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# Correspondence

## Physician Health Programs: Ill-Defined Identity and Complete Lack of Accountability

Dr. Huntoon's editorial[1] catalogs the harms that Physician Health Programs (PHPs) inflict, which persist despite litigation and audits because PHPs choose their legal identity according to the claim brought against them.

When sued for diagnostic negligence or asked for records, PHPs say they have no physician-patient relationship, render no diagnoses, and are not even medical entities. When physicians raise due-process or civil-rights claims, they invoke immunity under state statutes or peer-review privilege under the Health Care Quality Improvement Act (HCQIA). Courts defer to licensing boards' presumed expertise and oversight, while boards actually defer to PHPs. Because of these carefully cultivated alternating identities, at no point can a PHP's conclusions be challenged.

The model's original architects describe both identities. In their *BMJ* "Blueprint" study, McLellan et al. wrote that PHPs "do not treat physicians"; rather, they "provide evaluation and diagnosis" while operating "under the authority of state physician licensing boards."[2] However, *evaluation and diagnosis are the practice of medicine*. Even this sentinel study used diagnoses from PHP records, that participants could neither see nor contest, and analyzed them without consent.[2]

That study, which DuPont and Merlo later offered judges as the evidence for their model,[3] deserves scrutiny. They reported that 55% of participants were formally mandated to enroll and the remaining 45% informally, "with the implicit threat of formal action." In other words, 100% were coerced.

Study results have since been misstated: In 2022, the same group reports that 80.7% "successfully completed" their contracts;[4] vs. 64.2% in the original study, by counting as a success physicians whose contracts were extended, usually due to alleged relapses. Lawson and Boyd added that, since many never had a single positive drug test, physicians who may never actually have had a substance use disorder may be counted as successes, and also that nearly all outcome literature comes from authors tied to PHPs, testing laboratories, or treatment centers.[5]

I respectfully differ with the editorial on remedies. Dr. Huntoon rightly notes limits of North Carolina's 2017 reforms, but a purportedly independent Review Committee selected by the same PHP structure offers no subpoena power, neutral adjudicator, or participant discovery. Worse, it prohibits any further appeal.

Reform should insist that every board-PHP exclusively contracted dyad be actively supervised by the state (as ruled by SCOTUS in *FTC v NC Dental Board*) and aligned with ensuing FTC guidance,[6] guided by an independent compliance unit. Also, PHPs must declare their actual legal identity and the full array of laws to which they are subject. If PHPs evaluate and diagnose, they should be state-licensed and regulated, carry malpractice liability, release records to the physicians they assess, honor confidentiality laws, and meet DSM criteria and nationally recognized occupational FFD assessment and forensic testing standards. If they exercise delegated state authority, they owe full due process before a neutral adjudicator, with the right of full discovery and testimony of an independent evaluator. A program that operates under a chameleon identity cannot be reformed by secretive patchwork legislation or sporadic audits alone.

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