



# UPDATE!

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## Questions and Answers

**Chris Bundy, MD, MPH**

**Executive Medical Director, Washington Physicians Health Program**

Since 1986 the Washington Physicians Health Program (WPHP) has served as the legally authorized 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 health support 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 Medical Commission (WMC). 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 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 be impaired annually. 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. Does WPHP only address substance use disorders?**

A: No. In fact, about 60% of WPHP referrals today are for non-substance related concerns such as mental health issues, burnout and distress, medical conditions, and concerns related to aging and cognition. WPHP can help with any health condition that can cause impairment and, in general, WPHP's enabling statutes are not different for substance vs. non-substance related conditions. However, WPHP does take an individualized approach to each participant based on guidelines established by the Federation of State Physician Health Programs. As such, recommendations for evaluation, treatment, and monitoring will differ according to the condition(s) being addressed.

### **Q. What "rules" dictate the relationship between the WMC and WPHP?**

A: Washington state law (RCWs), administrative rules (WACs), and the contract between WPHP and the Department of Health govern the relationship between WPHP and WMC. The laws and rules provide for the existence of a confidential physician health program and set out the definitions and requirements of the program. RCW chapters [18-71](#) (Physicians) and [18-130](#) (especially [18-130-175](#)) are the most relevant statutes.

### **Q: If I am worried that a colleague is impaired, whom should I call?**

A: If your colleague is an MD or a PA, you can fulfill your obligation by [notifying the Washington WMC](#) or the Washington Physicians Health Program (WPHP) at 1-800-552-7236 or making a referral through our website at [www.wphp.org](http://www.wphp.org).

### **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 246-16-220](#) and [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 the patients they treat. You do not have to be certain that a colleague is impaired (such certainty is rare), knowledge that a colleague may be impaired triggers a reporting requirement. It is WPHP's role to determine whether and to what extent a health professional may be impaired.

### **Q: What happens if I make a report with WMC?**

A: WMC will be obligated to review the case and may open an investigation. This may result in disciplinary sanctions, including public disclosure of facts relevant to the case. There is also a high likelihood that WMC 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 WMC?**

A: A referral to WPHP fulfills your reporting requirement while also taking advantage of the WPHP confidential, therapeutic alternative to discipline. This means that WPHP can assist your colleague without WMC's knowledge or involvement. WPHP has an obligation to assess your colleague as soon as possible to rule out impairment or refer for further evaluation and treatment if impairment cannot be ruled out. For patient safety reasons, your colleague

will have a reasonable, but limited, timeframe in which to respond and engage with WPHP's evaluation process. They may be directed to take medical leave if impaired or at substantial risk for impairment and complete sufficient treatment before they can return to work pursuant to a WPHP health support agreement. If they are unwilling or unable to take advantage of this process, WPHP has the legal obligation to make a report to the WMC.

**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 WMC?**

A: To support 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-refer to WPHP or to be referred by their employer or colleagues to WPHP rather than to WMC serves this purpose. It encourages use of WPHP as a therapeutic alternative to discipline for providers who need help and can be rehabilitated. Having the opportunity to confidentially avoid a disciplinary process serves as a powerful motivator for physicians to commit to thorough evaluation and treatment, if needed.

**Q. Are physicians and PAs required to report their involvement with WPHP to their employer?**

A: It depends. Individuals who come to WPHP without their employer's knowledge have no obligation to report their health condition or participation in WPHP to their employer. However, a need for medical leave or a recommendation for a health support agreement will necessitate some communication with the employer. With the participant's consent, WPHP will act as an intermediary with the employer to advocate for the participant's needs while minimizing the protected health information that is disclosed. Practically speaking, referral by an employer is more common than self-referral. In those cases, participant authorized communication with the employer can help put concerns to rest and promote continuation or return to work.

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

A: If WPHP is significantly concerned that your colleague is suffering from an impairing health condition and they do not follow WPHP recommendations for evaluation, treatment, or a health support agreement, we are obligated to notify WMC. We are also required to notify the WMC in any circumstance where program non-compliance poses a reasonable likelihood of patient harm. We work very hard to help our participants avoid such circumstances. We feel that participants do best when internal motivators are engaged, rather than externally leveraged through a possible WMC referral.

**Q: How frequently does the WPHP report individuals to WMC?**

A: These events are rare. Currently, around 85% of the physicians in WPHP health support agreements are unknown to WMC. Over half that are known to WMC were referred by WMC 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 WMC instead. Historically, WPHP reporting obligation has been triggered for less than 5% of participants annually.

**Q: What happens if I do not call and make a report?**

A: When impairment is suspected, not making a report risks unsafe care. Failing to act also needlessly jeopardizes the career of a colleague where adverse professional consequences can be avoided or minimized through therapeutic intervention. 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 DOH or a civil liability action. Both the Washington State Medical Association and the American Medical Association recognize that physicians have an ethical obligation to report impaired and potentially impaired colleagues.

**Q: What if a potentially impaired physician or PA is my patient?**

A: You may still have an obligation to make a referral to WPHP or WMC, although your concern must 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 must 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 situations in which I cannot fulfill my legal reporting obligation by calling WPHP instead of the WMC?**

A: Yes, there are two. (1) 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 DOH. (2) 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 DOH is required. WPHP will advise accordingly should such circumstances come to light during the referral process.

**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 WMC?**

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

To learn more about WPHP or make a referral please call us at 800-552-7236 or visit our website at [www.wphp.org](http://www.wphp.org).