

March 14, 2007

Dear Sen. Slossberg, Sen. Handley, and Members of the Public Health Committee,

I am Dede Dwyer; a registered nurse for nearly 27 years, a member of the recovering nurse community of Connecticut and Nurses for Nurses; an anonymous peer support group for nurses in recovery for the last 9 years.

I am here today to testify in support of revised RB 7155 *AN ACT CONCERNING A PROFESSIONAL ASSISTANCE PROGRAM FOR HEALTH CARE PROFESSIONALS*. (See attached language)

This legislation captures the key elements of a true alternative to discipline program. Based on scientific research and best practices, alternative programs afford immediate intervention assisting professionals in obtaining a full assessment of their needs, the appropriate level of care (treatment), confidentiality, relapse prevention and education.

Confidentiality; an integral component of any program dealing with the issues of substance abuse and mental illness, not only safeguards the dignity of the individual but it allows the person to concentrate on what needs to be done. Which means full engagement in treatment and subsequent recovery, more specifically, confidentiality eliminates one of the major barriers facing impaired health care practitioners today.

Through this program, education and prevention will be conducted statewide and be consistent in its content; therefore health care facility staff will fully understand the need for early intervention, appropriate treatment and on-going support. This will subsequently enable their colleagues to return to practice with skill and safety in their respective professional settings.

A case management system administered by skilled mental health and addictions specialists will conduct the close monitoring and relapse prevention components, establishing an environment of consistency, offering dedicated on-going support for those engaged in the program.

Likewise, this legislation calls for several levels of accountability which will truly preserve patient safety as well as the overall integrity of the health care team of physician, nurse and patient.

The entities that have collaborated on this legislation have worked long and hard to bring about a positive move forward for all health care practitioners who are or may be impaired by chemical dependency, physical or mental illness.

By doing the "right thing for the right reasons" they have afforded the same dignity, confidentiality, and respect extended to any patient regardless of their disease entity.

Thank you for this opportunity to address the Committee, I respectfully submit this testimony in support of the revised language for raised bill 7155.

Denice B. Dwyer, RNC-E  
*Denice B. Dwyer, RNC-E*  
(Dede Dwyer)

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**AN ACT CONCERNING A PROFESSIONAL ASSISTANCE PROGRAM FOR HEALTH CARE PROFESSIONALS**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (NEW) (*Effective from passage*) (a) As used in this section:

(1) "Chemical dependency" means abusive or excessive use of drugs, including alcohol, narcotics or chemicals, that results in physical or psychological dependence;

(2) "Department" means the Department of Public Health;

(3) "Health care professionals" includes any person licensed or who has received a permit pursuant to chapter 370, 372, 373, 375, 375a, 376, 376a, 376b, 376c, 377, 378, 379, 379a, 380, 381, 381a, 383, 383a, 383b, 383c, 384, 384a, 384b, 384c, 384d, 385, 398 or 399 of the general statutes;

(4) "Medical review committee" means any committee that reviews and monitors participation by health care professionals in the assistance program including medical review committees described in section 19a-17b of the general statutes;

(5) "Assistance program" means the program established pursuant to subsection 1(b) to provide education, prevention, intervention, referral assistance, rehabilitation or support services to health care professionals who have a chemical dependency, emotional or behavioral disorder or physical or mental illness.

(b) State or local professional societies or membership organizations of health care professionals or any combination thereof, may establish a single assistance program to serve all health care professionals identified in subsection 1(a)(3), provided the assistance program (1) operates in compliance with the provisions of this section, and (2) includes one or more medical review committees that comply with the applicable provisions of subsections (c) to (f), inclusive, of this section. The program shall (A) be an alternative, voluntary and confidential opportunity for the rehabilitation of health care professionals and persons who have applied to become health care professionals, and (B) include mandatory, periodic evaluations of each participant's ability to practice with skill and safety and without posing a threat to the health and safety of any person or patient in the health care setting.

(c) Prior to admitting a health care professional into the assistance program established pursuant to subsection (b) of this section, a medical review

committee shall (1) determine if the health care professional is an appropriate candidate for rehabilitation and participation in the program, and (2) establish the participant's terms and conditions for participating in the program. No action taken by the medical review committee pursuant to this subsection shall be construed as the practice of medicine or mental health care.

(d) The medical review committee shall not admit to the assistance program established pursuant to subsection (b) of this section any health care professional who has pending disciplinary charges, prior history of disciplinary action or a consent order by any professional licensing or disciplinary body or has been charged with or convicted of a felony under the laws of this state, or of an offense that, if committed within this state, would constitute a felony. The medical review committee shall refer such health care professional to the department and shall submit to the department all records and files maintained by the assistance program, concerning such health care professional. Upon such referral, the department shall determine if the health care professional is eligible to participate in the assistance program and whether such participation should be treated as confidential pursuant to subsection (h) of this section. The department may seek the advice of professional health care societies or organizations and the assistance program in determining what intervention, referral assistance, rehabilitation or support services are appropriate for such health care professional. If the department determines that the health care professional is an appropriate candidate for confidential participation in the assistance program, during the health care professional's participation in and upon successful completion of the program, in accordance with terms agreed upon by the department, the health care professional, and the assistance program, the entire record of the referral and investigation shall not be public and shall remain confidential unless the health care professional requests that the record be open.

(e) Any health care professional participating in the assistance program established pursuant to subsection (b) of this section shall immediately notify the assistance program upon (1) being made aware of the filing of any disciplinary charges or the taking of any disciplinary action against such health care professional by a professional licensing or disciplinary body, or (2) being charged with or convicted of a felony under the laws of this state, or of an offense that, if committed within this state, would constitute a felony. The assistance program shall regularly review available sources to determine if disciplinary charges have been filed, or disciplinary action has been taken, or felony charges have been filed or substantiated against any health care professional who has been admitted to the assistance program. Upon such notification, the assistance program shall refer such health care professional to the department and shall submit to the department all records and files maintained by the assistance program concerning such health care professional. Upon such referral, the

department shall determine if the health care professional is eligible to continue participating in the assistance program and whether such participation should be treated as confidential in accordance with subsection (h) of this section. The department may seek the advice of professional health care societies or organizations and the assistance program in determining what intervention, referral assistance, rehabilitation or support services are appropriate for such health care professional. If the department determines that the health care professional is an appropriate candidate for confidential participation in the assistance program, during the health care professional's participation and upon successful completion of the program in accordance with terms agreed upon by the department, the health care professional, and the assistance program, the entire record of the referral and investigation shall not be public and shall remain confidential unless the health care professional requests that the record be open.

(f) The medical review committee shall not admit to the program established pursuant to subsection (b) of this section any health care professional who is alleged to have harmed a patient. Upon being made aware of such allegation of harm the medical review committee and the assistance program shall refer such health care professional to the department and shall submit to the department all records and files maintained by the assistance program, concerning such health care professional. Such referral may include recommendations as to what intervention, referral assistance, rehabilitation or support services are appropriate for such health care professional. Upon such referral, the department shall determine if the health care professional is eligible to participate in the assistance program and whether such participation should be provided in a confidential manner in accordance with the provisions of subsection (h) of this section. The department may seek the advice of professional health care societies or organizations and the assistance program[s] in determining what intervention, referral assistance, rehabilitation or support services are appropriate for such health care professional. If the department determines that the health care professional is an appropriate candidate for confidential participation in the assistance program, during the health care professional's participation in and upon successful completion of the program in accordance with terms agreed upon by the department, the health care professional, and the assistance program, the entire record of the referral and investigation shall not be public and shall remain confidential unless the health care professional requests that the record be open.

(g) The assistance program established pursuant to subsection (b) of this section shall report annually to the appropriate professional licensing board or commission or, in the absence of such board or commission, to the Department of Public Health on the number of health care professionals participating in the assistance program, the purposes for participating in the assistance program and

whether participants are practicing health care with skill and safety and without posing a threat to the health and safety of any person or patient in the health care setting. Annually, on or before December thirty-first, the assistance program shall report such information to the joint standing committee of the General Assembly having cognizance of matters relating to public health, in accordance with the provisions of section 11-4a of the general statutes.

(h) (1) All information given or received in connection with any intervention, rehabilitation, referral assistance or support services provided by the assistance program pursuant to this section, including the identity of any health care professional seeking or receiving such intervention, rehabilitation, referral assistance or support services shall be confidential and shall not be disclosed to any third person or entity, unless disclosure is reasonably necessary for the accomplishment of the purposes of such intervention, referral assistance or support services or for the accomplishment of an audit in accordance with subsection (l) of this section and shall not be disclosed in any civil or criminal case or proceeding or in any legal or administrative proceeding, unless the health care professional seeking or obtaining intervention, referral assistance or support services waives such privilege or unless disclosure is otherwise required by law. Unless the privilege under this subsection has been waived or unless disclosure is otherwise required by law, no person in any civil or criminal case or proceeding or in any legal or administrative proceeding may request or require any information given or received in connection with the intervention and referral or support services provided pursuant to this section.

(2) The proceedings of a medical review committee shall not be subject to discovery or introduced into evidence in any civil action for or against a health care professional arising out of matters that are subject to evaluation and review by such committee, and no person who was in attendance at such proceedings shall be permitted or required to testify in any such civil action as to the content of such proceedings. Nothing in this subdivision shall be construed to preclude (A) in any civil action, the use of any writing recorded independently of such proceedings; (B) in any civil action, the testimony of any person concerning such person's knowledge, acquired independently of such proceedings, about the facts that form the basis for the instituting of such civil action; (C) in any civil action arising out of allegations of patient harm caused by health care services rendered by a health care professional who, at the time such services were rendered, had been requested to refrain from practicing or whose practice of medicine or health care was restricted, the disclosure of such request to refrain from practicing or such restriction; or (D) in any civil action against a health care professional, disclosure of the fact that a health care professional participated in the assistance program, the dates of participation, the reason for participation and confirmation of successful completion of the program, provided a court of competent

jurisdiction has determined that good cause exists for such disclosure after (i) notification to the health care professional of the request for such disclosure, and (ii) a hearing concerning such disclosure at the request of any party, and provided further, the court imposes appropriate safeguards against unauthorized disclosure or publication of such information.

3) Nothing in this subsection shall be construed to prevent the assistance program from disclosing information in connection with administrative proceedings related to the imposition of disciplinary action against any health care professional referred to the department by the assistance program pursuant to subsection (d), (e), (f) or (i) of this section or by the oversight committee pursuant to (2)(e) of this section.

(i) If at any time, (1) the assistance program established pursuant to subsection (b) of this section, determines that a health care professional is not able to practice with skill and safety or poses a threat to the health and safety of any person or patient in the health care setting and the health care professional does not refrain from practicing health care or fails to participate in a recommended program of rehabilitation, or (2) a health care professional who has been referred to the assistance program fails to comply with terms or conditions of participation in the program or refuses to participate in the assistance program, the assistance program shall refer the health care professional to the department and shall submit to the department all records and files maintained by the assistance program concerning such health care professional. Upon such referral, the department shall determine if the health care professional is eligible to participate in the assistance program and whether such participation should be provided in a confidential manner in accordance with the provisions of subsection (h) of this section. The department may seek the advice of professional health care societies or organizations and the assistance program[s] in determining what intervention, referral assistance, rehabilitation or support services are appropriate for such health care professional. If the department determines that the health care professional is an appropriate candidate for confidential participation in the assistance program, during the health care professional's participation in and upon successful completion of the program in accordance with terms agreed upon by the department, the health care professional, and the assistance program, the entire record of the referral and investigation shall not be public and shall remain confidential unless the health care professional requests that the record be open.

(j) (1) Any physician, hospital or state or local professional society or organization of health care professionals that refers an individual for intervention to the assistance program for physicians established pursuant to subsection (b) of this section shall be deemed to have satisfied the obligations

imposed on the person or organization pursuant to subsection (a) of section 20-13d of the general statutes, with respect to a physician's inability to practice medicine with reasonable skill or safety due to chemical dependency, emotional or behavioral disorder or physical or mental illness.

(2) Any physician, physician assistant, hospital or state or local professional society or organization of health care professionals that refers an individual for intervention to the assistance program for physician assistants established pursuant to subsection (b) of this section shall be deemed to have satisfied the obligations imposed on the person or organization pursuant to subsection (a) of section 20-12e of the general statutes, with respect to a physician assistant's inability to practice with reasonable skill or safety due to chemical dependency, emotional or behavioral disorder or physical or mental illness.

(k) The assistance program established pursuant to subsection (b) of this section shall meet with the professional assistance oversight committee established under section 2 of this act on a regular basis, but not less than four times each year.

(l) On or before November 1, 2007, and annually thereafter, the assistance program established pursuant to subsection (b) of this section shall select a person determined to be qualified by the assistance program and the department to conduct an audit on the premises of the assistance program for the purpose of examining quality control of the program and compliance with all requirements of this section. On or after November 1, 2011, the department, with the agreement of the professional assistance oversight committee established under section 2 of this act, may waive the audit requirement, in writing. Any audit conducted pursuant to this subsection shall consist of a random sampling of at least twenty per cent of the assistance program's files or ten files, whichever is greater. Prior to conducting the audit, the auditor shall agree in writing (1) not to copy any program files or records, (2) not to remove any program files or records from the premises, (3) to destroy all personally identifying information about health care professionals participating in the assistance program upon the completion of the audit, (4) not to disclose personally identifying information about health care professionals participating in the program to any person or entity other than a person employed by the assistance program who is authorized by such program to receive such disclosure, and (5) not to disclose in any audit report any personally identifying information about health care professionals participating in the assistance program. Upon completion of the audit, the auditor shall submit a written audit report to the assistance program, the department, the professional assistance oversight committee established under section 2 of this act and the joint standing committee of the General

Assembly having cognizance of matters relating to public health, in accordance with the provisions of section 11-4a of the general statutes.

Sec. 2. (NEW) (*Effective from passage*) (a) The Department of Public Health shall establish a professional assistance oversight committee for the health care professional assistance program established pursuant to section 1 of this act. Such committee's duties shall include, but not be limited to, overseeing quality assurance. The oversight committee shall consist of the following members: (1) Three members selected by the department, who are health care professionals with training and experience in mental health or addiction services, (2) three members selected by the assistance program[s], who are not employees, board or committee members of the assistance program and who are health care professionals with training and experience in mental health or addiction services, and (3) one member selected by the Department of Mental Health and Addiction Services who is a health care professional.

(b) The assistance program established pursuant to section 1 of this act shall provide administrative support to the oversight committee.

(c) Beginning January 1, 2008, the oversight committee shall meet with assistance programs on a regular basis, but not fewer than four times each year.

(d) The oversight committee may request and shall be entitled to receive copies of files or such other assistance program records it deems necessary, provided all information pertaining to the identity of any health care professional shall first be redacted by the assistance program. No member of the oversight committee may copy, retain or maintain any such redacted records. If the oversight committee determines that a health care professional is not able to practice with skill and safety or poses a threat to the health and safety of any person or patient in the health care setting, and the health care professional has not refrained from practicing health care or has failed to comply with terms or conditions of participation in the program of rehabilitation, the oversight committee shall notify the assistance program to refer the health care professional to the department. Upon such notification, the assistance program shall refer the health care professional to the department, in accordance with the provisions of subsection (i) of section 1 of this act.

(e) If, at any time, the oversight committee determines that the assistance program has not acted in accordance with the provisions of this Act, or requires remedial action based upon the audit performed under subsection 1(1), the oversight committee shall give thirty days written notice to the assistance program. The assistance program shall develop and submit to the oversight committee a corrective action plan within thirty days of the issuance of said

notice. The assistance program may seek the advice and assistance of the oversight committee in developing the corrective action plan. Upon approval of the corrective action plan, the oversight committee shall provide a copy of the approved plan to the assistance program and the department. If the assistance program fails to satisfy the corrective action plan, the oversight committee may amend the plan or direct the assistance program to refer some or all of the records of the health care professionals in the assistance program to the department. Upon such referral, the department shall determine if the health care professionals are eligible for continued intervention, referral assistance or support services and whether participation in such intervention, referral assistance or support services should be treated as confidential in accordance with subsection 1(h). If the department determines that the health care professional is an appropriate candidate for confidential participation in continued intervention, referral assistance or support services and the health care professional agrees to participate in accordance with terms agreed upon by the department and the health care professional, the entire record of the referral and investigation shall not be public and shall remain confidential unless the health care professional requests that the record be open. At such time as the oversight committee determines that the assistance program is in compliance with the corrective action plan and the oversight committee gives written notice to the department, the department may refer the health care professionals to the assistance program for continued intervention, referral assistance or support services and shall submit to the assistance program all records and files concerning those health care professionals.

(f) Records created for, by or on behalf of the oversight committee shall not be deemed public records and shall not be subject to the provisions of section 1-210 of the general statutes. Such records shall be treated as confidential in accordance with the provisions of subsection (h) of section 1 of this act.

(g) The proceedings of the oversight committee shall not be subject to discovery or introduced into evidence in any civil action for or against a health care professional arising out of matters that are subject to evaluation and review by such committee, and no person who was in attendance at such proceedings shall be permitted or required to testify in any such civil action as to the content of such proceedings. Nothing in this subdivision shall be construed to preclude (1) in any civil action, the use of any writing recorded independently of such proceedings; (2) in any civil action, the testimony of any person concerning such person's knowledge, acquired independently of such proceedings, about the facts that form the basis for the instituting of such civil action; (3) in any civil action arising out of allegations of patient harm caused by health care services rendered by a health care professional who, at the time such services were rendered, had been requested to refrain from practicing or whose practice of medicine or health

care was restricted, the disclosure of such request to refrain from practicing or such restriction; or (4) in any civil action against a health care professional, disclosure of the fact that a health care professional participated in the assistance program, the dates of participation, the reason for participation and confirmation of successful completion of the program, provided a court of competent jurisdiction has determined that good cause exists for such disclosure after (A) notification to the health care professional of the request for such disclosure, and (B) a hearing concerning such disclosure at the request of any party, and provided further, the court imposes appropriate safeguards against unauthorized disclosure or publication of such information.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	New section
Sec. 2	<i>from passage</i>	New section

**Statement of Purpose:**

To authorize state or local professional societies and organizations of health care professionals to establish a single program for rehabilitating impaired health care professionals.

*Proposed additions are indicated by underline.*