

CHAPTER 2013-166

Committee Substitute for Senate Bill No. 248

An act relating to treatment programs for impaired licensees and applicants; amending s. 456.076, F.S.; exempting an entity retained by the Department of Health as an impaired practitioner consultant from certain licensure requirements; authorizing impaired practitioner consultants to contract with schools or programs to provide services to impaired students who are enrolled for the purpose of preparing for licensure as a specified health care practitioner or as a veterinarian; limiting the liability of those schools or programs when they refer a student to an impaired practitioner consultant; authorizing each board and profession within the division to delegate to its chair or other designee the authority to determine that an applicant for licensure under its jurisdiction may be impaired before certifying or declining to certify an application for licensure; authorizing the chair or other designee to refer the applicant to the consultant for an evaluation before the board certifies or declines to certify the applicant's application to the department; tolling the department's deadline for approving or denying the application until the evaluation is completed and the result of the evaluation and recommendation by the consultant is communicated to the board by the consultant if the applicant agrees to be evaluated by the consultant; requiring the board to certify or decline to certify the applicant's application to the department notwithstanding the lack of an evaluation and recommendation by the consultant if the applicant declines to be evaluated by the consultant; providing that the impaired practitioner consultant is the official custodian of records relating to the referral of the licensee or applicant to the consultant and any other interaction between them; clarifying the circumstances under which an impaired practitioner consultant may disclose certain information concerning an impaired licensee or applicant; authorizing the Department of Health and others that contract with an impaired practitioner consultant to have administrative control over the consultant to the extent necessary to receive disclosures allowed under federal law; authorizing an impaired licensee to obtain confidential information from the department regarding a pending disciplinary proceeding; amending ss. 458.331 and 459.015, F.S.; conforming cross-references; creating s. 468.315, F.S.; providing that radiological personnel are subject to a treatment program for impaired licensees; providing an effective date.

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

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

456.076 Treatment programs for impaired practitioners.—

(1) For professions that do not have impaired practitioner programs provided for in their practice acts, the department shall, by rule, designate approved impaired practitioner programs under this section. The

department may adopt rules setting forth appropriate criteria for approval of treatment providers. The rules may specify the manner in which the consultant, retained as set forth in subsection (2), works with the department in intervention, requirements for evaluating and treating a professional, requirements for continued care of impaired professionals by approved treatment providers, continued monitoring by the consultant of the care provided by approved treatment providers regarding the professionals under their care, and requirements related to the consultant's expulsion of professionals from the program.

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

1. A practitioner or recovered practitioner licensed under chapter 458, chapter 459, or part I of chapter 464;⁵ or

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

a. A medical director who must be a practitioner or recovered practitioner licensed under chapter 458 or; chapter 459;⁵ or

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

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

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

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

(d) A medical school accredited by the Liaison Committee on Medical Education or of the Commission on Osteopathic College Accreditation, or another ~~other~~ school providing for the education of students enrolled in preparation for licensure as a health care practitioner as defined in this chapter or a veterinarian under chapter 474 ~~allopathic physicians under chapter 458 or osteopathic physicians under chapter 459~~, which is governed by accreditation standards requiring notice and the provision of due process procedures to students, is not liable in any civil action for referring a student to the consultant retained by the department or for disciplinary actions that adversely affect the status of a student when the disciplinary actions are instituted in reasonable reliance on the recommendations, reports, or conclusions provided by such consultant, if the school, in referring the student or taking disciplinary action, adheres to the due process procedures adopted by the applicable accreditation entities and if the school committed no intentional fraud in carrying out the provisions of this section.

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

(4)(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 grounds for discipline pursuant to s. 456.072 or the corresponding grounds for discipline within the applicable practice act 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 required by the consultant, 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 or her participation in a treatment program.

(b) If, however, the department has not received a legally sufficient complaint and 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. 456.073 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)~~ and (7).

(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 impaired practitioner program and no other complaint against the licensee exists.

~~(5)(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.

~~(6)~~(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 ~~(7)~~(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. 456.073. 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 State Surgeon General.

~~(7)~~(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.

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

1. The consultant indemnify the state for any liabilities incurred up to the limits set out in chapter 768.
2. The consultant establish a quality assurance program to monitor services delivered under the contract.
3. The consultant’s quality assurance program, treatment, and monitoring records be evaluated quarterly.

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

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

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

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

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

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

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

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

(9) An impaired practitioner consultant is the official custodian of records relating to the referral of an impaired licensee or applicant to that consultant and any other interaction between the licensee or applicant and the consultant. The consultant may disclose to the impaired licensee or applicant or his or her designee any information that is disclosed to or obtained by the consultant or that is confidential under paragraph (6)(a), but only to the

extent that it is necessary to do so to carry out the consultant’s duties under this section. The department, and any other entity that enters into a contract with the consultant to receive the services of the consultant, has direct administrative control over the consultant to the extent necessary to receive disclosures from the consultant as allowed by federal law. If a disciplinary proceeding is pending, an impaired licensee may obtain such information from the department under s. 456.073.

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

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

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

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

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

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

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

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

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

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

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

Approved by the Governor June 14, 2013.

Filed in Office Secretary of State June 14, 2013.