

By the Committee on Health Policy; and Senators Young, Bean, and Rouson

588-02419-17

2017876c1

1 A bill to be entitled
2 An act relating to programs for impaired health care
3 practitioners; amending s. 456.076, F.S.; revising
4 provisions related to impaired practitioner programs;
5 providing definitions; deleting a requirement that the
6 Department of Health designate approved programs by
7 rule; deleting a requirement authorizing the
8 department to adopt by rule the manner in which
9 consultants work with the department in intervention,
10 in evaluating and treating professionals, in providing
11 and monitoring continued care of impaired
12 professionals, and in expelling professionals from the
13 program; authorizing, instead of requiring, the
14 department to retain one or more consultants to
15 operate its impaired practitioner program; requiring
16 the department to establish the terms and conditions
17 of the program by contract; providing contract terms;
18 requiring consultants to establish the terms of
19 monitoring impaired practitioners; authorizing
20 consultants to consider the recommendations of certain
21 persons in establishing the terms of monitoring;
22 authorizing consultants to modify monitoring terms to
23 protect the health, safety, and welfare of the public;
24 requiring consultants to assist the department and
25 licensure boards on matters relating to impaired
26 practitioners; making technical changes; requiring the
27 department to refer practitioners to consultants under
28 certain circumstances; authorizing consultants to
29 withhold certain information about self-reporting

588-02419-17

2017876c1

30 participants from the department under certain
31 circumstances to encourage self-reporting; requiring
32 consultants to disclose all information relating to
33 practitioners who are terminated from the program for
34 material noncompliance; providing that all information
35 obtained by a consultant retains its confidential or
36 exempt status; providing that consultants, and certain
37 agents of consultants, may not be held liable
38 financially or have a cause of action for damages
39 brought against them for disclosing certain
40 information or for any other act or omission relating
41 to the program; authorizing consultants to contract
42 with a school or program to provide services to
43 certain students; amending s. 401.411, F.S.; providing
44 that an impaired practitioner may be reported to a
45 consultant rather than the department under certain
46 circumstances; amending s. 455.227, F.S.; conforming
47 provisions to changes made by the act; amending s.
48 456.0635, F.S.; providing that, under certain
49 circumstances, a board or, if there is no board, the
50 department, is not required to refuse to admit certain
51 candidates to an examination, to issue a license,
52 certificate, or registration to certain applicants, or
53 to renew a license, certificate, or registration of
54 certain applicants if they have successfully completed
55 a pretrial diversion program; providing applicability;
56 amending ss. 456.072, 457.109, 458.331, 459.015,
57 460.413, 461.013, 462.14, 463.016, and 464.018, F.S.;

58 providing that an impaired practitioner may be

588-02419-17

2017876c1

59 reported to a consultant rather than the department
60 under certain circumstances; amending s. 464.204,
61 F.S.; conforming provisions to changes made by the
62 act; amending ss. 465.016, 466.028, 467.203, 468.217,
63 and 468.3101, F.S.; providing that an impaired
64 practitioner may be reported to a consultant rather
65 than the department under certain circumstances;
66 amending s. 474.221, F.S.; conforming provisions to
67 changes made by the act; amending s. 483.825, F.S.;
68 providing that certain persons may be reported to a
69 consultant rather than the department under certain
70 circumstances; providing an effective date.

71
72 Be It Enacted by the Legislature of the State of Florida:

73
74 Section 1. Section 456.076, Florida Statutes, is amended to
75 read:

76 456.076 Impaired practitioner programs ~~Treatment programs~~
77 ~~for impaired practitioners.~~

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

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

83 (b) "Evaluator" means a state-licensed or nationally
84 certified individual who has been approved by a consultant or
85 the department, who has completed an evaluator training program
86 established by the consultant, and who is therefore authorized
87 to evaluate practitioners as part of an impaired practitioner

588-02419-17

2017876c1

88 program.

89 (c) "Impaired practitioner" means a practitioner with an
90 impairment.

91 (d) "Impaired practitioner program" means a program
92 established by the department by contract with one or more
93 consultants to serve impaired and potentially impaired
94 practitioners for the protection of the health, safety, and
95 welfare of the public.

96 (e) "Impairment" means a potentially impairing health
97 condition that is the result of the misuse or abuse of alcohol,
98 drugs, or both, or a mental or physical condition that could
99 affect a practitioner's ability to practice with skill and
100 safety.

101 (f) "Inability to progress" means a determination by a
102 consultant based on a participant's response to treatment and
103 prognosis that the participant is unable to safely practice
104 despite compliance with treatment requirements and his or her
105 participant contract.

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

109 (h) "Participant" means a practitioner who is participating
110 in the impaired practitioner program by having entered into a
111 participant contract. A practitioner ceases to be a participant
112 when the participant contract is successfully completed or is
113 terminated for any reason.

114 (i) "Participant contract" means a formal written document
115 outlining the requirements established by a consultant for a
116 participant to successfully complete the impaired practitioner

588-02419-17

2017876c1

117 program, including the participant's monitoring plan.

118 (j) "Practitioner" means a person licensed, registered,
119 certified, or regulated by the department under part III of
120 chapter 401; chapter 457; chapter 458; chapter 459; chapter 460;
121 chapter 461; chapter 462; chapter 463; chapter 464; chapter 465;
122 chapter 466; chapter 467; part I, part II, part III, part V,
123 part X, part XIII, or part XIV of chapter 468; chapter 478;
124 chapter 480; part III or part IV of chapter 483; chapter 484;
125 chapter 486; chapter 490; or chapter 491; or an applicant for a
126 license, registration, or certification under the same laws.

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

131 (l) "Treatment program" means a department- or consultant-
132 approved residential, intensive outpatient, partial
133 hospitalization or other program through which an impaired
134 practitioner is treated based on the impaired practitioner's
135 diagnosis and the treatment plan approved by the consultant.

136 (m) "Treatment provider" means a department- or consultant-
137 approved state-licensed or nationally certified individual who
138 provides treatment to an impaired practitioner based on the
139 practitioner's individual diagnosis and a treatment plan
140 approved by the consultant ~~For professions that do not have~~
141 ~~impaired practitioner programs provided for in their practice~~
142 ~~acts, the department shall, by rule, designate approved impaired~~
143 ~~practitioner programs under this section. The department may~~
144 ~~adopt rules setting forth appropriate criteria for approval of~~
145 ~~treatment providers. The rules may specify the manner in which~~

588-02419-17

2017876c1

146 ~~the consultant, retained as set forth in subsection (2), works~~
147 ~~with the department in intervention, requirements for evaluating~~
148 ~~and treating a professional, requirements for continued care of~~
149 ~~impaired professionals by approved treatment providers,~~
150 ~~continued monitoring by the consultant of the care provided by~~
151 ~~approved treatment providers regarding the professionals under~~
152 ~~their care, and requirements related to the consultant's~~
153 ~~expulsion of professionals from the program.~~

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

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

161 (b)2. An entity that employs:

162 1.a. A medical director who is ~~must be a practitioner or~~
163 ~~recovered practitioner~~ licensed under chapter 458 or chapter
164 459; or

165 2.b. An executive director who is ~~must be a registered~~
166 ~~nurse or a recovered registered nurse~~ licensed under part I of
167 chapter 464.

168 (3) The terms and conditions of the impaired practitioner
169 program must be established by the department by contract with a
170 consultant for the protection of the health, safety, and welfare
171 of the public and must provide, at a minimum, that the
172 consultant:

173 (a) Accepts referrals;

174 (b) Arranges for the evaluation and treatment of impaired

588-02419-17

2017876c1

175 practitioners by a treatment provider, when the consultant deems
176 the evaluation and treatment necessary;

177 (c) Monitors the recovery progress and status of impaired
178 practitioners to ensure that such practitioners are able to
179 practice their profession with skill and safety. Such monitoring
180 must continue until the consultant or department concludes that
181 monitoring by the consultant is no longer required for the
182 protection of the public or until the practitioner's
183 participation in the program is terminated for material
184 noncompliance or inability to progress; and

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

188 (4) The department shall specify, in its contract with each
189 consultant, the types of licenses, registrations, or
190 certifications of the practitioners to be served by that
191 consultant.

192 (5) A consultant shall enter into a participant contract
193 with an impaired practitioner and shall establish the terms of
194 monitoring and shall include the terms in a participant
195 contract. In establishing the terms of monitoring, the
196 consultant may consider the recommendations of one or more
197 approved evaluators, treatment programs, or treatment providers.
198 A consultant may modify the terms of monitoring if the
199 consultant concludes, through the course of monitoring, that
200 extended, additional, or amended terms of monitoring are
201 required for the protection of the health, safety, and welfare
202 of the public.

203 (6) ~~(b)~~ A ~~An~~ entity retained as an impaired practitioner

588-02419-17

2017876c1

204 ~~consultant under this section which employs a medical director~~
205 ~~or an executive director~~ is not required to be licensed as a
206 substance abuse provider or mental health treatment provider
207 under chapter 394, chapter 395, or chapter 397 for purposes of
208 providing services under this program.

209 (7)(e)1. Each ~~The~~ consultant shall assist the department
210 and licensure boards on matters of impaired practitioners,
211 including the determination of ~~probable cause panel and the~~
212 ~~department in carrying out the responsibilities of this section.~~
213 ~~This includes working with department investigators to determine~~
214 ~~whether a practitioner is, in fact, impaired,~~ as specified in
215 the consultant's contract with the department.

216 ~~2. The consultant may contract with a school or program to~~
217 ~~provide services to a student enrolled for the purpose of~~
218 ~~preparing for licensure as a health care practitioner as defined~~
219 ~~in this chapter or as a veterinarian under chapter 474 if the~~
220 ~~student is allegedly impaired as a result of the misuse or abuse~~
221 ~~of alcohol or drugs, or both, or due to a mental or physical~~
222 ~~condition. The department is not responsible for paying for the~~
223 ~~care provided by approved treatment providers or a consultant.~~

224 ~~(d) A medical school accredited by the Liaison Committee on~~
225 ~~Medical Education or the Commission on Osteopathic College~~
226 ~~Accreditation, or another school providing for the education of~~
227 ~~students enrolled in preparation for licensure as a health care~~
228 ~~practitioner as defined in this chapter or a veterinarian under~~
229 ~~chapter 474 which is governed by accreditation standards~~
230 ~~requiring notice and the provision of due process procedures to~~
231 ~~students, is not liable in any civil action for referring a~~
232 ~~student to the consultant retained by the department or for~~

588-02419-17

2017876c1

233 ~~disciplinary actions that adversely affect the status of a~~
234 ~~student when the disciplinary actions are instituted in~~
235 ~~reasonable reliance on the recommendations, reports, or~~
236 ~~conclusions provided by such consultant, if the school, in~~
237 ~~referring the student or taking disciplinary action, adheres to~~
238 ~~the due process procedures adopted by the applicable~~
239 ~~accreditation entities and if the school committed no~~
240 ~~intentional fraud in carrying out the provisions of this~~
241 ~~section.~~

242 (8)(3) Before issuing an approval of, or intent to deny, an
243 application for licensure, each board and profession within the
244 Division of Medical Quality Assurance may delegate to its chair
245 or other designee its authority to determine, ~~before certifying~~
246 ~~or declining to certify an application for licensure to the~~
247 ~~department,~~ that an applicant for licensure under its
248 jurisdiction may have an impairment ~~be impaired as a result of~~
249 ~~the misuse or abuse of alcohol or drugs, or both, or due to a~~
250 ~~mental or physical condition that could affect the applicant's~~
251 ~~ability to practice with skill and safety.~~ Upon such
252 determination, the chair or other designee may refer the
253 applicant to the consultant to facilitate ~~for~~ an evaluation
254 before the board issues an approval of, certifies or intent to
255 deny, ~~declines to certify his or her application to the~~
256 ~~department.~~ If the applicant agrees to be evaluated ~~by the~~
257 ~~consultant,~~ the department's deadline for approving or denying
258 the application pursuant to s. 120.60(1) is tolled until the
259 evaluation is completed and the result of the evaluation and
260 recommendation ~~by the consultant~~ is communicated to the board by
261 the consultant. If the applicant declines to be evaluated ~~by the~~

588-02419-17

2017876c1

262 consultant, the board shall issue an approval of, or intent to
263 deny, certify or decline to certify the applicant's application
264 ~~to the department~~ notwithstanding the lack of an evaluation and
265 recommendation by the consultant.

266 (9) (a) (4) (a) ~~When~~ Whenever the department receives a
267 ~~written or oral~~ legally sufficient complaint alleging that a
268 practitioner has an impairment licensee under the jurisdiction
269 ~~of the Division of Medical Quality Assurance within the~~
270 ~~department is impaired as a result of the misuse or abuse of~~
271 ~~alcohol or drugs, or both, or due to a mental or physical~~
272 ~~condition which could affect the licensee's ability to practice~~
273 ~~with skill and safety,~~ and no complaint exists against the
274 practitioner licensee other than impairment ~~exists,~~ the
275 department shall refer the practitioner to the consultant, along
276 with all information in the department's possession relating to
277 the impairment. The impairment does reporting of such
278 ~~information shall~~ not constitute grounds for discipline pursuant
279 to s. 456.072 or ~~the corresponding grounds for discipline within~~
280 the applicable practice act if ~~the probable cause panel of the~~
281 ~~appropriate board, or the department when there is no board,~~
282 ~~finds:~~

283 1. The practitioner licensee has acknowledged the
284 impairment; ~~problem.~~

285 2. The practitioner becomes a participant licensee ~~has~~
286 ~~voluntarily enrolled in an~~ impaired practitioner program and
287 successfully completes a participant contract under terms
288 established by the consultant; ~~appropriate, approved treatment~~
289 ~~program.~~

290 3. The practitioner licensee has voluntarily withdrawn from

588-02419-17

2017876c1

291 practice or has limited the scope of his or her practice if ~~as~~
292 required by the consultant;~~;~~ ~~in each case, until such time as~~
293 ~~the panel, or the department when there is no board, is~~
294 ~~satisfied the licensee has successfully completed an approved~~
295 ~~treatment program.~~

296 4. The practitioner licensee has provided to the
297 consultant, or has authorized the consultant to obtain, all
298 records and information relating to the impairment from any
299 source and all other medical records of the practitioner
300 requested by the consultant; and ~~executed releases for medical~~
301 ~~records, authorizing the release of all records of evaluations,~~
302 ~~diagnoses, and treatment of the licensee, including records of~~
303 ~~treatment for emotional or mental conditions, to the consultant.~~
304 ~~The consultant shall make no copies or reports of records that~~
305 ~~do not regard the issue of the licensee's impairment and his or~~
306 ~~her participation in a treatment program.~~

307 5. The practitioner has authorized the consultant, in the
308 event of the practitioner's termination from the impaired
309 practitioner program, to report the termination to the
310 department and provide the department with copies of all
311 information in the consultant's possession relating to the
312 practitioner.

313 (b) To encourage practitioners who are or may be impaired
314 to voluntarily self-refer to a consultant, the consultant may
315 not provide information to the department relating to a self-
316 referring participant if the consultant has no knowledge of a
317 pending department investigation, complaint, or disciplinary
318 action against the participant and if the participant is in
319 compliance and making progress with the terms of the impaired

588-02419-17

2017876c1

320 practitioner program and contract, unless authorized by the
321 participant ~~If, however, the department has not received a~~
322 ~~legally sufficient complaint and the licensee agrees to withdraw~~
323 ~~from practice until such time as the consultant determines the~~
324 ~~licensee has satisfactorily completed an approved treatment~~
325 ~~program or evaluation, the probable cause panel, or the~~
326 ~~department when there is no board, shall not become involved in~~
327 ~~the licensee's case.~~

328 ~~(c) Inquiries related to impairment treatment programs~~
329 ~~designed to provide information to the licensee and others and~~
330 ~~which do not indicate that the licensee presents a danger to the~~
331 ~~public shall not constitute a complaint within the meaning of s.~~
332 ~~456.073 and shall be exempt from the provisions of this~~
333 ~~subsection.~~

334 ~~(d) Whenever the department receives a legally sufficient~~
335 ~~complaint alleging that a licensee is impaired as described in~~
336 ~~paragraph (a) and no complaint against the licensee other than~~
337 ~~impairment exists, the department shall forward all information~~
338 ~~in its possession regarding the impaired licensee to the~~
339 ~~consultant. For the purposes of this section, a suspension from~~
340 ~~hospital staff privileges due to the impairment does not~~
341 ~~constitute a complaint.~~

342 ~~(e) The probable cause panel, or the department when there~~
343 ~~is no board, shall work directly with the consultant, and all~~
344 ~~information concerning a practitioner obtained from the~~
345 ~~consultant by the panel, or the department when there is no~~
346 ~~board, shall remain confidential and exempt from the provisions~~
347 ~~of s. 119.07(1), subject to the provisions of subsections (6)~~
348 ~~and (7).~~

588-02419-17

2017876c1

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

355 (10)(5) In any disciplinary action for a violation other
356 than impairment in which a practitioner licensee establishes the
357 violation for which the practitioner licensee is being
358 prosecuted was due to or connected with impairment and further
359 establishes the practitioner licensee is satisfactorily
360 progressing through or has successfully completed an impaired
361 practitioner program ~~approved treatment program~~ pursuant to this
362 section, such information may be considered by the board, or the
363 department when there is no board, as a mitigating factor in
364 determining the appropriate penalty. This subsection does not
365 limit mitigating factors the board may consider.

366 (11)(a)(6)(a) Upon request by the consultant, and with the
367 authorization of the practitioner when required by law, an
368 approved evaluator, treatment program, or treatment provider
369 ~~shall, upon request,~~ disclose to the consultant all information
370 in its possession regarding a referral or participant ~~the issue~~
371 ~~of a licensee's impairment and participation in the treatment~~
372 ~~program. All information obtained by the consultant and~~
373 ~~department pursuant to this section is confidential and exempt~~
374 ~~from the provisions of s. 119.07(1), subject to the provisions~~
375 ~~of this subsection and subsection (7).~~ Failure to provide such
376 information to the consultant is grounds for withdrawal of
377 approval of such evaluator, treatment program, or treatment

588-02419-17

2017876c1

378 provider.

379 (b) When a referral or participant is terminated from the
380 impaired practitioner program for material noncompliance with a
381 participant contract, inability to progress, or any other reason
382 than completion, the consultant shall disclose ~~If in the opinion~~
383 ~~of the consultant, after consultation with the treatment~~
384 ~~provider, an impaired licensee has not progressed satisfactorily~~
385 ~~in a treatment program, all information regarding the issue of a~~
386 ~~licensee's impairment and participation in a treatment program~~
387 in the consultant's possession relating to the practitioner
388 ~~shall be disclosed~~ to the department. Such disclosure shall
389 constitute a complaint pursuant to the general provisions of s.
390 456.073. In addition, whenever the consultant concludes that
391 impairment affects a practitioner's licensee's practice and
392 constitutes an immediate, serious danger to the public health,
393 safety, or welfare, the consultant shall immediately communicate
394 such that conclusion shall be communicated to the department and
395 disclose all information in the consultant's possession relating
396 to the practitioner to the department ~~State Surgeon General.~~

397 (12) All information obtained by the consultant pursuant to
398 this section is confidential and exempt from s. 119.07(1) and s.
399 24(a), Art. I of the State Constitution.

400 (13) ~~(7)~~ A consultant, or a director, officer, employee, or
401 agent of a consultant, may not be held liable financially or may
402 not have a cause of action for damages brought against him or
403 her for making a disclosure pursuant to this section, for any
404 other action or omission relating to the impaired practitioner
405 program, or for the consequences of such disclosure or action or
406 omission, including, without limitation, action by the

588-02419-17

2017876c1

407 department against a license, registration, or certification
408 ~~licensee, or approved treatment provider who makes a disclosure~~
409 ~~pursuant to this section is not subject to civil liability for~~
410 ~~such disclosure or its consequences.~~

411 (14) The provisions of s. 766.101 apply to any consultant
412 and the consultant's directors, officers, employees, or agents
413 in regards to providing information relating to a participant to
414 a medical review committee if the participant authorizes such
415 disclosure ~~officer, employee, or agent of the department or the~~
416 ~~board and to any officer, employee, or agent of any entity with~~
417 ~~which the department has contracted pursuant to this section.~~

418 (15) (a) (8) (a) ~~A consultant retained pursuant to this~~
419 section and subsection (2), a consultant's directors, officers,
420 and employees, or agents and those acting at the direction of
421 ~~the consultant for the limited purpose of an emergency~~
422 ~~intervention on behalf of a licensee or student as described in~~
423 ~~subsection (2) when the consultant is unable to perform such~~
424 ~~intervention shall be considered agents of the department for~~
425 ~~purposes of s. 768.28 while acting within the scope of the~~
426 ~~consultant's duties under the contract with the department if~~
427 ~~the contract complies with the requirements of this section. The~~
428 ~~contract must require that:~~

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

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

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

435 ~~4. The consultant's quality assurance program be subject to~~

588-02419-17

2017876c1

436 ~~review and approval by the department.~~

437 ~~5. The consultant operate under policies and procedures~~
438 ~~approved by the department.~~

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

442 ~~7. The department be entitled to review the records~~
443 ~~relating to the consultant's performance under the contract for~~
444 ~~the purpose of management audits, financial audits, or program~~
445 ~~evaluation.~~

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

448 ~~9. The department be entitled to terminate the contract~~
449 ~~with the consultant for noncompliance with the contract.~~

450 (b) In accordance with s. 284.385, the Department of
451 Financial Services shall defend any claim, suit, action, or
452 proceeding, including a claim, suit, action, or proceeding for
453 injunctive, affirmative, or declaratory relief, against the
454 consultant, or the consultant's directors, officers, or
455 employees, and agents brought as the result of any action or
456 omission relating to the impaired practitioner program or those
457 acting at the direction of the consultant for the limited
458 purpose of an emergency intervention on behalf of a licensee or
459 student as described in subsection (2) when the consultant is
460 unable to perform such intervention, which claim, suit, action,
461 or proceeding is brought as a result of an act or omission by
462 any of the consultant's officers and employees and those acting
463 under the direction of the consultant for the limited purpose of
464 an emergency intervention on behalf of the licensee or student

588-02419-17

2017876c1

465 ~~when the consultant is unable to perform such intervention, if~~
466 ~~the act or omission arises out of and is in the scope of the~~
467 ~~consultant's duties under its contract with the department.~~

468 (16)(e) If a the consultant retained by the department
469 pursuant to this section subsection (2) is also retained by
470 another any other state agency to operate an impaired
471 practitioner program for that agency, this section also applies
472 to the consultant's operation of an impaired practitioner
473 program for that agency, and if the contract between such state
474 agency and the consultant complies with the requirements of this
475 section, the consultant, the consultant's officers and
476 employees, and those acting under the direction of the
477 consultant for the limited purpose of an emergency intervention
478 on behalf of a licensee or student as described in subsection
479 (2) when the consultant is unable to perform such intervention
480 shall be considered agents of the state for the purposes of this
481 section while acting within the scope of and pursuant to
482 guidelines established in the contract between such state agency
483 and the consultant.

484 (17)(9) A An impaired practitioner consultant is the
485 official custodian of records relating to the referral of an
486 impaired licensee or applicant to that consultant and any other
487 interaction between the licensee or applicant and the
488 consultant. The consultant may disclose to a referral or
489 participant, or to the legal representative of the referral or
490 participant, the documents, records, or other information from
491 the consultant's file, including information received by the
492 consultant from other sources, and information on the terms
493 required for the referral's or participant's monitoring

588-02419-17

2017876c1

494 contract, the referral's or participant's progress or inability
495 to progress, the referral's or participant's discharge or
496 termination, information supporting the conclusion of material
497 noncompliance, or any other information required by law ~~the~~
498 ~~impaired licensee or applicant or his or her designee any~~
499 ~~information that is disclosed to or obtained by the consultant~~
500 ~~or that is confidential under paragraph (6)(a), but only to the~~
501 ~~extent that it is necessary to do so to carry out the~~
502 ~~consultant's duties under this section. The department, and any~~
503 ~~other entity that enters into a contract with the consultant to~~
504 ~~receive the services of the consultant, has direct~~
505 ~~administrative control over the consultant to the extent~~
506 ~~necessary to receive disclosures from the consultant as allowed~~
507 ~~by federal law. If a consultant discloses information to the~~
508 ~~department in accordance with this part, a referral or~~
509 ~~participant, or his or her legal representative, may obtain a~~
510 ~~complete copy of the consultant's file from the consultant or~~
511 ~~disciplinary proceeding is pending, an impaired licensee may~~
512 ~~obtain such information from the department under s. 456.073.~~

513 (18) (a) The consultant may contract with a school or
514 program to provide impaired practitioner program services to a
515 student enrolled for the purpose of preparing for licensure as a
516 health care practitioner as defined in this chapter or as a
517 veterinarian under chapter 474 if the student has or is
518 suspected of having an impairment. The department is not
519 responsible for paying for the care provided by approved
520 treatment providers or approved treatment programs or for the
521 services provided by a consultant to a student.

522 (b) A medical school accredited by the Liaison Committee on

588-02419-17

2017876c1

523 Medical Education or the Commission on Osteopathic College
524 Accreditation, or another school providing for the education of
525 students enrolled in preparation for licensure as a health care
526 practitioner as defined in this chapter, or a veterinarian under
527 chapter 474, which is governed by accreditation standards
528 requiring notice and the provision of due process procedures to
529 students, is not liable in any civil action for referring a
530 student to the consultant retained by the department or for
531 disciplinary actions that adversely affect the status of a
532 student when the disciplinary actions are instituted in
533 reasonable reliance on the recommendations, reports, or
534 conclusions provided by such consultant, if the school, in
535 referring the student or taking disciplinary action, adheres to
536 the due process procedures adopted by the applicable
537 accreditation entities and if the school committed no
538 intentional fraud in carrying out the provisions of this
539 section.

540 Section 2. Paragraph (1) of subsection (1) of section
541 401.411, Florida Statutes, is amended to read:

542 401.411 Disciplinary action; penalties.—

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

547 (1) The failure to report to the department any person
548 known to be in violation of this part. However, a professional
549 known to be operating under this part without reasonable skill
550 and without regard for the safety of the public by reason of
551 illness, drunkenness, or the use of drugs, narcotics, chemicals,

588-02419-17

2017876c1

552 or any other type of material, or as a result of a mental or
553 physical condition, may be reported to a consultant operating an
554 impaired practitioner program as described in s. 456.076 rather
555 than to the department.

556 Section 3. Paragraph (u) of subsection (1) of section
557 455.227, Florida Statutes, is amended to read:

558 455.227 Grounds for discipline; penalties; enforcement.—

559 (1) The following acts shall constitute grounds for which
560 the disciplinary actions specified in subsection (2) may be
561 taken:

562 (u) Termination from an impaired practitioner program ~~a~~
563 ~~treatment program for impaired practitioners~~ as described in s.
564 456.076 for failure to comply, without good cause, with the
565 terms of the monitoring or participant ~~treatment~~ contract
566 entered into by the licensee or failing to successfully complete
567 a drug or alcohol treatment program.

568 Section 4. Subsections (2) and (3) of section 456.0635,
569 Florida Statutes, are amended to read:

570 456.0635 Health care fraud; disqualification for license,
571 certificate, or registration.—

572 (2) Each board within the jurisdiction of the department,
573 or the department if there is no board, shall refuse to admit a
574 candidate to any examination and refuse to issue a license,
575 certificate, or registration to any applicant if the candidate
576 or applicant or any principal, officer, agent, managing
577 employee, or affiliated person of the candidate or applicant:

578 (a) Has been convicted of, or entered a plea of guilty or
579 nolo contendere to, regardless of adjudication, a felony under
580 chapter 409, chapter 817, or chapter 893, or a similar felony

588-02419-17

2017876c1

581 offense committed in another state or jurisdiction, unless the
582 candidate or applicant has successfully completed a pretrial
583 diversion or drug court program for that felony and provides
584 proof that the plea has been withdrawn or the charges have been
585 dismissed. Any such conviction or plea shall exclude the
586 applicant or candidate from licensure, examination,
587 certification, or registration unless the sentence and any
588 subsequent period of probation for such conviction or plea
589 ended:

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

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

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

597 (b) Has been convicted of, or entered a plea of guilty or
598 nolo contendere to, regardless of adjudication, a felony under
599 21 U.S.C. ss. 801-970, or 42 U.S.C. ss. 1395-1396, unless the
600 sentence and any subsequent period of probation for such
601 conviction or plea ended more than 15 years before the date of
602 the application;

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

607 (d) Has been terminated for cause, pursuant to the appeals
608 procedures established by the state, from any other state
609 Medicaid program, unless the candidate or applicant has been in

588-02419-17

2017876c1

610 good standing with a state Medicaid program for the most recent
611 5 years and the termination occurred at least 20 years before
612 the date of the application; or

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

616

617 This subsection does not apply to an applicant for initial
618 licensure, certification, or registration who was enrolled on or
619 before July 1, 2009, in an educational or training program that
620 was recognized by a board or, if there was no board, recognized
621 by the department, and was arrested or charged with a felony
622 specified in paragraph (a) or paragraph (b) before July 1, 2009.

623 (3) The department shall refuse to renew a license,
624 certificate, or registration of any applicant if the applicant
625 or any principal, officer, agent, managing employee, or
626 affiliated person of the applicant:

627 (a) Has been convicted of, or entered a plea of guilty or
628 nolo contendere to, regardless of adjudication, a felony under
629 chapter 409, chapter 817, or chapter 893, or a similar felony
630 offense committed in another state or jurisdiction, unless the
631 applicant is currently enrolled in a pretrial diversion or drug
632 court program that allows the withdrawal of the plea for that
633 felony upon successful completion of that program. Any such
634 conviction or plea excludes the applicant from licensure renewal
635 unless the sentence and any subsequent period of probation for
636 such conviction or plea ended:

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

588-02419-17

2017876c1

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

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

644 (b) Has been convicted of, or entered a plea of guilty or
645 nolo contendere to, regardless of adjudication, a felony under
646 21 U.S.C. ss. 801-970, or 42 U.S.C. ss. 1395-1396 since July 1,
647 2009, unless the sentence and any subsequent period of probation
648 for such conviction or plea ended more than 15 years before the
649 date of the application. However, if the applicant was arrested
650 or charged with such felony before July 1, 2009, he or she is
651 not excluded from licensure renewal under this paragraph.

652 (c) Has been terminated for cause from the Florida Medicaid
653 program pursuant to s. 409.913, unless the applicant has been in
654 good standing with the Florida Medicaid program for the most
655 recent 5 years.

656 (d) Has been terminated for cause, pursuant to the appeals
657 procedures established by the state, from any other state
658 Medicaid program, unless the applicant has been in good standing
659 with a state Medicaid program for the most recent 5 years and
660 the termination occurred at least 20 years before the date of
661 the application.

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

665 Section 5. Paragraphs (i) and (hh) of subsection (1) of
666 section 456.072, Florida Statutes, are amended to read:

667 456.072 Grounds for discipline; penalties; enforcement.—

588-02419-17

2017876c1

668 (1) The following acts shall constitute grounds for which
669 the disciplinary actions specified in subsection (2) may be
670 taken:

671 (i) Except as provided in s. 465.016, failing to report to
672 the department any person who the licensee knows is in violation
673 of this chapter, the chapter regulating the alleged violator, or
674 the rules of the department or the board. However, a person who
675 the licensee knows is unable to practice with reasonable skill
676 and safety to patients by reason of illness or use of alcohol,
677 drugs, narcotics, chemicals, or any other type of material, or
678 as a result of a mental or physical condition, may be reported
679 to a consultant operating an impaired practitioner program as
680 described in s. 456.076 rather than to the department.

681 (hh) Being terminated from an impaired practitioner program
682 that a treatment program for impaired practitioners, which is
683 overseen by a ~~an impaired practitioner~~ consultant as described
684 in s. 456.076, for failure to comply, without good cause, with
685 the terms of the monitoring or participant treatment contract
686 entered into by the licensee, or for not successfully completing
687 any drug treatment or alcohol treatment program.

688 Section 6. Paragraph (f) of subsection (1) of section
689 457.109, Florida Statutes, is amended to read:

690 457.109 Disciplinary actions; grounds; action by the
691 board.—

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

694 (f) Failing to report to the department any person who the
695 licensee knows is in violation of this chapter or of the rules
696 of the department. However, a person who the licensee knows is

588-02419-17

2017876c1

697 unable to practice acupuncture with reasonable skill and safety
698 to patients by reason of illness or use of alcohol, drugs,
699 narcotics, chemicals, or any other type of material, or as a
700 result of a mental or physical condition, may be reported to a
701 consultant operating an impaired practitioner program as
702 described in s. 456.076 rather than to the department.

703 Section 7. Paragraph (e) of subsection (1) of section
704 458.331, Florida Statutes, is amended to read:

705 458.331 Grounds for disciplinary action; action by the
706 board and department.—

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

709 (e) Failing to report to the department any person who the
710 licensee knows is in violation of this chapter or of the rules
711 of the department or the board. However, a person who the
712 licensee knows is unable to practice medicine with reasonable
713 skill and safety to patients by reason of illness or use of
714 alcohol, drugs, narcotics, chemicals, or any other type of
715 material, or as a result of a mental or physical condition, may
716 be reported to a consultant operating an impaired practitioner
717 program as described in s. 456.076 rather than to the department
718 ~~A treatment provider approved pursuant to s. 456.076 shall~~
719 ~~provide the department or consultant with information in~~
720 ~~accordance with the requirements of s. 456.076(4), (5), (6),~~
721 ~~(7), and (9).~~

722 Section 8. Paragraph (e) of subsection (1) of section
723 459.015, Florida Statutes, is amended to read:

724 459.015 Grounds for disciplinary action; action by the
725 board and department.—

588-02419-17

2017876c1

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

728 (e) Failing to report to the department or the department's
729 impaired professional consultant any person who the licensee or
730 certificateholder knows is in violation of this chapter or of
731 the rules of the department or the board. However, a person who
732 the licensee knows is unable to practice osteopathic medicine
733 with reasonable skill and safety to patients by reason of
734 illness or use of alcohol, drugs, narcotics, chemicals, or any
735 other type of material, or as a result of a mental or physical
736 condition, may be reported to a consultant operating an impaired
737 practitioner program as described in s. 456.076 rather than to
738 the department A treatment provider, approved pursuant to s.
739 456.076, shall provide the department or consultant with
740 information in accordance with the requirements of s.
741 456.076(4), (5), (6), (7), and (9).

742 Section 9. Paragraph (g) of subsection (1) of section
743 460.413, Florida Statutes, is amended to read:

744 460.413 Grounds for disciplinary action; action by board or
745 department.—

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

748 (g) Failing to report to the department any person who the
749 licensee knows is in violation of this chapter or of the rules
750 of the department or the board. However, a person who the
751 licensee knows is unable to practice chiropractic medicine with
752 reasonable skill and safety to patients by reason of illness or
753 use of alcohol, drugs, narcotics, chemicals, or any other type
754 of material, or as a result of a mental or physical condition,

588-02419-17

2017876c1

755 may be reported to a consultant operating an impaired
756 practitioner program as described in s. 456.076 rather than to
757 the department.

758 Section 10. Paragraph (f) of subsection (1) of section
759 461.013, Florida Statutes, is amended to read:

760 461.013 Grounds for disciplinary action; action by the
761 board; investigations by department.—

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

764 (f) Failing to report to the department any person who the
765 licensee knows is in violation of this chapter or of the rules
766 of the department or the board. However, a person who the
767 licensee knows is unable to practice podiatric medicine with
768 reasonable skill and safety to patients by reason of illness or
769 use of alcohol, drugs, narcotics, chemicals, or any other type
770 of material, or as a result of a mental or physical condition,
771 may be reported to a consultant operating an impaired
772 practitioner program as described in s. 456.076 rather than to
773 the department.

774 Section 11. Paragraph (f) of subsection (1) of section
775 462.14, Florida Statutes, is amended to read:

776 462.14 Grounds for disciplinary action; action by the
777 department.—

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

780 (f) Failing to report to the department any person who the
781 licensee knows is in violation of this chapter or of the rules
782 of the department. However, a person who the licensee knows is
783 unable to practice naturopathic medicine with reasonable skill

588-02419-17

2017876c1

784 and safety to patients by reason of illness or use of alcohol,
785 drugs, narcotics, chemicals, or any other type of material, or
786 as a result of a mental or physical condition, may be reported
787 to a consultant operating an impaired practitioner program as
788 described in s. 456.076 rather than to the department.

789 Section 12. Paragraph (l) of subsection (1) of section
790 463.016, Florida Statutes, is amended to read:

791 463.016 Grounds for disciplinary action; action by the
792 board.—

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

795 (1) Willfully failing to report any person who the licensee
796 knows is in violation of this chapter or of rules of the
797 department or the board. However, a person who the licensee
798 knows is unable to practice optometry with reasonable skill and
799 safety to patients by reason of illness or use of alcohol,
800 drugs, narcotics, chemicals, or any other type of material, or
801 as a result of a mental or physical condition, may be reported
802 to a consultant operating an impaired practitioner program as
803 described in s. 456.076 rather than to the department.

804 Section 13. Paragraph (k) of subsection (1) of section
805 464.018, Florida Statutes, is amended to read:

806 464.018 Disciplinary actions.—

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

809 (k) Failing to report to the department any person who the
810 licensee knows is in violation of this part or of the rules of
811 the department or the board. However, a person who the licensee
812 knows is unable to practice nursing with reasonable skill and

588-02419-17

2017876c1

813 safety to patients by reason of illness or use of alcohol,
814 drugs, narcotics, chemicals, or any other type of material, or
815 as a result of a mental or physical condition, may be reported
816 to a consultant operating an impaired practitioner program as
817 described in s. 456.076 rather than to the department; however,
818 ~~if the licensee verifies that such person is actively~~
819 ~~participating in a board-approved program for the treatment of a~~
820 ~~physical or mental condition, the licensee is required to report~~
821 ~~such person only to an impaired professionals consultant.~~

822 Section 14. Paragraph (c) of subsection (2) of section
823 464.204, Florida Statutes, is amended to read:

824 464.204 Denial, suspension, or revocation of certification;
825 disciplinary actions.—

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

829 (c) Imposition of probation or restriction of
830 certification, including conditions such as corrective actions
831 as retraining or compliance with the department's impaired
832 practitioner program operated by a consultant as described in s.
833 456.076 ~~an approved treatment program for impaired~~
834 ~~practitioners.~~

835 Section 15. Paragraph (o) of subsection (1) of section
836 465.016, Florida Statutes, is amended to read:

837 465.016 Disciplinary actions.—

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

840 (o) Failing to report to the department any licensee under
841 chapter 458 or under chapter 459 who the pharmacist knows has

588-02419-17

2017876c1

842 violated the grounds for disciplinary action set out in the law
843 under which that person is licensed and who provides health care
844 services in a facility licensed under chapter 395, or a health
845 maintenance organization certificated under part I of chapter
846 641, in which the pharmacist also provides services. However, a
847 person who the licensee knows is unable to practice medicine or
848 osteopathic medicine with reasonable skill and safety to
849 patients by reason of illness or use of alcohol, drugs,
850 narcotics, chemicals, or any other type of material, or as a
851 result of a mental or physical condition, may be reported to a
852 consultant operating an impaired practitioner program as
853 described in s. 456.076 rather than to the department.

854 Section 16. Paragraph (f) of subsection (1) of section
855 466.028, Florida Statutes, is amended to read:

856 466.028 Grounds for disciplinary action; action by the
857 board.—

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

860 (f) Failing to report to the department any person who the
861 licensee knows, or has reason to believe, is clearly in
862 violation of this chapter or of the rules of the department or
863 the board. However, a person who the licensee knows, or has
864 reason to believe, is clearly unable to practice her or his
865 profession with reasonable skill and safety to patients by
866 reason of illness or use of alcohol, drugs, narcotics,
867 chemicals, or any other type of material, or as a result of a
868 mental or physical condition, may be reported to a consultant
869 operating an impaired practitioner program as described in s.
870 456.076 rather than to the department.

588-02419-17

2017876c1

871 Section 17. Paragraph (h) of subsection (1) of section
872 467.203, Florida Statutes, is amended to read:

873 467.203 Disciplinary actions; penalties.—

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

876 (h) Failing to report to the department any person who the
877 licensee knows is in violation of this chapter or of the rules
878 of the department. However, a person who the licensee knows is
879 unable to practice midwifery with reasonable skill and safety to
880 patients by reason of illness or use of alcohol, drugs,
881 narcotics, chemicals, or any other type of material, or as a
882 result of a mental or physical condition, may be reported to a
883 consultant operating an impaired practitioner program as
884 described in s. 456.076 rather than to the department.

885 Section 18. Paragraph (f) of subsection (1) of section
886 468.217, Florida Statutes, is amended to read:

887 468.217 Denial of or refusal to renew license; suspension
888 and revocation of license and other disciplinary measures.—

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

891 (f) Failing to report to the department any person who the
892 licensee knows is in violation of this part or of the rules of
893 the department or of the board. However, a person who the
894 licensee knows is unable to practice occupational therapy with
895 reasonable skill and safety to patients by reason of illness or
896 use of alcohol, drugs, narcotics, chemicals, or any other type
897 of material, or as a result of a mental or physical condition,
898 may be reported to a consultant operating an impaired
899 practitioner program as described in s. 456.076 rather than to

588-02419-17

2017876c1

900 the department.

901 Section 19. Paragraph (n) of subsection (1) of section
902 468.3101, Florida Statutes, is amended to read:

903 468.3101 Disciplinary grounds and actions.—

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

910 (n) Being terminated from an impaired practitioner program
911 operated by a consultant as described in s. 456.076 for failure
912 to comply, without good cause, with the terms of monitoring or a
913 participant contract entered into by the licensee, or for not
914 successfully completing a drug treatment or alcohol treatment
915 program ~~Failing to comply with the recommendations of the~~
916 ~~department's impaired practitioner program for treatment,~~
917 ~~evaluation, or monitoring. A letter from the director of the~~
918 ~~impaired practitioner program that the certificateholder is not~~
919 ~~in compliance shall be considered conclusive proof under this~~
920 ~~part.~~

921 Section 20. Section 474.221, Florida Statutes, is amended
922 to read:

923 474.221 Impaired practitioner provisions; applicability.—
924 Notwithstanding the transfer of the Division of Medical Quality
925 Assurance to the Department of Health or any other provision of
926 law to the contrary, veterinarians licensed under this chapter
927 shall be governed by the ~~treatment of~~ impaired practitioner
928 program provisions of s. 456.076 as if they were under the

588-02419-17

2017876c1

929 jurisdiction of the Division of Medical Quality Assurance,
930 except that for veterinarians the Department of Business and
931 Professional Regulation shall, at its option, exercise any of
932 the powers granted to the Department of Health by that section,
933 and "board" shall mean board as defined in this chapter.

934 Section 21. Paragraph (o) of subsection (1) of section
935 483.825, Florida Statutes, is amended to read:

936 483.825 Grounds for disciplinary action.—

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

939 (o) Failing to report to the department a person or other
940 licensee who the licensee knows is in violation of this chapter
941 or the rules of the department or board adopted hereunder.
942 However, a person or other licensee who the licensee knows is
943 unable to perform or report on clinical laboratory examinations
944 with reasonable skill and safety to patients by reason of
945 illness or use of alcohol, drugs, narcotics, chemicals, or any
946 other type of material, or as a result of a mental or physical
947 condition, may be reported to a consultant operating an impaired
948 practitioner program as described in s. 456.076 rather than to
949 the department.

950 Section 22. This act shall take effect upon becoming a law.
951