



Medical Board Seeks Non-Disciplinary Program for Providers Suffering From Mental and Physical Conditions

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Medical Board Seeks Non-Disciplinary Program for Providers Suffering From Mental and Physical Conditions

Written by Eric J. Plinke, Daniel S. Zinsmaster and Courtney M. White – 2/20/18

The State Medical Board of Ohio (Medical Board) recently released proposed rules that will create a non-disciplinary, confidential monitoring program for licensees with mental or physical illnesses. Historically, licensees with a mental or physical illness could not only be subject to formal disciplinary action pursuant to the Medical Board's rules, but the licensee's mental or physical illness became public information as a result of the disciplinary process. This potentially stigmatic threat of public disciplinary action and disclosure has caused many licensees to hide or ignore such conditions rather than seek treatment^[i] or to avoid seeking licensure in Ohio. The proposed rules attempt to address these circumstances.

In 1987, the Ohio General Assembly carved out a reporting exception for physicians experiencing impairment from alcohol or substance abuse or dependency. Often referred to as the "One Bite Rule," this program allowed an impaired licensee to avoid Medical Board intervention, and the physician's colleagues would be excused from reporting the physician's impairment, so long as the physician completed treatment with a Medical Board-approved treatment provider, maintained uninterrupted sobriety and violated no other provisions of the Ohio Medical Practices Act (RC Chapter 4731). In other words, if licensees appropriately addressed their substance abuse or dependency issues prior to Medical Board intervention and engaged in no

other professional misconduct, health care providers could avoid discipline so long as they maintained compliance with their monitoring program.

Despite the success of the One Bite Rule for physicians with substance abuse issues, licensees with mental or physical illnesses have not received the benefit of the One Bite Rule. Instead, they have faced possible disciplinary actions when seeking treatment for any mental or physical illness, or for merely having a history of such illnesses. The Medical Board's recently proposed rules seek to ameliorate this disparity.

The proposed rules will allow licensees with mental or physical illnesses to be monitored by the Medical Board without being subjected to formal, public disciplinary action. In order to be eligible for this program, a licensee must meet certain eligibility requirements, including the following:

1. Submit to a physical or mental examination if required by the Medical Board.
2. Provide continuing authorization for the disclosure and release of information to the Medical Board or other individuals involved in the licensee's treatment.
3. Be willing to commence treatment, monitoring or supervision, or, if the licensee has already commenced treatment for the mental or physical condition, demonstrate the licensee has been fully compliant with the treatment plan.
4. If the licensee was previously a participant in the monitoring program, the licensee must have demonstrated full compliance with all program requirements.
5. If the licensee was previously the subject of monitoring or formal disciplinary action, the action must have been based solely on the individual's mental or physical illness and the licensee must have been released from probation without restrictions.

6. The licensee must not have been implicated in any sexual boundary allegations, acts or threats of violence, felonies, misdemeanors or any criminal acts, regardless of whether formal charges were pursued.
7. Apart from the presence of a mental or physical illness, there is no information indicating the licensee is in violation of any other provision of the Ohio Medical Practices Act.
8. Allowing the licensee to participate in the confidential monitoring program will not create a significant risk of potential harm to patients.

Under the proposed rules, upon meeting the eligibility requirements, the licensee would be required to enter into a participation agreement with the Medical Board that would include requirements such as the licensee stipulate to the existence of a mental or physical illness; undertake continued treatment for the illness at the licensee's expense; submit to screening for analysis of therapeutic levels of medication that may be prescribed to the licensee; and agree to ongoing monitoring by the Medical Board. More information on the proposed rules can be found on the Medical Board's website, available [here](#).

The Medical Board's recently proposed rules provide a response, at least in part, to criticism of state licensing boards that penalize health care providers who are experiencing health issues through no fault of their own or who simply have a history of such conditions. Understandably, licensees may still express apprehensions about reporting mental or physical health conditions to the Medical Board, even with the implementation of a confidential, non-disciplinary monitoring program. Nevertheless, the proposed rules are a positive step for licensees with mental or physical illnesses and may incentivize such individuals to seek and receive treatment.

The Medical Board is currently seeking comments on the proposed rules. Comments must be sent to the Medical Board (Sallie.Debolt@med.ohio.gov) and the Common Sense Initiative Office (CSIPublicComments@governor.ohio.gov) no later than February 26, 2018. Please contact your Dinsmore health care attorney with any questions regarding the proposed rules or for assistance with submitting comments.

[i] See N. Dyrbye, M.D., MHPE et al., *Medical Licensure Questions and Physician Reluctance to Seek Care for Mental Health Conditions*, Mayo Clin Proc. 2017 Oct;92(10): 1486-1493.

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