

By Senator Thrasher

8-00660A-11

20111742

1 A bill to be entitled
2 An act relating to the regulation of professions;
3 amending s. 20.165, F.S.; authorizing the Department
4 of Business and Professional Regulation to require a
5 person licensed by or applying for a license from the
6 department to be governed by provisions providing
7 programs for impaired practitioners under the
8 jurisdiction of the Division of Medical Quality
9 Assurance within the Department of Health; authorizing
10 the Department of Business and Professional Regulation
11 to exercise any of the powers granted to the
12 Department of Health with respect to such programs;
13 amending s. 456.001, F.S.; redefining the term "health
14 care practitioner" as it relates to the regulation of
15 health care professions to include those persons
16 certified or licensed to provide medical
17 transportation services or radiological services;
18 amending s. 456.0635, F.S.; exempting a health care
19 practitioner from disqualification for a license,
20 certificate, or registration if the practitioner was
21 suffering from an addiction or impairment at the time
22 of the disqualifying conduct and subsequently
23 completes an impaired practitioner program; amending
24 s. 456.074, F.S.; requiring the State Surgeon General
25 to issue an emergency order suspending or restricting
26 a health care practitioner's license under certain
27 circumstances; amending s. 456.076, F.S.; exempting an
28 entity retained by the Department of Health as an
29 impaired practitioner consultant from certain

8-00660A-11

20111742

30 licensing requirements if the entity employs or
31 contracts with licensed professionals; revising the
32 schools or programs that may contract for impaired
33 practitioner consulting services; limiting the
34 liability of certain medical schools and schools that
35 prepare health care practitioners and veterinarians
36 for licensure for referring a student to an impaired
37 practitioner consultant; clarifying the types of legal
38 proceedings related to services provided by impaired
39 practitioner consultants which are defended by the
40 Department of Financial Services; clarifying
41 requirements for an impaired practitioner consultant
42 to maintain as confidential certain information
43 concerning an impaired practitioner; providing an
44 effective date.

45
46 Be It Enacted by the Legislature of the State of Florida:

47
48 Section 1. Subsection (10) is added to section 20.165,
49 Florida Statutes, to read:

50 20.165 Department of Business and Professional Regulation.—
51 There is created a Department of Business and Professional
52 Regulation.

53 (10) The Department of Business and Professional Regulation
54 may require a person licensed by or applying for a license from
55 the department to be governed by the provisions of s. 456.076 as
56 if the person was under the jurisdiction of the Division of
57 Medical Quality Assurance. The Department of Business and
58 Professional Regulation may exercise any of the powers granted

8-00660A-11

20111742

59 to the Department of Health by s. 456.076, and the term "board"
60 means the board from which the license was granted or is sought.

61 Section 2. Subsection (4) of section 456.001, Florida
62 Statutes, is amended to read:

63 456.001 Definitions.—As used in this chapter, the term:

64 (4) "Health care practitioner" means any person licensed
65 under part III of chapter 401; chapter 457; chapter 458; chapter
66 459; chapter 460; chapter 461; chapter 462; chapter 463; chapter
67 464; chapter 465; chapter 466; chapter 467; part I, part II,
68 part III, part IV, part V, part X, part XIII, or part XIV of
69 chapter 468; chapter 478; chapter 480; part III or part IV of
70 chapter 483; chapter 484; chapter 486; chapter 490; or chapter
71 491.

72 Section 3. Subsection (2) of section 456.0635, Florida
73 Statutes, is amended to read:

74 456.0635 Medicaid fraud; disqualification for license,
75 certificate, or registration.—

76 (2) Each board within the jurisdiction of the department,
77 or the department if there is no board, shall refuse to admit a
78 candidate to any examination and refuse to issue or renew a
79 license, certificate, or registration to any applicant if the
80 candidate or applicant or any principal, officer, agent,
81 managing employee, or affiliated person of the applicant, has
82 been:

83 (a) Convicted of, or entered a plea of guilty or nolo
84 contendere to, regardless of adjudication, a felony under
85 chapter 409, chapter 817, chapter 893, 21 U.S.C. ss. 801-970, or
86 42 U.S.C. ss. 1395-1396, unless the sentence and any subsequent
87 period of probation for such conviction or pleas ended more than

8-00660A-11

20111742

88 15 years before ~~prior to~~ the date of the application. The
89 disqualification set forth in this paragraph does not apply to
90 any person who is determined to have been suffering from an
91 addiction or impairment at the time of the conduct for which the
92 person was convicted, or who entered a plea of guilty or nolo
93 contendere to, regardless of adjudication, a felony under
94 chapter 893 and who subsequently enrolled in and continues to
95 successfully participate in or has subsequently successfully
96 completed an impaired practitioner program as set forth in s.
97 456.076(1) or the equivalent of such program in another
98 jurisdiction. This exception from disqualification does not
99 prohibit or require action against the license, certificate, or
100 registration of such person pursuant to the disciplinary
101 provisions of this chapter or the appropriate practice act;

102 (b) Terminated for cause from the Florida Medicaid program
103 pursuant to s. 409.913, unless the applicant has been in good
104 standing with the Florida Medicaid program for the most recent 5
105 years; or

106 (c) Terminated for cause, pursuant to the appeals
107 procedures established by the state or Federal Government, from
108 any other state Medicaid program or the federal Medicare
109 program, unless the applicant has been in good standing with a
110 state Medicaid program or the federal Medicare program for the
111 most recent 5 years and the termination occurred at least 20
112 years before ~~prior to~~ the date of the application.

113 Section 4. Subsection (5) is added to section 456.074,
114 Florida Statutes, to read:

115 456.074 Certain health care practitioners; immediate
116 suspension of license.-

8-00660A-11

20111742

117 (5) If a treatment program for impaired practitioners which
118 is retained by the department pursuant to s. 456.076 discloses
119 to the department that:

120 (a) A licensed health care practitioner as defined in s.
121 456.001(4) is not progressing satisfactorily in that treatment
122 program; and

123 (b) The health care practitioner's impairment affects his
124 or her practice and constitutes an immediate, serious danger to
125 the public health, safety, or welfare,

126
127 the State Surgeon General shall review the matter within 10
128 business days after receiving the disclosure, and, if warranted,
129 shall issue an emergency order suspending or restricting the
130 health care practitioner's license.

131 Section 5. Subsection (2), paragraph (d) of subsection (3),
132 and paragraph (b) of subsection (7) of section 456.076, Florida
133 Statutes, are amended, and subsection (8) is added to that
134 section, to read:

135 456.076 Treatment programs for impaired practitioners.—

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

140 1. A practitioner or recovered practitioner licensed under
141 chapter 458, chapter 459, or part I of chapter 464; ~~r~~ or

142 2. An entity employing a medical director or employing a
143 registered nurse as an executive director, who must be a
144 practitioner or recovered practitioner licensed under chapter
145 458, chapter 459, or part I of chapter 464.

8-00660A-11

20111742

146 (b) An entity that is retained as a consultant under this
147 section and employs a medical director or registered nurse as an
148 executive director is not required to be licensed as a substance
149 abuse provider or mental health treatment provider under chapter
150 394, chapter 395, or chapter 397 in order to operate as a
151 consultant under this section if the entity employs or contracts
152 with licensed professionals to perform or appropriately
153 supervise any specific treatment or evaluation that requires
154 individual licensing or supervision.

155 (c) The consultant shall assist the probable cause panel
156 and department in carrying out the responsibilities of this
157 section. This includes ~~shall include~~ working with department
158 investigators to determine whether a practitioner is, in fact,
159 impaired. The consultant may contract for services to be
160 provided, for appropriate compensation, if requested by a ~~the~~
161 school or program, for students enrolled in a school ~~schools~~ for
162 licensure as a health care practitioner under chapter 456 or a
163 ~~veterinarian under chapter 474 allopathic physicians or~~
164 ~~physician assistants under chapter 458, osteopathic physicians~~
165 ~~or physician assistants under chapter 459, nurses under chapter~~
166 ~~464, or pharmacists under chapter 465~~ who are alleged to be
167 impaired as a result of the misuse or abuse of alcohol or drugs,
168 or both, or due to a mental or physical condition.

169 (d) The department is not responsible under any
170 circumstances for paying the costs of care provided by approved
171 treatment providers, and the department is not responsible for
172 paying the costs of consultants' services provided for such
173 students.

174 (e) A medical school accredited by the Liaison Committee on

8-00660A-11

20111742

175 Medical Education of the Commission on Osteopathic College
176 Accreditation, or another ~~other~~ school providing for the
177 education of students enrolled in preparation for licensure as a
178 health care practitioner under chapter 456 or a veterinarian
179 under chapter 474 ~~allopathic physicians under chapter 458 or~~
180 ~~osteopathic physicians under chapter 459~~, which school is
181 governed by accreditation standards requiring notice and the
182 provision of due process procedures to students, is not liable
183 in any civil action for referring a student to the consultant
184 retained by the department or for disciplinary actions that
185 adversely affect the status of a student when the disciplinary
186 actions are instituted in reasonable reliance on the
187 recommendations, reports, or conclusions provided by such
188 consultant, if the school, in referring the student or taking
189 disciplinary action, adheres to the due process procedures
190 adopted by the applicable accreditation entities and if the
191 school committed no intentional fraud in carrying out the
192 provisions of this section.

193 (3)

194 (d) Whenever the department receives a legally sufficient
195 complaint alleging that a licensee or applicant is impaired as
196 described in paragraph (a) and no complaint against the licensee
197 or applicant other than impairment exists, the appropriate
198 board, the board's designee, or the department shall forward all
199 information in its possession regarding the impaired licensee or
200 applicant to the consultant. For the purposes of this section, a
201 suspension from hospital staff privileges due to the impairment
202 does not constitute a complaint.

203 (7)

8-00660A-11

20111742

204 (b) In accordance with s. 284.385, the Department of
205 Financial Services shall defend any claim, suit, action, or
206 proceeding, including a claim, suit, action, or proceeding for
207 injunctive, affirmative, or declaratory relief, against the
208 consultant, the consultant's officers or employees, or those
209 acting at the direction of the consultant for the limited
210 purpose of an emergency intervention on behalf of a licensee or
211 student as described in subsection (2) when the consultant is
212 unable to perform such intervention which is brought as a result
213 of any act or omission by any of the consultant's officers and
214 employees and those acting under the direction of the consultant
215 for the limited purpose of an emergency intervention on behalf
216 of a licensee or student as described in subsection (2) when the
217 consultant is unable to perform such intervention when such act
218 or omission arises out of and in the scope of the consultant's
219 duties under its contract with the department.

220 (8) An impaired practitioner consultant is the official
221 custodian of records concerning any impaired licensee monitored
222 by that consultant. The consultant may not, except to the extent
223 necessary for carrying out the consultant's duties under this
224 section, disclose to the impaired licensee or his or her
225 designee any information that is disclosed to or obtained by the
226 consultant and is confidential under paragraph (5) (a). If a
227 disciplinary proceeding is pending, an impaired licensee may
228 obtain such information from the department under s.
229 456.073(10).

230 Section 6. This act shall take effect July 1, 2011.