Federation of State Physician Health Programs (FSPHP)
Task Force to Support Safe Haven Position Statement
Enhancing Confidential Care for Physicians and Healthcare Professionals through
FSPHP State Physician Health Programs (PHPs)

Purpose/Need Statement: To create a safe mechanism for physicians and healthcare professionals to seek help while maintaining the privacy of their protected private health information.

A staggering physician workforce shortage is predicted to have a negative impact on patient care. Therefore, effective and proven rehabilitation protects the health of the physician and sustains the physician workforce, thereby supporting public safety. Physician Health Programs (PHP) were established in 1974 to address these issues.

General Considerations:
Confidentiality promotes early intervention, self-referral, and open communication during treatment. Confidentiality diminishes the effects of stigma that can be associated with mental health care. The implementation of confidentiality is an integral component of encouraging help-seeking and provides assurance of public safety.

There is a Triad of Confidentiality that is essential in PHPs:

1. **Regulatory Protection:** PHP is approved to accept confidential referrals without the involvement of the state medical board and may accept referrals in lieu of a medical board report in states that mandate reporting of impairment or potential impairment
2. **Record Protection**: PHP records are protected from discovery in legal proceedings
3. **Application Protection:** PHP compliance permits non-disclosure of protected health information on licensure/credentialing/insurance and certification applications

Conclusions:

1. **Regulatory Protection:** Licensing board regulations and legislation should exist that allow referral to state-approved PHPs as an alternative to mandated reporting, particularly when mental health concerns are not a threat to patient safety

2. **Record Protection:** States should implement relevant federal and state legislation enforcing ADA and HIPAA compliance to protect the privacy of PHP information and to allow non-reporting of health conditions addressed by a state-approved PHP when there is not an issue that poses a public risk.

3. **Application Protection:** Licensing boards, credentialing agencies, board certification applications, and professional liability applications should be adjusted to exclude disclosure of potentially impairing conditions when individuals comply with a state-approved PHP.

Approved by FSPHP Task Force to Support Safe Haven March 2024 and
FSPHP Board of Directors September 2024

ACTION PLAN: Enhancing Confidential Care for Healthcare Professionals through FSPHP State Physician Health Programs or Health Professional Programs (PHPs)
A Campaign to Codify the Triad of Confidentiality

Call to Action:
Addressing known confidentiality barriers to seeking help, which may discourage healthcare professionals from obtaining necessary support, early intervention, or treatment from their state physician health program when facing well-being challenges.

Background:
FSPHP State Physician Health Program members are authorized by organized medicine to function as the confidential alternative to disciplinary measures. PHPs, with over 50 years of expertise, effectively balance the supportive needs of healthcare professionals with patient safety concerns. Studies indicate successful outcomes, significantly surpassing the general population, for recovery from mental health conditions and substance use disorders. Additionally, completing the PHP model is associated with reduced malpractice rates. PHPs excel in peer support treatment, monitoring, and rehabilitation to ensure safe medical practice. When implemented according to the standards of the PHP model, afforded with safeguards and confidentiality, state physician health programs are an integral component of maintaining and enhancing public safety.

Objectives:
FSPHP seeks support from national medical organizations (e.g. AMA, FSMB, ACGME, AOA, ACP, AFSP, APA, ABMS, etc.), credentialing bodies, state medical societies, state medical boards, state legislatures, liability carriers, and physician interest groups (e.g. Dr. Lorna Breen Heroes' Foundation) to advocate for PHP confidentiality and PHP record protection improvements to state legislation and licensing board regulations. This can be accomplished while maintaining the critical responsibility of state medical boards for public safety.

The proposed changes include tangible amendments to legislation and regulation to effectively implement the Triad of Confidentiality:

- **Codify Regulatory Protection:** Codify in legislation, and/or rules and regulations the process of referral to a PHPs to increase utilization of their services: as an efficacious alternative to discipline, encouraging healthcare professionals including physicians to be referred to their state PHP for issues related to behavior and mental health (including, but not limited to, burnout, career fatigue, substance use disorder, and other health conditions). Reporting to the medical board would only occur if the individual were deemed not safe to practice or posed a danger to themselves or others.

- **Codify PHP Record Protection:** Safeguarding all PHP referral and participant information, including proceedings, minutes, records, reports, and communications, as privileged information. This protection ensures non-disclosure and protection from a subpoena except where patient safety concerns are present. Under no circumstances should a PHP record be open to disclosure to unauthorized sources. Notably, reporting public safety issues and maintaining PHP record protection are not mutually exclusive concepts and in fact, work best

when considered hand-in-hand. A physician undergoing treatment for mental health issues will be apprised of the public safety exception to confidentiality.

- **Codify application protection with a mechanism for creating appropriate wording of questions for non-disclosure of Protected Health Information on Licensure/Credentialing Applications when there is PHP compliance:** Adjusting licensing board and credentialing organization applications to exclude disclosure of potentially impairing conditions when individuals comply with a state-approved PHP. Report of the FSMB Workgroup to Study Risk and Support Factors Affecting Physician Performance.

Action Plan:
The following action plan is intended to be multi-phasic and iterative based on the progress of each state and organized medicine to implement the Triad of Confidentiality consistently:

1. **Regulatory Protection:** PHP is approved to accept confidential referrals without the involvement of the state medical board and may accept referrals in lieu of a medical board report in states that mandate reporting of impairment or potential impairment
2. **Record Protection:** PHP records are protected from discovery in legal proceedings
3. **Application Protection:** PHP compliance permits non-disclosure of protected health information on licensure/credentialing/insurance and certification applications

Phase One: Information Gathering
FSPHP will assess the current status of confidentiality on a state-by-state basis. The suggested plan includes the utilization of regional and local leadership to find this information.

- Step 1: Determine on a state-by-state basis, the current status of the aforementioned elements of confidentiality: record protection, referral as an alternative to discipline, and licensure application questions.
- Step 2: Identify which of these three elements are deficient for those states that have not fully implemented the Triad of Confidentiality.
- Step 3: Strategize with regional and local leadership, PHPs, and state stakeholders to take the steps necessary to promote change for each triad element.
- Step 4: Identify existing barriers across states and regions to strategize with organized medicine ways to create an environment conducive to change.
- Step 5: Decide what is needed to achieve confidentiality by the stated triad.

Phase Two: Education and Public Campaign
FSPHP will execute this action plan through an informative website page, press releases, and collaborative educational efforts with the FSMB, AMA, ABMS, ACGME, AOA, ACP, AFSP, APA, ABMS, etc. State Medical Societies, Specialty Boards, and Credentialing Organizations.

The focus will be on sharing examples of:

- **Licensing Board Regulations:** Legislation allowing referral to state-approved PHPs as an alternative to mandated reporting, particularly when health concerns are not a threat to patient safety.

- **Model Legislation:** ADA-compliant legislation protecting the privacy of PHP records and the non-reporting of health conditions appropriately addressed by a state-approved PHP when there is not an issue that poses a public risk.
- **Application Revisions:** Adjusting licensing board and credentialing organization applications to exclude disclosure of potentially impairing conditions when individuals comply with state-approved PHP recommendations.

Recommended question with FSPHP Part B:

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) ***Reference is FSMB Physician Wellness Report**

Part B: If you are currently a compliant participant in the State Physician Health Program, you may answer "No."

Phase Three: Initial and Periodic Review

FSPHP will monitor the progress of each state in implementing the Triad of Confidentiality within state legislation and regulation. Tracking the progress of the implementation will be under the PEER Committee for those participating in the process and remaining PHPs will be encouraged by FSPHP to implement changes with Board assistance.

End Goal:

The ultimate goal is for organized medicine, state medical boards, credentialing bodies, and specialty boards to increase the confidentiality of PHPs where it does not exist and thereby promote physician use of state PHPs. This approach aims to promote physician wellness by reducing the stigma surrounding mental health and addiction issues and ultimately safeguarding the quality of patient care. Empowering state PHPs to inform legislation and enhance regulations supporting confidentiality goals.

TRIAD EXAMPLES:

Massachusetts:

- Massachusetts statute that *enables* exception to mandated reporting is at MGL Ch. 112, s. 5F https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXVI/Chapter112/Section5F

- Regulations that define the exception to mandated reporting are at 243 CMR 2.07 (23) https://www.mass.gov/doc/243-cmr-2-licensing-and-the-practice-of-medicine/download

  PHS is also a defined peer review organization that provides document protection (defined at MGL Ch. 111, s. 1 “Medical Peer Review Committee” and protections set forth at MGL Ch. 111, s. 204)

  https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXVI/Chapter111/Section1

  https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXVI/Chapter111/Section204

- **Medical board license application question:** Please note, the licensing board either has or is about to remove reference to "or within the past two years."

  For the purposes of the following questions, "currently "does not mean on the day of, or even the weeks or months, proceeding the completion of this application. It means recently enough to have an impact on one's functioning as a licensee, or within the past two years. "Medical condition " includes mental health conditions, behavioral health conditions, and substance use disorders.

  Do you have a medical or physical condition that currently appears your ability to practice medicine? (You may answer "NO" if the behavior or condition is known to the Massachusetts Medical Society Physician Health Services and you are complying with all PHS requirements for evaluation, treatment, and monitoring as recommended. If you answer "yes", Please provide the specifics of your condition in any related treatment, including dates and diagnosis. In addition, provide any adjustments or interventions you have made or taken into ameliorate and address the impact of your medical condition on your current practice, including a change of specialty of field of practice, or participation in any supervised rehabilitation program, professional, assistance, or retraining program, or monitoring program.

Washington:

- The PHP as an Exception to Mandated Reporting – Washington:
  - https://app.leg.wa.gov/wac/default.aspx?cite=246-16-220
  - https://app.leg.wa.gov/rcw/default.aspx?cite=18.130.070
- The PHP Record Protection:
  - https://app.leg.wa.gov/rcw/default.aspx?cite=18.130.175 (section 4)
- Health Related Licensure Application Question*:*
  - https://wmc.wa.gov/licensing/applications-and-forms

References:

1. The sick physician. Impairment by psychiatric disorders, including alcoholism and drug dependence. *JAMA*. Feb 5 1973;223(6):684-7.
2. Carr GD, Bradley Hall P, Reid Finlayson AJ, DuPont RL. Physician Health Programs: The US Model. *Physician Mental Health and Well-Being*. 2017:265-294:chap Chapter 12.
3. Earley P. Special populations: persons in safety-sensitive occupations. *The ASAM criteria 3rd ed Carson City: The Change Companies*. 2013
4. DuPont RL, Humphreys K. A new paradigm for long-term recovery. *Subst Abus*. Jan 2011;32(1):1- doi:10.1080/08897077.2011.540497
5. DuPont RL, Seppala MD, White WL. The three missing elements in the treatment of substance use disorders: Lessons from the physician health programs. *J Addict Dis*. 2016;35(1):3-7. doi:10.1080/10550887.2015.1102797
6. *Model Physician Health Programs Act*. 2016. https://www.fsphp.org/assets/docs/ama_physicians_health_programs_act_-_2016.pdf

7. 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*. Nov 4 2008;337:a2038. doi:10.1136/bmj.a2038
8. DuPont RL, McLellan AT, White WL, Merlo LJ, Gold MS. Setting the standard for recovery: Physicians' Health Programs. *J Subst Abuse Treat*. Mar 2009;36(2):159-71. doi:10.1016/j.jsat.2008.01.004
9. Weenink J-W, Kool RB, Bartels RH, Westert GP. Getting back on track: a systematic review of the outcomes of remediation and rehabilitation programmes for healthcare professionals with performance concerns. *BMJ Quality & Safety*. 2017;26(12):1004-1014. doi:10.1136/bmjqs-2017-006710
10. Brooks E, Gendel MH, Gundersen DC, et al. Physician health programmes and malpractice claims: reducing risk through monitoring. *Occup Med (Lond)*. Jun 2013;63(4):274-80. doi:10.1093/occmed/kqt036
11. Domino KB, Hornbein TF, Polissar NL, et al. Risk factors for relapse in health care professionals with substance use disorders. *JAMA*. Mar 23 2005;293(12):1453-60. doi:10.1001/jama.293.12.1453
12. Skipper GE, Campbell MD, DuPont RL. Anesthesiologists with substance use disorders: a 5-year outcome study from 16 state physician health programs. *Anesthesia & Analgesia*. 2009;109(3):891-896.
13. Buhl A, Oreskovich MR, Meredith CW, Campbell MD, Dupont RL. Prognosis for the recovery of surgeons from chemical dependency: a 5-year outcome study. *Arch Surg*. Nov 2011;146(11):1286-91. doi:10.1001/archsurg.2011.271
14. Knight JR, Sanchez LT, Sherritt L, Bresnahan LR, Fromson JA. Outcomes of a monitoring program for physicians with mental and behavioral health problems. *J Psychiatr Pract*. Jan 2007;13(1):25-32. doi:10.1097/00131746-200701000-00004
15. Knight JR, Sanchez LT, Sherritt L, Bresnahan LR, Silveria JM, Fromson JA. Monitoring physician drug problems: attitudes of participants. *J Addict Dis*. 2002;21(4):27-36. doi:10.1300/J069v21n04_03
16. Ellis E. NC Physicians Health Program offered help to hundreds last year. NCMedSoc.,Available at: https://secure.ncmedsoc.org/physicians-health-program-offered-help-to-hundreds-last-year/. Accessed April 30, 2019
17. https://amascopeofpractice.org/wp-content/uploads/2023/01/AMA-Issue-Brief-Access-to-Care-2021.pdf