

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u> </u>	(Y/N)
ADOPTED AS AMENDED	<u> </u>	(Y/N)
ADOPTED W/O OBJECTION	<u> </u>	(Y/N)
FAILED TO ADOPT	<u> </u>	(Y/N)
WITHDRAWN	<u> </u>	(Y/N)
OTHER	<u> </u>	

1 Committee/Subcommittee hearing bill: Health Quality
2 Subcommittee

3 Representative Renuart offered the following:

4
5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

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

9 456.076 Treatment programs for impaired ~~practitioners~~
10 health professionals and students.—

11 (1) For professions that do not have impaired practitioner
12 programs provided for in their practice acts, the department
13 shall, by rule, designate approved impaired practitioner
14 programs under this section. The department may adopt rules
15 setting forth appropriate criteria for approval of treatment
16 providers. The rules may specify the manner in which the
17 consultant, retained as set forth in subsection (2), works with
18 the department in intervention, requirements for evaluating and
19 treating a professional, requirements for continued care of
20 impaired professionals by approved treatment providers,

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21 continued monitoring by the consultant of the care provided by
22 approved treatment providers regarding the professionals under
23 their care, and requirements related to the consultant's
24 expulsion of professionals from the program.

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

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

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

32 a. A medical director who must be a practitioner or
33 recovered practitioner licensed under chapter 458 or chapter
34 459; ~~or~~

35 b. An executive director who must be a registered nurse or
36 a recovered registered nurse licensed under part I of chapter
37 464.

38 (b) An entity retained as an impaired practitioner
39 consultant under this section which employs a medical director
40 or an executive director is not required to be licensed as a
41 substance abuse provider or mental health treatment provider
42 under chapter 394, chapter 395, or chapter 397.

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

48 2. The consultant may contract with a school or program to
49 provide for services to a student ~~be provided, for appropriate~~
50 ~~compensation, if requested by the school, for students~~ enrolled

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51 for the purpose of preparing in schools for licensure as a
52 health care practitioner under this chapter or as a veterinarian
53 under chapter 474 if the student is allegedly allopathic
54 physicians or physician assistants under chapter 458,
55 osteopathic physicians or physician assistants under chapter
56 459, nurses under chapter 464, or pharmacists under chapter 465
57 who are alleged to be impaired as a result of the misuse or
58 abuse of alcohol or drugs, or both, or due to a mental or
59 physical condition. The department is not responsible under any
60 circumstances for paying for the costs of care provided by
61 approved treatment providers or a consultant, and the department
62 is not responsible for paying the costs of consultants' services
63 provided for students.

64 (d) A medical school accredited by the Liaison Committee on
65 Medical Education or of the Commission on Osteopathic College
66 Accreditation, or another ~~other~~ school providing for the
67 education of students enrolled in preparation for licensure as a
68 health care practitioner under this chapter or a veterinarian
69 under chapter 474 ~~allopathic physicians under chapter 458 or~~
70 ~~osteopathic physicians under chapter 459,~~ which is governed by
71 accreditation standards requiring notice and the provision of
72 due process procedures to students, is not liable in any civil
73 action for referring a student to the consultant retained by the
74 department or for disciplinary actions that adversely affect the
75 status of a student when the disciplinary actions are instituted
76 in reasonable reliance on the recommendations, reports, or
77 conclusions provided by such consultant, if the school, in
78 referring the student or taking disciplinary action, adheres to
79 the due process procedures adopted by the applicable
80 accreditation entities and if the school committed no

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81 intentional fraud in carrying out the provisions of this
82 section.

83 (3) (a) Whenever the department receives a written or oral
84 legally sufficient complaint alleging that a licensee under the
85 jurisdiction of the Division of Medical Quality Assurance within
86 the department is impaired as a result of the misuse or abuse of
87 alcohol or drugs, or both, or due to a mental or physical
88 condition which could affect the licensee's ability to practice
89 with skill and safety, and no complaint against the licensee
90 other than impairment exists, the reporting of such information
91 shall not constitute grounds for discipline pursuant to s.
92 456.072 or the corresponding grounds for discipline within the
93 applicable practice act if the probable cause panel of the
94 appropriate board, or the department when there is no board,
95 finds:

96 1. The licensee has acknowledged the impairment problem.

97 2. The licensee has voluntarily enrolled in an appropriate,
98 approved treatment program.

99 3. The licensee has voluntarily withdrawn from practice or
100 limited the scope of practice as required by the consultant, in
101 each case, until such time as the panel, or the department when
102 there is no board, is satisfied the licensee has successfully
103 completed an approved treatment program.

104 4. The licensee has executed releases for medical records,
105 authorizing the release of all records of evaluations,
106 diagnoses, and treatment of the licensee, including records of
107 treatment for emotional or mental conditions, to the consultant.
108 The consultant shall make no copies or reports of records that
109 do not regard the issue of the licensee's impairment and his or
110 her participation in a treatment program.

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111 (b) If, however, the department has not received a legally
112 sufficient complaint and the licensee agrees to withdraw from
113 practice until such time as the consultant determines the
114 licensee has satisfactorily completed an approved treatment
115 program or evaluation, the probable cause panel, or the
116 department when there is no board, shall not become involved in
117 the licensee's case.

118 (c) Inquiries related to impairment treatment programs
119 designed to provide information to the licensee and others and
120 which do not indicate that the licensee presents a danger to the
121 public shall not constitute a complaint within the meaning of s.
122 456.073 and shall be exempt from the provisions of this
123 subsection.

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

132 (e) The probable cause panel, or the department when there
133 is no board, shall work directly with the consultant, and all
134 information concerning a practitioner obtained from the
135 consultant by the panel, or the department when there is no
136 board, shall remain confidential and exempt from the provisions
137 of s. 119.07(1), subject to the provisions of subsections ~~(5)~~
138 ~~and~~ (6) and (7).

139 (f) A finding of probable cause shall not be made as long
140 as the panel, or the department when there is no board, is

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141 satisfied, based upon information it receives from the
142 consultant and the department, that the licensee is progressing
143 satisfactorily in an approved impaired practitioner program and
144 no other complaint against the licensee exists.

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

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

164 (b) If in the opinion of the consultant, after consultation
165 with the treatment provider, an impaired licensee has not
166 progressed satisfactorily in a treatment program, all
167 information regarding the issue of a licensee's impairment and
168 participation in a treatment program in the consultant's
169 possession shall be disclosed to the department. Such disclosure
170 shall constitute a complaint pursuant to the general provisions

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171 of s. 456.073. Whenever the consultant concludes that impairment
172 affects a licensee's practice and constitutes an immediate,
173 serious danger to the public health, safety, or welfare, that
174 conclusion shall be communicated to the State Surgeon General.

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

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

192 1. The consultant indemnify the state for any liabilities
193 incurred up to the limits set out in chapter 768.

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

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

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

200 5. The consultant operate under policies and procedures

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201 approved by the department.

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

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

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

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

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

228 (c) If the consultant retained pursuant to subsection (2)
229 is retained by any other state agency, and if the contract
230 between such state agency and the consultant complies with the

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231 requirements of this section, the consultant, the consultant's
232 officers and employees, and those acting under the direction of
233 the consultant for the limited purpose of an emergency
234 intervention on behalf of a licensee or student as described in
235 subsection (2) when the consultant is unable to perform such
236 intervention shall be considered agents of the state for the
237 purposes of this section while acting within the scope of and
238 pursuant to guidelines established in the contract between such
239 state agency and the consultant.

240 (8) An impaired practitioner consultant is the official
241 custodian of records relating to the referral of an impaired
242 licensee or applicant to that consultant and any other
243 interaction between the licensee or applicant and the
244 consultant. The consultant may disclose to the impaired licensee
245 or applicant or his or her designee any information that is
246 disclosed to or obtained by the consultant or that is
247 confidential under paragraph (6) (a), but only to the extent that
248 it is necessary to do so to carry out the consultant's duties
249 under this section. The department, and any other entity that
250 enters into a contract with the consultant to receive the
251 services of the consultant, has direct administrative control
252 over the consultant to the extent necessary to receive
253 disclosures from the consultant as allowed by federal law. If a
254 disciplinary proceeding is pending, an impaired licensee may
255 obtain such information from the department under s. 456.073.

256 Section 2. Paragraph (e) of subsection (1) of section
257 458.331, Florida Statutes, is amended to read:

258 458.331 Grounds for disciplinary action; action by the
259 board and department.—

260 (1) The following acts constitute grounds for denial of a

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261 license or disciplinary action, as specified in s. 456.072(2):

262 (e) Failing to report to the department any person who the
263 licensee knows is in violation of this chapter or of the rules
264 of the department or the board. A treatment provider approved
265 pursuant to s. 456.076 shall provide the department or
266 consultant with information in accordance with the requirements
267 of s. 456.076(3), (4), (5), ~~and~~ (6), and (8).

268 Section 3. Paragraph (e) of subsection (1) of section
269 459.015, Florida Statutes, is amended to read:

270 459.015 Grounds for disciplinary action; action by the
271 board and department.—

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

274 (e) Failing to report to the department or the department's
275 impaired professional consultant any person who the licensee or
276 certificateholder knows is in violation of this chapter or of
277 the rules of the department or the board. A treatment provider,
278 approved pursuant to s. 456.076, shall provide the department or
279 consultant with information in accordance with the requirements
280 of s. 456.076(3), (4), (5), ~~and~~ (6), and (8).

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

283 468.315 Treatment program for impaired radiological
284 personnel.—Radiological personnel who are subject to
285 certification under this part are governed by s. 456.076 as if
286 they were under the jurisdiction of the Division of Medical
287 Quality Assurance.

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

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T I T L E A M E N D M E N T

Remove everything before the enacting clause and insert:

A bill to be entitled
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; 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

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319 subject to a treatment program for impaired licensees; providing
320 an effective date.