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SENATE BILL NO. 497

INTRODUCED BY W. MCKAMEY, M. NIKOLAKAKOS, E. TILLEMAN, G. HUNTER, J. KASSMIER, G. LAMMERS, S. FITZPATRICK, N. DURAM, J. DARLING, V. MOORE

A BILL FOR AN ACT ENTITLED: "AN ACT ADDRESSING CAREER FATIGUE AND WELLNESS IN CERTAIN HEALTH CARE PROVIDERS; PROVIDING CIVIL IMMUNITY FOR MEMBERS OF OR HEALTH CARE PROFESSIONAL CONSULTANTS TO CERTAIN ENTITIES ADDRESSING CAREER FATIGUE AND WELLNESS IN HEALTH CARE PROVIDERS; REVISING MANDATORY AND PERMISSIVE REPORTING LAWS RELATED TO CERTAIN HEALTH CARE PROVIDERS; AMENDING SECTIONS 37-3-401 AND 37-4-312, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Health care provider professional wellness program -- reporting -- nonliability -- evidentiary privilege -- definitions. (1) A person ~~or entity~~ may not be obligated to report information regarding a health care provider to the provider's respective licensing board solely because the health care provider who is a participant in a professional program ~~to the provider's respective licensing board. A person or entity may report information regarding a health care provider to the provider's respective licensing board if the person or entity reasonably and in good faith has determined that the participant is not competent to continue in practice or is a danger to themselves or to the health and welfare of their patients or the public.~~

(2) ~~Every member of, or a health care professional consultant to, any committee, board, group, commission, or other entity that functions primarily to review, evaluate, or make recommendations on a A~~ professional program is and its agents are immune from civil liability for any act, ~~decisions~~ decision, omission, or utterance done or made in performance of the professional program ~~the member's or health care professional consultant's duties while serving as a member of or as a health care professional consultant to the committee, board, group, commission, or other entity.~~ An active participant in a professional program may not be employed or engaged by the professional program or have a financial ownership interest in the professional

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1 program.

2 (3) (a) The proceedings, minutes, records, reports, analyses, findings, conclusions,
3 recommendations, and deliberative process, including oral or written opinions and reports, of a professional
4 program originating in or provided to the professional program are not subject to discovery or introduction into
5 evidence in any civil action unless a court of competent jurisdiction, after a hearing in camera, determines that
6 the evidence is not otherwise available and that extraordinary circumstances exist such that the need for the
7 evidence substantially outweighs the interest in protecting the evidence from disclosure and orders the
8 disclosure of ~~the proceedings, minutes, records, reports, or communications information. The information is not~~
9 ~~admissible in a licensing action unless the office of administrative hearings determines, after in an in camera~~
10 ~~review, that the factors of public safety and health outweigh the individual right of privacy of the licensee subject~~
11 ~~to the licensing action.~~

12 (b) A person involved in the work of a professional program may not be questioned as a witness in
13 a civil action regarding the person's knowledge of any factual information regarding specific patient health care
14 or treatment by virtue of the person's involvement in the professional program.

15 (c) Exchange of information between professional programs does not constitute a waiver of any
16 privilege provided in this subsection (3).

17 (4) As used in this section, the following definitions apply:

18 (a) "Board" ~~has the same meaning as provided in 37-1-302. The term specifically includes means~~
19 the board of medical examiners established in 2-15-1731, the board of dentistry established in 2-15-1732, the
20 board of pharmacy established in 2-15-1733, the board of nursing established in 2-15-1734, and the board of
21 behavioral health established in 2-15-1744.

22 (b) "Health care provider" means:

23 (i) a physician, physician assistant, dentist, mental health professional, ~~behavioral health~~
24 ~~professional as defined in 37-39-102~~, pharmacist, or nurse licensed, ~~registered, or certified~~ under Title 37; or

25 (ii) students enrolled in a school of medicine, osteopathic medicine, physician assistant medicine,
26 nursing, dentistry, or pharmacy or in a behavioral health or mental health educational program.

27 (c) "Professional program" means a program created to address issues related to career fatigue

1 and wellness in health care providers and that:

2 (i) is established or contracted for by a statewide association that primarily represents health care
3 providers; and

4 (ii) is exempt from federal income taxes pursuant to section 501(c)(3) or 501(c)(6) of the Internal
5 Revenue Code; and

6 ~~(iii) — primarily represents health care providers.~~

7

8 **Section 2.** Section 37-3-401, MCA, is amended to read:

9 **"37-3-401. Report of incompetence or unprofessional conduct.** (1) ~~Notwithstanding Except as~~
10 ~~provided in [section 1], notwithstanding~~ any provision of state law dealing with confidentiality, each licensed
11 physician, professional standards review organization, and the Montana medical association or any component
12 society of the association shall and any other person may report to the board any information that the physician,
13 organization, association, society, or person has that appears to show that a physician is:

14 (a) medically incompetent;

15 (b) mentally or physically unable to safely engage in the practice of medicine; or

16 (c) guilty of unprofessional conduct.

17 (2) (a) Information that relates to possible physical or mental impairment connected to habitual
18 intemperance or excessive use of addictive drugs, alcohol, or any other drug or substance by a licensee or to
19 other mental or chronic physical illness of a licensee may be reported to the appropriate personnel of the
20 medical assistance program established by the board under 37-3-203, in lieu of reporting directly to the board.

21 (b) The medical assistance program personnel referred to in subsection (2)(a) shall report to the
22 board the identity of a licensee and all facts and documentation in their possession if:

23 (i) the licensee fails or refuses to:

24 (A) comply with a reasonable request that the licensee undergo a mental, physical, or chemical
25 dependency evaluation or a combination of evaluations;

26 (B) undergo a reasonable course of recommended treatment, including reasonable aftercare;

27 (C) satisfactorily complete a reasonable evaluation, a course of treatment, or aftercare;

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- 1 (ii) the licensee's condition creates a risk of harm to the licensee, a patient, or others; or
2 (iii) the medical assistance program personnel are in possession of information that appears to
3 show that the licensee has or is otherwise engaged in unprofessional conduct.

4 ~~(3) The person and entity referred to in subsection (1) with a mandatory duty to report is not~~
5 ~~obligated to report a physician who is participating in a professional program pursuant to [section 1] unless~~
6 ~~there is a reasonable belief that the physician is not competent to continue to practice or is a danger to the~~
7 ~~physician or to the health and welfare of the physician's patients or the public.~~

8 ~~(3)(4)~~—This section applies to professional standards review organizations only to the extent that the
9 organizations are not prohibited from disclosing information under federal law."

10

11 **Section 3.** Section 37-4-312, MCA, is amended to read:

12 **"37-4-312. Report of incompetence or unprofessional conduct.** (1) ~~Notwithstanding Except as~~
13 ~~provided in [section 1], notwithstanding~~ any provision of state law dealing with confidentiality, each licensee,
14 professional standards review organization, the Montana dental association or any component society of the
15 association, and any other person may report to the board any information that the licensee, organization,
16 association, society, or person has that appears to show that a licensee is physically or mentally impaired by
17 habitual intemperance or excessive use of addictive drugs, alcohol, or any other drug or substance or by mental
18 illness or chronic physical illness.

19 (2) (a) Information that relates to possible physical or mental impairment connected to habitual
20 intemperance or the excessive use of addictive drugs, alcohol, or any other drug or substance by a licensee or
21 to other mental or chronic physical illness of a licensee may be reported to the appropriate personnel of the
22 program endorsed by the board under 37-4-311 in lieu of reporting directly to the board.

23 (b) The program personnel referred to in subsection (2)(a) shall report to the board the identity of a
24 licensee and all facts and documentation in their possession if:

25 (i) the licensee fails or refuses to comply with a reasonable request that the licensee undergo a
26 mental, physical, or chemical dependency evaluation or a combination of evaluations;

27 (ii) the licensee fails or refuses to undergo a reasonable course of treatment that the program

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1 personnel recommend, including reasonable aftercare;

2 (iii) the licensee fails or refuses to satisfactorily complete a reasonable evaluation, a course of
3 treatment, or aftercare; or

4 (iv) the licensee's condition creates a risk of harm to the licensee, a patient, or others.

5 ~~(3) The person or entity referred to in subsection (1) is not obligated to report a licensee who is~~
6 ~~participating in a professional program pursuant to [section 1] unless there is a reasonable belief that the~~
7 ~~licensee is not competent to continue to practice or is a danger to the licensee or to the health and welfare of~~
8 ~~the licensee's patients or the public.~~

9 ~~(3)(4)~~—This section applies to professional standards review organizations only to the extent that the
10 organizations are not prohibited from disclosing information under federal law."
11

12 NEW SECTION. Section 4. Codification instruction. [Section 1] is intended to be codified as an
13 integral part of Title 37, chapter 2, part 2, and the provisions of Title 37, chapter 2, part 2, apply to [section 1].
14

15 NEW SECTION. Section 5. Effective date. [This act] is effective on passage and approval.
16

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