

# Code of Virginia

## Chapter 25.1 of Title 54.1 – Health Practitioner Monitoring Program

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**§ 54.1-2515. Definitions.**

As used in this chapter, unless the context requires a different meaning:

"Committee" means the Health Practitioners' Monitoring Program Committee as described in § 54.1-2517.

"Contract" means a written agreement between a practitioner and the Committee providing the terms and conditions of program participation or a written agreement entered into by the Director for the implementation of monitoring services.

"Disciplinary action" means any proceeding that may lead to a monetary penalty or probation or to a reprimand, restriction, revocation, suspension, denial, or other order relating to the license, certificate, registration, or multistate privilege of a health care practitioner issued by a health regulatory board.

"Impairment" means a physical or mental disability, including but not limited to substance abuse, that substantially alters the ability of a practitioner to practice his profession with safety to his patients and the public.

"Practitioner" means any individual regulated by any health regulatory board listed in § 54.1-2503.

"Program" means the Health Practitioners' Monitoring Program established pursuant to § 54.1-2516.

1997, c. 439; 2009, c. 472; 2016, c. 105.

**§ 54.1-2516. Program established; practitioner participation; disciplinary action stayed under certain conditions.**

A. The Director of the Department of Health Professions shall maintain a health practitioners' monitoring program that provides an alternative to disciplinary action for impaired health practitioners. The Director shall promulgate such regulations as are necessary for the implementation of this program after consulting with the various health regulatory boards.

The Director may, in consultation and coordination with the Health Practitioners' Monitoring Program Committee, enter into contracts as may be necessary for the implementation of monitoring services. Such services may include education, assessment, referral for intervention and treatment, and monitoring of impaired practitioners. If the Director enters into an agreement with another agency of the Commonwealth pursuant to this section, that agency shall be immune from liability resulting from the good faith exercise of its obligations under the agreement.

When evaluating such contracts, the Director shall consider the utilization of programs, as appropriate, that have been established by professional organizations for peer assistance of impaired practitioners.

The Program's operating costs, including any contractual obligations for services, shall be funded by special dedicated revenues consistent with the provisions of §§ 54.1-113, 54.1-2400, and 54.1-2505. However, this section shall not prohibit the Committee from charging participants a reasonable portion of a fee related to the costs of participation in the Program. No participant shall be denied entry into the Program due to the inability to pay a portion of the costs related to participation.

Any monitoring program for individuals licensed or certified by the Board of Medicine, and any contract for the implementation of monitoring services with respect to any such individuals, shall be subject to the prior approval of that Board.

B. Any health practitioner who has an impairment as defined in this chapter, may, on a voluntary basis, participate in the Program regardless of whether the impairment constitutes grounds for disciplinary action.

C. Disciplinary action shall be stayed upon entry of the practitioner in the Program under the following conditions:

1. No report of a possible violation of law or regulation has been made against the practitioner other than impairment or the diversion of controlled substances for personal use and such use does not constitute a danger to patients or clients.
2. The practitioner has entered the Program by written contract with the Committee.
3. Disciplinary action against the practitioner has not previously been stayed in accordance with this section.
4. The practitioner remains in compliance with the terms of his contract with the Committee.
5. The Committee has consulted with the designated representative of the relevant health regulatory board.

(1997, c. 439; 2009, c. 472.)

**§ 54.1-2517. Health Practitioners' Monitoring Program Committee; certain meetings, decisions to be excepted from the Freedom of Information Act; confidentiality of records; immunity from liability.**

A. The Health Practitioners' Monitoring Program Committee shall consist of nine persons appointed by the Director to advise and assist in the operation of the Program, of whom eight shall be licensed, certified, or registered practitioners and one shall be a citizen member. Of the members who are licensed, certified, or registered practitioners, at least one shall be licensed to practice medicine or osteopathy in Virginia and engaged in active clinical practice, at least one shall be a registered nurse engaged in active practice, and all shall be knowledgeable about impairment and rehabilitation, particularly as related to the monitoring of health care practitioners. The Committee shall have the following powers and duties:

1. To determine, in accordance with the regulations, eligibility to enter into the Program;
2. To determine, in accordance with the regulations, those Program participants who are eligible for stayed disciplinary action;
3. To enter into written contracts with practitioners which may include, among other terms and conditions, withdrawal from practice or limitations on the scope of the practice for a period of time;
4. To report to the Director and the health regulatory boards as necessary on the status of applicants for and participants in the Program;
5. To report to the Director, at least annually, on the performance of the Program; and
6. To assist the Director in carrying out the provisions of this chapter.

B. Records of the Program, to the extent such records identify individual practitioners in the Program, shall be privileged and confidential, and shall not be disclosed consistent with the Virginia Freedom of Information Act (§ 2.2-3700 et seq.). Such records shall be used only in the exercise of the proper functions as set forth in this chapter and shall not be public records nor shall such records be subject to court order, except as provided in subdivision C 4, or be subject to discovery or introduction as evidence in any civil, criminal, or administrative proceedings except those conducted by a health regulatory board.

C. Notwithstanding the provisions of subsection B and of subdivision 2 of § 2.2-3705.5, the Committee may disclose such records relative to an impaired practitioner only:

1. When disclosure of the information is essential to the monitoring needs of the impaired practitioner;
2. When release of the information has been authorized in writing by the impaired practitioner;
3. To a health regulatory board within the Department of Health Professions; or
4. When an order by a court of competent jurisdiction has been granted, upon a showing of good cause therefor, including the need to avert a substantial risk of death or serious bodily harm. In assessing good cause, the court shall weigh the public interest and the need for disclosure against the injury to the patient, to the physician-patient relationship, and to the treatment services. Upon the granting of such order, the court, in determining the extent to which any disclosure of all or any part of any record is necessary, shall impose appropriate protections against unauthorized disclosures.

D. Pursuant to subdivision A 24 of § 2.2-3711, the proceedings of the Committee which in any way pertain or refer to a specific practitioner who may be, or who is actually, impaired and who may be or is, by reason of such impairment, subject to disciplinary action by the relevant board

shall be excluded from the requirements of the Freedom of Information Act (§ 2.2-3700 et seq.) and may be closed. Such proceedings shall be privileged and confidential.

E. The members of the Committee shall be immune from liability resulting from the exercise of the powers and duties of the Committee as provided in § 8.01-581.13.

1997, c. 439; 1999, cc. 703, 726; 2004, c. 690; 2009, c. 472; 2016, c. 105; 2017, c. 778.

**§ 54.1-2518. Investigation by Department or other authorized official; prosecution for violations of law.**

This chapter shall not be construed to inhibit an investigation into the conduct of a practitioner by the Department of Health Professions or any other authorized agency, including, but not limited to, law-enforcement or health regulatory agencies, or to prohibit the prosecution of any practitioner for any violation of law.

(1997, c. 439.)

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