

CHAPTER 97-261

House Bill No. 1925

An act relating to regulation of professions; dividing ch. 455, F.S., into parts; transferring those provisions of ch. 455, F.S., that pertain to health-related professions into the second part; duplicating publication of extant provisions affecting both health-related professions and other professions in the second part; amending s. 11, ch. 96-403, Laws of Florida; transferring certain functions from the Agency for Health Care Administration to the Department of Health; amending s. 20.43, F.S.; prescribing guidelines for appointments to boards within the Department of Health; amending ss. 455.01, 455.203, 455.205, 455.207, 455.208, 455.209, 455.211, 455.213, 455.214, 455.217, 455.2175, 455.218, 455.2185, 455.221, 455.2226, 455.2228, 455.223, 455.224, 455.225, 455.227, 455.2273, 455.2275, 455.228, 455.2285, 455.229, 455.232, 455.24, 455.242, 455.243, 455.245, F.S.; conforming those sections to the transfer of regulatory authority over health-related professions from the Agency for Health Care Administration to the Department of Health; conforming those sections to the subdivision of ch. 455, F.S.; creating s. 455.501, F.S.; providing definitions; creating s. 455.504, F.S.; providing applicability; creating s. 455.507, F.S.; providing for continuing licensure of members of the Armed Forces; creating s. 455.511, F.S.; prohibiting disqualification from professional licensure on account of citizenship; creating s. 455.514, F.S.; providing for qualification of immigrants for professional licensure examination; creating s. 455.517, F.S.; providing legislative intent; creating s. 455.521, F.S.; prescribing powers and duties of the Department of Health; creating s. 455.524, F.S.; providing for long-range policy planning; creating s. 455.527, F.S.; providing method of contacting regulatory boards; renumbering s. 455.206, F.S., relating to conditions for board membership; creating s. 455.534, F.S.; providing for organization, meetings, compensation, and travel expense for boards; creating s. 455.537, F.S.; providing for publication of information; creating s. 455.541, F.S.; providing accountability and liability of board members; creating s. 455.544, F.S.; providing for board rules, final agency action, and challenges; creating s. 455.547, F.S.; providing requirements with respect to continuing education; creating s. 455.551, F.S.; providing for continued recognition of certain education programs; creating s. 455.554, F.S.; providing for consultation with postsecondary education boards; creating s. 455.561, F.S.; providing for limited licenses; renumbering and amending s. 455.2141, F.S., relating to general licensing provisions for health-related professions; prescribing additional guidelines with respect to continuing education; renumbering and amending s. 455.2142, F.S., relating to sexual misconduct by applicants for licensure; creating s. 455.571, F.S.; providing for use of professional testing services; renumbering and amending s. 455.2173, F.S., relating to examinations; prescribing additional powers and duties of the respective boards and the department; creating s. 455.577, F.S.; providing a penalty for theft

or reproduction of an examination; creating s. 455.581, F.S.; prescribing additional provisions with respect to examination and licensure of foreign-trained professionals; creating s. 455.584, F.S.; providing exemptions and limited license authorization for certain foreign professionals; renumbering and amending s. 455.220, F.S., relating to fees and receipts; prescribing additional powers and duties of the respective boards and the department; renumbering and amending s. 455.2205, F.S., relating to the Health Care Trust Fund; creating s. 455.594, F.S.; providing for legal and investigative services; renumbering and amending s. 455.222, F.S., relating to instruction on domestic violence; renumbering s. 455.2224, F.S., relating to hepatitis B and HIV carriers; creating s. 455.604, F.S.; providing for instruction on HIV and AIDS; creating s. 455.607, F.S.; providing for instruction on HIV and AIDS; creating s. 455.611, F.S.; providing for oaths, depositions, and subpoenas; creating s. 455.614, F.S.; providing for mediation; creating s. 455.617, F.S.; providing authority to issue citations; creating s. 455.621, F.S.; providing for disciplinary proceedings; creating s. 455.624, F.S.; providing grounds for discipline; prescribing penalties; creating s. 455.627, F.S.; providing disciplinary guidelines; creating s. 455.631, F.S.; prescribing a penalty for giving false information; creating s. 455.634, F.S.; providing for prosecution of criminal violations; creating s. 455.637, F.S.; providing sanctions against unlicensed practice of a profession; creating s. 455.641, F.S.; providing for enforcement of prohibition against unlicensed practice; providing a fee; creating s. 455.644, F.S.; requiring an annual report; creating s. 455.647, F.S.; providing for public inspection of certain information; creating s. 455.651, F.S.; providing a penalty for disclosure of confidential information; renumbering and amending s. 455.236, F.S., relating to financial arrangements between referring health care providers and providers of health care services; renumbering s. 455.237, F.S., relating to prohibiting kickbacks; renumbering and amending s. 455.239, F.S., relating to licensure of designated health care services; creating s. 455.664, F.S.; providing requirements with respect to advertising by health care providers; renumbering and amending s. 455.241, F.S., relating to patient records; renumbering and amending s. 455.2415, F.S., relating to confidential communications between a patient and a psychiatrist; renumbering s. 455.2416, F.S., relating to practitioner disclosure of confidential information; creating s. 455.677, F.S.; providing for disposition of records of deceased, relocated, or retired practitioners; creating s. 455.681, F.S.; providing for inspections; renumbering s. 455.244, F.S., relating to chiropractic and podiatric health care; creating s. 455.687, F.S.; providing for immediate suspension of certain licenses; renumbering s. 455.2455, F.S., relating to treatment of Medicare beneficiaries; renumbering and amending s. 455.2456, F.S., relating to financial responsibility; renumbering s. 455.247, F.S., relating to reports on professional liability claims; renumbering and amending s. 455.25, F.S., relating to disclosure of certain financial interests; renumbering and amending s. 455.26, F.S., relating to the Impaired Practitioners Committee; renumbering and amending s. 455.261, F.S.,

relating to the treatment program for impaired practitioners; creating s. 455.711, F.S.; providing for inactive and delinquent status; creating s. 455.714, F.S.; providing for renewal and cancellation notices; creating s. 455.717, F.S.; requiring an address of record; renumbering and amending s. 455.277, F.S., relating to the Health Care Community Antitrust Guidance Act; renumbering s. 455.2775, F.S., relating to information submitted in relation to antitrust issues; repealing s. 455.2055, F.S., relating to membership of practice boards, the provisions of which were incorporated into s. 20.43, F.S.; requiring the Secretary of Health to appoint a task force to study the validation of health care practitioner credentials; amending s. 459.0085, F.S.; directing the Department of Health to suspend a license under certain circumstances; increasing malpractice indemnity limits for osteopathic physicians; providing membership of the task force; amending s. 458.320, F.S.; increasing malpractice indemnity limits and providing for financial responsibility; amending s. 627.912, F.S.; providing for insurer reporting of professional liability claims and actions; revising the timeframe for reporting; providing penalties; amending s. 458.331, F.S.; increasing malpractice indemnity limits for physicians; amending s. 459.015, F.S.; increasing the amount of an indemnity paid for a claim for medical malpractice; amending s. 468.1645, F.S.; revising an exemption from licensure as a nursing home administrator relating to persons employed to administer in facilities or institutions operated by and for persons who rely exclusively upon treatment by spiritual means through prayer; amending s. 458.3115, F.S.; revising requirements for the development of examinations administered to certain foreign-licensed physicians; prescribing eligibility requirements for certain foreign-trained physicians to take a restricted-license examination; creating s. 458.3124, F.S.; providing for certain foreign-trained and licensed physicians to take certain licensure examinations; providing restrictions and establishing fees; restricting the practice of such persons; providing for eligibility for full licensure; providing for the adoption of rules; providing an effective date.

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

Section 1. Section 11 of chapter 96-403, Laws of Florida, is amended to read:

Section 11. Effective July 1, 1997, the regulation of nursing assistants, as provided under s. 400.211, Florida Statutes; health care services pools, as provided under s. 402.48, Florida Statutes; the Board of Acupuncture, created under chapter 457, Florida Statutes; the Board of Medicine, created under chapter 458, Florida Statutes; the Board of Osteopathic Medicine, created under chapter 459, Florida Statutes; the Board of Chiropractic, created under chapter 460, Florida Statutes; the Board of Podiatric Medicine, created under chapter 461, Florida Statutes; naturopathy, as provided under chapter 462, Florida Statutes; the Board of Optometry, created under chapter 463, Florida Statutes; the Board of Nursing, created under chapter 464, Florida Statutes; the Board of Pharmacy, created under chapter 465,

Florida Statutes; the Board of Dentistry, created under chapter 466, Florida Statutes; midwifery, as provided under chapter 467, Florida Statutes; the Board of Speech-Language Pathology and Audiology, created under part I of chapter 468, Florida Statutes; the Board of Nursing Home Administrators, created under part II of chapter 468, Florida Statutes; occupational therapy, as provided under part III of chapter 468, Florida Statutes; respiratory therapy, as provided under part V of chapter 468, Florida Statutes; dietetics and nutrition practice, as provided under part X of chapter 468, Florida Statutes; electrolysis, as provided under chapter 478, Florida Statutes; the Board of Clinical Laboratory Personnel, created under part IV of chapter 483, Florida Statutes; medical physicists, as provided under part V of chapter 483, Florida Statutes; the Board of Opticianry, created under part I of chapter 484, Florida Statutes; the Board of Physical Therapy Practice, created under chapter 486, Florida Statutes; the Board of Psychology, created under chapter 490, Florida Statutes; and the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling, created under chapter 491, Florida Statutes, under the Division of Health Quality Assurance of the Agency for Health Care Administration, or under the agency, within the Department of Business and Professional Regulation, but not including personnel, property, and unexpended balances of appropriations related to consumer complaints, investigative and prosecutorial services, including all licensing, examination, publication, administrative, and management information services, but not consumer complaint, investigative, or prosecutorial services, provided by the Agency for Health Care Administration, is transferred by a type two transfer, as defined in s. 20.06(2), Florida Statutes, and assigned to the Division of Medical Quality Assurance within the Department of Health, as created by this act.

Section 2. Section 20.43, Florida Statutes, 1996 Supplement, is amended to read:

20.43 Department of Health.—There is created a Department of Health.

(1) The purpose of the Department of Health is to promote and protect the health of all residents and visitors in the state through organized state and community efforts, including cooperative agreements with counties. The department shall:

(a) Prevent to the fullest extent possible, the occurrence and progression of communicable and noncommunicable diseases and disabilities.

(b) Maintain a constant surveillance of disease occurrence and accumulate health statistics necessary to establish disease trends and to design health programs.

(c) Conduct special studies of the causes of diseases and formulate preventive strategies.

(d) Promote the maintenance and improvement of the environment as it affects public health.

(e) Promote the maintenance and improvement of health in the residents of the state.

(f) Provide leadership, in cooperation with the public and private sectors, in establishing statewide and community public health delivery systems.

(g) Provide health care and early intervention services to infants, toddlers, children, adolescents, and high-risk perinatal patients who are at risk for disabling conditions or have chronic illnesses.

(h) Develop working associations with all agencies and organizations involved and interested in health and health care delivery.

(i) Analyze trends in the evolution of health systems, and identify and promote the use of innovative, cost-effective health delivery systems.

(j) Serve as the statewide repository of all aggregate data accumulated by state agencies related to health care; analyze that data and issue periodic reports and policy statements, as appropriate; require that all aggregated data be kept in a manner that promotes easy utilization by the public, state agencies, and all other interested parties; provide technical assistance as required; and work cooperatively with the state's higher education programs to promote further study and analysis of health care systems and health care outcomes.

(k) Biennially publish, and annually update, a state health plan that assesses current health programs, systems, and costs; makes projections of future problems and opportunities; and recommends changes needed in the health care system to improve the public health.

(l) Regulate health practitioners, to the extent authorized by the Legislature, as necessary for the preservation of the health, safety, and welfare of the public.

(2) The head of the Department of Health is the Secretary of Health and State Health Officer. The secretary must be a physician licensed under chapter 458 or chapter 459 who has advanced training or extensive experience in public health administration. The secretary is appointed by the Governor subject to confirmation by the Senate. The secretary serves at the pleasure of the Governor.

(3) The following divisions of the Department of Health are established:

(a) Division of Administration.

(b) Division of Environmental Health.

(c) Division of Disease Control.

(d) Division of Family Services.

(e) Division of Children's Medical Services.

(f) ~~Effective July 1, 1997,~~ Division of Medical Quality Assurance, which is responsible for the following boards and professions established within the division:

1. Nursing assistants, as provided under s. 400.211.
2. Health care services pools, as provided under s. 402.48.
3. The Board of Acupuncture, created under chapter 457.
4. The Board of Medicine, created under chapter 458.
5. The Board of Osteopathic Medicine, created under chapter 459.
6. The Board of Chiropractic, created under chapter 460.
7. The Board of Podiatric Medicine, created under chapter 461.
8. Naturopathy, as provided under chapter 462.
9. The Board of Optometry, created under chapter 463.
10. The Board of Nursing, created under chapter 464.
11. The Board of Pharmacy, created under chapter 465.
12. The Board of Dentistry, created under chapter 466.
13. Midwifery, as provided under chapter 467.
14. The Board of Speech-Language Pathology and Audiology, created under part I of chapter 468.
15. The Board of Nursing Home Administrators, created under part II of chapter 468.
16. Occupational therapy, as provided under part III of chapter 468.
17. Respiratory therapy, as provided under part V of chapter 468.
18. Dietetics and nutrition practice, as provided under part X of chapter 468.
19. Athletic trainers, as provided under part XIV of chapter 468.
20. Electrolysis, as provided under chapter 478.
21. The Board of Massage, created under chapter 480.
22. The Board of Clinical Laboratory Personnel, created under part IV of chapter 483.
23. Medical physicists, as provided under part V of chapter 483.
24. The Board of Opticianry, created under part I of chapter 484.
25. The Board of Hearing Aid Specialists, created under part II of chapter 484.
26. The Board of Physical Therapy Practice, created under chapter 486.

27. The Board of Psychology, created under chapter 490.

28. The Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling, created under chapter 491.

The department ~~may~~ shall contract with the Agency for Health Care Administration who shall provide consumer complaint, investigative, and prosecutorial services required by the Division of Medical Quality Assurance, councils, or boards, as appropriate.

(4)(a) The members of each board within the department shall be appointed by the Governor, subject to confirmation by the Senate. Consumer members on the board shall be appointed pursuant to paragraph (b). Members shall be appointed for 4-year terms, and such terms shall expire on October 31. However, a term of less than 4 years may be used to ensure that:

1. No more than two members' terms expire during the same calendar year for boards consisting of seven or eight members.

2. No more than three members' terms expire during the same calendar year for boards consisting of 9 to 12 members.

3. No more than five members' terms expire during the same calendar year for boards consisting of 13 or more members.

A member whose term has expired shall continue to serve on the board until such time as a replacement is appointed. A vacancy on the board shall be filled for the unexpired portion of the term in the same manner as the original appointment. No member may serve for more than the remaining portion of a previous member's unexpired term, plus two consecutive 4-year terms of the member's own appointment thereafter.

(b) Each board with five or more members shall have at least two consumer members who are not, and have never been, members or practitioners of the profession regulated by such board or of any closely related profession. Each board with fewer than five members shall have at least one consumer member who is not, and has never been, a member or practitioner of the profession regulated by such board or of any closely related profession.

(c) Notwithstanding any other provision of law, the department is authorized to establish uniform application forms and certificates of licensure for use by the boards within the department. Nothing in this paragraph authorizes the department to vary any substantive requirements, duties, or eligibilities for licensure or certification as provided by law.

(5)(4) The department shall plan and administer its public health programs through its county health departments and may, for administrative purposes and efficient service delivery, establish up to 15 service areas to carry out such duties as may be prescribed by the secretary. The boundaries of the service areas shall be the same as, or combinations of, the districts of the health and human services boards established in s. 20.19 and, to the extent practicable, shall take into consideration the boundaries of the jobs and education regional boards.

(6)(5) The secretary and division directors are authorized to appoint ad hoc advisory committees as necessary. The issue or problem that the ad hoc committee shall address, and the timeframe within which the committee is to complete its work, shall be specified at the time the committee is appointed. Ad hoc advisory committees shall include representatives of groups or entities affected by the issue or problem that the committee is asked to examine. Members of ad hoc advisory committees shall receive no compensation, but may, within existing departmental resources, receive reimbursement for travel expenses as provided in s. 112.061.

Section 3. Section 455.01, Florida Statutes, 1996 Supplement, is amended to read:

455.01 Definitions.—As used in this part ~~chapter~~, the term:

(1) “Board” means any board or commission, or other statutorily created entity to the extent such entity is authorized to exercise regulatory or rule-making functions, within the department, including the Florida Real Estate Commission; except that, for ss. 455.201-455.261, “board” means only a board, or other statutorily created entity to the extent such entity is authorized to exercise regulatory or rulemaking functions, within the Division of Certified Public Accounting, ~~the Division of Medical Quality Assurance~~, the Division of Professions, or the Division of Real Estate.

(2) “Consumer member” means a person appointed to serve on a specific board or who has served on a specific board, who is not, and never has been, a member or practitioner of the profession, or of any closely related profession, regulated by such board.

(3) “Department” means the Department of Business and Professional Regulation.

(4) ~~“Health care practitioner” means any person licensed under chapter 457; chapter 458; chapter 459; chapter 460; chapter 461; chapter 462; chapter 463; chapter 464; chapter 465; chapter 466; part I, part III, part V, or part X of chapter 468; chapter 474; chapter 484; chapter 486; chapter 490; or chapter 491.~~

(4)(5) “License” means any permit, registration, certificate, or license issued by the department.

(5)(6) “Licensee” means any person issued a permit, registration, certificate, or license by the department.

(6)(7) “Profession” means any activity, occupation, profession, or vocation regulated by the department in the Divisions of Certified Public Accounting, ~~Medical Quality Assurance~~, Professions, Real Estate, and Regulation.

Section 4. Section 455.203, Florida Statutes, 1996 Supplement, is amended to read:

455.203 Department; ~~Agency for Health Care Administration~~; powers and duties.—The department ~~and the Agency for Health Care Administration~~, for the boards under its jurisdiction ~~their respective jurisdictions~~, shall:

(1) Adopt rules establishing a procedure for the biennial renewal of licenses; ~~provided, however, the department or the Agency for Health Care Administration may issue up to a 4-year license to selected licensees notwithstanding any other provisions of law to the contrary.~~ Fees for such renewal shall not exceed the fee caps for individual professions on an annualized basis as authorized by law.

(2) Appoint the executive director of each board, subject to the approval of the board.

(3) Submit an annual budget to the Legislature at a time and in the manner provided by law.

(4) Develop a training program for persons newly appointed to membership on any board. The program shall familiarize such persons with the substantive and procedural laws and rules and fiscal information relating to the regulation of the appropriate profession and with the structure of the department ~~or the Agency for Health Care Administration.~~

(5) Adopt all rules necessary to administer this part ~~chapter~~.

(6) Establish by rule ~~rules~~ procedures by which the department ~~and the Agency for Health Care Administration~~ shall use the expert or technical advice of the appropriate board for the purposes of investigation, inspection, evaluation of applications, other duties of the department, or any other areas the department may deem appropriate.

(7) Require all proceedings of any board or panel thereof and all formal or informal proceedings conducted by the department, ~~the Agency for Health Care Administration~~, an administrative law judge, or a hearing officer with respect to licensing or discipline to be electronically recorded in a manner sufficient to assure the accurate transcription of all matters so recorded.

(8) Select only those investigators, or consultants who undertake investigations, who meet criteria established with the advice of the respective boards.

(9) Allow applicants for new or renewal licenses and current licensees to be screened by the Title IV-D child support agency pursuant to s. 409.2598 to assure compliance with a support obligation. The purpose of this subsection is to promote the public policy of this state as established in s. 409.2551. The department shall, when directed by the court, suspend or deny the license of any licensee found to have a delinquent support obligation. The department shall issue or reinstate the license without additional charge to the licensee when notified by the court that the licensee has complied with the terms of the court order. The department shall not be held liable for any license denial or suspension resulting from the discharge of its duties under this subsection.

Section 5. Section 455.205, Florida Statutes, is amended to read:

455.205 Contacting boards through department ~~or agency~~.—Each board under the jurisdiction of the department may be contacted through the

headquarters of the department in the City of Tallahassee or at any regional office of the department. ~~Each board under the jurisdiction of the Agency for Health Care Administration may be contacted through the headquarters of the Agency for Health Care Administration in the City of Tallahassee.~~

Section 6. Subsections (1) and (3) of section 455.207, Florida Statutes, are amended to read:

455.207 Boards; organization; meetings; compensation and travel expenses.—

(1) ~~Each board within the department and each board within the Agency for Health Care Administration~~ shall comply with the provisions of this section.

(3) The board shall meet at least once annually and may meet as often as is necessary. The chairperson or a quorum of the board shall have the authority to call other meetings. A quorum shall be necessary for the conduct of official business by the board or any committee thereof. Unless otherwise provided by law, 51 percent or more of the appointed members of the board or any committee, when applicable, shall constitute a quorum. The membership of committees of the board, except as otherwise authorized pursuant to this part chapter or the applicable practice act, shall be composed of currently appointed members of the board. The vote of a majority of the members of the quorum shall be necessary for any official action by the board or committee. Three consecutive unexcused absences or absences constituting 50 percent or more of the board's meetings within any 12-month period shall cause the board membership of the member in question to become void, and the position shall be considered vacant. The board, or the department when there is no board, shall, by rule, define unexcused absences.

Section 7. Section 455.208, Florida Statutes, is amended to read:

455.208 Publication of information.—~~The department, the Agency for Health Care Administration,~~ and the boards shall have the authority to advise licensees periodically, through the publication of a newsletter, about information that the department, ~~the Agency for Health Care Administration,~~ or the board determines is of interest to the industry. Unless otherwise prohibited by law, the department and the boards shall publish a summary of final orders resulting in fines, suspensions, or revocations, and any other information the department or the board determines is of interest to the public.

Section 8. Subsection (2) of section 455.209, Florida Statutes, is amended to read:

455.209 Accountability and liability of board members.—

(2) Each board member and each former board member serving on a probable cause panel shall be exempt from civil liability for any act or omission when acting in the member's official capacity, and the department ~~or the Agency for Health Care Administration, as appropriate,~~ or the Department of Legal Affairs shall defend any such member in any action

against any board or member of a board arising from any such act or omission. In addition, the department or the Department of Legal Affairs may defend the member's company or business in any action against the company or business if the department or the Department of Legal Affairs determines that the actions from which the suit arises are actions taken by the member in the member's official capacity and were not beyond the member's statutory authority. In providing such defense, the department, the agency, or the Department of Legal Affairs may employ or utilize the legal services of outside counsel.

Section 9. Subsections (1) and (2) of section 455.211, Florida Statutes, 1996 Supplement, are amended to read:

455.211 Board rules; final agency action; challenges.—

(1) The secretary of the department shall have standing to challenge any rule or proposed rule of a board under its jurisdiction pursuant to s. 120.56. ~~The Director of Health Care Administration shall have standing to challenge any rule or proposed rule of any board under its jurisdiction, pursuant to s. 120.56.~~ In addition to challenges for any invalid exercise of delegated legislative authority, the administrative law judge, upon such a challenge by the secretary ~~or the Director of Health Care Administration~~, may declare all or part of a rule or proposed rule invalid if it:

(a) Does not protect the public from any significant and discernible harm or damages;

(b) Unreasonably restricts competition or the availability of professional services in the state or in a significant part of the state; or

(c) Unnecessarily increases the cost of professional services without a corresponding or equivalent public benefit.

However, there shall not be created a presumption of the existence of any of the conditions cited in this subsection in the event that the rule or proposed rule is challenged.

(2) In addition, either the secretary, ~~the Director of Health Care Administration~~, or the board shall be a substantially interested party for purposes of s. 120.54(7). The board may, as an adversely affected party, initiate and maintain an action pursuant to s. 120.68 challenging the final agency action.

Section 10. Subsections (3), (7), and (8) of section 455.213, Florida Statutes, 1996 Supplement, are amended to read:

455.213 General licensing provisions.—

(3) The board, or the department when there is no board, may refuse to issue an initial license to any applicant who is under investigation or prosecution in any jurisdiction for an action that would constitute a violation of this ~~part chapter~~ or the professional practice acts administered by the department and the boards, until such time as the investigation or prosecution is complete.

(7) Notwithstanding anything to the contrary, any elected official who is licensed pursuant to any practice act within the purview of this part chapter may hold employment for compensation with any public agency concurrent with such public service. Such dual service shall be disclosed according to any disclosure required by applicable law.

(8) In any instance in which a licensee or applicant to the department ~~or the Agency for Health Care Administration~~ is required to be in compliance with a particular provision by, on, or before a certain date, and if that date occurs on a Saturday, Sunday, or a legal holiday, then the licensee or applicant is deemed to be in compliance with the specific date requirement if the required action occurs on the first succeeding day which is not a Saturday, Sunday, or legal holiday.

Section 11. Subsections (3) and (6) of section 455.214, Florida Statutes, are amended to read:

455.214 Limited licenses.—

(3) The board, or the department when there is no board, may deny limited licensure to an applicant who has committed, or is under investigation or prosecution for, any act which would constitute the basis for discipline pursuant to the provisions of this part chapter or the applicable practice act.

(6) Each applicant granted a limited license is subject to all the provisions of this part chapter and the respective practice act under which the limited license is issued which are not in conflict with this section.

Section 12. Paragraph (e) of subsection (1) of section 455.217, Florida Statutes, 1996 Supplement, is amended to read:

455.217 Examinations.—

(1) The Division of Technology, Licensure, and Testing of the Department of Business and Professional Regulation shall provide services for the preparation and administration of all examinations.

(e) If the professional board with jurisdiction over an examination concurs, the department may, for a fee, share with any other state's licensing authority an examination developed by or for the department unless prohibited by a contract entered into by the department for development or purchase of the examination. The department, with the concurrence of the appropriate board, shall establish guidelines that ensure security of a shared exam and shall require that any other state's licensing authority comply with those guidelines. Those guidelines shall be approved by the appropriate professional board. All fees paid by the user shall be applied to the department's examination and development program for professions regulated by this part chapter. All fees paid by the user for professions not regulated by this part chapter shall be applied to offset the fees for the development and administration of that profession's examination.

Section 13. Section 455.2175, Florida Statutes, is amended to read:

455.2175 Penalty for theft or reproduction of an examination.—In addition to, or in lieu of, any other discipline imposed pursuant to s. 455.227, the theft of an examination in whole or in part or the act of reproducing or copying any examination administered by the department ~~or the Agency for Health Care Administration~~, whether such said examination is reproduced or copied in part or in whole and by any means, constitutes ~~shall constitute~~ a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 14. Section 455.218, Florida Statutes, is amended to read:

455.218 Foreign-trained professionals; special examination and license provisions.—

(1) When not otherwise provided by law, ~~within their respective jurisdictions, the Agency for Health Care Administration and the department~~ shall by rule provide procedures under which exiled professionals may be examined within each practice act. A person shall be eligible for such examination if the person:

(a) Immigrated to the United States after leaving the person's home country because of political reasons, provided such country is located in the Western Hemisphere and lacks diplomatic relations with the United States;

(b) Applies to the department ~~or the Agency for Health Care Administration~~, ~~as appropriate~~, and submits a fee;

(c) Was a Florida resident immediately preceding the person's application;

(d) Demonstrates to the department ~~or the Agency for Health Care Administration~~, through submission of documentation verified by the applicant's respective professional association in exile, that the applicant was graduated with an appropriate professional or occupational degree from a college or university; however, the department ~~or the Agency for Health Care Administration~~ may not require receipt of any documentation from the Republic of Cuba as a condition of eligibility under this section;

(e) Lawfully practiced the profession for at least 3 years;

(f) Prior to 1980, successfully completed an approved course of study pursuant to chapters 74-105 and 75-177, Laws of Florida; and

(g) Presents a certificate demonstrating the successful completion of a continuing education program which offers a course of study that will prepare the applicant for the examination offered under subsection (2). The department ~~and the Agency for Health Care Administration~~ shall develop rules for the approval of such programs for its ~~their~~ respective boards.

(2) Upon request of a person who meets the requirements of subsection (1) and submits an examination fee, the department ~~or the Agency for Health Care Administration~~, for its ~~their~~ respective boards, shall provide a written practical examination that ~~which~~ tests the person's current ability

to practice the profession competently in accordance with the actual practice of the profession. Evidence of meeting the requirements of subsection (1) shall be treated by the department ~~or the Agency for Health Care Administration~~ as evidence of the applicant's preparation in the academic and pre-professional fundamentals necessary for successful professional practice, and the applicant shall not be examined by the department ~~or the Agency for Health Care Administration~~ on such fundamentals.

(3) The fees charged for the examinations offered under subsection (2) shall be established by the department ~~and the Agency for Health Care Administration~~, for its ~~their~~ respective boards, by rule and shall be sufficient to develop or to contract for the development of the examination and its administration, grading, and grade reviews.

(4) The department ~~and the Agency for Health Care Administration~~ shall examine any applicant who meets the requirements of subsections (1) and (2). Upon passing the examination and the issuance of the license, a licensee is subject to the administrative requirements of this part ~~chapter~~ and the respective practice act under which the license is issued. Each applicant so licensed is subject to all provisions of this part ~~chapter~~ and the respective practice act under which the license was issued.

(5) Upon a request by an applicant otherwise qualified under this section, the examinations offered under subsection (2) may be given in the applicant's native language, provided that any translation costs are borne by the applicant.

(6) The department ~~and the Agency for Health Care Administration~~, for its ~~their~~ respective boards, shall not issue an initial license to, or renew a license of, any applicant or licensee who is under investigation or prosecution in any jurisdiction for an action which would constitute a violation of this part ~~chapter~~ or the professional practice acts administered by the department or agency and the boards until such time as the investigation or prosecution is complete, at which time the provisions of the professional practice acts shall apply.

Section 15. Section 455.2185, Florida Statutes, is amended to read:

455.2185 Exemption for certain out-of-state or foreign professionals; limited practice permitted.—

(1) A professional of any other state or of any territory or other jurisdiction of the United States or of any other nation or foreign jurisdiction is exempt from the requirements of licensure under this part ~~chapter~~ and the applicable professional practice act under the agency with regulatory jurisdiction over the profession if that profession is regulated in this state under the agency with regulatory jurisdiction over the profession and if that person:

(a) Holds, if so required in the jurisdiction in which that person practices, an active license to practice that profession.

(b) Engages in the active practice of that profession outside the state.

(c) Is employed or designated in that professional capacity by a sports entity visiting the state for a specific sporting event.

(2) A professional's practice under this section is limited to the members, coaches, and staff of the team for which that professional is employed or designated and to any animals used if the sporting event for which that professional is employed or designated involves animals. A professional practicing under authority of this section shall not have practice privileges in any licensed ~~health care facility~~ or veterinary facility without the approval of that facility.

Section 16. Subsections (1) and (2) of section 455.221, Florida Statutes, are amended to read:

455.221 Legal and investigative services.—

(1) A board shall retain, through the department's contract procedures, board counsel from the Department of Legal Affairs. The Department of Legal Affairs shall provide legal services to each board within the Department of Business and Professional Regulation ~~or the Agency for Health Care Administration~~, but the primary responsibility of the Department of Legal Affairs shall be to represent the interests of the citizens of the state by vigorously counseling the boards with respect to their obligations under the laws of the state. A board shall provide for the periodic review and evaluation of the services provided by its board counsel. Subject to the prior approval of the Attorney General, any board may retain, through the department's contract procedures, independent legal counsel to provide legal advice to the board on a specific matter. Fees and costs of such counsel by the Department of Legal Affairs or independent legal counsel approved by the Attorney General shall be paid from the Professional Regulation Trust Fund ~~or the Health Care Trust Fund, as appropriate~~. All contracts for independent counsel shall provide for periodic review and evaluation by the board and the department of services provided.

(2) The Department of Business and Professional Regulation ~~or the Agency for Health Care Administration~~ may employ or utilize the legal services of outside counsel and the investigative services of outside personnel. However, no attorney employed or used ~~utilized~~ by the department ~~or the Agency for Health Care Administration~~ shall prosecute a matter and provide legal services to the board with respect to the same matter.

Section 17. Subsection (1) of section 455.2226, Florida Statutes, is amended to read:

455.2226 Requirement for instruction on human immunodeficiency virus and acquired immune deficiency syndrome.—

(1) ~~As of July 1, 1991, The appropriate Board of Funeral Directors and Embalmers shall require each person licensed or certified under chapter 457; chapter 458; chapter 459; chapter 460; chapter 461; chapter 463; chapter 464; chapter 465; chapter 466; part II, part III, or part V of chapter 468; chapter 470; or chapter 486 to complete a continuing educational course, approved by the board, on human immunodeficiency virus and acquired~~

immune deficiency syndrome as part of biennial relicensure or recertification. The course shall consist of education on the modes of transmission, infection control procedures, clinical management, and prevention of human immunodeficiency virus and acquired immune deficiency syndrome. Such course shall include information on current Florida law on acquired immune deficiency syndrome and its impact on testing, confidentiality of test results, and treatment of patients.

Section 18. Subsection (1) of section 455.2228, Florida Statutes, is amended to read:

455.2228 Requirement for instruction on human immunodeficiency virus and acquired immune deficiency syndrome.—

(1) The board, or the department where there is no board, shall require each person licensed or certified under chapter 476 or ~~chapter 477, chapter 480, or part XIV of chapter 468~~ to complete a continuing educational course approved by the board, or the department where there is no board, on human immunodeficiency virus and acquired immune deficiency syndrome as part of biennial relicensure or recertification. The course shall consist of education on modes of transmission, infection control procedures, clinical management, and prevention of human immunodeficiency virus and acquired immune deficiency syndrome, with an emphasis on appropriate behavior and attitude change.

Section 19. Section 455.223, Florida Statutes, 1996 Supplement, is amended to read:

455.223 Power to administer oaths, take depositions, and issue subpoenas.—For the purpose of any investigation or proceeding conducted by the department ~~or the Agency for Health Care Administration~~, the department ~~or the agency~~ shall have the power to administer oaths, take depositions, make inspections when authorized by statute, issue subpoenas which shall be supported by affidavit, serve subpoenas and other process, and compel the attendance of witnesses and the production of books, papers, documents, and other evidence. The department ~~or the Agency for Health Care Administration~~ shall exercise this power on its own initiative or whenever requested by a board or the probable cause panel of any board. Challenges to, and enforcement of, the subpoenas and orders shall be handled as provided in s. 120.569.

Section 20. Subsections (1), (2), (3), and (6) of section 455.224, Florida Statutes, are amended to read:

455.224 Authority to issue citations.—

(1) Notwithstanding s. 455.225, the board, or the department ~~or the Agency for Health Care Administration~~ when there is no board, shall adopt rules to permit the issuance of citations. The citation shall be issued to the subject and shall contain the subject's name and address, the subject's license number if applicable, a brief factual statement, the sections of the law allegedly violated, and the penalty imposed. The citation must clearly state that the subject may choose, in lieu of accepting the citation, to follow the

procedure under s. 455.225. If the subject disputes the matter in the citation, the procedures set forth in s. 455.225 must be followed. However, if the subject does not dispute the matter in the citation with the department or the agency, whichever has jurisdiction, within 30 days after the citation is served, the citation becomes a final order and constitutes discipline. The penalty shall be a fine or other conditions as established by rule.

(2) The board, or the department or the agency when there is no board, shall adopt rules designating violations for which a citation may be issued. Such rules shall designate as citation violations those violations for which there is no substantial threat to the public health, safety, and welfare.

(3) The department or the Agency for Health Care Administration shall be entitled to recover the costs of investigation, in addition to any penalty provided according to board or department, or agency rule, as part of the penalty levied pursuant to the citation.

(6) Within its jurisdiction ~~their respective jurisdictions~~, the department ~~has and the Agency for Health Care Administration have~~ exclusive authority to, and shall adopt rules to, designate those violations for which the licensee is subject to the issuance of a citation and designate the penalties for those violations if any board fails to incorporate this section into rules by January 1, 1992. A board created on or after January 1, 1992, has 6 months in which to enact rules designating violations and penalties appropriate for citation offenses. Failure to enact such rules gives the department or the agency exclusive authority to adopt rules as required for implementing this section. A board has continuous authority to amend its rules adopted pursuant to this section.

Section 21. Section 455.225, Florida Statutes, 1996 Supplement, is amended to read:

455.225 Disciplinary proceedings.—Disciplinary proceedings for each board shall be within the jurisdiction of the department or the Agency for Health Care Administration, as appropriate.

(1) The department or the Agency for Health Care Administration, for the boards under its jurisdiction ~~their respective jurisdictions~~, shall cause to be investigated any complaint that is filed before it if the complaint is in writing, signed by the complainant, and legally sufficient. A complaint is legally sufficient if it contains ultimate facts that show that a violation of this part chapter, of any of the practice acts relating to the professions regulated by the department or the agency, or of any rule adopted by the department, the agency, or a regulatory board in the department or the agency has occurred. In order to determine legal sufficiency, the department or the agency may require supporting information or documentation. The department or the agency may investigate, and the department, the agency, or the appropriate board may take appropriate final action on, a complaint even though the original complainant withdraws it or otherwise indicates a desire not to cause the complaint to be investigated or prosecuted to completion. The department or the agency may investigate an anonymous complaint if the complaint is in writing and is legally sufficient, if the alleged violation of law or rules is substantial, and if the department or the agency

has reason to believe, after preliminary inquiry, that the alleged violations alleged in the complaint are true. The department ~~or the agency~~ may investigate a complaint made by a confidential informant if the complaint is legally sufficient, if the alleged violation of law or rule is substantial, and if the department ~~or the agency~~ has reason to believe, after preliminary inquiry, that the allegations of the complainant are true. The department ~~or the agency~~ may initiate an investigation if it has reasonable cause to believe that a licensee or a group of licensees has violated a Florida statute, a rule of the department, ~~a rule of the agency~~, or a rule of a board. ~~Except as provided in ss. 458.331(9), 459.015(9), 460.413(5), and 461.013(6),~~ When an investigation of any subject is undertaken, the department ~~or the agency~~ shall promptly furnish to the subject or the subject's attorney a copy of the complaint or document that resulted in the initiation of the investigation. The subject may submit a written response to the information contained in such complaint or document within 20 days after service to the subject of the complaint or document. The subject's written response shall be considered by the probable cause panel. The right to respond does not prohibit the issuance of a summary emergency order if necessary to protect the public. However, if the secretary, or the secretary's designee, and the chairman of the respective board or the chairman of its probable cause panel agree in writing that such notification would be detrimental to the investigation, the department ~~or the agency~~ may withhold notification. The department ~~or the agency~~ may conduct an investigation without notification to any subject if the act under investigation is a criminal offense.

(2) ~~The department and the Agency for Health Care Administration shall~~ allocate sufficient and adequately trained staff to expeditiously and thoroughly determine legal sufficiency and investigate all legally sufficient complaints. When its investigation is complete and legally sufficient, the department ~~or the agency~~ shall prepare and submit to the probable cause panel of the appropriate regulatory board the investigative report of the department ~~or the agency~~. The report shall contain the investigative findings and the recommendations of the department ~~or the agency~~ concerning the existence of probable cause. At any time after legal sufficiency is found, the department ~~or the agency~~ may dismiss any case, or any part thereof, if the department ~~or the agency~~ determines that there is insufficient evidence to support the prosecution of allegations contained therein. The department ~~or the agency~~ shall provide a detailed report to the appropriate probable cause panel prior to dismissal of any case or part thereof, and to the subject of the complaint after dismissal of any case or part thereof, under this section. For cases dismissed prior to a finding of probable cause, such report is confidential and exempt from s. 119.07(1). The probable cause panel shall have access, upon request, to the investigative files pertaining to a case prior to dismissal of such case. If the department ~~or the agency~~ dismisses a case, the probable cause panel may retain independent legal counsel, employ investigators, and continue the investigation and prosecution of the case as it deems necessary.

(3) As an alternative to the provisions of subsections (1) and (2), when a complaint is received, the department ~~or the agency~~ may provide a licensee with a notice of noncompliance for an initial offense of a minor violation. Each board, or the department ~~or the agency~~ if there is no board, shall

establish by rule those minor violations under this provision which do not endanger the public health, safety, and welfare and which do not demonstrate a serious inability to practice the profession. Failure of a licensee to take action in correcting the violation within 15 days after notice may result in the institution of regular disciplinary proceedings.

(4) The determination as to whether probable cause exists shall be made by majority vote of a probable cause panel of the board, ~~or by the department or the Agency for Health Care Administration~~, as appropriate. Each regulatory board shall provide by rule that the determination of probable cause shall be made by a panel of its members or by the department ~~or the agency~~. Each board may provide by rule for multiple probable cause panels composed of at least two members. Each board may provide by rule that one or more members of the panel or panels may be a former board member. The length of term or repetition of service of any such former board member on a probable cause panel may vary according to the direction of the board when authorized by board rule. Any probable cause panel must include one of the board's former or present consumer members, if one is available, willing to serve, and is authorized to do so by the board chairman. Any probable cause panel must include a present board member. Any probable cause panel must include a former or present professional board member. However, any former professional board member serving on the probable cause panel must hold an active valid license for that profession. All proceedings of the panel are exempt from s. 286.011 until 10 days after probable cause has been found to exist by the panel or until the subject of the investigation waives his privilege of confidentiality. The probable cause panel may make a reasonable request, and upon such request the department ~~or the agency~~ shall provide such additional investigative information as is necessary to the determination of probable cause. A request for additional investigative information shall be made within 15 days from the date of receipt by the probable cause panel of the investigative report of the department ~~or the agency~~. The probable cause panel or the department ~~or the agency~~, as may be appropriate, shall make its determination of probable cause within 30 days after receipt by it of the final investigative report of the department ~~or the agency~~. The secretary may grant extensions of the 15-day and the 30-day time limits. If the probable cause panel does not find probable cause within the 30-day time limit, as may be extended, or if the probable cause panel finds no probable cause, the department ~~or the agency~~ may determine, within 10 days after the panel fails to determine probable cause or 10 days after the time limit has elapsed, that probable cause exists. In lieu of a finding of probable cause, the probable cause panel, or the department ~~or the agency~~ when there is no board, may issue a letter of guidance to the subject. If the probable cause panel finds that probable cause exists, it shall direct the department ~~or the agency~~ to file a formal complaint against the licensee. The department ~~or the agency~~ shall follow the directions of the probable cause panel regarding the filing of a formal complaint. If directed to do so, the department ~~or the agency~~ shall file a formal complaint against the subject of the investigation and prosecute that complaint pursuant to chapter 120. However, the department ~~or the agency~~ may decide not to prosecute the complaint if it finds that probable cause had been improvidently found by the panel. In such cases, the department ~~or the agency~~ shall refer the

matter to the board. The board may then file a formal complaint and prosecute the complaint pursuant to chapter 120. The department ~~or the agency~~ shall also refer to the board any investigation or disciplinary proceeding not before the Division of Administrative Hearings pursuant to chapter 120 or otherwise completed by the department ~~or the agency~~ within 1 year after the filing of a complaint. A probable cause panel or a board may retain independent legal counsel, employ investigators, and continue the investigation as it deems necessary; all costs thereof shall be paid from the ~~Health Care Trust Fund or the Professional Regulation Trust Fund, as appropriate.~~ All proceedings of the probable cause panel are exempt from s. 120.525.

(5) A formal hearing before an administrative law judge from the Division of Administrative Hearings shall be held pursuant to chapter 120 if there are any disputed issues of material fact. The administrative law judge shall issue a recommended order pursuant to chapter 120. If any party raises an issue of disputed fact during an informal hearing, the hearing shall be terminated and a formal hearing pursuant to chapter 120 shall be held.

(6) The appropriate board, with those members of the panel, if any, who reviewed the investigation pursuant to subsection (4) being excused, or the department when there is no board, shall determine and issue the final order in each disciplinary case. Such order shall constitute final agency action. Any consent order or agreed settlement shall be subject to the approval of the department ~~or the agency.~~

(7) ~~The department or the Agency for Health Care Administration, as appropriate,~~ shall have standing to seek judicial review of any final order of the board, pursuant to s. 120.68.

(8) Any proceeding for the purpose of summary suspension of a license, or for the restriction of the license, of a licensee pursuant to s. 120.60(6) shall be conducted by the Secretary of Business and Professional Regulation or his designee ~~or the Director of Health Care Administration or his designee, as appropriate,~~ who shall issue the final summary order.

(9) ~~The department or the Agency for Health Care Administration, as appropriate,~~ shall periodically notify the person who filed the complaint of the status of the investigation, whether probable cause has been found, and the status of any civil action or administrative proceeding or appeal.

(10) The complaint and all information obtained pursuant to the investigation by the department ~~or the Agency for Health Care Administration~~ are confidential and exempt from s. 119.07(1) until 10 days after probable cause has been found to exist by the probable cause panel or by the department ~~or the agency~~, or until the regulated professional or subject of the investigation waives his privilege of confidentiality, whichever occurs first. Upon completion of the investigation and pursuant to a written request by the subject, the department ~~or the agency~~ shall provide the subject an opportunity to inspect the investigative file or, at the subject's expense, forward to the subject a copy of the investigative file. ~~Notwithstanding s. 455.241, the subject may inspect or receive a copy of any expert witness report or patient record connected with the investigation, if the subject agrees in writing to~~

~~maintain the confidentiality of any information received under this subsection until 10 days after probable cause is found and to maintain the confidentiality of patient records pursuant to s. 455.241. The subject may file a written response to the information contained in the investigative file. Such response must be filed within 20 days, unless an extension of time has been granted by the department or the agency. This subsection does not prohibit the department or the Agency for Health Care Administration from providing such information to any law enforcement agency or to any other regulatory agency.~~

(11) A privilege against civil liability is hereby granted to any complainant or any witness with regard to information furnished with respect to any investigation or proceeding pursuant to this section, unless the complainant or witness acted in bad faith or with malice in providing such information.

~~(12)(a) No person who reports in any capacity, whether or not required by law, information to the department or the Division of Health Quality Assurance of the Agency for Health Care Administration with regard to the incompetence, impairment, or unprofessional conduct of any health care provider licensed under chapter 458, chapter 459, chapter 460, chapter 461, chapter 462, chapter 463, chapter 464, chapter 465, or chapter 466 shall be held liable in any civil action for reporting against such health care provider if such person acts without intentional fraud or malice.~~

~~(b) No facility licensed under chapter 395, health maintenance organization certificated under part I of chapter 641, physician licensed under chapter 458, or osteopathic physician licensed under chapter 459 shall discharge, threaten to discharge, intimidate, or coerce any employee or staff member by reason of such employee's or staff member's report to the agency about a physician licensed under chapter 458, chapter 459, chapter 460, chapter 461, or chapter 466 who may be guilty of incompetence, impairment, or unprofessional conduct so long as such report is given without intentional fraud or malice.~~

~~(c) In any civil suit brought outside the protections of paragraphs (a) and (b), where intentional fraud or malice is alleged, the person alleging intentional fraud or malice shall be liable for all court costs and for the other party's reasonable attorney's fees if intentional fraud or malice is not proved.~~

Section 22. Paragraphs (b), (d), (g), (i), (j), and (q) of subsection (1) and subsection (4) of section 455.227, Florida Statutes, are amended to read:

455.227 Grounds for discipline; penalties; enforcement.—

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

(b) Intentionally violating any rule adopted by the board or, the department, ~~or the Agency for Health Care Administration~~, as appropriate.

(d) Using a Class III or a Class IV laser device or product, as defined by federal regulations, without having complied with the rules adopted pursuant to s. 501.122(2) governing the registration of such devices ~~with the Department of Health and Rehabilitative Services.~~

(g) Having been found liable in a civil proceeding for knowingly filing a false report or complaint with the department ~~or the agency~~ against another licensee.

(i) ~~Except as provided in s. 465.016,~~ Failing to report to the department any person who the licensee knows is in violation of this part chapter, the chapter regulating the alleged violator, or the rules of the department or the board.

(j) Aiding, assisting, procuring, employing, or advising any unlicensed person or entity to practice a profession contrary to this part chapter, the chapter regulating the profession, or the rules of the department or the board.

(q) Violating any provision of this part chapter, the applicable professional practice act, a rule of the department or the board, or a lawful order of the department or the board, or failing to comply with a lawfully issued subpoena of the department.

(4) In addition to, or in lieu of, any other remedy or criminal prosecution, the department ~~or the Agency for Health Care Administration, as appropriate,~~ may file a proceeding in the name of the state seeking issuance of an injunction or a writ of mandamus against any person who violates any of the provisions of this part chapter, or any provision of law with respect to professions regulated by the department ~~or the agency~~, or any board therein, or the rules adopted pursuant thereto.

Section 23. Section 455.2273, Florida Statutes, 1996 Supplement, is amended to read:

455.2273 Disciplinary guidelines.—

(1) Each board, or the department when there is no board, shall adopt, by rule, and periodically review the disciplinary guidelines applicable to each ground for disciplinary action which may be imposed by the board, or the department when there is no board, pursuant to this part chapter, the respective practice acts, and any rule of the board or department.

(2) The disciplinary guidelines shall specify a meaningful range of designated penalties based upon the severity and repetition of specific offenses, it being the legislative intent that minor violations be distinguished from those which endanger the public health, safety, or welfare; that such guidelines provide reasonable and meaningful notice to the public of likely penalties which may be imposed for proscribed conduct; and that such penalties be consistently applied by the board.

(3) A specific finding of mitigating or aggravating circumstances shall allow the board to impose a penalty other than that provided for in such guidelines. If applicable, the board, or the department when there is no board, shall adopt by rule disciplinary guidelines to designate possible mitigating and aggravating circumstances and the variation and range of penalties permitted for such circumstances.

(4) The department ~~or the Agency for Health Care Administration, as appropriate,~~ must review such disciplinary guidelines for compliance with the legislative intent as set forth herein to determine whether the guidelines establish a meaningful range of penalties and may also challenge such rules pursuant to s. 120.56.

~~(5) The rules provided for in this section shall be promulgated no later than January 1, 1993.~~

(5)(6) The administrative law judge, in recommending penalties in any recommended order, must follow the penalty guidelines established by the board or department and must state in writing the mitigating or aggravating circumstances upon which the recommended penalty is based.

Section 24. Section 455.2275, Florida Statutes, is amended to read:

455.2275 Penalty for giving false information.—In addition to, or in lieu of, any other discipline imposed pursuant to s. 455.227, the act of knowingly giving false information in the course of applying for or obtaining a license from the department ~~or the Agency for Health Care Administration,~~ or any board thereunder, with intent to mislead a public servant in the performance of his official duties, or the act of attempting to obtain or obtaining a license from either the department ~~or the agency,~~ or any board thereunder, to practice a profession by knowingly misleading statements or knowing misrepresentations constitutes a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 25. Subsections (1), (2), and (5) of section 455.228, Florida Statutes, 1996 Supplement, are amended to read:

455.228 Unlicensed practice of a profession; cease and desist notice; civil penalty; enforcement; citations; allocation of moneys collected.—

(1) When the department ~~or the Agency for Health Care Administration~~ has probable cause to believe that any person not licensed by the department ~~or the agency,~~ or the appropriate regulatory board within the department ~~or the agency,~~ has violated any provision of this part chapter or any statute that relates to the practice of a profession regulated by the department ~~or the agency,~~ or any rule adopted pursuant thereto, the department ~~or the agency~~ may issue and deliver to such person a notice to cease and desist from such violation. In addition, the department ~~or the agency~~ may issue and deliver a notice to cease and desist to any person who aids and abets the unlicensed practice of a profession by employing such unlicensed person. The issuance of a notice to cease and desist shall not constitute agency action for which a hearing under ss. 120.569 and 120.57 may be sought. For the purpose of enforcing a cease and desist order, the department ~~or the agency~~ may file a proceeding in the name of the state seeking issuance of an injunction or a writ of mandamus against any person who violates any provisions of such order. In addition to the foregoing remedies, the department ~~or the agency~~ may impose an administrative penalty not to exceed \$5,000 per incident pursuant to the provisions of chapter 120 or may issue a citation pursuant to the provisions of subsection (3). If the department ~~or the agency~~ is required to seek enforcement of the ~~agency~~ order for a penalty pursuant

to s. 120.569, it shall be entitled to collect its attorney's fees and costs, together with any cost of collection.

(2) In addition to or in lieu of any remedy provided in subsection (1), the department ~~or the agency~~ may seek the imposition of a civil penalty through the circuit court for any violation for which the department ~~or the agency~~ may issue a notice to cease and desist under subsection (1). The civil penalty shall be no less than \$500 and no more than \$5,000 for each offense. The court may also award to the prevailing party court costs and reasonable attorney fees and, in the event the department ~~or the agency~~ prevails, may also award reasonable costs of investigation.

(5) The provisions of this section apply only to the provisions of s. 455.217 and the professional practice acts administered by the department ~~or the Agency for Health Care Administration~~.

Section 26. Section 455.2285, Florida Statutes, is amended to read:

455.2285 Annual report concerning finances, administrative complaints, disciplinary actions, and recommendations.—The department is ~~and the Agency for Health Care Administration~~ are each directed to prepare and submit a report to the President of the Senate and Speaker of the House of Representatives by November 1 of each year. In addition to finances and any other information the Legislature may require, the report shall include statistics and relevant information, profession by profession, detailing:

(1) The revenues, expenditures, and cash balances for the prior year, and a review of the adequacy of existing fees.

(2) The number of complaints received and investigated.

(3) The number of findings of probable cause made.

(4) The number of findings of no probable cause made.

(5) The number of administrative complaints filed.

(6) The disposition of all administrative complaints.

(7) A description of disciplinary actions taken.

(8) The status of the development and implementation of rules providing for disciplinary guidelines pursuant to s. 455.2273.

(9) Such recommendations for administrative and statutory changes necessary to facilitate efficient and cost-effective operation of the department and the various boards.

Section 27. Section 455.229, Florida Statutes, 1996 Supplement, is amended to read:

455.229 Public inspection of information required from applicants; exceptions; examination hearing.—

(1) All information required by the department ~~or the Agency for Health Care Administration~~ of any applicant shall be a public record and shall be open to public inspection pursuant to s. 119.07, except financial information, medical information, school transcripts, examination questions, answers, papers, grades, and grading keys, which are confidential and exempt from s. 119.07(1) and shall not be discussed with or made accessible to anyone except members of the board, the department ~~or the Agency for Health Care Administration~~, and staff thereof, who have a bona fide need to know such information. Any information supplied to the department ~~or the Agency for Health Care Administration~~ by any other agency which is exempt from the provisions of chapter 119 or is confidential shall remain exempt or confidential pursuant to applicable law while in the custody of the department ~~or the agency~~.

(2) The department ~~or the Agency for Health Care Administration~~ shall establish by rule the procedure by which an applicant, and the applicant's attorney, may review examination questions and answers. Examination questions and answers are not subject to discovery but may be introduced into evidence and considered only in camera in any administrative proceeding under chapter 120. If an administrative hearing is held, the department ~~or the agency~~ shall provide challenged examination questions and answers to the administrative law judge. The examination questions and answers provided at the hearing are confidential and exempt from s. 119.07(1), unless invalidated by the administrative law judge.

(3) Unless an applicant notifies the department ~~or the agency~~ at least 5 days prior to an examination hearing of the applicant's inability to attend, or unless an applicant can demonstrate an extreme emergency for failing to attend, the department ~~or the agency~~ may require an applicant who fails to attend to pay reasonable attorney's fees, costs, and court costs of the department ~~or the agency~~ for the examination hearing.

Section 28. Subsection (1) of section 455.232, Florida Statutes, is amended to read:

455.232 Disclosure of confidential information.—

(1) No officer, employee, or person under contract with the department ~~or the Agency for Health Care Administration~~, or any board therein, or any subject of an investigation shall convey knowledge or information to any person who is not lawfully entitled to such knowledge or information about any public meeting or public record, which at the time such knowledge or information is conveyed is exempt from the provisions of s. 119.01, s. 119.07(1), or s. 286.011.

Section 29. Section 455.24, Florida Statutes, is amended to read:

455.24 Advertisement by a veterinarian health care provider of free or discounted services; required statement.—In any advertisement for a free, discounted fee, or reduced fee service, examination, or treatment by a person health care provider licensed under chapter 458, chapter 459, chapter 460, chapter 461, chapter 462, chapter 463, chapter 464, chapter 466, chapter 474, or chapter 486, the following statement shall appear in capital letters

clearly distinguishable from the rest of the text: ~~THE PATIENT AND ANY OTHER PERSON RESPONSIBLE FOR PAYMENT HAS A RIGHT TO REFUSE TO PAY, CANCEL PAYMENT, OR BE REIMBURSED FOR PAYMENT FOR ANY OTHER SERVICE, EXAMINATION, OR TREATMENT THAT WHICH IS PERFORMED AS A RESULT OF AND WITHIN 72 HOURS OF RESPONDING TO THE ADVERTISEMENT FOR THE FREE, DISCOUNTED FEE, OR REDUCED FEE SERVICE, EXAMINATION, OR TREATMENT.~~ However, the required statement shall not be necessary as an accompaniment to an advertisement of a licensed health care provider defined by this section if the advertisement appears in a classified directory the primary purpose of which is to provide products and services at free, reduced, or discounted prices to consumers and in which the statement prominently appears in at least one place.

Section 30. Section 455.242, Florida Statutes, is amended to read:

455.242 Disposition of records of deceased practitioners or practitioners relocating or terminating practice.—Each board created under the provisions of ~~chapter 457, chapter 458, chapter 459, chapter 460, chapter 461, chapter 463, chapter 464, chapter 465, chapter 466, chapter 474, part I of chapter 484, chapter 486, chapter 490, or chapter 491, and the department under the provisions of chapter 462,~~ shall provide by rule for the disposition, under that said chapter, of the medical records ~~that or records of a psychological nature of practitioners which are in existence at the time the practitioner dies, terminates practice, or relocates and is no longer available to patients and which records pertain to the practitioner's patients.~~ The rules shall provide that the records be retained for at least 2 years after the practitioner's death, termination of practice, or relocation. In the case of the death of the practitioner, the rules shall provide for the disposition of such records by the estate of the practitioner.

Section 31. Section 455.243, Florida Statutes, is amended to read:

455.243 Authority to inspect.—~~In addition to the authority specified in s. 465.017, Duly authorized agents and employees of the department and the Agency for Health Care Administration shall have the power to inspect in a lawful manner at all reasonable hours:~~

(1) ~~Any pharmacy; or~~

(2) ~~any establishment at which the services of a licensee authorized to prescribe controlled substances specified in chapter 893 are offered, for the purpose of determining if any of the provisions of this part chapter or any practice act of a profession or any rule adopted promulgated thereunder is being violated; or for the purpose of securing such other evidence as may be needed for prosecution.~~

Section 32. Section 455.245, Florida Statutes, is amended to read:

455.245 Certain ~~health care practitioners;~~ immediate suspension of license.—

(1) ~~The department or the Agency for Health Care Administration shall issue an emergency order suspending the license of any person licensed~~

~~under chapter 458, chapter 459, chapter 460, chapter 461, chapter 462, chapter 463, chapter 464, chapter 465, chapter 466, chapter 474, or chapter 484 who pleads guilty to, is convicted or found guilty of, or who enters a plea of nolo contendere to, regardless of adjudication, a felony under chapter 409 or chapter 893 or under 21 U.S.C. ss. 801-970 or under 42 U.S.C. ss. 1395-1396.~~

~~(2) If the board has previously found any physician or osteopathic physician in violation of the provisions of s. 458.331(1)(t) or s. 459.015(1)(x), in regard to his treatment of three or more patients, and the probable cause panel of the board finds probable cause of an additional violation of that section, then the Director of Health Care Administration shall review the matter to determine if an emergency suspension or restriction order is warranted. Nothing in this section shall be construed so as to limit the authority of the secretary of the department or the Director of Health Care Administration to issue an emergency order.~~

Section 33. Section 455.501, Florida Statutes, is created to read:

455.501 Definitions.—As used in this part, the term:

(1) “Board” means any board or commission, or other statutorily created entity to the extent such entity is authorized to exercise regulatory or rule-making functions, within the department, except that, for ss. 455.517-455.707, “board” means only a board, or other statutorily created entity to the extent such entity is authorized to exercise regulatory or rulemaking functions, within the Division of Medical Quality Assurance.

(2) “Consumer member” means a person appointed to serve on a specific board or who has served on a specific board, who is not, and never has been, a member or practitioner of the profession, or of any closely related profession, regulated by such board.

(3) “Department” means the Department of Health.

(4) “Health care practitioner” means any person licensed under chapter 457; chapter 458; chapter 459; chapter 460; chapter 461; chapter 462; chapter 463; chapter 464; chapter 465; chapter 466; part I, part III, part V, or part X of chapter 468; chapter 480; chapter 484; chapter 486; chapter 490; or chapter 491.

(5) “License” means any permit, registration, certificate, or license issued by the department.

(6) “Licensee” means any person issued a permit, registration, certificate, or license by the department.

(7) “Profession” means any activity, occupation, profession, or vocation regulated by the department in the Division of Medical Quality Assurance.

Section 34. Section 455.504, Florida Statutes, is created to read:

455.504 Applicability of part.—This part applies only to the regulation by the department of professions.

Section 35. Section 455.507, Florida Statutes, is created to read:

455.507 Members of Armed Forces in good standing with administrative boards.—

(1) Any member of the Armed Forces of the United States now or hereafter on active duty who, at the time of his becoming such a member, was in good standing with any administrative board of the state and was entitled to practice or engage in his profession or vocation in the state shall be kept in good standing by such administrative board, without registering, paying dues or fees, or performing any other act on his part to be performed, as long as he is a member of the Armed Forces of the United States on active duty and for a period of 6 months after his discharge from active duty as a member of the Armed Forces of the United States, provided he is not engaged in his licensed profession or vocation in the private sector for profit.

(2) The boards listed in ss. 20.165 and 20.43 shall adopt rules exempting the spouses of members of the Armed Forces of the United States from licensure renewal provisions, but only in cases of absence from the state because of their spouses' duties with the Armed Forces.

Section 36. Section 455.511, Florida Statutes, is created to read:

455.511 Restriction on requirement of citizenship.—A person is not disqualified from practicing an occupation or profession regulated by the state solely because he is not a United States citizen.

Section 37. Section 455.514, Florida Statutes, is created to read:

455.514 Qualification of immigrants for examination to practice a licensed profession or occupation.—

(1) It is the declared purpose of this section to encourage the use of foreign-speaking Florida residents duly qualified to become actively qualified in their professions so that all people of this state may receive better services.

(2) Any person who has successfully completed, or is currently enrolled in, an approved course of study created pursuant to chapters 74-105 and 75-177, Laws of Florida, shall be deemed qualified for examination and reexaminations for a professional or occupational license which shall be administered in the English language unless 15 or more such applicants request that the reexamination be administered in their native language. In the event that such reexamination is administered in a foreign language, the full cost to the board of preparing and administering it shall be borne by the applicants.

(3) Each board within the department shall adopt and implement programs designed to qualify for examination all persons who were resident nationals of the Republic of Cuba and who, on July 1, 1977, were residents of this state.

Section 38. Section 455.517, Florida Statutes, is created to read:

455.517 Professions and occupations regulated by department; legislative intent; requirements.—

(1) It is the intent of the Legislature that persons desiring to engage in any lawful profession regulated by the department shall be entitled to do so as a matter of right if otherwise qualified.

(2) The Legislature further believes that such professions shall be regulated only for the preservation of the health, safety, and welfare of the public under the police powers of the state. Such professions shall be regulated when:

(a) Their unregulated practice can harm or endanger the health, safety, and welfare of the public, and when the potential for such harm is recognizable and clearly outweighs any anticompetitive impact which may result from regulation.

(b) The public is not effectively protected by other means, including, but not limited to, other state statutes, local ordinances, or federal legislation.

(c) Less restrictive means of regulation are not available.

(3) It is further legislative intent that the use of the term “profession” with respect to those activities licensed and regulated by the department shall not be deemed to mean that such activities are not occupations for other purposes in state or federal law.

(4) No board, nor the department, shall create unreasonably restrictive and extraordinary standards that deter qualified persons from entering the various professions. No board, nor the department, shall take any action which tends to create or maintain an economic condition that unreasonably restricts competition, except as specifically provided by law.

(5) Policies adopted by the department shall ensure that all expenditures are made in the most cost-effective manner to maximize competition, minimize licensure costs, and maximize public access to meetings conducted for the purpose of professional regulation. The long-range planning function of the department shall be implemented to facilitate effective operations and to eliminate inefficiencies.

Section 39. Section 455.521, Florida Statutes, is created to read:

455.521 Department; powers and duties.—The department, for the boards under its jurisdiction, shall:

(1) Adopt rules establishing a procedure for the biennial renewal of licenses; however, the department may issue up to a 4-year license to selected licensees notwithstanding any other provisions of law to the contrary. Fees for such renewal shall not exceed the fee caps for individual professions on an annualized basis as authorized by law.

(2) Appoint the executive director of each board, subject to the approval of the board.

(3) Submit an annual budget to the Legislature at a time and in the manner provided by law.

(4) Develop a training program for persons newly appointed to membership on any board. The program shall familiarize such persons with the substantive and procedural laws and rules and fiscal information relating to the regulation of the appropriate profession and with the structure of the department.

(5) Adopt all rules necessary to administer this part.

(6) Establish by rules procedures by which the department shall use the expert or technical advice of the appropriate board for the purposes of investigation, inspection, evaluation of applications, other duties of the department, or any other areas the department may deem appropriate.

(7) Require all proceedings of any board or panel thereof and all formal or informal proceedings conducted by the department, an administrative law judge, or a hearing officer with respect to licensing or discipline to be electronically recorded in a manner sufficient to assure the accurate transcription of all matters so recorded.

(8) Select only those investigators, or consultants who undertake investigations, who meet criteria established with the advice of the respective boards.

(9) Allow applicants for new or renewal licenses and current licensees to be screened by the Title IV-D child support agency pursuant to s. 409.2598 to assure compliance with a support obligation. The purpose of this subsection is to promote the public policy of this state as established in s. 409.2551. The department shall, when directed by the court, suspend or deny the license of any licensee found to have a delinquent support obligation. The department shall issue or reinstate the license without additional charge to the licensee when notified by the court that the licensee has complied with the terms of the court order. The department shall not be held liable for any license denial or suspension resulting from the discharge of its duties under this subsection.

Section 40. Section 455.524, Florida Statutes, is created to read:

455.524 Long-range policy planning; plans, reports, and recommendations.—To facilitate efficient and cost-effective regulation, the department and the board, where appropriate, shall develop and implement a long-range policy planning and monitoring process to include recommendations specific to each profession. Such process shall include estimates of revenues, expenditures, cash balances, and performance statistics for each profession. The period covered shall not be less than 5 years. The department, with input from the boards, shall develop the long-range plan and must obtain the approval of the secretary. The department shall monitor compliance with the approved long-range plan and, with input from the boards, shall annually update the plans for approval by the secretary. The department shall provide concise management reports to the boards quarterly. As part of the review process, the department shall evaluate:

(1) Whether the department, including the boards and the various functions performed by the department, is operating efficiently and effectively and if there is a need for a board or council to assist in cost-effective regulation.

(2) How and why the various professions are regulated.

(3) Whether there is a need to continue regulation, and to what degree.

(4) Whether or not consumer protection is adequate, and how it can be improved.

(5) Whether there is consistency between the various practice acts.

(6) Whether unlicensed activity is adequately enforced.

Such plans should include conclusions and recommendations on these and other issues as appropriate. Such plans shall be provided to the Governor and the Legislature by November 1 of each year.

Section 41. Section 455.527, Florida Statutes, is created to read:

455.527 Contacting boards through department.—Each board under the jurisdiction of the department may be contacted through the headquarters of the department in the City of Tallahassee.

Section 42. Section 455.206, Florida Statutes, is transferred and renumbered as section 455.531, Florida Statutes.

Section 43. Section 455.534, Florida Statutes, is created to read:

455.534 Boards; organization; meetings; compensation and travel expenses.—

(1) Each board within the department shall comply with the provisions of this section.

(2) The board shall annually elect from among its number a chairperson and vice chairperson.

(3) The board shall meet at least once annually and may meet as often as is necessary. The chairperson or a quorum of the board shall have the authority to call other meetings. A quorum shall be necessary for the conduct of official business by the board or any committee thereof. Unless otherwise provided by law, 51 percent or more of the appointed members of the board or any committee, when applicable, shall constitute a quorum. The membership of committees of the board, except as otherwise authorized pursuant to this part or the applicable practice act, shall be composed of currently appointed members of the board. The vote of a majority of the members of the quorum shall be necessary for any official action by the board or committee. Three consecutive unexcused absences or absences constituting 50 percent or more of the board's meetings within any 12-month period shall cause the board membership of the member in question to become void, and the position shall be considered vacant. The board, or the

department when there is no board, shall, by rule, define unexcused absences.

(4) Unless otherwise provided by law, a board member or former board member serving on a probable cause panel shall be compensated \$50 for each day in attendance at an official meeting of the board and for each day of participation in any other business involving the board. Each board shall adopt rules defining the phrase "other business involving the board," but the phrase may not routinely be defined to include telephone conference calls. A board member also shall be entitled to reimbursement for expenses pursuant to s. 112.061. Travel out of state shall require the prior approval of the secretary.

(5) When two or more boards have differences between them, the boards may elect to, or the secretary may request that the boards, establish a special committee to settle those differences. The special committee shall consist of three members designated by each board, who may be members of the designating board or other experts designated by the board, and of one additional person designated and agreed to by the members of the special committee. In the event the special committee cannot agree on the additional designee, upon request of the special committee, the secretary may select the designee. The committee shall recommend rules necessary to resolve the differences. If a rule adopted pursuant to this provision is challenged, the participating boards shall share the costs associated with defending the rule or rules. The department shall provide legal representation for any special committee established pursuant to this section.

Section 44. Section 455.537, Florida Statutes, is created to read:

455.537 Publication of information.—The department and the boards shall have the authority to advise licensees periodically, through the publication of a newsletter, about information that the department or the board determines is of interest to the industry. Unless otherwise prohibited by law, the department and the boards shall publish a summary of final orders resulting in fines, suspensions, or revocations, and any other information the department or the board determines is of interest to the public.

Section 45. Section 455.541, Florida Statutes, is created to read:

455.541 Accountability and liability of board members.—

(1) Each board member shall be accountable to the Governor for the proper performance of duties as a member of the board. The Governor shall investigate any legally sufficient complaint or unfavorable written report received by the Governor or by the department or a board concerning the actions of the board or its individual members. The Governor may suspend from office any board member for malfeasance, misfeasance, neglect of duty, drunkenness, incompetence, permanent inability to perform his official duties, or commission of a felony.

(2) Each board member and each former board member serving on a probable cause panel shall be exempt from civil liability for any act or omission when acting in the member's official capacity, and the department

or the Department of Legal Affairs shall defend any such member in any action against any board or member of a board arising from any such act or omission. In addition, the department or the Department of Legal Affairs may defend the member's company or business in any action against the company or business if the department or the Department of Legal Affairs determines that the actions from which the suit arises are actions taken by the member in the member's official capacity and were not beyond the member's statutory authority. In providing such defense, the department or the Department of Legal Affairs may employ or utilize the legal services of outside counsel.

Section 46. Section 455.544, Florida Statutes, is created to read:

455.544 Board rules; final agency action; challenges.—

(1) The secretary of the department shall have standing to challenge any rule or proposed rule of a board under its jurisdiction pursuant to s. 120.56. In addition to challenges for any invalid exercise of delegated legislative authority, the administrative law judge, upon such a challenge by the secretary, may declare all or part of a rule or proposed rule invalid if it:

(a) Does not protect the public from any significant and discernible harm or damages;

(b) Unreasonably restricts competition or the availability of professional services in the state or in a significant part of the state; or

(c) Unnecessarily increases the cost of professional services without a corresponding or equivalent public benefit.

However, there shall not be created a presumption of the existence of any of the conditions cited in this subsection in the event that the rule or proposed rule is challenged.

(2) In addition, either the secretary or the board shall be a substantially interested party for purposes of s. 120.54(7). The board may, as an adversely affected party, initiate and maintain an action pursuant to s. 120.68 challenging the final agency action.

(3) No board created within the department shall have standing to challenge a rule or proposed rule of another board. However, if there is a dispute between boards concerning a rule or proposed rule, the boards may avail themselves of the provisions of s. 455.534(5).

Section 47. Section 455.547, Florida Statutes, is created to read:

455.547 Education; substituting demonstration of competency for clock-hour requirements.—Any board, or the department when there is no board, that requires student completion of a specific number of clock hours of classroom instruction for initial licensure purposes shall establish the minimal competencies that such students must demonstrate in order to be licensed. The demonstration of such competencies may be substituted for specific classroom clock-hour requirements established in statute or rule

which are related to instructional programs for licensure purposes. Student demonstration of the established minimum competencies shall be certified by the educational institution. The provisions of this section shall not apply to boards for which federal licensure standards are more restrictive or stringent than the standards prescribed in statute.

Section 48. Section 455.551, Florida Statutes, is created to read:

455.551 Education; accreditation.—Notwithstanding any other provision of law, educational programs and institutions which are required by statute to be accredited, but which were accredited by an agency that has since ceased to perform an accrediting function, shall be recognized until such programs and institutions are accredited by a qualified successor to the original accrediting agency, an accrediting agency recognized by the United States Department of Education, or an accrediting agency recognized by the board, or the department when there is no board.

Section 49. Section 455.554, Florida Statutes, is created to read:

455.554 Consultation with postsecondary education boards prior to adoption of changes to training requirements.—Any state agency or board that has jurisdiction over the regulation of a profession or occupation shall consult with the State Board of Independent Colleges and Universities; the State Board of Independent Postsecondary Vocational, Technical, Trade, and Business Schools; the Board of Regents; and the State Board of Community Colleges prior to adopting any changes to training requirements relating to entry into the profession or occupation. This consultation must allow the educational board to provide advice regarding the impact of the proposed changes in terms of the length of time necessary to complete the training program and the fiscal impact of the changes. The educational board must be consulted only when an institution offering the training program falls under its jurisdiction.

Section 50. Section 455.561, Florida Statutes, is created to read:

455.561 Limited licenses.—

(1) It is the intent of the Legislature that, absent a threat to the health, safety, and welfare of the public, the use of retired professionals in good standing to serve the indigent, underserved, or critical need populations of this state should be encouraged. To that end, the board, or the department when there is no board, may adopt rules to permit practice by retired professionals as limited licensees under this section.

(2) Any person desiring to obtain a limited license, when permitted by rule, shall submit to the board, or the department when there is no board, an application and fee, not to exceed \$300, and an affidavit stating that the applicant has been licensed to practice in any jurisdiction in the United States for at least 10 years in the profession for which the applicant seeks a limited license. The affidavit shall also state that the applicant has retired or intends to retire from the practice of that profession and intends to practice only pursuant to the restrictions of the limited license granted pursuant to this section. If the applicant for a limited license submits a

notarized statement from the employer stating that the applicant will not receive monetary compensation for any service involving the practice of his profession, the application and all licensure fees shall be waived.

(3) The board, or the department when there is no board, may deny limited licensure to an applicant who has committed, or is under investigation or prosecution for, any act which would constitute the basis for discipline pursuant to the provisions of this part or the applicable practice act.

(4) The recipient of a limited license may practice only in the employ of public agencies or institutions or nonprofit agencies or institutions which meet the requirements of s. 501(c)(3) of the Internal Revenue Code, and which provide professional liability coverage for acts or omissions of the limited licensee. A limited licensee may provide services only to the indigent, underserved, or critical need populations within the state. The standard for determining indigency shall be that recognized by the Federal Poverty Income Guidelines produced by the United States Department of Health and Human Services. The board, or the department when there is no board, may adopt rules to define underserved and critical need areas and to ensure implementation of this section.

(5) A board, or the department when there is no board, may provide by rule for supervision of limited licensees to protect the health, safety, and welfare of the public.

(6) Each applicant granted a limited license is subject to all the provisions of this part and the respective practice act under which the limited license is issued which are not in conflict with this section.

(7) This section does not apply to chapter 458 or chapter 459.

Section 51. Section 455.2141, Florida Statutes, 1996 Supplement, is transferred, renumbered as section 455.564, Florida Statutes, and amended to read:

~~455.564 455.2141 Department Agency for Health Care Administration; general licensing provisions.—~~

(1) Any person desiring to be licensed in a profession within the jurisdiction of the ~~department Agency for Health Care Administration~~ shall apply to the ~~department agency~~ in writing to take the licensure examination. The application shall be made on a form prepared and furnished by the ~~department agency~~ and shall be supplemented as needed to reflect any material change in any circumstance or condition stated in the application which takes place between the initial filing of the application and the final grant or denial of the license and which might affect the decision of the ~~department agency~~.

(2) Before the issuance of any license, the ~~department Agency for Health Care Administration~~ may charge an initial license fee as determined by rule of the applicable board or, if no such board exists, by rule of the ~~department agency~~. Upon receipt of the appropriate license fee, the ~~department agency~~ shall issue a license to any person certified by the appropriate board, or its designee, as having met the licensure requirements imposed by law or rule.

(3) When any administrative law judge conducts a hearing pursuant to the provisions of chapter 120 with respect to the issuance of a license by the ~~department Agency for Health Care Administration~~, the administrative law judge shall submit his recommended order to the appropriate board, which shall thereupon issue a final order. The applicant for licensure may appeal the final order of the board in accordance with the provisions of chapter 120.

(4) A privilege against civil liability is hereby granted to any witness for any information furnished by the witness in any proceeding pursuant to this section, unless the witness acted in bad faith or with malice in providing such information.

(5) As a condition of renewal of a license, the Board of Medicine, the Board of Osteopathic Medicine, the Board of Chiropractic, and the Board of Podiatric Medicine shall each require licensees which they respectively regulate to periodically demonstrate their professional competency by completing at least 40 hours of continuing education every 2 years, which may include up to 1 hour of risk management or cost containment and up to 2 hours of other topics related to the applicable medical specialty, if required by board rule. Each of such boards shall determine whether any specific course requirements not otherwise mandated by law shall be mandated and shall approve criteria for, and the content of, any course mandated by such board.

(6) The respective boards within the jurisdiction of the ~~department Agency for Health Care Administration~~ may adopt rules to provide for the use of approved videocassette courses, not to exceed 5 hours per subject, to fulfill the continuing education requirements of the professions they regulate. Such rules shall provide for prior board approval of the criteria for and content of such courses and shall provide for a videocassette course validation form to be signed by the vendor and the licensee and submitted to the ~~department Agency for Health Care Administration~~, along with the license renewal application, for continuing education credit.

(7) Any board that currently requires continuing education for renewal of a license shall adopt rules to establish the criteria for continuing education courses. The rules may provide that up to a maximum of 25 percent of the required continuing education hours can be fulfilled by the performance of pro bono services to the indigent or to underserved populations or in areas of critical need within the state where the licensee practices. The board, or the department if there is no board, must require that any pro bono services be approved in advance in order to receive credit for continuing education under this subsection. The standard for determining indigency shall be that recognized by the Federal Poverty Income Guidelines produced by the United States Department of Health and Human Services. The rules may provide for approval by the board, or the department if there is no board, that a part of the continuing education hours can be fulfilled by performing research in critical-need areas or for training leading to advanced professional certification. The board, or the department if there is no board, may make rules to define underserved and critical-need areas. The department shall adopt rules for administering continuing education requirements adopted by the boards or the department if there is no board.

(8) Notwithstanding any law to the contrary, an elected official who is licensed under a practice act administered by the Division of Health Quality Assurance may hold employment for compensation with any public agency concurrent with such public service. Such dual service must be disclosed according to any disclosure required by applicable law.

(9) In any instance in which a licensee or applicant to the department is required to be in compliance with a particular provision by, on, or before a certain date, and if that date occurs on a Saturday, Sunday, or a legal holiday, then the licensee or applicant is deemed to be in compliance with the specific date requirement if the required action occurs on the first succeeding day which is not a Saturday, Sunday, or legal holiday.

Section 52. Section 455.2142, Florida Statutes, is transferred, renumbered as section 455.567, Florida Statutes, and amended to read:

455.567 455.2142 Sexual misconduct; disqualification for license, certificate, or registration.—Each board within the jurisdiction of the department Agency for Health Care Administration, or the department agency if there is no board, shall refuse to admit a candidate to any examination and refuse to issue a license, certificate, or registration to any applicant if the candidate or applicant has:

(1) Had any license, certificate, or registration to practice any profession or occupation revoked or surrendered based on a violation of sexual misconduct in the practice of that profession under the laws of any other state or any territory or possession of the United States and has not had that license, certificate, or registration reinstated by the licensing authority of the jurisdiction that revoked the license, certificate, or registration; or

(2) Committed any act in any other state or any territory or possession of the United States which if committed in this state would constitute sexual misconduct.

A licensing authority's acceptance of a candidate's relinquishment of a license which is offered in response to or in anticipation of the filing of administrative charges against the candidate's license constitutes the surrender of the license.

Section 53. Section 455.571, Florida Statutes, is created to read:

455.571 Use of professional testing services.—Notwithstanding any other provision of law to the contrary, the department may use a professional testing service to prepare, administer, grade, and evaluate any computerized examination, when that service is available and approved by the board, or the department if there is no board.

Section 54. Section 455.2173, Florida Statutes, 1996 Supplement, is transferred, renumbered as section 455.574, Florida Statutes, and amended to read:

455.574 455.2173 Department of Health Agency for Health Care Administration; examinations.—

(1)(a) ~~The department Agency for Health Care Administration shall provide, contract, or approve services for the development, preparation, and administration, scoring, score reporting, and evaluation of all examinations, in consultation with the appropriate board. The department agency shall certify ensure that the examinations developed and approved by the department adequately and reliably measure an applicant's ability to practice the profession regulated by the department agency and shall seek the advice of the appropriate board in the preparation and administration of the examinations. After an examination developed or approved by the department has been administered, the board, or the department when there is no board, may reject any question which does not reliably measure the general areas of competency specified in the rules of the board. The department may contract for the preparation, administration, scoring, score reporting, and evaluation of agency shall use professional testing services to prepare, administer, grade, and evaluate the examinations, when such services are available and approved by the board.~~

(b) ~~For each examination developed by the department or contracted vendor, to the extent not otherwise specified by statute, the board, or the department, when there is no board, the Agency for Health Care Administration, shall by rule specify the general areas of competency to be covered by each examination, the relative weight to be assigned in grading each area tested, and the score necessary to achieve a passing grade, and fees, where applicable, to cover the actual cost for any purchase, development, and administration of required examinations. This subsection does not apply to national examinations approved and administered pursuant to paragraph (c). If a practical examination is deemed to be necessary, the rules shall specify the criteria by which examiners are to be selected, the grading criteria to be used by the examiner, the relative weight to be assigned in grading each criterion, and the score necessary to achieve a passing grade. When a mandatory standardization exercise for a practical examination is required by law, the board, or the department when there is no board, may conduct such exercise. Therefore, board members, or employees of the department when there is no board, may serve as examiners at a practical examination with the consent of the board or department, as appropriate.~~

(c) ~~The board, or the department when there is no board, may approve by rule the use of any national examination which the department has certified as meeting requirements of national examinations and generally accepted testing standards pursuant to department rules. Providers of examinations seeking certification by the department shall pay the actual costs incurred by the department in making a determination regarding the certification Agency for Health Care Administration shall use any national examination which is available and which is approved by the board. The name and number of a candidate may be provided to a national contractor for the limited purpose of preparing the grade tape and information to be returned to the board or department; or, to the extent otherwise specified by rule, the candidate may apply directly to the vendor of the national examination and supply test score information to the department agency. The department agency may delegate to the board the duty to provide and administer the examination. Any national examination approved by a~~

board, or the department when there is no board, prior to October 1, 1997, is deemed certified under this paragraph.

(d) ~~Each board, or the department, when there is no board, the Agency for Health Care Administration shall adopt rules regarding the security and monitoring of examinations. The department agency shall implement those rules adopted by the respective boards. In order to maintain the security of examinations, the department may employ the procedures set forth in s. 455.637 to seek fines and injunctive relief against an examinee who violates the provisions of s. 455.577 or the rules adopted pursuant to this paragraph. The department, or any agent thereof, may, for the purposes of investigation, confiscate any written, photographic, or recording material or device in the possession of the examinee at the examination site which the department deems necessary to enforce such provisions or rules.~~

(e) If the professional board with jurisdiction over an examination concurs, the department may, for a fee, share with any other state's licensing authority an examination developed by or for the department unless prohibited by a contract entered into by the department for development or purchase of the examination. The department, with the concurrence of the appropriate board, shall establish guidelines that ensure security of a shared exam and shall require that any other state's licensing authority comply with those guidelines. Those guidelines shall be approved by the appropriate professional board. All fees paid by the user shall be applied to the department's examination and development program for professions regulated by this part.

~~(2) For each examination developed by the department or a contracted vendor, the board, or the department, when there is no board, the Agency for Health Care Administration shall adopt rules providing for reexamination of any applicants who have failed an the examination developed by the department or a contracted vendor. If both a written and a practical examination are given, an applicant shall be required to retake only the portion of the examination on which the applicant he failed to achieve a passing grade, if the applicant he successfully passes that portion within a reasonable time, as determined by rule of the board, or the department when there is no board, of his passing the other portion. Except for national examinations approved and administered pursuant to this section, the department shall provide procedures for applicants who fail an examination developed by the department or a contracted vendor to review their examination questions, answers, papers, grades, and grading key. Applicants shall bear the actual cost for the department to provide examination review pursuant to this subsection. The board or, when there is no board, the agency shall make available an examination review procedure for applicants and charge an examination review fee not to exceed \$75 per review. Unless prohibited or limited by rules implementing security or access guidelines of national examinations, the applicant is entitled to review his examination questions, answers, papers, grades, and grading key. An applicant may waive in writing the confidentiality of the applicant's his examination grades.~~

(3) For each examination developed or administered by the department or a contracted vendor, The Agency for Health Care Administration shall

~~make an accurate record of each applicant's examination questions, answers, papers, grades, and grading key. The agency shall be kept keep such record for a period of not less than 2 years immediately following the examination, and such record shall thereafter be maintained or destroyed as provided in chapters 119 and 257 267. This subsection does not apply to national examinations approved and administered pursuant to this section.~~

(4) Meetings of any member of the department Agency for Health Care Administration or of any board within the department agency held for the exclusive purpose of creating or reviewing licensure examination questions or proposed examination questions are exempt from the provisions of s. 286.011 and s. 24(b), Art. I of the State Constitution. Any public records, such as tape recordings, minutes, or notes, generated during or as a result of such meetings are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution. However, these exemptions shall not affect the right of any person to review an examination as provided in subsection (2).

(5) For examinations developed by the department or a contracted vendor, each board, or the department when there is no board, may provide licensure examinations in an applicant's native language. Applicants for examination or reexamination pursuant to this subsection shall bear the full cost for the department's development, preparation, administration, grading, and evaluation of any examination in a language other than English. Requests for translated examinations must be on file in the board office at least 6 months prior to the scheduled examination. When determining whether it is in the public interest to allow the examination to be translated into a language other than English, the board shall consider the percentage of the population who speak the applicant's native language. Applicants must apply for translation to the applicable board at least 6 months prior to the scheduled examination.

(6) In addition to meeting any other requirements for licensure by examination or by endorsement, an applicant may be required by a board, or the department when there is no board, to certify competency in state laws and rules relating to the applicable practice act.

Section 55. Section 455.577, Florida Statutes, is created to read:

455.577 Penalty for theft or reproduction of an examination.—In addition to, or in lieu of, any other discipline imposed pursuant to s. 455.624, the theft of an examination in whole or in part or the act of reproducing or copying any examination administered by the department, whether such examination is reproduced or copied in part or in whole and by any means, constitutes a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 56. Section 455.581, Florida Statutes, is created to read:

455.581 Foreign-trained professionals; special examination and license provisions.—

(1) When not otherwise provided by law, within its jurisdiction, the department shall by rule provide procedures under which exiled professionals may be examined within each practice act. A person shall be eligible for such examination if the person:

(a) Immigrated to the United States after leaving the person's home country because of political reasons, provided such country is located in the Western Hemisphere and lacks diplomatic relations with the United States;

(b) Applies to the department and submits a fee;

(c) Was a Florida resident immediately preceding the person's application;

(d) Demonstrates to the department, through submission of documentation verified by the applicant's respective professional association in exile, that the applicant was graduated with an appropriate professional or occupational degree from a college or university; however, the department may not require receipt of any documentation from the Republic of Cuba as a condition of eligibility under this section;

(e) Lawfully practiced the profession for at least 3 years;

(f) Prior to 1980, successfully completed an approved course of study pursuant to chapters 74-105 and 75-177, Laws of Florida; and

(g) Presents a certificate demonstrating the successful completion of a continuing education program which offers a course of study that will prepare the applicant for the examination offered under subsection (2). The department shall develop rules for the approval of such programs for its boards.

(2) Upon request of a person who meets the requirements of subsection (1) and submits an examination fee, the department, for its boards, shall provide a written practical examination which tests the person's current ability to practice the profession competently in accordance with the actual practice of the profession. Evidence of meeting the requirements of subsection (1) shall be treated by the department as evidence of the applicant's preparation in the academic and preprofessional fundamentals necessary for successful professional practice, and the applicant shall not be examined by the department on such fundamentals.

(3) The fees charged for the examinations offered under subsection (2) shall be established by the department, for its boards, by rule and shall be sufficient to develop or to contract for the development of the examination and its administration, grading, and grade reviews.

(4) The department shall examine any applicant who meets the requirements of subsections (1) and (2). Upon passing the examination and the issuance of the license, a licensee is subject to the administrative requirements of this part and the respective practice act under which the license is issued. Each applicant so licensed is subject to all provisions of this part and the respective practice act under which the license was issued.

(5) Upon a request by an applicant otherwise qualified under this section, the examinations offered under subsection (2) may be given in the applicant's native language, provided that any translation costs are borne by the applicant.

(6) The department, for its boards, shall not issue an initial license to, or renew a license of, any applicant or licensee who is under investigation or prosecution in any jurisdiction for an action which would constitute a violation of this part or the professional practice acts administered by the department and the boards until such time as the investigation or prosecution is complete, at which time the provisions of the professional practice acts shall apply.

Section 57. Section 455.584, Florida Statutes, is created to read:

455.584 Exemption for certain out-of-state or foreign professionals; limited practice permitted.—

(1) A professional of any other state or of any territory or other jurisdiction of the United States or of any other nation or foreign jurisdiction is exempt from the requirements of licensure under this part and the applicable professional practice act under the agency with regulatory jurisdiction over the profession if that profession is regulated in this state under the agency with regulatory jurisdiction over the profession and if that person:

(a) Holds, if so required in the jurisdiction in which that person practices, an active license to practice that profession.

(b) Engages in the active practice of that profession outside the state.

(c) Is employed or designated in that professional capacity by a sports entity visiting the state for a specific sporting event.

(2) A professional's practice under this section is limited to the members, coaches, and staff of the team for which that professional is employed or designated and to any animals used if the sporting event for which that professional is employed or designated involves animals. A professional practicing under authority of this section shall not have practice privileges in any licensed health care facility or veterinary facility without the approval of that facility.

Section 58. Section 455.220, Florida Statutes, is transferred, renumbered as section 455.587, Florida Statutes, and amended to read:

455.587 455.220 Fees; receipts; disposition for boards within the department Agency for Health Care Administration.—

(1) Each board within the jurisdiction of the department Agency for Health Care Administration shall determine by rule the amount of license licensing fees for its profession, based upon long-range estimates prepared by the department agency of the revenue required to implement laws relating this part and the provisions of law with respect to the regulation of professions by the department agency and the any board within the agency.

Each board, or the department if there is no board, shall ensure that license fees are adequate to cover all anticipated costs and to maintain a reasonable cash balance, as determined by rule of the agency, with advice of the applicable board. If sufficient action is not taken by a board within 1 year after notification by the department that license fees are projected to be inadequate, the department shall set license fees on behalf of the applicable board to cover anticipated costs and to maintain the required cash balance. The department shall include recommended fee cap increases in its annual report to the Legislature. Further, it is the legislative intent that no regulated profession operate with a negative cash balance. The department may provide by rule for advancing sufficient funds to any profession operating with a negative cash balance. The advancement may be for a period not to exceed 2 consecutive years, and the regulated profession must pay interest. Interest shall be calculated at the current rate earned on investments of a trust fund used by the department to implement this part. Interest earned shall be allocated to the various funds in accordance with the allocation of investment earnings during the period of the advance.

(2) Each board, or the department if there is no board, may, by rule, assess and collect a one-time fee from each active and each voluntary inactive licensee in an amount necessary to eliminate a cash deficit or, if there is not a cash deficit, in an amount sufficient to maintain the financial integrity of the professions as required in this section. Not more than one such assessment may be made in any 4-year period without specific legislative authorization.

(3) Each board authorized to approve continuing education providers, or the department if there is no board, may establish, by rule, a fee not to exceed \$250 for anyone seeking approval to provide continuing education courses and may establish by rule a biennial renewal fee not to exceed \$250 for the renewal of providership of such courses. This subsection does not apply to continuing education courses or providers approved by the board under chapter 465.

(4)(2) All moneys collected by the ~~department~~ Agency for Health Care Administration from fees or fines or from costs awarded to the agency by a court shall be paid into a trust fund used by the department to implement this part ~~the Health Care Trust Fund~~. The Legislature shall appropriate funds from this trust fund sufficient to carry out ~~the provisions of this part~~ and the provisions of law with respect to professions regulated by ~~the Division of Medical Quality Assurance within the department~~ Agency for Health Care Administration and ~~the boards~~ any board within the agency. ~~The department may contract with public and private entities to receive and deposit revenue pursuant to this section. The department shall maintain separate accounts in the trust fund used by the department to implement this part for every profession within the department. To the maximum extent possible, the department shall directly charge all expenses to the account of each regulated profession. For the purpose of this subsection, direct charge expenses include, but are not limited to, costs for investigations, examinations, and legal services. For expenses that cannot be charged directly, the department shall provide for the proportionate allocation~~

among the accounts of expenses incurred by the department in the performance of its duties with respect to each regulated profession. The department may not expend funds from the account of a profession to pay for the expenses incurred on behalf of another profession. The department shall maintain adequate records to support its allocation of agency expenses. The department shall provide any board with reasonable access to these records upon request. The department shall provide each board an annual report of revenue and direct and allocated expenses related to the operation of that profession. The board shall use these reports and the department's adopted long-range plan to determine the amount of license fees. A condensed version of this information, with the department's recommendations, shall be included in the annual report to the Legislature prepared under s. 455.644.

(5) The department shall provide a condensed management report of budgets, finances, performance statistics, and recommendations to each board at least once a quarter. The department shall identify and include in such presentations any changes, or projected changes, made to the board's budget since the last presentation.

(6) If a duplicate license is required or requested by the licensee, the board or, if there is no board, the department may charge a fee as determined by rule not to exceed \$25 before issuance of the duplicate license.

(7) The department or the appropriate board shall charge a fee not to exceed \$25 for the certification of a public record. The fee shall be determined by rule of the department. The department or the appropriate board shall assess a fee for duplicating a public record as provided in s. 119.07(1)(a) and (b).

Section 59. Section 455.2205, Florida Statutes, 1996 Supplement, is transferred and renumbered as section 408.16, Florida Statutes, and amended to read:

408.16 ~~455.2205~~ Health Care Trust Fund; moneys to be deposited therein.—

(1) There is ~~hereby~~ created in the State Treasury a special fund to be designated as the Health Care Trust Fund, which shall be used in the operation of the Agency for Health Care Administration in the performance of the various functions and duties required of it by law.

(2) All fees, license fees, and other charges collected by the agency shall be deposited in the State Treasury to the credit of the Health Care Trust Fund, to be used in the operation of the agency as authorized by the Legislature. However, penalties and interest assessed and collected by the agency shall not be deposited in the trust fund but shall be deposited in the General Revenue Fund. The Health Care Trust Fund shall be subject to the service charge imposed pursuant to chapter 215.

(3) The agency shall maintain separate revenue and expenditure accounts in the Health Care Trust Fund for every ~~profession regulated and~~ provider licensed by the agency.

~~(4) The agency shall, to the extent practicable, provide for the proportionate allocation among the accounts of expenses incurred by the agency in the performance of its duties with respect to each regulated profession. The agency shall provide each board with an annual report of revenue expenditures and allocated expenses related to the regulation of that profession, and these reports shall be used by the board to determine the amount of licensing fees for each profession regulated by the agency.~~

(4)(5) All other moneys in the Health Care Trust Fund shall be for the use of the agency in the performance of its functions and duties as provided by law, subject to the fiscal and budgetary provisions of general law and the General Appropriations Act.

Section 60. Section 455.594, Florida Statutes, is created to read:

455.594 Legal and investigative services.—

(1) A board shall retain, through the department's contract procedures, board counsel from the Department of Legal Affairs. The Department of Legal Affairs shall provide legal services to each board within the Department of Health, but the primary responsibility of the Department of Legal Affairs shall be to represent the interests of the citizens of the state by vigorously counseling the boards with respect to their obligations under the laws of the state. A board shall provide for the periodic review and evaluation of the services provided by its board counsel. Subject to the prior approval of the Attorney General, any board may retain, through the department's contract procedures, independent legal counsel to provide legal advice to the board on a specific matter. Fees and costs of such counsel by the Department of Legal Affairs or independent legal counsel approved by the Attorney General shall be paid from a trust fund used by the department to implement this part. All contracts for independent counsel shall provide for periodic review and evaluation by the board and the department of services provided.

(2) The department may employ or use the legal services of outside counsel and the investigative services of outside personnel. However, no attorney employed or utilized by the department shall prosecute a matter and provide legal services to the board with respect to the same matter.

(3) Any person retained by the department under contract to review materials, make site visits, or provide expert testimony regarding any complaint or application filed with the department relating to a profession under the jurisdiction of the department shall be considered an agent of the department in determining the state insurance coverage and sovereign immunity protection applicability of ss. 284.31 and 768.28.

Section 61. Section 455.222, Florida Statutes, is transferred, renumbered as section 455.597, Florida Statutes, and amended to read:

455.597 ~~455.222~~ Requirement for instruction on domestic violence.—

(1)(a) ~~As of July 1, 1995,~~ The appropriate board shall require each person licensed or certified under chapter 458, chapter 459, chapter 464, chapter

466, chapter 467, chapter 490, or chapter 491 to complete a 1-hour continuing education course, approved by the board, on domestic violence, as defined in ~~s. 741.28~~ s. 741.30, as part of biennial relicensure or recertification. The course shall consist of information on the number of patients in that professional's practice who are likely to be victims of domestic violence and the number who are likely to be perpetrators of domestic violence, screening procedures for determining whether a patient has any history of being either a victim or a perpetrator of domestic violence, and instruction on how to provide such patients with information on, or how to refer such patients to, resources in the local community, such as domestic violence centers and other advocacy groups, that provide legal aid, shelter, victim counseling, batterer counseling, or child protection services.

(b) Each such licensee or certificateholder shall submit confirmation of having completed such course, on a form provided by the board, when submitting fees for each biennial renewal.

(c) The board may approve additional equivalent courses that may be used to satisfy the requirements of paragraph (a). Each licensing board that requires a licensee to complete an educational course pursuant to this subsection may include the hour required for completion of the course in the total hours of continuing education required by law for such profession unless the continuing education requirements for such profession consist of fewer than 30 hours biennially.

(d) Any person holding two or more licenses subject to the provisions of this subsection shall be permitted to show proof of having taken one board-approved course on domestic violence, for purposes of relicensure or recertification for additional licenses.

(e) Failure to comply with the requirements of this subsection shall constitute grounds for disciplinary action under each respective practice act and under ~~s. 455.624(1)(k)~~ s. 455.227(1)(g). In addition to discipline by the board, the licensee shall be required to complete such course.

(2) The board shall also require, as a condition of granting a license under any chapter specified in paragraph (1)(a), that each applicant for initial licensure under the appropriate chapter complete an educational course acceptable to the board on domestic violence which is substantially equivalent to the course required in subsection (1). An applicant who has not taken such course at the time of licensure shall, upon submission of an affidavit showing good cause, be allowed 6 months to complete such requirement.

(3) Each board may adopt rules to carry out the provisions of this section.

(4) Each board shall report to the President of the Senate, the Speaker of the House of Representatives, and the chairs of the appropriate substantive committees of the Legislature by March 1 of each year as to the implementation of and compliance with the requirements of this section.

Section 62. Section 455.2224, Florida Statutes, is transferred and re-numbered as section 455.601, Florida Statutes.

Section 63. Section 455.604, Florida Statutes, is created to read:

455.604 Requirement for instruction on human immunodeficiency virus and acquired immune deficiency syndrome.—

(1) The appropriate board shall require each person licensed or certified under chapter 457; chapter 458; chapter 459; chapter 460; chapter 461; chapter 463; chapter 464; chapter 465; chapter 466; part II, part III, or part V of chapter 468; or chapter 486 to complete a continuing educational course, approved by the board, on human immunodeficiency virus and acquired immune deficiency syndrome as part of biennial relicensure or recertification. The course shall consist of education on the modes of transmission, infection control procedures, clinical management, and prevention of human immunodeficiency virus and acquired immune deficiency syndrome. Such course shall include information on current Florida law on acquired immune deficiency syndrome and its impact on testing, confidentiality of test results, and treatment of patients.

(2) Each such licensee or certificateholder shall submit confirmation of having completed said course, on a form as provided by the board, when submitting fees for each biennial renewal.

(3) The board shall have the authority to approve additional equivalent courses that may be used to satisfy the requirements in subsection (1). Each licensing board that requires a licensee to complete an educational course pursuant to this section may count the hours required for completion of the course included in the total continuing educational requirements as required by law.

(4) Any person holding two or more licenses subject to the provisions of this section shall be permitted to show proof of having taken one board-approved course on human immunodeficiency virus and acquired immune deficiency syndrome, for purposes of relicensure or recertification for additional licenses.

(5) Failure to comply with the above requirements shall constitute grounds for disciplinary action under each respective licensing chapter and s. 455.624(1)(e). In addition to discipline by the board, the licensee shall be required to complete the course.

(6) The board shall require as a condition of granting a license under the chapters specified in subsection (1) that an applicant making initial application for licensure complete an educational course acceptable to the board on human immunodeficiency virus and acquired immune deficiency syndrome. An applicant who has not taken a course at the time of licensure shall, upon an affidavit showing good cause, be allowed 6 months to complete this requirement.

(7) The board shall have the authority to adopt rules to carry out the provisions of this section.

(8) The board shall report to the Legislature by March 1 of each year as to the implementation and compliance with the requirements of this section.

Section 64. Section 455.607, Florida Statutes, is created to read:

455.607 Requirement for instruction on human immunodeficiency virus and acquired immune deficiency syndrome.—

(1) The board, or the department where there is no board, shall require each person licensed or certified under chapter 480 or part XIV of chapter 468 to complete a continuing educational course approved by the board, or the department where there is no board, on human immunodeficiency virus and acquired immune deficiency syndrome as part of biennial relicensure or recertification. The course shall consist of education on modes of transmission, infection control procedures, clinical management, and prevention of human immunodeficiency virus and acquired immune deficiency syndrome, with an emphasis on appropriate behavior and attitude change.

(2) When filing fees for each biennial renewal, each licensee shall submit confirmation of having completed the course, on a form provided by the board or by the department if there is no board. At the time of the subsequent biennial renewal when coursework is to be completed, if the licensee has not submitted confirmation which has been received and recorded by the board, or department if there is no board, the department shall not renew the license.

(3) The board, or the department where there is no board, shall have the authority to approve additional equivalent courses that may be used to satisfy the requirements in subsection (1).

(4) The board, or the department where there is no board, shall require, as a condition of granting a license under any of the chapters or parts thereof specified in subsection (1), that an applicant making initial application for licensure complete an educational course acceptable to the board, or the department where there is no board, on human immunodeficiency virus and acquired immune deficiency syndrome. An applicant who has not taken a course at the time of licensure shall, upon an affidavit showing good cause, be allowed 6 months to complete this requirement.

(5) The board, or the department where there is no board, shall have the authority to adopt rules to carry out the provisions of this section.

(6) The board, or the department where there is no board, shall report to the Legislature by March 1 of each year as to the implementation and compliance with the requirements of this section.

(7) Any professional holding two or more licenses subject to the provisions of this section shall be permitted to show proof of having taken one board-approved course, or one department-approved course where there is no board, on human immunodeficiency virus and acquired immune deficiency syndrome, for purposes of relicensure or recertification for additional licenses.

Section 65. Section 455.611, Florida Statutes, is created to read:

455.611 Power to administer oaths, take depositions, and issue subpoenas.—For the purpose of any investigation or proceeding conducted by the

department, the department shall have the power to administer oaths, take depositions, make inspections when authorized by statute, issue subpoenas which shall be supported by affidavit, serve subpoenas and other process, and compel the attendance of witnesses and the production of books, papers, documents, and other evidence. The department shall exercise this power on its own initiative or whenever requested by a board or the probable cause panel of any board. Challenges to, and enforcement of, the subpoenas and orders shall be handled as provided in s. 120.569.

Section 66. Section 455.614, Florida Statutes, is created to read:

455.614 Mediation.—

(1) Notwithstanding the provisions of s. 455.621, the board, or the department when there is no board, shall adopt rules to designate which violations of the applicable professional practice act are appropriate for mediation. The board, or the department when there is no board, may designate as mediation offenses those complaints where harm caused by the licensee is economic in nature or can be remedied by the licensee.

(2) After the department determines a complaint is legally sufficient and the alleged violations are defined as mediation offenses, the department or any agent of the department may conduct informal mediation to resolve the complaint. If the complainant and the subject of the complaint agree to a resolution of a complaint within 14 days after contact by the mediator, the mediator shall notify the department of the terms of the resolution. The department or board shall take no further action unless the complainant and the subject each fail to record with the department an acknowledgment of satisfaction of the terms of mediation within 60 days of the mediator's notification to the department. In the event the complainant and subject fail to reach settlement terms or to record the required acknowledgment, the department shall process the complaint according to the provisions of s. 455.621.

(3) Conduct or statements made during mediation are inadmissible in any proceeding pursuant to s. 455.621. Further, any information relating to the mediation of a case shall be subject to the confidentiality provisions of s. 455.621.

(4) No licensee shall go through the mediation process more than three times without approval of the department. The department may consider the subject and dates of the earlier complaints in rendering its decision. Such decision shall not be considered a final agency action for purposes of chapter 120.

(5) Any board created on or after January 1, 1995, shall have 6 months to adopt rules designating which violations are appropriate for mediation, after which time the department shall have exclusive authority to adopt rules pursuant to this section. A board shall have continuing authority to amend its rules adopted pursuant to this section.

Section 67. Section 455.617, Florida Statutes, is created to read:

455.617 Authority to issue citations.—

(1) Notwithstanding s. 455.621, the board, or the department if there is no board, shall adopt rules to permit the issuance of citations. The citation shall be issued to the subject and shall contain the subject's name and address, the subject's license number if applicable, a brief factual statement, the sections of the law allegedly violated, and the penalty imposed. The citation must clearly state that the subject may choose, in lieu of accepting the citation, to follow the procedure under s. 455.621. If the subject disputes the matter in the citation, the procedures set forth in s. 455.621 must be followed. However, if the subject does not dispute the matter in the citation with the department within 30 days after the citation is served, the citation becomes a final order and constitutes discipline. The penalty shall be a fine or other conditions as established by rule.

(2) The board, or the department if there is no board, shall adopt rules designating violations for which a citation may be issued. Such rules shall designate as citation violations those violations for which there is no substantial threat to the public health, safety, and welfare.

(3) The department shall be entitled to recover the costs of investigation, in addition to any penalty provided according to board or department rule, as part of the penalty levied pursuant to the citation.

(4) A citation must be issued within 6 months after the filing of the complaint that is the basis for the citation.

(5) Service of a citation may be made by personal service or certified mail, restricted delivery, to the subject at the subject's last known address.

(6) A board created on or after January 1, 1992, has 6 months in which to enact rules designating violations and penalties appropriate for citation offenses. Failure to enact such rules gives the department exclusive authority to adopt rules as required for implementing this section. A board has continuous authority to amend its rules adopted pursuant to this section.

Section 68. Section 455.621, Florida Statutes, is created to read:

455.621 Disciplinary proceedings.—Disciplinary proceedings for each board shall be within the jurisdiction of the department.

(1) The department, for the boards under its jurisdiction, shall cause to be investigated any complaint that is filed before it if the complaint is in writing, signed by the complainant, and legally sufficient. A complaint is legally sufficient if it contains ultimate facts that show that a violation of this part, of any of the practice acts relating to the professions regulated by the department, or of any rule adopted by the department or a regulatory board in the department has occurred. In order to determine legal sufficiency, the department may require supporting information or documentation. The department may investigate, and the department or the appropriate board may take appropriate final action on, a complaint even though the original complainant withdraws it or otherwise indicates a desire not to cause the complaint to be investigated or prosecuted to completion. The

department may investigate an anonymous complaint if the complaint is in writing and is legally sufficient, if the alleged violation of law or rules is substantial, and if the department has reason to believe, after preliminary inquiry, that the violations alleged in the complaint are true. The department may investigate a complaint made by a confidential informant if the complaint is legally sufficient, if the alleged violation of law or rule is substantial, and if the department has reason to believe, after preliminary inquiry, that the allegations of the complainant are true. The department may initiate an investigation if it has reasonable cause to believe that a licensee or a group of licensees has violated a Florida statute, a rule of the department, or a rule of a board. Except as provided in ss. 458.331(9), 459.015(9), 460.413(5), and 461.013(6), when an investigation of any subject is undertaken, the department shall promptly furnish to the subject or the subject's attorney a copy of the complaint or document that resulted in the initiation of the investigation. The subject may submit a written response to the information contained in such complaint or document within 20 days after service to the subject of the complaint or document. The subject's written response shall be considered by the probable cause panel. The right to respond does not prohibit the issuance of a summary emergency order if necessary to protect the public. However, if the secretary, or the secretary's designee, and the chairman of the respective board or the chairman of its probable cause panel agree in writing that such notification would be detrimental to the investigation, the department may withhold notification. The department may conduct an investigation without notification to any subject if the act under investigation is a criminal offense.

(2) The department shall allocate sufficient and adequately trained staff to expeditiously and thoroughly determine legal sufficiency and investigate all legally sufficient complaints. For purposes of this section, it is the intent of the Legislature that the term "expeditiously" means that the department complete the report of its initial investigative findings and recommendations concerning the existence of probable cause within 6 months after its receipt of the complaint. The failure of the department, for disciplinary cases under its jurisdiction, to comply with the time limits of this section while investigating a complaint against a licensee constitutes harmless error in any subsequent disciplinary action unless a court finds that either the fairness of the proceeding or the correctness of the action may have been impaired by a material error in procedure or a failure to follow prescribed procedure. When its investigation is complete and legally sufficient, the department shall prepare and submit to the probable cause panel of the appropriate regulatory board the investigative report of the department. The report shall contain the investigative findings and the recommendations of the department concerning the existence of probable cause. At any time after legal sufficiency is found, the department may dismiss any case, or any part thereof, if the department determines that there is insufficient evidence to support the prosecution of allegations contained therein. The department shall provide a detailed report to the appropriate probable cause panel prior to dismissal of any case or part thereof, and to the subject of the complaint after dismissal of any case or part thereof, under this section. For cases dismissed prior to a finding of probable cause, such report is confidential and exempt from s. 119.07(1). The probable cause panel shall have access, upon request, to the investigative files pertaining to a case prior to dismissal of

such case. If the department dismisses a case, the probable cause panel may retain independent legal counsel, employ investigators, and continue the investigation and prosecution of the case as it deems necessary.

(3) As an alternative to the provisions of subsections (1) and (2), when a complaint is received, the department may provide a licensee with a notice of noncompliance for an initial offense of a minor violation. Each board, or the department if there is no board, shall establish by rule those minor violations under this provision which do not endanger the public health, safety, and welfare and which do not demonstrate a serious inability to practice the profession. Failure of a licensee to take action in correcting the violation within 15 days after notice may result in the institution of regular disciplinary proceedings.

(4) The determination as to whether probable cause exists shall be made by majority vote of a probable cause panel of the board, or by the department, as appropriate. Each regulatory board shall provide by rule that the determination of probable cause shall be made by a panel of its members or by the department. Each board may provide by rule for multiple probable cause panels composed of at least two members. Each board may provide by rule that one or more members of the panel or panels may be a former board member. The length of term or repetition of service of any such former board member on a probable cause panel may vary according to the direction of the board when authorized by board rule. Any probable cause panel must include one of the board's former or present consumer members, if one is available, is willing to serve, and is authorized to do so by the board chairman. Any probable cause panel must include a present board member. Any probable cause panel must include a former or present professional board member. However, any former professional board member serving on the probable cause panel must hold an active valid license for that profession. All proceedings of the panel are exempt from s. 286.011 until 10 days after probable cause has been found to exist by the panel or until the subject of the investigation waives his privilege of confidentiality. The probable cause panel may make a reasonable request, and upon such request the department shall provide such additional investigative information as is necessary to the determination of probable cause. A request for additional investigative information shall be made within 15 days from the date of receipt by the probable cause panel of the investigative report of the department or the agency. The probable cause panel or the department, as may be appropriate, shall make its determination of probable cause within 30 days after receipt by it of the final investigative report of the department. The secretary may grant extensions of the 15-day and the 30-day time limits. In lieu of a finding of probable cause, the probable cause panel, or the department if there is no board, may issue a letter of guidance to the subject. If, within the 30-day time limit, as may be extended, the probable cause panel does not make a determination regarding the existence of probable cause or does not issue a letter of guidance in lieu of a finding of probable cause, the department must make a determination regarding the existence of probable cause within 10 days after the expiration of the time limit. If the probable cause panel finds that probable cause exists, it shall direct the department to file a formal complaint against the licensee. The department shall follow the

directions of the probable cause panel regarding the filing of a formal complaint. If directed to do so, the department shall file a formal complaint against the subject of the investigation and prosecute that complaint pursuant to chapter 120. However, the department may decide not to prosecute the complaint if it finds that probable cause has been improvidently found by the panel. In such cases, the department shall refer the matter to the board. The board may then file a formal complaint and prosecute the complaint pursuant to chapter 120. The department shall also refer to the board any investigation or disciplinary proceeding not before the Division of Administrative Hearings pursuant to chapter 120 or otherwise completed by the department within 1 year after the filing of a complaint. The department, for disciplinary cases under its jurisdiction, must establish a uniform reporting system to quarterly refer to each board the status of any investigation or disciplinary proceeding that is not before the Division of Administrative Hearings or otherwise completed by the department within 1 year after the filing of the complaint. Annually, the department if there is no board, or each board must establish a plan to reduce or otherwise close any investigation or disciplinary proceeding that is not before the Division of Administrative Hearings or otherwise completed by the department within 1 year after the filing of the complaint. A probable cause panel or a board may retain independent legal counsel, employ investigators, and continue the investigation as it deems necessary; all costs thereof shall be paid from a trust fund used by the department to implement this part. All proceedings of the probable cause panel are exempt from s. 120.525.

(5) A formal hearing before an administrative law judge from the Division of Administrative Hearings shall be held pursuant to chapter 120 if there are any disputed issues of material fact. The administrative law judge shall issue a recommended order pursuant to chapter 120. If any party raises an issue of disputed fact during an informal hearing, the hearing shall be terminated and a formal hearing pursuant to chapter 120 shall be held.

(6) The appropriate board, with those members of the panel, if any, who reviewed the investigation pursuant to subsection (5) being excused, or the department when there is no board, shall determine and issue the final order in each disciplinary case. Such order shall constitute final agency action. Any consent order or agreed-upon settlement shall be subject to the approval of the department.

(7) The department shall have standing to seek judicial review of any final order of the board, pursuant to s. 120.68.

(8) Any proceeding for the purpose of summary suspension of a license, or for the restriction of the license, of a licensee pursuant to s. 120.60(6) shall be conducted by the Secretary of the Department of Health or his or her designee, as appropriate, who shall issue the final summary order.

(9)(a) The department shall periodically notify the person who filed the complaint of the status of the investigation, indicating whether probable cause has been found and the status of any civil action or administrative proceeding or appeal.

(b) In any disciplinary case for which probable cause has been found, the department shall provide to the person who filed the complaint a copy of the administrative complaint and:

1. A written explanation of how an administrative complaint is resolved by the disciplinary process.

2. A written explanation of how and when the person may participate in the disciplinary process.

3. A written notice of any hearing before the Division of Administrative Hearings or the regulatory board at which final agency action may be taken.

(c) In any disciplinary case for which probable cause is not found, the department shall so inform the person who filed the complaint and notify that person that he or she may, within 60 days, provide any additional information to the probable cause panel which may be relevant to the decision. In any administrative proceeding under s. 120.57, the person who filed the disciplinary complaint shall have the right to present oral or written communication relating to the alleged disciplinary violations or to the appropriate penalty.

(10) The complaint and all information obtained pursuant to the investigation by the department are confidential and exempt from s. 119.07(1) until 10 days after probable cause has been found to exist by the probable cause panel or by the department, or until the regulated professional or subject of the investigation waives his privilege of confidentiality, whichever occurs first. Upon completion of the investigation and pursuant to a written request by the subject, the department shall provide the subject an opportunity to inspect the investigative file or, at the subject's expense, forward to the subject a copy of the investigative file. Notwithstanding s. 455.667, the subject may inspect or receive a copy of any expert witness report or patient record connected with the investigation if the subject agrees in writing to maintain the confidentiality of any information received under this subsection until 10 days after probable cause is found and to maintain the confidentiality of patient records pursuant to s. 455.667. The subject may file a written response to the information contained in the investigative file. Such response must be filed within 20 days, unless an extension of time has been granted by the department. This subsection does not prohibit the department from providing such information to any law enforcement agency or to any other regulatory agency.

(11) A privilege against civil liability is hereby granted to any complainant or any witness with regard to information furnished with respect to any investigation or proceeding pursuant to this section, unless the complainant or witness acted in bad faith or with malice in providing such information.

(12)(a) No person who reports in any capacity, whether or not required by law, information to the department with regard to the incompetence, impairment, or unprofessional conduct of any health care provider licensed under chapter 458, chapter 459, chapter 460, chapter 461, chapter 462, chapter 463, chapter 464, chapter 465, or chapter 466 shall be held liable in

any civil action for reporting against such health care provider if such person acts without intentional fraud or malice.

(b) No facility licensed under chapter 395, health maintenance organization certificated under part I of chapter 641, physician licensed under chapter 458, or osteopathic physician licensed under chapter 459 shall discharge, threaten to discharge, intimidate, or coerce any employee or staff member by reason of such employee's or staff member's report to the department about a physician licensed under chapter 458, chapter 459, chapter 460, chapter 461, or chapter 466 who may be guilty of incompetence, impairment, or unprofessional conduct so long as such report is given without intentional fraud or malice.

(c) In any civil suit brought outside the protections of paragraphs (a) and (b) in which intentional fraud or malice is alleged, the person alleging intentional fraud or malice shall be liable for all court costs and for the other party's reasonable attorney's fees if intentional fraud or malice is not proved.

Section 69. Section 455.624, Florida Statutes, is created to read:

455.624 Grounds for discipline; penalties; enforcement.—

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

(a) Making misleading, deceptive, or fraudulent representations in or related to the practice of the licensee's profession.

(b) Intentionally violating any rule adopted by the board or the department, as appropriate.

(c) Being convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction which relates to the practice of, or the ability to practice, a licensee's profession.

(d) Using a Class III or a Class IV laser device or product, as defined by federal regulations, without having complied with the rules adopted pursuant to s. 501.122(2) governing the registration of such devices.

(e) Failing to comply with the educational course requirements for human immunodeficiency virus and acquired immune deficiency syndrome.

(f) Having a license or the authority to practice the regulated profession revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of any jurisdiction, including its agencies or subdivisions, for a violation that would constitute a violation under Florida law. The licensing authority's acceptance of a relinquishment of licensure, stipulation, consent order, or other settlement, offered in response to or in anticipation of the filing of charges against the license, shall be construed as action against the license.

(g) Having been found liable in a civil proceeding for knowingly filing a false report or complaint with the department against another licensee.

(h) Attempting to obtain, obtaining, or renewing a license to practice a profession by bribery, by fraudulent misrepresentation, or through an error of the department or the board.

(i) Except as provided in s. 465.016, failing to report to the department any person who the licensee knows is in violation of this part, the chapter regulating the alleged violator, or the rules of the department or the board.

(j) Aiding, assisting, procuring, employing, or advising any unlicensed person or entity to practice a profession contrary to this part, the chapter regulating the profession, or the rules of the department or the board.

(k) Failing to perform any statutory or legal obligation placed upon a licensee.

(l) Making or filing a report which the licensee knows to be false, intentionally or negligently failing to file a report or record required by state or federal law, or willfully impeding or obstructing another person to do so. Such reports or records shall include only those that are signed in the capacity of a licensee.

(m) Making deceptive, untrue, or fraudulent representations in or related to the practice of a profession or employing a trick or scheme in or related to the practice of a profession.

(n) Exercising influence on the patient or client for the purpose of financial gain of the licensee or a third party.

(o) Practicing or offering to practice beyond the scope permitted by law or accepting and performing professional responsibilities the licensee knows, or has reason to know, the licensee is not competent to perform.

(p) Delegating or contracting for the performance of professional responsibilities by a person when the licensee delegating or contracting for performance of such responsibilities knows, or has reason to know, such person is not qualified by training, experience, and authorization when required to perform them.

(q) Violating any provision of this part, the applicable professional practice act, a rule of the department or the board, or a lawful order of the department or the board, or failing to comply with a lawfully issued subpoena of the department.

(r) Improperly interfering with an investigation or inspection authorized by statute, or with any disciplinary proceeding.

(s) Failing to comply with the educational course requirements for domestic violence.

(2) When the board, or the department when there is no board, finds any person guilty of the grounds set forth in subsection (1) or of any grounds set forth in the applicable practice act, including conduct constituting a substantial violation of subsection (1) or a violation of the applicable practice

act which occurred prior to obtaining a license, it may enter an order imposing one or more of the following penalties:

(a) Refusal to certify, or to certify with restrictions, an application for a license.

(b) Suspension or permanent revocation of a license.

(c) Restriction of practice.

(d) Imposition of an administrative fine not to exceed \$5,000 for each count or separate offense.

(e) Issuance of a reprimand.

(f) Placement of the licensee on probation for a period of time and subject to such conditions as the board, or the department when there is no board, may specify. Those conditions may include, but are not limited to, requiring the licensee to undergo treatment, attend continuing education courses, submit to be reexamined, work under the supervision of another licensee, or satisfy any terms which are reasonably tailored to the violations found.

(g) Corrective action.

(3) In addition to any other discipline imposed pursuant to this section or discipline imposed for a violation of any practice act, the board, or the department when there is no board, may assess costs related to the investigation and prosecution of the case excluding costs associated with an attorney's time. In any case where the board or the department imposes a fine or assessment and the fine or assessment is not paid within a reasonable time, such reasonable time to be prescribed in the rules of the board, or the department when there is no board, or in the order assessing such fines or costs, the department or the Department of Legal Affairs may contract for the collection of, or bring a civil action to recover, the fine or assessment.

(4) In addition to, or in lieu of, any other remedy or criminal prosecution, the department may file a proceeding in the name of the state seeking issuance of an injunction or a writ of mandamus against any person who violates any of the provisions of this part, or any provision of law with respect to professions regulated by the department, or any board therein, or the rules adopted pursuant thereto.

(5) In the event the board, or the department when there is no board, determines that revocation of a license is the appropriate penalty, the revocation shall be permanent. However, the board may establish by rule requirements for reapplication by applicants whose licenses have been permanently revoked. Such requirements may include, but shall not be limited to, satisfying current requirements for an initial license.

Section 70. Section 455.627, Florida Statutes, is created to read:

455.627 Disciplinary guidelines.—

(1) Each board, or the department if there is no board, shall adopt by rule and periodically review the disciplinary guidelines applicable to each ground for disciplinary action which may be imposed by the board, or the department if there is no board, pursuant to this part, the respective practice acts, and any rule of the board or department.

(2) The disciplinary guidelines shall specify a meaningful range of designated penalties based upon the severity and repetition of specific offenses, it being the legislative intent that minor violations be distinguished from those which endanger the public health, safety, or welfare; that such guidelines provide reasonable and meaningful notice to the public of likely penalties which may be imposed for proscribed conduct; and that such penalties be consistently applied by the board.

(3) A specific finding of mitigating or aggravating circumstances shall allow the board to impose a penalty other than that provided for in such guidelines. If applicable, the board, or the department if there is no board, shall adopt by rule disciplinary guidelines to designate possible mitigating and aggravating circumstances and the variation and range of penalties permitted for such circumstances.

(4) The department must review such disciplinary guidelines for compliance with the legislative intent as set forth herein to determine whether the guidelines establish a meaningful range of penalties and may also challenge such rules pursuant to s. 120.56.

(5) The administrative law judge, in recommending penalties in any recommended order, must follow the penalty guidelines established by the board or department and must state in writing the mitigating or aggravating circumstances upon which the recommended penalty is based.

Section 71. Section 455.631, Florida Statutes, is created to read:

455.631 Penalty for giving false information.—In addition to, or in lieu of, any other discipline imposed pursuant to s. 455.624, the act of knowingly giving false information in the course of applying for or obtaining a license from the department, or any board thereunder, with intent to mislead a public servant in the performance of his official duties, or the act of attempting to obtain or obtaining a license from the department, or any board thereunder, to practice a profession by knowingly misleading statements or knowing misrepresentations constitutes a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 72. Section 455.634, Florida Statutes, is created to read:

455.634 Prosecution of criminal violations.—The department or the appropriate board shall report any criminal violation of any statute relating to the practice of a profession regulated by the department or appropriate board to the proper prosecuting authority for prompt prosecution.

Section 73. Section 455.637, Florida Statutes, is created to read:

455.637 Unlicensed practice of a profession; cease and desist notice; civil penalty; enforcement; citations; allocation of moneys collected.—

(1) When the department has probable cause to believe that any person not licensed by the department, or the appropriate regulatory board within the department, has violated any provision of this part or any statute that relates to the practice of a profession regulated by the department, or any rule adopted pursuant thereto, the department may issue and deliver to such person a notice to cease and desist from such violation. In addition, the department may issue and deliver a notice to cease and desist to any person who aids and abets the unlicensed practice of a profession by employing such unlicensed person. The issuance of a notice to cease and desist shall not constitute agency action for which a hearing under ss. 120.569 and 120.57 may be sought. For the purpose of enforcing a cease and desist order, the department may file a proceeding in the name of the state seeking issuance of an injunction or a writ of mandamus against any person who violates any provisions of such order. In addition to the foregoing remedies, the department may impose an administrative penalty not to exceed \$5,000 per incident pursuant to the provisions of chapter 120 or may issue a citation pursuant to the provisions of subsection (3). If the department is required to seek enforcement of the agency order for a penalty pursuant to s. 120.569, it shall be entitled to collect its attorney's fees and costs, together with any cost of collection.

(2) In addition to or in lieu of any remedy provided in subsection (1), the department may seek the imposition of a civil penalty through the circuit court for any violation for which the department may issue a notice to cease and desist under subsection (1). The civil penalty shall be no less than \$500 and no more than \$5,000 for each offense. The court may also award to the prevailing party court costs and reasonable attorney fees and, in the event the department prevails, may also award reasonable costs of investigation.

(3)(a) Notwithstanding the provisions of s. 455.621, the department shall adopt rules to permit the issuance of citations for unlicensed practice of a profession. The citation shall be issued to the subject and shall contain the subject's name and any other information the department determines to be necessary to identify the subject, a brief factual statement, the sections of the law allegedly violated, and the penalty imposed. The citation must clearly state that the subject may choose, in lieu of accepting the citation, to follow the procedure under s. 455.621. If the subject disputes the matter in the citation, the procedures set forth in s. 455.621 must be followed. However, if the subject does not dispute the matter in the citation with the department within 30 days after the citation is served, the citation shall become a final order of the department. The penalty shall be a fine of not less than \$500 or more than \$5,000 or other conditions as established by rule.

(b) Each day that the unlicensed practice continues after issuance of a citation constitutes a separate violation.

(c) The department shall be entitled to recover the costs of investigation, in addition to any penalty provided according to department rule as part of the penalty levied pursuant to the citation.

(d) Service of a citation may be made by personal service or certified mail, restricted delivery, to the subject at the subject's last known address.

(4) All fines, fees, and costs collected through the procedures set forth in this section shall be allocated to the professions in the manner provided for in s. 455.641 for the allocation of the fees assessed and collected to combat unlicensed practice of a profession.

(5) The provisions of this section apply only to the professional practice acts administered by the department.

Section 74. Section 455.641, Florida Statutes, is created to read:

455.641 Unlicensed activities; fees; disposition.—In order to protect the public and to ensure a consumer-oriented department, it is the intent of the Legislature that vigorous enforcement of regulation for all professional activities is a state priority. All enforcement costs should be covered by professions regulated by the department. Therefore, the department shall impose, upon initial licensure and each renewal thereof, a special fee of \$5 per licensee. Such fee shall be in addition to all other fees collected from each licensee and shall fund efforts to combat unlicensed activity. The board with concurrence of the department, or the department when there is no board, may earmark \$5 of the current licensure fee for this purpose, if such board, or profession regulated by the department, is not in a deficit and has a reasonable cash balance. The department shall make direct charges to this fund by profession and shall not allocate indirect overhead. The department shall seek board advice regarding enforcement methods and strategies prior to expenditure of funds. The department shall directly credit, by profession, revenues received from the department's efforts to enforce licensure provisions. The department shall include all financial and statistical data resulting from unlicensed activity enforcement as a separate category in the quarterly management report provided for in s. 455.219. The department shall not charge the account of any profession for the costs incurred on behalf of any other profession. For an unlicensed activity account, a balance which remains at the end of a renewal cycle may, with concurrence of the applicable board and the department, be transferred to the operating fund account of that profession.

Section 75. Section 455.644, Florida Statutes, is created to read:

455.644 Annual report concerning finances, administrative complaints, disciplinary actions, and recommendations.—The department is directed to prepare and submit a report to the President of the Senate and Speaker of the House of Representatives by November 1 of each year. In addition to finances and any other information the Legislature may require, the report shall include statistics and relevant information, profession by profession, detailing:

(1) The revenues, expenditures, and cash balances for the prior year, and a review of the adequacy of existing fees.

(2) The number of complaints received and investigated.

(3) The number of findings of probable cause made.

(4) The number of findings of no probable cause made.

(5) The number of administrative complaints filed.

(6) The disposition of all administrative complaints.

(7) A description of disciplinary actions taken.

(8) A description of any effort by the department to reduce or otherwise close any investigation or disciplinary proceeding not before the Division of Administrative Hearings under chapter 120 or otherwise not completed within 1 year after the initial filing of a complaint under this part.

(9) The status of the development and implementation of rules providing for disciplinary guidelines pursuant to s. 455.627.

(10) Such recommendations for administrative and statutory changes necessary to facilitate efficient and cost-effective operation of the department and the various boards.

Section 76. Section 455.647, Florida Statutes, is created to read:

455.647 Public inspection of information required from applicants; exceptions; examination hearing.—

(1) All information required by the department of any applicant shall be a public record and shall be open to public inspection pursuant to s. 119.07, except financial information, medical information, school transcripts, examination questions, answers, papers, grades, and grading keys, which are confidential and exempt from s. 119.07(1) and shall not be discussed with or made accessible to anyone except members of the board, the department, and staff thereof, who have a bona fide need to know such information. Any information supplied to the department by any other agency which is exempt from the provisions of chapter 119 or is confidential shall remain exempt or confidential pursuant to applicable law while in the custody of the department or the agency.

(2) The department shall establish by rule the procedure by which an applicant, and the applicant's attorney, may review examination questions and answers. Examination questions and answers are not subject to discovery but may be introduced into evidence and considered only in camera in any administrative proceeding under chapter 120. If an administrative hearing is held, the department shall provide challenged examination questions and answers to the administrative law judge. The examination questions and answers provided at the hearing are confidential and exempt from s. 119.07(1), unless invalidated by the administrative law judge.

(3) Unless an applicant notifies the department at least 5 days prior to an examination hearing of the applicant's inability to attend, or unless an applicant can demonstrate an extreme emergency for failing to attend, the department may require an applicant who fails to attend to pay reasonable attorney's fees, costs, and court costs of the department for the examination hearing.

Section 77. Section 455.651, Florida Statutes, is created to read:

455.651 Disclosure of confidential information.—

(1) No officer, employee, or person under contract with the department, or any board therein, or any subject of an investigation shall convey knowledge or information to any person who is not lawfully entitled to such knowledge or information about any public meeting or public record, which at the time such knowledge or information is conveyed is exempt from the provisions of s. 119.01, s. 119.07(1), or s. 286.011.

(2) Any person who willfully violates any provision of this section is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, and may be subject to discipline pursuant to s. 455.227, and, if applicable, shall be removed from office, employment, or the contractual relationship.

Section 78. Section 455.236, Florida Statutes, 1996 Supplement, is transferred, renumbered as section 455.654, Florida Statutes, and amended to read:

~~455.654~~ 455.236 Financial arrangements between referring health care providers and providers of health care services.—

(1) ~~SHORT TITLE.—This section shall be known and~~ may be cited as the “Patient Self-Referral Act of 1992.”

(2) ~~LEGISLATIVE INTENT.—It is recognized by the Legislature that the referral of a patient by a health care provider to a provider of health care services in which the referring health care provider has an investment interest represents a potential conflict of interest. The Legislature finds these referral practices may limit or eliminate competitive alternatives in the health care services market, may result in overutilization of health care services, may increase costs to the health care system, and may adversely affect the quality of health care. The Legislature also recognizes, however, that it may be appropriate for providers to own entities providing health care services, and to refer patients to such entities, as long as certain safeguards are present in the arrangement. It is the intent of the Legislature to provide guidance to health care providers regarding prohibited patient referrals between health care providers and entities providing health care services and to protect the people citizens of Florida from unnecessary and costly health care expenditures.~~

(3) ~~DEFINITIONS.—For the purpose of this section, the word, phrase, or term:~~

(a) “Board” means any of the following boards relating to the respective professions: the Board of Medicine as created in s. 458.307; the Board of Osteopathic Medicine as created in s. 459.004; the Board of Chiropractic as created in s. 460.404; the Board of Podiatric Medicine as created in s. 461.004; the Board of Optometry as created in s. 463.003; the Board of Pharmacy as created in s. 465.004; and the Board of Dentistry as created in s. 466.004.

(b) “Comprehensive rehabilitation services” means services that are provided by health care professionals licensed under part I or part III of chapter

468 or chapter 486 to provide speech, occupational, or physical therapy services on an outpatient or ambulatory basis.

(c) "Designated health services" means, for purposes of this section, clinical laboratory services, physical therapy services, comprehensive rehabilitative services, diagnostic-imaging services, and radiation therapy services.

(d) "Entity" means any individual, partnership, firm, corporation, or other business entity.

(e) "Fair market value" means value in arms length transactions, consistent with the general market value, and, with respect to rentals or leases, the value of rental property for general commercial purposes, not taking into account its intended use, and, in the case of a lease of space, not adjusted to reflect the additional value the prospective lessee or lessor would attribute to the proximity or convenience to the lessor where the lessor is a potential source of patient referrals to the lessee.

(f) "Group practice" means a group of two or more health care providers legally organized as a partnership, professional corporation, or similar association:

1. In which each health care provider who is a member of the group provides substantially the full range of services which the health care provider routinely provides, including medical care, consultation, diagnosis, or treatment, through the joint use of shared office space, facilities, equipment, and personnel;

2. For which substantially all of the services of the health care providers who are members of the group are provided through the group and are billed in the name of the group and amounts so received are treated as receipts of the group; and

3. In which the overhead expenses of and the income from the practice are distributed in accordance with methods previously determined by members of the group.

(g) "Health care provider" means any physician licensed under chapter 458, chapter 459, chapter 460, or chapter 461, or any health care provider licensed under chapter 463 or chapter 466.

(h) "Immediate family member" means a health care provider's spouse, child, child's spouse, grandchild, grandchild's spouse, parent, parent-in-law, or sibling.

(i) "Investment interest" means an equity or debt security issued by an entity, including, without limitation, shares of stock in a corporation, units or other interests in a partnership, bonds, debentures, notes, or other equity interests or debt instruments. Except for purposes of ~~s. 455.661~~ ~~s. 455.239~~, the following investment interests shall be excepted from this definition:

1. An investment interest in an entity that is the sole provider of designated health services in a rural area;

2. An investment interest in notes, bonds, debentures, or other debt instruments issued by an entity which provides designated health services, as an integral part of a plan by such entity to acquire such investor's equity investment interest in the entity, provided that the interest rate is consistent with fair market value, and that the maturity date of the notes, bonds, debentures, or other debt instruments issued by the entity to the investor is not later than October 1, 1996.

3. An investment interest in real property resulting in a landlord-tenant relationship between the health care provider and the entity in which the equity interest is held, unless the rent is determined, in whole or in part, by the business volume or profitability of the tenant or exceeds fair market value; or

4. An investment interest in an entity which owns or leases and operates a hospital licensed under chapter 395 or a nursing home facility licensed under chapter 400.

(j) "Investor" means a person or entity owning a legal or beneficial ownership or investment interest, directly or indirectly, including, without limitation, through an immediate family member, trust, or another entity related to the investor within the meaning of 42 C.F.R. s. 413.17, in an entity.

(k) "Referral" means any referral of a patient by a health care provider for health care services, including, without limitation:

1. The forwarding of a patient by a health care provider to another health care provider or to an entity which provides or supplies designated health services or any other health care item or service; or

2. The request or establishment of a plan of care by a health care provider, which includes the provision of designated health services or other health care item or service.

3. Except for the purposes of s. 455.661 ~~s. 455.239~~, the following orders, recommendations, or plans of care shall not constitute a referral by a health care provider:

a. By a radiologist for diagnostic-imaging services.

b. By a physician specializing in the provision of radiation therapy services for such services.

c. By a medical oncologist for drugs and solutions to be prepared and administered intravenously to such oncologist's patient, as well as for the supplies and equipment used in connection therewith to treat such patient for cancer and the complications thereof.

d. By a cardiologist for cardiac catheterization services.

e. By a pathologist for diagnostic clinical laboratory tests and pathological examination services, if furnished by or under the supervision of such pathologist pursuant to a consultation requested by another physician.

f. By a health care provider who is the sole provider or member of a group practice for designated health services or other health care items or services that are prescribed or provided solely for such referring health care provider's or group practice's own patients, and that are provided or performed by or under the direct supervision of such referring health care provider or group practice.

g. By a health care provider for services provided by an ambulatory surgical center licensed under chapter 395.

h. By a health care provider for diagnostic clinical laboratory services where such services are directly related to renal dialysis.

i. By a urologist for lithotripsy services.

j. By a dentist for dental services performed by an employee of or health care provider who is an independent contractor with the dentist or group practice of which the dentist is a member.

k. By a physician for infusion therapy services to a patient of that physician or a member of that physician's group practice.

l. By a nephrologist for renal dialysis services and supplies.

(l) "Rural area" means a county with a population density of no greater than 100 persons per square mile, as defined by the United States Census.

(4) PROHIBITED REFERRALS AND CLAIMS FOR PAYMENT.—Except as provided in this section:

(a) A health care provider may not refer a patient for the provision of designated health services to an entity in which the health care provider is an investor or has an investment interest.

(b) A health care provider may not refer a patient for the provision of any other health care item or service to an entity in which the health care provider is an investor unless:

1. The provider's investment interest is in registered securities purchased on a national exchange or over-the-counter market and issued by a publicly held corporation:

a. Whose shares are traded on a national exchange or on the over-the-counter market; and

b. Whose total assets at the end of the corporation's most recent fiscal quarter exceeded \$50 million; or

2. With respect to an entity other than a publicly held corporation described in subparagraph 1., and a referring provider's investment interest in such entity, each of the following requirements are met:

a. No more than 50 percent of the value of the investment interests are held by investors who are in a position to make referrals to the entity.

b. The terms under which an investment interest is offered to an investor who is in a position to make referrals to the entity are no different from the terms offered to investors who are not in a position to make such referrals.

c. The terms under which an investment interest is offered to an investor who is in a position to make referrals to the entity are not related to the previous or expected volume of referrals from that investor to the entity.

d. There is no requirement that an investor make referrals or be in a position to make referrals to the entity as a condition for becoming or remaining an investor.

3. With respect to either such entity or publicly held corporation:

a. The entity or corporation does not loan funds to or guarantee a loan for an investor who is in a position to make referrals to the entity or corporation if the investor uses any part of such loan to obtain the investment interest.

b. The amount distributed to an investor representing a return on the investment interest is directly proportional to the amount of the capital investment, including the fair market value of any preoperational services rendered, invested in the entity or corporation by that investor.

4. Each board and, in the case of hospitals, the Agency for Health Care Administration ~~Department of Health and Rehabilitative Services~~, shall encourage the use by licensees of the declaratory statement procedure to determine the applicability of this section or any rule adopted pursuant to this section as it applies solely to the licensee. Boards shall submit to the Agency for Health Care Administration ~~Department of Health and Rehabilitative Services~~ the name of any entity in which a provider investment interest has been approved pursuant to this section, and the Agency for Health Care Administration ~~Department of Health and Rehabilitative Services~~ shall adopt rules providing for periodic quality assurance and utilization review of such entities.

(c) No claim for payment may be presented by an entity to any individual, third-party payor, or other entity for a service furnished pursuant to a referral prohibited under this section.

(d) If an entity collects any amount that was billed in violation of this section, the entity shall refund such amount on a timely basis to the payor or individual, whichever is applicable.

(e) Any person that presents or causes to be presented a bill or a claim for service that such person knows or should know is for a service for which payment may not be made under paragraph (c), or for which a refund has not been made under paragraph (d), shall be subject to a civil penalty of not more than \$15,000 for each such service to be imposed and collected by the appropriate board.

(f) Any health care provider or other entity that enters into an arrangement or scheme, such as a cross-referral arrangement, which the physician

or entity knows or should know has a principal purpose of assuring referrals by the physician to a particular entity which, if the physician directly made referrals to such entity, would be in violation of this section, shall be subject to a civil penalty of not more than \$100,000 for each such circumvention arrangement or scheme to be imposed and collected by the appropriate board.

(g) A violation of this section by a health care provider shall constitute grounds for disciplinary action to be taken by the applicable board pursuant to s. 458.331(2), s. 459.015(2), s. 460.413(2), s. 461.013(2), s. 463.016(2), or s. 466.028(2). Any hospital licensed under chapter 395 found in violation of this section shall be subject to the rules adopted by the Agency for Health Care Administration Department of Health and Rehabilitative Services pursuant to s. 395.0185(2).

(h) Any hospital licensed under chapter 395 that discriminates against or otherwise penalizes a health care provider for compliance with this act.

(i) The provision of paragraph (a) shall not apply to referrals to the offices of radiation therapy centers managed by an entity or subsidiary or general partner thereof, which performed radiation therapy services at those same offices prior to April 1, 1991, and shall not apply also to referrals for radiation therapy to be performed at no more than one additional office of any entity qualifying for the foregoing exception which, prior to February 1, 1992, had a binding purchase contract on and a nonrefundable deposit paid for a linear accelerator to be used at the additional office. The physical site of the radiation treatment centers affected by this provision may be relocated as a result of the following factors: acts of God; fire; strike; accident; war; eminent domain actions by any governmental body; or refusal by the lessor to renew a lease. A relocation for the foregoing reasons is limited to relocation of an existing facility to a replacement location within the county of the existing facility upon written notification to the Office of Licensure and Certification.

(j) A health care provider who meets the requirements of paragraphs (b) and (i) must disclose his investment interest to his patients as provided in s. 455.701 ~~s. 455.25~~.

Section 79. Section 455.237, Florida Statutes, 1996 Supplement, is transferred and renumbered as section 455.657, Florida Statutes.

Section 80. Section 455.239, Florida Statutes, is transferred, renumbered as section 455.661, Florida Statutes, and amended to read:

455.661 ~~455.239~~ Designated health care services; licensure required.—

(1) An entity, as defined in ~~s. 455.654~~ ~~s. 455.236~~, which furnishes designated health care services may not operate in this state unless licensed by the Agency for Health Care Administration Department of Health and Rehabilitative Services pursuant to subsection (2).

(2) The agency department shall adopt rules for licensing requirements for designated health care services including, but not limited to, rules providing for:

- (a) A licensure fee of not less than \$400 and not more than \$1,500 to be assessed annually;
- (b) Parameters of quality with respect to the provision of ancillary services by respective entities;
- (c) Periodic inspection of the facilities of an entity for the purpose of evaluating the premises, operation, supervision, and procedures of the entity to ensure compliance with quality parameters as established in department rules; and
- (d) The submission by an entity of information on its ownership, including identification of the owners who are health care providers, as defined in s. 455.654 ~~s. 455.251~~, and each investor's percentage of ownership.

Section 81. Section 455.664, Florida Statutes, is created to read:

455.664 Advertisement by a health care provider of free or discounted services; required statement.—In any advertisement for a free, discounted fee, or reduced fee service, examination, or treatment by a health care provider licensed under chapter 458, chapter 459, chapter 460, chapter 461, chapter 462, chapter 463, chapter 464, chapter 466, or chapter 486, the following statement shall appear in capital letters clearly distinguishable from the rest of the text: THE PATIENT AND ANY OTHER PERSON RESPONSIBLE FOR PAYMENT HAS A RIGHT TO REFUSE TO PAY, CANCEL PAYMENT, OR BE REIMBURSED FOR PAYMENT FOR ANY OTHER SERVICE, EXAMINATION, OR TREATMENT THAT IS PERFORMED AS A RESULT OF AND WITHIN 72 HOURS OF RESPONDING TO THE ADVERTISEMENT FOR THE FREE, DISCOUNTED FEE, OR REDUCED FEE SERVICE, EXAMINATION, OR TREATMENT. However, the required statement shall not be necessary as an accompaniment to an advertisement of a licensed health care provider defined by this section if the advertisement appears in a classified directory the primary purpose of which is to provide products and services at free, reduced, or discounted prices to consumers and in which the statement prominently appears in at least one place.

Section 82. Section 455.241, Florida Statutes, 1996 Supplement, is transferred, renumbered as section 455.667, Florida Statutes, and amended to read:

455.667 455.241 Ownership and control of patient records; report or copies of records to be furnished.—

(1) As used in this section, the term “records owner” means any health care practitioner who generates a medical record after making a physical or mental examination of, or administering treatment or dispensing legend drugs to, any person; any health care practitioner to whom records are transferred by a previous records owner; or any health care practitioner’s employer, including, but not limited to, group practices and staff-model health maintenance organizations, provided the employment contract or agreement between the employer and the health care practitioner designates the employer as the records owner.

(2) As used in this section, the terms “records owner,” “health care practitioner,” and “health care practitioner’s employer” do not include any of the following persons or entities; furthermore, the following persons or entities are not authorized to acquire or own medical records, but are authorized to maintain those documents required by the part or chapter under which they are licensed or regulated:

- (a) Certified nursing assistants regulated under s. 400.211.
 - (b) Pharmacists and pharmacies licensed under chapter 465.
 - (c) Dental hygienists licensed under s. 466.023.
 - (d) Nursing home administrators licensed under part II of chapter 468.
 - (e) Respiratory therapists regulated under part V of chapter 468.
 - (f) Athletic trainers licensed under part XIV of chapter 468.
 - (g) Electrolysisists licensed under chapter 478.
 - (h) Clinical laboratory personnel licensed under part III of chapter 483.
 - (i) Medical physicists licensed under part IV of chapter 483.
 - (j) Opticians and optical establishments licensed or permitted under part I of chapter 484.
 - (k) Persons or entities practicing under s. 627.736(7).
- (3) This section does not apply to facilities licensed under chapter 395.

(4)(4) Any health care practitioner licensed by the department or a board within the department who makes a physical or mental examination of, or administers treatment or dispenses legend drugs to, any person shall, upon request of such person or the person’s legal representative, furnish, in a timely manner, without delays for legal review, copies of all reports and records relating to such examination or treatment, including X rays and insurance information. However, when a patient’s psychiatric, chapter 490 psychological, or chapter 491 psychotherapeutic records are requested by the patient or the patient’s legal representative, the health care practitioner may provide a report of examination and treatment in lieu of copies of records. Upon a patient’s written request, complete copies of the patient’s psychiatric records shall be provided directly to a subsequent treating psychiatrist. The furnishing of such report or copies shall not be conditioned upon payment of a fee for services rendered.

(5)(2) Except as otherwise provided in this section and in s. 440.13(4)(c)(2), such records may not be furnished to, and the medical condition of a patient may not be discussed with, any person other than the patient or the patient’s legal representative or other health care practitioners and providers involved in the care or treatment of the patient, except upon written authorization of the patient. However, such records may be furnished without written authorization under the following circumstances:

(a) To any person, firm, or corporation that has procured or furnished such examination or treatment with the patient's consent.

(b) ~~or~~ When compulsory physical examination is made pursuant to Rule 1.360, Florida Rules of Civil Procedure, in which case copies of the medical records shall be furnished to both the defendant and the plaintiff.

(c) ~~Such records may be furnished~~ In any civil or criminal action, unless otherwise prohibited by law, upon the issuance of a subpoena from a court of competent jurisdiction and proper notice to the patient or the patient's legal representative by the party seeking such records.

(d) For statistical and scientific research, provided the information is abstracted in such a way as to protect the identity of the patient or provided written permission is received from the patient or the patient's legal representative.

(6) Except in a medical negligence action or administrative proceeding when a health care practitioner or provider is or reasonably expects to be named as a defendant, information disclosed to a health care practitioner by a patient in the course of the care and treatment of such patient is confidential and may be disclosed only to other health care practitioners and providers involved in the care or treatment of the patient, or if permitted by written authorization from the patient or compelled by subpoena at a deposition, evidentiary hearing, or trial for which proper notice has been given.

(7) ~~The department or the Agency for Health Care Administration, as appropriate, may obtain patient records and insurance information, if the complaint being investigated alleges inadequate medical care based on termination of insurance. The department may access these records pursuant to a subpoena without written authorization from the patient if the department or the Agency for Health Care Administration and the probable cause panel of the appropriate board, if any, find reasonable cause to believe that a health care practitioner has excessively or inappropriately prescribed any controlled substance specified in chapter 893 in violation of this part chapter or any professional practice act or that a health care practitioner has practiced his profession below that level of care, skill, and treatment required as defined by this part chapter or any professional practice act; provided, however, the patient record obtained by the department or the agency pursuant to this subsection shall be used solely for the purpose of the department or the agency and the appropriate regulatory board in disciplinary proceedings. The records record shall otherwise be confidential and exempt from s. 119.07(1). This section does not limit the assertion of the psychotherapist-patient privilege under s. 90.503 in regard to records of treatment for mental or nervous disorders by a medical practitioner licensed pursuant to chapter 458 or chapter 459 who has primarily diagnosed and treated mental and nervous disorders for a period of not less than 3 years, inclusive of psychiatric residency. However, the health care practitioner shall release records of treatment for medical conditions even if the health care practitioner has also treated the patient for mental or nervous disorders. If the department or the agency has found reasonable cause under this section and the psychotherapist-patient privilege is asserted, the department or the~~

agency may petition the circuit court for an in camera review of the records by expert medical practitioners appointed by the court to determine if the records or any part thereof are protected under the psychotherapist-patient privilege.

~~(8)(3) All patient records obtained by the department or the Agency for Health Care Administration and any other documents maintained by the department or the agency which identify the patient by name are confidential and exempt from s. 119.07(1) and shall be used solely for the purpose of the department or the Agency for Health Care Administration and the appropriate regulatory board in its investigation, prosecution, and appeal of disciplinary proceedings. The records shall not be available to the public as part of the record of investigation for and prosecution in disciplinary proceedings made available to the public by the department or the Agency for Health Care Administration or the appropriate board.~~

(9) All records owners shall develop and implement policies, standards, and procedures to protect the confidentiality and security of the medical record. Employees of records owners shall be trained in these policies, standards, and procedures.

(10) Records owners are responsible for maintaining a record of all disclosures of information contained in the medical record to a third party, including the purpose of the disclosure request. The record of disclosure may be maintained in the medical record. The third party to whom information is disclosed is prohibited from further disclosing any information in the medical record without the expressed written consent of the patient or the patient's legal representative.

(11) Notwithstanding the provisions of s. 455.677, records owners shall place an advertisement in the local newspaper or notify patients, in writing, when they are terminating practice, retiring, or relocating, and no longer available to patients, and offer patients the opportunity to obtain a copy of their medical record.

(12) Notwithstanding the provisions of s. 455.677, records owners shall notify the appropriate board office when they are terminating practice, retiring, or relocating, and no longer available to patients, specifying who the new records owner is and where medical records can be found.

(13) Whenever a records owner has turned records over to a new records owner, the new records owner shall be responsible for providing a copy of the complete medical record, upon written request, of the patient or the patient's legal representative.

(14) Licensees in violation of the provisions of this section shall be disciplined by the appropriate licensing authority.

(15) The Attorney General is authorized to enforce the provisions of this section for records owners not otherwise licensed by the state, through injunctive relief and fines not to exceed \$5,000 per violation.

(16)(4) A health care practitioner or records owner furnishing copies of reports or records pursuant to this section shall charge no more than the

actual cost of copying, including reasonable staff time, or the amount specified in administrative rule by the appropriate board, or the department when there is no board.

(17) Nothing in this section shall be construed to limit health care practitioner consultations, as necessary.

(18) A records owner shall release to a health care practitioner who, as an employee of the records owner, previously provided treatment to a patient, those records that the health care practitioner actually created or generated when the health care practitioner treated the patient. Records released pursuant to this subsection shall be released only upon written request of the health care practitioner and shall be limited to the notes, plans of care, and orders and summaries that were actually generated by the health care practitioner requesting the record.

Section 83. Section 455.2415, Florida Statutes, 1996 Supplement, is transferred, renumbered as section 455.671, Florida Statutes, and amended to read:

455.671 ~~455.2415~~ Communications confidential; exceptions.—Communications between a patient and a psychiatrist, as defined in s. 394.455 ~~s. 394.455(23)~~, shall be held confidential and shall not be disclosed except upon the request of the patient or the patient's legal representative. Provision of psychiatric records and reports shall be governed by s. 455.667 ~~s. 455.241~~. Notwithstanding any other provision ~~provisions~~ of this section or s. 90.503, where:

- (1) A patient is engaged in a treatment relationship with a psychiatrist;
- (2) Such patient has made an actual threat to physically harm an identifiable victim or victims; and
- (3) The treating psychiatrist makes a clinical judgment that the patient has the apparent capability to commit such an act and that it is more likely than not that in the near future the patient will carry out that threat,

the psychiatrist may disclose patient communications to the extent necessary to warn any potential victim or to communicate the threat to a law enforcement agency. No civil or criminal action shall be instituted, and there shall be no liability on account of disclosure of otherwise confidential communications by a psychiatrist in disclosing a threat pursuant to this section.

Section 84. Section 455.2416, Florida Statutes, is transferred and renumbered as section 455.674, Florida Statutes.

Section 85. Section 455.677, Florida Statutes, is created to read:

455.677 Disposition of records of deceased practitioners or practitioners relocating or terminating practice.—Each board created under the provisions of chapter 457, chapter 458, chapter 459, chapter 460, chapter 461, chapter 463, chapter 464, chapter 465, chapter 466, part I of chapter 484, chapter 486, chapter 490, or chapter 491, and the department under the

provisions of chapter 462, shall provide by rule for the disposition, under that chapter, of the medical records or records of a psychological nature of practitioners which are in existence at the time the practitioner dies, terminates practice, or relocates and is no longer available to patients and which records pertain to the practitioner's patients. The rules shall provide that the records be retained for at least 2 years after the practitioner's death, termination of practice, or relocation. In the case of the death of the practitioner, the rules shall provide for the disposition of such records by the estate of the practitioner.

Section 86. Section 455.681, Florida Statutes, is created to read:

455.681 Authority to inspect.—In addition to the authority specified in s. 465.017, duly authorized agents and employees of the department shall have the power to inspect in a lawful manner at all reasonable hours:

(1) Any pharmacy; or

(2) Any establishment at which the services of a licensee authorized to prescribe controlled substances specified in chapter 893 are offered,

for the purpose of determining if any of the provisions of this part or any practice act of a profession or any rule adopted thereunder is being violated; or for the purpose of securing such other evidence as may be needed for prosecution.

Section 87. Section 455.244, Florida Statutes, is transferred and renumbered as section 455.684, Florida Statutes.

Section 88. Section 455.687, Florida Statutes, is created to read:

455.687 Certain health care practitioners; immediate suspension of license.—

(1) The department shall issue an emergency order suspending the license of any person licensed under chapter 458, chapter 459, chapter 460, chapter 461, chapter 462, chapter 463, chapter 464, chapter 465, chapter 466, or chapter 484 who pleads guilty to, is convicted or found guilty of, or who enters a plea of nolo contendere to, regardless of adjudication, a felony under chapter 409 or chapter 893 or under 21 U.S.C. ss. 801-970 or under 42 U.S.C. ss. 1395-1396.

(2) If the board has previously found any physician or osteopathic physician in violation of the provisions of s. 458.331(1)(t) or s. 459.015(1)(x), in regard to his treatment of three or more patients, and the probable cause panel of the board finds probable cause of an additional violation of that section, then the Secretary of Health shall review the matter to determine if an emergency suspension or restriction order is warranted. Nothing in this section shall be construed so as to limit the authority of the secretary of the department to issue an emergency order.

Section 89. Section 455.2455, Florida Statutes, is transferred and renumbered as section 455.691, Florida Statutes.

Section 90. Section 455.2456, Florida Statutes, is transferred, renumbered as section 455.694, Florida Statutes, and amended to read:

455.694 ~~455.2456~~ Boards regulating certain health care practitioners.—

(1) As a prerequisite for licensure or license renewal, the Board of Acupuncture, the Board of Chiropractic, the Board of Podiatric Medicine, and the Board of Dentistry shall, by rule, require that all health care practitioners licensed under the respective board, and the Board of Nursing shall, by rule, require that advanced registered nurse practitioners certified under s. 464.012, maintain medical malpractice insurance or provide proof of financial responsibility in an amount and in a manner determined by the board to be sufficient to cover claims arising out of the rendering of or failure to render professional care and services in this state.

(2) The board may grant exemptions upon application by practitioners meeting any of the following criteria:

(a) Any person licensed under chapter 457, chapter 460, chapter 461, s. 464.012, or chapter 466 who practices exclusively as an officer, employee, or agent of the Federal Government or of the state or its agencies or its subdivisions. For the purposes of this subsection, an agent of the state, its agencies, or its subdivisions is a person who is eligible for coverage under any self-insurance or insurance program authorized by the provisions of s. 768.28(15) ~~s. 768.28(14)~~ or who is a volunteer under s. 110.501(1).

(b) Any person whose license or certification has become inactive under chapter 457, chapter 460, chapter 461, chapter 464, or chapter 466 and who is not practicing in this state. Any person applying for reactivation of a license must show either that such licensee maintained tail insurance coverage which provided liability coverage for incidents that occurred on or after October 1, 1993, or the initial date of licensure in this state, whichever is later, and incidents that occurred before the date on which the license became inactive; or such licensee must submit an affidavit stating that such licensee has no unsatisfied medical malpractice judgments or settlements at the time of application for reactivation.

(c) Any person holding a limited license pursuant to s. 455.561 ~~s. 455.214~~, and practicing under the scope of such limited license.

(d) Any person licensed or certified under chapter 457, chapter 460, chapter 461, s. 464.012, or chapter 466 who practices only in conjunction with his teaching duties at an accredited school or in its main teaching hospitals. Such person may engage in the practice of medicine to the extent that such practice is incidental to and a necessary part of duties in connection with the teaching position in the school.

(e) Any person holding an active license or certification under chapter 457, chapter 460, chapter 461, s. 464.012, or chapter 466 who is not practicing in this state. If such person initiates or resumes practice in this state, he must notify the department of such activity.

(f) Any person who can demonstrate to the board that he has no malpractice exposure in the state.

(3) Notwithstanding the provisions of this section, the financial responsibility requirements of ss. 458.320 and 459.0085 shall continue to apply to practitioners licensed under those chapters.

Section 91. Section 455.247, Florida Statutes, 1996 Supplement, is transferred and renumbered as section 455.697, Florida Statutes.

Section 92. Section 455.25, Florida Statutes, is transferred and renumbered as section 455.701, Florida Statutes, and is amended to read:

455.701 ~~455.25~~ Disclosure of financial interest by production.—

(1) A health care provider shall not refer a patient to an entity in which such provider is an investor unless, prior to the referral, the provider furnishes the patient with a written disclosure form, informing the patient of:

(a) The existence of the investment interest.

(b) The name and address of each applicable entity in which the referring health care provider is an investor.

(c) The patient's right to obtain the items or services for which the patient has been referred at the location or from the provider or supplier of the patient's choice, including the entity in which the referring provider is an investor.

(d) The names and addresses of at least two alternative sources of such items or services available to the patient.

~~(2) An entity may not provide items or services to a patient unless, before providing the item or service, the entity obtains the signature of the patient on a written disclosure form informing the patient of:~~

~~(a) The existence or nonexistence of any financial relationship with the health care provider who referred the patient;~~

~~(b) A schedule of typical fees for items or services usually provided by the entity or, if impracticable because of the nature of the treatment, a written estimate specific to the patient;~~

~~(c) The patient's right to obtain the items or services for which the patient has been referred at a location or from a supplier of the patient's choice, including an entity with which the referring health care provider may have a financial relationship; and~~

~~(d) The names, addresses, and telephone numbers of at least two reasonable alternative sources of such items or services available to the patient.~~

(2)(3) The physician or health care provider and the entity shall post a copy of the ~~their respective~~ disclosure forms in a conspicuous public place ~~places in his or her office~~ ~~the offices~~.

(3)(4) A violation of this section shall constitute a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. In addition

to any other penalties or remedies provided, a violation of this section shall be grounds for disciplinary action by the respective board.

Section 93. Section 455.26, Florida Statutes, is transferred, renumbered as section 455.704, Florida Statutes, and amended to read:

455.704 ~~455.26~~ Impaired Practitioners Committee; duties.—

(1) There is created the Impaired Practitioners Committee to be composed of one representative appointed by each board under the jurisdiction of the Division of Medical Quality Assurance, of one addictionologist, and one lay member having an appropriate background in the area of impairment, each to be appointed by the agency head of the agency having jurisdiction over the professions; ~~one representative of the Agency for Health Care Administration, to be appointed by the Director of Health Care Administration;~~ and of one representative of the department appointed by the secretary of the department. Section 455.534 ~~455.207~~ applies to the activities of the committee.

(2) The committee shall:

(a) Establish policies and guidelines to be used in approving treatment providers for preventive and rehabilitative programs directed to impaired practitioners;

(b) Act as liaison between approved treatment providers and the department ~~and the Agency for Health Care Administration;~~

(c) Advise the department ~~and the agency~~ on the continuation and expansion of treatment programs for impaired practitioners; and

(d) Disseminate information concerning the impairment program.

Section 94. Section 455.261, Florida Statutes, 1996 Supplement, is transferred, renumbered as section 455.707, Florida Statutes, and amended to read:

455.707 ~~455.261~~ Treatment programs for impaired practitioners.—

(1) For professions that ~~which~~ do not have impaired practitioner programs provided for in their practice acts, the department shall, by rule, designate approved treatment programs under this section. The department may adopt rules setting forth appropriate criteria for approval of treatment providers based on the policies and guidelines established by the Impaired Practitioners Committee. The department shall not compel any impaired practitioner program in existence on October 1, 1992, to serve additional professions.

(2) The department shall retain one or more impaired practitioner consultants as recommended by the committee. A consultant shall be a licensee or recovered licensee under the jurisdiction of the Division of Medical Quality Assurance within the department, and at least one consultant must be a practitioner or recovered practitioner licensed under chapter 458, chapter 459, or chapter 464. The consultant shall assist the probable cause panel and

department in carrying out the responsibilities of this section. This shall include working with department investigators to determine whether a practitioner is, in fact, impaired.

(3)(a) Whenever the department receives a written or oral legally sufficient complaint alleging that a licensee under the jurisdiction of the Division of Medical Quality Assurance within the department is impaired as a result of the misuse or abuse of alcohol or drugs, or both, or due to a mental or physical condition which could affect the licensee's ability to practice with skill and safety, and no complaint against the licensee other than impairment exists, the reporting of such information shall not constitute a complaint within the meaning of s. 455.621 ~~s. 455.225~~ if the probable cause panel of the appropriate board, or the department when there is no board, finds:

1. The licensee has acknowledged the impairment problem.
2. The licensee has voluntarily enrolled in an appropriate, approved treatment program.
3. The licensee has voluntarily withdrawn from practice or limited the scope of practice as determined by the panel, or the department when there is no board, in each case, until such time as the panel, or the department when there is no board, is satisfied the licensee has successfully completed an approved treatment program.
4. The licensee has executed releases for medical records, authorizing the release of all records of evaluations, diagnoses, and treatment of the licensee, including records of treatment for emotional or mental conditions, to the consultant. The consultant shall make no copies or reports of records that do not regard the issue of the licensee's impairment and his participation in a treatment program.

(b) If, however, the licensee agrees to withdraw from practice until such time as the consultant determines the licensee has satisfactorily completed an approved treatment program or evaluation, the probable cause panel, or the department when there is no board, shall not become involved in the licensee's case.

(c) Inquiries related to impairment treatment programs designed to provide information to the licensee and others and which do not indicate that the licensee presents a danger to the public shall not constitute a complaint within the meaning of s. 455.621 ~~s. 455.225~~ and shall be exempt from the provisions of this subsection.

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

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

(f) A finding of probable cause shall not be made as long as the panel, or the department when there is no board, is satisfied, based upon information it receives from the consultant and the department, that the licensee is progressing satisfactorily in an approved treatment program.

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

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

(b) If in the opinion of the consultant, after consultation with the treatment provider, an impaired licensee has not progressed satisfactorily in a treatment program, all information regarding the issue of a licensee's impairment and participation in a treatment program in the consultant's possession shall be disclosed to the department. Such disclosure shall constitute a complaint pursuant to the general provisions of s. 455.621 ~~s. 455.225~~. Whenever the consultant concludes that impairment affects a licensee's practice and constitutes an immediate, serious danger to the public health, safety, or welfare, that conclusion shall be communicated to the secretary of the department.

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

Section 95. Section 455.711, Florida Statutes, is created to read:

455.711 Inactive and delinquent status.—

(1) A licensee may practice a profession only if the licensee has an active-status license. A licensee who practices a profession without an active-status

license is in violation of this section and s. 455.624, and the board, or the department if there is no board, may impose discipline on the licensee.

(2) Each board, or the department if there is no board, shall permit a licensee to choose, at the time of licensure renewal, an active or inactive status. However, a licensee who changes from inactive to active status is not eligible to return to inactive status until the licensee thereafter completes a licensure cycle on active status.

(3) Each board, or the department if there is no board, shall by rule impose a fee for an inactive-status license which is no greater than the fee for an active-status license.

(4) An inactive-status licensee may change to active status at any time, if the licensee meets all requirements for active status, pays any additional licensure fees necessary to equal those imposed on an active-status licensee, pays any applicable reactivation fees as set by the board, or the department if there is no board, and meets all continuing education requirements as specified in this section.

(5) A licensee must apply with a complete application, as defined by rule of the board, or the department if there is no board, to renew an active-status or inactive-status license before the license expires. If a licensee fails to renew before the license expires, the license becomes delinquent in the license cycle following expiration.

(6) A delinquent-status licensee must affirmatively apply with a complete application, as defined by rule of the board, or the department if there is no board, for active or inactive status during the licensure cycle in which a licensee becomes delinquent. Failure by a delinquent-status licensee to become active or inactive before the expiration of the current licensure cycle renders the license null without any further action by the board or the department. Any subsequent licensure shall be as a result of applying for and meeting all requirements imposed on an applicant for new licensure.

(7) Each board, or the department if there is no board, shall by rule impose an additional delinquency fee, not to exceed the biennial renewal fee for an active-status license, on a delinquent-status licensee when such licensee applies for active or inactive status.

(8) Each board, or the department if there is no board, shall by rule impose an additional fee, not to exceed the biennial renewal fee for an active-status license, for processing a licensee's request to change licensure status at any time other than at the beginning of a licensure cycle.

(9) Each board, or the department if there is no board, may by rule impose reasonable conditions, excluding full reexamination but including part of a national examination or a special purpose examination to assess current competency, necessary to ensure that a licensee who has been on inactive status for more than two consecutive biennial licensure cycles and who applies for active status can practice with the care and skill sufficient to protect the health, safety, and welfare of the public. Reactivation requirements may differ depending on the length of time licensees are inactive. The

costs to meet reactivation requirements shall be borne by licensees requesting reactivation.

(10) Before reactivation, an inactive or delinquent licensee must meet the same continuing education requirements, if any, imposed on an active-status licensee for all biennial licensure periods in which the licensee was inactive or delinquent.

(11) The status or a change in status of a licensee does not alter in any way the right of the board, or of the department if there is no board, to impose discipline or to enforce discipline previously imposed on a licensee for acts or omissions committed by the licensee while holding a license, whether active, inactive, or delinquent.

(12) This section does not apply to a business establishment registered, permitted, or licensed by the department to do business.

Section 96. Section 455.714, Florida Statutes, is created to read:

455.714 Renewal and cancellation notices.—

(1) At least 90 days before the end of a licensure cycle, the department shall:

(a) Forward a licensure renewal notification to an active or inactive licensee at the licensee's last known address of record with the department.

(b) Forward a notice of pending cancellation of licensure to a delinquent-status licensee at the licensee's last known address of record with the department.

(2) Each licensure renewal notification and each notice of pending cancellation of licensure must state conspicuously that a licensee who remains on inactive status for more than two consecutive biennial licensure cycles and who wishes to reactivate the license may be required to demonstrate the competency to resume active practice by sitting for a special purpose examination or by completing other reactivation requirements, as defined by rule of the board or the department if there is no board.

Section 97. Section 455.717, Florida Statutes, is created to read:

455.717 Address of record.—

(1) Each licensee of the department is solely responsible for notifying the department in writing of the licensee's current mailing address and place of practice, as defined by rule of the board or the department if there is no board. A licensee's failure to notify the department of a change of address constitutes a violation of this section, and the licensee may be disciplined by the board or the department if there is no board.

(2) Notwithstanding any other law, service by regular mail to a licensee's last known address of record with the department constitutes adequate and sufficient notice to the licensee for any official communication to the licensee

by the board or the department except when other service is required under s. 455.261.

Section 98. Section 455.277, Florida Statutes, 1996 Supplement, is transferred, renumbered as section 408.18, Florida Statutes, and amended to read:

408.18 ~~455.277~~ Health Care Community Antitrust Guidance Act; anti-trust no-action letter; market-information collection and education.—

(1) This section may be cited as the “Florida Health Care Community Antitrust Guidance Act.”

(2) This section is created to provide instruction to the health care community in a time of tremendous change, and to resolve, as completely as possible, the problem of antitrust uncertainty that may deter mergers, joint ventures, or other business activities that can improve the delivery of health care, without creating costly, time-consuming regulations that can lead to more litigation and delay.

(3) For purposes of this section, the term:

(a) “Health care community” means all licensed health care providers, insurers, networks, purchasers, and other participants in the health care system.

(b) “Antitrust no-action letter” means a letter that states the intention of the Attorney General’s office not to take antitrust enforcement actions with respect to the requesting party, based on the specific facts then presented, as of the date the letter is issued.

(4)(a) Members of the health care community who seek antitrust guidance may request a review of their proposed business activity by the Attorney General’s office. In conducting its review, the Attorney General’s office may seek whatever documentation, data, or other material it deems necessary from the Agency for Health Care Administration, the State Center for Health Statistics, and the Department of Insurance.

(b) In order to receive an antitrust no-action letter, a member of the health care community must submit in writing to the Attorney General’s office a request for an antitrust no-action letter.

(c) The requesting parties are under an affirmative obligation to make full, true, and accurate disclosure with respect to the activities for which the antitrust no-action letter is requested. Requests relating to unnamed persons or companies may not be answered. Each request must be accompanied by all relevant material information; relevant data, including background information; complete copies of all operative documents; the provisions of law under which the request arises; and detailed statements of all collateral oral understandings, if any.

(d) All parties requesting the antitrust no-action letter must provide the Attorney General’s office with whatever additional information or documents the Attorney General’s office requests for its review of the matter.

(5) The Attorney General's office shall act on the no-action letter request within 90 days after it receives all information necessary to complete its review.

(6) At the completion of its review of a request for an antitrust no-action letter, the Attorney General's office shall do one of the following:

- (a) Issue the antitrust no-action letter;
- (b) Decline to issue any type of letter; or
- (c) Take such other position or action as it considers appropriate.

(7) The recipient of a no-action letter must annually file with the Attorney General's office an affidavit stating that there has been no change in the facts the recipient has presented, at which time the Attorney General may renew the no-action letter. As long as there is no change in any material fact, the Attorney General's office is estopped from bringing any action pursuant to the antitrust laws concerning any specific conduct that is the subject of the no-action letter. Further, the no-action letter, if it meets the requirements of the Florida Evidence Code, is admissible in any court proceeding in this state. The Attorney General's office remains free to bring an action or proceeding based on a different set of facts presented.

(8) The Agency for Health Care Administration shall coordinate all existing data received, such as the hospital patient discharge database, ambulatory patient database, ambulatory facilities' financial data, health facility licensure and certification tracking system, health facility plans and construction data, local health council data, Medicaid data, provider claims data, psychiatric hospital discharge data, pharmaceutical data, licensure data of health maintenance organizations, licensure data of health insurers, health care practitioner licensure data, hospital financial database, health facility utilization and projected need data, nursing home financial database, nursing home patient database, and joint venture database. This information shall be made available to the Attorney General's office, as needed.

(9) When the member of the health care community seeking the no-action letter is regulated by the Department of Insurance, the Department of Insurance shall make available to the Attorney General's office, as needed, any information it maintains in its regulatory capacity.

~~(10) The Agency for Health Care Administration is appropriated \$142,487 in nonoperating transfer authority from the Health Care Trust Fund to be transferred to the Department of Legal Affairs to implement the provisions of this act. Transferred funds shall be taken from the unappropriated cash balance available from licensure and renewal fees assessed on physicians regulated by the Division of Medical Quality Assurance.~~

~~(11) There is appropriated to the Department of Legal Affairs, Office of the Attorney General, \$142,487 from the Legal Services Trust Fund and two full-time equivalent positions to implement the provisions of this act.~~

Section 99. Section 455.2775, Florida Statutes, 1996 Supplement, is transferred and renumbered as section 408.185, Florida Statutes.

Section 100. Section 455.2055, Florida Statutes, as created by section 13 of chapter 96-403, Laws of Florida, is repealed.

Section 101. Sections 455.01-455.275, Florida Statutes, are designated as part I of that chapter, and the Division of Statutory Revision is requested to title that part: "Department of Business and Professional Regulation." Sections 455.501-455.724, Florida Statutes, are designated as part II of that chapter, and the Division of Statutory Revision is requested to title that part: "Department of Health."

Section 102. Paragraphs (f) and (g) of subsection (5) of section 459.0085, Florida Statutes, 1996 Supplement, are amended to read:

459.0085 Financial responsibility.—

(5) The requirements of subsections (1), (2), and (3) shall not apply to:

(f) Any person holding an active license under this chapter who meets all of the following criteria:

1. The licensee has held an active license to practice in this state or another state or some combination thereof for more than 15 years.

2. The licensee has either retired from the practice of osteopathic medicine or maintains a part-time practice of osteopathic medicine of no more than 1,000 patient contact hours per year.

3. The licensee has had no more than two claims for medical malpractice resulting in an indemnity exceeding \$25,000 ~~\$10,000~~ within the previous 5-year period.

4. The licensee has not been convicted of, or pled guilty or nolo contendere to, any criminal violation specified in this chapter or the practice act of any other state.

5. The licensee has not been subject within the last 10 years of practice to license revocation or suspension for any period of time, probation for a period of 3 years or longer, or a fine of \$500 or more for a violation of this chapter or the medical practice act of another jurisdiction. The regulatory agency's acceptance of an osteopathic physician's relinquishment of a license, stipulation, consent order, or other settlement, offered in response to or in anticipation of the filing of administrative charges against the osteopathic physician's license, shall be construed as action against the physician's license for the purposes of this paragraph.

6. The licensee has submitted a form supplying necessary information as required by the department and an affidavit affirming compliance with the provisions of this paragraph.

7. The licensee shall submit biennially to the department a certification stating compliance with the provisions of this paragraph. The licensee shall, upon request, demonstrate to the department information verifying compliance with this paragraph.

A licensee who meets the requirements of this paragraph shall be required either to post notice in the form of a sign prominently displayed in the reception area and clearly noticeable by all patients or to provide a written statement to any person to whom medical services are being provided. Such sign or statement shall state that: Under Florida law, osteopathic physicians are generally required to carry medical malpractice insurance or otherwise demonstrate financial responsibility to cover potential claims for medical malpractice. However, certain part-time osteopathic physicians who meet state requirements are exempt from the financial responsibility law. YOUR OSTEOPATHIC PHYSICIAN MEETS THESE REQUIREMENTS AND HAS DECIDED NOT TO CARRY MEDICAL MALPRACTICE INSURANCE. This notice is provided pursuant to Florida law.

(g) Any person holding an active license under this chapter who agrees to meet all of the following criteria:

1. Upon the entry of an adverse final judgment arising from a medical malpractice arbitration award, from a claim of medical malpractice either in contract or tort, or from noncompliance with the terms of a settlement agreement arising from a claim of medical malpractice either in contract or tort, the licensee shall pay the judgment creditor the lesser of the entire amount of the judgment with all accrued interest or either \$100,000, if the osteopathic physician is licensed pursuant to this chapter but does not maintain hospital staff privileges, or \$250,000, if the osteopathic physician is licensed pursuant to this chapter and maintains hospital staff privileges, within 60 days after the date such judgment became final and subject to execution, unless otherwise mutually agreed to in writing by the parties. Such adverse final judgment shall include any cross-claim, counterclaim, or claim for indemnity or contribution arising from the claim of medical malpractice. Upon notification of the existence of an unsatisfied judgment or payment pursuant to this subparagraph, the department shall notify the licensee by certified mail that he shall be subject to disciplinary action unless, within 30 days from the date of mailing, he either:

a. Shows proof that the unsatisfied judgment has been paid in the amount specified in this subparagraph; or

b. Furnishes the department with a copy of a timely filed notice of appeal and either:

(I) A copy of a supersedeas bond properly posted in the amount required by law; or

(II) An order from a court of competent jurisdiction staying execution on the final judgment, pending disposition of the appeal.

2. Upon the next meeting of the probable cause panel of the board following 30 days after the date of mailing the notice of disciplinary action to the licensee, the panel shall make a determination of whether probable cause exists to take disciplinary action against the licensee pursuant to subparagraph 1.

3. If the board determines that the factual requirements of subparagraph 1. are met, it shall take disciplinary action as it deems appropriate against the licensee. Such disciplinary action shall include, at a minimum, probation of the license with the restriction that the licensee must make payments to the judgment creditor on a schedule determined by the board to be reasonable and within the financial capability of the osteopathic physician. Notwithstanding any other disciplinary penalty imposed, the disciplinary penalty may include suspension of the license for a period not to exceed 5 years. In the event that an agreement to satisfy a judgment has been met, the board shall remove any restriction on the license.

4. The licensee has completed a form supplying necessary information as required by the department.

A licensee who meets the requirements of this paragraph shall be required to either post notice in the form of a sign prominently displayed in the reception area and clearly noticeable by all patients or provide a written statement to any person to whom medical services are being provided. Such sign or statement shall state that: Under Florida law, osteopathic physicians are generally required to carry medical malpractice insurance or otherwise demonstrate financial responsibility to cover potential claims for medical malpractice. YOUR OSTEOPATHIC PHYSICIAN HAS DECIDED NOT TO CARRY MEDICAL MALPRACTICE INSURANCE. This is permitted under Florida law subject to certain conditions. Florida law imposes strict penalties against noninsured osteopathic physicians who fail to satisfy adverse judgments arising from claims of medical malpractice. This notice is provided pursuant to Florida law.

5. The Department of Health shall issue an emergency order suspending the license of any licensee who fails after 30 days after receipt of notice from the department to satisfy a medical malpractice claim against him or her; furnish the department a copy of a timely filed notice of appeal; furnish the department a copy of a supercedeas bond properly posted in the amount required by law; or furnish the department an order from a court of competent jurisdiction staying execution on the final judgment pending disposition of the appeal.

Section 103. The Secretary of Health shall appoint a task force to develop uniform procedures to standardize the validation of health care practitioner credentials in order to ensure that once credentials are validated they can be accepted by licensed health care providers and facilities throughout the state. The task force shall include, but not be limited to, representatives from the Florida Hospital Association, the Florida League of Hospitals, the Florida Medical Association, the Florida Osteopathic Medical Association, the Florida Dental Association, the Florida Health Care Association, the Florida Association for the Homes for the Aging, the Florida Association of Health Maintenance Organizations, and the Florida Association of Managed Care Organizations.

Section 104. Subsection (5) of section 458.320, Florida Statutes, is amended to read:

458.320 Financial responsibility.—

(5) The requirements of subsections (1), (2), and (3) shall not apply to:

(a) Any person licensed under this chapter who practices medicine exclusively as an officer, employee, or agent of the Federal Government or of the state or its agencies or its subdivisions. For the purposes of this subsection, an agent of the state, its agencies, or its subdivisions is a person who is eligible for coverage under any self-insurance or insurance program authorized by the provisions of s. 768.28(14).

(b) Any person whose license has become inactive under this chapter and who is not practicing medicine in this state. Any person applying for reactivation of a license must show either that such licensee maintained tail insurance coverage which provided liability coverage for incidents that occurred on or after January 1, 1987, or the initial date of licensure in this state, whichever is later, and incidents that occurred before the date on which the license became inactive; or such licensee must submit an affidavit stating that such licensee has no unsatisfied medical malpractice judgments or settlements at the time of application for reactivation.

(c) Any person holding a limited license pursuant to s. 458.317 and practicing under the scope of such limited license.

(d) Any person licensed or certified under this chapter who practices only in conjunction with his teaching duties at an accredited medical school or in its main teaching hospitals. Such person may engage in the practice of medicine to the extent that such practice is incidental to and a necessary part of duties in connection with the teaching position in the medical school.

(e) Any person holding an active license under this chapter who is not practicing medicine in this state. If such person initiates or resumes any practice of medicine in this state, he must notify the department of such activity.

(f) Any person holding an active license under this chapter who meets all of the following criteria:

1. The licensee has held an active license to practice in this state or another state or some combination thereof for more than 15 years.

2. The licensee has either retired from the practice of medicine or maintains a part-time practice of no more than 1,000 patient contact hours per year.

3. The licensee has had no more than two claims for medical malpractice resulting in an indemnity exceeding \$25,000 ~~\$10,000~~ within the previous 5-year period.

4. The licensee has not been convicted of, or pled guilty or nolo contendere to, any criminal violation specified in this chapter or the medical practice act of any other state.

5. The licensee has not been subject within the last 10 years of practice to license revocation or suspension for any period of time; probation for a period of 3 years or longer; or a fine of \$500 or more for a violation of this chapter or the medical practice act of another jurisdiction. The regulatory agency's acceptance of a physician's relinquishment of a license, stipulation, consent order, or other settlement, offered in response to or in anticipation of the filing of administrative charges against the physician's license, shall be construed as action against the physician's license for the purposes of this paragraph.

6. The licensee has submitted a form supplying necessary information as required by the department and an affidavit affirming compliance with the provisions of this paragraph.

7. The licensee shall submit biennially to the department certification stating compliance with the provisions of this paragraph. The licensee shall, upon request, demonstrate to the department information verifying compliance with this paragraph.

A licensee who meets the requirements of this paragraph shall be required either to post notice in the form of a sign prominently displayed in the reception area and clearly noticeable by all patients or provide a written statement to any person to whom medical services are being provided. Such sign or statement shall state that: Under Florida law, physicians are generally required to carry medical malpractice insurance or otherwise demonstrate financial responsibility to cover potential claims for medical malpractice. However, certain part-time physicians who meet state requirements are exempt from the financial responsibility law. YOUR DOCTOR MEETS THESE REQUIREMENTS AND HAS DECIDED NOT TO CARRY MEDICAL MALPRACTICE INSURANCE. This notice is provided pursuant to Florida law.

(g) Any person holding an active license under this chapter who agrees to meet all of the following criteria:

1. Upon the entry of an adverse final judgment arising from a medical malpractice arbitration award, from a claim of medical malpractice either in contract or tort, or from noncompliance with the terms of a settlement agreement arising from a claim of medical malpractice either in contract or tort, the licensee shall pay the judgment creditor the lesser of the entire amount of the judgment with all accrued interest or either \$100,000, if the physician is licensed pursuant to this chapter but does not maintain hospital staff privileges, or \$250,000, if the physician is licensed pursuant to this chapter and maintains hospital staff privileges, within 60 days after the date such judgment became final and subject to execution, unless otherwise mutually agreed to in writing by the parties. Such adverse final judgment shall include any cross-claim, counterclaim, or claim for indemnity or contribution arising from the claim of medical malpractice. Upon notification of the existence of an unsatisfied judgment or payment pursuant to this subparagraph, the department shall notify the licensee by certified mail that he shall be subject to disciplinary action unless, within 30 days from the date of mailing, he either:

a. Shows proof that the unsatisfied judgment has been paid in the amount specified in this subparagraph; or

b. Furnishes the department with a copy of a timely filed notice of appeal and either:

(I) A copy of a supersedeas bond properly posted in the amount required by law; or

(II) An order from a court of competent jurisdiction staying execution on the final judgment pending disposition of the appeal.

2. Upon the next meeting of the probable cause panel of the board following 30 days after the date of mailing the notice of disciplinary action to the licensee, the panel shall make a determination of whether probable cause exists to take disciplinary action against the licensee pursuant to subparagraph 1.

3. If the board determines that the factual requirements of subparagraph 1. are met, it shall take disciplinary action as it deems appropriate against the licensee. Such disciplinary action shall include, at a minimum, probation of the license with the restriction that the licensee must make payments to the judgment creditor on a schedule determined by the board to be reasonable and within the financial capability of the physician. Notwithstanding any other disciplinary penalty imposed, the disciplinary penalty may include suspension of the license for a period not to exceed 5 years. In the event that an agreement to satisfy a judgment has been met, the board shall remove any restriction on the license.

4. The licensee has completed a form supplying necessary information as required by the department.

5. The Department of Health shall issue an emergency order suspending the license of any licensee who fails, after 30 days after receipt of notice from the department, to: satisfy a medical malpractice claim against him or her; furnish the department a copy of a timely filed notice of appeal; furnish the department a copy of a supersedeas bond properly posted in the amount required by law; or furnish the department an order from a court of competent jurisdiction staying execution on the final judgment pending disposition of the appeal.

A licensee who meets the requirements of this paragraph shall be required to either post notice in the form of a sign prominently displayed in the reception area and clearly noticeable by all patients or provide a written statement to any person to whom medical services are being provided. Such sign or statement shall state that: Under Florida law, physicians are generally required to carry medical malpractice insurance or otherwise demonstrate financial responsibility to cover potential claims for medical malpractice. YOUR DOCTOR HAS DECIDED NOT TO CARRY MEDICAL MALPRACTICE INSURANCE. This is permitted under Florida law subject to certain conditions. Florida law imposes penalties against noninsured physicians who fail to satisfy adverse judgments arising from claims of medical malpractice. This notice is provided pursuant to Florida law.

Section 105. Section 627.912, Florida Statutes, 1996 Supplement, is amended to read:

627.912 Professional liability claims and actions; reports by insurers.—

(1) Each self-insurer authorized under s. 627.357 and each insurer or joint underwriting association providing professional liability insurance to a practitioner of medicine licensed ~~under pursuant to the provisions of~~ chapter 458, to a practitioner of osteopathic medicine licensed ~~under pursuant to the provisions of~~ chapter 459, to a podiatrist licensed ~~under pursuant to the provisions of~~ chapter 461, to a dentist licensed ~~under pursuant to the provisions of~~ chapter 466, to a hospital licensed ~~under pursuant to the provisions of~~ chapter 395, to a crisis stabilization unit licensed under part IV of chapter 394, to a health maintenance organization certificated under part I of chapter 641, to clinics included in chapter 390, to an ambulatory surgical center as defined in s. 395.002, or to a member of The Florida Bar shall report in duplicate to the Department of Insurance any claim or action for damages for personal injuries claimed to have been caused by error, omission, or negligence in the performance of such insured's professional services or based on a claimed performance of professional services without consent, if the claim resulted in:

- (a) A final judgment in any amount.
- (b) A settlement in any amount.
- (c) A final disposition not resulting in payment on behalf of the insured.

Reports shall be filed with the department and, if the insured party is licensed ~~under pursuant to~~ chapter 458, chapter 459, chapter 461, or chapter 466, with the ~~Agency for Health Care Administration~~ Department of Business and Professional Regulation, no later than ~~30~~ 60 days following the occurrence of any event listed in paragraph (a), paragraph (b), or paragraph (c). The ~~Agency for Health Care Administration~~ Department of Business and Professional Regulation shall review each report and determine whether any of the incidents that resulted in the claim potentially involved conduct by the licensee that is subject to disciplinary action, in which case the provisions of s. 455.225 shall apply. The ~~Agency for Health Care Administration~~ Department of Business and Professional Regulation, as part of the annual report required by s. 455.2285, shall publish annual statistics, without identifying licensees, on the reports it receives, including final action taken on such reports by the ~~agency~~ Department of Business and Professional Regulation or the appropriate regulatory board.

- (2) The reports required by subsection (1) shall contain:
 - (a) The name, address, and specialty coverage of the insured.
 - (b) The insured's policy number.
 - (c) The date of the occurrence which created the claim.
 - (d) The date the claim was reported to the insurer or self-insurer.

(e) The name and address of the injured person. This information is confidential and exempt from the provisions of s. 119.07(1), and must not be disclosed by the department without the injured person's consent, except for disclosure by the department to the Agency for Health Care Administration Department of Business and Professional Regulation. This information may be used by the department for purposes of identifying multiple or duplicate claims arising out of the same occurrence.

(f) The date of suit, if filed.

(g) The injured person's age and sex.

(h) The total number and names of all defendants involved in the claim.

(i) The date and amount of judgment or settlement, if any, including the itemization of the verdict as required under s. 768.48, together with a copy of the settlement or judgment.

(j) In the case of a settlement, such information as the department may require with regard to the injured person's incurred and anticipated medical expense, wage loss, and other expenses.

(k) The loss adjustment expense paid to defense counsel, and all other allocated loss adjustment expense paid.

(l) The date and reason for final disposition, if no judgment or settlement.

(m) A summary of the occurrence which created the claim, which shall include:

1. The name of the institution, if any, and the location within the institution at which the injury occurred.

2. The final diagnosis for which treatment was sought or rendered, including the patient's actual condition.

3. A description of the misdiagnosis made, if any, of the patient's actual condition.

4. The operation, diagnostic, or treatment procedure causing the injury.

5. A description of the principal injury giving rise to the claim.

6. The safety management steps that have been taken by the insured to make similar occurrences or injuries less likely in the future.

(n) Any other information required by the department to analyze and evaluate the nature, causes, location, cost, and damages involved in professional liability cases.

(3) Upon request by the Agency for Health Care Administration Department of Business and Professional Regulation, the department shall provide ~~the that agency department~~ with any information received under pursuant to this section related to persons licensed under chapter 458, chapter 459,

chapter 461, or chapter 466. For purposes of safety management, the department shall annually provide the Department of Health and ~~Rehabilitative Services~~ with copies of the reports in cases resulting in an indemnity being paid to the claimants.

(4) There shall be no liability on the part of, and no cause of action of any nature shall arise against, any insurer reporting hereunder or its agents or employees or the department or its employees for any action taken by them under pursuant to this section. The department may impose a fine of \$250 per day per case, not to exceed \$1,000 per case, against an insurer that violates the requirements of this section. This subsection applies to claims accruing on or after October 1, 1997.

Section 106. Paragraph (t) of subsection (1) of section 458.331, Florida Statutes, 1996 Supplement, is amended to read:

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

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

(t) Gross or repeated malpractice or the failure to practice medicine with that level of care, skill, and treatment which is recognized by a reasonably prudent similar physician as being acceptable under similar conditions and circumstances. The board shall give great weight to the provisions of s. 766.102 when enforcing this paragraph. As used in this paragraph, “repeated malpractice” includes, but is not limited to, three or more claims for medical malpractice within the previous 5-year period resulting in indemnities being paid in excess of ~~\$25,000~~ \$10,000 each to the claimant in a judgment or settlement and which incidents involved negligent conduct by the physician. As used in this paragraph, “gross malpractice” or “the failure to practice medicine with that level of care, skill, and treatment which is recognized by a reasonably prudent similar physician as being acceptable under similar conditions and circumstances,” shall not be construed so as to require more than one instance, event, or act. Nothing in this paragraph shall be construed to require that a physician be incompetent to practice medicine in order to be disciplined pursuant to this paragraph.

Section 107. Paragraph (x) of subsection (1) of section 459.015, Florida Statutes, 1996 Supplement, is amended to read:

459.015 Grounds for disciplinary action by the board.—

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

(x) Gross or repeated malpractice or the failure to practice osteopathic medicine with that level of care, skill, and treatment which is recognized by a reasonably prudent similar osteopathic physician as being acceptable under similar conditions and circumstances. The board shall give great weight to the provisions of s. 766.102 when enforcing this paragraph. As used in this paragraph, “repeated malpractice” includes, but is not limited

to, three or more claims for medical malpractice within the previous 5-year period resulting in indemnities being paid in excess of \$25,000 \$10,000 each to the claimant in a judgment or settlement and which incidents involved negligent conduct by the osteopathic physician. As used in this paragraph, "gross malpractice" or "the failure to practice osteopathic medicine with that level of care, skill, and treatment which is recognized by a reasonably prudent similar osteopathic physician as being acceptable under similar conditions and circumstances" shall not be construed so as to require more than one instance, event, or act. Nothing in this paragraph shall be construed to require that an osteopathic physician be incompetent to practice osteopathic medicine in order to be disciplined pursuant to this paragraph. A recommended order by an administrative law judge or a final order of the board finding a violation under this paragraph shall specify whether the licensee was found to have committed "gross malpractice," "repeated malpractice," or "failure to practice osteopathic medicine with that level of care, skill, and treatment which is recognized as being acceptable under similar conditions and circumstances," or any combination thereof, and any publication by the board shall so specify.

Section 108. Subsection (2) of section 468.1645, Florida Statutes, is amended to read:

468.1645 Administrator license required.—

(2) Nothing in this part or in the rules adopted hereunder shall require an administrator of any facility or institution operated by and a recognized church or religious denomination for persons who rely exclusively upon treatment by spiritual means through prayer, in accordance with the creed or tenets of any organized church or religious denomination, to be licensed as a nursing home administrator if the administrator who is employed only to administer in such facilities or institutions accredited by such church or denomination for the care and treatment of the sick ~~in accordance with its teachings, to be licensed as a nursing home administrator.~~

Section 109. Effective upon this act becoming a law, paragraphs (a) and (c) of subsection (1) of section 458.3115, Florida Statutes, 1996 Supplement, are amended to read:

458.3115 Restricted license; certain foreign-licensed physicians; United States Medical Licensing Examination (USMLE) or agency-developed examination; restrictions on practice; full licensure.—

(1)

(a) Notwithstanding any other provision of law, the agency shall provide procedures under which certain physicians who are or were foreign-licensed and have practiced medicine no less than 2 years may take the USMLE or an agency-developed examination to qualify for a restricted license to practice medicine in this state. The agency and board-developed examination shall test the same areas of medical knowledge as the Federation of State Medical Boards of the United States, Inc. (FLEX) previously administered by the Florida Board of Medicine to grant medical licensure in Florida. Said

examination shall be in the same form and content and shall be administered in the same manner as the FLEX. The agency-developed examination must be made available no later than September 1, 1998, to a physician who qualifies for licensure. A person who is eligible to take and elects to take the agency and board-developed examination, who has previously passed part 1 or part 2 of the previously administered FLEX shall not be required to retake or pass the equivalent parts of the agency-developed examination, and may sit for the agency and board-developed examination five times within 5 years.

(c) A person shall be eligible to take such examination for restricted licensure if the person:

1. Has taken, upon approval by the board, and completed, in November 1990 or November 1992, one of the special preparatory medical update courses authorized by the board and the University of Miami Medical School and subsequently passed the final course examination; ~~or upon approval by the board to take the course completed in 1990 or in 1992, has a certificate of successful completion of that course from the University of Miami or the Stanley H. Kaplan course; or can document to the department that he or she was one of the persons who took and successfully completed the Stanley H. Kaplan course that was approved by the Board of Medicine and supervised by the University of Miami. At a minimum, the documentation must include class attendance records and the test score on the final course examination;~~

2. Applies to the agency and submits an application fee that is nonrefundable and equivalent to the fee required for full licensure;

3. Documents no less than 2 years of the active practice of medicine in another jurisdiction;

4. Submits an examination fee that is nonrefundable and equivalent to the fee required for full licensure plus the actual per-applicant cost to the agency to provide either examination described in this section;

5. Has not committed any act or offense in this or any other jurisdiction that would constitute a substantial basis for disciplining a physician under this chapter or chapter 455; and

6. Is not under discipline, investigation, or prosecution in this or any other jurisdiction for an act that would constitute a violation of this chapter or chapter 455 and that substantially threatened or threatens the public health, safety, or welfare.

Section 110. Section 458.3124, Florida Statutes, is created to read:

458.3124 Restricted license; certain experienced foreign-trained physicians.—

(1) A person who was trained in a medical school that is listed in the World Directory of Medical Schools published by the World Health Organization and is located in a country other than the United States, Canada, or Puerto Rico may apply to take Step III of the United States Medical Licensing Examination, if the person:

(a) Legally practiced medicine for at least 5 years in the country in which the school is located;

(b) Has passed Steps I and II of the United States Medical Licensing Examination;

(c) Is certified by the Education Commission for Foreign Medical Graduates as qualified for a restricted license to practice medicine;

(d) Is not subject to discipline, investigation, or prosecution in any jurisdiction for acts that threaten the public health, safety, or welfare or violate chapters 455 or 458; and

(e) Has been a resident of this state since July 1, 1996.

(2) A person applying for licensure under this section must submit to the Department of Health on or before December 31, 1998:

(a) A completed application and documentation required by the Board of Medicine to prove compliance with subsection (1); and

(b) A nonrefundable application fee not to exceed \$500 and a nonrefundable examination fee not to exceed \$300 plus the actual cost to purchase and administer the examination.

(3) A person applying under this section may take the examination a maximum of 5 times within 5 years.

(4) A restricted licensee under this section must practice under the supervision of a licensee approved by the board, with the first year of licensure under direct supervision and the second year in community service under indirect supervision, including practicing with organizations that serve indigent populations, such as section 501(c)(3) agencies, public health units, prisons, or other organizations approved by the board.

(5) Notwithstanding s. 458.311(1)(f), a person who successfully meets the requirements of this section and who successfully passes Step III of the United States Medical Licensing Examination is eligible for full licensure as a physician.

(6) The board shall adopt rules to implement this section.

Section 111. Except as otherwise provided in this act, this act shall take effect July 1, 1997.

Became a law without the Governor's approval May 30, 1997.

Filed in Office Secretary of State May 29, 1997.