

June 29, 2020

The Honorable Jared Polis
Governor
State of Colorado
State Capitol Building
200 E. Colfax Avenue, Room 136
Denver, CO 80203

Dear Governor Polis:

On behalf of the American Medical Association (AMA) and our physician and medical student members, I am writing in strong opposition to the actions taken by the Colorado Department of Regulatory Agencies (DORA) that would have harmful consequences to the mental health and wellness of physicians.

Specifically, the AMA is greatly concerned about the decision to award Colorado's Peer Assistance Contract RFP-SJA2020-52 to an organization that would require both voluntary and mandated participants to sign a release of information to the Colorado Medical Board (CMB). This requirement eliminates a life-saving assurance of confidentiality for medical licensees. Research and experience show that without assurances of confidentiality, many physicians will not voluntarily seek services because of stigma and fear of losing one's professional license and/or being seen as "weak" to their peers for seeking treatment for a potential impairment.

The AMA wants to work with states like Colorado to ensure that we avoid situations such as what recently happened when Lorna Breen, MD, an emergency medicine physician, died by suicide. Dr. Breen's sister recently shared her sister's story with the AMA. Dr. Breen suffered greatly as she served on the frontlines of her hospital. Unbeknownst to her family and her colleagues, Dr. Breen had great difficulty dealing with the pressures of treating hundreds of COVID-19 patients, often with limited resources. She felt helpless to stop the suffering and dying. This caused considerable anxiety and stress for Dr. Breen, who also greatly feared seeking help because of fear to her professional reputation or actions against her medical license. Despite the efforts of her family, Dr. Breen died by suicide in Virginia on April 26, 2020.

In response, the Commonwealth of Virginia—through the leadership of Dr. Breen's family, the Medical Society of Virginia, the medical licensing board and many other stakeholders—unanimously supported and quickly enacted new legislation¹ to provide confidentiality protection for physicians who seek help for a potential impairment. This is the right approach to save physicians' lives and protect the public safety. And this is exactly what the Colorado Physician Health Program (COPHP) does today to provide safe care and confidential treatment to their patients.

¹ See Virginia Senate Bill 120, "Health care providers, certain; program to address career fatigue and wellness, civil immunity." Available at <https://lis.virginia.gov/cgi-bin/legp604.exe?201+sum+SB120S>

In contrast, removing confidentiality, which is exactly what DORA's recent action would do, will make things worse for Colorado physicians. A study by researchers at the Mayo Clinic, Stanford and the American Medical Association, for example, found that, "Nearly 40 percent of physicians reported that they would be reluctant to seek formal medical care for treatment of a mental health condition because of concerns about repercussions to their medical licensure."²

We further point to a 2008 national study of 7,905 U.S. surgeons in which more than 6 percent reported suicidal ideation during the previous 12 months. Of that cohort, only 26 percent sought care. When asked why they did not seek care, 60 percent reported that they were reluctant to seek care because of concerns that doing so could negatively affect their medical license.³

Studies like those above demonstrate why confidentiality is critical. The COPHP has a long track record of working with DORA and the CMB to support physicians and protect the public safety. The Federation of State Medical Boards cautions that, "The very presence of application questions for medical licensure or licensure renewal may stigmatize those suffering from mental and behavioral illnesses for which physicians might otherwise seek care."⁴ Requiring disclosure of a mental illness to the medical board as a precursor to seeking treatment would drive physicians needing help away at a time when the COVID pandemic may necessitate greater access to counseling and other treatment options.

To be clear, ensuring confidentiality for treatment to support physician wellness does not mean ignoring potential threats to patient safety. Those voluntarily seeking involvement with the COPHP have been advised that there are circumstances in which COPHP would have no choice but to disclose to the CMB the physician's identity and involvement with CPHP. The CMB, DORA and COPHP have successfully worked together for more than three decades to ensure that physicians receive the care and treatment they need. These three parties have collaborated to ensure confidentiality of physicians who were safe to practice while complying with COPHP monitoring and treatment plans.

We further note the importance of the COPHP in providing peer assistance services; for physicians, by physicians. The COPHP has the experience and expertise to address all physician-specific health issues. They triage urgent appointments on the same day, and provide same day appointments, whether in person or via telemedicine or video conferencing to ensure the physicians get help when they need it. The COPHP works with providers across the United States who specialize in treatment of physicians for physical, mental, behavioral and substance

² Dyrbye LN, West CP, Sinsky CA, et al. Medical licensure questions and physician reluctance to seek care for mental health conditions. *Mayo Clin Proc.* 2017;92(10):1486–93.

³ *Arch Surg.* 2011;146(1):54-62.

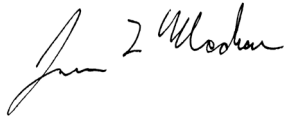
⁴ Physician Wellness and Burnout Report and Recommendations of the Workgroup on Physician Wellness and Burnout Adopted as policy by the Federation of State Medical Boards April 2018. Available at <http://www.fsmb.org/siteassets/advocacy/policies/policy-on-wellness-and-burnout.pdf>

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abuse issues. The AMA strongly supports continuing this proven model and we urge you to reverse this recent DORA decision.

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 or (773) 469-9555.

Sincerely,

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

James L. Madara, MD

cc: Colorado Medical Society