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## **Laws, Rules and Ethics for Florida Engineers Renewal Cycle 2011-2013**



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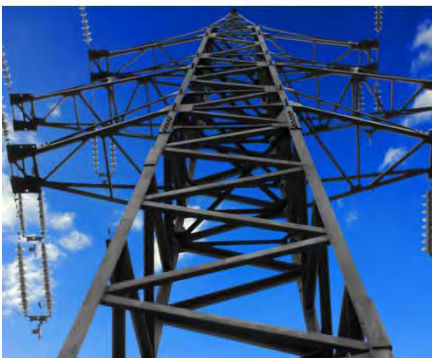
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# Florida Laws and Rules for Engineers

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Laws, Rules and Ethics for  
Florida Engineers  
Renewal Cycle 2011-2013

Florida Board of Professional Engineers Approved Course #000130

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By: Edward P. Brunet, Jr., P.E.

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# Florida Laws and Rules for Engineers

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## Section 1 - Introduction

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## Overview

The course is divided into seven (7) sections.

Section 1 - Provides a brief overview of the sections of the Florida Administrative Code and the Florida Statutes that are applicable to professional engineers. The roles of the Board and the Florida Engineering Management Corporation (FEMC) are also discussed.

Section 2 - Reviews the rules that were adopted, amended or repealed during the immediately preceding biennium.

Section 3- This section reviews any changes to Chapters 455 and 471 F.S. that were made by legislators during the preceding biennium.

Section 4 - Provides an overview of how the disciplinary process works.

Section 5 - Reviews the application of the provisions of Chapter 471 F.S. to individual disciplinary cases and unlicensed practice cases during the immediately preceding biennium.

Section 6 - Contains a list of resources used to develop this course.

Section 7 - Provides answers to the Practice Problems contained within the course document.

## Florida Statutes

The Florida statutes are designed, more or less, to provide agencies with the authority to make rules to carry out statute. In many cases, the statute does not define specifically what can and cannot be done; that's the purpose of the Florida Administrative code. The statutes can only be added, amended, or deleted by the legislature.

There are two (2) chapters in the Florida Statutes that are of primary interest to Engineers.

### ***Title XXXII, Chapter 455 – Business and Professional Regulation: General Provisions***

Title XXXII applies to Regulation of Professions and Occupations. Chapter 455 includes general provisions that are applicable to all regulated professions, not just engineers. Some of the language in Chapter 455 is very prescriptive. Other language contains qualifiers. For example, Chapter 455.2178 states that if a Board requires continuing education, then the Board shall approve continuing education providers. In other words, the statute does not specifically require continuing education for all professions. But if a Board or department requires continuing education, then certain rules apply.

Some requirements in Chapter 455 that are applicable to engineers are:

- A Board may provide by rule that distance learning is acceptable for continuing education.
- A Board may issue a citation for certain offenses, and the Board is authorized to define the offenses for which a citation may be issued.
- The Board may provide a licensee with a notice of noncompliance for an initial offense of a minor violation. The Board is responsible for identifying those offenses for which a notice of noncompliance may be issued.
- The determination as to whether there is probable cause that a violation occurred shall be made by majority vote of a probable cause panel of the board.
- A formal hearing before an administrative law judge from the Division of Administrative Hearings shall be held if there are any disputed issues of material fact regarding a complaint.
- Allows the Board to assess an administrative fine not to exceed \$5,000 for each offense.

**Title XXXII, Chapter 471 – Engineering**

Chapter 471, which is specific to engineering, is also a Florida Statute that can only be amended by the legislature. Some of the requirements in Chapter 471 are:

- Defines who must be licensed as an engineer, as well as persons who are exempt from licensure.
- Defines the number of members who must serve on the Florida Board of Professional Engineers and the required background for each member.
- Places a limit on fees for licensure, renewal, certificates of authorization, etc.
- Defines the minimum requirements for licensure and licensure by endorsement.
- Establishes the creation of the Florida Engineers Management Corporation and defines the purpose, financing and operation of the management corporation.

**Florida Administrative Code**

The Florida Administrative Code is the official compilation of the administrative rules and regulations of state agencies. Chapter 61G15 in the Florida Administrative Code covers the Board of Professional Engineers.

Unlike the Florida Statutes, amendments, additions or deletions to Chapter 61G15 do NOT require a vote by the legislature. The Board of Professional Engineers is empowered to revise Chapter 61G15. All proposed changes to the Florida Administrative Code are published in the Florida Administrative Weekly. The website is (<https://www.flrules.org/>).

Chapter 61G15 contains very specific rules regarding the practice of engineering in the state of Florida. Some examples are:

- Defines grounds for disciplinary proceedings, in addition to those specified in the Statutes.

- Defines penalty guidelines for specific infractions of the rules
- Defines very specific requirements for demonstration of substantial equivalency for applicants with degrees from non-EAC/ABET accredited programs.
- Prescribes exactly the form and size of seals that are acceptable.
- Prescribes procedures for sealing, signing and dating documents.
- Prescribes fees for licensure, renewal, etc. that are not in excess of the maximum fees allowed by the Florida Statutes
- Defines procedures for the adoption of another engineer's work

**The FEMC**

The Florida Statutes establish that the Florida Board of Professional Engineers and other boards may contract with a nonprofit corporation to provide services for the regulation of professions. Below is the applicable language from Chapter 455.

**Chapter 455.32**

The purpose of this section is to create a model for contracting with nonprofit corporations to provide services for the regulation of Florida's professionals which will ensure a consistent, effective application of regulatory provisions and appropriate budgetary oversight to achieve the most efficient use of public funds. Nonprofit corporations may be established pursuant to this section to provide administrative, examination, licensing, investigative, and prosecutorial services to any board created within the department pursuant to chapter 20 in accordance with the provisions of this chapter and the applicable practice act.

Pursuant to Chapter 455.32, the Florida Engineers Management Corporation was established. The FEMC provides administrative, investigative, and prosecutorial services to the Board.

The FEMC has a seven-member board of directors, five of whom are appointed by the board and must be registrants regulated by the board and two of whom are appointed by the secretary and must be laypersons not regulated by the board. The management corporation may hire staff as necessary to carry out its functions. Staff of the FEMC are not public employees.

It is important to note that the FEMC is empowered by the Board to investigate and prosecute disciplinary cases. However, the Board retains the sole authority to: a) determine probable cause in the pursuit of disciplinary action against a licensee, b) take final action on license applications or in disciplinary cases, and c) adopt administrative rules.

**Practice Problem #1**

List below the Chapters of the Florida Statutes and the Florida Administrative Code that are applicable to engineers.

**Practice Problem #2**

Describe below the respective roles of the legislature and the Board in enacting laws and rules for Florida Engineers.

**Practice Problem #3**

What functions does the FEMC provide for the Board?

What roles does the Board and the FEMC have, respectively, in the disciplinary process, including investigation, prosecution, probable cause determination, and issuing Final Orders.

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# Florida Laws and Rules for Engineers

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## Section 2 – Rules Adopted, Amended, or Repealed in the Preceding Biennium

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**61G15-18.011: Definitions**

**Summary:** To amplify and clarify the meaning of “degree of control necessary for the Engineer of Record.”

**Notice:** Published in the 02/20/2009 issue of the Florida Administrative Weekly.

**Adopted:** Effective 06/02/2009

**Final Rule (06/02/2009)**

**61G15-18.011: Definitions.**

As used in Chapter 471, F.S., and in these rules where the context will permit the following terms have the following meanings:

(1) “Responsible Charge” shall mean that degree of control an engineer is required to maintain over engineering decisions made personally or by others over which the engineer exercises supervisory direction and control authority. The engineer in responsible charge is the Engineer of Record as defined in subsection 61G15-30.002(1), F.A.C.

(a) The degree of control necessary for the Engineer of Record shall be such that the engineer:

1. Personally makes engineering decisions or reviews and approves proposed decisions prior to their implementation, including the consideration of alternatives, whenever engineering decisions which could affect the health, safety and welfare of the public are made. In making said engineering decisions, the engineer shall be physically present or, if not physically present, be available in a reasonable period of time, through the use of electronic communication devices, such as electronic mail, videoconferencing, teleconferencing, computer networking, or via facsimile transmission.

2. Judges the validity and applicability of

recommendations prior to their incorporation into the work, including the qualifications of those making the recommendations.

3. Approves the inclusion of standard engineering design details into the engineering work. Standard engineering design details include details mandated or directed to be contained in engineering documents by governmental agencies (such as the Florida Department of Transportation); and details contained in engineering design manuals and catalogues that are generally accepted as authoritative in the engineering profession. In order to approve the inclusion of such details the Engineer of Record must conduct such reasonable analysis of the content of the standard detail(s) as is necessary in the sound professional judgment of the Engineer of Record to be assured that the inclusion of such detail(s) into the engineering work is acceptable engineering practice.

(b) Engineering decisions which must be made by and are the responsibility of the Engineer of Record are those decisions concerning permanent or temporary work which could create a danger to the health, safety, and welfare of the public, such as, but not limited to, the following:

1. The selection of engineering alternatives to be investigated and the comparison of alternatives for engineering works.

2. The selection or development of design standards or methods, and materials to be used.

3. The selection or development of techniques or methods of testing to be used in evaluating materials or completed works, either new or existing.

4. The development and control of operating and maintenance procedures.

(c) As a test to evaluate whether an engineer is the Engineer of Record, the following shall be considered:

1. The engineer shall be capable of answering questions relevant to the engineering

decisions made during the engineer's work on the project, in sufficient detail as to leave little doubt as to the engineer's proficiency for the work performed and involvement in said work. It is not necessary to defend decisions as in an adversary situation, but only to demonstrate that the engineer in responsible charge made them and possessed sufficient knowledge of the project to make them. Examples of questions to be answered by the engineer could relate to criteria for design, applicable codes and standards, methods of analysis, selection of materials and systems, economics of alternate solutions, and environmental considerations. The individuals should be able to clearly define the span and degree of control and how it was exercised and to demonstrate that the engineer was answerable within said span and degree of control necessary for the engineering work done.

2. The engineer shall be completely in charge of, and satisfied with, the engineering aspects of the project.

3. The engineer shall have the ability to review design work at any time during the development of the project and shall be available to exercise judgment in reviewing these documents.

4. The engineer shall have personal knowledge of the technical abilities of the technical personnel doing the work and be satisfied that these capabilities are sufficient for the performance of the work.

(d) The term "responsible charge" relates to engineering decisions within the purview of the Professional Engineers Act and does not refer to management control in a hierarchy of professional engineers except as each of the individuals in the hierarchy exercises independent engineering judgement and thus responsible charge. It does not refer to administrative and personnel management functions. While an engineer may also have such duties in this position, it should not enhance or decrease one's status of being in responsible charge of the work. The phrase does not refer to the concept of financial liability.

(2) "Engineering Design" shall mean that the

process of devising a system, component, or process to meet desired needs. It is a decision-making process (often iterative), in which the basic sciences, mathematics, and engineering sciences are applied to convert resources optimally to meet a stated objective. Among the fundamental elements of the design process are the establishment of objectives and criteria, synthesis, analysis, construction, testing and evaluation. Central to the process are the essential and complementary roles of synthesis and analysis. This definition is intended to be interpreted in its broadest sense. In particular the words "system, component, or process" and "convert resources optimally" operate to indicate that sociological, economic, aesthetic, legal, ethical, etc., considerations can be included.

(3) The term "evaluation of engineering works and systems" as used in the definition in the practice of engineering set forth in Chapter 471.005(4)(a), F.S., includes but is not limited to services provided by testing laboratories involving the following:

(a) The planning and implementation of any investigation or testing program for the purpose of developing design criteria either by an engineering testing laboratory or other professional engineers.

(b) The planning or implementation of any investigation, inspection or testing program for the purpose of determining the causes of failures.

(c) The preparation of any report documenting soils or other construction materials test data.

(d) The preparation of any report offering any engineering evaluation, advice or test results, whenever such reports go beyond the tabulation of test data. Reports which document soils or other construction materials test data will be considered as engineering reports.

(e) Services performed by any entity or provided by a testing laboratory for any entity subject to regulation by a state or federal regulatory agency which enforces standards as to testing shall be exempt from this rule except

where the services otherwise would require the participation of a professional engineer.

(4) "Certification" shall mean a statement signed and/or sealed by a professional engineer representing that the engineering services addressed therein, as defined in Section 471.005(6), F.S., have been performed by the professional engineer, and based upon the professional engineer's knowledge, information and belief, and in accordance with commonly accepted procedures consistent with applicable standards of practice, and is not a guaranty or warranty, either expressed or implied.

(5) "FEMC" shall mean the Florida Engineers Management Corporation, created in Section 471.038(3), F.S.

(6) The term "principal officer(s) of the business organization" as used in Section 471.023(1), F.S., means the (a) President, Vice President, Secretary or Treasurer of the Corporation, or Limited Liability Company (LLC); or (b) any other officer who has management responsibilities in the corporation or LLC, as documented by the corporate charter or bylaws so long as such documentation provides that such officer is empowered to bind the corporation or LLC in all of its activities which fall within the definition of the practice of engineering as that term is defined in Section 471.005(7), F.S.

*Rulemaking Authority 471.008, 471.013(1)(a)1., 2. FS. Law Implemented 471.003(2)(f), 471.005(7), 471.005(6), 471.013(1)(a)1., 2., 471.023(1), 471.025(3), 471.033(1)(j) FS. History—New 6-23-80, Amended 12-19-82, 11-22-83, Formerly 21H-18.11, Amended 1-16-91, 4-4-93, Formerly 21H-18.011, Amended 12-22-99, 4-19-01, 10-16-02, 9-15-04, 6-5-08, 6-2-09.*

**61G15-19.004: Disciplinary Guidelines; Range of Penalties; Aggravating and Mitigating Circumstances**

**Summary:** Disciplinary Guidelines; Range of Penalties; Aggravating and Mitigating Circumstances.

**Notice:** Published in the 11/25/2009 issue of the Florida Administrative Weekly.

**Adopted:** Effective 2/21/2010

**61G15-19.004: Disciplinary Guidelines; Range of Penalties; Aggravating and Mitigating Circumstances**

(1) The Board sets forth below a range of disciplinary guidelines from which disciplinary penalties will be imposed upon practitioners (including holders of certificate of authorization) guilty of violating Chapter 471, F.S. The purpose of the disciplinary guidelines is to give notice to licensees of the range of penalties which will normally be imposed upon violations of particular provisions of Chapter 471, F.S. The disciplinary guidelines are based upon a single count violation of each provision listed. Multiple counts of violations of the same provision of Chapter 471, F.S., or the rules promulgated thereto, or other unrelated violations contained in the same administrative complaint will be grounds for enhancement of penalties. All penalties at the upper range of the sanctions set forth in the guidelines, i.e., suspension, revocation, etc., include lesser penalties, i.e., fine, probation or reprimand which may be included in the final penalty at the Board's discretion. All impositions of probation as a penalty shall include successful completion of the Engineering Law and Rules Study Guide, completion of a Board-approved course in Engineering Professionalism and Ethics, and an appearance before the Board at the option of the Board at the end of the probationary period. Other terms may be imposed by the Board at its discretion.

(2) The following disciplinary guidelines shall be followed by the Board in imposing disciplinary penalties upon licensees for violation of the below mentioned statutes and rules:

VIOLATION	PENALTY RANGE	
	FIRST VIOLATION	SECOND AND SUBSEQUENT VIOLATIONS
(a) Violating any provision of Section 455.227(1), 471.025 or 471.031, F.S., or any other provision of Chapter 471, F.S., or rule of the Board or Department (Sections 471.033(1)(a) and 455.227(1)(b), (q), F.S)	Reprimand and \$1,000 fine, to One (1) year suspension, two (2) years probation and \$5,000 fine	One (1) year suspension, two (2) years probation and \$5,000 fine to Revocation
1. Failure to sign, seal or date documents (Section 471.025(1), F.S.)	Reprimand to one (1) year probation	Reprimand and one (1) year probation to Revocation
2. Sealing any document after license has expired or been revoked or suspended, or failure to surrender seal if the license has been revoked or suspended (Section 471.025(2), F.S.)	Suspended license: Revocation and \$1,000 fine  Revoked license: Referral to State's Attorney's office	Suspended license: Revocation and \$5,000 fine  Revoked license: Referral to State's Attorney's office
3. Signing or sealing any document that depicts work the licensee is not licensed to perform or which is beyond his or her profession or specialty therein or practicing or offering to practice beyond the scope permitted by law or accepting and performing responsibilities the licensee is not competent to perform (Sections 471.025(3), 455.227(1)(o), F.S., paragraphs 61G15-19.001(6)(c), (d), F.A.C.)	Reprimand, one (1) year probation and \$1,000 fine; to \$5,000 fine, one (1) year suspension and two (2) years probation	Reprimand, \$5,000 fine, one (1) year suspension and two (2) years probation to Revocation
4. Firm practicing without certificate of authorization (Section 471.023, F.S. and subsection 61G15-19.001(3), F.A.C.)	Reprimand, \$1,000 fine to one (1) year suspension and \$5,000 fine	Reprimand, one (1) year suspension and \$5,000 fine to Revocation

5. Failure to complete continuing education (Section 471.017(3), F.S. and Rule 61G15-22.001, F.A.C.)	Reprimand and \$1,000 fine, to Suspension until licensee demonstrates compliance	Suspension until licensee demonstrates compliance to Revocation
6. Practicing engineering without a license or using a name or title tending to indicate that such person holds an active license as an engineer (Sections 471.031(1)(a), (b), F.S.)	\$1,000 fine to \$5,000 fine	\$5,000 fine to \$10,000 fine to referral to State Attorney's Office
7. Presenting as his or her own the license of another (Section 471.031(1)(c), F.S.)	\$1,000 fine to \$5,000 fine	\$5,000 fine to \$10,000 fine and referral to State Attorney's Office
8. Giving false or forged evidence to the Board or concealing information relative to violations of this chapter (Sections 471.031(1)(d), (g), F.S.)	\$1,000 fine to \$5,000 fine and suspension	Reprimand and \$5,000 fine to Revocation
9. Employing unlicensed persons to practice engineering or aiding, assisting, procuring, employing unlicensed practice or practice contrary to Chapter 455 or 471, F.S. (Sections 471.031(1)(f) and 455.227(1)(j), F.S.)	\$1,000 fine and reprimand; to \$5,000 and suspension	Reprimand and \$5,000 fine to Revocation
10. Having been found liable for knowingly filing a false complaint against another licensee (Section 455.227(1)(g), F.S.)	\$1,000 fine and reprimand; to \$5,000 per count and suspension	Reprimand and \$5,000 fine to Revocation
11. Failing to report a person in violation of Chapter 455, Chapter 471, F.S., or the rules of the Board or the Department (Section 455.227(1)(i), F.S.)	Reprimand to \$5,000 and suspension for one (1) year	Reprimand and \$5,000 fine to Revocation
12. Failing to perform any statutory or legal obligation (Section 455.227(1)(k), F.S.)	Depending on the severity of the offense, from a Reprimand to Revocation	Depending on the severity of the offense, from a Reprimand to Revocation

13. Exercising influence on a client for financial gain (Section 455.227(1)(n), F.S.)	Reprimand to one (1) year suspension and \$5,000 fine	Reprimand and \$5,000 fine to Revocation
14. Improper delegation of professional responsibilities (Section 455.227(1)(p), F.S.)	\$1,000 fine and probation for one (1) year, to suspension	Reprimand and \$5,000 fine to Revocation
15. Improperly interfering with an investigation or inspection or disciplinary proceeding (Section 455.227(1)(r), F.S.)	\$1,000 fine and probation for one (1) year; to suspension	Reprimand and \$5,000 fine to Revocation
(b) Attempting to procure a license by bribery, fraudulent misrepresentation, or error of the Board or Department (Sections 471.033(1)(b) and 455.227(1)(h), F.S.)	One (1) year suspension and \$1,000 fine, to Revocation if licensed; if not licensed, denial of license and referral to State Attorney	Revocation and \$5,000 fine if licensed; if not licensed, denial of license and referral to State Attorney
(c) Having a license to practice engineering acted against or denied by another jurisdiction (Sections 471.033(1)(c) and 455.227(1)(f), F.S.)	Same penalty as imposed in other jurisdiction or as close as possible to penalties set forth in Florida Statutes	Same penalty as imposed in other jurisdiction or as close as possible to penalties set forth in Florida Statutes
(d)1. Being convicted or found guilty of, or entering a plea of nolo contendere to a crime which relates to the practice or ability to practice (Sections 471.033(1)(d) and 455.227(1)(c), F.S.)	Depending on the severity of the crime, from Reprimand \$1,000 fine, and one (1) year probation, to Revocation	Depending on the severity of the crime, from one (1) year suspension with 2 years probation to Revocation
2. Conviction of crime related to building code inspection or plans examination (paragraph 61G15-19.001(7)(a), F.A.C.)	Reprimand \$1,000 fine, and one (1) year probation	One (1) year suspension with 2 years probation to Revocation
(e) Knowingly making or filing a false report or record, failing to file a report or record required by law, impeding or obstructing such filing (Sections 471.033(1)(e), 455.227(1)(l), F.S. and paragraph 61G15-19.001(7)(c), F.A.C.)	Reprimand and \$1,000 fine to one (1) year suspension, two (2) years probation	One (1) year suspension, 2 years probation, and \$1,000 fine, to Revocation and \$5,000 fine

(f) Fraudulent, false, deceptive or misleading advertising (Sections 471.033(1)(f), F.S. and subsection 61G15-19.001(2), F.A.C.)	Reprimand to one (1) year probation and \$5,000 fine	One (1) year probation and \$5,000 fine to Revocation
(g) Fraud, deceit, negligence, incompetence or misconduct (Sections 471.033(1)(g) and 455.227(1)(a), (m), F.S.)		
1. Fraud or deceit	Reprimand, two (2) years probation and \$1,000 fine, to one (1) year suspension and \$5,000 fine	One (1) year suspension and \$5,000 fine to Revocation
2.a. Negligence (subsection 61G15-19.001(4), F.A.C.)	Reprimand, two (2) years probation and \$1,000 fine, to \$5,000 fine, five (5) year suspension and ten (10) years probation	Two (2) years probation and \$1,000 fine, to \$5,000 fine and Revocation
b. Negligence in procedural requirements (subsections 61G15-30.003(2),(3) and (5), F.A.C.; Rules 61G15-30.005 and 61G15-30.006, F.A.C.)	Reprimand to two (2) years probation and \$1,000 fine	Two (2) years probation and \$1,000 fine, to \$5,000 fine and Revocation
c. As a special inspector	Reprimand, two (2) years probation and \$1,000 fine, to \$5,000 fine	Two (2) years probation and \$1,000 fine, to \$5,000 fine and Revocation
3. Incompetence (subsection 61G15-19.001(5), F.A.C.)	Two (2) year probation to Suspension until ability to practice proved followed by two (2) year probation	Suspension until ability to practice proved followed by two (2) year probation, to Revocation
4. Misconduct (subsection 61G15-19.001(6), F.A.C.)	Reprimand and \$1,000 fine to one (1) year suspension	One (1) year suspension to Revocation and \$5,000 fine.

<p>a. Expressing an opinion publicly on an engineering subject without being informed as to the facts and being competent to form a sound opinion (paragraph 61G15-19.001(6)(a), F.A.C.)</p>	<p>Reprimand and \$1,000 fine to one (1) year suspension</p>	<p>One (1) year suspension to Revocation and \$5,000 fine</p>
<p>b. Being untruthful, deceptive or misleading in any professional report, statement or testimony or omitting relevant and pertinent information from such report, statement or testimony when the result or such omission would or reasonably could lead to a fallacious conclusion (paragraph 61G15-19.001(6)(b), F.A.C.)</p>	<p>Reprimand and \$1,000 fine to one (1) year suspension</p>	<p>One (1) year suspension to Revocation and \$5,000 fine</p>
<p>c. Offering directly or indirectly any bribe or commission or tendering any gift to obtain selection or preferment for engineering employment other than the payment of the usual commission for securing salaried positions through licensed employment agencies (paragraph 61G15-19.001(6)(e), F.A.C.)</p>	<p>Reprimand, \$5,000 fine per count and suspension for five (5) years, to Revocation</p>	<p>Five (5) years suspension to Revocation</p>
<p>d. Soliciting or accepting gratuities without client knowledge (paragraphs 61G15-19.001(6)(g), (h), F.A.C.)</p>	<p>Reprimand, one (1) year probation and \$1,000 fine, to one (1) year suspension, two (2) years probation and \$5,000 fine</p>	<p>One (1) year suspension, two (2) years probation and \$5,000 fine to Revocation</p>
<p>e. Failure to preserve client's confidence (paragraph 61G15-19.001(6)(r), F.A.C.)</p>	<p>Reprimand, one (1) year probation and \$1,000 fine, to one (1) year suspension, two (2) years probation (if pecuniary benefit accrues to engineer)</p>	<p>One (1) year suspension, two (2) years probation and \$5,000 fine to Revocation</p>
<p>f. Professional judgment overruled by unqualified person (paragraph 61G15-19.001(6)(i), F.A.C.)</p>	<p>Reprimand, one (1) year probation and \$1,000 fine, to one (1) year suspension, two (2) years probation and \$5,000 fine</p>	<p>One (1) year suspension, two (2) years probation and \$5,000 fine to Revocation</p>

g. Use of name/firm in fraudulent venture (paragraph 61G15-19.001(6)(k), F.A.C.)	Reprimand, one (1) year probation and \$1,000 fine, to \$5,000 fine, one (1) year suspension and two (2) years probation	One (1) year suspension, two (2) years probation and \$5,000 fine to Revocation
h. Undisclosed conflict of interest (paragraphs 61G15-19.001(6)(f), (p), F.A.C.)	Reprimand, \$1,000 fine and two (2) years probation, to Revocation and \$5,000 fine	One (1) year suspension, two (2) years probation and \$5,000 fine to Revocation
(h) Violating any provision of Chapter 455, F.S. (Sections 471.033(1)(h) and 455.227(1)(q), F.S.)	Depending on the severity of the violation, Reprimand and \$1,000 fine per count, to \$5,000 fine and revocation	Depending on the severity of the violation, One (1) year suspension, two (2) years probation and \$5,000 fine to Revocation
(i) Practicing on a revoked, suspended, inactive or delinquent license (Sections 471.033(1)(i) and 471.031(1)(e), F.S.)		
1. Delinquent license	Fine based on length of time in practice while inactive; \$100/month or \$1,000 maximum, renewal of license or cease practice	
2. Inactive license	Fine based on length of time in practice while inactive; \$100/month or \$1,000 maximum, renewal of license or cease practice	
3. Suspended license	Revocation and \$1,000 fine	
4. Revoked license	Referral to State Attorney	Referral to State Attorney

<p>(j) Affixing or permitting to be affixed his or her seal, name, or digital signature to any documents that were not prepared by him or her or under his or her responsible supervision, direction or control (Section 471.033(1)(j), F.S. and paragraphs 61G15-19.001(6)(j), (q), F.A.C.)</p>	<p>Reprimand, one (1) year probation and \$1,000 fine, to \$5,000 fine, one (1) year suspension and two (2) years probation</p>	<p>One (1) year suspension, two (2) years probation and \$5,000 fine to Revocation</p>
<p>(k) Violating any order of the board or department (Sections 471.033(1)(k), 455.227(1)(q), F.S. and paragraph 61G15-19.001(6)(o), F.A.C.)</p>	<p>Depending on the severity of the violation, from Suspension until compliant with the order of the Board and \$1,000 fine, to Revocation and \$5,000 fine</p>	<p>Depending on the severity of the violation, Suspension until compliant with the order of the Board and \$1,000 fine, to Revocation and \$5,000 fine</p>
<p>(l) Aiding, assisting, procuring, employing unlicensed practice or practice contrary to Chapter 455 or 471, F.S. (Section 455.227(1)(j), F.S.)</p>	<p>\$1,000 fine and probation for one (1) year, to \$5,000 fine and suspension</p>	<p>Reprimand and \$5,000 fine to Revocation</p>
<p>(m) Failing to report in writing a conviction or plea of nolo contendere, a crime in any jurisdiction (Section 455.227(1)(t), F.S.)</p>	<p>Reprimand to \$5,000 fine</p>	<p>Six (6) month suspension to \$5,000 fine and Revocation</p>

(3) The board shall be entitled to deviate from the above-mentioned guidelines upon a showing of aggravating or mitigating circumstances by clear and convincing evidence presented to the board prior to the imposition of a final penalty. The fact that a Hearing Officer of the Division of Administrative Hearings may or may not have been aware of the below mentioned aggravating or mitigating circumstances prior to a recommendation of penalty in a Recommended Order shall not obviate the duty of the board to consider aggravating and mitigating circumstances brought to its attention prior to the issuance of a Final Order.

(a) Aggravating circumstances; circumstances which may justify deviating from the above set forth disciplinary guidelines and cause the enhancement of a penalty beyond the

maximum level of discipline in the guidelines shall include but not be limited to the following:

1. History of previous violations of the practice act and the rules promulgated thereto.
2. In the case of negligence; of the magnitude and scope of the project and the damage inflicted upon the general public by the licensee's misfeasance.
3. Evidence of violation of professional practice acts in other jurisdictions wherein the licensee has been disciplined by the appropriate regulatory authority.
4. Violation of the provision of the practice act wherein a letter of guidance as provided in Section 455.225(3), F.S., has previously been issued to the licensee.

(b) Mitigating circumstances; circumstances which may justify deviating from the above set forth disciplinary guidelines and cause the lessening of a penalty beyond the minimum level of discipline in the guidelines shall include but not be limited to the following:

1. In cases of negligence, the minor nature of the project in question and lack of danger to the public health, safety and welfare resulting from the licensee's misfeasance.

2. Lack of previous disciplinary history in this or any other jurisdiction wherein the licensee practices his profession.

3. Restitution of any damages suffered by the licensee's client.

4. The licensee's professional standing among his peers including continuing education.

5. Steps taken by the licensee or his firm to insure the non-occurrence of similar violations in the future.

*Rulemaking Authority 455.227, 471.008, 471.031, 471.033 FS. Law Implemented 455.227, 471.031, 471.033 FS. History-New 1-7-87, Formerly 21H-19.004, Amended 11-27-94, 5-22-01, 11-15-01, 5-20-02, 11-21-06, 2-21-10.*

**Practice Problem #4**

Describe below, in general terms, the range of penalties prescribed in the Disciplinary Guidelines.

**Practice Problem #5**

Describe below, in general terms, the degree of control that must be exercised by the Engineer of Record.

What types of questions should an engineer in responsible charge be able to answer regarding his proficiency, decision-making and degree of involvement on a particular project?

**61G15-20.007: Demonstration of Substantial Equivalency**

**Summary:** To revise the list of approved evaluators.

**Notice:** Published in the 07/24/2009 issue of the Florida Administrative Weekly.

**Adopted:** Effective 10/15/2009

**Summary:** PROPOSED RULE PENDING: The Board proposes the rule amendment to add new language to set forth requirements for recognition of College Level Examination Programs (CLEP) credits and to incorporate by reference the website where the CLEP credit granting recommendations can be located.

**Notice:** Published in the 09/17/2009 issue of the Florida Administrative Weekly.

**Adopted:** Not yet adopted

Editor’s note: this change of rules is pending.

**Final Rule (10/15/2009)**

**61G15-20.007: Demonstration of Substantial Equivalency**

(1) Applicants having engineering degrees from programs that are not accredited by EAC/ABET must demonstrate:

(a) 32 college credit hours of higher mathematics and basic sciences.

1. The hours of mathematics must be

beyond algebra and trigonometry and must emphasize mathematical concepts and principles rather than computation. Courses in probability and statistics, differential calculus, integral calculus, and differential equations are required. Additional courses may include linear algebra, numerical analysis, and advanced calculus.

2. The hours in basic sciences, must include courses in general chemistry and calculus-based general physics, with at least a two semester (or equivalent) sequence of study in either area. Additional basic sciences courses may include life sciences (biology), earth sciences (geology), and advanced chemistry or physics. Computer skills and/or programming courses cannot be used to satisfy mathematics or basic science requirements.

(b) 16 college credit hours in humanities and social sciences. Examples of traditional courses in this area are philosophy, religion, history, literature, fine arts, sociology, psychology, political science, anthropology, economics, professional ethics, social responsibility and no more than 6 credit hours of languages other than English or other than the applicant’s native language. Courses such as accounting, industrial management, finance, personnel administration, engineering economics and military training are not acceptable. Courses which instill cultural values are acceptable, while routine exercises of personal craft are not.

(c) 48 college credit hours of engineering science and engineering design. Courses in this area shall have their roots in mathematics and basic sciences but carry knowledge further toward creative application. Examples of approved engineering science courses are mechanics, thermodynamics, electrical and electronic circuits, materials science, transport phenomena, and computer science (other than computer programming skills). Courses in engineering design stress the establishment of objectives and criteria, synthesis, analysis, construction, testing, and evaluation. In order to promote breadth, at least one engineering course outside the major disciplinary area is required.

(d) In addition, evidence of attainment of appropriate laboratory experience, competency in English, and understanding of the ethical,

social, economic and safety considerations of engineering practice must be presented. As for competency in English, transcripts of course work completed, course content syllabi, testimonials from employers, college level advanced placement tests, Test of English as a Foreign Language (TOEFL) scores of at least 550 in the paper-based version, or 213 in the computer-based version, will be accepted as satisfactory evidence.

(2) The FBPE Educational Advisory Committee shall make the final decision regarding equivalency of programs and shall make recommendations to the Board as to whether an applicant shall be approved for admittance to the examination or for licensure by endorsement.

(3) The applicant with an engineering degree from a foreign institution must request an evaluation of substantial equivalency of his or her credentials to EAC/ABET standards through either; Center for Professional Engineering Education Services, P. O. Box 720010, Miami, Florida 33172; or Joseph Silny & Associates, Inc., P. O. Box 248233, Coral Gables, Florida 33124. The applicant with an engineering degree from a domestic engineering program not accredited by EAC/ABET must request such an evaluation from Josef Silny & Associates, Inc.

(4) Any applicant whose only educational deficiency under subsection (2) involves humanities and social sciences shall be entitled to receive conditional approval to take the Fundamentals examination. Such an applicant shall not become eligible for the Principles and Practice examination until satisfactory completion and documentation of the necessary hours in humanities and social sciences as provided in subsection (2).

*Rulemaking Authority 471.008 FS. Law Implemented 471.013, 471.015 FS. History–New 7-20-95, Amended 6-5-96, 4-16-98, 1-17-99, 7-28-99, 1-6-02, 6-13-02, 6-30-02, 10-2-03, 6-16-04, 3-13-05, 5-1-05, 6-11-06, 1-29-07, 4-9-07, 1-31-08, 10-15-09.*

**61G15-21.2009: Endorsement**

**Summary:** This rule is being repealed because it is duplicated by Rule 61G15-20.0015, F.A.C., and it is therefore redundant.

**Notice:** Published in the 04/10/2009 issue of the Florida Administrative Weekly.

**Adopted:** Effective 06/02/2009

**Final Rule (06/02/2009)**

**61G15-20.0015: Endorsement.**

This rule has been repealed.

*Rulemaking Authority 471.008 FS. Law Implemented 471.015(3), (5) FS. History–New 8-23-98, Repealed 6-2-09.*

**61G15-22.010: Qualifying Activities for Laws and Rules Requirement**

**Summary:** To eliminate obtaining PDH's in laws and rules of the Board by attending a board meeting and to revise and clarify what board members will receive for their service as members.

**Notice:** Published in the 05/29/2009 issue of the Florida Administrative Weekly.

**Adopted:** Effective 08/10/2009

**Final Rule (08/10/2009)**

**61G15-22.010: Qualifying Activities for Laws and Rules Requirement.**

(1) In order to comply with the provisions of Section 471.017(3), F.S., licensees shall demonstrate professional competency relative to Chapter 471, F.S., and the Board's rules, by:

(a) Either completing a continuing education course, as detailed in subsection (2) below,

(b) By serving as a board member, as detailed in subsection (3) below, or

(c) By approval of the Board as a consulting engineer providing assistance to the Board in the performance of its duties, as detailed in subsection (4) below.

(2) Successful completion of a course of continuing education for laws and rules of the Board which must consist of a minimum of four (4) PHD's in laws and rules of the Board.

(3) Members of the Board of Professional Engineers shall receive four (4) PDH's in laws and rules of the Board for their service as board members.

(4) All consultant engineers used by the Board in the resolution of Board business, including rule making and prosecution of discipline cases and complaints, shall receive credit for four (4) PDH's in laws and rules of the Board by specific approval of the Board of a written list of such consultants during each biennium.

*Rulemaking Authority 455.2178, 455.2179, 471.008, 471.017(3), 471.019 FS. Law Implemented 455.213(6), 455.2177, 455.2178, 455.2179, 471.008, 471.017(3), 471.019 FS. History—New 9-16-01, Amended 9-4-02, 1-16-03, 8-10-09.*

**61G15-22.011: Board Approval of Continuing Education Providers**

**Summary:** To delete outdated language.

**Notice:** Published in the 04/30/2010 issue of the Florida Administrative Weekly.

**Adopted:** Effective 07/08/2010

**Final Rule (07/08/2010)**

**61G15-22.011: Board Approval of Continuing Education Providers.**

(1) Applicants for continuing education provider status must either be registered as a continuing education provider with the National Council for Examiners of Engineering and Surveying (NCEES) or meet the requirements of subsection (2) of this rule to demonstrate the education and/or the experience necessary to instruct professional engineers in the conduct of their practice.

(2) To demonstrate the education and/or the experience necessary to instruct professional engineers in the conduct of their practice for continuing education credit, an applicant for continuing education provider status must be a regionally accredited educational institution, a commercial educator, a governmental agency, a state or national professional association whose primary purpose is to promote the profession of engineering, an engineer with a Florida license to practice engineering who is not under disciplinary restrictions pursuant to any order of the Board, or an engineering firm that possesses an active certificate of authorization issued by the Board pursuant to Section 471.023, F.S.

(3) To allow the Board to evaluate an application for continuing education provider status, the applicant must submit the following:

(a) The name, address and telephone number of the prospective provider; and

(b) Proof of registration as continuing education provider with NCEES, or if the applicant is not registered as a continuing education provider with NCEES, the applicant must submit the following:

1. A description of the type of courses or seminars the provider expects to conduct for credit;
2. A description of the staffing capability of the applicant;
3. A sample of intended course materials;
4. A list of anticipated locations to conduct the courses;
5. A complete course curriculum for each course the applicant intends to offer;
6. A description of the means the applicant will use to update the course in response to rule or law changes;
7. A description of the means the applicant will use to evaluate the licensee's performance in the course;
8. A fee of \$250.

(4) No engineer may conduct continuing education courses or seminars for credit upon the engineer's receipt of any disciplinary order from any professional regulatory board in any jurisdiction. Rather, the engineer must notify the Board office within ten (10) days of the engineer's receipt of any such order.

(5) Should the Board determine that the provider has failed to provide appropriate continuing education services, it shall request that the Department of Business and Professional Regulation issue an order requiring the provider cease and desist from offering any continuing education courses and shall request that the Department revoke any approval of the provider granted by the Board.

(6) No provider may allow an engineer to conduct any course or seminar offered by the provider if that engineer has been disciplined and has not been released from the terms of the final order in the disciplinary case. Upon receipt of notice that an instructor is under discipline, the provider shall, within seven (7) days, write to the Board office and confirm that the engineer is no longer conducting any course or seminar offered by the provider. For the purpose of this subsection, a letter of guidance or a reprimand shall not constitute "under discipline."

(7) The Board retains the right and authority to audit and/or monitor programs and review records and course materials given by any provider approved pursuant to this rule. The Board shall request that the Department of Business and Professional Regulation revoke the approved status of the provider or reject individual programs given by a provider if the provider disseminated any false or misleading information in connection with the continuing education programs, or if the provider fails to conform to and abide by the rules of the Board. Licensees will not lose credit for attending courses offered by approved providers that are later rejected or stopped by the Board.

(8) Members of the Board of Professional Engineers or the Florida Engineers Management Corporation Board of Directors are prohibited from being a continuing education provider.

(9) The following providers shall be approved as providers, and the Board shall accept their courses for continuing education credit:

(a) Educational Institutions teaching college level courses;

(b) Federal and State Governmental Agencies that establish rules, regulations, guidelines, or otherwise have an impact on the practice of engineering; and

(c) State and National Engineering Professional Associations approved by the Board.

*Rulemaking Authority 455.213(6), 455.2178,*

455.2179, 471.008, 471.017(3), 471.019 FS. Law Implemented 455.213(6), 455.2177, 455.2178, 455.2179, 471.008, 471.017(3), 471.019 FS. History–New 9-16-01, Amended 9-4-02, 12-21-03, 8-8-05, 6-11-06, 1-29-07, 6-3-07, 8-10-09, 7-8-10.

**Practice Problem #6**

List below two (2) mitigating circumstances and two (2) aggravating circumstances that the Board may consider to impose penalties outside the disciplinary guidelines.

**Practice Problem #7**

List below a minimum of three (3) qualifying activities and two (2) non-qualifying activities to meet the Area of Practice requirements for continuing education.

**61G15-23.002: Seal, Signature and Date Shall Be Affixed**

<b>Summary:</b>	Procedures for electronically signing and sealing engineering documents are updated.
<b>Notice:</b>	Published in the 01/16/09 issue of the Florida Administrative Weekly.
<b>Adopted:</b>	Effective 05/06/2009

**Final Rule (05/06/2009)**

**61G15-23.002: Seal, Signature and Date Shall Be Affixed.**

(1) A professional engineer shall sign by hand the licensee's handwritten signature (facsimiles are not acceptable) and affix the licensee's seal:

(a) To all final drawings, specifications, plans, reports, or documents prepared or issued by the licensee and being filed for public record; and

(b) To all final documents provided to the owner or the owner's representative;

(c) In addition, the date that the signature and seal is affixed as provided herein shall be entered on said plans, specifications, reports, or other documents immediately adjacent to the signature of the professional engineer.

(d) In order to comply with the requirements of this rule, a licensee is not required to seal, sign and date documents other than those referenced in paragraph (a) or (b). This provision does not obviate any requirement of any public entity or any provision of contract which may require the sealing, signing and dating of additional original documents.

(2)(a) Every sheet of plans and prints which must be sealed under the provisions of Chapter 471, F.S., shall be sealed, signed and dated by the professional engineer in responsible charge.

(b) When an engineer must seal, sign and date engineering specifications or calculations under the provisions of Section 471.025, F.S., and subsection (1) of this rule, an index sheet for engineering specifications and calculations may be used. The index sheet must be signed, sealed and dated by those professional engineers in responsible charge of the production and preparation of each section of the engineering specifications or calculations, with sufficient information on index sheet so that the user will be aware of each portion of the specifications or calculations for which each professional engineer is responsible. In addition, the index sheet shall include at a minimum:

1. The name, address and license number of each engineer in responsible charge of the production of any portion of the calculations or specifications.

2. Identification of the project, by address or by lot number, block number, section or subdivision and city or county.

3. Identification of the applicable building code and chapter(s) that the design is intended to meet.

4. Identification of any computer program used for engineering the specifications or calculations.

(c) Engineering reports which must be signed, sealed and dated under the provisions of Section 471.025, F.S., and subsection (1) of this rule shall be sealed, signed and dated by utilizing a signature page or cover letter that is sealed, signed and dated by each professional engineer who is in responsible charge of any portion of the report.

(3)(a) A title block shall be used on each sheet of plans or prints and shall contain the printed name, address, and license number of the engineer who has sealed, signed and dated the plans or prints.

(b) If the engineer sealing, signing and dating engineering plans or prints is practicing through a duly authorized engineering business, the title block required by paragraph (2)(a) shall contain the name, address and certificate of authorization number of the engineering business.

(c) If the licensee(s) sealing signing and dating engineering specifications, calculations or reports is practicing through a duly authorized engineering business, the name, address and certificate of authorization number of the engineering business shall be placed on the index sheet, signature page or cover letter incorporated into or accompanying all engineering specifications, calculations or reports.

(4) Engineers working for local, State or Federal Government agencies shall legibly indicate their name and license number, and shall indicate the name and address of the agency on all documents that are required to be sealed, signed and dated.

(5) A professional engineer may only seal an engineering report, plan, print or specification if that professional engineer was in responsible charge, as that term is defined in subsection 61G15-18.011(1), F.A.C., of the preparation and production of the engineering document and the professional engineer has the expertise in the engineering discipline used in producing the engineering document in question.

(6) A professional engineer shall not seal original documents made of mylar, linen, sepi or other materials which can be changed by the entity with whom such document(s) are filed unless the professional engineer accompanies such document(s) with a signed and sealed letter making the receiver aware that copies of the original document as designed by the professional engineer have been retained by the professional engineer and that the professional engineer will not be responsible for any subsequent changes to the reproducible original documents.

(7) A professional engineer shall not seal plans, reports or other documents which are not final documents unless the professional

engineer clearly notes any limitations on the use of the documents or plans on the face of the documents or plans, by using terms such as "Preliminary," "For Review Only," "Not for Construction," or any other suitable statement which denotes that the documents are for limited use, are not final and are not intended for permit, construction, or bidding purposes.

(8) Engineers who wish to sign and seal electronically transmitted plans, specifications, reports, final bid documents, or other documents shall follow the procedures set forth in Rule 61G15-23.003, F.A.C.

*Rulemaking Authority 471.025 FS. Law Implemented 471.025 FS. History—New 1-8-80, Amended 1-20-85, Formerly 21H-23.02, Amended 5-14-86, Formerly 21H-23.002, Amended 11-15-94, 8-18-98, 2-3-00, 2-22-01, 2-5-04, 1-31-08, 5-6-09.*

**61G15-23.003: Procedures for Signing and Sealing Electronically Transmitted Plans, Specifications, Reports or Other Documents**

**Summary:** Procedures for electronically signing and sealing engineering documents are updated.

**Notice:** Published in the 08/01/08 issue of the Florida Administrative Weekly.

**Adopted:** Effective 05/06/2009

**Final Rule (05/06/2009)**

**61G15-23.003: Procedures for Signing and Sealing Electronically Transmitted Plans, Specifications, Reports or Other Documents.**

(1) Engineering work which must be sealed under the provisions of Section 471.025, F.S.,

may be signed electronically or digitally as provided herein by the professional engineer in responsible charge. As used herein, the terms “digital signature” and “electronic signature” shall have the meanings ascribed to them in Sections 668.003(3) and (4), F.S. The affixing of a digital or electronic signature to engineering work as provided herein shall constitute the sealing of such work.

(a) A scanned image of an original signature shall not be used in lieu of a digital or electronic signature.

(b) The date that the electronic signature file was created or the digital signature was placed into the document must appear on the document in the same manner as date is required to be applied when a licensee uses the manual sealing procedure set out in Rule 61G15-23.002, F.A.C.

(2) A professional engineer utilizing a digital signature to seal engineering work shall assure that the digital signature is:

- (a) Unique to the person using it;
- (b) Capable of verification;
- (c) Under the sole control of the person using it;

(d) Linked to a document in such a manner that the electronic signature is invalidated if any data in the document are changed.

(3) A professional engineer utilizing an electronic signature to seal engineering work shall create a “signature” file that contains the engineer’s name and PE number, a brief overall description of the engineering documents, and a list of the electronic files to be sealed. Each file in the list shall be identified by its file name utilizing relative Uniform Resource Locators (URL) syntax described in the Internet Architecture Board’s Request for Comments (RFC) 1738, December 1994, which is hereby adopted and incorporated by reference by the Board and can be obtained from the Internet Website: <http://ftp.isi.edu/in-notes/rfc1738.txt>. Each file shall have an authentication code

defined as an SHA-1 message digest described in Federal Information Processing Standard Publication 180-1 “Secure Hash Standard,” 1995 April 17, which is hereby adopted and incorporated by reference by the Board and can be obtained from the Internet Website: <http://www.itl.nist.gov/div897/pubs/fip180-1.htm>. The licenses shall then create a report that contains the engineer’s name and PE number, a brief overall description of the engineering documents in question and the authentication code of the signature file. This report shall be printed and manually signed, dated, and sealed by the professional engineer in responsible charge. The signature file is defined as sealed if the signature file’s authentication code matches the authentication code on the printed, manually signed, dated and sealed report. Each electronic file listed in a sealed signature file is defined as sealed if the listed authentication code in the signature file matches the electronic file’s computed authentication code.

*Rulemaking Authority 471.025(1), 668.006 FS. Law Implemented 471.025 FS. History–New 8-18-98, Amended 9-4-05, 5-6-09.*

**61G15-32.001: General Responsibility**

<b>Summary:</b>	Existing language is clarified and tasks for which an Engineer of Record is responsible are added
<b>Notice:</b>	Published in the 03/14/2008 issue of the Florida Administrative Weekly.
<b>Adopted:</b>	Effective 03/26/2009

**Final Rule (03/26/2009)**

**61 G 15-32.001 General Responsibilities.**

Fire protection engineering documents shall be prepared in accordance with applicable technology and the requirements of the authority having jurisdiction. The documents shall identify

the Engineer of Record for the project. Both the Engineer of Record for the fire protection system and the delegated engineer, if utilized, shall comply with the requirements of the general responsibility rules, Chapter 61G15-30, F.A.C., and with the requirements of the more specific rules contained herein. The Engineer of Record for the Fire Protection System(s) shall provide design requirements in writing to the delegated engineer if one is used and shall review the design documents of the delegated engineer for conformance with his written instructions in accordance with Rule 61G15-30.005, F.A.C. Any Fire Protection Delegated Engineering Documents must be included in the final set of documents filed for permit.

*Specific Authority 471.008, 471.033(2) FS. Law Implemented 471.033 FS. History–New 5-19-93, Formerly 21H-32.001, Amended 3-26-09.*

**61G15-32.002: Definitions**

<b>Summary:</b>	Rule amendment to add new language and to delete unnecessary language to clarify definitions.
<b>Notice:</b>	Published in the 08/06/2010 issue of the Florida Administrative Weekly.
<b>Adopted:</b>	Effective 10/11/2010

**Final Rule (10/11/2010)**

**61G15-32.002 Definitions.**

(1) Engineer of Record for the Fire Protection System(s): The Florida Registered Professional Engineer who develops the Fire Protection System(s) design criteria; performs analysis as required: and is responsible for the preparation of the Fire Protection System Engineering Documents. Except to the limited extent provided in subsection 61G15-

32.002(10), F.A.C., the Engineer of Record for the Fire Protection system(s) is responsible for providing sealed, signed and dated Fire Protection System Engineering Documents that are in full conformity with the applicable design standards set forth in Rule Chapter 61G15-32, F.A.C.

(2) Fire Protection Component: Any individual part, subsystem or device to be incorporated in a Fire Protection System.

(3) Fire Protection System: Any assembly of Fire Protection components, materials, equipment, which require design to form a fully functional fire protection system.

(4) Listed: A fire protection component tested by a nationally recognized fire protection equipment testing organization. Recognized organizations include Underwriters Laboratories, Inc. and Factory Mutual Research Corporation.

(5) Fire Protection System Engineering Documents: The fire protection system engineering drawings, specifications, prescriptive and performance criteria, water supply analysis and other materials or representations, which are submitted with the general construction documents pursuant to Section 553.79(6), F.S., that set forth the overall design requirements and provide sufficient direction for the contractor to layout the construction, alteration, demolition, renovation, repair, modification, permitting and such, for any public or private fire protection system(s), which are prepared, signed, dated and sealed by the Engineer of Record for the Fire Protection System(s).

(6) Fire Protection System Layout Documents: Layout drawings, hydraulic calculations, catalog information on standard products, and other construction data prepared by the licensed contractor or Engineer of Record that provides detail on the location of risers, cross mains, branch lines, sprinkler heads, sizing of pipe, hanger locations, and hydraulic calculations and also serves as a guide for fabrication and installation of a fire protection system. Fire Protection System Layout Documents are based upon engineering direction provided in the Fire Protection System

Engineering Documents and require no additional engineering input. These documents do not require the seal of a Florida registered engineer.

(7) Codes and Standards: Those nationally recognized codes and standards adopted directly or by reference in Chapter 633, F.S., Florida Building Code (2007) and Florida Fire Prevention Code set forth in Chapter 69A-60, F.A.C. Applicable codes and standards also include those promulgated by State and local authorities having jurisdiction. In the event the codes and standards fail to cover or address a specific protection requirement, alternative research, test results, and engineering data may be utilized, relying on the Engineer of Record for Fire Protection to make an informed engineering decision. This definition is not intended to preclude the use of new technologies when said technology has been demonstrated to provide equivalent or improved protection above that of published National Fire Protection standards.

(8) Material Deviation: Any deviation from the design parameters established and documented by the Engineer of Record.

(9) Layout: The location of risers, cross mains, branch lines, sprinkler heads, sizing of pipe, hanger locations, and hydraulic calculations based on engineering documents.

(10) Fire Protection Delegated Engineering Documents. Fire Protection System Engineering Documents prepared by a delegated engineer to whom the Engineer of Record for the Fire Protection System has contractually delegated responsibility for the design to be simultaneously submitted for permit of a discrete and limited portion of a fire protection system and which are signed, sealed and dated by the delegated engineer. These documents shall be reviewed and approved by the Engineer of Record for the Fire Protection System for conformity with the Engineer of Record's design intent and shall be included in the engineering design documents prepared prior to submittal for a building permit and Fire Department installation permit, except when no building permit is required. When no building permit is required, the delegated engineering work bearing the seal of delegated engineer and approval of the Engineer of

Record for the Fire Protection System shall be submitted together to the fire official for permitting.

*Rulemaking Authority 471.008, 471.033(2) FS. Law Implemented 471.005(7), 471.033(2) FS. History—New 5-19-93, Formerly 21H-32.002, Amended 4-2-00, 6-26-01, 3-26-09, 10-11-10.*

**61G15-32.003: Common Requirements to All Fire Protection Engineering Documents**

<b>Summary:</b>	New requirements for Fire Protection Electrical Engineering Documents are added.
<b>Notice:</b>	Published in the 03/14/2008 issue of the Florida Administrative Weekly.
<b>Adopted:</b>	Effective 03/26/2009

**Final Rule (03/26/2009)**

**61G15-32.003 Common Requirements to All Fire Protection Engineering Documents.**

(1) The Fire Protection System Engineering Documents shall provide the engineering requirements to be used in the preparation of the Fire Protection System Layout Documents and to indicate the nature and scope of the work, and to describe, detail, dimension, label and define the Fire Protection Components, System(s), materials, assemblies, equipment and its structural and utility support system(s), insofar as they involve the safeguarding of life, health or property.

(2) The Fire Protection System Engineering Documents shall specify the applicable requirements for the acceptance testing of the fire protection system and components, which shall be based upon applicable codes and standards, where available.

(3) The occupancy of the area or description of a specific hazard being protected by the Fire Protection System(s) shall be shown on the Fire Protection System Engineering Documents.

(4) The applicable code and standard to be used in the preparation of the Fire Protection System Layout Documents shall be shown on the Fire Protection System Engineering Documents. When codes and standards are not available or applicable, and said layout documents are to be based on engineering judgment, any reasons and assumptions made to develop the fire protection concept shall be identified on the Fire Protection System Engineering Documents.

(5) Structural support and structural openings required by the Fire Protection System shall be shown on the Fire Protection System Engineering Documents and shall be referenced on structural engineering documents.

(6) When layout documents contain material deviation from the Engineer of Record's Fire Protection System Engineering Document, such layout documents are not compliant unless they are accompanied by revised Engineering Documents made and sealed by the Engineer of Record for the Fire Protection System.

(7) Requirements for activation control systems, sequence, operating parameters, interlocks, safety related devices, indicators and alarms, shall be shown on the Fire Protection System Engineering Documents, unless shown on other related documents.

(8) Any information deemed appropriate by the Engineer of Record to assist the authority having jurisdiction in understanding the owner's intended use and proposed protection of the building or facility and to provide sufficient direction to the installation contractor or other interested parties regarding the layout of the system(s), shall be included in the Fire Protection System Engineering Documents.

(9) Fire Protection Electrical Engineering Documents shall additionally meet the requirements of Rule 61G15-30.003, F.A.C., Engineering Documents.

*Specific Authority 471.008, 471.033(2) FS. Law Implemented 471.005(7), 471.033(2) FS. History-- New 5-19-93, Formerly 21H-32.003, Amended 4-2-00, 6-26-01, 3-26-09.*

**61G15-32.008: Design of Fire Alarms and Detection Systems**

<b>Summary:</b>	Old definitions of fire alarms, signaling, and control systems are replaced with new definitions and new requirements for such fire alarms, signaling, and control systems are established.
<b>Notice:</b>	Published in the 03/14/2008 issue of the Florida Administrative Weekly.
<b>Adopted:</b>	Effective 03/26/2009

**Final Rule (03/26/2009)**

**61G15-32.008 Design of Fire Alarms and Detection Systems.**

(1) Fire alarms and detection systems include fire protection supervision, emergency alarm circuits, activation of life safety system controls and remote signaling of emergency conditions.

(2) The design specifications shall be based on the Florida Building Code (2007), the Florida Fire Prevention Code, or as required by the local authority having jurisdiction.

(3) For fire alarm plans on small systems below the threshold requirements for mandatory use of professional engineering services, the

Engineer of Record shall specify the minimum system requirements.

(4) To ensure minimum design quality of Fire Alarm and Detection Systems Engineering Documents, said documents shall include as a minimum the following information when applicable:

(a) The plans shall be clear, with a symbols legend, system riser diagram showing all initiation and notification components, and cabling requirements. Indicate locations where fire ratings are required as determined by the system's survivability requirements. Identify the general occupancy of the protected property, and for each room and area unless it is clear from features shown.

(b) Locate initiation and notification devices and connections to related systems on the floor plans and sections when needed for clarity. Related systems include elevator controls smoke control systems, dampers, and doors.

(c) Strobe intensity and speaker output ratings for all notification devices.

(d) Identify the Class and Style of circuits as listed in the NFPA 72.

(e) Identify the functions required by the alarm and control systems including the transmission of emergency signals being monitored or annunciated.

(f) Indicate whether the fire alarm is conventional or addressable, and indicate all zoning.

(g) Locate surge protective devices and required protective features.

(h) Locate system devices that are subject to environmental factors, and indicate requirements for the protection of equipment from temperature, humidity or corrosive atmospheres, including coastal salt air.

(i) The plans shall include a site plan of the immediate area around the protected building,

structure or equipment when alarm devices are required outside the structure.

(j) In buildings where smoke detection will be obstructed by walls, beams or ceiling features, the Engineer of Record shall provide applicable design and details to direct the installer to mitigate the obstructions. In buildings with smoke detection under a pitched roof, the plans shall indicate the roof pitch and a building section shall be provided as part of the Engineering Design Documents.

(k) Fire detection systems utilizing smoke detection in situations where smoke stratification is anticipated, the design shall provide the necessary criteria to mitigate the detection problems.

(l) Systems designed using Performance Based criteria shall be identified and referenced to design guides or standards approved by the local authority having jurisdiction consistent with standards adopted by the Florida Fire Prevention Code and the Florida Building Code (2007).

(m) The system design must indicate if the system is to provide a general evacuation signal or a zoned evacuation for all high-rise buildings or multi-tenanted properties as defined in the Florida Building Code (2007).

(n) Wiring requirements for underground, wet locations, campus style wiring, protection against damage and burial depth shall be specified or indicated on the engineering design documents.

(o) Requirements for operations and maintenance procedures, manuals, system documentation, and instruction of Owner's operating personnel, as needed to operate the systems as intended over time.

(5) In the event that the Engineer of Record elects to specify specific equipment and to show the required wiring, battery and voltage drop (circuit analysis) calculations shall be completed. The calculations shall be completed using the equipment manufacturer's data and applicable NFPA 72 procedures.

(6) System test requirements shall be noted on the Engineering Design Documents.

(7) When the engineer determines that special requirements are required by the owner, insurance underwriter or local fire code amendments these requirements shall be documented or referenced on the Engineering Design Documents.

*Specific Authority 471.008, 471.033(2) FS. Law Implemented 471.033 FS. History-New 5-19-93, Formerly 21H-32.008, Amended 3-26-09.*

**61G15-35.004: Common Requirement to All Engineers Providing Threshold Building Inspection Services as Special inspectors**

<b>Summary:</b>	Requirements for “Authorized Representatives” are clarified.
<b>Notice:</b>	Published in the 02/06/2009 issue of the Florida Administrative Weekly.
<b>Adopted:</b>	Effective 05/06/2009

**Final Rule (05/06/2009)**

**61G15-35.004 Common Requirements to All Engineers Providing Threshold Building Inspection Services as Special Inspectors.**

(1) For each Threshold Building, a notice shall be filed for public record, bearing the name, address, signature, date and seal of the Special Inspector, certifying that the Special Inspector is competent to provide the engineering services for the specific type of structure.

(2) Special Inspectors utilizing Authorized Representatives shall insure the Authorized Representative is qualified by education or

licensure to perform the duties assigned by the Special Inspector. The qualifications shall include licensure as a professional engineer or architect; graduation from an engineering education program in civil or structural engineering; graduation from an architectural education program; successful completion of the NCEES Fundamentals Examination; or licensed building inspector with the Board of Building Code Administrators, Chapter 468, F.S. or licensed general contractor under Chapter 489, F.S.

(3) Special Inspectors shall be in responsible charge of the work of the Authorized Representative, including reviewing reports and spot checks.

(4) Special Inspectors shall institute quality assurance procedures to include but not be limited to requiring unscheduled visits, utilization or relevant check lists, use of a Daily Inspection Report and insuring that the Special Inspector or the Authorized Representative is at the project whenever so required by the inspection plan.

*Rulemaking Authority 471.008 FS. Law Implemented 471.015(7) FS. History-New 3-21-01, Amended 4-5-04, 5-6-09.*

**61G15-37.001: Performance Standards and Measurable Outcomes**

<b>Summary:</b>	Purpose and effect of the change is to describe additional responsibilities of FEMC administrative staff.
<b>Notice:</b>	Published in the 07/10/2009 issue of the Florida Administrative Weekly.
<b>Adopted:</b>	Effective 09/13/2009

**Final Rule (09/13/2009)**

**61G15-37.001: Performance Standards and Measurable Outcomes.**

In order to facilitate efficient and cost effective regulation by the Florida Engineers Management Corporation (“FEMC”), the following performance standards and measurable outcomes are adopted:

(1) FEMC shall make a determination of legal sufficiency within 30 days of receipt of a complaint.

(2) Within fifteen days of receiving a complaint that is determined to be legally sufficient, FEMC shall furnish to the subject or the subject’s attorney a copy of the complaint or document that resulted in the initiation of the investigation.

(3) FEMC shall provide status reports to the Board regarding all outstanding disciplinary cases at every other regularly scheduled meeting of the Board. The status report shall include all legally sufficient disciplinary cases until entry of a final order by the Board. Upon entry of a final order, FEMC shall notify the licensee’s employer of the action taken by the Board.

(4) FEMC shall refer to the board any investigation or disciplinary proceeding not before the Division of Administrative Hearings pursuant to Chapter 120, F.S., or otherwise completed by FEMC within 1 year after the filing of a complaint.

(5) FEMC shall notify the person who filed the complaint of the status of the investigation every six months, including whether probable cause has been found, when the case is agendaed for consideration by the Board and the status of any administrative proceeding or appeal.

(6) At least 90 days before the end of a licensure cycle, FEMC shall forward a licensure

renewal notification to active or inactive licensees at the licensee’s last known address of record with FEMC.

(7) At least 90 days before the end of a licensure cycle, FEMC shall forward a notice of pending cancellation of licensure to a delinquent status licensee at the licensee’s last known address of record with FEMC.

(8) Upon receipt of an application for a license, FEMC shall examine the application and, within 30 days after such receipt, notify the applicant of any apparent errors or omissions and request any additional information FEMC is permitted by law to require.

(9) Every application for a license shall be approved or denied within 90 days after receipt of a completed application.

(10) If an applicant seeks a license for an activity that is exempt from licensure, FEMC shall notify the applicant and return any tendered application fee within 30 days after receipt of the original application.

(11) FEMC shall maintain the Board’s web site at [www.fbpe.org](http://www.fbpe.org). All final orders involving disciplinary cases shall be posted on the web site, until the terms of the final order are completed, or until the licensee becomes inactive, retires, relinquishes the license or permits the license to become null and void.

*Rulemaking Authority 471.038(3)(n) FS. Law Implemented 471.038(3)(m) FS. History–New 11-12-02, Amended 4-8-07, 9-13-09.*

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# Florida Laws and Rules for Engineers

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## **Section 3 – Changes to Chapters 455 and 471 F.S. in the Preceding Biennium**

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**The Florida Statutes**

There have been several significant changes in Chapters 455 and 471 in the preceding biennium. For your convenience and review, we have included the full text of both chapters.

New sections are highlighted in RED and the prior wording is highlighted in BLUE.

**Chapter 471 Engineering**

**471.001 Purpose.**

**471.003 Qualifications for practice; exemptions.**

**471.0035 Instructors in postsecondary educational institutions; exemption from licensure requirement.**

**471.005 Definitions.**

**471.7 Board of Professional Engineers.**

**471.8 Rulemaking authority.**

**471.9 Board headquarters.**

**471.011 Fees.**

**471.013 Examinations; prerequisites.**

**471.015 Licensure.**

**471.017 Renewal of license.**

**471.019 Reactivation.**

**471.0195 Florida Building Code training for engineers.**

**471.021 Engineers and firms of other states; temporary certificates to practice in Florida.**

**471.023 Certification of business organizations.**

**471.025 Seals.**

**471.027 Engineers authorized to enter lands of third parties under certain conditions.**

**471.031 Prohibitions; penalties.**

**471.033 Disciplinary proceedings.**

**471.37 Effect of chapter locally.**

**471.38 Florida Engineers Management Corporation.**

**471.0385 Court action; effect.**

**471.045 Professional engineers performing building code inspector duties.**

**471.001 Purpose.**--The Legislature deems it necessary in the interest of public health and safety to regulate the practice of engineering in this state.

**History.**--ss. 1, 42, ch. 79-243; ss. 2, 3, ch. 81-318; ss. 14, 15, ch. 89-30; s. 4, ch. 91-429; s. 5, ch. 2000-332.

**471.003 Qualifications for practice; exemptions.**--

(1) No person other than a duly licensed engineer shall practice engineering or use the name or title of "licensed engineer," "professional engineer," or any other title, designation, words, letters, abbreviations, or device tending to indicate that such person holds an active license as an engineer in this state.

(2) The following persons are not required to be licensed under the provisions of this chapter as a licensed engineer:

(a) Any person practicing engineering for the improvement of, or otherwise affecting, property legally owned by her or him, unless such practice involves a public utility or the public health, safety, or welfare or the safety or health of employees. This paragraph shall not be construed as authorizing the practice of engineering through an agent or employee who is not duly licensed under the provisions of this chapter.

(b) 1.A person acting as a public officer employed by any state, county, municipal, or other governmental unit of this state when working on any project the total estimated cost of which is \$10,000 or less.

2. Persons who are employees of any state, county, municipal, or other governmental unit of this state and who are the subordinates of a person in responsible charge licensed under this

chapter, to the extent that the supervision meets standards adopted by rule of the board.

(c) Regular full-time employees of a corporation not engaged in the practice of engineering as such, whose practice of engineering for such corporation is limited to the design or fabrication of manufactured products and servicing of such products.

(d) Regular full-time employees of a public utility or other entity subject to regulation by the Florida Public Service Commission, Federal Energy Regulatory Commission, or Federal Communications Commission.

(e) Employees of a firm, corporation, or partnership who are the subordinates of a person in responsible charge, licensed under this chapter.

(f) Any person as contractor in the execution of work designed by a professional engineer or in the supervision of the construction of work as a foreman or superintendent.

(g) A licensed surveyor and mapper who takes, or contracts for, professional engineering services incidental to her or his practice of surveying and mapping and who delegates such engineering services to a licensed professional engineer qualified within her or his firm or contracts for such

professional engineering services to be performed by others who are licensed professional engineers under the provisions of this chapter.

(h) Any electrical, plumbing, air-conditioning, or mechanical contractor whose practice includes the design and fabrication of electrical, plumbing, air-conditioning, or mechanical systems, respectively, which she or he installs by virtue of a license issued under chapter 489, under part I of chapter 553, or under any special act or ordinance when working on any construction project which:

1. Requires an electrical or plumbing or air-conditioning and refrigeration system with a value of \$125,000 or less; and

2. a. Requires an aggregate service capacity of 600 amperes (240 volts) or less on a residential electrical system or 800 amperes

(240 volts) or less on a commercial or industrial electrical system;

b. Requires a plumbing system with fewer than 250 fixture units; or

c. Requires a heating, ventilation, and air-conditioning system not to exceed a 15-ton-per-system capacity, or if the project is designed to accommodate 100 or fewer persons.

(i) Any general contractor, certified or registered pursuant to the provisions of chapter 489, when negotiating or performing services under a design-build contract as long as the engineering services offered or rendered in connection with the contract are offered and rendered by an engineer licensed in accordance with this chapter.

(j) Any defense, space, or aerospace company, whether a sole proprietorship, firm, limited liability company, partnership, joint venture, joint stock association, corporation, or other business entity, subsidiary, or affiliate, or any employee, contract worker, subcontractor, or independent contractor of the defense, space, or aerospace company who provides engineering for aircraft, space launch vehicles, launch services, satellites, satellite services, or other defense, space, or aerospace-related product or services, or components thereof.

(3) Notwithstanding the provisions of this chapter or of any other law, no licensed engineer whose principal practice is civil or structural engineering, or employee or subordinate under the responsible supervision or control of the engineer, is precluded from performing architectural services which are purely incidental to her or his engineering practice, nor is any licensed architect, or employee or subordinate under the responsible supervision or control of the architect, precluded from performing engineering services which are purely incidental to her or his architectural practice. However, no engineer shall practice architecture or use the designation "architect" or any term derived therefrom, and no architect shall practice engineering or use the designation "engineer" or any term derived therefrom.

**History.**--ss. 10, 42, ch. 79-243; ss. 3, 10, ch. 81-302; ss. 2, 3, ch. 81-318; s. 5, ch. 82-179; s. 3, ch. 83-160; ss. 46, 119, ch. 83-329; s. 1, ch. 85-134; s. 57, ch. 87-225; s. 2, ch. 87-341; s. 2, ch. 87-349; ss. 1, 14, 15, ch.

89-30; s. 1, ch. 89-115; s. 67, ch. 89-162; s. 4, ch. 91-429; ss. 80, 118, ch. 94-119; s. 330, ch. 97-103; s. 65, ch. 98-287; s. 31, ch. 2000-356; s. 16, ch. 2002-299; s. 1, ch. 2003-425; s. 4, ch. 2004-332; s. 64, ch. 2009-195.

**PRIOR WORDING: 471.003 Qualifications for practice; exemptions.--**

(1) No person other than a duly licensed engineer shall practice engineering or use the name or title of "licensed engineer," "professional engineer," or any other title, designation, words, letters, abbreviations, or device tending to indicate that such person holds an active license as an engineer in this state.

(2) The following persons are not required to be licensed under the provisions of this chapter as a licensed engineer:

(a) Any person practicing engineering for the improvement of, or otherwise affecting, property legally owned by her or him, unless such practice involves a public utility or the public health, safety, or welfare or the safety or health of employees. This paragraph shall not be construed as authorizing the practice of engineering through an agent or employee who is not duly licensed under the provisions of this chapter.

(b)1. A person acting as a public officer employed by any state, county, municipal, or other governmental unit of this state when working on any project the total estimated cost of which is \$10,000 or less.

2. Persons who are employees of any state, county, municipal, or other governmental unit of this state and who are the subordinates of a person in responsible charge licensed under this chapter, to the extent that the supervision meets standards adopted by rule of the board.

(c) Regular full-time employees of a corporation not engaged in the practice of engineering as such, whose practice of engineering for such corporation is limited to the design or fabrication of manufactured products and servicing of such products.

(d) Regular full-time employees of a public utility or other entity subject to regulation by the Florida Public Service Commission, Federal Energy Regulatory Commission, or Federal Communications Commission.

(e) Employees of a firm, corporation, or partnership who are the subordinates of a person in responsible charge, licensed under this chapter.

(f) Any person as contractor in the execution of work designed by a professional engineer or in the supervision of the construction of work as a foreman or superintendent.

(g) A licensed surveyor and mapper who takes, or contracts for, professional engineering services incidental to her or his practice of surveying and mapping and who delegates such engineering services to a licensed professional engineer qualified within her or his firm or contracts for such professional engineering services to be performed by others who are licensed professional engineers under the provisions of this chapter.

(h) Any electrical, plumbing, air-conditioning, or mechanical contractor whose practice includes the design and fabrication of electrical, plumbing, air-conditioning, or mechanical systems, respectively, which she or he installs by virtue of a license issued under chapter 489, under part I of chapter 553, or under any special act or ordinance when working on any construction project which:

1. Requires an electrical or plumbing or air-conditioning and refrigeration system with a value of \$50,000 or less; and

2.a. Requires an aggregate service capacity of 600 amperes (240 volts) or less on a residential electrical system or 800 amperes (240 volts) or less on a commercial or industrial electrical system;

b. Requires a plumbing system with fewer than 250 fixture units; or

c. Requires a heating, ventilation, and air-conditioning system not to exceed a 15-ton-per-

system capacity, or if the project is designed to accommodate 100 or fewer persons.

(i) Any general contractor, certified or registered pursuant to the provisions of chapter 489, when negotiating or performing services under a design-build contract as long as the engineering services offered or rendered in connection with the contract are offered and rendered by an engineer licensed in accordance with this chapter.

(j) Any defense, space, or aerospace company, whether a sole proprietorship, firm, limited liability company, partnership, joint venture, joint stock association, corporation, or other business entity, subsidiary, or affiliate, or any employee, contract worker, subcontractor, or independent contractor of the defense, space, or aerospace company who provides engineering for aircraft, space launch vehicles, launch services, satellites, satellite services, or other defense, space, or aerospace-related product or services, or components thereof.

(3) Notwithstanding the provisions of this chapter or of any other law, no licensed engineer whose principal practice is civil or structural engineering, or employee or subordinate under the responsible supervision or control of the engineer, is precluded from performing architectural services which are purely incidental to her or his engineering practice, nor is any licensed architect, or employee or subordinate under the responsible supervision or control of the architect, precluded from performing engineering services which are purely incidental to her or his architectural practice. However, no engineer shall practice architecture or use the designation "architect" or any term derived therefrom, and no architect shall practice engineering or use the designation "engineer" or any term derived therefrom.

**471.0035 Instructors in postsecondary educational institutions; exemption from licensure requirement.**--For the sole purpose of teaching the principles and methods of engineering design, notwithstanding the

provisions of s. 471.005(7), a person employed by a public postsecondary educational institution, or by an independent postsecondary educational institution licensed or exempt from licensure pursuant to the provisions of chapter 1005, is not required to be licensed under the provisions of this chapter as a professional engineer.

**History.**--s. 11, ch. 99-252; s. 32, ch. 2000-356; s. 4, ch. 2000-372; s. 17, ch. 2002-299; s. 1017, ch. 2002-387.

**471.005 Definitions.--As used in this chapter, the term:**

(1) "Board" means the Board of Professional Engineers.

(2) "Board of directors" means the board of directors of the Florida Engineers Management Corporation.

(3) "Certificate of authorization" means a license to practice engineering issued by the management corporation to a corporation or partnership.

(4) "Department" means the Department of Business and Professional Regulation.

(5) "Engineer" includes the terms "professional engineer" and "licensed engineer" and means a person who is licensed to engage in the practice of engineering under this chapter.

(6) "Engineer intern" means a person who has graduated from an engineering curriculum approved by the board and has passed the fundamentals of engineering examination as provided by rules adopted by the board.

(7) "Engineering" includes the term "professional engineering" and means any service or creative work, the adequate performance of which requires engineering education, training, and experience in the application of special knowledge of the mathematical, physical, and engineering sciences to such services or creative work as consultation, investigation, evaluation, planning, and design of engineering works and systems, planning the use of land and water, teaching of the principles and methods of engineering design, engineering surveys, and the inspection of construction for the purpose of determining in

general if the work is proceeding in compliance with drawings and specifications, any of which embraces such services or work, either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects, and industrial or consumer products or equipment of a mechanical, electrical, hydraulic, pneumatic, or thermal nature, insofar as they involve safeguarding life, health, or property; and includes such other professional services as may be necessary to the planning, progress, and completion of any engineering services. A person who practices any branch of engineering; who, by verbal claim, sign, advertisement, letterhead, or card, or in any other way, represents himself or herself to be an engineer or, through the use of some other title, implies that he or she is an engineer or that he or she is licensed under this chapter; or who holds himself or herself out as able to perform, or does perform, any engineering service or work or any other service designated by the practitioner which is recognized as engineering shall be construed to practice or offer to practice engineering within the meaning and intent of this chapter.

(8) "License" means the licensing of engineers or certification of businesses to practice engineering in this state.

(9) "Management corporation" means the Florida Engineers Management Corporation.

(10) "Retired professional engineer" or "professional engineer, retired" means a person who has been duly licensed as a professional engineer by the board and who chooses to relinquish or not to renew his or her license and applies to and is approved by the board to be granted the title "Professional Engineer, Retired."

(11) "Secretary" means the Secretary of Business and Professional Regulation.

(12) "Space or aerospace company" means any business entity concerned with the design, manufacture, or support of aircraft, rockets, missiles, spacecraft, satellites, space vehicles, space stations, space facilities, or components thereof, and equipment, systems, facilities, simulators, programs, products, services, and activities related thereto.

(13) "Defense company" means any business entity that holds a valid Department of Defense contract or any business entity that is a subcontractor under a valid Department of Defense contract. The term includes any business entity that holds valid contracts or subcontracts for products or services for military use under prime contracts with the United States Department of Defense, the United States Department of State, or the United States Coast Guard.

**History.**--ss. 2, 42, ch. 79-243; ss. 4, 10, ch. 81-302; ss. 2, 3, ch. 81-318; s. 4, ch. 83-160; s. 4, ch. 84-365; ss. 2, 14, 15, ch. 89-30; s. 4, ch. 91-429; s. 151, ch. 94-218; s. 331, ch. 97-103; s. 33, ch. 2000-356; s. 3, ch. 2000-372; s. 18, ch. 2002-299; s. 2, ch. 2003-425.

**471.7 Board of Professional Engineers.--**

There is created in the department the Board of Professional Engineers. The board shall consist of 11 members, nine of whom shall be licensed engineers and two of whom shall be laypersons who are not and have never been engineers or members of any closely related profession or occupation. Of the members who are licensed engineers, three shall be civil engineers, one shall be a structural engineer, one shall be either an electrical or electronic engineer, one shall be a mechanical engineer, one shall be an industrial engineer, one shall be an engineering educator, and one shall be from any discipline of engineering other than civil engineering. Members shall be appointed by the Governor for terms of 4 years each.

**History.**--ss. 3, 42, ch. 79-243; ss. 5, 9, 10, ch. 81-302; ss. 2, 3, ch. 81-318; ss. 3, 14, 15, ch. 89-30; s. 4, ch. 91-429; s. 152, ch. 94-218; s. 19, ch. 2002-299; s. 1, ch. 2004-332.

**471.8 Rulemaking authority.--**

The board has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement provisions of this chapter or chapter 455 conferring duties upon it.

**History.**--s. 1, ch. 87-341; s. 1, ch. 87-349; s. 1, ch. 88-303; ss. 4, 14, 15, ch. 89-30; s. 4, ch. 91-429; s. 109, ch. 98166; s. 142, ch. 98-200; s. 170, ch. 2000-160.

**471.9 Board headquarters.**--The location of the Board of Professional Engineers shall be in Leon County.

*History.*--ss. 3, 42, ch. 79-243; ss. 6, 10, ch. 81-302; ss. 2, 3, ch. 81-318; ss. 5, 14, 15, ch. 89-30; s. 4, ch. 91-429.

**471.011 Fees.--**

(1) The board by rule may establish fees to be paid for applications, examination, reexamination, licensing and renewal, inactive status application and reactivation of inactive licenses, and recordmaking and recordkeeping. The board may also establish by rule a delinquency fee. The board shall establish fees that are adequate to ensure the continued operation of the board. Fees shall be based on department estimates of the revenue required to implement this chapter and the provisions of law with respect to the regulation of engineers.

(2) The initial application and examination fee shall not exceed \$125 plus the actual per applicant cost to the management corporation to purchase the examination from the National Council of Examiners for Engineering and Surveying or a similar national organization. The examination fee shall be in an amount which covers the cost of obtaining and administering the examination and shall be refunded if the applicant is found ineligible to sit for the examination. The application fee shall be nonrefundable.

(3) The initial license fee shall not exceed \$125.

(4) The fee for a certificate of authorization shall not exceed \$125.

(5) The biennial renewal fee shall not exceed \$125.

(6) The fee for a temporary registration or certificate to practice engineering shall not exceed \$25 for an individual or \$50 for a business firm.

(7) The fee for licensure by endorsement shall not exceed \$150.

(8) The fee for application for inactive status or for reactivation of an inactive license shall not exceed \$150.

*History.*--ss. 4, 42, ch. 79-243; ss. 2, 3, ch. 81-318; s. 20, ch. 88-205; ss. 6, 14, 15, ch. 89-30; s. 4, ch. 91-429; s. 212, ch. 94-119; s. 1, ch. 97-312; s. 34, ch. 2000-356; s. 5, ch. 2000-372.

**471.013 Examinations; prerequisites.--**

(1)(a) A person shall be entitled to take an examination for the purpose of determining whether she or he is qualified to practice in this state as an engineer if the person is of good moral character and:

1. Is a graduate from an approved engineering curriculum of 4 years or more in a school, college, or university which has been approved by the board and has a record of 4 years of active engineering experience of a character indicating competence to be in responsible charge of engineering;

2. Is a graduate of an approved engineering technology curriculum of 4 years or more in a school, college, or university within the State University System, having been enrolled or having graduated prior to July 1, 1979, and has a record of 4 years of active engineering experience of a character indicating competence to be in responsible charge of engineering; or

3. Has, in lieu of such education and experience requirements, 10 years or more of active engineering work of a character indicating that the applicant is competent to be placed in responsible charge of engineering. However, this subparagraph does not apply unless such person notifies the department before July 1, 1984, that she or he was engaged in such work on July 1, 1981.

The board shall adopt rules providing for the review and approval of schools or colleges and the courses of study in engineering in such schools and colleges. The rules shall be based on the educational requirements for engineering as defined in s. 471.005. The board may adopt rules providing for the acceptance of the approval and accreditation of schools and courses of study by a nationally accepted accreditation organization.

(b) A person shall be entitled to take the fundamentals examination for the purpose of

determining whether she or he is qualified to practice in this state as an engineer intern if she or he is in the final year of, or is a graduate of, an approved engineering curriculum in a school, college, or university approved by the board.

(c) A person shall not be entitled to take the principles and practice examination until that person has successfully completed the fundamentals examination.

(d) The board shall deem that an applicant who seeks licensure by examination has passed the fundamentals examination when such applicant has received a doctorate degree in engineering from an institution that has an undergraduate engineering program that is accredited by the Engineering Accreditation Commission of the Accreditation Board for Engineering and Technology, Inc., and has taught engineering full time for at least 3 years, at the baccalaureate level or higher, after receiving that degree.

(e) Every applicant who is qualified to take the fundamentals examination or the principles and practice examination shall be allowed to take either examination three times, notwithstanding the number of times either examination has been previously failed. If an applicant fails either examination three times, the board shall require the applicant to complete additional college-level education courses as a condition of future eligibility to take that examination.

(2)(a) The board may refuse to certify an applicant for failure to satisfy the requirement of good moral character only if:

1. There is a substantial connection between the lack of good moral character of the applicant and the professional responsibilities of a licensed engineer; and
2. The finding by the board of lack of good moral character is supported by clear and convincing evidence.

(b) When an applicant is found to be unqualified for a license because of a lack of good moral character, the board shall furnish the applicant a statement containing the findings of the board, a complete record of the evidence upon which the determination was based, and a notice of the rights of the applicant to a rehearing and appeal.

**History.**--ss. 5, 42, ch. 79-243; s. 340, ch. 81-259; ss. 7, 10, ch. 81-302; ss. 2, 3, ch. 81-318; ss. 14, 15, ch. 89-30; s. 4, ch. 91-429; s. 141, ch. 92-149; s. 332, ch. 97-103; s. 20, ch. 2002-299; s. 1, ch. 2003-293; s. 2, ch. 2004-332.

**471.015 Licensure.--**

(1) The management corporation shall issue a license to any applicant who the board certifies is qualified to practice engineering and who has passed the fundamentals examination and the principles and practice examination.

(2) The board shall certify for licensure any applicant who satisfies the requirements of s. 471.013. The board may refuse to certify any applicant who has violated any of the provisions of s. 471.031.

(3) The board shall certify as qualified for a license by endorsement an applicant who:

(a) Qualifies to take the fundamentals examination and the principles and practice examination as set forth in s. 471.013, has passed a United States national, regional, state, or territorial licensing examination that is substantially equivalent to the fundamentals examination and principles and practice examination required by s. 471.013, and has satisfied the experience requirements set forth in s. 471.013; or

(b) Holds a valid license to practice engineering issued by another state or territory of the United States, if the criteria for issuance of the license were substantially the same as the licensure criteria that existed in this state at the time the license was issued.

(4) The management corporation shall not issue a license by endorsement to any applicant who is under investigation in another state for any act that would constitute a violation of this chapter or of chapter 455 until such time as the investigation is complete and disciplinary proceedings have been terminated.

(5) (a) The board shall deem that an applicant who seeks licensure by endorsement has passed an examination substantially equivalent to the fundamentals examination when such applicant:

1. Has held a valid professional engineer's license in another state for 15 years and has had 20 years of continuous professional-level engineering experience;

2. Has received a doctorate degree in engineering from an institution that has an undergraduate engineering degree program which is accredited by the Accreditation Board for Engineering Technology; or

3. Has received a doctorate degree in engineering and has taught engineering full time for at least 3 years, at the baccalaureate level or higher, after receiving that degree.

(b) The board shall deem that an applicant who seeks licensure by endorsement has passed an examination substantially equivalent to the fundamentals examination and the principles and practices examination when such applicant has held a valid professional engineer's license in another state for 25 years and has had 30 years of continuous professional-level engineering experience.

(6) The board may require a personal appearance by any applicant for licensure under this chapter. Any applicant of whom a personal appearance is required must be given adequate notice of the time and place of the appearance and provided with a statement of the purpose of and reasons requiring the appearance.

(7) The board shall, by rule, establish qualifications for certification of licensees as special inspectors of threshold buildings, as defined in ss. 553.71 and 553.79, and shall compile a list of persons who are certified. A special inspector is not required to meet standards for certification other than those established by the board, and the fee owner of a threshold building may not be prohibited from selecting any person certified by the board to be a special inspector. The board shall develop minimum qualifications for the qualified representative of the special inspector who is authorized to perform inspections of threshold buildings on behalf of the special inspector under s. 553.79.

**History.**--ss. 6, 42, ch. 79-243; ss. 2, 3, ch. 81-318; s. 2, ch. 85-134; ss. 14, 15, ch. 89-30; s. 4, ch. 91-429; ss. 82, 216, ch. 94-119; s. 32, ch. 95-392; s. 110, ch. 98-166; s. 37, ch. 2000-141; s. 171, ch. 2000-160; s.

35, ch. 2000-356; s. 6, ch. 2000-372; s. 21, ch. 2002-299; s. 2, ch. 2003-293.

**471.017 Renewal of license.--**

(1) The management corporation shall renew a license upon receipt of the renewal application and fee.

(2) The board shall adopt rules establishing a procedure for the biennial renewal of licenses.

(3) The board shall require a demonstration of continuing professional competency of engineers as a condition of license renewal or relicensure. Every licensee must complete 4 professional development hours, for each year of the license renewal period. For each renewal period for such continuing education, 4 hours shall relate to this chapter and the rules adopted under this chapter and the remaining 4 hours shall relate to the licensee's area of practice. The board shall adopt rules that are consistent with the guidelines of the National Council of Examiners for Engineering and Surveying for multijurisdictional licensees for the purpose of avoiding proprietary continuing professional competency requirements and shall allow nonclassroom hours to be credited. The board may, by rule, exempt from continuing professional competency requirements retired professional engineers who no longer sign and seal engineering documents and licensees in unique circumstances that severely limit opportunities to obtain the required professional development hours.

**History.**--ss. 7, 42, ch. 79-243; ss. 2, 3, ch. 81-318; ss. 14, 15, ch. 89-30; s. 4, ch. 91-429; s. 213, ch. 94-119; s. 11, ch. 98-287; s. 36, ch. 2000-356; s. 7, ch. 2000-372.

**471.019 Reactivation.--**The board shall prescribe by rule continuing education requirements for reactivating a license. The continuing education requirements for reactivating a license for a licensed engineer may not exceed 12 classroom hours for each year the license was inactive.

**History.**--ss. 8, 42, ch. 79-243; s. 341, ch. 81-259; ss. 2, 3, ch. 81-318; s. 104, ch. 83-329; ss. 7, 14, 15, ch.

89-30; s. 4, ch. 91-429; s. 214, ch. 94-119; s. 12, ch. 98-287; s. 37, ch. 2000-356; s. 22, ch. 2002-299.

**471.0195 Florida Building Code training for engineers.**--All licensees actively participating in the design of engineering works or systems in connection with buildings, structures, or facilities and systems covered by the Florida Building Code shall take continuing education courses and submit proof to the board, at such times and in such manner as established by the board by rule, that the licensee has completed any specialized or advanced courses on any portion of the Florida Building Code applicable to the licensee's area of practice. The board shall record reported continuing education courses on a system easily accessed by code enforcement jurisdictions for evaluation when determining license status for purposes of processing design documents. Local jurisdictions shall be responsible for notifying the board when design documents are submitted for building construction permits by persons who are not in compliance with this section. The board shall take appropriate action as provided by its rules when such noncompliance is determined to exist.

**History.**--s. 38, ch. 2000-356; s. 23, ch. 2002-299; s. 12, ch. 2009-195.

**PRIOR WORDING: 471.0195 Florida Building Code training for engineers.**--All licensees actively participating in the design of engineering works or systems in connection with buildings, structures, or facilities and systems covered by the Florida Building Code shall take continuing education courses and submit proof to the board, at such times and in such manner as established by the board by rule, that the licensee has completed the core curriculum courses and any specialized or advanced courses on any portion of the Florida Building Code applicable to the licensee's area of practice or has passed the appropriate equivalency test of the Building Code Training Program as required by s. 553.841. The board shall record reported continuing education courses on a system easily accessed by code enforcement jurisdictions for evaluation when determining license status for purposes of processing design documents. Local jurisdictions

shall be responsible for notifying the board when design documents are submitted for building construction permits by persons who are not in compliance with this section. The board shall take appropriate action as provided by its rules when such noncompliance is determined to exist.

**471.021 Engineers and firms of other states; temporary certificates to practice in Florida.**

(1) Upon approval of the board and payment of the fee set in s. 471.011, the management corporation shall issue a temporary license for work on one specified project in this state for a period not to exceed 1 year to an engineer holding a certificate to practice in another state, provided Florida licensees are similarly permitted to engage in work in such state and provided that the engineer be qualified for licensure by endorsement.

(2) Upon approval by the board and payment of the fee set in s. 471.011, the management corporation shall issue a temporary certificate of authorization for work on one specified project in this state for a period not to exceed 1 year to an out-of-state corporation, partnership, or firm, provided one of the principal officers of the corporation, one of the partners of the partnership, or one of the principals in the fictitiously named firm has obtained a temporary license in accordance with subsection (1).

(3) The application for a temporary license shall constitute appointment of the Department of State as an agent of the applicant for service of process in any action or proceeding against the applicant arising out of any transaction or operation connected with or incidental to the practice of engineering for which the temporary license was issued.

**History.**--ss. 9, 42, ch. 79-243; ss. 2, 3, ch. 81-318; ss. 14, 15, ch. 89-30; s. 4, ch. 91-429; s. 142, ch. 92-149; s. 8, ch. 2000-372; s. 24, ch. 2002-299.

**471.023 Certification of business organizations.**

(1) The practice of, or the offer to practice, engineering by licensees or offering engineering

services to the public through a business organization, including a partnership, corporation, business trust, or other legal entity or by a business organization, including a corporation, partnership, business trust, or other legal entity offering such services to the public through licensees under this chapter as agents, employees, officers, or partners is permitted only if the business organization possesses a certification issued by the management corporation pursuant to qualification by the board, subject to the provisions of this chapter. One or more of the principal officers of the business organization or one or more partners of the partnership and all personnel of the business organization who act in its behalf as engineers in this state shall be licensed as provided by this chapter. All final drawings, specifications, plans, reports, or documents involving practices licensed under this chapter which are prepared or approved for the use of the business organization or for public record within the state shall be dated and shall bear the signature and seal of the licensee who prepared or approved them. Nothing in this section shall be construed to mean that a license to practice engineering shall be held by a business organization. Nothing herein prohibits business organizations from joining together to offer engineering services to the public, if each business organization otherwise meets the requirements of this section. No business organization shall be relieved of responsibility for the conduct or acts of its agents, employees, or officers by reason of its compliance with this section, nor shall any individual practicing engineering be relieved of responsibility for professional services performed by reason of his or her employment or relationship with a business organization.

(2) For the purposes of this section, a certificate of authorization shall be required for any business organization or other person practicing under a fictitious name, offering engineering services to the public. However, when an individual is practicing engineering in his or her own given name, he or she shall not be required to be licensed under this section.

(3) The fact that a licensed engineer practices through a business organization does not relieve the licensee from personal liability for negligence, misconduct, or wrongful acts

committed by him or her. Partnerships and all partners shall be jointly and severally liable for the negligence, misconduct, or wrongful acts committed by their agents, employees, or partners while acting in a professional capacity. Any officer, agent, or employee of a business organization other than a partnership shall be personally liable and accountable only for negligent acts, wrongful acts, or misconduct committed by him or her or committed by any person under his or her direct supervision and control, while rendering professional services on behalf of the business organization. The personal liability of a shareholder or owner of a business organization, in his or her capacity as shareholder or owner, shall be no greater than that of a shareholder-employee of a corporation incorporated under chapter 607. The business organization shall be liable up to the full value of its property for any negligent acts, wrongful acts, or misconduct committed by any of its officers, agents, or employees while they are engaged on its behalf in the rendering of professional services.

(4) Each certification of authorization shall be renewed every 2 years. Each business organization certified under this section must notify the board within 1 month after any change in the information contained in the application upon which the certification is based.

(5) Disciplinary action against a business organization shall be administered in the same manner and on the same grounds as disciplinary action against a licensed engineer.

**History.**--ss. 11, 42, ch. 79-243; s. 1, ch. 80-223; ss. 2, 3, ch. 81-318; ss. 8, 14, 15, ch. 89-30; s. 4, ch. 91-429; s. 143, ch. 92-149; s. 333, ch. 97-103; s. 39, ch. 2000-356; s. 9, ch. 2000-372; s. 25, ch. 2002-299; s. 3, ch. 2003-293.

#### **471.025 Seals.--**

(1) The board shall prescribe, by rule, one or more forms of seal to be used by licensees. Each licensee shall obtain at least one seal in the form approved by rule of the board and may, in addition, register his or her seal electronically in accordance with ss. 668.001-668.006. All final drawings, specifications, plans, reports, or documents prepared or issued by the licensee

and being filed for public record and all final documents provided to the owner or the owner's representative shall be signed by the licensee, dated, and sealed with said seal. Such signature, date, and seal shall be evidence of the authenticity of that to which they are affixed. Drawings, specifications, plans, reports, final documents, or documents prepared or issued by a licensee may be transmitted electronically and may be signed by the licensee, dated, and sealed electronically with said seal in accordance with ss. 668.001-668.006.

(2) It is unlawful for any person to seal or digitally sign any document with a seal or digital signature after his or her license has expired or been revoked or suspended, unless such license has been reinstated or reissued. When an engineer's license has been revoked or suspended by the board, the licensee shall, within a period of 30 days after the revocation or suspension has become effective, surrender his or her seal to the executive director of the board and confirm to the executive director the cancellation of the licensee's digital signature in accordance with ss. 668.001-668.006. In the event the engineer's license has been suspended for a period of time, his or her seal shall be returned to him or her upon expiration of the suspension period.

(3) No licensee shall affix or permit to be affixed his or her seal, name, or digital signature to any plan, specification, drawing, final bid document, or other document that depicts work which he or she is not licensed to perform or which is beyond his or her profession or specialty therein.

**History.**--ss. 12, 42, ch. 79-243; ss. 2, 3, ch. 81-318; ss. 14, 15, ch. 89-30; s. 4, ch. 91-429; s. 144, ch. 92-149; s. 334, ch. 97-103; s. 4, ch. 97-241; s. 40, ch. 2000-356; s. 32, ch. 2000-372; s. 2, ch. 2001-63; s. 26, ch. 2002-299.

**471.027 Engineers authorized to enter lands of third parties under certain conditions.--**

Engineers are hereby granted permission and authority to go on, over, and upon the lands of others when necessary to make engineering surveys and, in so doing, to carry with them their agents and employees necessary for that

purpose. Entry under the right hereby granted shall not constitute trespass, and engineers and their duly authorized agents or employees so entering shall not be liable to arrest or a civil action by reason of such entry; however, nothing in this section shall be construed as giving authority to said licensees, agents, or employees to destroy, injure, damage, or move anything on lands of another without the written permission of the landowner.

**History.**--ss. 17, 42, ch. 79-243; ss. 2, 3, ch. 81-318; ss. 14, 15, ch. 89-30; s. 4, ch. 91-429; s. 27, ch. 2002-299.

**471.031 Prohibitions; penalties.--**

(1) A person may not:

(a) Practice engineering unless the person is licensed or exempt from licensure under this chapter.

(b) 1. Except as provided in subparagraph 2. or subparagraph 3., use the name or title "professional engineer" or any other title, designation, words, letters, abbreviations, or device tending to indicate that such person holds an active license as an engineer when the person is not licensed under this chapter, including, but not limited to, the following titles: "agricultural engineer," "air-conditioning engineer," "architectural engineer," "building engineer," "chemical engineer," "civil engineer," "control systems engineer," "electrical engineer," "environmental engineer," "fire protection engineer," "industrial engineer," "manufacturing engineer," "mechanical engineer," "metallurgical engineer," "mining engineer," "minerals engineer," "marine engineer," "nuclear engineer," "petroleum engineer," "plumbing engineer," "structural engineer," "transportation engineer," "software engineer," "computer hardware engineer," or "systems engineer."

2. Any person who is exempt from licensure under s. 471.003(2)(j) may use the title or personnel classification of "engineer" in the scope of his or her work under that exemption if the title does not include or connote the term "professional engineer," "registered engineer," "licensed engineer," "registered professional engineer," or "licensed professional engineer."

3. Any person who is exempt from licensure under s. 471.003(2)(c) or (e) may use the title or personnel classification of "engineer" in the scope of his or her work under that exemption if the title does not include or connote the term "professional engineer," "registered engineer," "licensed engineer," "registered professional engineer," or "licensed professional engineer" and if that person is a graduate from an approved engineering curriculum of 4 years or more in a school, college, or university which has been approved by the board.

(c) Present as his or her own the license of another.

(d) Give false or forged evidence to the board or a member thereof.

(e) Use or attempt to use a license that has been suspended, revoked, or placed on inactive or delinquent status.

(f) Employ nonexempt unlicensed persons to practice engineering.

(g) Conceal information relative to violations of this chapter.

(2) Any person who violates any provision of this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**--ss. 14, 42, ch. 79-243; ss. 2, 3, ch. 81-318; s. 47, ch. 83-329; ss. 9, 14, 15, ch. 89-30; s. 4, ch. 91-429; s. 215, ch. 94-119; s. 335, ch. 97-103; s. 41, ch. 2000-356; s. 28, ch. 2002-299; s. 3, ch. 2003-425; s. 3, ch. 2004-332.

**471.033 Disciplinary proceedings.--**

(1) The following acts constitute grounds for which the disciplinary actions in subsection (3) may be taken:

(a) Violating any provision of s. 455.227(1), s. 471.025, or s. 471.031, or any other provision of this chapter or rule of the board or department.

(b) Attempting to procure a license to practice engineering by bribery or fraudulent misrepresentations.

(c) Having a license to practice engineering revoked, suspended, or otherwise acted against, including the denial of licensure, by the

licensing authority of another state, territory, or country, for any act that would constitute a violation of this chapter or chapter 455.

(d) 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 the practice of engineering or the ability to practice engineering.

(e) Making or filing a report or record that the licensee knows to be false, willfully 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 include only those that are signed in the capacity of a licensed engineer.

(f) Advertising goods or services in a manner that is fraudulent, false, deceptive, or misleading in form or content.

(g) Engaging in fraud or deceit, negligence, incompetence, or misconduct, in the practice of engineering.

(h) Violating chapter 455.

(i) Practicing on a revoked, suspended, inactive, or delinquent license.

(j) Affixing or permitting to be affixed his or her seal, name, or digital signature to any final drawings, specifications, plans, reports, or documents that were not prepared by him or her or under his or her responsible supervision, direction, or control.

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

(1) Performing building code inspection services under s. 553.791, without satisfying the insurance requirements of that section.

(2) The board shall specify, by rule, what acts or omissions constitute a violation of subsection (1).

(3) When the board finds any person guilty of any of the grounds set forth in subsection (1), it may enter an order imposing one or more of the following penalties:

(a) Denial of an application for licensure.

- (b) Revocation or suspension of a license.
- (c) Imposition of an administrative fine not to exceed \$5,000 for each count or separate offense.
- (d) Issuance of a reprimand.
- (e) Placement of the licensee on probation for a period of time and subject to such conditions as the board may specify.
- (f) Restriction of the authorized scope of practice by the licensee.
- (g) Restitution.
- (4) The management corporation shall reissue the license of a disciplined engineer or business upon certification by the board that the disciplined person has complied with all of the terms and conditions set forth in the final order.

**History.**--ss. 15, 42, ch. 79-243; ss. 8, 10, ch. 81-302; ss. 2, 3, ch. 81-318; s. 3, ch. 85-134; ss. 10, 14, 15, ch. 89-30; s. 4, ch. 91-429; s. 145, ch. 92-149; s. 217, ch. 94-119; s. 336, ch. 97-103; s. 5, ch. 97-241; s. 111, ch. 98-166; s. 13, ch. 98-287; s. 119, ch. 2000-141; s. 172, ch. 2000-160; s. 10, ch. 2000-372; s. 35, ch. 2001-186; s. 4, ch. 2001-372; s. 29, ch. 2002-299; s. 4, ch. 2003-293; s. 4, ch. 2005-147; s. 53, ch. 2009-195.

**PRIOR WORDING:** (1) The following acts constitute grounds for which the disciplinary actions in subsection (3) may be taken:

- (a) Violating any provision of s. 455.227(1), s. 471.025, or s. 471.031, or any other provision of this chapter or rule of the board or department.
- (b) Attempting to procure a license to practice engineering by bribery or fraudulent misrepresentations.
- (c) Having a license to practice engineering revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of another state, territory, or country, for any act that would constitute a violation of this chapter or chapter 455.

(d) 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 the practice of engineering or the ability to practice engineering.

(e) Making or filing a report or record that the licensee knows to be false, willfully 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 include only those that are signed in the capacity of a licensed engineer.

(f) Advertising goods or services in a manner that is fraudulent, false, deceptive, or misleading in form or content.

(g) Engaging in fraud or deceit, negligence, incompetence, or misconduct, in the practice of engineering.

(h) Violating chapter 455.

(i) Practicing on a revoked, suspended, inactive, or delinquent license.

(j) Affixing or permitting to be affixed his or her seal, name, or digital signature to any final drawings, specifications, plans, reports, or documents that were not prepared by him or her or under his or her responsible supervision, direction, or control.

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

(l) Performing building code inspection services under s. 553.791, without satisfying the insurance requirements of that section.

(2) The board shall specify, by rule, what acts or omissions constitute a violation of subsection (1).

(3) When the board finds any person guilty of any of the grounds set forth in subsection (1), it may enter an order imposing one or more of the following penalties:

- (a) Denial of an application for licensure.
  - (b) Revocation or suspension of a license.
  - (c) Imposition of an administrative fine not to exceed \$5,000 for each count or separate offense.
  - (d) Issuance of a reprimand.
  - (e) Placement of the licensee on probation for a period of time and subject to such conditions as the board may specify.
  - (f) Restriction of the authorized scope of practice by the licensee.
  - (g) Restitution.
- (4) The management corporation shall reissue the license of a disciplined engineer or business upon certification by the board that the disciplined person has complied with all of the terms and conditions set forth in the final order.

**471.037 Effect of chapter locally. --**

- (1) Nothing contained in this chapter shall be construed to repeal, amend, limit, or otherwise affect any local building code or zoning law or ordinance, now or hereafter enacted, which is more restrictive with respect to the services of licensed engineers than the provisions of this chapter.
- (2) In counties or municipalities that issue building permits, such permits may not be issued in any case in which it is apparent from the application for the building permit that the provisions of this chapter have been violated. However, this subsection does not authorize the withholding of building permits in cases involving the exceptions and exemptions set out in s. 471.003.

**History.**--ss. 13, 42, ch. 79-243; ss. 2, 3, ch. 81-318; ss. 12, 14, 15, ch. 89-30; s. 4, ch. 91-429; s. 81, ch. 94-119; s. 42, ch. 2000-356; s. 30, ch. 2002-299.

**471.038 Florida Engineers Management Corporation.--**

- (1) This section may be cited as the "Florida Engineers Management Corporation Act."
- (2) The purpose of this section is to create a public-private partnership by providing that a single nonprofit corporation be established to provide administrative, investigative, and prosecutorial services to the board and that no additional nonprofit corporation be created for these purposes.
- (3) The Florida Engineers Management Corporation is created to provide administrative, investigative, and prosecutorial services to the board in accordance with the provisions of chapter 455 and this chapter. The management corporation may hire staff as necessary to carry out its functions. Such staff are not public employees for the purposes of chapter 110 or chapter 112, except that the board of directors and the staff are subject to the provisions of s. 112.061. The provisions of s. 768.28 apply to the management corporation, which is deemed to be a corporation primarily acting as an instrumentality of the state, but which is not an agency within the meaning of s. 20.03(11). The management corporation shall:
  - (a) Be a Florida corporation not for profit, incorporated under the provisions of chapter 617.
  - (b) Provide administrative, investigative, and prosecutorial services to the board in accordance with the provisions of chapter 455, this chapter, and the contract required by this section.
  - (c) Receive, hold, and administer property and make only prudent expenditures directly related to the responsibilities of the board, and in accordance with the contract required by this section.
  - (d) Be approved by the board, and the department, to operate for the benefit of the board and in the best interest of the state.
  - (e) Operate under a fiscal year that begins on July 1 of each year and ends on June 30 of the following year.
  - (f) Have a seven-member board of directors, five of whom are to be appointed by the board

and must be registrants regulated by the board and two of whom are to be appointed by the secretary and must be laypersons not regulated by the board. All appointments shall be for 4-year terms. No member shall serve more than two consecutive terms. Failure to attend three consecutive meetings shall be deemed a resignation from the board, and the vacancy shall be filled by a new appointment.

(g) Select its officers in accordance with its bylaws. The members of the board of directors who were appointed by the board may be removed by the board.

(h) Select the president of the management corporation, who shall also serve as executive director to the board, subject to approval of the board.

(i) Use a portion of the interest derived from the management corporation account to offset the costs associated with the use of credit cards for payment of fees by applicants or licensees.

(j) Operate under a written contract with the department which is approved by the board. The contract must provide for, but is not limited to:

1. Submission by the management corporation of an annual budget that complies with board rules for approval by the board and the department.

2. Annual certification by the board and the department that the management corporation is complying with the terms of the contract in a manner consistent with the goals and purposes of the board and in the best interest of the state. This certification must be reported in the board's minutes. The contract must also provide for methods and mechanisms to resolve any situation in which the certification process determines noncompliance.

3. Funding of the management corporation through appropriations allocated to the regulation of professional engineers from the Professional Regulation Trust Fund.

4. The reversion to the board, or the state if the board ceases to exist, of moneys, records, data, and property held in trust by the management corporation for the benefit of the board, if the management corporation is no longer approved to operate for the board or the board ceases to exist. All records and data in a computerized

database shall be returned to the department in a form that is compatible with the computerized database of the department.

5. The securing and maintaining by the management corporation, during the term of the contract and for all acts performed during the term of the contract, of all liability insurance coverages in an amount to be approved by the board to defend, indemnify, and hold harmless the management corporation and its officers and employees, the department and its employees, and the state against all claims arising from state and federal laws. Such insurance coverage must be with insurers qualified and doing business in the state. The management corporation must provide proof of insurance to the department. The department and its employees and the state are exempt from and are not liable for any sum of money which represents a deductible, which sums shall be the sole responsibility of the management corporation. Violation of this subparagraph shall be grounds for terminating the contract.

6. Payment by the management corporation, out of its allocated budget, to the department of all costs of representation by the board counsel, including salary and benefits, travel, and any other compensation traditionally paid by the department to other board counsel.

7. Payment by the management corporation, out of its allocated budget, to the department of all costs incurred by the management corporation or the board for the Division of Administrative Hearings of the Department of Management Services and any other cost for utilization of these state services.

8. Payment by the management corporation, out of its allocated budget, to the department of reasonable costs associated with the contract monitor.

(k) Provide for an annual financial audit of its financial accounts and records by an independent certified public accountant. The annual audit report shall include a management letter in accordance with s. 11.45 and a detailed supplemental schedule of expenditures for each expenditure category. The annual audit report must be submitted to the board, the department, and the Auditor General for review.

(l) Provide for persons not employed by the corporation who are charged with the responsibility of receiving and depositing fee and fine revenues to have a faithful performance bond in such an amount and according to such terms as shall be determined in the contract.

(m) Submit to the secretary, the board, and the Legislature, on or before October 1 of each year, a report on the status of the corporation which includes, but is not limited to, information concerning the programs and funds that have been transferred to the corporation. The report must include: the number of license applications received; the number approved and denied and the number of licenses issued; the number of examinations administered and the number of applicants who passed or failed the examination; the number of complaints received; the number determined to be legally sufficient; the number dismissed; the number determined to have probable cause; the number of administrative complaints issued and the status of the complaints; and the number and nature of disciplinary actions taken by the board.

(n) Develop and submit to the department, performance standards and measurable outcomes for the board to adopt by rule in order to facilitate efficient and cost-effective regulation.

(4) The management corporation may not exercise any authority specifically assigned to the board under chapter 455 or this chapter, including determining probable cause to pursue disciplinary action against a licensee, taking final action on license applications or in disciplinary cases, or adopting administrative rules under chapter 120.

(5) Notwithstanding ss. 455.228 and 455.2281, the duties and authority of the department to receive complaints and to investigate and deter the unlicensed practice of engineering are delegated to the board. The board may use funds of the Board of Professional Engineers in the unlicensed activity account established under s. 455.2281 to perform the duties relating to unlicensed activity.

(6) The department shall retain the independent authority to open or investigate any cases or complaints, as necessary to protect the public health, safety, or welfare. In addition, the

department may request that the management corporation prosecute such cases and shall retain sole authority to issue emergency suspension or restriction orders pursuant to s. 120.60.

(7) Management corporation records are public records subject to the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution; however, public records exemptions set forth in ss. 455.217 and 455.229 for records created or maintained by the department shall apply to records created or maintained by the management corporation. In addition, all meetings of the board of directors are open to the public in accordance with s. 286.011 and s. 24(b), Art. I of the State Constitution. The exemptions set forth in s. 455.225, relating to complaints and information obtained pursuant to an investigation by the department, shall apply to such records created or obtained by the management corporation only until an investigation ceases to be active. For the purposes of this subsection, an investigation is considered active so long as the management corporation or any law enforcement or administrative agency is proceeding with reasonable dispatch and has a reasonable, good faith belief that it may lead to the filing of administrative, civil, or criminal proceedings. An investigation ceases to be active when the case is dismissed prior to a finding of probable cause and the board has not exercised its option to pursue the case or 10 days after the board makes a determination regarding probable cause. All information, records, and transcriptions regarding a complaint that has been determined to be legally sufficient to state a claim within the jurisdiction of the board become available to the public when the investigation ceases to be active, except information that is otherwise confidential or exempt from s. 119.07(1). However, in response to an inquiry about the licensure status of an individual, the management corporation shall disclose the existence of an active investigation if the nature of the violation under investigation involves the potential for substantial physical or financial harm to the public. The board shall designate by rule those violations that involve the potential for substantial physical or financial harm. The department and the board shall have access to all records of the management

corporation, as necessary to exercise their authority to approve and supervise the contract.

(8) The management corporation is the sole source and depository for the records of the board, including all historical information and records. The management corporation shall maintain those records in accordance with the guidelines of the Department of State and shall not destroy any records prior to the limits imposed by the Department of State.

(9) The board shall provide by rule for the procedures the management corporation must follow to ensure that all licensure examinations are secure while under the responsibility of the management corporation and that there is an appropriate level of monitoring during the licensure examinations.

**History.**--s. 2, 5, ch. 97-312; s. 112, ch. 98-166; s. 173, ch. 2000-160; ss. 1, 2, ch. 2000-372; s. 121, ch. 2001-266; s. 5, ch. 2003-293.

**471.0385 Court action; effect.**--If any provision of s. 471.038 is held to be unconstitutional or is held to violate the state or federal antitrust laws, the following shall occur:

(1) The corporation shall cease and desist from exercising any powers and duties enumerated in the act.

(2) The Department of Business and Professional Regulation shall resume the performance of such activities. The department shall regain and receive, hold, invest, and administer property and make expenditures for the benefit of the board.

(3) The Executive Office of the Governor, notwithstanding chapter 216, is authorized to reestablish positions, budget authority, and salary rate necessary to carry out the department's responsibilities related to the regulation of professional engineers.

**History.**--s. 3, ch. 97-312.

**471.045 Professional engineers performing building code inspector duties.**--Notwithstanding any other provision of law, a person who is currently licensed under this chapter to practice as a professional engineer may provide building code inspection services

described in s. 468.603(6) and (7) to a local government or state agency upon its request, without being certified by the Florida Building Code Administrators and Inspectors Board under part XII of chapter 468. When performing these building code inspection services, the professional engineer is subject to the disciplinary guidelines of this chapter and s. 468.621(1)(c)-(h). Any complaint processing, investigation, and discipline that arise out of a professional engineer's performing building code inspection services shall be conducted by the Board of Professional Engineers rather than the Florida Building Code Administrators and Inspectors Board. A professional engineer may not perform plans review as an employee of a local government upon any job that the professional engineer or the professional engineer's company designed.

**History.**--s. 7, ch. 98-419; s. 10, ch. 99-254; s. 28, ch. 2000-372

**Chapter 455 Business and Professional Regulation: General Provisions**

**455.01 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, including the Florida Real Estate Commission; except that, for ss. 455.201-455.245, "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 Certified Public Accounting, the Division of Professions, or the Division of Real Estate.

(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 Business and Professional Regulation.

(4) "License" means any permit, registration, certificate, or license issued by the department.

(5) "Licensee" means any person issued a permit, registration, certificate, or license by the department.

(6) "Profession" means any activity, occupation, profession, or vocation regulated by the department in the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation.

**History.**—s. 1, ch. 21885, 1943; s. 1, ch. 28215, 1953; s. 12, ch. 63-195; s. 2, ch. 65-170; s. 27, ch. 67-248; s. 3, ch. 67-409; s. 1, ch. 67-596; s. 121, ch. 71-355; s. 122, ch. 73-333; s. 5, ch. 79-36; s. 123, ch. 79-164; s. 2, ch. 84-70; s. 9, ch. 91-220; s. 4, ch. 92-149; s. 5, ch. 93-220; s. 1, ch. 96-291; s. 3, ch. 97-261; s. 109, ch. 2000-153; s. 23, ch. 2000-160.

*Note.*—Former s. 485.01.

**455.017 Applicability of this chapter.**—This chapter applies only to the regulation of professions by the department.

**History.**—s. 60, ch. 94-218; s. 4, ch. 2010-106.

**PRIOR WORDING: 455.017 Applicability of this chapter.**--The provisions of this chapter apply only to the regulation by the department of professions.

**455.02 Licensure of members of the Armed Forces in good standing and their spouses with administrative boards.**—

(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 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, 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, if 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. 20.165 shall adopt rules that exempt the spouse of a member of the Armed Forces of the United States from licensure renewal provisions, but only in cases of his or her absence from the state because of his or her spouse's duties with the Armed Forces.

(3)(a) The department may issue a temporary professional license to the spouse of an active duty member of the Armed Forces of the United States if the spouse applies to the department in the format prescribed by the department. An application must include proof that:

1. The applicant is married to a member of the Armed Forces of the United States who is on active duty.

2. The applicant holds a valid license for the profession issued by another state, the District of Columbia, any possession or territory of the United States, or any foreign jurisdiction.

3. The applicant's spouse is assigned to a duty station in this state and that the applicant is also assigned to a duty station in this state pursuant to the member's official active duty military orders.

4.a. A complete set of the applicant's fingerprints<sup>1</sup> is submitted to the Department of Law Enforcement for a statewide criminal history check.

b. The Department of Law Enforcement shall forward the fingerprints<sup>2</sup> submitted pursuant to sub-subparagraph a. to the Federal Bureau of Investigation for a national criminal history check. The department shall, and the board may, review the results of the criminal history checks according to the level 2 screening standards in s. 435.04 and determine whether the applicant meets the licensure requirements. The costs of fingerprint processing shall be

borne by the applicant. If the applicant's 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.

(b) An application must be accompanied by an application fee prescribed by the department that is sufficient to cover the cost of issuance of the temporary license.

(c) A temporary license expires 6 months after the date of issuance and is not renewable.

**History.**— s. 2, ch. 21885, 1943; s. 5, ch. 79-36; s. 95, ch. 83-329; s. 1, ch. 84-15; s. 71, ch. 85-81; s. 6, ch. 93-220; s. 186, ch. 97-103; s. 5, ch. 2010-106; s. 4, ch. 2010-182.

*Note*<sup>1</sup>.— The word “is” was substituted by the editors for the word “are,” which was enacted by s. 5, ch. 2010-106. Section 4, ch. 2010-182, enacted the words “has been” instead of the word “are.”

*Note*<sup>2</sup>.— As enacted by s. 4, ch. 2010-182. Subsection (3) was also added by s. 5, ch. 2010-106, and that version did not use the phrase “submitted pursuant to sub-subparagraph a.”

*Note.*— Former s. 485.02.

**PRIOR WORDING: 455.02 Members of Armed Forces in good standing with administrative boards.—**

(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 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, 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. 20.165 shall promulgate 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.

**455.10 Restriction on requirement of citizenship.**—No person shall be disqualified from practicing an occupation or profession regulated by the state solely because he or she is not a United States citizen.

**History.**—ss. 1, 2, 3, ch. 72-125; s. 1, ch. 74-37; s. 1, ch. 77-174; s. 5, ch. 79-36; s. 187, ch. 97-103.

*Note.*—Former s. 455.012.

**455.11 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 Florida citizens 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 said 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 same shall be borne by said 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.**—ss. 1, 3, ch. 77-255; s. 5, ch. 79-36; s. 194, ch. 79-400; s. 5, ch. 92-149; s. 61, ch. 94-218.

*Note.*—Former s. 455.016.

**455.116 Regulation trust funds.**—The following trust funds shall be placed in the department:

- (1) Administrative Trust Fund.
- (2) Alcoholic Beverage and Tobacco Trust Fund.
- (3) Cigarette Tax Collection Trust Fund.
- (4) Hotel and Restaurant Trust Fund.
- (5) Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund.
- (6) Pari-mutuel Wagering Trust Fund.
- (7) Professional Regulation Trust Fund.

**History.**—s. 8, ch. 93-220; s. 44, ch. 96-418; s. 22, ch. 2008-240.

**455.117 Sale of services and information by department.**—The department may provide, directly or by contract, services and information to other levels of government and private entities.

**History.**—s. 9, ch. 93-220.

**455.201 Professions and occupations regulated by department; 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 given profession or occupation to find employment.

(c) The Legislature shall evaluate proposals to increase regulation of already regulated professions or occupations to determine their effect 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.

**History.**—s. 1, ch. 76-28; s. 5, ch. 79-36; s. 122, ch. 79-164; s. 3, ch. 82-1; s. 79, ch. 83-218; s. 36, ch. 92-33; s. 6, ch. 92-149; s. 20, ch. 93-129; s. 62, ch. 94-218; s. 134, ch. 99-251.

**Note.**—Former s. 455.001.

**455.203 Department; powers and duties.—**  
The department, for the boards 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. 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 rule 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 implement an automated method for periodically disclosing information relating to current licensees to the Department of Revenue.

The purpose of this subsection is to promote the public policy of this state 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, subpoena, order to show cause, or written agreement entered into by the licensee 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 shall not be held liable for any license denial or suspension resulting from the discharge of its duties under this subsection.

(10) Have authority to:

- (a) Close and terminate deficient license application files 2 years after the board or the department notifies the applicant of the deficiency; and
- (b) Approve applications for professional licenses that meet all statutory and rule requirements for licensure.

**History.**—s. 5, ch. 79-36; s. 27, ch. 81-302; s. 7, ch. 83-329; s. 15, ch. 86-285; s. 15, ch. 89-162; s. 1, ch. 90-228; s. 37, ch. 92-33; s. 7, ch. 92-149; s. 23, ch. 93-129; s. 10, ch. 93-208; s. 10, ch. 93-262; ss. 63, 64, ch. 94-218; s. 206, ch. 96-410; s. 4, ch. 97-261; s. 117, ch. 98-200; s. 24, ch. 2000-160; s. 51, ch. 2001-158; s. 38, ch. 2005-39; s. 21, ch. 2008-240.

**455.2035 Rulemaking authority for professions not under a board.—**The department may adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the regulatory requirements of any profession within the department's jurisdiction which does not have a statutorily authorized regulatory board.

**History.**—s. 136, ch. 99-251.

**455.204 Long-range policy planning; plans, reports, and recommendations.—**To facilitate efficient and cost-effective regulation, the department and the board, where appropriate, shall develop and implement a long-range policy planning and monitoring process to include

recommendations specific to each profession. Such process shall include estimates of revenues, expenditures, cash balances, and performance statistics for each profession. The period covered shall not be less than 5 years. The department, with input from the boards, shall develop the long-range plan and must obtain the approval of the secretary. The department shall monitor compliance with the approved long-range plan and, with input from the boards, shall annually update the plans for approval by the secretary. 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.

Such plans should include conclusions and recommendations on these and other issues as appropriate. Such plans shall be provided to the Governor and the Legislature by November 1 of each year.

*History.*—s. 8, ch. 92-149.

**455.205 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 or at any regional office of the department.

*History.*—s. 30, ch. 69-106; s. 2, ch. 77-115; s. 5, ch. 79-36; s. 38, ch. 92-33; s. 23, ch. 93-129; ss. 65, 66, ch. 94-218; s. 5, ch. 97-261.

*Note.*—Former s. 455.004.

**455.207 Boards; organization; meetings; compensation and travel expenses.**—

- (1) Each board within the department shall comply with the provisions of this section.
- (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. The chairperson or a quorum of the board shall have the authority to call other 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. 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 secretary.
- (5) When two or more boards have differences between them, the boards may elect to, or the secretary 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 secretary 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. 5, ch. 79-36; s. 28, ch. 81-302; s. 8, ch. 83-329; s. 72, ch. 85-81; s. 4, ch. 88-392; s. 39, ch. 92-33; s. 9, ch. 92-149; s. 23, ch. 93-129; s. 3, ch. 94-119; s. 6, ch. 97-261; s. 25, ch. 2000-160.

**455.208 Publication of information.**—The department and the boards shall have the authority to advise licensees periodically, through the publication of a newsletter, about information that the department or the board determines is of interest to the industry. Unless otherwise prohibited by law, the department and the boards shall publish a summary of final orders resulting in fines, suspensions, or revocations, and any other information the department or the board determines is of interest to the public.

*History.*—s. 5, ch. 88-392; s. 40, ch. 92-33; s. 10, ch. 92-149; s. 23, ch. 93-129; s. 67, ch. 94-218; s. 7, ch. 97-261.

**455.209 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 the member's 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 the Professional Regulation Trust Fund, subject to the provisions of ss. 215.37 and 455.219.

*History.*—s. 5, ch. 79-36; ss. 13, 15, 25, 30, 34, 57, 62, ch. 80-406; s. 6, ch. 88-392; s. 2, ch. 90-228; s. 41, ch. 92-33; s. 11, ch. 92-149; s. 23, ch. 93-129; s. 68, ch. 94-218; s. 188, ch. 97-103; s. 8, ch. 97-261; s. 1, ch. 98-166; s. 151, ch. 99-251.

**455.211 Board rules; final agency action; challenges.**—

(1) The secretary of the department 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 secretary, 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 secretary 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. 455.207(5).

(4) Any proposed board rule that has not been modified to remove proposed committee objections of the Administrative Procedures Committee must receive approval from the department prior to filing the rule with the Department of State for final adoption. The department may repeal any rule enacted by the board which has taken effect without having met proposed committee objections of the Administrative Procedures Committee.

*History.*—s. 5, ch. 79-36; s. 42, ch. 92-33; s. 12, ch. 92-149; s. 23, ch. 93-129; s. 69, ch. 94-218; s. 207, ch. 96-410; s. 9, ch. 97-261; s. 5, ch. 2000-356.

**455.212 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. 63, ch. 92-136; s. 30, ch. 92-321.

**455.2121 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. 4, ch. 94-119.

**455.2122 Education.**—A board, or the department where there is no board, shall approve distance learning courses as an alternative to classroom courses to satisfy prelicensure or postlicensure education requirements provided for in part VIII of chapter 468 or part I of chapter 475. A board, or the department when there is no board, may not require centralized examinations for completion of prelicensure or postlicensure education requirements for those professions licensed under part VIII of chapter 468 or part I of chapter 475.

*History.*—s. 6, ch. 2010-106; s. 4, ch. 2010-176.

*PRIOR WORDING:* New.

**455.2123 Continuing education.**—A board, or the department when there is no board, may provide by rule that distance learning may be used to satisfy continuing education requirements. A board, or the department when there is no board, shall approve distance learning courses as an alternative to classroom courses to satisfy continuing education requirements provided for in part VIII, part XV, or part XVI of chapter 468 or part I or part II of

chapter 475 and may not require centralized examinations for completion of continuing education requirements for the professions licensed under part VIII, part XV, or part XVI of chapter 468 or part I or part II of chapter 475.

*History.— s. 137, ch. 99-251; s. 7, ch. 2010-106; s. 5, ch. 2010-176.*

**PRIOR WORDING: 455.2123 Continuing education.** — A board, or the department when there is no board, may provide by rule that distance learning may be used to satisfy continuing education requirements.

**455.2123 Continuing education.**—A board, or the department when there is no board, may provide by rule that distance learning may be used to satisfy continuing education requirements.

*History.—s. 137, ch. 99-251.*

**455.2124 Proration of or not requiring continuing education.**—A board, or the department when there is no board, may:

(1) Prorate continuing education for new licensees by requiring half of the required continuing education for any applicant who becomes licensed with more than half the renewal period remaining and no continuing education for any applicant who becomes licensed with half or less than half of the renewal period remaining; or

(2) Require no continuing education until the first full renewal cycle of the licensee.

These options shall also apply when continuing education is first required or the number of hours required is increased by law or the board, or the department when there is no board.

*History.—s. 138, ch. 99-251.*

**455.2125 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. 23, ch. 95-243; s. 34, ch. 98-421; s. 71, ch. 2004-5; s. 13, ch. 2004-41; s. 53, ch. 2007-217.*

**455.213 General licensing provisions.—**

(1) Any person desiring to be licensed shall apply to the department in writing. The application for licensure shall be submitted on a form prescribed by the department and must include the applicant's social security number. Notwithstanding any other provision of law, the department is the sole authority for determining the contents of any documents to be submitted for initial licensure and licensure renewal. Such documents may contain information including, as appropriate: demographics, education, work history, personal background, criminal history, finances, business information, complaints, inspections, investigations, discipline, bonding, photographs, performance periods, reciprocity, local government approvals, supporting documentation, periodic reporting requirements, fingerprint requirements, continuing education requirements, and ongoing education monitoring. The application 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. 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. In cases where a person applies or schedules directly with a national examination organization or examination vendor to take an examination required for licensure, any organization- or vendor-related fees associated with the examination may be paid directly to the organization or vendor. An application is received for purposes of s. 120.60 upon the department's receipt of the application submitted in the format prescribed by the department; the application fee set by the board or, if there is no board, set by the department; and any other fee required by law or rule to be remitted with the application.

(2) Before the issuance of any license, the department may charge an initial license fee as determined by rule of the applicable board or, if no such board exists, by rule of the department. Upon receipt of the appropriate license fee, except as provided in subsection (3), the department shall issue a license to any person certified by the appropriate board, or its designee, or the department when there is no board, as having met the applicable requirements imposed by law or rule. However, an applicant who is not otherwise qualified for licensure is not entitled to licensure solely based on a passing score on a required examination. Upon a determination by the department that it erroneously issued a license, or upon the revocation of a license by the applicable board, or by the department when there is no board, the licensee must surrender his or her license to the department.

(3) 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.

(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 a license 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) Any board that currently requires continuing education for renewal of a license 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 when 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 section. 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 when 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 when there is no board, may make rules to define underserved and critical need areas. The department shall adopt rules for the administration of continuing education requirements adopted by the boards or the department when there is no board.

(7) Notwithstanding anything to the contrary, any elected official who is licensed pursuant to any practice act within the purview of this chapter may hold employment for compensation with any public agency concurrent with such public service. Such dual service shall be disclosed according to any disclosure required by applicable law.

(8) 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.

(9) 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 and use by the Department of Business and Professional Regulation, and as otherwise provided by law.

(10) For any profession requiring fingerprints as part of the registration, certification, or licensure process or for any profession requiring a criminal history record check to determine good moral character, a fingerprint card containing the fingerprints of the applicant must accompany all applications for registration, certification, or licensure. The fingerprint card shall be forwarded to the Division of Criminal Justice Information Systems within the Department of Law Enforcement for purposes of processing the fingerprint card to determine if the applicant has a criminal history record. The fingerprint card shall also be forwarded to the Federal Bureau of Investigation for purposes of processing the fingerprint card to determine if the applicant has a criminal history record. The information obtained by the processing of the fingerprint card by the Florida Department of Law Enforcement and the Federal Bureau of Investigation shall be sent to the department for the purpose of determining if the applicant is statutorily qualified for registration, certification, or licensure.

(11) Any submission required to be in writing may otherwise be required by the department to be made by electronic means. The department is authorized to contract with private vendors, or enter into interagency agreements, to collect electronic fingerprints where fingerprints are required for registration, certification, or the

licensure process or where criminal history record checks are required.

**History.**— s. 5, ch. 79-36; s. 29, ch. 81-302; s. 9, ch. 83-329; s. 7, ch. 84-203; s. 30, ch. 85-175; s. 3, ch. 86-287; s. 1, ch. 89-162; s. 67, ch. 89-374; s. 1, ch. 91-137; s. 10, ch. 91-220; s. 43, ch. 92-33; ss. 13, 76, ch. 92-149; s. 23, ch. 93-129; ss. 1, 4, ch. 96-309; s. 208, ch. 96-410; s. 1078, ch. 97-103; s. 63, ch. 97-170; s. 1, ch. 97-228; s. 10, ch. 97-261; s. 53, ch. 97-278; s. 2, ch. 98-166; s. 37, ch. 98-397; s. 139, ch. 99-251; s. 26, ch. 2000-160; s. 1, ch. 2001-269; s. 9, ch. 2001-278; s. 1, ch. 2007-86; s. 1, ch. 2009-195; s. 8, ch. 2010-106.

**PRIOR WORDING: 455.213 General licensing provisions.—**

(1) Any person desiring to be licensed shall apply to the department in writing. The application for licensure shall be made on a form prepared and furnished by the department and include the applicant's social security number. Notwithstanding any other provision of law, the department is the sole authority for determining the contents of any documents to be submitted for initial licensure and licensure renewal. Such documents may contain information including, as appropriate: demographics, education, work history, personal background, criminal history, finances, business information, complaints, inspections, investigations, discipline, bonding, signature notarization, photographs, performance periods, reciprocity, local government approvals, supporting documentation, periodic reporting requirements, fingerprint requirements, continuing education requirements, and ongoing education monitoring. The application 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. 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. In cases where a person applies or schedules directly with a national examination organization or examination vendor to take an examination required for licensure, any organization- or vendor-related fees associated with the examination may be paid directly to the organization or vendor.

(2) Before the issuance of any license, the department may charge an initial license fee as determined by rule of the applicable board or, if no such board exists, by rule of the department. Upon receipt of the appropriate license fee, except as provided in subsection (3), the department shall issue a license to any person certified by the appropriate board, or its designee, or the department when there is no board, as having met the applicable requirements imposed by law or rule. However, an applicant who is not otherwise qualified for licensure is not entitled to licensure solely based on a passing score on a required examination.

(3) 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.

(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 a license 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) Any board that currently requires continuing education for renewal of a license 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 when 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 section. 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 when 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 when there is no board, may make rules to define underserved and critical need areas. The department shall adopt rules for the administration of continuing education requirements adopted by the boards or the department when there is no board.

(7) Notwithstanding anything to the contrary, any elected official who is licensed pursuant to any practice act within the purview of this chapter may hold employment for compensation with any public agency concurrent with such public service. Such dual service shall be disclosed according to any disclosure required by applicable law.

(8) 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.

(9) 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 and use by the Department of Business and Professional Regulation, and as otherwise provided by law.

(10) For any profession requiring fingerprints as part of the registration, certification, or licensure process or for any profession requiring a criminal history record check to determine good moral character, a fingerprint card containing the fingerprints of the applicant must accompany all applications for registration, certification, or licensure. The fingerprint card shall be forwarded to the Division of Criminal Justice Information Systems within the Department of Law Enforcement for purposes of processing the fingerprint card to determine if the applicant has a criminal history record. The fingerprint card shall also be forwarded to the Federal Bureau of Investigation for purposes of processing the fingerprint card to determine if the applicant has a criminal history record. The information obtained by the processing of the fingerprint card by the Florida Department of Law Enforcement and the Federal Bureau of Investigation shall be sent to the department for the purpose of determining if the applicant is statutorily qualified for registration, certification, or licensure.

(11) Any submission required to be in writing may otherwise be required by the department to be made by electronic means. The department is authorized to contract with private vendors, or enter into interagency agreements, to collect electronic fingerprints where fingerprints are required for registration, certification, or the licensure process or where criminal history record checks are required.

**455.214 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 his or her 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. 14, ch. 92-149; s. 189, ch. 97-103; s. 11, ch. 97-261; s. 27, ch. 2000-160.

**455.217 Examinations.**—This section shall be read in conjunction with the appropriate practice act associated with each regulated profession under this chapter.

(1) The Division of Professions of the Department of Business and Professional Regulation shall provide, contract, or approve services for the development, preparation, administration, scoring, score reporting, and evaluation of all examinations. The division shall seek the advice of the appropriate board in providing such services.

(a) The department, acting in conjunction with the Division of Service Operations, the Division of Professions, and the Division of Real Estate, as appropriate, shall ensure that examinations 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 department may reject any question which does not reliably measure the general areas of competency specified in the rules of the board or department, when there is no board. The department shall use qualified outside testing vendors for the development, preparation, and evaluation of examinations, when such services are economically and viably available and approved by the department.

(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 the examination, the relative weight to be assigned in grading each area tested, the score necessary to achieve a passing grade, and the fees, where applicable, to cover the actual cost for any purchase, development, and administration of the required examination. However, statutory fee caps in each practice act shall apply. This subsection

does not apply to national examinations approved and administered pursuant to paragraph (d).

(c) If a practical examination is deemed to be necessary, 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 may conduct such exercise. Therefore, board members may serve as examiners at a practical examination with the consent of the board.

(d) A board, or the department when there is no board, may approve by rule the use of any national examination which the department has certified as meeting requirements of national examinations and generally accepted testing standards pursuant to department rules. Providers of examinations, which may be either profit or nonprofit entities, seeking certification by the department shall pay the actual costs incurred by the department in making a determination regarding the certification. The department shall use any national examination which is available, certified by the department, and approved by the board. 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. 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. Any licensing or certification examination that is not developed or administered by the department in-house or provided as a national examination shall be competitively bid.

(e) The department shall adopt rules regarding the security and monitoring of examinations. In order to maintain the security of examinations, the department may employ the procedures set forth in s. 455.228 to seek fines and injunctive

relief against an examinee who violates the provisions of s. 455.2175 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.

(f) If the professional board with jurisdiction over an examination concurs, the department may, for a fee, share with any other state's licensing authority an examination 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. All fees paid by the user for professions not regulated by this chapter shall be applied to offset the fees for the development and administration of that profession's examination. If both a written and a practical examination are given, an applicant shall be required to retake only the portion of the examination for which he or she failed to achieve a passing grade, if he or she successfully passes that portion within a reasonable time of his or her passing the other portion.

(2) For each examination developed by the department or a contracted vendor, the board or the department when there is no board, shall make rules providing for reexamination of any applicants who fail 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 for which he or she 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 department when there is no board, of his or her passing the other portion.

(3) Except for national examinations approved and administered pursuant to paragraph (1)(d), the department shall provide procedures for applicants who have taken and failed an examination developed by the department or a contracted vendor to review their most recently administered 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 his or her examination grades.

(4) 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 paragraph (1)(d).

(5) Meetings and records of meetings of any member of the department or of any board or commission within the department held for the exclusive purpose of creating or reviewing licensure examination questions or proposed examination questions are confidential and exempt from ss. 119.07(1) and 286.011. However, this exemption shall not affect the right of any person to review an examination as provided in subsection (3).

(6) 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. Applicants for examination or reexamination pursuant to this subsection shall bear the full cost for the department's development, preparation, administration, grading, and evaluation of any examination in a language other than English or Spanish. Requests for translated examinations, except for those in Spanish, must be on file in the board office, or with the department when there is no

board, 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 or Spanish, the board, or the department when there is no board, shall consider the percentage of the population who speak the applicant's native language.

(7) In addition to meeting other requirements for licensure by examination or by endorsement, an applicant may be required by a board, or by the department, if there is no board, to pass an examination pertaining to state laws and rules applicable to the practice of the profession regulated by that board or by the department. This subsection does not apply to persons regulated under chapter 473.

**History.**— s. 30, ch. 69-106; s. 1, ch. 73-97; s. 3, ch. 77-115; s. 5, ch. 79-36; s. 286, ch. 81-259; s. 30, ch. 81-302; s. 4, ch. 82-1; s. 39, ch. 82-179; s. 80, ch. 83-218; s. 10, ch. 83-329; s. 1, ch. 88-49; s. 2, ch. 89-162; s. 2, ch. 91-137; s. 1, ch. 91-140; s. 11, ch. 91-220; s. 15, ch. 92-149; s. 5, ch. 94-119; s. 70, ch. 94-218; s. 303, ch. 96-406; s. 1080, ch. 97-103; s. 2, ch. 97-228; s. 12, ch. 97-261; s. 18, ch. 99-7; s. 28, ch. 2000-160; s. 6, ch. 2000-356; s. 23, ch. 2008-240; s. 1, ch. 2009-54; s. 1, ch. 2009-69; s. 63, ch. 2009-195; s. 9, ch. 2010-106.

**Note.**— Former s. 455.007(2).

**PRIOR WORDING: 455.217 Examinations.**—This section shall be read in conjunction with the appropriate practice act associated with each regulated profession under this chapter.

(1) The Division of Technology of the Department of Business and Professional Regulation shall provide, contract, or approve services for the development, preparation, administration, scoring, score reporting, and evaluation of all examinations. The division shall seek the advice of the appropriate board in providing such services.

(a) The department, acting in conjunction with the Division of Technology and the Division of Real Estate, as appropriate, shall ensure that examinations 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 department may reject any question which does not reliably measure the general areas of competency specified in the rules of the board or department, when there is no board. The department shall use professional testing services for the development, preparation, 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 the examination, the relative weight to be assigned in grading each area tested, the score necessary to achieve a passing grade, and the fees, where applicable, to cover the actual cost for any purchase, development, and administration of the required examination. However, statutory fee caps in each practice act shall apply. This subsection does not apply to national examinations approved and administered pursuant to paragraph (d).

(c) If a practical examination is deemed to be necessary, 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 may conduct such exercise. Therefore, board members may serve as examiners at a practical examination with the consent of the board.

(d) A board, or the department when there is no board, may approve by rule the use of any national examination which the department has certified as meeting requirements of national examinations and generally accepted testing standards pursuant to department rules. Providers of examinations, which may be either profit or nonprofit entities, seeking certification by the department shall pay the actual costs incurred by the department in making a determination regarding the certification. The department shall use any national examination which is available, certified by the department,

and approved by the board. 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. 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. Any licensing or certification examination that is not developed or administered by the department in-house or provided as a national examination shall be competitively bid.

(e) The department shall adopt rules regarding the security and monitoring of examinations. In order to maintain the security of examinations, the department may employ the procedures set forth in s. 455.228 to seek fines and injunctive relief against an examinee who violates the provisions of s. 455.2175 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.

(f) If the professional board with jurisdiction over an examination concurs, the department may, for a fee, share with any other state's licensing authority an examination 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. All fees paid by the user for professions not regulated by this chapter shall be applied to offset the fees for the development and administration of that profession's examination. If both a written and a

practical examination are given, an applicant shall be required to retake only the portion of the examination for which he or she failed to achieve a passing grade, if he or she successfully passes that portion within a reasonable time of his or her passing the other portion.

(2) For each examination developed by the department or a contracted vendor, the board or the department when there is no board, shall make rules providing for reexamination of any applicants who fail 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 for which he or she 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 department when there is no board, of his or her passing the other portion.

(3) Except for national examinations approved and administered pursuant to paragraph (1)(d), the department shall provide procedures for applicants who have taken and failed 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 his or her examination grades.

(4) 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 paragraph (1)(d).

(5) Meetings and records of meetings of any member of the department or of any board or commission within the department held for the exclusive purpose of creating or reviewing licensure examination questions or proposed

examination questions are confidential and exempt from ss. 119.07(1) and 286.011. However, this exemption shall not affect the right of any person to review an examination as provided in subsection (3).

(6) 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. Applicants for examination or reexamination pursuant to this subsection shall bear the full cost for the department's development, preparation, administration, grading, and evaluation of any examination in a language other than English or Spanish. Requests for translated examinations, except for those in Spanish, must be on file in the board office, or with the department when there is no board, 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 or Spanish, the board, or the department when there is no board, shall consider the percentage of the population who speak the applicant's native language.

(7) In addition to meeting any other requirements for licensure by examination or by endorsement, an applicant may be required by a board, or by the department, if there is no board, to pass an examination pertaining to state laws and rules applicable to the practice of the profession regulated by that board or by the department.

**455.2171 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 when there is no board.

*History.*—s. 6, ch. 94-119.

**455.2175 Penalty for theft or reproduction of an examination.**—In addition to, or in lieu of, any other discipline imposed pursuant to s. 455.227, 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. An examinee whose examination materials are confiscated is not permitted to take another examination until the criminal investigation reveals that the examinee did not violate this section.

*History.*— s. 3, ch. 90-228; s. 3, ch. 91-137; s. 47, ch. 92-33; s. 23, ch. 93-129; s. 71, ch. 94-218; s. 13, ch. 97-261; s. 10, ch. 2010-106.

**PRIOR WORDING: 455.2175 Penalty for theft or reproduction of an examination.**—In addition to, or in lieu of, any other discipline imposed pursuant to s. 455.227, 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.

**455.2177 Monitoring of compliance with continuing education requirements.**—

(1) The department shall establish a system to monitor licensee compliance with applicable continuing education requirements and to determine each licensee's continuing education status. As used in this section, the term "monitor" means the act of determining, for each licensee, whether the licensee was in full compliance with applicable continuing education requirements as of the time of the licensee's license renewal.

(2) The department may refuse renewal of a licensee's license until the licensee has satisfied all applicable continuing education requirements. This subsection does not preclude the department or boards from imposing additional penalties pursuant to the applicable practice act or rules adopted pursuant thereto.

(3) The department may waive the continuing education monitoring requirements of this section for any profession that demonstrates to the department that the monitoring system places an undue burden on the profession. The

department shall waive the continuing education monitoring requirements of this section for any profession that has a program in place which measures compliance with continuing education requirements through statistical sampling techniques or other methods and can indicate that at least 95 percent of its licensees are in compliance.

(4) The department may adopt rules under ss. 120.536(1) and 120.54 to implement this section.

**History.**—s. 157, ch. 99-251; s. 17, ch. 2001-278; s. 43, ch. 2002-207; s. 2, ch. 2004-292; s. 82, ch. 2005-2.

**455.2178 Continuing education providers.—**

(1) Each continuing education provider shall provide to the department such information regarding the continuing education status of licensees as the department determines is necessary to carry out its duties under s. 455.2177, in an electronic format determined by the department. After a licensee's completion of a course, the information must be submitted to the department electronically no later than 30 calendar days thereafter. However, the continuing education provider shall electronically report to the department completion of a licensee's course within 10 business days beginning on the 30th day before the renewal deadline or prior to the renewal date, whichever occurs sooner. The foregoing applies only if the profession has not been granted a waiver from the monitoring requirements under s. 455.2177. Upon the request of a licensee, the provider must also furnish to the department information regarding courses completed by the licensee.

(2) Each continuing education provider shall retain all records relating to a licensee's completion of continuing education courses for at least 4 years after completion of a course.

(3) A continuing education provider may not be approved, and the approval may not be renewed, unless the provider agrees in writing to provide such cooperation under this section and s. 455.2177 as the department deems necessary or appropriate.

(4) The department may fine, suspend, or revoke approval of any continuing education provider that fails to comply with its duties under this section. Such fine may not exceed \$500 per violation. Investigations and prosecutions of a provider's failure to comply with its duties under this section shall be conducted pursuant to s. 455.225.

(5) For the purpose of determining which persons or entities must meet the reporting, recordkeeping, and access provisions of this section, the board of any profession subject to this section, or the department if there is no board, shall, by rule, adopt a definition of the term "continuing education provider" applicable to the profession's continuing education requirements. The intent of the rule shall be to ensure that all records and information necessary to carry out the requirements of this section and s. 455.2177 are maintained and transmitted accordingly and to minimize disputes as to what person or entity is responsible for maintaining and reporting such records and information.

(6) The department may adopt rules under ss. 120.536(1) and 120.54 to implement this section.

**History.**—s. 158, ch. 99-251; s. 3, ch. 2004-292; s. 2, ch. 2007-86.

**455.2179 Continuing education provider and course approval; cease and desist orders.—**

(1) If a board, or the department if there is no board, requires completion of continuing education as a requirement for renewal of a license, the board, or the department if there is no board, shall approve providers of the continuing education. The approval of continuing education providers and courses must be for a specified period of time, not to exceed 4 years. An approval that does not include such a time limitation may remain in effect pursuant to the applicable practice act or the rules adopted under the applicable practice act.

(2) The board, or the department if there is no board, shall issue an order requiring a person or entity to cease and desist from offering any continuing education programs for licensees, and fining, suspending, or revoking any approval

of the provider previously granted by the board, or the department if there is no board, if the board, or the department if there is no board, determines that the person or entity failed to provide appropriate continuing education services that conform to approved course material. Such fine may not exceed \$500 per violation. Investigations and prosecutions of a provider's failure to comply with its duties under this section shall be conducted under s. 455.225.

(3) Each board authorized to approve continuing education providers, or the department if there is no board, may establish, by rule, a fee not to exceed \$250 for anyone seeking approval to provide continuing education courses and may establish, by rule, a biennial fee not to exceed \$250 for the renewal of providership of such courses. The Florida Real Estate Commission, authorized under the provisions of chapter 475 to approve prelicensure, precertification, and postlicensure education providers, may establish, by rule, an application fee not to exceed \$250 for anyone seeking approval to offer prelicensure, precertification, or postlicensure education courses and may establish, by rule, a biennial fee not to exceed \$250 for the renewal of such courses. Such postlicensure education courses are subject to the reporting, monitoring, and compliance provisions of this section and ss. 455.2177 and 455.2178.

(4) The department and each affected board may adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this section.

*History.—s. 159, ch. 99-251; s. 7, ch. 2000-356; s. 4, ch. 2004-292.*

**455.218 Foreign-trained professionals; special examination and license provisions.—**

(1) When not otherwise provided by law, 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 that 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. 1, ch. 86-90; s. 7, ch. 88-205; s. 7, ch. 88-392; s. 48, ch. 92-33; s. 16, ch. 92-149; s. 23, ch. 93-129; s. 312, ch. 94-119; s. 72, ch. 94-218; s. 14, ch. 97-261; s. 3, ch. 98-166; s. 29, ch. 2000-160.

**455.2185 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 veterinary facility without the approval of that facility.

*History.*—s. 1, ch. 94-96; s. 15, ch. 97-261; s. 30, ch. 2000-160.

**455.219 Fees; receipts; disposition; periodic management reports.—**

(1) Each board within the department shall determine by rule the amount of license fees for its profession, based upon department-prepared long-range estimates of the revenue required to implement all provisions of law relating to the regulation of professions by the department and any board; however, when the department has determined, based on the long-range estimates of such revenue, that a profession's trust fund moneys are in excess of the amount required to cover the necessary functions of the board, or the department when there is no board, the department may adopt rules to implement a waiver of license renewal fees for that profession for a period not to exceed 2 years, as determined by the department. Each board, or the department when there is no board, shall ensure license fees are adequate to cover all anticipated costs and to maintain a reasonable cash balance, as determined by rule of the department, with advice of the applicable board. If sufficient action is not taken by a board within 1 year of 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 legislative intent that no regulated profession operate with a negative cash balance. The department may provide by rule for the advancement of sufficient funds to any profession or the Florida State Boxing Commission operating with a negative cash balance. Such advancement may be for a period not to exceed 2 consecutive years and shall require interest to be paid by the regulated profession. Interest shall be calculated at the current rate earned on Professional Regulation Trust Fund investments. Interest earned shall be allocated to the various funds in accordance with the allocation of investment earnings during the period of the advance.

(2) Each board, or the department if there is no board, may, by rule, assess and collect a one-time fee from each active and each voluntary inactive 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 such professions as required in this section. No more than one such assessment may be made in any 4-year period without specific legislative authorization.

(3) All moneys collected by the department from fees or fines or from costs awarded to the department by a court shall be paid into the Professional Regulation Trust Fund, which fund is created in the department. The department may contract with public and private entities to receive and deposit revenue pursuant to this section. The Legislature shall appropriate funds from this trust fund sufficient to carry out the provisions of this chapter and the provisions of law with respect to professions regulated by the department and any board within the department. The department shall maintain separate accounts in the Professional Regulation Trust Fund 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 shall include, but not be 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 department shall not expend funds from the account of a profession to pay for the expenses incurred on behalf of another profession. The department shall maintain adequate records to support its allocation of department expenses. The department shall provide any board with reasonable access to these records upon request. Each board shall be provided an annual report of revenue and direct and allocated expenses related to the operation of that profession. These reports and the department's adopted long-range plan shall be used by the board 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 pursuant to s. 455.2285.

(4) A condensed management report of budgets, finances, performance statistics, and recommendations shall be provided to each board at least once a quarter. The department shall identify and include in such presentations any changes, or projected changes, made to the board's budget since the last presentation.

(5) 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.

(6) 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 duplication of a public record as provided in s. 119.07(4).

**History.**—s. 5, ch. 79-36; s. 287, ch. 81-259; s. 2, ch. 84-271; s. 82, ch. 90-132; s. 4, ch. 90-228; s. 4, ch. 91-137; s. 17, ch. 92-149; s. 73, ch. 94-218; s. 8, ch. 2000-356; s. 44, ch. 2004-335.

**455.221 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 the Professional Regulation Trust Fund, subject to the provisions of ss. 215.37 and 455.219. All contracts for independent counsel shall provide for periodic review and evaluation by the board and the department of services provided.

(2) The Department of Business and Professional Regulation may employ or utilize the legal services of outside counsel and the investigative services of outside personnel. However, no attorney employed or used 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. 30, ch. 69-106; s. 1, ch. 73-97; s. 3, ch. 77-115; s. 5, ch. 79-36; s. 288, ch. 81-259; s. 31, ch. 81-302; s. 51, ch. 92-33; s. 23, ch. 93-129; s. 7, ch. 94-119; ss. 74, 75, ch. 94-218; s. 16, ch. 97-261; s. 152, ch. 99-251.

**Note.**—Former s. 455.007(3), (4).

**455.2226 Funeral directors and embalmers; instruction on HIV and AIDS.—**

(1) The Board of Funeral Directors and Embalmers shall require each person licensed or certified under chapter 497 to complete 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, and treatment of patients.

(2) Each such licensee or certificate holder shall submit confirmation of having completed said course, on a form as provided by the board, when submitting fees for each biennial 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. 455.227(1)(e). In addition to discipline by the board, the licensee shall be required to complete said course.

(6) The board shall require as a condition of granting a license under the chapters specified in subsection (1) that an applicant making initial application for licensure complete an educational course acceptable to the board on human immunodeficiency virus and acquired immune deficiency syndrome. An applicant who has not taken a course at the time of licensure shall, upon an affidavit showing good cause, be allowed 6 months to complete this requirement.

(7) The board shall have the authority to adopt rules to carry out the provisions of this section.

(8) The board shall report to the Legislature by March 1 of each year as to the implementation and compliance with the requirements of this section.

**History.**—s. 4, ch. 88-380; s. 10, ch. 89-350; ss. 71, 72, ch. 91-297; s. 18, ch. 92-149; s. 28, ch. 95-144; s. 17, ch. 97-261; s. 144, ch. 2004-301.

**455.2228 Barbers and cosmetologists; instruction on HIV and AIDS.—**

(1) The board, or the department where there is no board, shall require each person licensed or certified under chapter 476 or chapter 477 to complete a continuing educational course approved by the board, or the department where there is no board, on human immunodeficiency virus and acquired immune deficiency syndrome as part of biennial relicensure or recertification. The course shall consist of education on modes of transmission, infection control procedures, clinical management, and prevention of human immunodeficiency virus and acquired immune deficiency syndrome, with an emphasis on appropriate behavior and attitude change.

(2) When filing fees for each biennial renewal, each licensee shall submit confirmation of having completed said course, on a form provided by the board or by the department if there is no board. At the time of the subsequent biennial renewal when coursework is to be completed, if the licensee has not submitted confirmation which has been received and recorded by the board, or department if there is no board, the department shall not renew the license.

(3) The board, or the department where there is no board, shall have the authority to approve additional equivalent courses that may be used to satisfy the requirements in subsection (1).

(4) As of December 31, 1992, the board, or the department where there is no board, shall require, as a condition of granting a license under any of the chapters or parts thereof specified in subsection (1), that an applicant making initial application for licensure complete an educational course acceptable to the board, or the department where there is no board, on human immunodeficiency virus and acquired immune deficiency syndrome. An applicant who has not taken a course at the time of licensure shall, upon an affidavit showing good cause, be allowed 6 months to complete this requirement.

(5) The board, or the department where there is no board, shall have the authority to adopt rules to carry out the provisions of this section.

(6) The board, or the department where there is no board, shall report to the Legislature by March 1 of each year as to the implementation and compliance with the requirements of this section.

(7) Any professional 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, or one department-approved course where there is no board, on human immunodeficiency virus and acquired immune deficiency syndrome, for purposes of relicensure or recertification for additional licenses.

**History.**—s. 11, ch. 89-350; ss. 73, 74, ch. 91-297; s. 16, ch. 95-388; s. 18, ch. 97-261.

**455.223 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. 5, ch. 79-36; s. 32, ch. 81-302; s. 4, ch. 86-90; s. 5, ch. 91-137; s. 52, ch. 92-33; s. 23, ch. 93-129; s. 77, ch. 94-218; s. 210, ch. 96-410; s. 19, ch. 97-261.

**455.2235 Mediation.—**

(1) Notwithstanding the provisions of s. 455.225, 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, may designate as mediation offenses those complaints where harm caused by the licensee is economic in nature or can be remedied by the licensee.

(2) 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. 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. 455.225.

(3) Conduct or statements made during mediation are inadmissible in any proceeding pursuant to s. 455.225. Further, any information relating to the mediation of a case shall be subject to the confidentiality provisions of s. 455.225.

(4) 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.

(5) If any board fails to adopt rules designating which violations are appropriate for resolution by mediation by January 1, 1995, the department shall have exclusive authority to, and shall, adopt rules to designate the violations which are appropriate for mediation. 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. 19, ch. 92-149; s. 8, ch. 94-119.

#### **455.224 Authority to issue citations.—**

(1) Notwithstanding s. 455.225, the board or the department 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. 455.225. If the subject disputes the matter in the citation, the procedures set forth in s. 455.225 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 final order and constitutes discipline. The penalty shall be a fine or other conditions as established by rule.

(2) The board, or the department when 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.

(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) Within its jurisdiction, the department has exclusive authority to, and shall adopt rules to, designate those violations for which the licensee is subject to the issuance of a citation and designate the penalties for those violations if any board fails to incorporate this section into rules by January 1, 1992. A board created on or after January 1, 1992, 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. 6, ch. 91-137; s. 53, ch. 92-33; s. 20, ch. 92-149; s. 23, ch. 93-129; s. 313, ch. 94-119; s. 78, ch. 94-218; s. 20, ch. 97-261; s. 161, ch. 99-251.

**455.225 Disciplinary proceedings.—** Disciplinary proceedings for each board shall be within the jurisdiction of the department.

(1)(a) 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 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.

(b) 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 secretary, or the secretary'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. 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. 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)(a) 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. A violation is a minor violation if it does not demonstrate a serious inability to practice the profession, result in economic or physical harm to a person, or adversely affect the public health, safety, or welfare or create a significant threat of such harm. Each board, or the department if there is no board, shall establish by rule those violations which are minor violations under this provision. 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.

(b) The department may issue a notice of noncompliance for an initial offense of a minor violation, notwithstanding a board's failure to designate a particular minor violation by rule as provided in paragraph (a).

(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, 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. 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 secretary 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 when 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, for disciplinary cases under its jurisdiction, 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 had 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. 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 the Professional Regulation Trust Fund. 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 administrative law judge shall issue a recommended order pursuant to chapter 120. If any party raises an issue of disputed fact during an informal hearing, the hearing shall be terminated and a formal hearing pursuant to chapter 120 shall be held.

(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 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 Secretary of Business and Professional Regulation or his or her designee, who shall issue the final summary order.

(9) The department shall periodically notify the person who filed the complaint of the status of the investigation, whether probable cause has been found, and the status of any civil action or administrative proceeding or appeal.

(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. However, this exemption does not apply to actions against unlicensed persons pursuant to s. 455.228 or the applicable practice act. Upon completion of the investigation and pursuant to a written request by the subject, 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. The subject may file a written response to the information contained in the investigative file. Such response must be filed within 20 days, 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.

**History.**—s. 1, ch. 74-57; s. 5, ch. 79-36; s. 289, ch. 81-259; s. 33, ch. 81-302; s. 12, ch. 83-329; s. 8, ch. 84-203; s. 3, ch. 85-311; s. 5, ch. 86-90; s. 8, ch. 88-1; s. 5, ch. 88-277; s. 1, ch. 88-279; s. 3, ch. 89-162; s. 1, ch. 90-44; s. 5, ch. 90-228; s. 7, ch. 91-137; s. 2, ch. 91-140; s. 54, ch. 92-33; s. 21, ch. 92-149; s. 132, ch. 92-279; s. 55, ch. 92-326; s. 23, ch. 93-129; s. 314, ch. 94-119; s. 79, ch. 94-218; s. 305, ch. 96-406; s. 211, ch. 96-410; s. 1082, ch. 97-103; s. 2, ch. 97-209; s. 3, ch. 97-228; s. 142, ch. 97-237; s. 21, ch. 97-261; s. 4, ch. 97-264; s. 18, ch. 97-273; s. 4, ch. 98-166; s. 31, ch. 2000-160.

*Note.*—Former s. 455.013.

#### **455.2255 Classification of disciplinary actions.—**

(1) A licensee may petition the department to review a disciplinary incident to determine whether the specific violation meets the standard of a minor violation as set forth in s. 455.225(3). If the circumstances of the violation meet that standard and 2 years have passed

since the issuance of a final order imposing discipline, the department shall reclassify that violation as inactive if the licensee has not been disciplined for any subsequent minor violation of the same nature. After the department has reclassified the violation as inactive, it is no longer considered to be part of the licensee's disciplinary record, and the licensee may lawfully deny or fail to acknowledge the incident as a disciplinary action.

(2) The department may establish a schedule classifying violations according to the severity of the violation. After the expiration of set periods of time, the department may provide for such disciplinary records to become inactive, according to their classification. After the disciplinary record has become inactive, the department may clear the violation from the disciplinary record and the subject person or business may lawfully deny or fail to acknowledge such disciplinary actions. The department may adopt rules to implement this subsection.

(3) Notwithstanding s. 455.017, this section applies to the disciplinary records of all persons or businesses licensed by the department.

*History.—s. 143, ch. 99-251.*

**455.227 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 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

pursuant to s. 501.122(2) governing the registration of such 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 the 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) 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.

(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 such responsibilities knows, or has reason to know, such person is not qualified by training, experience, and authorization when required to perform them.

(q) Violating any provision of this chapter, the applicable professional practice act, a rule of the department or the board, or 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.

(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.

(d) Imposition of an administrative fine not to exceed \$5,000 for each count or separate offense.

(e) Issuance of a reprimand.

(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.

(3)(a) In addition to any other discipline imposed pursuant to this section or discipline imposed for a violation of any practice act, the board, or the department when there is no board, may assess costs related to the investigation and prosecution of the case excluding costs associated with an attorney's time.

(b) 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, such reasonable time to be prescribed in the rules of the board, or the department when there is no board, or in the order assessing such 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.

(c) The department shall not issue or renew a license to any person against whom or business against which the board has assessed a fine, interest, or costs associated with investigation and prosecution until the person or business has paid in full such fine, interest, or costs associated with investigation and prosecution or until the person or business complies with or satisfies all terms and conditions of the final order.

(4) 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.

(5) In the event 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. Such requirements may include, but shall not be limited to, satisfying current requirements for an initial license.

**History.**—s. 5, ch. 79-36; s. 13, ch. 83-329; s. 5, ch. 88-380; s. 8, ch. 91-137; s. 55, ch. 92-33; s. 22, ch. 92-149; s. 23, ch. 93-129; s. 9, ch. 94-119; s. 80, ch. 94-218; s. 5, ch. 95-187; s. 22, ch. 97-261; s. 144, ch. 99-251; s. 32, ch. 2000-160.

**455.2273 Disciplinary guidelines.—**

(1) Each board, or the department when 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 when 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 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 when 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.

(6) Notwithstanding s. 455.017, this section applies to disciplinary guidelines adopted by all boards or divisions within the department.

**History.**—s. 2, ch. 86-90; s. 56, ch. 92-33; s. 23, ch. 92-149; s. 23, ch. 93-129; s. 81, ch. 94-218; s. 212, ch. 96-410; s. 23, ch. 97-261; s. 33, ch. 2000-160; s. 24, ch. 2008-240.

**455.2275 Penalty for giving false information.—**

In addition to, or in lieu of, any other discipline imposed pursuant to s. 455.227, 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 either 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. 31, ch. 85-175; s. 12, ch. 89-124; s. 9, ch. 91-137; s. 57, ch. 92-33; s. 24, ch. 92-149; s. 23, ch. 93-129; s. 82, ch. 94-218; s. 190, ch. 97-103; s. 24, ch. 97-261.

**455.2277 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. 25, ch. 92-149.

**455.228 Unlicensed practice of a profession; cease and desist notice; civil penalty; enforcement; citations; allocation of moneys collected.—**

(1) 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. In addition to the foregoing remedies, the department may impose an administrative penalty not to exceed \$5,000 per incident pursuant to the provisions of chapter 120 or may issue a citation pursuant to the provisions of subsection (3). If the department is required to seek enforcement of the order for a penalty pursuant to s. 120.569, it shall be entitled to collect its attorney's fees and costs, together with any cost of collection.

(2) In addition to or in lieu of any remedy provided in subsection (1), 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 under subsection (1). 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.

(3)(a) Notwithstanding the provisions of s. 455.225, the department shall adopt rules to permit the issuance of citations for unlicensed practice of a profession. 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. The citation must clearly state that the subject may choose, in lieu of accepting the citation, to follow the procedure under s. 455.225. If the subject disputes the matter in the citation, the procedures set forth in s. 455.225 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 shall become a final order of the department. The penalty shall be a fine of not less than \$500 or more than \$5,000 or other conditions as established by rule.

(b) Each day that the unlicensed practice continues after issuance of a citation constitutes a separate violation.

(c) The department shall be entitled to recover the costs of investigation, in addition to any penalty provided according to department rule as part of the penalty levied pursuant to the citation.

(d) 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.

(4) All fines, fees, and costs collected through the procedures set forth in this section shall be allocated to the professions in the manner provided for in s. 455.2281 for the allocation of the fees assessed and collected to combat unlicensed practice of a profession.

(5) The provisions of this section apply only to the provisions of s. 455.217 and the professional practice acts administered by the department.

*History.—s. 3, ch. 84-271; s. 6, ch. 90-228; s. 58, ch. 92-33; s. 26, ch. 92-149; s. 23, ch. 93-129; s. 11, ch. 94-119; ss. 83, 84, ch. 94-218; s. 213, ch. 96-410; s. 25, ch. 97-261; s. 34, ch. 2000-160.*

**455.2281 Unlicensed activities; fees; disposition.—**In order to protect the public and to ensure a consumer-oriented department, it is the intent of the Legislature that vigorous enforcement of regulation for all professional

activities is a state priority. All enforcement costs should be covered by professions regulated by the department. Therefore, the department shall impose, upon initial licensure and each renewal thereof, a special fee of \$5 per licensee. Such fee shall be in addition to all other fees collected from each licensee and shall fund efforts to combat unlicensed activity. Any profession regulated by the department which offers services that are not subject to regulation when provided by an unlicensed person may use funds in its unlicensed activity account to inform the public of such situation. The board with concurrence of the department, or the department when there is no board, may earmark \$5 of the current licensure fee for this purpose, if such board, or profession regulated by the department, is not in a deficit and has a reasonable cash balance. A board or profession regulated by the department may authorize the transfer of funds from the operating fund account to the unlicensed activity account of that profession if the operating fund account is not in a deficit and has a reasonable cash balance. The department shall make direct charges to this fund by profession and shall not allocate indirect overhead. The department shall seek board advice regarding enforcement methods and strategies prior to expenditure of funds; however, the department may, without board advice, allocate funds to cover the costs of continuing education compliance monitoring under s. 455.2177. The department shall directly credit, by profession, 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 and from continuing education compliance monitoring as separate categories in the quarterly management report provided for in s. 455.219. The department shall not charge the account of any profession for the costs incurred on behalf of any other profession. 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.

**History.**—s. 27, ch. 92-149; s. 12, ch. 94-119; s. 160, ch. 99-251; s. 2, ch. 2001-269; s. 5, ch. 2004-292.

**455.2285 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 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, for any disciplinary cases under its jurisdiction, 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. 455.2273.
- (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. 4, ch. 84-271; s. 3, ch. 86-90; s. 7, ch. 90-228; s. 59, ch. 92-33; s. 28, ch. 92-149; s. 23, ch. 93-129; ss. 85, 86, ch. 94-218; s. 143, ch. 97-237; s. 26, ch. 97-261; s. 5, ch. 97-264; s. 19, ch. 97-273; s. 5, ch. 98-166.

**455.2286 Automated information system.—**

By November 1, 2001, the department shall implement an automated information system for all certificateholders and registrants under part XII of chapter 468, chapter 471, chapter 481, or chapter 489. The system shall provide instant notification to local building departments and other interested parties regarding the status of the certification or registration. The provision of such information shall consist, at a minimum, of an indication of whether the certification or registration is active, of any current failure to meet the terms of any final action by a licensing authority, of any ongoing disciplinary cases that are subject to public disclosure, whether there are any outstanding fines, and of the reporting of any material violations pursuant to s. 553.781. The system shall also retain information developed by the department and local governments on individuals found to be practicing or contracting without holding the applicable license, certification, or registration required by law. The system may be Internet-based.

*History.—s. 6, ch. 98-287; s. 31, ch. 2000-141.*

**455.229 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 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.

(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. 5, ch. 79-36; s. 1, ch. 88-392; s. 8, ch. 90-228; s. 10, ch. 91-137; s. 3, ch. 91-140; s. 60, ch. 92-33; s. 29, ch. 92-149; s. 23, ch. 93-129; s. 13, ch. 94-119; s. 87, ch. 94-218; ss. 306, 307, ch. 96-406; s. 214, ch. 96-410; s. 27, ch. 97-261.*

**455.232 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. 455.227, and, if applicable, shall be removed from office, employment, or the contractual relationship.

*History.—s. 2, ch. 85-311; s. 5, ch. 91-140; s. 83, ch. 91-224; s. 61, ch. 92-33; s. 30, ch. 92-149; s. 23, ch. 93-129; s. 10, ch. 94-119; s. 88, ch. 94-218; s. 28, ch. 97-261.*

**455.24 Advertisement by a veterinarian of free or discounted services; required statement.**

—In any advertisement for a free, discounted fee, or reduced fee service, examination, or treatment by a person licensed under chapter 474, the following statement shall appear in capital letters clearly distinguishable from the rest of the text: THE 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 provider 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. 1, ch. 84-161; s. 1, ch. 85-7; s. 6, ch. 86-90; s. 13, ch. 89-124; s. 31, ch. 92-149; s. 29, ch. 97-261.

**455.242 Veterinarians; disposition of records of deceased practitioners or practitioners relocating or terminating practice.**

—Each board created under the provisions of chapter 474 shall provide by rule for the disposition, under that chapter, of the records that are in existence at the time the practitioner dies, terminates practice, or relocates and is no longer available 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. 1, ch. 79-302; s. 11, ch. 88-1; s. 11, ch. 88-392; s. 15, ch. 89-124; s. 16, ch. 91-137; s. 34, ch. 92-149; s. 30, ch. 97-261.

**455.243 Authority to inspect.**—Duly authorized agents and employees of the department shall have the power to inspect in a lawful manner at all reasonable hours 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. 2, ch. 82-22; s. 63, ch. 92-33; s. 35, ch. 92-149; s. 23, ch. 93-129; s. 92, ch. 94-218; s. 31, ch. 97-261; s. 35, ch. 2000-160.

**455.245 Veterinarians; immediate suspension of license.**

—The department shall issue an emergency order suspending the license of any person licensed under chapter 474 who pleads guilty to, is convicted or found guilty of, or who enters a plea of nolo contendere to, regardless of adjudication, a felony under chapter 409 or chapter 893 or under 21 U.S.C. ss. 801-970 or under 42 U.S.C. ss. 1395-1396.

*History.*—s. 1, ch. 86-91; s. 12, ch. 88-1; s. 16, ch. 89-124; s. 64, ch. 92-33; s. 36, ch. 92-149; s. 23, ch. 93-129; s. 93, ch. 94-218; s. 192, ch. 97-103; s. 32, ch. 97-261.

**455.271 Inactive and delinquent status.**

- (1) A licensee may practice a profession only if the licensee has an active status license. A licensee who practices a profession without an active status license is in violation of this section and s. 455.227, and the board, or the department when there is no board, may impose discipline on the licensee.
- (2) Each board, or the department when there is no board, shall permit a licensee to choose, at the time of licensure renewal, an active or

inactive status. However, a licensee who changes from inactive to active status is not eligible to return to inactive status until the licensee thereafter completes a licensure cycle on active status.

(3) Each board, or the department when there is no board, shall, by rule, impose a fee for an inactive status license which is no greater than the fee for an active status license.

(4) An inactive status licensee may change to active status at any time, provided the licensee meets all requirements for active status, pays any additional licensure fees necessary to equal those imposed on an active status licensee, pays any applicable reactivation fees as set by the board, or the department when there is no board, and meets all continuing education requirements as specified in this section.

(5) A licensee shall apply with a complete application, as defined by rule of the board, or the department when there is no board, to renew an active or inactive status license before the license expires. Failure of a licensee to renew before the license expires shall cause the license to become delinquent in the license cycle following expiration.

(6)(a) A delinquent status 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 status licensee to become active or inactive before the expiration of the current licensure cycle shall render the license void without any further action by the board or the department.

(b) Notwithstanding the provisions of the professional practice acts administered by the department, the board, or the department if there is no board, may, at its discretion, reinstate the license of an individual whose license has become void if the board or department, as applicable, determines that the individual has made a good faith effort to comply with this section but has failed to comply because of illness or unusual hardship. The individual must apply to the board, or the department if there is no board, for reinstatement in a manner prescribed by rules of the board or the

department, as applicable, and shall pay an applicable fee in an amount determined by rule. The board, or the department if there is no board, shall require that such individual meet all continuing education requirements prescribed by law, pay appropriate licensing fees, and otherwise be eligible for renewal of licensure under this chapter.

This subsection does not apply to individuals subject to regulation under chapter 473.

(7) Each board, or the department when 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 status licensee when such licensee applies for active or inactive status.

(8) Each board, or the department when 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 when 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) Before reactivation, an inactive or delinquent licensee shall 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.

(11) The status or a change in status of a licensee shall not alter in any way the board's, or the department's when there is no board, right 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, or delinquent.

(12) This section does not apply to a business establishment registered, permitted, or licensed by the department to do business or to a person licensed, permitted, registered, or certified pursuant to chapter 310 or chapter 475.

**History.**—s. 14, ch. 94-119; s. 1, ch. 2005-249.

**455.273 Renewal and cancellation notices.—**

(1) At least 90 days before the end of a licensure cycle, the Department of Business and Professional Regulation shall:

(a) Forward a licensure renewal notification to an active or inactive 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 status 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 when there is no board.

**History.**—s. 15, ch. 94-119.

**455.275 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 when there is no board. 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 when there is no board.

(2) Notwithstanding any other provision of 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 pursuant to s. 455.225.

**History.**—s. 16, ch. 94-119.

**455.32 Management Privatization Act.—**

(1) This section shall be known by the popular name the "Management Privatization Act."

(2) The purpose of this section is to create a model for contracting with nonprofit corporations to provide services for the regulation of Florida's professionals which will ensure a consistent, effective application of regulatory provisions and appropriate budgetary oversight to achieve the most efficient use of public funds. Nonprofit corporations may be established pursuant to this section to provide administrative, examination, licensing, investigative, and prosecutorial services to any board created within the department pursuant to chapter 20 in accordance with the provisions of this chapter and the applicable practice act. No additional entities may be created to provide these services.

(3) As used in this section, the term:

(a) "Board" means any board, commission, or council created within the department pursuant to chapter 20.

(b) "Corporation" means any nonprofit corporation with which the department contracts pursuant to subsection (14).

(c) "Department" means the Department of Business and Professional Regulation.

(d) "Contract manager" means an employee of the department who serves as a liaison between the department, the board, and the corporation and is responsible for ensuring that the police powers of the state are not exercised by the corporation, while also serving as the contract monitor.

(e) "Business case" means a needs assessment, financial feasibility study, and

corporate financial model as specified in paragraph (4).

(f) "Performance standards and measurable outcomes" shall include, but not be limited to, timeliness and qualitative criteria for the activities specified in paragraph (6)(o).

(g) "Secretary" means the Secretary of Business and Professional Regulation.

(4) Based upon the request of any board, the department is authorized to establish and contract with a nonprofit corporation to provide administrative, examination, licensing, investigative, and prosecutorial services to that board, in accordance with the provisions of this chapter and the applicable practice act and as specified in a contract between the department and the corporation. The privatization request must contain a business case that includes a needs assessment and financial feasibility study performed by the board or an entity commissioned by a majority vote of the board. The needs assessment must contain specific performance standards and measurable outcomes and an evaluation of the department's current and projected performance in regard to those standards. The feasibility study must include the financial status of the board for the current fiscal year and the next 2 fiscal years. A financial model for the corporation must also be developed which includes projected costs and expenses for the first 2 years of operation and specific performance standards and measurable outcomes. The business case for privatization shall be submitted by the board to the department for inclusion in its legislative budget request to the Executive Office of the Governor and the Legislature pursuant to s. 216.023. The board shall proceed with the privatization only if such privatization is specifically authorized by general law.

(5) Any such corporation may hire staff as necessary to carry out its functions. Such staff are not public employees for the purposes of chapter 110 or chapter 112, except that the board of directors and the employees of the corporation are subject to the provisions of s. 112.061 and part III of chapter 112. The provisions of s. 768.28 apply to each such corporation, which is deemed to be a corporation primarily acting as an instrumentality

of the state but which is not an agency within the meaning of s. 20.03(11).

(6) Each corporation created to perform the functions provided in this section shall:

(a) Be a Florida corporation not for profit, incorporated under the provisions of chapter 617.

(b) Provide administrative, examination, licensing, investigative, and prosecutorial services to the board, which services may include unlicensed activity investigations and prosecutions, in accordance with the provisions of this chapter, the applicable practice act, and the contract required by this section.

(c) Receive, hold, and administer property and make only prudent expenditures directly related to the responsibilities of the applicable board and in accordance with the contract required by this section.

(d) Be approved by the department to operate for the benefit of the board and in the best interest of the state and specifically authorized by the Legislature.

(e) Operate under a fiscal year that begins on July 1 of each year and ends on June 30 of the following year.

(f) Be funded through appropriations allocated to the regulation of the relevant profession from the Professional Regulation Trust Fund pursuant to s. 455.219.

(g) Have a five-member board of directors, three of whom are to be appointed by the applicable board and must be licensees regulated by that board and two of whom are to be appointed by the secretary and are laypersons not regulated by that board. Initially, one member shall be appointed for 2 years, two members shall be appointed for 3 years, and two members shall be appointed for 4 years. One layperson shall be appointed to a 3-year term and one layperson shall be appointed to a 4-year term. Thereafter, all appointments shall be for 4-year terms. No new member shall serve more than two consecutive terms. Failure to attend three consecutive meetings shall be deemed a resignation from the board of directors, and the vacancy shall be filled by a new appointment. No professional board

member may also serve on the board of directors for the corporation.

(h) Select its officers in accordance with its bylaws. The members of the board of directors may be removed by the Governor, for the same reasons that a board member may be removed pursuant to s. 455.209.

(i) Select the president of the corporation, who shall manage the operations of the corporation, subject to the approval of the board.

(j) Use a portion of the interest derived from the corporation account to offset the costs associated with the use of credit cards for payment of fees by applicants or licensees.

(k) Operate under a written contract with the department.

(l) Provide for an annual financial audit of its financial accounts and records by an independent certified public accountant. The annual audit report shall include a management letter in accordance with s. 11.45 and a detailed supplemental schedule of expenditures for each expenditure category. The annual audit report must be submitted to the board, the department, and the Auditor General for review.

(m) Provide for all employees and nonemployees charged with the responsibility of receiving and depositing fee and fine revenues to have a faithful performance bond in such an amount and according to such terms as shall be determined in the contract.

(n) Keep financial and statistical information as necessary to completely disclose the financial condition and operation of the corporation and as requested by the Office of Program Policy Analysis and Government Accountability, the Auditor General, and the department.

(o) Submit to the secretary, the board, and the Legislature, on or before October 1 of each year, a report describing all of the activities of the corporation for the previous fiscal year which includes, but is not limited to, information concerning the programs and funds that have been transferred to the corporation. The report must include:

1. The number of license renewals.
2. The number of license applications received.

3. The number of license applications approved and denied and the number of licenses issued.

4. The average time required to issue a license.

5. The number of examinations administered and the number of applicants who passed or failed the examination.

6. The number of complaints received.

7. The number of complaints determined to be legally sufficient.

8. The number of complaints dismissed.

9. The number of complaints determined to have probable cause.

10. The number of administrative complaints issued and the status of the complaints.

11. The number and nature of disciplinary actions taken by the board.

12. All revenues received and all expenses incurred by the corporation during the preceding fiscal year in its performance of the duties under the contract.

13. Any audit performed under paragraph (l), including financial reports and performance audits.

14. The status of the compliance of the corporation with all performance-based program measures adopted by the board.

(p) Meet or exceed the requirements of the business case developed by the board and approved by the Executive Office of the Governor.

(7) The department shall annually certify that the corporation is complying with the terms of the contract in a manner consistent with the goals and purposes of the board and in the best interest of the state. If the department determines the corporation is not compliant with the terms of the contract, including performance standards and measurable outcomes, the contract may be terminated as provided in paragraph (14)(e).

(8) Nothing in this section shall limit the ability of the corporation to enter into contracts and perform all other acts incidental to those contracts which are necessary for the

administration of its affairs and for the attainment of its purposes.

(9) The corporation may acquire by lease, and maintain, use, and operate, any real or personal property necessary to perform the duties provided by the contract and this section.

(10) The corporation may exercise the authority assigned to the department or board under this section or the practice act of the relevant profession, pursuant to the contract, including but not limited to initiating disciplinary investigations for unlicensed practice of the relevant profession. The corporation may make a determination of legal sufficiency to begin the investigative process as provided in s. 455.225. However, the department or the board may not delegate to the corporation, by contract or otherwise, the authority for determining probable cause to pursue disciplinary action against a licensee, taking final action on license actions or on disciplinary cases, or adopting administrative rules under chapter 120.

(11) The department shall retain the independent authority to open, investigate, or prosecute any cases or complaints, as necessary to protect the public health, safety, or welfare. In addition, the department shall retain sole authority to issue emergency suspension or restriction orders pursuant to s. 120.60 or may delegate concurrent authority for this purpose to the relevant professional board.

(12) The corporation is the sole source and depository for the records of the board, including all historical information and records. The corporation shall maintain those records in accordance with the guidelines of the Department of State and shall not destroy any records prior to the limits imposed by the Department of State.

(13) The board shall provide by rule for the procedures the corporation must follow to ensure that all licensure examinations are secure while under the responsibility of the corporation and that there is an appropriate level of monitoring during the licensure examinations.

(14) The contract between the department and the corporation must be in compliance with this section and other applicable laws. The department shall retain responsibility for any duties it currently exercises relating to its police

powers and any other current duty that is not provided to the corporation by contract or this section. The contract shall provide, at a minimum, that:

(a) The corporation provide administrative, examination, licensing, investigative, and prosecutorial services in accordance with the provisions of this section and the practice act of the relevant profession. The prosecutorial functions of the corporation shall include the authority to pursue investigations leading to unlicensed practice complaints, with the approval of and at the direction of the relevant professional board. With approval of the department and the board, the corporation may subcontract for specialized services for the investigation and prosecution of unlicensed activity pursuant to this chapter. The corporation shall be required to report all criminal matters, including unlicensed activity that constitutes a crime, to the state attorney for criminal prosecution pursuant to s. 455.2277.

(b) The articles of incorporation and bylaws of the corporation be approved by the department.

(c) The corporation submit an annual budget for approval by the department. If the department's appropriations request differs from the budget submitted by the corporation, the relevant professional board shall be permitted to authorize the inclusion in the appropriations request of a comment or statement of disagreement with the department's request.

(d) The corporation utilize the department's licensing and computerized database system.

(e) The corporation be annually certified by the department as complying with the terms of the contract in a manner consistent with the goals and purposes of the board and in the best interest of the state. As part of the annual certification, the department shall make quarterly assessments regarding contract compliance by the corporation. The contract must also provide for methods and mechanisms for resolving any situation in which the assessment and certification process determines noncompliance, to include termination.

(f) The department employ a contract manager to actively monitor the activities of the corporation to ensure compliance with the

contract, the provisions of this chapter, and the applicable practice act.

(g) The corporation be funded through appropriations allocated to the regulation of the relevant profession from the Professional Regulation Trust Fund.

(h) If the corporation is no longer approved to operate for the board or the board ceases to exist, all moneys, records, data, and property held in trust by the corporation for the benefit of the board revert to the department, or the state if the department ceases to exist. All records and data in a computerized database must be returned to the department in a form that is compatible with the computerized database of the department.

(i) The corporation secure and maintain, during the term of the contract and for all acts performed during the term of the contract, all liability insurance coverages in an amount to be approved by the department to defend, indemnify, and hold harmless the corporation and its officers and employees, the department and its employees, the board, and the state against all claims arising from state and federal laws. Such insurance coverage must be with insurers qualified and doing business in the state. The corporation must provide proof of insurance to the department. The department and its employees, the board, and the state are exempt from and are not liable for any sum of money which represents a deductible, which sums shall be the sole responsibility of the corporation. Violation of this paragraph shall be grounds for terminating the contract.

(j) The board, in lieu of the department, shall retain board counsel pursuant to the requirements of s. 455.221. The corporation, out of its allocated budget, shall pay all costs of representation by the board counsel, including salary and benefits, travel, and any other compensation traditionally paid by the department to other board counsel.

(k) The corporation, out of its allocated budget, pay to the department all costs incurred by the corporation or the board for the Division of Administrative Hearings of the Department of Management Services and any other cost for utilization of these state services.

(l) The corporation, out of its allocated budget, pay to the department all direct and indirect costs associated with the monitoring of the contract, including salary and benefits, travel, and other related costs traditionally paid to state employees.

(m) The corporation comply with the performance standards and measurable outcomes developed by the board and the department. The performance standards and measurable outcomes must be specified within the contract.

(15) Corporation records are public records subject to the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution; however, public records exemptions set forth in ss. 455.217, 455.225, and 455.229 for records held by the department shall apply to records held by the corporation. In addition, all meetings of the board of directors are open to the public in accordance with s. 286.011 and s. 24(b), Art. I of the State Constitution. The department and the board shall have access to all records of the corporation as necessary to exercise their authority to approve and supervise the contract. The Auditor General and the Office of Program Policy Analysis and Government Accountability shall have access to all records of the corporation as necessary to conduct financial and operational audits or examinations.

(16) If any provision of this section is held to be unconstitutional or is held to violate the state or federal antitrust laws, the following shall occur:

(a) The corporation shall cease and desist from exercising any powers and duties enumerated in this section.

(b) The department shall resume the performance of such activities. The department shall regain and receive, hold, invest, and administer property and make expenditures for the benefit of the board.

(c) The Executive Office of the Governor, notwithstanding chapter 216, may reestablish positions, budget authority, and salary rate necessary to carry out the department's responsibilities related to the board.

**History.**—s. 9, ch. 2000-356; s. 120, ch. 2001-266; s. 1, ch. 2004-292; s. 83, ch. 2005-2; s. 1, ch. 2008-134.

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# Florida Laws and Rules for Engineers

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## Section 4 – Overview of the Disciplinary Process

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**Overview of the Disciplinary Process**

**Filing of a Complaint**

The disciplinary process is started with the filing of a complaint. Anyone can file a complaint against a licensed engineer. It is not necessary that the complainant also be a licensed engineer. The complainant has the option of signing the complaint or remaining anonymous.

The Board will investigate a **signed** complaint if it is:

- a. Submitted in writing,
- b. Signed by the complainant, and
- c. Legally sufficient.

The Board will investigate an **anonymous** complaint if it is:

- a. Submitted in writing,
- b. Legally sufficient,
- c. A substantial violation, and
- d. Believed that the allegation is true after an initial review

A complaint is legally sufficient if it contains ultimate facts that show that a violation of any practice act or the Board's Rules has occurred. In order to determine legal sufficiency, FEMC may require supporting information or documentation. The investigation may continue and the 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.

Within fifteen (15) days of receiving a complaint which is determined to be legally sufficient, the FEMC must furnish the subject of the complaint with a copy of the complaint. The subject has twenty (20) days to provide a written response to the complaint.

**Disposal of Violations**

Depending on the nature of the offense, there are a number of means by which violations may be disposed of. Many violations are disposed of through the Administrative Complaint process. However, some lesser violations may be handled through alternative means.

	Notice of Noncompliance	Mediation	Citation
Offenses	<ul style="list-style-type: none"> <li>- Failure to date documents when affixing signature and seal</li> <li>- Practice with an inactive or delinquent license less than (1) month</li> <li>- Firm practicing without a current certificate of authorization less than (1) month.</li> </ul>	<ul style="list-style-type: none"> <li>- Practice with an improper seal</li> <li>- Failure to date documents when affixing seal and signature.</li> </ul>	<ul style="list-style-type: none"> <li>- Practiced or offered to practice engineering through a firm that has not been duly certified.</li> <li>- Practice with an inactive or delinquent license more than (1) month or if a Notice of Noncompliance has previously been issued for the same offense.</li> <li>- Firm practicing without a current certificate of authorization more than (1) month or if a Notice of Noncompliance has previously been issued for the same offense.</li> <li>- Failure to notify the Board of a change in the principal officer of the firm within (1) month when the principal officer is the qualifying engineer for the firm.</li> </ul>

## Administrative Complaint Process

Most violations are disposed of through the Administrative Complaint process. One of the functions of the Florida Board of Engineers is to act on administrative complaints. The Board reviews each disciplinary case and issues a Final Order.

The process is as follows:

1. A complaint is filed with the Florida Engineers Management Corporation (FEMC).
2. The complaint is reviewed for legal sufficiency.
  - a. If there is a determination of legal sufficiency, the file is assigned to an investigator.
  - b. If there is a determination of no legal sufficiency, the case is closed by memo to the Executive Director.
3. Once the investigation is complete, the case is presented to the Probable Cause Panel. If probable cause is found, then an administrative complaint is issued. The prosecuting attorney must notify the engineer. The engineer has three options. He/she can:
  - a. Request an informal hearing in front of the board, or
  - b. Request a formal hearing before an administrative law judge (ALJ), or
  - c. Agree to a settlement stipulation.
4. Regardless of the option chosen, the Board makes the final determination regarding the penalties, which are issued in a Final Order by the Board.

## Disciplinary Guidelines

The Board operates under certain guidelines that prescribe a minimum and maximum penalty that will **normally** be imposed for each offense. In 471.033 (1) F.S. and 61G15-19.001 F.A.C., the offenses are identified for which disciplinary action may be taken. The **normal** ranges of penalties are set forth in Chapter 471.033 (3)

F.S. and these are further clarified in 61G15-19.004 F.A.C.

- (a) Denial of an application for licensure.
- (b) Revocation or suspension of a license.
- (c) Imposition of an administrative fine not to exceed \$5,000 for each count or separate offense.
- (d) Issuance of a reprimand.
- (e) Placement of the licensee on probation for a period of time and subject to such conditions as the board may specify.
- (f) Restriction of the authorized scope of practice by the licensee.
- (g) Restitution.

## Aggravating / Mitigating Circumstances

While there are guidelines for the Board to follow when determining the penalty for each offense, the Board does have the latitude to deviate from the guidelines. The guidelines are intended to address normal penalties. However, where aggravating circumstances exist, the Board may impose a punishment that is more severe than prescribed in the guidelines. Likewise, the Board may impose a less severe punishment when mitigating circumstances exist.

Also, the fact that an Administrative Law Judge or a Probable Cause Panel was not aware of mitigating or aggravating circumstances prior to recommending a penalty, does not prevent the Board from considering such circumstances that are brought to the Board's attention prior to issuance of a Final Order.

**Aggravating circumstances** may justify the Board to deviate from the disciplinary guidelines and cause an enhancement of a penalty beyond the maximum penalty prescribed in the guidelines. Aggravating circumstances may include:

- A history of previous violations
- In cases of negligence, the magnitude of the project and extent of the damage inflicted on the public

- Violation of professional practice acts in other jurisdictions
- Violations following the previous issuance of a letter of guidance to the licensee

**Mitigating circumstances** may justify the Board to deviate from the disciplinary guidelines and cause a lessening of a penalty beyond the minimum penalty prescribed in the guidelines. Mitigating circumstances may include:

- A lack of previous history of violations
- In cases of negligence, the minor nature of the project and a lack of danger to the public
- Restitution of damages suffered by the licensee's client
- The licensee's professional standing among his peers, including continuing education
- Measures taken by the licensee and his firm to insure that similar violations do not recur in the future

### The Buck Stops Here!

Following the discussion above on mitigating and aggravating circumstances, it is appropriate to point out the following:

The Board has the final say in the determination of penalties and is not obligated to follow the guidelines, recommendations or settlement stipulations that are made prior to the Board's issuance of its Final Order.

This bears repeating:

1. The Board is not obligated to impose the same penalty that is recommended by an Administrative Law Judge (ALJ) in a Recommended Order.
2. The Board is not obligated to impose the same penalty that is recommended by a Probable Cause Panel.
3. The Board is not obligated to accept a settlement stipulation.

The Board may choose to set aside the judgment of an ALJ, reject the recommendation

of a Probable Cause Panel, or reject a settlement stipulation, and impose a different penalty at the Board's discretion. In the disciplinary cases from the previous biennium that follow in the next section, there are numerous occasions when the Board rejects a recommendation and subsequently imposes a different penalty.

### The Probable Cause Panel

The Probable Cause Panel (PCP) reviews the facts resulting from an investigation performed by the FEMC. The PCP is also required to consider the subject's response to the complaint as part of the evidence. If probable cause is found that one or more violations have occurred, then an Administrative Complaint is issued. The PCP also typically recommends a punishment, although the recommendation is not always followed. The punishment is sometimes reduced by a settlement stipulation. And the Board is also empowered to impose a different punishment than recommended by the PCP.

If the information submitted to the PCP is not sufficient to determine probable cause, then the case is dismissed and the information is not made public. Also, the PCP may issue a letter of guidance to the licensee in lieu of finding probable cause, in which case the letter of guidance and the information in the investigation remain confidential.

The PCP is made up of three (3) current board members or two (2) current board members and one (1) previous board member. The PCP is appointed at the first board meeting of the year, and members serve for a period of one (1) year.

### Disputing the Facts

After an Administrative Complaint is issued by the PCP, the engineer and his attorney must determine a path forward based on whether there is a dispute over the facts of the case. **If the facts are disputed**, the engineer may elect to have a **formal hearing before an Administrative Law Judge (ALJ)**. The ALJ will hear the testimony of both sides and issue a ruling regarding the facts of the case. The ALJ will also issue a recommended Final Order to the Board. However, the Board is not obligated to follow the recommended Final Order.

**If there is no dispute over the facts** of the case, the engineer can elect to present his case to the Board in an **informal hearing**. In the informal hearing, the engineer and his attorney may argue interpretations of the law or present mitigating circumstances in the hopes of reducing the penalties imposed by the Board. **Disputing the facts of the case is not allowed in an informal hearing.**

**Settlement Stipulation**

In lieu of a formal or informal hearing, the engineer may enter into a settlement stipulation. This is analogous to a “plea bargain” in the criminal court system. Starting with the punishment recommended by the PCP, the two sides negotiate a penalty. Again, the Board is not obligated to accept the terms of a settlement stipulation. The Board may elect to impose the original penalty recommended by the PCP or a different penalty altogether.

**Default Judgment**

There is one other option available to the subject of an Administrative Complaint: Do nothing.

However, this course of action – or rather course of inaction – is not recommended. If the engineer fails to respond to an Administrative Complaint, the Board will render a default judgment. In the absence of any explanation from the engineer or any assurances that he/she will not violate the Rules again, the penalties meted out by the Board can be very severe.

**Practice Problem #8**

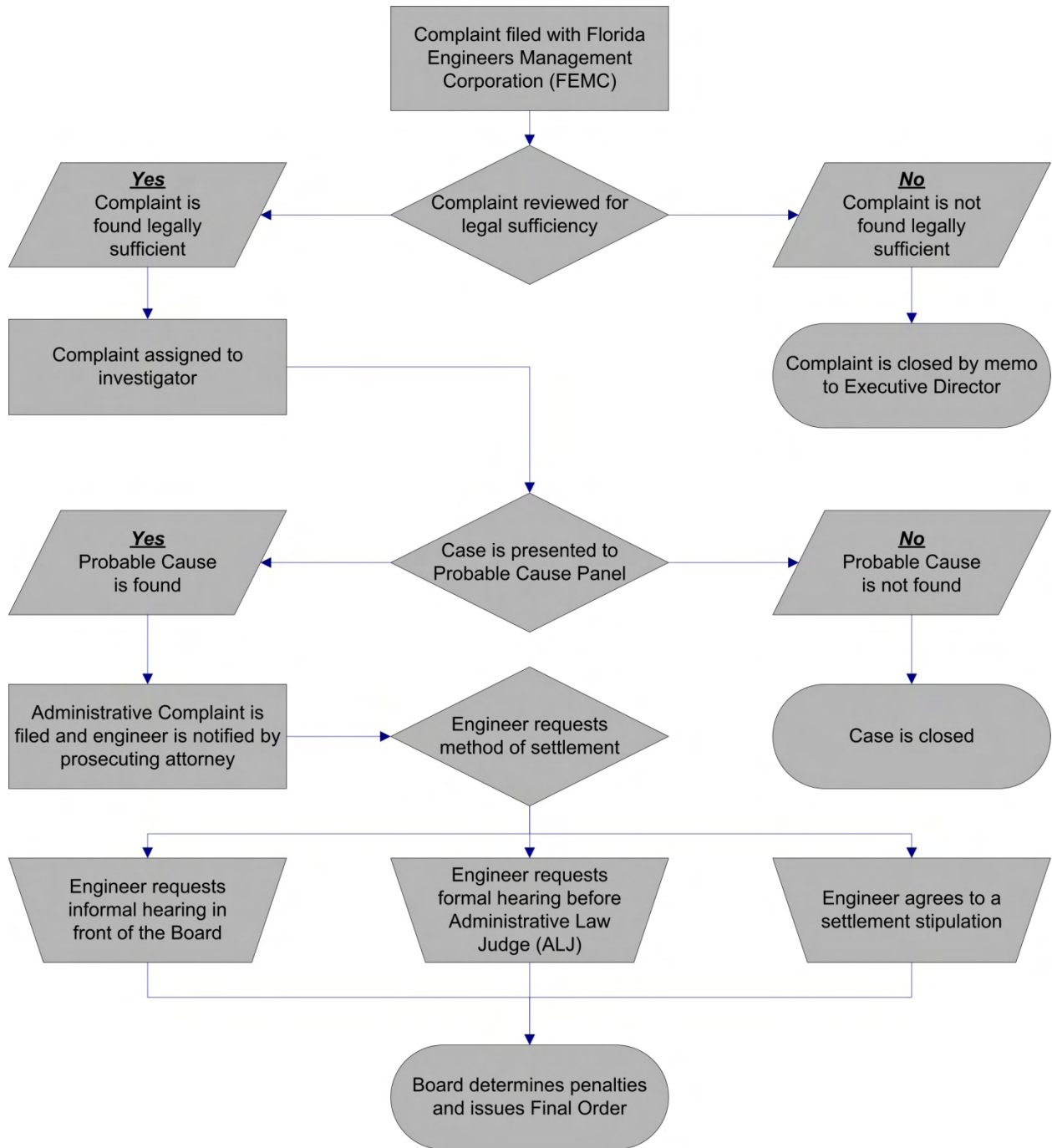
What role does a Probable Cause Panel play in the disciplinary process?

**Practice Problem #9**

When can a Respondent request a formal hearing in front of an Administrative Law Judge?

**Practice Problem #10**

List below two (2) out of the three (3) options available to an engineer when an administrative complaint is filed against him.



**Figure 1** This figure maps the Florida disciplinary process.

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# Florida Laws and Rules for Engineers

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## **Section 5 – Selected Disciplinary Cases During the Preceding Biennium**

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**Disciplinary Case #1**

**FEMC Case No.** 2007038075  
 Barnett, Winthrop, P.E.  
 PE 25576

**Source:** FBPE Meeting Minutes –  
 April 2009

**Charges:** One (1) count of  
 negligence, One (1) count  
 practicing on a delinquent  
 license

**Legal Counsel:** David Rankin, Esquire

**PCP:** Burke, Seckinger

**Board Discussion and Final Order**

Mr. Barnett was present and sworn in prior to addressing the Board. He was represented by his attorney David Rankin, Esquire.

Mr. Creehan outlined the basis for the complaint. The complaint was initiated by Robert Campbell, Director of Transportation and Land Development for Hillsborough County. The complaint alleged the respondent practiced engineering while his license was delinquent. An Administrative Complaint was filed on November 21, 2007. The Administrative Complaint charged the Respondent with negligence in the FEMC Case No. 2005050647 and practicing on a delinquent license in FEMC Case No. 2007038075.

The prosecutor recommended the FEMC Final Order filed on September 23, 2008 for Case No. 20070308075 be vacated (FEMC Case No. 2005 to remain dismissed pursuant to that Order) and in its place the proposed Settlement Stipulation pursuant to FEMC Case No. 2007030875 be adopted.

**NOTE:** Respondent has a disciplinary history under FEMC Case No. (s) 2004004769 and 2004006356. Respondent completed all the terms pursuant to the Settlement Stipulation

including successful plans reviews at the six (6) and eighteen (18) months periods respectively.

The Probable Cause Panel Recommendation was:

1. Vacate the part of FEMC Final Order as it pertains to FEMC Case No. 2007038075.
2. Adoption of the proposed Settlement Stipulation which includes a \$5,000.00 administrative fine; costs of \$1,215.00; and an appearance before the Board to explain what the Respondent has done to improve quality and control measures in his practice.

The original PCP Recommendation was: \$10,000.00 administrative fine; costs of \$1,215.00; suspension of license for two years; following suspension, Subject shall serve two years probation with plans review at 6 and 18 months: and an appearance before the Board to explain what his plans for doing business while under suspension are.

**NOTE:** The Panel made its above recommendation based on two cases against Respondent at the specific Panel meeting where probable cause was found. Secondly the Respondent's license was effectively suspended nearly two months - the time from which the Final Order was filed until the stay lifting his suspension pursuant to the appeal was granted.

After review of the proposed Settlement Stipulation the following action occurred.

Dr. Hyder moved to reject the stipulation. Mr. Halyard noted there was a signed stipulation and it appears to be signed in February of this year. Based on this fact the following action was taken.

Upon motion by Mr. Halyard seconded by Mr. Wallis, the stipulation in FEMC Case No. 2007038075 was adopted and the portion of the FEMC Final Order involving FEMC Case No 2007038075 is vacated. The motion passed by majority with one dissenting vote.

**Case Law Reference**

Two issues are discussed in this case: negligence and practicing with a delinquent license. Here are the case law references for each:

**61G15-19.001 (4)**

A professional engineer shall not be negligent in the practice of engineering. The term negligence set forth in Section 471.033(1)(g), F.S., is herein defined as the failure by a professional engineer to utilize due care in performing in an engineering capacity or failing to have due regard for acceptable standards of engineering principles. Professional engineers shall approve and seal only those documents that conform to acceptable engineering standards and safeguard the life, health, property and welfare of the public.

**471.003**

No person other than a duly licensed engineer shall practice engineering or use the name or title of "licensed engineer," "professional engineer," or any other title, designation, words, letters, abbreviations, or device tending to indicate that such person holds an active license as an engineer in this state.

**Disciplinary Case #2**

**FEMC Case No.** 2007047573  
 Hassoun, Mouaffak, P.E.  
 PE 61969

**Source:** FBPE Meeting Minutes –  
 April 2009

**Charges:** One (1) count of violation of  
 the rules regarding the  
 successor engineer

**Legal Counsel:** Randall Gilbert, Esquire

**PCP:** Rebane, Burke

**Board Discussion and Final Order**

Mr. Hassoun was sworn in prior to addressing the board.

Mr. Creehan outlined the basis for the complaint initiated by a fellow Professional Engineer. The complaint alleges Mr. Hassoun plagiarized his plans when he used the complainant's design for concrete pads for one of complainant's competitors. Further, complainant alleged that the subject "obviously did not take the time to develop a protocol to provide the calculations or to design the proper attachments.

An Administrative Complaint was filed and Mr. Hassoun, through his attorney Mr. Gilbert, entered into a settlement stipulation.

PCP Recommendation: Reprimand; \$2,000 administrative fine; costs of \$2,020; two years probation with plans review of 6 and 18 month; Board approved course in Engineering Professionalism and Ethics; Study guide; and appearance before the Board to explain his understanding of the rules regarding the successor engineer.

Stipulation: Same as to substantive discipline imposed. Certain changes to the stipulation text were made at the request of Respondent's

Counsel relating to the process for completing the probation. It was noted that the changes did not materially affect the probationary terms.

Mr. Hassoun was asked to explain his understanding of the successor engineer.

Mr. Hassoun noted this as an honest mistake and he was unaware they belonged to someone else. He thought the documents were shop drawings. He was then sued, hired a lawyer, they settled, six months later there is a complaint filed. This case has cost him \$30,000. Since then he has taken all of the required continuing education courses, renewed his license, and he works with a respected company and has never had a problem.

Mr. Hassoun shared his understanding of the engineering successor rule as applied means you cannot sign and seal someone else's drawing without notifying them that you are using their work and obtaining their permission.

After discussion, the Board took the following action:

Upon motion by Mr. Halyard seconded by Dr. Bauer, the stipulation was accepted.

**Case Law Reference**

Rule 61G15-27.001, F.A.C. however, makes it clear that a successor engineer seeking to reuse already sealed documents must be able to document that he has, in fact, recreated all the work done by the original engineer. In other words, all site visits, research, and the like must be documented and producible upon demand. In addition, he or she must remove the old title block and use his own and, of course, accept all professional and legal responsibility for the documents

**61G15-27.001 Procedures for a Successor Professional Engineer Adopting As His Own the Work of Another Engineer.**

(1) A successor professional engineer seeking to reuse already sealed contract documents under the successor professional engineer's seal must be able to document and produce upon request evidence that he has in fact recreated all the work done by the original professional engineer. In other words, calculations, site visits, research and the like must be documented and produceable upon demand. Further, the successor professional engineer must take all professional and legal responsibility for the documents which he sealed and signed and can in no way exempt himself from such full responsibility. Plans need not be redrawn by the successor professional engineer; however, justification for such action must be available through well kept and complete documentation on the part of the successor professional engineer as to his having rethought and reworked the entire design process. A successor professional engineer must use his own title block, seal and signature and must remove the title block, seal and signature of the original professional engineer before reusing any sealed contract documents.

(2) Prior to sealing and signing work a successor professional engineer shall be required to notify the original professional engineer, his successors, or assigns by certified letter to the last known address of the original professional engineer of the successor's intention to use or reuse the original

professional engineer's work. The successor professional engineer will take full responsibility for the drawing as though they were the successor professional engineer's original product.

**Disciplinary Case #3**

**FEMC Case No.** 2005014415  
 Malone, Roger, P.E.  
 PE 56496

**Source:** FBPE Meeting Minutes –  
 August 2009

**Charges:** One (1) count of negligence

**Legal Counsel:** Edwin Bayo, Esquire

**PCP:** Rebane, Seckinger

**Board Discussion and Final Order**

Mr. Malone was present with his counsel Mr. Ed Bayo. Mr. Malone was sworn prior to addressing the Board.

Mr. Rimes outlined the facts of this case. This investigation was predicated on a complaint filed by a licensed professional engineer, who alleges that the subject signed and sealed plans for the New Flagler 6-12 School in Palm Coast, Florida being constructed for the Flagler County School District. There were major structural engineering deficiencies. According to the complainant, the subject was an employee for Gibraltar Design, which at the time of the contract in 2003, held a certificate of authorization from the Florida Board of Professional Engineers (CA 7728, now null & void), as well as a Certificate of Authorization from the Florida Board of Architecture (AA 2911, now delinquent). The complainant's firm, Structural Engineers Group, was contracted by the school board to review and redesign the project.

The PCP Recommendation was \$5,000.00 administrative fine (\$5,000.00 per count for (1) count); costs of \$3,337.50; suspension of licensure, stayed if fine/costs paid within 30 days of Final Order date; Subject will be placed on 2 year(s) probation with plan review at 6 and 18 months; Board approved course in Engineering Professionalism and Ethics; study guide; and

appearance before the Board to explain: the current clients he's performing work for, and who comprises his staff.

The stipulation calls for dismissal of items contained in Paragraphs 4C, 4E, 4G & 4H of the AC. a reprimand; \$5,000.00 administrative Fine (\$5,000.00 per count for (1) count); costs of \$9172.00; Board approved course in Engineering Professionalism and Ethics & study guide; within 1 year of entry of Final Order; when subject recommences practice in Florida, he is required to notify the Board & then Mr. Malone agrees to imposition of whatever terms may be set for a Project Review determined by the as appropriate at the time; appearance before the Board on two (2) occasions initially to answer questions relating to this case then at time of recommencing practice to explain: the current clients he's performing work for, composition of his staff and scope of practice.

Mr. Bayo' addressed the Board on Mr. Malone's engineering background. He confirmed Mr. Malone's relocation to another state with no plans to return to the State of Florida. He noted, for the record, no subsequent complaints against his client.

Upon motion by Dr. Bauer, seconded by Dr. Earle, the Settlement Stipulation was accepted. The motion passed.

Mr. Burke asked Mr. Bayo' if there was a civil suit. Mr. Bayo' indicated there was litigation and Mr. Malone had to pay 1/7 of the total which is approximately \$750,000.

Mr. Malone briefed the Board on the company and structure. The firm was based in Jacksonville with a staff of four engineers and technicians who worked with him on the project. He was the engineer of record and they were under his responsible charge. Review of documents was his responsibility.

Mr. Burke asked what Mr. Malone has learned from this experience. Mr. Malone confirmed his understanding for second and third reviews and he can't depend on those working for him to assume his responsibility as engineer of record.

Mr. Bayo' asked if the time frame for payment of the fine could be changed extended to 90 days to assist the respondent.

Upon motion by Dr. Earle, seconded by Ms. Garcia, the Settlement Stipulation was amended to allow payment of fines and costs within 90 days of the Final Order. The motion passed.

**Case Law Reference**

The violation in this case was negligence.

**61G15-19.001 (4)**

(4) A professional engineer shall not be negligent in the practice of engineering. The term negligence set forth in Section 471.033(1)(g), F.S., is herein defined as the failure by a professional engineer to utilize due care in performing in an engineering capacity or failing to have due regard for acceptable standards of engineering principles. Professional engineers shall approve and seal only those documents that conform to acceptable engineering standards and safeguard the life, health, property and welfare of the public.

Failure to comply with the procedures set forth in the Responsibility Rules as adopted by the Board of Professional Engineers shall be considered as non-compliance with this section unless the deviation or departures therefrom are justified by the specific circumstances of the project in question and the sound professional judgment of the professional engineer.

**Disciplinary Case #4**

**FEMC Case No.** 2007056560  
 Tan, Seng-Chai, P.E.  
 PE 32930

**Source:** FBPE Meeting Minutes – August 2009

**Charges:** Negligence in the practice of engineering

**Legal Counsel:** Edwin Bayo, Esquire

**PCP:** Rebane, Charland, Halyard

**Board Discussion and Final Order**

Mr. Tan was not present at this hearing; he was represented by counsel, Edwin Bayo.

Mr. Rimes stated this investigation was predicated on the receipt of a complaint filed by a professional engineer in Illinois. The engineer states he contracted with Tanco Construction Co., Inc., to build a house and bath house in Palm Beach County, Florida. He alleges the Engineer of Record, Seng-Chai Tan, PE, would not seal drawings for complainant's review. This complaint was originally closed as legally insufficient on 11/14/07 because it appeared to be a contract dispute between the complainant and the general contractor. The case was re-opened on 12/21/07 at the direction of FEMC Chief Prosecutor Patrick Creehan after additional information was received from the complainant.

The Probable Cause Panel Recommendation is Reprimand; \$1,000.00 administrative fine (\$1,000.00 per count for (1) count); and costs of \$3,131.83, Suspension of licensure, stayed if fine/costs paid within 30 days of Final Order date. Upon resumption of engineering practice in Florida: Subject will make an appearance before the Board, following appearance: Subject will be placed on 2 year(s) probation with plan review at 6 and 18 months; Board approved course in

Engineering Professionalism and Ethics; and study guide.

The Settlement Stipulation calls for withdrawal of the specifications set forth in Paragraphs 4A, 4D, 4E, 4G, 4J and 5 of the Administrative Complaint and Dismisses all charges related to those specifications, reprimand; and costs of \$3,131.83, Suspension of licensure, stayed if costs paid within 30 days of Final Order date. Upon resumption of engineering practice in Florida: Subject will make an appearance before the Board, following appearance: Subject will be placed on 2 year(s) probation with plan review at 6 and 18 months; Board approved course in Engineering Professionalism and Ethics; and study guide. The second year of Probation will be terminated early if, at the sole discretion of the Board Consultant and the Board, it is determined that the initial plan review report was "favorable" (defined in the Stipulation as being free of any material deficiencies).

Mr. Burke asked why Mr. Tan was not in attendance. Mr. Bayo' indicated Mr. Tan moved to Thailand. Mr. Tan has not been to the United States in two years with exception of one visit to retain Mr. Bayo's services.

Mr. Burke commented on this case. The complainant is an engineer in Indiana and he did not understand the contractual relationship with regards to the engineer not working for Tanco. There was some negligence and he had concern with removing the fine from the penalty.

Mr. Bayo' explained due to the amount of costs involved the fine was eliminated. He further noted this has been a fairly trying case for Mr. Tan, trying to defend the case and deal with it from the other side of the world. He indicated if the owner or the contractor had pointed out the problems, he could have addressed those issues. He was never given the opportunity. Mr. Bayo' indicated his client's willingness to give up his license and he believes Mr. Tan will never return to Florida as part of his practice.

Upon motion by Mr. Tomasino, seconded by Dr. Earle, the stipulation was accepted. The motion passed.

**Case Law Reference**

Two law references were made in this case, both involving negligence in the practice of engineering.

**61G15-19.001 Grounds for Disciplinary Proceedings.**

(4) A professional engineer shall not be negligent in the practice of engineering. The term negligence set forth in Section 471.033(1)(g), F.S., is herein defined as the failure by a professional engineer to utilize due care in performing in an engineering capacity or failing to have due regard for acceptable standards of engineering principles. Professional engineers shall approve and seal only those documents that conform to acceptable engineering standards and safeguard the life, health, property and welfare of the public.

Failure to comply with the procedures set forth in the Responsibility Rules as adopted by the Board of Professional Engineers shall be considered as non-compliance with this section unless the deviation or departures therefrom are justified by the specific circumstances of the project in question and the sound professional judgment of the professional engineer.

**471.033 Disciplinary proceedings.--**

(1) The following acts constitute grounds for which the disciplinary actions in subsection (3) may be taken:

(g) Engaging in fraud or deceit, negligence, incompetence, or misconduct, in the practice of engineering.

**Disciplinary Case #5**

**FEMC Case No.** 2008045140  
 Zaleski, James, P.E.  
 PE 51544

**Source:** FBPE Meeting Minutes –  
 August 2009

**Charges:** Negligence in the practice of  
 engineering

**Legal Counsel:** None

**PCP:** Rebane, Charland, Halyard

**Board Discussion and Final Order**

Mr. Zaleski was present and sworn in prior to addressing the Board.

Mr. Rimes stated this investigation was predicated on the receipt of a complaint from a homeowner of property located at Lot #5 Carr Lane, Tallahassee, alleging Mr. Zaleski provided soil boring tests. Apparently, after the house was constructed it began to show structural cracking. A subsequent engineer was engaged to provide more soil borings and discovered pipe clay on site. Complainant alleges Mr. Zaleski falsified the soils report and "has reason to believe that the soil borings were never conducted, even though a report was issued and signed by Mr. Zaleski."

The Probable Cause Recommendation was Reprimand; \$2,000.00 administrative fine (\$2,000.00 per count for (1) count); costs of \$1,112.00; Suspension of licensure, stayed if fine/costs paid within 30 days of Final Order date; Subject will be placed on 2 year(s) probation with plan review at 6 and 18 months; Board approved course in Engineering Professionalism and Ethics; study guide; and appearance before the Board to explain: what steps he plans to take to improve the quality of his practice.

The Settlement Stipulation calls for a Reprimand; \$2,000.00 administrative fine (\$2,000.00 per count for (1) count); costs of \$1,112.00; Suspension of licensure, stayed if fine/costs paid within 30 days of Final Order date; Subject will be placed on 2 year(s) probation with plan review at 6 and 18 months; Board approved course in Engineering Professionalism and Ethics; study guide; and appearance before the Board to explain: what steps he plans to take to improve the quality of his practice. The second year of PROBATION will be terminated early if, at the sole discretion of the Board Consultant and the Board, it is determined that the initial plan review report was "favorable" (defined in the Stipulation as being free of any material deficiencies).

Mr. Rimes noted members had received a letter from one of the complainants expressing their concern.

Mr. Burke asked Mr. Zaleski to explain how he is going to prevent this from happening again.

Mr. Zaleski advised the Board of his primary job which is working for a site contractor in Tallahassee. He performs modifications to plans, as well as densities for FDOT, and he limits this as his area of practice. There are other types of side jobs that he will not do anymore. He had worked for this man for over seven years and has never had a complaint. The superintendent filed the complaint.

Upon motion by Ms. Garcia, seconded by Dr. Panigrahi, the Settlement Stipulation was accepted. The motion passed.

**Case Law Reference**

The same case laws as cited in Disciplinary Case #4 above apply.

**Disciplinary Case #6**

**FEMC Case No.** 2008035570  
Hampton, John H.  
PE 22072

**Source:** FBPE Meeting Minutes –  
August 2009

**Charges:** Misconduct in the practice of  
engineering. Plan stamping.

**Legal Counsel:** Dennis Creed, III, Esquire

**PCP:** Rebane, Charland, Halyard

**Board Discussion and Final Order**

Mr. John Hampton was present with his attorney, Mr. R. Paul Roecker, Esquire. Mr. Hampton was sworn in before addressing the board.

Mr. Rimes outlines the facts of this case. The charges relate to a violation of Section 471.033(1)(g), F.S., engaging in misconduct in the practice of engineering, Rule 61G15-19.001(6)(j) , and 61G15-29.001(3), affixing seal/signature to plans, reports, certifications not prepared under responsible supervision direction & control.

Probable Cause was found in November 2009 and an AC was authorized. After service, the parties engaged in discussion and negotiations wherein Respondent agreed he had not adequately supervised the preparation and creation of the reports in question. As a result, of the discussion a Settlement Stipulation was entered into on March 24, 2010.

The stipulation calls for a Fine \$5000.00 for Count I, \$2000.00 for Count II; Fine of \$1486.00;

Reprimanded; 2 year(s) Probation with plan review at 6 and 18 months; Board approved course in Engineering Professionalism and Ethics; study guide; and appearance before the Board to explain: what procedures and quality control measures he plans to implement to improve his work product.

Mr. Hampton addressed the board as part of the requirement of considering the stipulation. He responded to several questions posed by the Board on his present practice.

Upon motion by Dr. Earle seconded by Ms. Garcia, the stipulation was adopted. The motion passed

**Case Law Reference**

One of the charges in this case was plan stamping. Plan stamping is quite simply when an engineer seals a drawing or other document that was not prepared by him or under his direct supervision and control. Below is the language from Chapter 471 F.S. related to plan stamping:

**471.033 Disciplinary proceedings**

(1) The following acts constitute grounds for which the disciplinary actions in subsection (3) may be taken:

(j) Affixing or permitting to be affixed his or her seal, name, or digital signature to any final drawings, specifications, plans, reports, or documents that were not prepared by him or her or under his or her responsible supervision, direction, or control.

**Disciplinary Case #7**

**FEMC Case No.** 2009064016  
Perkins, Judy A.  
PE 62332

**Source:** FBPE Meeting Minutes –  
August 2009

**Charges:** Negligence in the practice of  
engineering.

**Legal Counsel:** None

**PCP:** Rebane, Charland

**Board Discussion and Final Order**

Ms. Perkins was present and sworn in prior to addressing the board.

Mr. Rimes outlined the facts of the case. The charges relate to 471.033(1) (g), F.S., by engaging in negligence in the practice of engineering.

Ms. Perkins had entered into a proposed stipulation. The stipulation calls for a Reprimand; \$3,000.00 administrative fine; costs of \$129.87; suspension of licensure, stayed if fine/costs paid

within 30 days of Final Order date; Subject will be placed on an additional two (2) years from the agreed upon extension date of November 22, 2010 in case no. 2006033572 with plan review at 6 and 18 months; Board approved Intermediate course in Engineering Professionalism and Ethics; study guide; and appearance before the Board at the time of the hearing to explain what steps she's taken to improve her practice in adhering to current building codes, what improvements and quality control measures she will implement to improve her work product.

Ms. Perkins addressed the Board and responded to several questions on her present practice.

Upon motion by Ms. Garcia seconded by Dr. Earle, the stipulation was adopted. The motion passed.

**Case Law Reference**

This case revolves around negligence in the practice of engineering, a violation of 473.033(1)(g), F.S.

**471.033 Disciplinary proceedings**

(1) The following acts constitute grounds for which the disciplinary actions in subsection (3) may be taken:

(g) Engaging in fraud or deceit, negligence, incompetence, or misconduct, in the practice of engineering.

**Disciplinary Case #8**

**FEMC Case No.** 2006058732  
 Gildart, David, P.E.  
 PE 57456

**Source:** FBPE Meeting Minutes –  
 October 2009

**Charges:** Negligence in the practice of  
 engineering.

**Legal Counsel:** Robert Simon, Esquire

**PCP:** Rebane, Seckinger

**Board Discussion and Final Order**

Mr. Gildart was present and sworn in prior to addressing the Board. His attorney, Robert Simon was also present.

Mr. Rimes explained the facts of the case.

This investigation is predicated on the receipt of a complaint alleging the subject submitted deficient plans to the City of Winter Park Building Department.

The plans were rejected twice by the Winter Park Building Department and apparently the Subject failed to address those concerns to the satisfaction of the building official involved. FEMC's consultant reviewed the plans and opined they failed to reach a level of acceptable engineering principles.

Specifically the deficiencies were failure to evidence plumbing plans shown or designed, no mechanical plans designed or shown,

rational wind analysis designed or shown including no attempt to show how the resisting wind systems provides a complete load path capable of transferring loads from the point of origin to the load resistance elements, a violation of the FBC.

Subject at the time failed to provide a response to the Complainant's allegations and based on the foregoing the Probable Cause Panel found probable cause on January 17, and a one count Administrative Complaint charging the Subject with negligence was filed on January 25, 2008.

Subsequent to the Administrative Complaint being filed and served, the Respondent, his counsel, Mr. Creehan and Mr. Power had a conference call in which it was determined there were additional documents the FBPE had not received. These documents would have supplied the missing information and would have affected the basis for finding probable cause. The consultant reviewed these additional materials on July 11, 2008 and the expert issued a revised opinion stating the subject is not guilty of violating Chapter 471.033(1) (g), F.S. as originally thought. The case was presented to the meeting of the PCP. The Panel declined to close the case but requested an additional expert review.

FEMC engaged a second consultant who wrote a report on November 10, 2008 addressing those concerns. The second expert found the subject negligent in the practice of engineering including but not limited to the plans lacking adequate information for the delegated truss designer to properly design the trusses involved.

FEMC's additional expert reviewed subject's plans and on February 18, 2009 the expert opined the electrical plans were deficient as to the Responsibility Rules for the Design of Power Systems 61G15-33.003(2) as they did not include such items as the load computations, conductor sizes and insulation type, the grounding and bonding and other items. For these foregoing reasons the Consultant found the subject negligent in the practice of engineering.

An Amended Administrative Complaint was authorized by the PCP and was filed on May 21, 2009. After negotiation and review a Stipulation was entered into on July 13, to resolve this case. The final Probable Cause Recommendation was a Reprimand; \$5,000.00 administrative fine; costs of \$2,537.59; Suspension of licensure, stayed if fine/costs paid within 30 days of Final Order date; Subject will be placed on (2) year(s)

probation with plan review at 6 and 18 months; Board approved course in Engineering Professionalism and Ethics; study guide; and appearance before the Board to explain: what continuing education has he taken to improve his qualifications to practice structural, electrical, HVAC, and plumbing.

The Settlement Stipulation entered into called for a reprimand; costs of \$1,837.59; Suspension of licensure, stayed if costs paid within 30 days of Final Order date; Subject will be placed on (2) year(s) PROBATION with plan review at 6 and 18 months; Board approved course in Engineering Professionalism and Ethics; study guide; and APPEARANCE before the Board to explain: what education, experience, and training he has to perform structural and electrical engineering; what impact the Consultants' reports from this case will have on his future designs; what future training and educational courses does he plan to take to improve the quality of his work. The second year of PROBATION will be terminated early if, at the sole discretion of the Board Consultant and the Board, it is determined that the initial plan review report was "favorable" (defined in the Stipulation as being free of any material deficiencies).

Mr. Rimes explained removal of the fine based on Mr. Gildart's quick concurrence in the disposition once the issues were clarified and the significant expense was incurred by respondent as a result of having to respond to an initial consultant report that was deficient. Mr. Rimes also deleted the costs relative to the report as it was of no use in the ultimate prosecution of the case.

Upon a motion by Mr. Charland seconded by Mr. Hyder the Settlement Stipulation was adopted. Mr. Tomasino opposed. The motion passed.

**Case Law Reference**

In this case, specific reference was made to the section regarding the design of power systems.

**61G15-33.003 Design of Power Systems.**

- (1) Power systems convey or distribute electrical energy. Items to be included in the design and analysis of these systems are: steady state and transient loads, short circuit analysis and protection (design and analysis), load flow, voltage drop, harmonics and protective device coordination.
- (2) Electrical Engineering Documents applicable to power systems shall at a minimum indicate the following:
  - (a) Power Distribution Riser Diagram with short circuit values.
  - (b) Conductor Ampacities (sizes) and insulation type.
  - (c) Circuit interrupting devices and fault current interrupting capability.
  - (d) Location and characteristics of surge protective devices.
  - (e) Main and distribution equipment, control devices, locations and sizes.
  - (f) Voltage drop calculations for the feeders and customer-owned service conductors are required. Additionally, the documents shall state the reasons why the two percent limit for feeders and customer-owned service conductors are not being met, if applicable.
  - (g) Circuitry of all outlets, equipment and devices.
  - (h) Load computations.
  - (i) Electrical legends.
  - (j) Grounding and bonding.
  - (k) Instrumentation and control where required.
  - (l) Record documents applicable to power systems shall, at a minimum, contain information as required by Florida Building Code.
  - (m) Installation and testing requirements of required emergency and standby power systems.

**Disciplinary Case #9**

**FEMC Case No.** 2007051700  
 Shalloway, Kemp Daniel, PE  
 PE 15961

**Source:** FBPE Meeting Minutes –  
 October 2009

**Charges:** Violation of PE / client rules.

**Legal Counsel:** David Rankin, Esquire

**PCP:** Rebane, Seckinger, Halyard,  
 Charland

**Board Discussion and Final Order**

Mr. Shalloway was present and sworn in prior to addressing the Board. His counsel, David Rankin was also present. Mr. William Gotthelf was sworn in as well.

This investigation was predicated on a complaint filed by Ruth Clements, Land Acquisition & Land Management, at the South Florida Water Management District (SFWMD). The investigation found that for more than four years (1998 to 2003) Kemp Daniel Shalloway, PE, while acting as engineer for Indian Trail Improvement District (ITID) was an active advocate for ITID, SFWMD and other governmental entities to purchase & use certain rock pits owned by Palm Beach Aggregates, Inc. (PBA) for water storage and drought control in Palm Beach County, Florida. During this same period, Shalloway was being paid to provide services to PBA. Most importantly for this investigation Shalloway had also had entered into an agreement with the owner of PBA to be paid a large "success fee" that was contingent upon the purchase of the rock pits by ITID & various related governmental entities. Shalloway did disclose to ITID (by letter dated November 3, 1998) the fact that he would be paid by PBA for "work" done on the rock pits (the L-8 Project)

and received ITID's acquiescence in the conflict (by letter dated December 1, 1998). However, Shalloway never disclosed to ITID that his contract with PBA provided for this "success fee" to be paid by PBA.

During the period at issue SEI was a corporation owned solely by Shalloway and served as the vehicle to perform the matters discussed herein. Since the corporation was, in effect, the alter ego of Shalloway it was treated as coextensive with Shalloway as to all matters addressed by the PCP and the charging documents.

Ultimately, SFWMD along with the State of Florida, Palm Beach County, Indian Trail Improvement District (ITID) and the City of West Palm Beach entered into two cost share agreements to purchase the PBA rock pits. SFWMD now uses the rock pit reservoirs for ITID flood control, diverting runoff of polluted water from reaching the Lake Worth Lagoon, and using stored runoff to replenish the Loxahatchee River and Loxahatchee Slough, and to alleviate drought conditions. The total acquisition price paid by SFWMD (et al.) to PBA for the reservoirs was \$217,581,500.00. PBA paid Shalloway a \$2.4 million success fee for arranging the sale. Certain of these "success fee" funds were later provided to Palm Beach County Commissioner Warren Newall, a planner & also a member of Shalloway's firm's (SFRN), through SFRN's accounts. Newall's failure to disclose these payments (and others made to him by other parties) later resulted in his federal criminal conviction.

All parties are in agreement that the rock pits are genuinely valuable to the citizens of Palm Beach County and Florida as they are made up of watertight, petrified mud capable of storing 11 billion gallons. They have already been used to capture runoff from hurricanes and have provided millions of gallons for drought relief.

On July 15, 2008, an Administrative Complaint was authorized and served charging both Shalloway & SEI with failure to disclose a conflict of interest and failure to disclose a gratuity paid by an entity doing business with a PE's client-see Rules 61G15-19.001(6) (f) and

(h). The clients were delineated as SFWMD and ITID. A request for a formal administrative hearing was received and the matter was referred to DOAH. Subsequent thereto, additional information was adduced from Mr. Shalloway's counsel, other individuals and as the result of additional investigation.

Based upon that information, the case was removed from DOAH's jurisdiction and returned to FEMC. A Supplemental Investigative Report was then produced.

After preparation of the Supplemental Report, this case was represented to the PCP on July 15, 2009. Since the additional information made it clear that the "success fee" was not a gratuity but was payment for services rendered by Shalloway to PBA, the charge relating to Rule 61G15-19.001(6) (h) was dropped. Additionally, and after a final contact post PCP was made with SFWMD, it was clear that Shalloway did not have a contract with SFWMD and was never SFWMD's client within the constraints of Rule 61G15- 19.001(6) (f). As a result, SFWMD was dropped as a party to whom Shalloway was required to make a disclosure of the PBA arrangement. Also, while at the time of the July 2008 PCP meeting the Panel was not made aware of the existence of the November 1998 disclosure letter & the December 1, 1998 ITID consent, by the second PCP meeting these facts were apparent.

Therefore an amended Administrative Complaint was authorized and filed. After negotiation, a Stipulation was entered into on September 28, 2009 and is being presented to the BOPE.

The Settlement Stipulation called for a reprimand; \$10,000.00 administrative fine; costs of \$5928.00 to be paid to the Board within thirty (30) days of the date that the Final Order is rendered; Respondent Shalloway will be placed on probation until he successfully completes Board approved course in Engineering Professionalism and Ethics & study guide; appearance before the Board to his discuss his present practice and how he will assure the Board & public that he will not engage in the type conduct that occasioned these proceedings.

Staff recommendation on this case was to accept the Settlement Stipulation.

Mr. Burke confirmed a quorum of the Board. He confirmed Mr. Charland and Mr. Halyard were recused due to serving on the Probable Cause Panel. Dr. Hyder recused himself due to knowledge of the case.

After extensive discussion of the circumstances surrounding this case, the following occurred:

Mr. Tomasino noted he would not approve the Settlement Stipulation. In his opinion, the case may have been mishandled. He recommended the stipulation not be approved and a Letter of Guidance be issued.

Upon motion by Mr. Wallis, seconded by Mr. Tomasino the Settlement Stipulation was rejected. The motion passed.

Mr. Wallis agrees with Mr. Tomasino that the fine is excessive. After discussion the following action was taken:

Upon motion by Mr. Tomasino the penalty should be lowered to a Letter of Guidance. This motion failed for lack of second.

After further discussion the following action was taken.

Upon motion by Ms. Garcia seconded by Dr. Panigrahi, a Counter Stipulation was offered calling for the terms of the proposed settlement stipulation with exception of a reducing the fine from \$10,000 to \$2,000. The motion passed with Mr. Tomasino voting to oppose.

Mr. Rankin consulted with Mr. Shalloway and he stated on record his acceptance of the Counter Stipulation with the reduction of the fine from \$10,000 to \$2,000.

**Case Law Reference**

Here is the excerpt from 61G15-19.001:

**61G15-19.001 Grounds for Disciplinary Proceedings**

(f) Becoming involved in a conflict of interest with an employer or client, without the knowledge and approval of the client or employer, but if unavoidable a professional engineer shall immediately take the following actions:

1. Disclose in writing to his employer or client the full circumstances as to a possible conflict of interest; and
2. Assure in writing that the conflict will in no manner influence the professional engineer's judgment or the quality of his services to his employer or client; and
3. Promptly inform his client or employer in writing of any business association, interest or circumstances which may be influencing his judgment or the quality of his services to his client or employer;

(h) Soliciting or accepting gratuities directly or indirectly from contractors, their agents or other parties dealing with the professional engineer's client or employer in connection with work for which the professional engineer is responsible without the written consent of the engineer's employer or client;

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# Florida Laws and Rules for Engineers

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## Section 6 – Resources Used to Develop This Course

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**Resources Used to Develop This Course**

Below is a list of resources used in the development of this course:

Florida Administrative Code, Chapter 61G15, Board of Professional Engineers

Florida Statutes, Title XXXII, Chapter 455 – Business and Professional Regulation: General Provisions

Florida Statutes, Title XXXII, Chapter 471 – Engineering

Florida Administrative Weekly

FBPE Meeting Minutes

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# Florida Laws and Rules for Engineers

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## Section 7 – Answers to Practice Problems

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**Practice Problem #1**

List below the Chapters of the Florida Statutes and the Florida Administrative Code that are applicable to engineers.

**Answer:**

*Florida Statutes:*

*Chapter 455, Business and Professional Regulation, General Provisions  
Chapter 471, Engineering*

*Florida Administrative Code:*

*Chapter 61G15*

**Practice Problem #2**

Describe below the respective roles of the legislature and the Board in enacting laws and rules for Florida Engineers.

**Answer:**

*The legislature is responsible for adopting, amending and repealing the Florida Statutes, which are designed to provide agencies with the authority to make rules and carry out the statute.*

*The Board is responsible for adopting, amending and repealing administrative rules for engineers in Chapter 61G15 of the Florida Administrative Code.*

**Practice Problem #3**

1. What functions does the FEMC provide for the Board?
2. What roles does the Board and the FEMC have, respectively, in the disciplinary process, including investigation, prosecution, probable cause determination and issuing Final Orders?

**Answer:**

1. *The FEMC provides administrative, investigative and prosecutorial services to the Board.*
2. *The FEMC is responsible for investigation and prosecution. The Board is responsible for determining Probable Cause through the use of a Probable Cause Panel. And the Board is responsible for issuing Final Orders.*

**Practice Problem #4**

Describe below, in general terms, the range of penalties prescribed in the Disciplinary Guidelines.

**Answer:**

*At a minimum, the Board can issue a reprimand. The most severe penalty is revocation of the violator's license. In between these two extremes, the Board has a variety of options, including issuing administrative fines up to \$5,000 per count, suspending the offender's license, or placing the licensee on probation.*

**Practice Problem #5**

1. Describe below, in general terms, the degree of control that must be exercised by the Engineer of Record.
2. What types of questions should an engineer in responsible charge be able to answer regarding his proficiency, decision-making and degree of involvement on a particular project?

**Answer:**

1. *Personally makes engineering decisions or reviews and approves proposed decisions prior to their implementation, including the consideration of alternatives, whenever engineering decisions which could affect the health, safety and welfare of the public are made. In making said engineering decisions, the engineer shall be physically present or, if not physically present, be available in a reasonable period of time, through the use of electronic communication devices, such as electronic mail, videoconferencing, teleconferencing, computer networking, or via facsimile transmission. Also, judges the validity and applicability of recommendations prior to their incorporation into the work, including the qualifications of those making the recommendations.*
2. *The engineer shall be capable of answering questions relevant to the engineering decisions made during the engineer's work on the project, in sufficient detail as to leave little doubt as to the engineer's proficiency for the work performed and involvement in said work. It is not necessary to defend decisions as in an adversary situation, but only to demonstrate that the engineer in responsible charge made them and possessed sufficient knowledge of the project to make them.*

**Practice Problem #6**

List below two (2) mitigating circumstances and two (2) aggravating circumstances that the Board may consider to impose penalties outside the disciplinary guidelines.

**Answer:***Mitigating circumstances:*

1. *The minor nature of the project and lack of danger to the public due to the licensee's negligence.*
2. *Lack of previous disciplinary history in Florida and other jurisdictions.*
3. *Restitution of any damages suffered by the licensee's client.*
4. *The licensee's professional standing among his peers, including continuing education*
5. *Steps taken to ensure that a similar violation will not reoccur.*

*Aggravating circumstances:*

1. *History of previous violations.*
2. *In the case of negligence, the magnitude and scope of the project and the damage inflicted on the public.*
3. *Evidence of violations in other jurisdictions.*
4. *Violations after the licensee has already been warned via a letter of guidance. .*

**Practice Problem #7**

List below a minimum of three (3) qualifying activities and two (2) non-qualifying activities to meet the Area of Practice requirements for continuing education.

**Answer:***Qualifying Activities:*

1. *Completion of college courses.*
2. *Completion of continuing education courses.*
3. *Teaching a college course or continuing education course.*
4. *Authoring published papers, articles, books, or licensee examination questions.*
5. *Serving as an officer in a professional or technical society.*

*Non-qualifying activities:*

1. *Self-generated courses.*
2. *Personal self-improvement courses.*
3. *Equipment demonstrations and trade show displays.*
4. *Enrollment in an activity without attendance.*
5. *Repetitive attendance or teaching of a course.*
6. *Tours of building, unless there's a clear objective to maintain and strengthen competency in a technical field.*
7. *Regular employment.*
8. *Personal, estate or financial planning.*
9. *Courses with content that is below the level of knowledge and skill that reflects the*

*responsibility of engineer in charge.*

**Practice Problem #8**

What role does a Probable Cause Panel play in the disciplinary process?

**Answer:**

*The Probable Cause Panel (PCP) reviews the facts resulting from an investigation performed by the FEMC. If probable cause is found that one or more violations have occurred, then the PCP issues an Administrative Complaint. The PCP also typically recommends penalties to the Board in each case that it reviews.*

**Practice Problem #9**

When can a Respondent request a formal hearing in front of an Administrative Law Judge?

**Answer:**

*A respondent can only request a formal hearing in front of an Administrative Law Judge when there are disputed facts in the case. If the engineer simply wishes to argue interpretations of the law or present mitigating circumstances, then an informal hearing in front of the Board is required.*

**Practice Problem #10**

List below two (2) out of the three (3) options available to an engineer when an administrative complaint is filed against him.

**Answer:**

1. *Request a formal hearing in front of an Administrative Law Judge.*
2. *Request an informal hearing in front of the Board.*
3. *Negotiate a settlement stipulation with the prosecuting attorney.*