

**Sixty-third Legislative Assembly of North Dakota  
In Regular Session Commencing Tuesday, January 8, 2013**

SENATE BILL NO. 2135  
(Senators Dever, J. Lee, Axness)  
(Representatives Porter, Rohr, Hogan)

AN ACT to create and enact chapter 43-17.3 of the North Dakota Century Code, relating to a physician health program.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1.** Chapter 43-17.3 of the North Dakota Century Code is created and enacted as follows:

**43-17.3-01. Definitions.**

As used in this chapter:

1. "Board" means the state board of medical examiners.
2. "Committee or designated agency" means a committee or delegated agency of the physician health program which is composed of physicians and other professionals who have expertise in the areas of alcoholism, drug abuse, or mental illness and which is designated by the physician health program to perform any or all of the activities set forth in section 43-17.3-02 pursuant to agreement with the board.
3. "Impairment" means the presence of any physical, mental, or behavioral disorder or pattern of alcohol or substance abuse which interferes with a licensee's ability to engage safely in professional activities.
4. "Licensee" means a physician or other health professional under the jurisdiction of the board, and includes an applicant for licensure or regulation by the board.
5. "Physician health program" or "program" means a board-sanctioned program for the detection, intervention, and monitoring of licensees with conditions that could result in impairment.
6. "Treatment plan" means a plan of care, rehabilitation, monitoring and maintenance, followup, or aftercare services or combination of any of these services provided by an organization or by an individual authorized by the board or the physician health program to provide such services for a licensee taking part in the physician health program.

**43-17.3-02. Physician health program.**

1. The board may enter an agreement with the physician health program for the program to undertake those functions and responsibilities specified in the agreement. The functions and responsibilities of the agreement may include any or all of the following:
  - a. Contracting with agencies or providers of diagnostic, monitoring, or treatment services;
  - b. Receiving and evaluating reports of licensees who may be experiencing potentially impairing conditions;
  - c. Intervening in cases in which a licensee is determined to be in need of treatment;
  - d. Referring licensees to appropriate services;
  - e. Monitoring the treatment and aftercare services provided to licensees;

- f. Educating licensees and the public about the functions of the program and the program's relationship to the board; and
  - g. Performing other activities as agreed upon by the board and the physician health program.
2. The board may participate, through its licensing fees or other specified funds, in the funding of the physician health program.

**43-17.3-03. Physician health program requirements.**

In consultation with the board, the physician health program shall develop procedures for:

- 1. Periodic reporting of statistical information regarding physician health program activity.
- 2. Periodic disclosure and joint review of information the board deems appropriate regarding reports received, contacts of investigations made, and the disposition of each case. Except as expressly provided under this chapter, the physician health program may not disclose any personally identifiable information about licensee participants.
- 3. Immediate reporting to the board the identity and results of any contact or investigation concerning an impaired licensee who is believed to constitute an imminent danger to the public or to the licensee.
- 4. Reporting to the board, in a timely fashion, the identity and results of any contact or investigation concerning a potentially impaired licensee:
  - a. Who refuses to cooperate with the program;
  - b. Who refuses to submit to evaluation or treatment;
  - c. Who is not in compliance with a contractual treatment plan; or
  - d. Whose possible impairment is not substantially alleviated through treatment and:
    - (1) Who the program determines is unable to practice professionally with reasonable skill and safety by reason of illness related to the abuse of alcohol or other substances or as a result of any physical or mental condition; or
    - (2) Who may pose a threat to the health or safety of any individual.
- 5. Reporting to the board, in a timely fashion, the identity of any licensee participant regarding whom the program learns of the filing of any disciplinary charges or actions or violations of chapter 43-17.
- 6. Entering contractual agreements with each participant in the program which make clear the program procedures, the responsibilities of program participants, and the consequences of noncompliance with the program or with contractual agreements, including the program's reporting obligations to the board.

**43-17.3-04. Evaluation.**

If the board determines a licensee currently exhibits possible impairment, the board may direct that an evaluation of the licensee be conducted by the physician health program or by the committee or designated agency for the purpose of determining whether there is a current need for treatment or monitoring of the licensee to assure the licensee is able to practice safely. The physician health program shall report the findings of this evaluation to the board. As a condition of application, every applicant for initial licensure or renewal of licensure shall agree to submit to such an evaluation for cause within a specified timeframe, and to the release of the results of the evaluation to the board.

**43-17.3-05. Self-reporting and self-referral.**

1. A licensee may voluntarily self-refer or self-report to the physician health program or the board that the licensee may have a potentially impairing condition.
2. A licensee:
  - a. Who under this section voluntarily seeks the assistance of the physician health program in assessing or dealing with a condition that could possibly lead to impairment will not be reported to the board solely on the basis of this self-referral. However, if a licensee who self-refers or self-reports refuses evaluation by the program; if the evaluation reveals evidence of a condition or impairment that could affect the licensee's ability to practice or constitutes a threat to the safety of patients or the public; or the licensee refuses to cooperate with the treatment plan, monitoring and followup, or aftercare devised by the program, including any recommendation about current continuation in practice, the program shall report the identity and findings of the evaluation of the licensee to the board. Participation in the program does not protect a licensee from board action resulting from a report of the licensee's possible violations of chapter 43-17.
  - b. Who self-reports or self-refers to the board for a potentially impairing condition may be referred by the board to the physician health program in the manner prescribed by board policies, and subsequent reporting by the program to the board will be at the discretion and in the manner prescribed by the board.
  - c. Who is participating in or who has completed a contract for treatment with and has been discharged from the physician health program, who is in full compliance with all facets of the treatment plan or has completed treatment and is compliant with aftercare, may answer in the negative on any question on the application to the board for licensure or licensure renewal regarding current impairment by that condition or those conditions for which the licensee is currently participating in or has been discharged from the physician health program. However, any recurrence of the impairing condition or conditions or the existence of other potentially impairing conditions that are not currently known to the physician health program must be reported on the application.

**43-17.3-06. Mandated reporting.**

A report by a health professional, including a self-report or self-referral by a licensee to the physician health program, must be deemed to be a report to the board for the purposes of mandated reporting of physician impairment.

**43-17.3-07. Confidentiality of records.**

1. Notwithstanding section 44-04-18, except as otherwise provided in this chapter, all physician health program records containing identifying information about a licensee participant are confidential and may not be disclosed:
  - a. To any third person, unless disclosure is reasonably necessary for the accomplishment of the purposes of intervention, rehabilitation, referral assistance, or support services; or
  - b. In any legal or administrative proceeding, unless privilege or disclosure is otherwise required by law.
2. Except as provided under this section, a staff member handling records for administrative purposes; a person engaged by the program to perform evaluations, monitoring, or followup; and a person in attendance at any meeting of a physician health program or of a committee or designated agency may not be required to testify as to the content of any findings, committee discussion, or proceedings.

**43-17.3-08. Liability.**

1. Notwithstanding any other provision of law, the board, the physician health program, committee or designated agency, or delegated individuals and members of any of these entities are not liable to any person for any acts, omissions, or recommendations made in good faith within the scope of responsibilities pursuant to this chapter.
2. A person that in good faith and without malice which makes a report to the physician health program or the board under this section is not liable to any person for that report.

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President of the Senate

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Speaker of the House

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Secretary of the Senate

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Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-third Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2135.

Senate Vote:    Yeas 44            Nays 0            Absent 3

House Vote:    Yeas 91            Nays 1            Absent 2

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Secretary of the Senate

Received by the Governor at \_\_\_\_\_ M. on \_\_\_\_\_, 2013.

Approved at \_\_\_\_\_ M. on \_\_\_\_\_, 2013.

\_\_\_\_\_  
Governor

Filed in this office this \_\_\_\_\_ day of \_\_\_\_\_, 2013,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

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Secretary of State