

Ask An Attorney

By David H. Fitch, Esq., Underberg & Kessler LLP

Q

I am a general practice physician suffering symptoms of depression. Will I be able to continue practicing medicine if I seek mental health treatment?

A

Yes, if you are able to practice with reasonable skill and safety and are not “impaired” due to your condition. New York State law prohibits physicians from practicing medicine if impaired by drugs, alcohol, physical disability, or mental disability. However, a problem or illness does not necessarily equate to impairment which would require notification to the state Health Department’s Office of Professional Medical Conduct (OPMC).

The vast majority of physicians in New York State are devoted, competent professionals committed to maintaining and advancing their patients’ health. Despite this drive to help others, or perhaps because of it, providing the best possible health care and treatment to patients is often extremely demanding and stressful. Work-related burnout (e.g., emotional exhaustion, loss of enthusiasm, disenchantment, decreased sense of accomplishment) is significantly more prevalent among physicians than other workers.

The state’s prohibition of the practice of medicine by impaired doctors is a safeguard to maintain the quality of patient care. OPMC disciplines hundreds of physicians each year for misconduct in response to complaints from patients, health care colleagues, and institutions. Physicians are required to report to OPMC when there is reasonable evidence of professional misconduct by a physician or physician assistant. Professional misconduct under the New York State Education Law includes practicing the profession while impaired by alcohol, drugs, or physical or mental disability. Impairment constituting medical misconduct is defined by The Federation of State Medical Boards as the inability “to practice medicine with reasonable skill and safety by reason of mental illness, physical illness or condition...or habitual or excessive use or abuse of drugs defined in law as controlled substances, alcohol, or other substances that impair ability.”

The most important step for a physician who is suffering from depression, or any other mental health condition, is to seek professional help. The diagnosis of a psychiatric condition does not necessarily result in impairment to a physician’s ability to practice medicine. However, more difficult or severe conditions may impede a doctor’s ability to recognize the need for treatment.

The Physician Health Program (PHP) for the New York State Committee for Physician Health is a division of the Medical Society of the State of New York and provides “non-disciplinary, confidential assistance to physicians, residents, medical students, and physician’s assistants experiencing problems from stress and difficult adjustment, emotional, substance abuse and other psychiatric disorders, including psychiatric problems that may arise as a result of medical illness.” Contacting the PHP is confidential and remains confidential so long as the physician continues in any recommended treatment. If the physician becomes non-compliant with the treatment recommendation, the PHP may be required by law to contact OPMC. (See page 18. More information can be found at www.mssny.org/cph/ and at www.cphny.org.)

A physician may also wish to seek advice from a health care attorney whose practice includes defending providers who have been charged with professional misconduct. The goal is to obtain good treatment outcomes which allow the physician to return to practice safe, high-quality medicine.

Material in this column was prepared for informational purposes only. It is not intended to constitute legal advice, the provision of legal services, or the creation of an attorney-client relationship. Readers should not act on this information without seeking the advice of an attorney.

Reprinted with permission from: **The Bulletin - December 2015.**

Published by **Monroe County Medical Society. www.mcms.org**