Workplace Impairment of the Healthcare Professional

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This resource is for anyone and everyone in the healthcare field. This includes counselors, social workers, nurses, physicians, physician assistants, podiatrists, dentists, veterinarians, pharmacists, pharmacy technicians, and anyone else that is part of a healthcare establishment. For the purpose of this article, all of the aforementioned professionals will be referred to as either a *healthcare worker* or as a *healthcare professional*.

This article looks at the policies and standards in place by very reputable cooperatives such as the American Medical Association and The Joint Commission. Common signs and symptoms of substance abuse along with the steps of reporting said abuse are also discussed. The end of the article contains other resources available for those with the substance abuse problem, along with those reporting the problem.

American Medical Association Policies

“There are generally agreed upon definitions of disruptive behavior that can be found in the American Medical Association (AMA) Policy H 140.918-Disruptive Physician and in the Joint Commission On Accreditation Of Healthcare Organizations (JCAHO) Medical staff chapter, Physician Health, M.2.6, which will soon demand that all hospitals have well-being committees to handle just such concerns. A 1972 report of the AMA Council on Mental Health defined physician impairment. Certain managed care guidelines broaden the definition of an impaired physician. Along with physicians who are unable, or potentially unable, to practice medicine with reasonable skill and safety is the "disruptive" physician. These physicians may not have identifiable substance abuse or psychiatric disorders, but may still be the subject of action. Even conditions, such as extreme fatigue and emotional distress, can cause impairment, even if only temporarily. [Healthcare professionals] who, because of chemical use, mental or behavioral problems, or physical illness, pose a danger to patients are, by definition, impaired. They may be unsafe to practice medicine, and the danger may be direct or indirect, such as when their interactions with other staff and patients interfere with providing medical care. Clearly, a [healthcare worker] who manifests aberrant behavior that appears to compromise the quality of patient care should be placed under observation. However, what if the behavior is not deemed to present an immediate danger to patient safety? In the past, medical staffs have tolerated a wide range of such behaviors. A set of parameters recognized as a broad standard needed to be identified. The standards needed to be flexible, yet offer guidelines to managers, wellness committees, and boards.”[1]

The American Medical Association (AMA) has been encouraging scientific growth and improvement, enhancement of the public health circuit, and providing positive guidance and reinforcement for the health care professional-patient relationship since 1847.[2] One branch of the AMA is the Ethics Group. The Ethics Group strives to promote superior client service and the betterment of the health of humanity by evaluating and encouraging health care professional competence, dedication, capacity, and expertise. This group is composed of two parts: the Council on Ethical and Judicial Affairs (CEJA) and the Journal of Ethics (JOE). The Council on Ethical and Judicial Affairs “maintains and updates the Code of Medical Ethics and promotes adherence to the Code’s professional ethical standards.”[3] “The AMA Journal of Ethics helps students, residents, and physicians explore and address

the ethical challenges emerging from new medical technologies, changing patient expectations, and shifting public priorities."[4]

"The AMA's Code of Medical Ethics offers ethical guidance for the medical profession and centers on the physician-patient relationship. It sets ethical guidance to how [healthcare professionals] should interact with patients. The AMA believes all [healthcare professionals] should uphold the ethical standards set forth in the Code."[5] "CEJA's goal is to preserve the AMA's legacy of leadership in professional ethics while ensuring that the Code remains relevant in the face of changes in biomedical science and conditions of medical practice."[6]

The following is how the American Medical Association defines behavior:[7]

- *Inappropriate behavior means conduct that is unwarranted and is reasonably interpreted to be demeaning or offensive. Persistent, repeated inappropriate behavior can become a form of harassment and thereby become disruptive, and subject to treatment as 'disruptive behavior.'*

- *Disruptive behavior means any abusive conduct, including sexual or other forms of harassment, or other forms of verbal or non-verbal conduct that harms or intimidates others to the extent that quality of care or patient safety could be compromised.*

- *Appropriate behavior means any reasonable conduct to advocate for patients, to recommend improvements in patient care, to participate in the operations, leadership or activities of the organized medical staff, or to engage in professional practice, including practice that may be in competition with the hospital. Appropriate behavior is not subject to discipline under these bylaws.*

AMA's Code of Medical Ethics Opinion 9.3.1:[8]

> *When physician health or wellness is compromised, so may the safety and effectiveness of the medical care provided. To preserve the quality of their performance, physicians have a responsibility to maintain their health and wellness, broadly construed as preventing or treating acute or chronic diseases, including mental illness, disabilities, and occupational stress.*

To fulfill this responsibility individually, [healthcare professionals] should:

(a) Maintain their own health and wellness by:

1. *Following healthy lifestyle habits*
2. *Ensuring that they have a personal physician whose objectivity is not compromised*

(b) Take appropriate action when their health or wellness is compromised, including:

1. *Engaging in honest assessment of their ability to continue practicing safely*
2. *Taking measures to mitigate the problem*
3. *Taking appropriate measures to protect patients, including measures to minimize the risk of transmitting infectious disease commensurate with the seriousness of the disease*
4. *Seeking appropriate help as needed, including help in addressing substance abuse. [Healthcare professionals] should not practice if their ability to do so safely is impaired by use of a controlled substance, alcohol, other chemical agent or a health condition*

Collectively, [healthcare professionals] have an obligation to ensure that colleagues are able to provide safe and effective care, which includes promoting health and wellness among [healthcare professionals].

AMA's Code of Medical Ethics Opinion 9.3.2:[9]

Physical or mental health conditions that interfere with a [healthcare professional's] ability to engage safely in professional activities can put patients at risk, compromise professional relationships, and undermine trust in medicine. While protecting patients' well-being must always be the primary consideration, [healthcare professionals] who are impaired are deserving of thoughtful, compassionate care.

To protect patient interests and ensure that their colleagues receive appropriate care and assistance, individually [healthcare professionals] have an ethical obligation to:

(a) Intervene in a timely manner to ensure that impaired colleagues cease practicing and receive appropriate assistance from a [healthcare professional] health program.

(b) Report impaired colleagues in keeping with ethics guidance and applicable law.

(c) Assist recovered colleagues when they resume patient care.

Collectively, [healthcare professionals] have an obligation to ensure that their colleagues are able to provide safe and effective care. This obligation is discharged by:

(d) Promoting health and wellness among [healthcare professionals].

(e) Establishing mechanisms to assure that impaired [healthcare professionals] promptly cease practice.

(f) Supporting peers in identifying [healthcare professionals] in need of help.

(g) Establishing or supporting [healthcare professional] health programs that provide a supportive environment to maintain and restore health and wellness.

AMA's Code of Medical Ethics Opinion 9.4.2:[10]

Medicine has a long tradition of self-regulation, based on [healthcare professionals'] enduring commitment to safeguard the welfare of patients and the trust of the public. The obligation to report incompetent or unethical conduct that may put patients at risk is recognized in both the ethical standards of the profession and in law and [healthcare professionals] should be able to report such conduct without fear or loss of favor.

Reporting a colleague who is incompetent or who engages in unethical behavior is intended not only to protect patients, but also to help ensure

that colleagues receive appropriate assistance from a [healthcare professional] health program or other service to be able to practice safely and ethically. [Healthcare professionals] must not submit false or malicious reports.

[Healthcare professionals] who become aware of or strongly suspect that conduct threatens patient welfare or otherwise appears to violate ethical or legal standards should:

(a) Report the conduct to appropriate clinical authorities in the first instance so that the possible impact on patient welfare can be assessed and remedial action taken. This should include notifying the peer review body of the hospital, or the local or state medical society when the [healthcare professional] of concern does not have hospital privileges.

(b) Report directly to the state licensing board when the conduct in question poses an immediate threat to the health and safety of patients or violates state licensing provisions.

(c) Report to a higher authority if the conduct continues unchanged despite initial reporting.

(d) Protect the privacy of any patients who may be involved to the greatest extent possible, consistent with due process.

(e) Report the suspected violation to appropriate authorities.

[Healthcare professionals] who receive reports of alleged incompetent or unethical conduct should:

(f) Evaluate the reported information critically and objectively.

(g) Hold the matter in confidence until it is resolved.

(h) Ensure that identified deficiencies are remedied or reported to other appropriate authorities for action.

(i) Notify the reporting [healthcare professional] when appropriate action has been taken, except in cases of anonymous reporting.

AMA's Code of Medical Ethics Opinion 9.4.3:[11]

Incompetence, corruption, dishonest, or unethical conduct on the part of members of the medical profession is reprehensible. In addition to posing a real or potential threat to patients, such conduct undermines the public's confidence in the profession. The obligation to address misconduct falls on both individual [healthcare professionals] and on the profession as a whole.

The goal of disciplinary review is both to protect patients and to help ensure that colleagues receive appropriate assistance from a [healthcare professional] health program or other service to enable them to practice safely and ethically. Disciplinary review must not be undertaken falsely or maliciously.

Individually, [healthcare professionals] should report colleagues whose behavior is incompetent or unethical in keeping with ethics guidance.

Collectively, medical societies have a civic and professional obligation to:

(a) Report to the appropriate governmental body or state board of medical examiners credible evidence that may come to their attention involving the alleged criminal conduct of any [healthcare professional] relating to the practice of medicine.

(b) Initiate disciplinary action whenever a [healthcare professional] is alleged to have engaged in misconduct whenever there is credible evidence tending to establish unethical conduct, regardless of the outcome of any civil or criminal proceedings relating to the alleged misconduct.

(c) Impose a penalty, up to and including expulsion from membership, on a [healthcare professional] who violates ethical standards.

AMA's Code of Medical Ethics Opinion 9.4.4:[12]

The importance of respect among all health professionals as a means of ensuring good patient care is foundational to ethics. [Healthcare professionals] have a responsibility to address situations in which individual [healthcare professionals] behave disruptively, that is, speak or act in ways that may negatively affect patient care, including conduct that

interferes with the individual's ability to work with other members of the health care team, or for others to work with the [healthcare professional].

Disruptive behavior is different from criticism offered in good faith with the aim of improving patient care and from collective action on the part of [healthcare professionals]. [Healthcare professionals] must not submit false or malicious reports of disruptive behavior.

[Healthcare professionals] who have leadership roles in a health care institution must be sensitive to the unintended effects institutional structures, policies, and practices may have on patient care and professional staff.

As members of the medical staff, [healthcare professionals] should develop and adopt policies or bylaw provisions that:

(a) Establish a body authorized to receive, review, and act on reports of disruptive behavior, such as a medical staff wellness committee. Members must be required to disclose relevant conflicts of interest and to recuse themselves from a hearing.

(b) Establish procedural safeguards that protect due process.

(c) Clearly state principal objectives in terms that ensure high standards of patient care, and promote a professional practice and work environment.

(d) Clearly describe the behaviors or types of behavior that will prompt intervention.

(e) Provide a channel for reporting and appropriately recording instances of disruptive behavior. A single incident may not warrant action, but individual reports may help identify a pattern that requires intervention.

(f) Establish a process to review or verify reports of disruptive behavior.

(g) Establish a process to notify a [healthcare professional] that his or her behavior has been reported as disruptive, and provide opportunity for the [healthcare professional] to respond to the report.

(h) Provide for monitoring and assessing whether a [healthcare professional's] disruptive conduct improves after intervention.

(i) Provide for evaluative and corrective actions that are commensurate with the behavior, such as self-correction and structured rehabilitation. Suspending the individual's responsibilities or privileges should be a mechanism of final resort.

(j) Identify who will be involved in the various stages of the process, from reviewing reports to notifying [healthcare professionals] and monitoring conduct after intervention.

(k) Provide clear guidelines for protecting confidentiality.

(l) Ensure that individuals who report instances of disruptive behavior are appropriately protected.

The Joint Commission Standards

"Founded in 1951, The Joint Commission seeks to continuously improve health care for the public, in collaboration with other stakeholders, by evaluating health care organizations and inspiring them to excel in providing safe and effective care of the highest quality and value. The Joint Commission evaluates and accredits more than 21,000 health care organizations and programs in the United States. An independent, not-for-profit organization, The Joint Commission is the nation's oldest and largest standards-setting and accrediting body in health care. To earn and maintain The Joint Commission's Gold Seal of Approval™, an organization must undergo an on-site survey by a Joint Commission survey team at least every three years. (Laboratories must be surveyed every two years.)"[13]

"Joint Commission standards are the basis of an objective evaluation process that can help health care organizations measure, assess and improve performance. The standards focus on important patient, individual, or resident care and organization functions that are essential to providing safe, high quality

care. The Joint Commission's state-of-the-art standards set expectations for organization performance that are reasonable, achievable, and surveyable."[14]

"Joint Commission standards are developed with input from health care professionals, providers, subject matter experts, consumers, and government agencies (including the Centers for Medicare & Medicaid Services). They are informed by scientific literature and expert consensus and reviewed by the Board of Commissioners. New standards are added only if they relate to patient safety or quality of care, have a positive impact on health outcomes, meet or surpass law and regulation, and can be accurately and readily measured. The standards development process includes the following steps:"[14]

- *Emerging quality and safety issues suggesting the need for additional or modified requirements are identified through the scientific literature or discussions with The Joint Commission's standing committees and advisory groups, accredited organizations, professional associations, consumer groups or others.*
- *The Joint Commission prepares draft standards using input from technical advisory panels, focus groups, experts and other stakeholders.*
- *The draft standards are distributed nationally for review and made available for comment on the Standards Field Review page of The Joint Commission website.*
- *After any necessary revisions, standards are reviewed and approved by executive leadership.*
- *The survey process is enhanced, as needed, to address the new standards requirements, and pilot testing of the survey process is conducted.*
- *Surveyors are educated about how to assess compliance with the new standards.*
- *The approved standards are published for use by the field.*
- *Once a standard is in effect, ongoing feedback is sought for the purpose of continuous improvement.*

"The [Joint Commission] has stated that healthcare organizations have an obligation to protect patients from harm, and that they are therefore required to design a process that provides education and prevention of physical, psychiatric, and emotional illness and facilitates confidential diagnosis, treatment, and

rehabilitation of potentially impaired [healthcare professionals]. The focus of this process is rehabilitation, rather than discipline, to aid a [healthcare professional] in retaining or regaining optimal professional functioning, consistent with the protection of patients. However, the standards also direct that if, at any time during this process, it is determined that a [healthcare professional] is unable to safely perform according to the privileges that he or she had been granted, the matter is forwarded to medical staff leadership for appropriate corrective action. Such action includes, but is not limited to, strict adherence to any state or federally mandated reporting requirements."[15]

"While the most compelling reason for addressing disruptive and intimidating behavior has been the clear demonstration that it can be harmful for patients, there are other reasons. Individuals who have a history of disruptive behavior also pose the highest litigation risk for American hospitals, and many would argue that such behavior is inconsistent with the highest professional standards. Such behavior also contributes to poor teamwork, difficult work environments, poor patient satisfaction, and problems recruiting and retaining nursing staff."[16]

"Several groups have described approaches for dealing with disruptive and intimidating behavior; the ones which seem most adaptable are those from the College of Physicians and Surgeons of Ontario and the Vanderbilt group. These include:"[16]

- *Making expectations explicit by having a code of conduct supported by appropriate policies*
- *Ensuring robust Board support for clinical leaders in implementation*
- *Support and training for those dealing with disruptive and intimidating behavior*
- *Screening for health and personal issues*
- *Proactive surveillance systems*
- *Dealing consistently and transparently with infringements*
- *Dealing with lower level aberrant behavior early*
- *Having a graduated set of responses (informal, formal, disciplinary, regulatory) depending on the severity of the incident*
- *Making resources available to help those displaying and those affected by disruptive and intimidating behavior*

"Joint Commission accreditation can be earned by many types of health care organizations, including hospitals, doctor's offices, nursing homes, office-based surgery centers, behavioral health treatment facilities, and providers of home care services."[17]

There are many benefits of Joint Commission accreditation. These include:[18]

- *Helps organize and strengthen patient safety efforts – Patient safety and quality of care issues are at the forefront of Joint Commission standards and initiatives.*
- *Strengthens community confidence in the quality and safety of care, treatment and services – Achieving accreditation makes a strong statement to the community about an organization's efforts to provide the highest quality services.*
- *Provides a competitive edge in the marketplace – Accreditation may provide a marketing advantage in a competitive health care environment and improve the ability to secure new business.*
- *Improves risk management and risk reduction – Joint Commission standards focus on state-of-the-art performance improvement strategies that help health care organizations continuously improve the safety and quality of care, which can reduce the risk of error or low quality care.*
- *May reduce liability insurance costs – By enhancing risk management efforts, accreditation may improve access to and reduce the cost of liability insurance coverage.*
- *Provides education to improve business operations – Joint Commission Resources, the Joint Commission's not-for-profit affiliate, provides continuing support and education services to accredited organizations in a variety of settings.*
- *Provides professional advice and counsel, enhancing staff education – Joint Commission surveyors are experienced health care professionals trained to provide expert advice and education services during the on-site survey.*
- *Provides a customized, intensive review – Joint Commission surveyors come from a variety of health care industries and are assigned to organizations that match their background. The standards also are specific to each accreditation program so each survey is relevant to your industry.*

- *Enhances staff recruitment and development – Joint Commission accreditation can attract qualified personnel, who prefer to serve in an accredited organization. Accredited organizations also provide additional opportunities for staff to develop their skills and knowledge.*
- *Provides deeming authority for Medicare certification – Some accredited health care organizations qualify for Medicare and Medicaid certification without undergoing a separate government quality inspection, which eases the burdens of duplicative federal and state regulatory agency surveys.*
- *Recognized by insurers and other third parties – In some markets, accreditation is becoming a prerequisite to eligibility for insurance reimbursement and for participation in managed care plans or contract bidding.*
- *Provides a framework for organizational structure and management – Accreditation involves preparing for a survey and maintaining a high level of quality and compliance with the latest standards. Joint Commission accreditation provides guidance to an organization's quality improvement efforts.*
- *May fulfill regulatory requirements in select states – Laws may require certain health care providers to acquire accreditation for their organization. Those organizations already accredited by The Joint Commission may be compliant and need not undergo any additional surveys or inspections.*
- *Provides practical tools to strengthen or maintain performance excellence – The Leading Practice Library offers good practices submitted by accredited organizations. The Targeted Solutions Tool, an interactive web-based tool from the Joint Commission Center for Transforming Healthcare, allows accredited organizations to measure their organization's performance and helps them find customized solutions for challenging health care problems.*
- *Aligns health care organizations with one of the most respected names in health care – Being accredited by The Joint Commission helps organizations position for the future of integrated care.*

Joint Commission accreditation is different from certification. "Certification is earned by programs or services that may be based within or associated with a health care organization. For example, a Joint Commission accredited medical

center can have Joint Commission certified programs or services within neurological or orthopedics. These programs could be within the medical center or in the community."[19]

As with accreditation, certification provides many benefits, including:[20]

- *Improves the quality of patient care by reducing variation in clinical processes – The Joint Commission's standards and emphasis on clinical practice guidelines help organizations establish a consistent approach to care, reducing the risk of error.*
- *Provides a framework for program structure and management – Certification standards help organize the disease management program. This helps to maintain a consistently high level of quality, using effective data-driven performance improvement.*
- *Provides an objective assessment of clinical excellence – Joint Commission reviewers have significant experience evaluating disease management programs. They are trained to provide expert advice and education on good practices during the on-site review.*
- *Creates a loyal, cohesive clinical team – Certification provides an opportunity for staff to develop their skills and knowledge. Achieving certification provides the clinical team with common goals and a concrete validation of their combined efforts.*
- *Promotes a culture of excellence across the organization – Consistent alignment with Joint Commission standards promotes an environment of continuous improvement in the care of patients.*
- *Facilitates marketing, contracting and reimbursement – Certification may provide an advantage in a competitive health care marketplace and improve the ability to secure new business.*
- *Strengthens community confidence in the quality and safety of care, treatment, and services – Achieving and displaying The Joint Commission's Gold Seal of Approval® makes a strong statement to the community about an organization's commitment to providing the highest quality services.*
- *Can fulfill regulatory requirements in select states – Certification may meet certain regulatory requirements in some states, which can reduce duplication on the part of certified organizations.*

"Substance abuse can result in negative consequences for the health professional including loss of family, license to practice, or even life. Substance misuse also jeopardizes the public which depends on them for care. The cost associated with chemical dependency is significant. It affects employers, co-workers, clients, family, and the community at large. Absenteeism, accidents, injuries, stress-related illnesses and violence are only some examples that can result if the disease is left untreated."[21]

"The pathways toward development of substance abuse and dependence problems in healthcare professionals vary by group. For example, though professionally discouraged, self-diagnosing physicians have reported prescribing controlled substances for themselves. Due to drug access, a significant number of pharmacists tend to self-medicate and have the opportunity to titrate their drug use, a practice that can perpetuate the fallacy that pharmacological knowledge of drug action is an effective strategy to prevent addiction. In addition to drug access and a social environment promoting drug use people who choose nursing as a profession may report a higher rate of family history of alcoholism and drug abuse than other [healthcare professional] groups. Finally, perhaps more so than any other group of [healthcare professionals], the greatest threat in dentistry may be alcohol consumption, not controlled substance use. Given the increasingly stressful environment due to manpower shortages in the healthcare system in general, substance induced impairment among some healthcare professions is anticipated to grow."[22]

Healthcare professionals "are perceived as immune to the temptations of daily life. After all, they preach the virtues of a healthy lifestyle and understand the dangers of drug and alcohol abuse,"[23] and "on the whole, demonstrate healthier lifestyles than the general population, including lower rates of smoking and higher rates of exercise."[24] "This thought process, however, is flawed. One out of ten doctors will succumb to alcohol or drug misuse during their careers, and 7% of doctors are active substance abusers."[23] "The American Nurses Association (ANA) estimates that six to eight percent of nurses use alcohol or drugs to an extent that is sufficient to impair practice. Healthcare professionals are highly trained, self-motivated and are often expected to assume leadership roles, therefore may have great difficulty in acknowledging personal needs. It is common to hear, 'I could not reach out for help.'"[21] It has been determined that "substance misuse and addiction rates are no different among [healthcare professionals] that they are in the general population, and [healthcare professionals] demonstrate significantly higher levels of opioid abuse."[24] "This

risky behavior has not been the subject of a lot of public scrutiny since [those working in the healthcare field] take the utmost care to safeguard their professional images, and their addiction is usually not discovered until it is well-advanced. Physicians also enjoy a lofty social position filled with many rewards, but this elevated status creates an obstacle when they suffer from addiction, thereby delaying any intervention to overcome the problem. This delay is frequently due to the potentially career-destroying outcomes of disclosure, as society has zero tolerance for drug use by health care professionals. Most patients accept 'only abstinence for any practicing [healthcare professional].'"[23]

A contrasting feature, however, between the general population and those who work in the healthcare field, is that healthcare workers "who abuse drugs or alcohol are rarely trying to obtain a 'quick high'; rather, they are attempting to diffuse the extraordinary stresses and demands of their profession or are trying to deal with physical pain or mental illness. Addicted individuals are also twice as likely to develop mood or anxiety disorders. This comorbidity, the infliction of two or more disorders or illnesses affecting the same person, may serve to worsen the [healthcare worker's] untreated addiction or mental illness. Since [healthcare professionals] are knowledgeable in the use of drugs, their work performance is usually the last thing affected by a drug or alcohol impairment. This fact contributes to a [healthcare professional's] general denial that he or she has an addiction problem."[23]

"In an informed consent context, there has been a push to expand those things that must be disclosed, including [healthcare worker-specific] issues such as the [healthcare professional's] lack of experience, health issues involving the [professional], success rates for the procedure, and the [healthcare worker's] HIV-positive status. However, scholars disagree on whether [healthcare workers] have an affirmative duty to divulge their alcohol or substance abuse to a patient. While a number of them argue for disclosure, the courts for the most part have not found it to be a material risk that must be discussed when securing the patient's informed consent."[23]

"Interestingly, the man dubbed the father of surgery in the United States created most of his surgical improvements while under the influence of cocaine or morphine; William Stewart Halsted, the renowned professor of surgery at Johns Hopkins, developed an interest in new anesthetics, which led to his downfall. Cocaine was one of the most effective anesthetics at the time, and after personally testing the drug on several occasions, he became addicted. Dr. Halsted quickly developed the telltale signs of drug addiction; he routinely made up excuses, lied, and missed time from his employment."[23]

"Each year within the health community professionals with substance use disorders are undetected and untreated. In 1986, in response to members of the nursing community, the Washington State Nurses Association in a joint effort with the Board of Nursing (now the Nursing Care Quality Assurance Commission) worked to establish an alternative to traditional license discipline to allow nurses to maintain their licenses and return safely to practice. Successful completion of treatment, and ongoing monitoring was put into place to ensure public safety and sustained recovery. Revised Code of Washington (RCW) 18.130.175, Voluntary Substance Abuse Monitoring Programs, was adopted in 1988 and has become a model for other professions and other states. In establishing the use of voluntary substance abuse monitoring programs the legislature made its intentions clear:"[21]

> *It is the intent of the legislature that the disciplining authorities seek ways to identify and support the rehabilitation of health professionals whose practice or competency may be impaired due to the abuse of drugs or alcohol. The Legislature intends that such health professionals be treated so that they can return to or continue to practice their profession in a way which safeguards the public. The Legislature specifically intends that the disciplining authorities establish an alternative program to the traditional administrative proceedings against such health professionals.*[21]

"The Substance Abuse Monitoring Program (SAMP) began as part of the Board of Nursing and wrote its first return to practice agreement in November 1988. Now called Washington Health Professional Services (WHPS) the program provides monitoring services, as an alternative to license discipline, allowing many nurses to resume their careers and continue to provide valuable services to the public."[21]

Certain personality traits and other aspects of a person's life cause them to be more inclined to substance abuse. Some of these attributes may be:[25]

- *Obsessive-compulsive personality style*
- *Family history of substance use disorders or mental illness*
- *Childhood family problems*
- *Personal mental illness*
- *Sensation-seeking behavior*
- *Denial of personal and social problems*
- *Perfectionism*
- *Idealism*

"Marital and relationship problems may be the first indication of impairment, which gradually spreads to other aspects of their lives. A [healthcare worker's] professional performance often is the last area to be affected."[25] With that being said, some of the common signs that may be seen by co-workers, family, and friends are the following:[25]

- *Frequent tardiness and absences*
- *Unexplained disappearances during working hours*
- *Inappropriate behavior*
- *Affective lability or irritability*
- *Interpersonal conflict*
- *Avoidance of peers or supervisors*
- *Keeping odd hours*
- *Disorganization and forgetfulness*
- *Diminished chart completion and work performance*
- *Heavy drinking at social functions*
- *Unexplained changes in weight or energy level*
- *Diminished personal hygiene*
- *Slurred or rapid speech*

- *Frequently dilated pupils or red and watery eyes and a runny nose*
- *Defensiveness, anxiety, apathy, or manipulative behavior*
- *Withdrawal from long-standing relationships*
- *Paranoid ideation*[21]
- *Sleeping on the job*[21]
- *Unsteady, stiff, or listing gait*[21]
- *Tremors, restlessness*[21]
- *Increasing forgetfulness*[21]
- *Mood swings (e.g. erratic outbursts, emotionally labile)*[21]
- *Frequent complaints of vague illness or injury*[21]
- *Requests jobs in less supervised settings*[21]
- *Seems like a workaholic (e.g. frequently works overtime, arrives early and stays late)*[21]

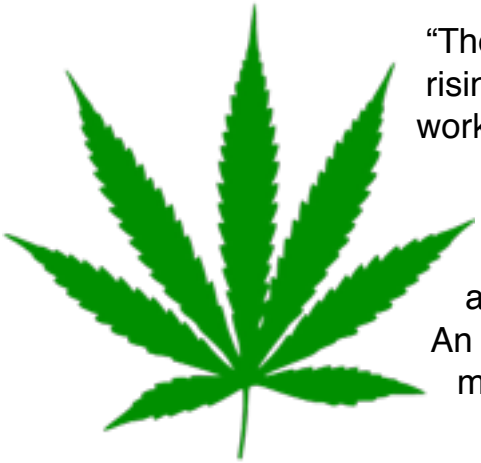
- *Volunteers to count narcotics*[21]
- *Evidence of tampering with vials or capsules*[21]
- *Makes frequent medication errors*[21]
- *Frequent medication loss, spills, or wasting*[21]
- *Overmedicates compared to other staff*[21]
- *Patients complain of ineffective pain relief*[21]
- *Frequent unexplained disappearances from the unit*[21]
- *Disorganized illogical charting*[21]
- *Elaborate, implausible excuses for behavior*[21]

- *Casually asks physicians for prescriptions*[21]
- *Not adhering to safety policies*[21]
- *Decreased job performance*[21]
- *Unexplained bruises*[26]
- *Sweating*[26]

- *Complaints of headaches*[26]
- *Tremors*[26]
- *Diarrhea and vomiting*[26]
- *Abdominal / muscle cramps*[26]
- *Restlessness*[26]
- *Frequent use of breath mints / gum or mouthwash*[26]
- *Inappropriate verbal or emotional response*[26]
- *Calling in sick frequently*[26]
- *Arriving late for work, leaving early*[26]
- *Extended breaks; sometimes without telling colleagues they are leaving*[26]
- *Errors in judgement*[26]

"Substance-impaired [healthcare professionals] are often loners and become isolated. There is no healthcare professional drug culture. Healthcare professionals may limit their contact with others out of fear of discovery and rigorously deny problems to themselves or others."[22]

Where Marijuana is Legal



"The number of people using marijuana in the United States is rising rapidly, and the impact of this increase is showing up at work. Drug testing services report more positive tests for marijuana, both in pre-employment drug screens and drug tests conducted for other reasons. The penalty for a positive test is often a refusal to hire or, for those who are already employees, discipline up to and including termination. An employee familiar with state laws legalizing marijuana for medical and recreational use may be surprised by such a

harsh workplace penalty, but employers continue to have good reasons for enforcing a strong substance abuse policy that includes a ban on marijuana."[27]

"Safety concerns are often a company's primary reason for prohibiting marijuana in the workplace, and they are a valid basis for banning the drug. Marijuana use has been linked to an increase in job accidents and injuries. In May 2015, an article in the *Journal of Occupational and Environmental Medicine* concluded that there is a likely statistical association between illicit drug use, including marijuana, and workplace accidents. While some studies suggest that marijuana use may be reasonably safe in some controlled environments, its association with workplace accidents and injuries raises concern. Issues with attendance and productivity also can arise from marijuana use, and morale may be impacted. Despite the safety and productivity risks associated with marijuana use, however, the drug is increasingly seen as socially acceptable and its dangers may be marginalized."[27]

"Although marijuana remains classified as a Schedule I drug [which implies that it has] no legitimate medical use and a high potential for abuse, the federal Department of Justice allows state and local agencies to enforce narcotics laws that are outside federal priorities. This gives states leeway to enforce some marijuana laws as they see fit and to allow the drug to be used under state law. A person using marijuana where it is legal won't face criminal charges if the drug is used in compliance with state statutes, but its use can still have consequences in the workplace. State laws legalizing marijuana use do not require an employer to compromise workplace safety. An employer's substance abuse policy can prohibit an employee from using or being under the influence of the marijuana, including medical marijuana, at work. A policy making it clear that employees are prohibited from being impaired by marijuana can provide direction to employees and supervisors and can help employees understand that activity which is legal under state law may not prevent them from losing their jobs. So far, courts have ruled that employers may take action under their substance abuse policy if an employee tests positive for marijuana, even if the drug is being used for medical purposes away from the workplace under state law. However, some newer medical marijuana laws offer additional employee protections, and these laws have not yet been tested in court. While employers need to be mindful of state medical marijuana laws that can include discrimination provisions, there is no federal requirement to accommodate the use of the drug. Because marijuana remains illegal under federal law, employers do not need to consider its use as an accommodation under the federal Americans with Disabilities Act."[27]

“Social acceptance of marijuana may be increasing because fewer people see great risk associated with using it. In 2002, 38 percent of Americans age 12 and over saw great risk in using the drug once a month. In 2014, that number had fallen to 26.5 percent. These relaxed attitudes toward marijuana use come at a time when the drug is more potent than ever. In the 1970s, marijuana had a content of THC (marijuana's active ingredient) of about 1 percent. Today, THC content is nearly 13 percent, and some strains are advertised as having a THC content of around 25 percent or higher.”[27]

“Marijuana intoxication is the result of a number of brain changes that occur when marijuana is used. These include alterations in short-term memory, sense of time, sensory perception, attention span, problem solving, verbal fluency, reaction time, and psychomotor control. Some users report positive feelings such as mild euphoria and relaxation, while others, particularly naive users, report anxiety, paranoia, and panic reactions. The short term effects of marijuana last approximately 1-4 hours, depending on potency of the marijuana, the route of administration, and the tolerance of the user. While frequent users develop tolerance to many of marijuana's effects, tolerance is never complete; even users who do not appear or feel intoxicated continue to manifest impairments under testing.”[28]

“While there is no question that marijuana causes short-term impairments in brain function, the degree to which these impairments are reversible with chronic use is less clear. Some studies have shown that brain function recovers over time, while others demonstrate persistence of subtle, but important, impairments. How is it possible to reconcile the different findings from different studies? These inconsistencies often appear to reflect differences in the sensitivity with which "impairment" is measured. By and large, most of the prominent brain effects of marijuana are short term and do in fact reverse when marijuana is discontinued. However, there is increasing evidence that subtle effects, such as slowed information processing, may actually persist long after discontinuation. These effects are difficult to detect because they may only become apparent in the setting of highly complex, demanding brain functions.”[28]

> *The psychoactive effects of marijuana are thought to be predominantly mediated by THC stimulation of brain cannabinoid (CB1) receptors. Acute and chronic marijuana use cause changes in brain function, as demonstrated by measures of cerebral blood flow, glucose metabolism, electrophysiology, and structural anatomy. Functional imaging studies have shown less activity in brain regions involved in memory and attention in chronic marijuana users than in non-users, even after 28*

days of abstinence. Long-term marijuana users have also been shown to have reduced volumes of the hippocampus and amygdala, consistent with animal studies that demonstrate up to a 44% persistent decrease in hippocampal synapses in rats dosed with THC for 90 days. Downregulation of CB1 receptors between 20-60% in different areas of the brain account for the development of tolerance to some of marijuana's effects. Increasing endogenous cannabinoid activity by administering URB597 to block anandamide metabolism in adolescent rats produces long-lasting decreases in CB1 binding in caudate-putamen, nucleus accumbens, ventral tegmental area and hippocampus.[28]

"Marijuana has been shown to be addicting to 9% of people who begin smoking at 18 years or older. Withdrawal symptoms -- irritability, anxiety, sleep disturbances -- often contribute to relapse. Because adolescent brains are still developing, marijuana use before 18 results in higher rates of addiction -- up to 17% within 2 years -- and disruption to an individual's life. The younger the use, the greater the risk."[28]

"Marijuana is well known to cause fluctuations in mood and anxiety, but the extent to which these fluctuations persist beyond the period of marijuana use is unclear. Studies show an increase in anxiety and depressive disorders among frequent marijuana users, but there is not sufficient information to determine the direction of causality. In other words, we cannot yet determine whether marijuana causes an increase in depression and anxiety, or whether individuals who suffer from depression and anxiety tend to use more marijuana. However, heavier marijuana use has been shown to increase the association with anxiety and depression and weekly or more frequent cannabis use in teenagers predicts an approximately twofold increase in risk for later depression and anxiety."[28]

In sufficient doses, marijuana can cause psychosis, a state of mind characterized by the inability to distinguish between what is real and what is not. Psychosis is concerning for three reasons: First, the loss of connection to reality can be an emotionally terrifying experience. Second, psychosis can stimulate unsafe behavior when the lack of connection to reality inhibits the ability to determine what is safe and what is not. Third, there is mounting evidence that psychosis itself is harmful to the brain, and may actually predispose the brain to psychotic disorders. In addition to causing psychosis, marijuana may also contribute to the development of life long psychotic disorders such as schizophrenia. Schizophrenia is a disorder characterized by deterioration in thinking, disturbances in perception, and impairments in social function. Marijuana can unmask

symptoms among individuals who have pre-existing vulnerability (such as a family history) to schizophrenia. Additionally, marijuana may be an independent risk factor for the development of psychotic disorders such as schizophrenia. Schizophrenia affects approximately 1% of the population across the world, and marijuana has been found to increase the risk of manifesting the illness by 1.4 to 2 fold. Marijuana use by schizophrenics has been associated with brain volume loss significantly greater than seen in schizophrenics who abstain from marijuana.[28]

Steps for Reporting an Impaired Co-Worker

"Unfortunately early recognition leading to intervention and treatment of the chemically dependent health professional is often delayed. The problem is denied, rationalized or minimized. Co-workers, colleagues, and supervisors may protect, blame, promote, transfer, or even ignore the affected professional. It is difficult to take responsibility to deal with the problem for many reasons yet it is a professional responsibility to assist colleagues in recognizing deterioration in job performance that may be the result of chemical dependency."[21]

"It is important for employers to remember that fear of stigma and discrimination often prevents people with substance dependence from addressing the problem and seeking treatment. Therefore, while it is often necessary to accommodate people's needs on an individual basis, organizations should foster a workplace culture of respect and inclusion by building accommodation into the way they do business. When an employee is diagnosed with substance dependence, they have a right to be accommodated by their employer—just as anyone else with a disability."[29]

"There are many barriers which block intervening with a co-worker. The three most common barriers are:"[21]

- *Lack of knowledge:*
    - *Of chemical dependency as a primary disease with signs and symptoms and a specific course that can be identified, documented and treated.*

- *That chemical dependency does exist in healthcare professions.*
- *Of the signs and symptoms of a problem in the workplace.*
- *About how to intervene in the workplace and what resources are available.*

- *Fear:*
  - *Of what may happen to the person if you intervene.*
  - *Of the reaction of the person towards you.*
  - *That somehow you may be sued for intervening.*
  - *That you may be the one to cause a professional to lose a job or place their license in jeopardy.*
- *Attitudes and Beliefs That:*
  - *Chemically dependent people are morally wrong or non-functioning. Most are functioning, working people. (Chemical dependency is an equal opportunity disease that can affect all people, of all ages, in all professions.)*
  - *You can independently help a colleague who may have a problem.*
  - *There is no need to refer or to contact other sources of help.*

The following ethical issues should be considered:

- "Confidentiality related to information concerning a chemical dependency problem is required by federal law. Each employer should have a policy which includes: 1) a cause for testing policy, 2) identification of the person who will interact with the employee concerning their impaired practice, 3) a referral process for evaluation and treatment, and 4) clear consequences associated with refusing treatment."[21]
- "It is the obligation and responsibility of a colleague or co-worker to document and report an impaired health professional's behavior to the employer or designated supervisor. The health professional should not be allowed to give patient care until he/she has been evaluated and received treatment."[21]
- "A health professional should be offered treatment in lieu of termination. It is more cost effective to help the health professional get treatment and return

him/her to the workplace than to replace them. Valuable expertise and service history may be lost if the health professional's employment is preemptively terminated, and the health professional is not afforded the opportunity to get treatment for what is a progressive medical illness."[21]

- "It is important to note that the suicide risk is increased after an intervention/ confrontation. It is necessary to assure the health professional is not left alone after an intervention until a plan is in place."[21]
- "The health professional has the right to refuse treatment. Although they may put themselves in jeopardy if they do, it is each person's right to make that decision. The employer needs to make it clear that if evaluation and treatment are rejected, the healthcare worker's employment may be terminated."[21]

"The Washington State Department of Health, in conjunction with various professional health boards, developed and implemented the Washington Health Professional Services (WHPS) program on August 1, 1991. WHPS is currently a program within the Nursing Care Quality Assurance Commission. The purpose of the program is to:"[21]

- *Provide a confidential, non-punitive approach to substance use disorders*
- *Promote early intervention for suspected substance abuse and support recovery*
- *Retain skilled practitioners through monitoring and providing an alternative to discipline*
- *Ensure the public's safety from chemically impaired practice and judgment*
- *Return recovering nurses safely back to work*

"If the health professional appears to be under the influence of mind-altering chemicals in the work setting, the issue must be addressed immediately. Remove the professional from the unit/department, get a drug screen, and evaluate the need for emergency treatment (either medical and/or psychiatric). If immediate medical intervention is needed, transport the individual to the emergency room. Once the immediate emergency is stabilized, then develop the plan of action to address the problem."[21]

What not to do during a workplace intervention:[21]

- *Just react*
- *Intervene alone*
- *Try to diagnose the problem*
- *Expect an admission of problem*
- *Give up*
- *Use labels*
- *Assume*[29]

It is important to "keep in mind that the [healthcare professionals] may just be having a bad week or month"[29] and there may be another factor causing unexplained behavior, such as:[29]

- *Another disability or temporary medical conditions*
- *Conflict at work*
- *Job dissatisfaction or low morale*
- *The stress in balancing work and caregiving obligations*
- *Personal problems unrelated to work*

A healthcare professional "may need to be removed immediately from the workplace if:"[29]

- *They are involved in a workplace accident, or near accident, where impairment is suspected.*
- *Their behavior or performance is having a serious impact on the workplace, owing to suspected impairment.*
- *Their behavior puts their own safety or the safety of others at risk.*

"Generally, it is the employee's responsibility to disclose their accommodation needs. However, people with substance dependence may not recognize or admit that they have a disability. As well, stigma and fear of losing their job can make them reluctant to admit there is a problem. When [a supervisor or co-worker] observes changes in an employee's attendance, performance or behavior that may indicate possible substance dependence, it triggers the employer's legal

obligation to initiate a discussion with the employee about a need for accommodation of a disability. This is called the **duty to inquire**. In workplaces with safety-sensitive positions where there is drug and alcohol testing, the employer's duty to inquire is also triggered upon receipt of a positive test result. Because denial is often a characteristic of substance dependence, the employer may need to have more than one conversation with the employee."[29]

"If a supervisor or co-worker becomes aware of an employee who is showing signs of impairment (regardless of cause), it is very important that action is taken. Examples of corrective actions include but are not limited to:"[26]

- *Call for first aid or emergency medical assistance, if necessary.*
- *Speak to the employee in a private area to discuss their behavior.*
- *Ask another supervisor or designated person to be present as a witness.*
- *State your concerns about safety for others and themselves to the employee and request that they explain what is going on. Do not assume substances are the cause.*
- *Based on employee response, discuss options, where applicable and available.*
- *Follow the steps outlined in your organization's program. In some cases, it may be necessary to assign non-safety sensitive work, or to ask the employee to stop their work.*
- *If applicable, notify senior management and/or union representative.*
- *Be familiar with available resources and supports (e.g., Employee Assistance Programs, or agencies within the local community), and help employees seek treatment as necessary. Encourage access and use of support programs, and reassure the employee that the services are voluntary and confidential.*
- *If necessary, call a taxi or have employee escorted home; do not allow them to drive if you suspect impairment.*
- *If disciplinary action is required, follow your organization's policies on progressive discipline*

“Every discussion should be accompanied by an incident report. The report should include the events preceding the incident, identification of the employee’s unsafe work practices, the matters discussed with the employee, that management and union representatives were notified, a list of all actions taken, and any recommendations made to the employee.”[26]

“It is not the employer or supervisor’s duty to diagnose an employee, or to know if they have a disability. Employers can observe changes in an employee’s attendance, performance, or behavior. They can initiate a discussion about the issue(s) as related to work, and discuss possible solutions. The discussion between the employer and employee may need to occur more than once. Document all discussions. Provide support and practice empathy, not sympathy. Focus on solutions, but if disciplinary action is necessary, it is important to follow through.”[26]

“In order to fulfill their duty of inquire, the employer should”[29]

- *Be respectful, compassionate, and non-judgmental.*
- *Understand that the employee might be feeling pressured, guilty, or anxious.*
- *Ensure the conversation is confidential.*
- *Identify concerns about an employee’s performance, behavior, or positive test results.*
- *Explain the employer’s duty to accommodate all disabilities, including substance dependence, and refer the employee to any internal accommodation policies.*
- *Only ask questions relevant to the employee’s possible need for accommodation, such as whether the employee has been assessed by a medical professional.*
- *Let the employee know about other workplace support, if available.*
- *Allow the employee to involve their union or employee representative in discussions.*

“If the employee does not disclose a disability, such as a substance dependence, the employer should clearly outline the consequences of the employee’s behavior and deal with the attendance, performance or other behavior issues according to workplace policies. However, if the employee later provides a

disability-related explanation, the employer must reconsider their approach. This includes reconsideration of the appropriateness of any disciplinary or other action already taken."[29]

"In order to appropriately accommodate an employee, the employer requires information from a medical professional. Employers need to know:"[29]

- *whether the employee has a disability; and if so*
- *what accommodations the employee needs.*

"These are medical questions and they need to be answered by a medical professional — the employee's family doctor or specialist. The medical information will allow the employer to make an informed decision about reasonable accommodation options. Employers need to keep in mind that requesting medical information for the accommodation process requires the balancing of two competing rights: the employer's right to manage the workplace and the employee's right to privacy. When requesting medical information, employers must use the least intrusive means possible and respect the employee's privacy rights. Requests must be limited to information related to the employee's essential duties and their accommodation needs. The employer is rarely entitled to the specific diagnosis. They are not entitled to the content of the diagnosis, or details of the treatment plan."[29]

"The employer should provide the medical professional with the following information:"[29]

- *Description of the employee's job function/responsibilities.*
- *The employee's work schedule.*
- *Whether the employee is in a safety-sensitive position.*
- *Any other relevant information that is particular to the workplace.*

"The employer should ask the [diagnosing medical professional] the following questions:"[29]

- *Does the employee have a disability that requires accommodation?*
- *Are there any restrictions or limitations to the performance of the job?*
- *Has a treatment plan been developed? If so, how might this affect the employee's behavior, attendance, performance, schedule?*

- *What is the employee's prognosis?*
- *If the employee is off work, are there specific recommendations for accommodation that will facilitate a safe and successful return to work?*
- *For an employee in a safety sensitive position, is the employee medically fit to safely perform their job? Does the employee require medication where side effects may prevent them from working in their safety sensitive position?*

"Based on this information, the employer should be able to determine whether the employee:"[29]

- *Is able to perform the essential duties of their position with appropriate accommodation.*
- *Needs to move to a different position (e.g., a non-safety-sensitive position).*
- *Needs to be off work pending further medical assessment or treatment, and if so, for how long.*

"The employee has the duty to cooperate and provide the employer with the relevant medical information. This can include attending appointments as scheduled, and providing complete and accurate information to the medical professional. The employee has the final say whether their medical information can be released. The employer and the employee may also decide that the medical information is not required in order to facilitate the accommodation process"[29]

"Generally, an employee should not be removed from the workplace unless there is medical information to clearly support this. However, if an employee has health needs requiring urgent attention, or if they pose a serious risk to the safety of themselves or others, and employer should deal with this immediately. An employer should obtain legal advice when removing an employee from the workplace, and other agencies or offices may need to be contacted."[29]

"There are specific circumstances when an employee can be evaluated by an independent medical professional who is not their family doctor or specialist. This is called an Independent Medical Evaluation or IME."[29]

- *When an employer lacks sufficient or clear medical information, they should first go back to the employee's medical professional for this*

information. If that medical professional does not provide the necessary information, an employer may at that point consider requesting an IME.

Note: Employers should exercise caution and seek legal advice before seeking an IME because requesting an employee to undergo one infringes on their privacy rights. As with any other medical assessment, the employer is entitled only to the medical information they need to accommodate the employee.

- *When there is contractual right to request an employee to under an IME, provided, for example, in a collective agreement.*
- *When there is a legislative requirement in certain industries.*
- *When an employee request the assistance of a specialist.*

Good practices for an Independent Medical Evaluation:[29]

- *Permit the employee to select the physician from a list of acceptable specialists.*
- *Both parties agree in advance to accept the medical results of an IME.*
- *In all cases, employers should facilitate the IME by providing time off work and paying for the cost of the IME.*

"The employer cannot ask for any more medical information from an IME than they can ask from the employee's own family doctor or specialist. Likewise, the employer should provide the same information given to the employee's medical professional."[29]

"An employee has the right to be accommodated to the point of undue hardship when they have a diagnosed substance dependence. However, this does not give the employee the right to their ideal or preferred accommodation. The accommodation has to work for everyone. The best way to approach accommodation is on an individual, case-by-case basis. When looking at available options, the employer should work with the employee and their representatives and be as creative, open and as flexible as possible. Doing so will increase the likelihood that the parties will find a solution that meets the needs of everyone involved. Relapse is often a symptom of substance dependence. Accommodating an employee with this disability may mean accommodating them through more than one relapse. Throughout the accommodation process, the goal should be to keep the employee at work

(where appropriate) or support the employee in returning to work as soon as possible. The employer is in the best position to know what is possible within the context of their particular work environment, and should remain open-minded to options that will facilitate the maintenance of, or return to, active employment. If an employee is not willing to participate in the process or take responsibility for their own workplace behavior, or rejects a reasonable accommodation solution, accommodation may not be possible."[29]

"Examples of accommodation measures or solutions:"[29]

- *Short- or long-term changes in the employee's schedule to allow for treatment or regular meetings - with supports such as a sponsor or medical professional.*
- *Adjustments in hours or performance requirements to meet any needs set out in the medical assessment.*
- *Re-assignment to a position that is not safety-sensitive, particularly in the early days of treatment.*
- *Short-term or long-term sick leave to allow for treatment.*

"The primary responsibility for developing the accommodation plan rests with the employer. Once the employee's accommodation requirements are established, the employer works in consultation with the employee to develop the accommodation plan. The employee may wish to involve their union or employee representative in these discussions."[29]

"The accommodation plan should:"[29]

- *Be put in writing and signed by all parties.*
- *Identify the specific accommodation measures or solutions that have been agreed to based upon the employee's medical information (e.g., timelines / dates, work schedule, duties and restrictions / limitations).*
- *Designate to whom the employee may go with concerns or questions about the accommodation plan.*
- *Identify what changes in the employee's behavior or performance will be understood as 'significant' and therefore requiring updated medical information.*

- *Be flexible and subject to change based on the employee's needs and updated medical information.*
- *Allow for whatever treatment the employee may require, whether urgent or ongoing. The employee may require time away from work to pursue treatment.*
- *Take into consideration that an employee who is substance-dependent may also have another physical or mental disability that requires accommodation.*

"The accommodation plan may include a 'return to work agreement' that specifies the conditions the employee agrees to meet when returning to work."[29]

"Treatment plans are not accommodation plans. They are individualized, confidential plans between the employee and their doctor and do not involve the employer. An employer's responsibility is to ensure that the accommodation plans respect the parameters of the required treatment."[29]

- *The employer is not entitled to know the details of a treatment plan.*
- *The employee is only required to provide the employer with enough information about the treatment plan to develop an accommodation plan.*
- *Each employee will have different treatment needs, and these may change over time.*
- *Treatment for substance dependence can range in intensity and in duration. For example, an employee may be required to attend counseling during the day, in the evenings, or for an extended period of time for in-patient residential treatment.*

"The process for implementing the plan should be spelled out clearly within the accommodation plan itself so everyone understands their roles and responsibilities. It is important for the employer, the employee, and their union or employee representative to communicate clearly during the implementation of the accommodation plan. Any issues or setbacks in the process should be flagged as soon as possible. The details of the accommodation plan, including any medical information, should only be shared with those who need to know."[29]

"To ensure the successful implementation of the accommodation plan, the employer and employee may need to meet to develop and sign a 'return to work

agreement.' A return to work agreement outlines the expectations for an employee's conduct when returning to work and the agreed-upon conditions that the employee must meet. These conditions may include expectations about attendance, performance, safety, behavior and compliance with an existing workplace drug and alcohol policy. The return to work agreement should not include treatment expectations or any other details of an employee's confidential treatment plan. In the context of safety-sensitive positions, the return to work agreement may include some form of medical monitoring, such as drug or alcohol testing. Some employers make use of tools such as 'relapse prevention agreements' or 'last chance agreements.' Employers should be aware that the use of agreements like these does not replace the obligation to accommodate an employee to the point of undue hardship under human rights legislation. The duty to accommodate ends when an employer reaches the point of undue hardship."[29]

Under the Americans with Disabilities Act of 1990, section 12111(10), undue hardship is defined as:[30]

> *(A) In general*
>
> *The term "undue hardship" means an action requiring significant difficulty or expense, when considered in light of the factors set forth in subparagraph (B).*
>
> *(B) Factors to be considered*
>
> *In determining whether an accommodation would impose an undue hardship on a covered entity, factors to be considered include*
>
> *(i) the nature and cost of the accommodation needed under this chapter;*
>
> *(ii) the overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility;*
>
> *(iii) the overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its facilities; and*

(iv) the type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the covered entity.

"The last step in the accommodation process is ongoing. Employers should plan on following up on a regular basis with the employee and making regular adjustments to the accommodation plan as required. It is not always possible to foresee how the accommodation process will unfold. Flexibility and communication are necessary to ensure the employee's successful accommodation. It is useful to build follow-up meetings right into the accommodation arrangement. The purpose and scope of the meetings should be clearly explained to all parties. As previously mentioned, relapse is often a characteristic of substance dependence. An employee may start using substances again after several tries at rehabilitation or even after years of sobriety. Therefore the accommodation plan may need to be adjusted to address the employee's evolving situation. An employer may also request periodic updates from the medical professional to confirm that the employee is still able to continue in their current position. An employer should communicate changes to the employee's accommodation arrangements on a need-to-know basis to other managers, supervisors, staff, as well as union or employee representatives."[29]

"An employee cannot hold out for a preferred accommodation if a reasonable accommodation is offered by the employer. Should an employee reject a reasonable solution that provides for accommodation, the employer will be found to have met their duty to accommodate. The employer's duty to accommodate ends when the employee is no longer able to fulfill the basic obligations associated with the employment relationship for the foreseeable future."[29]

"Many federally-regulated workplaces have safety-sensitive positions, leading some employers to have concerns regarding employee impairment by drugs or alcohol while at work. These employers may decide to conduct drug or alcohol testing as an additional precautionary measure. In deciding whether and how to conduct drug or alcohol testing in the workplace, an employer must consider a variety of factors including human rights law, safety, privacy, labor standards, the provisions of any applicable collective agreements, regulatory requirements, the level of supervision available in the workplace, among other considerations. Whether or not testing is permissible will depend on the nature and context of the employment. The same will be true in deciding what action is appropriate in the event of a positive test result. Employers should note that conducting testing on a

person who does not occupy a safety-sensitive position is rarely permissible. Employers should also remember that conducting testing is a form of medical examination, and it constitutes a significant invasion of privacy. A positive result on a drug or alcohol test may be treated as an indicator of potentially greater risk, but should not be taken as concrete evidence of a substance dependence or that the person has or will, in fact, come to work impaired by drugs or alcohol. When an employer receives an employee's positive test result, they have an obligation to initiate a conversation about possible substance dependence. This will help determine what workplace consequences, if any, are appropriate, and will provide an opportunity to discuss what support, assistance and accommodation the employee may need. Further medical assessment may be necessary or advisable in such circumstances."[29]

Hypothetical Case Highlighting Legal and Ethical Issues

Earl, a registered nurse, started working at the local hospital about 4 years ago. He was always punctual, worked well with his colleagues, and never had a patient complaint logged against him. About a year ago, Earl slipped and fell down a flight of stairs, hurting his back. He was put on pain medication for his injury, and was able to return to work shortly thereafter, although the pain in his back persisted. He and his wife have a 3 year old son, and a second child on the way, which has been adding to his stress level and financial concerns.

Two months ago, Earl had a patient complain while in recovery from surgery that the medication didn't relieve his pain like it normally had when the other nurses administer the dose. The report was filed, but Earl excused this due to lack of sleep causing him to accidentally give the patient the wrong medication.

Because finances are tight, Earl has been working as much overtime as his supervisor will allow and often comes in before his shift starts. Twice he has even showed up on his days off claiming that he thought he had been scheduled that day. His co-workers don't see him as routinely as they usually had, when they would commonly visit during lunch and breaks. They have also noticed that he has lost a significant amount of weight in the past several months and that his eyes are always red, but assume it must be from his busy schedule and diminished amount of sleep.

One of Earl's colleagues pulled him aside and asked if he was maybe over working himself and should cut down his hours. Earl got very agitated and defensive. This reaction surprised his co-worker, as Earl was never known to be anything other than helpful, friendly, and had always welcomed the advise of those around him.

After this interaction, his co-worker decided that something more was wrong than simply depravation of sleep. Earl's colleague made a list of the very specific details of why they were concerned, researched the policy for reporting such concerns to the hospital where they both worked, and also looked into the state laws for reporting. The co-worker then followed these laws and guidelines for Earl's intervention.

Earl got the help he needed and was able to return to his job shortly following the birth of his second child.

Impairment Policy

"Some organizations may choose to establish a workplace committee to help develop and implement the [impairment] policy. The committee should include representation by employees, occupational health professionals, management, and unions where applicable. You may also wish to include representation from your employee assistance plan or benefit providers, as well as community addiction specialists."[31]

"The formal policy should clarify expectations as well as consequences of non-compliance with the policy, including:"[31]

- *Definition of problematic substance use in the workplace*
- *Definition of impairment in the workplace*
- *Clear statements about the purpose of the policy and what it is attempting to achieve*
- *Define safe and acceptable behavior*
- *Describe signs or symptoms that indicate potential impairment*
- *Establish when to intervene if impairment is suspected*

- *Guidelines for the discussion with the employee*
- *Consistent and professional interactions with employees who are impaired at work*
- *Safety procedures related to intervening*
- *Safety procedures related to sending an impaired employee home*
- *Details about potential disciplinary action*
- *Mandatory training requirements for employees and leaders to recognize and report impairment*
- *Who is covered, such as full and part-time staff, students, interns, third parties, volunteers and independent contractors*
- *Define how the policy will apply to work-related social events, off-site events or other non-routine business events*
- *State how the policy complies with privacy legislation*
- *Include a process for informing the organization if an employee is receiving medical treatment that may impair performance. (It is usually not permissible under human rights legislation to demand the name of the medication.)*
- *Describe a process for employees to report a concern about a co-worker's fitness for duty due to impairment*
- *Include a procedure for reporting violations of the policy*
- *Describe any conditions under which drug or alcohol testing may be required. Refer to the applicable legislation for your jurisdiction*
- *Disciplinary actions or consequences for both first incident and subsequent incidents*
- *Describe the availability of employee assistance programs or other resources if available*
- *Define what is expected of managers or others in enforcing the policy, including having regular discussions with their teams*

“A committee action plan should be developed in conjunction with the policy that looks at:”[31]

- *Setting up the initial review by legal advisors and senior management, and ensuring regular reviews of the policy thereafter.*
- *Confirming employees know about the policy through regular confirmation in writing or by email that each employee has received and read the policy and any amendments to it.*
- *Considering workplace situations when behaviors related to impairment or problematic substance use might be difficult to detect, be potentially hazardous or are more likely to occur due to higher levels of stress, accountability or responsibility.*
- *Considering hosting wellness, substance use and addiction awareness workshops internally or with experts, employee assistance plan providers, benefit providers or local addiction agencies.*
- *Using regular and confidential surveys to obtain employee opinions and feedback about the current state of wellness within the organization.*

“The focus for senior leaders, managers, supervisors, and union representatives should be on addressing workplace behaviors and not on managing problematic substance use or addiction. Training should include an understanding of:”[31]

- *Impairment-free policy – Both the intent and procedures to be followed.*
- *Testing procedures – Details of how or when any drug or alcohol testing procedures, or other testing for impairment, are allowed.*
- *Consequences for non-compliance – Awareness of what can and cannot be done with respect to the policy or testing procedures.*
- *Employee communication – Explain the impairment policy, including key messages about objectives and responsibilities.*
- *Recognizing symptoms – Awareness of signs of impairment or problematic substance use.*
- *Procedures and documentation – Create awareness of what should be done when there are observable workplace signs of impairment, problematic substance use, or behaviors related to addiction.*
- *Resources – Help identify appropriate resources to offer employees who need to address problematic substance use as well as stressors that can*

cause impairment – family, financial, and education/training, performance demands, etc.

- *Crisis response training – Appropriate responses to a crisis related to stressors, addiction or problematic substance use.*
- *Stigma reduction – Dispel myths and stereotypes about impairment, whether it's related to stress, mental health issues, problematic substance use or addiction.*

"Education for employees could include the following:"[31]

- *Policy communication – Explain the impairment policy, including key messages about objectives and responsibilities.*
- *Awareness – Share information about how stressors as well as problematic substance use or addiction can cause impairment and impact workplace safety, health and performance, professional and personal relationships.*
- *Expert speakers – Seek out professional speakers who talk about their first-person experience with problematic substance use and other addictions. Benefit providers or local addictions agencies may also have or be able to recommend speakers.*

Conclusion

In conclusion, it is the responsibility of everyone within the healthcare establishment to look out for the patient's well-being, the institution's reputation and quality of health care, and fellow co-workers that may need help and are unable to reach out due to shame, denial, or fear of job loss. Even the most skilled, responsible, and dedicated healthcare worker is susceptible to substance abuse, but before jumping to the conclusion that that may be the case, make sure to know the person's baseline, that is, what the person's normal behavior is like. Changes from this baseline may indicate a substance abuse issue, but it may instead be one of the several other challenges we all face in life as well.

Make sure you know the laws and guidelines for your state or jurisdiction, as these things vary from one location to another. Also find out what the healthcare establishment's policy is for when and how to go about reporting matters such as these and an intervention if deemed necessary. Document the specifics of the events that make you suspicious that there may be an underlying problem with a colleague's behavior before you make reports against them.

Additional Resources

For educational resources about the impairment of health care workers, in addition to advocacy for their health issues at local, state, and national levels:

Federation of State Physician Health Programs
www.fsphp.org

To contact a state medical board and for different programs or organizations available for help:

Federation of State Medical Boards
http://www.fsmb.org/contact-a-state-medical-board/

For education and training for health care professionals regarding substance abuse, professionalism, and disruptive behaviors:

Center for Professional Health at the Vanderbilt University Medical Center
https://ww2.mc.vanderbilt.edu/cph/

To seek assistance for reporting substance misuse or impairment:

Washington Health Professional Services (WHPS)
https://www.doh.wa.gov/AboutUs/ContactUs

To seek assistance for reporting substance misuse or impairment for pharmacists and pharmacy technicians:

Washington Recovery Assistance Program for Pharmacy (WRAPP)
https://www.wsparx.org/page/ContactUs

For the American Nurses Association (ANA) code of ethics:

https://www.nursingworld.org/practice-policy/nursing-excellence/ethics/

Council on Ethical and Judicial Affairs:

https://www.ama-assn.org/about-us/about-council-ethical-judicial-affairs-ceja

Joint Commission Nation Patient Safety Goals:

https://www.jointcommission.org/standards_information/npsgs.aspx

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