

**ARTICLE 20-06**  
**PROFESSIONAL HEALTH PROGRAM: ALTERNATIVE TO DISCIPLINE**

Chapter  
20-06-01                      Administration

**CHAPTER 20-06-01**  
**ADMINISTRATION**

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**20-06-01-01. Definitions.**

As used in this chapter:

1. "Administrator" means the professional health program that is designated through the agreement set forth in section 43-28-06.
2. "Agreement" means the agreement set forth in section 43-28-06.
3. "Impairment" means the presence of any physical, mental, or behavioral disorder or pattern of alcohol or substance use which interferes with a licensee's ability to engage safely in professional activities.
4. "Licensee" means an individual who hold a license or registration issued by the board and who is encompassed by the agreement.
5. "Participant" means an individual enrolled in the program.
6. "Treatment plan" means a plan of care, rehabilitation, monitoring and maintenance, followup, or aftercare services or combination of any of these services provided by an organization or by an individual authorized by the board or administrator to provide such services for a licensee taking part in the program.

**20-06-01-02. Agreement.**

1. The board may enter an agreement with the administrator to undertake those functions and responsibilities specified in the agreement. The functions and responsibilities of the agreement may include any or all of the following:
  - a. Contracting with agencies or providers of diagnostic, monitoring, or treatment services;
  - b. Receiving and evaluating reports of licensees who may be experiencing potentially impairing conditions;
  - c. Intervening in cases in which a licensee is determined to be in need of treatment;
  - d. Referring licensees to appropriate services;
  - e. Monitoring the treatment and aftercare services provided to licensees;
  - f. Educating licensees and the public about the functions of the administrator and the licensee health program, and their relationship to the board; and
  - g. Performing other activities as agreed upon by the board and the administrator.
2. The board may participate, through its licensing fees or other specified funds, in the funding of the operations of the administrator.

**20-06-01-03. Requirements and procedures.**

In consultation with the board, the administrator shall develop procedures for:

1. Periodic reporting of statistical information regarding program activity.
2. Periodic disclosure and joint review of information the board deems appropriate regarding reports received, contacts of investigations made, and the disposition of each

case. Except as expressly provided under this article and section 43-28-06, the administrator may not disclose any personally identifiable information about participants other than board-ordered participants.

3. Immediate reporting to the board the identity and results of any contact or investigation concerning an impaired licensee who is believed to constitute an imminent danger to the public or to the individual.
4. Reporting a licensee to the board, in a timely fashion, the identity and results of any contact or investigation concerning a potentially impaired participant:
  - a. Who refuses to cooperate with the administrator;
  - b. Who refuses to submit to evaluation or treatment;
  - c. Who is not in compliance with a contractual treatment plan; or
  - d. Whose possible impairment is not substantially alleviated through treatment and:
    - (1) Who the administrator determines is unable to practice professionally with reasonable skill and safety by reason of illness related to the abuse of alcohol or other substances or as a result of any physical or mental condition; or
    - (2) Who may pose a threat to the health or safety of any individual.
5. Reporting to the board, in a timely fashion, the identity of any licensee participant regarding whom the administrator learns of the filing of any disciplinary charges or actions or violations of chapter 43-28.
6. Entering contractual agreements with each participant in the program which make clear the administrator and program procedures, the responsibilities of participants, and the consequences of noncompliance with the program or with contractual agreements, including the administrator's reporting obligations to the board.
7. A policy by which a participant may obtain a second opinion review of recommendations by the administrator regarding assessment, monitoring, or treatment.

#### **20-06-01-04. Evaluation.**

If the board determines a licensee currently exhibits possible impairment, the board may direct that an evaluation of the licensee be facilitated by the administrator for the purpose of determining whether there is a current need for treatment or monitoring of the licensee to assure the licensee is able to practice safely. The administrator shall report the findings of this evaluation to the board.

#### **20-06-01-05. Self-reporting and self-referral.**

1. A licensee may voluntarily refer or self-report to the administrator or the board for a potentially impairing condition.
2. A licensee:
  - a. Who under this section voluntarily seeks the assistance of the administrator in assessing or dealing with a condition that could possibly lead to impairment will not be reported to the board solely on the basis of this self-referral. However, if a licensee who self-refers or self-reports refuses evaluation by the administrator; if the evaluation reveals evidence of a condition or impairment that could affect the licensee's ability to practice or constitutes a threat to the safety of patients or the public; or the licensee refuses to cooperate with the treatment plan, monitoring and followup, or aftercare devised by the administrator, including any recommendation about current continuation in practice, the administrator shall report the identity and findings of the evaluation of the licensee to the board. Participation in the program does not protect a licensee from board action resulting from a report of the licensee's possible violations of chapter 43-28.
  - b. Who self-reports or self-refers to the board for a potentially impairing condition may be referred by the board to the administrator in the manner prescribed by board policies, and subsequent reporting by the administrator to the board will be at the discretion and in the manner prescribed by the board.
  - c. Who is participating in or who has completed a contract for treatment with and has been discharged from the program by the administrator, who is in full compliance with all facets of the treatment plan or has completed treatment and is compliant with aftercare, may answer in the negative on any question on the application to the board for licensure or licensure renewal regarding current impairment by that condition or those conditions for which the licensee is currently participating in or has been discharged from the program

by the administrator. However, any recurrence of the impairing condition or conditions or the existence of other potentially impairing conditions that are not currently known to the administrator must be reported on the application.

**20-06-01-06. Mandated reporting.**

A report by a health professional, including a self-report or self-referral by a licensee to the administrator, must be deemed to be a report to the board for the purposes of mandated reporting of impairment.

**20-06-01-07. Confidentiality of records.**

Records of the program may only be disclosed pursuant to section 43-28-06 or section 43-17.3-07.

**20-06-01-08. Liability.**

1. Notwithstanding any other provision of law, the board, the administrator, or delegated individuals and members of any of these entities are not liable to any person for any acts, omissions, or recommendations made in good faith within the scope of responsibilities pursuant to this chapter.
2. A person that in good faith and without malice which makes a report to the administrator or the board under this section is not liable to any person for that report.