



Safe Haven Non-Reporting Protection for Physicians-Support for Policy Statement

The American Osteopathic Association (AOA) states that the examination of the National Board of Osteopathic Medical Examiners (NBOME) must remain as the avenue for the licensure of osteopathic physicians and supports a uniform pathway of licensing osteopathic physicians through the mechanisms of the NBOME to be effective after 12/31/19.

White paper

Introduction

In the wake of rising burnout rates among U.S. medical professionals—a phenomenon that has dire consequences for both healthcare providers and the patients they serve—there is compelling evidence that a significant proportion of U.S. physicians and medical students experience symptoms of burnout, compounded by the stigma surrounding mental health and substance use treatment. Consequently, there is a critical demand for policy revisions that offer support without the fear of disciplinary actions or professional repercussions by advocating for 'safe haven non-reporting' protections, we aim to foster an environment where physicians can seek necessary treatment confidentially, thereby safeguarding their well-being and ensuring the continued provision of high-quality care to their patients. Through detailed recommendations, this paper intends to pave the way for a more supportive, understanding, and resilient healthcare system.

Background

Burnout among US medical students, residents and practicing physicians is a significant problem that negatively impacts medical professionals as well as the patients that they serve. In 2021, a research study found that 62.8% of U.S. physicians

Exhibited at least one symptom of burnout, up from 38.2% in 2020, 43.9% in 2017, 54.4% in 2014, and 45.5% in 2011. In addition, 54% of medical students, interns and residents reported experiencing symptoms of burnout.²

Burnout is characterized by a “wide array of signs, symptoms and related conditions, including fatigue, loss of empathy, detachment, depression and suicidal ideation.”³ It has also been shown to negatively impact a physician’s prescribing habits, test ordering, risk of malpractice suits, and whether patients adhere to their recommendations.⁴ Although the aforementioned description does not explicitly reference substance use disorders, we will hereafter reference symptoms of burnout, mental health and substance use issues (and their treatment) interchangeably.

Even when resources are available to help physicians and students address symptoms of burnout; however, both groups report similar concerns about pursuing them. For purposes of this policy paper, we will focus on concerns regarding lack of confidentiality and possible

disciplinary or discriminatory action by schools, employers, state medical licensing boards and other academic or professional entities.

Federation of state medical boards' recommendations

In 2016, the Federation of State Medical Boards (FSMB) convened a Workgroup on Physician Wellness and Burnout (Workgroup) to study the issue of physician burnout and drafted recommendations to help groups in the medical community better address this issue. The Workgroup found that although numerous resources exist to help medical students and physicians experiencing symptoms of burnout or impairment through academic institutions, medical licensing boards and state physician health programs, social and professional pressures make students and physicians reluctant to seek treatment or to report seeking it.⁵ Both medical students and physicians cited fears that seeking help would result in documentation on academic or professional records which could lead to discrimination or denial of a medical license, and ultimately jeopardize their ability to practice medicine.

Although the FSMB recommendations came out in 2018, a 2023 Medscape report found that some issues remain, with four in 10 physicians stating that they avoided seeking help for depression or burnout due to concerns about their employers or state medical boards finding out.⁶

Further, despite evidence showing that a past history of mental health or substance use disorders does not reliably predict future risk to the public, approximately one-quarter of state licensing applications still contain questions about applicants' histories with these issues. As of October 2023, 26 state medical boards had removed intrusive language from their licensure applications, and 11 states were in the process of making these changes.⁷ This shift signifies a growing recognition within the medical community of the importance of addressing mental health concerns without stigma or fear of professional repercussions; however, additional action is needed to enact these changes in all 50 states.

Although medical licensing boards previously asked about both mental and physical health, historical practices showed a disparity in the specificity and intensity of questions, with mental health inquiries being more probing. Recent changes across various states now reflect a more balanced approach, ensuring questions are limited to conditions that directly impact a physician's ability to practice medicine.

The response of medical licensing boards to physicians' disclosures of mental health issues has also evolved, aiming for a more supportive approach. Forty-seven states now offer physician health programs, which typically serve as an alternative to discipline if a physician voluntarily discloses a mental or behavioral health condition and remains in compliance with a recommended treatment plan.⁸ These changes highlight a commitment to reducing the stigma around mental health and supporting physicians in seeking care, thereby promoting a healthier, safer environment for physicians and their patients.

In addition to the deterrent effect that questions from medical licensing boards regarding mental health appear to have on physicians' willingness to seek help when needed or report seeking it, courts have found that many such questions run afoul of the Americans with Disabilities Act (ADA). The ADA protects individuals with disabilities, including psychiatric disabilities, from discrimination. Professional licensing bodies are not exempt from the requirements of the ADA, and courts have stated that "[public entities] may not administer a licensing or certification

program in a manner that subjects qualified individuals with disability to discrimination on the basis of disability.”⁸ Public entities such as a medical licensing board also may not “impose or apply eligibility criteria that screen out or tend to screen out an individual with a disability ... unless such criteria can be shown to be necessary for the provision of the service, program, or activity being offered.”⁹

In order to encourage medical students and physicians to seek appropriate treatment for mental health and substance use disorders, and ensure that medical licensing boards comply with the ADA, the FSMB encourages medical licensing boards to adopt policies that support physician “safe haven non-reporting.”

“Safe haven non-reporting” allows physicians who are receiving appropriate treatment for mental health or substance use issues who are monitored and in good standing with their confidential treatment program to (re)apply for licensure without having to disclose their treatment to the board. Only disclosures related to issues that are not being appropriately treated and could inhibit a physician’s ability to safely practice medicine would be required.

AOA POLICY STATEMENTS

The AOA adopts the following statements as its official position on “safe haven non-reporting:”

1. The presence or history of a mental health or substance use disorder does not automatically render a physician unfit to practice medicine, and the AOA opposes discrimination or disciplinary action against a physician or medical student based solely on the presence of such a disorder, without taking into consideration the individual’s behavior or treatment.
2. The AOA urges state medical licensing boards and credentialing entities to regard physical and mental health disorders similarly and refrain from asking about past history of mental health or substance use diagnoses or treatment on licensure applications or renewals which conflicts with the Americans with disabilities act. Instead, the AOA encourages entities to focus on whether any *current* physical or mental disorders are present which may impair that individual’s ability to safely practice medicine. The AOA further encourages physician licensing and credentialing entities to offer a “safe haven non-reporting” option for physician applicants who are undergoing appropriate treatment for current mental health or substance use disorders. This alternative helps to ensure confidentiality of such treatment for the individual physician while ensuring patient safety.
3. If physician licensing and credentialing entities decide to use questions related to mental health or substance use disorders on an application or renewal, the AOA encourages entities to consider phrasing them similarly to questions about physical health. For example:

“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)”
4. “Appropriate treatment” includes physician participation provided through state physician health programs recognized by the Federation of State Physician Health Programs, or programs following similar standards and guidelines, and adherence to treatment recommendations.

5. Finally, the AOA encourages medical educational and professional entities, as well organizations throughout the medical community, to support and educate students and physicians about confidential treatment and “safe haven non-reporting” options, in order to encourage these individuals to seek appropriate treatment without fear of documentation, disciplinary action or other repercussions.

References:

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