

## CHAPTER 82

AN ACT establishing an Alternative to Discipline Program for nurses and supplementing chapter 11 of Title 45 of the Revised Statutes.

**BE IT ENACTED** *by the Senate and General Assembly of the State of New Jersey:*

C.45:11-24.10 Alternative to Discipline Program for nurses; definitions.

1. a. The New Jersey Board of Nursing shall establish an Alternative to Discipline Program for board licensees who are suffering from a chemical dependency or other impairment.

The program shall permit these licensees to disclose their dependency or impairment status to an intervention program designated by the board, which shall provide confidential oversight of the licensee during the period that the licensee seeks treatment for, and follows a plan for recovery from, the dependency or impairment.

b. The board shall designate at least one intervention program to provide services under this act and shall delineate, in a formal agreement, the responsibilities of the intervention program and its relationship to the board.

c. The board shall establish a five-member Alternative to Discipline Committee to review matters involving licensees suffering from chemical dependencies or other impairments.

(1) The committee shall be comprised of two members of the board who are appointed by the president of the board, at least one of whom is a registered professional nurse; two registered professional nurses with expertise in addiction recommended by the New Jersey State Nurses Association who represent a designated intervention program; and one individual designated by the Commissioner of Health and Senior Services.

(2) The committee shall meet on a regular basis. The executive director of the board and the director of the designated intervention program shall serve as staff to the committee and shall be available to assist the committee at its meetings.

(3) The committee shall perform the following duties, as well as such others as the board may require:

(a) accept from licensees, and from other members of the public, reports, which include the individual's identity, concerning licensees who may be suffering from chemical dependencies or other impairments;

(b) accept referrals, which include the individual's identity, from the board;

(c) accept coded summary reports from the designated intervention program, without any information from which the licensee's identity can be discerned;

(d) promptly review each referral to determine if participation in the program is appropriate, giving due consideration to factors for participation, as specified by regulation of the board;

(e) accept confidential reports from the intervention program regarding participating licensees and ensure that the identity of the licensee is maintained in a limited-access file of the committee with disclosure provided only to those persons whom the committee determines have a need to know the licensee's identity;

(f) require the program to conduct such supplemental inquiry concerning a licensee as may be directed by the committee, and authorize the program to request, through the committee, that further investigation be conducted by committee staff, investigative personnel or the Attorney General, as appropriate;

(g) require the program to immediately disclose to the committee the identity of a participating licensee in the event of noncompliance by the licensee with the conditions for participation or any other change in circumstances that may render the licensee inappropriate for participation in the program, as specified by regulation of the board; and

(h) transmit such reports as required by the board.

d. The executive director of the board shall advise the committee of any information concerning a concurrent investigation or consumer complaints, as may be necessary to enable the committee to assess whether participation of a licensee in the program is appropriate.

e. Upon receipt of disclosure of the identity of a participating licensee pursuant to subparagraph (g) of paragraph (3) of subsection c. of this section, the committee shall notify the board of the identity of the licensee.

f. Any information concerning the conduct of a licensee provided to the board pursuant to this act, is confidential and shall not be considered a public or government record under P.L.1963, c.73 (C.47:1A-1 et seq.) and P.L.2001, c.404 (C.47:1A-5 et al.), pending final

disposition of the inquiry or investigation by the board, except for information required to be shared with the Division of Insurance Fraud Prevention in the Department of Banking and Insurance to comply with the provisions of section 9 of P.L.1983, c.320 (C.17:33A-9) or with any other law enforcement agency.

If the result of the inquiry or investigation is a finding of no basis for disciplinary action by the board, the information shall remain confidential and shall not be considered a public or government record under P.L.1963, c.73 (C.47:1A-1 et seq.) and P.L.2001, c.404 (C.47:1A-5 et al.), except that the board may release the information to a government agency, for good cause shown, upon an order of the Superior Court after notice to the licensee who is the subject of the information and an opportunity to be heard. The application for the court order shall be placed under seal.

g. A licensee who files a report with the committee pursuant to subparagraph (a) of paragraph (3) of subsection c. of this section, shall be deemed to have discharged his duty to report an impairment to the board or division pursuant to regulation or law.

h. As used in this section:

"Chemical dependency" means a condition involving the continued misuse of chemical substances.

"Chemical substances" is to be construed to include alcohol, drugs or medications, including those taken pursuant to a valid prescription for legitimate medical purposes and in accordance with the prescriber's direction, as well as those used illegally.

"Impairment" means an inability to function at an acceptable level of competency, or an incapacity to continue to practice with the requisite skill, safety and judgment, as a result of alcohol or chemical dependency, a psychiatric or emotional disorder, senility or a disabling physical disorder.

"Licensee" means a registered professional nurse, licensed practical nurse or other professional subject to regulation by the board.

#### C.45:11-24.11 Review of program after five years.

2. Five years following the effective date of this act, the board shall determine, after study and consultation, whether the program established pursuant to this act should be continued, altered, expanded or discontinued. If the board concludes that the program should be terminated, those licensees currently participating shall be permitted to continue with the confidentiality protections provided in this act.

#### C.45:11-24.12 Revision of fees; construction of act.

3. a. The board may, by regulation, revise the fees charged pursuant to N.J.A.C.13:37-5.5 or establish a surcharge to these fees for costs related to the administration of the Alternative to Discipline Program and the committee established pursuant to this act.

b. Nothing in this act shall be construed to require the board to fund the testing, specimen monitoring or treatment of a licensee who participates in the Alternative to Discipline Program pursuant to this act

#### C.45:11-24.13 Rules, regulations.

4. The board shall adopt rules and regulations, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to carry out the purposes of this act.

5. This act shall take effect on the 90th day after enactment, but the New Jersey Board of Nursing may take such anticipatory administrative action in advance as shall be necessary for the implementation of the act.

Approved May 3, 2005.