



Confidential Care to Support Physician Health and Wellness Policy Backgrounder

Many physicians and medical students are reluctant to seek help or counseling for wellness, burnout or related issues. They fear disclosing that they have sought help on such documents as licensure or credentialing applications 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. A few states have enacted laws that directly address physicians' concerns, encouraging them to seek help that benefits them and their patients.

The American Medical Association has guided state medical associations with these advocacy efforts and compiled numerous resources to empower other organizations to take similar action in upcoming legislative sessions. The AMA's Advocacy Resource Center legal team is responsible for most of the content in this document and related toolkits, with additional resources found [here](#).

Background

Many aspects of clinical care can suffer from physician burnout, depression and suicide. Even before the COVID-19 pandemic, 44% of physicians reported experiencing burnout in 2017.¹ That figure jumped to 63% in 2021, with the pandemic surely playing a role. This includes physicians in private practice, academic medical centers, outpatient clinics, hospitals and other clinical settings.^{1,2}

One study found that due to fears of disclosing their condition to a state licensing board, nearly 40% of physicians report not seeking help for burnout or depression.³ Another report found that 9% of physicians (10% of family physicians) have had thoughts of suicide.⁴ While physicians have higher levels of resilience than other professions,⁵ they also work in environments that drive high levels of burnout. In addition to fears of disclosure to licensing boards, physicians don't seek help for suicidal thoughts because of fear of judgment from colleagues or because they believe they should be able to handle the stress.

The systems that physicians are licensed, credentialed, insured, employed and practice in can lead to burnout, and are the same systems that need fixing to lead to solutions to burnout. One problem is that these systems often ask physicians intrusive and potentially illegal questions that require them to disclose if they have ever been diagnosed with a mental illness or substance use disorder or sought counseling for a mental illness. The AAFP, AMA, Dr. Lorna Breen Heroes' Foundation, Federation of State Medical Boards and The Joint Commission strongly oppose various systems asking questions about past diagnosis or treatment.⁶

Advocating to Support Physicians and Medical Students

Current impairment should be the only questions on disclosures about mental health. Questions about treating a mental health condition from medical board licensing organizations, employers and on credentialing applications deter physicians and medical students from seeking the care they need.³ The FSMB recommends that "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)".⁷



State medical boards in California, Kansas, Texas, Minnesota and Georgia either already had or recently made changes to their application and renewal forms to move in this direction.^{8,9,10,11,12}

The state of Washington allows applicants for a medical license a 'safe haven' to answer 'no' to questions about impairment when the applicant is known to the physician health program. The 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."¹³

Adopting legislation to protect physicians seeking help is paramount. Legislative or regulatory changes create another 'safe haven' through which physicians and other health care professionals could seek and obtain confidential care in ways that would not impact their careers.

Virginia, South Dakota, Indiana and Arizona have recently enacted laws to protect physicians seeking help with career fatigue and wellness. Virginia enacted [H.B.115](#) in 2020, followed by Indiana and South Dakota in 2021, passing [S.B. 365](#) and [H.B. 1179](#), respectively. Lastly, Arizona enacted [H.B. 2429](#) in 2022. These four state laws⁶:

- Provide broad confidentiality and civil immunity protections to physicians and other health care professionals to seek professional support to address career fatigue, burnout and other behavioral health issues.
- Allow physicians the ability to seek and receive the help they need without the fear of repercussions.
- Emphasize 'career fatigue and wellness' instead of the more negative term 'burnout.'

It is important to note that all four state laws use the phrase 'career fatigue and wellness' instead of 'burnout.' The Virginia law (H.B. 115) modifies Virginia law to ease the burden for physicians to become members or work with Physician Health Programs. These programs assist physicians in seeking help for career fatigue and wellness issues.¹⁴

Expanding immunity protection for wellness programs. Virginia's H.B. 115 expands civil immunity for health care professionals who are members or consult with entities that review, evaluate or make recommendations about health care services.¹⁵ These individuals would include health care professionals who are members or consult with entities that address physician career fatigue and wellness issues.

South Dakota's H.B. 1179 provides civil immunity to any person, agency, institution, facility or organization employed, contracted or operating a physician wellness program if they act in good faith.¹⁶

Indiana's S.B. 365 specifies that wellness programs and their participants may not be named as a party in a civil lawsuit in connection with certain actions taken as representatives of the wellness program if they acted in good faith.¹⁷

Virginia's H.B. 115 also clarifies that for a physician participating in a PHP that addresses career fatigue or wellness, if there lacks reasonable evidence that the physician is not competent to continue in practice or is a danger to themselves, patients or the public, then participation in such a PHP would not trigger a requirement that the physician be reported to the state (e.g., the state



medical board).¹⁵ Indiana S.B. 365 and South Dakota H.B. 1179 provide similar confidentiality protections.

Indiana's S.B. 365 states that no wellness program personnel or participant may reveal or disclose the wellness program's communication, records or determinations to anyone outside the program.¹⁷ A physician's participation in a wellness program does not require reporting their participation to the medical board.

South Dakota's H.B. 1179 keeps confidential any records of a participant in a physician wellness program unless the physician voluntarily provides a written release of the information or disclosure is required to meet a physician's obligation to report a criminal charge or action or unprofessional or dishonorable conduct.¹⁶

Arizona's H.B. 2429 also keeps confidential a health professional's record of participation in a wellness program, and the record is not subject to discovery, subpoena or a reporting requirement to the regulatory board unless¹⁸:

- The health professional voluntarily provides written release of the information; or
- The disclosure is required to meet a person's obligation to:
 - Report criminal conduct.
 - Report an act of unprofessional conduct.
 - Report that the health professional is not able to practice safely.
 - Warn an individual of an imminent threat of harm.

Implementing Physician Health Programs. PHPs are evidence-based and remain a proven model to help physicians with impairment.⁶ State PHPs are a confidential resource for physicians at risk of potential impairment and who voluntarily come forward or are referred by a colleague, workplace or the licensing board.

In some states, a PHP may be the only legally authorized entity to receive reports of physician impairment instead of reporting them to the disciplinary authority.⁶ 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 a physician wellness program or health care professionals encounter impairment concerns. According to the Federation of State Physician Health Programs, in most states, PHPs receive reports and confidentially assist the physician without revealing their identity to the disciplinary authority.¹⁹

PHP programs provide objective confirmation and documentation to other entities (e.g., employers, credentialing entities, etc.) that a physician is following recommendations to support their health and safe practice. At the participant's request, PHP verification of health monitoring compliance is often a requirement for continued employment and/or medical staff privileges.²⁰

The [Physician Health Programs Act](#) is the AMA's model legislation designed to guide state implementation of PHPs to offer a therapeutic alternative for evidence-based care to physicians at risk of a potential impairment in a structured, confidential manner.²⁰ Many PHPs also offer well-being programs and services to refer for professional coaching, therapy and other support services in a confidential, voluntary and safe manner. While not all referrals to a PHP result in time out of practice, expertise is in place to facilitate a safe return to practice. When time out of practice is indicated, PHPs work with the physician and their treatment providers to focus on safely returning the physician to caring for their patients.



Please refer to the [AAFP Physician Well-being Toolkit](#) for other legislative and regulatory information to support physician wellness.

Note: The 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 judgment in connection with the provision of services and seek legal advice regarding any legal questions. References and links to third parties do not constitute an endorsement or warranty by the AMA, and the AMA hereby disclaims any express and implied warranties of any kind.

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