

**Texas Supreme Court  
Advisory Committee**

# Memo

To: Texas Supreme Court Advisory Committee (SCAC)

From: TRE Subcommittee

CC: Chip Babcock, Jacqueline Daumerie, Shiva Zamen

Date: June 5, 2023

Re: TRE 510

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In response to Chip Babcock’s February 27, 2023 referral letter, the SCAC Evidence Subcommittee has reviewed recommendations from the State Bar of Texas Administration of Rules of Evidence Committee (“AREC”) that would add what they call a “peer-assistance” privilege to Texas Rule of Evidence 510. Our subcommittee supports the proposed changes to the rule’s text.

## **The stated rationale for AREC’s proposal**

AREC’s proposal was animated by concern that lawyers may be deterred from seeking assistance through the Texas Lawyers’ Assistance Program (“TLAP”) because Rule 510 does not include an express privilege protecting their communications with TLAP staff. Although our subcommittee ultimately voted in support of AREC’s proposed changes, we were not convinced by their stated concern with regard with existing Rule 510. Statutory law in Texas governs the extent to which communications by lawyers, judges, and law students with TLAP are confidential. Chapter 467 of the Health and Safety Code is the general statute governing peer assistance programs in Texas and is the only one applicable to TLAP. A copy of Chapter 467 is attached to this memo for easy reference. Because Chapter 467 provides only limited assurances of confidentiality, the proposed changes to Rule 510 will not fully ensure the confidentiality of their communications.

Moreover, it is of particular significance that Chapter 467’s exceptions to confidentiality include allowing disclosure of TLAP communications in professional disciplinary hearings. We assume that for most lawyers and judges the possibility that a communication with TLAP could be used by the State Bar’s disciplinary body in a hearing to suspend or revoke their law license (or, for law students, that they won’t be admitted to the bar) is a far greater deterrent against talking with

TLAP as compared with the far more remote possibility that their TLAP communications might be used in court proceedings against them. It is difficult to imagine circumstances in which a TLAP communication would be of sufficient probative value in a case (*e.g.*, a malpractice case or a family law dispute) to justify its admission under Rule 403. Indeed, in this connection, it is notable that as far as we have been able to determine, no court has ever ordered TLAP to disclose its communications who those who have sought its assistance.

### **Our subcommittee's recommendation**

Although we were not convinced by AREC's reasons for amending Rule 510, our subcommittee ultimately voted in favor AREC's proposal. Our reasoning was straightforward: after much deliberation, we could foresee no harm to adding a peer-assistance privilege to Rule 510 while we acknowledge the possibility, even if we deem that possibility remote, that adding this privilege could offer some added encouragement to some to seek TLAP's help.

### **Additional notes**

AREC's proposal to amend Rule 510 is not limited to communications with TLAP. Instead, their language would extend the new privilege to other professionals who seek help through their peer assistance programs. Our subcommittee agrees that if the Court does add a peer assistance privilege to Rule 510 it should not be limited to TLAP communications. We note, however, that there are several statutes that specifically address communications between peer assistance programs and licensed Texas professionals in particular fields. (AREC's memo lists these other statutes so we will not repeat them again here.) Consequently, any changes to Rule 510 that the Court makes must be consistent with those other statutory schemes. In this regard, our subcommittee does not support the exact language of a comment that AREC proposes to go along with its textual changes to Rule 510. That proposed comment reads:

This rule is a privilege rule only. Statutory protections exist to provide for the confidentiality of mental health and chemical dependency information that is in the possession of an approved peer assistance program under Chapter 467 of the Texas Health and Safety Code. Such programs include, but are not limited to, programs assisting lawyers (the Texas Lawyers' Assistance Program or TLAP), and professions listed in the Texas Occupations Code such as nurses, doctors, veterinarians, and chemical dependency counselors.

However, Chapter 467.002 specifically exempts professions whose peer assistance programs are governed by other statutory law: "This chapter does not apply to a peer assistance program for licensed physicians or pharmacists or for any other profession that is authorized under other law to establish a peer assistance program." If the Court is inclined to include a comment (though it is not clear to our subcommittee that a comment is either needed or useful), one simple solution may be to have the proposed comment refer not just to Chapter 467 but to any statutory grant of confidentiality, perhaps along these lines:

This rule is a privilege rule only. Statutory protections exist to provide for the confidentiality of mental health and chemical dependency information that is in the possession of statutorily approved peer assistance programs. Such programs

include, but are not limited to, programs assisting lawyers (the Texas Lawyers' Assistance Program or TLAP), and professions listed in the Texas Occupations Code such as nurses, doctors, veterinarians, and chemical dependency counselors. *See generally* TEX. HEALTH & SAFETY CODE ANN., §467.



## The Supreme Court of Texas

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February 27, 2023

Mr. Charles L. "Chip" Babcock  
Chair, Supreme Court Advisory Committee  
Jackson Walker L.L.P.  
cbabcock@jw.com

Re: Referral of Rules Issues

Dear Chip:

The Supreme Court requests the Advisory Committee to study and make recommendations on the following matters.

**Texas Rule of Evidence 509.** In the attached memorandum, the State Bar of Texas Administration of Rules of Evidence Committee ("AREC") proposes amending Texas Rule of Evidence 509 to reflect more accurately the current scope of statutory medical privileges. The Committee should review and make recommendations.

**Texas Rule of Evidence 510.** In the attached memorandum, AREC proposes amending Texas Rule of Evidence 510 to add a peer-assistance privilege. The Committee should review and make recommendations.

As always, the Court is grateful for the Committee's counsel and your leadership.

Sincerely,

A handwritten signature in black ink, appearing to read "Nathan L. Hecht", written over a horizontal line.

Nathan L. Hecht  
Chief Justice

Attachments

## **MEMORANDUM**

To: Texas State Bar Board of Directors

From: Angie Olalde, Chair of State Bar of Texas Administration of Rules of Evidence Committee (AREC)

Re: AREC's recommendation to amend TRE 509

Date: December 5, 2022

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### **Summary**

At its final meeting for the 2020-2021 bar year, AREC voted to recommend 3 changes to TRE 509:

1. to remove references to administrative proceedings in 509(e)(1)(b) and 509(e)(5),
2. to remove (f)'s consent requirements, and
3. to add the sexually violent predator statutory exception to 509(e)(6)).

AREC decided not to recommend adding any redaction requirement to records under TRE 509, or to add a privilege exception if the patient's condition is relevant to the execution of a will.

### **Background and AREC's Work**

AREC continues its years-long review of TRE 509 and 510 to update them and make them consistent with current statutory provisions regarding the confidentiality of personal health and mental health information.

Rules 509 and 510 are peculiar among the Texas Rules of Evidence because their roots lie largely in statutory privileges afforded to patients and their doctors, nurses, physicians' assistants, dentists, podiatrists, pharmacists, and several other types of healthcare providers. There is even a statute protecting communications between a veterinarian and a pet owner. These statutes and protections are tied to the provision of health care.

AREC has been tasked with reviewing current statutes to ensure that the Rules of Evidence do not conflict with, and accurately reflect the current scope of the law concerning, a patient's medical and mental health privileges.

As part of that work, preliminary review shows that three changes should be recommended without additional delay:

## I. Removing references to administrative proceedings in 509(e)(1)(b) and 509(e)(5)

In 2015's restyling, the committee noted that the former rule's reference to administrative proceedings was deleted because the Texas Rules of Evidence only govern proceedings in Texas courts.

The TRE apply only to proceedings in Texas courts, unless a statute or constitutional provision requires otherwise. Tex. R. Evid. 101(b), (d). The TRE does not apply to certain criminal proceedings set out in Rule 101(e).

To the extent the rules apply in administrative proceedings, it is because the Administrative Procedure Act mandates their applicability. Tex. Gov't Code § 2001.083 provides that "[i]n a contested case, a state agency shall give effect to the rules of privilege recognized by law." Section 2001.091 excludes privileged material from discovery in contested administrative cases."

Based on this note, and the fact that a physician's duty to keep medical information confidential outside the courtroom derives from statutory and professional obligations, AREC has voted to remove language in Rule 509 that applies specifically to administrative proceedings.

TRE 509(e)(1)(B), (5) both exclusively relate to occupational licensing investigations and proceedings brought by the Texas Medical Board (TMB) against physicians. These are administrative proceedings that take place before TMB and at the State Office of Administrative Hearings (SOAH). There are a separate set of laws and rules relating to these proceedings, including the physician-patient privilege contained in the Texas Occupation Code Chapter 159, so removing references to administrative proceedings in the TRE will have no actual impact.

The current version of Rule 509 includes an exception for disciplinary investigations or proceedings against a physician or nurse under the Medical Practice Act. These are administrative proceedings that should be governed according to administrative rules and the applicable statutory privileges and confidentiality provisions, not the Texas Rules of Evidence.

AREC therefore voted to recommend the following change to Rule 509, to remove subsection 509(e)(1)(b) and 509(e)(5):

(e) Exceptions in a Civil Case. This privilege does not apply:

(1) Proceeding Against Physician. If the communication or record is relevant to a claim or defense in:

~~(A) a proceeding the patient brings against a physician; or~~

~~(B) a license revocation proceeding in which the patient is a complaining witness.~~

...

~~(5) Disciplinary Investigation or Proceeding. In a disciplinary investigation of or proceeding against a physician under the Medical Practice Act, Tex. Occ. Code § 164.001 et seq., or a registered nurse under Tex. Occ. Code § 301.451 et seq. But the board~~

~~conducting the investigation or proceeding must protect the identity of any patient whose medical records are examined unless:~~

~~(A) the patient's records would be subject to disclosure under paragraph (e)(1); or~~

~~(B) the patient has consented in writing to the release of medical records, as provided in subdivision (f).~~

These recommended changes are not meant to in any way limit any statutory or existing privileges, but to clarify that administrative proceedings are governed by statutory confidentiality and privilege protections. Nothing in this recommended change would prohibit an administrative proceeding from choosing to abide by TRE provisions.

## **II. Removing subsection (f)'s consent requirements and changing "consent" to "authorization."**

Extensive federal and state laws govern the release of protected health information. The TRE, on the other hand, relate to the admission of certain evidence during proceedings before Texas courts, and do not govern whether a third-party health provider should, or can, release information to a third party. Because regulations such as the Health Insurance Portability and Accountability Act, or HIPAA, govern whether and when protected health information can be *released* to someone who is not the patient, there is no need for the Texas Rules of Evidence to duplicate, or possibly conflict with, such requirements.

For example, an "authorization" has a specific meaning in the HIPAA Privacy Rule., which is the document that must be signed by the patient or their representative. Authorizations must comply with the certain requirements before the release of protected health information to a third party can occur. The TMRPA,<sup>1</sup> the TMRPA, Texas Civil Practice & Remedies Code,<sup>2</sup> and Office of the Attorney General model<sup>3</sup> authorization forms use the term "authorization" in reference to the release of protected health information. The TRE, however, uses the term "consent," while substantively referring to what federal and Texas law deem an "authorization."

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<sup>1</sup> Tex. Health & Safety Code § 181.154(d) (Texas Medical Records Privacy Act or TMRPA, adopting HIPAA's requirements for an authorization to release medical information); *see also* Tex. Health & Safety Code § 181.154(b) (a separate authorization is required for each disclosure and that "[a]n authorization for disclosure under this subsection may be made in written or electronic form or in oral form if it is documented in writing by the covered entity.")

<sup>2</sup> For medical liability claims brought against health care providers, a patient-litigant in Texas must provide complete a statutory "Authorization Form for Release of Protected Health Information." Tex. Civ. Prac. Rem. Code § 74.052(b).

<sup>3</sup> The OAG model authorization form states that:

As indicated on the form, specific authorization is required for the release of information about certain sensitive conditions, including:

- Mental health records (excluding "psychotherapy notes" as defined in HIPAA at 45 CFR 164.501).
- Drug, alcohol, or substance abuse records.
- Records or tests relating to HIV/AIDS.
- Genetic (inherited) diseases or tests (except as may be prohibited by 45 C.F.R. § 164.502).

Therefore, to eliminate any duplication of, or conflict with, state and federal statutory protections regarding the release of protected health information, AREC has voted to amend TRE 509(f) as follows:

(e) **Exceptions in a Civil Case.** This privilege does not apply:

...

(2) ~~Consent~~ **Authorization.** If a written authorization is executed that complies with Texas or federal law governing the disclosure of medical information ~~the patient or a person authorized to act on the patient's behalf consents in writing to the release of any privileged information, as provided in subdivision (f).~~

...

~~(f) Consent For Release of Privileged Information.~~

~~(1) Consent for the release of privileged information must be in writing and signed by:~~

~~(A) the patient;~~

~~(B) a parent or legal guardian if the patient is a minor;~~

~~(C) a legal guardian if the patient has been adjudicated incompetent to manage personal affairs;~~

~~(D) an attorney appointed for the patient under Tex. Health & Safety Code title 7, subtitles C and D;~~

~~(E) an attorney ad litem appointed for the patient under Tex. Estates Code title 3, subtitle C;~~

~~(F) an attorney ad litem or guardian ad litem appointed for a minor under Tex. Fam. Code chapter 107, subchapter B; or~~

~~(G) a personal representative if the patient is deceased.~~

~~(2) The consent must specify:~~

~~(A) the information or medical records covered by the release;~~

~~(B) the reasons or purposes for the release; and~~

~~(C) the person to whom the information is to be released.~~

~~(3) The patient, or other person authorized to consent, may withdraw consent to the release of any information. But a withdrawal of consent does not affect any information disclosed before the patient or authorized person gave written notice of the withdrawal.~~

~~(4) Any person who receives information privileged under this rule may disclose the information only to the extent consistent with the purposes specified in the consent.~~

### III. Adding the sexually violent predator statutory exception to TRE 509(e)(6)

The program for the civil commitment of sexually violent predators not exist when TRE 509(e)(6) was originally written. As a subsequently created program that meets the criteria listed in this rule, AREC has voted that TRE 509 should be amended to include this program.

Accordingly, AREC recommends the following change to TRE 509(e)(6):

***Involuntary Civil Commitment or Similar Proceeding.*** In a proceeding for involuntary civil commitment or court-ordered treatment, or a probable cause hearing under Tex. Health & Safety Code:

(A) chapter 462 (Treatment of Persons With Chemical Dependencies);



(B) title 7, subtitle C (Texas Mental Health Code); ~~or~~  
(C) title 7, subtitle D (Persons With an Intellectual Disability Act); or  
(D) title 11, chapter 841 (Civil Commitment of Sexually Violent Predators).

## **MEMORANDUM**

To: Texas State Bar Board of Directors

From: Angie Olalde, Chair of State Bar of Texas Administration of Rules of Evidence Committee (AREC)

Re: AREC's recommendation to amend TRE 510 to add a peer-assistance privilege

Date: December 5, 2022

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### **Summary**

At its final meeting for the 2020-2021 bar year, AREC voted to modify Texas Rule of Evidence or "TRE" 510 to add a "peer assistance program" privilege.

### **Background and AREC's Work**

It was recommended by Andrew Tolchin, and supported by others in the Bar, including Chris Ritter and prior State Bar President Sylvia Borunda Firth, that AREC review whether an evidentiary privilege could be added to ensure the privacy of communications for lawyers seeking assistance through the Texas Lawyers' Assistance Program, or "TLAP."

AREC already had a Subcommittee formed to review whether Rules 509 and 510 should be amended to comport with current statutory physician-patient and mental health privileges. By way of brief background, while most privileges in the TRE are based in the common law, Rules 509 and 510 were adopted to reflect statutory privileges. As the statutes have changed through the years, AREC has been tasked to review these rules to ensure they comport with current statutory privileges.

AREC, through its subcommittee, researched this issue and requested a presentation from TLAP personnel regarding the practical implications of the requested privilege. On September 10, 2021, TLAP gave a presentation to the full AREC committee to discuss its work and the potential implications of a peer assistance privilege under the TRE.

It is clear that Texas has a strong public policy in preventing and treating chemical dependency. As established in the Texas Health and Safety Code,

Chemical dependency is a preventable and treatable illness and public health problem affecting the general welfare and the economy of this state. The legislature recognizes the need for proper and sufficient facilities, programs, and procedures for prevention, intervention, treatment, and rehabilitation. It is the policy of this state that a person with a chemical dependency shall be offered a continuum of services that will enable the person to lead a normal life as a productive member of society.

Tex. Health & Safety Code § 461A.001. The Executive Commissioner of the Health and Human Services Commission has the authority to “establish minimum criteria that peer assistance programs must meet to be governed by and entitled to the benefits of a law that authorizes licensing and disciplinary authorities to establish or approve peer assistance programs for impaired professionals.” *Id.* §461A.051(2).

Chapter 467 of the Health and Safety Code governs certain approved peer assistance programs in Texas. They must be established or approved by a licensing or disciplinary authority. Under Section 467.007, information, reports or records that an approved peer assistance program receives under Chapter 467 is confidential, and may not be disclosed without written approval of the impaired professional or other interested person in many circumstances. Disclosure is allowed at disciplinary hearings before a licensing or disciplinary authority, or to health care personnel to whom the impaired professional has been referred or to meet a health care emergency.

Several statutes address whether communications among licensed Texas professionals seeking help through a peer assistance program (as defined by statute) will be treated as confidential, or receive other protections from disclosure. For example,

- Tex. Occ. Code § 504.057 establishes a peer assistance program for chemical dependency counselors
- Tex. Health & Safety Code § 773.013 provides authority to establish a peer assistance program for emergency medical services or EMS personnel
- Tex. Occ. Code § 254.0065 provides that records and information about a dentist’s participation in a peer assistance program are confidential
- Tex. Occ. Code § 301.4106 provides that a peer assistance program be established for nurses, and Chapters 301 and 303 of that code offer confidentiality protections to nurses
- Tex. Occ. Code § 564.052 authorizes a peer assistance program for pharmacists and pharmacy students
- Tex. Occ. Code §§ 602, 603, 604 and 801, 603, 604, and 801 mention peer assistance programs for medical physicists, perfusionists, respiratory care practitioners, and veterinarians.

TLAP is a peer assistance program.

The subcommittee discussed the request to add a privilege to TRE 510 for only TLAP communications. While such a privilege would solidify protections for impaired professionals’ communications with the TLAP peer assistance program, it would not do so for other impaired professionals who seek help through their peer assistance programs. The Subcommittee recommended that any recognition of an impaired professional privilege apply to all such programs, and not just to TLAP.

In addition, the TRE applies only to proceedings in Texas courts, with limited exceptions noted in TRE 101 (d)-(f). A TRE-recognized privilege would not apply beyond such proceedings, unless the proceedings are otherwise governed under the TRE.

Additionally, a TRE privilege would not interfere with or otherwise invalidate any statutory confidentiality provisions or privileges. *See* \_\_\_\_\_.

Therefore, on June 10, 2022, AREC voted to recommend that TRE 510 be amended to add a peer assistance privilege.

### **AREC’S Recommendation**

We recommend Texas Rule of Evidence 510, governing the Mental Health Information Privilege in Civil Cases, be amended as follows:

(a) Definitions. In this rule:

(1) A “professional” is a person:

(A) authorized to practice medicine in any state or nation;

(B) licensed or certified by the State of Texas in the diagnosis, evaluation, or treatment of any mental or emotional disorder;

(C) involved in the treatment or examination of drug abusers;

(D) [acting as an employee, member, or agent of an approved peer assistance program under Chapter 467 of the Texas Health and Safety Code](#); or

(E) who the patient reasonably believes to be a professional under this rule.

(2) A “patient” is a person who:

(A) consults or is interviewed by a professional for diagnosis, evaluation, [referral](#), or treatment of any mental or emotional condition or disorder, including alcoholism and drug addiction; or

(B) is being treated voluntarily or being examined for admission to voluntary treatment for drug abuse.

...

(4) A communication is “confidential” if not intended to be disclosed to third persons other than those:

(A) present to further the patient’s interest in the diagnosis, examination, evaluation, [referral](#), or treatment;

(B) reasonably necessary to transmit the communication; or

(C) participating in the diagnosis, examination, evaluation, or treatment under the professional’s direction, including members of the patient’s family.

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We additionally recommend that a comment to this amendment be added, as follows:

This rule is a privilege rule only. Statutory protections exist to provide for the confidentiality of mental health and chemical dependency information that is in the possession of an approved peer assistance program under Chapter 467 of the Texas Health and Safety Code. Such programs include, but are not limited to, programs assisting lawyers (the Texas Lawyers’ Assistance Program or TLAP), and professions listed in the Texas Occupations Code such as nurses, doctors, veterinarians, and chemical dependency counselors.

HEALTH AND SAFETY CODE

TITLE 6. FOOD, DRUGS, ALCOHOL, AND HAZARDOUS SUBSTANCES

SUBTITLE B. ALCOHOL AND SUBSTANCE ABUSE PROGRAMS

CHAPTER 467. PEER ASSISTANCE PROGRAMS

Sec. 467.001. DEFINITIONS. In this chapter:

(1) "Approved peer assistance program" means a program that is designed to help an impaired professional and that is:

(A) established by a licensing or disciplinary authority; or

(B) approved by a licensing or disciplinary authority as meeting the criteria established by the executive commissioner and any additional criteria established by that licensing or disciplinary authority.

(2) "Department" means the Department of State Health Services.

(2-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(3) "Impaired professional" means an individual whose ability to perform a professional service is impaired by chemical dependency on drugs or alcohol or by mental illness.

(4) "Licensing or disciplinary authority" means a state agency or board that licenses or has disciplinary authority over professionals.

(5) "Professional" means an individual who:

(A) may incorporate under The Texas Professional Corporation Law as described by Section [1.008\(m\)](#), Business Organizations Code; or

(B) is licensed, registered, certified, or otherwise authorized by the state to practice as a licensed vocational nurse, social worker, chemical dependency counselor, occupational therapist, speech-language pathologist, audiologist, licensed dietitian, or dental or dental hygiene school faculty member.

(6) "Professional association" means a national or statewide association of professionals, including any committee of a professional association and any nonprofit organization

controlled by or operated in support of a professional association.

(7) "Student" means an individual enrolled in an educational program or course of study leading to initial licensure as a professional as such program or course of study is defined by the appropriate licensing or disciplinary authority.

(8) "Impaired student" means a student whose ability to perform the services of the profession for which the student is preparing for licensure would be, or would reasonably be expected to be, impaired by chemical dependency on drugs or alcohol or by mental illness.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 570, Sec. 1, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 17, Sec. 27, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 892, Sec. 26, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 21, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1223, eff. April 2, 2015.

Sec. 467.002. OTHER PEER ASSISTANCE PROGRAMS. This chapter does not apply to a peer assistance program for licensed physicians or pharmacists or for any other profession that is authorized under other law to establish a peer assistance program.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 467.003. PROGRAMS. (a) A professional association or licensing or disciplinary authority may establish a peer assistance program to identify and assist impaired professionals in accordance with the minimum criteria established by the executive commissioner and any additional criteria established by the appropriate licensing or disciplinary authority.

(b) A peer assistance program established by a professional association is not governed by or entitled to the benefits of this chapter unless the association submits evidence to the appropriate licensing or disciplinary authority showing that the association's program meets the minimum criteria established by the executive

commissioner and any additional criteria established by that authority.

(c) If a licensing or disciplinary authority receives evidence showing that a peer assistance program established by a professional association meets the minimum criteria established by the executive commissioner and any additional criteria established by that authority, the authority shall approve the program.

(d) A licensing or disciplinary authority may revoke its approval of a program established by a professional association under this chapter if the authority determines that:

(1) the program does not comply with the criteria established by the executive commissioner or by that authority; and

(2) the professional association does not bring the program into compliance within a reasonable time, as determined by that authority.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 22, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1224, eff. April 2, 2015.

Sec. 467.0035. PROVISION OF SERVICES TO STUDENTS. (a) An approved peer assistance program may provide services to impaired students. A program that elects to provide services to impaired students is not required to provide the same services to those students that it provides to impaired professionals.

(b) An approved peer assistance program that provides services to students shall comply with any criteria for those services that are adopted by the appropriate licensing or disciplinary authority.

Added by Acts 1995, 74th Leg., ch. 570, Sec. 2, eff. Sept. 1, 1995.

Sec. 467.004. FUNDING. (a) Except as provided by Section 467.0041(b) of this code and Section 504.058, Occupations Code, a licensing or disciplinary authority may add a surcharge of not more than \$10 to its license or license renewal fee to fund an approved

peer assistance program. The authority must adopt the surcharge in accordance with the procedure that the authority uses to initiate and adopt an increase in its license or license renewal fee.

(b) A licensing or disciplinary authority may accept, transfer, and expend funds made available by the federal or state government or by another public or private source to fund an approved peer assistance program.

(c) A licensing or disciplinary authority may contract with, provide grants to, or make other arrangements with an agency, professional association, institution, or individual to implement this chapter.

(d) Money collected under this section may be used only to implement this chapter and may not be used to pay for the actual treatment and rehabilitation costs required by an impaired professional.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 194, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 493, Sec. 1, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1314, Sec. 24, eff. Sept. 1, 1997.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 564 (H.B. [3145](#)), Sec. 1, eff. June 17, 2011.

Sec. 467.0041. FUNDING FOR STATE BOARD OF DENTAL EXAMINERS.

(a) Except as provided by this section, the State Board of Dental Examiners is subject to Section [467.004](#).

(b) The board may add a surcharge of not more than \$10 to its license or license renewal fee to fund an approved peer assistance program.

(c) The board may collect a fee of not more than \$50 each month from a participant in an approved peer assistance program.

(d) Subject to the General Appropriations Act, the board may use the fees and surcharges collected under this section and fines collected in the enforcement of Subtitle D, Title 3, Occupations Code, to fund an approved program and to pay the administrative costs incurred by the board that are related to the program.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 195, eff. Sept. 1, 1991.



Amended by Acts 1995, 74th Leg., ch. 2, Sec. 19, eff. Feb. 6, 1995; Acts 1997, 75th Leg., ch. 493, Sec. 2, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1314, Sec. 25, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 10.07, eff. Sept. 1, 1997.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1225, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1226, eff. April 2, 2015.

Sec. 467.005. REPORTS. (a) A person who knows or suspects that a professional is impaired by chemical dependency on alcohol or drugs or by mental illness may report the professional's name and any relevant information to an approved peer assistance program.

(b) A person who is required by law to report an impaired professional to a licensing or disciplinary authority satisfies that requirement if the person reports the professional to an approved peer assistance program. The program shall notify the person making the report and the appropriate licensing or disciplinary authority if the person fails to participate in the program as required by the appropriate licensing or disciplinary authority.

(c) An approved peer assistance program may report in writing to the appropriate licensing or disciplinary authority the name of a professional who the program knows or suspects is impaired and any relevant information concerning that professional.

(d) A licensing or disciplinary authority that receives a report made under Subsection (c) shall treat the report in the same manner as it treats an initial allegation of misconduct against a professional.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 414, Sec. 1, eff. Sept. 1, 1997.

Sec. 467.006. ASSISTANCE TO IMPAIRED PROFESSIONALS. (a) A licensing or disciplinary authority that receives an initial complaint concerning an impaired professional may:

(1) refer the professional to an approved peer

assistance program; or

(2) require the professional to participate in or successfully complete a course of treatment or rehabilitation.

(b) A licensing or disciplinary authority that receives a second or subsequent complaint or a report from a peer assistance program concerning an impaired professional may take the action permitted by Subsection (a) in addition to any other action the authority is otherwise authorized to take in disposing of the complaint.

(c) An approved peer assistance program that receives a report or referral under Subsection (a) or (b) or a report under Section 467.005(a) may intervene to assist the impaired professional to obtain and successfully complete a course of treatment and rehabilitation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 467.007. CONFIDENTIALITY. (a) Any information, report, or record that an approved peer assistance program or a licensing or disciplinary authority receives, gathers, or maintains under this chapter is confidential. Except as prescribed by Subsection (b) or by Section 467.005(c), a person may not disclose that information, report, or record without written approval of the impaired professional or other interested person. An order entered by a licensing or disciplinary authority may be confidential only if the licensee subject to the order agrees to the order and there is no previous or pending action, complaint, or investigation concerning the licensee involving malpractice, injury, or harm to any member of the public. It is the intent of the legislature to encourage impaired professionals to seek treatment for their impairments.

(b) Information that is confidential under Subsection (a) may be disclosed:

(1) at a disciplinary hearing before a licensing or disciplinary authority in which the authority considers taking disciplinary action against an impaired professional whom the authority has referred to a peer assistance program under Section 467.006(a) or (b);

(2) at an appeal from a disciplinary action or order imposed by a licensing or disciplinary authority;

(3) to qualified personnel for bona fide research or educational purposes only after information that would identify a person is removed;

(4) to health care personnel to whom an approved peer assistance program or a licensing or disciplinary authority has referred the impaired professional; or

(5) to other health care personnel to the extent necessary to meet a health care emergency.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 245, Sec. 1, eff. Sept. 1, 1991.

Sec. 467.0075. CONSENT TO DISCLOSURE. An impaired professional who is reported to a peer assistance program by a third party shall, as a condition of participation in the program, give consent to the program that at a minimum authorizes the program to disclose the impaired professional's failure to successfully complete the program to the appropriate licensing or disciplinary authority.

Added by Acts 1997, 75th Leg., ch. 414, Sec. 2, eff. Sept. 1, 1997.

Sec. 467.008. CIVIL IMMUNITY. (a) A person who in good faith reports information or takes action in connection with a peer assistance program is immune from civil liability for reporting the information or taking the action.

(b) The civil immunity provided by this section shall be liberally construed to accomplish the purposes of this chapter.

(c) The persons entitled to immunity under this section include:

(1) an approved peer assistance program;

(2) the professional association or licensing or disciplinary authority operating the peer assistance program;

(3) a member, employee, or agent of the program, association, or authority;

(4) a person who reports or provides information concerning an impaired professional;

(5) a professional who supervises or monitors the course of treatment or rehabilitation of an impaired professional; and

(6) a person who employs an impaired professional in connection with the professional's rehabilitation, unless the person:

(A) knows or should have known that the professional is incapable of performing the job functions involved; or

(B) fails to take reasonable precautions to monitor the professional's job performance.

(d) A professional association, licensing or disciplinary authority, program, or person acting under this chapter is presumed to have acted in good faith. A person alleging a lack of good faith has the burden of proof on that issue.

(e) The immunity provided by this section is in addition to other immunity provided by law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.