

## Physician impairment

Most physicians are likely familiar with guidelines relating to physician impairment, but they may not be aware that these guidelines typically conflict with the Americans with Disabilities Act (ADA), which protects all employees against unwarranted requests for mental health information or evaluations.

Under the ADA, employers cannot request mental health information from their employees or refer them for mental health evaluations without objective evidence showing that either the employee:

- is unable to perform essential job functions because of a mental health condition
- poses a high risk of substantial, imminent harm to himself (herself) or others in the workplace because of a mental health condition.<sup>1</sup>

Employers cannot rely on speculative evidence or generalizations about these conditions when making these determinations,<sup>1</sup> and common mental disorders (eg, depressive disorders, anxiety disorders, attention-deficit/hyperactivity disorder, specific learn-

ing disorders, etc.) should almost never form the basis of such requests.<sup>2</sup>

In contrast, the American Medical Association (AMA) does not distinguish between the presence of a mental health condition and physician impairment,<sup>3,4</sup> which may result in unwarranted requests and referrals for mental health evaluations. Some state laws on impairment, which all derive from AMA policies,<sup>5</sup> even state outright that, “‘Impaired’ or ‘impairment’ means the presence of the diseases of alcoholism, drug abuse, or mental illness”<sup>6</sup> and directly discriminate against physicians with these conditions.

State physician health programs (PHPs) also may describe impairment in problematic ways (eg, “Involvement in litigation against hospital”).<sup>7</sup> Their descriptions also are overly inclusive in that they could be used to describe most physicians (N.D.L., J.W.B., unpublished data, 2017), and they rarely represent sufficient legal indications for a mental health evaluation under the ADA (N.D.L., J.W.B., unpublished data, 2017). Even the APA’s *Clinical Guide to Psychiatric Ethics* describes physician impairment as synonymous with mental illness.<sup>8</sup>

Requests for mental health information or evaluations not only can include referrals to state PHPs but also “suggestions” to see a psychologist, professional job coach, or any provider who may ask for mental health information. Under the ADA’s guidelines, obtaining “voluntary” consent from an employee who could be fired for not cooperating does not change the involuntary nature of these requests.<sup>2,9</sup>

Employers who hire psychiatrists, physicians, and medical residents should comply with the ADA and disregard the AMA’s policies, state laws, PHPs, other institutional guidelines,<sup>10</sup> and guidance from some articles published in *CURRENT PSYCHIATRY*<sup>11,12</sup> when requesting mental health information, evaluations, and referrals for their employees.

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