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Professional, Legal and Employment Issues for Physical Therapy Practitioners Who May Have a Substance Use Disorder

This article is based on a presentation by Brian Fingerson, BS Pharm, RPH, FAPhA, President, Kentucky Professionals Recovery Network; and Louis D. Kelly, Esq., General Counsel, Kentucky Board of Physical Therapy, at the 2016 FSBPT Annual Meeting.

This presentation provided a look at the risk factors for developing a Substance Use Disorder (SUD) and recognition of the signs and symptoms of SUD. How can this come to the attention of the licensure board — by the licensee or by the filing of a complaint? The presenters discussed possible legal and licensure consequences as well as what are the structural processes for return to practice and accountability of the licensee while under a board order of reinstatement.

Kentucky has an open and transparent disciplinary and recovery system.

Not only does the person who needs to abstain from the substance they are abusing need to be accountable to himself, but also to the profession and the regulatory board. Someone treated for an SUD must show they are able to maintain their abstinence and go back to practice.

An SUD, which includes alcoholism and any other substance to be abused, is defined as anything that triggers the brain's pleasure center and says "that feels good," to the point that they lose control to it. An SUD is a primary chronic disease with genetic, psychosocial, and environmental factors influencing its development and manifestations. The disease is often progressive and fatal. It is characterized by continuous or periodic: impaired control over drinking, preoccupation with the drug alcohol, use of alcohol despite adverse consequences, and distortions in thinking, most notably denial.

A story about a proverbial group of cash-strapped college students going out on a Friday night to a nice restaurant was shared. The first question they're asked is, "what would you like to drink?" There are choices there. They could order a glass of water, which costs nothing and may come with a free slice of lemon. Or perhaps a soda, which may cost a couple of dollars. Or a glass of wine, which depending on the restaurant, could cost anywhere from $7 to $15. Why would a cash-strapped student make that choice? Because the first time they drank wine it made them feel good. By the second one the person across the table starts looking good. By the fifth or sixth, they're singing karaoke.

That's fine — unless the person climbs behind the wheel of a car or has a substance use disorder.

The late Scottish psychiatrist R.D. Lang described denial in his book *Knots*:

"There must be something wrong with him because he would not be acting as he does unless there was. Therefore he is acting as he is because there is something the matter with him. He does not think there is anything the matter with him because one of the things the matter with him is that he does not think there is anything the matter with him. Therefore we have to help him realize that, the fact that he does not think there is anything the matter with him is one of the things that is the matter with him."

Anyone who has confronted someone with a SUD has confronted that. It's like beating your head against a wall. However, regulatory boards have an added degree of control over someone who has a substance use disorder than the general public.

Or, as the late Vernon Johnson put it: "Alcoholism, chemical addiction, SUD, is a disease, the very nature of which renders the victim incapable of recognizing the severity of the symptoms, the progression of the disease, or of accepting any ordinary offers of help." What regulatory boards offer is not an ordinary offer of help, but an extraordinary offer of help.

Under the DSM V: Diagnosis of Addictive Diseases — the latest diagnostic manual — tolerance and withdrawal are always present when a drug is overused or used for an extended time. However, if two or three "loss of control" elements are present as well, the person can be said to be moderately addicted. If four or more criteria are positive, the patient is deemed severely addicted. Those "loss of control" elements are:

- Recurrent use resulting in failure to fulfill obligations
- Recurrent use in physically hazardous situations
- Continued use despite social or interpersonal problems
- Used more and longer than planned
- Unsuccessful attempts to quit or control use
- Excessive time spent obtaining, using, or recovering from use
- Important social, occupational, or other activities given up
- Craving or a strong desire or urge to use a specific substance

There is a statistical increased risk for healthcare professionals (HCPs). The estimated risk factor for the general public to become addicted is 10%. For HCPs, it's 12–16%.

HCPs are more susceptible due to access to drugs, job stress, knowledge of pharmacology, and family history. The reason why Fingerson asked at the outset how many had a family member with an SUD was because if one parent suffers from SUD, there is a 20–25% chance you will too. If both parents suffer from SUD, the risk jumps to 30–50%. In fact, to kick off the presentation, the audience was asked how many of them have family members with an SUD. It was estimated more than 60% raised their hands, which is higher than the normally 50–60% seen when other audiences have been asked that question.

Symptoms of impairment in the workplace include changes in the manner in which patients

and colleagues are treated, deterioration of personal appearance and hygiene, and either a loss in interest in work or becoming a Super PT.

Other symptoms could include poor record keeping, problems with concentration, treatment errors, absenteeism or tardiness, especially on the day following days off, and a pattern of frequent job changes. The PT may show signs of paranoia, make frequent trips to the bathroom, have mood swings, or have periods of unemployment.

An addict has three courses of action: either sober up, get locked up, or get covered up when they die. They ask for help usually when their health is threatened, or a loved one gives an ultimatum, their livelihood is threatened, or they're arrested.

They don't have to reach this point.

In Kentucky, licensees can call the Kentucky Professionals Recovery Network and receive help unknown to the licensing board. As long as there's not a complaint filed and they follow the instructions and follow the contracts they sign, the board need never know they have a problem. They're dealing with it proactively.

If the professional's licensing board is notified, it may act with compassion, but it also has an obligation to protect the public. Boards need to determine if this is a bad person in need of punishment, or a good person in need of treatment. If the practitioner broke the law or harmed someone, there needs to be consequences for their behaviors. But in many cases they still can be treated.

Rehab does work. The goals of rehab are to reduce or eliminate denial, increase self-care, treat the medical and psychiatric problems, treat the co-morbid family (someone with a SUD affects anywhere from five to 20 people), and educate the professional so the professional can protect himself or herself from relapse.

To be effective, those under treatment must sign a contract that spells out what is expected. It's important to draw up the contract for a specific length of time, usually five years. If a person can be held accountable for five years, the chances of maintaining sobriety increase dramatically. If pertinent, it also should be shared with the employer. The contract may limit the number of hours worked and limit the sites or types of workplaces.

In addition, the HCP may have their practice modified, be monitored by peers or others, have protocols prescribed for when a legitimate medical problem requires mood-altering drugs, and consequences should the HCP returns to substance abuse.

Legal issues also were discussed. Most professional licensing boards have statutes or rules prohibiting substance abuse, including Kentucky and Louisiana.

The first obligation of any regulatory board is public protection. In recent years, 99% of the time the PT Board has learned of a SUD through a criminal charge. Kentucky requires applicants and renewals to declare if they have any arrests, but also perform background checks because not everyone is truthful. Board members should check if their state practice acts require the reporting and disclosures only upon application or renewal, or if they require self-reporting of any arrests. That's important because most licenses are granted at

two-year intervals and if self-reporting is not required and an incident occurs the day after a license or renewal is granted the board may not be aware of it for two years.

Many professional licensing boards also have restrictions for certain criminal convictions. In Illinois, for example, boards can refuse to issue or revoke the license of licensees convicted of felonies or misdemeanors involving dishonesty or directly related to the practice of physical therapy. Idaho allows discipline for the conviction of a felony or any crime that has a bearing on the practice of physical therapy.

Boards also have to determine if they have the authority to issue an immediate suspension before the case is adjudicated. Texas statute says the "board may temporarily suspend a license … on an emergency basis if the board, by at least a two-thirds vote, determines from the evidence or information presented to the board that the continued practice by the license holder constitutes a continuing or imminent threat to the public health or welfare." To determine what constitutes evidence of a threat to health or welfare, the board must look at the nature of the criminal charge or accusation (is it going to the bathroom frequently or a felony charge of possessing heroin), the prior history of substance abuse (a recent DUI perhaps), and the opinion of a trained professional.

Several factors come into play when determining whether or not to proceed with a disciplinary action before a criminal charge is adjudicated. The anticipated time it will take for resolution is one consideration. Felonies take longer than misdemeanors in most cases. Whether or not the pending charge will preclude the licensee from participating in his own defense is another, because anything a licensee says to the board could be used in a court of law. Also consider the available evidence. Adjudicated cases provide the board with more evidence. Sometimes the licensee will voluntarily agree to a suspension or other safeguards while the case is ongoing.

SUDs in HCPs is a condition that has been increasingly recognized in the past 30 years. The profession has worked hard to develop treatment protocols and support programs.

The vast majority of healthcare professionals who successfully complete treatment and participate in aftercare monitoring can and do successfully return to practice.

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