

Confidentiality Ensures Protection in a Less-than-Perfect World



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In a perfect world, there would be no stigma associated with getting help for addiction or a mental or behavioral health condition. Sadly, we don't live in that world; in reality, stigma keeps people – including health professionals – from asking for help when they need it, especially for a mental health condition.

Stigma is lethal. It significantly deters physicians and other licensed healthcare workers from seeking help for mental illness.^{1, 2} It leads to exclusion, prejudice, discrimination, and can even lead to death.³ Professional Health Programs (PHP), including ours, have seen some tragic losses due to stigma and its consequences.

Stigma is a barrier to care for anyone suffering from addiction, depression and suicide ideations, cognitive issues, even burnout and anxiety, and health professionals are no different. They fight both real and perceived fear about losing their license, livelihood, promotions or other career opportunities, and about being seen as a poor provider, weak, or "less than" if they admit they need help. When they don't come forward, they are at risk of disease progression that can lead to impairment, impacting their personal safety and

that of their patients.

In the battle against stigma, confidentiality is critical. Anonymity and confidentiality have long been sacred principles for those in recovery; 12-step programs have touted anonymity going back to 1935. These days, the personal health records of those in addiction or mental health treatment are safeguarded not only by HIPAA and HITECH regulations but also through Title 42 Part 2 of the Code of Federal Regulations (CFR).⁴ The goal is to eliminate fear of discrimination or even prosecution for those seeking help for substance use and other dependencies.

Confidentiality is also a foundational component in the Physician Health Program (PHP) world. Our national organization, the Federation of State Physician Health Programs (FSPHP) – of which I currently serve as president – has written an issue brief on the importance of communicating about both the extent and limits of PHP confidentiality. The brief recommends that member PHPs publicly display their confidentiality parameters, including their standing under HIPAA, CFR, safe harbor and state peer review statutes, their confidentiality processes with state medical boards, legal requirements, and any limits or circumstances for releases of information. The Tennessee Medical Foundation (TMF) has followed the Federation's recommendations. You can read the TMF statement on Privacy & Confidentiality on our website at <https://e-tmf.org/privacy/>.

The FSPHP also has an initiative called the Triad of Confidentiality, which seeks to address the following scenarios:

- Medical licensing and credentialing processes often require disclosure of mental health history.
- Seeking help for a mental health condition can lead to breaches in confidentiality, potentially impacting physician standing among colleagues or superiors.
- Demanding workloads make it challenging for physicians, especially trainees, to prioritize their own mental health care.
- Many physicians internalize negative attitudes about mental illness, viewing the need for help as a sign of weakness or personal failure causing self-stigma.

The Triad elements are:

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, PHP record protection, confidential referral to a PHP, and health fitness question reform.

These actions are part of the battle to eliminate stigma. You may have seen recent headlines detailing intense efforts by the House of Medicine to mitigate stigma; the American Medical Association, Physicians Foundation, Dr. Lorna Breen Heroes' Foundation, National Institutes of Health, FSPHP, Federation of State Medical Boards (FSMB), and many other entities including the TMF, are waging this war together. There have been improvements on several fronts but there is still much to do.

In this imperfect world, we still need to protect those who seek help for mental health disorders. We can do that through the Triad of Confidentiality, and through ongoing efforts to let health professionals and stakeholders know that if they are referred to, and become involved with a PHP, we are committed to holding their identity and information in the strictest confidence.

References:

1. Knaak S, Mantler E, Szeto A. Mental illness-related stigma in healthcare: Barriers to access and care and evidence-based solutions. *Healthc Manage Forum*. 2017 Mar;30(2):111-116. doi: 10.1177/0840470416679413. Epub 2017 Feb 16. PMID: 28929889; PMCID: PMC5347358.
2. Bergman A, Rushton CH. Overcoming Stigma: Asking for and Receiving Mental Health Support. *AACN Adv Crit Care*. 2023 Mar 15;34(1):67-71. doi: 10.4037/aacnacc2023684. PMID: 36877645; PMCID: PMC10329256.
3. Jain L, Sarfraz Z, Karlapati S, Kazmi S, Nasir MJ, Atiq N, Ansari D, Shah D, Aamir U, Zaidi K, Shakil Zubair A, Jyotsana P. Suicide in Healthcare Workers: An Umbrella Review of Prevalence, Causes, and Preventive Strategies. *J Prim Care Community Health*. 2024 Jan-Dec;15:21501319241273242. doi: 10.1177/21501319241273242. PMID: 39228162; PMCID: PMC11375687.
4. Available at <https://www.ecfr.gov/current/title-42/chapter-I/subchapter-A/part-2>

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