

CHAPTER 2017-41

Committee Substitute for Committee Substitute for House Bill No. 229

An act relating to health care practitioner licensure; amending s. 456.076, F.S.; revising provisions related to impaired practitioner programs; providing definitions; deleting a requirement that the Department of Health designate approved programs by rule; deleting a requirement authorizing the department to adopt by rule the manner in which consultants work with the department; authorizing, rather than requiring, the department to retain one or more consultants to operate its impaired practitioner program; requiring the department to establish the terms and conditions of the program by contract; providing contract terms; requiring consultants to establish the terms of monitoring impaired practitioners; authorizing consultants to consider the recommendations of certain persons in establishing the terms of monitoring; authorizing consultants to modify monitoring terms under certain circumstances; requiring consultants to assist the department and licensure boards on certain matters; requiring the department to refer practitioners to consultants under certain circumstances; prohibiting the department from referring practitioners to consultants under certain circumstances; authorizing consultants to withhold certain information about self-reporting participants from the department under certain circumstances; requiring consultants to disclose all information relating to practitioners who are terminated from the program for specified reasons; providing that all information obtained by a consultant retains its confidential or exempt status; providing that consultants, and certain agents of consultants, may not be held liable financially or have a cause of action for damages brought against them for disclosing certain information or for any other act or omission relating to the program; authorizing consultants to contract with a school or program to provide services to certain students; amending s. 456.0635, F.S.; revising grounds for refusing to issue or renew a license, certificate, or registration in a health care profession; providing applicability; amending ss. 401.411, 456.072, 457.109, 458.331, 459.015, 460.413, 461.013, 462.14, 463.016, 464.018, 465.016, 466.028, 467.203, 468.217, 468.3101, and 483.825, F.S.; providing that an impaired practitioner may be reported to a consultant rather than the department under certain circumstances; amending ss. 455.227, 464.204, and 474.221, F.S.; conforming provisions to changes made by the act; providing effective dates.

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

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

456.076 Impaired practitioner programs ~~Treatment programs for impaired practitioners.~~—

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

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

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

(c) “Impaired practitioner” means a practitioner with an impairment.

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

(e) “Impairment” means a potentially impairing health condition that is the result of the misuse or abuse of alcohol, drugs, or both, or a mental or physical condition that could affect a practitioner’s ability to practice with skill and safety.

(f) “Inability to progress” means a determination by a consultant based on a participant’s response to treatment and prognosis that the participant is unable to safely practice despite compliance with treatment requirements and his or her participant contract.

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

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

(i) “Participant contract” means a formal written document outlining the requirements established by a consultant for a participant to successfully complete the impaired practitioner program, including the participant’s monitoring plan.

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

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

(l) “Treatment program” means a department-approved or consultant-approved residential, intensive outpatient, partial hospitalization, or other program through which an impaired practitioner is treated based on the impaired practitioner’s diagnosis and the treatment plan approved by the consultant.

~~(m) “Treatment provider” means a department-approved or consultant-approved residential state-licensed or nationally certified individual who provides treatment to an impaired practitioner based on the practitioner’s individual diagnosis and a treatment plan approved by the consultant 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 may shall retain one or more impaired practitioner consultants to operate its impaired practitioner program. Each consultant who are each licensees under the jurisdiction of the Division of Medical Quality Assurance within the department and who must be:~~

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

~~(b)2. An entity that employs:~~

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

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

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

~~(a) Accepts referrals;~~

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

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

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

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

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

(6)(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.

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

2. The consultant may contract with a school or program to provide services to a student enrolled for the purpose of preparing for licensure as a health care practitioner as defined in this chapter or as a veterinarian under chapter 474 if the student is allegedly 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 for paying for the care provided by approved treatment providers or a consultant.

~~(d) A medical school accredited by the Liaison Committee on Medical Education or the Commission on Osteopathic College Accreditation, or another 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 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.~~

~~(8)(3) Before issuing an approval of, or intent to deny, an application for licensure, 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 have an impairment 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 to facilitate for an evaluation before the board issues an approval of, certifies or intent to deny, 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 issue an approval of, or intent to deny, certify or decline to certify the applicant's application to the department notwithstanding the lack of an evaluation and recommendation by the consultant.~~

~~(9)(a)(4)(a) Except as provided in paragraph (b), when Whenever the department receives a written or oral legally sufficient complaint alleging that a practitioner has an impairment 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 exists against the practitioner licensee other than impairment exists, the department shall refer the practitioner to the consultant, along with all information in the department's possession relating to the impairment. The impairment does 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 practitioner licensee has acknowledged the impairment; ~~problem.~~
2. The practitioner becomes a participant licensee has voluntarily enrolled in an impaired practitioner program and successfully completes a participant contract under terms established by the consultant; appropriate, approved treatment program.
3. The practitioner licensee has voluntarily withdrawn from practice or has limited the scope of his or her practice if 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 practitioner licensee has provided to the consultant, or has authorized the consultant to obtain, all records and information relating to the impairment from any source and all other medical records of the practitioner requested by the consultant; and 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.
5. The practitioner has authorized the consultant, in the event of the practitioner's termination from the impaired practitioner program, to report the termination to the department and provide the department with copies of all information in the consultant's possession relating to the practitioner.

(b) For a practitioner employed by a governmental entity who is also certified by the department pursuant to part III of chapter 401, the department may not refer the practitioner to the consultant, as described in paragraph (a), when the practitioner has already been referred by his or her employer to an employee assistance program used by the governmental entity. If the practitioner fails to satisfactorily complete the employee assistance program or his or her employment is terminated, the employer shall immediately notify the department, which shall then refer the practitioner to the consultant as provided in paragraph (a).

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

~~(e) 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 (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.~~

~~(10)(5)~~ In any disciplinary action for a violation other than impairment in which a practitioner licensee establishes the violation for which the practitioner licensee is being prosecuted was due to or connected with impairment and further establishes the practitioner licensee is satisfactorily progressing through or has successfully completed an impaired practitioner program ~~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.

~~(11)(a)(6)(a)~~ Upon request by the consultant, and with the authorization of the practitioner when required by law, an approved evaluator, treatment program, or treatment provider shall, upon request, disclose to the consultant all information in its possession regarding a referral or participant 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).~~ Failure to provide such information to the consultant is grounds for withdrawal of approval of such evaluator, treatment program, or treatment provider.

~~(b) When a referral or participant is terminated from the impaired practitioner program for material noncompliance with a participant contract, inability to progress, or any other reason than completion of the program, the consultant shall disclose~~ 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 relating to the practitioner shall be disclosed to the department. Such disclosure shall constitute a complaint pursuant to the general provisions of s. 456.073. In addition, whenever the consultant concludes that impairment affects a practitioner's licensee's practice and constitutes an immediate, serious danger to the public health, safety, or welfare, the consultant shall immediately communicate such that conclusion shall ~~be communicated to the department and disclose all information in the consultant's possession relating to the practitioner to the department~~ State Surgeon General.

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

~~(7) 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.~~

(13) The provisions of s. 766.101 apply to any consultant and the consultant's directors, officers, employees, or agents in regards to providing information relating to a participant to a medical review committee if the participant authorizes such disclosure 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.

(14)(a)(8)(a) A consultant retained pursuant to this section and subsection (2), a consultant's directors, officers, and employees, or agents 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, including a claim, suit, action, or proceeding for injunctive, affirmative, or declaratory relief, against the consultant, or the consultant's directors, officers, or employees, and agents, brought as the result of any action or omission relating to the impaired practitioner program 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 claim, suit, action, or proceeding is brought as a result of an 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 the licensee or student when the consultant is unable to perform such intervention, if the act or omission arises out of and is in the scope of the consultant's duties under its contract with the department.

(15)(c) If a the consultant retained by the department pursuant to this section subsection (2) is also retained by another any other state agency to operate an impaired practitioner program for that agency, this section also applies to the consultant's operation of an impaired practitioner program for that 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.

~~(16)(9) A 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 a referral or participant, or to the legal representative of the referral or participant, the documents, records, or other information from the consultant's file, including information received by the consultant from other sources; information on the terms required for the referral's or participant's monitoring contract, the referral's or participant's progress or inability to progress, or the referral's or participant's discharge or termination; information supporting the conclusion of material noncompliance; or any other information required by law 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 consultant discloses information to the department in accordance with this part, a referral or participant, or his or her legal representative, may obtain a complete copy of the consultant's file from the consultant or disciplinary proceeding is pending, an impaired licensee may obtain such information from the department under s. 456.073.~~

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

(b) A medical school accredited by the Liaison Committee on Medical Education or the Commission on Osteopathic College Accreditation, or another 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, 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.

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

456.076 Impaired practitioner programs.—

~~(16)(9) A 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 a referral or participant, or to the legal representative of the referral or participant, the documents, records, or other information from the consultant's file, including information received by the consultant from other sources; information on the terms required for the referral's or participant's monitoring contract, the referral's or participant's progress or inability to progress, or the referral's or participant's discharge or termination; information supporting the conclusion of material noncompliance; or any other information required by law 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. The consultant must disclose to the department, upon the department's request, whether an applicant for a multistate license under s. 464.0095 is participating in a treatment program and must report to the department when a nurse holding a multistate license under s. 464.0095 enters a treatment program. A nurse holding a multistate license pursuant to s. 464.0095 must report to the department within 2 business days after entering a treatment program pursuant to this section. If a consultant discloses information to the department in accordance with this part, a referral or participant, or his or her legal representative, may obtain a complete copy of the consultant's file from the consultant or disciplinary proceeding is pending, an impaired licensee may obtain such information from the department under s. 456.073.~~

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

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

(2) Each board within the jurisdiction of the department, or the department 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 or any principal, officer, agent, managing employee, or affiliated person of the candidate or applicant:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

401.411 Disciplinary action; penalties.—

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

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

Section 5. Paragraph (u) of subsection (1) of section 455.227, Florida Statutes, is 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:

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

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

456.072 Grounds for discipline; penalties; enforcement.—

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

(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 chapter, the chapter regulating the alleged violator, or the rules of the department or the board. However, a person who the licensee knows is unable to practice with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material, or as a result of a mental or physical condition, may be reported to a consultant operating an impaired practitioner program as described in s. 456.076 rather than to the department.

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

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

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

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

(f) 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. However, a person who the licensee knows is unable to practice acupuncture with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material, or as a result of a mental or physical condition, may be reported to a consultant operating an impaired practitioner program as described in s. 456.076 rather than to the department.

Section 8. 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. However, a person who the licensee knows is unable to practice medicine with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material, or as a result of a mental or physical condition, may be reported to a consultant operating an impaired practitioner program as described in s. 456.076 rather than to the department ~~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).~~

Section 9. 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. However, a person who the licensee knows is unable to practice osteopathic medicine with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material, or as a result of a mental or physical condition, may be reported to a consultant operating an impaired practitioner program as described in s. 456.076 rather than to the department ~~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).

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

460.413 Grounds for disciplinary action; action by board or department.

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

(g) 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. However, a person who the licensee knows is unable to practice chiropractic medicine with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material, or as a result of a mental or physical condition, may be reported to a consultant operating an impaired practitioner program as described in s. 456.076 rather than to the department.

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

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

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

(f) 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. However, a person who the licensee knows is unable to practice podiatric medicine with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material, or as a result of a mental or physical condition, may be reported to a consultant operating an impaired practitioner program as described in s. 456.076 rather than to the department.

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

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

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

(f) 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. However, a person who the licensee knows is unable to practice naturopathic medicine with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material, or

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

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

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

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

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

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

464.018 Disciplinary actions.—

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

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

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

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

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

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

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

465.016 Disciplinary actions.—

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

(o) Failing to report to the department any licensee under chapter 458 or under chapter 459 who the pharmacist knows has violated the grounds for disciplinary action set out in the law under which that person is licensed and who provides health care services in a facility licensed under chapter 395, or a health maintenance organization certificated under part I of chapter 641, in which the pharmacist also provides services. However, a person who the licensee knows is unable to practice medicine or osteopathic medicine with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material, or as a result of a mental or physical condition, may be reported to a consultant operating an impaired practitioner program as described in s. 456.076 rather than to the department.

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

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

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

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

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

467.203 Disciplinary actions; penalties.—

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

(h) 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. However, a person who the licensee knows is unable to practice midwifery with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material, or as a result of a mental or physical condition, may be reported to a consultant operating an impaired practitioner program as described in s. 456.076 rather than to the department.

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

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

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

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

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

468.3101 Disciplinary grounds and actions.—

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

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

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

474.221 Impaired practitioner provisions; applicability.—Notwithstanding the transfer of the Division of Medical Quality Assurance to the Department of Health or any other provision of law to the contrary, veterinarians licensed under this chapter shall be governed by the ~~treatment~~ of impaired practitioner program provisions of s. 456.076 as if they were under the jurisdiction of the Division of Medical Quality Assurance, except that for veterinarians the Department of Business and Professional Regulation shall, at its option, exercise any of the powers granted to the Department of Health by that section, and “board” shall mean board as defined in this chapter.

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

483.825 Grounds for disciplinary action.—

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

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

Section 23. Except as otherwise expressly provided in this act, this act shall take effect upon becoming a law.

Approved by the Governor May 31, 2017.

Filed in Office Secretary of State May 31, 2017.