

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 379**

4 (By Senators Stollings, Laird, Foster, Kessler (Mr. President),
5 Plymale and Jenkins)

6 _____
7 [Originating in the Committee on Health and Human Resources;
8 reported February 3, 2012.]
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11 A BILL to amend the Code of West Virginia, 1931, as amended, by
12 adding thereto a new section, designated §30-7-11a; and to
13 amend said code by adding thereto a new article, designated
14 §30-7E-1, §30-7E-2 and §30-7E-3, all relating generally to
15 authorizing the West Virginia Board of Examiners for
16 Registered Professional Nurses to designate programs in which
17 persons regulated by the board may be monitored while they
18 pursue treatment and recovery for alcohol abuse, chemical
19 dependency or major mental illness; and enrolling on a
20 voluntary basis without being subject to disciplinary action
21 if the person complies with the goals and restrictions of the
22 program.

23 *Be it enacted by the Legislature of West Virginia:*

24 That the Code of West Virginia, 1931, as amended, be amended
25 by adding thereto a new section, designated §30-7-11a; and that
26 said code be amended by adding thereto a new article, designated

1 §30-7E-1, §30-7E-2 and §30-7E-3, all to read as follows:

2 **ARTICLE 7. REGISTERED PROFESSIONAL NURSES.**

3 **§30-7-11a. Voluntary agreements relating to alcohol or chemical**
4 **dependency; confidentiality.**

5 (a) In order to encourage voluntary participation in monitored
6 alcohol, chemical dependency or major mental illness programs and
7 in recognition of the fact that major mental illness, alcoholism
8 and chemical dependency are illnesses, any person who holds a
9 license to practice registered nursing in this state or who is
10 applying for a license to practice registered nursing in this state
11 may enter into a voluntary agreement with a nurse health program as
12 defined in section one, article three-e of this chapter. The
13 agreement between the licensee or applicant and the nurse health
14 program shall include a jointly agreed upon treatment program and
15 mandatory conditions and procedures to monitor compliance with the
16 program of recovery.

17 (b) Any voluntary agreement entered into pursuant to this
18 section shall not be considered a disciplinary action or order by
19 the board, shall not be disclosed to the board and shall not be
20 public information if:

21 (1) Such voluntary agreement is the result of the licensee or
22 applicant self-enrolling or voluntarily participating in the board
23 designated nurse health program;

24 (2) The board has not received nor filed any written
25 complaints regarding said licensee or applicant relating to an

1 alcohol, chemical dependency or major mental illness affecting the
2 care and treatment of patients; and

3 (3) The licensee or applicant is in compliance with the
4 voluntary treatment program and the conditions and procedures to
5 monitor compliance.

6 (c) Pursuant to this section, if any licensee or applicant
7 enters into a voluntary agreement with a nurse health program as
8 defined in section one, article three-e of this chapter, and then
9 fails to comply with or fulfill the terms of said agreement, the
10 nurse health program shall report the noncompliance to the board
11 within twenty-four hours. The board may initiate disciplinary
12 proceedings pursuant to section eleven of this article or may
13 permit continued participation in the nurse health program or both.

14 (d) If the board has not instituted any disciplinary
15 proceeding as provided for in this article, any information
16 received, maintained or developed by the board relating to the
17 alcohol or chemical dependency impairment of any licensee or
18 applicant and any voluntary agreement made pursuant to this section
19 shall be confidential and not available for public information,
20 discovery or court subpoena, nor for introduction into evidence in
21 any medical professional liability action or other action for
22 damages arising out of the provision of or failure to provide
23 health care services.

24 (e) Notwithstanding any of the foregoing provisions, the board
25 may cooperate with and provide documentation of any voluntary
26 agreement entered into pursuant to this section to licensing boards

1 in other jurisdictions of which the board has become aware and may
2 be appropriate.

3 **ARTICLE 7E. NURSE HEALTH PROGRAMS.**

4 **§30-7E-1. Definitions.**

5 For the purposes of this article, the following words and
6 terms have the meanings ascribed to them, unless the context
7 clearly indicates otherwise.

8 (1) "Board" means the West Virginia Board of Examiners for
9 Registered Professional Nurses.

10 (2) "Major mental illness" means a diagnosis of a mental
11 disorder within the axis of psychotic or affective or mood, or
12 alcohol or chemical abuse, or alcohol or chemical dependency, as
13 stipulated in the International Code of Diagnosis.

14 (3) "Nurse" means those health care professionals licensed by
15 the West Virginia Board of Examiners for Registered Professional
16 Nurses.

17 (4) "Nurse Health Program" means a program meeting the
18 requirements of this article.

19 (5) "Qualifying illness" means the diagnosis of alcohol or
20 substance abuse or alcohol or substance dependency or major mental
21 illness.

22 **§30-7E-2. Nurse health program.**

23 (a) The board is authorized to designate one or more nurse
24 health programs. To be eligible for designation by the board, a
25 nurse health program shall:

1 (1) Enter into an agreement with the board outlining specific
2 requirements of the program;

3 (2) Agree to make their services available to all licensed
4 West Virginia registered professional nurses with a qualifying
5 illness;

6 (3) Provide for the education of nurses with respect to the
7 recognition and treatment of alcohol, chemical dependency and
8 mental illness and the availability of the nurse health program for
9 qualifying illnesses;

10 (4) Offer assistance to any person in referring a nurse for
11 purposes of assessment or treatment or both for a qualifying
12 illness;

13 (5) Monitor the status of a nurse who enters treatment for a
14 qualifying illness pursuant to a written, voluntary agreement
15 during treatment;

16 (6) Monitor the compliance of a nurse who enters into a
17 written, voluntary agreement for a qualifying illness with the
18 nurse health program setting forth a course for recovery;

19 (7) Agree to accept referrals from the board to provide
20 monitoring services pursuant to a board order; and

21 (8) Include such other requirements as the board deems
22 necessary.

23 (c) A designated nurse health program shall:

24 (1) Set and collect reasonable fees, grants and donations for
25 administration and services provided;

26 (2) Work collaboratively with the board to develop model

1 compliance agreements;

2 (3) Work collaboratively with the board to identify qualified
3 providers of services as may be needed by the individuals
4 participating in the nurse health program;

5 (4) Report to the board no less than annually, statistics
6 including the number of individuals served; the number of compliant
7 individuals; the number of individuals who have successfully
8 completed their agreement period; and the number of individuals
9 reported to a particular board for suspected noncompliance:
10 *Provided*, That in making such report the nurse health program shall
11 not disclose any personally identifiable information relating to
12 any nurse participating in a voluntary agreement as provided
13 herein: *Provided, however*, That in the case of a nurse not in
14 compliance with the requirements, full disclosure of information
15 will be provided to the board.

16 (d) The fact that a nurse is participating in a designated
17 nurse health program is confidential, as is all nurse patient
18 information, acquired, created or used by the nurse health program,
19 and it shall remain confidential and may not be subject to
20 discovery or subpoena in a civil case. The disclosure of
21 participation and noncompliance to the board, as required by a
22 compliance agreement, waives the confidentiality as to the board
23 for disciplinary purposes.

1 (e) The nurse health program and all persons engaged in nurse
2 health program activities are immune from civil liability and no
3 civil action may be brought or maintained while the nurse health

1 program and all persons engaged in nurse health program activities
2 are acting in good faith and within the scope of their duties.

3 (f) The board is immune from civil liability and no civil
4 action may be brought or maintained against the board or the state
5 for an injury alleged to have been the result of the activities of
6 the nurse health program or the board referral of an individual to
7 the nurse health program when they are acting in good faith and
8 within the scope of their duties.

9 **§30-7E-3. Discretionary authority of boards to designate programs.**

10 The West Virginia Board of Examiners of Registered
11 Professional Nurses has the sole discretion to designate nurse
12 health programs for licensees of the boards and no provision of
13 this article may be construed to entitle any nurse to the creation
14 or designation of a nurse health program for any individual
15 qualifying illness or group of qualifying illnesses.