

SENATE BILL NO. 2135

Introduced by

Senators Dever, J. Lee, Axness

Representatives Porter, Rohr, Hogan

1 A BILL for an Act to create and enact chapter 43-17.3 of the North Dakota Century Code,
2 relating to a physician health program.

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

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

6 **43-17.3-01. Definitions.**

7 As used in this chapter:

8 1. "Board" means the state board of medical examiners.

9 2. "Committee or designated agency" means a committee or delegated agency of the
10 physician health program which is composed of physicians and other professionals
11 who have expertise in the areas of alcoholism, drug abuse, or mental illness and
12 which is designated by the physician health program to perform any or all of the
13 activities set forth in section 43-17.3-02 pursuant to agreement with the board.

14 3. "Impairment" means the presence of any physical, mental, or behavioral disorder or
15 pattern of alcohol or substance abuse which interferes with a licensee's ability to
16 engage safely in professional activities.

17 4. "Licensee" means a physician or other other health professional under the jurisdiction
18 of the board, and includes an applicant for licensure or regulation by the board.

19 5. "Physician health program" or "program" means a board-sanctioned program for the
20 detection, intervention, and monitoring of licensees with conditions that could result in
21 impairment.

22 6. "Treatment plan" means a plan of care, rehabilitation, monitoring and maintenance,
23 followup, or aftercare services or combination of any of these services provided by an
24 organization or by an individual authorized by the board or the physician health

1 program to provide such services for a licensee taking part in the physician health
2 program.

3 **43-17.3-02. Physician health program.**

4 1. The board may enter an agreement with the physician health program for the program
5 to undertake those functions and responsibilities specified in the agreement. The
6 functions and responsibilities of the agreement may include any or all of the following:

7 a. Contracting with agencies or providers of diagnostic, monitoring, or treatment
8 services;

9 b. Receiving and evaluating reports of licensees who may be experiencing
10 potentially impairing conditions;

11 c. Intervening in cases in which a licensee is determined to be in need of treatment;

12 d. Referring licensees to appropriate services;

13 e. Monitoring the treatment and aftercare services provided to licensees;

14 f. Educating licensees and the public about the functions of the program and the
15 program's relationship to the board; and

16 g. Performing other activities as agreed upon by the board and the physician health
17 program.

18 2. The board may participate, through its licensing fees or other specified funds, in the
19 funding of the physician health program.

20 **43-17.3-03. Physician health program requirements.**

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

22 1. Periodic reporting of statistical information regarding physician health program activity.

23 2. Periodic disclosure and joint review of information the board deems appropriate
24 regarding reports received, contacts of investigations made, and the disposition of
25 each case. Except as expressly provided under this chapter, the physician health
26 program may not disclose any personally identifiable information about licensee
27 participants.

28 3. Immediate reporting to the board the identity and results of any contact or investigation
29 concerning an impaired licensee who is believed to constitute an imminent danger to
30 the public or to the licensee.

- 1 4. Reporting to the board, in a timely fashion, the identity and results of any contact or
2 investigation concerning a potentially impaired licensee:
 - 3 a. Who refuses to cooperate with the program;
 - 4 b. Who refuses to submit to evaluation or treatment;
 - 5 c. Who is not in compliance with a contractual treatment plan; or
 - 6 d. Whose possible impairment is not substantially alleviated through treatment and:
 - 7 (1) Who the program determines is unable to practice professionally with
8 reasonable skill and safety by reason of illness related to the abuse of
9 alcohol or other substances or as a result of any physical or mental
10 condition; or
 - 11 (2) Who may pose a threat to the health or safety of any individual.
- 12 5. Reporting to the board, in a timely fashion, the identity of any licensee participant
13 regarding whom the program learns of the filing of any disciplinary charges or actions
14 or violations of chapter 43-17.
- 15 6. Entering contractual agreements with each participant in the program which make
16 clear the program procedures, the responsibilities of program participants, and the
17 consequences of noncompliance with the program or with contractual agreements,
18 including the program's reporting obligations to the board.

19 **43-17.3-04. Evaluation.**

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

28 **43-17.3-05. Self-reporting and self-referral.**

- 29 1. A licensee may voluntarily self-refer or self-report to the physician health program or
30 the board that the licensee may have a potentially impairing condition.
- 31 2. A licensee:

- 1 a. Who under this section voluntarily seeks the assistance of the physician health
2 program in assessing or dealing with a condition that could possibly lead to
3 impairment will not be reported to the board solely on the basis of this
4 self-referral. However, if a licensee who self-refers or self-reports refuses
5 evaluation by the program; if the evaluation reveals evidence of a condition or
6 impairment that could affect the licensee's ability to practice or constitutes a
7 threat to the safety of patients or the public; or the licensee refuses to cooperate
8 with the treatment plan, monitoring and followup, or aftercare devised by the
9 program, including any recommendation about current continuation in practice,
10 the program shall report the identity and findings of the evaluation of the licensee
11 to the board. Participation in the program does not protect a licensee from board
12 action resulting from a report of the licensee's possible violations of chapter
13 43-17.
- 14 b. Who self-reports or self-refers to the board for a potentially impairing condition
15 may be referred by the board to the physician health program in the manner
16 prescribed by board policies, and subsequent reporting by the program to the
17 board will be at the discretion and in the manner prescribed by the board.
- 18 c. Who is participating in or who has completed a contract for treatment with and
19 has been discharged from the physician health program, who is in full compliance
20 with all facets of the treatment plan or has completed treatment and is compliant
21 with aftercare, may answer in the negative on any question on the application to
22 the board for licensure or licensure renewal regarding current impairment by that
23 condition or those conditions for which the licensee is currently participating in or
24 has been discharged from the physician health program. However, any
25 recurrence of the impairing condition or conditions or the existence of other
26 potentially impairing conditions that are not currently known to the physician
27 health program must be reported on the application.

28 **43-17.3-06. Mandated reporting.**

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

1 **43-17.3-07. Confidentiality of records.**

2 1. Notwithstanding section 44-04-18, except as otherwise provided in this chapter, all
3 physician health program records containing identifying information about a licensee
4 participant are confidential and may not be disclosed:

5 a. To any third person, unless disclosure is reasonably necessary for the
6 accomplishment of the purposes of intervention, rehabilitation, referral
7 assistance, or support services; or

8 b. In any legal or administrative proceeding, unless privilege or disclosure is
9 otherwise required by law.

10 2. Except as provided under this section, a staff member handling records for
11 administrative purposes; a person engaged by the program to perform evaluations,
12 monitoring, or followup; and a person in attendance at any meeting of a physician
13 health program or of a committee or designated agency may not be required to testify
14 as to the content of any findings, committee discussion, or proceedings.

15 **43-17.3-08. Liability.**

16 1. Notwithstanding any other provision of law, the board, the physician health program,
17 committee or designated agency, or delegated individuals and members of any of
18 these entities are not liable to any person for any acts, omissions, or
19 recommendations made in good faith within the scope of responsibilities pursuant to
20 this chapter.

21 2. A person that in good faith and without malice which makes a report to the physician
22 health program or the board under this section is not liable to any person for that
23 report.