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FEATURE

Physician health programs under fire

Jeanne Lenzer asks whether bias and profit are forcing some doctors into unnecessary treatment programs for impaired physicians

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Doctors are substantially more likely than the general population to be depressed and to commit suicide.[1] Yet critics charge that the support systems put in place to help physicians in the United States are failing them and possibly driving some to suicide.[2-8]

Of the 850 000 practicing physicians in the US, 300-400 commit suicide each year. The physician suicide rate is similar for both sexes, but male physicians are 70% more likely to commit suicide than men in the general population, while female physicians are 250-400% more likely than other women.[1]

Physician health programs, which provide support and monitoring for doctors with mental health issues and alcohol or drug problems, exist in 47 states and the District of Columbia. But critics charge that some programs are punitive, unmonitored, and deprive doctors of due process rights, preventing them from challenging diagnoses they disagree with.[2-8] Some doctors say their medical license was suspended or revoked without evidence of professional impairment, tarnishing their reputation and ending their career. Simply answering "yes" to an employment or licensing question about past treatment for depression can be enough to trigger what one doctor described as a "Kafkaesque nightmare."[6]

At the center of the controversy are agreements between the programs and medical boards allowing state boards to revoke a doctor's license to practice medicine if he or she is "non-compliant" with evaluation and treatment. Advocates say that licensing boards must retain control over the programs in order to ensure physician compliance and protect patients from unsafe doctors. They cite success rates of around 80%.[9]

However, these figures fail to account for what may be a far larger pool of doctors: those who want help but are afraid to ask. A survey of medical students found they would avoid seeking help for psychological problems for various reasons, including loss of confidentiality (37%) and fear of a negative impact on their career (23%).[10]

"Holes big enough to drive a truck through"

The state of North Carolina launched an audit of its program after four psychiatrists raised concerns. The audit, which was released in April 2014,[11] found that the program "did not ensure that physicians receive quality evaluations and treatment because [there were] no documented criteria for selecting treatment centers," and that "physicians were not allowed to effectively represent themselves when disputing evaluations."

State auditor Beth Wood told *The BMJ* that holes in the program "were so big you could drive a truck through them." She said doctors could find it difficult, if not impossible, to defend themselves against an incorrect assessment because they were not allowed to appeal a diagnosis or assessment to the medical board.

Compounding the problem, said Wood, was that "the chief executive and medical director were in total control of entire process." They assessed allegedly impaired doctors, but when those assessments were contested, they were responsible for presenting complaints to the state medical board. The doctors concerned were not allowed to be present and were not allowed to see the programs' medical reports on them.

Warren Pendergast, chief executive of the North Carolina Physicians Health Program and past president of the Federation of State Physician Health Programs, declined to respond to questions from *The BMJ*. "We are…involved in litigation and therefore unable to comment at this time," he said.

The lack of transparency and failure to honor due process, said Wood, provide fertile ground for abuse in which anonymous accusers can retaliate against whistleblowers or make accusations based on personal animosities or bias.

Kernan Manion, formerly a civilian contracted psychiatrist at the naval hospital in Camp Lejeune, North Carolina, alleges in a recently filed lawsuit that the state "constructively suspended and/or revoked" his medical license after he raised concerns about poor conditions and substandard treatment of US marines with combat related post-traumatic stress disorder.[6-13] Despite a comprehensive psychologic evaluation that found Manion had no mental impairment, the state demanded that he have another assessment and possible treatment at an out-of-state facility. He declined, saying he was denied due process rights. The state then told him that because he had not complied with the program requirements he had to inactivate his license immediately and resign his position or face felony charges for practicing without a license.

Manion says in his lawsuit that doctors who are reported to physician health programs face a "catch 22"; if they challenge

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a program determination that they are alcoholic, addicted, or mentally ill, they are assumed to be "in denial" and told their license will be revoked since they are failing to cooperate with assessment. However, if they agree to assessment (even if only to avoid automatic license revocation) they are generally forced to sign five year contracts that commit them to highly burdensome and expensive treatment and monitoring programs. Even doctors who comply with program treatment plans have lost their jobs after being forced into lengthy out-of-state treatment programs.

Another criticism of the approved treatment centers is that they are not evidence based and instead often rely on a spiritual 12 step ideology. Some doctors say they should have the right to seek other forms of treatment with strong scientific evidence of success.[14 15]

Heated dispute

Doctors with the Federation of State Physician Health Programs say the programs have restored the lives of many doctors while preserving their careers. Daniel I Perlin, an anesthesiologist and board member of the federation, says he was using injected fentanyl when he was called in by his boss in February 1999 and told to take a urine test. Perlin says, "I told him to f-off and stormed out of the hospital." Ten hours later he received a registered letter from the hospital attorney saying they had conducted a preliminary audit and found "I was charging narcotics for patients I had no business taking care of…they told me I could either go to a physician health program or face prison."

Perlin went to the program and says a woman on staff there told him her story of recovery. He says, "Rather than hearing what I thought I was going to hear, which was a punitive discussion, she said, 'You're not a bad guy, you just have a bad disease.' And she opened me up to the possibility that I could practice medicine and be in recovery, and heal rather than losing my license and going to jail."

Now, 17 years later, Perlin is on a committee at his hospital to help other doctors and says he is grateful for how the program helped him.

Psychiatrists concerned

Jesse O Cavenar, Jr, emeritus professor and vice chair of the department of psychiatry at Duke University, told *The BMJ* that he grew concerned about the state's program after he and several other psychiatrists found that its diagnoses were at "marked variance" with their own assessments. Cavenar, who has never been the object of an investigation or medical board action, has become a fierce advocate for reform. He believes Manion and other doctors have been unfairly treated and that the state's program and medical board, as well as the Federation of State Physician Health Programs, have been unresponsive to concerns he and his colleagues have raised.

The American Society of Addiction Medicine strongly supports licensing controls over doctors, saying it is necessary to facilitate the "dual role" of rehabilitating doctors and other healthcare professionals while also "enhancing public safety." It vigorously defended state programs and claims that the North Carolina audit reported that "There were no instances of abuse by the program."[16]

But state auditor Wood says that is a misrepresentation of the findings. She told *The BMJ* that although the state investigators were unable to confirm specific instances of abuse, the program's processes were "so opaque" that it would be impossible to detect abuses that might have occurred, "and nobody would ever know it except the doctors who were abused." The report further specified that abuses could be undetected because "the program lacks objective, impartial due process procedures for physicians who dispute its evaluations and directives."[11]

Complaints about physician health programs extend far beyond North Carolina. Doctors in several states—including Oregon, Massachusetts, Michigan, and Florida—have filed lawsuits against physician health programs. Leonard Masters of Jacksonville, Florida, was awarded over $1.3m (£1m; €1.2m) in 1999 for "false imprisonment" after he was threatened with loss of his license and entered a drug and alcohol rehab program under duress.[17] Masters said he not only didn't have a drug or alcohol problem but the program never interviewed any of his family members, friends, professional colleagues, supervisors, or his (now former) wife of 28 years—all of whom said he had never displayed any evidence of alcohol abuse.

Doris C Gunderson, president of the Federation of State Physician Health Programs, told *The BMJ* that the federation is concerned that publicity about "a small, dissatisfied minority of physicians who were not able to achieve a successful return to their profession," could drive doctors away from programs that are helping them. She said that doctors who successfully complete monitoring have lower malpractice claims and that the goal of the program "is to say to a physician: 'We're on your side and are here to help get you back to 100% effectiveness.'"

Big business

Doctors caught up in state programs say they have not only been prevented from working but have been expected to pay exorbitant sums of money for treatment—sometimes as cash up-front. Rehabilitation programs are a $34bn industry in the US, and doctors are often referred by state health programs to three month inpatient treatment centers that can cost up to $1000 a day. According to the American Society of Addiction Medicine, "the majority" of treatment programs provide both diagnostic and treatment services. This dual role creates an inherent conflict of interest, thereby raising concerns about "disease creep, in which doctors may fall prey to an ever expanding definition of emotional or mental disturbances."

Indeed, Gunderson's email to *The BMJ* cited a study supporting her claim that "at least one third" of doctors "will experience a health condition that impairs their ability to practice medicine safely."[18]

Distinguishing between illness and impairment

A substantial problem driving unnecessary mandated treatment is that many programs do not seem to be distinguishing doctors who are ill from those who are impaired—something that is central to treatment, according to the Federation of State Physician Health Programs, the American Society of Medicine, and the American Psychiatric Association. Conflating illness with impairment results in far more doctors being subject to investigations and treatment than might otherwise be the case.

The federation defines impairment as "the inability to practice medicine with reasonable skill and safety." It states, "Physician illness and impairment exist on a continuum, with illness typically predating impairment, often by many years. This is a critically important distinction. Illness is the existence of a disease. Impairment is a functional classification and implies

the inability of the person affected by disease to perform specific activities."[19]

Despite the distinction, the federation notes that "In some jurisdictions the regulatory process addresses all ill physicians as if they were impaired."[19] Critics say that many doctors have indeed been caught up in mandated programs even though they were not impaired.

Susan Haney, an emergency physician in Oregon, learnt the hard way about the problem. Haney, who has had intermittent depression, was told that despite an unblemished track record as a doctor, she would have to "inactivate" her license while she was undergoing evaluation after she voluntarily sought help. Her depression, which was stable and never interfered with her work, was nonetheless treated as evidence of impairment. Her case is supported by the Oregon Medical Association, which voted unanimously to support Haney in a lawsuit against the Oregon Board of Medical Examiners.

Similarly, when Michael Langan, an internist in Massachusetts, sought help to taper off an oral opiate he had been started on for shingles, he was forced to sign a five year treatment and monitoring program contract and before he was even evaluated, he was asked how he was going to pay the $80 000 cost. [2]

Maryland experience

Virtually all states provide a mechanism to report "non-compliant" doctors to the relevant licensing authorities—whether they enter programs voluntarily or are mandated. The combination of treatment with the threat of license revocation has been held out as necessary to protect patients and enforce treatment. However, programs that operate under threat of license revocation can have unintended and perverse consequences, says Pamela Wible, a family physician who specializes in physician suicides. Writing in *Medscape*, Wible said, "Threatened loss of licensure deters vulnerable physicians from seeking help and may even trigger a suicidal crisis," and cited instances she believes are indicative of the problem.[20 21]

Even when doctors enter a program voluntarily, they can have their license revoked for non-compliance with assessment or treatment—for example, because they didn't attend Alcoholics Anonymous meetings or show up for a drug test.

To reduce barriers to treatment for physicians seeking help, doctors in Maryland fought long and hard to get a separate voluntary and confidential program that is not run by the medical board.[22] Advocates say the voluntary approach will both reduce the abuses of doctors caused by harsh board actions and enhance patient protection by encouraging more doctors to get help without fear of punitive actions.

Program director, Chae Kwak, told *The BMJ,* "In many other states, programs may be statutorily obligated to report to the medical board." The voluntary Maryland program, in contrast, is legally bound by strict confidentiality. Kwak says, "We couldn't report [a doctor] to the board even if we wanted to."

However, as a safeguard, doctors who are referred by hospitals or other entities sign disclosure agreements allowing progress reports to be sent.

Kwak says it's too soon to know the full effects of having dual programs, but so far the majority of doctors in treatment in Maryland are in the voluntary program, while only 5% of doctors in the North Carolina program enter voluntarily.

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1 Hampton T. Experts address risk of physician suicide. *JAMA* 2005;294:1189-91. doi:10.1001/jama.294.10.1189 pmid:16160124.
2 Anderson P. Physician health programs: more harm than good? *Medscape* 2015. http://www.medscape.com/viewarticle/849772
3 Boyd JW. A call for national standards and oversight of state physician health programs. *J Addict Med* 2015;9:431-2. doi:10.1097/ADM.0000000000000174 pmid:26517323.
4 Miles S. Do state licensing procedures discriminate against physicians using mental health services? One physician calls for reform. *Minn Med* 1997;80:42-6.pmid:9009612.
5 Miles SH. A piece of my mind. A challenge to licensing boards: the stigma of mental illness. *JAMA* 1998;280:865. doi:10.1001/jama.280.10.865 pmid:9739951.
6 Anderson P. MD sues North Carolina Medical Board, physicians health program. *Medscape* 2016 Feb 16. http://www.medscape.com/viewarticle/858968
7 Boyd JW, Knight JR. Ethical and managerial considerations regarding state physician health programs. *J Addict Med* 2012;6:243-6. doi:10.1097/ADM.0b013e318262ab09 pmid:23070127.
8 Katz A. Physician health programs: coercive or supportive?*Emerg Med News* 2016;38:20-1doi:10.1097/01.EEM.0000480794.97823.49.
9 McLellan AT, Skipper GS, Campbell M, DuPont RL. Five year outcomes in a cohort study of physicians treated for substance use disorders in the United States. *BMJ* 2008;337:a2038. doi:10.1136/bmj.a2038. pmid:18984632.
10 Tjia J, Givens JL, Shea JA. Factors associated with undertreatment of medical student depression. *J Am Coll Health* 2005;53:219-24. doi:10.3200/JACH.53.5.219-224 pmid:15813232.
11 Wood BA. State of North Carolina performance audit. North Carolina physicians health program. 2016. http://www.ncauditor.net/EPSWeb/Reports/Performance/PER-2013-8141.pdf
12 Benjamin M. Camp Lejeune whistle-blower fired. *Salon* 2009 Nov 16. http://www.salon.com/2009/11/16/camp_lejeune/ .
13 Benjamin M. Navy supervisor doctored whistle-blower's records *Salon* 2010 Feb 1. http://www.salon.com/2010/02/01/camp_lejeune_.
14 Glaser G. The irrationality of alcoholics anonymous. *Atlantic* 2015 Apr. http://www.theatlantic.com/magazine/archive/2015/04/the-irrationality-of-alcoholics-anonymous/386255/
15 Szalavitz M. The rehab industry needs to clean up its act. here's how. *Huffington Post* 2016 Feb 16. http://www.huffingtonpost.com/the-influence/the-rehab-industry-needs-clean-up_b_9210542.html
16 Goldsmith RJ, Carr GD. ASAM responds to "Physician health programs: more harm than good?" *Medscape* 2015 http://www.medscape.com/viewarticle/851462
17 Williams D. Doctor wins his lawsuit says hospital misdiagnosed him. *Florida Times Union* 1999 May 25. https://www.questia.com/newspaper/1G1-55483548/doctor-wins-his-lawsuit-says-hospital-misdiagnosed
18 Leape LL, Fromson JA. Problem doctors: is there a system-level solution?*Ann Intern Med* 2006;144:107-15. doi:10.7326/0003-4819-144-2-200601170-00008 pmid:16418410.
19 Federation of State Physician Health Programs. Public policy statement: position illness versus impairment. 2008. https://www.fsmb.org/Media/Default/PDF/FSMB/Advocacy/grpol_policy-on-physician-impairment.pdf
20 Wible PL. Do physician health programs increase physician suicides? *Medscape* 2015 http://www.medscape.com/viewarticle/850023.http://www.medscape.com/viewarticle/850023.
21 Bourne T, Wynants L, Peters M, et al. The impact of complaints procedures on the welfare, health and clinical practise of 7926 doctors in the UK: a cross-sectional survey. *BMJ Open* 2015;5:e006687. doi:10.1136/bmjopen-2014-006687 pmid:25592686.
22 Platman S, Allen TE, Bailey S, Kwak C, Johnson S. Physician health programs: the Maryland experience. *J Addict Med* 2013;7:435-8. doi:10.1097/01.ADM.0000434988.43332.dc pmid:24145163.