

The Lorna Breen Act and Well Being Committees: How do we monitor the practitioner's physical and mental ability to practice the privileges granted?

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Burnout

- A state of physical, emotional or mental exhaustion combined with doubts about personal competence and value of work



Burnout is Not a Mental Health Diagnosis

- Burnout, marked by emotional exhaustion, a lack of empathy for or negative attitudes toward patients, and feelings of decreased personal achievement, is not a mental health diagnosis, but it is a serious condition that, if unaddressed, can lead to mental health problems.

- Lola Butcher, July 8, 2023, Physician Leadership Journal

Lorna Breen Health Care Provider Protection Act

- Ran the ED at New York Presbyterian Allen Hospital
- Worked 12-24 hr shift, limited PPE, insufficient supplies, not enough oxygen, not enough beds, not enough help
- April 9, 2020, unable to move – had not slept in a week
- Admitted to inpatient psychiatric unit – 10 day stay
- Died April 26, 2020
- Lorena Breen Healthcare Provider Act 3/18/22
 - HHS must award grants for programs to promote mental health
- Stark Exception 12/29/22
 - Permits Hospital to offer mental and behavioral health programs to clinicians



Stark-AKS Provisions in Omnibus Bill

- December 30, 2022
- Exception for Physician Wellness Programs
 - Program includes
 - counseling, mental health services, suicide prevention, substance use disorder prevention and treatment
 - made available to all physicians

Survey Question

- Based on LB case study should we
 - Not ask any question about past mental and physical history
 - Continue to ask questions about mental and physical health
 - Ask questions but in a different manner

Problem

Need to know for credentialing purposes and patient safety

VS.

Stigma of revealing or seeking mental health

PRACTICE IMPAIRMENT OR LIMITATIONS

Please note that an affirmative answer to any of the questions below will not automatically disqualify you from licensure. The Board will make an individualized assessment of the nature, the severity and the duration of the risks associated with an ongoing medical condition to determine whether an unrestricted license should be issued, whether conditions should be imposed, or whether you are eligible for licensure. Please note that a Limited Practice License may be available. Refer to the Application Information for a Limited Practice License for further information.

Limitations

46. Are you currently enrolled in, or participating in any drug, alcohol, or substance abuse recovery program or impaired practitioner program?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/>
47. 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?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/>
48. Do you currently have any other condition that impairs or limits your ability to practice medicine safely?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/>

NOTE: A "yes" response to question 42-48 requires a signed and dated written explanation. The *Explanation For Application Question* form may be used to provide your explanation.

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PHYSICAL AND MENTAL HEALTH STATUS: IF YOU ANSWER YES TO ANY OF THE FOLLOWING QUESTIONS YOU MUST SUBMIT THE ADDITIONAL INFORMATION REQUESTED BELOW

A. Do you have any physical or mental disability which impairs or could impair your ability to carry out your professional obligations in a manner that meets the standards of care in the community and the Medical Staff bylaws, rules and regulations, Hospital and Medical Staff policies? (When answering this question, please consider all types of physical or mental disability, including past or present substance abuse.)	YES	NO
B. Are you suffering from any communicable health condition that could pose a health and safety risk to your patients or the patients, staff and visitors of St. Joseph Hospital?	YES	NO
C. Do you currently have or have you ever had a history of chemical dependency or substance abuse or have you attended or been ordered or agreed to attend any twelve (12) step program?	YES	NO

*If you answered "Yes" to any question on this page, please describe all physical and/or mental disabilities you have which impair or could impair your ability to carry out your professional obligations in a manner that meets the standards of care in the community and the Bylaws, Rules and Policies of this Medical Staff and the accommodations that could be made to enable you to practice at the Hospital.

Endorsement for Change

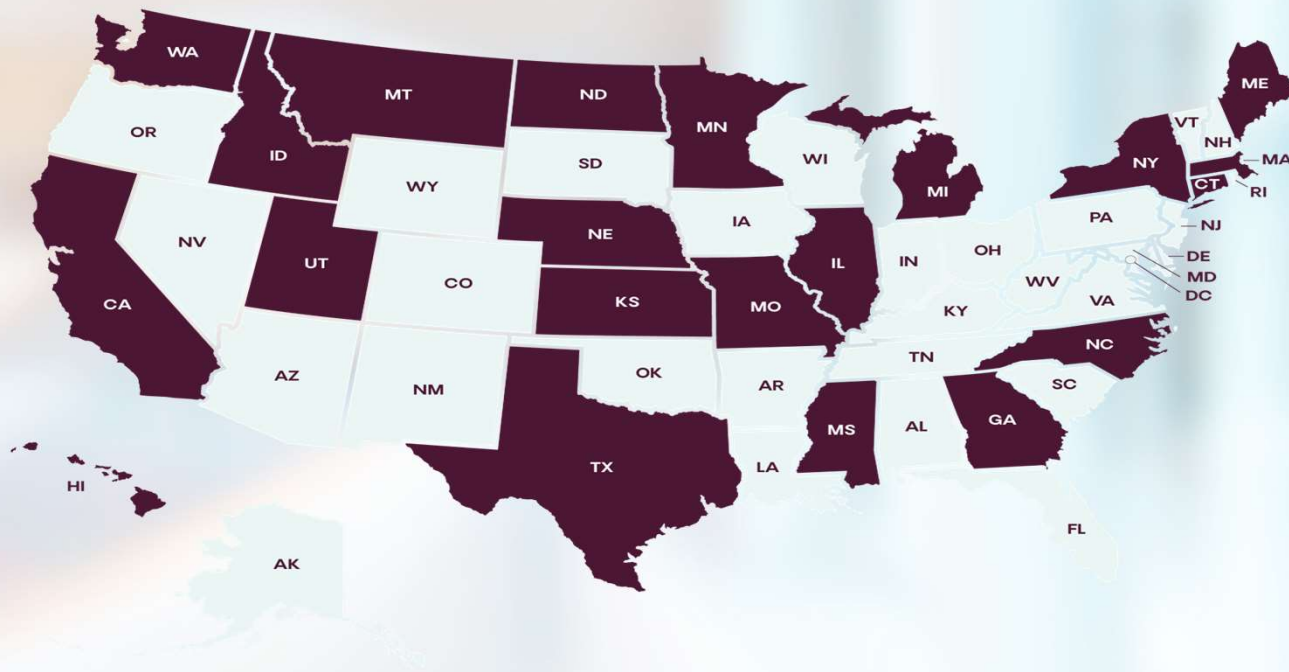
March 25, 2021

- **The stigma surrounding mental illness is a well-known barrier to seeking care** among the general population, but it can have an even stronger impact among health care professionals. For most physicians and other clinicians, seeking treatment for mental health sparks legitimate fear of resultant loss of licensure, loss of income, or other meaningful career setbacks as a result of ongoing stigma. Such fears have deterred them from accessing necessary mental health care, leaving many to suffer in silence, or worse. In fact, physicians have a significantly higher risk of dying by suicide than the general public.

Multiple Organizations are Supporting Change

- American College of Emergency Physicians, American Academy of Dermatology Association, American Academy of Family Physicians, American Academy of Neurology, American Association of Child and Adolescent Psychiatry, American Association of Clinical Urologists, American Association of Neurological Surgeons, American Association of Orthopedic Surgeons, American College of Cardiology, American College of Obstetricians and Gynecologists, American College of Radiology, American College of Rheumatology, American College of Surgeons, American Foundation for Suicide Prevention, American Gastroenterological Association, American Medical Association, American Medical Group Association, American Nurses Association, American Osteopathic Association, American Psychiatric Association, American Society of Anesthesiologists, Association for Clinical Oncology, Association of American Medical Colleges, Congress of Neurological Surgeons, Dr. Lorna Breen Heroes' Foundation, Emergency Nurses Association, National Alliance on Mental Illness, National Association of Spine Specialists, Physicians Advocacy Institute, Renal Physicians Association, Society for Vascular Surgery, The Society of Thoracic Surgeons, American Medical Association, National Association of Medical Staff Services

Responding to Medical Boards, Affiliations, and other Requests for Mental and Physical Health Information



■ States where applications were consistent with our recommendations.

■ States where applications were inconsistent with our recommendations or where applications could not be accessed for review.

Risk of No Questions

How to get the information while preserving psychological safety of the applicant?

Immediate vs. Delayed Risk

Mitigation

Trust but Verify

***In God We Trust
All Others We Credential***

If no questions

- What do you do to protect patients?

Solutions



Option 1- One Question

- Ask one question using FSMB recommended 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)”*

Option 2 – No Questions

- Refrain from asking probing questions about an applicant's health altogether



Option 3 - Attestation

- “The Oregon Medical Board recognizes that licensees encounter health conditions, including those involving mental health and substance use disorders, just as their patients and other health care providers do.
- The Board expects its licensees to address their health concerns and ensure patient safety. Options include seeking medical care, self-limiting the licensee's practice, and anonymously self-referring to the Oregon Health Professionals’ Services Program (uprisehealthmonitoring.com). “The failure to adequately address a health condition, resulting in the inability to practice your profession with reasonable skill and safety, can result in the Board taking action against your Oregon Medical Board license. I have read and understand the above advisory and agree to abide by the Board's expectation.”
- For more information, visit omb.oregon.gov/wellness
- Source: Oregon Medical Board Report, Summer 2023,
- Other states that have adopted the Attestation model North Carolina, Mississippi and Louisiana

Solutions

- Refer Mental and Physical Health disclosures to your Medical Staff's Well Being Committee
 - Develop a Medical Staff policy and/or define a process in your Bylaws to confidentially address physical and mental health disclosures or findings
 - Consider using a special attestation for applicants to disclose mental and physical health issues, separate from the primary application attestation
 - Encourage individuals with past addiction history to consult WBC

Well-Being Committee Redefined

- Active Screening
- Education
- Proactive Check-ins

- *“Because of [the physician health program’s] attention, I have my self-esteem, confidence, and health. My license too. Now my career is taking off in new directions, for which I am grateful.”*
- *Anonymous*

Well-Being Committee Purpose

- Support personal health
- Facilitate rehabilitation
- No disciplinary role

Well-Being Committee Functions

- Education
 - Prevention
 - Recognition of illness/impairment
- Self-referral resource
- Referral by others and maintaining informant confidentiality
- Maintenance of confidentiality, except:
 - Threats to health and safety of patients/others
- Developing individual rehabilitation plans
- Assessing physical ability to perform privileges and necessary accommodations
- Evaluation of credibility of complaints
- Monitoring practitioner until rehabilitation is complete
- Reporting to medical staff leadership instances in which practitioner is providing treatment
- Initiating appropriate actions when practitioner fails to complete rehabilitation

Well Being Committee

- Create comfort zone for giving information –
- Limitations will not be used against you but will be used to support you
- Accommodation may be offered

Educate - Mental Health Information Privacy

- **MENTAL HEALTH RECORDS ARE CONFIDENTIAL**
 - May be released with authorization
 - May be released in very limited circumstances v



CONFIDENTIAL

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Discrimination and Mental and Physical Health

- Americans with Disabilities Act (ADA)
- Workplace Privacy
- Reasonable Accommodations

Solutions

- Education
- Privacy
- Availability
- Affordability
- Well-Being Committee Support
- Drug Testing Policy – Clearly defined
- EAP for Medical Staff



Sample Bylaws Language

Procedures for Appointment and Reappointment

Physical and Mental Capabilities - *Obtaining Information*

- The application shall request information pertaining to the condition of the applicant's physical and mental health on a separate page, which can be removed from the remaining application and processed separately. Upon receipt of the application, the page addressing physical and mental conditions shall be sent directly to the Committee on Practitioner Wellness.

Review and Reasonable Accommodations

- Any Practitioner who discloses or manifests a physical, mental, or impairment condition that may impact patient care or has the potential to impact patient care will have his or her application processed in the usual manner without reference to the condition. The Committee on Practitioner Wellness shall be responsible for determining if the Practitioner can practice safely, with or without accommodation.

Sample Bylaws Language

- **The Committee on Practitioner Wellness shall receive all initial application and reapplication physical and mental health attestations. Following evaluation, the Committee shall designate a member of the Committee to reach out to anyone who has indicated a current (or past) physical, mental, or impairment issue that has impacted or has (had) the potential to impact their ability to practice medicine or surgery safely. The information received is confidential and shall not be disclosed to anyone outside of the Committee. When information is received from an applicant, reapplicant or medical staff member, that relates to the practitioner's health and well-being, the Committee will be responsible for formulating a plan to support the practitioner and maintain the highest degree of confidentiality.**
- **The Committee shall not disclose information regarding a physical, mental or impairment condition to the Medical Executive Committee unless it has determined that the Practitioner cannot perform the essential functions of a health care practitioner even with a reasonable accommodation or that the Practitioner refuses the recommendations of the Committee to practice safely. The Committee shall meet with the Practitioner to discuss if and how reasonable accommodations can be made and may facilitate such accommodations.**

How I Became the Singing Doctor — My journey of discovering the healing power of music

Beckers, July 1, 2023



Issues Raised by Breen Recommendation and Limitations on Credentialing

1. What information (extent) and in what manner can you ask for this information?
2. What are the Medical Staff options for dealing with any information discovered?
3. How does the purpose and function of the Physician Well Being Committee change in this environment?
4. Who determines the point at which patient safety concerns outweigh physician personal privacy rights?
5. Do we need to routinely inform patients about the status of our Medical Staff's ability to receive and act on this information?
6. Will Insurance cover any liability that may be incurred as a result of the changes?
7. At what point does an Organized Medical Staff have the right to insist on a mental and/or physical evaluation of a physician?
8. How does the WBC get protected and establish communication protocols with the MEC?
9. Why would anyone agree to sit on a WBC under these circumstances?
10. Can this function be outsourced?
11. Negligent credentialing claims?

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Resources

- Lorna Breen Hero's Foundation
 - <https://drlornabreen.org/>
- American Medical Association
 - <https://www.ama-assn.org/practice-management/physician-health/ama-physician-well-being-program>
- Federation State Medical Boards
 - <https://www.fsmb.org/siteassets/advocacy/policies/policy-on-wellness-and-burnout.pdf>
- California Public Protection and Physician Health
 - <https://cppph.org/cppph-guidelines/>
- AMA STEPS Forward Wellness-Centered Leadership Playbook
 - <https://www.ama-assn.org/practice-management/ama-steps-forward/wellness-centered-leadership-playbook>
- California Medical Association California Physician's Legal Handbook Physician Well-Being Committees
 - <https://www.cplh.org/>
- NAMSS Ideal Credentialing Standards 2024
 - <https://www.namss.org/Advocacy/Ideal-Credentialing-Standards>



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and great people
come together.



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