

DECEMBER 9-10, 2021

 **HALL
RENDER**
KILLIAN HEATH & LYMAN

 Illinois
State
Medical
Society

Aging and Impaired Practitioners

MEDICAL STAFF SEMINAR 2021

PRESENTED BY HALL RENDER'S MEDICAL STAFF SERVICES TEAM

HEALTH LAW
IS OUR BUSINESS.

■ ■ HALL
■ ■ RENDER
KILLIAN HEATH & LYMAN

Presenter Info



Brian Betner
Attorney, Hall Render
bbetner@hallrender.com
317-977-1466

Disclosures

- **DISCLOSURE:** Mayo B. Alao, Brian C. Betner, Erin M. Drummy, Christopher C. Eades, and Scott Geboy have indicated that they do not have a current or recent significant financial interest or affiliation with any manufacturer of any commercial products or providers of any commercial services that may be discussed or that may have an impact on this presentation or with any corporate organizations offering financial or educational grants for this continuing medical education activity.
- **Planning Committee Disclosures:** No member of the CME Planning Committee has disclosed a relevant financial relationship or affiliation with any commercial interest.



AMITA Health Saints Mary and Elizabeth Medical Center is accredited by the Illinois State Medical Society to provide continuing medical education for physicians. AMITA Health Saints Mary and Elizabeth Medical Center designates this live activity for a maximum of 9.75 hour AMA PRA Category 1 Credit(s)™. Each physician should claim credit commensurate with the extent of their participation in the activity.



Background

- Hospital/Physician Strategy 101
 - Backbone to service delivery
 - Specialists build programs – cardiovascular, orthopedic, bariatric
 - Develop outpatient programs
 - Primary care and specialists, outpatient services
 - Branding
- Physician recruitment/development is an investment
 - Time, money and resources
 - Opportunity



Background

- Physician Daily Pressures
 - Financial
 - EMR
 - Uncertain regulatory environment
 - Expanded competition (Walmart, CVS, etc.)
 - Declining reimbursement
 - Production-based compensation models
 - Commercial payer requirements
 - Expanded AHP roles
 - Work/life balance
 - Patient satisfaction
 - Medicine is hard



I. Who Is an Impaired Physician?

An impaired physician is unable to practice medicine with reasonable skill and safety to patients because of physical or mental illness, including deterioration through the aging process, loss of motor skill or excessive use or abuse of drugs, including alcohol

American Medical Association

I. Who Is an Impaired Physician?

- Alcohol
- Drugs
- Burnout
- Behavior
- Aging
- Medical

I. Who Is an Impaired Physician?

Drugs and Alcohol

- Prevalence of alcohol and/or illegal drug dependence for physicians is similar to that for the general population
- According to 2020 U.S. Census, there are **1,018,776** physicians in the U.S., which means there are approximately:
 - 61,000 physicians with drug abuse issues
 - 142,000 with alcohol abuse issues

I. Who Is an Impaired Physician?

Prescription Drugs

- Physicians five times more likely to misuse prescription drugs
- Relieve stress, pain, emotional issues, etc.

I. Who Is an Impaired Physician?

Drugs and Alcohol

- Anesthesiologists and ED physicians are 3 times more likely to abuse substances than the remaining population of physicians – Fentanyl, Sufentanil
- Substance abuse is the most frequent reason a physician is subject to disciplinary action by state medical licensing boards
- 17% physicians (N=1900) report personal knowledge of impaired physician in past 3 years
- 1/3 didn't report it. JAMA

I. Who Is an Impaired Physician?

Drugs and Alcohol

- 5-year study of 904 physicians in 16 state physician health programs
 - 50% alcohol
 - 36% opioids
 - 8% stimulants
 - 50% multiple drugs

I. Who Is an Impaired Physician?

Psychological/Mental Health

- Depression among physicians parallels that of general population – 13% for men, 20% for women
- Suicide risk is approximately 40% higher for men, 130% higher for women (then general population)

I. Who Is an Impaired Physician?

Psychological/Mental Health

- "Personality disorder is a pattern of inner experience and behavior that deviates markedly from expectations of his/her culture, is pervasive and inflexible, is stable over time and leads to distress or impairment"
 - DSM IV

I. Who Is an Impaired Physician?

Psychological/Mental Health

- Practitioners requiring mandated intervention tend to fall within antisocial, borderline, narcissistic or histrionic behavior categories

I. Who Is an Impaired Physician?

Psychological/Mental Health

- Antisocial Personality Disorder
 - Deceitfulness, as indicated by repeated lying, use of aliases or conning others for personal profit or pleasure
 - Impulsivity or failure to plan ahead
 - Irritability and aggressiveness
 - Consistent irresponsibility, as indicated by repeated failure to sustain consistent work behavior or honor financial obligations
 - Lack of remorse, as indicated by being indifferent to or rationalizing having hurt, mistreated or stolen from another

I. Who Is an Impaired Physician?

Psychological/Mental Health

- Narcissistic Personality
 - Has a grandiose sense of self-importance
 - Preoccupied with fantasies of unlimited success, power, brilliance, beauty, etc.
 - Believes he or she is "special" and unique and can only be understood by, or should associate with, other special or high-status people or institutions
 - Has a sense of entitlement, i.e., unreasonable expectations of especially favorable treatment or automatic compliance with his/her expectations
 - Is interpersonally exploitive, i.e., takes advantage of others to achieve his or her own ends
 - Lacks empathy – is unwilling to recognize or identify with the feelings of others

I. Who Is an Impaired Physician?

Psychological/Mental Health

- Borderline Personality – intense mood swings that repeat over time, along with:
 - Harmful, impulsive behaviors
 - Relationship issues
 - Fear of abandonment
 - Aggressive behavior
 - Suicide gestures, anger

I. Who Is an Impaired Physician?

Aging Physicians

- As adults reach 60s and 70s, progressive decline in cognitive and physical skills
- *After age 55, consistent decline in cognitive functioning, inductive reasoning, verbal memory and overall reasoning¹

¹D. Powell, M.D., Practices in Cognitive Aging, 1994

I. Who Is an Impaired Physician?

Aging Physicians

- Many practitioners reduce workloads, call obligations, etc., as they grow older
 - However...
 - Some lack self-awareness about limits
 - Recession damaged net worth, extending retirement date
 - Some haven't developed interests outside their medical practice

I. Who Is an Impaired Physician?

Aging Physicians

- 1985: 9.4% of physicians over age 65
- 2011: 15.1% of physicians over age 65
- 2018: 17% of physicians over age 65
- Per AAMC, more than 2 of every 5 active physicians in the U.S. will be 65 or older within the next decade
 - The Complexities of Physician Supply and Demand: Projections from 2019-2034

II. Physician Burnout = Impairment?

- 2015: 46% Physician reported being burned out
- 2013: 40%
- 2018: 14% report burnout & depression
- Burnout → Loss of enthusiasm for work, cynicism and low sense of personal accomplishment

II. Physician Burnout = Impairment?

- Factors contributing to burnout
 - 56% Documentation
 - 39% Too many hours at work
 - 28% Lack of respect from peers
 - 24% Compensation
 - 21% Loss of control
 - 20% Cog in wheel

II. Physician Burnout = Impairment?

- Burnout affect patient care?
 - 40% Never
 - 33% Easily frustrated with patients
 - 32% Less engaged with patients
 - 29% Less friendly
 - 14% Express frustration in front of patients

III. What Are the Signs of Impairment?

Alcohol

- Alcohol on breath
- Slurs speech
- Tremors
- Hidden bottles
- Poor hygiene
- Memory blackouts
- Tardiness
- Mood swings
- Irritability
- Unexplained absences
- Isolation
- Leaving work (unexcused)

III. What Are the Signs of Impairment?

Opiates

- Agitation
- Dilated pupils
- Pinpoint pupils
- Sweating
- Frequent bathroom breaks
- Unexplained absences
- Excessive narcotics usage

III. What Are the Signs of Impairment?

Aging

- Forgetfulness
- Confusion
- Memory or concentration issues
- Uncertainty about procedure, anatomy
- Repeating questions
- Orientation issues

III. What Are the Signs of Impairment?

Disruptive Behavior

- Tantrums, verbal/physical assault, abuse, sexual advances, demands for special treatment, false accusations, rude/inappropriate behavior

IV. What's the Appropriate Intervention?

- One that ensures patient safety while affording the physician the opportunity for effective treatment, in confidence, that allows him/her to successfully resume their practice under a program of appropriate aftercare
 - Wellness vs. Peer Review Action
 - Don't underestimate the power of denial
 - Practitioners with psychological or aging issues may not have the insight to recognize the issues exist – part of the condition

IV. What's the Appropriate Intervention?

- Ideally, the issue is routed through the Medical Staff's physician assistance or Physician Health committees, who works in conjunction with the state physician health program to have the issue evaluated and treated
- State Physician Assistance Program
 - Some programs report physician recovery rates as high as 90%

IV. What's the Appropriate Intervention?

- The traditional peer review, or disciplinary approach, is not an effective mechanism to address these issues, other than as leverage or motivation to ensure compliance with assessment process
- What about employed physicians? The employment agreement likely affords the hospital the right to obtain a "fitness for duty" evaluation

IV. What's the Appropriate Intervention?

- Keep the ADA in mind...it does not cover an individual currently engaged in the illegal use of drugs
- The ADA does ban the discrimination against an individual who has successfully completed a supervised drug rehabilitation program or who is participating in such a program
 - 28 CFR §131(a)(2)

IV. What's the Appropriate Intervention?

- Coping with burnout
 - 50% Exercise
 - 46% Family/friends
 - 42% Sleep
 - 36% Isolation
 - 22% Alcohol
 - 3% Drug use

V. What's the Process?

Report → Investigate → Referral → Assessment →
Treatment → Reentry → Monitor

V. What's the Process?

Applicable Legal Authorities – Quality and Physician Health Issues

	Quality	Conduct	Substance	Psychological	Medical	Aging
HCQIA						
State Law						
Accrediting Bodies						
Medical Staff Bylaws/Corrective Action Plan						
• Medical Staff Policies						
• OPPE/FPPE						
• Code of Conduct						
Physician Wellness Committee						
• Wellness Policies						
• Physician Wellness Agreement						
Employment Agreement						
• HR policies						

V. What's the Process?

Report

- Anyone can report suspected impairment, i.e., patients, staff, other practitioners, etc.
 - Initial reports are usually made verbally to a supervisor, who contacts the Chief of Staff and/or the administrator on-call
 - The reporter should document the incident ASAP, including time, date of occurrence, where the incident occurred, witnesses present, basis for the suspicion and their name

V. What's the Process?

Investigation

- The Chief of Staff and/or Administrator meet privately with the Physician ASAP after the report, i.e., within minutes
- Physician may be directed to provide blood or urine sample, under supervision, for immediate testing
- Physician may be sent home and others requested to attend to his/her patients
- Chief and/or Administrator may convene meeting of Wellness Committee ASAP, share the results of initial investigation, request Physician to attend to respond to concerns and questions
- Where appropriate, consult with State Association resources as well

V. What's the Process?

Referral

- Where evidence suggests, direct physician to contact state association and voluntarily suspend practice pending assessment and treatment
- What if physician is not willing to do so voluntarily?
 - Summary (and potentially indefinite) suspension on basis physician poses an imminent threat to health, safety or welfare of patients (see Medical Staff Bylaws)

V. What's the Process?

Referral

- Physician required to execute an Assistance Agreement:
 - They will immediately contact state association and take first available appointment
 - Medical Staff Wellness Committee/MEC may contact and share specific concerns with the state, and the state may communicate with them
 - They will follow through and cooperate with state recommendations, including referrals for assessment and treatment
 - They will voluntarily suspend their practice and use of privileges pending completion of this process and release by Wellness Committee/MEC to resume practice
 - Breach of the Agreement may result in suspension of privileges, fair hearing rights and a Data Bank report

V. What's the Process?

Assessment

- The assessment will be multi-disciplinary and include:
 - Complete medical examination
 - Battery of psychological testing
 - Psychiatric evaluation
 - Family therapy
- The Assessment Program should be allowed/encouraged/required to contact the Medical Staff Wellness Committee to obtain their perspective on the issues
- The hospital Medical Staff Wellness Committee should be allowed to obtain copies of any program evaluations, reports or recommendations

V. What's the Process?

Assessment/Treatment

- Sometimes, the process ends with assessment – find no issue. More frequently, assessment evolves into recommendations for treatment
- So, duration of this part of the process is difficult to predict – depends on the results
- And...the physician is financially responsible for the costs involved
- If employed, consider FMLA, disability and sick-time benefits

V. What's the Process?

Treatment

- The program releases the physician, recommendation or prescription for aftercare to manage and monitor the issues identified
- Wellness Committee enters into a written agreement with the physician that implements the recommendation and the physician agrees to their monitoring and oversight
 - AA, NA, 12 step program meetings
 - Counseling
 - Assignment of mentor
 - Random testing
 - Practice modifications

V. What's the Process?

Monitor

- Oversight may seem to be intrusive and to a degree, somewhat insulting
- Successful recovery requires independent oversight, testing, monitoring for years
- And, the goal is a successful recovery
- Potential for relapse is lifelong – no "cure"

Practical Takeaways

- Have a physician assistance policy
- Appoint a physician wellness committee
- Educate staff about risks and signs of impairment
- Encourage good faith reporting



Questions?



Contact Us

For more information on these topics
visit hallrender.com.

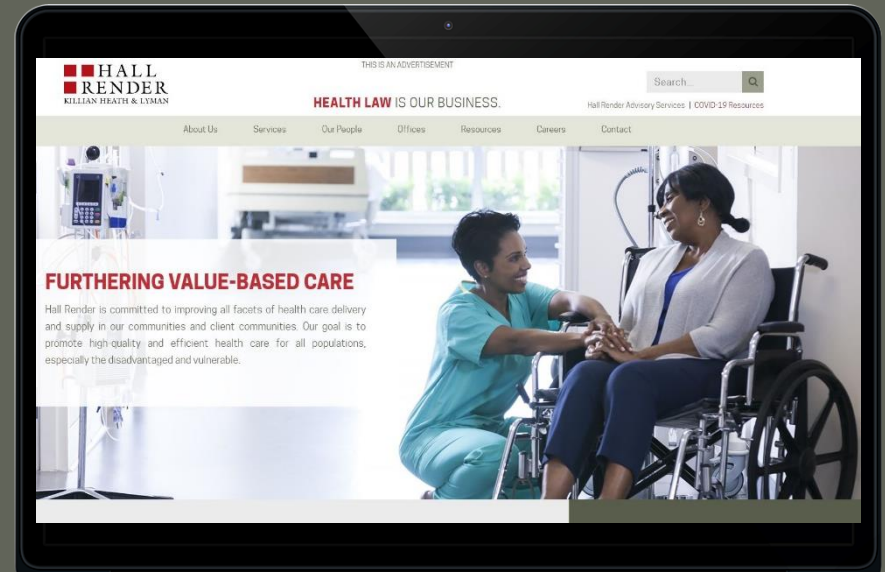
Brian Betner

bbetner@hallrender.com

(317) 977-1466

HEALTH LAW
IS OUR BUSINESS.

**HALL
RENDER**
KILLIAN HEATH & LYMAN



This presentation is solely for educational purposes and the matters presented herein do not constitute legal advice with respect to your particular situation.