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**TESTIMONY RE: RAISED BILL NO. 7155 AN ACT CONCERNING A
PROFESSIONAL ASSISTANCE PROGRAM FOR HEALTH CARE
PROFESSIONALS.**

Public Health Committee

March 14, 2007

Good afternoon Senator Handley, Representative Sayers and members of the Public Health Committee.

Thank-you for the opportunity to provide testimony on behalf of the Connecticut Nurses' Association (CNA), the professional organization for registered nurses in Connecticut. I am Marilyn Richard, a member of the Association's Government Relations Committee. I am an advanced practice registered nurse in psych/mental health and have practiced nursing for over 30 years. I am providing comments in support of **RAISED BILL NO. 7155, AN ACT CONCERNING A PROFESSIONAL ASSISTANCE PROGRAM FOR HEALTH CARE PROFESSIONALS.**

For over seventeen years the Connecticut Nurses' Association has spearheaded efforts for a program that would provide a voluntary alternative to the disciplinary process for nurses who have or are at risk of impairment due to substance abuse, mental health or physical disabilities. We now join with our colleagues from the Connecticut Association of Physician's Assistants, the Connecticut State Dental Society, the Connecticut State Medical Society and the Connecticut Veterinary Medicine Association whose organizations represent over 90,000 health care professionals and with the Connecticut Department of Public Health in support of this important legislation. The revised language of this bill that is supported is attached to this testimony.

Why does the CNA support such a program?

- Health care professional health programs are based on best practices and research in the area of mental health and addiction and address illnesses and conditions that are treatable.
- Public health and safety is promoted through a program that provides education, early intervention and close monitoring in a case management program run by mental health/addiction specialists.
- This alliance will provide a strong interdisciplinary collaboration with strict guidelines to ensure quality.
- The time is decreased between the practitioner's acknowledgment of a problem and the time he/she enters a recovery program; earlier intervention provides increased public safety and earlier return of participants to safe and competent practice.
- The program provides confidentiality for the practitioner who is voluntarily seeking assistance which is an essential and critical component of best practice models.
- The program ensures that practitioners who are not able to practice with skill and safety are referred to the appropriate agency as directed by state law.
- The American Nurses Association supports alternative programs and addresses this as part of the profession's responsibility to impairment problems.
- Since the late 80's the National Council of State Boards of Nursing has considered alternative programs the standard of practice. Currently over 42 states have alternative programs.

The association has appreciated the committee's support of this concept in the past and urges support for this bill. Thank you and I am available for questions.

PROPOSED REVISIONS TO RAISED BILL 7155

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, those 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[s] including medical review committees described in section 19a-17b of the general statutes;

(5) "Assistance program" means [a] the program established [a state or local professional society or membership organization of health care professionals] 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) [A] State or local professional societies[y] or membership organizations of health care professionals or any combination thereof, may establish a single [health care professional] 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 [a] one or more medical review committees that comply[ies] 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 [an] 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 [refer] admit to [an] 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 review committee or] the assistance program, [or both,] concerning such health care professional. Upon such referral, the department shall determine if the health care professional is eligible to participate in [an] 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[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.

(e) Any health care professional participating in [an] 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[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 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 [refer] 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 review committee or] the assistance program, [or both,] 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 [an] 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) [Each] 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 [an] 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 [maintained by the assistance program in a file which shall be kept] confidential and shall not [only] 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. [in accordance with this subsection. Such information may be disclosed: (A) To a person or entity employed by the assistance program, provided such disclosure is necessary for purposes of such program; (B) to another person or entity if the assistance program determines that disclosure is necessary in order to accomplish the purposes of such intervention, rehabilitation, referral assistance or support services; (C) in a civil or criminal case or other legal or administrative proceeding, in accordance with subdivision (2) of this subsection or subsection (f) of section 2 of this act or if the health care professional seeking or obtaining intervention, rehabilitation, referral assistance or support services authorizes such disclosure or; (D) in connection with administrative proceedings related to the imposition of disciplinary action against any health care professional referred to the department by an assistance program pursuant to subsection (d), (e), (f) or (i) of this section; (E) for purposes of an audit in accordance with subsection (l) of this section; or (F) if disclosure is otherwise required by law.]

(2) The proceedings of a medical review committee [established pursuant to this section] 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 [an] 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) [an] 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 [an] 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 [an] 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 [an] 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 [an] 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) [Each] 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, [each] 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[s] 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 [such] the assistance program[s], who are not employees, board or committee members of [any] 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 [A] assistance program[s] 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 [participate in a recommended] 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(l), 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.

[(e)] (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.

[(f)] (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 [an] 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.

Section 20-13e

In order to provide for a single program and consistency with existing statutes, the Department and the coalition also request the Committee to revise Section 20-13e of the general statutes as follows:

Section 20-13(e) of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) The department shall investigate each petition filed pursuant to section 20-13d, in accordance with the provisions of subdivision (10) of subsection (a) of section 19a-14, to determine if probable cause exists to issue a statement of charges and to institute proceedings against the physician under subsection (e) of this section. Such investigation shall be concluded not later than eighteen months from the date the petition is filed with the department and, unless otherwise specified by this subsection, the record of such investigation shall be deemed a public record, in accordance with section 1-210, at the conclusion of such eighteen-month period. Any such investigation shall be confidential and no person shall disclose his knowledge of such investigation to a third party unless the physician requests that such investigation and disclosure be open. If the department determines that probable cause exists to issue a statement of charges, the entire record of such proceeding shall be public unless the department determines that the physician is an appropriate candidate for participation in a rehabilitation program in accordance with Raised Bill No. 7155 [subsection (b) of this section and the physician agrees to participate in such program in accordance with terms agreed upon by the department and the physician]. The petition and all records of any physician who was determined eligible for participation in a rehabilitation program prior to the effective date of Raised Bill No. 7155 shall remain confidential during the physician's participation and upon successful completion of the rehabilitation program in accordance with the terms and conditions agreed upon by the

department and the physician. If at any time subsequent to the filing of a petition and during the eighteen-month period, the department makes a finding of no probable cause, the petition and the entire record of such investigation shall remain confidential unless the physician requests that such petition and record be open.

[(b) In any investigation pursuant to subsection (a) of this section, the department may recommend that the physician participate in an appropriate rehabilitation program, provided the department determines that the physician, during his participation in such a program in accordance with terms agreed upon by the department and the physician, does not pose a threat in his practice of medicine to the health and safety of any person. Such determination shall become a part of the record of such investigation. The department may seek the advice of established medical organizations in determining the appropriateness of any rehabilitation program. If the physician participates in an approved program, with the consent of the department, the department shall monitor the physician's participation in such program and require the person responsible for the physician's activities in such program to submit signed monthly reports describing the physician's progress therein. The department shall determine if participation in such a program is sufficient cause to end its investigation. Upon commencement of the rehabilitation program by the physician and during his continued participation in such program in accordance with terms agreed upon by the department and the physician, all records shall remain confidential.]

[(c)] (b) As part of an investigation of a petition filed pursuant to subsection (a) of section 20-13d, the Department of Public Health may order the physician to submit to a physical or mental examination, to be performed by a physician chosen from a list approved by the department. The department may seek the advice of established medical organizations or licensed health professionals in determining the nature and scope of any diagnostic examinations to be used as part of any such physical or mental examination. The examining physician shall make a written statement of his or her findings.

[(d)] (c) If the physician fails to obey a department order to submit to examination or attend a hearing, the department may petition the superior court for the judicial district of Hartford to order such examination or attendance, and said court or any judge assigned to said court shall have jurisdiction to issue such order.

[(e)] (d) Subject to the provisions of section 4-182, no license shall be restricted, suspended or revoked by the board, and no physician's right to practice shall be limited by the board, until the physician has been given notice and opportunity for hearing in accordance with the regulations established by the commissioner.

Statement of Purpose:

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

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