



# A Higher Power

Physician obligations to report another physician's conduct under Wyoming law

BY NICK HEALEY



Wyoming physicians are sometimes confronted with the awkward and difficult choice of whether to bring a colleague's potentially unprofessional, unethical, or harmful conduct to light by making a report to a hospital's peer review committee, or even the Wyoming Board of Medicine in some circumstances. However, physicians are often unsure whether such a report is justified, and whether it is ethically or legally required. Whether a report is justified or ethically required in any particular situation is beyond the scope of this article—however, we can shed light on whether it is required by Wyoming law.

## **I. Generally, Wyoming law does not require physicians to report colleagues to the Wyoming Board of Medicine.**

Unlike many states, Wyoming-licensed physicians can, but are not required to, report another physician to the Wyoming Board of Medicine for conduct violating the Wyoming Medical Practice Act. The Board is empowered to accept and investigate reports of conduct that violates the Wyoming Medical Practice

Act including, but not limited to: errant behavior, criminal conduct, and the provision of care that falls below the applicable standard of care.<sup>1</sup> Moreover, physicians making good faith disclosures to the Wyoming Board of Medicine, without malice and in a reasonable belief of the accuracy of the disclosure, are protected from legal actions for damages by the Wyoming Medical Practice Act.<sup>2</sup>

This lack of a reporting obligation is in contrast to other Wyoming professions. Wyoming nurses, for example, are obligated to report other Wyoming nurses to the Wyoming State Board of Nursing for violating the Wyoming Nursing Practice Act,<sup>3</sup> and the knowing and willful failure to make such a report can be a violation of the Wyoming Nursing Practice Act, subjecting the nurse to discipline by the Wyoming State Board of Nursing.<sup>4</sup>

## **II. Wyoming physicians may have reporting obligations in other contexts.**

Wyoming physicians may, however, have reporting obligations under the Wyoming Medical Practice Act when

<sup>1</sup> Wyo. Stat. Ann. § 33-26-202; § 33-26-402.

<sup>2</sup> Wyo. Stat. Ann. § 33-26-408.

<sup>3</sup> Wyo. Stat. Ann. § 33-21-153.

<sup>4</sup> Wyo. Stat. Ann. § 33-21-146.



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acting in certain contexts, such as a medical staff committee member, or under federal law.

### A. Medical staff reporting obligations

It may fall to physicians serving on the medical executive committee of a Wyoming hospital to fulfill the hospital's obligation under the Wyoming Medical Practice Act to report corrective action taken by the hospital against a physician. The Wyoming Medical Practice Act requires hospitals to report any "action" taken against a physician on the basis of unprofessional conduct or substance abuse to the Wyoming Board of Medicine. The hospital's medical staff bylaws may place this obligation on the medical executive committee, since, generally, hospital medical staff is heavily involved in the corrective action function. It is worth noting that the hospital's reporting obligation under the Wyoming Medical Practice Act is broader than the hospital's obligation to report corrective action to the National Practitioner Data Bank (NPDB). Under the federal Health Care Quality Improvement Act (HCQIA), hospitals and other healthcare entities must make a report to the NPDB of any professional review action that adversely affects the clinical privileges of a physician or dentist for a period of more than 30 days, the hospital's acceptance of the surrender of privileges, or any restrictions placed on those privileges.<sup>5</sup> The hospital's obligation under the Wyoming Medical Practice Act covers "any action" taken on the basis of unprofessional conduct (as defined by the Act) or substance abuse, regardless of the length of time the action lasts. Moreover, although employment actions (such as terminations) are generally not reportable to the NPDB, they may be reportable under the Wyoming Medical Practice Act.


Some medical staff bylaws (and employment agreements) may also require a physician to report inappropriate conduct by another physician by incorporating professional codes of conduct. For instance, medical staff bylaws commonly require medical staff members to adhere to all aspects of the American Medical Association's Code of Medical Ethics, which includes certain reporting obligations. For instance, AMA Code of Medical Ethics opinion 9.4.2 states that physicians who strongly believe the conduct of a colleague threatens patient welfare

or otherwise violates ethical or legal standard should report such conduct to appropriate clinical authorities, the hospital's peer review board and the local medical society.<sup>6</sup> Where that conduct threatens the health and safety of patients or violates state licensing provisions, it should be reported to the state licensing board.<sup>7</sup> Medical staff bylaws may also incorporate specialty society or board codes of conduct, either explicitly or by reference, which contain similar reporting obligations.

### B. Federal law obligations

The Emergency Medical Treatment and Labor Act (EMTALA) imposes its own reporting obligation for violations by hospitals and their physicians. A hospital that receives what it suspects to be an improper transfer must report their suspicions to the Centers for Medicare and Medicaid Services or the relevant state survey agency within 72 hours of when the hospital suspects they have received an improperly transferred individual.<sup>8</sup> A transfer will be improper if the transferring hospital's physician wrongly certified that the benefits of the transfer outweighed the risks, the transferring physician misrepresented an individual's condition, or the transfer is a result of an on-call physician failure or refusal to appear within a reasonable period of time.<sup>9</sup> Importantly, the transferring hospital must send the individual's records and must inform the hospital if the transfer is associated with an on-call physician's failure or refusal to appear.<sup>10</sup> While there is no list of information that is required to be reported, hospitals and physicians making such a report will likely include such information necessary to identify those involved with the improper transfer and the reasons why it may have been improper.

## Conclusion

Irrespective of whether a physician is, or feels they are, under an ethical obligation to report the conduct of a colleague, there are circumstances under both Wyoming law, and otherwise, where the physician may be legally obligated to make a report. Wyoming physicians should, therefore, carefully review all the sources of such obligations they may be subject to, and ensure they understand them, so they can fulfill those legal obligations should the requirement arise. 

<sup>5</sup> Natl. Pract. Data Bank, *Reporting Adverse Clinical Privileges Actions*, <https://www.npdb.hrsa.gov/guidebook/EClinicalPrivileges.jsp> (accessed September 27, 2023).

<sup>6</sup> Am. Med. Ass'n, *AMA Principles of Med. Ethics: II: 9.4.2 Reporting Incompetent or Unethical Behavior by Colleagues*, <https://code-medical-ethics.ama-assn.org/sites/default/files/2022-08/9.4.2.pdf> (accessed September 27, 2023).

<sup>7</sup> Id.

<sup>8</sup> Centers for Medicare and Medicaid Services, *Certification and Compliance For EMTALA*, <https://www.cms.gov/medicare/provider-enrollment-and-certification/certificationandcompliance/downloads/emtala.pdf> (accessed September 28, 2023); 59 Fed. Reg. 32106 (June 22, 1994).

<sup>9</sup> 42 U.S.C. § 1395dd.

<sup>10</sup> 42 C.F.R. § 489.24(3)(2)(iii)