

HEALTH AND SAFETY CODE CHAPTER 467. PEER ASSISTANCE PROGRAMS

HEALTH AND SAFETY CODE

TITLE 6. FOOD, DRUGS, ALCOHOL, AND HAZARDOUS SUBSTANCES

SUBTITLE B. ALCOHOL AND SUBSTANCE ABUSE PROGRAMS

CHAPTER 467. PEER ASSISTANCE PROGRAMS

Sec. 467.001. DEFINITIONS. In this chapter:

(1) "Approved peer assistance program" means a program that is designed to help an impaired professional and that is:

(A) established by a licensing or disciplinary authority; or

(B) approved by a licensing or disciplinary authority as meeting the criteria established by the department and any additional criteria established by that licensing or disciplinary authority.

(2) "Department" means the Department of State Health Services.

(3) "Impaired professional" means an individual whose ability to perform a professional service is impaired by chemical dependency on drugs or alcohol or by mental illness.

(4) "Licensing or disciplinary authority" means a state agency or board that licenses or has disciplinary authority over professionals.

(5) "Professional" means an individual who:

(A) may incorporate under The Texas Professional Corporation Act (Article 1528e, Vernon's Texas Civil Statutes); or

(B) is licensed, registered, certified, or otherwise authorized by the state to practice as a licensed vocational nurse, social worker, chemical dependency counselor, occupational therapist, speech-language pathologist, audiologist, licensed dietitian, or dental or dental hygiene school faculty member.

(6) "Professional association" means a national or statewide association of professionals, including any committee of a professional association and any nonprofit organization controlled by or operated in support of a professional association.

(7) "Student" means an individual enrolled in an

educational program or course of study leading to initial licensure as a professional as such program or course of study is defined by the appropriate licensing or disciplinary authority.

(8) "Impaired student" means a student whose ability to perform the services of the profession for which the student is preparing for licensure would be, or would reasonably be expected to be, impaired by chemical dependency on drugs or alcohol or by mental illness.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 570, Sec. 1, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 17, Sec. 27, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 892, Sec. 26, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1373, Sec. 21, eff. September 1, 2007.

Sec. 467.002. OTHER PEER ASSISTANCE PROGRAMS. This chapter does not apply to a peer assistance program for licensed physicians or pharmacists or for any other profession that is authorized under other law to establish a peer assistance program.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 467.003. PROGRAMS. (a) A professional association or licensing or disciplinary authority may establish a peer assistance program to identify and assist impaired professionals in accordance with the minimum criteria established by the department and any additional criteria established by the appropriate licensing or disciplinary authority.

(b) A peer assistance program established by a professional association is not governed by or entitled to the benefits of this chapter unless the association submits evidence to the appropriate licensing or disciplinary authority showing that the association's program meets the minimum criteria established by the department and any additional criteria established by that authority.

(c) If a licensing or disciplinary authority receives evidence showing that a peer assistance program established by a professional association meets the minimum criteria established by

the department and any additional criteria established by that authority, the authority shall approve the program.

(d) A licensing or disciplinary authority may revoke its approval of a program established by a professional association under this chapter if the authority determines that:

(1) the program does not comply with the criteria established by the department or by that authority; and

(2) the professional association does not bring the program into compliance within a reasonable time, as determined by that authority.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1373, Sec. 22, eff. September 1, 2007.

Sec. 467.0035. PROVISION OF SERVICES TO STUDENTS. (a) An approved peer assistance program may provide services to impaired students. A program that elects to provide services to impaired students is not required to provide the same services to those students that it provides to impaired professionals.

(b) An approved peer assistance program that provides services to students shall comply with any criteria for those services that are adopted by the appropriate licensing or disciplinary authority.

Added by Acts 1995, 74th Leg., ch. 570, Sec. 2, eff. Sept. 1, 1995.

Sec. 467.004. FUNDING. (a) Except as provided by Section 467.0041(b), a licensing or disciplinary authority may add a surcharge of not more than \$10 to its license or license renewal fee to fund an approved peer assistance program. The authority must adopt the surcharge in accordance with the procedure that the authority uses to initiate and adopt an increase in its license or license renewal fee.

(b) A licensing or disciplinary authority may accept, transfer, and expend funds made available by the federal or state government or by another public or private source to fund an approved peer assistance program.

(c) A licensing or disciplinary authority may contract with, provide grants to, or make other arrangements with an agency, professional association, institution, or individual to implement this chapter.

(d) Money collected under this section may be used only to implement this chapter and may not be used to pay for the actual treatment and rehabilitation costs required by an impaired professional.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 194, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 493, Sec. 1, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1314, Sec. 24, eff. Sept. 1, 1997.

Sec. 467.0041. FUNDING FOR TEXAS STATE BOARD OF DENTAL EXAMINERS. (a) Except as provided by this section, the Texas State Board of Dental Examiners is subject to Section 467.004.

(b) The board may add a surcharge of not more than \$10 to its license or license renewal fee to fund an approved peer assistance program.

(c) The board may collect a fee of not more than \$50 each month from a participant in an approved peer assistance program. Fees collected under this subsection shall be remitted to the comptroller for deposit to the credit of the dental registration account.

(d) Subject to the General Appropriations Act, the board may use the fees and surcharges collected under this section and fines collected in the enforcement of Chapter 9, Title 71, Revised Statutes, and that are deposited in the dental registration account, to fund an approved program and to pay the administrative costs incurred by the board that are related to the program.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 195, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 2, Sec. 19, eff. Feb. 6, 1995; Acts 1997, 75th Leg., ch. 493, Sec. 2, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1314, Sec. 25, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch; 1423, Sec. 10.07, eff. Sept. 1, 1997.

Sec. 467.005. REPORTS. (a) A person who knows or suspects

that a professional is impaired by chemical dependency on alcohol or drugs or by mental illness may report the professional's name and any relevant information to an approved peer assistance program.

(b) A person who is required by law to report an impaired professional to a licensing or disciplinary authority satisfies that requirement if the person reports the professional to an approved peer assistance program. The program shall notify the person making the report and the appropriate licensing or disciplinary authority if the person fails to participate in the program as required by the appropriate licensing or disciplinary authority.

(c) An approved peer assistance program may report in writing to the appropriate licensing or disciplinary authority the name of a professional who the program knows or suspects is impaired and any relevant information concerning that professional.

(d) A licensing or disciplinary authority that receives a report made under Subsection (c) shall treat the report in the same manner as it treats an initial allegation of misconduct against a professional.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 414, Sec. 1, eff. Sept. 1, 1997.

Sec. 467.006. ASSISTANCE TO IMPAIRED PROFESSIONALS.

(a) A licensing or disciplinary authority that receives an initial complaint concerning an impaired professional may:

(1) refer the professional to an approved peer assistance program; or

(2) require the professional to participate in or successfully complete a course of treatment or rehabilitation.

(b) A licensing or disciplinary authority that receives a second or subsequent complaint or a report from a peer assistance program concerning an impaired professional may take the action permitted by Subsection (a) in addition to any other action the authority is otherwise authorized to take in disposing of the complaint.

(c) An approved peer assistance program that receives a report or referral under Subsection (a) or (b) or a report under

Section 467.005(a) may intervene to assist the impaired professional to obtain and successfully complete a course of treatment and rehabilitation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 467.007. CONFIDENTIALITY. (a) Any information, report, or record that an approved peer assistance program or a licensing or disciplinary authority receives, gathers, or maintains under this chapter is confidential. Except as prescribed by Subsection (b) or by Section 467.005(c), a person may not disclose that information, report, or record without written approval of the impaired professional or other interested person. An order entered by a licensing or disciplinary authority may be confidential only if the licensee subject to the order agrees to the order and there is no previous or pending action, complaint, or investigation concerning the licensee involving malpractice, injury, or harm to any member of the public. It is the intent of the legislature to encourage impaired professionals to seek treatment for their impairments.

(b) Information that is confidential under Subsection (a) may be disclosed:

(1) at a disciplinary hearing before a licensing or disciplinary authority in which the authority considers taking disciplinary action against an impaired professional whom the authority has referred to a peer assistance program under Section 467.006(a) or (b);

(2) at an appeal from a disciplinary action or order imposed by a licensing or disciplinary authority;

(3) to qualified personnel for bona fide research or educational purposes only after information that would identify a person is removed;

(4) to health care personnel to whom an approved peer assistance program or a licensing or disciplinary authority has referred the impaired professional; or

(5) to other health care personnel to the extent necessary to meet a health care emergency.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended

by Acts 1991, 72nd Leg., ch. 245, Sec. 1, eff. Sept. 1, 1991.

Sec. 467.0075. CONSENT TO DISCLOSURE. An impaired professional who is reported to a peer assistance program by a third party shall, as a condition of participation in the program, give consent to the program that at a minimum authorizes the program to disclose the impaired professional's failure to successfully complete the program to the appropriate licensing or disciplinary authority.

Added by Acts 1997, 75th Leg., ch. 414, Sec. 2, eff. Sept. 1, 1997.

Sec. 467.008. CIVIL IMMUNITY. (a) A person who in good faith reports information or takes action in connection with a peer assistance program is immune from civil liability for reporting the information or taking the action.

(b) The civil immunity provided by this section shall be liberally construed to accomplish the purposes of this chapter.

(c) The persons entitled to immunity under this section include:

- (1) an approved peer assistance program;
- (2) the professional association or licensing or disciplinary authority operating the peer assistance program;
- (3) a member, employee, or agent of the program, association, or authority;
- (4) a person who reports or provides information concerning an impaired professional;
- (5) a professional who supervises or monitors the course of treatment or rehabilitation of an impaired professional; and
- (6) a person who employs an impaired professional in connection with the professional's rehabilitation, unless the person:

(A) knows or should have known that the professional is incapable of performing the job functions involved; or

(B) fails to take reasonable precautions to monitor the professional's job performance.

(d) A professional association, licensing or disciplinary authority, program, or person acting under this chapter is presumed to have acted in good faith. A person alleging a lack of good faith has the burden of proof on that issue.

(e) The immunity provided by this section is in addition to other immunity provided by law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.