

12-38-131. Impaired professional diversion program - committee.

(1) (a) If a person licensed to practice pursuant to this article voluntarily seeks treatment for chemical or alcohol dependency or for psychiatric, psychological, or emotional problems that could lead to formal disciplinary action by the board, the board may abstain from taking formal disciplinary action if the board finds that the protection of public health, safety, and welfare can be assured while the licensee is treated and monitored by the impaired professional diversion committee created in subsection (2) of this section.

(b) As part of the program established by the board to be administered by the impaired professional diversion committee, the board shall adopt rules that:

(I) Set criteria for acceptance, denial, or termination of licensees in the program, specifying that only those licensees who request acceptance into the program may participate;

(II) Provide that licensees who are not specifically identified by the board as candidates for the program may voluntarily apply;

(III) Allow licensees credit for participating in a similar program in this or another state on a case-by-case basis;

(IV) Allow information that would otherwise be confidential to be released, on a case-by-case basis, to another state when such information is requested of a licensee who has not satisfactorily completed the program in this state.

(2) (a) The board shall create a corporate entity for the purposes of administering an impaired professional diversion program. The board shall appoint a committee to direct the program through the entity that shall be composed of seven individuals, appointed as follows:

(I) One member shall be a licensed professional nurse specializing in the treatment of chemical dependency;

(II) Two members shall be licensed professional nurses specializing in psychiatric nursing;

(III) Two members shall be licensed practical or professional nurses who are recovering from an addiction to drugs or alcohol;

(IV) One member shall be a licensed physician who specializes in the diagnosis and treatment of addictive diseases; and

(V) One member shall be from the public and shall be knowledgeable in the field of chemical dependency.

(b) (Deleted by amendment, L. 2003, p. 912, § 15, effective August 6, 2003.)

(c) (I) The board shall appoint members to the committee by a majority vote for terms of three years.

(II) No member may serve more than one term; except that, if a member is appointed to finish out a term for another appointee and the remaining portion of the term is for less than eighteen months, such replacement appointee may subsequently be reappointed for a full term.

(III) No member shall be appointed from the membership on the board or from the staff of the board.

(IV) (Deleted by amendment, L. 2003, p. 912, § 15, effective August 6, 2003.)

(V) The board may make appointments as necessary to finish the term of an appointee who does not complete a term of appointment.

(d) The committee shall be paid a per diem and expenses when meeting.

(3) (a) The committee shall select a director for the impaired professional diversion program created in this section. The director may hire staff or contract for services as necessary to carry out the duties of the committee. Such employees shall not be state employees for purposes of section 13 of article XII of the state constitution.

(b) The committee shall establish general procedures and policies for the impaired professional diversion program including, but not limited to, any educational requirements and public relations.

(c) Pursuant to rules adopted by the board, the committee shall:

(I) Establish ways to identify licensees with alcohol or drug abuse or psychiatric, psychological, or emotional problems;

(II) Develop methods to rehabilitate licensees who participate in the program while assessing continued public protection;

(III) (A) Evaluate licensees who request admittance to the program, including approving or disapproving such requests pursuant to guidelines developed and adopted by the committee and the recommendations of the director; except that no licensee shall be admitted to or continued in the program if the safety of the public cannot be reasonably assured.

(B) As part of its evaluation, the committee may consider any information received concerning the requesting licensee, including information released from the board at the discretion of the board.

(IV) Admit a participant only if all requirements concerning participation, including surveillance and supervision, are expressly provided for in a contract signed by the participant

and the director. Requirements for participation shall be tailored to reflect the circumstances of such participation.

(d) The committee shall develop an annual budget and administer funds received from the administering entity.

(e) The committee shall provide the board with periodic reports containing anonymous demographic information about the program's participants and written reports on the overall operation of the program.

(f) The committee shall review and designate those treatment providers, facilities, or services to which participating licensees may be referred.

(4) (a) A licensee may apply to the program without being referred for a violation of this article due to an addiction to or abuse of alcohol or drugs or due to a psychiatric, psychological, or emotional problem.

(b) A licensee applying to the program shall be advised of the procedural requirements of the program and the possible ramifications of noncompliance with a contract for participation, once signed.

(5) (a) A licensee may be terminated from the program for:

(I) Successful completion of the program as specified in the contract between the licensee and director;

(II) Failing to cooperate with the program administrators and to fulfill the contractual obligations to which the licensee agreed;

(III) Discovery of information that the licensee failed to disclose prior to acceptance that indicates the licensee may have violated a provision of this article; or

(IV) Becoming unable to practice nursing with reasonable skill and safety.

(b) A licensee terminated from the program pursuant to subparagraph (II), (III), or (IV) of paragraph (a) of this subsection (5) shall be referred to the board for disciplinary action pursuant to section 12-38-117.

(6) (a) The impaired professional diversion committee shall hold meetings in executive session when considering information and reports regarding individual applicants or participants. All other meetings shall be subject to the open meetings law, part 4 of article 6 of title 24, C.R.S., and the open records law, article 72 of title 24, C.R.S.

(b) (I) Records of a proceeding pertaining to the rehabilitation of a licensee pursuant to the impaired professional diversion program shall be confidential and shall not be subject to

subpoena except if a licensee has been referred to the board for disciplinary action by the committee.

(II) If the committee has determined that a licensee has been rehabilitated through the completion of the impaired professional diversion program, the committee shall purge and destroy all records pertaining to the licensee's participation in the program.

(III) Information received by the committee that does not relate to the licensee's application for the program may be used by the board in a disciplinary or criminal proceeding against the licensee.

(7) Any person who, in good faith, provides information to the impaired professional diversion committee or to the board regarding a licensee's possible impairment while practicing pursuant to this article or lack of progress pursuant to the program shall be immune from civil action for defamation or other cause of action resulting from the provision of such information.

(8) (a) There is hereby created the impaired professional diversion fund. The fund shall consist of any unexpended and unencumbered balance in the nursing peer health assistance diversion fund, as said fund existed prior to July 1, 1995, and any moneys collected by the board and required to be credited to the fund pursuant to paragraph (c) of this subsection (8). Any interest earned on the investment of moneys in the fund shall be credited at least annually to said fund.

(b) It is the intent of the general assembly that the costs of educational and intervention services, services related to the identification of psychiatric, psychological, or emotional problems, and the referral to and monitoring and evaluation of treatment of the nurse participant in the impaired professional diversion program shall be borne by fees assessed by the board and paid by nursing licensees; except that the cost of treatment shall be the responsibility of the licensee participant. No moneys shall be appropriated from the general fund for payment of any expenses incurred under this section, and no such expenses of this program shall be charged against the state.

(c) As a condition of licensure in this state, every applicant shall pay to the administering entity that has been selected by the board pursuant to the provisions of paragraph (a) of subsection (9) of this section, an amount set by the board not to exceed twenty-eight dollars per nursing licensee for each renewal, which amount shall be used to support the professional diversion committee and the impaired professional diversion program to provide assistance to nurses needing help in dealing with psychiatric, psychological, or emotional problems or excessive alcohol or drug use or addiction that may be detrimental to their ability to practice nursing.

(9) (a) The entity selected by the committee to administer the program shall be a qualified, nonprofit private foundation that is qualified under section 501 (c) (3) of the federal "Internal Revenue Code of 1986", as amended, and shall be dedicated to providing support for charitable, educational, and scientific purposes that are related to nursing, nursing education, health-related projects, research and science, and other charitable purposes to enhance the nursing profession.

(b) The responsibilities of the entity selected by the committee to administer the program shall be to:

(I) Collect the required annual payments;

(II) Verify to the board, in a manner acceptable to the board, the names of all nurse applicants who have met the designated provider's fee requirements;

(III) Distribute the moneys collected, less expenses, to the impaired professional diversion program, as directed by the board;

(IV) Provide a biannual audit and an annual accounting to the board of all amounts collected, expenses incurred, and amounts disbursed; and

(V) Post a surety performance bond in an amount specified by the board to secure performance under the requirements of this section. The administering entity may recover the actual administrative costs incurred in performing its duties under this section in an amount not to exceed ten percent of the total amount collected. The board shall adjust the fee required in paragraph (c) of subsection (8) of this section to provide for these administrative costs and to continue adequate funding to the impaired professional diversion program.

(10) Nothing in this section shall be construed to create any liability of the board, members of the board, a committee, the members of a committee, or the state of Colorado for the actions of the board in making awards to the impaired professional diversion program, the committee, or in designating nursing licensees to participate in the program. No civil action may be brought or maintained against the board, its members, a committee, the members of a committee, or the state for an injury alleged to have been the result of an act or omission of a nursing licensee participating in or referred to a program pursuant to this section. However, the state shall remain liable under the provisions of the "Colorado Governmental Immunity Act", article 10 of title 24, C.R.S., if an injury alleged to have been the result of an act or omission of a nursing licensee participating in a peer health assistance diversion program occurred while such nursing licensee was performing duties as an employee of the state.

(11) Any member of the board or member of the impaired professional diversion program committee, any member of the board's or committee's staff, any person acting as a witness or consultant to the board or committee, any witness testifying in a proceeding authorized under this article, and any person who lodges a complaint pursuant to this article shall be immune from liability in any civil action brought against him or her for acts occurring while acting in his or her capacity as board or committee member, staff, consultant, or witness, respectively, if such individual was acting in good faith within the scope of his or her respective capacity, made a reasonable effort to obtain the facts of the matter as to which he or she acted, and acted in the reasonable belief that the action taken by him or her was warranted by the facts. Any person participating in good faith in lodging a complaint or participating in any investigative or administrative proceeding pursuant to this article shall be immune from any civil or criminal liability that may result from such participation.

Source: L. 89: Entire section added, p. 691, § 1, effective July 1. L. 91: (4)(b) and (6)(a) amended, p. 973, § 1, effective May 6. L. 95: Entire section R&RE, p. 1081, § 9, effective July 1. L. 2002: (1)(b)(II) amended, p. 655, § 1, effective May 28. L. 2003: (2)(a), (2)(b), (2)(c)(I), (2)(c)(IV), and (8)(c) amended, p. 912, § 15, effective August 6. L. 2004: (11) amended, p. 1836, § 79, effective January 1, 2005.