

January 27, 2022

Board of Medical Examiners
301 S. Park Ave., 4th Fl.
Helena, MT 59620

Dear Montana Board of Medical Examiners:

On behalf of the American Medical Association (AMA) and our physician and medical student members, I urge the Montana Board of Medical Examiners (BOME) to take swift action to restore and support a comprehensive physician health program (PHP) to protect the public safety and health and wellness of Montana's physicians and other health care professionals. The AMA's national perspective on the value that PHPs provide leaves us with several clear conclusions:

- Physicians and other health care professionals who use PHPs receive evidence-based care to treat and manage a wide range of potentially impairing medical conditions, including substance use disorders, mental illness, and other conditions.
- PHPs—particularly those in rural and underserved areas of the country—help physicians and other health care professionals not only to get the care they need, but commonly help put them on a stable and safe road to resume their professional career.
- Medical boards (and other state licensing boards) and PHPs that work together to maintain confidentiality of care while participants are receiving care are essential to maintaining trust with participants, ensuring continuity of care, and safeguarding the public safety.

The AMA is greatly concerned by the unfolding events in Montana that have led to the disbanding of the Montana PHP and the uncertainty faced by current participants. Having the PHP operated by the State of Montana raises highly troubling concerns that could lead to tragic consequences for impaired physicians, current participants, and the public at-large. This letter highlights just a few of our immediate concerns, and we also provide a recommendation for immediate action to help establish a new, high-quality PHP in Montana.

Disbanding the Montana PHP will result in life-threatening unintended consequences

First, one of the hallmarks of a successful PHP is its ability to encourage impaired physicians to voluntarily seek assistance. In Montana, the PHP has always been a successful model in this regard, and by disbanding the PHP the state has confused and injected a high level of distrust into the entire medical community in Montana. This type of action is unprecedented. To date, the AMA and the Montana Medical Association have not been able to learn whether the Montana Department of Labor and Industry (DLI) has any clinical experience with the work done by PHPs. Successful patient-physician relationships are built on trust and shared decision-making; so are PHPs.

Specifically, our concern is as follows: if potentially impaired physicians do not trust the DLI to care for their substance use disorder or mental illness, they will not seek care. If current Montana PHP participants do not trust the DLI, they could very well drop out of the program. Both situations would harm the public safety.

A recent search of the DLI website, moreover, resulted in no information concerning the status of the PHP or where physicians could get help. This is an untenable situation. **Every day Montana is without a functional, high-quality PHP leaves open the possibility that physicians needing care will not receive it.** This erodes trust and when trust is eroded, successful care and treatment is at risk.

A second hallmark of a successful PHP is where its director and case managers know how and where to get people help. Montana, like many rural and underserved areas, does not have enough addiction medicine or psychiatrists to help all its residents. The Montana PHP—for years—has been able to successfully find evidence-based care in states across the nation for Montana’s health care professionals. This process not only includes ensuring that the care is affordable, but it also takes into account the unique medical and personal needs of PHP participants. These intrastate and national connections take years to establish. If the DLI does not have these connections, Montana’s health care professionals needing care will languish, and as explained above, likely will not seek care.

Disbanding the Montana PHP violates Montana confidentiality law

The AMA also questions how the DLI has been able to take such steps given the legislature’s clear direction under Title 37 of Montana Professions and Occupations Chapter that states that:

The board shall establish a medical assistance program to assist and rehabilitate licensees who are subject to the jurisdiction of the board and who are found to be physically or mentally impaired by habitual intemperance or the excessive use of addictive drugs, alcohol, or any other drug or substance or by mental illness or chronic physical illness.

Straightforward and strict statutory interpretation demonstrates clearly that the BOME—and not the DLI—must establish the Montana PHP.

In addition to the confusion concerning whether the DLI has the authority to operate the PHP, the AMA is concerned that Montana law does not provide for any confidentiality protections of PHP participants if the DLI undertakes such operational control. The confidentiality protections afforded PHP participants under Montana Administrative Code Section 37-2-202 establish that the PHP is charged with maintaining such confidentiality. If there is no PHP, it is unclear who would be charged with this important legal obligation. The fact that this section provides the obligation squarely to the PHP is another clear indication that the legislature intended for the PHP to exist as its own entity—and certainly not under the DLI or any other state agency. Physicians who are current participants would be justifiably concerned that their personal health information may not be protected by Montana law given that the confidentiality protections were attached by the legislature to the PHP.

The AMA urges the establishment of a high-quality, high-functioning Montana PHP

To rectify this unfolding calamity in Montana, the AMA strongly urges the BOME to work with the DLI to immediately issue a Request for Proposal (RFP) for the establishment of a high-quality PHP. The RFP should make clear that the PHP shall be expected to follow state law. It should further state that the DLI’s actions are temporary and shall cease all current and future operational control or involvement once a new PHP has been selected. The AMA further urges that the BOME, in coordination and cooperation with other appropriate Montana state licensing boards, have sole authority to review the PHP applicants in terms of their ability and fitness to provide PHP services. Any review or participation in the RFP process by DLI should be limited to the administrative authority provided under state law.

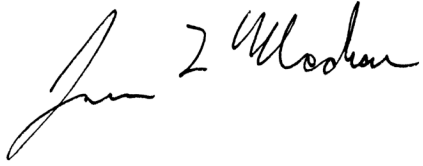
Montana Board of Medical Examiners

January 27, 2022

Page 3

Thank you for your consideration. If you have any questions, please contact Daniel Blaney-Koen, JD, Senior Legislative Attorney, AMA Advocacy Resource Center at daniel.blaney-koen@ama-assn.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim L Madara". The signature is written in a cursive style with a large initial "J" and "M".

James L. Madara, MD

cc: Montana Medical Association