

Physician Impairment and the WPHP: Questions and Answers



WASHINGTON
**Medical
Commission**
Licensing. Accountability. Leadership.

Chris Bundy, MD, MPH

Executive Medical Director, Washington Physicians Health Program

Since 1986 the Washington Physicians Health Program (WPHP) has served as the legally qualified professional support program in Washington for licensed physicians and physician assistants. We are a small, independent, physician-led, non-profit organization that is contracted with the Department of Health to provide assessment, treatment referral, post-treatment monitoring and advocacy for professionals with health conditions that may impair their ability to safely practice. This is largely possible through laws in Washington that allow WPHP to work with professionals confidentially and without notification or involvement of the licensing authority. We endeavor to assist our colleagues, who are often suffering silently, obtain help before a career and/or life altering event occurs. A referral to WPHP is a courageous act of compassion for a colleague whose life and career may be at risk.

Q: What is impairment?

A: Impairment is defined as the inability to practice with reasonable skill and safety to patients as the result of a physical or mental health condition. Impairment is a functional classification related to illness, but the presence of illness, in itself, does not mean an individual is impaired. Clinical competence is often confused with impairment. Impairment, by definition, results from an underlying illness. In the absence of impairing illness, performance problems related to competence are outside of the scope of WPHP's mission and expertise.

Q: How common is impairment?

A: No one knows the true prevalence of physician impairment. Estimates suggest 1-2% of health care providers may fall into the category of impairment at some point in the course of a year. Impairing conditions such as substance, mood and anxiety disorders appear to occur at least as frequently in physicians if not more frequently. However, physicians are less likely to seek help for such problems on their own due to fear, shame, stigma and denial.

Q: Do I really have to call someone if I am worried about a colleague who may be impaired?

A: Per Washington Administrative Code (WAC 246-16-235), if you hold a clinical license through DOH and you

have knowledge "that another license holder may not be able to practice his or her profession with reasonable skill and safety due to a mental or physical condition," you are legally and ethically obligated to make a report for the safety of your colleague and for the safety of the patients they treat. Note that you do not have to know whether the colleague is impaired, you simply must have knowledge that your colleague may be impaired. It is WPHP's role to determine whether and to what extent actual or potential impairment exists.

Q: Whom do I call, if I am worried that a colleague is impaired?

A: If your colleague is an MD or a PA, you can fulfill your obligation by calling one of two agencies. You can call the Medical Commission, or you can make a report to the Washington Physicians Health Program at 1-800-552-7236. Someone at WPHP is available to take your call 24 hours per day, 365 days per year.

Q: What happens if I make a report with the Medical Commission?

A: The Medical Commission will be obligated to review the case and likely open an investigation of your colleague for "unprofessional conduct" for practicing medicine while potentially impaired due to an untreated or undertreated illness. For unavoidable reasons, this has a high likelihood of resulting in disciplinary sanctions for your colleague, including public disclosure of any disciplinary action. There is also a high likelihood that the Medical Commission will have empathic concern for the well-being of your colleague and strongly encourage your colleague to self-refer to WPHP for immediate clinical help.

Q: What happens if I make a report to WPHP instead of the Medical Commission?

A: You have fulfilled your legal obligation to make a report. WPHP now has an obligation to assess your colleague as soon as possible to "rule-out" that they are impaired, or to get them adequately treated if WPHP "rules-in" impairment. For patient safety reasons, your colleague will have a reasonable, but limited, time frame in which to respond and comply with WPHP's clinical evaluation. They may be directed to take extended medical leave if impaired or at substantial risk for impairment and

Physician Impairment and the WPHP: Questions and Answers

complete sufficient treatment before they can return to work under WPHP monitoring. If they are non-compliant with this process, WPHP has the legal obligation to make a report to the Medical Commission as appropriate. You have given your colleague a chance to receive confidential help without being identified to the Medical Commission, facing the risk of disciplinary action for trying to practice while impaired by illness.

Q: Once I've made a report to WPHP, under what circumstances does WPHP report my colleague to the Medical Commission?

A: If WPHP is significantly concerned that your colleague is suffering from an impairing health condition and he or she does not follow WPHP recommendations, we are obligated to notify the Medical Commission. We work very hard to help clients avoid this contingency. We feel that clients do best when internal motivators are engaged, rather than externally leveraged through a possible Medical Commission referral.

Q: How frequently does the WPHP report my colleague to the Medical Commission?

A: These events are rare. At this time, 94% of the physicians being actively monitored by WPHP are unknown to the Medical Commission. Over half that are known to the Medical Commission were referred by the Medical Commission to WPHP when an investigation revealed a potentially impairing health condition. Usually these are cases in which no one called WPHP when concerns of impairment came to light and eventually someone called the Medical Commission instead. In less than 3% of cases is WPHP required to notify the Medical Commission about a potentially impaired professional.

Q: What happens if I don't call anyone and make a report?

A: When impairment is suspected, not making a report prolongs the unacceptable exposure of patients to the risk of unsafe care from the potentially impaired provider. Failing to act also needlessly jeopardizes the career of a colleague that can be easily saved through therapeutic treatment for their illness. Finally, if it is shown that you knew there was a concern for impairment and failed to act, you may be exposed to legal risk from the Department of Health or a malpractice suit.

Q: What if the "impaired" physician in question is my patient?

A: You may still have an obligation to make a referral to WPHP or the Medical Commission, although your concern

has to reach a higher threshold. Per WAC 246-16-235, you do not have to make a report until your physician-patient "poses a clear and present danger to patients or clients." You have to weigh this obligation versus your legal obligations under HIPAA if your patient is not willing to consent to you disclosing their identity in a report to WPHP. You may always contact WPHP anonymously for guidance on whether to report a physician or PA patient.

Q: Are there any possible "impairment" situations in which I cannot fulfill my legal reporting obligation by calling WPHP instead of the Medical Commission?

A: Yes, there are two. Any behaviors falling under the definition of sexual misconduct (WAC 246-16-100) cannot be reported to WPHP and stay confidential. These incidents must be directly reported to the Department of Health. Any situation in which there is concern for impairment and there is known patient harm stemming from the suspected impairment, a direct report to the Department of Health is required. In these situations, a report to WPHP is not a substitute for reporting to the Department of Health. WPHP will advise accordingly should such circumstances come to light.

Q: In the absence of patient harm, why is the law set up to allow reporting of suspected impairment to WPHP "as a substitute for reporting to the Department" and the Medical Commission?

A: In order to maximize patient safety, the law is set up to encourage early identification, assessment and treatment of providers who are thought to be impaired. Allowing physicians to self-report to WPHP or to be reported by their employer or colleagues to WPHP rather than to the Medical Commission serves this purpose. It encourages use of WPHP as a therapeutic alternative to discipline for providers who need help and can be rehabilitated. Having a chance to avoid the threat of discipline serves as a powerful motivator for such physicians to commit to intensive treatment and recovery programs.

Q: If I need to make a report, is there any disadvantage to me or to my colleague if I call the WPHP rather than the Medical Commission?

A: No. If we feel you are not fulfilling your obligation by calling us and this is one of those rare cases in which a call to the Medical Commission or DOH is mandatory, we will explicitly clarify this for you.