

Sub. S. B. No. 81
As Passed by the Senate

_____ moved to amend as follows:

In line 1 of the title, after "sections" insert "4723.021, 4723.06, 1
4723.28,"; after "4723.431" insert ","; delete the second "and" and insert 2
";"; after "enact" insert "new section 4723.35 and" 3

In line 2 of the title, after "sections" insert "4723.351,"; after 4
"4723.436" insert ","; after "4730.204" insert "; and to repeal section 5
4723.35" 6

In line 7 of the title, after "patients;" insert "to revise the law 7
governing the Board of Nursing's monitoring of impaired practitioners;" 8

In line 12, after "sections" insert "4723.021, 4723.06, 4723.28,"; 9
after "4723.431" insert ","; after "amended" insert "and new section 10
4723.35" 11

In line 13, after "sections" insert "4723.351,"; after "4723.436" 12
insert "," 13

After line 14, insert: 14

"Sec. 4723.021. (A) In the absence of fraud or bad faith, 15
~~the board of nursing, a current or former board member, an agent~~ 16



~~of the board, a representative of the board, an employee of the board, or an entity that provides services related to remediation under the board's practice intervention and improvement program~~ none of the following shall not be held liable in damages to any person as the result of any act, omission, proceeding, conduct, or decision related to official duties undertaken or performed pursuant to this chapter:

(1) The board of nursing;

(2) A current or former board member;

(3) An agent, representative, or employee of the board;

(4) An entity that provides services related to remediation under the board's practice intervention and improvement program;

(5) The monitoring organization that conducts the safe haven program as described in sections 4723.35 and 4723.351 of the Revised Code and that may provide other services as requested by the board. ~~If~~

(B) If a member, agent, representative, employee, or entity or the monitoring organization asks to be defended by the state against any claim or action arising out of any act, omission, proceeding, conduct, or decision related to the requestor's official duties, and the request is made in writing at a reasonable time before trial and the requestor cooperates in good faith in the defense of the claim or action, the state shall provide and pay for the requestor's defense and shall pay any resulting judgment, compromise, or settlement. At no time shall the state pay any part of a claim or judgment that is for punitive or exemplary damages.

Sec. 4723.06. (A) The board of nursing shall:	45
(1) Administer and enforce the provisions of this chapter,	46
including the taking of disciplinary action for violations of	47
section 4723.28 of the Revised Code, any other provisions of	48
this chapter, or rules adopted under this chapter;	49
(2) Develop criteria that an applicant must meet to be	50
eligible to sit for the examination for licensure to practice as	51
a registered nurse or as a licensed practical nurse;	52
(3) Issue and renew nursing licenses, dialysis technician	53
certificates, and community health worker certificates, as	54
provided in this chapter;	55
(4) Define the minimum educational standards for the	56
schools and programs of registered nursing and practical nursing	57
in this state;	58
(5) Survey, inspect, and grant full approval to	59
prelicensure nursing education programs in this state that meet	60
the standards established by rules adopted under section 4723.07	61
of the Revised Code. Prelicensure nursing education programs	62
include, but are not limited to, diploma, associate degree,	63
baccalaureate degree, master's degree, and doctor of nursing	64
programs leading to initial licensure to practice nursing as a	65
registered nurse and practical nurse programs leading to initial	66
licensure to practice nursing as a licensed practical nurse.	67
(6) Grant conditional approval, by a vote of a quorum of	68
the board, to a new prelicensure nursing education program or a	69
program that is being reestablished after having ceased to	70
operate, if the program meets and maintains the minimum	71
standards of the board established by rules adopted under	72
section 4723.07 of the Revised Code. If the board does not grant	73

conditional approval, it shall hold an adjudication under 74
Chapter 119. of the Revised Code to consider conditional 75
approval of the program. If the board grants conditional 76
approval, at the first meeting following completion of the 77
survey process required by division (A)(5) of this section, the 78
board shall determine whether to grant full approval to the 79
program. If the board does not grant full approval or if it 80
appears that the program has failed to meet and maintain 81
standards established by rules adopted under section 4723.07 of 82
the Revised Code, the board shall hold an adjudication under 83
Chapter 119. of the Revised Code to consider the program. Based 84
on results of the adjudication, the board may continue or 85
withdraw conditional approval, or grant full approval. 86

(7) Place on provisional approval, for a period of time 87
specified by the board, a prelicensure nursing education program 88
that has ceased to meet and maintain the minimum standards of 89
the board established by rules adopted under section 4723.07 of 90
the Revised Code. Prior to or at the end of the period, the 91
board shall reconsider whether the program meets the standards 92
and shall grant full approval if it does. If it does not, the 93
board may withdraw approval, pursuant to an adjudication under 94
Chapter 119. of the Revised Code. 95

(8) Approve continuing education programs and courses 96
under standards established in rules adopted under sections 97
4723.07, 4723.69, 4723.79, and 4723.88 of the Revised Code; 98

(9) Establish a ~~substance use disorder monitoring the safe~~ 99
haven program in accordance with ~~section~~ sections 4723.35 and 100
4723.351 of the Revised Code; 101

(10) Establish the practice intervention and improvement 102
program in accordance with section 4723.282 of the Revised Code; 103

(11) Grant approval to the course of study in advanced pharmacology and related topics described in section 4723.482 of the Revised Code;	104 105 106
(12) Make an annual edition of the exclusionary formulary established in rules adopted under section 4723.50 of the Revised Code available to the public by electronic means and, as soon as possible after any revision of the formulary becomes effective, make the revision available to the public by electronic means;	107 108 109 110 111 112
(13) Approve under section 4723.46 of the Revised Code national certifying organizations for examination and licensure of advanced practice registered nurses, which may include separate organizations for each nursing specialty;	113 114 115 116
(14) Provide guidance and make recommendations to the general assembly, the governor, state agencies, and the federal government with respect to the regulation of the practice of nursing and the enforcement of this chapter;	117 118 119 120
(15) Make an annual report to the governor, which shall be open for public inspection;	121 122
(16) Maintain and have open for public inspection the following records:	123 124
(a) A record of all its meetings and proceedings;	125
(b) A record of all applicants for, and holders of, licenses and certificates issued by the board under this chapter or in accordance with rules adopted under this chapter. The record shall be maintained in a format determined by the board.	126 127 128 129
(c) A list of education and training programs approved by the board.	130 131

(17) Deny conditional approval to a new prelicensure 132
nursing education program or a program that is being 133
reestablished after having ceased to operate if the program or a 134
person acting on behalf of the program submits or causes to be 135
submitted to the board false, misleading, or deceptive 136
statements, information, or documentation in the process of 137
applying for approval of the program. If the board proposes to 138
deny approval of the program, it shall do so pursuant to an 139
adjudication conducted under Chapter 119. of the Revised Code. 140

(B) The board may fulfill the requirement of division (A) 141
(8) of this section by authorizing persons who meet the 142
standards established in rules adopted under section 4723.07 of 143
the Revised Code to approve continuing education programs and 144
courses. Persons so authorized shall approve continuing 145
education programs and courses in accordance with standards 146
established in rules adopted under section 4723.07 of the 147
Revised Code. 148

Persons seeking authorization to approve continuing 149
education programs and courses shall apply to the board and pay 150
the appropriate fee established under section 4723.08 of the 151
Revised Code. Authorizations to approve continuing education 152
programs and courses shall expire and may be renewed according 153
to the schedule established in rules adopted under section 154
4723.07 of the Revised Code. 155

In addition to approving continuing education programs 156
under division (A) (8) of this section, the board may sponsor 157
continuing education activities that are directly related to the 158
statutes and rules the board enforces. 159

(C) (1) The board may deny conditional approval to a new 160
prelicensure nursing education program or program that is being 161

reestablished after having ceased to operate if the program is 162
controlled by a person who controls or has controlled a program 163
that had its approval withdrawn, revoked, suspended, or 164
restricted by the board or a board of another jurisdiction that 165
is a member of the national council of state boards of nursing. 166
If the board proposes to deny approval, it shall do so pursuant 167
to an adjudication conducted under Chapter 119. of the Revised 168
Code. 169

(2) As used in this division, "control" means any of the 170
following: 171

(a) Holding fifty per cent or more of the outstanding 172
voting securities or membership interest of a prelicensure 173
nursing education program; 174

(b) In the case of an unincorporated prelicensure nursing 175
education program, having the right to fifty per cent or more of 176
the program's profits or in the event of a dissolution, fifty 177
per cent or more of the program's assets; 178

(c) In the case of a prelicensure nursing education 179
program that is a for-profit or not-for-profit corporation, 180
having the contractual authority presently to designate fifty 181
per cent or more of its directors; 182

(d) In the case of a prelicensure nursing education 183
program that is a trust, having the contractual authority 184
presently to designate fifty per cent or more of its trustees; 185

(e) Having the authority to direct the management, 186
policies, or investments of a prelicensure nursing education 187
program. 188

(D) (1) When an action taken by the board under division 189

(A) (6), (7), or (17) or (C) (1) of this section is required to be 190
taken pursuant to an adjudication conducted under Chapter 119. 191
of the Revised Code, the board may, in lieu of an adjudication 192
hearing, enter into a consent agreement to resolve the matter. A 193
consent agreement, when ratified by a vote of a quorum of the 194
board, constitutes the findings and order of the board with 195
respect to the matter addressed in the agreement. If the board 196
refuses to ratify a consent agreement, the admissions and 197
findings contained in the agreement are of no effect. 198

(2) In any instance in which the board is required under 199
Chapter 119. of the Revised Code to give notice to a person 200
seeking approval of a prelicensure nursing education program of 201
an opportunity for a hearing and the person does not make a 202
timely request for a hearing in accordance with section 119.07 203
of the Revised Code, the board is not required to hold a 204
hearing, but may adopt, by a vote of a quorum, a final order 205
that contains the board's findings. 206

(3) When the board denies or withdraws approval of a 207
prelicensure nursing education program, the board may specify 208
that its action is permanent. A program subject to a permanent 209
action taken by the board is forever ineligible for approval and 210
the board shall not accept an application for the program's 211
reinstatement or approval. 212

Sec. 4723.28. (A) The board of nursing, by a vote of a 213
quorum, may impose one or more of the following sanctions if it 214
finds that a person committed fraud in passing an examination 215
required to obtain a license or dialysis technician certificate 216
issued by the board or to have committed fraud, 217
misrepresentation, or deception in applying for or securing any 218
nursing license or dialysis technician certificate issued by the 219

board: deny, revoke, suspend, or place restrictions on any 220
nursing license or dialysis technician certificate issued by the 221
board; reprimand or otherwise discipline a holder of a nursing 222
license or dialysis technician certificate; or impose a fine of 223
not more than five hundred dollars per violation. 224

(B) Except as provided in section 4723.092 of the Revised 225
Code, the board of nursing, by a vote of a quorum, may impose 226
one or more of the following sanctions: deny, revoke, suspend, 227
or place restrictions on any nursing license or dialysis 228
technician certificate issued by the board; reprimand or 229
otherwise discipline a holder of a nursing license or dialysis 230
technician certificate; or impose a fine of not more than five 231
hundred dollars per violation. The sanctions may be imposed for 232
any of the following: 233

(1) Denial, revocation, suspension, or restriction of 234
authority to engage in a licensed profession or practice a 235
health care occupation, including nursing or practice as a 236
dialysis technician, for any reason other than a failure to 237
renew, in Ohio or another state or jurisdiction; 238

(2) Engaging in the practice of nursing or engaging in 239
practice as a dialysis technician, having failed to renew a 240
nursing license or dialysis technician certificate issued under 241
this chapter, or while a nursing license or dialysis technician 242
certificate is under suspension; 243

(3) Conviction of, a plea of guilty to, a judicial finding 244
of guilt of, a judicial finding of guilt resulting from a plea 245
of no contest to, or a judicial finding of eligibility for a 246
pretrial diversion or similar program or for intervention in 247
lieu of conviction for, a misdemeanor committed in the course of 248
practice; 249

(4) Conviction of, a plea of guilty to, a judicial finding	250
of guilt of, a judicial finding of guilt resulting from a plea	251
of no contest to, or a judicial finding of eligibility for a	252
pretrial diversion or similar program or for intervention in	253
lieu of conviction for, any felony or of any crime involving	254
gross immorality or moral turpitude;	255
(5) Selling, giving away, or administering drugs or	256
therapeutic devices for other than legal and legitimate	257
therapeutic purposes; or conviction of, a plea of guilty to, a	258
judicial finding of guilt of, a judicial finding of guilt	259
resulting from a plea of no contest to, or a judicial finding of	260
eligibility for a pretrial diversion or similar program or for	261
intervention in lieu of conviction for, violating any municipal,	262
state, county, or federal drug law;	263
(6) Conviction of, a plea of guilty to, a judicial finding	264
of guilt of, a judicial finding of guilt resulting from a plea	265
of no contest to, or a judicial finding of eligibility for a	266
pretrial diversion or similar program or for intervention in	267
lieu of conviction for, an act in another jurisdiction that	268
would constitute a felony or a crime of moral turpitude in Ohio;	269
(7) Conviction of, a plea of guilty to, a judicial finding	270
of guilt of, a judicial finding of guilt resulting from a plea	271
of no contest to, or a judicial finding of eligibility for a	272
pretrial diversion or similar program or for intervention in	273
lieu of conviction for, an act in the course of practice in	274
another jurisdiction that would constitute a misdemeanor in	275
Ohio;	276
(8) Self-administering or otherwise taking into the body	277
any dangerous drug, as defined in section 4729.01 of the Revised	278
Code, in any way that is not in accordance with a legal, valid	279

prescription issued for that individual, or self-administering	280
or otherwise taking into the body any drug that is a schedule I	281
controlled substance;	282
(9) Habitual or excessive use of controlled substances,	283
other habit-forming drugs, or alcohol or other chemical	284
substances to an extent that impairs the individual's ability to	285
provide safe nursing care or safe dialysis care;	286
(10) Impairment of the ability to practice according to	287
acceptable and prevailing standards of safe nursing care or safe	288
dialysis care because of the use of drugs, alcohol, or other	289
chemical substances;	290
(11) Impairment of the ability to practice according to	291
acceptable and prevailing standards of safe nursing care or safe	292
dialysis care because of a physical or mental disability;	293
(12) Assaulting or causing harm to a patient or depriving	294
a patient of the means to summon assistance;	295
(13) Misappropriation or attempted misappropriation of	296
money or anything of value in the course of practice;	297
(14) Adjudication by a probate court of being mentally ill	298
or mentally incompetent. The board may reinstate the person's	299
nursing license or dialysis technician certificate upon	300
adjudication by a probate court of the person's restoration to	301
competency or upon submission to the board of other proof of	302
competency.	303
(15) The suspension or termination of employment by the	304
United States department of defense or department of veterans	305
affairs for any act that violates or would violate this chapter;	306
(16) Violation of this chapter or any rules adopted under	307

it;	308
(17) Violation of any restrictions placed by the board on a nursing license or dialysis technician certificate;	309 310
(18) Failure to use universal and standard precautions established by rules adopted under section 4723.07 of the Revised Code;	311 312 313
(19) Failure to practice in accordance with acceptable and prevailing standards of safe nursing care or safe dialysis care;	314 315
(20) In the case of a registered nurse, engaging in activities that exceed the practice of nursing as a registered nurse;	316 317 318
(21) In the case of a licensed practical nurse, engaging in activities that exceed the practice of nursing as a licensed practical nurse;	319 320 321
(22) In the case of a dialysis technician, engaging in activities that exceed those permitted under section 4723.72 of the Revised Code;	322 323 324
(23) Aiding and abetting a person in that person's practice of nursing without a license or practice as a dialysis technician without a certificate issued under this chapter;	325 326 327
(24) In the case of an advanced practice registered nurse, except as provided in division (M) of this section, either of the following:	328 329 330
(a) Waiving the payment of all or any part of a deductible or copayment that a patient, pursuant to a health insurance or health care policy, contract, or plan that covers such nursing services, would otherwise be required to pay if the waiver is used as an enticement to a patient or group of patients to	331 332 333 334 335

receive health care services from that provider;	336
(b) Advertising that the nurse will waive the payment of	337
all or any part of a deductible or copayment that a patient,	338
pursuant to a health insurance or health care policy, contract,	339
or plan that covers such nursing services, would otherwise be	340
required to pay.	341
(25) Failure to comply with the terms and conditions of	342
participation in the substance use disorder monitoring safe	343
haven program established under section <u>conducted under sections</u>	344
4723.35 <u>and 4723.351</u> of the Revised Code;	345
(26) Failure to comply with the terms and conditions	346
required under the practice intervention and improvement program	347
established under section 4723.282 of the Revised Code;	348
(27) In the case of an advanced practice registered nurse:	349
(a) Engaging in activities that exceed those permitted for	350
the nurse's nursing specialty under section 4723.43 of the	351
Revised Code;	352
(b) Failure to meet the quality assurance standards	353
established under section 4723.07 of the Revised Code.	354
(28) In the case of an advanced practice registered nurse	355
other than a certified registered nurse anesthetist, failure to	356
maintain a standard care arrangement in accordance with section	357
4723.431 of the Revised Code or to practice in accordance with	358
the standard care arrangement;	359
(29) In the case of an advanced practice registered nurse	360
who is designated as a clinical nurse specialist, certified	361
nurse-midwife, or certified nurse practitioner, failure to	362
prescribe drugs and therapeutic devices in accordance with	363

section 4723.481 of the Revised Code;	364
(30) Prescribing any drug or device to perform or induce an abortion, or otherwise performing or inducing an abortion;	365 366
(31) Failure to establish and maintain professional boundaries with a patient, as specified in rules adopted under section 4723.07 of the Revised Code;	367 368 369
(32) Regardless of whether the contact or verbal behavior is consensual, engaging with a patient other than the spouse of the registered nurse, licensed practical nurse, or dialysis technician in any of the following:	370 371 372 373
(a) Sexual contact, as defined in section 2907.01 of the Revised Code;	374 375
(b) Verbal behavior that is sexually demeaning to the patient or may be reasonably interpreted by the patient as sexually demeaning.	376 377 378
(33) Assisting suicide, as defined in section 3795.01 of the Revised Code;	379 380
(34) Failure to comply with the requirements in section 3719.061 of the Revised Code before issuing for a minor a prescription for an opioid analgesic, as defined in section 3719.01 of the Revised Code;	381 382 383 384
(35) Failure to comply with section 4723.487 of the Revised Code, unless the state board of pharmacy no longer maintains a drug database pursuant to section 4729.75 of the Revised Code;	385 386 387 388
(36) The revocation, suspension, restriction, reduction, or termination of clinical privileges by the United States department of defense or department of veterans affairs or the	389 390 391

termination or suspension of a certificate of registration to 392
prescribe drugs by the drug enforcement administration of the 393
United States department of justice; 394

(37) In the case of an advanced practice registered nurse 395
who is designated as a clinical nurse specialist, certified 396
nurse-midwife, or certified nurse practitioner, failure to 397
comply with the terms of a consult agreement entered into with a 398
pharmacist pursuant to section 4729.39 of the Revised Code. 399

(C) Disciplinary actions taken by the board under 400
divisions (A) and (B) of this section shall be taken pursuant to 401
an adjudication conducted under Chapter 119. of the Revised 402
Code, except that in lieu of a hearing, the board may enter into 403
a consent agreement with an individual to resolve an allegation 404
of a violation of this chapter or any rule adopted under it. A 405
consent agreement, when ratified by a vote of a quorum, shall 406
constitute the findings and order of the board with respect to 407
the matter addressed in the agreement. If the board refuses to 408
ratify a consent agreement, the admissions and findings 409
contained in the agreement shall be of no effect. 410

(D) The hearings of the board shall be conducted in 411
accordance with Chapter 119. of the Revised Code, the board may 412
appoint a hearing examiner, as provided in section 119.09 of the 413
Revised Code, to conduct any hearing the board is authorized to 414
hold under Chapter 119. of the Revised Code. 415

In any instance in which the board is required under 416
Chapter 119. of the Revised Code to give notice of an 417
opportunity for a hearing and the applicant, licensee, or 418
certificate holder does not make a timely request for a hearing 419
in accordance with section 119.07 of the Revised Code, the board 420
is not required to hold a hearing, but may adopt, by a vote of a 421

quorum, a final order that contains the board's findings. In the 422
final order, the board may order any of the sanctions listed in 423
division (A) or (B) of this section. 424

(E) If a criminal action is brought against a registered 425
nurse, licensed practical nurse, or dialysis technician for an 426
act or crime described in divisions (B) (3) to (7) of this 427
section and the action is dismissed by the trial court other 428
than on the merits, the board shall conduct an adjudication to 429
determine whether the registered nurse, licensed practical 430
nurse, or dialysis technician committed the act on which the 431
action was based. If the board determines on the basis of the 432
adjudication that the registered nurse, licensed practical 433
nurse, or dialysis technician committed the act, or if the 434
registered nurse, licensed practical nurse, or dialysis 435
technician fails to participate in the adjudication, the board 436
may take action as though the registered nurse, licensed 437
practical nurse, or dialysis technician had been convicted of 438
the act. 439

If the board takes action on the basis of a conviction, 440
plea, or a judicial finding as described in divisions (B) (3) to 441
(7) of this section that is overturned on appeal, the registered 442
nurse, licensed practical nurse, or dialysis technician may, on 443
exhaustion of the appeal process, petition the board for 444
reconsideration of its action. On receipt of the petition and 445
supporting court documents, the board shall temporarily rescind 446
its action. If the board determines that the decision on appeal 447
was a decision on the merits, it shall permanently rescind its 448
action. If the board determines that the decision on appeal was 449
not a decision on the merits, it shall conduct an adjudication 450
to determine whether the registered nurse, licensed practical 451
nurse, or dialysis technician committed the act on which the 452

original conviction, plea, or judicial finding was based. If the board determines on the basis of the adjudication that the registered nurse, licensed practical nurse, or dialysis technician committed such act, or if the registered nurse, licensed practical nurse, or dialysis technician does not request an adjudication, the board shall reinstate its action; otherwise, the board shall permanently rescind its action.

Notwithstanding the provision of division (D) (2) of section 2953.32 or division (F) (1) of section 2953.39 of the Revised Code specifying that if records pertaining to a criminal case are sealed or expunged under that section the proceedings in the case shall be deemed not to have occurred, sealing or expungement of the following records on which the board has based an action under this section shall have no effect on the board's action or any sanction imposed by the board under this section: records of any conviction, guilty plea, judicial finding of guilt resulting from a plea of no contest, or a judicial finding of eligibility for a pretrial diversion program or intervention in lieu of conviction.

The board shall not be required to seal, destroy, redact, or otherwise modify its records to reflect the court's sealing or expungement of conviction records.

(F) The board may investigate an individual's criminal background in performing its duties under this section. As part of such investigation, the board may order the individual to submit, at the individual's expense, a request to the bureau of criminal identification and investigation for a criminal records check and check of federal bureau of investigation records in accordance with the procedure described in section 4723.091 of the Revised Code.

(G) During the course of an investigation conducted under 483
this section, the board may compel any registered nurse, 484
licensed practical nurse, or dialysis technician or applicant 485
under this chapter to submit to a mental or physical 486
examination, or both, as required by the board and at the 487
expense of the individual, if the board finds reason to believe 488
that the individual under investigation may have a physical or 489
mental impairment that may affect the individual's ability to 490
provide safe nursing care. ~~Failure~~ 491

The board shall not compel an individual who has been 492
referred to the safe haven program as described in sections 493
4723.35 and 4723.351 to submit to a mental or physical 494
examination. 495

Failure of any individual to submit to a mental or 496
physical examination when directed constitutes an admission of 497
the allegations, unless the failure is due to circumstances 498
beyond the individual's control, and a default and final order 499
may be entered without the taking of testimony or presentation 500
of evidence. 501

If the board finds that an individual is impaired, the 502
board shall require the individual to submit to care, 503
counseling, or treatment approved or designated by the board, as 504
a condition for initial, continued, reinstated, or renewed 505
authority to practice. The individual shall be afforded an 506
opportunity to demonstrate to the board that the individual can 507
begin or resume the individual's occupation in compliance with 508
acceptable and prevailing standards of care under the provisions 509
of the individual's authority to practice. 510

For purposes of this division, any registered nurse, 511
licensed practical nurse, or dialysis technician or applicant 512

under this chapter shall be deemed to have given consent to 513
submit to a mental or physical examination when directed to do 514
so in writing by the board, and to have waived all objections to 515
the admissibility of testimony or examination reports that 516
constitute a privileged communication. 517

(H) The board shall investigate evidence that appears to 518
show that any person has violated any provision of this chapter 519
or any rule of the board. Any person may report to the board any 520
information the person may have that appears to show a violation 521
of any provision of this chapter or rule of the board. In the 522
absence of bad faith, any person who reports such information or 523
who testifies before the board in any adjudication conducted 524
under Chapter 119. of the Revised Code shall not be liable for 525
civil damages as a result of the report or testimony. 526

(I) All of the following apply under this chapter with 527
respect to the confidentiality of information: 528

(1) Information received by the board pursuant to a 529
complaint or an investigation is confidential and not subject to 530
discovery in any civil action, except that the board may 531
disclose information to law enforcement officers and government 532
entities for purposes of an investigation of either a licensed 533
health care professional, including a registered nurse, licensed 534
practical nurse, or dialysis technician, or a person who may 535
have engaged in the unauthorized practice of nursing or dialysis 536
care. No law enforcement officer or government entity with 537
knowledge of any information disclosed by the board pursuant to 538
this division shall divulge the information to any other person 539
or government entity except for the purpose of a government 540
investigation, a prosecution, or an adjudication by a court or 541
government entity. 542

(2) If an investigation requires a review of patient records, the investigation and proceeding shall be conducted in such a manner as to protect patient confidentiality.

(3) All adjudications and investigations of the board shall be considered civil actions for the purposes of section 2305.252 of the Revised Code.

(4) Any board activity that involves continued monitoring of an individual as part of or following any disciplinary action taken under this section shall be conducted in a manner that maintains the individual's confidentiality. Information received or maintained by the board with respect to the board's monitoring activities is not subject to discovery in any civil action and is confidential, except that the board may disclose information to law enforcement officers and government entities for purposes of an investigation of a licensee or certificate holder.

(J) Any action taken by the board under this section resulting in a suspension from practice shall be accompanied by a written statement of the conditions under which the person may be reinstated to practice.

(K) When the board refuses to grant a license or certificate to an applicant, revokes a license or certificate, or refuses to reinstate a license or certificate, the board may specify that its action is permanent. An individual subject to permanent action taken by the board is forever ineligible to hold a license or certificate of the type that was refused or revoked and the board shall not accept from the individual an application for reinstatement of the license or certificate or for a new license or certificate.

(L) No unilateral surrender of a nursing license or dialysis technician certificate issued under this chapter shall be effective unless accepted by majority vote of the board. No application for a nursing license or dialysis technician certificate issued under this chapter may be withdrawn without a majority vote of the board. The board's jurisdiction to take disciplinary action under this section is not removed or limited when an individual has a license or certificate classified as inactive or fails to renew a license or certificate.

(M) Sanctions shall not be imposed under division (B) (24) of this section against any licensee who waives deductibles and copayments as follows:

(1) In compliance with the health benefit plan that expressly allows such a practice. Waiver of the deductibles or copayments shall be made only with the full knowledge and consent of the plan purchaser, payer, and third-party administrator. Documentation of the consent shall be made available to the board upon request.

(2) For professional services rendered to any other person licensed pursuant to this chapter to the extent allowed by this chapter and the rules of the board.

Sec. 4723.35. (A) As used in this section and section 4723.351 of the Revised Code:

(1) "Applicant" means an individual who has applied for a license or certificate to practice issued under this chapter. "Applicant" may include an individual who has been granted authority by the board of nursing to practice as one type of practitioner, but has applied for authority to practice as another type of practitioner.

(2) "Impaired" or "impairment" means either or both of the following: 601
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(a) Impairment of the ability to practice as described in division (B) (10) of section 4723.28 of the Revised Code; 603
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(b) Impairment of the ability to practice as described in division (B) (11) of section 4723.28 of the Revised Code. 605
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(3) "Practitioner" means an individual authorized under this chapter to practice as a registered nurse, including as an advanced practice registered nurse, licensed practical nurse, dialysis technician, community health worker, or medication aide. 607
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(B) The board of nursing shall establish the safe haven program to monitor applicants and practitioners who are or may be impaired, but against whom the board has abstained from taking disciplinary action. The program is to be conducted by the monitoring organization under contract with the board as described in section 4723.351 of the Revised Code. 612
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(C) (1) On the establishment of the program, the board may transfer to the monitoring organization, in whole or in part, either or both of the following responsibilities: 618
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(a) The monitoring and oversight of licensees as part of the substance use disorder program as that program existed on or before the effective date of this section; 621
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(b) The monitoring and oversight of licensees under terms specified in a board adjudication order or consent agreement. 624
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(2) If the board transfers the responsibilities described in division (C) (1) of this section, both of the following apply: 626
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(a) The monitoring organization shall provide to the board 628

quarterly reports regarding the compliance of transferred licensees. 629
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(b) The monitoring organization shall immediately report to the board any licensee who is not in compliance with the terms and conditions of monitoring. 631
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(D) The board shall refer to the monitoring organization any applicant or practitioner whose health and effectiveness show signs of impairment or potential impairment, but only if the applicant or practitioner meets the eligibility conditions of division (G) of this section. 634
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(E) Determinations regarding an applicant's or practitioner's eligibility for admission to, continued participation in, and successful completion of the safe haven program shall be made by the monitoring organization in accordance with rules adopted under section 4723.351 of the Revised Code. 639
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(F) The board shall abstain from taking disciplinary action under section 4723.28, 4723.652, or 4723.86 of the Revised Code against an individual whose health and effectiveness show signs of impairment or potential impairment, but who is not currently under the terms of a consent agreement with the board for impairment or an order issued by the board for impairment if the individual is participating in the safe haven program. 645
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An applicant's or practitioner's impairment neither excuses an applicant or practitioner who has committed other violations of this chapter nor precludes the board from investigating or taking disciplinary action against an applicant or practitioner for other violations of this chapter. 653
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(G) An applicant or practitioner is eligible to 658
participate in the safe haven program if both of the following 659
conditions are met: 660

(1) The applicant or practitioner needs assistance with 661
impairment or potential impairment. 662

(2) The applicant or practitioner has an unencumbered 663
license and is not currently under the terms of a consent 664
agreement with the board for impairment or an order issued by 665
the board for impairment. 666

Sec. 4723.351. (A) To be qualified to contract with the 667
board of nursing to conduct the safe haven program, an 668
organization must meet all of the following requirements: 669

(1) Operate in this state as a professionals health 670
program; 671

(2) Be organized as a not-for-profit entity and exempt 672
from federal income taxation under subsection 501(c)(3) of the 673
Internal Revenue Code; 674

(3) Contract with or employ to serve as the organization's 675
medical director an individual who is authorized under Chapter 676
4731. of the Revised Code to practice medicine and surgery or 677
osteopathic medicine and surgery and specializes or has training 678
and expertise in addiction medicine or psychiatry; 679

(4) Contract with or employ one or more licensed health 680
care professionals as necessary for the organization's 681
operation. 682

(B) The monitoring organization shall do all of the 683
following pursuant to the contract: 684

(1) Conduct a review of individuals and entities providing 685

impairment evaluation and treatment services to determine which 686
should be approved to serve as the program's evaluators and 687
treatment providers; 688

(2) Grant or deny approval to evaluators and treatment 689
providers and periodically review and update the program's list 690
of approved evaluators and providers, including by examining 691
their outcomes and operations; 692

(3) Receive any report of applicant or practitioner 693
impairment or suspected impairment from any source, including 694
board referrals described in section 4723.35 of the Revised 695
Code; 696

(4) Notify an applicant or practitioner who is the subject 697
of a referral or report received under this section that the 698
referral or report has been made and that the applicant or 699
practitioner may be eligible to participate in the program 700
conducted under this section; 701

(5) Determine whether an applicant or practitioner 702
referred or reported to the monitoring organization is eligible 703
to participate in the program, which may include evaluating 704
records as described in division (D)(1)(c) of this section, and 705
notify the practitioner or applicant of the determination; 706

(6) In the case of an applicant or practitioner reported 707
by a treatment provider, notify the treatment provider of the 708
eligibility determination; 709

(7) Report to the board any practitioner or applicant who 710
is determined ineligible to participate in the program; 711

(8) Refer an eligible applicant or practitioner who 712
chooses to participate in the program for evaluation by a 713

treatment provider approved by the monitoring organization, 714
unless the report received by the monitoring organization was 715
made by an approved treatment provider and the applicant or 716
practitioner has already been evaluated by the treatment 717
provider; 718

(9) Monitor the evaluation of an eligible applicant or 719
practitioner; 720

(10) Refer an eligible applicant or practitioner who 721
chooses to participate in the program to a treatment provider 722
approved by the monitoring organization; 723

(11) Establish, in consultation with the treatment 724
provider to which an applicant or practitioner is referred, the 725
terms and conditions with which the applicant or practitioner 726
must comply for continued participation in and successful 727
completion of the program; 728

(12) Report to the board any applicant or practitioner who 729
does not complete evaluation or treatment or does not comply 730
with any of the terms and conditions established by the 731
monitoring organization and the treatment provider; 732

(13) Perform any other activities specified in the 733
contract with the board or that the monitoring organization 734
considers necessary to comply with this section and section 735
4723.35 of the Revised Code. 736

(C) The monitoring organization shall not disclose to the 737
board the name of an applicant or practitioner or any records 738
relating to an applicant or practitioner, unless any of the 739
following occurs: 740

(1) The applicant or practitioner is determined to be 741

<u>ineligible to participate in the program.</u>	742
<u>(2) The applicant or practitioner requests the disclosure.</u>	743
<u>(3) The applicant or practitioner is unwilling or unable to complete or comply with any part of the program, including evaluation, treatment, or monitoring.</u>	744 745 746
<u>(4) The applicant or practitioner presents an imminent danger to the public or to the applicant or practitioner, as a result of the applicant's or practitioner's impairment.</u>	747 748 749
<u>(5) The applicant's or practitioner's impairment has not been substantially alleviated by participation in the program.</u>	750 751
<u>(D) (1) The monitoring organization shall develop procedures governing each of the following:</u>	752 753
<u>(a) Receiving referrals or reports of applicant or practitioner impairment or potential impairment;</u>	754 755
<u>(b) Notifying applicants or practitioners of referrals, reports, and eligibility determinations;</u>	756 757
<u>(c) Evaluating records of referred applicants and practitioners, in particular records from other jurisdictions regarding prior treatment for impairment or continued monitoring;</u>	758 759 760 761
<u>(d) Referring eligible applicants and practitioners for evaluation or treatment;</u>	762 763
<u>(e) Establishing individualized treatment plans for eligible applicants and practitioners, as recommended by treatment providers;</u>	764 765 766
<u>(f) Establishing individualized terms and conditions with which eligible applicants or practitioners must comply for</u>	767 768

continued participation in and successful completion of the 769
program; 770

(g) Establishing criteria for the approval and periodic 771
review of evaluators and treatment providers, including 772
examinations of evaluator and provider outcomes and operations. 773

(2) The monitoring organization, in consultation with the 774
board, shall develop procedures governing each of the following: 775

(a) Providing reports to the board on a periodic basis on 776
the total number of applicants and practitioners participating 777
in the program, without disclosing the names or records of any 778
program participants other than those about whom reports are 779
required by this section; 780

(b) Reporting to the board any applicant or practitioner 781
who due to impairment presents an imminent danger to the public 782
or to the applicant or practitioner; 783

(c) Reporting to the board any applicant or practitioner 784
who is unwilling or unable to complete or comply with any part 785
of the program, including evaluation, treatment, or monitoring; 786

(d) Reporting to the board any applicant or practitioner 787
whose impairment was not substantially alleviated by 788
participation in the program. 789

(E) The board may adopt any rules it considers necessary 790
to implement this section and section 4723.35 of the Revised 791
Code, including rules regarding the monitoring organization and 792
treatment providers that provide treatment to practitioners 793
referred by the monitoring organization. Any such rules shall be 794
adopted in accordance with Chapter 119. of the Revised Code." 795

In line 226, after "sections" insert "4723.021, 4723.06, 4723.28,"; 796

after "4723.431" insert ",," 797

After line 227, insert: 798

"Section 3. That section 4723.35 of the Revised Code is 799
 hereby repealed." 800

In line 228, delete "3" and insert "4" 801

In line 356, delete "4" and insert "5" 802

In line 359, delete "5" and insert "6"; delete "3 and"; after "4" 803
 insert "and 5" 804

In line 361, delete "6" and insert "7" 805

The motion was _____ agreed to.

SYNOPSIS 806

Board of Nursing - Safe Haven impairment monitoring 807

R.C. 4723.021, 4723.06, 4723.28, 4723.35, and 4723.351 808

Eliminates existing law provisions establishing the Board 809
 of Nursing's Substance Use Disorder Monitoring Program, which 810
 requires a practitioner to surrender his or her Board-issued 811
 license or certificate as a condition of participation, and 812
 replaces them with provisions that do all of the following: 813

(1) Establish the Safe Haven Program, a program to monitor 814
 impairment; 815

(2) Extend the program to applicants for licensure, rather 816
 than only licensed practitioners as under the current law 817

program, and to those impaired because of mental or physical	818
disability, rather than only drug, alcohol, or substance use	819
impairment as under the current law program;	820
(3) Require the program to be conducted by a monitoring	821
organization under contract with the Board and establishes	822
eligibility conditions on such an organization;	823
(4) Establish eligibility conditions on applicant and	824
practitioner participation, including that an applicant or	825
practitioner need assistance with impairment or potential	826
impairment;	827
(5) Require, rather than authorize as under current law,	828
the Board to abstain from taking certain disciplinary action	829
against impaired practitioners;	830
(6) Establish duties on the monitoring organization,	831
including receiving reports of impairment, determining if	832
applicants and practitioners are eligible to participate,	833
referring participants to evaluation and treatment, and	834
monitoring evaluation, treatment, and compliance;	835
(7) Generally grant the monitoring organization immunity	836
from civil liability for any act taken in conducting the	837
program.	838