

The Florida Board of Podiatric Medicine will hold a meeting on Wednesday, December 9, 2015, commencing at 12:00 p.m., or shortly thereafter. This meeting will be held at the Department of Health, 4042 Bald Cypress Way, Tallahassee, Florida at meet me number (888) 670-3525, participant code 7342425515, to which all persons are invited to attend. Participants in this public meeting should be aware that these proceedings are being recorded and that an audio file of the meeting will be posted to the board's website.

AGENDA

I. CALL TO ORDER (Roll Call):

Chet Evans, M.S., D.P.M., Chair
Scott Koppel, DPM, Vice-Chair
Mark S. Block, D.P.M.
Joseph Sindone, D.P.M.
Joseph Strickland, D.P.M.
Robert Morris, Ph.D.
James Pearce, BBA, MBA

II. DISCIPLINARY GUIDELINES:

- a. Rule 64B18-14.002, F.A.C. – current language
- b. Draft of revised Rule 64B18-14.002, F.A.C.
- c. S. 456.072, Grounds for discipline
- d. S. 456.079 Disciplinary Guidelines
- e. S. 456.44 Controlled Substance Prescribing
- f. S. 790.338 Medical Privacy & Firearms

III. NEXT MEETING: January 22, 2016 - Orlando

IV. ADJOURNMENT

Current Rule

64B18-14.002 Disciplinary Guidelines.

(1) Unless mitigating or aggravating factors are demonstrated when the Board finds an applicant or licensee whom it regulates under Chapter 461, F.S., has committed any of the acts set forth in either Section 461.012 or 456.072, F.S., it shall issue a final order imposing appropriate penalties, plus costs based upon the severity and repetition of the offense within the ranges recommended in the following disciplinary guidelines:

(a) Practicing or attempting to practice podiatric medicine or advertising podiatric services in this State without an active license to practice podiatric medicine pursuant to Chapter 461, F.S., or with a license fraudulently obtained. In the case of an applicant, the Board shall deny the application and impose a \$10,000 fine. In the case of a licensee who has obtained or attempted to obtain a license by fraud, the Board shall impose probation to revocation and a fine of \$10,000. In the case of a licensee who has practiced, attempted to practice, or advertised while holding an inactive or delinquent license, the Board shall impose a reprimand with or without a period of suspension and a fine of \$10,000.

(b) Using or attempting to use a license to practice podiatric medicine which has been suspended. The Board shall impose a penalty of revocation.

(c) Selling or fraudulently obtaining or furnishing any podiatry diploma, license, or record of registration or aiding or abetting in the same. The Board in the case of a licensee shall impose a penalty ranging from suspension to revocation and a fine of \$10,000. In the case of an applicant, the Board shall deny the application and impose a \$10,000 fine.

(d) Making any willfully false oath or affirmation whenever an oath or affirmation is required by Chapter 461, F.S. The Board in the case of licensee shall impose a penalty ranging from suspension to revocation and a fine of \$10,000. In the case of an applicant, the Board shall also deny the application in addition to the \$10,000 fine.

(e) Using the name or title "Podiatrist," "Doctor of Podiatry," "Doctor of Podiatric Medicine," or using the phrase "foot clinic," "foot doctor," "Podiatric Technician," or any other name, title, or phrase which would lead the public to believe that such person is engaging in the practice of podiatric medicine, unless such person is licensed as a podiatric physician in this State. The Board in the case of a licensee shall impose a penalty ranging from a reprimand to suspension, and a fine of \$1,000 to \$10,000. In the case of an applicant, the Board shall deny the application. If fraud, making a false or fraudulent representation is alleged and shown, a \$10,000 fine shall be imposed in addition to other actions.

(f) Knowingly concealing information relative to a violation of Chapter 461, F.S. The Board in the case of a licensee shall impose a penalty ranging from a reprimand to probation, and an administrative fine from \$500 to \$2,000. In the case of an applicant, the Board shall deny the application.

(2) Unless mitigating or aggravating factors are demonstrated when the Board finds an applicant or licensee whom it regulates under Chapter 461, F.S., has committed any of the acts set forth in either Section 461.013(1), 456.013(7), 456.033, 456.053, 456.062, 456.067 or 456.072, F.S., it shall issue a final order imposing appropriate penalties based on the severity and repetition of the offense within the ranges recommended in the following disciplinary guidelines:

(a) Attempting to obtain, obtaining or renewing a license to practice podiatric medicine by bribery, by fraudulent misrepresentation, or through an error of the Department or the Board. In the case of an applicant, the Board shall deny the application and impose a fine of \$10,000, if fraud. In the case of a licensee, the Board shall impose a penalty of a reprimand to revocation and a fine of \$500 to \$10,000, and referral for criminal investigation, if bribery; a \$10,000 fine if fraudulent misrepresentation; and a reprimand and fine of \$500 to \$1,000 if error of Department.

(b) Having a license to practice podiatric medicine revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of another state, territory, or country. In the case of a licensee, the Board shall impose a penalty that parallels the action taken by the other jurisdiction and a fine from \$250 to \$10,000, depending upon the nature of the offense and the substantiating evidence. In the case of an applicant, the Board shall deny the application.

(c) Being convicted or found guilty, including any plea of nolo contendere, regardless of adjudication, of a crime in any jurisdiction which directly related to the practice of podiatric medicine or the ability to practice podiatric medicine. In the case of a licensee, the Board shall impose a penalty ranging from probation to revocation and a fine of \$1,000 to \$10,000, depending upon the nature of the offense and the substantiating evidence. In the case of an applicant, the Board shall deny the application.

(d) Advertising in a manner which is false, deceptive or misleading. The Board shall impose a penalty ranging from reprimand to probation and a fine of \$10,000.

(e) Advertising, practicing or attempting to practice under a name other than one's own. The Board shall impose a penalty ranging from reprimand to suspension and a fine from \$1,000 to \$5,000. If fraud, making a false or fraudulent representation is

alleged and shown, a \$10,000 fine shall be imposed in addition to other actions.

(f) Failing to report to the Department any person the licensee knows to be in violation of Chapter 461, F.S., or the rules of the Board or Department. The Board shall impose a penalty of a reprimand and a fine of \$500 to \$2,000.

(g) Aiding, assisting, procuring, permitting or advising any unlicensed person to practice podiatric medicine contrary to Chapter 461, F.S., or the rules of the Board or Department. The Board shall impose a penalty of probation to suspension and a fine from \$1,000 to \$5,000. In the case of an applicant, the Board shall deny the application.

(h) Failing to perform any statutory or legal obligation placed upon a licensed podiatric physician. The Board shall impose a penalty ranging from reprimand to suspension and a fine of \$5,000 to \$10,000.

(i) Making or filing a report or record which the licensee knows to be false, intentionally or negligently failing to file a report or record required by state or federal law, willfully impeding or obstructing such filing, or inducing another person to impede or obstruct such filing. Such reports or records shall include only those which are signed in the capacity of a licensed podiatric physician. If negligent, the Board shall impose a penalty ranging from reprimand to probation and a fine of \$2,500 to \$10,000. If fraud, the Board shall impose a penalty ranging from probation to revocation and a fine of \$10,000.

(j) Paying or receiving any commission, bonus, kickback, rebate or engaging in any split-fee arrangement in any form whatsoever with a physician, organization, agency or person, either directly or indirectly, for patients referred to providers of health care goods and services, including, but not limited to hospitals, nursing homes, clinical laboratories, ambulatory surgical centers or pharmacies. The Board shall impose a penalty ranging from reprimand to suspension and a fine of \$1,000 to \$10,000.

(k) Making misleading, deceptive, untrue or fraudulent representations in the practice of podiatric medicine or employing a trick or scheme in the practice of podiatric medicine when such scheme or trick fails to conform to the generally prevailing standards of treatment in the podiatric community. The Board shall impose a penalty ranging from probation to suspension and a fine of \$10,000.

(l) Soliciting patients either personally or through an agent. The Board shall impose a penalty ranging from reprimand to probation and a fine of \$500 to \$2,000.

(m) Failing to keep written medical records justifying the course of treatment of the patient. The Board shall impose a penalty ranging from reprimand to probation and a fine of \$500 to \$2,000.

(n) Exercising influence on the patient or client in such a manner as to exploit the patient or client for financial gain of the licensee or of a third party. The Board shall impose a penalty ranging from probation to suspension and a fine of \$1,000 to \$10,000.

(o) Performing professional services which have not been duly authorized by the patient or client or his legal representative. The Board shall impose a penalty ranging from reprimand to probation and a fine of \$1,000 to \$10,000.

(p) Prescribing, dispensing, administering, mixing or otherwise preparing a legend drug, including all controlled substances, other than in the course of the podiatric physician's professional practice. The Board shall impose a penalty ranging from probation to revocation and a fine of \$1,000 to \$10,000.

(q) Prescribing, dispensing, or administering any medicinal drug appearing on any schedule set forth in Chapter 893, F.S., by the podiatric physician to himself except those prescribed, dispensed or administered to the podiatric physician by another practitioner authorized to prescribe, dispense or administer them. The Board shall impose a penalty ranging from probation to suspension and a fine of \$1,000 to \$10,000.

(r) Prescribing, ordering, dispensing, administering, supplying, selling or giving amphetamine or sympathomimetic amine drug or compound designated as a Schedule II controlled substance pursuant to Chapter 893, F.S. The Board shall impose a penalty ranging from suspension to revocation and a fine of \$1,000 to \$10,000.

(s) Being unable to practice podiatric medicine with reasonable skill and safety to patients by reason of illness, or use of alcohol, drugs, narcotic, chemicals or any other type of material or as a result of any mental or physical condition. The Board shall impose a penalty of suspension until such time as the licensee demonstrates rehabilitation followed by probation under such terms and conditions as set by the Board and a fine from \$500 to \$2,500. If the individual is an applicant, the Board shall deny the application.

(t) Gross or repeated malpractice or the failure to practice podiatric medicine at a level of care, skill, and treatment which is recognized by a reasonably prudent podiatric physician as being acceptable under similar conditions and circumstances. The Board shall impose a penalty ranging from probation to revocation and a fine of \$1,000 to \$10,000, depending on the severity of the offense.

(u) Performing any procedure or prescribing any therapy which, by prevailing standards of podiatric practice in the community, would constitute experimentation on human subjects without first obtaining full, informed, and written consent. The Board shall impose a penalty ranging from probation to revocation and a fine of \$1,000 to \$10,000.

(v) Practicing or offering to practice beyond the scope permitted by law or accepting and performing professional responsibilities which the licensee knows or has reason to know that he is not competent to perform. The Board shall impose a penalty ranging from probation to revocation and a fine of \$1,000 to \$10,000, depending on the severity of the offense.

(w) 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. The Board shall impose a penalty ranging from reprimand to probation and a fine of \$500 to \$2,000.

(x) Violating any provision of Chapter 461 or 456, F.S., or any rule of the Board or Department. The Board shall impose a penalty ranging from a fine of \$1,000 to \$10,000, and probation or suspension if a practice issue is involved or denial of license, if an applicant.

(y) Conspiring with another licensee or with any other person to commit an act, or committing an act, which would tend to coerce, intimidate or preclude another licensee from lawfully advertising his services. The Board shall impose a penalty of reprimand to probation and a fine of \$500 to \$1,500.

(z) Prescribing, ordering, dispensing, administering, supplying, selling or giving growth hormones, testosterone or its analogs, human chorionic gonadotropin (CG), or other hormones for the purpose of muscle building or to enhance athletic performance. The Board shall impose a penalty ranging from probation to suspension and a fine of \$5,000 to \$10,000.

(aa) Fraud, deceit, or misconduct in the practice of podiatric medicine. The Board shall impose a penalty depending on the severity of the offense ranging from probation to revocation and a fine of \$5,000, to \$10,000 if fraud is alleged.

(bb) Failure to report to the Department any licensee under Chapter 458 or 459, F.S., for violations of disciplinary provisions of their laws and rules. In the case of a licensee, the Board shall impose a penalty of a reprimand and an administrative fine of \$500 to \$2,000.

(cc) Failure to comply with the requirements of Sections 381.026 and 381.0261, F.S., to provide patients with information regarding their patient rights. In the case of a licensee, the Board shall impose a penalty of a reprimand to probation and an administrative fine from \$250 to \$1,000.

(dd) Failure to comply with HIV/AIDS education requirement. The Board shall impose an administrative fine from \$500 to \$1,000.

(ee) Having been found liable in a civil proceeding for knowingly filing a false report or complaint with the Department against another licensee. The Board shall impose a penalty ranging from probation to suspension and a fine of \$500 to \$1,000.

(ff) Engaging or attempting to engage a patient or client in verbal or physical sexual activity. The Board shall impose a penalty ranging from probation to revocation and a fine of \$5,000 to \$10,000.

(gg) Failure to comply with the requirements of profiling or credentialing. The Board shall impose an administrative fine from \$500 to \$1,000.

(hh) Failure to report a criminal conviction or plea to the Board in writing within 30 days. The Board shall impose a penalty ranging from reprimand to probation and a \$500 to \$1,000 administrative fine.

(ii) Using information about people involved in motor vehicle accidents which has been derived from accident reports. The Board shall impose a penalty ranging from reprimand to probation and an administrative fine of \$1,000 to \$5,000.

(jj) Sexual misconduct under Section 456.063, F.S., shall result in denial of licensure or relinquishment or revocation of the license.

(kk) Testing positive on a preemployment drug screen. The Board shall impose a \$500 fine and refer the licensee to PRN for screening and possible treatment if medically necessary.

(ll) Performing health care services on the wrong patient, wrong site, wrong or unauthorized procedure. The Board shall impose a penalty ranging from reprimand to suspension, require continuing medical education, and impose a fine of \$1,000 to \$10,000.

(mm) Leaving a foreign object in patient. The Board shall impose a reprimand to probation and a fine of \$1,000 to \$10,000.

(nn) Failure to complete the two hour course on medical errors. The Board shall impose a fine of \$500 to \$1,000.

(oo) Using a Class III or Class IV laser device or product, as defined by federal regulations, without having complied with the rules adopted pursuant to Section 501.122(2), F.S., governing the registration of such devices with the Department of Health and Rehabilitative Services. The Board shall impose a penalty ranging from reprimand to probation and a fine of \$250 to \$1,000.

(pp) Improperly interfering with an investigation or inspection authorized by statute, or with any disciplinary proceeding. The Board shall impose a penalty ranging from suspension to revocation and a fine of \$1,000 to \$10,000.

(qq) Failure to report sexual misconduct. The Board shall impose a reprimand and a fine of \$1,000 to \$10,000.

(rr) Failure to submit or update required information. The Board shall impose a penalty ranging from a reprimand up to probation plus a fine from \$2,500.00 to \$5,000.00 pursuant to Section 456.039(3)(b), F.S.

(ss) Termination from impaired practitioner treatment program. The Board shall impose a penalty of suspension until individual proves ability to practice with reasonable skill and safety.

(tt) Failure to comply with a lawful order of the Board. The Board shall impose a penalty of suspension until compliance and payment of fine from \$500.00 to \$1,000.00.

(uu) Failure to provide the last known address of record pursuant to Section 456.035, F.S., shall impose a penalty of suspension until compliance and payment of fine from \$500.00 to \$2,000.00.

(vv) Being convicted of, or entering a plea of guilty or nolo contendere to, any misdemeanor or felony, regardless of adjudication, to any of the acts set forth in Section 456.072(1)(ii), F.S., relating to the Medicaid program, the Board shall impose a penalty ranging from suspension to revocation and a fine of \$1,000 to \$10,000.

(ww) 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, the Board shall impose a penalty ranging from a reprimand to suspension and a fine from \$5,000 to \$10,000.

(xx) Being terminated from the state Medicaid program pursuant to Section 409.913, F.S., 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, the Board shall impose a penalty ranging from a reprimand to revocation and a fine of \$250 to \$10,000 according to the nature of the offense and the substantiating evidence.

(yy) 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, the Board shall impose a penalty ranging from suspension to revocation and a fine of \$10,000, per count.

Rulemaking Authority 456.039(3), 456.072, 456.073(3), 456.079, 461.003, 461.005, 461.013 FS. Law Implemented 456.033, 456.053, 456.062, 456.063, 456.067, 456.072, 456.073(3), 456.079, 461.012, 461.013 FS. History—New 11-21-79, Amended 8-31-81, Formerly 21T-14.02, Amended 10-14-86, 12-8-88, 1-19-92, 4-26-93, Formerly 21T-14.002, 61F12-14.002, Amended 2-25-96, 5-29-97, Formerly 59Z-14.002, Amended 11-17-97, 8-24-00, 8-13-02, 4-26-04, 6-14-06, 10-10-06, 11-25-07, 12-25-11.

64B18-14.002 Disciplinary Guidelines.

(1) Unless mitigating or aggravating factors are demonstrated when the Board finds an applicant or licensee whom it regulates under Chapter 461, F.S., has committed any of the acts set forth in either Section 461.012 or 456.072, F.S., it shall issue a final order imposing appropriate penalties, plus costs based upon the severity and repetition of the offense within the ranges recommended in the following disciplinary guidelines:

VIOLATION	FIRST OFFENSE	SECOND OFFENSE
(a) Practicing or attempting to practice podiatric medicine or advertising podiatric services in this State without an active license to practice podiatric medicine pursuant to Chapter 461, F.S., or with a license fraudulently obtained.	In the case of an applicant, the Board shall deny the application and impose a \$10,000 fine. In the case of a licensee who has obtained or attempted to obtain a license by fraud, the Board shall impose probation to revocation and a fine of \$10,000. In the case of a licensee who has practiced, attempted to practice, or advertised while holding an inactive or delinquent license, the Board shall impose a reprimand with or without a period of suspension and a fine of \$10,000.	
(b) 456.072 Using or attempting to use a license to practice podiatric medicine which has been suspended.	The Board shall impose a penalty of revocation.	
(c) Selling or fraudulently obtaining or furnishing any podiatry diploma, license, or record of registration or aiding or abetting in the same. The Board in the case of a licensee shall impose a penalty ranging from suspension to revocation and a fine of \$10,000. In the case of an applicant, the Board shall deny the application and impose a \$10,000 fine.	The Board in the case of a licensee shall impose a penalty ranging from suspension to revocation and a fine of \$10,000. In the case of an applicant, the Board shall deny the application and impose a \$10,000 fine.	
(d) Making any willfully false oath or affirmation whenever an oath or affirmation is required by Chapter 461, F.S.	The Board in the case of licensee shall impose a penalty ranging from suspension to revocation and a fine of \$10,000. In the case of an applicant, the Board shall also deny the application in addition to the \$10,000 fine.	
(e) Using the name or title "Podiatrist," "Doctor of Podiatry," "Doctor of Podiatric Medicine," or using the phrase "foot clinic," "foot doctor," "Podiatric Technician," or any other name, title, or phrase which would lead the public to believe that such person is engaging in the practice of podiatric medicine, unless such person is licensed as a podiatric physician in this State.	The Board in the case of a licensee shall impose a penalty ranging from a reprimand to suspension, and a fine of \$1,000 to \$10,000. In the case of an applicant, the Board shall deny the application. If fraud, making a false or fraudulent representation is alleged and shown, a \$10,000 fine shall be imposed in addition to other actions.	

(f) Knowingly concealing information relative to a violation of Chapter 461, F.S.	The Board in the case of a licensee shall impose a penalty ranging from a reprimand to probation, and an administrative fine from \$500 to \$2,000. In the case of an applicant, the Board shall deny the application.	
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(2) Unless mitigating or aggravating factors are demonstrated when the Board finds an applicant or licensee whom it regulates under Chapter 461, F.S., has committed any of the acts set forth in either Section 461.013(1), 456.013(7), 456.033, 456.053, 456.062, 456.067 or 456.072, F.S., it shall issue a final order imposing appropriate penalties based on the severity and repetition of the offense within the ranges recommended in the following disciplinary guidelines:

VIOLATION	FIRST OFFENSE	SECOND OFFENSE
	MINIMUM	MAXIMUM
(a) Attempting to obtain, obtaining or renewing a license to practice podiatric medicine by bribery, by fraudulent misrepresentation, or through an error of the Department or the Board.	In the case of an applicant, the Board shall deny the application and impose a fine of \$10,000, if fraud. In the case of a licensee, the Board shall impose a penalty of a reprimand to revocation and a fine of \$500 to \$10,000, and referral for criminal investigation, if bribery; a \$10,000 fine if fraudulent misrepresentation; and a reprimand and fine of \$500 to \$1,000 if error of Department.	
(b) Having a license to practice podiatric medicine revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of another state, territory, or country.	In the case of a licensee, the Board shall impose a penalty that parallels the action taken by the other jurisdiction and a fine from \$250 to \$10,000, depending upon the nature of the offense and the substantiating evidence. In the case of an applicant, the Board shall deny the application.	
(c) Being convicted or found guilty, including any plea of nolo contendere, regardless of adjudication, of a crime in any jurisdiction which directly related to the practice of podiatric medicine or the ability to practice podiatric medicine.	In the case of a licensee, the Board shall impose a penalty ranging from probation to revocation and a fine of \$1,000 to \$10,000, depending upon the nature of the offense and the substantiating evidence. In the case of an applicant, the Board shall deny the application.	
(d) Advertising in a manner which is false, deceptive or misleading.	The Board shall impose a penalty ranging from reprimand to probation and a fine of \$10,000.	
(e) Advertising, practicing or attempting to practice under a name other than one's own.	The Board shall impose a penalty ranging from reprimand to suspension and a fine from \$1,000 to \$5,000. If fraud, making a false or fraudulent representation is alleged and shown, a \$10,000 fine shall be	

	imposed in addition to other actions.	
(f) Failing to report to the Department any person the licensee knows to be in violation of Chapter 461, F.S., or the rules of the Board or Department.	The Board shall impose a penalty of a reprimand and a fine of \$500 to \$2,000.	
(g) Aiding, assisting, procuring, permitting or advising any unlicensed person to practice podiatric medicine contrary to Chapter 461, F.S., or the rules of the Board or Department.	The Board shall impose a penalty of probation to suspension and a fine from \$1,000 to \$5,000. In the case of an applicant, the Board shall deny the application.	
(h) Failing to perform any statutory or legal obligation placed upon a licensed podiatric physician.	The Board shall impose a penalty ranging from reprimand to suspension and a fine of \$5,000 to \$10,000.	
(i) Making or filing a report or record which the licensee knows to be false, intentionally or negligently failing to file a report or record required by state or federal law, willfully impeding or obstructing such filing, or inducing another person to impede or obstruct such filing. Such reports or records shall include only those which are signed in the capacity of a licensed podiatric physician.	If negligent, the Board shall impose a penalty ranging from reprimand to probation and a fine of \$2,500 to \$10,000. If fraud, the Board shall impose a penalty ranging from probation to revocation and a fine of \$10,000.	
(j) Paying or receiving any commission, bonus, kickback, rebate or engaging in any split-fee arrangement in any form whatsoever with a physician, organization, agency or person, either directly or indirectly, for patients referred to providers of health care goods and services, including, but not limited to hospitals, nursing homes, clinical laboratories, ambulatory surgical centers or pharmacies.	The Board shall impose a penalty ranging from reprimand to suspension and a fine of \$1,000 to \$10,000.	
(k) Making misleading, deceptive, untrue or fraudulent representations in the practice of podiatric medicine or employing a trick or scheme in the practice of podiatric medicine when such scheme or trick fails to conform to the generally prevailing standards of treatment in the podiatric community.	The Board shall impose a penalty ranging from probation to suspension and a fine of \$10,000.	
(l) Soliciting patients either personally or through an agent.	The Board shall impose a penalty ranging from reprimand to probation and a fine of \$500 to \$2,000.	
(m) Failing to keep written medical records justifying the course of treatment of the patient.	The Board shall impose a penalty ranging from reprimand to probation and a fine of \$500 to \$2,000.	
(n) Exercising influence on the patient or client in such a manner as to exploit the patient or client for financial gain of the licensee or of a third party.	The Board shall impose a penalty ranging from probation to suspension and a fine of \$1,000 to \$10,000.	
(o) Performing professional services which have not been duly authorized by the patient or client or his legal representative.	The Board shall impose a penalty ranging from reprimand to probation and a fine of \$1,000 to \$10,000.	
(p) Prescribing, dispensing, administering, mixing or	The Board shall impose a penalty	

otherwise preparing a legend drug, including all controlled substances, other than in the course of the podiatric physician's professional practice.	ranging from probation to revocation and a fine of \$1,000 to \$10,000.	
(q) Prescribing, dispensing, or administering any medicinal drug appearing on any schedule set forth in Chapter 893, F.S., by the podiatric physician to himself except those prescribed, dispensed or administered to the podiatric physician by another practitioner authorized to prescribe, dispense or administer them.	The Board shall impose a penalty ranging from probation to suspension and a fine of \$1,000 to \$10,000.	
(r) Prescribing, ordering, dispensing, administering, supplying, selling or giving amphetamine or sympathomimetic amine drug or compound designated as a Schedule II controlled substance pursuant to Chapter 893, F.S.	The Board shall impose a penalty ranging from suspension to revocation and a fine of \$1,000 to \$10,000.	
(s) Being unable to practice podiatric medicine with reasonable skill and safety to patients by reason of illness, or use of alcohol, drugs, narcotic, chemicals or any other type of material or as a result of any mental or physical condition.	The Board shall impose a penalty of suspension until such time as the licensee demonstrates rehabilitation followed by probation under such terms and conditions as set by the Board and a fine from \$500 to \$2,500. If the individual is an applicant, the Board shall deny the application.	
(t) Gross or repeated malpractice or the failure to practice podiatric medicine at a level of care, skill, and treatment which is recognized by a reasonably prudent podiatric physician as being acceptable under similar conditions and circumstances.	The Board shall impose a penalty ranging from probation to revocation and a fine of \$1,000 to \$10,000, depending on the severity of the offense.	
(u) Performing any procedure or prescribing any therapy which, by prevailing standards of podiatric practice in the community, would constitute experimentation on human subjects without first obtaining full, informed, and written consent.	The Board shall impose a penalty ranging from probation to revocation and a fine of \$1,000 to \$10,000.	
(v) Practicing or offering to practice beyond the scope permitted by law or accepting and performing professional responsibilities which the licensee knows or has reason to know that he is not competent to perform.	The Board shall impose a penalty ranging from probation to revocation and a fine of \$1,000 to \$10,000, depending on the severity of the offense.	
(w) 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.	The Board shall impose a penalty ranging from reprimand to probation and a fine of \$500 to \$2,000.	
(x) Violating any provision of Chapter 461 or 456, F.S., or any rule of the Board or Department.	The Board shall impose a penalty ranging from a fine of \$1,000 to \$10,000, and probation or suspension if a practice issue is involved or denial of license, if an applicant.	

(y) Conspiring with another licensee or with any other person to commit an act, or committing an act, which would tend to coerce, intimidate or preclude another licensee from lawfully advertising his services.	The Board shall impose a penalty of reprimand to probation and a fine of \$500 to \$1,500.	
(z) Prescribing, ordering, dispensing, administering, supplying, selling or giving growth hormones, testosterone or its analogs, human chorionic gonadotropin (CG), or other hormones for the purpose of muscle building or to enhance athletic performance.	The Board shall impose a penalty ranging from probation to suspension and a fine of \$5,000 to \$10,000.	
(aa) Fraud, deceit, or misconduct in the practice of podiatric medicine.	The Board shall impose a penalty depending on the severity of the offense ranging from probation to revocation and a fine of \$5,000, to \$10,000 if fraud is alleged.	
(bb) Failure to report to the Department any licensee under Chapter 458 or 459, F.S., for violations of disciplinary provisions of their laws and rules.	In the case of a licensee, the Board shall impose a penalty of a reprimand and an administrative fine of \$500 to \$2,000.	
(cc) Failure to comply with the requirements of Sections 381.026 and 381.0261, F.S., to provide patients with information regarding their patient rights.	In the case of a licensee, the Board shall impose a penalty of a reprimand to probation and an administrative fine from \$250 to \$1,000.	
(dd) Failure to comply with HIV/AIDS education requirement.	The Board shall impose an administrative fine from \$500 to \$1,000.	
(ee) Having been found liable in a civil proceeding for knowingly filing a false report or complaint with the Department against another licensee.	The Board shall impose a penalty ranging from probation to suspension and a fine of \$500 to \$1,000.	
(ff) Engaging or attempting to engage a patient or client in verbal or physical sexual activity.	The Board shall impose a penalty ranging from probation to revocation and a fine of \$5,000 to \$10,000.	
(gg) Failure to comply with the requirements of profiling or credentialing.	The Board shall impose an administrative fine from \$500 to \$1,000.	
(hh) Failure to report a criminal conviction or plea to the Board in writing within 30 days.	The Board shall impose a penalty ranging from reprimand to probation and a \$500 to \$1,000 administrative fine.	
(ii) Using information about people involved in motor vehicle accidents which has been derived from accident reports.	The Board shall impose a penalty ranging from reprimand to probation and an administrative fine of \$1,000 to \$5,000.	
(jj) Sexual misconduct under Section 456.063, F.S.,	shall result in denial of licensure or relinquishment or revocation of the license.	
(kk) Testing positive on a preemployment drug screen.	The Board shall impose a \$500 fine and refer the licensee to PRN for	

	screening and possible treatment if medically necessary.	
(ll) Performing health care services on the wrong patient, wrong site, wrong or unauthorized procedure.	The Board shall impose a penalty ranging from reprimand to suspension, require continuing medical education, and impose a fine of \$1,000 to \$10,000.	
(mm) Leaving a foreign object in patient.	The Board shall impose a reprimand to probation and a fine of \$1,000 to \$10,000.	
(nn) Failure to complete the two hour course on medical errors.	The Board shall impose a fine of \$500 to \$1,000.	
(oo) Using a Class III or Class IV laser device or product, as defined by federal regulations, without having complied with the rules adopted pursuant to Section 501.122(2), F.S., governing the registration of such devices with the Department of Health and Rehabilitative Services.	The Board shall impose a penalty ranging from reprimand to probation and a fine of \$250 to \$1,000.	
(pp) Improperly interfering with an investigation or inspection authorized by statute, or with any disciplinary proceeding.	The Board shall impose a penalty ranging from suspension to revocation and a fine of \$1,000 to \$10,000.	
(qq) Failure to report sexual misconduct.	The Board shall impose a reprimand and a fine of \$1,000 to \$10,000.	
(rr) Failure to submit or update required information.	The Board shall impose a penalty ranging from a reprimand up to probation plus a fine from \$2,500.00 to \$5,000.00 pursuant to Section 456.039(3)(b), F.S.	
(ss) Termination from impaired practitioner treatment program.	The Board shall impose a penalty of suspension until individual proves ability to practice with reasonable skill and safety.	
(tt) Failure to comply with a lawful order of the Board.	The Board shall impose a penalty of suspension until compliance and payment of fine from \$500.00 to \$1,000.00.	
(uu) Failure to provide the last known address of record pursuant to Section 456.035, F.S.,	shall impose a penalty of suspension until compliance and payment of fine from \$500.00 to \$2,000.00.	
(vv) Being convicted of, or entering a plea of guilty or nolo contendere to, any misdemeanor or felony, regardless of adjudication, to any of the acts set forth in Section 456.072(1)(ii), F.S., relating to the Medicaid program,	the Board shall impose a penalty ranging from suspension to revocation and a fine of \$1,000 to \$10,000.	
(ww) 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	the Board shall impose a penalty ranging from a reprimand to suspension and a fine from \$5,000 to	

settlement,	\$10,000.	
(xx) Being terminated from the state Medicaid program pursuant to Section 409.913, F.S., 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,	the Board shall impose a penalty ranging from a reprimand to revocation and a fine of \$250 to \$10,000 according to the nature of the offense and the substantiating evidence.	
(yy) 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,	the Board shall impose a penalty ranging from suspension to revocation and a fine of \$10,000, per count.	
<u>(aaa) Authorizing or directing a person, not certified pursuant to 461.0135, F.S. to operate X-ray equipment, in violation of 461.012(2)(v) or 456.072(1)(j), F.S.</u>		
<u>(bbb) 456.072(ee), F.S.: 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.</u>		
<u>(ccc) 456.072(mm), F.S.: Failure to comply with controlled substance prescribing requirements of s. 456.44.</u>		
<u>(ddd) 456.072(nn), F.S.: Violating any of the provisions of s. 790.338.</u>		

Rulemaking Authority 456.039(3), 456.072, 456.073(3), 456.079, 461.003, 461.005, 461.013 FS. Law Implemented 456.033, 456.053, 456.062, 456.063, 456.067, 456.072, 456.073(3), 456.079, 461.012, 461.013 FS. History—New 11-21-79, Amended 8-31-81, Formerly 21T-14.02, Amended 10-14-86, 12-8-88, 1-19-92, 4-26-93, Formerly 21T-14.002, 61F12-14.002, Amended 2-25-96, 5-29-97, Formerly 59Z-14.002, Amended 11-17-97, 8-24-00, 8-13-02, 4-26-04, 6-14-06, 10-10-06, 11-25-07, 12-25-11, _____.

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.

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.

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<u>Title XXXII</u>	<u>Chapter 456</u>	<u>View Entire</u>
REGULATION OF PROFESSIONS AND OCCUPATIONS	HEALTH PROFESSIONS AND OCCUPATIONS: GENERAL PROVISIONS	<u>Chapter</u>

456.44 Controlled substance prescribing.—

(1) DEFINITIONS.—

(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.

(2) REGISTRATION.—Effective January 1, 2012, a physician licensed under chapter 458, chapter 459, chapter 461, or chapter 466 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 the physician’s 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 clinician 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 physician 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 physician 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 physician shall use a written controlled substance agreement between the physician 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 physician unless otherwise authorized by the treating physician and documented in the medical record.

(d) The patient shall be seen by the physician 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 physician's evaluation of the patient's progress. If treatment goals are not being achieved, despite medication adjustments, the physician shall reevaluate the appropriateness of continued treatment. The physician 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 physician 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 psychiatrist.

(f) A physician registered under this section 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 physician's full name presented in a legible manner.

(g) Patients with signs or symptoms of substance abuse shall be immediately referred 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 physician is board-certified or board-eligible in pain management. Throughout the period of time before receiving the consultant's report, a prescribing physician 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 physician 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 physician 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 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 physician 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.

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CRIMES

[Chapter 790](#)
WEAPONS AND FIREARMS

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790.338 Medical privacy concerning firearms; prohibitions; penalties; exceptions.—

(1) A health care practitioner licensed under chapter 456 or a health care facility licensed under chapter 395 may not intentionally enter any disclosed information concerning firearm ownership into the patient's medical record if the practitioner knows that such information is not relevant to the patient's medical care or safety, or the safety of others.

(2) A health care practitioner licensed under chapter 456 or a health care facility licensed under chapter 395 shall respect a patient's right to privacy and should refrain from making a written inquiry or asking questions concerning the ownership of a firearm or ammunition by the patient or by a family member of the patient, or the presence of a firearm in a private home or other domicile of the patient or a family member of the patient. Notwithstanding this provision, a health care practitioner or health care facility that in good faith believes that this information is relevant to the patient's medical care or safety, or the safety of others, may make such a verbal or written inquiry.

(3) Any emergency medical technician or paramedic acting under the supervision of an emergency medical services medical director under chapter 401 may make an inquiry concerning the possession or presence of a firearm if he or she, in good faith, believes that information regarding the possession of a firearm by the patient or the presence of a firearm in the home or domicile of a patient or a patient's family member is necessary to treat a patient during the course and scope of a medical emergency or that the presence or possession of a firearm would pose an imminent danger or threat to the patient or others.

(4) A patient may decline to answer or provide any information regarding ownership of a firearm by the patient or a family member of the patient, or the presence of a firearm in the domicile of the patient or a family member of the patient. A patient's decision not to answer a question relating to the presence or ownership of a firearm does not alter existing law regarding a physician's authorization to choose his or her patients.

(5) A health care practitioner licensed under chapter 456 or a health care facility licensed under chapter 395 may not discriminate against a patient based solely upon the patient's exercise of the constitutional right to own and possess firearms or ammunition.

(6) A health care practitioner licensed under chapter 456 or a health care facility licensed under chapter 395 shall respect a patient's legal right to own or possess a firearm and should refrain from unnecessarily harassing a patient about firearm ownership during an examination.

(7) An insurer issuing any type of insurance policy pursuant to chapter 627 may not deny coverage, increase any premium, or otherwise discriminate against any insured or applicant for insurance on the basis of or upon reliance upon the lawful ownership or possession of a firearm or ammunition or the lawful use or storage of a firearm or ammunition. Nothing herein shall prevent an insurer from

considering the fair market value of firearms or ammunition in the setting of premiums for scheduled personal property coverage.

(8) Violations of the provisions of subsections (1)-(4) constitute grounds for disciplinary action under ss. 456.072(2) and 395.1055.

History.—s. 1, ch. 2011-112.

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