

First Regular Session of the 122nd General Assembly (2021)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2020 Regular Session of the General Assembly.

SENATE ENROLLED ACT No. 365

AN ACT to amend the Indiana Code concerning civil procedure.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 34-30-15.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]:

Chapter 15.5. Health Care: Wellness Programs for Physicians
Sec. 1. This chapter applies to the following:

- (1) Any board, committee, commission, group, organization, or other entity that acts as a physician wellness program.
- (2) Any member, consultant, participant, or expert witness that comprises or participates in a physician wellness program.
- (3) Any person who provides or furnishes records or information to a physician wellness program in compliance with applicable state and federal laws concerning patient confidentiality.

Sec. 2. As used in this chapter, "licensed physician" means:

- (1) an individual who holds an unlimited license to practice medicine in Indiana under IC 25-22.5;
- (2) a physician with a restricted license; or
- (3) any:

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(A) student in training in a medical school approved by the medical licensing board; or

(B) intern or resident who performs duties in a hospital under the supervision of the hospital's staff or in a program approved by the medical school.

Sec. 3. As used in this chapter, "wellness program" means any board, committee, commission, group, organization, or other entity that provides services by licensed health care providers and physician peer coaches for the purpose of evaluating or addressing issues concerning the wellness of licensed physicians and career fatigue in licensed physicians. The term does not include an impaired physician committee or an employee assistance program (EAP).

Sec. 4. (a) Subject to subsection (f), all verbal communication belonging to or performed as part of a wellness program are confidential and privileged and may not be used in any administrative or judicial proceeding.

(b) Subject to subsection (f), all minutes, records, reports, written expert opinions, written communications, and other comparable memoranda created or prepared by a wellness program are confidential and privileged and may not be used in any administrative or judicial proceeding.

(c) Subject to section 8 of this chapter, neither the personnel of a wellness program nor any participant in a wellness program may reveal the content of any wellness program:

- (1) communication;
- (2) record; or
- (3) determination;

to any person or entity outside of the wellness program.

(d) Subject to subsection (f), a person who comprises, attends, or otherwise participates in a wellness program must invoke the confidentiality and privilege provisions described in this section during all administrative and judicial proceedings.

(e) The production, disclosure, or discovery of any confidential or privileged information belonging to a wellness program is:

- (1) subject to IC 16-39-3; and
- (2) protected by the privilege and confidentiality provisions established under this chapter.

(f) A court of competent jurisdiction may order the release of confidential or privileged information belonging to a wellness program only after conducting a hearing and the court finds by a preponderance of the evidence that:



- (1) other reasonable methods of obtaining the information are not available or would not be effective; and
- (2) the need for disclosure outweighs the potential harm to the patient. In weighing the potential harm to the patient, the court shall consider the impact of disclosure on the provider-patient privilege and the patient's rehabilitative process.

A court mandating the discovery of confidential or privileged information under this subsection must do so via written court order.

(g) Information that is otherwise discoverable or admissible from original sources outside of the wellness group is not confidential, privileged, or otherwise immune from discovery or use in any administrative or judicial proceeding merely because it was presented or used during a wellness group proceeding.

Sec. 5. (a) The exchange of privileged or confidential information between or among one (1) or more wellness programs does not constitute a waiver of any confidentiality or privilege provision established in section 4 of this chapter.

(b) The referral of a licensed physician from a wellness program to an impaired physician committee shall not require the reporting of the licensed physician to the medical licensing board under section 8 of this chapter and does not violate any privilege or confidentiality established by this chapter.

Sec. 6. Nothing in this chapter may be construed to:

- (1) make confidential, privilege, or otherwise preclude the production or discovery of information or records to any person entitled to the applicable information or records under applicable state or federal law; or
- (2) abrogate, limit, or restrict any other privacy protection applicable to the information or records at issue under applicable state or federal law.

Sec. 7. (a) A:

- (1) wellness program;
- (2) director, volunteer, or employee of a wellness program; and
- (3) physician peer coach or licensed health care provider who evaluates or addresses issues relating to the wellness of a physician as part of a wellness program;

may not be named as a party in a civil action with respect to an official act taken in good faith and in furtherance of the work of the wellness program.



(b) A person acting without malice who gives information to a person described in subsection (a) relating to the treatment or evaluation of a licensed physician by a wellness program may not be named as a party in a civil action with respect to the provision of information.

Sec. 8. (a) No member, consultant, or participant who participates in a wellness program shall be required to report a licensed physician to the medical licensing board for any act, omission, statement, discovery, or disclosure subject to a wellness program's consideration or review unless one (1) or more of the following circumstances exist:

- (1) The licensed physician is not competent to continue practice.
- (2) The licensed physician presents a danger to:
 - (A) himself or herself; or
 - (B) the health and welfare of:
 - (i) the licensed physician's patients; or
 - (ii) the general public.

(b) The referral of a licensed physician from a wellness program to an impaired physician committee shall not require the reporting of the licensed physician to the medical licensing board and does not violate any privilege or confidentiality established by this chapter.

Sec. 9. Notwithstanding any other law or provision, no restraining order or injunction may be issued for the purpose of precluding a wellness program from operating in good faith with respect to the issues of licensed physician career fatigue and licensed physician wellness.



President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Governor of the State of Indiana

Date: _____ Time: _____

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