its confidential or
952 exempt status; providing that consultants, and certain
953 agents of consultants, may not be held liable
954 financially or have a cause of action for damages
955 brought against them for disclosing certain
956 information or for any other act or omission relating
957 to the program; authorizing consultants to contract
958 with a school or program to provide services to
959 certain students; amending s. 401.411, F.S.; providing

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960 that an impaired practitioner may be reported to a
961 consultant rather than the department under certain
962 circumstances; amending s. 456.0635, F.S.; revising
963 grounds for refusing to issue or renew a license,
964 certificate, or registration in a health care
965 profession; providing applicability; amending s.
966 455.227, F.S.; conforming provisions to changes made
967 by the act; amending ss. 456.072, 457.109, 458.331,
968 459.015, 460.413, 461.013, 462.14, 463.016, and
969 464.018, F.S.; providing that an impaired practitioner
970 may be reported to a consultant rather than the
971 department under certain circumstances; amending s.
972 464.204, F.S.; conforming provisions to changes made
973 by the act; amending ss. 465.016, 466.028, 467.203,
974 468.217, and 468.3101, F.S.; providing that an
975 impaired practitioner may be reported to a consultant
976 rather than the department under certain
977 circumstances; amending s. 474.221, F.S.; conforming
978 provisions to changes made by the act; amending s.
979 483.825, F.S.; providing that certain persons may be
980 reported to a consultant rather than the department
981 under certain circumstances; providing multiple
982 effective dates.

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