

WASHINGTON STATE MEDICAL ASSOCIATION
HOUSE OF DELEGATES

Resolution: B-15
(A-20)

Subject: Washington Physician Health Program Must Be
ADA Compliant and Scientifically Validated

Introduced by: Yakima County Medical Society

Referred to: Reference Committee B

1 WHEREAS, the Medical Director of the Washington Physicians Health Program (WPHP) has
2 authored a series of articles, printed in the Washington Medical Commission (WMC) Newsletter
3 defending the efficacy of PHP treatment for physician substance use disorder (SUD), and
4 includes citation of supporting literature¹. However, the principal cited study is not recent, does
5 not define the criteria by which participant physicians were diagnosed², and has no control
6 group. Therefore, these citations are not an adequate foundation for evidence-based treatment
7 decisions for SUD, and no basis at all for diagnoses other than SUD; and

8
9 WHEREAS, assertions of PHP efficacy depend heavily on testimonials and expert opinion; and

10
11 WHEREAS, case reports of bad outcomes from Physician Health Programs are increasingly
12 frequent^{3 4 5}. Two case studies are from Washington physicians who were coerced to sign PHP
13 program contracts and forensic monitoring without any evidence of SUD^{6 7}; and

14
15 WHEREAS, “impairment” in professional practice is a specific occupational disability.
16 Individuals who have, have had, or who are “regarded as” having a disability including mental
17 illness or substance abuse have protections accorded by the Americans with Disabilities Act
18 (ADA). However, Physician Health Programs and Medical Licensure Boards have routinely
19 disregarded the legal protections afforded by the ADA⁸; and

¹ *WPHP Report: Setting the Record Straight, Part 1*. Chris Bundy, MD, MPH Executive Medical Director, Washington Physicians Health Program. Washington Medical Commission Newsletter Fall 2019. <https://wmc.wa.gov/sites/default/files/public/Newsletter/WMCUpdateFall2019.pdf>

² *Five year outcomes in a cohort study of physicians treated for substance use disorders in the United States*. Thomas McLellan, Gregory S Skipper, Michael Campbell, and Robert L DuPont. British Medical Journal. 2008; 337: a2038. Published online 2008 Nov 4.

<https://www.bmj.com/content/337/bmj.a2038>

³ *Doctor left destitute after seeking help from physician health program*. P.J.Randhawa. KSDK News, St. Louis, MO. May 21, 2019. <https://www.ksdk.com/video/news/local/cover-story/doctor-left-destitute-after-seeking-help-from-physician-health-program/63-930cda69-181e-40d6-bc50-21cb30d01e8e>

⁴ *Physician Health Programs: More Harm Than Good?* Pauline Anderson. Medscape. August 19, 2015. https://www.medscape.com/viewarticle/849772#vp_1

⁵ *Do physician health programs increase physician suicides?* Wible PL. Medscape 2015. <https://www.medscape.com/viewarticle/850023>

⁶ *Beloved doctor dies in physician health program. Her husband wants to know why*. Pamela Wible MD, December 20, 2019. <https://www.idealmedicalcare.org/beloved-doctor-dies-in-physician-health-program-her-husband-wants-to-know-why/>

⁷ *Nevertheless, I have persisted*. Melissa J Freeman, MD. Qualitative Research in Medicine and Healthcare 2019; Vol 3:99-106. November 2019. <https://www.pagepressjournals.org/index.php/qrmh/article/view/8638/8599>

⁸ *Professional Practice Guidelines for Occupationally Mandated Psychological Evaluations*. American Psychological Association August 19, 2018. <https://www.apa.org/practice/guidelines/psychological-evaluations>

1 WHEREAS, on February 7, 2020, the WA Department of Health (DOH) recognized that,
2 "WPHP had an obligation to comply with Title II of the ADA. Further, ...WPHP had an
3 obligation to comply with the ADA compliance provisions in the contract it has with DOH. As
4 a result, DOH understands WPHP will develop an ADA compliance policy and procedures
5 [which] will be communicated to the public"⁹; and
6

7 WHEREAS, subsequent Washington Medical Commission (WMC) and WPHP bulletins have
8 failed to acknowledge this ADA mandate¹⁰; and
9

10 WHEREAS, nationally, Physician Health Programs have not followed the American Psychiatric
11 Association's legal and ethical standards of psychiatric practice, particularly in the treatment of
12 substance abuse disorders^{11 12}; and
13

14 WHEREAS, the current epidemic of physician "burnout" is better characterized as moral injury,
15 a PTSD variant caused by "a tangle of contradictory requirements...[which force physicians]...to
16 parse the impossible with every patient encounter."^{13 14 15} PHPs have not addressed the systemic
17 basis of moral injury, and their interventions may exacerbate the damage¹⁶; and
18

19 WHEREAS, Washington Physician Health Program disciplinary actions can be even more
20 damaging to physician careers than malpractice litigation. Malpractice insurance policies may
21 provide little or no defense coverage for WPHP actions. Policies vary, but it is critically
22 important for physicians to understand their legal defense resources for all threats to maintenance
23 of licensure; THEREFORE BE IT
24

25 RESOLVED, that the WSMA will advocate for unbiased Cochrane-type meta-analysis of
26 published research on PHP effectiveness (Directive to Take Action); and BE IT FURTHER
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28 RESOLVED, that the WSMA will advocate for open publication of the WPHP's plan for ADA
29 compliance (Directive to Take Action); and BE IT FURTHER
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31 RESOLVED, that the WSMA will provide information in WSMA Reports, and on the WSMA
32 website to educate physicians that their malpractice insurance, especially when employer
33 contracted, may not cover defense against regulatory actions. Using Physicians Insurance as a

⁹ Letter from the WA DOH which orders ADA compliance for the WPHP. February 7, 2020 :

https://ycms.org/wp-content/uploads/DOH_Horiagon-Order-for-WPHP-Compliance-with-ADA.pdf

¹⁰ WPHP Report: Setting the Record Straight, Part 2. Chris Bundy, MD. WMC Newsletter Winter 2019.

<https://wmc.wa.gov/sites/default/files/public/Newsletter/WMCUpdateWinter2019.pdf>

¹¹ Systematic Abuse and Misuse of Psychiatry in the Medical Regulatory-Therapeutic Complex. Robert S. Emmons, M.D., Kernan Manion, M.D., and Louise B. Andrew, M.D., J.D. Journal of American Physicians and Surgeons. Winter 2018. <https://www.jpands.org/jpands2304.htm>

¹² Practicing What We Preach — Ending Physician Health Program Bans on Opioid-Agonist Therapy. Leo Beletsky, J.D., M.P.H., Sarah E. Wakeman, M.D., and Kevin Fiscella, M.D., M.P.H. N Engl J Med 2019; August 29, 2019; 381:796-798

https://www.nejm.org/doi/full/10.1056/NEJMp1907875?query=recirc_curatedRelated_article

¹³ Why 'Burnout' Is the Wrong Term for Physician Suffering. Wendy Dean, MD; Austin Charles Dean; Simon G. Talbot, MD. Medscape July 23, 2019 https://www.medscape.com/viewarticle/915097_2

¹⁴ It's Not Burnout, It's Moral Injury | Dr. Zubin Damania on Physician "Burnout". Mar 8, 2019. https://www.youtube.com/watch?v=L_1PNZdHq6Q

¹⁵ Physician Burnout, Interrupted. Pamela Hartzband, M.D., and Jerome Groopman, M.D. NEJM, May 1, 2020. <https://www.nejm.org/doi/full/10.1056/NEJMp2003149>

¹⁶ Coercion, Moral Injury, and Suicide in the Medical Regulatory-Therapeutic Complex. Robert S. Emmons, M.D. Journal of American Physicians and Surgeons Volume 24 Number 2 Summer 2019 <https://www.jpands.org/vol24no2/emmons.pdf>

- 1 model, all Washington physicians are encouraged to ask for a clear statement of coverage and
- 2 consider private purchase of additional coverage for legal defense for the protection of medical
- 3 license, professional reputation, civil rights, ADA rights, and due process rights (Reaffirm
- 4 WSMA policy).

Fiscal Note: \$30,000 to hire consultant to conduct meta-analysis

HOUSE ACTION: ADOPTED _____ ADOPTED AS AMENDED _____
 FILED _____ REFERRED _____ NOT ADOPTED _____