2022 Council Resolution 58: Removing Intrusive Medical Exams and Questionnaires from Employment Contracts

Council Action: **AMENDED AND ADOPTED**

Board Action: **ADOPTED**

Status: **Completed**

SUBMITTED BY: Emergency Medicine Residents' Association

Purpose:

Support cessation of invasive medical evaluation exams and questionnaires that may invade the privacy of emergency physicians seeking employment beyond what is necessary to confirm the ability to perform duties associated with the individual's role as hired.

Fiscal Impact:

Budgeted committee and staff resources.

WHEREAS, In the course of employment many physicians discover that their employment is contingent upon completion of a post-offer/pre-employment medical evaluation, including physical examinations and questionnaires; and

WHEREAS, Some of the information requested may be considered sensitive by the physician in question seeking employment, for example, questions related to surgical history may incidentally disclose biopsies to rule out neoplasia, abortion care, procedures to assist with family planning, gender affirmation, and the like, as well as questions regarding medications, for example, may unnecessarily reveal chronic, auto-immune, or psychiatric complaints, among others including those related to hormone use or for cosmetic concerns; and

WHEREAS, Physician employees may wish to exert their right to privacy regarding conditions that do not cause impairment and have reasonable concern may color their professional or personal reputation; and

WHEREAS, Determining what information to provide to a medical screener (often a non-physician provider or nurse) places the physician in an ethical conundrum – whether to be honest or whether to obfuscate to protect one's professional and personal identity; falsification by omission to one's employer through mandated health exams may be cause for dissolution of contract, but revealing private health information may be deemed too invasive by the physician in question who is simply seeking to provide their skills in exchange for wages; and

WHEREAS, It is unclear why invasive medical screening exams are necessary to complete the hiring process for physicians who are not requesting or anticipating employer accommodations; therefore be it

RESOLVED, That ACEP support the cessation of invasive medical evaluation exams and questionnaires that may unduly and unnecessarily invade the privacy of emergency medicine physicians seeking employment beyond that which is necessary to confirm ability to perform duties associated with the individual's role as hired.

Background:

This resolution calls for ACEP to support the cessation of invasive medical evaluation exams and questionnaires that may invade the privacy of emergency physicians seeking employment beyond what is necessary to confirm the ability to perform duties associated with the individual's role as hired.

After the passage of the Americans with Disabilities Act (ADA) in 1990, professional organizations, such as the American Psychiatric Association (APA), proposed guidelines for state licensing boards when asking about a physician's health. Title II of the ADA prohibits discrimination by public entities on the basis of disability, including psychiatric disabilities. Since the ADA's passage, medical board screening of applicants of prior history of physical illness, mental illness, or substance use disorders (SUD) using broad or hypothetical questions has been increasingly seen as discriminatory. Arguments have been raised about the necessity and legitimacy of broad-based inquiries into a physician's history with physical health, mental illness, or SUD and their use as a proxy for a physician's ability to currently practice competently and without impairment. The American Medical Association (AMA), Federation of State Medical Boards (FSMB), and ACEP stress the importance to distinguish between illness and impairment. The ADA also focuses on this important distinction. However, state boards often find challenges complying with the recommendations as they attempt to identify the line between an applicant's right to privacy with the sense of duty to protect the public.

ACEP's policy statement "physician impairment" states:

"The existence of a health problem in a physician is NOT synonymous with occupational impairment. Because of their training and dedication, most physicians with appropriately managed personal health problems and other stressors are able to function safely and effectively in the workplace."

In addition, the policy recommends that licensing and credentialing bodies use the FSMB language for questions about the physical or mental health of applicants. It further states that "licensing and credentialing bodies should not ask applicants and licensees about their past history of diagnosis or treatment for mental disorders, substance use disorders, physical disorders, and/or disabilities, focusing instead of current impairment."

The FSMB policy on "Policy on Physician Illness and Impairment" also support the distinction between illness and impairment.

"It is important to distinguish illness from impairment. Illness, per se, does not constitute impairment. When functional impairment exists, it is often the result of an illness in need of treatment. Therefore, with appropriate treatment, the issue of impairment may be prevented or resolved while the diagnosis of illness may remain."

State board licensing application questions about physician health vary. Recently, there has been renewed attention on destigmatizing mental health issues and removing questions about mental health. There has been less focus on removing questions about physical health. In June 2018, the AMA amended its policy on *Access to Confidential Health Services for Medical Students and Physicians* mostly addresses issues around mental health. The policy states in part, "Our AMA will urge state medical boards to refrain from asking applicants about past history of mental health or substance use disorder diagnosis or treatment, and only focus on current impairment by mental illness or addiction, and to accept 'safe haven' non-reporting for physicians seeking licensure or re-licensure who are undergoing treatment for mental health or addiction issues, to help ensure confidentiality of such treatment for the individual physician while providing assurance of patient safety." The FSMB, in its policy *Physician Wellness and Burnout* adopted in April 2018, recommends that state medical boards consider whether it is necessary to include "probing questions about a physician applicant's mental health, addiction, or substance use on applications for medical licensure," noting also that these questions are likely to discourage treatment-seeking among applicants. It goes on to state that "Applications must not seek information about impairment that may have occurred in the distant past and state medical boards should limit the time window for such historical questions to two years or less, though a focus on the presence or absence of current impairment is preferred." The FSMB recommends language such as: "Are you currently suffering from any condition for which you are not being appropriately treated that impairs your judgment or that would otherwise adversely affect your ability to practice medicine in a competent, ethical and professional manner?" AMA Policy "Licensure Confidentiality" endorses this approach by the FSMB. An analysis of medical licensure application questions from 2018 found that a majority of states had questions that were unlikely to meet ADA standards. The table in the article shows the wide range in questions and approaches taken by states.

Amended Resolution 82(21) Defining the Job Description of an Emergency Physician directed ACEP to develop a job description that applies to all emergency physicians reflecting the true physical and cognitive demands of the specialty that can used in relation to disability claims. ACEP developed a letter with a description of emergency medicine work and describing the job requirements of an emergency physician. The letter can be used on behalf of a member's disability claim and can serve as the foundation for a future document. The Emergency Medicine Practice Committee is working on a policy statement and supporting documentation.

Stragegic Plan Reference:

Career Fulfillment – Members believe that ACEP confronts tough issues head on and feel supported in addressing their career frustrations and in finding avenues for greater career fulfillment.

Advocacy – Members believe that they can rely on ACEP to fight for emergency physicians across all landscapes and levels, including federal, state, and local.

Prior Council Action:

Amended Resolution 82 (21) Defining the Job Description of an Emergency Physician adopted. Directed ACEP work with appropriate stakeholders and the insurance industry to develop ACEP policy defining an accurate job description that can apply to all emergency physicians and consider developing an accurate job description for emergency physicians that can be used to support appeals of long term disability claim denials, until an acceptable ACEP policy is created.

Amended Resolution 20(19) Supporting Physicians to Seek Care for Mental Health and Substance Use Disorders adopted. Directed ACEP to: 1) promote awareness of current ACEP policy statement that supports decreasing the barriers, perceived or real, to physicians to feel safe seeking treatment for mental health, substance use, and other issues; 2) work with the American Medical Association, the Federation of State Medical Boards, and state medical societies to advocate for a change at state medical boards for protections for licensure for physicians to seek help and treatment for mental health, substance use, and other disorders; and 3) partner with appropriate stakeholders to investigate the effectiveness and quality of evidence of Physician Health Programs (PHPs) across the states and produce a white paper that reports on the findings.

Amended Resolution 18(18) Reducing Physician Barriers to Mental Health Care adopted. Directed ACEP to work with stakeholders to advocate for changes in state medical board licensing application questions about physician's mental health.

Resolution 16(18) No More Emergency Physician Suicides adopted. Directed ACEP to study the unique specialty-specific factors leading to depression and suicide in emergency physician and develop an action plan to address them.

Amended Resolution 32(04) Disability in Emergency Physicians adopted. Directed ACEP to evaluate and communicate issues related to disability and impairment in the practice of emergency medicine to members and address barriers to participation for members with disabilities. Also directed ACEP to request that ABEM include information on disability in their Longitudinal Study of Emergency Physicians.

Substitute Resolution 9(99) Federation of State Medical Board Recommendations adopted. Directed ACEP to consider establishing a formal relationship with the FSMB and to develop strategies and tools for members to respond to the FSMB's recommendations in "Maintaining State-Based Medical Licensure and Discipline: A Blueprint for Uniform and Effective Regulation of the Medical Profession."

Substitute Resolution 43(88) Emergency Physician Wellness adopted. Directed ACEP to endorse the concept of promoting emergency physician wellness and for the Board to report back to the Council Steering Committee on their actions related to the Wellness Working Group report.

Amended Resolution 29(82) Physician Impairment adopted. Directed ACEP to establish a committee to develop a program on addiction education for members and a program to encourage colleagues with substance use disorders to seek help and provide a report to the 1983 Council about the progress on these efforts.

Prior Board Action:

Amended Resolution 82 (21) Defining the Job Description of an Emergency Physician adopted.

Amended Resolution 20(19) Supporting Physicians to Seek Care for Mental Health and Substance Use Disorders adopted.

Amended Resolution 18(18) Reducing Physician Barriers to Mental Health Care adopted.

Resolution 16(18) No More Emergency Physician Suicides adopted.

February 2020, approved the revised policy statement "Physician Impairment;" revised and approved October

2013, October 2006; reaffirmed September 1999; revised and approved April 1994; originally approved September 1990.

Amended Resolution 32(04) Disability in Emergency Physicians adopted.

Substitute Resolution 9(99) Federation of State Medical Boards adopted.

Substitute Resolution 43(88) Emergency Physician Wellness adopted.

Amended Resolution 29(82) Physician Impairment adopted.

Council Action:

Reference Committee C recommended that Amended Resolution 58(22) be adopted with the revised title.

RESOLVED, That ACEP support the cessation of ~~invasive~~ **intrusive** medical evaluation exams and questionnaires that may unduly and unnecessarily invade the privacy of emergency medicine physicians seeking **and continuing** employment beyond that ~~which is~~ necessary to confirm ability to perform duties associated with the individual's role as hired.

The Council adopted Amended Resolution 58(22) on September 30, 2022.

Testimony:

Asynchronous testimony was exclusively in support. Testimony concurred that though efforts have been made to ensure stigma, probing, or invasive questioning are not part of the pre-employment screening process for physicians, there are still gaps in current policy that need to be addressed. There was discussion for clarification about what constitutes an invasive question. Comments also suggested clarity that the resolution did not call for preferential treatment for physicians beyond that which is requested of non-physician employees. Live testimony also universally supported the resolution.

Board Action:

The Board adopted Amended Resolution 58(22) on October 3, 2022.

RESOLVED, That ACEP support the cessation of intrusive medical evaluation exams and questionnaires that may unduly and unnecessarily invade the privacy of emergency medicine physicians seeking and continuing employment beyond that necessary to confirm ability to perform duties associated with the individual's role as hired.

References:

U.S. Equal Employment Opportunity Commission. Pre-Employment Inquiries and Medical Questions & Examinations. U.S. Equal Employment Opportunity Commission. [Online] June 14, 2022. https://www.eeoc.gov/pre-employment-inquiries-and-medical-questions-examinations.

Implementation Action:

Assigned to the Emergency Medicine Practice Committee to determine if revisions are needed to ACEP's policy statement "Physician Impairment" or whether a separate policy statement or other resources are needed to address the resolution. The committee revised the policy statement to include the language and intent of the resolution and it was approved by the Board of Directors on September 4, 2025.

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