

VERMONT BOARD OF NURSING

Board's Legal Authority for Alternative Program and Practice Remediation Program

Statute:

26 V.S.A. § 1574(9) authorizes that the Board of Nursing “may adopt rules establishing a program to serve as an alternative to the disciplinary process for nurses and nursing assistants with chemical dependencies or other professional practice issues as designated by the board.”

Administrative Rules:

Part 11 Alternative Program for Nurses and Nursing Assistants

11.1 Alternative Program Created

(a) As authorized by 26 V.S.A. § 1574(9) the Board has created “The Alternative Program” (“the Program”) for licensees and applicants eligible for licensure.

(b) The Alternative program’s goal is to protect public safety. It does so by permitting eligible individuals, for whom formal discipline is not necessary, to engage in:

- (1) chemical dependency rehabilitation, or
- (2) practice remediation.

(c) The Program is intended for persons:

- (1) with chemical dependencies; meaning physical or psychological reliance upon one or more substances including drugs or alcohol use of which has or can impair a licensee’s ability to practice; or
- (2) with professional practice deficiencies.

(d) Participation in the Alternative Program is not a right of a licensee or applicant. The Board, in its sole discretion, determines whether an individual is an acceptable candidate.

(e) Records pertaining to an individual’s participation in the program are not available to the public. They remain confidential except:

- (1) to the extent necessary to monitor and assure compliance with program requirements and then may, only as needed be shared with employers or others as determined by the program; or
- (2) when disclosed by the participant to another licensing authority.
- (3) a licensee’s participation in the program may be considered in any future disciplinary matter.

11.2 Administration The Alternative Program is administered by a committee appointed by the Board.

(a) The committee and Executive Director, in their sole discretion, determine whether an individual is an appropriate candidate for participation in the Program. They review pertinent reports and information, and impose and monitor conditions as appropriate.

(b) As needed and subject to Board approval, the committee may adopt or revise protocols for the operation and scope of the Program.

11.3 Chemical Dependency Rehabilitation: Eligibility A candidate for participation in chemical dependency rehabilitation must:

- (a) hold a license issued by the Board or be an eligible applicant for one;
- (b) voluntarily request admission to the Program;
- (c) if requested, agree to undergo a comprehensive assessment, at the applicant's expense, from a pre-approved qualified provider based on criteria determined by the committee;
- (d) not be ineligible for any of the reasons set forth in Rule 11.4 below.

11.4 Chemical Dependency Rehabilitation: Ineligible Persons An applicant may be ineligible to participate in the chemical dependency program if that person:

- (a) has pending felony charges or felony conviction(s) related to chemical dependency; or
- (b) has had within the preceding five years a restricted license for conduct that would constitute unprofessional conduct in this state; or
- (c) has diverted controlled substances; or
- (d) has consciously taken or disregarded a substantial risk of harm; or
- (e) presents an imminent danger to the public; or
- (f) has a recent history of chemical dependency and failed treatment; or
- (g) has an independent comprehensive assessment upon which the committee determines that the individual is not an appropriate candidate for the Program.

11.5 Practice Remediation: Eligibility

(a) A candidate for participation in practice remediation must:

- (1) hold a license issued by the Board or be an eligible applicant for one;
- (2) agree to participate in the Program;
- (3) agree to undergo a comprehensive assessment, at the applicant's expense, if requested, from a pre-approved qualified provider based on criteria determined by the committee
- (4) agree that a practice deficiency has occurred; and
- (5) not be ineligible for any of the reasons set forth in Rule 11.6 below.

(b) The program must determine whether the individual's practice deficiency is likely to be corrected by remediation.

11.6 Practice Remediation: Ineligible Persons An applicant may be ineligible to participate in practice remediation program if that person:

- (a) has previously been disciplined by Vermont or another state Board of Nursing for conduct that would constitute unprofessional conduct in this state;
- (b) has attempted to conceal an error or falsify records;
- (c) has consciously taken or disregarded a substantial risk of harm;
- (d) has a practice deficiency that persisted after multiple remedial or counseling interventions;
or
- (e) may pose a threat to the safety and welfare of the public while participating in the program;
- (f) has pending felony charges or a felony conviction related to the practice of nursing;
- (g) is, in the judgment of the program based on an independent review of the individual's physical or mental health, not an appropriate candidate for the program.

11.7 Contract

(a) Individuals accepted into the Alternative Program shall enter into a written contract with the Program. The contract shall set forth the terms, conditions, costs, and restrictions which the committee deems appropriate for the individual participant. The contract is an Order of the Board with which the individual must comply.

(b) So long as the individual complies with the contract conditions, disciplinary action based on the conduct for which the individual was accepted into the Program will not be initiated.

(c) An individual who fails to comply with the Program contract may be terminated from the Program and may be referred for formal disciplinary proceedings for violating a Board Order.

11.8 Completion of the Program Upon satisfactory completion of the program the licensee will be discharged.