

Confidential Care to Support Physician Health and Wellness



Many physicians and medical students are reluctant to seek help or counseling for wellness, burnout, or related issues because of the fear that they will have to disclose that fact, e.g., on licensure or credentialing applications, which may negatively impact their ability to practice and even compromise their medical careers.

Physicians and medical students also may not know where to turn for confidential care. To address the problem, a few states have enacted laws that directly address physicians' concerns, encouraging physicians to seek help that benefits them and their patients.

The American Medical Association (AMA) has guided certain state medical associations with these advocacy efforts and has compiled a slew of resources to empower other organizations to take up similar action in upcoming legislative sessions. Most of the content in this document and related toolkits is provided by the AMA's Advocacy Resource Center legal team¹.

Background

Prior to the COVID-19 pandemic, physician burnout, depression and suicide already were major challenges for the U.S. health care system, impacting nearly every aspect of clinical care. Recent studies show a national burnout rate of **43.9 percent** among physicians in practice², including private practice, academic medical centers, outpatient clinics, and many other clinical settings³. **More than 40 percent** of physicians do not seek help for burnout or depression for fear of disclosing it to a state licensing board. **Nine percent** of physicians said they have had thoughts of suicide⁴.

Physicians are among the most resilient⁵, and yet the environments in which physicians work drive these high levels of burnout. The majority of burnout is driven by systems factors and thus, the majority of solutions are at the system level⁶. Physicians say they don't seek help for suicidal thoughts because of fear of judgment from colleagues or that they should be able to handle the stress.

Compounding the problems

- medical licensing applications
- employment and credentialing applications
- professional liability insurance applications

The problem is that these may include intrusive and potentially illegal questions requiring disclosure of whether a potential licensee or applicant has ever been diagnosed with a mental illness or substance use disorder (SUD) or ever sought counseling for a mental illness.

These questions about past diagnosis or treatment are **strongly opposed** by the AAFP, the AMA, the Dr. Lorna Breen Heroes' Foundation, the Federation of State Medical Boards and The Joint Commission.

¹The information and guidance provided in this document is believed to be current and accurate at the time of posting but it is not intended as, and should not be construed to be, legal, financial, medical, or consulting advice. Physicians and other qualified health care practitioners should exercise their professional judgement in connection with the provision of services and should seek legal advice regarding any legal questions. References and links to third parties do not constitute an endorsement or warranty by the AMA and AMA hereby disclaims any express and implied warranties of any kind.

²Shanafelt TD, West CP, Sinsky C, et al Changes in burnout and satisfaction with work-life integration in physicians and the general US working population between 2011 and 2017. *Mayo Clin Proc.* 2019;94(9):1681–1694. doi: 10.1016/j.mayocp.2018

³Physician Burnout & Depression Report 2022: Stress, Anxiety and Anger. Medscape. January 21, 2022.

<https://www.medscape.com/slideshow/2022-lifestyle-burnout-6014664#8>

⁴A Tragedy of the Profession: Medscape Physician Suicide Report 2022." March 4, 2022. Available at <https://www.medscape.com/slideshow/2022-physician-suicide-report-6014970>

⁵West CP, Dyrbye LN, Sinsky C, Trockel M, Tutty M, Nedelec L, Carlasare LE, Shanafelt TD. Resilience and Burnout Among Physicians and the General US Working Population. *JAMA Netw Open.* 2020;3(7):e209385. doi:10.1001/jamanetworkopen.2020.9385

⁶For multiple resources, please see "AMA spurs a movement to fight the key causes of physician burnout." Available at

https://www.ama-assn.org/practice-management/physician-health/ama-spurs-movement-fight-key-causes-physicianburnout?gclid=Cj0KCQjwpcOTBhCZARIsAEAYLuW73AMrSKIGepp2dfU9wYlJtWtBn5IVRC9Qi2n180ZqdGvJHw7K4aAm1GEALw_wcB

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Examples of Advocacy Actions to Support Physicians and Medical Students

Licensing, credentialing and other applications should focus on current impairment

One major issue that deters physicians and medical students from seeking care is the inappropriate medical board licensing questions (or those that appear on employment or credentialing applications)⁷.

As noted by the Federation of State Medical Boards (FSMB):

When medical boards do include questions pertaining to a physician applicant's health, the FSMB recommends "Application questions must focus only on current impairment and not on illness diagnosis, or previous treatment in order to be compliant with the Americans with Disabilities Act (ADA)"

Some states have already made changes to their application and renewal forms to move in this direction⁸.

Washington State



created a **"safe haven"** within the licensing application by allowing applicants to answer "no" to questions related to impairment when the applicant is known to the physician health program. The Washington application states, **"You may answer 'No' if the behavior or condition is already known to the Washington Physician Health Program (WPHP).** 'Known to WPHP' means that you have informed WPHP of your behavior or condition and you are complying with all of WPHP's requirements for evaluation, treatment, and/or monitoring."

Legislation to Protect Physicians Seeking Help

Legislative or regulatory changes can be made that create a **"safe space"** through which physicians and other health care professionals could seek and obtain **confidential care** in ways that would not impact their careers. At least four states, **Virginia, South Dakota, Indiana and Arizona** have enacted laws specifically intended to protect physicians seeking help with career fatigue and wellness.

Virginia led the way by enacting **H.B.115** in 2020. In 2021, Indiana and South Dakota followed by passing **S.B. 365** and **H.B. 1179** respectively. Arizona enacted **H.B. 2429** in 2022. H.B. 115 also modifies prior Virginia law in two ways that lower barriers to physicians who want to be members of, or otherwise work with, PHPs⁹ to assist physicians seeking help with career fatigue and wellness, and for physicians seeking that assistance.

It is important to note that H.B. 115, S.B. 365, H.B. 1179 and H.B. 2429 all use the phrase "career fatigue and wellness" rather than "burnout."

These four state laws



further the goal of supporting physicians and other health care professionals to seek professional support to address career fatigue, burnout and behavioral health concerns with **confidentiality** and **civil immunity protections**. These new laws enable physicians, who may avoid seeking help in other programs because of the fear of potential negative repercussions, to get the help they need.

⁸Dyrbye LN, West C, Sinsky CA, Goeders LE, Satele DV, Shanafelt TD. Medical Licensure Questions and Physician Reluctance to Seek Care for Mental Health Conditions. Mayo Clin Proc. 2017;92(10):1486-1493⁹Findings From Population-Level Surveys. Prev Chronic Dis 2022;19:210430. DOI: <http://dx.doi.org/10.5888/pcd19.210430>

⁹The partnership of the North Carolina Medical Society, North Carolina PHP and others were instrumental in changing the question in North Carolina, for example. "Physicians Are Human, Too." Available at <https://www.forbes.com/sites/physiciansfoundation/2018/07/18/physicians-are-human-too/#3f6cde754a29>

It is important to highlight that the Virginia Health Practitioner Monitoring Program has helped physicians for more than 20 years. For more information: <http://www.dhp.virginia.gov/PractitionerResources/HealthPractitionersMonitoringProgram/index.html>

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Immunity for Wellness Programs

H.B 115



Virginia's H.B. 115 expanded the civil immunity that currently exists for physicians serving as members of, or consultants to, entities that function primarily to **review, evaluate, or make recommendations** related to health care services, to include physicians serving as members of, or consultants to, entities that function primarily to address issues related to physician career fatigue and wellness. H.B. 115 also clarified that, absent evidence indicating a reasonable probability that a physician who is a participant in a PHP addressing issues related to career fatigue or wellness is not competent to continue in practice or is a danger to himself or herself, his or her patients, or the public, participation in such a PHP does not trigger the requirement that the physician be reported to the state, e.g., the state medical board. Again, both Indiana S.B. 365 and South Dakota H.B. 1179 provide similar confidentiality protections.

H.B 1179



Like H.B. 115, South Dakota's H.B. 1179 gives civil immunity to any person or facility participating in a wellness program if they act in good faith. Indiana's S.B. 365 provides that wellness programs and their participants may not be named in a civil lawsuit if they acted in good faith.

S.B 365



Indiana's S.B. 365 provides that wellness programs and their participants may not be named in a civil lawsuit if they acted in good faith. Under S.B. 365 no person participating in a wellness program may reveal the content of any wellness program communication; record; or determination to any person or entity outside of the wellness program, and a physician's participation in a wellness program does not require reporting the physician to the medical board

H.B 1179



South Dakota's H.B. 1179 states that any record of a person's participation in a physician wellness program is **confidential** unless the physician voluntarily provides for written release of the information or the disclosure is required to meet the physician's obligation to report a criminal charge or action, or unprofessional or dishonorable conduct.

H.B. 2429



Arizona's H.B. 2429 provides that a record of a health professional's participation in a health professional wellness program is **confidential** and not subject to discovery, subpoena or a reporting requirement to the applicable health profession regulatory board, **unless** either:

1. The health professional voluntarily provides for written release of the information.
2. The disclosure is required to meet a person's obligation:
 - (a) to report criminal conduct
 - (b) to report an act of unprofessional conduct
 - (c) to report that the health professional is not able to safely practice
 - (d) to warn an individual of an imminent threat of harm

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Physician Health Programs Act

Physician health programs (PHPs) remain a proven model to help physicians with impairment. State PHPs help physicians at risk of potential impairment who may come forward voluntarily or when referred by a colleague, workplace or, the licensing board.

Depending on state law, a PHP may be the only legally authorized entity that may receive reports of possible impairment in lieu of reporting to the disciplinary authority. Individuals and entities may be able to discharge a mandatory reporting obligation by contacting the PHP. This can provide another layer of confidential support when physician wellness programs or treating professionals encounter concerns of impairment. According to the Federation of State Physician Health Programs, in most states, PHPs can receive those reports and assist the physician confidentially, without revealing the identity of the physician to the disciplinary authority.

Additional unique qualities of successful PHP programs



include the ability of PHPs to provide objective confirmation and documentation to concerned others (employers, credentialing entities, etc.) that a physician is following recommendations to support their health and safe practice. PHP verification of health monitoring compliance, at the request of the PHP participant, is often a requirement of continued employment and/or medical staff privileges.

The AMA's Model Legislation



The AMA's model legislation, the "[Physician Health Programs Act](#)," is designed to guide state implementation of PHPs in order to offer a **therapeutic alternative** for evidence-based care to physicians at risk of a potential impairment in a structured, confidential manner. Many PHPs also offer **wellbeing programs** and services to refer those in need to professional **coaching, therapy** and, other support services in a **confidential, voluntary, safe** manner. While not all referrals to a PHP result in time of out of practice, there is expertise in place to facilitate a safe return to practice¹⁰. When time out of practice is indicated, PHPs work with the physician and his/her treatment providers to focus on how to **safely return** the physician to caring for his/her patients.

Please refer to the [AAFP Workforce Toolkit for legislative and regulatory options to support physician Wellness](#).

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¹⁰A 2017 report found that "24 percent of the 225 people who received services from the North Carolina PHP last year were self-referrals." The NCPHP found that more than 90 percent felt they benefited from the services provided. Participants in the PHP said that they sought help due to "substance related issues (66.67 percent), followed by workplace stress (28.6 percent) and anxiety (28.6 percent)."