BOARD OF RESPIRATORY CARE LAWS AND RULES

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RESPIRATORY THERAPY

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468.35 Short title.—This part shall be known and may be cited as the "Respiratory Care Act."
History.—ss. 1, 3, ch. 84-252; s. 4, ch. 91-429.

468.351 Purpose and intent; application.—

(1)(a) The purpose in enacting this part is to provide for the licensure of persons who deliver respiratory care services and who meet certain requirements. The delivery of respiratory care services by persons licensed pursuant to this part shall not be construed to permit the practice of medicine.

(b) It is the finding of the Legislature that the delivery of respiratory care services by unskilled and incompetent persons presents a danger to the public health and safety. Because it is difficult for the public to make informed choices related to respiratory care services and since the consequences of wrong choices can seriously endanger public health and safety, it is the intent of the Legislature to prohibit the delivery of respiratory care services by persons who are determined to possess less than minimum competencies or who otherwise present a danger to the public.

(2) It is the intent of the Legislature that the department regulate blood gas laboratories and that the supervision of health care practitioners performing blood gas analysis and specimen collection for the purpose of such analysis be specified in rules pursuant to the applicable practice act. Further, it is the intent of the Legislature that personnel licensed pursuant to this part shall be exempt from the licensure provisions of chapter 483.

History.—ss. 1, 3, ch. 84-252; s. 1, ch. 86-60; s. 1, ch. 87-553; s. 4, ch. 91-429; s. 129, ch. 97-264.

468.352 Definitions.—As used in this part, the term:

(1) "Board" means the Board of Respiratory Care.

(2) "Certified respiratory therapist" means any person licensed pursuant to this part who is certified by the National Board for Respiratory Care or its successor; who is employed to deliver respiratory care services, under the order of a physician licensed pursuant to chapter 458 or chapter 459, in accordance with protocols established by a hospital or other health care provider or the board; and who functions in situations of unsupervised patient contact requiring individual judgment.

(3) "Critical care" means care given to a patient in any setting involving a life-threatening emergency.

(4) "Department" means the Department of Health.

(5) "Direct supervision" means practicing under the direction of a licensed, registered, or certified respiratory therapist who is physically on the premises and readily available, as defined by the board.

(6) "Physician supervision" means supervision and control by a physician licensed under chapter 458 or chapter 459 who assumes the legal liability for the services rendered by the personnel employed in his or her office. Except in the case of an emergency, physician supervision requires the easy availability of the physician within the office or the physical presence of the physician for consultation and direction of the actions of the persons who deliver respiratory care services.

(7) "Practice of respiratory care" or "respiratory therapy" means the allied health specialty associated with the cardiopulmonary system that is practiced under the orders of a physician licensed under chapter 458 or

chapter 459 and in accordance with protocols, policies, and procedures established by a hospital or other health care provider or the board, including the assessment, diagnostic evaluation, treatment, management, control, rehabilitation, education, and care of patients in all care settings.

(8) "Registered respiratory therapist" means any person licensed under this part who is registered by the National Board for Respiratory Care or its successor, and who is employed to deliver respiratory care services under the order of a physician licensed under chapter 458 or chapter 459, in accordance with protocols established by a hospital or other health care provider or the board, and who functions in situations of unsupervised patient contact requiring individual judgment.

(9) "Respiratory care practitioner" means any person licensed under this part who is employed to deliver respiratory care services, under direct supervision, pursuant to the order of a physician licensed under chapter 458 or chapter 459.

(10) "Respiratory care services" includes:

(a) Evaluation and disease management.

(b) Diagnostic and therapeutic use of respiratory equipment, devices, or medical gas.

(c) Administration of drugs, as duly ordered or prescribed by a physician licensed under chapter 458 or chapter 459 and in accordance with protocols, policies, and procedures established by a hospital or other health care provider or the board.

(d) Initiation, management, and maintenance of equipment to assist and support ventilation and respiration.

(e) Diagnostic procedures, research, and therapeutic treatment and procedures, including measurement of ventilatory volumes, pressures, and flows; specimen collection and analysis of blood for gas transport and acid/base determinations; pulmonary-function testing; and other related physiological monitoring of cardiopulmonary systems.

(f) Cardiopulmonary rehabilitation.

(g) Cardiopulmonary resuscitation, advanced cardiac life support, neonatal resuscitation, and pediatric advanced life support, or equivalent functions.

(h) Insertion and maintenance of artificial airways and intravascular catheters.

(i) Education of patients, families, the public, or other health care providers, including disease process and management programs and smoking prevention and cessation programs.

(j) Initiation and management of hyperbaric oxygen.

History.—ss. 1, 3, ch. 84-252; s. 2, ch. 86-60; s. 2, ch. 87-553; s. 4, ch. 91-429; s. 135, ch. 94-218; s. 291, ch. 97-103; s. 130, ch. 97-264; s. 176, ch. 99-397; s. 109, ch. 2001-277; s. 1, ch. 2004-299.

468.353 Board of Respiratory Care; powers and duties.—

(1) The board is authorized to establish minimum standards for the delivery of respiratory care services and to adopt those rules necessary to administer this part.

(2) The board may administer oaths, summon witnesses, and take testimony in all matters relating to its duties under this part.

(3) The board may adopt rules to administer this part, including rules governing the investigation, inspection, and review of schools and colleges that offer courses in respiratory care in order to ascertain their compliance with standards established by the board or appropriate accrediting agencies.

History.—ss. 1, 2, 3, ch. 84-252; ss. 4, 5, ch. 91-429; s. 25, ch. 95-146; s. 177, ch. 99-397.

468.354 Board of Respiratory Care; organization; function.—

(1) There is created within the department, the Board of Respiratory Care, composed of seven members appointed by the Governor and confirmed by the Senate.

(2) The board shall include:

(a) A registered respiratory therapist.

(b) A certified respiratory therapist.

(c) A respiratory care professional from each of the following areas:

1. Respiratory care education.
2. Respiratory care management and supervision.
3. Homecare/subacute.

(d) Two consumer members, who are residents of this state and have never been licensed as health care practitioners.

Each respiratory care professional on the board must have been actively engaged in the delivery of respiratory care services in this state for at least 4 consecutive years prior to appointment.

(3)(a) Except as provided in paragraph (b), the term of office for each board member shall be 4 years. No member shall serve for more than two consecutive terms. Any time there is a vacancy to be filled, all professional organizations dealing with respiratory therapy incorporated within the state as not for profit which register their interest shall recommend at least twice as many persons to fill the vacancy as the number of vacancies to be filled, and the Governor may appoint from the submitted list, in his or her discretion, any of those persons so recommended. The Governor shall, insofar as possible, appoint persons from different geographical areas.

(b) To achieve staggering of terms, within 120 days after July 1, 1999, the Governor shall appoint the board members as follows:

1. Two members shall be appointed for terms of 2 years.
2. Two members shall be appointed for terms of 3 years.
3. Three members shall be appointed for terms of 4 years.

(c) All provisions of chapter 456, relating to boards apply to this part.

(4)(a) The board shall annually elect from among its members a chair and vice chair.

(b) The board shall meet at least twice a year and shall hold additional meetings as are deemed necessary. Four members of the council constitute a quorum.

(c) Unless otherwise provided by law, a board member shall be compensated $50 for each day he or she attends an official board meeting and for each day he or she participates in any other board business. A board member shall also be entitled to reimbursement for expenses pursuant to s. 112.061. Travel out of the state shall require the prior approval of the State Surgeon General.

(5) The board may recommend to the department a code of ethics for those persons licensed pursuant to this part.

History.—ss. 1, 2, 3, ch. 84-252; s. 3, ch. 86-60; s. 3, ch. 87-553; ss. 4, 5, ch. 91-429; s. 25, ch. 95-146; s. 292, ch. 97-103; s. 131, ch. 97-264; s. 57, ch. 99-5; s. 178, ch. 99-397; s. 11, ch. 2000-159; s. 142, ch. 2000-160; s. 80, ch. 2001-62; s. 93, ch. 2008-6.

468.355 Licensure requirements.—To be eligible for licensure by the board, an applicant must be an active “certified respiratory therapist” or an active “registered respiratory therapist” as designated by the National Board for Respiratory Care, or its successor.

History.—ss. 1, 3, ch. 84-252; s. 4, ch. 86-60; s. 4, ch. 91-429; s. 132, ch. 97-264; s. 179, ch. 99-397; s. 110, ch. 2001-277; s. 2, ch. 2004-299.

468.358 Licensure by endorsement.—

(1) Licensure as a certified respiratory therapist shall be granted by endorsement to an individual who holds the “Certified Respiratory Therapist” credential issued by the National Board for Respiratory Care or an equivalent credential acceptable to the board. Licensure by this mechanism requires verification by oath and submission of evidence satisfactory to the board that such credential is held.

(2) Licensure as a registered respiratory therapist shall be granted by endorsement to an individual who holds the “Registered Respiratory Therapist” credential issued by the National Board for Respiratory Care or an equivalent credential acceptable to the board. Licensure by this mechanism requires verification by oath and submission of evidence satisfactory to the board that such credential is held.

(3) An individual who has been granted licensure, certification, registration, or other authority, by whatever name known, to deliver respiratory care services in another state or country may petition the board for consideration for licensure in this state and, upon verification by oath and submission of evidence of licensure, certification, registration, or other authority acceptable to the board, may be granted licensure by endorsement.

(4) Licensure shall not be granted by endorsement as provided in this section without the submission of a proper application and the payment of the requisite fees therefor.

History.—ss. 1, 3, ch. 84-252; s. 6, ch. 86-60; s. 4, ch. 91-429; s. 135, ch. 97-264; s. 112, ch. 2001-277.

468.359 Assumption of title and use of abbreviations.—

(1) Only persons who are licensed pursuant to this part as respiratory care practitioners have the right to use the title “Respiratory Care Practitioner” and the abbreviation “RCP.”

(2) Only persons who are licensed pursuant to this part as registered respiratory therapists have the right to use the title “Registered Respiratory Therapist” and the abbreviation “RRT” when delivering services pursuant to this part.

(3) Only persons who are licensed pursuant to this part as certified respiratory therapists have the right to use the title “Certified Respiratory Therapist” and the abbreviation “CRT” when delivering services pursuant to this part.

(4) No person in this state shall deliver respiratory care services; advertise as, or assume the title of, respiratory care practitioner, certified respiratory therapist, or registered respiratory therapist; or use the abbreviation “RCP,” “CRT,” or “RRT” that would lead the public to believe that such person is licensed pursuant to this part unless such person is so licensed; or take any other action that would lead the public to believe that such person is licensed pursuant to this part unless such person is so licensed.

History.—ss. 1, 3, ch. 84-252; s. 7, ch. 86-60; s. 4, ch. 91-429; s. 136, ch. 97-264; s. 113, ch. 2001-277.

468.36 Current address.—Every licensee shall file with the department the licensee’s current residence address as defined by board rule.

History.—ss. 1, 3, ch. 84-252; s. 4, ch. 91-429; s. 293, ch. 97-103; s. 137, ch. 97-264.

468.361 Renewal of licensure; continuing education.—

(1) The department shall provide by rule a method for the biennial renewal of licensure at fees set by the board.

(2) The board shall prescribe by rule continuing education requirements, not to exceed 24 hours biennially, as a condition for renewal of licensure. The program criteria with respect thereto shall be approved by the board.

(3) The board shall approve continuing education courses which may be accepted in meeting the requirements of this part. Providers of such courses shall also be approved by the board.

(4) The board may make exceptions from the requirements of this section in emergency or hardship cases.

History.—ss. 1, 3, ch. 84-252; s. 4, ch. 91-429; s. 197, ch. 94-119; s. 138, ch. 97-264.

468.363 Reactivation of licensure; continuing education.—The board shall prescribe by rule continuing education requirements as a condition of reactivating a license. The continuing education requirements for reactivating a license may not exceed 12 classroom hours for each year the license was inactive.

History.—ss. 1, 3, ch. 84-252; s. 4, ch. 91-429; s. 198, ch. 94-119; s. 139, ch. 97-264.

468.364 Fees; establishment; disposition.—

(1) The board shall establish by rule fees for the following purposes:

(a) Application, a fee not to exceed $50.

(b) Initial licensure, a fee not to exceed $200.

(c) Renewal of licensure, a fee not to exceed $200 biennially.

(d) Renewal of inactive licensure, a fee not to exceed $50.

(e) Reactivation, a fee not to exceed $50.

(2) The fees established pursuant to subsection (1) shall be based upon the actual costs incurred by the department in carrying out its responsibilities under this part.

(3) All moneys collected by the department under this part shall be deposited as required by s. 456.025.

History.—ss. 1, 3, ch. 84-252; s. 5, ch. 87-553; s. 18, ch. 88-205; s. 4, ch. 91-429; s. 140, ch. 97-264; s. 84, ch. 98-166; s. 181, ch. 99-397; s. 143, ch. 2000-160.

468.365 Disciplinary grounds and actions.—

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

(a) Procuring, attempting to procure, or renewing a license as provided by this part by bribery, by fraudulent misrepresentation, or through an error of the department or the board.

(b) Having licensure, certification, registration, or other authority, by whatever name known, to deliver respiratory care services revoked, suspended, or otherwise acted against, including the denial of licensure, certification, registration, or other authority to deliver respiratory care services by the licensing authority of another state, territory, or country.

(c) Being convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction which directly relates to respiratory care services or to the ability to deliver such services.

(d) Willfully making or filing a false report or record, willfully failing to file a report or record required by state or federal law, or willfully impeding or obstructing such filing or inducing another person to do so. Such reports or records include only those reports or records which require the signature of a respiratory care practitioner or respiratory therapist licensed pursuant to this part.

(e) Circulating false, misleading, or deceptive advertising.

(f) Unprofessional conduct, which includes, but is not limited to, any departure from, or failure to conform to, acceptable standards related to the delivery of respiratory care services, as set forth by the board in rules adopted pursuant to this part.

(g) Engaging or attempting to engage in the possession, sale, or distribution of controlled substances, as set forth by law, for any purpose other than a legitimate purpose.

(h) Willfully failing to report any violation of this part.

(i) Violating a lawful order of the board or department previously entered in a disciplinary hearing.

(j) Engaging in the delivery of respiratory care services with a revoked, suspended, or inactive license.

(k) Permitting, aiding, assisting, procuring, or advising any person who is not licensed pursuant to this part, contrary to this part or to any rule of the department or the board.

(l) Failing to perform any statutory or legal obligation placed upon a respiratory care practitioner or respiratory therapist licensed pursuant to this part.

(m) Accepting and performing professional responsibilities which the licensee knows, or has reason to know, she or he is not competent to perform.

(n) Delegating professional responsibilities to a person when the licensee delegating such responsibilities knows, or has reason to know, that such person is not qualified by training, experience, or licensure to perform them.

(o) Gross or repeated malpractice or the failure to deliver respiratory care services with that level of care, skill, and treatment which is recognized by a reasonably prudent respiratory care practitioner or respiratory therapist with similar professional training as being acceptable under similar conditions and circumstances.

(p) Paying or receiving any commission, bonus, kickback, or rebate to or from, or engaging in any split-fee arrangement in any form whatsoever with, a person, organization, or agency, either directly or indirectly, for goods or services rendered to patients referred by or to providers of health care goods and services, including, but not limited to, hospitals, nursing homes, clinical laboratories, ambulatory surgical centers, or pharmacies. The provisions of this paragraph shall not be construed to prevent the licensee from receiving a fee for professional consultation services.

(q) Exercising influence within a respiratory care relationship for the purpose of engaging a patient in sexual activity. A patient is presumed to be incapable of giving free, full, and informed consent to sexual activity with the patient's respiratory care practitioner or respiratory therapist.

(r) Making deceptive, untrue, or fraudulent representations in the delivery of respiratory care services or employing a trick or scheme in the delivery of respiratory care services if such a scheme or trick fails to conform to the generally prevailing standards of other licensees within the community.

(s) Soliciting patients, either personally or through an agent, through the use of fraud, deception, or otherwise misleading statements or through the exercise of intimidation or undue influence.

(t) Failing to keep written respiratory care records justifying the reason for the action taken by the licensee.

(u) Exercising influence on the patient in such a manner as to exploit the patient for the financial gain of the licensee or a third party, which includes, but is not limited to, the promoting or selling of services, goods, appliances, or drugs.

(v) Performing professional services which have not been duly ordered by a physician licensed pursuant to chapter 458 or chapter 459 and which are not in accordance with protocols established by the hospital, other health care provider, or the board, except as provided in ss. 743.064, 766.103, and 768.13.

(w) Being unable to deliver respiratory care services with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material as a result of any mental or physical condition. In enforcing this paragraph, the department shall, upon probable cause, have authority to compel a respiratory care practitioner or respiratory therapist to submit to a mental or physical examination by physicians designated by the department. The cost of examination shall be borne by the licensee being examined. The failure of a respiratory care practitioner or respiratory therapist to submit to such an examination when so directed constitutes an admission of the allegations against her or him, upon which a default and a final order may be entered without the taking of testimony or presentation of evidence, unless the failure was due to circumstances beyond her or his control. A respiratory care practitioner or respiratory therapist affected under this paragraph shall at reasonable intervals be afforded an opportunity to demonstrate that she or he can resume the competent delivery of respiratory care services with reasonable skill and safety to her or his patients. In any proceeding under this paragraph, neither the record of proceedings nor the orders entered by the board shall be used against a respiratory care practitioner or respiratory therapist in any other proceeding.

(x) Violating any provision of this chapter or chapter 456, or any rules adopted pursuant thereto.

(2) The board may enter an order denying licensure or imposing any of the penalties in s. 456.072(2) against any applicant for licensure or licensee who is found guilty of violating any provision of subsection (1) of this section or who is found guilty of violating any provision of s. 456.072(1).

(3) The board shall not reinstate licensure, or cause a license to be issued to a person it has deemed unqualified, until such time as it is satisfied that such person has complied with all the terms and conditions set

forth in the final order and that the respiratory care practitioner or respiratory therapist is capable of safely engaging in the delivery of respiratory care services.

(4) The board may, by rule, establish guidelines for the disposition of disciplinary cases involving specific types of violations. Such guidelines may include minimum and maximum fines, periods of supervision on probation, or conditions upon probation or reissuance of a license.

History.—ss. 1, 3, ch. 84-252; s. 8, ch. 86-60; s. 4, ch. 91-429; s. 38, ch. 95-144; s. 295, ch. 97-103; s. 141, ch. 97-264; s. 85, ch. 98-166; s. 182, ch. 99-397; s. 144, ch. 2000-160; s. 40, ch. 2001-277; s. 16, ch. 2005-240.

468.366 Penalties for violations.—

(1) It is a violation of law for any person, including any firm, association, or corporation, to:

(a) Sell or fraudulently obtain, attempt to obtain, or furnish to any person a diploma, license, or record, or aid or abet in the sale, procurement, or attempted procurement thereof.

(b) Deliver respiratory care services, as defined by this part or by rule of the board, under cover of any diploma, license, or record that was illegally or fraudulently obtained or signed or issued unlawfully or under fraudulent representation.

(c) Deliver respiratory care services, as defined by this part or by rule of the board, unless such person is duly licensed to do so under the provisions of this part or unless such person is exempted pursuant to s. 468.368.

(d) Use, in connection with his or her name, any designation tending to imply that he or she is a respiratory care practitioner or a respiratory therapist, duly licensed under the provisions of this part, unless he or she is so licensed.

(e) Advertise an educational program as meeting the requirements of this part, or conduct an educational program for the preparation of respiratory care practitioners or respiratory therapists, unless such program has been approved by the board.

(f) Knowingly employ unlicensed persons in the delivery of respiratory care services, unless exempted by this part.

(g) Knowingly conceal information relative to any violation of this part.

(2) Any violation of this section is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—ss. 1, 3, ch. 84-252; s. 9, ch. 86-60; s. 4, ch. 91-429; s. 296, ch. 97-103; s. 142, ch. 97-264; s. 58, ch. 2000-318.

468.367 Injunctive relief.—The department may, in its discretion, in lieu of or in addition to any remedy set forth in this part, file a proceeding in the name of the state seeking issuance of a restraining order, an injunction, or a writ of mandamus against any person who is or has been violating any of the provisions of this part or the lawful rules, orders, or subpoenas of the department or board.

History.—ss. 1, 3, ch. 84-252; s. 4, ch. 91-429.

468.368 Exemptions.—This part may not be construed to prevent or restrict the practice, service, or activities of:

(1) Any person licensed in this state by any other law from engaging in the profession or occupation for which he or she is licensed.

(2) Any legally qualified person in the state or another state or territory who is employed by the United States Government or any agency thereof while such person is discharging his or her official duties.

(3) A friend or family member who is providing respiratory care services to an ill person and who does not represent himself or herself to be a respiratory care practitioner or respiratory therapist.

(4) An individual providing respiratory care services in an emergency who does not represent himself or herself as a respiratory care practitioner or respiratory therapist.

(5) Any individual employed to deliver, assemble, set up, or test equipment for use in a home, upon the order of a physician licensed pursuant to chapter 458 or chapter 459. This subsection does not, however, authorize the practice of respiratory care without a license.

(6) Any individual certified or registered as a pulmonary function technologist who is credentialed by the National Board for Respiratory Care for performing cardiopulmonary diagnostic studies.

(7) Any student who is enrolled in an accredited respiratory care program approved by the board, while performing respiratory care as an integral part of a required course.

(8) The delivery of incidental respiratory care to noninstitutionalized persons by surrogate family members who do not represent themselves as registered or certified respiratory care therapists.

(9) Any individual credentialed by the Underseas Hyperbaric Society in hyperbaric medicine or its equivalent as determined by the board, while performing related duties. This subsection does not, however, authorize the practice of respiratory care without a license.

History.—ss. 1, 3, ch. 84-252; s. 10, ch. 86-60; s. 6, ch. 87-553; s. 4, ch. 91-429; s. 297, ch. 97-103; s. 143, ch. 97-264; s. 3, ch. 2004-299.

468.369 Payment or reimbursement by hospitals of costs of compliance with part.—A hospital shall not be required to pay for or reimburse any person for the costs of compliance with any of the requirements of this part, including costs of continuing education.

History.—ss. 1, 3, ch. 84-252; s. 4, ch. 91-429.

Please note: This is a transcription of the Florida Administrative Code; however, it is not the official Code. All attempts have been made to verify the complete accuracy of the text. If you are concerned about the accuracy, please consult the Florida Administrative Code which can be found in any law library.

CHAPTER 64B32-1 BOARD OF RESPIRATORY CARE - ORGANIZATION, PROCEDURES, AND GENERAL PROVISIONS

64B32-1.001 Organization. (Repealed)
64B32-1.002 Delegation of Powers and Duties to Respiratory Care Council. (Repealed)
64B32-1.003 Final Orders. (Repealed)
64B32-1.004 Designation of Official Reporter. (Repealed)
64B32-1.005 Exemptions and Student Registration. (Repealed)
64B32-1.006 Address of Licensee.
64B32-1.007 Certification of Public Records. (Repealed)
64B32-1.008 Attendance at Board Meetings.
64B32-1.009 Other Business Involving the Board.
64B32-1.010 Spouses of Members of Armed Forces Exemption.
64B32-1.011 Public Comment.

64B32-1.006 Address of Licensee.

Each person holding a license issued pursuant to Part V of Chapter 468, Florida Statutes, must maintain on file with the Board the current place of practice and the residence address at which any notice required by law may be served by the Department, the Board, or its agents. Within 60 days of changing either address, whether or not within this state, the licensee shall notify the Department by serving written notification of the new address to the Board.

Specific Authority 468.36 FS. Law Implemented 456.035, 468.36 FS. History–New 5-10-92, Formerly 21M-33.009, 61F6- 33.009, 59R-70.009, Amended 3-16-98, Formerly 64B8-70.009, Amended 7-1-02.

64B32-1.007 Certification of Public Records. (Repealed)

Rulemaking Authority 456.025(8), 468.353 FS. Law Implemented 456.025(8) FS. History–New 5-10-92, Formerly 21M-33.010, 61F6-33.010, 59R-70.010, 64B8-70.010, Repealed 1-7-16.

64B32-1.008 Attendance at Board Meetings.

(1) Board members shall attend all regularly scheduled Board meetings unless prevented from doing so by reason of court order, subpoena, business with a court with the sole prerogative of setting the date of such business, death of a family member, illness of the Board member, or illness of the member's family, or other similar extenuating circumstances.

(2) No Board member may be absent from three consecutive regularly scheduled Board meetings unless the absence is excused for one of the reasons stated in subsection (1) of this rule. Other absences constitute unexcused absences for the purpose of declaring a vacancy on the Board. An otherwise excused absence is not excused if the Board member fails to notify the Board office of the impending absence prior to the regularly scheduled Board meeting at which the absence will occur unless the failure to notify is the result of emergency circumstances that would reasonably tend to preclude timely notification.

Specific Authority 456.011(3) FS. Law Implemented 456.011(3) FS. History–New 1-6-02.

64B32-1.009 Other Business Involving the Board.

For purposes of Board member compensation pursuant to Section 456.011(4), Florida Statutes, "other business involving the Board" does not include telephone conference calls that last less than four hours, but otherwise is defined to include:

(1) Board meetings;

(2) Meetings of committees of the Board;

(3) Meetings of a Board member with staff or with a member or members of other regulatory boards at the request of the Board or the Department;

(4) Probable cause panel meetings;

(5) Attendance at legislative workshops or committee meetings at the request of the Board or Department;

(6) Attendance at meetings of National and State Associations as an authorized representative of the Board;

(7) Attendance at continuing education programs for the purpose of auditing a Board-approved provider when such attendance has been approved by the Board;

(8) Attendance at any function relating to Board business and authorized by the Board or Department.

Specific Authority 456.011(4) FS. Law Implemented 456.011(4) FS. History–New 1-6-02.

64B32-1.010 Spouses of Members of Armed Forces Exemption.

A licensee who is the spouse of a member of the Armed Forces of the United States shall be exempt from all licensure renewal provisions for any period of time when the licensee is absent from the State of Florida due to the spouse's duties with the Armed Forces. The licensee must document the absence and the spouse's military status to the Board. The licensee is required to notify the Board of a change in status within six months of the licensee's return to the State of Florida or the spouse's discharge from active duty. If the change of status occurs within the second half of the biennium, the licensee is exempt from the continuing education requirement for that biennium.

Specific Authority 456.024(2) FS. Law implemented 456.024(2) FS. History–New 1-6-02, Amended 5-23-04.

64B32-1.011 Public Comment.

The Board of Respiratory Care invites and encourages all members of the public to provide comment on matters or propositions before the Board or a committee of the Board. The opportunity to provide comment shall be subject to the following:

(1) Members of the public will be given an opportunity to provide comment on subject matters before the Board after an agenda item is introduced at a properly noticed board meeting.

(2) Members of the public shall be limited to 10 minutes to provide comment. This time shall not include time spent by the presenter responding to questions posed by Board members, staff or board counsel. The chair of the Board may extend the time to provide comment if time permits.

(3) A member of the public shall notify board staff in writing of his or her interest to be heard on a proposition or matter before the Board. The notification shall identify the person or entity, indicate support, opposition, or neutrality, and identify who will speak on behalf of a group or faction of persons consisting of three or more persons. Any person or entity appearing before the Board may use a pseudonym if he or she does not wish to be identified.

Rulemaking Authority 286.0114 FS. Law Implemented 286.0114 FS. History–New 4-9-14.

CHAPTER 64B32-2 LICENSURE REQUIREMENTS

64B32-2.001 Licensure by Endorsement.
64B32-2.002 Issuance of Temporary Certificates. (Repealed)
64B32-2.003 Fees for Application and Initial Licensure.

64B32-2.001 License by Endorsement.

(1) Applicants for licensure as a Registered Respiratory Therapist or Certified Respiratory Therapist in the state of Florida shall apply on Form DH-MQA 1145, Application for Registered Respiratory Therapist or Certified Respiratory Therapist, Revised 07/2020, incorporated herein as this Board's application form and available on the web at http://www.flrules.org/Gateway/reference.asp?No=Ref-12222, or at http://www.doh.state.fl.us/mqa/respiratory/index.html.

(2) Each applicant applying for licensure shall pay an application fee in the form of a check or money order payable to the Department of Health. The initial application must be accompanied by the application fee. The application fee is nonrefundable and may not be used for more than one year from the original submission of the application. After one year from the date of the original submission of an application and application fee, a new application and new fee shall be required from any applicant who desires to be considered for licensure.

(3) Every applicant for licensure as a registered respiratory therapist or certified respiratory therapist shall demonstrate the following:

(a)1. That the applicant holds the "Registered Respiratory Therapist" or "Certified Respiratory Therapist" credential issued by the National Board for Respiratory Care, or an equivalent credential acceptable to the Board, or

2. That the applicant holds licensure, or the equivalent, to deliver respiratory care in another state and such licensure

was granted pursuant to requirements determined to be equivalent to, or more stringent than, the requirements in Florida.

(b) That the applicant is not otherwise disqualified by reason of a violation of chapter 456 or 468, part V, F.S., or the rules promulgated thereunder.

(c) An applicant who has not practiced respiratory care for 2 years or more must complete a Board-approved comprehensive review course within two (2) years immediately prior to the filing of the licensure application or be recredentialed in the level in which he or she is applying to practice in order to ensure that he or she has the sufficient skills to re-enter the profession. Board-approved comprehensive course means any course or courses which includes, at a minimum, fourteen (14) hours in the topics and numbers of hours as follows:

Patient assessment	3 hours
Hemodynamics	2 hours
Pulmonary Function	1 hour
Arterial blood gases	1 hour
Respiratory equipment	2 hours
Airway Care	1 hour
Mechanical ventilation	2 hours
Emergency care/special procedures	1 hour
General respiratory care (including medication)	1 hour

Rulemaking Authority 456.013, 468.353(1), 468.364 FS. Law Implemented 456.013, 456.072(1), (2), 456.0635, 468.353, 468.358, 468.364, 468.365(1), (2) FS. History–New 4-29-85, Formerly 21M-34.02, 21M-34.002, 61F6-34.002, 59R-71.002, 64B8-71.002, Amended 7-22-02, 8-28-05, 6-12-07, 5-15-08, 5-25-09, 5-10-10, 10-6-10, 3-28-12, 1-16-13, 12-4-14, 4-7-16, 10-17-16, 4-3-18, 1-23-19, 10-10-19, 10-29-20.

CHAPTER 64B32-3 ADMISSION OF CERTIFIED RESPIRATORY THERAPISTS (Repealed)

64B32-2.003 Fees for Application and Initial Licensure.

(1) The application fee for a person desiring to be granted licensure shall be $50.00.

(2) The initial licensure fee for a person who becomes licensed shall be $50.00.

(3) In addition to all other fees collected, there shall be a $5.00 fee collected for each initial licensure and each renewal for the purpose of combating unlicensed activity.

Rulemaking Authority 456.013(2), 468.364 FS. Law Implemented 456.013(2), 456.065, 468.364 FS. History–New 4-29-85, Formerly 21M-34.04, 21M-34.004, Amended 2-15-94, Formerly 61F6-34.004, Amended 9-29-94, Formerly 59R-71.004, 64B8-71.004, Amended 4-27-00, 8-28-05, 10-10-19.

CHAPTER 64B32-4 BOARD OF RESPIRATORY CARE - LICENSE RENEWAL AND REACTIVATION; INACTIVE LICENSES

64B32- 4.001 Fees.
64B32- 4.002 Reactivation of Retired Status License

64B32-4.001 Fees.

(1) The biennial renewal fee for licensure shall be $120.00, with the exception that for the 2019 renewal period the fee shall be $50.00.

(2) The reactivation fee for activating an inactive license shall be $50.00.

(3) The renewal fee for renewing the inactive status of a license shall be $50.00.

(4) If a licensee wishes to request the Board or the Department to provide a duplicate license for replacement of a lost or destroyed license, the Board will issue the duplicate if the request is in writing and accompanied by a payment of $25.00.

(5) In addition to all other fees collected from each licensee, there shall be a $5.00 fee collected upon license renewal for the purpose of combating unlicensed activity.

(6) The delinquency fee shall be $120.00.

(7) The change in status fee shall be $35.00.

(8) The retired status fee shall be $50.00.

Rulemaking Authority 456.025(1), 456.036(4)(b), (7), (8), 456.065, 468.353(1), 468.364 FS. Law Implemented 456.025(1), (4), (6),

456.036, 456.065, 468.364 FS. History–New 4-29-85, Formerly 21M-36.04, Amended 5-10-92, Formerly 21M-36.004, Amended 9-21-93, 1-3-94, Formerly 61F6-36.004, Amended 7-18-95, Formerly 59R-73.004, 64B8-73.004, Amended 4-27-00, 8-13-02, 5-15-05, 2-23-06, 1-1-15, 1-1-19.

64B32-4.002 Reactivation of Retired Status License.

(1) A retired status licensee for less than five years may change to active status provided:

(a) A licensee pay any renewal fees imposed on an active status license for all biennial licensure periods during which the licensee was on retired status.

(b) A licensee must provide evidence of licensure as either a Certified Respiratory Therapist (CRT) or a Registered Respiratory Therapist (RRT), pursuant to Section 468.355, F.S.

(c) A licensee must meet the continuing educational requirements for Rule 64B32-6.001, F.A.C., for each biennium the licensee was in retired status.

(d) A licensee must take a medical errors course pursuant to Rule 64B32-6.007, F.A.C.

(2) A retired status licensee for five years or more may change to active status provided:

(a) A licensee pay any renewal fees imposed on an active status license for all biennial licensure periods during which the licensee was on retired status.

(b) A licensee must provide evidence of licensure as either a Certified Respiratory Therapist (CRT) or a Registered Respiratory Therapist (RRT), pursuant to Section 468.358, F.S.

(c) A licensee must meet the continuing educational requirements for Rule 64B32-6.001, F.A.C., for each biennium the licensee was in retired status.

(d) A licensee is required to provide evidence of attendance of a Board-approved comprehensive review course, within six months prior to reactivation of license, in order to ensure that he or she has the sufficient skills to re-enter the profession.

(e) A licensee must take a medical errors course pursuant to Rule 64B32-6.007, F.A.C.

(3) Board-approved comprehensive review course means any course or courses which includes, at a minimum, fourteen (14) hours in the topics and number of hours as follows:

Patient assessment	3 hours
Hemodynamics	2 hours
Pulmonary function	1 hour
Arterial blood gases	1 hour
Respiratory equipment	2 hours
Airway care	1 hour
Mechanical ventilation	2 hours
Emergency care/special procedures	1 hour
General respiratory care (including medication)	1 hour

Specific Authority 456.036(7), (9), 468.353(1) FS. Law Implemented 456.036(7), (9) FS. History–New 4-19-07, Amended 7-27-08.

CHAPTER 64B32-5 BOARD OF RESPIRATORY CARE - DISCIPLINE AND LICENSURE PROVISIONS

64B32-5.001 Disciplinary Guidelines.
64B32-5.002 Payment of Fine.
64B32-5.003 Unprofessional Conduct; Acceptable Standards Definition.
64B32-5.004 Code of Ethics.(Repealed)
64B32-5.005 HIV/AIDS: Knowledge of Antibody Status, Action to Be Taken. (Repealed)
64B32-5.006 Mediation.
64B32-5.007 Citations.
64B32-5.008 Notice of Noncompliance.

64B32-5.001 Disciplinary Guidelines.

(1)The Board may impose disciplinary penalties upon a determination that an applicant or licensee:

(a) Has violated any provision of Chapter 468, Part V, F.S., or any rules promulgated thereunder;

(b) Has violated any provision of Chapter 456, F.S., or any rules promulgated thereunder;

Section 456.0635, F.S., outlines specific offenses for which the Board is prohibited from issuing or renewing a license,

certificate, or registration to any applicant if the candidate has been convicted of, pled nolo contendere, or guilty to, regardless of adjudication, a felony under Chapter 409, Chapter 817, Chapter 893, 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 pleas ended more than 15 years prior to the date of the application.

(c) Has committed an act defined as “unprofessional conduct” in this rule chapter.

(2) The range of disciplinary penalties which the Board may impose includes any and all set forth in Section 456.072, F.S., unless the conduct to be disciplined falls within the purview of Section 456.0635, F.S., in which case the Board shall impose the penalty specified in Section 456.0635, F.S. In determining the appropriate disciplinary action to be imposed in each case, the Board shall take into consideration the following factors:

(a) The danger to the public;

(b) The length of time since the date of the violation;

(c) The number of previous disciplinary cases filed against the applicant or licensee;

(d) The length of time the applicant or licensee has practiced;

(e) The actual damage, physical or otherwise, to the patient;

(f) The deterrent effect of the penalty imposed;

(g) The effect of the penalty upon the applicant’s or licensee’s livelihood;

(h) Any efforts for rehabilitation;

(i) Any other mitigating or aggravating circumstances.

(3) Violations and Range of Penalties. In imposing discipline upon applicants and licensees, in proceedings pursuant to Sections 120.57(1) and (2), F.S., the Board shall act in accordance with the following disciplinary guidelines and shall impose a penalty within the range corresponding to the severity and repetition of the violations as set forth below. The mitigating or aggravating circumstances used to justify any deviation from the specified guidelines must be enunciated in the final order. The verbal identification of offenses are descriptive only; the full language of each statutory provision cited must be consulted in order to determine the conduct included. For applicants, any and all offenses listed herein are sufficient for refusal to certify an application for licensure. In addition to the penalty imposed, pursuant to Section 456.072(4), F.S., the Board shall recover the costs of the investigation and prosecution of the case. Additionally, if the Board makes a finding of pecuniary benefit or self-gain related to the violation, then the Board shall require refund of fees billed and collected from the patient or a third party on behalf of the patient.

VIOLATION		RECOMMENDED RANGE OF PENALTY
(a) Attempting to obtain a license by bribery, fraud or through an error of the Department or the Board. (Sections 468.365(1)(a), 456.072(1)(h), F.S.)	First Offense	From one year probation with conditions to revocation and payment of a fine of $250 to $1,000.
	Second Offense	From revocation with ability to reapply and a fine from $2,000 to $6,000.
	Third Offense	From revocation with no ability to reapply and a fine from $6,000 to $10,000.

However, if the violation is not through an error but is for fraud or making a false or fraudulent representation, the fine is increased to $10,000 per count or offense.

(b) Actions taken against license by another jurisdiction. (Sections 468.365(1)(b), 456.072(l)(f), F.S.)	First Offense	From imposition of discipline comparable to the discipline which would have been imposed if the substantive violation occurred in Florida to suspension of the license until the license is unencumbered in the jurisdiction in which disciplinary action was originally taken, and an administrative fine ranging from $300 to $1,000. Impaired practitioners working in this state may be ordered into the PRN.
	Second Offense	Same as for a first offense except a fine shall range from $1,000 to $2,000.
	Third Offense	Same minimum as for a first offense with a maximum penalty of revocation and a fine from $2,000 to $10,000.
(c) Guilt of crime directly relating to practice or ability to practice. (Sections 468.365(1)(c), 456.072(1)(c), F.S.)	First Offense	From a minimum of six months probation with conditions to revocation of the license and an administrative fine ranging from $300 to $1,000. Any Board ordered probation shall be for no less time than

		Court ordered sanctions.
	Second Offense	From one year suspension and $5,000 fine to revocation and fine of $10,000.
(d) Willfully failing to file a report as required. (Sections 468.365(1)(d), 456.072(1)(l), F.S.)	First Offense	From six months to one year probation with conditions, and an administrative fine from $300 to $1,000.
	Second Offense	From one year probation with conditions to six months suspension and a fine from $500 to $3,000.
	Third Offense	From one year suspension to revocation and a fine from $3,000 to $10,000.

However, if the offense is for fraud or for willfully making a false or fraudulent report, the fine is increased to $10,000 per count or offense.

(e) False, deceptive, or misleading advertising. (Section 468.365(1)(e), F.S.)	First Offense	From reprimand to one year suspension, and an administrative fine from $250 to $1,000.
	Second Offense	From one year probation with conditions to one year suspension and a fine from $500 to $3,000.
	Third Offense	From one year suspension to revocation and a fine from $3,000 to $10,000.
(f) Unprofessional conduct. (Section 468.365(1)(f), F.S.)	First Offense	From a minimum of one year probation with conditions to revocation, and an administrative fine from $300 to $2,000.
	Second Offense	From one year suspension to revocation and a fine from $2,000 to $10,000.
(g) Controlled substances. (Section 468.365(1)(g), F.S.)	First Offense	From a minimum of six months probation with conditions to revocation of the license and an administrative fine ranging from $1,000 to $5,000. Any Board ordered probation shall be for no less time than Court ordered sanctions.
	Second Offense	From one year suspension to revocation and a fine from $5,000 to $10,000.
(h) Failure to report another licensee in violation. (Sections 468.365(1)(h), 456.072(1)(i), F.S.)	First Offense	From a letter of concern to six months probation with conditions, and an administrative fine from $300 to $1,000.
	Second Offense	From six months probation with conditions to one year suspension and a fine from $500 to $3,000.
	Third Offense	From one year suspension to revocation and a fine from $3,000 to $10,000.
(i) Violation of order of the Board or Department or failure to comply with subpoena. (Sections 468.365(1)(i), 456.072(1)(q), F.S.)	First Offense	From a reprimand to six months suspension, and an administrative fine from $300 to $1,000. For failure to comply with subpoena, $250 minimum fine and ninety day suspension and thereafter until compliance.
	Second Offense	From one year suspension to revocation and a fine from $2,000 to $10,000.
(j) Unlicensed practice. (Section 468.365(1)(j), F.S.)	First Offense	A reprimand to six months suspension followed by one year, and probation with conditions, and an administrative fine from $500 to $1,000.
	Second Offense	From six months suspension to revocation and a fine from $2,000 to $10,000.
	Third Offense	Revocation with no ability to reapply and a fine from $5,000 to $10,000.
(k) Aiding unlicensed practice. (Sections 468.365(1)(k), 456.072(1)(j), F.S.)	First Offense	From a minimum of one year probation with conditions to six months suspension followed by one year of probation with conditions, and an administrative fine from $500 to $3,000.
	Second Offense	From six months suspension followed by one year of probation with conditions to revocation and a fine from $2,000 to $10,000.
	Third Offense	From one year suspension followed by two years probation with conditions to revocation with no ability to reapply and a fine from $6,000 to $10,000.

(l) Failure to perform legal obligation. (Sections 468.365(1)(l), 456.072(1)(k), F.S.)	First Offense	From a reprimand to revocation, and an administrative fine from $300 to $1,000.
	Second Offense	From one year probation with conditions to six months suspension and a fine from $500 to $5,000.
	Third Offense	From one year suspension to revocation with no ability to reapply and a fine from $3,000 to $10,000.
(m) Practicing beyond competence level. (Sections 468.365(1)(m), 456.072(1)(o), F.S.)	First Offense	From reprimand to one year suspension followed by two years probation and an administrative fine from $300 to $2,000.
	Second Offense	From six months suspension followed by one year probation with conditions to revocation and a fine from $1,000 to $10,000.
	Third Offense	From one year suspension followed by two years probation to revocation with no ability to reapply and a fine from $3,000 to $10,000.
(n) Delegation of professional responsibilities to unqualified person. (Sections 468.365(1)(n), 456.072(1)(p), F.S.)	First Offense	From one year probation with conditions to revocation, and an administrative fine from $300 to $1,000.
	Second Offense	From six months suspension followed by one year of probation with conditions to revocation and a fine from $1,000 to $10,000.
	Third Offense	From one year suspension followed by two years probation to revocation with no ability to reapply and a fine from $3,000 to $10,000.
(o) Malpractice. (Section 468.365(1)(o), F.S.)	First Offense	From one year probation with conditions to revocation, and an administrative fine from $500 to $2,000.
	Second Offense	From two years probation with conditions to revocation and a fine from $2,000 to $10,000.
	Third Offense	From one year suspension followed by two years probation to revocation with no ability to reapply and a fine from $3,000 to $10,000.
(p) Kickbacks or split fee arrangements. (Section 468.365(1)(p), F.S.)	First Offense	From refund of fees billed and six months suspension followed by at least one year probation with conditions to revocation, and administrative fine from $300 to $3,000.
	Second Offense	From one year suspension followed by two years probation with conditions to revocation with no ability to reapply and a fine from $2,000 to $10,000.
(q) Exercising influence or engage patient in sex. (Sections 468.365(1)(q), 456.072(1)(v), F.S.)	First Offense	From one year suspension followed by at least one year probation with conditions and possible referral to the PRN to revocation, and an administrative fine from $500 to $2,000.
	Second Offense	From one year suspension followed by at least one year probation with conditions to revocation with no ability to reapply and possible referral to PRN a fine from $1,000 to $10,000.
(r) Deceptive, untrue, or fraudulent representations in the practice of respiratory care. (Sections 468.365(1)(r), 456.072(1)(a), (m), F.S.)	First Offense	From a minimum of one year probation with conditions to revocation, and an administrative fine from $10,000 per count or offense.
	Second Offense	From two years of probation with conditions to revocation with no ability to reapply and a fine of $10,000 per count or offense.
(s) Improper solicitation of patients. (Section 468.365(1)(s), F.S.)	First Offense	From a minimum of one year probation with conditions to revocation, and an administrative fine from $300 to $1,000.
	Second Offense	From two years probation with conditions to revocation and a fine from $2,000 to $10,000.
	Third Offense	From one year suspension followed by two years probation to revocation with no ability to reapply and a fine from $3,000 to $10,000.

However, if the violation is for fraud or soliciting patients by making a false or fraudulent representation, the fine is

increased to $10,000 per count or offense.

(t) Failure to keep written medical records. (Section 468.365(1)(t), F.S.)	First Offense	From a letter of concern to one year suspension, followed by a minimum of one year probation with conditions and an administrative fine from $300 to $1,000.
	Second Offense	From a reprimand to two years probation with conditions and a fine from $500 to $5,000.
	Third Offense	From six months suspension followed by one year probation to revocation and a fine from $3,000 to $10,000.
(u) Exercising influence on patient for financial gain. (Sections 468.365(1)(u), 456.072(1)(n), F.S.)	First Offense	From refund of fees billed and a minimum of one year probation with conditions, to two years suspension and an administrative fine from $500 to $3,000.
	Second Offense	From refund of fees billed and two years probation with conditions to revocation and a fine from $2,000 to $10,000.
	Third Offense	From refund of fees billed and one year suspension followed by two years probation to revocation with no ability to reapply and a fine from $3,000 to $10,000.
(v) Performing professional services not authorized by physician. (Section 468.365(1)(v), F.S.)	First Offense	From a reprimand to one year suspension, followed by a minimum of one year probation with conditions and an administrative fine from $300 to $1,000.
	Second Offense	From six months probation with conditions to revocation and a fine from $1,000 to $10,000.
	Third Offense	From six months suspension followed by one year probation to revocation with no ability to reapply and a fine from $3,000 to $10,000.
(w) Inability to practice respiratory care with skill and safety. (Sections 468.365(1)(w), 456.072(1)(z), F.S.)	First Offense	From referral to PRN for submission to a mental or physical examination directed towards the problem and/or one year probation with conditions, to revocation and an administrative fine from $100 to $1,000.
	Second Offense	From referral to PRN and/or two years of probation with conditions to revocation and a fine from $300 to $5,000.
(x) Violation of this chapter, Chapter 456, F.S., or any rules adopted pursuant thereto. (Sections 468.365(1)(x), 456.072(1)(b), (dd), F.S.)	First Offense	From a reprimand to revocation and a fine from $300 to $2,000.
	Second Offense	From six months of probation with conditions to revocation and a fine from $1,000 to $10,000.
	Third Offense	From one year of probation with conditions to revocation and a fine from $2,000 to $10,000.
(y) Improper interference with investigation, inspection or discipline. (Section 456.072(1)(r), F.S.)	First Offense	From six months of probation with conditions to revocation and a fine from $500 to $5,000.
	Second Offense	From six months suspension followed by one year probation with conditions to revocation with no ability to reapply and a fine from $1,000 to $10,000.
(z) Failure to report conviction or plea. (Section 456.072(1)(x), F.S.)	First Offense	From reprimand to six months suspension and a fine from $300 to $1,000.
	Second Offense	From one year probation with conditions to revocation with no ability to reapply and a fine from $1,000 to $10,000.
(aa) Wrong patient, wrong site, or wrong or unauthorized procedure. (Section 456.072(1)(bb), F.S.)	First Offense	From one year probation with conditions to revocation and a fine from $500 to $2,000.
	Second Offense	From two years probation with conditions to revocation and a fine from $2,000 to $10,000.
	Third Offense	From one year suspension followed by two years probation to revocation with no ability to reapply and a fine from $3,000 to $10,000.
(bb) Leaving a foreign body in a patient. (Section 456.072(1)(bb), (cc), F.S.)	First Offense	From one year probation with conditions to revocation and a fine from $500 to $2,000.

	Second Offense	From two years probation with conditions to revocation and a fine from $2,000 to $10,000.
	Third Offense	From one year suspension followed by two years probation to revocation with no ability to reapply and a fine from $3,000 to $10,000.
(cc) Testing positive in a pre-employer ordered drug screen. (Section 456.072(1)(aa), F.S.)	First Offense	From six months probation with referral to PRN to revocation employment condition and/or and a fine from $500 to $2,000.
	Second Offense	From one year probation with conditions and referral to PRN to revocation and an administrative fine from $1,000 to $10,000.
(dd) Termination of PRN Contract. (Section 456.072(1)(hh), F.S.)	Any Offense	Reprimand to revocation, plus an administrative fine from $250 to $2,000.
(ee) Practicing with a delinquent, retired, or inactive status license. (Section 456.072(1)(o), F.S.)	Any Offense	Reprimand to revocation, plus an administrative fine from $2,000 to $10,000. If fraud is shown, $10,000 fine per count.
However, if fraud is shown, the fine is increased to $10,000 fine per count.		
(ff) Failure to notify a patient through written or oral notice of the type of license the practitioner holds. (Section 456.072(1)(t), F.S.)	First Offense	Read laws and rules and submit an affidavit attesting that the licensee has read the laws and rules.
	Second Offense	A fine from $100.00 to $500.00.
(gg) Any felony offense classified under Chapter 409, 817, 893, F.S., or 21 U.S.C ss. 801-970, or 42 U.S.C. ss. 1395-1396. (Section 456.0635, F.S.)	Any Offense	The board is prohibited from issuing or renewing a license, certificate, or registration, unless the sentence and any subsequent period of probation for such conviction or pleas ended more than 15 years prior to the date of the application.
(hh) Terminated for cause from the Florida Medicaid program pursuant to Section 409.913, F.S. (Section 456.0635, F.S.)	Any Offense	The board is prohibited from issuing or renewing a license, certificate, or registration, unless the applicant has been in good standing with the Florida Medicaid program for the most recent 5 years.
(ii) Terminated for cause, pursuant to the appeals procedures established by the state or Federal Government, from any other state Medicaid program. (Section 456.0635, F.S.)	Any Offense	The board is prohibited from issuing or renewing a license, certificate, or registration, unless the applicant has been in good standing with a state Medicaid program or the Federal Medicare program for the most recent 5 years and the termination occurred at least 20 years prior to the date of the application.
(jj) Willfully failing to comply with Section 627.64194 or 641.513, F.S., with such frequency as to indicate a general business practice. (Section 456.072(1)(oo), F.S.)	First Offense	From refund of fees billed and a minimum of one year probation with conditions, to two years suspension and an administrative fine from $500 to $3,000.
	Second Offense	From refund of fees billed and two years probation with Conditions to revocation and a fine from $2,000 to $10,000.
	Third Offense	Refund of fees billed, revocation with no ability to reapply and a Fine from $3,000 to $10,000.

However, if the offense is for fraud, the fine is increased to $10,000 per count or offense.

(4) Stipulation or Settlements. The provisions of this rule are not intended and shall not be construed to limit the ability of the Board to dispose informally of disciplinary actions by stipulation, agreed settlement, or consent order pursuant to Section 120.57(4), F.S.

(5) Letters of Guidance. The provisions of this rule cannot and shall not be construed to limit the authority of the probable cause panel of the Board to direct the Department to send a letter of guidance pursuant to Section 456.073(4), F.S., in any case for which it finds such action appropriate.

(6) Other Action. The provisions of this rule are not intended to and shall not be construed to limit the ability of the Board to pursue or recommend that the Department pursue collateral civil or criminal actions when appropriate.

Rulemaking Authority 456.079, 456.353(3), 468.365(4) FS. Law Implemented 456.0635, 456.072, 456.079, 468.365 FS. History–New 4-29-85, Formerly 21M-37.01, 21M-37.001, Amended 1-3-94, Formerly 61F6-37.001, 59R-74.001, 64B8-74.001, Amended 5-5-02, 12-5-04, 5-15-05, 2-23-06, 3-29-07, 5-4-10, 6-5-17.

64B32-5.002 Payment of Fine.

All fines imposed by the Board shall be paid within thirty (30) days from the date of the final order entered by the Board unless the final order extends the deadline in any given case.

Specific Authority 456.072(4), 468.365(4) FS. Law Implemented 456.072(4), 468.365(2)(c) FS. History–New 6-9-99, Formerly 64B8-74.005.

64B32-5.003 Unprofessional Conduct; Acceptable Standards Definition.

(1) A licensee is guilty of unprofessional conduct, which is defined as any departure from, or failure to conform to, acceptable standards related to the delivery of respiratory care services. Some examples of unprofessional conduct shall include the following acts:

(a) Violating the confidentiality of information or knowledge concerning a patient.

(b) Falsely misrepresenting the facts on an application for employment as a respiratory therapist.

(c) Leaving a respiratory therapy assignment before properly advising appropriate supervisory personnel.

(d) Providing false or incorrect information to an employer regarding the status of the certification, registration, or licensure.

(e) Failing to report another licensee in violation of the laws and/or rules pertaining to the profession.

(f) Using foul or abusive language in patient care or public areas.

(2) Acceptable standards means practicing respiratory care with the level of care, skill, and treatment which is recognized by a reasonably prudent respiratory therapist as being acceptable under similar conditions and circumstances.

Specific Authority 468.353(1), 468.365(1)(f) FS. Law Implemented 468.365(1)(f) FS. History–New 4-29-85, Formerly 21M- 37.02, 21M-37.002, 61F6-37.002, 59R-74.002, 64B8-74.002, Amended 1-6-02, 12-26-05.

64B32-5.004 Code of Ethics. (*Repealed)*

Rulemaking Authority 468.354(5) FS. Law Implemented 468.354(5)(a) FS. History–New 4-29-85, Formerly 21M-37.03, 21M-37.003, 61F6-37.003, 59R-74.003, 64B8-74.003, Repealed 1-31-17.

64B32-5.005 HIV/AIDS: Knowledge of Antibody Status, Action to Be Taken. *(Repealed)*

Rulemaking Authority 456.032 FS. Law Implemented 456.032, 468.365(1)(x) FS. History–New 11-9-92, Formerly 21M-37.004, 61F6-37.004, 59R-74.004, 64B8-74.004, Repealed 1-31-17.

64B32-5.006 Mediation.

(1) "Mediation" means a process whereby a mediator appointed by the Department acts to encourage and facilitate resolution of a legally sufficient complaint. It is an informal and nonadversarial process with the objective of assisting the parties to reach a mutually acceptable agreement. When an offense subject to mediation is also a citation violation, the mediator shall be informed regarding the citation penalty for the offense.

(2) For purposes of Section 456.078, F.S., the Board designates as being appropriate for mediation:

(a) First time violations of subsection 64B32-6.001(2), F.A.C., failure to respond to a continuing education audit.

(b) Failure to notify the Department of a change of address as required by Rule 64B32-1.006, F.A.C., if there is a dispute and the Respondent did not timely respond to a notice of noncompliance.

(c) Issuance of a bad check to the Department under Section 468.365(1)(l), F.S., if there is a dispute and the Respondent did not timely respond to a notice of noncompliance.

(d) Violation of continuing education requirements under Section 468.361, F.S.

(e) Unprofessional conduct violations under Rule 64B32-5.003, F.A.C.

(f) Exercising influence on a patient to exploit the patient for financial gain under Section 468.365(1)(u), F.S.

(g) Failure to pay required fees and/or fines in a timely matter if disputed under Section 468.365(1)(i), F.S.

Specific Authority 456.078 FS. Law Implemented 456.078 FS. History–New 3-21-95, Formerly 59R-74.005, 64B8-74.005, Amended 5-31-04.

64B32-5.007 Citations.

(1) Pursuant to Section 456.077, F.S., the Board sets forth below those violations for which there is no substantial threat to the public health, safety, and welfare; or, if there is a substantial threat to the public health, safety, and welfare, such potential for harm has been removed prior to the issuance of the citation. Next to each violation is the penalty to be imposed. All citations will include a requirement that the subject correct the violation, if remediable, within a specified period of time not to exceed 90 days, and impose whatever obligations will remedy the offense, except documentation of completion of continuing education requirements shall be as specified in paragraph (2)(a). If the violation is not corrected, or is disputed, the Department shall follow the procedure set forth in Section 456.073, F.S. In addition to any administrative fine imposed, the Respondent shall be required by the Department to pay the costs of investigation. The form to be used is specified in the rules of the Department of Health.

(2) The following violations may be disposed of by citation with the specified penalty:

(a) Violations of continuing education requirements required by Section 468.361, F.S.: are to be completed within 90 days of the date of the filing of the final order. Licensee must submit certified documentation of completion of all the CE requirements for the period for which the citation was issued; prior to renewing the license for the next biennium, licensee must document compliance with the CE requirements for the relevant period.

1. Failure to document HIV/AIDS continuing education requirement the fine shall be $100.

2. Documentation of some but not all of the 24 hours of continuing education for license renewal the fine shall be $50 for each hour not documented.

(b) Violation of any portion of Rule 64B32-5.003, F.A.C., for unprofessional conduct the fine shall be $300.

(c) Failure to notify the Board of current address as required by Rule 64B32-1.006, F.A.C. the fine shall be $50.

(d) Failure to keep written respiratory care records justifying the reason for the action taken on only one patient under Section 468.365(1)(t), F.S. the fine shall be $100.

(e) Circulating misleading advertising in violation of Section 468.365(1)(e), F.S., the fine shall be $500.

(f) Exercising influence on a patient to exploit the patient for financial gain by promoting or selling services, goods, appliances or drugs under Section 468.365(1)(u), F.S. the fine shall be $1,000.

(g) Failure to submit compliance documentation after receipt of the continuing education audit notification under Section 468.365(1)(x), F.S. the fine shall be $150.

(h) Failure to provide satisfaction including the costs incurred following receipt of the Department's notification of a check dishonored for insufficient funds under Section 468.365(1)(l), F.S. the fine shall be $150.

(i) Failure to pay required fees and/or fines in a timely manner under Section 468.365(1)(i), F.S. the fine shall be $150.

(3) When an initial violation for which a citation could be issued occurs in conjunction with a violation or other violations for which a citation could not be issued, the procedures of Section 456.073, F.S., shall apply.

(4) The licensee has 90 days from the date the citation becomes a final order to pay any fine imposed and costs. All fines and costs are to be made payable to the Department of Health, and sent to the Department in Tallahassee. A copy of the citation shall accompany the payment of the fine and costs.

(5) The Department of Health shall periodically, submit a report to the Board regarding the number and nature of the citations issued, the penalties imposed, and the level of compliance.

Rulemaking Authority 456.077 FS. Law Implemented 456.072(3), 456.077 FS. History–New 5-19-96, Formerly 59R-74.006,
64B8-74.006, Amended 1-6-02, 5-31-04, 2-23-06, 3-28-10, 9-15-10.

64B32-5.008 Notice of Noncompliance.

In accordance with Sections 120.695 and 456.073, F.S., the Board shall issue a notice of noncompliance as a first response to a minor violation of a rule. Failure of a licensee to take action to correct the violation within 15 days shall result in either the issuance of a citation when appropriate or the initiation of regular disciplinary proceedings. The minor violations which shall result in a notice of noncompliance are:

(1) Failure to notify of a change of address within 60 days as required by Rule 64B32-1.006, F.A.C.

(2) Non-intentional issuance of a bad check to the Department under Section 486.125(1)(k), F.S.

Specific Authority 120.695, 456.073(3), 486.025 FS. Law Implemented 120.695, 456.073(3) FS. History–New 5-31-04.

CHAPTER 64B32-6 BOARD OF RESPIRATORY CARE - CONTINUING EDUCATION

64B32-6.001 Continuing Education Requirement
64B32-6.002 Definitions.
64B32-6.003 Citations. (Repealed)
64B32-6.004 Procedures for Approval of Attendance at Continuing Education Courses.
64B32-6.005 Provider Approval and Renewal Procedures.
64B32-6.006 AIDS Education and Medical Error Prevention Education.
64B32-6.007 Continuing Education Requirements for Reactivation of License.

64B32-6.001 Continuing Education Requirement.

(1) The Legislature and the Board have determined that competency in delivery of respiratory care services is enhanced by continuous updating of knowledge and skills. To this end, continuing education is required as a condition for renewal of licensure of all respiratory care licensees.

(2) Each licensee shall submit proof satisfactory to the Board of participation in appropriate continuing education. During each biennium, as established by the Department, each licensee must earn 24 hours of continuing education credit including those earned as provided in this rule. None of these hours can be obtained by taking Basic Life Support (BLS) training. No more than five (5) hours per biennium shall be awarded for completion of courses focusing on risk management.

(3) Those persons initially licensed during the second year of a biennium are exempt from the continuing education requirements, except for the Medical Errors course and HIV/AIDS course and the Florida laws and rules course, pursuant to subsection (5) of this rule, for their first renewal. Continuing education requirements must be met for each biennium thereafter.

(4) A licensee who holds a current license as a Certified Respiratory Therapist (CRT) or holds a current license in another health care profession may satisfy the continuing education requirement for issuance of the Registered Respiratory Therapist (RRT) or renewal of the CRT license with hours counted toward renewal of another license as long as the hours meet all the requirements of this rule chapter.

(5) A licensee may be required to earn continuing education credit hours which include the following:

(a) Florida laws and rules	Mandatory for all licensees: 2 credit hours pursuant to subsection 64B32-6.001(5), F.A.C. Licensees may earn up to 8 continuing education hours per biennium by attending meetings of the Board of Respiration Care, but no more than 2 of those hours will be credited to satisfying the Florida laws and rules requirement.
(b) Prevention of Medical Errors	Mandatory for all licensees: 2 hours in a board-approved continuing education course pursuant to Rule 64B32-6.006, F.A.C.
(c) HIV/AIDS	Mandatory for the initial renewal of all licensees, optional for subsequent renewals: At least 3 hours but no more than 5 hours pursuant to Rule 64B32-6.006, F.A.C. The course must be taken within the last five (5) years prior to either initial licensure or first renewal. Licensees may complete up to 5 hours of continuing education credited to HIV/AIDS education, although any completed hours in excess of the required 3 hours will be counted as continuing education credits.

(d) Other requirements that satisfy continuing education are listed in Rule 64B32-6.004, F.A.C.

(6) No licensee will be given more than the credited hours of completion of any continuing education course, as credited for completion of the course once, per biennium, regardless of the number of times a licensee registers for and completes a course.

Rulemaking Authority 456.013, 468.361(2) FS. Law Implemented 456.013(7), 456.033(1), 468.361 FS. History–New 4-29-85, Formerly 21M-38.01, Amended 9-29-86, Formerly 21M-38.001, Amended 1-2-94, Formerly 61F6-38.001, Amended 11-1-94, Formerly 59R-75.001, Amended 6-9-99, Formerly 64B8-75.001, Amended 5-15-05, 10-28-07, 5-15-08, 8-4-09, 4-25-10, 4-4-12, 8-4-14, 5-25-15, 12-28-15, 8-3-16.

64B32-6.002 Definitions.

(1) "Academic Quarter Credit Hour" means ten (10) hours.

(2) "Academic Semester Credit Hour" means fifteen (15) hours.

(3) "Continuing education", for the purposes of this rule chapter, means planned offerings designed to enhance learning and promote the continued development of knowledge, skills, and attitudes consistent with contemporary standards for the individual's respiratory care practice.

(4) "Approved" means acceptable to the Board.

(5) "Biennium" means a time period of two (2) calendar years, as designated by the Department.

(6) "Hour" equals a minimum of fifty (50) minutes. One-half (1/2 or .5) hour equals a minimum of twenty-five (25) minutes.

Rulemaking Authority 468.353(1), 468.361(2) FS. Law Implemented 468.361 FS. History–New 4-29-85, Formerly 21M-38.02, Amended 9-29-86, Formerly 21M-38.002, 61F6-38.002, 59R-75.002, 64B8-75.002, Amended 2-20-07, 8-3-15.

64B32-6.004 Procedures for Approval of Attendance at Continuing Education Courses.

(1)During the license renewal period of each biennium, an application for renewal will be mailed to each licensee at the last address provided to the Board. Failure to receive any notification during this period does not relieve the licensee of the responsibility of meeting the continuing education requirements. The licensee must retain such receipts, vouchers, certificates, or other papers as may be necessary to document completion of the appropriate continuing education offerings listed on the renewal form for a period of not less than 4 years from the date the offering was taken. Failure to document compliance with the continuing education requirements or the furnishing of false or misleading information regarding compliance shall be grounds for disciplinary action pursuant to Section 468.365(1)(a), F.S.

(2) Excluding any recertification, review, refresher, or preparatory courses, all licensees shall be awarded continuing education hours for:

(a) Attendance at all offerings that are approved on or before April 1, 2017, by:

1. The American Association for Respiratory Care (AARC);

2. The Florida Society for Respiratory Care; and,

3. The Accreditation Council for Continuing Medical Education (ACCME), the American and Florida Thoracic Societies, the American College of Cardiology, the American College of Chest Physicians, the American and Florida Societies of Anesthesiologists, the American and Florida Lung Association, the National Society for Cardiopulmonary Technologists, the American Heart Association, the American Nurses Association, the Florida Nurses Association, and the Florida Board of Nursing.

(b) Attendance at all offerings that are conducted by institutions approved on or before April 1, 2017, by the Commission on Accreditation for Respiratory Care (CoARC);

(c) Successful completion, for the first time, of any college or university course, but only if such course is part of the curriculum within an accredited respiratory therapy program and is provided by that accredited respiratory therapy program, up to the maximum hours permitted by subsection (3) of this rule.

(d) Successful completion of the following certification classes, up to a maximum total of 16 hours per biennium;

1. Advanced cardiac life support;

2. Neonatal resuscitation program;

3. Pediatric advanced life support;

4. Any course offered by the National Board of Respiratory Care (NBRC) on or before April 1, 2017.

(e) Successful completion of the following recertification classes, up to a maximum of 8 hours per biennium;

1. Advanced cardiac life support;

2. Neonatal resuscitation program;

3. Pediatric advanced life support.

(f) Attendance at scheduled public meetings of the Board of Respiratory Care, at which disciplinary hearings are conducted, and_where the licensee has not been required by the Board to appear, up to a maximum of 8 continuing education hours in risk management per biennium.

(3) Credit for two (2) hours shall be awarded for completion of a FEMA Emergency Management/Preparedness continuing education course approved by FEMA on or before April 1, 2017, that covers the following topics: natural disasters,

manmade disasters and bioterrorism, pandemic flu, and respiratory care disaster response.

(4) Each licensee who is presenting a continuing education course as either the lecturer of the offering or as author of the course materials may earn a maximum 12 hours of continuing education credit per biennium. Each licensee who is either participating as a lecturer of a continuing education course or an author of a continuing education program may receive credit for the portion of the offering he/she presented or authored to the total hours awarded for the offering.

(a) Continuing education credit may be awarded to a lecturer or author for the initial presentation of each program only; repeat presentations of the same continuing education course shall not be granted credit.

(b) In order for a continuing education credit to be awarded to each licensee participating as either faculty or author, the format of the continuing education program must comply with all applicable sections of this rule chapter.

(c) The number of hours to be awarded to each licensee who participates in a continuing education program as either a lecturer or author is based on the definition of "hour" employed within this rule chapter.

(5) Former members of the Board's Probable Cause Panel shall receive five (5) hours of continuing education credit in risk management per biennium for their service on the Panel.

(6) The Board shall make exceptions for licensee from the continuing education requirements, including waiver of all or a portion of these requirements or the granting of an extension of time in which to complete these requirements, upon a finding of good cause by majority vote of the Board at a public meeting following receipt of a written request for exception based upon emergency or hardship. Emergency or hardship cases are those: (1) involving long term personal illness or illness involving a close relative or person for whom the licensee has care-giving responsibilities; (2) where the licensee can demonstrate that the required course(s) are not reasonably available; and (3) where the licensee can demonstrate economic, technological, or legal hardships that substantially relate to the ability to perform or complete the continuing education requirements.

Rulemaking Authority 456.013(6), (9), 468.353, 468.361 FS. Law Implemented 456.013(6), (9), 468.361 FS. History–New 4-29-85, Formerly 21M-38.04, Amended 9-29-86, 11-29-88, 9-24-92, 10-15-92, Formerly 21M-38.004, Amended 1-2-94, 7-10-94, Formerly 61F6-38.004, Amended 11-1-94, 3-14-95, 7-18-95, 4-24-96, 8-27-96, Formerly 59R-75.004, 64B8-75.004, Amended 6-8-00, 5-7-01, 1-22-03, 7-29-03, 5-31-04, 4-19-07, 10-8-07, 9-3-09, 2-18-10, 5-25-15, 9-23-15, 6-5-17.

64B32-6.005 Provider Approval and Renewal Procedures.

(1) The provider seeking approval shall:

Make application and profile electronically and allow a minimum of 90 days prior to the date the offering begins, and submit the form entitled APPLY TO BE A CE PROVIDER on FORM DH-MQA-CEB-1, May 2006 which was adopted and incorporated by reference in Department of Health Rule 64B-5.003, F.A.C., and is available at: https://www.cebroker.com/public/pb_index.asp along with a minimum of one course for approval and the following:

(a) A statement of the educational goals and objectives of the program, including the criteria for successful completion of the program as explained to attendees;

(b) A detailed course outline or syllabus, including such items as method of instruction, and testing materials, if any;

(c) A current curriculum vitae of each speaker or lecturer appearing in the program;

(d) The procedure to be used for recording attendance of those attendees seeking to apply for continuing education credit and the procedure for certification of attendance; and

(e) A sample certificate of completion.

(f) Sample evaluation.

(g) The $250 application fee.

(h) Submit a minimum of one (1) offering for the Board's review.

(2) All course offerings shall be relevant to the practice of respiratory care as defined in Section 468.352(4), F.S., must be offered for the purpose of keeping licensees apprised of advancements and new developments in the practice of respiratory care, and is designed to enhance learning and skills consistent with contemporary standards for the profession.

(3) Provider approval shall be granted for each biennium in which the provider meets the requirements of this rule. Provider approval shall expire on January 31 of each even-numbered year. In the event a provider applies for approval at a time other than the beginning of a biennium, any approval will expire at the end of the biennium in which the application was made.

(4) Every provider shall:

(a) Notify the Board through CE Broker, of any change in contact persons or any significant alterations or changes in the content, goals or objectives, or syllabus of the program, or in the instructors of the program.

(b) Be subject to periodic review to determine if the program continues to meet the requirements of this rule.

(c) Allow for evaluation of the program by every participant.

(d) Maintain all records pertaining to the program for a period of not less than four (4) years from the date of the offering.

(5) The Board may utilize the assistance of a representative, expert groups, or individuals as appropriate in implementing these rules.

(6) The Board may audit providers as necessary to assure that the requirements of this rule are met. Failure to document compliance with these requirements or the furnishing of false or misleading information regarding compliance shall be grounds for discipline.

(7) Providers seeking renewal shall make application electronically a minimum of 90 days prior to the first offering in the new biennium on the form entitled RENEW CE PROVIDERSHIP-FORM DH-MQA-CEB-8, May 2006 adopted and incorporated by reference in the Department of Health Rule 64B-5.003, F.A.C., and available at https://www.cebroker.com/public/pb_index.asp. The biennial renewal fee for providers shall be $220.00.

(8) The provider seeking initial approval for home study, self directed or anytime courses shall comply with the provisions of subsections (1) through (3), and providers seeking to renew approval as a provider of home study, self directed, or anytime courses shall comply with the provisions of subsections (4) through (7).

(a) In addition to the credit exclusion for recertification, review, refresher or preparatory courses as provided in Rule 64B32-6.004, F.A.C., a home study course submission shall not include reprints from textbooks.

(b) Each home study course submitted for the Board's review shall not exceed 12 hours in length as defined in Rule 64B32-6.002, F.A.C.

(c) Instead of the information submitted for in-person programs, the provider shall submit the following for pre-approval:

1. A statement of the educational goals and objectives of the program, including the criteria for successful completion of the program and the number of correct answers required on the test by a participant to receive credit for having taken the program;

2. All materials to be read by the participant, and the testing questions to be answered for successful completion;

3. A current curriculum vitae of each person substantially involved in the preparation of the substance of the program;

4. The identification procedures for verification that the named licensee has taken the home study course;

5. A sample certificate of completion; and

6. If not completely original, references and permission for use or reprint of any copyrighted materials regardless of source.

(9) The provider seeking home study, self directed, or anytime course approval for electronically delivered productions including but not limited to audio or video tape, DVD, CD, or other media delivery devices or methods also shall understand and agree:

(a) Not more than one offering shall be submitted per tape, DVD, CD or other media delivery device or method.

(b) Each tape, DVD, CD or other media delivery device or method shall contain a maximum of four contact hours worth of material.

(c) The offering shall begin with an introduction of the speaker(s) and with a statement of the educational objectives of the program, including the criteria for successful completion of the program.

(d) Approval for an offering related to respiratory care services shall expire at the end of the biennium; however, the offering may be renewed, if unchanged without resubmission of the offering itself. If changed, the course may be resubmitted for consideration by the Board with changes if accompanied by a statement that the offering is current and reflective of advancements and new developments regarding respiratory care services. If changed, the course shall be submitted not fewer than 90 days prior to its being offered in the new biennium.

Rulemaking Authority 456.025(7), 468.361 FS. Law Implemented 456.025(7), 468.361 FS. History–New 4-24-96, Amended 5-7-97, Formerly 59R-75.0041, Amended 4-23-98, 6-9-99, Formerly 64B8-75.0041, Amended 7-4-02, 10-22-03, 5-15-05, 7-13-05, 2-18-10, 9-17-15.

64B32-6.006 AIDS Education and Medical Error Prevention Education.

(1) Each licensee must complete at least three continuing education hours of HIV/AIDS education through a Board

approved course no later than upon the licensee's first biennial renewal of licensure. New licensees may complete a course no more than five (5) years preceding initial licensure date.

(2) To receive Board approval, courses on HIV/AIDS shall be at least one hour and include the following subject areas: Modes of transmission, Infection control procedures, Clinical management, Prevention, and current Florida law on AIDS and the impact on testing, confidentiality, and treatment. A home study course shall be permitted to fulfill this aspect of the HIV/AIDS education.

(3) Courses approved by any Board within the Division of Medical Quality Assurance of the Department of Health pursuant to Section 456.033, F.S., are approved by this Board.

(4) Each licensee must complete a Board approved 2-hour continuing education course relating to the prevention of medical errors no later than upon the licensee's first biennial renewal of licensure. The 2-hour course shall count toward the total number of continuing education hours required for each license renewal. The course shall include medication errors, including missed treatments, documentation errors, equipment errors, patient errors and communication errors.

Rulemaking Authority 456.013(7), 456.033 FS. Law Implemented 456.013(7), 456.033 FS. History–New 6-20-89, Amended 7-28-92, Formerly 21M-38.006, Amended 1-2-94, Formerly 61F6-38.006, 59R-75.006, 64B8-75.006, Amended 4-27-00, 7-22-02, 6-20-07, 5-25-15, 9-17-15, 2-4-16, 10-17-16.

64B32-6.007 Continuing Education Requirements for Reactivation of License.

The continuing education requirements for reactivation of a license shall be:

(1) Those requirements specified in Section 456.036(11), F.S.; and,

(2) Documented proof of completion of 24 hours of approved continuing education as provided in this rule chapter and medical error prevention, for the biennium during which the license was inactive; and,

(3) Documented proof of 12 hours of approved continuing education as provided in this rule chapter for each year the license was inactive.

Rulemaking Authority 456.036, 468.363 FS. Law Implemented 456.036, 468.363 FS. History–New 10-11-04, Amended 6-21-07, 10-17-17.

CHAPTER 64B32-7 PROBABLE CAUSE AND RELATED MATTERS

64B32-7.001 Probable Cause Panel.

(1) The Board shall enter final orders in disciplinary cases against respiratory therapists. The determination of probable cause to issue an administrative complaint against a respiratory therapist shall be made by the Probable Cause Panel of the Board.

(2) The Chair of the Board shall appoint at least two people to the probable cause panel and shall designate its chair. The appointed people shall be either current Board members or at least one current Board member and one or more former members of the Board. If available, one member of the panel shall be a consumer member and at least one member shall be a licensed member of the profession. Once appointed, a panel shall serve for no less than six months. With regard to violations of Part V of Chapter 468 and Chapter 456, Florida Statutes, and/or the rules promulgated pursuant thereto, the determination as to whether there is probable cause that a violation has occurred shall be made by a majority vote of the Probable Cause Panel of the Board.

(3) The Chair of the Board may make temporary appointments to the panel as necessary to conduct the business of the panel in the absence or unavailability of a regularly appointed panel member.

(4) If a Board member has reviewed a case as a member of the Probable Cause Panel, that member, if available, shall be on the panel for reconsideration of that case if reconsideration is requested by the prosecutor.

Specific Authority 456.073(2), (4), 468.365 FS. Law Implemented 456.073(4) FS. History–New 4-27-00.

Chapter 456, F.S.

Health Professions & Occupations:

CHAPTER 456

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456.001 Definitions.—As used in this chapter, the term:
(1) "Board" means any board or commission, or other statutorily created entity to the extent such entity is authorized to exercise regulatory or rulemaking functions, within the department, except that, for ss. 456.003-456.018, 456.022, 456.023, 456.025-456.033, and 456.039-456.082, "board" means only a board, or other statutorily created entity to the extent such entity is authorized to exercise regulatory or rulemaking functions, within the Division of Medical Quality Assurance.
(2) "Consumer member" means a person appointed to serve on a specific board or who has served on a specific board, who is not, and never has been, a member or practitioner of the profession, or of any closely related profession, regulated by such board.
(3) "Department" means the Department of Health.
(4) "Health care practitioner" means any person licensed under 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.
(5) "License" means any permit, registration, certificate, or license, including a provisional license, issued by the department.
(6) "Licensee" means any person or entity issued a permit, registration, certificate, or license, including a provisional license, by the department.
(7) "Profession" means any activity, occupation, profession, or vocation regulated by the department in the Division of Medical Quality Assurance.

History.—s. 33, ch. 97-261; s. 72, ch. 99-397; s. 36, ch. 2000-160; s. 2, ch. 2002-199; s. 116, ch. 2014-17.
Note.—Former s. 455.501.

456.002 Applicability.—This chapter applies only to the regulation by the department of professions.

History.—s. 34, ch. 97-261; s. 37, ch. 2000-160.
Note.—Former s. 455.504.

456.003 Legislative intent; requirements.—

(1) It is the intent of the Legislature that persons desiring to engage in any lawful profession regulated by the department shall be entitled to do so as a matter of right if otherwise qualified.
(2) The Legislature further believes that such professions shall be regulated only for the preservation of the health, safety, and welfare of the public under the police powers of the state. Such professions shall be regulated when:
(a) Their unregulated practice can harm or endanger the health, safety, and welfare of the public, and when the potential for such harm is recognizable and clearly outweighs any anticompetitive impact which may result from regulation.
(b) The public is not effectively protected by other means, including, but not limited to, other state statutes, local ordinances, or federal legislation.
(c) Less restrictive means of regulation are not available.
(3) It is further legislative intent that the use of the term "profession" with respect to those activities licensed and regulated by the department shall not be deemed to mean that such activities are not occupations for other purposes in state or federal law.
(4)(a) Neither the department nor any board may create unreasonably restrictive and extraordinary standards that deter qualified persons from entering the various professions. Neither the department nor any board may take any action that tends to create or maintain an economic condition that unreasonably restricts competition, except as specifically provided by law.
(b) Neither the department nor any board may create a regulation that has an unreasonable effect on job creation or job retention in the state or that places unreasonable restrictions on the ability of individuals who seek to practice or who are practicing a profession or occupation to find employment.
(c) The Legislature shall evaluate proposals to increase the regulation of regulated professions or occupations to determine the effect of increased regulation on job creation or retention and employment opportunities.
(5) Policies adopted by the department shall ensure that all expenditures are made in the most cost-effective manner to maximize competition, minimize licensure costs, and maximize public access to meetings conducted for the purpose of professional regulation. The long-range planning function of the department shall be implemented to facilitate effective operations and to eliminate inefficiencies.
(6) Unless expressly and specifically granted in statute, the duties conferred on the boards do not include the enlargement, modification, or contravention of the lawful scope of practice of the profession regulated by the boards. This subsection shall not prohibit the boards, or the department when there is no board, from taking disciplinary action or issuing a declaratory statement.

History.—s. 38, ch. 97-261; s. 135, ch. 99-251; s. 38, ch. 2000-160; s. 57, ch. 2001-277.
Note.—Former s. 455.517.

456.004 Department; powers and duties.—The department, for the professions under its jurisdiction, shall:
(1) Adopt rules establishing a procedure for the biennial renewal of licenses; however, the department may issue up to a 4-year license to selected licensees notwithstanding any other provisions of law to the contrary. The rules shall specify the expiration dates of licenses and the process for tracking compliance with continuing education requirements, financial responsibility requirements, and any other conditions of renewal set forth in statute or rule. Fees for such renewal shall not exceed the fee caps for individual professions on an annualized basis as authorized by law.
(2) Appoint the executive director of each board, subject to the approval of the board.
(3) Submit an annual budget to the Legislature at a time and in the manner provided by law.
(4) Develop a training program for persons newly appointed to membership on any board. The program shall familiarize such persons with the substantive and procedural laws and rules and fiscal information relating to the regulation of the appropriate profession and with the structure of the department.
(5) Adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter.
(6) Establish by rules procedures by which the department shall use the expert or technical advice of the appropriate board for the purposes of investigation, inspection, evaluation of applications, other duties of the department, or any other areas the department may deem appropriate.
(7) Require all proceedings of any board or panel thereof and all formal or informal proceedings conducted by the department, an administrative law judge, or a hearing officer with respect to licensing or discipline to be electronically recorded in a manner sufficient to assure the accurate transcription of all matters so recorded.
(8) Select only those investigators, or consultants who undertake investigations, who meet criteria established with the advice of the respective boards.
(9) Work cooperatively with the Department of Revenue to establish an automated method for periodically disclosing information relating to current licensees to the Department of Revenue, the state's Title IV-D agency. The purpose of this subsection is to promote the public policy of this state relating to child support as established in s. 409.2551. The department shall, when directed by the court or the Department of Revenue pursuant to s. 409.2598, suspend or deny the license of any licensee found not to be in compliance with a support order, a subpoena, an order to show cause, or a written agreement with the Department of Revenue. The department shall issue or reinstate the license without additional charge to the licensee when notified by the court or the Department of Revenue that the licensee has complied with the terms of the support order. The department is not liable for any license denial or suspension resulting from the discharge of its duties under this subsection.
(10) Set an examination fee that includes all costs to develop, purchase, validate, administer, and defend the examination and is an amount certain to cover all administrative costs plus the actual per-applicant cost of the examination.

(11) Work cooperatively with the Agency for Health Care Administration and the judicial system to recover Medicaid overpayments by the Medicaid program. The department shall investigate and prosecute health care practitioners who have not remitted amounts owed to the state for an overpayment from the Medicaid program pursuant to a final order, judgment, or stipulation or settlement.

History.—s. 39, ch. 97-261; s. 118, ch. 98-200; s. 74, ch. 99-397; s. 39, ch. 2000-160; s. 52, ch. 2001-158; s. 5, ch. 2001-277; s. 6, ch. 2008-92; s. 21, ch. 2009-223.
Note.—Former s. 455.521.

456.005 Long-range policy planning.—To facilitate efficient and cost-effective regulation, the department and the board, if appropriate, shall develop and implement a long-range policy planning and monitoring process that includes recommendations specific to each profession. The process shall include estimates of revenues, expenditures, cash balances, and performance statistics for each profession. The period covered may not be less than 5 years. The department, with input from the boards and licensees, shall develop and adopt the long-range plan. The department shall monitor compliance with the plan and, with input from the boards and licensees, shall annually update the plans. The department shall provide concise management reports to the boards quarterly. As part of the review process, the department shall evaluate:
(1) Whether the department, including the boards and the various functions performed by the department, is operating efficiently and effectively and if there is a need for a board or council to assist in cost-effective regulation.
(2) How and why the various professions are regulated.
(3) Whether there is a need to continue regulation, and to what degree.
(4) Whether or not consumer protection is adequate, and how it can be improved.
(5) Whether there is consistency between the various practice acts.
(6) Whether unlicensed activity is adequately enforced.

The plans shall include conclusions and recommendations on these and other issues as appropriate.

History.—s. 40, ch. 97-261; s. 40, ch. 2000-160; s. 61, ch. 2008-6; s. 148, ch. 2010-102.
Note.—Former s. 455.524.

456.006 Contacting boards through department.—Each board under the jurisdiction of the department may be contacted through the headquarters of the department in the City of Tallahassee.

History.—s. 41, ch. 97-261; s. 40, ch. 2000-160.
Note.—Former s. 455.527.

456.007 Board members.—Notwithstanding any provision of law to the contrary, any person who otherwise meets the requirements of law for board membership and who is connected in any way with any medical college, dental college, or community college may be appointed to any board so long as that connection does not result in a relationship wherein such college represents the person's principal source of income. However, this section shall not apply to the physicians required by s. 458.307(2) to be on the faculty of a medical school in this state or on the full-time staff of a teaching hospital in this state.

History.—s. 2, ch. 84-161; s. 1, ch. 84-271; s. 3, ch. 88-392; s. 42, ch. 97-261; s. 17, ch. 97-264; s. 40, ch. 2000-160.
Note.—Former s. 455.206; s. 455.531.

456.008 Accountability and liability of board members.—
(1) Each board member shall be accountable to the Governor for the proper performance of duties as a member of the board. The Governor shall investigate any legally sufficient complaint or unfavorable written report received by the Governor or by the department or a board concerning the actions of the board or its individual members. The Governor may suspend from office any board member for malfeasance, misfeasance, neglect of duty, drunkenness, incompetence, permanent inability to perform his or her official duties, or commission of a felony.
(2) Each board member and each former board member serving on a probable cause panel shall be exempt from civil liability for any act or omission when acting in the member's official capacity, and the department shall defend any such member in any action against any board or member of a board arising from any such act or omission. In addition, the department may defend the member's company or business in any action against the company or business if the department determines that the actions from which the suit arises are actions taken by the member in the member's official capacity and were not beyond the member's statutory authority. In providing such defense, the department may employ or utilize the legal services of the Department of Legal Affairs or outside counsel retained pursuant to s. 287.059. Fees and costs of providing legal services provided under this subsection shall be paid from a trust fund used by the department to implement this chapter, subject to the provisions of s. 456.025.

History.—s. 45, ch. 97-261; s. 21, ch. 99-7; s. 153, ch. 99-251; s. 41, ch. 2000-160.
Note.—Former s. 455.541.

456.009 Legal and investigative services.—
(1) The department shall provide board counsel for boards within the department by contracting with the Department of Legal Affairs, by retaining private counsel pursuant to s. 287.059, or by providing department staff counsel. The primary responsibility of board counsel shall be to represent the interests of the citizens of the state. A board shall provide for the periodic review and evaluation of the services provided by its board counsel. Fees and costs of such counsel shall be paid from a trust fund used by the department to implement this chapter, subject to the provisions of s. 456.025. All contracts for independent counsel shall provide for periodic review and evaluation by the board and the department of services provided.
(2) The department may employ or use the legal services of outside counsel and the investigative services of outside personnel. However, no attorney employed or utilized by the department shall prosecute a matter and provide legal services to the board with respect to the same matter.
(3) Any person retained by the department under contract to review materials, make site visits, or provide expert testimony regarding any complaint or application filed with the department relating to a profession under the jurisdiction of the department shall be considered an agent of the department in determining the state insurance coverage and sovereign immunity protection applicability of ss. 284.31 and 768.28.

History.—s. 60, ch. 97-261; s. 154, ch. 99-251; s. 42, ch. 2000-160.
Note.—Former s. 455.594.

456.011 Boards; organization; meetings; compensation and travel expenses.—
(1) Each board within the department shall comply with the provisions of this chapter.
(2) The board shall annually elect from among its number a chairperson and vice chairperson.
(3) The board shall meet at least once annually and may meet as often as is necessary. Meetings shall be conducted through teleconferencing or other technological means, unless disciplinary hearings involving standard of care, sexual misconduct, fraud, impairment, or felony convictions; licensure denial hearings; or controversial rule hearings are being conducted; or unless otherwise approved in advance of the meeting by the director of the Division of Medical Quality Assurance. The chairperson or a quorum of the board shall have the authority to call meetings, except as provided above relating to in-person meetings. A quorum shall be necessary for the conduct of official business by the board or any committee thereof. Unless otherwise provided by law, 51 percent or more of the appointed members of the board or any committee, when applicable, shall constitute a quorum. The membership of committees of the board, except as otherwise authorized pursuant to this chapter or the applicable practice act, shall be composed of currently appointed members of the board. The vote of a majority of the members of the quorum shall be necessary for any official action by the board or committee. Three consecutive unexcused absences or absences constituting 50 percent or more of the board's meetings within any 12-month period shall cause the board membership of the member in question to become void, and the position shall be considered vacant. The board, or the department when there is no board, shall, by rule, define unexcused absences.
(4) Unless otherwise provided by law, a board member or former board member serving on a probable cause panel shall be compensated $50 for each day in attendance at an official meeting of the board and for each day of participation in any other business involving the board. Each board shall adopt rules defining the phrase "other business involving the board," but the phrase may not routinely be defined to include telephone conference calls that last less than 4 hours. A board member also shall be entitled to reimbursement for expenses pursuant to s. 112.061. Travel out of state shall require the prior approval of the State Surgeon General.
(5) When two or more boards have differences between them, the boards may elect to, or the State Surgeon General may request that the boards, establish a special committee to settle those differences. The special committee shall consist of three members designated by each board, who may be members of the designating board or other experts designated by the board, and of one additional person designated and agreed to by the members of the special committee. In the event the special committee cannot agree on the additional designee, upon request of the special committee, the State Surgeon General may select the designee. The committee shall recommend rules necessary to resolve the differences. If a rule adopted pursuant to this provision is challenged, the participating boards shall share the costs associated with defending the rule or rules. The department shall provide legal representation for any special committee established pursuant to this section.

History.—s. 43, ch. 97-261; s. 43, ch. 2000-160; s. 10, ch. 2001-277; s. 62, ch. 2008-6.
Note.—Former s. 455.534.

456.012 Board rules; final agency action; challenges.—
(1) The State Surgeon General shall have standing to challenge any rule or proposed rule of a board under its jurisdiction pursuant to s. 120.56. In addition to challenges for any invalid exercise of delegated legislative authority, the administrative law judge, upon such a challenge by the State Surgeon General, may declare all or part of a rule or proposed rule invalid if it:
(a) Does not protect the public from any significant and discernible harm or damages;
(b) Unreasonably restricts competition or the availability of professional services in the state or in a significant part of the state; or
(c) Unnecessarily increases the cost of professional services without a corresponding or equivalent public benefit.

However, there shall not be created a presumption of the existence of any of the conditions cited in this subsection in the event that the rule or proposed rule is challenged.

(2) In addition, either the State Surgeon General or the board shall be a substantially interested party for purposes of s. 120.54(7). The board may, as an adversely affected party, initiate and maintain an action pursuant to s. 120.68 challenging the final agency action.
(3) No board created within the department shall have standing to challenge a rule or proposed rule of another board. However, if there is a dispute between boards concerning a rule or proposed rule, the boards may avail themselves of the provisions of s. 456.011(5).

History.—s. 46, ch. 97-261; s. 44, ch. 2000-160; s. 63, ch. 2008-6.
Note.—Former s. 455.544.

456.013 Department; general licensing provisions.—
(1)(a) Any person desiring to be licensed in a profession within the jurisdiction of the department shall apply to the department in writing to take the licensure examination. The application shall be made on a form prepared and furnished by the department. The application form must be available on the World Wide Web and the department may accept electronically submitted applications beginning July 1, 2001. The application shall require the social security number of the applicant, except as provided in paragraph (b). The form shall be supplemented as needed to reflect any material change in any circumstance or condition stated in the application which takes place between the initial filing of the application and the final grant or denial of the license and which might affect the decision of the department. If an application is submitted electronically, the department may require supplemental materials, including an original signature of the applicant and verification of credentials, to be submitted in a nonelectronic format. An incomplete application shall expire 1 year after initial filing. In order to further the economic development goals of the state, and notwithstanding any law to the contrary, the department may enter into an agreement with the county tax collector for the purpose of appointing the county tax collector as the department's agent to accept applications for licenses and applications for renewals of licenses. The agreement must specify the time within which the tax collector must forward any applications and accompanying application fees to the department.
(b) If an applicant has not been issued a social security number by the Federal Government at the time of application because the applicant is not a citizen or resident of this country, the department may process the application using a unique personal identification number. If such an applicant is otherwise eligible for licensure, the board, or the department when there is no board, may issue a temporary license to the applicant, which shall expire 30 days after issuance unless a social security number is obtained and submitted in writing to the department. Upon receipt of the applicant's social security number, the department shall issue a new license, which shall expire at the end of the current biennium.
(2) Before the issuance of any license, the department shall charge an initial license fee as determined by the applicable board or, if there is no board, by rule of the department. Upon receipt of the appropriate license fee, the department shall issue a license to any person certified by the appropriate board, or its designee, as having met the licensure requirements imposed by law or rule. The license shall consist of a wallet-size identification card and a wall card measuring 61/2 inches by 5 inches. The licensee shall surrender to the department the wallet-size identification card and the wall card if the licensee's license is issued in error or is revoked.
(3)(a) The board, or the department when there is no board, may refuse to issue an initial license to any applicant who is under investigation or prosecution in any jurisdiction for an action that would constitute a violation of this chapter or the professional practice acts administered by the department and the boards, until such time as the investigation or prosecution is complete, and the time period in which the licensure application must be granted or denied shall be tolled until 15 days after the receipt of the final results of the investigation or prosecution.
(b) If an applicant has been convicted of a felony related to the practice or ability to practice any health care profession, the board, or the department when there is no board, may require the applicant to prove that his or her civil rights have been restored.
(c) In considering applications for licensure, the board, or the department when there is no board, may require a personal appearance of the applicant. If the applicant is required to appear, the time period in which a licensure application must be granted or denied shall be tolled until such time as the applicant appears. However, if the applicant fails to appear before the board at either of the next two regularly scheduled board meetings, or fails to appear before the department within 30 days if there is no board, the application for licensure shall be denied.
(4) When any administrative law judge conducts a hearing pursuant to the provisions of chapter 120 with respect to the issuance of a license by the department, the administrative law judge shall submit his or her recommended order to the appropriate board, which shall thereupon issue a final order. The applicant for licensure may appeal the final order of the board in accordance with the provisions of chapter 120.
(5) A privilege against civil liability is hereby granted to any witness for any information furnished by the witness in any proceeding pursuant to this section, unless the witness acted in bad faith or with malice in providing such information.
(6) As a condition of renewal of a license, the Board of Medicine, the Board of Osteopathic Medicine, the Board of Chiropractic Medicine, and the Board of Podiatric Medicine shall each require licensees which they respectively regulate to periodically demonstrate their professional competency by completing at least 40 hours of continuing education every 2 years. The boards may require by rule that up to 1 hour of the required 40 or more hours be in the area of risk management or cost containment. This provision shall not be construed to limit the number of hours that a licensee may obtain in risk management or cost containment to be credited toward satisfying the 40 or more required hours. This provision shall not be construed to require the boards to impose any requirement on licensees except for the completion of at least 40 hours of continuing education every 2 years. Each of such boards

shall determine whether any specific continuing education requirements not otherwise mandated by law shall be mandated and shall approve criteria for, and the content of, any continuing education mandated by such board. Notwithstanding any other provision of law, the board, or the department when there is no board, may approve by rule alternative methods of obtaining continuing education credits in risk management. The alternative methods may include attending a board meeting at which another licensee is disciplined, serving as a volunteer expert witness for the department in a disciplinary case, or serving as a member of a probable cause panel following the expiration of a board member's term. Other boards within the Division of Medical Quality Assurance, or the department if there is no board, may adopt rules granting continuing education hours in risk management for attending a board meeting at which another licensee is disciplined, for serving as a volunteer expert witness for the department in a disciplinary case, or for serving as a member of a probable cause panel following the expiration of a board member's term.

(7) The boards, or the department when there is no board, shall require the completion of a 2-hour course relating to prevention of medical errors as part of the biennial renewal process. The 2-hour course counts toward the total number of continuing education hours required for the profession. The course must be approved by the board or department, as appropriate, and must include a study of root-cause analysis, error reduction and prevention, and patient safety. In addition, the course approved by the Board of Medicine and the Board of Osteopathic Medicine must include information relating to the five most misdiagnosed conditions during the previous biennium, as determined by the board. If the course is being offered by a facility licensed pursuant to chapter 395 for its employees, the board may approve up to 1 hour of the 2-hour course to be specifically related to error reduction and prevention methods used in that facility.

(8) The respective boards within the jurisdiction of the department, or the department when there is no board, may adopt rules to provide for the use of approved videocassette courses, not to exceed 5 hours per subject, to fulfill the continuing education requirements of the professions they regulate. Such rules shall provide for prior approval of the board, or the department when there is no board, of the criteria for and content of such courses and shall provide for a videocassette course validation form to be signed by the vendor and the licensee and submitted to the department, along with the license renewal application, for continuing education credit.

(9) Any board that currently requires continuing education for renewal of a license, or the department if there is no board, shall adopt rules to establish the criteria for continuing education courses. The rules may provide that up to a maximum of 25 percent of the required continuing education hours can be fulfilled by the performance of pro bono services to the indigent or to underserved populations or in areas of critical need within the state where the licensee practices. The board, or the department if there is no board, must require that any pro bono services be approved in advance in order to receive credit for continuing education under this subsection. The standard for determining indigency shall be that recognized by the Federal Poverty Income Guidelines produced by the United States Department of Health and Human Services. The rules may provide for approval by the board, or the department if there is no board, that a part of the continuing education hours can be fulfilled by performing research in critical need areas or for training leading to advanced professional certification. The board, or the department if there is no board, may make rules to define underserved and critical need areas. The department shall adopt rules for administering continuing education requirements adopted by the boards or the department if there is no board.

(10) Notwithstanding any law to the contrary, an elected official who is licensed under a practice act administered by the Division of Medical Quality Assurance may hold employment for compensation with any public agency concurrent with such public service. Such dual service must be disclosed according to any disclosure required by applicable law.

(11) In any instance in which a licensee or applicant to the department is required to be in compliance with a particular provision by, on, or before a certain date, and if that date occurs on a Saturday, Sunday, or a legal holiday, then the licensee or applicant is deemed to be in compliance with the specific date requirement if the required action occurs on the first succeeding day which is not a Saturday, Sunday, or legal holiday.

(12) Pursuant to the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, each party is required to provide his or her social security number in accordance with this section. Disclosure of social security numbers obtained through this requirement shall be limited to the purpose of administration of the Title IV-D program for child support enforcement.

(13) The department shall waive the initial licensing fee, the initial application fee, and the initial unlicensed activity fee for a military veteran or his or her spouse at the time of discharge, if he or she applies to the department for an initial license within 60 months after the veteran is honorably discharged from any branch of the United States Armed Forces. The applicant must apply for the fee waiver using a form prescribed by the department and must submit supporting documentation as required by the department.

History.—s. 44, ch. 92-33; s. 1, ch. 93-27; s. 23, ch. 93-129; s. 27, ch. 95-144; s. 2, ch. 96-309; s. 209, ch. 96-410; s. 1079, ch. 97-103; s. 64, ch. 97-170; s. 51, ch. 97-261; s. 54, ch. 97-278; ss. 7, 237, 262, ch. 98-166; s. 145, ch. 99-251; s. 76, ch. 99-397; s. 45, ch. 2000-160; s. 20, ch. 2000-318; ss. 11, 68, ch. 2001-277; s. 11, ch. 2003-416; s. 1, ch. 2005-62; s. 1, ch. 2013-123; s. 27, ch. 2014-1; s. 10, ch. 2016-230.

Note.—Former s. 455.2141; s. 455.564.

456.0135 General background screening provisions.—

(1) An application for initial licensure received on or after January 1, 2013, under chapter 458, chapter 459, chapter 460, chapter 461, chapter 464, s. 465.022, part XIII of chapter 468, or chapter 480 shall include fingerprints pursuant to procedures established by the department through a vendor approved by the Department of Law Enforcement and fees imposed for the initial screening and retention of fingerprints. Fingerprints must be submitted electronically to the Department of Law Enforcement for state processing,

and the Department of Law Enforcement shall forward the fingerprints to the Federal Bureau of Investigation for national processing. Each board, or the department if there is no board, shall screen the results to determine if an applicant meets licensure requirements. For any subsequent renewal of the applicant's license that requires a national criminal history check, the department shall request the Department of Law Enforcement to forward the retained fingerprints of the applicant to the Federal Bureau of Investigation unless the fingerprints are enrolled in the national retained print arrest notification program.
(2) All fingerprints submitted to the Department of Law Enforcement as required under subsection (1) shall be retained by the Department of Law Enforcement as provided under s. 943.05(2)(g) and (h) and (3) and enrolled in the national retained print arrest notification program at the Federal Bureau of Investigation when the Department of Law Enforcement begins participation in the program. The department shall notify the Department of Law Enforcement regarding any person whose fingerprints have been retained but who is no longer licensed.
(3) The costs of fingerprint processing, including the cost for retaining fingerprints, shall be borne by the applicant subject to the background screening.
(4) All fingerprints received under this section shall be entered into the Care Provider Background Screening Clearinghouse as provided in s. 435.12.

History.—s. 13, ch. 2012-73; s. 1, ch. 2014-139; s. 13, ch. 2015-116.

456.014 Public inspection of information required from applicants; exceptions; examination hearing.—
(1) All information required by the department of any applicant shall be a public record and shall be open to public inspection pursuant to s. 119.07, except financial information, medical information, school transcripts, examination questions, answers, papers, grades, and grading keys, which are confidential and exempt from s. 119.07(1) and shall not be discussed with or made accessible to anyone except the program director of an approved program or accredited program as provided in s. 464.019(6), members of the board, the department, and staff thereof, who have a bona fide need to know such information. Any information supplied to the department by any other agency which is exempt from the provisions of chapter 119 or is confidential shall remain exempt or confidential pursuant to applicable law while in the custody of the department or the agency.
(2) The department shall establish by rule the procedure by which an applicant, and the applicant's attorney, may review examination questions and answers. Examination questions and answers are not subject to discovery but may be introduced into evidence and considered only in camera in any administrative proceeding under chapter 120. If an administrative hearing is held, the department shall provide challenged examination questions and answers to the administrative law judge. The examination questions and answers provided at the hearing are confidential and exempt from s. 119.07(1), unless invalidated by the administrative law judge.
(3) Unless an applicant notifies the department at least 5 days prior to an examination hearing of the applicant's inability to attend, or unless an applicant can demonstrate an extreme emergency for failing to attend, the department may require an applicant who fails to attend to pay reasonable attorney's fees, costs, and court costs of the department for the examination hearing.

History.—s. 76, ch. 97-261; s. 46, ch. 2000-160; s. 1, ch. 2010-37; s. 5, ch. 2014-92.
Note.—Former s. 455.647.

456.015 Limited licenses.—
(1) It is the intent of the Legislature that, absent a threat to the health, safety, and welfare of the public, the use of retired professionals in good standing to serve the indigent, underserved, or critical need populations of this state should be encouraged. To that end, the board, or the department when there is no board, may adopt rules to permit practice by retired professionals as limited licensees under this section.
(2) Any person desiring to obtain a limited license, when permitted by rule, shall submit to the board, or the department when there is no board, an application and fee, not to exceed $300, and an affidavit stating that the applicant has been licensed to practice in any jurisdiction in the United States for at least 10 years in the profession for which the applicant seeks a limited license. The affidavit shall also state that the applicant has retired or intends to retire from the practice of that profession and intends to practice only pursuant to the restrictions of the limited license granted pursuant to this section. If the applicant for a limited license submits a notarized statement from the employer stating that the applicant will not receive monetary compensation for any service involving the practice of her or his profession, the application and all licensure fees shall be waived.
(3) The board, or the department when there is no board, may deny limited licensure to an applicant who has committed, or is under investigation or prosecution for, any act which would constitute the basis for discipline pursuant to the provisions of this chapter or the applicable practice act.
(4) The recipient of a limited license may practice only in the employ of public agencies or institutions or nonprofit agencies or institutions which meet the requirements of s. 501(c)(3) of the Internal Revenue Code, and which provide professional liability coverage for acts or omissions of the limited licensee. A limited licensee may provide services only to the indigent, underserved, or critical need populations within the state. The standard for determining indigency shall be that recognized by the Federal Poverty Income Guidelines produced by the United States Department of Health and Human Services. The board, or the department when there is no board, may adopt rules to define underserved and critical need areas and to ensure implementation of this section.
(5) A board, or the department when there is no board, may provide by rule for supervision of limited licensees to protect the health, safety, and welfare of the public.

(6) Each applicant granted a limited license is subject to all the provisions of this chapter and the respective practice act under which the limited license is issued which are not in conflict with this section.
(7) This section does not apply to chapter 458 or chapter 459.

History.—s. 50, ch. 97-261; s. 22, ch. 99-7; s. 47, ch. 2000-160.
Note.—Former s. 455.561.

456.016 Use of professional testing services.—Notwithstanding any other provision of law to the contrary, the department may use a professional testing service to prepare, administer, grade, and evaluate any computerized examination, when that service is available and approved by the board, or the department if there is no board.

History.—s. 53, ch. 97-261; s. 48, ch. 2000-160.
Note.—Former s. 455.571.

456.017 Examinations.—
(1)(a) The department shall provide, contract, or approve services for the development, preparation, administration, scoring, score reporting, and evaluation of all examinations, in consultation with the appropriate board. The department shall certify that examinations developed and approved by the department adequately and reliably measure an applicant's ability to practice the profession regulated by the department. After an examination developed or approved by the department has been administered, the board, or the department when there is no board, may reject any question which does not reliably measure the general areas of competency specified in the rules of the board. The department may contract for the preparation, administration, scoring, score reporting, and evaluation of examinations, when such services are available and approved by the board.
(b) For each examination developed by the department or contracted vendor, to the extent not otherwise specified by statute, the board, or the department when there is no board, shall by rule specify the general areas of competency to be covered by each examination, the relative weight to be assigned in grading each area tested, and the score necessary to achieve a passing grade. The department shall assess fees to cover the actual cost for any purchase, development, validation, administration, and defense of required examinations. This subsection does not apply to national examinations approved and administered pursuant to paragraph (c). If a practical examination is deemed to be necessary, the rules shall specify the criteria by which examiners are to be selected, the grading criteria to be used by the examiner, the relative weight to be assigned in grading each criterion, and the score necessary to achieve a passing grade. When a mandatory standardization exercise for a practical examination is required by law, the board, or the department when there is no board, may conduct such exercise. Therefore, board members, or employees of the department when there is no board, may serve as examiners at a practical examination with the consent of the board or department, as appropriate.
(c) The board, or the department when there is no board, shall approve by rule the use of one or more national examinations that the department has certified as meeting requirements of national examinations and generally accepted testing standards pursuant to department rules.
1. Providers of examinations seeking certification shall pay the actual costs incurred by the department in making a determination regarding the certification. The name and number of a candidate may be provided to a national contractor for the limited purpose of preparing the grade tape and information to be returned to the board or department; or, to the extent otherwise specified by rule, the candidate may apply directly to the vendor of the national examination and supply test score information to the department. The department may delegate to the board the duty to provide and administer the examination. Any national examination approved by a board, or the department when there is no board, prior to October 1, 1997, is deemed certified under this paragraph.
2. Neither the board nor the department may administer a state-developed written examination if a national examination has been certified by the department. The examination may be administered electronically if adequate security measures are used, as determined by rule of the department.
3. The board, or the department when there is no board, may administer a state-developed practical or clinical examination, as required by the applicable practice act, if all costs of development, purchase, validation, administration, review, and defense are paid by the examination candidate prior to the administration of the examination. If a national practical or clinical examination is available and certified by the department pursuant to this section, the board, or the department when there is no board, may administer the national examination.
4. It is the intent of the Legislature to reduce the costs associated with state examinations and to encourage the use of national examinations whenever possible.
(d) Each board, or the department when there is no board, shall adopt rules regarding the security and monitoring of examinations. The department shall implement those rules adopted by the respective boards. In order to maintain the security of examinations, the department may employ the procedures set forth in s. 456.065 to seek fines and injunctive relief against an examinee who violates the provisions of s. 456.018 or the rules adopted pursuant to this paragraph. The department, or any agent thereof, may, for the purposes of investigation, confiscate any written, photographic, or recording material or device in the possession of the examinee at the examination site which the department deems necessary to enforce such provisions or rules. The scores of candidates who have taken state-developed examinations shall be provided to the candidates electronically using a candidate identification number, and the department shall post the aggregate scores on the department's website without identifying the names of the candidates.

(e) If the professional board with jurisdiction over an examination concurs, the department may, for a fee, share with any other state's licensing authority or a national testing entity an examination or examination item bank developed by or for the department unless prohibited by a contract entered into by the department for development or purchase of the examination. The department, with the concurrence of the appropriate board, shall establish guidelines that ensure security of a shared exam and shall require that any other state's licensing authority comply with those guidelines. Those guidelines shall be approved by the appropriate professional board. All fees paid by the user shall be applied to the department's examination and development program for professions regulated by this chapter.
(f) The department may adopt rules necessary to administer this subsection.
(2) For each examination developed by the department or a contracted vendor, the board, or the department when there is no board, shall adopt rules providing for reexamination of any applicants who failed an examination developed by the department or a contracted vendor. If both a written and a practical examination are given, an applicant shall be required to retake only the portion of the examination on which the applicant failed to achieve a passing grade, if the applicant successfully passes that portion within a reasonable time, as determined by rule of the board, or the department when there is no board, of passing the other portion. Except for national examinations approved and administered pursuant to this section, the department shall provide procedures for applicants who fail an examination developed by the department or a contracted vendor to review their examination questions, answers, papers, grades, and grading key for the questions the candidate answered incorrectly or, if not feasible, the parts of the examination failed. Applicants shall bear the actual cost for the department to provide examination review pursuant to this subsection. An applicant may waive in writing the confidentiality of the applicant's examination grades. Notwithstanding any other provisions, only candidates who fail an examination with a score that is less than 10 percent below the minimum score required to pass the examination shall be entitled to challenge the validity of the examination at hearing.
(3) For each examination developed or administered by the department or a contracted vendor, an accurate record of each applicant's examination questions, answers, papers, grades, and grading key shall be kept for a period of not less than 2 years immediately following the examination, and such record shall thereafter be maintained or destroyed as provided in chapters 119 and 257. This subsection does not apply to national examinations approved and administered pursuant to this section.
(4) Meetings of any member of the department or of any board within the department held for the exclusive purpose of creating or reviewing licensure examination questions or proposed examination questions are exempt from the provisions of s. 286.011 and s. 24(b), Art. I of the State Constitution. Any public records, such as tape recordings, minutes, or notes, generated during or as a result of such meetings are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution. However, these exemptions shall not affect the right of any person to review an examination as provided in subsection (2).
(5) For examinations developed by the department or a contracted vendor, each board, or the department when there is no board, may provide licensure examinations in an applicant's native language. Notwithstanding any other provision of law, applicants for examination or reexamination pursuant to this subsection shall bear the full cost for the department's development, preparation, validation, administration, grading, and evaluation of any examination in a language other than English prior to the examination being administered. Requests for translated examinations must be on file in the board office at least 6 months prior to the scheduled examination. When determining whether it is in the public interest to allow the examination to be translated into a language other than English, the board shall consider the percentage of the population who speak the applicant's native language. Applicants must apply for translation to the applicable board at least 6 months prior to the scheduled examination.
(6) In addition to meeting any other requirements for licensure by examination or by endorsement, and notwithstanding the provisions in paragraph (1)(c), an applicant may be required by a board, or the department when there is no board, to certify competency in state laws and rules relating to the applicable practice act. Beginning October 1, 2001, all laws and rules examinations shall be administered electronically unless the laws and rules examination is administered concurrently with another written examination for that profession or unless the electronic administration would be substantially more expensive.
(7) The department may post examination scores electronically on the Internet in lieu of mailing the scores to each applicant. The electronic posting of the examination scores meets the requirements of chapter 120 if the department also posts along with the examination scores a notification of the rights set forth in chapter 120. The date of receipt for purposes of chapter 120 is the date the examination scores are posted electronically. The department shall also notify the applicant when scores are posted electronically of the availability of postexamination review, if applicable.

History.—s. 46, ch. 92-33; s. 23, ch. 93-129; s. 1, ch. 95-367; s. 304, ch. 96-406; s. 1081, ch. 97-103; s. 54, ch. 97-261; s. 238, ch. 98-166; s. 79, ch. 99-397; s. 49, ch. 2000-160; s. 46, ch. 2000-318; s. 12, ch. 2001-277; s. 2, ch. 2005-62.
Note.—Former s. 455.2173; s. 455.574.

456.018 Penalty for theft or reproduction of an examination.—In addition to, or in lieu of, any other discipline imposed pursuant to s. 456.072, the theft of an examination in whole or in part or the act of reproducing or copying any examination administered by the department, whether such examination is reproduced or copied in part or in whole and by any means, constitutes a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 55, ch. 97-261; s. 50, ch. 2000-160; s. 27, ch. 2000-318.
Note.—Former s. 455.577.

456.019 Restriction on requirement of citizenship.—A person is not disqualified from practicing an occupation or profession regulated by the state solely because she or he is not a United States citizen.

History.—s. 36, ch. 97-261; s. 20, ch. 99-7; s. 51, ch. 2000-160.
Note.—Former s. 455.511.

456.021 Qualification of immigrants for examination to practice a licensed profession or occupation.—
(1) It is the declared purpose of this section to encourage the use of foreign-speaking Florida residents duly qualified to become actively qualified in their professions so that all people of this state may receive better services.
(2) Any person who has successfully completed, or is currently enrolled in, an approved course of study created pursuant to chapters 74-105 and 75-177, Laws of Florida, shall be deemed qualified for examination and reexaminations for a professional or occupational license which shall be administered in the English language unless 15 or more such applicants request that the reexamination be administered in their native language. In the event that such reexamination is administered in a foreign language, the full cost to the board of preparing and administering it shall be borne by the applicants.
(3) Each board within the department shall adopt and implement programs designed to qualify for examination all persons who were resident nationals of the Republic of Cuba and who, on July 1, 1977, were residents of this state.

History.—s. 37, ch. 97-261; s. 51, ch. 2000-160.
Note.—Former s. 455.514.

456.022 Foreign-trained professionals; special examination and license provisions.—
(1) When not otherwise provided by law, within its jurisdiction, the department shall by rule provide procedures under which exiled professionals may be examined within each practice act. A person shall be eligible for such examination if the person:
(a) Immigrated to the United States after leaving the person's home country because of political reasons, provided such country is located in the Western Hemisphere and lacks diplomatic relations with the United States;
(b) Applies to the department and submits a fee;
(c) Was a Florida resident immediately preceding the person's application;
(d) Demonstrates to the department, through submission of documentation verified by the applicant's respective professional association in exile, that the applicant was graduated with an appropriate professional or occupational degree from a college or university; however, the department may not require receipt of any documentation from the Republic of Cuba as a condition of eligibility under this section;
(e) Lawfully practiced the profession for at least 3 years;
(f) Prior to 1980, successfully completed an approved course of study pursuant to chapters 74-105 and 75-177, Laws of Florida; and
(g) Presents a certificate demonstrating the successful completion of a continuing education program which offers a course of study that will prepare the applicant for the examination offered under subsection (2). The department shall develop rules for the approval of such programs for its boards.
(2) Upon request of a person who meets the requirements of subsection (1) and submits an examination fee, the department, for its boards, shall provide a written practical examination which tests the person's current ability to practice the profession competently in accordance with the actual practice of the profession. Evidence of meeting the requirements of subsection (1) shall be treated by the department as evidence of the applicant's preparation in the academic and preprofessional fundamentals necessary for successful professional practice, and the applicant shall not be examined by the department on such fundamentals.
(3) The fees charged for the examinations offered under subsection (2) shall be established by the department, for its boards, by rule and shall be sufficient to develop or to contract for the development of the examination and its administration, grading, and grade reviews.
(4) The department shall examine any applicant who meets the requirements of subsections (1) and (2). Upon passing the examination and the issuance of the license, a licensee is subject to the administrative requirements of this chapter and the respective practice act under which the license is issued. Each applicant so licensed is subject to all provisions of this chapter and the respective practice act under which the license was issued.
(5) Upon a request by an applicant otherwise qualified under this section, the examinations offered under subsection (2) may be given in the applicant's native language, provided that any translation costs are borne by the applicant.
(6) The department, for its boards, shall not issue an initial license to, or renew a license of, any applicant or licensee who is under investigation or prosecution in any jurisdiction for an action which would constitute a violation of this chapter or the professional practice acts administered by the department and the boards until such time as the investigation or prosecution is complete, at which time the provisions of the professional practice acts shall apply.

History.—s. 56, ch. 97-261; s. 52, ch. 2000-160.
Note.—Former s. 455.581.

456.023 Exemption for certain out-of-state or foreign professionals; limited practice permitted.—
(1) A professional of any other state or of any territory or other jurisdiction of the United States or of any other nation or foreign

jurisdiction is exempt from the requirements of licensure under this chapter and the applicable professional practice act under the agency with regulatory jurisdiction over the profession if that profession is regulated in this state under the agency with regulatory jurisdiction over the profession and if that person:
(a) Holds, if so required in the jurisdiction in which that person practices, an active license to practice that profession.
(b) Engages in the active practice of that profession outside the state.
(c) Is employed or designated in that professional capacity by a sports entity visiting the state for a specific sporting event.
(2) A professional's practice under this section is limited to the members, coaches, and staff of the team for which that professional is employed or designated and to any animals used if the sporting event for which that professional is employed or designated involves animals. A professional practicing under authority of this section shall not have practice privileges in any licensed health care facility or veterinary facility without the approval of that facility.
History.—s. 57, ch. 97-261; s. 53, ch. 2000-160.
Note.—Former s. 455.584.

456.024 Members of Armed Forces in good standing with administrative boards or the department; spouses; licensure.—
(1) Any member of the Armed Forces of the United States now or hereafter on active duty who, at the time of becoming such a member, was in good standing with any administrative board of the state, or the department when there is no board, and was entitled to practice or engage in his or her profession or vocation in the state shall be kept in good standing by such administrative board, or the department when there is no board, without registering, paying dues or fees, or performing any other act on his or her part to be performed, as long as he or she is a member of the Armed Forces of the United States on active duty and for a period of 6 months after discharge from active duty as a member of the Armed Forces of the United States, provided he or she is not engaged in his or her licensed profession or vocation in the private sector for profit.
(2) The boards listed in s. 20.43, or the department when there is no board, shall adopt rules exempting the spouses of members of the Armed Forces of the United States from licensure renewal provisions, but only in cases of absence from the state because of their spouses' duties with the Armed Forces.
(3)(a) A person is eligible for licensure as a health care practitioner in this state if he or she:
1. Serves or has served as a health care practitioner in the United States Armed Forces, the United States Reserve Forces, or the National Guard;
2. Serves or has served on active duty with the United States Armed Forces as a health care practitioner in the United States Public Health Service; or
3. Is a health care practitioner, other than a dentist, in another state, the District of Columbia, or a possession or territory of the United States and is the spouse of a person serving on active duty with the United States Armed Forces.

The department shall develop an application form, and each board, or the department if there is no board, shall waive the application fee, licensure fee, and unlicensed activity fee for such applicants. For purposes of this subsection, "health care practitioner" means a health care practitioner as defined in s. 456.001 and a person licensed under part III of chapter 401 or part IV of chapter 468.

(b) The board, or the department if there is no board, shall issue a license to practice in this state to a person who:
1. Submits a complete application.
2. If he or she is a member of the United States Armed Forces, the United States Reserve Forces, or the National Guard, submits proof that he or she has received an honorable discharge within 6 months before, or will receive an honorable discharge within 6 months after, the date of submission of the application.
3.a. Holds an active, unencumbered license issued by another state, the District of Columbia, or a possession or territory of the United States and who has not had disciplinary action taken against him or her in the 5 years preceding the date of submission of the application;
b. Is a military health care practitioner in a profession for which licensure in a state or jurisdiction is not required to practice in the United States Armed Forces, if he or she submits to the department evidence of military training or experience substantially equivalent to the requirements for licensure in this state in that profession and evidence that he or she has obtained a passing score on the appropriate examination of a national or regional standards organization if required for licensure in this state; or
c. Is the spouse of a person serving on active duty in the United States Armed Forces and is a health care practitioner in a profession, excluding dentistry, for which licensure in another state or jurisdiction is not required, if he or she submits to the department evidence of training or experience substantially equivalent to the requirements for licensure in this state in that profession and evidence that he or she has obtained a passing score on the appropriate examination of a national or regional standards organization if required for licensure in this state.
4. Attests that he or she is not, at the time of submission of the application, the subject of a disciplinary proceeding in a jurisdiction in which he or she holds a license or by the United States Department of Defense for reasons related to the practice of the profession for which he or she is applying.
5. Actively practiced the profession for which he or she is applying for the 3 years preceding the date of submission of the application.
6. Submits a set of fingerprints for a background screening pursuant to s. 456.0135, if required for the profession for which he or she is applying.

The department shall verify information submitted by the applicant under this subsection using the National Practitioner Data Bank.

(c) Each applicant who meets the requirements of this subsection shall be licensed with all rights and responsibilities as defined by law. The applicable board, or the department if there is no board, may deny an application if the applicant has been convicted of or pled guilty or nolo contendere to, regardless of adjudication, any felony or misdemeanor related to the practice of a health care profession regulated by this state.
(d) An applicant for initial licensure under this subsection must submit the information required by ss. 456.039(1) and 456.0391(1) no later than 1 year after the license is issued.
(4)(a) The board, or the department if there is no board, may issue a temporary professional license to the spouse of an active duty member of the Armed Forces of the United States who submits to the department:
1. A completed application upon a form prepared and furnished by the department in accordance with the board's rules;
2. The required application fee;
3. Proof that the applicant is married to a member of the Armed Forces of the United States who is on active duty;
4. Proof that the applicant holds a valid license for the profession issued by another state, the District of Columbia, or a possession or territory of the United States, and is not the subject of any disciplinary proceeding in any jurisdiction in which the applicant holds a license to practice a profession regulated by this chapter;
5. Proof that the applicant's spouse is assigned to a duty station in this state pursuant to the member's official active duty military orders; and
6. Proof that the applicant would otherwise be entitled to full licensure under the appropriate practice act, and is eligible to take the respective licensure examination as required in Florida.
(b) The applicant must also submit to the Department of Law Enforcement a complete set of fingerprints. The Department of Law Enforcement shall conduct a statewide criminal history check and forward the fingerprints to the Federal Bureau of Investigation for a national criminal history check.
(c) Each board, or the department if there is no board, shall review the results of the state and federal criminal history checks according to the level 2 screening standards in s. 435.04 when granting an exemption and when granting or denying the temporary license.
(d) The applicant shall pay the cost of fingerprint processing. If the fingerprints are submitted through an authorized agency or vendor, the agency or vendor shall collect the required processing fees and remit the fees to the Department of Law Enforcement.
(e) The department shall set an application fee, which may not exceed the cost of issuing the license.
(f) A temporary license expires 12 months after the date of issuance and is not renewable.
(g) An applicant for a temporary license under this subsection is subject to the requirements under s. 456.013(3)(a) and (c).
(h) An applicant shall be deemed ineligible for a temporary license pursuant to this section if the applicant:
1. Has been convicted of or pled nolo contendere to, regardless of adjudication, any felony or misdemeanor related to the practice of a health care profession;
2. Has had a health care provider license revoked or suspended from another of the United States, the District of Columbia, or a United States territory;
3. Has been reported to the National Practitioner Data Bank, unless the applicant has successfully appealed to have his or her name removed from the data bank; or
4. Has previously failed the Florida examination required to receive a license to practice the profession for which the applicant is seeking a license.
(i) The board, or department if there is no board, may revoke a temporary license upon finding that the individual violated the profession's governing practice act.
(j) An applicant who is issued a temporary professional license to practice as a dentist pursuant to this section must practice under the indirect supervision, as defined in s. 466.003, of a dentist licensed pursuant to chapter 466.

History.—s. 35, ch. 97-261; s. 19, ch. 99-7; s. 73, ch. 99-397; s. 54, ch. 2000-160; s. 1, ch. 2011-95; s. 28, ch. 2014-1; s. 11, ch. 2016-230.
Note.—Former s. 455.507.

456.0241 Temporary certificate for active duty military health care practitioners.—
(1) As used in this section, the term:
(a) "Military health care practitioner" means:
1. A person practicing as a health care practitioner as defined in s. 456.001, as a person licensed under part III of chapter 401, or as a person licensed under part IV of chapter 468 who is serving on active duty in the United States Armed Forces, the United States Reserve Forces, or the National Guard; or
2. A person who is serving on active duty in the United States Armed Forces and serving in the United States Public Health Service.
(b) "Military platform" means a military training agreement with a nonmilitary health care provider that is designed to develop and support medical, surgical, or other health care treatment opportunities in a nonmilitary health care provider setting to authorize a military health care practitioner to develop and maintain the technical proficiency necessary to meet the present and future health care needs of the United States Armed Forces. Such agreements may include Training Affiliation Agreements and External Resource Sharing Agreements.
(2) The department may issue a temporary certificate to an active duty military health care practitioner to practice in a regulated

profession in this state if the applicant:
(a) Submits proof that he or she will be practicing pursuant to a military platform.
(b) Submits a complete application and a nonrefundable application fee.
(c) Holds an active, unencumbered license to practice as a health care professional issued by another state, the District of Columbia, or a possession or territory of the United States or is a military health care practitioner in a profession for which licensure in a state or jurisdiction is not required for practice in the United States Armed Forces and provides evidence of military training and experience substantially equivalent to the requirements for licensure in this state in that profession.
(d) Attests that he or she is not, at the time of submission of the application, the subject of a disciplinary proceeding in a jurisdiction in which he or she holds a license or by the United States Department of Defense for reasons related to the practice of the profession for which he or she is applying.
(e) Has been determined to be competent in the profession for which he or she is applying.
(f) Submits a set of fingerprints for a background screening pursuant to s. 456.0135, if required for the profession for which he or she is applying.

The department shall verify information submitted by the applicant under this subsection using the National Practitioner Data Bank.

(3) A temporary certificate issued under this section expires 6 months after issuance but may be renewed upon proof of continuing military orders for active duty assignment in this state and evidence that the military health care practitioner continues to be a military platform participant.
(4) A military health care practitioner applying for a temporary certificate under this section is exempt from ss. 456.039-456.046. All other provisions of this chapter apply to such military health care practitioner.
(5) An applicant for a temporary certificate under this section is deemed ineligible if he or she:
(a) Has been convicted of or pled guilty or nolo contendere to, regardless of adjudication, any felony or misdemeanor related to the practice of a health care profession;
(b) Has had a health care provider license revoked or suspended in another state, the District of Columbia, or a possession or territory of the United States;
(c) Has failed to obtain a passing score on the Florida examination required to receive a license to practice the profession for which he or she is applying; or
(d) Is under investigation in another jurisdiction for an act that would constitute a violation of the applicable licensing chapter or this chapter until the investigation is complete and all charges against him or her are disposed of by dismissal, nolle prosequi, or acquittal.
(6) The department shall, by rule, set an application fee not to exceed $50 and a renewal fee not to exceed $50.
(7) Application shall be made on a form prescribed and furnished by the department.
(8) The department shall adopt rules to implement this section.

History.—s. 12, ch. 2016-230.

456.025 Fees; receipts; disposition.—
(1) It is the intent of the Legislature that all costs of regulating health care professions and practitioners shall be borne solely by licensees and licensure applicants. It is also the intent of the Legislature that fees should be reasonable and not serve as a barrier to licensure. Moreover, it is the intent of the Legislature that the department operate as efficiently as possible and regularly report to the Legislature additional methods to streamline operational costs. Therefore, the boards in consultation with the department, or the department if there is no board, shall, by rule, set renewal fees which:
(a) Shall be based on revenue projections prepared using generally accepted accounting procedures;
(b) Shall be adequate to cover all expenses relating to that board identified in the department's long-range policy plan, as required by s. 456.005;
(c) Shall be reasonable, fair, and not serve as a barrier to licensure;
(d) Shall be based on potential earnings from working under the scope of the license;
(e) Shall be similar to fees imposed on similar licensure types;
(f) Shall not be more than 10 percent greater than the actual cost to regulate that profession for the previous biennium; and
(g) Shall be subject to challenge pursuant to chapter 120.
(2) The chairpersons of the boards and councils listed in s. 20.43(3)(g) shall meet annually at division headquarters to review the long-range policy plan required by s. 456.005 and current and proposed fee schedules. The chairpersons shall make recommendations for any necessary statutory changes relating to fees and fee caps. Such recommendations shall be compiled by the Department of Health and be included in the annual report to the Legislature required by s. 456.026 as well as be included in the long-range policy plan required by s. 456.005.
(3) Each board within the jurisdiction of the department, or the department when there is no board, shall determine by rule the amount of license fees for the profession it regulates, based upon long-range estimates prepared by the department of the revenue required to implement laws relating to the regulation of professions by the department and the board. Each board, or the department if there is no board, shall ensure that license fees are adequate to cover all anticipated costs and to maintain a reasonable cash balance, as determined by rule of the agency, with advice of the applicable board. If sufficient action is not taken by a board within 1 year after notification by the department that license fees are projected to be inadequate, the department shall set license fees on behalf of the

applicable board to cover anticipated costs and to maintain the required cash balance. The department shall include recommended fee cap increases in its annual report to the Legislature. Further, it is the legislative intent that no regulated profession operate with a negative cash balance. The department may provide by rule for advancing sufficient funds to any profession operating with a negative cash balance. The advancement may be for a period not to exceed 2 consecutive years, and the regulated profession must pay interest. Interest shall be calculated at the current rate earned on investments of a trust fund used by the department to implement this chapter. Interest earned shall be allocated to the various funds in accordance with the allocation of investment earnings during the period of the advance.
(4) Each board, or the department if there is no board, may charge a fee not to exceed $25, as determined by rule, for the issuance of a wall certificate pursuant to s. 456.013(2) requested by a licensee who was licensed prior to July 1, 1998, or for the issuance of a duplicate wall certificate requested by any licensee.
(5) Each board, or the department if there is no board, may, by rule, assess and collect a one-time fee from each active status licensee and each inactive status licensee in an amount necessary to eliminate a cash deficit or, if there is not a cash deficit, in an amount sufficient to maintain the financial integrity of the professions as required in this section. Not more than one such assessment may be made in any 4-year period without specific legislative authorization.
(6) If the cash balance of the trust fund at the end of any fiscal year exceeds the total appropriation provided for the regulation of the health care professions in the prior fiscal year, the boards, in consultation with the department, may lower the license renewal fees.
(7) Each board, or the department if there is no board, shall establish, by rule, a fee not to exceed $250 for anyone seeking approval to provide continuing education courses or programs and shall establish by rule a biennial renewal fee not to exceed $250 for the renewal of providership of such courses. The fees collected from continuing education providers shall be used for the purposes of reviewing course provider applications, monitoring the integrity of the courses provided, covering legal expenses incurred as a result of not granting or renewing a providership, and developing and maintaining an electronic continuing education tracking system. The department shall implement an electronic continuing education tracking system for each new biennial renewal cycle for which electronic renewals are implemented after the effective date of this act and shall integrate such system into the licensure and renewal system. All approved continuing education providers shall provide information on course attendance to the department necessary to implement the electronic tracking system. The department shall, by rule, specify the form and procedures by which the information is to be submitted.
(8) All moneys collected by the department from fees or fines or from costs awarded to the agency by a court shall be paid into a trust fund used by the department to implement this chapter. The Legislature shall appropriate funds from this trust fund sufficient to carry out this chapter and the provisions of law with respect to professions regulated by the Division of Medical Quality Assurance within the department and the boards. The department may contract with public and private entities to receive and deposit revenue pursuant to this section. The department shall maintain separate accounts in the trust fund used by the department to implement this chapter for every profession within the department. To the maximum extent possible, the department shall directly charge all expenses to the account of each regulated profession. For the purpose of this subsection, direct charge expenses include, but are not limited to, costs for investigations, examinations, and legal services. For expenses that cannot be charged directly, the department shall provide for the proportionate allocation among the accounts of expenses incurred by the department in the performance of its duties with respect to each regulated profession. The regulation by the department of professions, as defined in this chapter, shall be financed solely from revenue collected by it from fees and other charges and deposited in the Medical Quality Assurance Trust Fund, and all such revenue is hereby appropriated to the department. However, it is legislative intent that each profession shall operate within its anticipated fees. The department may not expend funds from the account of a profession to pay for the expenses incurred on behalf of another profession, except that the Board of Nursing must pay for any costs incurred in the regulation of certified nursing assistants. The department shall maintain adequate records to support its allocation of agency expenses. The department shall provide any board with reasonable access to these records upon request. On or before October 1 of each year, the department shall provide each board an annual report of revenue and direct and allocated expenses related to the operation of that profession. The board shall use these reports and the department's adopted long-range plan to determine the amount of license fees. A condensed version of this information, with the department's recommendations, shall be included in the annual report to the Legislature prepared under s. 456.026.
(9) The department shall provide a management report of revenues and expenditures, performance measures, and recommendations to each board at least once a quarter.
(10) If a duplicate license is required or requested by the licensee, the board or, if there is no board, the department may charge a fee as determined by rule not to exceed $25 before issuance of the duplicate license.
(11) The department or the appropriate board shall charge a fee not to exceed $25 for the certification of a public record. The fee shall be determined by rule of the department. The department or the appropriate board shall assess a fee for duplicating a public record as provided in s. 119.07(4).

History.—s. 49, ch. 92-33; s. 23, ch. 93-129; s. 58, ch. 97-261; s. 80, ch. 99-397; s. 55, ch. 2000-160; ss. 32, 164, ch. 2000-318; s. 73, ch. 2001-62; s. 6, ch. 2001-277; s. 12, ch. 2003-416; s. 45, ch. 2004-335; s. 149, ch. 2010-102.
Note.—Former s. 455.220; s. 455.587.

456.026 Annual report concerning finances, administrative complaints, disciplinary actions, and recommendations.—The department is directed to prepare and submit a report to the President of the Senate and the Speaker of the House of Representatives by November 1 of each year. In addition to finances and any other information the Legislature may require, the report shall include

statistics and relevant information, profession by profession, detailing:
(1) The revenues, expenditures, and cash balances for the prior year, and a review of the adequacy of existing fees.
(2) The number of complaints received and investigated.
(3) The number of findings of probable cause made.
(4) The number of findings of no probable cause made.
(5) The number of administrative complaints filed.
(6) The disposition of all administrative complaints.
(7) A description of disciplinary actions taken.
(8) A description of any effort by the department to reduce or otherwise close any investigation or disciplinary proceeding not before the Division of Administrative Hearings under chapter 120 or otherwise not completed within 1 year after the initial filing of a complaint under this chapter.
(9) The status of the development and implementation of rules providing for disciplinary guidelines pursuant to s. 456.079.
(10) Such recommendations for administrative and statutory changes necessary to facilitate efficient and cost-effective operation of the department and the various boards.

History.—s. 75, ch. 97-261; s. 56, ch. 2000-160; s. 4, ch. 2002-254.
Note.—Former s. 455.644.

456.027 Education; accreditation.—Notwithstanding any other provision of law, educational programs and institutions which are required by statute to be accredited, but which were accredited by an agency that has since ceased to perform an accrediting function, shall be recognized until such programs and institutions are accredited by a qualified successor to the original accrediting agency, an accrediting agency recognized by the United States Department of Education, or an accrediting agency recognized by the board, or the department when there is no board.

History.—s. 48, ch. 97-261; s. 57, ch. 2000-160.
Note.—Former s. 455.551.

456.028 Consultation with postsecondary education boards prior to adoption of changes to training requirements.—Any state agency or board that has jurisdiction over the regulation of a profession or occupation shall consult with the Commission for Independent Education, the Board of Governors of the State University System, and the State Board of Education prior to adopting any changes to training requirements relating to entry into the profession or occupation. This consultation must allow the educational board to provide advice regarding the impact of the proposed changes in terms of the length of time necessary to complete the training program and the fiscal impact of the changes. The educational board must be consulted only when an institution offering the training program falls under its jurisdiction.

History.—s. 49, ch. 97-261; s. 35, ch. 98-421; s. 57, ch. 2000-160; s. 72, ch. 2004-5; s. 14, ch. 2004-41; s. 54, ch. 2007-217.
Note.—Former s. 455.554.

456.029 Education; substituting demonstration of competency for clock-hour requirements.—Any board, or the department when there is no board, that requires student completion of a specific number of clock hours of classroom instruction for initial licensure purposes shall establish the minimal competencies that such students must demonstrate in order to be licensed. The demonstration of such competencies may be substituted for specific classroom clock-hour requirements established in statute or rule which are related to instructional programs for licensure purposes. Student demonstration of the established minimum competencies shall be certified by the educational institution. The provisions of this section shall not apply to boards for which federal licensure standards are more restrictive or stringent than the standards prescribed in statute.

History.—s. 47, ch. 97-261; s. 57, ch. 2000-160.
Note.—Former s. 455.547.

456.031 Requirement for instruction on domestic violence.—
(1)(a) The appropriate board shall require each person licensed or certified under chapter 458, chapter 459, part I of chapter 464, chapter 466, chapter 467, chapter 490, or chapter 491 to complete a 2-hour continuing education course, approved by the board, on domestic violence, as defined in s. 741.28, as part of every third biennial relicensure or recertification. The course shall consist of information on the number of patients in that professional's practice who are likely to be victims of domestic violence and the number who are likely to be perpetrators of domestic violence, screening procedures for determining whether a patient has any history of being either a victim or a perpetrator of domestic violence, and instruction on how to provide such patients with information on, or how to refer such patients to, resources in the local community, such as domestic violence centers and other advocacy groups, that provide legal aid, shelter, victim counseling, batterer counseling, or child protection services.
(b) Each such licensee or certificateholder shall submit confirmation of having completed such course, on a form provided by the board, when submitting fees for every third biennial renewal.

(c) The board may approve additional equivalent courses that may be used to satisfy the requirements of paragraph (a). Each licensing board that requires a licensee to complete an educational course pursuant to this subsection may include the hour required for completion of the course in the total hours of continuing education required by law for such profession unless the continuing education requirements for such profession consist of fewer than 30 hours biennially.
(d) Any person holding two or more licenses subject to the provisions of this subsection shall be permitted to show proof of having taken one board-approved course on domestic violence, for purposes of relicensure or recertification for additional licenses.
(e) Failure to comply with the requirements of this subsection shall constitute grounds for disciplinary action under each respective practice act and under s. 456.072(1)(k). In addition to discipline by the board, the licensee shall be required to complete such course.
(2) Each board may adopt rules to carry out the provisions of this section.

History.—s. 4, ch. 95-187; s. 61, ch. 97-261; s. 58, ch. 2000-160; s. 6, ch. 2000-295; s. 112, ch. 2000-318; s. 1, ch. 2001-176; s. 1, ch. 2001-250; s. 105, ch. 2001-277; s. 1, ch. 2006-251.
Note.—Former s. 455.222; s. 455.597.

456.032 Hepatitis B or HIV carriers.—
(1) The department and each appropriate board within the Division of Medical Quality Assurance shall have the authority to establish procedures to handle, counsel, and provide other services to health care professionals within their respective boards who are infected with hepatitis B or the human immunodeficiency virus.
(2) Any person licensed by the department and any other person employed by a health care facility who contracts a blood-borne infection shall have a rebuttable presumption that the illness was contracted in the course and scope of his or her employment, provided that the person, as soon as practicable, reports to the person's supervisor or the facility's risk manager any significant exposure, as that term is defined in s. 381.004(1)(f), to blood or body fluids. The employer may test the blood or body fluid to determine if it is infected with the same disease contracted by the employee. The employer may rebut the presumption by the preponderance of the evidence. Except as expressly provided in this subsection, there shall be no presumption that a blood-borne infection is a job-related injury or illness.

History.—s. 75, ch. 91-297; s. 76, ch. 94-218; s. 62, ch. 97-261; s. 81, ch. 99-397; s. 59, ch. 2000-160; s. 121, ch. 2012-184; s. 2, ch. 2015-110.
Note.—Former s. 455.2224; s. 455.601.

456.033 Requirement for instruction for certain licensees on HIV and AIDS.—The following requirements apply to each person licensed or certified under chapter 457; chapter 458; chapter 459; chapter 460; chapter 461; chapter 463; part I of chapter 464; chapter 465; chapter 466; part II, part III, part V, or part X of chapter 468; or chapter 486:
(1) Each person shall be required by the appropriate board to complete no later than upon first renewal a continuing educational course, approved by the board, on human immunodeficiency virus and acquired immune deficiency syndrome as part of biennial relicensure or recertification. The course shall consist of education on the modes of transmission, infection control procedures, clinical management, and prevention of human immunodeficiency virus and acquired immune deficiency syndrome. Such course shall include information on current Florida law on acquired immune deficiency syndrome and its impact on testing, confidentiality of test results, treatment of patients, and any protocols and procedures applicable to human immunodeficiency virus counseling and testing, reporting, the offering of HIV testing to pregnant women, and partner notification issues pursuant to ss. 381.004 and 384.25.
(2) Each person shall submit confirmation of having completed the course required under subsection (1), on a form as provided by the board, when submitting fees for first renewal.
(3) The board shall have the authority to approve additional equivalent courses that may be used to satisfy the requirements in subsection (1). Each licensing board that requires a licensee to complete an educational course pursuant to this section may count the hours required for completion of the course included in the total continuing educational requirements as required by law.
(4) Any person holding two or more licenses subject to the provisions of this section shall be permitted to show proof of having taken one board-approved course on human immunodeficiency virus and acquired immune deficiency syndrome, for purposes of relicensure or recertification for additional licenses.
(5) Failure to comply with the above requirements shall constitute grounds for disciplinary action under each respective licensing chapter and s. 456.072(1)(e). In addition to discipline by the board, the licensee shall be required to complete the course.

History.—s. 63, ch. 97-261; s. 4, ch. 98-171; s. 9, ch. 99-331; s. 82, ch. 99-397; s. 60, ch. 2000-160; s. 113, ch. 2000-318; s. 2, ch. 2001-176; s. 2, ch. 2001-250; s. 106, ch. 2001-277; s. 2, ch. 2006-251.
Note.—Former s. 455.604.

456.035 Address of record.—
(1) Each licensee of the department is solely responsible for notifying the department in writing of the licensee's current mailing address and place of practice, as defined by rule of the board or the department if there is no board. Electronic notification shall be allowed by the department; however, it shall be the responsibility of the licensee to ensure that the electronic notification was received by the department. A licensee's failure to notify the department of a change of address constitutes a violation of this section, and the

licensee may be disciplined by the board or the department if there is no board.
(2) Notwithstanding any other law, service by regular mail to a licensee's last known address of record with the department constitutes adequate and sufficient notice to the licensee for any official communication to the licensee by the board or the department except when other service is required under s. 456.076.
History.—s. 97, ch. 97-261; s. 39, ch. 98-166; s. 62, ch. 2000-160; s. 13, ch. 2001-277.
Note.—Former s. 455.717.
456.036 Licenses; active and inactive status; delinquency.—
(1) A licensee may practice a profession only if the licensee has an active status license. A licensee who practices a profession with an inactive status license, a retired status license, or a delinquent license is in violation of this section and s. 456.072, and the board, or the department if there is no board, may impose discipline on the licensee.
(2) Each board, or the department if there is no board, shall permit a licensee to choose, at the time of licensure renewal, an active, inactive, or retired status.
(3) Each board, or the department if there is no board, shall by rule impose a fee for renewal of an active or inactive status license. The renewal fee for an inactive status license may not exceed the fee for an active status license.
(4) Notwithstanding any other provision of law to the contrary, a licensee may change licensure status at any time.
(a) Active status licensees choosing inactive status at the time of license renewal must pay the inactive status renewal fee, and, if applicable, the delinquency fee and the fee to change licensure status. Active status licensees choosing inactive status at any other time than at the time of license renewal must pay the fee to change licensure status.
(b) An active status licensee or an inactive status licensee who chooses retired status at the time of license renewal must pay the retired status fee, which may not exceed $50 as established by rule of the board or the department if there is no board. An active status licensee or inactive status licensee who chooses retired status at any time other than at the time of license renewal must pay the retired status fee plus a change-of-status fee.
(c) An inactive status licensee may change to active status at any time, if the licensee meets all requirements for active status. Inactive status licensees choosing active status at the time of license renewal must pay the active status renewal fee, any applicable reactivation fees as set by the board, or the department if there is no board, and, if applicable, the delinquency fee and the fee to change licensure status. Inactive status licensees choosing active status at any other time than at the time of license renewal must pay the difference between the inactive status renewal fee and the active status renewal fee, if any exists, any applicable reactivation fees as set by the board, or the department if there is no board, and the fee to change licensure status.
(5) A licensee must apply with a complete application, as defined by rule of the board, or the department if there is no board, to renew an active or inactive status license before the license expires. If a licensee fails to renew before the license expires, the license becomes delinquent in the license cycle following expiration.
(6) A delinquent licensee must affirmatively apply with a complete application, as defined by rule of the board, or the department if there is no board, for active or inactive status during the licensure cycle in which a licensee becomes delinquent. Failure by a delinquent licensee to become active or inactive before the expiration of the current licensure cycle renders the license null without any further action by the board or the department. Any subsequent licensure shall be as a result of applying for and meeting all requirements imposed on an applicant for new licensure.
(7) Each board, or the department if there is no board, shall by rule impose an additional delinquency fee, not to exceed the biennial renewal fee for an active status license, on a delinquent licensee when such licensee applies for active or inactive status.
(8) Each board, or the department if there is no board, shall by rule impose an additional fee, not to exceed the biennial renewal fee for an active status license, for processing a licensee's request to change licensure status at any time other than at the beginning of a licensure cycle.
(9) Each board, or the department if there is no board, may by rule impose reasonable conditions, excluding full reexamination but including part of a national examination or a special purpose examination to assess current competency, necessary to ensure that a licensee who has been on inactive status for more than two consecutive biennial licensure cycles and who applies for active status can practice with the care and skill sufficient to protect the health, safety, and welfare of the public. Reactivation requirements may differ depending on the length of time licensees are inactive. The costs to meet reactivation requirements shall be borne by licensees requesting reactivation.
(10) Each board, or the department if there is no board, may by rule impose reasonable conditions, including full reexamination to assess current competency, in order to ensure that a licensee who has been on retired status for more than 5 years, or a licensee from another state who has not been in active practice within the past 5 years, and who applies for active status is able to practice with the care and skill sufficient to protect the health, safety, and welfare of the public. Requirements for reactivation of a license may differ depending on the length of time a licensee has been retired.
(11) Before reactivation, an inactive status licensee or a delinquent licensee who was inactive prior to becoming delinquent must meet the same continuing education requirements, if any, imposed on an active status licensee for all biennial licensure periods in which the licensee was inactive or delinquent.
(12) Before the license of a retired status licensee is reactivated, the licensee must meet the same requirements for continuing education, if any, and pay any renewal fees imposed on an active status licensee for all biennial licensure periods during which the licensee was on retired status.
(13) The status or a change in status of a licensee does not alter in any way the right of the board, or of the department if there is no board, to impose discipline or to enforce discipline previously imposed on a licensee for acts or omissions committed by the licensee

while holding a license, whether active, inactive, retired, or delinquent.
(14) A person who has been denied renewal of licensure, certification, or registration under s. 456.0635(3) may regain licensure, certification, or registration only by meeting the qualifications and completing the application process for initial licensure as defined by the board, or the department if there is no board. However, a person who was denied renewal of licensure, certification, or registration under s. 24, chapter 2009-223, Laws of Florida, between July 1, 2009, and June 30, 2012, is not required to retake and pass examinations applicable for initial licensure, certification, or registration.
(15) This section does not apply to a business establishment registered, permitted, or licensed by the department to do business.
(16) The board, or the department when there is no board, may adopt rules pursuant to ss. 120.536(1) and 120.54 as necessary to implement this section.

History.—s. 95, ch. 97-261; s. 63, ch. 2000-160; s. 31, ch. 2000-318; s. 3, ch. 2005-62; s. 2, ch. 2012-64.
Note.—Former s. 455.711.

456.0361 Compliance with continuing education requirements.—
(1) The department shall establish an electronic continuing education tracking system to monitor licensee compliance with applicable continuing education requirements and to determine whether a licensee is in full compliance with the requirements at the time of his or her application for license renewal. The tracking system shall be integrated into the department's licensure and renewal process.
(2) The department may not renew a license until the licensee complies with all applicable continuing education requirements. This subsection does not prohibit the department or the boards from imposing additional penalties under the applicable professional practice act or applicable rules for failure to comply with continuing education requirements.
(3) The department may adopt rules to implement this section.

History.—s. 13, ch. 2016-230.

456.037 Business establishments; requirements for active status licenses; delinquency; discipline; applicability.—
(1) A business establishment regulated by the Division of Medical Quality Assurance pursuant to this chapter may provide regulated services only if the business establishment has an active status license. A business establishment that provides regulated services without an active status license is in violation of this section and s. 456.072, and the board, or the department if there is no board, may impose discipline on the business establishment.
(2) A business establishment must apply with a complete application, as defined by rule of the board, or the department if there is no board, to renew an active status license before the license expires. If a business establishment fails to renew before the license expires, the license becomes delinquent, except as otherwise provided in statute, in the license cycle following expiration.
(3) A delinquent business establishment must apply with a complete application, as defined by rule of the board, or the department if there is no board, for active status within 6 months after becoming delinquent. Failure of a delinquent business establishment to renew the license within the 6 months after the expiration date of the license renders the license null without any further action by the board or the department. Any subsequent licensure shall be as a result of applying for and meeting all requirements imposed on a business establishment for new licensure.
(4) The status or a change in status of a business establishment license does not alter in any way the right of the board, or of the department if there is no board, to impose discipline or to enforce discipline previously imposed on a business establishment for acts or omissions committed by the business establishment while holding a license, whether active or null.
(5) This section applies to any business establishment registered, permitted, or licensed by the department to do business. Business establishments include, but are not limited to, dental laboratories, electrology facilities, massage establishments, pharmacies, and pain-management clinics required to be registered under s. 458.3265 or s. 459.0137.

History.—s. 89, ch. 99-397; s. 64, ch. 2000-160; s. 27, ch. 2000-318; s. 102, ch. 2000-349; s. 1, ch. 2010-211.
Note.—Former s. 455.712.

456.038 Renewal and cancellation notices.—
(1) At least 90 days before the end of a licensure cycle, the department shall:
(a) Forward a licensure renewal notification to an active or inactive status licensee at the licensee's last known address of record with the department.
(b) Forward a notice of pending cancellation of licensure to a delinquent licensee at the licensee's last known address of record with the department.
(2) Each licensure renewal notification and each notice of pending cancellation of licensure must state conspicuously that a licensee who remains on inactive status for more than two consecutive biennial licensure cycles and who wishes to reactivate the license may be required to demonstrate the competency to resume active practice by sitting for a special purpose examination or by completing other reactivation requirements, as defined by rule of the board or the department if there is no board.

History.—s. 96, ch. 97-261; s. 65, ch. 2000-160; s. 33, ch. 2000-318.

Note.—Former s. 455.714.

456.039 Designated health care professionals; information required for licensure.—
(1) Each person who applies for initial licensure as a physician under chapter 458, chapter 459, chapter 460, or chapter 461, except a person applying for registration pursuant to ss. 458.345 and 459.021, must, at the time of application, and each physician who applies for license renewal under chapter 458, chapter 459, chapter 460, or chapter 461, except a person registered pursuant to ss. 458.345 and 459.021, must, in conjunction with the renewal of such license and under procedures adopted by the Department of Health, and in addition to any other information that may be required from the applicant, furnish the following information to the Department of Health:
(a)1. The name of each medical school that the applicant has attended, with the dates of attendance and the date of graduation, and a description of all graduate medical education completed by the applicant, excluding any coursework taken to satisfy medical licensure continuing education requirements.
2. The name of each hospital at which the applicant has privileges.
3. The address at which the applicant will primarily conduct his or her practice.
4. Any certification that the applicant has received from a specialty board that is recognized by the board to which the applicant is applying.
5. The year that the applicant began practicing medicine.
6. Any appointment to the faculty of a medical school which the applicant currently holds and an indication as to whether the applicant has had the responsibility for graduate medical education within the most recent 10 years.
7. A description of any criminal offense of which the applicant has been found guilty, regardless of whether adjudication of guilt was withheld, or to which the applicant has pled guilty or nolo contendere. A criminal offense committed in another jurisdiction which would have been a felony or misdemeanor if committed in this state must be reported. If the applicant indicates that a criminal offense is under appeal and submits a copy of the notice for appeal of that criminal offense, the department must state that the criminal offense is under appeal if the criminal offense is reported in the applicant's profile. If the applicant indicates to the department that a criminal offense is under appeal, the applicant must, upon disposition of the appeal, submit to the department a copy of the final written order of disposition.
8. A description of any final disciplinary action taken within the previous 10 years against the applicant by the agency regulating the profession that the applicant is or has been licensed to practice, whether in this state or in any other jurisdiction, by a specialty board that is recognized by the American Board of Medical Specialties, the American Osteopathic Association, or a similar national organization, or by a licensed hospital, health maintenance organization, prepaid health clinic, ambulatory surgical center, or nursing home. Disciplinary action includes resignation from or nonrenewal of medical staff membership or the restriction of privileges at a licensed hospital, health maintenance organization, prepaid health clinic, ambulatory surgical center, or nursing home taken in lieu of or in settlement of a pending disciplinary case related to competence or character. If the applicant indicates that the disciplinary action is under appeal and submits a copy of the document initiating an appeal of the disciplinary action, the department must state that the disciplinary action is under appeal if the disciplinary action is reported in the applicant's profile.
9. Relevant professional qualifications as defined by the applicable board.
(b) In addition to the information required under paragraph (a), each applicant who seeks licensure under chapter 458, chapter 459, or chapter 461, and who has practiced previously in this state or in another jurisdiction or a foreign country must provide the information required of licensees under those chapters pursuant to s. 456.049. An applicant for licensure under chapter 460 who has practiced previously in this state or in another jurisdiction or a foreign country must provide the same information as is required of licensees under chapter 458, pursuant to s. 456.049.
(2) Before the issuance of the licensure renewal notice required by s. 456.038, the Department of Health shall send a notice to each person licensed under chapter 458, chapter 459, chapter 460, or chapter 461, at the licensee's last known address of record with the department, regarding the requirements for information to be submitted by those practitioners pursuant to this section in conjunction with the renewal of such license and under procedures adopted by the department.
(3) Each person who has submitted information pursuant to subsection (1) must update that information in writing by notifying the Department of Health within 45 days after the occurrence of an event or the attainment of a status that is required to be reported by subsection (1). Failure to comply with the requirements of this subsection to update and submit information constitutes a ground for disciplinary action under each respective licensing chapter and s. 456.072(1)(k). For failure to comply with the requirements of this subsection to update and submit information, the department or board, as appropriate, may:
(a) Refuse to issue a license to any person applying for initial licensure who fails to submit and update the required information.
(b) Issue a citation to any licensee who fails to submit and update the required information and may fine the licensee up to $50 for each day that the licensee is not in compliance with this subsection. The citation must clearly state that the licensee may choose, in lieu of accepting the citation, to follow the procedure under s. 456.073. If the licensee disputes the matter in the citation, the procedures set forth in s. 456.073 must be followed. However, if the licensee does not dispute the matter in the citation with the department within 30 days after the citation is served, the citation becomes a final order and constitutes discipline. Service of a citation may be made by personal service or certified mail, restricted delivery, to the subject at the licensee's last known address.
(4)(a) An applicant for initial licensure must submit a set of fingerprints to the Department of Health in accordance with s. 458.311, s. 459.0055, s. 460.406, or s. 461.006.
(b) An applicant for renewed licensure must submit a set of fingerprints for the initial renewal of his or her license after January 1,

2000, to the agency regulating that profession in accordance with procedures established under s. 458.319, s. 459.008, s. 460.407, or s. 461.007.
(c) The Department of Health shall submit the fingerprints provided by an applicant for initial licensure to the Florida Department of Law Enforcement for a statewide criminal history check, and the Florida Department of Law Enforcement shall forward the fingerprints to the Federal Bureau of Investigation for a national criminal history check of the applicant. The department shall submit the fingerprints provided by an applicant for a renewed license to the Florida Department of Law Enforcement for a statewide criminal history check, and the Florida Department of Law Enforcement shall forward the fingerprints to the Federal Bureau of Investigation for a national criminal history check for the initial renewal of the applicant's license after January 1, 2000; for any subsequent renewal of the applicant's license, the department shall submit the required information for a statewide criminal history check of the applicant.
(5) Each person who is required to submit information pursuant to this section may submit additional information. Such information may include, but is not limited to:
(a) Information regarding publications in peer-reviewed medical literature within the previous 10 years.
(b) Information regarding professional or community service activities or awards.
(c) Languages, other than English, used by the applicant to communicate with patients and identification of any translating service that may be available at the place where the applicant primarily conducts his or her practice.
(d) An indication of whether the person participates in the Medicaid program.

History.—s. 127, ch. 97-237; s. 3, ch. 97-273; ss. 8, 34, ch. 98-166; s. 60, ch. 99-397; s. 66, ch. 2000-160; s. 21, ch. 2000-318; s. 74, ch. 2001-62; s. 13, ch. 2003-416; s. 57, ch. 2010-114; s. 54, ch. 2015-2.
Note.—Former s. 455.565.

456.0391 Advanced registered nurse practitioners; information required for certification.—
(1)(a) Each person who applies for initial certification under s. 464.012 must, at the time of application, and each person certified under s. 464.012 who applies for certification renewal must, in conjunction with the renewal of such certification and under procedures adopted by the Department of Health, and in addition to any other information that may be required from the applicant, furnish the following information to the Department of Health:
1. The name of each school or training program that the applicant has attended, with the months and years of attendance and the month and year of graduation, and a description of all graduate professional education completed by the applicant, excluding any coursework taken to satisfy continuing education requirements.
2. The name of each location at which the applicant practices.
3. The address at which the applicant will primarily conduct his or her practice.
4. Any certification or designation that the applicant has received from a specialty or certification board that is recognized or approved by the regulatory board or department to which the applicant is applying.
5. The year that the applicant received initial certification and began practicing the profession in any jurisdiction and the year that the applicant received initial certification in this state.
6. Any appointment which the applicant currently holds to the faculty of a school related to the profession and an indication as to whether the applicant has had the responsibility for graduate education within the most recent 10 years.
7. A description of any criminal offense of which the applicant has been found guilty, regardless of whether adjudication of guilt was withheld, or to which the applicant has pled guilty or nolo contendere. A criminal offense committed in another jurisdiction which would have been a felony or misdemeanor if committed in this state must be reported. If the applicant indicates that a criminal offense is under appeal and submits a copy of the notice for appeal of that criminal offense, the department must state that the criminal offense is under appeal if the criminal offense is reported in the applicant's profile. If the applicant indicates to the department that a criminal offense is under appeal, the applicant must, within 15 days after the disposition of the appeal, submit to the department a copy of the final written order of disposition.
8. A description of any final disciplinary action taken within the previous 10 years against the applicant by a licensing or regulatory body in any jurisdiction, by a specialty board that is recognized by the board or department, or by a licensed hospital, health maintenance organization, prepaid health clinic, ambulatory surgical center, or nursing home. Disciplinary action includes resignation from or nonrenewal of staff membership or the restriction of privileges at a licensed hospital, health maintenance organization, prepaid health clinic, ambulatory surgical center, or nursing home taken in lieu of or in settlement of a pending disciplinary case related to competence or character. If the applicant indicates that the disciplinary action is under appeal and submits a copy of the document initiating an appeal of the disciplinary action, the department must state that the disciplinary action is under appeal if the disciplinary action is reported in the applicant's profile.
(b) In addition to the information required under paragraph (a), each applicant for initial certification or certification renewal must provide the information required of licensees pursuant to s. 456.049.
(2) The Department of Health shall send a notice to each person certified under s. 464.012 at the certificateholder's last known address of record regarding the requirements for information to be submitted by advanced registered nurse practitioners pursuant to this section in conjunction with the renewal of such certificate.
(3) Each person certified under s. 464.012 who has submitted information pursuant to subsection (1) must update that information in writing by notifying the Department of Health within 45 days after the occurrence of an event or the attainment of a status that is required to be reported by subsection (1). Failure to comply with the requirements of this subsection to update and submit information

constitutes a ground for disciplinary action under chapter 464 and s. 456.072(1)(k). For failure to comply with the requirements of this subsection to update and submit information, the department or board, as appropriate, may:
(a) Refuse to issue a certificate to any person applying for initial certification who fails to submit and update the required information.
(b) Issue a citation to any certificateholder who fails to submit and update the required information and may fine the certificateholder up to $50 for each day that the certificateholder is not in compliance with this subsection. The citation must clearly state that the certificateholder may choose, in lieu of accepting the citation, to follow the procedure under s. 456.073. If the certificateholder disputes the matter in the citation, the procedures set forth in s. 456.073 must be followed. However, if the certificateholder does not dispute the matter in the citation with the department within 30 days after the citation is served, the citation becomes a final order and constitutes discipline. Service of a citation may be made by personal service or certified mail, restricted delivery, to the subject at the certificateholder's last known address.
(4)(a) An applicant for initial certification under s. 464.012 must submit a set of fingerprints to the Department of Health on a form and under procedures specified by the department, along with payment in an amount equal to the costs incurred by the Department of Health for a national criminal history check of the applicant.
(b) An applicant for renewed certification who has not previously submitted a set of fingerprints to the Department of Health for purposes of certification must submit a set of fingerprints to the department as a condition of the initial renewal of his or her certificate after the effective date of this section. The applicant must submit the fingerprints on a form and under procedures specified by the department, along with payment in an amount equal to the costs incurred by the Department of Health for a national criminal history check. For subsequent renewals, the applicant for renewed certification must only submit information necessary to conduct a statewide criminal history check, along with payment in an amount equal to the costs incurred by the Department of Health for a statewide criminal history check.
(c)1. The Department of Health shall submit the fingerprints provided by an applicant for initial certification to the Florida Department of Law Enforcement for a statewide criminal history check, and the Florida Department of Law Enforcement shall forward the fingerprints to the Federal Bureau of Investigation for a national criminal history check of the applicant.
2. The department shall submit the fingerprints provided by an applicant for the initial renewal of certification to the Florida Department of Law Enforcement for a statewide criminal history check, and the Florida Department of Law Enforcement shall forward the fingerprints to the Federal Bureau of Investigation for a national criminal history check for the initial renewal of the applicant's certificate after the effective date of this section.
3. For any subsequent renewal of the applicant's certificate, the department shall submit the required information for a statewide criminal history check of the applicant to the Florida Department of Law Enforcement.
(d) Any applicant for initial certification or renewal of certification as an advanced registered nurse practitioner who submits to the Department of Health a set of fingerprints and information required for the criminal history check required under this section shall not be required to provide a subsequent set of fingerprints or other duplicate information required for a criminal history check to the Agency for Health Care Administration, the Department of Juvenile Justice, or the Department of Children and Families for employment or licensure with such agency or department, if the applicant has undergone a criminal history check as a condition of initial certification or renewal of certification as an advanced registered nurse practitioner with the Department of Health, notwithstanding any other provision of law to the contrary. In lieu of such duplicate submission, the Agency for Health Care Administration, the Department of Juvenile Justice, and the Department of Children and Families shall obtain criminal history information for employment or licensure of persons certified under s. 464.012 by such agency or department from the Department of Health's health care practitioner credentialing system.
(5) Each person who is required to submit information pursuant to this section may submit additional information to the Department of Health. Such information may include, but is not limited to:
(a) Information regarding publications in peer-reviewed professional literature within the previous 10 years.
(b) Information regarding professional or community service activities or awards.
(c) Languages, other than English, used by the applicant to communicate with patients or clients and identification of any translating service that may be available at the place where the applicant primarily conducts his or her practice.
(d) An indication of whether the person participates in the Medicaid program.

History.—s. 152, ch. 2000-318; s. 268, ch. 2014-19.

456.0392 Prescription labeling.—
(1) A prescription written by a practitioner who is authorized under the laws of this state to write prescriptions for drugs that are not listed as controlled substances in chapter 893 but who is not eligible for a federal Drug Enforcement Administration number shall include that practitioner's name and professional license number. The pharmacist or dispensing practitioner must include the practitioner's name on the container of the drug that is dispensed. A pharmacist shall be permitted, upon verification by the prescriber, to document any information required by this section.
(2) A prescription for a drug that is not listed as a controlled substance in chapter 893 which is written by an advanced registered nurse practitioner certified under s. 464.012 is presumed, subject to rebuttal, to be valid and within the parameters of the prescriptive authority delegated by a practitioner licensed under chapter 458, chapter 459, or chapter 466.
(3) A prescription for a drug that is not listed as a controlled substance in chapter 893 which is written by a physician assistant

licensed under chapter 458 or chapter 459 is presumed, subject to rebuttal, to be valid and within the parameters of the prescriptive authority delegated by the physician assistant's supervising physician.
History.—s. 1, ch. 2004-8.
456.041 Practitioner profile; creation.—
(1)(a) The Department of Health shall compile the information submitted pursuant to s. 456.039 into a practitioner profile of the applicant submitting the information, except that the Department of Health shall develop a format to compile uniformly any information submitted under s. 456.039(4)(b). Beginning July 1, 2001, the Department of Health may compile the information submitted pursuant to s. 456.0391 into a practitioner profile of the applicant submitting the information. The protocol submitted pursuant to s. 464.012(3) must be included in the practitioner profile of the advanced registered nurse practitioner.
(b) Beginning July 1, 2005, the department shall verify the information submitted by the applicant under s. 456.039 concerning disciplinary history and medical malpractice claims at the time of initial licensure and license renewal using the National Practitioner Data Bank. The physician profiles shall reflect the disciplinary action and medical malpractice claims as reported by the National Practitioner Data Bank, and shall include information relating to liability and disciplinary actions obtained as a result of a search of the National Practitioner Data Bank.
(c) Within 30 calendar days after receiving an update of information required for the practitioner's profile, the department shall update the practitioner's profile in accordance with the requirements of subsection (8).
(2) On the profile published under subsection (1), the department shall indicate if the information provided under s. 456.039(1)(a)7. or s. 456.0391(1)(a)7. is or is not corroborated by a criminal history check conducted according to this subsection. The department, or the board having regulatory authority over the practitioner acting on behalf of the department, shall investigate any information received by the department or the board.
(3) The Department of Health shall include in each practitioner's practitioner profile that criminal information that directly relates to the practitioner's ability to competently practice his or her profession. The department must include in each practitioner's practitioner profile the following statement: "The criminal history information, if any exists, may be incomplete; federal criminal history information is not available to the public." The department shall provide in each practitioner profile, for every final disciplinary action taken against the practitioner, an easy-to-read narrative description that explains the administrative complaint filed against the practitioner and the final disciplinary action imposed on the practitioner. The department shall include a hyperlink to each final order listed in its website report of dispositions of recent disciplinary actions taken against practitioners.
(4) The Department of Health shall include, with respect to a practitioner licensed under chapter 458 or chapter 459, a statement of how the practitioner has elected to comply with the financial responsibility requirements of s. 458.320 or s. 459.0085. The department shall include, with respect to practitioners subject to s. 456.048, a statement of how the practitioner has elected to comply with the financial responsibility requirements of that section. The department shall include, with respect to practitioners licensed under chapter 461, information relating to liability actions which has been reported under s. 456.049 or s. 627.912 within the previous 10 years for any paid claim that exceeds $5,000. The department shall include, with respect to practitioners licensed under chapter 458 or chapter 459, information relating to liability actions which has been reported under ss. 456.049 and 627.912 within the previous 10 years for any paid claim that exceeds $100,000. Such claims information shall be reported in the context of comparing an individual practitioner's claims to the experience of other practitioners within the same specialty, or profession if the practitioner is not a specialist. The department must provide a hyperlink in such practitioner's profile to all such comparison reports. If information relating to a liability action is included in a practitioner's practitioner profile, the profile must also include the following statement: "Settlement of a claim may occur for a variety of reasons that do not necessarily reflect negatively on the professional competence or conduct of the practitioner. A payment in settlement of a medical malpractice action or claim should not be construed as creating a presumption that medical malpractice has occurred."
(5) The Department of Health shall include the date of a hospital or ambulatory surgical center disciplinary action taken by a licensed hospital or an ambulatory surgical center, in accordance with the requirements of s. 395.0193, in the practitioner profile. The department shall state whether the action related to professional competence and whether it related to the delivery of services to a patient.
(6) The Department of Health shall provide in each practitioner profile for every physician or advanced registered nurse practitioner terminated for cause from participating in the Medicaid program, pursuant to s. 409.913, or sanctioned by the Medicaid program a statement that the practitioner has been terminated from participating in the Florida Medicaid program or sanctioned by the Medicaid program.
(7) The Department of Health may include in the practitioner's practitioner profile any other information that is a public record of any governmental entity and that relates to a practitioner's ability to competently practice his or her profession.
(8) Upon the completion of a practitioner profile under this section, the Department of Health shall furnish the practitioner who is the subject of the profile a copy of it for review and verification. The practitioner has a period of 30 days in which to review and verify the contents of the profile and to correct any factual inaccuracies in it. The Department of Health shall make the profile available to the public at the end of the 30-day period regardless of whether the practitioner has provided verification of the profile content. A practitioner shall be subject to a fine of up to $100 per day for failure to verify the profile contents and to correct any factual errors in his or her profile within the 30-day period. The department shall make the profiles available to the public through the World Wide Web and other commonly used means of distribution. The department must include the following statement, in boldface type, in each profile that has not been reviewed by the practitioner to which it applies: "The practitioner has not verified the information contained in this profile."

(9) The Department of Health must provide in each profile an easy-to-read explanation of any disciplinary action taken and the reason the sanction or sanctions were imposed.
(10) The Department of Health may provide one link in each profile to a practitioner's professional website if the practitioner requests that such a link be included in his or her profile.
(11) Making a practitioner profile available to the public under this section does not constitute agency action for which a hearing under s. 120.57 may be sought.

History.—s. 128, ch. 97-237; s. 4, ch. 97-273; s. 35, ch. 98-166; s. 77, ch. 99-397; s. 111, ch. 2000-153; s. 67, ch. 2000-160; ss. 22, 153, ch. 2000-318; s. 14, ch. 2003-416; s. 7, ch. 2005-62; s. 1, ch. 2005-266; s. 3, ch. 2006-251; s. 22, ch. 2009-223; s. 103, ch. 2010-5; s. 26, ch. 2016-224.
Note.—Former s. 455.5651.

456.042 Practitioner profiles; update.—A practitioner must submit updates of required information within 15 days after the final activity that renders such information a fact. The Department of Health shall update each practitioner's practitioner profile periodically. An updated profile is subject to the same requirements as an original profile.

History.—s. 129, ch. 97-237; s. 5, ch. 97-273; s. 68, ch. 2000-160; s. 15, ch. 2003-416.
Note.—Former s. 455.5652.

456.043 Practitioner profiles; data storage.—Effective upon this act becoming a law, the Department of Health must develop or contract for a computer system to accommodate the new data collection and storage requirements under this act pending the development and operation of a computer system by the Department of Health for handling the collection, input, revision, and update of data submitted by physicians as a part of their initial licensure or renewal to be compiled into individual practitioner profiles. The Department of Health must incorporate any data required by this act into the computer system used in conjunction with the regulation of health care professions under its jurisdiction. The Department of Health is authorized to contract with and negotiate any interagency agreement necessary to develop and implement the practitioner profiles. The Department of Health shall have access to any information or record maintained by the Agency for Health Care Administration, including any information or record that is otherwise confidential and exempt from the provisions of chapter 119 and s. 24(a), Art. I of the State Constitution, so that the Department of Health may corroborate any information that practitioners are required to report under s. 456.039 or s. 456.0391.

History.—s. 130, ch. 97-237; s. 6, ch. 97-273; s. 112, ch. 2000-153; s. 69, ch. 2000-160; ss. 23, 154, ch. 2000-318.
Note.—Former s. 455.5653.

456.044 Practitioner profiles; rules; workshops.—Effective upon this act becoming a law, the Department of Health shall adopt rules for the form of a practitioner profile that the agency is required to prepare. The Department of Health, pursuant to chapter 120, must hold public workshops for purposes of rule development to implement this section. An agency to which information is to be submitted under this act may adopt by rule a form for the submission of the information required under s. 456.039 or s. 456.0391.

History.—s. 131, ch. 97-237; s. 7, ch. 97-273; s. 113, ch. 2000-153; s. 70, ch. 2000-160; ss. 24, 155, ch. 2000-318.
Note.—Former s. 455.5654.

456.045 Practitioner profiles; maintenance of superseded information.—Information in superseded practitioner profiles must be maintained by the Department of Health, in accordance with general law and the rules of the Department of State.

History.—s. 132, ch. 97-237; s. 8, ch. 97-273; s. 71, ch. 2000-160.
Note.—Former s. 455.5655.

456.046 Practitioner profiles; confidentiality.—Any patient name or other information that identifies a patient which is in a record obtained by the Department of Health or its agent for the purpose of compiling a practitioner profile pursuant to s. 456.041 is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Other data received by the department or its agent as a result of its duty to compile and promulgate practitioner profiles are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution until the profile into which the data are incorporated or with respect to which the data are submitted is made public pursuant to the requirements of s. 456.041. Any information or record that the Department of Health obtains from the Agency for Health Care Administration or any other governmental entity for the purpose of compiling a practitioner profile or substantiating other information or records submitted for that purpose which is otherwise exempt from public disclosure shall remain exempt as otherwise provided by law.

History.—s. 1, ch. 97-175; s. 71, ch. 2000-160; s. 1, ch. 2002-198.
Note.—Former s. 455.5656.

456.048 Financial responsibility requirements for certain health care practitioners.—
(1) As a prerequisite for licensure or license renewal, the Board of Acupuncture, the Board of Chiropractic Medicine, the Board of Podiatric Medicine, and the Board of Dentistry shall, by rule, require that all health care practitioners licensed under the respective board, and the Board of Medicine and the Board of Osteopathic Medicine shall, by rule, require that all anesthesiologist assistants licensed pursuant to s. 458.3475 or s. 459.023, and the Board of Nursing shall, by rule, require that advanced registered nurse practitioners certified under s. 464.012, and the department shall, by rule, require that midwives maintain medical malpractice insurance or provide proof of financial responsibility in an amount and in a manner determined by the board or department to be sufficient to cover claims arising out of the rendering of or failure to render professional care and services in this state.
(2) The board or department may grant exemptions upon application by practitioners meeting any of the following criteria:
(a) Any person licensed under chapter 457, s. 458.3475, s. 459.023, chapter 460, chapter 461, s. 464.012, chapter 466, or chapter 467 who practices exclusively as an officer, employee, or agent of the Federal Government or of the state or its agencies or its subdivisions. For the purposes of this subsection, an agent of the state, its agencies, or its subdivisions is a person who is eligible for coverage under any self-insurance or insurance program authorized by the provisions of s. 768.28(16) or who is a volunteer under s. 110.501(1).
(b) Any person whose license or certification has become inactive under chapter 457, s. 458.3475, s. 459.023, chapter 460, chapter 461, part I of chapter 464, chapter 466, or chapter 467 and who is not practicing in this state. Any person applying for reactivation of a license must show either that such licensee maintained tail insurance coverage which provided liability coverage for incidents that occurred on or after October 1, 1993, or the initial date of licensure in this state, whichever is later, and incidents that occurred before the date on which the license became inactive; or such licensee must submit an affidavit stating that such licensee has no unsatisfied medical malpractice judgments or settlements at the time of application for reactivation.
(c) Any person holding a limited license pursuant to s. 456.015, and practicing under the scope of such limited license.
(d) Any person licensed or certified under chapter 457, s. 458.3475, s. 459.023, chapter 460, chapter 461, s. 464.012, chapter 466, or chapter 467 who practices only in conjunction with his or her teaching duties at an accredited school or in its main teaching hospitals. Such person may engage in the practice of medicine to the extent that such practice is incidental to and a necessary part of duties in connection with the teaching position in the school.
(e) Any person holding an active license or certification under chapter 457, s. 458.3475, s. 459.023, chapter 460, chapter 461, s. 464.012, chapter 466, or chapter 467 who is not practicing in this state. If such person initiates or resumes practice in this state, he or she must notify the department of such activity.
(f) Any person who can demonstrate to the board or department that he or she has no malpractice exposure in the state.
(3) Notwithstanding the provisions of this section, the financial responsibility requirements of ss. 458.320 and 459.0085 shall continue to apply to practitioners licensed under those chapters, except for anesthesiologist assistants licensed pursuant to s. 458.3475 or s. 459.023 who must meet the requirements of this section.

History.—s. 1, ch. 93-41; s. 193, ch. 97-103; s. 90, ch. 97-261; s. 266, ch. 98-166; s. 88, ch. 99-397; s. 73, ch. 2000-160; s. 116, ch. 2000-318; s. 73, ch. 2004-5; s. 1, ch. 2004-303.
Note.—Former s. 455.2456; s. 455.694.

456.049 Health care practitioners; reports on professional liability claims and actions.—Any practitioner of medicine licensed pursuant to the provisions of chapter 458, practitioner of osteopathic medicine licensed pursuant to the provisions of chapter 459, podiatric physician licensed pursuant to the provisions of chapter 461, or dentist licensed pursuant to the provisions of chapter 466 shall report to the Office of Insurance Regulation any claim or action for damages for personal injury alleged to have been caused by error, omission, or negligence in the performance of such licensee's professional services or based on a claimed performance of professional services without consent pursuant to s. 627.912.

History.—s. 13, ch. 88-1; s. 7, ch. 91-140; s. 309, ch. 96-406; s. 91, ch. 97-261; s. 193, ch. 98-166; s. 74, ch. 2000-160; s. 16, ch. 2003-416.
Note.—Former s. 455.247; s. 455.697.

456.051 Reports of professional liability actions; bankruptcies; Department of Health's responsibility to provide.—
(1) The report of a claim or action for damages for personal injury which is required to be provided to the Department of Health under s. 456.049 or s. 627.912 is public information except for the name of the claimant or injured person, which remains confidential as provided in s. 627.912(2)(e). The Department of Health shall, upon request, make such report available to any person. The department shall make such report available as a part of the practitioner's profile within 30 calendar days after receipt.
(2) Any information in the possession of the Department of Health which relates to a bankruptcy proceeding by a practitioner of medicine licensed under chapter 458, a practitioner of osteopathic medicine licensed under chapter 459, a podiatric physician licensed under chapter 461, or a dentist licensed under chapter 466 is public information. The Department of Health shall, upon request, make such information available to any person. The department shall make such report available as a part of the practitioner's profile within 30 calendar days after receipt.

History.—s. 146, ch. 97-237; s. 22, ch. 97-273; ss. 38, 194, ch. 98-166; s. 75, ch. 2000-160; s. 17, ch. 2003-416; s. 74, ch. 2004-5.

Note.—Former s. 455.698.

456.052 Disclosure of financial interest by production.—
(1) A health care provider shall not refer a patient to an entity in which such provider is an investor unless, prior to the referral, the provider furnishes the patient with a written disclosure form, informing the patient of:
(a) The existence of the investment interest.
(b) The name and address of each applicable entity in which the referring health care provider is an investor.
(c) The patient's right to obtain the items or services for which the patient has been referred at the location or from the provider or supplier of the patient's choice, including the entity in which the referring provider is an investor.
(d) The names and addresses of at least two alternative sources of such items or services available to the patient.
(2) The physician or health care provider shall post a copy of the disclosure forms in a conspicuous public place in his or her office.
(3) A violation of this section shall constitute a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. In addition to any other penalties or remedies provided, a violation of this section shall be grounds for disciplinary action by the respective board.

History.—s. 1, ch. 86-31; s. 84, ch. 91-224; s. 13, ch. 92-178; s. 92, ch. 97-261; s. 76, ch. 2000-160.
Note.—Former s. 455.25; s. 455.701.

456.053 Financial arrangements between referring health care providers and providers of health care services.—
(1) SHORT TITLE.—This section may be cited as the "Patient Self-Referral Act of 1992."
(2) LEGISLATIVE INTENT.—It is recognized by the Legislature that the referral of a patient by a health care provider to a provider of health care services in which the referring health care provider has an investment interest represents a potential conflict of interest. The Legislature finds these referral practices may limit or eliminate competitive alternatives in the health care services market, may result in overutilization of health care services, may increase costs to the health care system, and may adversely affect the quality of health care. The Legislature also recognizes, however, that it may be appropriate for providers to own entities providing health care services, and to refer patients to such entities, as long as certain safeguards are present in the arrangement. It is the intent of the Legislature to provide guidance to health care providers regarding prohibited patient referrals between health care providers and entities providing health care services and to protect the people of Florida from unnecessary and costly health care expenditures.
(3) DEFINITIONS.—For the purpose of this section, the word, phrase, or term:
(a) "Board" means any of the following boards relating to the respective professions: the Board of Medicine as created in s. 458.307; the Board of Osteopathic Medicine as created in s. 459.004; the Board of Chiropractic Medicine as created in s. 460.404; the Board of Podiatric Medicine as created in s. 461.004; the Board of Optometry as created in s. 463.003; the Board of Pharmacy as created in s. 465.004; and the Board of Dentistry as created in s. 466.004.
(b) "Comprehensive rehabilitation services" means services that are provided by health care professionals licensed under part I or part III of chapter 468 or chapter 486 to provide speech, occupational, or physical therapy services on an outpatient or ambulatory basis.
(c) "Designated health services" means, for purposes of this section, clinical laboratory services, physical therapy services, comprehensive rehabilitative services, diagnostic-imaging services, and radiation therapy services.
(d) "Diagnostic imaging services" means magnetic resonance imaging, nuclear medicine, angiography, arteriography, computed tomography, positron emission tomography, digital vascular imaging, bronchography, lymphangiography, splenography, ultrasound, EEG, EKG, nerve conduction studies, and evoked potentials.
(e) "Direct supervision" means supervision by a physician who is present in the office suite and immediately available to provide assistance and direction throughout the time services are being performed.
(f) "Entity" means any individual, partnership, firm, corporation, or other business entity.
(g) "Fair market value" means value in arms length transactions, consistent with the general market value, and, with respect to rentals or leases, the value of rental property for general commercial purposes, not taking into account its intended use, and, in the case of a lease of space, not adjusted to reflect the additional value the prospective lessee or lessor would attribute to the proximity or convenience to the lessor where the lessor is a potential source of patient referrals to the lessee.
(h) "Group practice" means a group of two or more health care providers legally organized as a partnership, professional corporation, or similar association:
1. In which each health care provider who is a member of the group provides substantially the full range of services which the health care provider routinely provides, including medical care, consultation, diagnosis, or treatment, through the joint use of shared office space, facilities, equipment, and personnel;
2. For which substantially all of the services of the health care providers who are members of the group are provided through the group and are billed in the name of the group and amounts so received are treated as receipts of the group; and
3. In which the overhead expenses of and the income from the practice are distributed in accordance with methods previously determined by members of the group.
(i) "Health care provider" means any physician licensed under chapter 458, chapter 459, chapter 460, or chapter 461, or any health care provider licensed under chapter 463 or chapter 466.
(j) "Immediate family member" means a health care provider's spouse, child, child's spouse, grandchild, grandchild's spouse,

parent, parent-in-law, or sibling.
(k) "Investment interest" means an equity or debt security issued by an entity, including, without limitation, shares of stock in a corporation, units or other interests in a partnership, bonds, debentures, notes, or other equity interests or debt instruments. The following investment interests shall be excepted from this definition:
1. An investment interest in an entity that is the sole provider of designated health services in a rural area;
2. An investment interest in notes, bonds, debentures, or other debt instruments issued by an entity which provides designated health services, as an integral part of a plan by such entity to acquire such investor's equity investment interest in the entity, provided that the interest rate is consistent with fair market value, and that the maturity date of the notes, bonds, debentures, or other debt instruments issued by the entity to the investor is not later than October 1, 1996.
3. An investment interest in real property resulting in a landlord-tenant relationship between the health care provider and the entity in which the equity interest is held, unless the rent is determined, in whole or in part, by the business volume or profitability of the tenant or exceeds fair market value; or
4. An investment interest in an entity which owns or leases and operates a hospital licensed under chapter 395 or a nursing home facility licensed under chapter 400.
(l) "Investor" means a person or entity owning a legal or beneficial ownership or investment interest, directly or indirectly, including, without limitation, through an immediate family member, trust, or another entity related to the investor within the meaning of 42 C.F.R. s. 413.17, in an entity.
(m) "Outside referral for diagnostic imaging services" means a referral of a patient to a group practice or sole provider for diagnostic imaging services by a physician who is not a member of the group practice or of the sole provider's practice and who does not have an investment interest in the group practice or sole provider's practice, for which the group practice or sole provider billed for both the technical and the professional fee for the patient, and the patient did not become a patient of the group practice or sole provider's practice.
(n) "Patient of a group practice" or "patient of a sole provider" means a patient who receives a physical examination, evaluation, diagnosis, and development of a treatment plan if medically necessary by a physician who is a member of the group practice or the sole provider's practice.
(o) "Referral" means any referral of a patient by a health care provider for health care services, including, without limitation:
1. The forwarding of a patient by a health care provider to another health care provider or to an entity which provides or supplies designated health services or any other health care item or service; or
2. The request or establishment of a plan of care by a health care provider, which includes the provision of designated health services or other health care item or service.
3. The following orders, recommendations, or plans of care shall not constitute a referral by a health care provider:
a. By a radiologist for diagnostic-imaging services.
b. By a physician specializing in the provision of radiation therapy services for such services.
c. By a medical oncologist for drugs and solutions to be prepared and administered intravenously to such oncologist's patient, as well as for the supplies and equipment used in connection therewith to treat such patient for cancer and the complications thereof.
d. By a cardiologist for cardiac catheterization services.
e. By a pathologist for diagnostic clinical laboratory tests and pathological examination services, if furnished by or under the supervision of such pathologist pursuant to a consultation requested by another physician.
f. By a health care provider who is the sole provider or member of a group practice for designated health services or other health care items or services that are prescribed or provided solely for such referring health care provider's or group practice's own patients, and that are provided or performed by or under the direct supervision of such referring health care provider or group practice; provided, however, that effective July 1, 1999, a physician licensed pursuant to chapter 458, chapter 459, chapter 460, or chapter 461 may refer a patient to a sole provider or group practice for diagnostic imaging services, excluding radiation therapy services, for which the sole provider or group practice billed both the technical and the professional fee for or on behalf of the patient, if the referring physician has no investment interest in the practice. The diagnostic imaging service referred to a group practice or sole provider must be a diagnostic imaging service normally provided within the scope of practice to the patients of the group practice or sole provider. The group practice or sole provider may accept no more than 15 percent of their patients receiving diagnostic imaging services from outside referrals, excluding radiation therapy services.
g. By a health care provider for services provided by an ambulatory surgical center licensed under chapter 395.
h. By a urologist for lithotripsy services.
i. By a dentist for dental services performed by an employee of or health care provider who is an independent contractor with the dentist or group practice of which the dentist is a member.
j. By a physician for infusion therapy services to a patient of that physician or a member of that physician's group practice.
k. By a nephrologist for renal dialysis services and supplies, except laboratory services.
l. By a health care provider whose principal professional practice consists of treating patients in their private residences for services to be rendered in such private residences, except for services rendered by a home health agency licensed under chapter 400. For purposes of this sub-subparagraph, the term "private residences" includes patients' private homes, independent living centers, and assisted living facilities, but does not include skilled nursing facilities.
m. By a health care provider for sleep-related testing.
(p) "Present in the office suite" means that the physician is actually physically present; provided, however, that the health care

provider is considered physically present during brief unexpected absences as well as during routine absences of a short duration if the absences occur during time periods in which the health care provider is otherwise scheduled and ordinarily expected to be present and the absences do not conflict with any other requirement in the Medicare program for a particular level of health care provider supervision.

(q) "Rural area" means a county with a population density of no greater than 100 persons per square mile, as defined by the United States Census.

(r) "Sole provider" means one health care provider licensed under chapter 458, chapter 459, chapter 460, or chapter 461, who maintains a separate medical office and a medical practice separate from any other health care provider and who bills for his or her services separately from the services provided by any other health care provider. A sole provider shall not share overhead expenses or professional income with any other person or group practice.

(4) REQUIREMENTS FOR ACCEPTING OUTSIDE REFERRALS FOR DIAGNOSTIC IMAGING.—

(a) A group practice or sole provider accepting outside referrals for diagnostic imaging services is required to comply with the following conditions:

1. Diagnostic imaging services must be provided exclusively by a group practice physician or by a full-time or part-time employee of the group practice or of the sole provider's practice.

2. All equity in the group practice or sole provider's practice accepting outside referrals for diagnostic imaging must be held by the physicians comprising the group practice or the sole provider's practice, each of whom must provide at least 75 percent of his or her professional services to the group. Alternatively, the group must be incorporated under chapter 617 and must be exempt under the provisions of s. 501(c)(3) of the Internal Revenue Code and be part of a foundation in existence prior to January 1, 1999, that is created for the purpose of patient care, medical education, and research.

3. A group practice or sole provider may not enter into, extend or renew any contract with a practice management company that provides any financial incentives, directly or indirectly, based on an increase in outside referrals for diagnostic imaging services from any group or sole provider managed by the same practice management company.

4. The group practice or sole provider accepting outside referrals for diagnostic imaging services must bill for both the professional and technical component of the service on behalf of the patient, and no portion of the payment, or any type of consideration, either directly or indirectly, may be shared with the referring physician.

5. Group practices or sole providers that have a Medicaid provider agreement with the Agency for Health Care Administration must furnish diagnostic imaging services to their Medicaid patients and may not refer a Medicaid recipient to a hospital for outpatient diagnostic imaging services unless the physician furnishes the hospital with documentation demonstrating the medical necessity for such a referral. If necessary, the Agency for Health Care Administration may apply for a federal waiver to implement this subparagraph.

6. All group practices and sole providers accepting outside referrals for diagnostic imaging shall report annually to the Agency for Health Care Administration providing the number of outside referrals accepted for diagnostic imaging services and the total number of all patients receiving diagnostic imaging services.

(b) If a group practice or sole provider accepts an outside referral for diagnostic imaging services in violation of this subsection or if a group practice or sole provider accepts outside referrals for diagnostic imaging services in excess of the percentage limitation established in subparagraph (a)2., the group practice or the sole provider shall be subject to the penalties in subsection (5).

(c) Each managing physician member of a group practice and each sole provider who accepts outside referrals for diagnostic imaging services shall submit an annual attestation signed under oath to the Agency for Health Care Administration which shall include the annual report required under subparagraph (a)6. and which shall further confirm that each group practice or sole provider is in compliance with the percentage limitations for accepting outside referrals and the requirements for accepting outside referrals listed in paragraph (a). The agency may verify the report submitted by group practices and sole providers.

(5) PROHIBITED REFERRALS AND CLAIMS FOR PAYMENT.—Except as provided in this section:

(a) A health care provider may not refer a patient for the provision of designated health services to an entity in which the health care provider is an investor or has an investment interest.

(b) A health care provider may not refer a patient for the provision of any other health care item or service to an entity in which the health care provider is an investor unless:

1. The provider's investment interest is in registered securities purchased on a national exchange or over-the-counter market and issued by a publicly held corporation:

a. Whose shares are traded on a national exchange or on the over-the-counter market; and

b. Whose total assets at the end of the corporation's most recent fiscal quarter exceeded $50 million; or

2. With respect to an entity other than a publicly held corporation described in subparagraph 1., and a referring provider's investment interest in such entity, each of the following requirements are met:

a. No more than 50 percent of the value of the investment interests are held by investors who are in a position to make referrals to the entity.

b. The terms under which an investment interest is offered to an investor who is in a position to make referrals to the entity are no different from the terms offered to investors who are not in a position to make such referrals.

c. The terms under which an investment interest is offered to an investor who is in a position to make referrals to the entity are not related to the previous or expected volume of referrals from that investor to the entity.

d. There is no requirement that an investor make referrals or be in a position to make referrals to the entity as a condition for

becoming or remaining an investor.
3. With respect to either such entity or publicly held corporation:
a. The entity or corporation does not loan funds to or guarantee a loan for an investor who is in a position to make referrals to the entity or corporation if the investor uses any part of such loan to obtain the investment interest.
b. The amount distributed to an investor representing a return on the investment interest is directly proportional to the amount of the capital investment, including the fair market value of any preoperational services rendered, invested in the entity or corporation by that investor.
4. Each board and, in the case of hospitals, the Agency for Health Care Administration, shall encourage the use by licensees of the declaratory statement procedure to determine the applicability of this section or any rule adopted pursuant to this section as it applies solely to the licensee. Boards shall submit to the Agency for Health Care Administration the name of any entity in which a provider investment interest has been approved pursuant to this section.
(c) No claim for payment may be presented by an entity to any individual, third-party payor, or other entity for a service furnished pursuant to a referral prohibited under this section.
(d) If an entity collects any amount that was billed in violation of this section, the entity shall refund such amount on a timely basis to the payor or individual, whichever is applicable.
(e) Any person that presents or causes to be presented a bill or a claim for service that such person knows or should know is for a service for which payment may not be made under paragraph (c), or for which a refund has not been made under paragraph (d), shall be subject to a civil penalty of not more than $15,000 for each such service to be imposed and collected by the appropriate board.
(f) Any health care provider or other entity that enters into an arrangement or scheme, such as a cross-referral arrangement, which the physician or entity knows or should know has a principal purpose of assuring referrals by the physician to a particular entity which, if the physician directly made referrals to such entity, would be in violation of this section, shall be subject to a civil penalty of not more than $100,000 for each such circumvention arrangement or scheme to be imposed and collected by the appropriate board.
(g) A violation of this section by a health care provider shall constitute grounds for disciplinary action to be taken by the applicable board pursuant to s. 458.331(2), s. 459.015(2), s. 460.413(2), s. 461.013(2), s. 463.016(2), or s. 466.028(2). Any hospital licensed under chapter 395 found in violation of this section shall be subject to s. 395.0185(2).
(h) Any hospital licensed under chapter 395 that discriminates against or otherwise penalizes a health care provider for compliance with this act.
(i) The provision of paragraph (a) shall not apply to referrals to the offices of radiation therapy centers managed by an entity or subsidiary or general partner thereof, which performed radiation therapy services at those same offices prior to April 1, 1991, and shall not apply also to referrals for radiation therapy to be performed at no more than one additional office of any entity qualifying for the foregoing exception which, prior to February 1, 1992, had a binding purchase contract on and a nonrefundable deposit paid for a linear accelerator to be used at the additional office. The physical site of the radiation treatment centers affected by this provision may be relocated as a result of the following factors: acts of God; fire; strike; accident; war; eminent domain actions by any governmental body; or refusal by the lessor to renew a lease. A relocation for the foregoing reasons is limited to relocation of an existing facility to a replacement location within the county of the existing facility upon written notification to the Office of Licensure and Certification.
(j) A health care provider who meets the requirements of paragraphs (b) and (i) must disclose his or her investment interest to his or her patients as provided in s. 456.052.

History.—s. 7, ch. 92-178; s. 89, ch. 94-218; s. 60, ch. 95-144; s. 35, ch. 95-146; s. 8, ch. 96-296; s. 1083, ch. 97-103; s. 78, ch. 97-261; s. 70, ch. 97-264; s. 263, ch. 98-166; s. 62, ch. 98-171; s. 1, ch. 99-356; s. 10, ch. 2000-159; s. 77, ch. 2000-160; s. 14, ch. 2002-389; s. 23, ch. 2009-223; s. 72, ch. 2013-18.
Note.—Former s. 455.236; s. 455.654.

456.054 Kickbacks prohibited.—
(1) As used in this section, the term “kickback” means a remuneration or payment, by or on behalf of a provider of health care services or items, to any person as an incentive or inducement to refer patients for past or future services or items, when the payment is not tax deductible as an ordinary and necessary expense.
(2) It is unlawful for any health care provider or any provider of health care services to offer, pay, solicit, or receive a kickback, directly or indirectly, overtly or covertly, in cash or in kind, for referring or soliciting patients.
(3) Violations of this section shall be considered patient brokering and shall be punishable as provided in s. 817.505.

History.—s. 8, ch. 92-178; s. 2, ch. 96-152; s. 79, ch. 97-261; s. 8, ch. 99-204; s. 78, ch. 2000-160; s. 6, ch. 2006-305.
Note.—Former s. 455.237; s. 455.657.

456.055 Chiropractic and podiatric health care; denial of payment; limitation.—A chiropractic physician licensed under chapter 460 or a podiatric physician licensed under chapter 461 shall not be denied payment for treatment rendered solely on the basis that the chiropractic physician or podiatric physician is not a member of a particular preferred provider organization or exclusive provider organization which is composed only of physicians licensed under the same chapter.

History.—s. 43, ch. 85-167; s. 87, ch. 97-261; ss. 191, 264, ch. 98-166; s. 78, ch. 2000-160.

Note.—Former s. 455.244; s. 455.684.

456.056 Treatment of Medicare beneficiaries; refusal, emergencies, consulting physicians.—
(1) Effective as of January 1, 1993, as used in this section, the term:
(a) "Physician" means a physician licensed under chapter 458, an osteopathic physician licensed under chapter 459, a chiropractic physician licensed under chapter 460, a podiatric physician licensed under chapter 461, or an optometrist licensed under chapter 463.
(b) "Beneficiary" means a beneficiary of health insurance under Title XVIII of the federal Social Security Act.
(c) "Consulting physician" means any physician to whom a primary physician refers a Medicare beneficiary for treatment.
(2) A physician may refuse to treat a beneficiary. However, nothing contained in this section shall be construed to limit a physician's obligation under state or federal law to treat a patient for an emergency medical condition, regardless of the patient's ability to pay.
(3) If treatment is provided to a beneficiary for an emergency medical condition as defined in s. 395.002(8)(a), the physician must accept Medicare assignment provided that the requirement to accept Medicare assignment for an emergency medical condition shall not apply to treatment rendered after the patient is stabilized, or the treatment is unrelated to the original emergency medical condition. For the purpose of this subsection "stabilized" is defined to mean with respect to an emergency medical condition, that no material deterioration of the condition is likely within reasonable medical probability.
(4) If treatment provided to a beneficiary is not for such emergency medical condition, and the primary physician accepts assignment, all consulting physicians must accept assignment unless the patient agrees in writing, before receiving the treatment, that the physician need not accept assignment.
(5) Any attempt by a primary physician or a consulting physician to collect from a Medicare beneficiary any amount of charges for medical services in excess of those authorized under this section, other than the unmet deductible and the 20 percent of charges that Medicare does not pay, shall be deemed null, void, and of no merit.

History.—s. 1, ch. 92-118; s. 160, ch. 92-149; s. 89, ch. 97-261; ss. 192, 265, ch. 98-166; s. 78, ch. 2000-160; s. 117, ch. 2014-17.
Note.—Former s. 455.2455; s. 455.691.

456.057 Ownership and control of patient records; report or copies of records to be furnished; disclosure of information.—
(1) As used in this section, the term "records owner" means any health care practitioner who generates a medical record after making a physical or mental examination of, or administering treatment or dispensing legend drugs to, any person; any health care practitioner to whom records are transferred by a previous records owner; or any health care practitioner's employer, including, but not limited to, group practices and staff-model health maintenance organizations, provided the employment contract or agreement between the employer and the health care practitioner designates the employer as the records owner.
(2) As used in this section, the terms "records owner," "health care practitioner," and "health care practitioner's employer" do not include any of the following persons or entities; furthermore, the following persons or entities are not authorized to acquire or own medical records, but are authorized under the confidentiality and disclosure requirements of this section to maintain those documents required by the part or chapter under which they are licensed or regulated:
(a) Certified nursing assistants regulated under part II of chapter 464.
(b) Pharmacists and pharmacies licensed under chapter 465.
(c) Dental hygienists licensed under s. 466.023.
(d) Nursing home administrators licensed under part II of chapter 468.
(e) Respiratory therapists regulated under part V of chapter 468.
(f) Athletic trainers licensed under part XIII of chapter 468.
(g) Electrologists licensed under chapter 478.
(h) Clinical laboratory personnel licensed under part III of chapter 483.
(i) Medical physicists licensed under part IV of chapter 483.
(j) Opticians and optical establishments licensed or permitted under part I of chapter 484.
(k) Persons or entities practicing under s. 627.736(7).
(3) As used in this section, the term "records custodian" means any person or entity that:
(a) Maintains documents that are authorized in subsection (2); or
(b) Obtains medical records from a records owner.
(4) Any health care practitioner's employer who is a records owner and any records custodian shall maintain records or documents as provided under the confidentiality and disclosure requirements of this section.
(5) This section does not apply to facilities licensed under chapter 395.
(6) Any health care practitioner licensed by the department or a board within the department who makes a physical or mental examination of, or administers treatment or dispenses legend drugs to, any person shall, upon request of such person or the person's legal representative, furnish, in a timely manner, without delays for legal review, copies of all reports and records relating to such examination or treatment, including X rays and insurance information. However, when a patient's psychiatric, chapter 490 psychological, or chapter 491 psychotherapeutic records are requested by the patient or the patient's legal representative, the health care practitioner may provide a report of examination and treatment in lieu of copies of records. Upon a patient's written request, complete copies of the patient's psychiatric records shall be provided directly to a subsequent treating psychiatrist. The furnishing of such report or copies shall not be conditioned upon payment of a fee for services rendered.

(7)(a) Except as otherwise provided in this section and in s. 440.13(4)(c), such records may not be furnished to, and the medical condition of a patient may not be discussed with, any person other than the patient, the patient's legal representative, or other health care practitioners and providers involved in the patient's care or treatment, except upon written authorization from the patient. However, such records may be furnished without written authorization under the following circumstances:
1. To any person, firm, or corporation that has procured or furnished such care or treatment with the patient's consent.
2. When compulsory physical examination is made pursuant to Rule 1.360, Florida Rules of Civil Procedure, in which case copies of the medical records shall be furnished to both the defendant and the plaintiff.
3. In any civil or criminal action, unless otherwise prohibited by law, upon the issuance of a subpoena from a court of competent jurisdiction and proper notice to the patient or the patient's legal representative by the party seeking such records.
4. For statistical and scientific research, provided the information is abstracted in such a way as to protect the identity of the patient or provided written permission is received from the patient or the patient's legal representative.
5. To a regional poison control center for purposes of treating a poison episode under evaluation, case management of poison cases, or compliance with data collection and reporting requirements of s. 395.1027 and the professional organization that certifies poison control centers in accordance with federal law.
(b) Absent a specific written release or authorization permitting utilization of patient information for solicitation or marketing the sale of goods or services, any use of that information for those purposes is prohibited.
(c) Information disclosed to a health care practitioner by a patient in the course of the care and treatment of such patient is confidential and may be disclosed only to other health care practitioners and providers involved in the care or treatment of the patient, if allowed by written authorization from the patient, or if compelled by subpoena at a deposition, evidentiary hearing, or trial for which proper notice has been given.
(d) Notwithstanding paragraphs (a)-(c), information disclosed by a patient to a health care practitioner or provider or records created by the practitioner or provider during the course of care or treatment of the patient may be disclosed:
1. In a medical negligence action or administrative proceeding if the health care practitioner or provider is or reasonably expects to be named as a defendant;
2. Pursuant to s. 766.106(6)(b)5.;
3. As provided for in the authorization for release of protected health information filed by the patient pursuant to s. 766.1065; or
4. To the health care practitioner's or provider's attorney during a consultation if the health care practitioner or provider reasonably expects to be deposed, to be called as a witness, or to receive formal or informal discovery requests in a medical negligence action, presuit investigation of medical negligence, or administrative proceeding.
a. If the medical liability insurer of a health care practitioner or provider described in this subparagraph represents a defendant or prospective defendant in a medical negligence action:
(I) The insurer for the health care practitioner or provider may not contact the health care practitioner or provider to recommend that the health care practitioner or provider seek legal counsel relating to a particular matter.
(II) The insurer may not select an attorney for the practitioner or the provider. However, the insurer may recommend attorneys who do not represent a defendant or prospective defendant in the matter if the practitioner or provider contacts an insurer relating to the practitioner's or provider's potential involvement in the matter.
(III) The attorney selected by the practitioner or the provider may not, directly or indirectly, disclose to the insurer any information relating to the representation of the practitioner or the provider other than the categories of work performed or the amount of time applicable to each category for billing or reimbursement purposes. The attorney selected by the practitioner or the provider may represent the insurer or other insureds of the insurer in an unrelated matter.
b. The limitations in this subparagraph do not apply if the attorney reasonably expects the practitioner or provider to be named as a defendant and the practitioner or provider agrees with the attorney's assessment, if the practitioner or provider receives a presuit notice pursuant to chapter 766, or if the practitioner or provider is named as a defendant.
(8)(a)1. The department may obtain patient records pursuant to a subpoena without written authorization from the patient if the department and the probable cause panel of the appropriate board, if any, find reasonable cause to believe that a health care practitioner has excessively or inappropriately prescribed any controlled substance specified in chapter 893 in violation of this chapter or any professional practice act or that a health care practitioner has practiced his or her profession below that level of care, skill, and treatment required as defined by this chapter or any professional practice act and also find that appropriate, reasonable attempts were made to obtain a patient release. Notwithstanding the foregoing, the department need not attempt to obtain a patient release when investigating an offense involving the inappropriate prescribing, overprescribing, or diversion of controlled substances and the offense involves a pain-management clinic. The department may obtain patient records without patient authorization or subpoena from any pain-management clinic required to be licensed if the department has probable cause to believe that a violation of any provision of s. 458.3265 or s. 459.0137 is occurring or has occurred and reasonably believes that obtaining such authorization is not feasible due to the volume of the dispensing and prescribing activity involving controlled substances and that obtaining patient authorization or the issuance of a subpoena would jeopardize the investigation.
2. The department may obtain patient records and insurance information pursuant to a subpoena without written authorization from the patient if the department and the probable cause panel of the appropriate board, if any, find reasonable cause to believe that a health care practitioner has provided inadequate medical care based on termination of insurance and also find that appropriate, reasonable attempts were made to obtain a patient release.
3. The department may obtain patient records, billing records, insurance information, provider contracts, and all attachments thereto

pursuant to a subpoena without written authorization from the patient if the department and probable cause panel of the appropriate board, if any, find reasonable cause to believe that a health care practitioner has submitted a claim, statement, or bill using a billing code that would result in payment greater in amount than would be paid using a billing code that accurately describes the services performed, requested payment for services that were not performed by that health care practitioner, used information derived from a written report of an automobile accident generated pursuant to chapter 316 to solicit or obtain patients personally or through an agent regardless of whether the information is derived directly from the report or a summary of that report or from another person, solicited patients fraudulently, received a kickback as defined in s. 456.054, violated the patient brokering provisions of s. 817.505, or presented or caused to be presented a false or fraudulent insurance claim within the meaning of s. 817.234(1)(a), and also find that, within the meaning of s. 817.234(1)(a), patient authorization cannot be obtained because the patient cannot be located or is deceased, incapacitated, or suspected of being a participant in the fraud or scheme, and if the subpoena is issued for specific and relevant records.

4. Notwithstanding subparagraphs 1.-3., when the department investigates a professional liability claim or undertakes action pursuant to s. 456.049 or s. 627.912, the department may obtain patient records pursuant to a subpoena without written authorization from the patient if the patient refuses to cooperate or if the department attempts to obtain a patient release and the failure to obtain the patient records would be detrimental to the investigation.

(b) Patient records, billing records, insurance information, provider contracts, and all attachments thereto obtained by the department pursuant to this subsection shall be used solely for the purpose of the department and the appropriate regulatory board in disciplinary proceedings. This section does not limit the assertion of the psychotherapist-patient privilege under s. 90.503 in regard to records of treatment for mental or nervous disorders by a medical practitioner licensed pursuant to chapter 458 or chapter 459 who has primarily diagnosed and treated mental and nervous disorders for a period of not less than 3 years, inclusive of psychiatric residency. However, the health care practitioner shall release records of treatment for medical conditions even if the health care practitioner has also treated the patient for mental or nervous disorders. If the department has found reasonable cause under this section and the psychotherapist-patient privilege is asserted, the department may petition the circuit court for an in camera review of the records by expert medical practitioners appointed by the court to determine if the records or any part thereof are protected under the psychotherapist-patient privilege.

(9)(a) All patient records obtained by the department and any other documents maintained by the department which identify the patient by name are confidential and exempt from s. 119.07(1) and shall be used solely for the purpose of the department and the appropriate regulatory board in its investigation, prosecution, and appeal of disciplinary proceedings. The records shall not be available to the public as part of the record of investigation for and prosecution in disciplinary proceedings made available to the public by the department or the appropriate board.

(b) Notwithstanding paragraph (a), all patient records obtained by the department and any other documents maintained by the department which relate to a current or former Medicaid recipient shall be provided to the Medicaid Fraud Control Unit in the Department of Legal Affairs, upon request.

(10) All records owners shall develop and implement policies, standards, and procedures to protect the confidentiality and security of the medical record. Employees of records owners shall be trained in these policies, standards, and procedures.

(11) Records owners are responsible for maintaining a record of all disclosures of information contained in the medical record to a third party, including the purpose of the disclosure request. The record of disclosure may be maintained in the medical record. The third party to whom information is disclosed is prohibited from further disclosing any information in the medical record without the expressed written consent of the patient or the patient's legal representative.

(12) Notwithstanding the provisions of s. 456.058, records owners shall place an advertisement in the local newspaper or notify patients, in writing, when they are terminating practice, retiring, or relocating, and no longer available to patients, and offer patients the opportunity to obtain a copy of their medical record.

(13) Notwithstanding the provisions of s. 456.058, records owners shall notify the appropriate board office when they are terminating practice, retiring, or relocating, and no longer available to patients, specifying who the new records owner is and where medical records can be found.

(14) Whenever a records owner has turned records over to a new records owner, the new records owner shall be responsible for providing a copy of the complete medical record, upon written request, of the patient or the patient's legal representative.

(15) Licensees in violation of the provisions of this section shall be disciplined by the appropriate licensing authority.

(16) The Attorney General is authorized to enforce the provisions of this section for records owners not otherwise licensed by the state, through injunctive relief and fines not to exceed $5,000 per violation.

(17) A health care practitioner or records owner furnishing copies of reports or records or making the reports or records available for digital scanning pursuant to this section shall charge no more than the actual cost of copying, including reasonable staff time, or the amount specified in administrative rule by the appropriate board, or the department when there is no board.

(18) Nothing in this section shall be construed to limit health care practitioner consultations, as necessary.

(19) A records owner shall release to a health care practitioner who, as an employee of the records owner, previously provided treatment to a patient, those records that the health care practitioner actually created or generated when the health care practitioner treated the patient. Records released pursuant to this subsection shall be released only upon written request of the health care practitioner and shall be limited to the notes, plans of care, and orders and summaries that were actually generated by the health care practitioner requesting the record.

(20) The board with department approval, or the department when there is no board, may temporarily or permanently appoint a

person or entity as a custodian of medical records in the event of the death of a practitioner, the mental or physical incapacitation of a practitioner, or the abandonment of medical records by a practitioner. Such custodian shall comply with this section. The department may contract with a third party to provide these services under the confidentiality and disclosure requirements of this section.

History.—s. 1, ch. 79-302; s. 1, ch. 82-22; s. 1, ch. 83-108; s. 81, ch. 83-218; ss. 14, 119, ch. 83-329; s. 2, ch. 84-15; s. 41, ch. 85-175; s. 4, ch. 87-333; s. 9, ch. 88-1; s. 2, ch. 88-208; s. 14, ch. 88-219; s. 6, ch. 88-277; s. 10, ch. 88-392; s. 2, ch. 89-85; s. 14, ch. 89-124; s. 28, ch. 89-289; s. 1, ch. 90-263; s. 11, ch. 91-137; s. 6, ch. 91-140; s. 12, ch. 91-176; s. 4, ch. 91-269; s. 62, ch. 92-33; s. 32, ch. 92-149; s. 23, ch. 93-129; s. 315, ch. 94-119; ss. 90, 91, ch. 94-218; s. 308, ch. 96-406; s. 1084, ch. 97-103; s. 82, ch. 97-261; s. 6, ch. 98-166; s. 12, ch. 99-349; s. 86, ch. 99-397; s. 79, ch. 2000-160; s. 9, ch. 2000-163; s. 114, ch. 2000-318; s. 9, ch. 2001-222; ss. 69, 140, ch. 2001-277; s. 18, ch. 2003-416; s. 4, ch. 2005-256; s. 1, ch. 2006-271; s. 2, ch. 2010-211; s. 1, ch. 2013-108; s. 14, ch. 2016-230.
Note.—Former s. 455.241; s. 455.667.

456.0575 Duty to notify patients.—
(1) Every licensed health care practitioner shall inform each patient, or an individual identified pursuant to s. 765.401(1), in person about adverse incidents that result in serious harm to the patient. Notification of outcomes of care that result in harm to the patient under this section does not constitute an acknowledgment of admission of liability, nor can such notifications be introduced as evidence.
(2) Upon request by a patient, before providing nonemergency medical services in a facility licensed under chapter 395, a health care practitioner shall provide, in writing or by electronic means, a good faith estimate of reasonably anticipated charges to treat the patient's condition at the facility. The health care practitioner shall provide the estimate to the patient within 7 business days after receiving the request and is not required to adjust the estimate for any potential insurance coverage. The health care practitioner shall inform the patient that the patient may contact his or her health insurer or health maintenance organization for additional information concerning cost-sharing responsibilities. The health care practitioner shall provide information to uninsured patients and insured patients for whom the practitioner is not a network provider or preferred provider which discloses the practitioner's financial assistance policy, including the application process, payment plans, discounts, or other available assistance, and the practitioner's charity care policy and collection procedures. Such estimate does not preclude the actual charges from exceeding the estimate. Failure to provide the estimate in accordance with this subsection, without good cause, shall result in disciplinary action against the health care practitioner and a daily fine of $500 until the estimate is provided to the patient. The total fine may not exceed $5,000.

History.—s. 8, ch. 2003-416; s. 5, ch. 2016-234.

456.058 Disposition of records of deceased practitioners or practitioners relocating or terminating practice.—Each board created under the provisions of chapter 457, chapter 458, chapter 459, chapter 460, chapter 461, chapter 463, part I of chapter 464, chapter 465, chapter 466, part I of chapter 484, chapter 486, chapter 490, or chapter 491, and the department under the provisions of chapter 462, shall provide by rule for the disposition, under that chapter, of the medical records or records of a psychological nature of practitioners which are in existence at the time the practitioner dies, terminates practice, or relocates and is no longer available to patients and which records pertain to the practitioner's patients. The rules shall provide that the records be retained for at least 2 years after the practitioner's death, termination of practice, or relocation. In the case of the death of the practitioner, the rules shall provide for the disposition of such records by the estate of the practitioner.

History.—s. 85, ch. 97-261; s. 80, ch. 2000-160; s. 115, ch. 2000-318.
Note.—Former s. 455.677.

456.059 Communications confidential; exceptions.—Communications between a patient and a psychiatrist, as defined in s. 394.455, shall be held confidential and shall not be disclosed except upon the request of the patient or the patient's legal representative. Provision of psychiatric records and reports shall be governed by s. 456.057. Notwithstanding any other provision of this section or s. 90.503, where:
(1) A patient is engaged in a treatment relationship with a psychiatrist;
(2) Such patient has made an actual threat to physically harm an identifiable victim or victims; and
(3) The treating psychiatrist makes a clinical judgment that the patient has the apparent capability to commit such an act and that it is more likely than not that in the near future the patient will carry out that threat,

the psychiatrist may disclose patient communications to the extent necessary to warn any potential victim or to communicate the threat to a law enforcement agency. No civil or criminal action shall be instituted, and there shall be no liability on account of disclosure of otherwise confidential communications by a psychiatrist in disclosing a threat pursuant to this section.

History.—s. 10, ch. 88-1; s. 33, ch. 92-149; s. 43, ch. 96-169; s. 83, ch. 97-261; s. 81, ch. 2000-160.
Note.—Former s. 455.2415; s. 455.671.

456.061 Practitioner disclosure of confidential information; immunity from civil or criminal liability.—
(1) A practitioner regulated through the Division of Medical Quality Assurance of the department shall not be civilly or criminally

liable for the disclosure of otherwise confidential information to a sexual partner or a needle-sharing partner under the following circumstances:
(a) If a patient of the practitioner who has tested positive for human immunodeficiency virus discloses to the practitioner the identity of a sexual partner or a needle-sharing partner;
(b) The practitioner recommends the patient notify the sexual partner or the needle-sharing partner of the positive test and refrain from engaging in sexual or drug activity in a manner likely to transmit the virus and the patient refuses, and the practitioner informs the patient of his or her intent to inform the sexual partner or needle-sharing partner; and
(c) If pursuant to a perceived civil duty or the ethical guidelines of the profession, the practitioner reasonably and in good faith advises the sexual partner or the needle-sharing partner of the patient of the positive test and facts concerning the transmission of the virus.

However, any notification of a sexual partner or a needle-sharing partner pursuant to this section shall be done in accordance with protocols developed pursuant to rule of the Department of Health.

(2) Notwithstanding the foregoing, a practitioner regulated through the Division of Medical Quality Assurance of the department shall not be civilly or criminally liable for failure to disclose information relating to a positive test result for human immunodeficiency virus of a patient to a sexual partner or a needle-sharing partner.

History.—s. 43, ch. 88-380; s. 12, ch. 89-350; s. 191, ch. 97-103; s. 84, ch. 97-261; s. 220, ch. 99-8; s. 82, ch. 2000-160.
Note.—Former s. 455.2416; s. 455.674.

456.062 Advertisement by a health care practitioner of free or discounted services; required statement.—In any advertisement for a free, discounted fee, or reduced fee service, examination, or treatment by a health care practitioner licensed under chapter 458, chapter 459, chapter 460, chapter 461, chapter 462, chapter 463, chapter 464, chapter 465, chapter 466, chapter 467, chapter 478, chapter 483, part I of chapter 484, chapter 486, chapter 490, or chapter 491, the following statement shall appear in capital letters clearly distinguishable from the rest of the text: THE PATIENT AND ANY OTHER PERSON RESPONSIBLE FOR PAYMENT HAS A RIGHT TO REFUSE TO PAY, CANCEL PAYMENT, OR BE REIMBURSED FOR PAYMENT FOR ANY OTHER SERVICE, EXAMINATION, OR TREATMENT THAT IS PERFORMED AS A RESULT OF AND WITHIN 72 HOURS OF RESPONDING TO THE ADVERTISEMENT FOR THE FREE, DISCOUNTED FEE, OR REDUCED FEE SERVICE, EXAMINATION, OR TREATMENT. However, the required statement shall not be necessary as an accompaniment to an advertisement of a licensed health care practitioner defined by this section if the advertisement appears in a classified directory the primary purpose of which is to provide products and services at free, reduced, or discounted prices to consumers and in which the statement prominently appears in at least one place.

History.—s. 81, ch. 97-261; s. 85, ch. 99-397; s. 82, ch. 2000-160; s. 1, ch. 2006-215.
Note.—Former s. 455.664.

456.063 Sexual misconduct; disqualification for license, certificate, or registration.—
(1) Sexual misconduct in the practice of a health care profession means violation of the professional relationship through which the health care practitioner uses such relationship to engage or attempt to engage the patient or client, or an immediate family member, guardian, or representative of the patient or client in, or to induce or attempt to induce such person to engage in, verbal or physical sexual activity outside the scope of the professional practice of such health care profession. Sexual misconduct in the practice of a health care profession is prohibited.
(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 has:
(a) Had any license, certificate, or registration to practice any profession or occupation revoked or surrendered based on a violation of sexual misconduct in the practice of that profession under the laws of any other state or any territory or possession of the United States and has not had that license, certificate, or registration reinstated by the licensing authority of the jurisdiction that revoked the license, certificate, or registration; or
(b) Committed any act in any other state or any territory or possession of the United States which if committed in this state would constitute sexual misconduct.

For purposes of this subsection, a licensing authority's acceptance of a candidate's relinquishment of a license which is offered in response to or in anticipation of the filing of administrative charges against the candidate's license constitutes the surrender of the license.

(3) Licensed health care practitioners shall report allegations of sexual misconduct to the department, regardless of the practice setting in which the alleged sexual misconduct occurred.

History.—s. 1, ch. 95-183; s. 52, ch. 97-261; s. 78, ch. 99-397; s. 82, ch. 2000-160; s. 25, ch. 2000-318; s. 70, ch. 2001-277.
Note.—Former s. 455.2142; s. 455.567.

456.0635 Health care fraud; disqualification for license, certificate, or registration.—
(1) Health care fraud in the practice of a health care profession is prohibited.
(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.

(4) Licensed health care practitioners shall report allegations of health care fraud to the department, regardless of the practice setting in which the alleged health care fraud occurred.
(5) The acceptance by a licensing authority of a licensee's relinquishment of a license which is offered in response to or anticipation of the filing of administrative charges alleging health care fraud or similar charges constitutes the permanent revocation of the license.

History.—s. 24, ch. 2009-223; s. 1, ch. 2012-64; s. 15, ch. 2016-230; s. 3, ch. 2017-41.

456.065 Unlicensed practice of a health care profession; intent; cease and desist notice; penalties; enforcement; citations; fees; allocation and disposition of moneys collected.—

(1) It is the intent of the Legislature that vigorous enforcement of licensure regulation for all health care professions is a state priority in order to protect Florida residents and visitors from the potentially serious and dangerous consequences of receiving medical and health care services from unlicensed persons whose professional education and training and other relevant qualifications have not been approved through the issuance of a license by the appropriate regulatory board or the department when there is no board. The unlicensed practice of a health care profession or the performance or delivery of medical or health care services to patients in this state without a valid, active license to practice that profession, regardless of the means of the performance or delivery of such services, is strictly prohibited.
(2) The penalties for unlicensed practice of a health care profession shall include the following:
(a) When the department has probable cause to believe that any person not licensed by the department, or the appropriate regulatory board within the department, has violated any provision of this chapter or any statute that relates to the practice of a profession regulated by the department, or any rule adopted pursuant thereto, the department may issue and deliver to such person a notice to cease and desist from such violation. In addition, the department may issue and deliver a notice to cease and desist to any person who aids and abets the unlicensed practice of a profession by employing such unlicensed person. The issuance of a notice to cease and desist shall not constitute agency action for which a hearing under ss. 120.569 and 120.57 may be sought. For the purpose of enforcing a cease and desist order, the department may file a proceeding in the name of the state seeking issuance of an injunction or a writ of mandamus against any person who violates any provisions of such order.
(b) In addition to the remedies under paragraph (a), the department may impose by citation an administrative penalty not to exceed $5,000 per incident. The citation shall be issued to the subject and shall contain the subject's name and any other information the department determines to be necessary to identify the subject, a brief factual statement, the sections of the law allegedly violated, and the penalty imposed. If the subject does not dispute the matter in the citation with the department within 30 days after the citation is served, the citation shall become a final order of the department. The department may adopt rules to implement this section. The penalty shall be a fine of not less than $500 nor more than $5,000 as established by rule of the department. Each day that the unlicensed practice continues after issuance of a notice to cease and desist constitutes a separate violation. The department shall be entitled to recover the costs of investigation and prosecution in addition to the fine levied pursuant to the citation. Service of a citation may be made by personal service or by mail to the subject at the subject's last known address or place of practice. If the department is required to seek enforcement of the cease and desist or agency order, it shall be entitled to collect its attorney's fees and costs.
(c) In addition to or in lieu of any other administrative remedy, the department may seek the imposition of a civil penalty through the circuit court for any violation for which the department may issue a notice to cease and desist. The civil penalty shall be no less than $500 and no more than $5,000 for each offense. The court may also award to the prevailing party court costs and reasonable attorney fees and, in the event the department prevails, may also award reasonable costs of investigation and prosecution.
(d) In addition to the administrative and civil remedies under paragraphs (b) and (c) and in addition to the criminal violations and penalties listed in the individual health care practice acts:
1. It is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, to practice, attempt to practice, or offer to practice a health care profession without an active, valid Florida license to practice that profession. Practicing without an active, valid license also includes practicing on a suspended, revoked, or void license, but does not include practicing, attempting to practice, or offering to practice with an inactive or delinquent license for a period of up to 12 months which is addressed in subparagraph 3. Applying for employment for a position that requires a license without notifying the employer that the person does not currently possess a valid, active license to practice that profession shall be deemed to be an attempt or offer to practice that health care profession without a license. Holding oneself out, regardless of the means of communication, as able to practice a health care profession or as able to provide services that require a health care license shall be deemed to be an attempt or offer to practice such profession without a license. The minimum penalty for violating this subparagraph shall be a fine of $1,000 and a minimum mandatory period of incarceration of 1 year.
2. It is a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, to practice a health care profession without an active, valid Florida license to practice that profession when such practice results in serious bodily injury. For purposes of this section, "serious bodily injury" means death; brain or spinal damage; disfigurement; fracture or dislocation of bones or joints; limitation of neurological, physical, or sensory function; or any condition that required subsequent surgical repair. The minimum penalty for violating this subparagraph shall be a fine of $1,000 and a minimum mandatory period of incarceration of 1 year.
3. It is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, to practice, attempt to practice, or offer to practice a health care profession with an inactive or delinquent license for any period of time up to 12 months. However, practicing, attempting to practice, or offering to practice a health care profession when that person's license has been inactive or delinquent for a period of time of 12 months or more shall be a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. The minimum penalty for violating this subparagraph shall be a term of imprisonment of 30 days and a fine of $500.
(3) Because all enforcement costs should be covered by professions regulated by the department, the department shall impose, upon initial licensure and each licensure renewal, a special fee of $5 per licensee to fund efforts to combat unlicensed activity. Such fee shall be in addition to all other fees collected from each licensee. The department shall make direct charges to the Medical Quality Assurance Trust Fund by profession. The department shall seek board advice regarding enforcement methods and strategies. The department shall directly credit the Medical Quality Assurance Trust Fund, by profession, with the revenues received from the department's efforts to enforce licensure provisions. The department shall include all financial and statistical data resulting from unlicensed activity enforcement as a separate category in the quarterly management report provided for in s. 456.025. For an

unlicensed activity account, a balance which remains at the end of a renewal cycle may, with concurrence of the applicable board and the department, be transferred to the operating fund account of that profession. The department shall also use these funds to inform and educate consumers generally on the importance of using licensed health care practitioners.
(4) The provisions of this section apply only to health care professional practice acts administered by the department.
(5) Nothing herein shall be construed to limit or restrict the sale, use, or recommendation of the use of a dietary supplement, as defined by the Food, Drug, and Cosmetic Act, 21 U.S.C. s. 321, so long as the person selling, using, or recommending the dietary supplement does so in compliance with federal and state law.

History.—s. 73, ch. 97-261; s. 84, ch. 2000-160; s. 35, ch. 2000-318; s. 54, ch. 2001-277.
Note.—Former s. 455.637.

456.066 Prosecution of criminal violations.—The department or the appropriate board shall report any criminal violation of any statute relating to the practice of a profession regulated by the department or appropriate board to the proper prosecuting authority for prompt prosecution.

History.—s. 72, ch. 97-261; s. 85, ch. 2000-160.
Note.—Former s. 455.634.

456.067 Penalty for giving false information.—In addition to, or in lieu of, any other discipline imposed pursuant to s. 456.072, the act of knowingly giving false information in the course of applying for or obtaining a license from the department, or any board thereunder, with intent to mislead a public servant in the performance of his or her official duties, or the act of attempting to obtain or obtaining a license from the department, or any board thereunder, to practice a profession by knowingly misleading statements or knowing misrepresentations constitutes a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 71, ch. 97-261; s. 24, ch. 99-7; s. 86, ch. 2000-160; s. 27, ch. 2000-318.
Note.—Former s. 455.631.

456.068 Toll-free telephone number for reporting of complaints.—The Agency for Health Care Administration shall establish a toll-free telephone number for public reporting of complaints relating to medical treatment or services provided by health care professionals.

History.—s. 148, ch. 97-237; s. 24, ch. 97-273; s. 87, ch. 2000-160.
Note.—Former s. 455.699.
456.069 Authority to inspect.—In addition to the authority specified in s. 465.017, duly authorized agents and employees of the department shall have the power to inspect in a lawful manner at all reasonable hours:
(1) Any pharmacy; or
(2) Any establishment at which the services of a licensee authorized to prescribe controlled substances specified in chapter 893 are offered,

for the purpose of determining if any of the provisions of this chapter or any practice act of a profession or any rule adopted thereunder is being violated; or for the purpose of securing such other evidence as may be needed for prosecution.

History.—s. 86, ch. 97-261; s. 88, ch. 2000-160.
Note.—Former s. 455.681.

456.071 Power to administer oaths, take depositions, and issue subpoenas.—For the purpose of any investigation or proceeding conducted by the department, the department shall have the power to administer oaths, take depositions, make inspections when authorized by statute, issue subpoenas which shall be supported by affidavit, serve subpoenas and other process, and compel the attendance of witnesses and the production of books, papers, documents, and other evidence. The department shall exercise this power on its own initiative or whenever requested by a board or the probable cause panel of any board. Challenges to, and enforcement of, the subpoenas and orders shall be handled as provided in s. 120.569.

History.—s. 65, ch. 97-261; s. 89, ch. 2000-160.
Note.—Former s. 455.611.

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:
(a) Making misleading, deceptive, or fraudulent representations in or related to the practice of the licensee's profession.
(b) Intentionally violating any rule adopted by the board or the department, as appropriate.
(c) Being convicted or found guilty of, or entering a plea of guilty or nolo contendere to, regardless of adjudication, a crime in any jurisdiction which relates to the practice of, or the ability to practice, a licensee's profession.

(d) Using a Class III or a Class IV laser device or product, as defined by federal regulations, without having complied with the rules adopted under s. 501.122(2) governing the registration of the devices.
(e) Failing to comply with the educational course requirements for human immunodeficiency virus and acquired immune deficiency syndrome.
(f) Having a license or the authority to practice any regulated profession revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of any jurisdiction, including its agencies or subdivisions, for a violation that would constitute a violation under Florida law. The licensing authority's acceptance of a relinquishment of licensure, stipulation, consent order, or other settlement, offered in response to or in anticipation of the filing of charges against the license, shall be construed as action against the license.
(g) Having been found liable in a civil proceeding for knowingly filing a false report or complaint with the department against another licensee.
(h) Attempting to obtain, obtaining, or renewing a license to practice a profession by bribery, by fraudulent misrepresentation, or through an error of the department or the board.
(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.
(j) Aiding, assisting, procuring, employing, or advising any unlicensed person or entity to practice a profession contrary to this chapter, the chapter regulating the profession, or the rules of the department or the board.
(k) Failing to perform any statutory or legal obligation placed upon a licensee. For purposes of this section, failing to repay a student loan issued or guaranteed by the state or the Federal Government in accordance with the terms of the loan or failing to comply with service scholarship obligations shall be considered a failure to perform a statutory or legal obligation, and the minimum disciplinary action imposed shall be a suspension of the license until new payment terms are agreed upon or the scholarship obligation is resumed, followed by probation for the duration of the student loan or remaining scholarship obligation period, and a fine equal to 10 percent of the defaulted loan amount. Fines collected shall be deposited into the Medical Quality Assurance Trust Fund.
(l) Making or filing a report which the licensee knows to be false, intentionally or negligently failing to file a report or record required by state or federal law, or willfully impeding or obstructing another person to do so. Such reports or records shall include only those that are signed in the capacity of a licensee.
(m) Making deceptive, untrue, or fraudulent representations in or related to the practice of a profession or employing a trick or scheme in or related to the practice of a profession.
(n) Exercising influence on the patient or client for the purpose of financial gain of the licensee or a third party.
(o) Practicing or offering to practice beyond the scope permitted by law or accepting and performing professional responsibilities the licensee knows, or has reason to know, the licensee is not competent to perform.
(p) Delegating or contracting for the performance of professional responsibilities by a person when the licensee delegating or contracting for performance of the responsibilities knows, or has reason to know, the person is not qualified by training, experience, and authorization when required to perform them.
(q) Violating a lawful order of the department or the board, or failing to comply with a lawfully issued subpoena of the department.
(r) Improperly interfering with an investigation or inspection authorized by statute, or with any disciplinary proceeding.
(s) Failing to comply with the educational course requirements for domestic violence.
(t) Failing to identify through written notice, which may include the wearing of a name tag, or orally to a patient the type of license under which the practitioner is practicing. Any advertisement for health care services naming the practitioner must identify the type of license the practitioner holds. This paragraph does not apply to a practitioner while the practitioner is providing services in a facility licensed under chapter 394, chapter 395, chapter 400, or chapter 429. Each board, or the department where there is no board, is authorized by rule to determine how its practitioners may comply with this disclosure requirement.
(u) Failing to comply with the requirements of ss. 381.026 and 381.0261 to provide patients with information about their patient rights and how to file a patient complaint.
(v) Engaging or attempting to engage in sexual misconduct as defined and prohibited in s. 456.063(1).
(w) Failing to comply with the requirements for profiling and credentialing, including, but not limited to, failing to provide initial information, failing to timely provide updated information, or making misleading, untrue, deceptive, or fraudulent representations on a profile, credentialing, or initial or renewal licensure application.
(x) Failing to report to the board, or the department if there is no board, in writing within 30 days after the licensee has been convicted or found guilty of, or entered a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction. Convictions, findings, adjudications, and pleas entered into prior to the enactment of this paragraph must be reported in writing to the board, or department if there is no board, on or before October 1, 1999.
(y) Using information about people involved in motor vehicle accidents which has been derived from accident reports made by law enforcement officers or persons involved in accidents under s. 316.066, or using information published in a newspaper or other news publication or through a radio or television broadcast that has used information gained from such reports, for the purposes of commercial or any other solicitation whatsoever of the people involved in the accidents.
(z) Being 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 any mental or physical condition. In enforcing this paragraph, the department shall have, upon a finding of the State Surgeon General or the State Surgeon General's designee that probable cause exists to believe that the licensee is unable to practice because of the reasons stated in this paragraph, the authority to issue an order to compel a

licensee to submit to a mental or physical examination by physicians designated by the department. If the licensee refuses to comply with the order, the department's order directing the examination may be enforced by filing a petition for enforcement in the circuit court where the licensee resides or does business. The department shall be entitled to the summary procedure provided in s. 51.011. A licensee or certificateholder affected under this paragraph shall at reasonable intervals be afforded an opportunity to demonstrate that he or she can resume the competent practice of his or her profession with reasonable skill and safety to patients.
(aa) Testing positive for any drug, as defined in s. 112.0455, on any confirmed preemployment or employer-ordered drug screening when the practitioner does not have a lawful prescription and legitimate medical reason for using the drug.
(bb) Performing or attempting to perform health care services on the wrong patient, a wrong-site procedure, a wrong procedure, or an unauthorized procedure or a procedure that is medically unnecessary or otherwise unrelated to the patient's diagnosis or medical condition. For the purposes of this paragraph, performing or attempting to perform health care services includes the preparation of the patient.
(cc) Leaving a foreign body in a patient, such as a sponge, clamp, forceps, surgical needle, or other paraphernalia commonly used in surgical, examination, or other diagnostic procedures. For the purposes of this paragraph, it shall be legally presumed that retention of a foreign body is not in the best interest of the patient and is not within the standard of care of the profession, regardless of the intent of the professional.
(dd) Violating any provision of this chapter, the applicable practice act, or any rules adopted pursuant thereto.
(ee) With respect to making a personal injury protection claim as required by s. 627.736, intentionally submitting a claim, statement, or bill that has been "upcoded" as defined in s. 627.732.
(ff) With respect to making a personal injury protection claim as required by s. 627.736, intentionally submitting a claim, statement, or bill for payment of services that were not rendered.
(gg) Engaging in a pattern of practice when prescribing medicinal drugs or controlled substances which demonstrates a lack of reasonable skill or safety to patients, a violation of any provision of this chapter, a violation of the applicable practice act, or a violation of any rules adopted under this chapter or the applicable practice act of the prescribing practitioner. Notwithstanding s. 456.073(13), the department may initiate an investigation and establish such a pattern from billing records, data, or any other information obtained by the department.
(hh) Being terminated from a treatment program for impaired practitioners, which is overseen by an impaired practitioner consultant as described in s. 456.076, for failure to comply, without good cause, with the terms of the monitoring or treatment contract entered into by the licensee, or for not successfully completing any drug treatment or alcohol treatment program.
(ii) Being convicted of, or entering a plea of guilty or nolo contendere to, any misdemeanor or felony, regardless of adjudication, under 18 U.S.C. s. 669, ss. 285-287, s. 371, s. 1001, s. 1035, s. 1341, s. 1343, s. 1347, s. 1349, or s. 1518, or 42 U.S.C. ss. 1320a-7b, relating to the Medicaid program.
(jj) Failing to remit the sum owed to the state for an overpayment from the Medicaid program pursuant to a final order, judgment, or stipulation or settlement.
(kk) Being terminated from the state Medicaid program pursuant to s. 409.913, any other state Medicaid program, or the federal Medicare program, unless eligibility to participate in the program from which the practitioner was terminated has been restored.
(ll) Being convicted of, or entering a plea of guilty or nolo contendere to, any misdemeanor or felony, regardless of adjudication, a crime in any jurisdiction which relates to health care fraud.
(mm) Failure to comply with controlled substance prescribing requirements of s. 456.44.
(nn) Violating any of the provisions of s. 790.338.
(oo) Willfully failing to comply with s. 627.64194 or s. 641.513 with such frequency as to indicate a general business practice.
(2) When the board, or the department when there is no board, finds any person guilty of the grounds set forth in subsection (1) or of any grounds set forth in the applicable practice act, including conduct constituting a substantial violation of subsection (1) or a violation of the applicable practice act which occurred prior to obtaining a license, it may enter an order imposing one or more of the following penalties:
(a) Refusal to certify, or to certify with restrictions, an application for a license.
(b) Suspension or permanent revocation of a license.
(c) Restriction of practice or license, including, but not limited to, restricting the licensee from practicing in certain settings, restricting the licensee to work only under designated conditions or in certain settings, restricting the licensee from performing or providing designated clinical and administrative services, restricting the licensee from practicing more than a designated number of hours, or any other restriction found to be necessary for the protection of the public health, safety, and welfare.
(d) Imposition of an administrative fine not to exceed $10,000 for each count or separate offense. If the violation is for fraud or making a false or fraudulent representation, the board, or the department if there is no board, must impose a fine of $10,000 per count or offense.
(e) Issuance of a reprimand or letter of concern.
(f) Placement of the licensee on probation for a period of time and subject to such conditions as the board, or the department when there is no board, may specify. Those conditions may include, but are not limited to, requiring the licensee to undergo treatment, attend continuing education courses, submit to be reexamined, work under the supervision of another licensee, or satisfy any terms which are reasonably tailored to the violations found.
(g) Corrective action.
(h) Imposition of an administrative fine in accordance with s. 381.0261 for violations regarding patient rights.

(i) Refund of fees billed and collected from the patient or a third party on behalf of the patient.
(j) Requirement that the practitioner undergo remedial education.

In determining what action is appropriate, the board, or department when there is no board, must first consider what sanctions are necessary to protect the public or to compensate the patient. Only after those sanctions have been imposed may the disciplining authority consider and include in the order requirements designed to rehabilitate the practitioner. All costs associated with compliance with orders issued under this subsection are the obligation of the practitioner.

(3)(a) Notwithstanding subsection (2), if the ground for disciplinary action is the first-time failure of the licensee to satisfy continuing education requirements established by the board, or by the department if there is no board, the board or department, as applicable, shall issue a citation in accordance with s. 456.077 and assess a fine, as determined by the board or department by rule. In addition, for each hour of continuing education not completed or completed late, the board or department, as applicable, may require the licensee to take 1 additional hour of continuing education for each hour not completed or completed late.
(b) Notwithstanding subsection (2), if the ground for disciplinary action is the first-time violation of a practice act for unprofessional conduct, as used in ss. 464.018(1)(h), 467.203(1)(f), 468.365(1)(f), and 478.52(1)(f), and no actual harm to the patient occurred, the board or department, as applicable, shall issue a citation in accordance with s. 456.077 and assess a penalty as determined by rule of the board or department.
(4) In addition to any other discipline imposed through final order, or citation, entered on or after July 1, 2001, under this section or discipline imposed through final order, or citation, entered on or after July 1, 2001, for a violation of any practice act, the board, or the department when there is no board, shall assess costs related to the investigation and prosecution of the case. The costs related to the investigation and prosecution include, but are not limited to, salaries and benefits of personnel, costs related to the time spent by the attorney and other personnel working on the case, and any other expenses incurred by the department for the case. The board, or the department when there is no board, shall determine the amount of costs to be assessed after its consideration of an affidavit of itemized costs and any written objections thereto. In any case where the board or the department imposes a fine or assessment and the fine or assessment is not paid within a reasonable time, the reasonable time to be prescribed in the rules of the board, or the department when there is no board, or in the order assessing the fines or costs, the department or the Department of Legal Affairs may contract for the collection of, or bring a civil action to recover, the fine or assessment.
(5) In addition to, or in lieu of, any other remedy or criminal prosecution, the department may file a proceeding in the name of the state seeking issuance of an injunction or a writ of mandamus against any person who violates any of the provisions of this chapter, or any provision of law with respect to professions regulated by the department, or any board therein, or the rules adopted pursuant thereto.
(6) If the board, or the department when there is no board, determines that revocation of a license is the appropriate penalty, the revocation shall be permanent. However, the board may establish by rule requirements for reapplication by applicants whose licenses have been permanently revoked. The requirements may include, but are not limited to, satisfying current requirements for an initial license.
(7) Notwithstanding subsection (2), upon a finding that a physician has prescribed or dispensed a controlled substance, or caused a controlled substance to be prescribed or dispensed, in a manner that violates the standard of practice set forth in s. 458.331(1)(q) or (t), s. 459.015(1)(t) or (x), s. 461.013(1)(o) or (s), or s. 466.028(1)(p) or (x), or that an advanced registered nurse practitioner has prescribed or dispensed a controlled substance, or caused a controlled substance to be prescribed or dispensed, in a manner that violates the standard of practice set forth in s. 464.018(1)(n) or (p)6., the physician or advanced registered nurse practitioner shall be suspended for a period of not less than 6 months and pay a fine of not less than $10,000 per count. Repeated violations shall result in increased penalties.
(8) The purpose of this section is to facilitate uniform discipline for those actions made punishable under this section and, to this end, a reference to this section constitutes a general reference under the doctrine of incorporation by reference.

History.—s. 69, ch. 97-261; s. 84, ch. 99-397; s. 90, ch. 2000-160; s. 26, ch. 2000-318; s. 71, ch. 2001-277; s. 2, ch. 2002-254; s. 6, ch. 2003-411; s. 19, ch. 2003-416; s. 10, ch. 2004-344; s. 1, ch. 2005-240; s. 2, ch. 2006-207; s. 111, ch. 2007-5; s. 64, ch. 2008-6; s. 25, ch. 2009-223; s. 3, ch. 2011-112; s. 1, ch. 2011-141; s. 8, ch. 2016-222; ss. 5, 23, ch. 2016-224.
Note.—Former s. 455.624.

456.0721 Practitioners in default on student loan or scholarship obligations; investigation; report.—The Department of Health shall obtain from the United States Department of Health and Human Services information necessary to investigate and prosecute health care practitioners for failing to repay a student loan or comply with scholarship service obligations pursuant to s. 456.072(1)(k). The department shall obtain from the United States Department of Health and Human Services a list of default health care practitioners each month, along with the information necessary to investigate a complaint in accordance with s. 456.073. The department may obtain evidence to support the investigation and prosecution from any financial institution or educational institution involved in providing the loan or education to the practitioner. The department shall report to the Legislature as part of the annual report required by s. 456.026, the number of practitioners in default, along with the results of the department's investigations and prosecutions, and the amount of fines collected from practitioners prosecuted for violating s. 456.072(1)(k).

History.—s. 3, ch. 2002-254.

456.073 Disciplinary proceedings.—Disciplinary proceedings for each board shall be within the jurisdiction of the department.
(1) The department, for the boards under its jurisdiction, shall cause to be investigated any complaint that is filed before it if the complaint is in writing, signed by the complainant, and legally sufficient. A complaint filed by a state prisoner against a health care practitioner employed by or otherwise providing health care services within a facility of the Department of Corrections is not legally sufficient unless there is a showing that the prisoner complainant has exhausted all available administrative remedies within the state correctional system before filing the complaint. However, if the Department of Health determines after a preliminary inquiry of a state prisoner's complaint that the practitioner may present a serious threat to the health and safety of any individual who is not a state prisoner, the Department of Health may determine legal sufficiency and proceed with discipline. The Department of Health shall be notified within 15 days after the Department of Corrections disciplines or allows a health care practitioner to resign for an offense related to the practice of his or her profession. A complaint is legally sufficient if it contains ultimate facts that show that a violation of this chapter, of any of the practice acts relating to the professions regulated by the department, or of any rule adopted by the department or a regulatory board in the department has occurred. In order to determine legal sufficiency, the department may require supporting information or documentation. The department may investigate, and the department or the appropriate board may take appropriate final action on, a complaint even though the original complainant withdraws it or otherwise indicates a desire not to cause the complaint to be investigated or prosecuted to completion. The department may investigate an anonymous complaint if the complaint is in writing and is legally sufficient, if the alleged violation of law or rules is substantial, and if the department has reason to believe, after preliminary inquiry, that the violations alleged in the complaint are true. The department may investigate a complaint made by a confidential informant if the complaint is legally sufficient, if the alleged violation of law or rule is substantial, and if the department has reason to believe, after preliminary inquiry, that the allegations of the complainant are true. The department may initiate an investigation if it has reasonable cause to believe that a licensee or a group of licensees has violated a Florida statute, a rule of the department, or a rule of a board. Notwithstanding subsection (13), the department may investigate information filed pursuant to s. 456.041(4) relating to liability actions with respect to practitioners licensed under chapter 458 or chapter 459 which have been reported under s. 456.049 or s. 627.912 within the previous 6 years for any paid claim that exceeds $50,000. Except as provided in ss. 458.331(9), 459.015(9), 460.413(5), and 461.013(6), when an investigation of any subject is undertaken, the department shall promptly furnish to the subject or the subject's attorney a copy of the complaint or document that resulted in the initiation of the investigation. The subject may submit a written response to the information contained in such complaint or document within 20 days after service to the subject of the complaint or document. The subject's written response shall be considered by the probable cause panel. The right to respond does not prohibit the issuance of a summary emergency order if necessary to protect the public. However, if the State Surgeon General, or the State Surgeon General's designee, and the chair of the respective board or the chair of its probable cause panel agree in writing that such notification would be detrimental to the investigation, the department may withhold notification. The department may conduct an investigation without notification to any subject if the act under investigation is a criminal offense.
(2) The department shall allocate sufficient and adequately trained staff to expeditiously and thoroughly determine legal sufficiency and investigate all legally sufficient complaints. For purposes of this section, it is the intent of the Legislature that the term "expeditiously" means that the department complete the report of its initial investigative findings and recommendations concerning the existence of probable cause within 6 months after its receipt of the complaint. The failure of the department, for disciplinary cases under its jurisdiction, to comply with the time limits of this section while investigating a complaint against a licensee constitutes harmless error in any subsequent disciplinary action unless a court finds that either the fairness of the proceeding or the correctness of the action may have been impaired by a material error in procedure or a failure to follow prescribed procedure. When its investigation is complete and legally sufficient, the department shall prepare and submit to the probable cause panel of the appropriate regulatory board the investigative report of the department. The report shall contain the investigative findings and the recommendations of the department concerning the existence of probable cause. The department shall not recommend a letter of guidance in lieu of finding probable cause if the subject has already been issued a letter of guidance for a related offense. At any time after legal sufficiency is found, the department may dismiss any case, or any part thereof, if the department determines that there is insufficient evidence to support the prosecution of allegations contained therein. The department shall provide a detailed report to the appropriate probable cause panel prior to dismissal of any case or part thereof, and to the subject of the complaint after dismissal of any case or part thereof, under this section. For cases dismissed prior to a finding of probable cause, such report is confidential and exempt from s. 119.07(1). The probable cause panel shall have access, upon request, to the investigative files pertaining to a case prior to dismissal of such case. If the department dismisses a case, the probable cause panel may retain independent legal counsel, employ investigators, and continue the investigation and prosecution of the case as it deems necessary.
(3) As an alternative to the provisions of subsections (1) and (2), when a complaint is received, the department may provide a licensee with a notice of noncompliance for an initial offense of a minor violation. Each board, or the department if there is no board, shall establish by rule those minor violations under this provision which do not endanger the public health, safety, and welfare and which do not demonstrate a serious inability to practice the profession. Failure of a licensee to take action in correcting the violation within 15 days after notice may result in the institution of regular disciplinary proceedings.
(4) The determination as to whether probable cause exists shall be made by majority vote of a probable cause panel of the board, or by the department, as appropriate. Each regulatory board shall provide by rule that the determination of probable cause shall be made by a panel of its members or by the department. Each board may provide by rule for multiple probable cause panels composed of at least two members. Each board may provide by rule that one or more members of the panel or panels may be a former board member. The length of term or repetition of service of any such former board member on a probable cause panel may vary according to the

direction of the board when authorized by board rule. Any probable cause panel must include one of the board's former or present consumer members, if one is available, is willing to serve, and is authorized to do so by the board chair. Any probable cause panel must include a present board member. Any probable cause panel must include a former or present professional board member. However, any former professional board member serving on the probable cause panel must hold an active valid license for that profession. All proceedings of the panel are exempt from s. 286.011 until 10 days after probable cause has been found to exist by the panel or until the subject of the investigation waives his or her privilege of confidentiality. The probable cause panel may make a reasonable request, and upon such request the department shall provide such additional investigative information as is necessary to the determination of probable cause. A request for additional investigative information shall be made within 15 days from the date of receipt by the probable cause panel of the investigative report of the department or the agency. The probable cause panel or the department, as may be appropriate, shall make its determination of probable cause within 30 days after receipt by it of the final investigative report of the department. The State Surgeon General may grant extensions of the 15-day and the 30-day time limits. In lieu of a finding of probable cause, the probable cause panel, or the department if there is no board, may issue a letter of guidance to the subject. If, within the 30-day time limit, as may be extended, the probable cause panel does not make a determination regarding the existence of probable cause or does not issue a letter of guidance in lieu of a finding of probable cause, the department must make a determination regarding the existence of probable cause within 10 days after the expiration of the time limit. If the probable cause panel finds that probable cause exists, it shall direct the department to file a formal complaint against the licensee. The department shall follow the directions of the probable cause panel regarding the filing of a formal complaint. If directed to do so, the department shall file a formal complaint against the subject of the investigation and prosecute that complaint pursuant to chapter 120. However, the department may decide not to prosecute the complaint if it finds that probable cause has been improvidently found by the panel. In such cases, the department shall refer the matter to the board. The board may then file a formal complaint and prosecute the complaint pursuant to chapter 120. The department shall also refer to the board any investigation or disciplinary proceeding not before the Division of Administrative Hearings pursuant to chapter 120 or otherwise completed by the department within 1 year after the filing of a complaint. The department, for disciplinary cases under its jurisdiction, must establish a uniform reporting system to quarterly refer to each board the status of any investigation or disciplinary proceeding that is not before the Division of Administrative Hearings or otherwise completed by the department within 1 year after the filing of the complaint. Annually, the department, in consultation with the applicable probable cause panel, must establish a plan to expedite or otherwise close any investigation or disciplinary proceeding that is not before the Division of Administrative Hearings or otherwise completed by the department within 1 year after the filing of the complaint. A probable cause panel or a board may retain independent legal counsel, employ investigators, and continue the investigation as it deems necessary; all costs thereof shall be paid from a trust fund used by the department to implement this chapter. All proceedings of the probable cause panel are exempt from s. 120.525.

(5) A formal hearing before an administrative law judge from the Division of Administrative Hearings shall be held pursuant to chapter 120 if there are any disputed issues of material fact. The determination of whether or not a licensee has violated the laws and rules regulating the profession, including a determination of the reasonable standard of care, is a conclusion of law to be determined by the board, or department when there is no board, and is not a finding of fact to be determined by an administrative law judge. The administrative law judge shall issue a recommended order pursuant to chapter 120. Notwithstanding s. 120.569(2), the department shall notify the division within 45 days after receipt of a petition or request for a formal hearing.

(6) The appropriate board, with those members of the panel, if any, who reviewed the investigation pursuant to subsection (4) being excused, or the department when there is no board, shall determine and issue the final order in each disciplinary case. Such order shall constitute final agency action. Any consent order or agreed-upon settlement shall be subject to the approval of the department.

(7) The department shall have standing to seek judicial review of any final order of the board, pursuant to s. 120.68.

(8) Any proceeding for the purpose of summary suspension of a license, or for the restriction of the license, of a licensee pursuant to s. 120.60(6) shall be conducted by the State Surgeon General or his or her designee, as appropriate, who shall issue the final summary order.

(9)(a) The department shall periodically notify the person who filed the complaint, as well as the patient or the patient's legal representative, of the status of the investigation, indicating whether probable cause has been found and the status of any civil action or administrative proceeding or appeal.

(b) In any disciplinary case for which probable cause has been found, the department shall provide to the person who filed the complaint a copy of the administrative complaint and:

1. A written explanation of how an administrative complaint is resolved by the disciplinary process.
2. A written explanation of how and when the person may participate in the disciplinary process.
3. A written notice of any hearing before the Division of Administrative Hearings or the regulatory board at which final agency action may be taken.

(c) In any disciplinary case for which probable cause is not found, the department shall so inform the person who filed the complaint and notify that person that he or she may, within 60 days, provide any additional information to the department which may be relevant to the decision. To facilitate the provision of additional information, the person who filed the complaint may receive, upon request, a copy of the department's expert report that supported the recommendation for closure, if such a report was relied upon by the department. In no way does this require the department to procure an expert opinion or report if none was used. Additionally, the identity of the expert shall remain confidential. In any administrative proceeding under s. 120.57, the person who filed the disciplinary complaint shall have the right to present oral or written communication relating to the alleged disciplinary violations or to the appropriate penalty.

[1](10) The complaint and all information obtained pursuant to the investigation by the department are confidential and exempt from s. 119.07(1) until 10 days after probable cause has been found to exist by the probable cause panel or by the department, or until the regulated professional or subject of the investigation waives his or her privilege of confidentiality, whichever occurs first. Upon completion of the investigation and a recommendation by the department to find probable cause, and pursuant to a written request by the subject or the subject's attorney, the department shall provide the subject an opportunity to inspect the investigative file or, at the subject's expense, forward to the subject a copy of the investigative file. Notwithstanding s. 456.057, the subject may inspect or receive a copy of any expert witness report or patient record connected with the investigation if the subject agrees in writing to maintain the confidentiality of any information received under this subsection until 10 days after probable cause is found and to maintain the confidentiality of patient records pursuant to s. 456.057. The subject may file a written response to the information contained in the investigative file. Such response must be filed within 20 days of mailing by the department, unless an extension of time has been granted by the department. This subsection does not prohibit the department from providing such information to any law enforcement agency or to any other regulatory agency.
(11) A privilege against civil liability is hereby granted to any complainant or any witness with regard to information furnished with respect to any investigation or proceeding pursuant to this section, unless the complainant or witness acted in bad faith or with malice in providing such information.
(12)(a) No person who reports in any capacity, whether or not required by law, information to the department with regard to the incompetence, impairment, or unprofessional conduct of any health care provider licensed under chapter 458, chapter 459, chapter 460, chapter 461, chapter 462, chapter 463, chapter 464, chapter 465, or chapter 466 shall be held liable in any civil action for reporting against such health care provider if such person acts without intentional fraud or malice.
(b) No facility licensed under chapter 395, health maintenance organization certificated under part I of chapter 641, physician licensed under chapter 458, or osteopathic physician licensed under chapter 459 shall discharge, threaten to discharge, intimidate, or coerce any employee or staff member by reason of such employee's or staff member's report to the department about a physician licensed under chapter 458, chapter 459, chapter 460, chapter 461, or chapter 466 who may be guilty of incompetence, impairment, or unprofessional conduct so long as such report is given without intentional fraud or malice.
(c) In any civil suit brought outside the protections of paragraphs (a) and (b) in which intentional fraud or malice is alleged, the person alleging intentional fraud or malice shall be liable for all court costs and for the other party's reasonable attorney's fees if intentional fraud or malice is not proved.
(13) Notwithstanding any provision of law to the contrary, an administrative complaint against a licensee shall be filed within 6 years after the time of the incident or occurrence giving rise to the complaint against the licensee. If such incident or occurrence involved criminal actions, diversion of controlled substances, sexual misconduct, or impairment by the licensee, this subsection does not apply to bar initiation of an investigation or filing of an administrative complaint beyond the 6-year timeframe. In those cases covered by this subsection in which it can be shown that fraud, concealment, or intentional misrepresentation of fact prevented the discovery of the violation of law, the period of limitations is extended forward, but in no event to exceed 12 years after the time of the incident or occurrence.

History.—s. 68, ch. 97-261; s. 23, ch. 99-7; s. 114, ch. 2000-153; s. 91, ch. 2000-160; ss. 14, 72, ch. 2001-277; s. 5, ch. 2002-254; s. 1, ch. 2003-27; s. 20, ch. 2003-416; s. 65, ch. 2008-6; s. 1, ch. 2016-139.
[1]Note.—Section 1, ch. 2016-139, amended subsection (10), effective "December 31, 2018, or upon enactment of the Nurse Licensure Compact into law by 26 states, whichever occurs first." When s. 1, ch. 2016-139, takes effect, subsection (10) will read:

(10) The complaint and all information obtained pursuant to the investigation by the department are confidential and exempt from s. 119.07(1) until 10 days after probable cause has been found to exist by the probable cause panel or by the department, or until the regulated professional or subject of the investigation waives his or her privilege of confidentiality, whichever occurs first. The department shall report any significant investigation information relating to a nurse holding a multistate license to the coordinated licensure information system pursuant to s. 464.0095. Upon completion of the investigation and a recommendation by the department to find probable cause, and pursuant to a written request by the subject or the subject's attorney, the department shall provide the subject an opportunity to inspect the investigative file or, at the subject's expense, forward to the subject a copy of the investigative file. Notwithstanding s. 456.057, the subject may inspect or receive a copy of any expert witness report or patient record connected with the investigation if the subject agrees in writing to maintain the confidentiality of any information received under this subsection until 10 days after probable cause is found and to maintain the confidentiality of patient records pursuant to s. 456.057. The subject may file a written response to the information contained in the investigative file. Such response must be filed within 20 days of mailing by the department, unless an extension of time has been granted by the department. This subsection does not prohibit the department from providing such information to any law enforcement agency or to any other regulatory agency.

Note.—Former s. 455.621.

456.074 Certain health care practitioners; immediate suspension of license.—
(1) The department shall issue an emergency order suspending the license of any person licensed under chapter 458, chapter 459, chapter 460, chapter 461, chapter 462, chapter 463, chapter 464, chapter 465, chapter 466, or chapter 484 who pleads guilty to, is convicted or found guilty of, or who enters a plea of nolo contendere to, regardless of adjudication, to:
(a) A felony under chapter 409, chapter 817, or chapter 893 or under 21 U.S.C. ss. 801-970 or under 42 U.S.C. ss. 1395-1396; or

(b) A misdemeanor or felony under 18 U.S.C. s. 669, ss. 285-287, s. 371, s. 1001, s. 1035, s. 1341, s. 1343, s. 1347, s. 1349, or s. 1518 or 42 U.S.C. ss. 1320a-7b, relating to the Medicaid program.
(2) If the board has previously found any physician or osteopathic physician in violation of the provisions of s. 458.331(1)(t) or s. 459.015(1)(x), in regard to her or his treatment of three or more patients, and the probable cause panel of the board finds probable cause of an additional violation of that section, then the State Surgeon General shall review the matter to determine if an emergency suspension or restriction order is warranted. Nothing in this section shall be construed so as to limit the authority of the State Surgeon General to issue an emergency order.
(3) The department may issue an emergency order suspending or restricting the license of any health care practitioner as defined in s. 456.001(4) who tests positive for any drug on any government or private sector preemployment or employer-ordered confirmed drug test, as defined in s. 112.0455, when the practitioner does not have a lawful prescription and legitimate medical reason for using such drug. The practitioner shall be given 48 hours from the time of notification to the practitioner of the confirmed test result to produce a lawful prescription for the drug before an emergency order is issued.
(4) Upon receipt of information that a Florida-licensed health care practitioner has defaulted on a student loan issued or guaranteed by the state or the Federal Government, the department shall notify the licensee by certified mail that he or she shall be subject to immediate suspension of license unless, within 45 days after the date of mailing, the licensee provides proof that new payment terms have been agreed upon by all parties to the loan. The department shall issue an emergency order suspending the license of any licensee who, after 45 days following the date of mailing from the department, has failed to provide such proof. Production of such proof shall not prohibit the department from proceeding with disciplinary action against the licensee pursuant to s. 456.073.
(5) The department shall issue an emergency order suspending the license of a massage therapist or establishment as defined in chapter 480 upon receipt of information that the massage therapist, a person with an ownership interest in the establishment, or, for a corporation that has more than $250,000 of business assets in this state, the owner, officer, or individual directly involved in the management of the establishment has been convicted or found guilty of, or has entered a plea of guilty or nolo contendere to, regardless of adjudication, a violation of s. 796.07(2)(a) which is reclassified under s. 796.07(7) or a felony offense under any of the following provisions of state law or a similar provision in another jurisdiction:
(a) Section 787.01, relating to kidnapping.
(b) Section 787.02, relating to false imprisonment.
(c) Section 787.025, relating to luring or enticing a child.
(d) Section 787.06, relating to human trafficking.
(e) Section 787.07, relating to human smuggling.
(f) Section 794.011, relating to sexual battery.
(g) Section 794.08, relating to female genital mutilation.
(h) Former s. 796.03, relating to procuring a person under the age of 18 for prostitution.
(i) Former s. 796.035, relating to the selling or buying of minors into prostitution.
(j) Section 796.04, relating to forcing, compelling, or coercing another to become a prostitute.
(k) Section 796.05, relating to deriving support from the proceeds of prostitution.
(l) Section 796.07(4)(a)3., relating to a felony of the third degree for a third or subsequent violation of s. 796.07, relating to prohibiting prostitution and related acts.
(m) Section 800.04, relating to lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age.
(n) Section 825.1025(2)(b), relating to lewd or lascivious offenses committed upon or in the presence of an elderly or disabled person.
(o) Section 827.071, relating to sexual performance by a child.
(p) Section 847.0133, relating to the protection of minors.
(q) Section 847.0135, relating to computer pornography.
(r) Section 847.0138, relating to the transmission of material harmful to minors to a minor by electronic device or equipment.
(s) Section 847.0145, relating to the selling or buying of minors.

History.—s. 88, ch. 97-261; s. 25, ch. 99-7; s. 87, ch. 99-397; s. 92, ch. 2000-160; s. 73, ch. 2001-277; s. 1, ch. 2002-254; s. 66, ch. 2008-6; s. 26, ch. 2009-223; s. 2, ch. 2014-139; s. 55, ch. 2015-2; s. 54, ch. 2016-10; s. 4, ch. 2016-24.
Note.—Former s. 455.687.

456.075 Criminal proceedings against licensees; appearances by department representatives.—In any criminal proceeding against a person licensed by the department to practice a health care profession in this state, a representative of the department may voluntarily appear and furnish pertinent information, make recommendations regarding specific conditions of probation, or provide any other assistance necessary to promote justice or protect the public. The court may order a representative of the department to appear in any criminal proceeding if the crime charged is substantially related to the qualifications, functions, or duties of a health care professional licensed by the department.

History.—s. 1, ch. 2002-81.

456.076 Treatment programs for impaired practitioners.—

(1) For professions that do not have impaired practitioner programs provided for in their practice acts, the department shall, by rule, designate approved impaired practitioner programs under this section. The department may adopt rules setting forth appropriate criteria for approval of treatment providers. The rules may specify the manner in which the consultant, retained as set forth in subsection (2), works with the department in intervention, requirements for evaluating and treating a professional, requirements for continued care of impaired professionals by approved treatment providers, continued monitoring by the consultant of the care provided by approved treatment providers regarding the professionals under their care, and requirements related to the consultant's expulsion of professionals from the program.
(2)(a) The department shall retain one or more impaired practitioner consultants who are each licensees under the jurisdiction of the Division of Medical Quality Assurance within the department and who must be:
1. A practitioner or recovered practitioner licensed under chapter 458, chapter 459, or part I of chapter 464; or
2. An entity that employs:
a. A medical director who must be a practitioner or recovered practitioner licensed under chapter 458 or chapter 459; or
b. An executive director who must be a registered nurse or a recovered registered nurse licensed under part I of chapter 464.
(b) An entity retained as an impaired practitioner consultant under this section which employs a medical director or an executive director is not required to be licensed as a substance abuse provider or mental health treatment provider under chapter 394, chapter 395, or chapter 397 for purposes of providing services under this program.
(c)1. The consultant shall assist the probable cause panel and the department in carrying out the responsibilities of this section. This includes working with department investigators to determine whether a practitioner is, in fact, impaired.
2. The consultant may contract with a school or program to provide 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.
(3) Each board and profession within the Division of Medical Quality Assurance may delegate to its chair or other designee its authority to determine, before certifying or declining to certify an application for licensure to the department, that an applicant for licensure under its jurisdiction may be impaired as a result of the misuse or abuse of alcohol or drugs, or both, or due to a mental or physical condition that could affect the applicant's ability to practice with skill and safety. Upon such determination, the chair or other designee may refer the applicant to the consultant for an evaluation before the board certifies or declines to certify his or her application to the department. If the applicant agrees to be evaluated by the consultant, the department's deadline for approving or denying the application pursuant to s. 120.60(1) is tolled until the evaluation is completed and the result of the evaluation and recommendation by the consultant is communicated to the board by the consultant. If the applicant declines to be evaluated by the consultant, the board shall certify or decline to certify the applicant's application to the department notwithstanding the lack of an evaluation and recommendation by the consultant.
(4)(a) Whenever the department receives a written or oral legally sufficient complaint alleging that a licensee under the jurisdiction of the Division of Medical Quality Assurance within the department is impaired as a result of the misuse or abuse of alcohol or drugs, or both, or due to a mental or physical condition which could affect the licensee's ability to practice with skill and safety, and no complaint against the licensee other than impairment exists, the reporting of such information shall not constitute grounds for discipline pursuant to s. 456.072 or the corresponding grounds for discipline within the applicable practice act if the probable cause panel of the appropriate board, or the department when there is no board, finds:
1. The licensee has acknowledged the impairment problem.
2. The licensee has voluntarily enrolled in an appropriate, approved treatment program.
3. The licensee has voluntarily withdrawn from practice or limited the scope of practice as required by the consultant, in each case, until such time as the panel, or the department when there is no board, is satisfied the licensee has successfully completed an approved treatment program.
4. The licensee has executed releases for medical records, authorizing the release of all records of evaluations, diagnoses, and treatment of the licensee, including records of treatment for emotional or mental conditions, to the consultant. The consultant shall make no copies or reports of records that do not regard the issue of the licensee's impairment and his or her participation in a treatment program.
(b) If, however, the department has not received a legally sufficient complaint and the licensee agrees to withdraw from practice until such time as the consultant determines the licensee has satisfactorily completed an approved treatment program or evaluation, the probable cause panel, or the department when there is no board, shall not become involved in the licensee's case.
(c) Inquiries related to impairment treatment programs designed to provide information to the licensee and others and which do not indicate that the licensee presents a danger to the public shall not constitute a complaint within the meaning of s. 456.073 and shall be

exempt from the provisions of this subsection.
(d) Whenever the department receives a legally sufficient complaint alleging that a licensee is impaired as described in paragraph (a) and no complaint against the licensee other than impairment exists, the department shall forward all information in its possession regarding the impaired licensee to the consultant. For the purposes of this section, a suspension from hospital staff privileges due to the impairment does not constitute a complaint.
(e) The probable cause panel, or the department when there is no board, shall work directly with the consultant, and all information concerning a practitioner obtained from the consultant by the panel, or the department when there is no board, shall remain confidential and exempt from the provisions of s. 119.07(1), subject to the provisions of subsections (6) and (7).
(f) A finding of probable cause shall not be made as long as the panel, or the department when there is no board, is satisfied, based upon information it receives from the consultant and the department, that the licensee is progressing satisfactorily in an approved impaired practitioner program and no other complaint against the licensee exists.
(5) In any disciplinary action for a violation other than impairment in which a licensee establishes the violation for which the licensee is being prosecuted was due to or connected with impairment and further establishes the licensee is satisfactorily progressing through or has successfully completed an approved treatment program pursuant to this section, such information may be considered by the board, or the department when there is no board, as a mitigating factor in determining the appropriate penalty. This subsection does not limit mitigating factors the board may consider.
(6)(a) An approved treatment provider shall, upon request, disclose to the consultant all information in its possession regarding the issue of a licensee's impairment and participation in the treatment program. All information obtained by the consultant and department pursuant to this section is confidential and exempt from the provisions of s. 119.07(1), subject to the provisions of this subsection and subsection (7). Failure to provide such information to the consultant is grounds for withdrawal of approval of such program or provider.
(b) If in the opinion of the consultant, after consultation with the treatment provider, an impaired licensee has not progressed satisfactorily in a treatment program, all information regarding the issue of a licensee's impairment and participation in a treatment program in the consultant's possession shall be disclosed to the department. Such disclosure shall constitute a complaint pursuant to the general provisions of s. 456.073. Whenever the consultant concludes that impairment affects a licensee's practice and constitutes an immediate, serious danger to the public health, safety, or welfare, that conclusion shall be communicated to the State Surgeon General.
(7) A consultant, licensee, or approved treatment provider who makes a disclosure pursuant to this section is not subject to civil liability for such disclosure or its consequences. The provisions of s. 766.101 apply to any officer, employee, or agent of the department or the board and to any officer, employee, or agent of any entity with which the department has contracted pursuant to this section.
(8)(a) A consultant retained pursuant to subsection (2), a consultant's officers and employees, and those acting at the direction of the consultant for the limited purpose of an emergency intervention on behalf of a licensee or student as described in subsection (2) when the consultant is unable to perform such intervention shall be considered agents of the department for purposes of s. 768.28 while acting within the scope of the consultant's duties under the contract with the department if the contract complies with the requirements of this section. The contract must require that:
1. The consultant indemnify the state for any liabilities incurred up to the limits set out in chapter 768.
2. The consultant establish a quality assurance program to monitor services delivered under the contract.
3. The consultant's quality assurance program, treatment, and monitoring records be evaluated quarterly.
4. The consultant's quality assurance program be subject to review and approval by the department.
5. The consultant operate under policies and procedures approved by the department.
6. The consultant provide to the department for approval a policy and procedure manual that comports with all statutes, rules, and contract provisions approved by the department.
7. The department be entitled to review the records relating to the consultant's performance under the contract for the purpose of management audits, financial audits, or program evaluation.
8. All performance measures and standards be subject to verification and approval by the department.
9. The department be entitled to terminate the contract with the consultant for noncompliance with the contract.
(b) In accordance with s. 284.385, the Department of Financial Services shall defend any claim, suit, action, or proceeding, including a claim, suit, action, or proceeding for injunctive, affirmative, or declaratory relief, against the consultant, the consultant's officers or employees, or those acting at the direction of the consultant for the limited purpose of an emergency intervention on behalf of a licensee or student as described in subsection (2) when the consultant is unable to perform such intervention, which 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.
(c) If the consultant retained pursuant to subsection (2) is retained by any other state agency, and if the contract between such state agency and the consultant complies with the requirements of this section, the consultant, the consultant's officers and employees, and those acting under the direction of the consultant for the limited purpose of an emergency intervention on behalf of a licensee or student as described in subsection (2) when the consultant is unable to perform such intervention shall be considered agents of the state for the purposes of this section while acting within the scope of and pursuant to guidelines established in the contract between

such state agency and the consultant.
[1](9) An impaired practitioner consultant is the official custodian of records relating to the referral of an impaired licensee or applicant to that consultant and any other interaction between the licensee or applicant and the consultant. The consultant may disclose to the impaired licensee or applicant or his or her designee any information that is disclosed to or obtained by the consultant or that is confidential under paragraph (6)(a), but only to the extent that it is necessary to do so to carry out the consultant's duties under this section. The department, and any other entity that enters into a contract with the consultant to receive the services of the consultant, has direct administrative control over the consultant to the extent necessary to receive disclosures from the consultant as allowed by federal law. If a disciplinary proceeding is pending, an impaired licensee may obtain such information from the department under s. 456.073.

History.—s. 38, ch. 92-149; s. 1, ch. 95-139; s. 310, ch. 96-406; s. 1085, ch. 97-103; s. 3, ch. 97-209; s. 94, ch. 97-261; s. 2, ch. 98-130; s. 94, ch. 2000-160; ss. 29, 117, ch. 2000-318; s. 67, ch. 2008-6; s. 1, ch. 2008-63; s. 2, ch. 2013-130; s. 1, ch. 2013-166; s. 2, ch. 2016-139.
[1]Note.—Section 2, ch. 2016-139, amended subsection (9), effective "December 31, 2018, or upon enactment of the Nurse Licensure Compact into law by 26 states, whichever occurs first." When s. 2, ch. 2016-139, takes effect, subsection (9) will read:

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

Note.—Former s. 455.261; s. 455.707.

456.077 Authority to issue citations.—
(1) Notwithstanding s. 456.073, the board, or the department if there is no board, shall adopt rules to permit the issuance of citations. The citation shall be issued to the subject and shall contain the subject's name and address, the subject's license number if applicable, a brief factual statement, the sections of the law allegedly violated, and the penalty imposed. The citation must clearly state that the subject may choose, in lieu of accepting the citation, to follow the procedure under s. 456.073. If the subject disputes the matter in the citation, the procedures set forth in s. 456.073 must be followed. However, if the subject does not dispute the matter in the citation with the department within 30 days after the citation is served, the citation becomes a public final order and does not constitute discipline for a first offense, but does constitute discipline for a second or subsequent offense. The penalty shall be a fine or other conditions as established by rule.
(2) The board, or the department if there is no board, shall adopt rules designating violations for which a citation may be issued. Such rules shall designate as citation violations those violations for which there is no substantial threat to the public health, safety, and welfare or no violation of standard of care involving injury to a patient. Violations for which a citation may be issued shall include violations of continuing education requirements; failure to timely pay required fees and fines; failure to comply with the requirements of ss. 381.026 and 381.0261 regarding the dissemination of information regarding patient rights; failure to comply with advertising requirements; failure to timely update practitioner profile and credentialing files; failure to display signs, licenses, and permits; failure to have required reference books available; and all other violations that do not pose a direct and serious threat to the health and safety of the patient or involve a violation of standard of care that has resulted in injury to a patient.
(3) The department shall be entitled to recover the costs of investigation, in addition to any penalty provided according to board or department rule, as part of the penalty levied pursuant to the citation.
(4) A citation must be issued within 6 months after the filing of the complaint that is the basis for the citation.
(5) Service of a citation may be made by personal service or certified mail, restricted delivery, to the subject at the subject's last known address.
(6) A board has 6 months in which to enact rules designating violations and penalties appropriate for citation offenses. Failure to enact such rules gives the department exclusive authority to adopt rules as required for implementing this section. A board has continuous authority to amend its rules adopted pursuant to this section.

History.—s. 67, ch. 97-261; s. 95, ch. 2000-160; s. 74, ch. 2001-277; s. 21, ch. 2003-416.
Note.—Former s. 455.617.

456.078 Mediation.—
(1) Notwithstanding the provisions of s. 456.073, the board, or the department when there is no board, shall adopt rules to designate

which violations of the applicable professional practice act are appropriate for mediation. The board, or the department when there is no board, shall designate as mediation offenses those complaints where harm caused by the licensee:
(a) Is economic in nature except any act or omission involving intentional misconduct;
(b) Can be remedied by the licensee;
(c) Is not a standard of care violation involving any type of injury to a patient; or
(d) Does not result in an adverse incident.
(2) For the purposes of this section, an "adverse incident" means an event that results in:
(a) The death of a patient;
(b) Brain or spinal damage to a patient;
(c) The performance of a surgical procedure on the wrong patient;
(d) The performance of a wrong-site surgical procedure;
(e) The performance of a surgical procedure that is medically unnecessary or otherwise unrelated to the patient's diagnosis or medical condition;
(f) The surgical repair of damage to a patient resulting from a planned surgical procedure, which damage is not a recognized specific risk as disclosed to the patient and documented through the informed-consent process;
(g) The performance of a procedure to remove unplanned foreign objects remaining from a surgical procedure; or
(h) The performance of any other surgical procedure that breached the standard of care.
(3) After the department determines a complaint is legally sufficient and the alleged violations are defined as mediation offenses, the department or any agent of the department may conduct informal mediation to resolve the complaint. If the complainant and the subject of the complaint agree to a resolution of a complaint within 14 days after contact by the mediator, the mediator shall notify the department of the terms of the resolution. The department or board shall take no further action unless the complainant and the subject each fail to record with the department an acknowledgment of satisfaction of the terms of mediation within 60 days of the mediator's notification to the department. A successful mediation shall not constitute discipline. In the event the complainant and subject fail to reach settlement terms or to record the required acknowledgment, the department shall process the complaint according to the provisions of s. 456.073.
(4) Conduct or statements made during mediation are inadmissible in any proceeding pursuant to s. 456.073. Further, any information relating to the mediation of a case shall be subject to the confidentiality provisions of s. 456.073.
(5) No licensee shall go through the mediation process more than three times without approval of the department. The department may consider the subject and dates of the earlier complaints in rendering its decision. Such decision shall not be considered a final agency action for purposes of chapter 120.
(6) Any board created on or after January 1, 1995, shall have 6 months to adopt rules designating which violations are appropriate for mediation, after which time the department shall have exclusive authority to adopt rules pursuant to this section. A board shall have continuing authority to amend its rules adopted pursuant to this section.

History.—s. 66, ch. 97-261; s. 96, ch. 2000-160; s. 22, ch. 2003-416.
Note.—Former s. 455.614.

456.079 Disciplinary guidelines.—
(1) Each board, or the department if there is no board, shall adopt by rule and periodically review the disciplinary guidelines applicable to each ground for disciplinary action which may be imposed by the board, or the department if there is no board, pursuant to this chapter, the respective practice acts, and any rule of the board or department.
(2) The disciplinary guidelines shall specify a meaningful range of designated penalties based upon the severity and repetition of specific offenses, it being the legislative intent that minor violations be distinguished from those which endanger the public health, safety, or welfare; that such guidelines provide reasonable and meaningful notice to the public of likely penalties which may be imposed for proscribed conduct; and that such penalties be consistently applied by the board.
(3) A specific finding in the final order of mitigating or aggravating circumstances shall allow the board to impose a penalty other than that provided for in such guidelines. If applicable, the board, or the department if there is no board, shall adopt by rule disciplinary guidelines to designate possible mitigating and aggravating circumstances and the variation and range of penalties permitted for such circumstances.
(4) The department must review such disciplinary guidelines for compliance with the legislative intent as set forth herein to determine whether the guidelines establish a meaningful range of penalties and may also challenge such rules pursuant to s. 120.56.
(5) The administrative law judge, in recommending penalties in any recommended order, must follow the penalty guidelines established by the board or department and must state in writing the mitigating or aggravating circumstances upon which the recommended penalty is based.

History.—s. 70, ch. 97-261; s. 97, ch. 2000-160; s. 16, ch. 2001-277.
Note.—Former s. 455.627.

456.081 Publication of information.—The department and the boards shall have the authority to advise licensees periodically, through the publication of a newsletter on the department's website, about information that the department or the board determines is

of interest to the industry. The department and the boards shall maintain a website which contains copies of the newsletter; information relating to adverse incident reports without identifying the patient, practitioner, or facility in which the adverse incident occurred until 10 days after probable cause is found, at which time the name of the practitioner and facility shall become public as part of the investigative file; information about error prevention and safety strategies; and information concerning best practices. Unless otherwise prohibited by law, the department and the boards shall publish on the website a summary of final orders entered after July 1, 2001, resulting in disciplinary action, and any other information the department or the board determines is of interest to the public. In order to provide useful and timely information at minimal cost, the department and boards may consult with, and include information provided by, professional associations and national organizations.

History.—s. 44, ch. 97-261; s. 98, ch. 2000-160; ss. 15, 75, ch. 2001-277.
Note.—Former s. 455.537.

456.082 Disclosure of confidential information.—
(1) No officer, employee, or person under contract with the department, or any board therein, or any subject of an investigation shall convey knowledge or information to any person who is not lawfully entitled to such knowledge or information about any public meeting or public record, which at the time such knowledge or information is conveyed is exempt from the provisions of s. 119.01, s. 119.07(1), or s. 286.011.
(2) Any person who willfully violates any provision of this section is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, and may be subject to discipline pursuant to s. 456.072, and, if applicable, shall be removed from office, employment, or the contractual relationship.
(3) Any person injured as a result of a willful violation of this section shall have a civil cause of action for treble damages, reasonable attorney fees, and costs.

History.—s. 77, ch. 97-261; s. 37, ch. 98-166; s. 7, ch. 99-356; s. 188, ch. 99-397; s. 99, ch. 2000-160; s. 27, ch. 2000-318.
Note.—Former s. 455.651.

456.36 Health care professionals; exemption from disqualification from employment or contracting.—Any other provision of law to the contrary notwithstanding, only the appropriate regulatory board, or the department when there is no board, may grant an exemption from disqualification from employment or contracting as provided in s. 435.07 to a person under the licensing jurisdiction of that board or the department, as applicable.

History.—s. 34, ch. 2000-318.

456.38 Practitioner registry for disasters and emergencies.—The Department of Health may include on its forms for the licensure or certification of health care practitioners, as defined in s. 456.001, who could assist the department in the event of a disaster a question asking if the practitioner would be available to provide health care services in special needs shelters or to help staff disaster medical assistance teams during times of emergency or major disaster. The names of practitioners who answer affirmatively shall be maintained by the department as a health care practitioner registry for disasters and emergencies.

History.—s. 20, ch. 2000-140.

456.41 Complementary or alternative health care treatments.—
(1) LEGISLATIVE INTENT.—It is the intent of the Legislature that citizens be able to make informed choices for any type of health care they deem to be an effective option for treating human disease, pain, injury, deformity, or other physical or mental condition. It is the intent of the Legislature that citizens be able to choose from all health care options, including the prevailing or conventional treatment methods as well as other treatments designed to complement or substitute for the prevailing or conventional treatment methods. It is the intent of the Legislature that health care practitioners be able to offer complementary or alternative health care treatments with the same requirements, provisions, and liabilities as those associated with the prevailing or conventional treatment methods.
(2) DEFINITIONS.—As used in this section, the term:
(a) “Complementary or alternative health care treatment” means any treatment that is designed to provide patients with an effective option to the prevailing or conventional treatment methods associated with the services provided by a health care practitioner. Such a treatment may be provided in addition to or in place of other treatment options.
(b) “Health care practitioner” means any health care practitioner as defined in s. 456.001(4).
(3) COMMUNICATION OF TREATMENT ALTERNATIVES.—A health care practitioner who offers to provide a patient with a complementary or alternative health care treatment must inform the patient of the nature of the treatment and must explain the benefits and risks associated with the treatment to the extent necessary for the patient to make an informed and prudent decision regarding such treatment option. In compliance with this subsection:
(a) The health care practitioner must inform the patient of the practitioner’s education, experience, and credentials in relation to the complementary or alternative health care treatment option.

(b) The health care practitioner may, in his or her discretion, communicate the information orally or in written form directly to the patient or to the patient's legal representative.
(c) The health care practitioner may, in his or her discretion and without restriction, recommend any mode of treatment that is, in his or her judgment, in the best interests of the patient, including complementary or alternative health care treatments, in accordance with the provisions of his or her license.
(4) RECORDS.—Every health care practitioner providing a patient with a complementary or alternative health care treatment must indicate in the patient's care record the method by which the requirements of subsection (3) were met.
(5) EFFECT.—This section does not modify or change the scope of practice of any licensees of the department, nor does it alter in any way the provisions of the individual practice acts for those licensees, which require licensees to practice within their respective standards of care and which prohibit fraud and exploitation of patients.

History.—s. 1, ch. 2001-116.

456.42 Written prescriptions for medicinal drugs.—
(1) A written prescription for a medicinal drug issued by a health care practitioner licensed by law to prescribe such drug must be legibly printed or typed so as to be capable of being understood by the pharmacist filling the prescription; must contain the name of the prescribing practitioner, the name and strength of the drug prescribed, the quantity of the drug prescribed, and the directions for use of the drug; must be dated; and must be signed by the prescribing practitioner on the day when issued. However, a prescription that is electronically generated and transmitted must contain the name of the prescribing practitioner, the name and strength of the drug prescribed, the quantity of the drug prescribed in numerical format, and the directions for use of the drug and must be dated and signed by the prescribing practitioner only on the day issued, which signature may be in an electronic format as defined in s. 668.003(4).
(2) A written prescription for a controlled substance listed in chapter 893 must have the quantity of the drug prescribed in both textual and numerical formats, must be dated in numerical, month/day/year format, or with the abbreviated month written out, or the month written out in whole, and must be either written on a standardized counterfeit-proof prescription pad produced by a vendor approved by the department or electronically prescribed as that term is used in s. 408.0611. As a condition of being an approved vendor, a prescription pad vendor must submit a monthly report to the department that, at a minimum, documents the number of prescription pads sold and identifies the purchasers. The department may, by rule, require the reporting of additional information.

History.—s. 1, ch. 2003-41; s. 2, ch. 2006-271; s. 2, ch. 2009-202; s. 2, ch. 2011-141; s. 4, ch. 2014-113.

456.43 Electronic prescribing for medicinal drugs.—
(1) Electronic prescribing shall not interfere with a patient's freedom to choose a pharmacy.
(2) Electronic prescribing software shall not use any means or permit any other person to use any means, including, but not limited to, advertising, instant messaging, and pop-up ads, to influence or attempt to influence, through economic incentives or otherwise, the prescribing decision of a prescribing practitioner at the point of care. Such means shall not be triggered or in specific response to the input, selection, or act of a prescribing practitioner or his or her agent in prescribing a certain pharmaceutical or directing a patient to a certain pharmacy.
(a) The term "prescribing decision" means a prescribing practitioner's decision to prescribe a certain pharmaceutical.
(b) The term "point of care" means the time that a prescribing practitioner or his or her agent is in the act of prescribing a certain pharmaceutical.
(3) Electronic prescribing software may show information regarding a payor's formulary as long as nothing is designed to preclude or make more difficult the act of a prescribing practitioner or patient selecting any particular pharmacy or pharmaceutical.

History.—s. 3, ch. 2006-271.

456.44 Controlled substance prescribing.—
(1) DEFINITIONS.—As used in this section, the term:
(a) "Addiction medicine specialist" means a board-certified psychiatrist with a subspecialty certification in addiction medicine or who is eligible for such subspecialty certification in addiction medicine, an addiction medicine physician certified or eligible for certification by the American Society of Addiction Medicine, or an osteopathic physician who holds a certificate of added qualification in addiction medicine through the American Osteopathic Association.
(b) "Adverse incident" means any incident set forth in s. 458.351(4)(a)-(e) or s. 459.026(4)(a)-(e).
(c) "Board-certified pain management physician" means a physician who possesses board certification in pain medicine by the American Board of Pain Medicine, board certification by the American Board of Interventional Pain Physicians, or board certification or subcertification in pain management or pain medicine by a specialty board recognized by the American Association of Physician Specialists or the American Board of Medical Specialties or an osteopathic physician who holds a certificate in Pain Management by the American Osteopathic Association.
(d) "Board eligible" means successful completion of an anesthesia, physical medicine and rehabilitation, rheumatology, or neurology residency program approved by the Accreditation Council for Graduate Medical Education or the American Osteopathic

Association for a period of 6 years from successful completion of such residency program.
(e) "Chronic nonmalignant pain" means pain unrelated to cancer which persists beyond the usual course of disease or the injury that is the cause of the pain or more than 90 days after surgery.
(f) "Mental health addiction facility" means a facility licensed under chapter 394 or chapter 397.
(g) "Registrant" means a physician, a physician assistant, or an advanced registered nurse practitioner who meets the requirements of subsection (2).
(2) REGISTRATION.—A physician licensed under chapter 458, chapter 459, chapter 461, or chapter 466, a physician assistant licensed under chapter 458 or chapter 459, or an advanced registered nurse practitioner certified under part I of chapter 464 who prescribes any controlled substance, listed in Schedule II, Schedule III, or Schedule IV as defined in s. 893.03, for the treatment of chronic nonmalignant pain, must:
(a) Designate himself or herself as a controlled substance prescribing practitioner on his or her practitioner profile.
(b) Comply with the requirements of this section and applicable board rules.
(3) STANDARDS OF PRACTICE.—The standards of practice in this section do not supersede the level of care, skill, and treatment recognized in general law related to health care licensure.
(a) A complete medical history and a physical examination must be conducted before beginning any treatment and must be documented in the medical record. The exact components of the physical examination shall be left to the judgment of the registrant who is expected to perform a physical examination proportionate to the diagnosis that justifies a treatment. The medical record must, at a minimum, document the nature and intensity of the pain, current and past treatments for pain, underlying or coexisting diseases or conditions, the effect of the pain on physical and psychological function, a review of previous medical records, previous diagnostic studies, and history of alcohol and substance abuse. The medical record shall also document the presence of one or more recognized medical indications for the use of a controlled substance. Each registrant must develop a written plan for assessing each patient's risk of aberrant drug-related behavior, which may include patient drug testing. Registrants must assess each patient's risk for aberrant drug-related behavior and monitor that risk on an ongoing basis in accordance with the plan.
(b) Each registrant must develop a written individualized treatment plan for each patient. The treatment plan shall state objectives that will be used to determine treatment success, such as pain relief and improved physical and psychosocial function, and shall indicate if any further diagnostic evaluations or other treatments are planned. After treatment begins, the registrant shall adjust drug therapy to the individual medical needs of each patient. Other treatment modalities, including a rehabilitation program, shall be considered depending on the etiology of the pain and the extent to which the pain is associated with physical and psychosocial impairment. The interdisciplinary nature of the treatment plan shall be documented.
(c) The registrant shall discuss the risks and benefits of the use of controlled substances, including the risks of abuse and addiction, as well as physical dependence and its consequences, with the patient, persons designated by the patient, or the patient's surrogate or guardian if the patient is incompetent. The registrant shall use a written controlled substance agreement between the registrant and the patient outlining the patient's responsibilities, including, but not limited to:
1. Number and frequency of controlled substance prescriptions and refills.
2. Patient compliance and reasons for which drug therapy may be discontinued, such as a violation of the agreement.
3. An agreement that controlled substances for the treatment of chronic nonmalignant pain shall be prescribed by a single treating registrant unless otherwise authorized by the treating registrant and documented in the medical record.
(d) The patient shall be seen by the registrant at regular intervals, not to exceed 3 months, to assess the efficacy of treatment, ensure that controlled substance therapy remains indicated, evaluate the patient's progress toward treatment objectives, consider adverse drug effects, and review the etiology of the pain. Continuation or modification of therapy shall depend on the registrant's evaluation of the patient's progress. If treatment goals are not being achieved, despite medication adjustments, the registrant shall reevaluate the appropriateness of continued treatment. The registrant shall monitor patient compliance in medication usage, related treatment plans, controlled substance agreements, and indications of substance abuse or diversion at a minimum of 3-month intervals.
(e) The registrant shall refer the patient as necessary for additional evaluation and treatment in order to achieve treatment objectives. Special attention shall be given to those patients who are at risk for misusing their medications and those whose living arrangements pose a risk for medication misuse or diversion. The management of pain in patients with a history of substance abuse or with a comorbid psychiatric disorder requires extra care, monitoring, and documentation and requires consultation with or referral to an addiction medicine specialist or a psychiatrist.
(f) A registrant must maintain accurate, current, and complete records that are accessible and readily available for review and comply with the requirements of this section, the applicable practice act, and applicable board rules. The medical records must include, but are not limited to:
1. The complete medical history and a physical examination, including history of drug abuse or dependence.
2. Diagnostic, therapeutic, and laboratory results.
3. Evaluations and consultations.
4. Treatment objectives.
5. Discussion of risks and benefits.
6. Treatments.
7. Medications, including date, type, dosage, and quantity prescribed.
8. Instructions and agreements.
9. Periodic reviews.

10. Results of any drug testing.
11. A photocopy of the patient's government-issued photo identification.
12. If a written prescription for a controlled substance is given to the patient, a duplicate of the prescription.
13. The registrant's full name presented in a legible manner.

(g) A registrant shall immediately refer patients with signs or symptoms of substance abuse to a board-certified pain management physician, an addiction medicine specialist, or a mental health addiction facility as it pertains to drug abuse or addiction unless the registrant is a physician who is board-certified or board-eligible in pain management. Throughout the period of time before receiving the consultant's report, a prescribing registrant shall clearly and completely document medical justification for continued treatment with controlled substances and those steps taken to ensure medically appropriate use of controlled substances by the patient. Upon receipt of the consultant's written report, the prescribing registrant shall incorporate the consultant's recommendations for continuing, modifying, or discontinuing controlled substance therapy. The resulting changes in treatment shall be specifically documented in the patient's medical record. Evidence or behavioral indications of diversion shall be followed by discontinuation of controlled substance therapy, and the patient shall be discharged, and all results of testing and actions taken by the registrant shall be documented in the patient's medical record.

This subsection does not apply to a board-eligible or board-certified anesthesiologist, physiatrist, rheumatologist, or neurologist, or to a board-certified physician who has surgical privileges at a hospital or ambulatory surgery center and primarily provides surgical services. This subsection does not apply to a board-eligible or board-certified medical specialist who has also completed a fellowship in pain medicine approved by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association, or who is board eligible or board certified in pain medicine by the American Board of Pain Medicine, the American Board of Interventional Pain Physicians, the American Association of Physician Specialists, or a board approved by the American Board of Medical Specialties or the American Osteopathic Association and performs interventional pain procedures of the type routinely billed using surgical codes. This subsection does not apply to a registrant who prescribes medically necessary controlled substances for a patient during an inpatient stay in a hospital licensed under chapter 395.

History.—s. 3, ch. 2011-141; s. 31, ch. 2012-160; s. 16, ch. 2016-105; s. 6, ch. 2016-224; s. 4, ch. 2016-231.

456.50 Repeated medical malpractice.—

(1) For purposes of s. 26, Art. X of the State Constitution and ss. 458.331(1)(t), (4), and (5) and 459.015(1)(x), (4), and (5):

(a) "Board" means the Board of Medicine, in the case of a physician licensed pursuant to chapter 458, or the Board of Osteopathic Medicine, in the case of an osteopathic physician licensed pursuant to chapter 459.

(b) "Final administrative agency decision" means a final order of the licensing board following a hearing as provided in s. 120.57(1) or (2) or s. 120.574 finding that the licensee has violated s. 458.331(1)(t) or s. 459.015(1)(x).

(c) "Found to have committed" means the malpractice has been found in a final judgment of a court of law, final administrative agency decision, or decision of binding arbitration.

(d) "Incident" means the wrongful act or occurrence from which the medical malpractice arises, regardless of the number of claimants or findings. For purposes of this section:

1. A single act of medical malpractice, regardless of the number of claimants, shall count as only one incident.
2. Multiple findings of medical malpractice arising from the same wrongful act or series of wrongful acts associated with the treatment of the same patient shall count as only one incident.

(e) "Level of care, skill, and treatment recognized in general law related to health care licensure" means the standard of care specified in s. 766.102.

(f) "Medical doctor" means a physician licensed pursuant to chapter 458 or chapter 459.

(g) "Medical malpractice" means the failure to practice medicine in accordance with the level of care, skill, and treatment recognized in general law related to health care licensure. Only for the purpose of finding repeated medical malpractice pursuant to this section, any similar wrongful act, neglect, or default committed in another state or country which, if committed in this state, would have been considered medical malpractice as defined in this paragraph, shall be considered medical malpractice if the standard of care and burden of proof applied in the other state or country equaled or exceeded that used in this state.

(h) "Repeated medical malpractice" means three or more incidents of medical malpractice found to have been committed by a medical doctor. Only an incident occurring on or after November 2, 2004, shall be considered an incident for purposes of finding repeated medical malpractice under this section.

(2) For purposes of implementing s. 26, Art. X of the State Constitution, the board shall not license or continue to license a medical doctor found to have committed repeated medical malpractice, the finding of which was based upon clear and convincing evidence. In order to rely on an incident of medical malpractice to determine whether a license must be denied or revoked under this section, if the facts supporting the finding of the incident of medical malpractice were determined on a standard less stringent than clear and convincing evidence, the board shall review the record of the case and determine whether the finding would be supported under a standard of clear and convincing evidence. Section 456.073 applies. The board may verify on a biennial basis an out-of-state licensee's medical malpractice history using federal, state, or other databases. The board may require licensees and applicants for licensure to provide a copy of the record of the trial of any medical malpractice judgment, which may be required to be in an electronic format, involving an incident that occurred on or after November 2, 2004. For purposes of implementing s. 26, Art. X of the State Constitution, the 90-day requirement for granting or denying a complete allopathic or osteopathic licensure application in s.

120.60(1) is extended to 180 days.

History.—s. 2, ch. 2005-266.