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1
2 An act relating to treatment programs for impaired
3 licensees and applicants; amending s. 456.076, F.S.;
4 exempting an entity retained by the Department of
5 Health as an impaired practitioner consultant from
6 certain licensure requirements; authorizing impaired
7 practitioner consultants to contract with schools or
8 programs to provide services to impaired students who
9 are enrolled for the purpose of preparing for
10 licensure as a specified health care practitioner or
11 as a veterinarian; limiting the liability of those
12 schools or programs when they refer a student to an
13 impaired practitioner consultant; authorizing each
14 board and profession within the division to delegate
15 to its chair or other designee the authority to
16 determine that an applicant for licensure under its
17 jurisdiction may be impaired before certifying or
18 declining to certify an application for licensure;
19 authorizing the chair or other designee to refer the
20 applicant to the consultant for an evaluation before
21 the board certifies or declines to certify the
22 applicant's application to the department; tolling the
23 department's deadline for approving or denying the
24 application until the evaluation is completed and the
25 result of the evaluation and recommendation by the
26 consultant is communicated to the board by the
27 consultant if the applicant agrees to be evaluated by
28 the consultant; requiring the board to certify or
29 decline to certify the applicant's application to the

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30 department notwithstanding the lack of an evaluation
31 and recommendation by the consultant if the applicant
32 declines to be evaluated by the consultant; providing
33 that the impaired practitioner consultant is the
34 official custodian of records relating to the referral
35 of the licensee or applicant to the consultant and any
36 other interaction between them; clarifying the
37 circumstances under which an impaired practitioner
38 consultant may disclose certain information concerning
39 an impaired licensee or applicant; authorizing the
40 Department of Health and others that contract with an
41 impaired practitioner consultant to have
42 administrative control over the consultant to the
43 extent necessary to receive disclosures allowed under
44 federal law; authorizing an impaired licensee to
45 obtain confidential information from the department
46 regarding a pending disciplinary proceeding; amending
47 ss. 458.331 and 459.015, F.S.; conforming cross-
48 references; creating s. 468.315, F.S.; providing that
49 radiological personnel are subject to a treatment
50 program for impaired licensees; providing an effective
51 date.

52
53 Be It Enacted by the Legislature of the State of Florida:

54
55 Section 1. Section 456.076, Florida Statutes, is amended to
56 read:

57 456.076 Treatment programs for impaired practitioners.—

58 (1) For professions that do not have impaired practitioner

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59 programs provided for in their practice acts, the department
60 shall, by rule, designate approved impaired practitioner
61 programs under this section. The department may adopt rules
62 setting forth appropriate criteria for approval of treatment
63 providers. The rules may specify the manner in which the
64 consultant, retained as set forth in subsection (2), works with
65 the department in intervention, requirements for evaluating and
66 treating a professional, requirements for continued care of
67 impaired professionals by approved treatment providers,
68 continued monitoring by the consultant of the care provided by
69 approved treatment providers regarding the professionals under
70 their care, and requirements related to the consultant's
71 expulsion of professionals from the program.

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

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

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

79 a. A medical director who must be a practitioner or
80 recovered practitioner licensed under chapter 458 or ~~or~~ chapter
81 459; ~~or~~

82 b. An executive director who must be a registered nurse or
83 a recovered registered nurse licensed under part I of chapter
84 464.

85 (b) An entity retained as an impaired practitioner
86 consultant under this section which employs a medical director
87 or an executive director is not required to be licensed as a

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88 substance abuse provider or mental health treatment provider
89 under chapter 394, chapter 395, or chapter 397 for purposes of
90 providing services under this program.

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

96 2. The consultant may contract with a school or program to
97 provide for services to a student ~~be provided, for appropriate~~
98 ~~compensation, if requested by the school, for students enrolled~~
99 for the purpose of preparing in schools for licensure as a
100 health care practitioner as defined in this chapter or as a
101 veterinarian under chapter 474 if the student is allegedly
102 ~~allopathic physicians or physician assistants under chapter 458,~~
103 ~~osteopathic physicians or physician assistants under chapter~~
104 ~~459, nurses under chapter 464, or pharmacists under chapter 465~~
105 ~~who are alleged to be~~ impaired as a result of the misuse or
106 abuse of alcohol or drugs, or both, or due to a mental or
107 physical condition. The department is not responsible ~~under any~~
108 ~~circumstances~~ for paying for ~~the costs of~~ care provided by
109 approved treatment providers or a consultant, ~~and the department~~
110 ~~is not responsible for paying the costs of consultants' services~~
111 ~~provided for students.~~

112 (d) A medical school accredited by the Liaison Committee on
113 Medical Education or ~~of~~ the Commission on Osteopathic College
114 Accreditation, or another ~~other~~ school providing for the
115 education of students enrolled in preparation for licensure as a
116 health care practitioner as defined in this chapter or a

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117 veterinarian under chapter 474 ~~allopathic physicians under~~
118 ~~chapter 458 or osteopathic physicians under chapter 459,~~ which
119 is governed by accreditation standards requiring notice and the
120 provision of due process procedures to students, is not liable
121 in any civil action for referring a student to the consultant
122 retained by the department or for disciplinary actions that
123 adversely affect the status of a student when the disciplinary
124 actions are instituted in reasonable reliance on the
125 recommendations, reports, or conclusions provided by such
126 consultant, if the school, in referring the student or taking
127 disciplinary action, adheres to the due process procedures
128 adopted by the applicable accreditation entities and if the
129 school committed no intentional fraud in carrying out the
130 provisions of this section.

131 (3) Each board and profession within the Division of
132 Medical Quality Assurance may delegate to its chair or other
133 designee its authority to determine, before certifying or
134 declining to certify an application for licensure to the
135 department, that an applicant for licensure under its
136 jurisdiction may be impaired as a result of the misuse or abuse
137 of alcohol or drugs, or both, or due to a mental or physical
138 condition that could affect the applicant's ability to practice
139 with skill and safety. Upon such determination, the chair or
140 other designee may refer the applicant to the consultant for an
141 evaluation before the board certifies or declines to certify his
142 or her application to the department. If the applicant agrees to
143 be evaluated by the consultant, the department's deadline for
144 approving or denying the application pursuant to s. 120.60(1) is
145 tolled until the evaluation is completed and the result of the

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146 evaluation and recommendation by the consultant is communicated
147 to the board by the consultant. If the applicant declines to be
148 evaluated by the consultant, the board shall certify or decline
149 to certify the applicant's application to the department
150 notwithstanding the lack of an evaluation and recommendation by
151 the consultant.

152 (4)~~(3)~~(a) Whenever the department receives a written or
153 oral legally sufficient complaint alleging that a licensee under
154 the jurisdiction of the Division of Medical Quality Assurance
155 within the department is impaired as a result of the misuse or
156 abuse of alcohol or drugs, or both, or due to a mental or
157 physical condition which could affect the licensee's ability to
158 practice with skill and safety, and no complaint against the
159 licensee other than impairment exists, the reporting of such
160 information shall not constitute grounds for discipline pursuant
161 to s. 456.072 or the corresponding grounds for discipline within
162 the applicable practice act if the probable cause panel of the
163 appropriate board, or the department when there is no board,
164 finds:

165 1. The licensee has acknowledged the impairment problem.

166 2. The licensee has voluntarily enrolled in an appropriate,
167 approved treatment program.

168 3. The licensee has voluntarily withdrawn from practice or
169 limited the scope of practice as required by the consultant, in
170 each case, until such time as the panel, or the department when
171 there is no board, is satisfied the licensee has successfully
172 completed an approved treatment program.

173 4. The licensee has executed releases for medical records,
174 authorizing the release of all records of evaluations,

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175 diagnoses, and treatment of the licensee, including records of
176 treatment for emotional or mental conditions, to the consultant.
177 The consultant shall make no copies or reports of records that
178 do not regard the issue of the licensee's impairment and his or
179 her participation in a treatment program.

180 (b) If, however, the department has not received a legally
181 sufficient complaint and the licensee agrees to withdraw from
182 practice until such time as the consultant determines the
183 licensee has satisfactorily completed an approved treatment
184 program or evaluation, the probable cause panel, or the
185 department when there is no board, shall not become involved in
186 the licensee's case.

187 (c) Inquiries related to impairment treatment programs
188 designed to provide information to the licensee and others and
189 which do not indicate that the licensee presents a danger to the
190 public shall not constitute a complaint within the meaning of s.
191 456.073 and shall be exempt from the provisions of this
192 subsection.

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

201 (e) The probable cause panel, or the department when there
202 is no board, shall work directly with the consultant, and all
203 information concerning a practitioner obtained from the

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204 consultant by the panel, or the department when there is no
205 board, shall remain confidential and exempt from the provisions
206 of s. 119.07(1), subject to the provisions of subsections ~~(5)~~
207 ~~and~~ (6) and (7).

208 (f) A finding of probable cause shall not be made as long
209 as the panel, or the department when there is no board, is
210 satisfied, based upon information it receives from the
211 consultant and the department, that the licensee is progressing
212 satisfactorily in an approved impaired practitioner program and
213 no other complaint against the licensee exists.

214 (5)~~(4)~~ In any disciplinary action for a violation other
215 than impairment in which a licensee establishes the violation
216 for which the licensee is being prosecuted was due to or
217 connected with impairment and further establishes the licensee
218 is satisfactorily progressing through or has successfully
219 completed an approved treatment program pursuant to this
220 section, such information may be considered by the board, or the
221 department when there is no board, as a mitigating factor in
222 determining the appropriate penalty. This subsection does not
223 limit mitigating factors the board may consider.

224 (6)~~(5)~~(a) An approved treatment provider shall, upon
225 request, disclose to the consultant all information in its
226 possession regarding the issue of a licensee's impairment and
227 participation in the treatment program. All information obtained
228 by the consultant and department pursuant to this section is
229 confidential and exempt from the provisions of s. 119.07(1),
230 subject to the provisions of this subsection and subsection
231 (7)~~(6)~~. Failure to provide such information to the consultant is
232 grounds for withdrawal of approval of such program or provider.

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233 (b) If in the opinion of the consultant, after consultation
234 with the treatment provider, an impaired licensee has not
235 progressed satisfactorily in a treatment program, all
236 information regarding the issue of a licensee's impairment and
237 participation in a treatment program in the consultant's
238 possession shall be disclosed to the department. Such disclosure
239 shall constitute a complaint pursuant to the general provisions
240 of s. 456.073. Whenever the consultant concludes that impairment
241 affects a licensee's practice and constitutes an immediate,
242 serious danger to the public health, safety, or welfare, that
243 conclusion shall be communicated to the State Surgeon General.

244 (7)~~(6)~~ A consultant, licensee, or approved treatment
245 provider who makes a disclosure pursuant to this section is not
246 subject to civil liability for such disclosure or its
247 consequences. The provisions of s. 766.101 apply to any officer,
248 employee, or agent of the department or the board and to any
249 officer, employee, or agent of any entity with which the
250 department has contracted pursuant to this section.

251 (8)~~(7)~~(a) A consultant retained pursuant to subsection (2),
252 a consultant's officers and employees, and those acting at the
253 direction of the consultant for the limited purpose of an
254 emergency intervention on behalf of a licensee or student as
255 described in subsection (2) when the consultant is unable to
256 perform such intervention shall be considered agents of the
257 department for purposes of s. 768.28 while acting within the
258 scope of the consultant's duties under the contract with the
259 department if the contract complies with the requirements of
260 this section. The contract must require that:

261 1. The consultant indemnify the state for any liabilities

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262 incurred up to the limits set out in chapter 768.

263 2. The consultant establish a quality assurance program to
264 monitor services delivered under the contract.

265 3. The consultant's quality assurance program, treatment,
266 and monitoring records be evaluated quarterly.

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

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

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

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

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

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

282 (b) In accordance with s. 284.385, the Department of
283 Financial Services shall defend any claim, suit, action, or
284 proceeding against the consultant, the consultant's officers or
285 employees, or those acting at the direction of the consultant
286 for the limited purpose of an emergency intervention on behalf
287 of a licensee or student as described in subsection (2) when the
288 consultant is unable to perform such intervention which is
289 brought as a result of any act or omission by any of the
290 consultant's officers and employees and those acting under the

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291 direction of the consultant for the limited purpose of an
292 emergency intervention on behalf of a licensee or student as
293 described in subsection (2) when the consultant is unable to
294 perform such intervention when such act or omission arises out
295 of and in the scope of the consultant's duties under its
296 contract with the department.

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

309 (9) An impaired practitioner consultant is the official
310 custodian of records relating to the referral of an impaired
311 licensee or applicant to that consultant and any other
312 interaction between the licensee or applicant and the
313 consultant. The consultant may disclose to the impaired licensee
314 or applicant or his or her designee any information that is
315 disclosed to or obtained by the consultant or that is
316 confidential under paragraph (6) (a), but only to the extent that
317 it is necessary to do so to carry out the consultant's duties
318 under this section. The department, and any other entity that
319 enters into a contract with the consultant to receive the

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320 services of the consultant, has direct administrative control
321 over the consultant to the extent necessary to receive
322 disclosures from the consultant as allowed by federal law. If a
323 disciplinary proceeding is pending, an impaired licensee may
324 obtain such information from the department under s. 456.073.

325 Section 2. Paragraph (e) of subsection (1) of section
326 458.331, Florida Statutes, is amended to read:

327 458.331 Grounds for disciplinary action; action by the
328 board and department.—

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

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

338 Section 3. Paragraph (e) of subsection (1) of section
339 459.015, Florida Statutes, is amended to read:

340 459.015 Grounds for disciplinary action; action by the
341 board and department.—

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

344 (e) Failing to report to the department or the department's
345 impaired professional consultant any person who the licensee or
346 certificateholder knows is in violation of this chapter or of
347 the rules of the department or the board. A treatment provider,
348 approved pursuant to s. 456.076, shall provide the department or

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349 consultant with information in accordance with the requirements
350 of s. 456.076(4), (5), (6), (7), and (9) ~~s. 456.076(3), (4),~~
351 ~~(5), and (6)~~.

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

354 468.315 Treatment program for impaired radiological
355 personnel.—Radiological personnel who are subject to
356 certification under this part are governed by s. 456.076 as if
357 they were under the jurisdiction of the Division of Medical
358 Quality Assurance.

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