

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

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5 FOR

6 **Senate Bill No. 379**

7 (SENATORS STOLLINGS, LAIRD, FOSTER, KESSLER (MR. PRESIDENT), PLYMALE AND
8 JENKINS, *original sponsors*)

9 _____
10 [Passed February 24, 2012; in effect ninety days from passage.]

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12
13 AN ACT to amend the Code of West Virginia, 1931, as amended, by
14 adding thereto a new section, designated §30-7-11a; and to
15 amend said code by adding thereto a new article, designated
16 §30-7E-1, §30-7E-2 and §30-7E-3, all relating to authorizing
17 the West Virginia Board of Examiners for Registered
18 Professional Nurses to designate nurse health programs for
19 licensees and applicants for treatment and recovery for
20 alcohol abuse, chemical dependency or major mental illness;
21 and enrolling on a voluntary basis without being subject to
22 disciplinary action if the person complies with the goals and
23 restrictions of the program.

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

25 That the Code of West Virginia, 1931, as amended, be amended

1 by adding thereto a new section, designated §30-7-11a; and that
2 said code be amended by adding thereto a new article, designated
3 §30-7E-1, §30-7E-2 and §30-7E-3, all to read as follows:

4 **ARTICLE 7. REGISTERED PROFESSIONAL NURSES.**

5 **§30-7-11a. Voluntary agreements relating to alcohol or chemical
6 dependency; confidentiality.**

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

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

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

1 (2) The board has not received nor filed any written
2 complaints regarding said licensee or applicant relating to an
3 alcohol, chemical dependency or major mental illness affecting the
4 care and treatment of patients; and

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

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

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

26 (e) Notwithstanding any of the foregoing provisions, the board

1 may cooperate with and provide documentation of any voluntary
2 agreement entered into pursuant to this section to licensing boards
3 in other jurisdictions of which the board has become aware and may
4 be appropriate.

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

6 **§30-7E-1. Definitions.**

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

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

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

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

19 (4) "Nurse health program" means a program meeting the
20 requirements of this article.

21 (5) "Qualifying illness" means the diagnosis of alcohol or
22 substance abuse, alcohol or substance dependency or major mental
23 illness.

24 **§30-7E-2. Nurse health program.**

25 (a) The board is authorized to designate one or more nurse

1 health programs. To be eligible for designation by the board, a
2 nurse health program shall:

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

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

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

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

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

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

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

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

24 (b) A designated nurse health program shall:

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

1 (2) Work collaboratively with the board to develop model
2 compliance agreements;

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

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

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

25 (d) The nurse health program and all persons engaged in nurse
26 health program activities are immune from civil liability and no

1 civil action may be brought or maintained while the nurse health
2 program and all persons engaged in nurse health program activities
3 are acting in good faith and within the scope of their duties.

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

10 **§30-7E-3. Discretionary authority of boards to designate programs.**

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