



May 31, 2019

Ronne Hines  
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Via email to: [Ronne.Hines@state.co.us](mailto:Ronne.Hines@state.co.us)

Dear Ms. Hines:

On behalf of the Colorado Hospital Association, COPIC, and the Colorado Medical Society, we respectfully submit this joint feedback regarding the forthcoming Request for Proposals (“RFP”) for the peer assistance program overseen by the Colorado Medical Board (“Board”) pursuant to CRS 12-36-123.5.

Together, our organizations represent more than 100 Colorado hospitals and health systems, and approximately 7,500 physicians, all of whom strongly endorse the need for a robust peer assistance program for Colorado physicians, physician assistants, anesthesiology assistance, and students of these professions, as well as comparable programs for other health care professionals. We are grateful for the Division’s desire to align peer assistance program requirements across professions and your commitment to extensive stakeholder engagement on this issue.

Our organizations agree that peer assistance is most effective if program standards are transparent, are consistently applied to any peer assistance vendors to ensure an “even playing field” for all program applicants and provide consistent expectations for health care professionals seeking treatment in turbulent times. For that reason, we recommend the following be expressly included as requirements in the RFP and formally adopted by the Colorado Medical Board through a rule or policy statement:

**1. The Board is committed to ensuring a confidential treatment option is available through peer assistance programs.**

Without question, confidentiality is a cornerstone of the provider-patient relationship and part of the cultural fabric of patient privacy on which *all* patients rely. In the peer assistance context, confidentiality is even more critical, as it provides health care professionals with the security to seek the support they need before impacting their professional performance or jeopardizing patient safety.

- For many years Colorado has observed a “safe haven” within the peer assistance program that allows a provider to maintain the confidentiality of their treatment records and information and permits a peer assistance program to refrain from

disclosing the condition and ongoing treatment to the Colorado Medical Board as long as the professional is compliant with their treatment plan.

- The facilities, practices and legal counsel involved in assisting these providers and the physicians and providers who have been helped by a peer assistance program have uniformly advised us that maintaining the confidentiality of their participation in a peer assistance program is imperative. Without a strong assurance that participation in the peer assistance program will not be revealed to the board (assuming ongoing compliance with the treatment program), many, if not most, providers would choose not to seek treatment. Further, many participating providers, treatment programs, and treating providers have expressed that the prospect of being reported to the licensing boards for substantial noncompliance with the peer assistance program motivates the participants in the program and is a powerful tool for treating providers to maintain compliance with the treatment program.
- We are also concerned with the chilling effect of requiring a self-referring provider to sign a release or authorization upon intake into the program permitting disclosure of treatment records to the Colorado Medical Board. While we agree that providers should be informed of the consequences of failing to substantially comply, obtaining a release at the beginning of the Peer Assistance Program may discourage self-referrals to the program.
- We would also urge and encourage you to not adopt a strict compliance requirement. As you know, mental health issues and substance use disorders are a disease that can be medically treated. Unfortunately, relapse is often a part of the recovery and treatment process. Successful treatment involves promptly bringing the patients back into compliance. We would urge you to seek out the expertise of those treatment providers who specialize in this area and rely upon their expert, professional judgment to determine when patient safety is at risk.

**2. To fulfill its statutory directive to protect public health and safety, the Board may, under certain circumstances, need to access records of professionals receiving peer assistance services.**

The authority of the Board to access treatment records of the peer assistance program should occur *only* under the following conditions, subject to any other applicable laws, and subject to the professional being given notice of the conditions under which their records may be shared:

- The Board has ordered that the professional to participate in a peer assistance program as part of a formal disciplinary action pursuant to 12-36-118;
- The Board is requiring the professional to enter into a confidential agreement to limit practice pursuant to 12-36-118.5; or
- A professional who is voluntarily participating in a peer assistance program (and not at the direction of the Board) fails to materially comply with the peer assistance provider's treatment agreement. In this circumstance, information may be shared with the Colorado Medical Board if the peer assistance program becomes aware of material noncompliance with a treatment plan and in the exercise of the treatment provider's professional judgment patient safety may be at risk.

As a prevention and early intervention strategy, peer assistance is a core component of ensuring the Board can fulfill its obligation to protect public health and safety. To build the necessary level of trust among the medical community in the Board's peer assistance program, the Board should be actively engaged in ensuring transparency of program standards, consistent application of program standards and processes, and providing appropriate safeguards for confidentiality. We all share the same goal of providing necessary treatment to health care providers in need while simultaneously protecting patient safety.

Please do not hesitate to reach out if we can provide further analysis, recommendations, or information to assist the Division or the Board in proceeding with this process.

Regards,

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Donna Baldwin, D.O., Chair, Colorado Medical Board