

ARC Issue Brief: Confidential care to support physician health and wellness¹

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 practice,² including private practice, academic medical centers, outpatient clinics, and many other clinical settings.³ More than 40 percent of physicians do not seek help for burnout or depression for fear of disclosure to a state licensing board. Nine percent of physicians said they had thoughts of suicide.⁴ Physicians say they do not seek help for suicidal thoughts because of fear of judgment from colleagues or they can handle the stress.

Improving physicians' mental health and reducing physician burnout is one of the five pillars of the AMA Recovery Plan for America's Physicians.⁵ Physicians are among the most resilient,⁶ 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 level.⁷

Compounding the problems are medical licensing applications, employment and credentialing applications, and professional liability insurance applications. The problem is that these may include problematic and potentially illegal questions requiring disclosure whether a potential licensee or applicant has ever been diagnosed with a mental illness or substance use disorder (SUD) or even sought counseling for a mental illness. These questions about *past diagnosis or treatment* are strongly opposed by the American Medical Association (AMA), the Dr. Lorna Breen Heroes' Foundation, Federation of State Medical Boards, Federation of State Physician Health Programs- and The Joint Commission.

“Supporting physicians’ and medical students’ mental health and wellness is essential to supporting our nation’s health.” - Jack Resneck, MD, AMA President.

¹ 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 health care practitioners should exercise their professional judgment 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 AMA disclaims any express and implied warranties of any kind.

² Shanafelt 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

³ Physician Burnout & Depression Report 2022: Stress, Anxiety and Anger. *Medscape.* January 21, 2022. <https://www.medscape.com/slideshow/2022-lifestyle-burnout-6014664#8>

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

⁵ The AMA has developed extensive resources that help prioritize well-being and support physicians' practices: <https://www.ama-assn.org/practice-management/physician-health/equipping-physicians-manage-burnout-and-maintain-wellness>

⁶ West 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

⁷ For 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-physician-burnout>

How medical societies and policymakers can support physicians' health and wellness

This issue brief highlights several different options for physicians seeking care and provides tangible legislative, regulatory and other options for medical societies and other stakeholders to support those efforts. It seeks to further the goals of balancing privacy and confidentiality while also reducing stigma and protecting the public health.

The options discussed in this issue brief have different avenues for entry and levels of complexity. Some may be more relevant to meet a physician's or medical student's individual need, but the goal is for each option to allow for confidential care that supports a physician's or medical student's ability to manage the anxiety, depression, and other forms of occupational stress or mental illness. The AMA stands ready to work with all stakeholders to help ensure that safe, confidential, voluntary options⁸ are available and known to those who want or need access to such services.⁹

Actions to take to support physicians and medical students

- Ensure that your state's licensing, credentialing, and other applications focus on "current impairment" rather than stigmatizing language that inappropriately asks about past diagnoses.¹⁰
- Enact state legislation that provides for "safe haven" type reporting systems and wellness programs for physicians, medical students and other health care professionals to seek care for burnout and other stressors, as well as mental health issues.
- Partner with other health care professional organizations to seek changes across all health care professional licensing boards.
- Engage professional liability insurance carriers to seek changes to applications and remove intrusive questions about past mental health and substance use that do not accurately reflect an applicant's current ability to safely and competently practice medicine
- Review your state's Physician Health Program laws and policies to ensure they provide strong confidentiality protections for physicians seeking care or being referred for care. Contact your Physician Health Program to learn more: <https://www.fsphp.org/state-programs>
- Join the AMA and other key stakeholders to help implement—as recommended by the Dr. Lorna Breen Heroes' Foundation—a process to audit, revise and communicate medical board and licensing application changes and actions to support physicians' and other health care professionals' health and wellness.
- Provide ongoing education and communication to the profession to help ensure they know about confidential programs, changes to licensure questions, and other efforts that support seeking and receiving care without fear of disclosure.

⁸ While this issue brief highlights areas where medical societies and legislative/regulatory options are available, there also are other options to help those at risk of self-harm or suicide, including the Interactive Screening Program offered by the American Foundation for Suicide Prevention: <https://afsp.org/interactive-screening-program>

⁹ These issues also are experienced by medical students and residents as well as practicing physicians. See "Programs and Resources to Alleviate Concerns with Mental Health Disclosures on Physician Licensing." Welcher, C., Radabaugh, C., Aparicio, A., Chaudhry, H., Statz, M., Kirk, L., Bresnahan, L. *Journal of Medical Regulation* (2019) 105 (2): 24–32. <https://doi.org/10.30770/2572-1852-105.2.24>

¹⁰ For a detailed discussion, the AMA also encourages review of the "Licensure & Credentialing Strategy Tool Kit," developed by the Dr. Lorna Breen Heroes' Foundation: <https://drlornabreen.org/tool-kit/>

Licensing, credentialing and other applications should focus on current impairment—not past diagnosis

One major issue that deters physicians and medical students from seeking care is inappropriate medical board licensing and health system credentialing application questions.¹¹ The AMA joins multiple key stakeholders¹² in urging changes to medical board, credentialing and other applications to remove questions about “past diagnosis” and focus only on whether there is a current impairment.

The Federation of State Medical Boards does not require organizations to ask about a clinician’s history of mental health conditions or treatment.

- “The FSMB urges state medical boards to “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).”
- Sample language: “Are you currently suffering from any condition for which you are not being appropriately treated that impairs your judgment or that would otherwise adversely affect your ability to practice medicine in a competent, ethical and professional manner? (Yes/No)”

The Joint Commission does not require organizations to ask about a clinician’s history of mental health conditions or treatment.

- “We strongly encourage organizations to not ask about past history of mental health conditions or treatment. As an alternative, we support the recommendations of the Federation of State Medical Boards and the American Medical Association to limit inquiries to conditions that currently impair the clinicians’ ability to perform their job.”

The Dr. Lorna Breen Heroes’ Foundation urges all licensing boards, health systems and others to remove stigmatizing questions about past mental history diagnoses and treatment from applications.

- Ask one question consistent with the FSMB’s recommendation to address all mental and physical health conditions as one, with no added explanations, asterisks, or fine print.
- Refrain from asking probing questions about an applicant’s health altogether.
- Implement an Attestation Model, like that used in North Carolina and Mississippi.

“Increase access to high-quality, confidential mental health and substance use care for all health care workers.”
[U.S. Surgeon General’s Advisory on Building a Thriving Health Workforce](#), May 2022.

¹¹ Dyrbye 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):1486-1493

¹² The Joint Commission Statement on Health Care Worker Mental Health. The Joint Commission. Issued May 2020. Available at <https://www.jointcommission.org/resources/patient-safety-topics/healthcare-workforce-safety-and-well-being/resources-from-the-joint-commission/#7fc30c93e2f949cab12129b386380bb1>; Physician Wellness and Burnout Report and Recommendations of the Workgroup on Physician Wellness and Burnout. Federation of State Medical Boards. Policy adopted April 2018. Available at <https://www.fsmb.org/siteassets/advocacy/policies/policy-on-wellness-and-burnout.pdf>; “Remove Intrusive Mental Health Questions from Licensure and Credentialing Applications. A Toolkit to Audit, Change and Communicate.” The All-In Well Being First for Health Care toolkit. The Dr. Lorna Breen Heroes’ Foundation. 2022. Available at <https://drlornabreen.org/wp-content/uploads/2022/12/ALL-IN-Audit-Change-Communicate-Toolkit.pdf>

Select examples of state medical boards that focus on “current” impairment rather than “past” diagnosis or treatment

- California asks, “Do you currently have any condition (including, but not limited to emotional, mental, neurological or other physical, addictive, or behavioral disorder) that impairs your ability to practice medicine safely?”¹³
- Kansas asks, “Do you have any physical or mental health condition (including alcohol or substance use) that currently impairs your ability to practice your profession in a competent, ethical, and professional manner?”¹⁴
- Texas asks, “Are you currently suffering from any condition for which you are not being appropriately treated that impairs your judgment or that would otherwise adversely affect your ability to practice medicine in a competent, ethical and professional manner?”¹⁵

Minnesota Board of Medical Practice	
Before	After
MN previously required the release of medical records for “Applicants who have a medical condition during the last five years which, if untreated, would be likely to impair their ability to practice with reasonable skill and safety must have their treating physician complete this form.”	As of January 1, 2022, MN now asks ¹⁶ : “Do you currently have any condition that is not being appropriately treated which is likely to impair or adversely affect your ability to practice medicine with reasonable skill and safety in a competent, ethical and professional manner?”

Georgia Composite Medical Board	
Before	After
“During the last 7 years, have you suffered from any physical, psychiatric, or substance use disorder that could impair or require limitations on your functioning as a professional or has resulted in the inability to practice medicine for more than 30 days, or required court-ordered treatment or hospitalization? (If yes, provide treatment history documentation to include diagnosis, treatment regimen, hospitalization, and ongoing treatment/ medication to the Board. NOTE: If you are currently enrolled in GAPHP, you may check NO.”	As of Feb. 2, 2023, the question now reads ¹⁷ , “Are you currently suffering from any condition for which you are not being appropriately treated that impairs your judgment or that would otherwise adversely affect your ability to practice medicine in a competent, ethical, and professional manner? NOTE: If you are currently enrolled in Georgia PHP, you may answer NO.”

“The Board believes this is a step in right direction to address clinician burnout and encourage mental health care while still protecting patients from impaired professionals,” said Georgia Composite Medical Board Chair Matthew Norman, MD. ***“Applicants should not fear loss of a license or denial of a licensure application for seeking mental health services.”***

¹³ Application for a Physician’s and Surgeon’s License. Medical Board of California. Available at <https://www.mbc.ca.gov/Download/Forms/application-physician-11.pdf>

¹⁴ Kansas Board of Healing Arts. See http://www.ksbha.org/forms/md_do_app_fillable.pdf Application current as of August 9, 2021.

¹⁵ Physician Licensure Application. Texas Medical Board. Available at <https://www.tmb.state.tx.us/idl/C265E983-7678-5228-4434-29DF7A1F37EF> Texas previously asked: “Within the past five years, have you been diagnosed with or treated for any psychotic disorder, delusional disorder, mood disorder, major depression, personality disorder, or any other mental condition which impaired or does impair your behavior, judgment, or ability to function in school or work?” See, <http://jaapl.org/content/46/4/458>

¹⁶ Physician Application Packet. Minnesota Board of Medical Practice. Last Accessed February 20, 2023. Available at https://mn.gov/boards/assets/PY%20Application%20Packet%202022%20April-11_tcm21-36587.pdf

¹⁷ GCMB updates mental health question on licensure applications. Georgia Composite Medical Board. February 2, 2023. Available at <https://medicalboard.georgia.gov/press-releases/2023-02-02/gcmb-updates-mental-health-question-licensure-applications>

Hospital and health systems' efforts to support physician wellness

Just as state medical boards must continue their efforts,^{18,19} the AMA also strongly urges health systems and hospitals to review their credentialing applications to ensure they support physicians' and other health care professionals' health and wellness. Some leading states and health systems have already made changes to their application and renewal forms to move in this direction, including Henry Ford Health, Envision Health, the University of Virginia (UVA) Health System, and Sentara Health System²⁰.

- “We removed questions about past diagnosis because they didn't help us. Focusing on 'current impairment' makes people feel supported, and they're really delighted that we've made these changes.” - Lisa MacLean, MD, Director of Physician Wellness, Henry Ford Health
- “Changing the questions from a focus on 'past diagnosis' to one on whether there is a 'current impairment' sends a clear message to everyone that it is safe to seek care.” - Stefanie Simmons, MD, Vice President of Clinician Engagement for Envision Healthcare and Chief Medical Officer of the Dr. Lorna Breen Heroes' Foundation
- UVA only asks: “Do you currently have any mental health condition or impairment that affects or limits your ability to perform any of the obligations and responsibilities of professional practice in a safe and competent manner?”
- Sentara Health, which has hospitals in Virginia and North Carolina, recently removed intrusive and inappropriate questions asking if applicants had “ever been in a treatment or rehabilitation program for substance abuse”—recognizing that a focus on an applicant's current fitness to practice medicine safely and competently provided the health system with the information it required to ensure patient safety.

Legislation may be necessary to set statewide standards

The Virginia General Assembly this year unanimously approved House Bill 1573ER²¹, first-of-its-kind legislation strongly supported by the Medical Society of Virginia and AMA. The bill provides:

1. *§ 1. That each health regulatory board within the Department of Health Professions shall amend its licensure, certification, and registration applications to remove any existing questions pertaining to mental health conditions and impairment and to include the following questions: (i) Do you have any reason to believe that you would pose a risk to the safety or well-being of your patients or clients? and (ii) Are you able to perform the essential functions of a practitioner in your area of practice with or without reasonable accommodation?*
2. That an emergency exists and this act is in force from its passage.

¹⁸ See, for example, Wible, P., Palermini, A. “Physician-Friendly States for Mental Health: A Comparison of Medical Licensing Board Applications.” *Qualitative Research in Medicine & Healthcare* 2019; volume 3:107-119. Available at <https://www.pagepressjournals.org/index.php/qrmh/article/view/8649/8600>

¹⁹ Saddawi-Konefka D, Brown A, Eisenhart I, Hicks K, Barrett E, Gold JA. Consistency Between State Medical License Applications and Recommendations Regarding Physician Mental Health. *JAMA*. 2021;325(19):2017–2018. doi:10.1001/jama.2021.2275. “...in most states, recommendations from the FSMB have not yet been fully adopted. Consequently, medical license applications may continue to deter physicians from seeking mental health care.”

²⁰ The question asked by Sentara: “Are you able to safely and competently exercise the clinical privileges requested and perform the duties and responsibilities of appointment, including, but not limited to, emergency service coverage and committee service?”

²¹ Virginia House Bill 1573ER. Enrolled February 16, 2023. This is “An Act to direct health regulatory boards within the Department of Health Professions to amend language related to mental health conditions and impairment in licensure, certification, and registration applications; emergency.” The Virginia House and Senate voted 98-0 and 40-0, respectively, in favor of the bill. The Medical Society of Virginia and AMA strongly supported this bill.

“Safe haven” type laws and confidential care for physician wellness

Legislative or regulatory changes can be made that create a “safe haven” through which physicians and other health care professionals could seek and obtain confidential care in ways that would not impact their careers. Legislative and regulatory changes could also require that medical licensing and credentialing applications inquire only about *current* impairment and not about past diagnoses.

Several states have enacted laws specifically intended to protect physicians seeking help with career fatigue and wellness. Virginia led the way by enacting H.B. 115²² in 2020. In 2021, Indiana and South Dakota followed in 2021 by passing S.B. 365²³ and H.B. 1179²⁴, respectively. Arizona enacted H.B. 2429²⁵ in 2022. Multiple states in 2023 are pursuing similar bills. Key elements of the laws:

- Furthers the goal of supporting physicians and other health care professionals to seek professional support to address career fatigue, burnout and behavioral health concerns with broad confidentiality and civil immunity protections.
- Enables physicians, who may avoid seeking help in other programs because of the fear of potential negative repercussions, to get the help they need.
- Focuses on “career fatigue and wellness” rather than “burnout. H.B. 115, S.B. 365, H.B. 1179 and H.B. 2429 all use the phrase “career fatigue and wellness” rather than “burnout.” 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, Physician Health Programs (PHP)²⁶ to assist physicians seeking help with carrier fatigue and wellness, and for physicians seeking that assistance.

Provides qualified immunity for wellness programs and persons, facilities, and organizations participating in wellness programs.

- 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.
- 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 states that wellness programs and their participants may not be named in a civil lawsuit if they acted in good faith and in furthering the work of the wellness program.

“Safe haven” type laws balance public safety with supportive care for wellness

- H.B. 115 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

²² <https://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+CHAP0198+pdf>

²³ <http://in-proxy.openstates.org/2021/bills/SB0365/versions/SB0365.04.ENRH>

²⁴ <https://sdlegislature.gov/Session/Bill/22344/218749>

²⁵ <https://www.azleg.gov/legtext/55leg/2R/laws/0224.pdf>

²⁶ 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>

- state, e.g., the state medical board.
- 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 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.
 - 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.
 - H.B. 115 exists in addition to the Virginia PHP²⁷, which remains a trusted source to help physicians in need of support. The [South Dakota State Medical Association](#) identifies a number of wellness program physicians. The [Indiana State Medical Association](#) Physician Assistance Program provides physicians with consultation, screening, referral and case management, as needed, for substance use and mental health disorders, behavioral issues, and physical illnesses.

Implementing safe haven laws requires medical society ongoing leadership

Pursuant to H.B. 115, the MSV helped create a program for the entire healthcare team, including physicians, physician assistants, nurses, pharmacists, students and residents. The program provides a comprehensive set of well-being resources they can use to deal with stress, burnout and the effects of COVID-19, without risk to their licenses or employment. MSV administers the program—called [SafeHaven](#)TM—for the state of Virginia.

MSV is partnering with state medical societies across the nation to set up SafeHavenTM in their states. The resources offered to organizations and individuals enlisted in the program, include peer coaching, counseling, elite concierge services and expanded behavioral health resources to promote work/life balance and well-being for physicians, clinicians and their families.

“You have situational and systemic burnout in a profession and an industry that encourages its members and its leaders to just ‘buckle down.’ It’s a recipe for burnout,” said Melina Davis, Executive Vice President and CEO, Medical Society of Virginia. *“We must address the situational but more importantly the systematic burnout. We must encourage people to get help and drop the stigma of seeking help from the profession. These are not easy elements to address, but they’re all important.”*

²⁷ Virginia Health Practitioners Monitoring Program,
<http://www.dhp.virginia.gov/PractitionerResources/HealthPractitionersMonitoringProgram/index.html>

Medical society wellness programs can provide confidential support as a member benefit

In addition to PHPs and safe haven type efforts, medical societies also have established another option to help physicians. This approach is differentiated from situations when there is concern of impairment. Both approaches have helped thousands of physicians.

After a series of four physician suicides in Eugene, Oregon, the Lane County Medical Society created a model program in 2012 that provided a confidential, preclinical option for physicians seeking help with managing stressful situations. Those situations might include workplace conflicts, grief, depression, marriage or financial stress, or other issues that a physician believes may be adversely affecting his or her personal and/or professional life. The model was replicated by several county medical society leaders who eventually published a free toolkit to disperse the model even more broadly. There are around 30 similar programs. While the programs go by different names²⁸, there are several common elements:

- Typically, the county medical society privately contracts with a local psychiatry or psychology group to allow a certain number of confidential sessions per member. Less often, programs may employ a therapist directly. These visits are free or discounted as a membership benefit. Claims are not submitted to insurance and instead the bill is sent to the medical society with no identifying information on it.
- The county medical society sets up a mechanism for appointments to be made without knowing the member’s name. Some have 24/7 hotlines staffed by call centers and some allow physicians to set up an appointment directly with therapists.
- Funding for the programs may come from medical society membership dues, their society’s foundation, hospital medical staff funds or foundations, and other sources.
- Limited non-demographic information such as age, gender, specialty, employment type, and presenting challenges are sent back to the society in a way to keep individual identification from happening.

The Nebraska Medical Association launched [LifeBridge](#) for its physicians, and the Wisconsin Medical Society, for example, in July 2021 announced a partnership with Dane County Medical Society to launch the [LifeBridge Physician Wellness Program](#) for Dane County Medical Society Members. This pilot program provides up to six free telemedicine counseling/coaching sessions per year from a psychologist with Cornerstone Counseling Services, Inc. or Marshfield Clinic Health System, Inc.

<p><i>“Since Eugene and Portland Oregon’s medical societies were the first to start these programs in 2012 and 2015, we’ve since seen the development of a network that allows physicians in rural counties statewide to access existing programs via telehealth,”</i> said Amanda Borges, Executive Director for Medical Society of Metropolitan Portland.</p>	<p><i>“Ensuring confidentiality has been the number one factor in why these programs work,”</i> said Steven Reames, executive director of the Ada County Medical Society in Boise, Idaho. “And since we pushed our therapists onto telehealth due to COVID-19, utilization has increased two-fold.”</p>	<p><i>“We developed the LifeBridge Physician Wellness Program toolkit that can be used to help build a program from the ground-up,”</i> said Belinda Clare, chief operations officer of the Travis County Medical Society in Austin, Texas.</p>
---	---	---

²⁸ The free LifeBridge toolkit can be downloaded at www.physicianwellnessprogram.org. It explains how to start such a program, provides a reusable program name and logo, and lists the known county medical society programs in operation for reference.

Physician Health Programs are proven model to help physicians with impairment and other concerns

State physician health programs (PHPs) remain an evidence-based, comprehensive system supported by the AMA and state medical societies to help physicians at risk of potential impairment who may come forward voluntarily or when referred by a colleague, workplace or, the licensing board. PHPs have helped thousands of physicians in a confidential, therapeutic alternative to discipline when there is not a risk to patient safety²⁹. They are a therapeutic alternative for evidence-based care to physicians at risk of a potential impairment in a structured, confidential manner. Many PHPs also offer well-being programs and services to refer those in need to professional coaching, therapy and, other support services in a confidential, voluntary, safe manner.

Similar to the question above from the Georgia Composite Medical Board, the state of Washington authorizes medical license 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.”

The AMA encourages state medical societies to review their PHP statutes to ensure:

- PHPs may receive reports of possible impairment in lieu of reporting to the disciplinary authority.
- Physicians or other individuals who refer a colleague to a PHP enjoy full confidentiality protections as well as anti-retaliation protections.
- Physicians who participate in a PHP are not subject to punitive licensing board or credentialing sanctions as long as the individual either remains under the care of the PHP or has been determined to be able to safely return to practice.

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 practice.³⁰ When time out of practice is indicated, PHPs have a successful track record of working with the physician and his/her treatment provider(s) to focus on how to safely return the physician to caring for his/her patients.³¹

“PHPs have long recognized that confidentiality is critical to service utilization and effectiveness. It’s the cornerstone of the PHP model and should extend to all programs that support physician well-being.” – Chris Bundy, MD, MPH, Past President, Federation of State Physician Health Programs.

²⁹ The Federation of State Physician Health Programs (FSPHP) maintains a full list of PHPs available to physicians and other health care professionals: <https://www.fsphp.org/state-programs>

³⁰ A 2008 study of 16 state PHPs found that of 904 physicians admitted to a PHP between 1995 to 2001, more than 80 percent “completed treatment and returned to practice under supervision and monitoring. After five years, 631 (78.7%) physicians were licensed and working. McLellan AT, et al. Five year outcomes in a cohort study of physicians treated for substance use disorders in the United States. *BMJ*. 2008;337:a2038. Published 2008 Nov 4. Available at <https://pubmed.ncbi.nlm.nih.gov/18984632/>

³¹ A 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).” See “Physicians Health Program Offered Help to Hundreds Last Year.” Elaine Ellis. North Carolina Medical Society. Jan 24, 2018. Available at <https://secure.ncmedsoc.org/physicians-health-program-offered-help-to-hundreds-last-year/>

Draft legislative and regulatory options to support physician wellness³²

A. Definitions. The South Dakota, Indiana and Arizona laws define the phrase “physician wellness program” or “wellness program.”

- (1) **Indiana S.B. 365.** *“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).*
- (2) **South Dakota H.B. 1179.** *The term, “physician wellness program,” means a program of evaluation, counseling, or other modality to address an issue related to career fatigue or wellness in a person licensed to practice medicine or osteopathy or a physician assistant. The term does not include the provision of services intended to monitor for impairment.*
- (3) **Arizona H.B. 2429.** *The term, “health professional wellness program,” means a program of evaluation, counseling, including substance abuse counseling, or another modality to address an issue related to career fatigue or wellness in a health professional who is licensed pursuant to chapter 13, 15 or 17 of this title. The term does not include providing services that are intended to monitor for impairment.*

B. No obligation to report to regulatory authorities. The Virginia, Indiana, and South Dakota laws all make clear that wellness programs are not obligated to report to the relevant regulatory authority a physician’s participating in a wellness program, with certain exceptions. *This issue brief strongly recommends that any legislative physician wellness proposals include a requirement that a physician, graduate medical resident or medical student who’s seeking assistance from, or participates in, a wellness program is not reportable to any regulatory board or authority, subject to limited exceptions.* The following shows how the Virginia, Indiana, and South Dakota address this reporting issue.

- (1) **Virginia H. 115.** *No person or entity shall be obligated to report information regarding a health care provider licensed to practice medicine or osteopathic medicine who is a participant in a professional program to address issues related to career fatigue and wellness that is organized or contracted for by a statewide association exempt under 26 U.S.C. § 501(c)(6) of the Internal Revenue Code and that primarily represents health care professionals licensed to practice medicine or osteopathic medicine in multiple specialties to the Board. The protections under this section do not apply if the person or entity has determined that there is reasonable probability that the participant is a danger to themselves or to the health and welfare of their patients or the public.*
- (2) **Indiana S. B. 365.** The Indiana law removes reporting requirements in two contexts, referral to a physician impairment program as well as participation in a physician wellness program. Specifically, S.B. 365 states:

- (a) **Referral to impairment program.** *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 and does not violate any privilege or confidentiality*

³² While this language may be useful to consider in your state, it is not a comprehensive AMA model bill. Additional considerations for peer review, PHPs and medical licensing likely are applicable.

established by S.B. 365.

(b) No obligation to report participation. *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.*

i. **Exceptions to (a) and (b).** *The exception from the obligation to report under (a) and (b) does not apply if (1) the licensed physician is not competent to continue practice; or (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.*

(3) South Dakota S.D. 1179. *Any record of a person's participation in a physician wellness program is confidential and not subject to discovery, subpoena, or a reporting requirement to the applicable board, unless the person voluntarily provides for written release of the information or the disclosure is required to meet the licensee's obligation to report a criminal charge or action, or unprofessional or dishonorable conduct.*

C. No obligation to disclose to persons or organizations other than regulatory authorities.³³

This issue brief strongly recommends that any legislative physician wellness proposal ensures that a physician, graduate medical resident or, medical student seeking assistance from, or participating in, a wellness program is not obligated to report or disclose that fact to any third party, e.g., on a hospital credentialing application. The following is draft language for consideration.

- (1)** A physician, graduate medical resident or medical student who contacts, seeks help from, or is a participant in, a physician wellness program or physician health program (PHP) shall not be required to disclose such contact, seeking assistance, or participation to any health care facility, hospital, medical staff, accrediting organization, graduate medical education oversight body, health insurer, government agency, or other entity that requests such information as a condition of participation, employment, credentialing, payment, licensure, compliance or other requirement.
- (2)** The failure to disclose the information described in this section shall not be grounds for suspension, removal, termination of employment or contract, or any other adverse action by a graduate medical school of higher education, health care facility, hospital, medical staff, health insurer, government agency, or other entity.
- (3)** The obligation to disclose information described in this section shall not be a condition of participation, employment, credentialing, licensure, compliance or, other requirement by a graduate medical school of higher education, health care facility, hospital, hospital staff, health insurer, government agency, or other entity.

D. Proceedings and physician identity are confidential and privileged. The Virginia, Indiana, Arizona and South Dakota laws all confer confidentiality protections on wellness programs and participants. The sections of the Virginia law below appear to provide the most extensive

³³ Some states may allow for reporting to the medical board or an employer for compliance purposes that a participant in a PHP remains in treatment, is complying with the treatment plan, has completed treatment for the purposes of a safe return to practice.

protections of the three laws. The Virginia law provides the following confidentiality protections, which also can be used in PHP-related statutory or regulatory language.

- (1) **Proceedings, records, etc., are confidential and privileged.** The proceedings, minutes, records, and reports of any physician wellness program, together with all communications, whether oral, electronic, or written, originating in or provided to such committees or entities, are confidential and privileged communications that are privileged in their entirety, and are not discoverable.
- (2) **Analyses, deliberations, etc., are confidential and privileged.** The analysis, findings, conclusions, recommendations, and the deliberative process of any physician wellness program, as well as the proceedings, minutes, records, and reports, including the opinions and reports of experts, of such entities shall be confidential and privileged in their entirety, and are not discoverable.
- (3) **Physician’s identity is confidential and privileged.** A physician who contacts, seeks assistance from, or is a participant in a physician wellness program or other entity providing counseling, coaching or similar services to address issues related to career fatigue and wellness shall have his or her participation and identify deemed confidential, privileged in its entirety, and not discoverable.

E. Patient safety organization. To facilitate communications among wellness programs themselves and between wellness programs and other organizations designed to address issues of patient safety and health care quality, it is essential that information relating to the activity of wellness programs retain their confidential and privileged nature. Indiana S.B. 365 provides good language here, stating that “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” contained in S.B. 365. Virginia H. 115 is broader, however, in that its confidentiality and privilege protections extend to patient safety organizations. Virginia H. 115 states as follows:

- (1) The exchange of any of the following shall not constitute a waiver of any privilege established under H. 115:
 - (a) Patient safety data among health care providers or patient safety organizations that does not identify any patient; or
 - (b) Privileged information between physician wellness programs. [Note: states also are encouraged to broaden the scope to include graduate medical education programs, PHPs or committees, boards, groups, commissions, or other entities described under section A.]

F. Immunity for persons acting in performance of their duties.³⁴

- (1) Every member of, or consultant to, any physician wellness program or PHP or any committee, board, group, commission, or other entity that reviews, evaluates, or makes recommendations in connection with a physician wellness program or PHP, to address issues related to physician, graduate medical residents or medical student career fatigue and wellness shall be immune from civil liability or administrative action for any act, decision, omission, or utterance done or made in performance of his or her duties while

³⁴ It is important to highlight that these provisions may only be one component of more comprehensive protections, including peer review protections, needed as part of comprehensive legislation. One example can be found in Massachusetts:

http://www.massmed.org/Physician_Health_Services/Education_and_Resources/Peer_Review_Committee_Definition_M_G_L_c_111,%C2%A7_1/#.Xz_U4chKiUk?

serving as a member of or consultant to such physician wellness program, PHP or committee, board, group, commission, or other entity.

G. No retaliation, discrimination, or other adverse action. No individual, person, or entity may retaliate, discriminate, or otherwise take adverse action with respect to a physician, graduate medical resident, or medical student who contacts, seeks assistance from, or is a participating in a physician wellness program or PHP to address issues related to career fatigue and wellness or based solely on those actions or participation.

H. Focus on current impairment.

- (1) Medical and osteopathic school applications, medical and osteopathic board licensing applications, credentialing applications, hospital and other facility-based physician employers, and health insurance company credentialing applications shall focus on current impairment and not past diagnosis and only include the following on such applications: “Are you currently suffering from any condition for which you are not being appropriately treated that impairs your judgment or that would otherwise adversely affect your ability to practice medicine in a competent, ethical and professional manner? (Yes/No)”³⁵
- (2) Any medical licensing, credentialing or employment application that does not focus on current impairment shall be deemed null and void.

Additional federal and state laws

Although an in-depth discussion is beyond the scope of this Issue Brief, federal and state³⁶ disability, civil rights, and other laws also may provide protection from discrimination. To take just one example, in February 2023, several members of the U.S. Senate sent a letter to the U.S. Justice Department (DOJ), asking the DOJ to investigate whether state medical boards were violating title II of the Americans with Disabilities Act (ADA) by asking questions about mental health and substance use or addiction history in physician licensure applications.³⁷

Noting the multiple impacts of physician burnout, the letter stated that such questions may discourage many applicants and licensed physicians from seeking help and go beyond what is necessary to fulfill the purpose of screening physicians for current, debilitating cases of mental illness and substance use or abuse. Title II of the ADA prohibits public entities from discriminating against qualified individuals on the basis of disabilities, including mental health conditions.

³⁵ Alternatively, states may wish to use the following question as implemented by the Medical Board of California in 2019: “Do you currently have any condition (including, but not limited to emotional, mental, neurological or other physical, addictive, or behavioral disorder) that impairs your ability to practice medicine safely?” See <https://www.mbc.ca.gov/Download/Forms/application-physician-11a-11f.pdf>

³⁶ See, e.g., New York laws at <https://ag.ny.gov/civil-rights/disability-rights#:~:text=In%20New%20York%2C%20federal%2C%20state,other%20term%20or%20condition%20of.>

³⁷ Letter from U.S. Senators Ron Wyden, Cory A. Booker and Jeffrey A. Merkley to U.S. Attorney General Merrick Garland, Assistant Attorney General Kristen Clark, and Disability Rights Section Chief Rebecca Bond. February 23, 2023. Available at <https://www.wyden.senate.gov/imo/media/doc/Congressional%20Letter%20to%20DOJ%20re%20State%20Medical%20Boards%20Violating%20ADA%20with%20Intrusive%20Mental%20Health%20Questions.pdf>

For more information

The AMA has several resources to help physicians and medical societies, including:

- AMA: [Equipping physicians to manage burnout and maintain wellness](#)
- AMA STEPS Forward™ module: [Physician Suicide and Support: Identify At-Risk Physicians and Facilitate Access to Appropriate Care](#)
- AMA public health resources: [Managing mental health during COVID-19](#)

Select examples of physicians' stories:

- [To ease physician burnout, ditch the stigma against getting help](#). Interview with AMA President Jack Resneck, MD, and U.S. Surgeon General Vivek Murthy, MD. March 28, 2023
- [Key credentialing change has big upside for physician well-being](#). Feature of Lisa MacLean, MD, and Henry Ford Health. February 28, 2023
- [Being honest about needing care brings systemic, supportive changes](#). Feature of Stefanie Simmons, MD. February 24, 2023
- [Resident burnout and creating a culture of well-being with Mark Linzer, MD](#). January 12, 2023
- [Reducing physician burnout must be an urgent national priority](#). Op-ed from AMA President Jack Resneck, MD. December 15, 2022.
- [Physician burnout's not about you—it's about the broken health system](#). Feature of AMA Board Chair Sandra A. Fryhofer, MD, discussing burnout and medical school. October 26, 2023
- [What this physician leader has learned about the power of "No"](#). Feature of Betty Chu, MD. October 17, 2022
- [Pandemic pushes U.S. doctor burnout to all-time high of 63%](#). September 15, 2022
- [Surgeon general: Why fighting burnout is our 'moral obligation'](#). July 12, 2022
- [Why one doctor's burnout story shows that systemic changes matter](#). July 5, 2022
- [Doctors hit hardest by pandemic at higher risk of burnout](#). March 30, 2022
- [J. Corey Feist on landmark legislation for physician well-being](#). February 24, 2022 (Note: Corey is the co-founder and president of the Dr. Lorna Breen Heroes' Foundation and brother-in-law of Dr. Breen)
- [8 doctors leading the charge in fighting physician burnout](#). Feature of chief wellness officers. December 28, 2021

For more information about the information contained in this issue brief, please contact the Advocacy Resource Center attorneys Daniel Blaney-Koen, JD, at daniel.blaney-koen@ama-assn.org and Wes Cleveland, JD, at wes.cleveland@ama-assn.org